



**THE STOCK EXCHANGE OF HONG KONG LIMITED**  
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

26 June 2006

**The Listing Committee of The Stock Exchange of Hong Kong Limited (the “Listing Committee”) criticises Industrial and Commercial Bank of China (Asia) Limited (the “Company”) for breaching the Exchange Listing Rules.**

At a disciplinary hearing held on 22 February 2005, the Listing Committee conducted a hearing into possible breaches of the Exchange Listing Rules by the Company of its obligations under the then Rules 14.25(1) and 14.26 and paragraph 3.2.1 of the then Practice Note 19 of the Exchange Listing Rules.

On 12 April 2006, the Listing Committee conducted a disciplinary (review) hearing (the “Disciplinary (Review) Hearing”) on the application of the Company for a review of the decision reached and the sanction imposed by the Listing Committee at first instance.

**Facts:**

The Company was acquired by The Industrial and Commercial Bank of China (“ICBC”) in July 2000 and according to the Company’s filings as at December 2004, ICBC held approximately 57 per cent of the Company’s shares. On 4 May 2001, the Company entered into a business transfer agreement (the “Business Transfer Agreement”) with ICBC pursuant to which the Company would acquire the commercial banking business of ICBC’s Hong Kong Branch (the “Acquisition”). The Acquisition was completed in July 2001, which involved the acquisition of ICBC’s commercial banking business and the entering into of a collaboration agreement dated 3 July 2001 governing the business relationship between the Company and ICBC (the “Collaboration Agreement”).

Two cases of breaches by the Company had arisen since, and were related to, the Acquisition.

**Case I – Ongoing connected transactions**

*Rule 14.25(1)*

Pursuant to the then Rule 14.25(1) of the Exchange Listing Rules, the Company was required to make an announcement and include details of the transactions in its next published annual report whenever it entered into any connected transaction, the total consideration or value of which was more than the higher of \$1 million or 0.03 per cent of its net tangible assets (“NTA”) and less than the higher of \$10 million and 3 per cent of its NTA.

Under the Collaboration Agreement, there were certain ongoing connected transactions between the Company and ICBC, such as the provision of management services by the Company to ICBC and the reimbursement of rental expenses from the Company to ICBC (collectively, the “Ongoing Connected Non-Banking Transactions”).

Pursuant to the then Rule 14.25(1), the Company announced the Ongoing Connected Non-Banking Transactions on 4 May 2001 and 27 December 2001 but did not make the requisite announcement for those transactions which took place in 2002 until 28 October 2002 or obtain a waiver from the Exchange until 11 December 2002.

#### *Rule 14.26*

Further, there were other connected transactions which could be categorised as inter-bank lending/borrowing transactions, derivatives transactions, foreign exchange transactions, inter-bank capital markets transactions, capital markets transactions and forfaiting transactions, (collectively, the “Ongoing Connected Banking Transactions”).

Pursuant to the then Rule 14.26 of the Exchange Listing Rules, the Company was required to issue a circular and obtain prior independent shareholders’ approval for the proposed connected transactions where the total consideration or value of the connected transaction was more than the higher of \$10 million or 3 per cent of the Company’s net tangible assets.

In respect of the Ongoing Connected Banking Transactions, the Company did not issue the relevant circular to its shareholders until 18 November 2002 and did not obtain independent shareholders’ approval before carrying out the transactions in the second half of 2001 following the Acquisition and throughout 2002 (up to the date of the approval from the independent shareholders on 10 December 2002).

#### Case II – Advances falling within the then Practice Note 19 of the Exchange Listing Rules (“PN19”)

Pursuant to the Business Transfer Agreement, the financial exposures of certain customers of ICBC’s Hong Kong Branch (the “Exposures”) were transferred to the Company immediately following completion of the Acquisition in July 2001. The Company also entered into a deed of guarantee with ICBC (acting through its Hong Kong Branch) whereby ICBC agreed to guarantee the payment obligations of certain customers whose Exposures were to be transferred to the Company. ICBC would indemnify the Company in respect of any losses incurred if any obligation of such customers became unenforceable.

Under paragraph 3.2.1 of the then PN19, the Company should disclose any relevant advance to an entity which exceeded 25 per cent of the Company’s NTA (the “PN19 Threshold”). Since completion of the Acquisition in July 2001, the Company’s advances to certain customers had already exceeded the PN19 Threshold.

Upon the Company's application for a waiver from strict compliance with paragraph 3.2.1 of the then PN19 relating to the Exposures for 16 of its customers (the "PN19 Waiver Application"), the Listing Committee granted some but not all of the waivers applied for on a case specific basis in November 2002. The waivers granted were in respect of those advances that were exempted under section 81 of the Banking Ordinance. For those advances that were not exempted under the specified sections of the Banking Ordinance, the Listing Committee required that the Company fully comply with the requirements of paragraph 3.2.1 of the then PN19. With the Listing Committee's decision on the definition of "net assets" under the then PN19, the Company was asked to check and confirm whether its summary list of Exposures was correct and complete. The Company later advised that there were five additional customers whose exposures had exceeded the PN19 Threshold but were subsequently reduced to below that threshold.

As a result of the above decision of the Listing Committee, the Company was alleged to have breached paragraph 3.2.1 of the then PN19 for failing to disclose:

- (i) the relevant advances to 21 customers which exceeded the PN19 Threshold in the respective time periods prior to the date of the approval of the PN19 Waiver Application;
- (ii) as a sub-set of (i) above, the relevant advances to 11 customers exempted under section 81 of the Banking Ordinance which exceeded the PN19 Threshold prior to the date of the approval of the PN19 Waiver Application; and
- (iii) as a sub-set of (i) above, the relevant advances to four customers (the "Four Customers") that were non-exempted under the Banking Ordinance which exceeded the PN19 Threshold at the material time. In respect of the Four Customers, the non-exempted portions of their Exposures alone had already exceeded the PN19 Threshold at the time of the PN19 Waiver Application.

In its decision letter dated 20 November 2002, the Listing Committee also required the Company to issue an announcement in relation to the non-exempted advances to the Four Customers highlighted in (iii) above. However, the Company did not comply with the Listing Committee's direction to issue the relevant announcement.

### **The Decision**

The Listing Committee concluded as follows:

- (i) in respect of Case I, the Company breached the then Rule 14.25(1) of the Exchange Listing Rules in respect of the Ongoing Connected Non-Banking Transactions that took place in 2002 (whenever the threshold stipulated under the then Rule 14.25(1) had been exceeded) up to 28 October 2002;
- (ii) in respect of Case I, the Company also breached the then Rule 14.26 of the Exchange Listing Rules for the second half of 2001 from 3 July 2001, and for the year 2002 up to the date when its independent shareholders approved the Ongoing Connected Banking Transactions on 10 December 2002; and

- (iii) in respect of Case II, the Company breached paragraph 3.2.1 of the then PN19 for failing to disclose the relevant advances.

At the Disciplinary (Review) Hearing, the Listing Committee upheld the decision reached and the sanction imposed by the Listing Committee at first instance. The Listing Committee was gravely concerned that the Company had failed to comply with the earlier Listing Committee's requirement to publish an announcement in respect of the advances not covered by the PN19 waiver.

The Listing Committee decided to impose a public statement which involved criticism on the Company for the said breaches.

Head of Listing, Richard Williams said, "There are a number of important regulatory lessons to be taken away from the decision in this case. The first being that listed banks must fulfil their Exchange Listing Rules obligations notwithstanding the fact that they are also regulated by the Hong Kong Monetary Authority. The same principle applies also to listed issuers in other industries that are regulated by more than one regulatory authority.

Second, this case serves as a reminder for all listed issuers intending to engage in material transactions (in this case, the Acquisition being a "very substantial acquisition" of the Company as defined by the Exchange Listing Rules) that they should not only comply with disclosure and shareholder approval requirements in respect of the transaction itself, but also anticipate all Exchange Listing Rules implications following the transaction, so as to ensure their compliance arrangements are reviewed and where necessary modified to ensure that the issuer has appropriate compliance systems in place and that they work in practice. Such a review would identify any need to ascertain the possibility of obtaining waivers from compliance well in advance. If waivers are to be sought they should be requested in good time with adequate information and supporting material. A waiver cannot and does not operate retroactively to excuse or remedy past breaches.

Third, the Listing Committee expects that the management of listed issuers will comply with its directions. Failure to comply with a specific direction by the Listing Committee to provide disclosure of certain matters will be an aggravating factor in deciding the level of sanction to be imposed in any disciplinary action that may be brought against a listed issuer in respect of its underlying failure to adhere to the disclosure obligations by the Exchange Listing Rules."