

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 underlines the importance for directors to act with integrity and avoid any actual or potential conflict of interests by declaring any interests at the earliest opportunity and refraining themselves from voting or being counted as part of the quorum with respect to any conflicted issues. Directors, individually and collectively, have a duty to disclose any conflict of interest issues concerning other directors of the company.**

## The Listing Committee of the Exchange (“Committee”)

### CENSURES:

- (1) **Han Tang International Holdings Limited** (“Company”) (Stock Code:1187) for failing to:
  - (a) comply with the announcement, circular and shareholders’ approval requirements with respect to the Project Transfer Agreement and the Option Agreements, in breach of Rules 14.34, 14.38A, 14.48, 14.49 and Rules 14A.21, 14A.45, 14A.47, 14A.48 and 14A.49 of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited (“LR”);
  - (b) announce and obtain shareholders’ approval in respect of the Condition Issue, being a material variation to the terms of the Investment Agreement previously announced and approved by shareholders, in breach of LR14.36;
  - (c) ensure the April Announcement was accurate, complete and not misleading, in breach of LR2.13(2);
  
- (2) **Mr Goh Nan Kioh** (“Mr NK Goh”), a former non-executive director (“NED”) and former Chairman of the Company who resigned on 2 January 2014, and **Mr Goh Nan Yang** (“Mr NY Goh”), a former executive director (“ED”) of the Company who resigned on 31 March 2014 for:
  - (a) failing to avoid actual and potential conflicts of interest by not disclosing to the Company the Goh’s Interest with respect to the Pacific Option Agreement as well as abstain themselves from voting on the same, in breach of LR3.08(d);

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- (b) failing to apply such degree of skill, care and diligence required and expected of them in the discharge of their director's duties by not (i) disclosing the Option Agreements to the Company; (ii) reasonably contemplating that the Condition Issue was potentially a material variation of the Investment Agreement under the LR; and (iii) ensuring the April Announcement was accurate and complete, in breach of LR3.08(f); and
  - (c) failing to use their best endeavours to procure the Company's LR compliance ("Best Endeavour Undertaking") and for them to comply with the LR to the best of their abilities in breach of their obligations under their respective Undertaking given to the Exchange in the form set out in Appendix 5 Form B to the LR ("Best Ability Undertaking") (collectively, "Undertaking");
- (3) **Mr Yeow See Yuen** ("Mr Yeow"), a former independent non-executive director ("INED") and former NED of the Company who resigned on 16 June 2014, for breach of LR3.08(f) and his Undertaking as described in paragraphs (2)(b) and (c) above;
- (4) **Mr Wang Shu Jie** ("Mr SJ Wang"), a former INED and ED of the Company who resigned on 1 September 2014 for failing to:
- (a) apply such degree of skill, care and diligence required and expected of him to ensure the Condition Issue, Supplemental Agreement and Project Transfer Agreement were properly announced, in breach of LR3.08(f); and
  - (b) comply with the terms of his Undertaking.

**AND FURTHER CRITICISES:**

- (5) **Mr Xu Lei** ("Mr Xu"), a NED of the Company;
- (6) **Mr Liu Hongjun** ("Mr Liu"), a former INED of the Company who resigned on 27 June 2016 for failing to:
- (a) apply such degree of skill, care and diligence required and expected of them in taking reasonable steps to protect the Company's assets, in breach of LR3.08(f); and
  - (b) comply with the terms of their Best Ability Undertaking.

(Mr NK Goh, Mr NY Goh, Mr Yeow and Mr SJ Wang are collectively referred to as "Relevant Directors")

On 21 March 2017, the Committee conducted a hearing into, among others, the conduct of the Company under the LR, the Relevant Directors, Mr Xu and Mr Liu in relation to their obligations under the LR and their respective Undertaking.

## **FACTS**

On 7 December 2012, the Company's subsidiary ("Subsidiary-A") and an independent entity ("Entity") entered into an agreement ("Investment Agreement") in which both parties agreed to inject a total sum of \$400 million into the target company ("Target"). Subsidiary-A did not satisfy a condition precedent to inject \$291.16 million into the Target after the Entity became a shareholder of the Target ("Condition Issue"), which constituted a material variation to the Investment Agreement that had previously been disclosed and approved by shareholders.

On 28 January 2013, the Target and the Entity entered into an agreement ("Project Transfer Agreement") whereby the Target agreed to purchase plant and equipment from the Entity for \$460 million. The said agreement was a connected and disclosable transaction, which was classified as a very substantial acquisition.

On 6 February 2013, the Company's subsidiary ("Subsidiary-B") entered into an option agreement with (i) Pacific Union Pty Limited ("Pacific") ("Pacific Option Agreement") and (ii) KL-Kepong International Ltd ("KLK") (collectively, "Option Agreements"), whereby Pacific and KLK were each granted an option to acquire Subsidiary-B's shares in Carham Assets Limited ("Carham") for \$150 million. The Option Agreements were connected and disclosable transactions, which were classified as a very substantial disposal.

On 31 March 2013, Subsidiary-A and the Entity entered into an agreement ("Supplemental Agreement") that extended the deadline to complete one of the condition precedents under the Investment Agreement.

On 16 April 2013, the Company issued an announcement ("April Announcement") which did not disclose the Condition Issue, the Project Transfer Agreement, the Option Agreements and the Supplemental Agreement.

In April and May 2014, Mr NK Goh and Mr NY Goh authorised Subsidiary-B to effect the transfer of Subsidiary-B's shares in Carham to Pacific and KLK in discharge of the charge under a loan agreement between (a) Subsidiary-B and Pacific; and (b) Subsidiary-B and KLK, respectively. The transfer of shares led to the Company's loss of its principal business.

At the material time, Mr NK Goh was the director of the Company, Subsidiary-A and Pacific. Mr NY Goh was the brother of Mr NK Goh (collectively, "Goh's Interest"). They authorised the Pacific Option Agreement without (a) disclosing the Goh's Interest and (b) the Company's knowledge or approval.

Mr NK Goh and Mr NY Goh authorised the Option Agreements whilst Mr Yeow signed the same without the Company's approval or knowledge.

## **COMMITTEE'S FINDINGS OF BREACH**

The Committee considered the written and oral submissions of, among others, the Listing Department, the Company, the relevant Relevant Directors and Mr Xu and concluded:

**(1) Company breached LR2.13(2), 14.34, 14.36, 14.38A, 14.48, 14.49, 14A.21, 14A.45, 14A.47, 14A.48 and 14A.49 for reasons that:**

- (a) It failed to announce and obtain shareholders' approval for the Condition Issue which constituted a material variation to the Investment Agreement as required under LR14.36;
- (b) The April Announcement was inaccurate, incomplete and misleading, in breach of LR2.13(2); and
- (c) It failed to comply with the LR14.34, 14.38A, 14.48, 14.49, 14A.21, 14A.45, 14A.47, 14A.48 and 14A.49 in respect of the Option Agreements and the Project Transfer Agreement.

**(2) Mr NK Goh and Mr NY Goh breached LR3.08 and the Undertaking for reasons that:**

- (a) They failed to comply with the LR in respect of the Option Agreements;
- (b) They failed to avoid actual and potential conflicts of interest with respect to the Pacific Option Agreement, in breach of LR3.08(d);
- (c) They failed to exercise skill, care and diligence reasonably required and expected of them by not (i) disclosing the Option Agreements; (ii) reasonably contemplating the Condition Issue constituted a material variation; and (iii) ensuring the April Announcement was accurate and complete, in breach of LR3.08(f); and
- (d) They breached their Undertaking.

**(3) Mr Yeow breached LR3.08 and the Undertaking for reasons that:**

- (a) He failed to exercise skill, care and diligence reasonably required and expected of him given his knowledge, experience and position in the Company by not (i) disclosing the Option Agreements; (ii) reasonably contemplating the Condition Issue constituted a material variation; (iii) ensuring the April Announcement was accurate and complete; (iv) signed the Option Agreements without the Company's approval; and (v) informing the Company of the Goh's Interest, in breach of LR3.08(f); and
- (b) He breached his Undertaking.

**(4) Mr SJ Wang breached LR3.08 and the Undertaking for reasons that:**

- (a) He failed to exercise skill, care and diligence reasonably required and expected of him given his knowledge, experience and position in the Company by not (i) ensuring the Condition Issue, the Supplemental Agreement and the Project Transfer Agreement were properly disclosed; (ii) ensuring the April Announcement was accurate and complete; and (iii) reasonably contemplating the Condition Issue constituted a material variation, in breach of LR3.08(f); and

(b) He breached his Undertaking.

**(5) Mr Xu and Mr Liu breached LR3.08 and the Best Ability Undertaking for reasons that:**

(a) They failed to exercise skill, care and diligence reasonably required and expected of them given their knowledge, experience and position in the Company by not taking reasonable steps to protect the Company's assets, in breach of LR3.08(f); and

(b) They breached their Best Ability Undertaking.

**REGULATORY CONCERNS**

The Committee regards the breaches in this matter serious:

- (1) The LR are designed to ensure that investors have a continued confidence in the market and they are kept fully informed by the Company. The purpose and intention of LR14.36 is aimed to achieve this purpose, to which, the Company had failed to do by not disclosing the Condition Issue and not allowing shareholders the opportunity to vote on the same.
- (2) The April Announcement was incomplete, inaccurate and misleading for it failed to properly disclose the Condition Issue, the Supplemental Agreement, the Project Transfer Agreement and the Option Agreements. It is imperative that any announcements required under the LR comply with LR2.13(2) so as to provide transparency to the shareholders and the market.
- (3) The Option Agreements were connected transactions and classified as a very substantial disposal under the LR, which carried serious implications to the Company. The Company was required to disclose and obtain shareholders' prior approval for the Option Agreements so as to maintain a fair and orderly market.
- (4) Mr NK Goh and Mr NY Goh abused and took advantage of their interests (ie Goh's Interest) in authorising the Pacific Option Agreement without the Company's knowledge or approval. Such conduct undermines Mr NK Goh's and Mr NY Goh's integrity and duty owed by them to act in the interests of the Company's shareholders. It was imperative that Mr NK Goh and Mr NY Goh disclose the Goh's Interest and refrain from voting or be counted as part of the quorum with respect to the matter.
- (5) Mr Yeow's reason for signing the Option Agreement without the Company's knowledge or approval is unacceptable. Each director is accountable to the Company and its shareholders for its actions and they must disclose and seek approval from the Board before taking any actions that would affect the interests of the Company and its shareholders. Mr Yeow was expected to have disclosed to the Company the Option Agreement as well as its knowledge of the Goh's Interest.
- (6) Mr SJ Wang's failure to comply with his duties as a director undermines his responsibility to act in the interest of the Company's shareholders as a whole.

**SANCTIONS**

Having made the findings of breach stated above, and having concluded the breaches are serious, the Committee is highly critical of and decides to:

**CENSURE:**

- (1) The Company for its breach of LR2.13(2) 14.34, 14.36, 14.38A, 14.48, 14.49, 14A.21, 14A.45, 14A.47, 14A.48 and 14A.49;
- (2) The Relevant Directors for their breach of LR3.08 and their respective Undertaking; and

**CRITICISE:**

- (3) Mr Xu and Mr Liu for their breach of LR3.08(f) and their respective Best Ability Undertaking.

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

Hong Kong, 15 November 2017