

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)

**Inaccurate, incomplete, misleading or deceptive disclosure damages the integrity of the market and corrodes investor confidence. It is one of the Exchange's themes of enforcement published on 17 February 2017 following a review of the themed approach to enforcement adopted since 2014.**

**In this case, the Company has committed a number of serious breaches of the Exchange Listing Rules in relation to disclosure and shareholders' approval requirements. Accurate and timely disclosure and reporting of information in accordance with the Exchange Listing Rules is necessary for the Company's shareholders and the investing public to appraise the position of the Company. The Exchange takes non-compliance with disclosure obligations seriously and will continue to take action against issuers and directors who breach their disclosure obligations.**

**A director has responsibility to inform the Board of important information concerning the affairs of an issuer and the protection of the issuer's investments, particularly where such information triggers Exchange Listing Rule compliance issues.**

**The board of directors of a listed company is collectively responsible for the management and operations of the company. Directors including INEDs and NEDs have oversight responsibilities which cannot be discharged by delegating to other members of the board or staff of the company. One of the roles of an INED is to provide checks and balance, and to bring an independent judgment to bear on the strategy, affairs and transactions of the company.**

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

#### **CENSURES:**

(1) **Golden Meditech Holdings Limited ("Company")** (Stock Code: 801)

for breaching Rules 2.13, 14.34, 14.36, 14.38A, 14.40, 14.41, 14.48, 14.49, 14.51 and 14.74 of the *Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited* ("**Exchange Listing Rules**") for failing to comply with the disclosure and shareholders' approval requirements in relation to certain transactions;

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**FURTHER CENSURES:**

- (2) **Mr Kam Yuen (“Mr Kam”)**, current executive director (“**ED**”), Chairman and Compliance Officer of the Company;
- (3) **Mr Kong Kam Yu (“Mr Kong”)**, current ED of the Company;

**And the Listing (Disciplinary Review) Committee (“Review Committee”) on review**

**CRITICISES:**

- (4) **Mr Lu Tian Long (“Mr Lu”)**, former ED of the Company;
- (5) **Ms Zheng Ting (“Ms Zheng”)**, former ED and current non-executive director (“**NED**”) of the Company;
- (6) **Professor Gu Qiao (“Professor Gu”)**, current independent non-executive director (“**INED**”) of the Company; and
- (7) **Professor Cao Gang (“Professor Cao”)**, current INED of the Company

for breaching Rule 3.08(f) of the Exchange Listing Rules, and their obligations under 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 (the “**Undertaking**”) for failing to comply with the Exchange Listing Rules to the best of their ability and failing to use their best endeavours to procure the Company’s Exchange Listing Rule compliance (the directors identified at (2) to (7) above are collectively referred to as the “**Relevant Directors**”).

**And the Listing Appeals Committee on review determined to uphold the findings of breach and the directions on sanctions made by the Listing Committee as varied by the Review Committee against Ms Zheng, Professor Gu and Mr Lu.**

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this news release 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.

**BACKGROUND AND TIMELINE**

On 16 January 2018, the Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Undertakings.

On 12 June 2018, the Review Committee conducted a disciplinary (review) hearing on the applications by Mr Lu, Ms Zheng, Professor Gu and Professor Cao for a review of the decisions of and the sanctions imposed on them by the Listing Committee at first instance (“**Disciplinary (Review) Hearing**”).

On 30 November 2018, the Listing Appeals Committee conducted a further disciplinary (review) hearing on the applications by Ms Zheng, Professor Gu and Mr Lu for a review of the decisions of and the sanctions imposed on them by the Listing Committee as varied by the Review Committee.

## **FACTS**

This case involved the Company's failure to comply with the Exchange Listing Rules in relation to a series of transactions/events involving the Company's interest in a company called Funtalk China Holdings Limited ("**Funtalk**").

The Company had a 28.9 per cent interest in Funtalk upon the listing of Funtalk on NASDAQ in December 2009. The following events subsequently took place:

- (a) In March 2011, Fortress Group Limited ("**Fortress**") was set up for the purposes of the privatisation of Funtalk, whereby the Company disposed of its shareholding in Funtalk in exchange for an interest in Fortress. Fortress became the holding company that held 100 per cent of the equity interest in Funtalk after the privatisation. Upon completion of the privatisation, the Company's effective economic interest in Funtalk increased. No announcements were made and shareholders' approval was not obtained ("**Issue 1**").
- (b) On 25 August 2011, a shareholders' agreement was entered into between all the shareholders of Fortress ("**Shareholders' Agreement**"). The majority shareholder of Fortress ("**PAG**") was granted a put option, which gave PAG a right to require Fortress to repurchase PAG's interest in the outstanding senior obligations of Fortress, in the event that Fortress was not sold or listed before August 2014 ("**Put Option**"). If Fortress failed to do so, the other shareholders of Fortress (including the Company) would be required to repurchase PAG's interest in the outstanding senior obligations of Fortress in proportion to their respective shareholding in Fortress. No announcements were made and no shareholders' approval was obtained ("**Issue 2**"), or whether the Company had any basis to conclude that the Put Option was not a notifiable transaction.
- (c) On 25 March 2014, the Company announced that it had entered into an agreement to dispose of its interest in Fortress. It was a very substantial disposal for the Company and shareholders' approval was obtained. In the circular published on 12 May 2014 ("**VSD Circular**"), there was no reference to the Shareholders' Agreement or the Put Option ("**Issue 3**").
- (d) In July 2014, Mr Kam, on behalf of the Company, agreed with the other shareholders of Fortress for Fortress to dispose of Funtalk directly, rather than dispose of their interests in Fortress as announced and approved by shareholders of the Company. No announcement of the termination of the disposal of Fortress was made ("**Issue 4**").
- (e) On 28 November 2014, the Company published its interim report for the period ended 30 September 2014 ("**Interim Report**") which provided that the disposal of Fortress had been completed ("**Issue 5**"). The Interim Report provided that "*the Group completed the disposal of its entire shareholding in Fortress group Limited... during the reporting period*" and "*during the reporting period, the Company successfully disposed of its entire shareholding in Fortress*".

- (f) By agreeing to sell Funtalk instead of Fortress, it meant that PAG could still exercise the Put Option (as Fortress had not been sold or listed), which PAG did on 28 June 2015. On 29 June 2015, the Company announced (contrary to the disclosure in the Interim Report) that the sale of Fortress did not go ahead, and that PAG had exercised the Put Option, as a result of which the Company made an impairment provision in the amount of \$759,934,000 for the year ended 31 March 2015 (“**Issue 6**”).

Mr Kam and Mr Kong were responsible for monitoring of the Company’s interest in Fortress, and were aware of Issues 1 to 6 which were part and parcel of a business transaction. Further, Mr Kam was made the Company’s sole representative on the board of Fortress. Ms Zheng, Professor Gu and Professor Cao were on the Board at the time of each of Issues 1 to 6. Mr Lu resigned from the Board prior to Issue 6, but was on the Board at the time of each of Issues 1 to 5.

### **Exchange Listing Rule Requirements**

Issues 1 to 6 were subject to the following requirements of the Exchange Listing Rules:

- (a) Rule 2.13 provides that the information contained in any announcement or corporate communication must be accurate and complete in all material respects and not be misleading or deceptive.
- (b) Rule 14.34 requires an issuer to publish an announcement as soon as possible after the terms of a notifiable transaction have been finalised.
- (c) Rule 14.36 provides that where a transaction previously announced is terminated or there is any material variation of its terms, the listed issuer must as soon as practicable announce this fact by means of an announcement.
- (d) Rules 14.38A, 14.40 and 14.41 provide that a major transaction must be conditional upon shareholders’ approval at a general meeting held by the listed issuer, and that a circular must be issued to shareholders for this purpose.
- (e) Rules 14.48, 14.49 and 14.51 provide that a very substantial disposal and very substantial acquisition must be conditional upon shareholders’ approval at a general meeting held by the listed issuer, and that a circular must be issued to shareholders for this purpose.
- (f) Rules 14.73 and 14.74 provide that the grant of an option by a listed issuer will be treated as a transaction and classified by reference to the percentage ratios. If the exercise of an option is not at the listed issuer’s discretion, on the grant of the option, the transaction will be classified as if the option had been exercised.

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 Listing Exchange Rule compliance.

## **FINDINGS OF BREACH BY THE LISTING COMMITTEE AT FIRST INSTANCE**

The Listing Committee considered the written and 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 that it had breached Rules 14.34, 14.38A, 14.40, 14.41 and 14.74 in respect of Issue 2 and found that the Company did breach these Rules by failing to comply with the announcement, circular and shareholders' approval requirements in respect of the Put Option.

The Listing Committee also found that the Company breached:

- (a) Rule 2.13 in relation to the disclosure in the VSD Circular and the Interim Report (Issues 3 and 5);
- (b) Rules 14.34, 14.48, 14.49 and 14.51 for its failure to comply with the announcement, circular and shareholders' approval requirements in respect of the privatisation of Funtalk (Issue 1); and
- (c) Rule 14.36 for its failure to announce the termination of the disposal of Fortress (Issue 4).

### **Mr Kam and Mr Kong's breaches**

The Listing Committee concluded that Mr Kam and Mr Kong breached (i) Rule 3.08(f), (ii) their Undertakings for failing to comply with the Exchange Listing Rules to the best of their ability and (iii) their Undertakings for failing to use their best endeavours to procure the Company's compliance with the Exchange Listing Rules:

- (a) In respect of Issues 1 and 2, Mr Kam and Mr Kong were responsible for deciding and identifying whether the relevant transactions were discloseable and/or notifiable transactions. They took the view that Issue 1 was not a notifiable transaction, and relied upon an incorrect size test in respect of Issue 2. This demonstrated Mr Kam's and Mr Kong's lack of knowledge of the Company's Exchange Listing Rule compliance. However, the Listing Committee did note that although Mr Kong was responsible for Issues 1 and 2 as part of his financial role, he was not formally on the Board as an ED at the relevant time.
- (b) In respect of Issue 3, Mr Kam and Mr Kong were responsible for taking the view that the Shareholders' Agreement and the Put Option were not required to be disclosed in the VSD Circular, as they believed that the likelihood of PAG exercising the Put Option was extremely low. This demonstrated that Mr Kam and Mr Kong did not consider or recognise the implications of the Put Option, and did not apply such degree of skill, care and diligence as may reasonably be expected of persons of their knowledge and experience holding their office.

- (c) In respect of Issue 4, Mr Kam, as the Company's sole representative on the board of Fortress, agreed to the disposal of Funtalk by Fortress without consulting the Board, obtaining professional advice, conducting any due diligence or even reviewing the implications of the change in the nature of the disposal. This demonstrated that Mr Kam did not apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience holding his office. Mr Kong, as one of the two members of the Board (other than Mr Kam) who was responsible for monitoring the Company's interest in Fortress, did not take any steps to enquire about or to investigate the disposal of Funtalk by Fortress upon being informed by Mr Kam about the same. This demonstrated that Mr Kong did not exercise his own independent judgement in respect of the disposal.
- (d) In respect of Issue 5, Mr Kam and Mr Kong reported to the Board that the disposal of Fortress by the Company had been completed, as they took the view that the disposal of Funtalk by Fortress was essentially the same as the Company disposing of its interest in Fortress. This was untrue and clearly misleading, and the rest of the Board was thus not given the opportunity to consider whether the statements made in the Interim Report were correct. This demonstrated a severe lack of knowledge of the Company's Exchange Listing Rule compliance on the part of Mr Kam and Mr Kong.
- (e) In respect of Issue 6, Mr Kam and Mr Kong, as the directors who were responsible for monitoring the Company's interest in Fortress, did not demonstrate that they took any steps to ensure that the disposal of Funtalk by Fortress, instead of the disposal of the Company's interest in Fortress, was in the best interests of the Company. They did not make any enquiries, did not consult the Board, nor did they take any professional advice. This demonstrated that Mr Kam and Mr Kong failed to apply an appropriate degree of skill, care and diligence, which resulted in the impairment provision.
- (f) Mr Kam and Mr Kong failed to ensure the Company's Exchange Listing Rule compliance.

**Mr Lu, Ms Zheng, Professor Gu and Professor Cao's breaches**

The Listing Committee concluded that Mr Lu, Ms Zheng, Professor Gu and Professor Cao breached (i) Rule 3.08(f), (ii) their Undertakings for failing to comply with the Exchange Listing Rules to the best of their ability and (iii) their Undertakings for failing to use their best endeavours to procure the Company's compliance with the Exchange Listing Rules:

- (a) Mr Lu, Ms Zheng, Professor Gu and Professor Cao were aware of Issues 1, 2 and 3. They relied upon the information provided to them by Mr Kam and Mr Kong, and did not apply their own independent judgment on whether Issues 1 and 2 were notifiable transactions. In relation to Issue 3, they did not demonstrate that they had considered the Company's Exchange Listing Rule compliance. There was no evidence that they raised any enquiries with Mr Kam or Mr Kong about Issues 1 or 3, and they failed to notice a large discrepancy in the size test used by the Company in respect of Issue 2.

- (b) There was no evidence that Mr Lu, Ms Zheng, Professor Gu and Professor Cao considered, or suggested, it was necessary for the Company to seek advice from professional advisers in respect of Issues 1, 2 and 3 to ensure the Company's Exchange Listing Rule compliance at the relevant time.
- (c) Even though Mr Kam and Mr Kong were delegated by the Board with the task of monitoring the Company's interest in Fortress, the Directors were collectively responsible for the Company's management and operations.
- (d) Mr Lu, Ms Zheng, Professor Gu and Professor Cao failed to ensure the Company's Exchange Listing Rule compliance.

## **REGULATORY CONCERN**

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

- (1) This case reveals a serious concern over the Relevant Directors' ability to procure the Company's Exchange Listing Rule compliance. The conduct of the Relevant Directors, in particular that of Mr Kam and Mr Kong, 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) Chapter 14 imposes clearly defined and unambiguous obligations on issuers, which are designed to safeguard and protect investors and shareholders, as they rely on information in the public domain to make their investment decisions. The Company's breach of disclosure obligations and shareholders' approval requirements deprived the Company's investors and shareholders of their timely receipt of information, and for shareholders, their right to vote on those transactions as they are entitled to do under the Exchange Listing Rules. As a consequence, the rights and interests of the shareholders of the Company have been prejudiced.
- (3) Any breach of the disclosure requirements under the Exchange Listing Rules is a serious matter as they serve to safeguard the interests of shareholders and investors, which in turn contributes to an orderly, informed and fair market for the trading of securities listed on the Exchange.
- (4) The Company failed to comply with its obligations under Rule 2.13 and Chapter 14, and did not take any steps to remedy the Exchange Listing Rule breaches, apart from eventually announcing on 3 November 2016, over 16 months after the Company's announcement of the impairment loss on 29 June 2015, that the Company had entered into a proposed settlement agreement in respect of PAG's exercise of the Put Option.
- (5) A director has responsibility to inform the Board of important information concerning the affairs of an issuer and the protection of the issuer's investments, particularly where such information triggers Exchange Listing Rule compliance issues.

## **REVIEW BY THE REVIEW COMMITTEE**

Mr Lu, Ms Zheng, Professor Gu and Professor Cao applied for a review to the Review Committee of the decisions of and sanctions imposed on them by the Listing Committee. The Review Committee noted the decisions of the Listing Committee at first instance dated 6 February 2018. The Review Committee also noted that the Company, Mr Kam and Mr Kong had not sought a review of the decisions made by the Listing Committee of 6 February 2018.

At the Disciplinary (Review) Hearing, the Review Committee upheld the findings of breach by the Listing Committee at first instance in respect of Mr Lu, Ms Zheng, Professor Gu and Professor Cao. The Review Committee formed the view that the board of directors of a listed company is collectively responsible for the management and operations of the company. The delegation of responsibility did not absolve them from their responsibilities.

## **SANCTIONS IMPOSED BY THE LISTING COMMITTEE AND AS VARIED BY THE REVIEW COMMITTEE**

Having made the findings of breach stated above, and having concluded that the breaches were serious, the Listing Committee at first instance decided to:

- (1) censure the Company for its breach of Rules 2.13, 14.34, 14.36, 14.38A, 14.40, 14.41, 14.48, 14.49, 14.51 and 14.74; and
- (2) censure Mr Kam and Mr Kong for breach of Rule 3.08(f) and their Undertakings.

The Review Committee on review decided to:

- (3) criticise Mr Lu, Ms Zheng, Professor Gu and Professor Cao for breach of Rule 3.08(f) and their Undertakings.

Further, the Listing Committee at first instance (as varied by the Review Committee) directed:

- (1) The Company to appoint, within two months from the publication of this news release, an independent compliance adviser (as defined in Chapter 3A of the Exchange Listing Rules) satisfactory to the Listing Department on an ongoing basis for consultation regarding compliance with the Exchange Listing Rules for two years.
- (2) Mr Kam and Mr Kong to (a) attend 24 hours of training on Exchange Listing Rule compliance, director's duties, including 4 hours of training on notifiable and connected transactions, 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 Listing Department, such training to be completed within 90 days from the publication of this news release; and (b) provide the Listing Department with the training provider's written certification of full compliance within two weeks after training completion.

- (3) Ms Zheng, Professor Gu and Professor Cao to (a) attend 12 hours of training (the “**Training**”) on Exchange Listing Rule compliance, director’s duties, including 4 hours of training on notifiable and connected transactions, 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 Listing Department, such Training to be completed within 90 days from the publication of this news release; and (b) provide the Listing Department with the Training provider’s written certification of full compliance within two weeks after Training completion.
- (4) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, Mr Lu, a former director of the Company, who is currently not a director of any other company listed on the Exchange, (a) to attend the Training, 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.
- (5) The Company is to publish an announcement to confirm that the directions in paragraphs (1) to (3) above have been fully complied with within two weeks after the respective fulfilment of each of those directions. The last announcement required to be published under this requirement is to include the confirmation that all directions in paragraphs (1) to (3) have been complied with.
- (6) The Company is to submit drafts of the announcements referred to in sub-paragraph (5) above for the Listing Department’s comment and may only publish the announcements after the Listing Department has confirmed it has no further comment on them.
- (7) 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 (6) above are to be directed to the Listing Department for consideration and approval. The Listing Department should refer any matters of concern to the Listing Committee for determination.

#### **REVIEW BY THE LISTING APPEALS COMMITTEE**

Ms Zheng, Professor Gu and Mr Lu applied for a further review to the Listing Appeals Committee of the decisions of and sanctions imposed on them by the Listing Committee as varied by the Review Committee.

The Listing Appeals Committee noted the decisions of the Listing Committee at first instance dated 6 February 2018 and the Review Committee dated 28 June 2018. The Listing Appeals Committee also noted that Professor Cao has not sought a review of the decision made by the Review Committee of 28 June 2018.

The Listing Appeals Committee, having considered the written and oral submissions made by Ms Zheng, Professor Gu, Mr Lu and the Listing Department, determined to uphold the findings of breach made by the Review Committee against Ms Zheng, Professor Gu and Mr Lu on the basis that the Listing Appeals Committee considered:

- (a) each of Ms Zheng, Professor Gu and Mr Lu breached Rule 3.08(f) of the Exchange Listing Rules; and

- (b) each of Ms Zheng, Professor Gu and Mr Lu breached the Undertaking for failing to comply with the Exchange Listing Rules to the best of their ability and failing to use their best endeavours to procure the Company's Exchange Listing Rule compliance.

The Listing Appeals Committee on review determined to endorse the directions for training imposed on Ms Zheng, Professor Gu and Mr Lu by the Listing Committee as varied by the Review Committee, as set out under the section above headed "Sanctions Imposed by the Listing Committee and as Varied by the Review Committee" in this press release.

The Listing Appeals Committee has thoroughly considered all the facts as well as the mitigating factors submitted by the Appellants, including the circumstances in which the Appellants placed (or misplaced) their trust in their fellow directors. The Listing Appeals Committee concluded that the Appellants were not absolved from their responsibilities by delegating a part of their functions to their fellow directors. The Listing Appeals Committee agrees with the Review Committee's reasons set out in the Decision Letter which, in particular, noted that the board of directors of a listed company is collectively responsible for the management and operations of the company.

Directors including INEDs and NEDs have oversight responsibilities which cannot be discharged by delegating to other members of the board or staff of the company. One of the roles of an INED is to provide checks and balance, and to bring an independent judgment to bear on the strategy, affairs and transactions of the company, especially where the powers of the board are concentrated in the hands of only one or two directors, as in this case before the Listing Appeals Committee.

Hong Kong, 18 December 2018