

THIS DISCIPLINARY ACTION concerns the Company's failure to cooperate with the Listing Department's investigation by failing to provide the percentage ratios with respect to the subject transaction under investigation. A listed company is required to provide to the Exchange as soon as possible any information or explanation that the Exchange may reasonably require for the purpose of investigating a suspected breach of the Exchange Listing Rules.

This decision underlines the importance for directors to properly consider the terms of any transaction to be entered into by the Company to ensure it achieves the intended purpose and investment structure.

This decision also highlights the importance of directors who are common directors of a listed issuer and its subsidiary to take an active interest in the affairs of the subsidiary and to promptly inform the Board of the listed issuer of any events arising from the business and/or operation of the subsidiary that could affect the financial position of the listed issuer.

The Listing Committee of the Exchange ("Listing Committee")

CENSURES:

- (1) **GT Group Holdings Limited** ("Company") (Stock Code: 263) for failing to:-
 - (a) assist the Exchange with its investigation into the Company's non-compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("Exchange Listing Rules"), in breach of Rule 2.12A(2) of the Exchange Listing Rules;
 - (b) comply with the announcement, circular and shareholders' approval requirements with respect to the Subject Transaction (as defined below), in breach of Rules 14.34, 14.38A and 14.40 of the Exchange Listing Rules;
- (2) **Ms Ng Shin Kwan, Christine** ("Ms Ng"), an executive director ("ED") of the Company for failing to:-
 - (a) apply such degree of skill, care and diligence required and expected of her and in taking reasonable steps to procure the Company to comply with the Exchange Listing Rules, in breach of Rule 3.08(f) of the Exchange Listing Rules;

.../2

- (b) use her best endeavours to procure the Company's compliance with the Exchange Listing Rules ("Best Endeavours Undertaking") and comply with the Exchange Listing Rules to the best of her ability ("Best Ability Undertaking") in breach of her obligations under her Undertaking given to the Exchange in the form set out in Appendix 5 Form B to the Exchange Listing Rules;

AND CENSURES:

- (3) **Mr Lee Yuk Fat** ("Mr YF Lee"), a former ED of the Company who resigned on 1 September 2016; and
- (4) **Mr Lee Jalen** ("Mr Lee"), a former ED of the Company who resigned on 9 May 2017,
- for failing to comply with their respective Best Endeavours Undertaking.

(Ms Ng, Mr YF Lee and Mr Lee are collectively referred to as "Directors")

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this News Release apply only to the Company and Directors and not to any other past or present members of the board of directors of the Company.

On 20 November 2018, the Listing Committee conducted a hearing into the conduct of the Company under the Exchange Listing Rules and the Directors in relation to their obligations under the Exchange Listing Rules and/or their respective Best Ability Undertaking and Best Endeavours Undertaking.

On 26 March 2019, the Listing Committee conducted a disciplinary (review) hearing (the "Review Committee") on the application by the Company and the Directors for a review of the decision of the Listing Committee at first instance (the "Disciplinary (Review) Hearing").

FACTS

Charter Pearl Limited ("Charter Pearl") a wholly owned subsidiary of the Company was a minority shareholder of a private entity, HEC Capital Ltd ("HEC"), holding 3.5 per cent shareholding in HEC (ie 36.5 million shares) ("HEC Shares") with a value of \$215 million as at 15 September 2015.

On 15 September 2015, Charter Pearl and 10 other minority shareholders of HEC (collectively, "Minority Shareholders") entered into (a) a joint venture agreement ("JV Agreement"), pursuant to which, the Minority Shareholders agreed to transfer their collective 26.96 per cent shareholding in HEC (ie 281.2 million shares) to a newly incorporated private entity, Joint Global Ltd ("Joint Global") in return for the same number of shares in Joint Global ("Subject Transaction"); and (b) a joint venture partners agreement which sets out the terms of management of Joint Global ("JVP Agreement").

As a result of the Subject Transaction in so far as it relates to the Company, (a) HEC cancelled Charter Pearl's share certificate in the HEC Shares; and (b) Charter Pearl acquired a 12.98 per cent shareholding in Joint Global (ie 36.5 million shares).

Ms Ng was involved in the negotiation of the JV Agreement and JVP Agreement and signed the same on behalf of Charter Pearl. All the Directors had reviewed and approved the JV Agreement and JVP Agreement. The Directors were directors of the Company and Charter Pearl during the period of 1 August 2015 and 6 April 2017 (except Mr YF Lee who had resigned on 1 September 2016).

The Company submitted that the purpose of the Subject Transaction was to increase Charter Pearl's influence over Joint Global's decisions such that Joint Global could "*exert more corporate influence on HEC's decision when resolutions were required to be passed as special resolutions*" by vetoing the same. It is noted, from 2015 to 2016, HEC did not propose to pass any special resolutions and the Listing Department was not informed of any contemplated agreements of HEC which required the passing of any special resolutions.

According to the JVP Agreement, Joint Global was incorporated (in 2015) for the purpose of "*investment holding of shares in HEC*". However, from January to March 2016, Joint Global entered into a series of transactions where it *inter alia* acquired convertible notes and shares from various entities, including HEC ("Investment Activities"). The Investment Activities caused Joint Global to (a) become indebted to HEC for \$457.3 million ("Debt"); and (b) charge all of its shares in HEC as security for the Debt ("Security").

On 15 March 2016, Charter Pearl received an unsigned written shareholders resolution from Joint Global seeking each of the Minority Shareholders (including Charter Pearl) to approve and ratify the Investment Activities. The Company submitted that Ms Ng and Mr Lee had considered the said written shareholders resolutions. Consequently, on 21 March 2016, Ms Ng signed the said written shareholders resolutions on behalf of Charter Pearl.

On 24 March 2016, Ms Ng attended the Company's Audit Committee meeting. On the same day, all the Directors attended the Company's board of directors ("Board") meeting. Both meetings discussed *inter alia* the audit of the Group's consolidated financial statement and annual results for the year ended 31 December 2015. From the available information (including the minutes of both of the said meetings), the Directors did not inform or discuss with the Audit Committee and/or the Board about the Investment Activities, Debt, and Security, which had a financial impact on the Company.

On 25 April 2016, Charter Pearl discovered that Joint Global had, on 18 April 2016, disposed of all of Joint Global's shares in HEC in settlement of the Debt ("Disposal"), thereby ceasing to be a shareholder of HEC.

After the Disposal, on 11 August 2016, the Directors (in their capacity as directors of Charter Pearl) resolved to inform the Board about the Disposal, which caused the Board (on 23 August 2016) to make a full impairment loss of \$215 million ("Full Impairment Loss"). According to the Board minutes, the Company was of the view (with agreement from its auditors) that it was "*necessary*" to make the Full Impairment Loss because of the lack of financial information received from Joint Global with respect to the Disposal. The Company disclosed the Full Impairment Loss in its interim results for the six months ended 30 June 2016, published on 29 August 2016.

In mid-October 2016, the Listing Department commenced an investigation with respect to the Subject Transaction and requested the Company, on a number of occasions, to provide the percentage ratios, under Rule 14.07 of the Exchange Listing Rules, for the Subject Transaction (“Percentage Ratios”). However, the Company failed to provide the Percentage Ratios on each occasion by advancing the ground that the Subject Transaction was not a transaction within the meaning of the Exchange Listing Rules.

From the information available, the Subject Transaction yielded a consideration ratio of 28.7 per cent (based on the total market capital of the Company and value of the HEC Shares of HK\$215 million as at 15 September 2015). As such, the Subject Transaction constituted a major transaction under the Exchange Listing Rules which was subject to announcement, circular and shareholders’ approval. The Company did not, at the relevant time, comply with the said procedural requirements even though the Subject Transaction was ultimately disclosed in the Company’s annual report for the year ended 31 December 2015 (“2015 Annual Report”), published on 21 April 2016.

The Company submitted that, as at 20 June 2017, the JV Agreement and JVP Agreement were still in force and Charter Pearl still had an equity interest in Joint Global.

EXCHANGE LISTING RULE REQUIREMENTS

Rule 2.12A(2) of the Exchange Listing Rules provides that an issuer must provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange, any information or explanation that the Exchange may reasonably require for the purpose of investigating a suspected breach of or verifying compliance with the Exchange Listing Rules.

Rule 14.34 of the Exchange Listing Rules requires an issuer to publish an announcement as soon as possible after the terms of a notifiable transaction have been finalised.

Rules 14.38A and 14.40 of the Exchange Listing Rules 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.

Rule 3.08 of the Exchange Listing Rules 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 Directors were under an obligation, pursuant to their respective Undertakings, to comply with their respective Best Endeavours Undertaking and Best Ability Undertaking.

LISTING COMMITTEE’S FINDINGS OF BREACH

The Listing Committee considered the written and oral submissions of the Listing Department, the Company and Directors and concluded:-

- (1) **The Company breached Rules 2.12A(2), 14.34, 14.38A and 14.40 of the Exchange Listing Rules for the reasons that:**
 - (a) The Company failed to assist the Exchange with its investigation by not providing the requested Percentage Ratios, in breach of Rule 2.12A(2) of the Exchange Listing Rules; and
 - (b) The Subject Transaction constituted a major transaction under the Exchange Listing Rules. The Company failed to announce, issue a circular and obtain shareholders' approval with respect to the Subject Transaction, in breach of Rules 14.34, 14.38A and 14.40 of the Exchange Listing Rules.

- (2) **Ms Ng breached Rule 3.08(f) of the Exchange Listing Rules, the Best Endeavours Undertaking and the Best Ability Undertaking for the reasons that:**
 - (a) Ms Ng failed to properly consider the terms of the JV Agreement and JVP Agreement to ensure it achieved (i) the intended purpose that Charter Pearl could influence over Joint Global's decisions such that Joint Global could exert more corporate influence on HEC's decision when resolutions were required to be passed as special resolutions; and (ii) the intended investment structure where the Group remained to indirectly hold the HEC Shares after the Subject Transaction was completed;
 - (b) Ms Ng failed to take reasonable steps to raise with the Board possible Exchange Listing Rules implications with respect to the Subject Transaction;
 - (c) Ms Ng was at the relevant time a director of the Company and Charter Pearl. Ms Ng failed to inform the Board and the Audit Committee as soon as practicable of information concerning Charter Pearl that may have had a financial impact on the Company, namely the Investment Activities, Debt and Security;
 - (d) Ms Ng failed to comply with the Best Endeavours Undertaking to procure the Company to (i) comply with Rules 14.34, 14.38A and 14.40 of the Exchange Listing Rules; and (ii) assist with the Listing Department's investigation by providing the requested percentage ratios for the Subject Transaction; and
 - (e) Ms Ng failed to comply with the Best Ability Undertaking to comply with Rule 3.08(f) of the Exchange Listing Rules.

- (3) **Mr Lee and Mr YF Lee breached their respective Best Endeavours Undertaking for the reasons that:**
 - (a) Mr Lee and Mr YF failed to take reasonable steps to raise with the Board or procure the Company to comply with the announcement, circular and shareholders' approval requirements under the Exchange Listing Rules with respect to the Subject Transaction;

- (b) Mr Lee and Mr YF Lee failed to inform the Board as soon as practicable of any information concerning Charter Pearl that may have had a financial impact on the Company, namely the Investment Activities, Debt and Security;
- (c) Mr Lee and Mr YF Lee failed to comply with their Best Endeavours Undertaking to procure the Company to comply with Rules 14.34, 14.38A and 14.40 of the Exchange Listing Rules; and
- (d) Mr Lee failed to use his best endeavours to procure the Company to assist with the Listing Department's investigation. We note Mr YF Lee had resigned as a director at the time of the Listing Department's investigation.

At the Disciplinary (Review) Hearing, the Review Committee upheld the decision of the Listing Committee at first instance and further concluded that the exemption under Rule 14.04(1)(f) did not apply to the Subject Transaction.

REGULATORY CONCERNS

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

- (1) The Company failed to assist the Listing Department with its investigation by not providing the Percentage Ratios. As a result of the Company's failure to provide the Percentage Ratios, the Listing Department was unable to acquire a complete understanding of the procedural requirements the Company would have been required to comply with under the Exchange Listing Rules with respect to the Subject Transaction;
- (2) The Subject Transaction constituted a major transaction which was subject to announcement, circular and shareholders' approval requirements under the Exchange Listing Rules. The HEC Shares had a value of \$215 million as at 15 September 2015, which yielded a consideration ratio of 28.7 per cent. The Company did not disclose the Subject Transaction at the relevant time. Whilst the Company ultimately disclosed the Subject Transaction in the 2015 Annual Report on 21 April 2016, there were no explanations concerning the purpose and benefits of the same. Investors and shareholders rely on information in the public domain to make their investment decisions. The Exchange Listing Rules are designed to ensure that investors have a continued confidence in the market and the lack of disclosure and explanation concerning the Subject Transaction failed to ensure the shareholders were kept fully informed by the Company. In this case, the Company's shares were traded on incomplete information for approximately 7 months (ie from 15 September 2015 to 21 April 2016);
- (3) The Company's shareholders were not given the opportunity to decide on whether Charter Pearl should enter into the Subject Transaction, particularly when the Subject Transaction (a) did not contain any mechanisms that enabled Charter Pearl to exert any influence over how Joint Global would vote at HEC's shareholders' meetings; and (b) had materially changed the structure and nature of Charter Pearl's investment in HEC. The failure by the Company to obtain shareholders' approval with respect to the Subject Transaction, as set out in the JV Agreement, undermines the fairness, order and confidence of the market;

- (4) The Directors are, collectively and individually, required to apply such degree of skill, care and diligence as may reasonably be expected of them with their knowledge, experience and holding of office within the Company to take reasonable steps to inform the Board about the disclosure and shareholders' approval requirements with respect to the Subject Transaction. The Directors' failure to discharge their director's duties raises serious concern as to their commitment as directors of the Company. This also exposed the Company to the risk of non-compliance with the Exchange Listing Rules;
- (5) Ms Ng was involved in negotiating, reviewing the terms of and signing the JV Agreement and JVP Agreement on behalf of Charter Pearl. As such, Ms Ng was reasonably expected to have considered the terms of the JV Agreement and JVP Agreement to ensure it achieved the desired investment structure and purpose as well as to inform the Board about the possible Exchange Listing Rules compliance issues with respect to the same. The failure by Ms Ng to properly discharge her duties represented an abject failure by Ms Ng to act with the level of care and diligence reasonably expected of her not least her duties to protect the assets of the Company and her undertaking to procure the Company's fulfilment of its obligations to keep the market fully informed of important information and developments about the Company, which may affect the investment decisions of the shareholders and investors;
- (6) The Directors failed promptly to inform the Board and/or Audit Committee, as soon as practicable, of any financial issues arising from the operation of the Company's subsidiaries. Prompt notification of the financial issues would have provided the Board with ample time and opportunity to consider the options that were available to the Company and to seek appropriate professional advice with respect to the Company's financial issues as well as to remain accountable to its investors by making prompt announcements. The Directors' failure promptly to inform the Board and/or the Audit Committee of the Investment Activities, Debt and Security demonstrated either a lack of understanding with respect to the scope of, or a derogation of, their duties in the capacity as a director of the Company and its subsidiaries (ie Charter Pearl) and prevented proper consideration being made by the Board and Audit Committee of the options that may have been available to the Company regarding the Subject Transaction (as set out in the JV Agreement) and JVP Agreement as a whole; and
- (7) Ms Ng and Mr Lee were involved in the Company's decision not to provide the Percentage Ratios, which affected the Listing Department's discharge of its regulatory duties and assessment of the regulatory issues in this case.

SANCTIONS

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

CENSURE:

- (1) The Company for its breach of Rules 2.12A(2), 14.34, 14.38A and 14.40 of the Exchange Listing Rules;
- (2) Ms Ng for breach of Rule 3.08(f) of the Exchange Listing Rules, the Best Endeavours Undertaking and the Best Ability Undertaking; and
- (3) Mr Lee and Mr YF Lee for breach of their respective Best Endeavours Undertaking.

The Listing Committee further directed:

- (1) Ms Ng to (a) attend 40 hours of training on Exchange Listing Rules compliance, director's duties and ethics and corporate governance matters, including not less than 10 hours training on notifiable transactions under Chapter 14 of the Exchange Listing Rules and not less than 10 hours training on directors' duties provided by institutes, such as the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers to the satisfaction of the Listing Department. The training is to be completed within 6 months 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;
- (2) Mr Lee and Mr YF Lee, who are currently not directors of any other company listed on the Exchange, to (a) attend 20 hours of training on Exchange Listing Rules compliance, director's duties and ethics and corporate governance matters, including not less than 4 hours training on notifiable transactions under Chapter 14 of the Exchange Listing Rules, as a pre-requisite of any future appointment as a director of any company listed/to be listed on the Exchange, to be completed before the effective date of any such appointment; and (b) provide the Listing Department with the training provider's written certificate of full compliance;
- (3) The Company is to publish an announcement to confirm that the direction in paragraph (1) has been fully complied with within two weeks after the fulfilment of that direction;
- (4) The Company is to submit a draft of the announcement referred to in paragraph (3) above for the Listing Department's comment and may only publish the announcement after the Listing Department has confirmed it has no further comment on it; and
- (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 Listing Department for consideration and approval. The Listing Department should refer any matters of concern to the Listing Committee for determination.

The Review Committee on review decided to endorse the sanction and the directions imposed on the Company and the Directors by the Listing Committee at first instance.

Hong Kong, 14 May 2019