

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)

3 March 2016

**THE LISTING COMMITTEE OF THE STOCK EXCHANGE OF HONG KONG LIMITED (“LISTING COMMITTEE”) CENSURES CHINA KINGSTONE MINING HOLDINGS LIMITED (STOCK CODE: 1380) (“COMPANY”) AND ITS FORMER EXECUTIVE DIRECTORS, MS CHEN TAO (ALSO FORMER CHIEF EXECUTIVE OFFICER AND CHAIRLADY OF THE BOARD OF DIRECTORS OF THE COMPANY), MR LIN YUHUA, MR LIAO YUANSHI AND MR XIONG WENJUN FOR BREACHING THE EXCHANGE LISTING RULES.**

The Company has, through the conduct of its former executive directors, committed a number of serious breaches of the Exchange Listing Rules concerning disclosure, circular and shareholders’ approval requirements. Those requirements are designed to safeguard and protect the shareholders. The disclosure of timely and accurate information to shareholders and investors is important. Directors must fully understand their obligations under the Exchange Listing Rules, in order to procure the Company’s and their Rule compliance.

The above directors, Ms Chen Tao (“**Ms Chen**”), Mr Lin Yuhua (“**Mr Lin**”), Mr Liao Yuanshi (“**Mr Liao**”) and Mr Xiong Wenjun (“**Mr Xiong**”), are collectively referred to as the “**Relevant Directors**”.

For the avoidance of doubt, The Stock Exchange of Hong Kong Limited (“**Exchange**”) confirms that the above sanctions and directions 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.

On 19 January 2016, the Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (“**Exchange Listing Rules**”) and 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 (“**Undertaking**”).

## BACKGROUND

The Company was listed on 18 March 2011 and is engaged in the business of the production and sales of marble and marble-related products in Mainland China.

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The Company raised proceeds of approximately RMB900 million from its initial public offering (“**IPO Proceeds**”). The Company’s prospectus stated that the IPO Proceeds would be used for the development of its marble business.

The Company’s annual results for the year ended 31 December 2011 and its subsequent announcement dated 22 June 2012 disclosed that the Company had entered into various notifiable transactions (“**Transactions**”), comprising 3 entrusted loans (“**Entrusted Loans**”) (totalling RMB310,000,000), 6 structured deposits (“**Structured Deposits**”) (totalling RMB170,247,000), an investment in a Mainland China company (“**GJ**”) (RMB16,242,000) and 2 loans provided to GJ (totalling RMB80,000,000).

A circular was issued on 26 October 2012 for the extraordinary general meeting held on 15 November 2012 for the proposed resolutions that the Entrusted Loans, Structured Deposits and loans to GJ be approved, ratified and confirmed. The shareholders voted against the proposed resolutions.

Under the Exchange Listing Rules:

- (a) the Entrusted Loans, when aggregated, constituted advances to entity and a very substantial acquisition;
- (b) the Structured Deposits, when aggregated, constituted a very substantial acquisition; and
- (c) the investment in GJ and the loans to GJ, when aggregated, constituted a major transaction,

subject to announcement, circular and independent shareholders’ approval requirements under Chapters 13 and 14 (as the case may be), which the Company failed to comply.

The Transactions took place between June 2011 and November 2011. The Company did not consult its compliance adviser when the Transactions were contemplated. No Board meetings were held to consider the Transactions.

Ms Chen asserted that she followed the instructions of the then controlling shareholder (“**Mr Huang**”) and arranged the Transactions. She did not procure the Company’s compliance with the Exchange Listing Rules, as Mr Huang threatened to replace the Board and asserted that the disclosure of the Entrusted Loans and Structured Deposits would cause market over-reaction and share price fluctuations. According to Mr Lin, Mr Liao and Mr Xiong, they were asked by Ms Chen to sign documents after the event, which purported to be the Board minutes approving some of the Transactions.

The Company has used the IPO proceeds to fund the Entrusted Loans and Structured Deposits. Such use was not disclosed in the Prospectus or any announcement.

### **Exchange Listing Rule requirements**

Unless otherwise stated, references to specific Exchange Listing Rules in this news release refer to the Rules in force in 2011.

The Entrusted Loans were subject to the announcement, circular and independent shareholders' requirements under Rules 13.13, 13.14, 14.34, 14.38A, 14.49 and 14.51.

The Structured Deposits were subject to the announcement, circular and independent shareholders' requirements under Rules 14.34, 14.38A, 14.49 and 14.51.

The investment in GJ and the loans to GJ were subject to the announcement, circular and independent shareholders' requirements under Rules 14.34, 14.38A, 14.40 and 14.41.

Rule 3A.23 requires an issuer to consult with and, if necessary, seek advice from its compliance adviser on a timely basis, during the period from the date of its listing to the date of publication of the issuer's first full financial year's results, where a notifiable transaction is contemplated.

Rule 13.09(1) requires every issuer to disclose, as soon as reasonably practicable, any information relating to the group of which the issuer is a member, which is necessary to enable the Exchange, shareholders and the public to appraise the position of the group, or might be reasonably expected materially to affect market activity in and the price of its securities.

Rule 3.08 provides that the Exchange expects the directors, both collectively and individually, 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. Specifically, under Rule 3.08(f), every director must, in the performance of his duties as a director, "*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 issuer*".

The Relevant Directors were under an obligation, pursuant to their respective Undertakings, to comply to the best of their ability with the Exchange Listing Rules and to use their best endeavours to procure the Company's Rule compliance.

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

The Listing Committee considered the written and/or oral submissions of the Listing Department, the Company and the Relevant Directors, and concluded as follows:

**Company's breaches**

The Listing Committee noted that the Company admitted breaching Chapters 13 and 14 provisions, and found that the Company breached:

- (a) Rules 13.13, 13.14, 14.34, 14.38A, 14.40, 14.41, 14.49 and 14.51 for failing to comply with the announcement, circular and independent shareholders' approval requirements in respect of the Transactions;
- (b) Rule 3A.23 for failing to consult its compliance adviser when the Transactions were contemplated; and
- (c) Rule 13.09(1) for failing to disclose a change in use of the IPO Proceeds, which was price-sensitive information and should have been disclosed by the Company by way of an announcement.

**Ms Chen's breach of Rule 3.08 (f)**

The Listing Committee concluded that Ms Chen breached Rule 3.08(f) as:

- (a) Ms Chen did not convene any Board meetings for the consideration and approval of the Transactions. Mr Lin, Mr Liao and Mr Xiong were asked by Ms Chen to sign the purported Board minutes after the event. Such conduct amounted to a serious failing in the Company's corporate governance;
- (b) she did not ensure that the Company sought advice from professional advisers in respect of the Transactions to ensure the Company's Rule compliance at the relevant time. In particular, she did not procure the Company to seek advice from its compliance adviser before any of the notifiable transactions were entered into, in breach of Rule 3A.23;
- (c) she failed to ensure the Company's Rule compliance;
- (d) she proceeded with arranging and executing the Transactions, because, according to her assertion, Mr Huang threatened to remove the directors. This purported reason did not justify Ms Chen's conduct. This demonstrated her lack of knowledge and understanding of the importance of the Company's Rule compliance;
- (e) according to Ms Chen, she was instructed by Mr Huang not to disclose the Transactions to avoid share price fluctuations and over-reaction by the market. It went to show that Ms Chen did not fulfil her duties as the Company's director to exercise independent judgment when making decisions on the affairs of the Company; and

- (f) she repeatedly procured the Company to enter into the Transactions without: (i) proper Board approval; (ii) procuring advice from the compliance adviser; and (iii) procuring the Company's Rule compliance.

**Breach of Rule 3.08(f) by Mr Lin, Mr Liao and Mr Xiong**

The Listing Committee concluded that each of Mr Lin, Mr Liao and Mr Xiong breached Rule 3.08(f) as:

- (a) they signed the purported Board minutes after the event and simply rubber-stamped Ms Chen's decisions without making appropriate enquiries about the Transactions. They relied on Ms Chen's judgment without applying their own independent judgment on whether the Transactions would be in the best interests of the Company;
- (b) they failed to ensure the Company's Rule compliance;
- (c) they knew that no Board meetings were convened for the consideration and approval of the Transactions. However, they continued to endorse Ms Chen's decisions and conduct, which was a serious failing in the Company's corporate governance;
- (d) there was no evidence that they considered, or suggested, it was necessary for the Company to seek advice from professional advisers in respect of the Transactions to ensure the Company's Rule compliance at the relevant time;
- (e) as executive directors, they should have monitored the use of the IPO Proceeds. The directors were collectively responsible for the Company's management and operations; and
- (f) they repeatedly endorsed Ms Chen's decisions in relation to the Transactions without: (i) any Board meetings; (ii) procuring advice from the compliance adviser; and (iii) procuring the Company's Rule compliance.

**Breach of the Undertakings by Ms Chen, Mr Lin, Mr Liao and Mr Xiong**

The Listing Committee found that Ms Chen, Mr Lin, Mr Liao and Mr Xiong breached their respective Undertakings:

- (a) for failing to comply to the best of their ability with the Exchange Listing Rules by virtue of their breach of Rule 3.08(f); and
- (b) for failing to use their best endeavours to procure the Company's Rule compliance.

**Wilful and persistent failure to discharge responsibilities**

The Listing Committee also found that, given their conduct, the Relevant Directors wilfully and persistently failed to discharge their responsibilities under the Exchange Listing Rules.

**REGULATORY CONCERN**

The Listing Committee regards the breaches in this matter serious:

- (1) this case reveals a serious concern over the Company's corporate governance and the Relevant Directors' ability to procure the Company's Rule compliance. Their conduct have 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;
- (2) the Company repeatedly failed to comply with Chapters 13 and 14 provisions in respect of the Transactions, which were attributable to the conduct of the Relevant Directors;
- (3) the Company took on substantial credit risk and the shareholders were deprived of timely and important information about the Company's notifiable transactions. By reason of the conduct of the Relevant Directors, the shareholders were also deprived of their right to vote on the Transactions;
- (4) as a newly-listed company and the fact that the Relevant Directors did not appear to have the relevant experience in acting as directors of listed issuers in Hong Kong, the Listing Committee expect them to have taken advantage of the services of the Company's compliance adviser and to proactively seek advice and assistance from it; and
- (5) the Hong Kong securities market is disclosure-based. Investors and shareholders rely on information in the public domain to make their investment decisions. Investors rely on information in the prospectus to assess the investment risks in making investment decisions. After listing, timely disclosure by listed issuers of relevant information about a change in use of IPO proceeds is crucial to enable shareholders and investors to make informed investment decisions.

**SANCTIONS**

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

- (1) censure the Company for its breach of Rules 3A.23, 13.09(1), 13.13, 13.14, 14.34, 14.38A, 14.40, 14.41, 14.49 and 14.51; and

- (2) censure Ms Chen, Mr Lin, Mr Liao and Mr Xiong for their breach of Rules 3.08(f) and their respective Undertakings, stating that, in the Exchange's opinion, given their wilful and persistent failure to discharge their responsibilities under the Exchange Listing Rules, had any of them remained in office, his/her retention of office would have been prejudicial to the interests of investors. In the event that Ms Chen, Mr Lin, Mr Liao or Mr Xiong should wish to become a director of another issuer listed on the Exchange in the future, his/her conduct in this matter will be taken into account in assessing his/her suitability under Rule 3.09 of the Exchange Listing Rules.

The Listing Committee further directs:

- (3) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, each of Ms Chen, Mr Lin, Mr Liao and Mr Xiong, who are not currently directors of any other company listed on the Exchange, to (a) attend 24 hours of training on the Exchange Listing Rule compliance, director's duties, including four hours of training on directors' duties and four hours of training on notifiable transactions, provided by institutions such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors, or other course providers to be agreed with 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.