

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)

THIS DISCIPLINARY ACTION concerns the director's failure to perform his fiduciary duties. This decision reminds directors that they must not take advantage of their position as a director or abuse their powers for personal interests and gains.

The Listing Committee of the Exchange ("Committee")

CENSURES:

Mr Chen Jing ("Mr Chen") (in absentia), a former executive director ("ED") of TC Orient Lighting Holdings Limited, (Stock Code: 515) ("Company") who resigned on 5 June 2015 for failing 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, in particular, to:

- (1) Act honestly and in good faith in the interests of the Company, in breach of Rule 3.08(a) of the Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited ("Exchange Listing Rules");
- (2) Avoid an actual conflict of interest, in breach of Rule 3.08(d) of the Exchange Listing Rules; and
- (3) Apply such degree of skill, care and diligence required as may reasonably be expected of him, in breach of Rule 3.08(f) of the Exchange Listing Rules.

FURTHER DIRECTS:

- (1) The publication of a statement that includes that Mr Chen's failure to comply with Rule 3.08(a), (d) and (f) of the Exchange Listing Rules will be taken into account in assessing his suitability under Rule 3.09 of the Exchange Listing Rules in the event that Mr Chen wishes to become a director of another issuer on the Exchange in the future.

.../2

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

On 12 December 2017, the Listing Committee conducted a hearing into the conduct of Mr Chen in relation to his obligations under Rule 3.08(a), (d) and (f). Mr Chen did not attend the hearing and no submissions were made by Mr Chen or on his behalf.

FACTS

Mr Chen was appointed as ED and Chairman of the Company on 1 September 2014. At the same time, he was the president of Shenzhen Optoelectronics Industry Holdings Group Co Ltd (“Entity”). Mr Chen also had an indirect interest in the Entity.

From 10 October 2013 to 3 November 2014, Mr Chen acquired a personal loan of RMB4 million from an independent lender whilst the Entity acquired 6 loans totaling RMB27 million (collectively, “Loans”) from various independent lenders (collectively, “Lenders”).

From 10 October 2013 to 11 April 2015, Mr Chen caused (a) one of the Company’s subsidiaries to provide a guarantee for each of the Loans and (b) the Company and another one of the Company’s subsidiaries to indemnify the Loans (collectively, “Guarantee & Indemnity”). The Guarantee & Indemnity were issued without the Company’s knowledge or approval.

The indemnity constituted a major transaction whilst the Guarantee & Indemnity constituted a connected transaction under the Exchange Listing Rules, which were not disclosed and/or approved by the Company’s shareholders at the time.

On 17 April and 13 May 2015, the Lenders initiated litigation against the Group pursuant to the Guarantee & Indemnity, since Mr Chen and the Entity had failed to repay the Loans (“Litigation”). After the Litigation had been initiated, the Company’s board of directors (“Board”) became aware of the Guarantee & Indemnity and Mr Chen then purportedly admitted to the Board that he had signed the same without the Board’s approval since the Lenders had purportedly lost patience in chasing Mr Chen for the repayment of the Loans and coerced him to issue the Guarantee & Indemnity by threatening him and his family’s personal safety.

On 11 and 18 May 2015, Mr Chen reported the incident to the relevant authorities in the People’s Republic of China and Hong Kong. Subsequently, Mr Chen and the Entity settled the Loans with the Lenders. The Litigation was withdrawn in August 2015.

In light of Mr Chen’s purported admission of his involvement in the Guarantee & Indemnity, the Listing Department believed Mr Chen had in his possession information directly relevant and necessary to the investigation. An enquiry letter was sent to Mr Chen, followed by written reminders. However, Mr Chen did not respond and failed to cooperate in the Listing Department’s investigation despite repeated follow up.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee considered the written submissions of the Listing Department and concluded that Mr Chen breached Rule 3.08(a), (d) and (f) for the reasons that:

- (1) Mr Chen failed to act honestly and in the good faith in the interest of the Company as a whole for he was directly involved in the Guarantee & Indemnity, thus he should reasonably have known that the Company and its subsidiaries acquired no benefits from the Guarantee & Indemnity. Rather, the Guarantee & Indemnity exposed the Group to significant financial liabilities. Accordingly, Mr Chen should have, at the relevant time, brought the Guarantee & Indemnity to the attention of the Board for its consideration and approval, which he failed to do.

Despite the allegation that Mr Chen was coerced into entering into the Guarantee & Indemnity, which was subsequently reported to the relevant authorities, Mr Chen should have brought the Guarantee & Indemnity to the Board as soon as practicable so as to procure the Company to comply with the requirements under the Exchange Listing Rules. In the instant case, Mr Chen did not disclose his involvement in the matter until after the Lenders had initiated the Litigation against the Group, which is an unsatisfactory discharge of Mr Chen's director's duties under Rule 3.08(a).

- (2) Mr Chen failed to avoid an actual conflict of interest with respect to the Guarantee & Indemnity, particularly when he (a) was a borrower under the Loans; (b) had an indirect interest in the Equity; and (c) was an ED of the Company at the relevant time. Mr Chen should have disclosed his interests to the Board and abstained himself from voting on any Board resolutions with respect to the Guarantee & Indemnity. Mr Chen's conduct in signing the Guarantee & Indemnity without the Board's knowledge or approval is a blatant disregard of his duties under Rule 3.08(d).
- (3) As a director of the Company and a borrower under the Loans, Mr Chen should reasonably have known he was a connected person such that the Loans required disclosure and shareholders' approval. Further, in light of Mr Chen's direct and indirect interest in the Loans, Mr Chen should have also taken steps to ascertain at the time whether the granting of the Guarantee & Indemnity constituted a notifiable and connected transaction under the Exchange Listing Rules. Mr Chen failed to apply such degree of skill, care and diligence as may reasonably be expected of him, in breach of Rule 3.08(f).

REGULATORY CONCERN

The Committee regards the breaches in this matter serious. Directors have an obligation to (a) ensure the Company enters into agreements that are in the Company's interest; (b) avoid any potential or actual conflict of interests; and (c) procure the Company to disclose and obtain shareholders' approval for connected transactions. Failure to do so undermines a director's integrity and does not meet the Listing Department's expectations of and the obligations of a director toward the Company and its shareholders.

SANCTIONS

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

- (1) censure Mr Chen for breach of Rule 3.08(a), (d) and (f) of the Exchange Listing Rules; and
- (2) state that his conduct in this matter will be taken into account in assessing his suitability under Rule 3.09 of the Exchange Listing Rules in the event that he should wish to become a director of another issuer on the Exchange in the future.

Hong Kong, 30 January 2018