

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)

**Issuers must ensure that information contained in its announcements and corporate communication required under the Exchange Listing Rules be accurate and complete in all material respects and not be misleading or deceptive. Failing to do so prejudices the interest of their shareholders and the investing public, in particular, in terms of their right to receive accurate and complete and not misleading information to enable them to appraise the issuers' position for making informed investment decision, and destroys transparency, trust and confidence in the market. Directors are under a duty to use their best endeavours to procure the issuer to so comply.**

**Directors must also exercise such degree of skill, care and diligence as may be reasonably expected under Rule 3.08(f) of the Exchange Listing Rules in approving the publication of the issuer's announcements. Failure to exercise reasonable degree of skill, care and diligence by a director to procure the issuer to publish accurate, complete and not misleading announcements may amount to a breach of Rule 3.08(f). Issuer not privy to the transaction in question or publishing under tight time frame may not be accepted as reasonable excuse if the responsible director has been provided with relevant material information but who failed to take reasonable steps to procure its disclosure.**

**A director's cooperation with the Listing Department's investigation is of utmost importance in enabling the Exchange to discharge its function to maintain an orderly and fair market. Failure to comply with the Exchange's requests in connection with an investigation of possible Rule breaches without reasonable excuse is viewed in a very serious light.**

**The Listing Committee of The Stock Exchange of Hong Kong Limited ("Listing Committee")**

#### **CENSURES:**

- (1) Shenji Group Kunming Machine Tool Company Limited ("Company")** (Stock Code: 300) for breaching Rule 2.13(2) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("**Exchange Listing Rules**") for failing to ensure that the information contained in its announcement published on 11 November 2015 was accurate and complete in all material respects and not misleading;

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**FURTHER CENSURES:**

- (2) **Mr Wang Xing** (“**Mr Wang**”), former Chairman and executive director (“**ED**”) of the Company

for:

- (a) failing to apply such degree of skill, care and diligence required and expected of him with respect to the matters referred to herein, breaching Rule 3.08(f) of the Exchange Listing Rules;
- (b) failing to comply to the best of his ability with the Exchange Listing Rules (“**Best Ability Undertaking**”) and use his best endeavours to procure the Company’s Exchange Listing Rule compliance (“**Best Endeavours Undertaking**”), and failing to cooperate with the Listing Department’s investigation (“**Undertaking to Cooperate**”), breaching his obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5H to the Exchange Listing Rules (“**Director’s Undertaking**”)

**AND STATES THAT:**

The pattern of behaviour exhibited by Mr Wang in failing to cooperate with the Listing Department’s investigation is completely inconsistent with the standard of conduct expected by the Exchange of a director of a listed issuer and such failure will be taken into account in assessing his suitability under Rule 3.09 of the Exchange Listing Rules (and Rule 5.02 of the GEM Listing Rules) in the event that he should wish to become a director of any issuer listed or to be listed on the Exchange in the future.

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

On 31 October 2018, the Listing Committee conducted a hearing into the conduct of the Company and Mr Wang in relation to his obligations under the Exchange Listing Rules and the Director’s Undertaking.

**KEY FACTS**

On 9 October 2015, the Company announced that Shenyang Machine Tool (Group) Company Limited, its substantial shareholder (“**Transferor**”), was identifying a suitable transferee for the sale of its entire 25.08% interest in the Company (“**Share Transfer**”). There were two further announcements published by the Company on 23 and 30 October 2015 concerning the development of the matter.

[Announcement disclosing the Agreement for the Share Transfer](#)

On 11 November 2015 at 7:07 am, the Company published an announcement (“**Announcement**”) that the Transferor had entered into an agreement (“**Agreement**”) for the Share Transfer to Tibet Unis-zhuoyuan Equity Investment Company Limited (“**Transferee**”). The conditions to the Share Transfer becoming effective were set out in the Announcement, including obtaining the approval of the State-owned Assets Supervision and Administration Commission (“**SASAC**”) of the PRC State Council, but without mentioning any deadline for completion.

### Progress Announcement

On 5 February 2016 at 4:16 pm, the Company published an announcement about the progress of the Share Transfer (“**Progress Announcement**”). It was disclosed, amongst others, that (a) the approval of the SASAC of PRC State Council had yet to be obtained and that the Share Transfer was subject to a 3-month long stop date which would expire on 8 February 2016 (“**Long Stop Date**”); (b) if the effective conditions of the Share Transfer could not be fulfilled by the Long Stop Date, the Agreement would be terminated automatically with neither party bearing any liability; and (c) the parties were then discussing whether the Agreement would be postponed.

### Termination Announcement

On 17 February 2016 (8:28 am), the Company published an announcement about the termination of the Agreement (“**Termination Announcement**”), disclosing, amongst others, the following:

- (1) The conditions of the Share Transfer as set out in the Agreement included, among others, (i) the Transferor should obtain the written document from the Yunnan provincial government supporting the Transferee to become the substantial shareholder of the Company and (ii) Yunnan Industrial Investment Holding Group Co., Ltd., the Company’s second largest shareholder, should issue a written document to support and cooperate with the completion of the Share Transfer (collectively, the “**Letters of Support**”).
- (2) If the effective conditions of the Share Transfer could not be fulfilled by the Long Stop Date, the Agreement would be automatically terminated and neither party needs to bear liability.

(The terms of the Agreement referred to in sub-paragraphs (1) and (2) above which were not disclosed in the Announcement are collectively referred to as the “**Relevant Terms**”.)

- (3) The Agreement had been terminated as the approval of the SASAC of PRC State Council had not been obtained by the Long Stop Date.
- (4) The final version of the Agreement was signed in the evening of 10 November 2015, and the term regarding the Long Stop Date was included in the Agreement. Because of the time constraints, after the Company received the final version of the Agreement at 5:51 pm on that day, it uploaded the Announcement (prepared based on previous versions of the Agreement) without review.
- (5) On 4 February 2016, the Company became aware that the Transferor and the Transferee might not be able to agree to extend the Long Stop Date set out in the Agreement and was requested by the China Securities Regulatory Commission (“**CSRC**”) to announce it.

- (6) On 15 February 2016, the Company received enquiries from the CSRC and the Shanghai Stock Exchange (“SSE”) concerning the termination of the Share Transfer and requested the Company to explain, among other issues, why the Company did not disclose the Long Stop Date in the Announcement, and to verify whether there were other significant omissions in its previous announcements. As a result, the Company found that it had also failed to disclose the Relevant Terms in the Announcement.

Company’s explanation for the omissions in the Announcement

According to the Company:

- (1) As it was not a party to the Share Transfer, its knowledge about the transaction terms and process was all informed by the Transferor, the Transferee and its adviser. Drafts of the Announcement to disclose the Share Transfer were prepared based on information and/or drafts of the Agreement provided by the Transferee on 5 and 9 November 2015 which did not mention the Long Stop Date. The Company was never aware during the negotiation process that the parties to the Share Transfer intended to include a Long Stop Date in the Agreement. Those parties themselves also failed to disclose the Long Stop Date in their own filings.
- (2) Only Mr Wang and the Board Secretary were involved in preparing and publishing the Announcement. The other Directors had no knowledge before the Announcement was published. The Board Secretary received the executed Agreement by email on 10 November 2015 at 5:51 pm, and reported to Mr Wang by providing a physical copy of the executed Agreement to him for review. After receiving Mr Wang’s approval, arrangements to publish the Announcement were made.
- (3) On 4 February 2016, the CSRC, after reviewing relevant information in the course of monitoring the Company’s continuing compliance, requested the Company to verify and disclose relevant terms concerning Long Stop Date by which conditions to the Share Transfer had to be fulfilled. The Board office then checked the executed Agreement and only became aware of the Long Stop Date. The Company therefore disclosed the existence of the Long Stop Date in the Progress Announcement on 5 February 2016.

Company admitted breach of Rule 2.13(2)

The Company admitted that, in failing to disclose the Relevant Terms in the Announcement, it breached Rule 2.13(2) of the Exchange Listing Rules.

No admission or denial of breach of Rule 3.08 or Undertaking by Mr Wang

Mr Wang neither admitted nor denied breach of Rule 3.08 of the Exchange Listing Rules and his Best Ability Undertaking and Best Endeavours Undertaking concerning the Company’s compliance with Rule 2.13(2) regarding the Announcement.

Mr Wang failed to respond to the Listing Department's enquiries after he resigned as a director

Mr Wang failed to respond to the Listing Department's written enquiries of 25 August 2017 concerning the Listing Department's investigation on the above matter after he ceased to be a director of the Company with effect from 19 January 2017. On 13 September 2017, a staff member of the Listing Department successfully contacted Mr Wang on the telephone, and was requested to re-send the enquiry letter to another address of Mr Wang which the Listing Department did on the same day. As no response was received, the Listing Department subsequently telephoned Mr Wang again four times on two days but was unable to contact Mr Wang. The Listing Department also issued two follow up letters to Mr Wang but received no response.

**Exchange Listing Rule Requirements**

Rule 2.13(2) of the Exchange Listing Rules provides that information contained in any announcement required under the Exchange Listing Rules must be accurate and complete in all material respects and not be misleading or deceptive.

**LISTING COMMITTEE'S FINDINGS OF BREACH**

The Company and Mr Wang did not attend the hearing. The Listing Committee considered the written submissions of the Listing Department, the Company and Mr Wang, and concluded as follows:

**Company's breach of Rule 2.13(2)**

The Listing Committee concluded that the Relevant Terms were material information concerning the Share Transfer:

- (1) Obtaining the Letters of Support was a condition to the Share Transfer and was therefore one of the material terms of the Agreement.
- (2) The Share Transfer was subject to the Long Stop Date, ie all conditions to the Share Transfer had to be fulfilled within 3 months from the date of the Agreement, otherwise the Agreement would be terminated automatically. By failing to disclose this, the investing public was misled that there was no time limit for the parties to the Share Transfer to arrange for all conditions to be fulfilled, when in fact this was not the case.
- (3) Termination of the Share Transfer (which the investing public had not expected without knowing the Long Stop Date until the Progress Announcement was published on 5 February 2016) did have an adverse impact on the Company's financial situation as stated in the Termination Announcement.

The Listing Committee found that there were significant share trading movements in the Company's H-shares immediately after the Announcement, the Progress Announcement and the Termination Announcement were respectively published:

<u>Relevant announcement and relevant trading date</u>	<u>Movements of share price</u>	<u>Trading volume (no. of shares)</u>	<u>Movement of HSI</u>
Announcement 19 November 2015	+26.95% (from \$3.71 to \$4.71); +30.7% highest (\$4.85)	15,062,372 (4 times past 10-day average)	+0.34% (22,500)
Progress Announcement 11 February 2016	-8.8% (from \$3.62 to \$3.3); -10.8% lowest (\$3.23)	812,000 (0.50 times past 10-day average)	+0.31% (18,545)
Termination Announcement 17 February 2016	-9% (from \$3.46 to \$3.15); -15.3% lowest (\$2.93)	14,197,224 (13.7 times past 10-day average)	-1.42% (18,924)

The Listing Committee further concluded that the significant market reaction to the Announcement, the Progress Announcement and the Termination Announcement supported the view that the Share Transfer and the requirement to fulfill the condition regarding obtaining the approval of the SASAC of the PRC State Council by the Long Stop Date was material information to the Company's shareholders and the investing public who had been deprived of information in respect of the Share Transfer which should have been accurate and complete in all material respects and not misleading for making informed investment decisions on the trading of the Company's securities during the period from 19 November 2015 to 16 February 2016.

The Listing Committee therefore concluded that the Company breached Rule 2.13(2) of the Exchange Listing Rules in that its failure to disclose the Relevant Terms in the Announcement led to material omissions in the Announcement and rendered it not accurate and complete in all material respects and was misleading.

#### **Mr Wang's breaches of Rule 3.08(f) and Undertaking**

Under Rules 3.08, 3.16 and 13.04 of the Exchange Listing Rules, 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 Exchange Listing Rules.

Rule 3.08 further states 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, including the duty (under Rule 3.08(f)) 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. An assessment of whether a director's exercise of skill, care and diligence in discharging his director's duties under Rule 3.08(f) takes into account the director's knowledge, experience and the office he held.

Mr Wang's Director's Undertaking included an undertaking to comply with the Exchange Listing Rules to the best of his ability (ie the Best Ability Undertaking), and to use his best endeavours to procure that the Company also complies (ie the Best Endeavours Undertaking).

Breach of Rule 3.08(f)

In view of Mr Wang's knowledge, experience and position in the Company, the Listing Committee concluded that he failed to fulfill his duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, breaching Rule 3.08(f) of the Exchange Listing Rules:

- (1) Mr Wang had been a director of the Company since 23 March 2007, first as a Non-Executive Director until 28 July 2011 when he was re-designated as an ED and was appointed as the Chairman. When he approved the Announcement, he had already been on the Board for more than 8.5 years and as an ED and the Chairman for more than 4 years. With Mr Wang's experience as a director of a listed company, it was therefore reasonable to expect him to have exercised due care, skill and diligence to ensure that the Company complied with Rule 2.13(2) in respect of the Announcement.
- (2) The Board Secretary provided a physical copy of the executed Agreement to Mr Wang in the late afternoon of 10 November 2015, and therefore information about the Relevant Terms was available to him. However, he did not review and check, or procure the Board Secretary to review and check, the executed Agreement against the then latest draft of the Agreement and/or the draft Announcement which was prepared based on drafts of the Agreement. This led to the failure to identify the Relevant Terms and hence their omission from the Announcement. He simply approved the publication of the Announcement which omitted disclosure of the Relevant Terms.
- (3) Although the Company was not a party to the Share Transfer and did not have any prior knowledge of the parties' intention to include the Relevant Terms in the Agreement, and the Company submitted that it was then under time pressure to submit an announcement to the SSE and the Exchange for publication, the Agreement was only slightly more than 6 pages (excluding the cover and execution pages) and Mr Wang could have ensured that it was reviewed carefully and that all material terms of the Share Transfer were included in the Announcement within the time frame.
- (4) Even if the Company was under a tight timeframe to publish the Announcement, it did not justify Mr Wang, as the person in charge of the Company's disclosure at that time, not to exercise due care and diligence to ensure that the Announcement complied with Rule 2.13(2).

- (5) Even if the Company had published the Announcement under time pressure as it submitted, Mr Wang should and could have taken steps to ensure that the entire Agreement was properly and carefully reviewed immediately after publication of the Announcement, to ensure that any omitted material information could have been disclosed in a supplemental announcement. Mr Wang failed to do so. Instead, mere reliance was made on the filings made by the Transferor and the Transferee which also omitted disclosure of the Relevant Terms in their filings. The Company/Mr Wang only became aware of the omission when the CSRC made enquiries of the Share Transfer on 4 February 2016.

#### Breach of Best Ability Undertaking

The Listing Committee concluded that, with his breach of Rule 3.08 of the Exchange Listing Rules as analysed above, Mr Wang also breached his Best Ability Undertaking.

#### Breach of Best Endeavours Undertaking

Mr Wang undertook to the Exchange to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules. The Listing Committee took the view that, in the circumstances of this case, best endeavours would have required Mr Wang to, at least, ensure that the executed Agreement be reviewed and the draft Announcement be checked against the Agreement to ensure that it is accurate and complete in all material respects and not be misleading, as required under Rule 2.13(2). The Listing Committee concluded that Mr Wang failed to do so, and breached his Best Endeavours Undertaking to procure the Company's compliance with Rule 2.13(2) in respect of the Announcement.

#### Breach of Undertaking to Cooperate

Mr Wang's written Undertaking to Cooperate to the Exchange required him to cooperate in any investigation conducted by the Listing Department and/or the Listing Committee, including answering promptly and openly any questions addressed to him.

The Listing Committee accepted the Listing Department's submissions that Mr Wang (a) was taken to have received the Listing Department's enquiry letter of 25 August 2017 and subsequent follow up letters by virtue of the deemed service provision in his Director's Undertaking; (b) was clearly aware of the need for his cooperation in the investigation through the telephone conversation he had with a staff member of the Listing Department on 13 September 2017; (c) failed to respond to the investigation without any reasonable grounds; and (d) therefore failed to comply with his Undertaking to Cooperate in the Listing Department's investigation.

The Listing Committee therefore concluded that Mr Wang failed to cooperate with the Listing Department's investigation and therefore breached his Undertaking to Cooperate.

### **REGULATORY CONCERN**

The Listing Committee regards the breaches in this matter as serious:



- (1) The interest of the Company's shareholders 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. There was trading in the Company's shares from 19 November 2015 to 16 February 2016. The Listing Committee noted, in particular, the significant share trading movements after the Announcement, the Progress Announcement and the Termination Announcement were published.
- (2) Directors have an obligation to ensure that the company's announcement be accurate and complete in all material respects and not be misleading or deceptive. Failure to do so destroys transparency, trust and confidence in the market.
- (3) A director's cooperation with the Listing Department's investigation is of utmost importance in enabling the Exchange to discharge its function to maintain an orderly and fair market. Failure to comply with the Exchange's requests in connection with an investigation of possible Exchange Listing Rule breaches without reasonable excuse is viewed in a very serious light.

## **SANCTIONS**

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

- (1) Censure the Company for its breach of Rule 2.13(2) of the Exchange Listing Rules; and
- (2) Censure Mr Wang for breach of Rule 3.08(f) of the Exchange Listing Rules and the Director's Undertaking.

The Listing Committee further stated that the pattern of behaviour exhibited by Mr Wang in failing to cooperate with the Listing Department's investigation is completely inconsistent with the standard of conduct expected by the Exchange of a director of a listed issuer and such failure will be taken into account in assessing his suitability under Rule 3.09 of the Exchange Listing Rules (and Rule 5.02 of the GEM Listing Rules) in the event that he should wish to become a director of any issuer listed or to be listed on the Exchange in the future.

Hong Kong, 13 December 2018