

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Current Director of Agile Group Holdings Limited (Stock Code: 3383)

SANCTION AND DIRECTION

The Stock Exchange of Hong Kong Limited (**Exchange**)

CRITICISES:

Mr Chan Cheuk Yin, non-executive director (**NED**) (**Mr Chan**) of Agile Group Holdings Limited (Stock Code: 3383) (**Company**);

AND FURTHER DIRECTS Mr Chan to attend 18 hours of training on regulatory and legal topics and Listing Rule compliance (**Training**) within 90 days from the date hereof.

SUMMARY OF FACTS

The Company has been a major property developer in the People's Republic of China. It was run by a family (**Chan Family**) comprising six members including Mr Chan when it was listed on the Exchange in December 2005. They, through a family trust, held more than 66% of the equity interest in the Company.

All the Chan Family members, including Mr Chan, gave non-competition undertakings (**NCU**) in favour of the Company before the Company was listed. The Company's listing prospectus disclosed the details of the NCU. The NCU essentially required the Chan Family (who were at that time executive directors of the Company) not to be engaged, interested, or otherwise involved, directly or indirectly, in any business that is or is likely to be in competition with the Company and its subsidiaries (**Group**).

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In late 2013, Mr Chan (who was an executive director at that time) was informed by his son (**Son**) that he would establish a business which might compete with the Company. In this regard, according to Mr Chan, he intended to provide funds by way of gift for the Son to set up his own business. Mr Chan received oral legal advice that the provision of the funds would not be in breach of the NCU or other duties (including fiduciary duties) owed to the Company. In November 2013, Mr Chan personally provided an initial fund of \$180 million to the Son for the purpose of setting up his own business.

The Son subsequently established his own business in property development in the People's Republic of China.

In March 2014, the Company's board of directors (**Board**) discussed the re-designation of four Chan Family members including Mr Chan from executive directors to NEDs, and execution of a supplemental deed (**Deed**) releasing each Chan Family member from the NCU provided that he ceases to be an executive director of the Company. According to the Company, the reason for the re-designation was to gradually shift its image from a family-run business towards an international business conglomerate managed by a professional team. However, Mr Chan did not inform the Board about the Son's business, or his personal funding to such business. The Board (comprising all independent non-executive directors at that time) approved the Deed after receiving legal advice from the Company's legal advisers that "...the Deed would not likely be considered as a connected transaction...". The Company did not publish any announcement or circular or obtain the independent shareholders' approval in respect of the Deed.

After the Deed was executed and his re-designation as an NED, Mr Chan maintained an advisory role on the Group's strategy and policy, and continued to have access to the Company's confidential information. On the other hand, he also continued to help the Son develop his business by providing further funds (a total of \$2.07 billion including the initial fund (**Funds**)) and financial guarantees (in the total sum of \$535.5 million), and acting as a director and signatory of two companies within the Son's business group (**Subsidiaries**) to help the Subsidiaries' financing. In December 2014, he informed the other five Chan Family members about the Son's business. However, he did not disclose any information about his role in the Son's business to those family members or the Board.

In September 2018, the Son set up a discretionary family trust to hold his business. Mr Chan has been named as one of the discretionary beneficiaries. In October 2018, Mr Chan acquired the Subsidiaries from the Son's business. He did not inform the Board about his interest in the Son's trust or in the Subsidiaries. He claimed that he was only aware of his being named a beneficiary in around June 2019. He only declared his interest in the Subsidiaries in June 2019.

In June 2019, Mr Chan executed a deed of gift in favour of the Son, confirming that the Funds were a gift to the Son. Further, all the financial guarantees he gave for the Son's business were released and terminated.

In December 2019, the Son's business was listed on the Exchange. According to the Company, the other directors (including the family members) were only aware of Mr Chan's funding to the Son after receiving the Exchange's enquiries, even though the relationship between Mr Chan and the Son, and the fact that the Son's business was initially financed by his family resources, were disclosed in the prospectus of the Son's business.

LISTING RULE REQUIREMENTS

Rules 14A.45, 14A.47, 14A.49 and 14A.52 (in effect at the material time) (collectively, **CT Rules**) required listed issuers to comply with the annual reporting, announcement, circular and independent shareholder approval requirements for applicable connected transactions.

The Listing Decision LD79-2014 (published in January 2014) (**Listing Decision**) essentially states that when a variation to the terms of a non-competition undertaking given by a connected person in favour of a listed issuer confers a benefit on that connected person and his associates, the variation constitutes a connected transaction for the listed issuer; and if the value of the connected transaction could not be quantified in monetary terms, the de minimis exemption does not apply. The transaction would require independent shareholders' approval under Chapter 14A of the Listing Rules.

Listing Rule 3.08 provides that directors must fulfil both fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. Under Rule 3.08, directors must act honestly and in good faith in the interests of the issuer as a whole, act for proper purpose, avoid actual and potential conflict of interests and duty, disclose fully and fairly his interests in contracts with the issuer, and 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.

Mr Chan is also subject to the obligations in the Director's Undertaking to the Exchange in the form of Appendix 5B to the Listing Rules (**Undertaking**), which include, among others, that he will comply with the Listing Rules to the best of his ability and use his best endeavours to procure the Company's Rule compliance.

Code Provisions A.7.2 and C.1.1 of the Corporate Governance Code (Appendix 14 to the Listing Rules) (in effect at that time) required management to supply the board and its committees with adequate, complete and reliable information in a timely manner to enable the board to make informed assessment of the information put before it for approval / decisions.

ACCEPTANCE OF SANCTION AND DIRECTION

In settlement with the Exchange, Mr Chan has admitted his breach and accepted the sanction and direction imposed on him.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee of the Exchange (**Listing Committee**) found as follows:

- (1) The Company breached Rules 14A.45, 14A.47, 14A.49 and 14A.52 (effective at that time) in respect of the Deed. The Deed constituted a connected transaction between the Company and the Chan Family members. The Deed conferred benefits (the value of which was not quantifiable) on the Chan Family members and their associates to be engaged in competing business which they could not have done under the original NCU even after they ceased to be executive directors of the Company.
- (2) Mr Chan breached Listing Rule 3.08 and his Undertaking. He was an ED, and subsequently re-designated as NED, at the material time. He is a brother of the other Chan Family members. The Chan Family members are in control of the Company. Two of them are the chairman and executive directors of the Company who have been managing the Company after the re-designation. Mr Chan could influence the Board's investment decisions and strategy. On the other hand, the Son used Mr Chan's money to set up the business potentially competing with the Company before the Deed was tabled for the Board's consideration. He would benefit from the Deed as he could be engaged or involved in the Son's business if the Deed was approved by the Board. After the Deed was executed, Mr Chan continued to fund and financially support, and be engaged and involved in, the Son's business and the Subsidiaries. Against this background, Mr Chan failed to:

- (a) duly disclose to the Board, especially the independent non-executive directors, adequate and complete information relating to his interests in the Deed and/or in connection with the Son's business, the Funds and/or the Subsidiaries so that the Board could have made an informed assessment in respect of the Deed and his potential conflicting interests, consulted professional advisers and/or the Exchange, and put in place appropriate measures to address the issues.
- (b) alert the Board that the legal advice obtained from the Company's legal advisers was provided in the absence of complete information relating to his relevant interests and that the Board should consider whether clarification of the advice should be sought based on that information.
- (c) declare in a timely manner the potential conflicts of his interests in the Company with his interests in connection with the Son's business and/or the Subsidiaries, including the setup and nature of the Son's business, the Funds and his financial support to the Son's business, his directorship in the Subsidiaries, his discretionary interest in the Son's family trust, and his acquisition of the Subsidiaries.
- (d) comply with Rule 3.08 to the best of his ability and use his best endeavours to procure the Company's compliance with the connected transaction requirements under the Listing Rules in respect of the Deed.

CONCLUSION

The Listing Committee decided to impose the sanction and direction set out in this Statement of Disciplinary Action.

For the avoidance of doubt, the Exchange confirms that the above sanction and direction apply only to Mr Chan, and not to the Company or any of its other past or present directors.

Hong Kong, 20 June 2023