



## **THE STOCK EXCHANGE OF HONG KONG LIMITED**

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

8 September 2005

**The Listing Committee of The Stock Exchange of Hong Kong Limited (the Listing Committee) censures the following parties for breaching the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the Exchange Listing Rules):**

- 1. China Treasure (Greater China) Investments Limited (the Company);**
- 2. Mr Ma Kam Fook, Robert, an executive director of the Company (Mr Ma); and**
- 3. Mr Joel Lazare Hohman, a former non-executive director of the Company resigned effective 15 December 2004 (Mr Hohman).**

**Further, the Listing Committee criticises the following parties for breaching the Exchange Listing Rules:**

- 1. Mr Chan Yan Ming, Michael, a former executive director of the Company resigned effective 26 September 2003 (Mr Chan); and**
- 2. Mr Andrew Nan Sherrill, a former executive director of the Company resigned effective 4 April 2003 (Mr Sherrill).**

On 22 March 2005, the Listing Committee conducted a hearing into the conduct of the Company, Mr Ma, Mr Hohman, Mr Chan and Mr Sherrill (collectively, the Relevant Directors) in relation to the obligations under the then Rule 14.26(1) and Rule 21.04(3)(b) of the Exchange Listing Rules and the Declaration and Undertaking with regard to Directors given by each of the Relevant Directors to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (the Director's Undertaking).

### **Facts:**

#### **The then Rule 14.26(1) – Connected Transaction**

Under the Exchange Listing Rules, any investment manager, investment adviser or custodian (or any connected person thereof) would be regarded as a connected person of an issuer.

On 18 February 2002, the Company entered into an investment management agreement with China Core Capital Management Limited (CCCM). CCCM was not at that stage registered with the Securities and Futures Commission so the agreement with them was made conditional on a licence being obtained.

On 16 April 2002, the Company purchased a 13 per cent interest in Korning Investments Limited (KIL) from a Mr Chen (the Acquisition). Mr Chen was at that time also the controlling shareholder of CCCM.

It was alleged that, as Mr Chen was a connected person within the meaning of the then Rule 14.23 by reason of his interest in CCCM, the Acquisition therefore constituted a connected transaction of the Company. Given the size of the transaction, prior shareholders' approval should have been obtained before the transaction proceeded, failing which the Company was in breach of Rule 14.26(1).

### **Rule 21.04(3)(b) – Reasonable Spread of Investments**

The Company was an investment company under Chapter 21 of the Listing Rules. Pursuant to Rule 21.04(3)(b), an investment company should maintain a reasonable spread of investments. Generally, this would mean that the value of its holding of investments issued by any one company or body should not exceed 20 per cent of the investment company's net asset value at the time when such investment was made.

It was alleged that the Company breached Rule 21.04(3)(b) which arose on or about March 2002 and was continuing as at the date of the disciplinary hearing.

The relevant board minutes of the Company revealed the following:

- (i) at a board meeting held on 4 March 2002, the board approved the purchase of 4.91 per cent stake in Yanion International Holdings Limited (Yanion) for the sum of approximately HK\$14 million;
- (ii) at a board meeting held on 26 March 2002, the board approved the purchase of 190 shares in Modern Vocal Limited (MVL) for the sum of HK\$18 million; and
- (iii) at a board meeting held on 16 April 2002, the board approved the purchase of 13 per cent interest in KIL for the sum of US\$2.2 million.

MVL was a 60 per cent subsidiary of Yanion while KIL was an 87 per cent subsidiary of Yanion.

Based on the cost of each investment disclosed in the Company's annual report for the year ended 31 December 2002 and the pro-forma net tangible asset value of the Company disclosed in the extract from the Company's prospectus, the value of those investments was as follows: Yanion 19.7 per cent, MVL 18.8 per cent and KIL 19.3 per cent of the Company's net tangible asset value.

The Listing Division was of the view that the relationship between Yanion, MVL and KIL required that, for the purpose of Rule 21.04(3)(b), the interests should be aggregated. Thus, taken together, the combined interests amounted to some 57.8 per cent, and were well in excess of the 20 per cent threshold referred to in the Rule.

## **The Decision:**

The Listing Committee concluded that:

- (i) the Company breached the then Rule 14.26(1) in respect of the Acquisition and Rule 21.04(3)(b) in failing to maintain a reasonable spread of investments as required by the Rule;
- (ii) each of Mr Ma and Mr Hohman breached the Director's Undertaking in that they had caused or failed to prevent a breach of the then Rule 14.26(1) by the Company and had caused and/or failed to prevent and, in addition, had failed to remedy within a reasonable time the breach of Rule 21.04(3)(b); and
- (iii) each of Mr Sherrill and Mr Chan breached the Director's Undertaking in that they had caused or failed to prevent a breach of the then Rule 14.26(1) by the Company and had caused and/or failed to prevent the breach of Rule 21.04(3)(b).

The Listing Committee decided to impose the following sanctions on the parties:

- a public censure on the Company, Mr Ma and Mr Hohman for their respective breaches mentioned in (i) to (ii) above;
- a public statement which involves criticism on Mr Sherrill and Mr Chan for their respective breaches mentioned in (iii) above; and
- a direction that the breach of Rule 21.04(3)(b) be remedied by the Company to the satisfaction of the Listing Division within a period of one month from the final determination of this matter.

In arriving at its decision on the sanctions against the Relevant Directors for breaching the Director's Undertaking, the Listing Committee took into account the fact that Mr Ma and Mr Hohman failed to remedy within a reasonable time the breach of Rule 21.04(3)(b) which was first brought to the Listing Division's attention in or about April 2003.

Richard Williams, Head of Listing, commented: "This case highlights two matters of regulatory concern:

First, that the Exchange views the failure to disclose and obtain prior independent shareholder approval in respect of transactions with connected parties where required by the rules very seriously. A transaction of the character referred to in this case executed in breach of the rules prejudices the interests of independent shareholders in that they have not been given information on a timely basis or invited to approve the transaction before it is implemented.

Second, the case also demonstrates that it is important for the management of investment companies to maintain an adequate spread of investments. Failure to comply with this obligation exposes shareholders and investors to unnecessary risk."