

香港聯合交易所有限公司

(香港交易及結算所有限公司全資附屬公司)

THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

THIS DISCIPLINARY ACTION seeks to emphasise that where announcements are made, it is important that announcements are accurate and complete, in all material respects, and not misleading or deceptive. Any inaccurate, incomplete, misleading or deceptive announcements should be rectified immediately so as to ensure the shareholders and the public are able to appraise the position of the Company and make informed decisions. The Exchange attaches great importance to the disclosure obligations under the Exchange Listing Rules to ensure that investors have and can maintain confidence in the market.

The Listing Committee (“Listing Committee”) of The Stock Exchange of Hong Kong Limited (“Exchange”)

CENSURES:

- (1) **Sunac China Holdings Limited (“Company”)** (Stock Code:1918) for failing to ensure the Joint Announcement and the Termination Announcement was accurate and complete, in all material respects, and not misleading, in breach of Rule 2.13(2) of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited (**“Exchange Listing Rules”**).
- (2) **Mr Sun Hong Bin (“Mr Sun”)**, an executive director for:
 - (a) failing to apply such degree of skill, care and diligence required and expected of him in the discharge of his director’s duties by not (i) disclosing the Supplemental Agreement to the Board for their consideration; (ii) complying with the Company’s internal control procedures concerning the use of the Company’s chop/seal; (iii) considering whether the Supplemental Agreement was subject to any requirements of the Exchange Listing Rules; and (iv) considering the Company’s compliance of Rule 2.13(2) in respect of the Joint Announcement and the Termination Announcement;
 - (b) failing to use his best endeavours to procure the Company’s compliance of the Exchange Listing Rules (**“Best Endeavour Undertaking”**) and for him to comply with the Exchange Listing Rules to the best of his ability in breach of his obligations under his Undertaking given to the Exchange in the form set out in Appendix 5 to the Exchange Listing Rules (**“Best Ability Undertaking”**) (collectively, **“Undertaking”**);

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- (3) **Mr Wang Meng De (“Mr Wang”)**, an executive director for:
- (a) failing to apply such degree of skill, care and diligence required and expected of him in the discharge of his director’s duties by not (i) disclosing the Supplemental Agreement to the Board for their consideration; (ii) considering whether the Supplemental Agreement was subject to any requirements of the Exchange Listing Rules; and (iii) considering the Company’s compliance of Rule 2.13(2) in respect of the Joint Announcement and the Termination Announcement; and
 - (b) failing to comply with his Undertaking.

(Mr Sun and Mr Wang are collectively referred to as “**Relevant Directors**”)

SETTLEMENT AND HEARING

As a consequence of settlement, the Company and the Relevant Directors do not contest the breaches asserted by the Listing Department above and accept the sanctions and directions imposed on them by the Listing Committee as set out below.

BACKGROUND/FACTS

On 30 January 2015, the Company’s subsidiary (“**Subsidiary-A**”) and the Company (acting as a guarantor for Subsidiary-A) entered into a share purchase agreement (“**Share Purchase Agreement**”) with various entities (“**Sellers**”) including, Mr Kwok Ying Shing (“**Mr Kwok**”) to acquire 49.25% of the issued share capital of Kaisa Group Holdings Limited (“**Kaisa**”) for the consideration of \$4,552,553,039.40. It was a term of the Share Purchase Agreement that the consideration would be paid in three tranches, with the first tranche payment in the sum of \$1.55 billion.

On the same day the Company, Subsidiary-A and the Sellers signed a supplemental agreement (“**Supplemental Agreement**”) to the Share Purchase Agreement, pursuant to which the Sellers would be entitled to:

- (a) \$1.55 billion if the Share Purchase Agreement was terminated due to Subsidiary-A’s inability to satisfy or waive some of the condition precedents set out clause 4.1 of the Share Purchase Agreement; or
- (b) \$1.55 billion and compensation of loss, if the conditions under clause 4.1 of the Share Purchase Agreement have been satisfied (or waived) but Subsidiary-A is unable to complete the Share Purchase Agreement.

On 30 January 2015, Mr Sun and Mr Kwok signed a letter in which it was agreed that Mr Sun would place \$2.227 billion worth of the Company's shares (i.e. 332,500,000 shares) with Mr Kwok until Subsidiary-A has completed its payment obligations under the Share Purchase Agreement. According to the Company, the shares were subsequently returned to Mr Sun on 29 May 2015 following the termination of the Share Purchase Agreement.

On 6 February 2015, the Company and Kaisa issued a joint announcement concerning, amongst others things, (i) the Share Purchase Agreement and (ii) Subsidiary's acquisition of the remainder of Kaisa's issued shares by way of a conditional mandatory cash offer pursuant to the Takeovers Code ("**Joint Announcement**").

The Joint Announcement did not make reference to the Supplemental Agreement.

On 28 May 2015, the Company issued an announcement concerning the termination of the Share Purchase Agreement ("**Termination Announcement**"). The Termination Announcement did not make reference to the Supplemental Agreement.

At the material time, Mr Sun and Mr Wang were (and are still) directors of the Company. They had knowledge of the Supplemental Agreement but did not disclose the same to the Board for its knowledge and/or approval.

Mr Sun signed the Supplemental Agreement, on behalf of the Company and Subsidiary-A, and used their chops/seals without the Board's knowledge and approval.

A total sum of \$2.325 billion (including the sum of \$1.55 billion referred to in the Supplemental Agreement) had been refunded to the Company in full on and before 28 December 2015.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Company and Relevant Directors accept, and for the purpose of settlement, the Listing Committee's conclusions that:

- (1) **Company breached Rule 2.13(2) for the reason that** it failed to disclose the Supplemental Agreement in the Joint Announcement and the Termination Announcement, rendering them inaccurate and incomplete, in all material respects, and misleading, under Rule 2.13(2).
- (2) **Mr Sun breached Rule 3.08(f) and Undertaking for:**
 - (a) failing to apply such degree of skill, care and diligence required and expected of him in the discharge of his director's duties by not (i) disclosing the Supplemental Agreement to the Board for their consideration; (ii) complying with the Company's internal control procedures concerning the use of the Company's chop/seal; (iii) considering whether the Supplemental Agreement was subject to any requirements of the Exchange Listing Rules; and (iv) considering the Company's compliance of Rule 2.13(2) in respect of the Joint Announcement and the Termination Announcement; and

- (b) failing to use his best endeavours to procure the Company's compliance with respect to Rule 2.13(2) or comply with Rule 3.08(f) to the best of his abilities in breach of his Undertaking.

(3) Mr Wang breached Rule 3.08(f) and Undertaking for:

- (a) failing to apply such degree of skill, care and diligence required and expected of him in the discharge of his director's duties by not (i) disclosing the Supplemental Agreement to the Board for their consideration; (ii) considering whether the Supplemental Agreement was subject to any requirements of the Exchange Listing Rules; and (iii) considering the Company's compliance of Rule 2.13(2) in respect of the Joint Announcement and the Termination Announcement; and
- (b) failing to use his best endeavours to procure the Company's compliance with respect to Rule 2.13(2) or comply with Rule 3.08(f) to the best of his abilities in breach of his Undertaking.

REGULATORY CONCERNS

The Listing Committee regards the breaches in this matter as serious:

- (1) Any breaches of the disclosure requirements under the Exchange Listing Rules are a serious matter as they serve to safeguard the interests of shareholders and investors, which in turn contributes to an orderly, informed and fair market for the trading of securities listed on the Exchange.
- (2) The Joint Announcement and Termination Announcement were inaccurate and incomplete, in all material respects, and misleading for it failed to mention the Supplemental Agreement. It is imperative that any announcements required under the Exchange Listing Rules comply with Rule 2.13(2) so as to provide transparency to the shareholders and the market.
- (3) The financial implication of the Supplemental Agreement was serious, with the Company being liable to lose \$1.55 billion and possible compensation in the event that the Share Purchase Agreement was terminated in circumstances as set out in the Supplemental Agreement.
- (4) Mr Sun and Mr Wang had full knowledge of the Supplemental Agreement. It is imperative that Mr Sun and Mr Wang do not undermine the integrity of the Company and they should have duly brought to the Board's knowledge of the Supplemental Agreement such that the Company could comply with the Exchange Listing Rules requirements. In addition, the Relevant Directors have an obligation to keep the investors and public fully informed of important information and developments about the Company, which may affect their assessment of the Company.

- (5) Mr Sun signed the Supplemental Agreement without the Board's knowledge or approval which is unacceptable. Each director is accountable to the Company and its shareholders for his actions and must disclose and seek approval from the Board before taking any actions that would affect the interests of the Company and its shareholders.
- (6) The Company's breach was directly attributable to the Relevant Director's conduct and failure to act. This case brings serious concerns over the Company's corporate governance and the Relevant Directors' ability to procure the Company's compliance with the Exchange Listing Rules.

SANCTIONS

Having made the findings of breach as stated above, to which the Company and Relevant Directors do not contest, and for the purpose of settlement, to the facts set out above, and having concluded the breaches are serious, the Listing Committee decides to:

CENSURE:

- (1) The Company for its breach of Rule 2.13(2).
- (2) The Relevant Directors for their breach of Rule 3.08(f) and respective Undertaking.

The Listing Committee further directs:

- (3) Mr Sun and Mr Wang to each (a) attend 24 hours of training on the Exchange Listing Rules compliance, director's duties and corporate governance matters together with 2 hours on the disclosure requirements under Chapter 2 of the Exchange Listing Rules (in particular Rule 2.13) (altogether 26 hours, "**Training**") provided by institutes such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Department. The Training is to be completed within 90 days from the publication of this news release; and (b) provide the Department with the training provider's written certification of full compliance within two weeks after training completion.
- (4) The Company is to publish an announcement to confirm the directions in sub-paragraph (3) above have been fully complied with within two weeks after the fulfillment of those directions.
- (5) The Company is to submit a draft of the announcement referred to in sub-paragraph (4) above for the Department's comment and may only publish the announcement after the Department has confirmed it has no further comment on it.
- (6) Following the publication of this Press Release, any changes necessary and any administrative matters which may emerge in the management and operation of any of the directions set out in paragraphs (3) to (5) above are to be directed to the Listing Department for consideration and approval. The Listing Department should refer any matters of concern to the Listing Committee for determination.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Company and Relevant Directors and not to any other past or present members of the Board of directors of the Company.

Hong Kong, 26 October 2017