



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”)

24 June 2015

THIS DISCIPLINARY ACTION highlights the fact that the Director’s Undertaking to comply with, and to procure the issuer’s compliance with, the Exchange Listing Rules should not be taken lightly. Compliance with the Exchange Listing Rules by issuers and their directors is imperative to maintain a fair, orderly and efficient market for the trading of securities. Compliance is not optional, regardless of the commercial situation. Where there is doubt, the Listing Department should be consulted in a timely manner. The decision also emphasises the importance of keeping shareholders and the public fully informed of material information which might affect their interests, and to be informed of important information in a timely manner so as to enable them to make an informed assessment of the issuer.

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

CRITICISES:

- (1) **Opes Asia Development Limited** (the “Company”) (Stock Code: 810) for
- (a) failing to disclose, issue a circular and obtain prior shareholders’ approval for a major transaction in breach of Rules 14.34, 14.38A, 14.40 and 14.41 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Exchange Listing Rules”); and
 - (b) failing to publish its annual results and annual report for the year ended 31 December 2012 (the “2012 Annual Results” and “2012 Annual Report”, respectively) and hold the annual general meeting for the year ended 31 December 2012 (the “2012 AGM”) within the times stipulated under the Exchange Listing Rules in breach of Rules 13.46 and 13.49;

AND FURTHER CRITICISES:

- (2) **Mr Yang Yong Dong** (“Mr Yang”), former executive director and chairman of the Company;
- (3) **Mr Chu Wai Lim** (“Mr Chu”), former executive director of the Company;
- (4) **Ms Fong Son Wa** (“Ms Fong”), former executive director of the Company; and
- (5) **Mr Chan Yiu Pun, Clement** (“Mr Chan”), former executive director of the Company

for failing to use their best endeavours to procure the Company’s compliance with the Exchange Listing Rules under the Director’s Declaration and Undertaking given to the Exchange in the form set out in Form B of Appendix 5 to the Exchange Listing Rules (the “Director’s Undertaking”).

(The directors identified at (2) to (5) above are collectively referred to as the “Relevant Directors”.)

On 28 April 2015, the Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Director’s Undertakings.

FACTS

The Company is listed under Chapter 21 of the Exchange Listing Rules and principally engaged in investing in listed and unlisted companies.

The CB Transaction

On 13 June 2012, the Company entered into a subscription agreement for the subscription of RMB20 million convertible bonds (the “CB Transaction”). A size test conducted as at 13 June 2012 revealed a consideration ratio of 30.20 per cent rendering it a major transaction under Rule 14.96 of the Exchange Listing Rules. The Company did not issue an announcement, a circular or seek shareholders’ approval for the CB Transaction.

Upon being alerted by the Listing Department on or around 5 September 2012 that the CB Transaction constituted a major transaction under Chapter 14 of the Exchange Listing Rules, on 17 October 2012, the Company informed the Listing Department that the Company would not convene a special general meeting to ratify the CB Transaction because it was concerned that the subscription monies could not be refunded if the shareholders failed to ratify it.

The Company admitted to breaching the requirements under Chapter 14 of the Exchange Listing Rules in relation to major transactions.

Delay in publishing the 2012 Annual Results and 2012 Annual Report and holding the 2012 AGM

The Company, with its financial year ending on 31 December, published the 2012 Annual Results on 23 July 2013 (a delay of 3 months and 23 days), the 2012 Annual Report on 8 August 2013 (a delay of 3 months and 8 days) and held the 2012 AGM on 21 October 2013 (a delay of 3 months and 21 days) notwithstanding that it had committed a similar breach with respect to the delayed publication of the annual results and report, and holding the AGM for the year ended 31 December 2011.

At the meeting on 19 March 2013, noting that the Company would not be able to publish the 2012 Annual Results by the end of March 2013, the Relevant Directors considered the implications of breaching the Exchange Listing Rules or publishing the 2012 Annual Report with a qualified auditors' opinion. Relying on the advice of the company secretary and chief financial officer (the "CS & CFO"), the Relevant Directors agreed that a qualified auditors' opinion would have more serious consequences for the Company and hence resolved to delay the publication of the 2012 Annual Results and 2012 Annual Report.

The Company admitted to breaching Rules 13.46 and 13.49 of the Exchange Listing Rules.

Settlement between the Company and the Listing Department

As a consequence of a settlement, the Company accepted the sanction imposed on them by the Committee as set out below.

COMMITTEE'S FINDINGS OF BREACH

The Committee, having considered the submissions of the Listing Department, the Company, the Relevant Directors and the admissions of the Company, concluded as follows:

Company

The Company breached:

- (1) Rules 14.34, 14.38A, 14.40 and 14.41 of the Exchange Listing Rules in respect of the CB Transaction; and
- (2) Rules 13.49(1)(ii), 13.46(2)(a) and 13.46(2)(b) of the Exchange Listing Rules in respect of the delay in the publication of the 2012 Annual Results and 2012 Annual Report and the holding of the 2012 AGM.

Relevant Directors

The Committee also found that the Relevant Directors breached their respective Director's Undertakings to procure the Company's compliance with the Exchange Listing Rules:

- (1) With respect to the CB Transaction, by reason of the individual and collective failure of Mr Yang, Mr Chu and Ms Fong to understand when a size test should be conducted and to make enquiries to ensure that the relevant size test had been conducted at the 13 June 2012 executive board meeting when the CB Transaction was finalised; and by reason of the Relevant Directors' failure to give sufficient priority to Exchange Listing Rules compliance in not holding a special general meeting to ratify the CB Transaction; and
- (2) With respect to the delay in publication of the 2012 Annual Results and 2012 Annual Report and the holding of the 2012 AGM, by reason of Mr Yang and Mr Chan's endorsement of and reliance on the CS & CFO's advice at the relevant time without question or consideration of alternatives available; and their failure to give sufficient priority to, and their indifferent attitude towards, Exchange Listing Rules compliance.

REGULATORY CONCERN

The Committee regarded the breaches in this matter serious:

- (1) The principles behind the Exchange Listing Rules are to maintain confidence in the market; to ensure investors are given sufficient information to make a properly informed assessment of the issuer; and to ensure investors and the public are kept fully informed by listed issuers, in a timely manner, of material factors which might affect their interests.
- (2) The Company in failing to announce, issue a circular and seek shareholders' approval prior to entering into the CB Transaction deprived the Company's shareholders of the opportunity to consider and decide on the transaction before the Company was contractually bound to subscribe to the convertible bonds. As a consequence, the rights and interests of the shareholders of the Company had been prejudiced.
- (3) Compliance with the disclosure requirements for the timely and accurate publication of annual results and financial information is of fundamental importance to ensure the maintenance of (i) a fair and orderly market for the trading of securities in Hong Kong and (ii) confidence in such market. The delay in publication of the Company's 2012 Annual Results and 2012 Annual Report deprived shareholders of the Company of timely information necessary to allow them to make a properly informed assessment of the Company.
- (4) Taking the Company and the Relevant Directors' conduct as a whole, it is clear that they, on more than one occasion, did not give sufficient priority to regulatory compliance. With respect to the CB Transaction, there is serious concern that the Company and the Relevant Directors appeared to have paid little or no attention to the shareholders' right to vote essentially as shareholders of the Company on the use of the Company's funds, especially in this case where the consideration amounted to about 25 per cent of the Company's then net asset value.

- (5) In the circumstances, it is important to send a strong and clear regulatory message to the Company as well as its directors and other listed issuers that Exchange Listing Rules compliance is not optional, regardless of the commercial situation, and where there is doubt, the Listing Department should be consulted in a timely manner to ensure strict rule compliance.

Sanctions

Having made the findings of breach stated above, and having concluded that the breaches were serious, the Committee was highly critical of and decided to:

- (1) criticise the Company for its breach of Rules 14.34, 14.38A, 14.40, 14.41, 13.49(1)(ii), 13.46(2)(a) and 13.46(2)(b) of the Exchange Listing Rules; and
- (2) criticise each of the Relevant Directors for breach of their respective Director's Undertakings to procure the Company's Exchange Listing Rules compliance.

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