

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)

**The Exchange Listing Rule provisions on notifiable and/or connected transactions are designed to safeguard and protect investors and shareholders. The Exchange views the failure to comply with these provisions seriously.**

**In this case, the Company entered into a number of financing transactions with third party financial institutions to guarantee the repayment obligations of certain loans or contingent liabilities owed by connected persons at the relevant time. The connected persons were all related to a former Executive Director of the Company, who was also the Company's founder, and its Chairman and controlling shareholder at the relevant time.**

**A director has responsibility to be answerable to the issuer for the application of its assets and to put connected transactions forward for Board approval. Shareholders' approval should also be obtained where required, before such transactions are entered into and executed.**

**Repeated non-compliance with an issuer's internal control policies by a director indicates a serious concern as to the director's ability to discharge his responsibilities under the Exchange Listing Rules, such that the retention of office by that director is prejudicial to the interests of investors.**

**The Listing Committee of The Stock Exchange of Hong Kong Limited ("Listing Committee")**

#### **CRITICISES:**

(1) **SRE Group Limited ("Company")** (Stock Code: 1207)

for breaching Rules 14.34, 14.38A, 14.40, 14A.35, 14A.36, 14A.46, 14A.49 and 14A.60(1) of the *Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited* ("**Exchange Listing Rules**") for failing to comply with the announcement, circular and shareholders' approval requirements in relation to certain financing transactions;

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**AND CENSURES:**

- (2) **Mr Shi Jian** (“**Mr Shi**”), former executive director (“**ED**”) and Chairman of the Company, for breaching Rule 3.08(c), (e) and (f) of the Exchange Listing Rules, and his obligations under the *Declaration and Undertaking with regard to Directors* given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (the “**Undertaking**”) for failing to comply with the Exchange Listing Rules to the best of his ability and failing to use his best endeavours to procure the Company’s Exchange Listing Rule compliance.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this news release apply only to the Company and Mr Shi, and not to any other past or present members of the board of directors of the Company.

**SETTLEMENT**

As a consequence of settlement, the Company and Mr Shi admit their respective breaches asserted by the Listing Department above and accept the sanctions and directions imposed upon them by the Listing Committee as set out below.

As a condition of settlement, Mr Shi agreed that he would never become a director and be involved in the management of the Company or any of its subsidiaries.

**FACTS**

On 9 June 2015, the Company announced that Mr Shi, the founder, Chairman, ED and a substantial shareholder of the Company at the time, was required by PRC authorities to stay under custody at a designated residence. Mr Shi’s duties were suspended by the Board on 21 September 2015 and he was removed from office on 2 December 2015.

On 24 September 2015, the Company published an announcement which stated that upon conducting an internal review, it was revealed that between 2011 and 2014, certain financing transactions had been executed by Mr Shi, purportedly acting for and on behalf of certain members of the Group, with third party financial institutions without the knowledge of the other directors of the Company at the relevant time. The financing transactions involved the provision of six guarantees and other financial assistance by the Company and/or its subsidiaries to guarantee the repayment obligations of loans owed by certain parties connected to Mr Shi (“**Guarantees**”).

The Company admitted that it had failed to comply with the announcement, circular and shareholders’ approval requirements under Chapters 14 and 14A of the Exchange Listing Rules in relation to the Guarantees. Despite the Company’s admission, as the borrower named under one of the six Guarantees was a subsidiary of the Company at the relevant time, the findings of breach below relate to only five of the six Guarantees disclosed in the Company’s announcement of 24 September 2015 (“**Relevant Guarantees**”).

On 11 May 2016, the Company announced that PricewaterhouseCoopers Management Consulting (Shanghai) Limited, the independent forensic specialist engaged by the Company in November 2015 to conduct a forensic review of the Guarantees, had identified three additional sets of financing transactions which failed to comply with the announcement, circular, and/or shareholders' approval requirements under Chapters 14 and 14A of the Exchange Listing Rules ("**Additional Guarantees**", together with the Relevant Guarantees, the "**Financing Transactions**").

The Company admitted that it had failed to comply with the announcement, circular, and/or shareholders' approval requirements under Chapters 14 and/or 14A of the Exchange Listing Rules in relation to the Additional Guarantees.

On 13 July 2017, the Company announced that it no longer has any contingent liabilities in relation to the Financing Transactions as (i) the relevant borrowings have either been fully repaid by the respective borrowers or ceased to have any financial impact, or (ii) the relevant borrowers have become subsidiaries of the Company and therefore ceased to be connected persons of the Company under Chapter 14A of the Exchange Listing Rules.

#### **Exchange Listing Rule Requirements**

The Financing Transactions were subject to the following requirements of the Exchange Listing Rules:

- (a) Rule 14.34 provides that a listed issuer must inform the Exchange and publish an announcement as soon as possible after the terms of a discloseable transaction, major transaction or very substantial acquisition have been finalised.
- (b) Rules 14.38A and 14.40 provide that a major transaction must be conditional upon shareholders' approval at a general meeting held by the listed issuer, and that a circular must be issued to shareholders for this purpose.
- (c) Rule 14A.35 provides that a listed issuer must announce a connected transaction as soon as practicable after its terms have been agreed.
- (d) Rules 14A.36 and 14A.46 provide that a connected transaction must be conditional upon shareholders' approval at a general meeting held by the listed issuer, and that a circular must be issued to shareholders for this purpose.
- (e) Rule 14A.49 provides that a listed issuer must disclose its connected transactions conducted during the financial year in its annual report.
- (f) Rule 14A.60(1) provides that when a continuing transaction subsequently becomes connected, the listed issuer must comply with the annual review and disclosure requirements including publishing an announcement and annual reporting if the listed issuer's group continues to conduct the transaction under the agreement.

Rule 3.08 provides that the Exchange expects the directors to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. These include duties to:

- (a) be answerable to the listed issuer for the application or misapplication of its assets (Rule 3.08(c));
- (b) disclose fully and fairly his interests in contracts with the listed issuer (Rule 3.08(e)); and
- (c) apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the listed issuer (Rule 3.08(f)).

Mr Shi was under an obligation, pursuant to his Undertaking, to comply to the best of his ability with the Exchange Listing Rules and to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules.

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

On the basis of the written and oral submissions of the Listing Department, the Company and Mr Shi, and with the Company and Mr Shi admitting the Listing Department's assertion of breaches, the Listing Committee has the following findings:

### **Company's breaches**

The Listing Committee noted that the Company admitted that it had breached Rules 14.34, 14.38A, 14.40, 14A.35, 14A.36, 14A.46, 14A.49 and 14A.60(1) and found that the Company did breach these Rules by failing to comply with the reporting, announcement, circular and/or shareholders' approval requirements in respect of the Financing Transactions.

The Listing Committee, having considered the circumstances and facts of this matter, noted that the Company had internal controls in place for its compliance with Chapters 14 and 14A of the Exchange Listing Rules at the relevant time. Accordingly, the Company's breaches of the Exchange Listing Rules described above did not stem from internal control deficiencies.

### **Mr Shi's breaches**

The Listing Committee noted that Mr Shi admitted that he had breached (1) Rules 3.08(c), (e) and (f), (2) his Undertaking for complying with the Exchange Listing Rules to the best of his ability and (3) his Undertaking for failing to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules:

- (a) The evidence suggests that Mr Shi was the only director involved in the execution of the Financing Transactions. It was therefore incumbent upon him to recognise the nature of the transactions, to comply with the Company's internal control procedures, to report the Financing Transactions to the Board, and to procure the Company's Rule compliance in respect of the Financing Transactions. There is no evidence that Mr Shi took any of the above steps. This demonstrated that Mr Shi did not apply such degree of skill, care and diligence as may reasonably be expected of persons of his knowledge and experience holding his office.
- (b) The Financing Transactions were entered into by Mr Shi without complying with the relevant requirements under Chapters 14 and 14A of the Exchange Listing Rules, and according to the Company's submissions, without complying with the Group's internal control procedures. This demonstrated that Mr Shi has failed to (i) be answerable to the Company for the application of its assets, (ii) disclose fully and fairly his interests in contracts with the Company, and (iii) apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the Company.

The Listing Committee regards Mr Shi's breaches in this matter serious and considers that Mr Shi has failed in his responsibilities under the Exchange Listing Rules as a director of the Company:

- (a) The evidence shows that Mr Shi was the cause of the breaches by the Company. He procured the execution of the Financing Transactions. There is no evidence that Mr Shi considered any Exchange Listing Rule implications when the Financing Transactions were entered into, or at any time after the event, even though he was an ED and the Chairman of the Board.
- (b) The evidence also shows that Mr Shi failed to disclose most of the Financing Transactions to the Board, by not complying with the Company's internal control procedures, by not reporting the Financing Transactions to the Board, and by keeping the relevant documentation in his office rather than together with the Company's contracts.
- (c) The Company produced a set of minutes for a Board meeting purportedly held to approve one of the Relevant Guarantees ("**Minutes**"). The Minutes were found attached to a Co-Repayment Letter of Undertaking signed by Mr Shi on behalf of the Company to a third party bank, possibly for the purpose of showing the bank that Board approval for the Relevant Guarantee had been obtained. However, the Company submitted that there was no record of the purported Board meeting having taken place and there were no records to show that notice was given to all of the then directors of the Company. Mr Shi was the only director who was named in the Minutes as attending the Board meeting.

## **REGULATORY CONCERN**

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

- (1) This case reveals a serious concern over the competence of Mr Shi, as ED and the Chairman of the Board, to ensure that (a) notifiable and connected transactions were identified and reported to the Board for Board approval; and (b) the Company fully complied with the applicable Exchange Listing Rules.

- (2) Mr Shi's conduct led to the Company's repeated inability to comply with the applicable Exchange Listing Rules in respect of the Financing Transactions, which involved significant sums, over a prolonged period of time. Mr Shi's conduct also subjected the Group to significant credit risk.
- (3) Investors and shareholders rely on information in the public domain to make their investment decisions. Investors rely on information disclosed by listed issuers to assess the investment risks in making investment decisions. Mr Shi's conduct has undermined the integrity of the Company, as well as its obligation to keep its shareholders and the public fully informed of important information and developments about the Company, which may affect their assessment of the Company. The shareholders were also deprived of their right to vote on the Financing Transactions (where required).

### **SANCTIONS**

Having made the findings of breach stated above, and having concluded that the breaches are serious, the Listing Committee decides to:

- (1) criticise the Company for its breach of Rules 14.34, 14.38A, 14.40, 14A.35, 14A.36, 14A.46, 14A.49 and 14A.60(1);
- (2) censure Mr Shi for breach of Rules 3.08(c), (e) and (f) and his Undertaking; and
- (3) state that, in the Exchange's opinion, by reason of Mr Shi's failure to discharge his responsibilities under the Exchange Listing Rules, had Mr Shi remained in office, his retention of office would have been prejudicial to the interests of investors.

The Listing Committee further directs:

- (1) As a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange, Mr Shi, who is currently not a director of any other company listed on the Exchange, (a) to attend 24 hours of training on Exchange Listing Rule compliance and directors' duties, including four hours of training on notifiable and connected transactions, to be provided by institutions such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Listing Department, to be completed before the effective date of any such appointment; and (b) to provide the Listing Department with the training provider's written certification of full compliance.
- (2) Following the publication of this news release, any changes necessary and any administrative matters which may emerge in the management and operation of the above direction is 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.