

## STATEMENT OF DISCIPLINARY ACTION

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Exchange's Disciplinary Action against a Former Director of China Gas Industry Investment Holdings Co. Ltd. (Stock Code: 1940)

### **SANCTIONS**

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

**IMPOSES A PREJUDICE TO INVESTORS' INTERESTS STATEMENT** against **Mr David T Chen (Mr Chen)**, former chairman and executive director of China Gas Industry Investment Holdings Co. Ltd. (Stock Code: 1940) (**Company**).

The statement made in respect of Mr Chen above is made in addition to a public censure against him. The Prejudice to Investors' Interests Statement is a statement that, in the Exchange's opinion, had Mr Chen remained on the board of directors of the Company, the retention of office by him would have been prejudicial to the interests of investors.

### **SETTLEMENT**

Mr Chen agreed to settle this disciplinary action. He accepts his breaches and the sanctions imposed upon him by the Listing Committee.

### **SUMMARY OF FACTS**

The Company, through its initial public offering on 29 December 2020, raised net proceeds of HK\$315.9 million. According to the Company's prospectus, the Company planned to (i) pay declared dividends in a total sum of RMB267.7 million (equivalent to HK\$309.9 million) to its pre-listing shareholders using its existing funds upon listing and (ii) apply over 90 per cent of its net listing proceeds towards the development of a gas production plant.

In the forecasts submitted by the Company to the Exchange before listing, the Company expected to have negative working capital by end of December 2020 without the listing proceeds.

The Company's prospectus shows that the Group had borrowings since financial year ended 31 December 2017. The effective interest rates charged by the Group's lenders ranged from 4.52 per cent to 5.23 per cent. However, shortly before and after listing, the Company used a significant proportion of its funds to provide three unsecured loans (**Loans**) and subscribe for a loan note (together, **Transactions**) as follows:

Transaction	Date of Agreement	Borrower / Issuer	Principal (in million)	Due Date	Interest rate
Loan 1	30/11/2020	Aevitas Capital Management Limited	RMB50	30/12/2020	2%
Loan 2	01/12/2020	Orbitronic Global Development Co., Limited	RMB53.522	30/12/2020	2%
Loan 3	01/12/2020	Unite Victory International Trading Limited	RMB14.478	30/12/2020	2%
Loan Note	18/01/2021	Union Space Group Limited	HK\$80 (or RMB66.4)	17/12/2021	4.5%

There was no disclosure of the Transactions in the Company's prospectus. Mr Chen signed off on the draft prospectus before it was published on 16 December 2020.

Mr Chen entered into all four Transactions on the Company's behalf without seeking the approval of the Company's board of directors (**Board**) in accordance with the Company's internal control policy and without consulting the Company's sponsor and compliance adviser. Mr Chen also approved the fund transfers in connection with the Transactions. He only performed basic due diligence on the borrowers and the loan note issuer.

Under the subscription agreement, the loan note issuer was to grant a charge over its book debts as security for the loan note. However, Mr Chen was not aware of the situation regarding the security for the loan note, and he did not take any action to follow up on it.

During the audit for the year ended 31 December 2020, the Company's former auditor noted that the Loans were all overdue but the Company did not receive any repayment. The auditor enquired about the Transactions and their related fund transfers and requested the Board to commission an independent investigation, two days before the original scheduled Board meeting date for approving the 2020 annual results, to address the outstanding audit matters relating to the Transactions.

As a result, the Company failed to timely publish and/or despatch the annual results and reports for the year ended 31 December 2020 and the interim results and reports for the six months ended 30 June 2021 (together, **Results and Reports**).

In March 2021, Mr Chen attempted to seek the Board's endorsement of a draft put option agreement to enable repayment of the Loans. Under the draft agreement, the Company would be subject to an obligation to pay up to HK\$150 million to purchase its own shares from the vendor. Mr Chen did not know the proposed vendor named in the draft agreement, and he did not perform any background or credit assessment on the proposed vendor. According to Mr Chen, the draft agreement was prepared by the borrower in the first Loan. The Board resolved to reject the draft put option agreement.

The Company subsequently made a full loss allowance on the Loan and loan note receivables, in the sums of RMB118 million and RMB66.4 million respectively, in its financial statements for the years ended 31 December 2020 and 2021.

## **RULE REQUIREMENTS**

Rule 2.13(2) provides that the information contained in any announcement or corporate communication must be accurate and complete in all material respects and not misleading or deceptive. Corporate communications include a prospectus and any equivalent document in connection with an application for listing.

Under Rule 11.07, as an overriding principle, a prospectus must contain such particulars and information which is necessary to enable an investor to make an informed assessment of the activities, assets and liabilities, financial position, management and prospects of the issuer, among other things.

Under Rule 11.12, directors of an issuer are responsible for the information contained in the listing document.

The Exchange's then Guidance Letters GL86-16 and GL98-18 provide guidance on the information the Exchange expects to be included in a listing document. Such expectations include disclosing information relating to the listing applicant's financial condition and material adverse changes to a listing applicant's financial position after the trading record period; material risks to a listing applicant; and a clear picture of a listing applicant's ability to meet known, or reasonably likely, future cash requirements. Risk factor disclosure should not be confined to risks that are considered to be reasonably likely to occur. If the occurrence of a particular risk would have a significant effect on the listing applicant, that particular risk should be disclosed even if it has a low probability of occurring.

Rules 13.46(2)(a), 13.48(1), 13.49(1) and 13.49(6) stipulate the timing for the publication and/or despatch of a listed issuer's preliminary announcement of interim and annual results and reports.

Rule 3.08 provides that the Exchange expects 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. These duties include the duty to act honestly and in good faith in the interests of the company as a whole (Rule 3.08(a)), to act for proper purpose (Rule 3.08(b)), be answerable to the issuer for the application or misapplication of its assets (Rule 3.08(c)), and to apply such degree of skill, care and diligence as may reasonably be expected of a person of his/her knowledge and experience and holding his/her office within the issuer (Rule 3.08(f)).

Pursuant to the Declaration and Undertaking with regard to Directors in the form set out in the then Appendix 5B to the Listing Rules (**Undertaking**), a director of a listed issuer is also under an obligation to comply with the Listing Rules to the best of his/her ability and to use his/her best endeavours to procure the Company's Listing Rule compliance.

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

Mr Chen failed to exercise due skill, care and diligence in approving the Loans. The Loans were advanced on an unsecured basis at an interest rate much lower than the average interest rates being paid by the Company to its own lenders. He was unable to explain the commercial rationale for providing the unsecured Loans. He also failed to conduct sufficient due diligence and credit assessment on the borrowers and to exercise independent judgement in approving the loan terms. He did not consider the need to obtain security from the borrowers for the Loans. In granting the Loans without proper risk and credit assessments, Mr Chen exposed the Company to unnecessary credit risk and risk of default.

Mr Chen also failed to exercise due skill, care and diligence in respect of the loan note subscription. At the material time, the issuer of the loan note and the borrower in the first Loan were owned by the same individual. Although the Loans had defaulted by end of December 2020, Mr Chen caused the Company to enter into the subscription agreement in January 2021. He was unable to explain his credit assessment of the issuer, nor was he able to provide details of the purported security under the loan note. He did not consider the security to be the focus under the subscription agreement. He failed to give any regard to the Company's interests in entering into the subscription agreement and in approving the fund transfer.

He did not use his best endeavours to procure the Company's Listing Rule compliance in relation to the disclosure of the Transactions. In particular, he failed to seek the Board's approval in accordance with the Company's internal control policy and to ensure the Transactions and any disclosure obligations were properly considered by the Board. He also failed to consult the Company's sponsor and compliance adviser on the Company's disclosure obligations in connection with the Transactions under the Listing Rules, and take sufficient steps in procuring the Company's Listing Rule compliance.

Mr Chen's failure to discharge his responsibilities led to a delay in the Company's publication and/or despatch of the Results and Reports.

Mr Chen failed to exercise due skill, care and diligence in proposing the draft put option agreement to the Board. The Company would be exposed to further payment obligations under the draft put option agreement, but Mr Chen did not perform any background or credit assessment on the proposed vendor before putting forward the draft agreement.

Mr Chen therefore breached Rule 3.08 and his Undertaking by failing to comply with the Listing Rules to the best of his ability and to use his best endeavours to procure the Company's Listing Rule compliance in respect of the Transactions and/or their disclosure. His failure to discharge his responsibilities was wilful and persistent.

### **CONCLUSION**

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

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

Hong Kong, 27 February 2024