



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)
(「聯交所」)

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

6 August 2015

THIS DISCIPLINARY ACTION underlines the importance of keeping shareholders and the public fully informed of material factors which might affect their interests. The assessment of materiality by directors should be a careful subjective judgment with the interests of shareholders and investors paramount. Shareholders should not be deprived of their right to receive information and to vote on matters where they are required and/or entitled to do so.

The decision also highlights the directors’ responsibility to give due prominence to compliance with the GLR. Directors have an obligation to inform existing and incoming directors of material information concerning the affairs of the issuer particularly where that information has compliance and governance implications.

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

CRITICISES:

(1) Larry Jewelry International Company Limited (“Company”) (Stock Code: 8351)

for failing to announce and obtain shareholders’ approval in respect of a material change in the terms of a very substantial acquisition previously announced and approved by shareholders in breach of Rule 19.36 of the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (“GLR”);

(The Exchange noted that the current Board of Directors was appointed to office after the breaches by the Company and the Relevant Directors (defined below) and that the current Board of Directors was not involved in the subject breaches. For the avoidance of doubt, the Exchange confirms that the sanctions and directions detailed in this news release apply only to the Company and the Relevant Directors and not to any other past or present Board members of the Company.)

FURTHER CENSURES:

(2) Ms Tsang Po Yee Pauline (“Ms Tsang”), a former executive director (“ED”) and the compliance officer of the Company at the material time, re-designated as a non-executive director (“NED”) on 29 April 2014 and who resigned as a director of the Company on 19 September 2014;

AND CRITICISES:

- (3) **Mr Tam B Ray Billy** (“**Mr Tam**”), a former NED of the Company (date of resignation 19 September 2014);
- (4) **Mr Chan Man Fai Joe** (“**Mr Chan**”), a former NED and former chairman of the Company;
- (5) **Mr Seto Man Fai** (“**Mr Seto**”), a former independent non-executive director of the Company (“**INED**”);
- (6) **Mr Ho Hin Hung Henry** (“**Mr Ho**”), a former INED of the Company; and
- (7) **Mr Lam Kin Kok** (“**Mr Lam**”), a former INED and former NED of the Company

for:

- (a) failing to apply such degree of skill, care and diligence required and expected of them with respect to the treatment of the Waiver and Supplemental Agreement (defined below) in breach of GLR5.01(6); and
- (b) failing to use best endeavours to procure the Company’s GLR compliance and to comply with GLR to the best of their ability in breach of their obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 6-A to the GLR (“**Undertaking**”).

(Ms Tsang, Mr Tam, Mr Chan, Mr Seto, Mr Ho and Mr Lam being all directors in office at the material time, are collectively referred to as “**Relevant Directors**” and Mr Tam, Mr Chan, Mr Seto, Mr Ho and Mr Lam are collectively referred to as “**Remaining Directors**”.)

On 13 January 2015, the GEM Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the GLR and the Undertakings.

On 12 May 2015, the GEM Listing Committee conducted a disciplinary (review) hearing on (i) the application by the Company for a review of the sanction imposed on it by the GEM Listing Committee; and (ii) the applications by the Relevant Directors for a review of the decisions of and the sanctions imposed on them by the GEM Listing Committee.

FACTS

On 26 April 2011, the Company announced a very substantial acquisition (“**Acquisition**”) by its subsidiary (“**Purchaser**”) of Sharp Wonder Holdings Limited, the ultimate holding company of the retail outlets carrying business under the “Larry Jewelry” brand name (“**Target Companies**”) for a consideration of HK\$400 million (“**Consideration**”). Under the terms of the Acquisition, Solid Bonus Limited (“**Vendor**”), provided a profit guarantee of HK\$70 million (“**Profit Guarantee**”) calculated by reference to the combined net profit after tax of the Target Companies for the consecutive years ended 31 December 2011 (“**FY2011**”) and 2012 (“**FY2012**”). Any shortfall in the Profit Guarantee was payable by the Vendor on a dollar-for-dollar basis.

The Profit Guarantee was waived (“**Waiver**”) by a supplemental agreement dated 26 March 2012 entered into between the Vendor, the Purchaser and the Company as the Purchaser’s guarantor (“**Supplemental Agreement**”). The Waiver was approved by the Relevant Directors at a board meeting on 18 January 2012. The Company did not issue any announcement or other public document and/or seek shareholders’ approval regarding the Waiver and the Supplemental Agreement.

GEM LISTING COMMITTEE’S FINDINGS OF BREACH

Company’s breach of GLR19.36

The GEM Listing Committee concluded that the Company breached GLR19.36.

The GEM Listing Committee found that the Waiver was a material change to the terms of the Acquisition that was subject to announcement and, in agreeing with the Listing Department’s interpretation, shareholders’ approval under GLR19.36:

- (1) The Profit Guarantee, by its nature and by the fact that it was a key basis for the determination of the Consideration, was an important term of the Acquisition;
- (2) The Waiver, put into effect by the Supplemental Agreement, discharged the Vendor’s obligations under the Profit Guarantee thereby materially varying an important term of the Acquisition;
- (3) The Acquisition was announced by the Company on 26 April 2011 and approved by the shareholders on 12 July 2011; and
- (4) Accordingly, any material change to the terms of the Acquisition was also subject to announcement and shareholders’ approval.

The Company was obliged under GLR19.36 to announce and obtain prior shareholders’ approval for the Waiver and the Supplemental Agreement. As the Company did not do so, it breached GLR19.36.

Relevant Directors’ breaches of GLR5.01(6) and Undertakings

The GEM Listing Committee concluded that each of the Relevant Directors breached GLR5.01(6) and the respective Undertaking on the following grounds:

Ms Tsang’s breach of GLR5.01(6) and Undertaking

Ms Tsang was appointed an ED and the compliance officer of the Company on 16 December 2010. She was re-designated as a NED and stepped down as the compliance officer of the Company on 29 April 2014. Ms Tsang resigned as NED on 19 September 2014.

Breach of GLR5.01(6)

The GEM Listing Committee concluded that Ms Tsang breached GLR5.01(6) in failing to exercise the skill, care and diligence reasonably required and expected of her given her knowledge, experience and position in the Company as the compliance officer, in relation to:

- (1) Her failure to consider the application of GLR19.36 to the Waiver and the Supplemental Agreement;
- (2) Alternatively, if she did in fact consider the application of GLR19.36 at the material time, her failure to properly understand the requirements of the GLR and GLR19.36 in arriving at the decision that the Waiver and the Supplemental Agreement did not constitute a material variation to the Acquisition and was not subject to announcement; and
- (3) Her failure to consult and seek advice from the Company's compliance adviser ("CA") as required under GLR6A.23(2) during the fixed period (namely two full fiscal years after the date of listing).

Breach of Undertaking

The GEM Listing Committee also found that Ms Tsang breached her Undertaking:

- (1) To use her best endeavours to ensure the Company's GLR compliance in (a) failing to contemplate that the Waiver and the Supplemental Agreement was potentially a notifiable transaction and consider the requirements of the GLR and/or advise/alert the Company of the application of GLR19.36; and (b) failing to consult the CA who, had she done so, could and should have reasonably advised that the Waiver and the Supplemental Agreement constituted a material variation to the Acquisition requiring announcement and shareholders' approval hence preventing a breach of GLR19.36; and
- (2) To comply with the GLR to the best of her ability by reason of her breach of GLR5.01(6).

Remaining Directors' breaches of GLR5.01(6) and Undertakings

Mr Tam was appointed a NED of the Company on 16 December 2010. He resigned as NED on 19 September 2014. Mr Chan, Mr Seto, Mr Ho and Mr Lam were in office at the time the Waiver was approved and at the time the Company entered into the Supplemental Agreement. They all ceased to be directors of the Company on 9 November 2012.

Breach of GLR5.01(6)

The GEM Listing Committee concluded that the Remaining Directors breached GLR5.01(6) in failing to exercise the skill, care and diligence reasonably required and expected of them given their collective experience as businessmen and/or professionals holding management positions and/or directorships in private and public companies in Hong Kong and/or the PRC, in relation to:

- (1) Their failure to consider the application of GLR19.36 to the Waiver and the Supplemental Agreement;

- (2) Alternatively, if they did in fact consider the application of GLR19.36 at the material time, their failure to properly understand the requirements of the GLR and GLR19.36 in arriving at the decision that the Waiver and the Supplemental Agreement was not a material variation to the Acquisition and was not subject to announcement; and
- (3) Their failure to consult and seek advice from the CA.

Breach of Undertakings

The GEM Listing Committee also found that each of the Remaining Directors breached his Undertaking:

- (1) To use his best endeavours to ensure the Company's GLR compliance in (a) failing to contemplate and consider the application of GLR19.36 in respect of the Waiver and the Supplemental Agreement; and (b) failing to consult the CA who, had he done so, could and should have reasonably advised that the Waiver and the Supplemental Agreement constituted a material variation to the Acquisition requiring announcement and shareholders' approval hence preventing a breach of GLR19.36; and
- (2) To comply with the GLR to the best of his ability by reason of his breach of GLR5.01(6).

REGULATORY CONCERN

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

- (1) The principle behind the GLR is to keep the shareholders and the public informed of the material factors which might affect their interests, to maintain confidence in the market and to ensure investors are given sufficient information to make a properly informed assessment of the issuer.
- (2) Ms Tsang's failure to focus on the importance of keeping shareholders and investors fully informed raises serious concerns and undermines the integrity of the Company and its obligations to keep its shareholders and the public fully informed of important information and developments which may affect their assessment of the Company.
- (3) The Waiver and the Supplemental Agreement to amend the terms of the Acquisition which discharged the Vendor's obligations under the Profit Guarantee were clearly a material variation and subject to announcement and shareholders' approval. It is imperative that the Company, its shareholders and the public are fully informed of material information concerning the Company.
- (4) In this case, the Company's shareholders have been deprived of knowledge of a major development in respect of the Acquisition which they had sanctioned. They have not been given the right and opportunity to vote on a transaction (the Waiver) afforded to them under GLR19.36.
- (5) It was not an excuse for the Company not to comply with GLR19.36 even though the Relevant Directors at the material time whether, rightly or wrongly, thought that the Waiver served the best interest of the Company.

- (6) Directors have an obligation to inform existing and incoming directors of material information concerning the affairs of the issuer particularly where that information has compliance and governance implications.

SANCTIONS

The GEM Listing Committee decided as follows:

- (1) to criticise the Company for its breach of GLR19.36;
- (2) to censure Ms Tsang for her breach of GLR5.01(6) and her Undertaking; and
- (3) to criticise Mr Tam, Mr Chan, Mr Seto, Mr Ho and Mr Lam for their respective breaches of GLR5.01(6) and their Undertakings.

The GEM Listing Committee further directed that:

- (1) Mr Tam, a former director of the Company who currently remains a director of another/other company/companies listed on the Exchange, (a) to attend 24 hours of training on GLR compliance, director's duties and corporate governance matters together with four hours on GLR Chapter 19 requirements (including in particular GLR19.36) compliance (altogether 28 hours, "**Training**") provided by the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Listing Department. The Training is to be completed within 180 days from the publication of this news release; and (b) to provide the Listing Department with the training provider's written certification of full compliance within two weeks after training completion.
- (2) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, each of the former directors, Ms Tsang, Mr Chan, Mr Seto, Mr Ho and Mr Lam, who is not currently a director of any other company listed on the Exchange, (a) to attend the Training 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.