

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)

Directors must ensure listed issuers have appropriate and effective internal controls in place to ensure compliance with financial reporting obligations as well as integrity and reliability of financial information.

A specific function may be delegated to appropriately qualified staff but not ultimate responsibility for performance of that function by Directors. Adequate procedures must be put in place to ensure accurate and regular reporting of the delegated function to the Board to keep all directors fully informed and updated in respect of its performance.

The case demonstrates there was over-reliance on one director who assumed multiple key management positions to deal with day-to-day management and financial reporting function.

Directors must take an active interest in the listed issuer's operations and affairs. Where a listed issuer devotes significant resources into a new investment activity, it is imperative that its directors (a) establish appropriate policies and guidelines governing the investment; and (b) ensure supply of regular update of the status and performance of the investment to all directors.

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

CENSURES:

- (1) **Sino Splendid Holdings Limited (“Company”)** (Stock Code: 8006) for breaching Rule 17.56(2) of the Rules Governing the Listing of Securities on the GEM of the Exchange (“GLR”) by failing to ensure that the information contained in its interim results announcement for the six months ended 30 June 2016 (“**1H2016 Results**”) published on 12 August 2016 was accurate and complete in all material respects and not misleading;
- (2) Mr Chow Chi Wa (“**Mr Chow**”), an executive director (“**ED**”) of the Company;
- (3) Mr Wang Tao (“**Mr Wang**”), an ED of the Company;

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- (4) Mr Yang Xingan (“**Mr Yang**”), an ED of the Company;
- (5) Ms Yang Shuyan (“**Ms Yang**”), an independent non-executive director (“**INED**”) of the Company;
- (6) Mr Zhang Xiaoguang (“**Mr Zhang**”), an INED of the Company;

AND CRITICISES

- (7) Ms Lee Yim Wah (“**Ms Lee**”), an INED of the Company,

for:

- (a) failing to apply such degree of skill, care and diligence required and expected of them, breaching GLR5.01(6); and
- (b) failing to comply to the best of their ability with the GLR and use their best endeavours to procure the Company’s GLR compliance, breaching their obligations under the Declarations and Undertakings with regard to Directors given to the Exchange in the form set out in Appendix 6A to the GLR (the “**Undertakings**”).

(Directors identified at (2) to (7) above are collectively referred to as the “**Relevant Directors**”)

The Committee further CENSURES Mr Chow for breaching his obligations under GLR5.20 as the Company’s Compliance Officer.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions detailed in this news release apply only to the Company and the Relevant Directors.

On 30 August 2018, the Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the GLR and the Undertakings.

KEY FACTS

On Friday, 12 August 2016 (after trading hours), the Company announced its 1H2016 Results reporting, among other items, financial assets at fair value through profit and loss of \$87,812,000 and a net loss of \$7,462,000 (“**Original Results**”). The financial assets in question comprised equities securities listed in Hong Kong. On Monday, 15 August 2016, (a) the closing price of the Company’s shares rose by 3.6 per cent and (b) 1,633,750 shares were traded which represented 112 per cent increase compared to the 10-day average to 12 August 2016.

On 8 September 2016 (after trading hours), the Company published a clarification announcement disclosing that “*adjustments have been made to the financial statements due to an inadvertent error made on the recognition of investments on listed securities*”. The major adjustments were:

- (a) financial assets at fair value through profit and loss increased from \$87.8m to \$129.7m, up by \$41.9m (“**Error**”); and
- (b) with other less significant adjustments, the Company reported a \$26m net profit instead of a \$7.4m net loss.

On 9 September 2016, the closing price of the Company’s shares rose by 6.2 per cent and 1,490,000 shares were traded which represented nearly 300 per cent increase compared with the 10-day average to 8 September 2016.

During the 19 trading days between 15 August and 8 September 2016, 8,448,750 shares were traded on inaccurate information before the clarification announcement was published.

At all material times, Mr Chow held various key management positions in the Company:

<u>Position</u>	<u>Appointment date</u>
ED, Compliance Officer, Authorised Representative	29 March 2013
Company Secretary	1 August 2013
CEO	6 November 2013

At the relevant time, Mr Chow, a certified public accountant was responsible for the financial reporting function of the Company. Mr Chow was assisted by another accountant (“**Accountant**”) who joined the Group in January 2016 with eight years’ accounting experience but “*limited working experience with the listing rules and accounting treatment of financial assets investment*”. Mr Chow was to provide guidance and on-the-job training to the Accountant who prepared the Company’s monthly management accounts (“**Monthly Management Accounts**”) as well as draft quarterly, interim and annual results (“**Draft Results**”) for Mr Chow’s review. The other Directors of the Company were not supplied with the Monthly Management Accounts. They only received the Draft Results circulated to them to review.

Mr Chow became seriously ill in 2014 and needed medical attention every two to three months. The Board (a) first learnt of Mr Chow’s health issues in early 2015; and (b) assessed his ability and considered that Mr Chow was capable of discharging his financial reporting duties.

In September 2015, three EDs Mr Chow, Mr Yang and Mr Wang approved a strategy that the Company invest in securities listed in Hong Kong (“**Investments**”). The Investments began in October 2015 and were conducted through Sino Impact Group Limited (“**Sino Impact**”), a wholly owned subsidiary of the Company. Around November 2015, Mr Yang and Mr Zhang were informed of the Investments. Mr Chow and Mr Wang discussed and approved the acquisition and disposal of individual listed securities. Only Mr Chow monitored the Investments.

Sino Impact maintained securities accounts with two securities brokerage firms (“**Brokers**”) for the Investments. Monthly Statements in respect of the securities accounts (“**Monthly Statements**”) were issued by the Brokers at the end of each month. At all material times, the Company and Sino Impact shared the same office address to which hard copies of the Monthly Statements were sent, reviewed by Mr Chow and filed by the Accountant. Softcopies were emailed to Mr Yip, the sole director of Sino Impact who worked from home. No monthly update of the Investments was provided to any other Directors of the Company.

In January 2016, the Company (and Sino Impact) moved office from Wanchai to Sheung Wan. No change of address was notified to the Brokers which continued to send the hardcopy Monthly Statements to the old address in Wanchai.

The Company's Administrative Manager resigned on 31 March 2016. Since then and during the relevant time, Mr Chow and the Accountant took up most of her duties whilst a suitable replacement was being found.

In or around May 2016, Mr Chow noted that the Monthly Statements for January to April 2016 had not been received. He obtained copies from Mr Yip, reviewed them and passed them to the Accountant for filing.

On 28 July 2016, Mr Chow was admitted to hospital for medical treatment in Hong Kong. He expected to be discharged from hospital on the same day. However, he remained hospitalised until 4 August 2016. Mr Chow did not inform the other Directors of his hospitalisation or his absence from work. He just informed the Accountant and the Company Receptionist (with the latter being informed in accordance with the Company's practice).

Mr Chow returned to office on 5 August 2016. He selected 15 August 2016 (Monday) for the Board meeting and Audit Committee ("**AC**") meeting to approve the 1H2016 Results and the results publication. On 11 August 2016, after the Exchange's request to publish the results by 14 August (the deadline under the GLR), Mr Chow rescheduled the meetings for 12 August (Friday) when most Board members and AC members were available. On the same day, he emailed the draft Original Results to the other Directors.

The figure of \$87,812,000 for "Financial Assets at fair value through profit and loss" in the Original Results was brought forward from the Company's FY2015 Results without further assessment. Mr Chow and the Accountant were not aware that the May and June 2016 Monthly Statements had not been received. They "*inadvertently forgot any change in value of the financial assets*", and thought the value remained unchanged since 31 December 2015.

Mr Wang and Ms Yang were unable to attend the Board and AC meetings on 12 August 2016. They had telephone discussion about the Original Results with Mr Chow which focused on revenue, performance change and disclosure requirements. All other Directors attended the meetings when they reviewed the Original Results with the same focus; and approved the Original Results. None of the Relevant Directors noted the Error.

In September 2016, the Listing Department ("**Department**") requested the Company to provide further information disclosed in the Original Results. Mr Chow asked the Accountant for a breakdown of the financial assets, and was told about the "*missing*" Monthly Statements for May and June 2016. Mr Chow obtained copies from Mr Yip and discovered the Error.

GLR REQUIREMENTS

GLR17.56(2) provides that information contained in any announcement required under the GLR must be accurate and complete in all material respects and not be misleading or deceptive.

COMMITTEE'S FINDINGS OF BREACH

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

Company's breach

The Committee found that, due to the Error, there were material discrepancies between the Original Results and the restated 1H2016 Results as disclosed in the clarification announcement including, in particular, the financial assets at fair value through profit and loss and that the 1H2016 Results turned from a loss of approximately \$7.4m to a profit of \$26m.

The Committee concluded that the market reaction to the clarification announcement supported the view that the discrepancies were material information for the Company's shareholders and the investing public. They had been deprived of information which should have been accurate and complete in all material respects and not be misleading for making informed investment decisions in respect of the trading of the Company's securities during the period from 15 August to 8 September 2016.

The Committee therefore further concluded that the Company breached GLR17.56(2) in that the Original Results were not accurate and complete in all material respects and were misleading.

Internal controls

The Committee noted that the Company's internal controls did not prevent or detect the Error. The Committee concluded that the Company did not have adequate internal controls in place at the relevant time to ensure its GLR compliance, including compliance with GLR17.56(2) in relation to its financial results:

- (1) lack of guidelines or policy governing the Investments and associated risk management assessment;
- (2) inadequate system and procedures for the Board's regular monitoring of (a) the Investments and (b) more broadly, the Company's business and financial performance;
- (3) lack of written procedures or policy governing financial reporting; and
- (4) lack of policy and procedures governing (a) the notification of an ED's absence from office for health reasons to all other EDs of the Company (if not also the INEDs) and (b) back-up arrangements during the period of the ED's absence from office.

Directors' breaches

Under GLR5.01 and GLR5.03, the Board is collectively responsible for the Company's management and operations, and the Directors are collectively and individually responsible for ensuring the Company's full compliance with the GLR.

GLR5.01 further states that:

- (i) The Exchange expects directors, both collectively and individually, to fulfil their fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, including the duty (under GLR5.01(6)) to 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.
- (ii) Directors do not satisfy the required levels of skill, care and diligence if they pay attention to the issuer's affairs only at formal meetings. At a minimum, they must take an active interest in the issuer's affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention.

Mr Chow's breach of GLR5.01(6)

The Committee concluded that Mr Chow breached GLR5.01(6) by failing to:

- (1) keep the other Board members regularly informed and updated about the Investments which were significant assets of the Company as their fair value, reported at \$87,812,000, represented 37 per cent of the Company's current assets of \$239 million; and 31 per cent of the total assets of \$280 million as of 30 June 2016 as reported in the Original Results. At the same time, the Company reported revenue of only \$47.7 million and a net loss of \$7.4 million for 1H2016;
- (2) provide the other Board members with regular or monthly updates on the Company's business and financial performance;
- (3) ensure that reasonable steps were taken to minimise the risk of loss or non-receipt of mail (including the Monthly Statements) resulting from the Company's office move, eg notifying the Brokers of the change of address, subscribing for the service provided by Hongkong Post to re-direct mail to the new address; and requiring Mr Yip to forward copy Monthly Statements to Mr Chow and the Accountant;
- (4) monitor the Company's (a) receipt of the hardcopies of the Monthly Statements; and in turn (b) the Investments;
- (5) ensure accurate financial reporting in the 1H2016 Results; and
- (6) ensure the Company had adequate internal controls in place.

Breach of GLR5.01(6) by two EDs Mr Yang and Mr Wang

The Committee noted that Mr Yang was appointed an ED of the Company in January 2015 whilst Mr Wang was appointed an ED in September 2015. The Committee concluded that both Mr Yang and Mr Wang breached GLR5.01(6) by failing to:

- (1) monitor the Investments on a regular basis;

- (2) regularly monitor the Company's business and financial performance;
- (3) ensure that the Company had adequate internal controls in place; and
- (4) review the Original Results with care, skill and diligence:
 - (a) Mr Wang and Mr Yang were reasonably required to (i) review carefully the line item "financial assets at fair value through profit or loss" which financial assets were significant assets of the Company; and (ii) make enquiries to gain a proper understanding of the Investments in particular when they had not been supplied with regular updates referred to at (1) and (2) above and received only limited information from the Draft Results. There was no evidence of Mr Wang and Mr Yang making any enquiries.
 - (b) According to Mr Yang and Mr Wang, they both were not aware that the figure of \$87,812,000 for "financial assets at fair value through profits and loss" in the Original Results was identical to the figure reported in the FY2015 Results. This was notwithstanding that (i) the two (same) figures were presented side by side in the Original Results; and (ii) it did not require accounting expertise for one to note it. Further, the FY2015 Report had disclosed the basis for the determination of the fair value of the Investments in footnote 19 to the Company's 2015 financial statements as quoted below:

* 19. FINANCIAL ASSETS AT FAIR VALUE THROUGH PROFIT OR LOSS	2015 \$'000	2014 \$'000
<i>Equity securities, at market value</i>		
<i>Listed in Hong Kong</i>	87,812	-
<i>The fair values of all listed securities are determined with reference to the quoted market bid price." ("Disclosure")</i>		

- (c) Mr Yang and Mr Wang were in office when the FY2015 Report was published on 30 March 2016. They were or must be deemed to be aware of the Disclosure. As such, the enquiries reasonably required of Mr Yang and Mr Wang in compliance with GLR5.01(6) extended to enquiring into why the fair value of the Investments was stated to be the same as that six months earlier. However, there was no evidence that they did so.
- (d) Had Mr Yang and Mr Wang made enquiries with this knowledge, they might/could have alerted Mr Chow and the Board to look closer and discovered the Error and could have avoided the breach of GLR17.56(2). However, they did not.

INEDs' breach of GLR5.01(6)

Ms Yang and Mr Zhang

Ms Yang and Mr Zhang were appointed INEDs on 29 May 2015. Apart from being Board members, they also served on the AC with Ms Yang (who had an accounting background) being the Chairperson and Mr Zhang being a member. The Terms of Reference of the AC included, among other terms:

- (a) Review of financial information including “*monitor integrity of the financial statements and annual, interim and quarterly results and reports of the Company*”.
- (b) Review the financial controls, internal controls and risk management systems; and discuss internal control system with management to ensure management has performed its duty to have an effective internal control system.

The Committee concluded that the two INEDs Ms Yang and Mr Zhang also breached GLR5.01(6) for the following reasons:

- (1) As members of the Board of the Directors, these two INEDs were subject to GLR compliance, including GLR5.01. Under GLR5.03, the Directors were collectively and individually responsible for ensuring the Company's GLR compliance.
- (2) These two INEDs had knowledge of the existence of the Investments in November 2015. They were in office when the Company's 2015 Report was published and therefore were aware or ought to have been aware of the basis of the determination of the fair value of the Investments.
- (3) In the circumstances, exercise of care, skill and diligence in compliance with GLR5.01(6) required that these two INEDs also take the actions required of Mr Yang and Mr Wang as set out above. However, they had failed to do so. Their failure to act thus was also clearly inconsistent with their proper fulfillment of their duties as AC members.
- (4) The Committee therefore found that Ms Yang and Mr Zhang breached GLR5.01(6).

Ms Lee

The Committee found that Ms Lee also breached GLR5.01(6) for the following reasons:

- (1) Ms Lee was appointed an INED and an AC member on 31 March 2016. Ms Lee was subject to (a) the same directors' duties including that under GLR5.01 and (b) compliance with the AC duties as the other two INEDs, Ms Yang and Mr Zhang.
- (2) What distinguished Ms Lee's position was that:

- (a) Ms Lee had not been appointed when the 2015 Report was published on 30 March 2016. She was appointed a day later on 31 March 2016.
 - (b) Ms Lee had been in office for about four and a half months when she participated in approving the 1H2016 Results on 12 August 2016 whilst the other two INEDs had been in office for 15 months.
- (3) Notwithstanding (2) above, the Committee agreed with the Department's submission that, as of 12 August 2016, Ms Lee was aware or ought to have been aware of the existence of the Investments and the basis of the determination of the fair value of the Investments for the following reasons:
- (a) After being appointed an INED, Ms Lee should have received an induction from the Company (as required by Code Provision A.6.1 of the Corporate Governance Code, Appendix 15 of the GLR) to enable her to be familiarised with, among other things, the Company's business activities, investment activities, and assets type held. In any event, Ms Lee was expected and required to take an active interest in the issuer's affairs and obtain a general understanding of its business.
 - (b) Given the requirements at (a) above and the Company's 2015 Report, the latest set of the Company's published financial results available on Ms Lee's appointment, were published just one day before, it was reasonable to expect that (i) the Company provided Ms Lee a copy of the 2015 Report with a briefing on them as a part of the induction for Ms Lee; and (ii) Ms Lee had perused the document shortly after her appointment as an INED.
 - (c) Ms Lee was in office when the Company's 1Q2016 Results were published in May 2016. Those results disclosed the Investments and their fair value (as of 31 March 2016) being incorrectly stated as HK\$87,812,000.
 - (d) Three sets of the Company's financial results in a row reported the same fair value of the Investments figure of HK\$87,812,000 as at 31 December 2015 (in the 2015 Report), 31 March 2016 (in the 1Q2016 Results); and 30 June 2016 (in the Original Results).
 - (e) In the circumstances, given Ms Lee's duties and her knowledge or deemed knowledge at (a) to (d) above, exercise of care, skill and diligence in compliance with GLR5.01(6) required that Ms Lee took the same actions as required of the other two INEDs, Ms Yang and Mr Zhang, set out above. Ms Lee had failed to do so. The Committee therefore also found that Ms Lee breached GLR5.01(6) and her Undertaking.

The Committee took into account Ms Lee's shorter period of office at the material times than that of the other two INEDs, when considering the appropriate sanction to impose upon her.

Mr Chow's breach of GLR5.20

GLR5.20 provides that "*The Compliance Officer's responsibilities must include, as a minimum ... (1) advising on and assisting the board of directors of the issuer in implementing procedures to ensure that the Company complies with the GLR...*".

The Committee also concluded that Mr Chow breached GLR5.20 as there was no evidence that Mr Chow had given assistance and advice to the Company's Board on the implementation of procedures to ensure the Company's GLR compliance.

Relevant Directors' breach of Undertakings

The Department asserted that, by reason of their respective GLR5.01(6) and GLR5.20 breaches, the Relevant Directors also breached their Undertakings to the Exchange.

REGULATORY CONCERN

The Committee views the breaches in this case serious:

- (1) There was over-reliance on Mr Chow who assumed multiple key management positions to deal with the day-to-day management and financial reporting functions of the Company, with the assistance of an accountant for the latter.
- (2) A specific function may be delegated, but not ultimate responsibilities for that function, by Directors. There was no system in place to ensure regular reporting of the function (delegated to Mr Chow) to the Board to keep all directors informed and updated.
- (3) There was a lack of appropriate and effective internal controls to ensure the Company's compliance with financial reporting obligations as well as the integrity and reliability of financial information.
- (4) The interest of the Company's shareholders and investing public had been prejudiced in terms of their right to receive accurate and complete and not misleading information to enable them to appraise the Company's position for making informed investment decision. Over 8 million shares of the Company were traded from 15 August to 8 September 2016 on inaccurate information.
- (5) The Relevant Directors failed to take active interests in the Company's affairs concerning significant assets held by the Group. They also lacked proper understanding of their duties as directors of a listed issuer.

SANCTIONS

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

- (1) a public censure of the Company for its breach of GLR17.56(2);

- (2) a public censure of Mr Chow for his breach of GLR5.01(6), GLR5.20 and the Undertaking to the Exchange;
- (3) a public censure of Mr Yang, Mr Wang, Ms Yang and Mr Zhang for their respective breaches of GLR5.01(6) and the Undertakings; and
- (4) a public statement involving criticism against Ms Lee for her breach of GLR5.01(6) and the Undertaking.

The Committee further directs that:

- (1) The Company:
 - (a) appoint an independent Compliance Adviser (as defined in GLR Chapter 6A namely, an entity licensed or registered under the Securities and Futures Ordinance for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor, and as applicable, which is appointed pursuant to GLR6A.19 or GLR6A.20 to undertake work as a Compliance Adviser) satisfactory to the Department on an ongoing basis for consultation on GLR compliance and proper corporate governance for a period of two years to commence within four weeks from the publication of this news release;
 - (b) submit the proposed scope of retainer to the Department for comment before appointment of the Compliance Adviser which shall include an express provision that the Compliance Adviser shall be accountable to the AC of the Company;
 - (c) engage the professional firm (which conducted a review of the Company's internal controls and made the recommendations in its internal control review report) or where appropriate as agreed to by the Department upon the Company's application with reasons, any other professional firm satisfactory to the Department, to conduct a follow-up review of the Company's internal controls to ensure full implementation of the recommendations within six weeks of this news release; and
 - (d) provide a copy of the report on the follow-up review to the Department within two weeks after its receipt by the Company.
- (2) Those of the Relevant Directors, who remain current directors of the Company, are to (a) attend 24 hours of training on GLR compliance, director's duties and corporate governance matters to be provided by institutions such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Department, to be completed within 120 days from the publication of this news release; and (b) provide the Department with the training provider's written certification of full compliance.
- (3) The Company is to publish an announcement to confirm that the respective directions in paragraphs (1)(a), (c), (d) and (2) above has been fully complied with within two weeks after the fulfillment of the direction. The last announcement to be published under this requirement is to include the confirmation that the directions in paragraphs (1)(a), (c), (d) and (2) above have been complied with.

- (4) The Company is to submit drafts of the announcements referred to in paragraph (3) above for the Department's comment and may only publish the announcements after the Department has confirmed it has no further comment on them.
- (5) Following the publication of this news release, any changes necessary and any administrative matters which may emerge in the management and operation of any of the directions set out in paragraphs (1) to (4) above are to be directed to the Department for consideration and approval. The Department should refer any matters of concern to the Committee for determination.

Hong Kong, 30 October 2018