

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)

**The Exchange views the due performance of directors' duties seriously. It has, since 2014, been a theme of the Exchange's enforcement activities.**

**Directors have clear duties to safeguard assets of the listed issuer and its subsidiaries. They must ensure that adequate internal controls are established and properly implemented. Failure to do so exposes listed issuers to risks including that of the misappropriation of assets. Setting up internal controls framework and documentation is only partial fulfillment of their duties. Directors need to take a proactive approach to ensure proper implementation of internal controls taking into account any major change (whether in the direction, scale, components or otherwise) in the business operations of the listed issuer and its subsidiaries. Consideration must also be given to the adequacy of resources devoted to the maintenance of internal controls.**

**Directors must take an active interest in the affairs of the listed issuer including actively participating in board meetings. Failure to do so falls short of the standard expected of directors of listed companies and amounts to a dereliction of their duties.**

**Compliance Officers have the important role towards ensuring adequate internal controls and their proper implementation. The role is not simply a rule requirement but requires proactive engagement by properly qualified individuals.**

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

#### **CENSURES:**

- (1) Mr Tang Yun ("Mr Tang"), a former executive director ("ED") of Changhong Jiahua Holdings Limited ("Company");**
- (2) Mr Rong Dong ("Mr Rong"), a former ED of the Company;**
- (3) Mr Zhao Yong ("Mr Zhao"), an ED of the Company; and**

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**CRITICISES:**

- (4) Mr Zhu Jianqiu (“Mr Zhu”), an ED of the Company;
- (5) Ms Shi Ping (“Ms Shi”), an ED of the Company;
- (6) Mr Xiang Chaoyang (“Mr Xiang”), a former ED of the Company;
- (7) Mr Wu Xiangtao (“Mr Wu”), a former ED of the Company;
- (8) Mr Yu Xiao (“Mr Yu”), a former ED of the Company;
- (9) Mr Jonathan Chan Ming Sun (“Mr Chan”), an independent non-executive director (“INED”) of the Company;
- (10) Mr Robert Ip Chun Chung (“Mr Ip”), an INED of the Company;
- (11) Mr Sun Dongfeng (“Mr Sun”), an INED of the Company; and
- (12) Mr Cheng Yuk Kin (“Mr Cheng”), an INED of the Company,

for their respective breaches of the Rules Governing the Listing of Securities on the GEM of The Stock Exchange of Hong Kong Limited (“GLR”) and the Declaration and Undertaking with regard to Directors (“**Director’s Undertaking**”) given to the Exchange in the form set out in Appendix 6A to the GLR by failing to comply with the GLR to the best of his ability. All 12 directors identified above are collectively referred to as the “**Relevant Directors**”.

**HEARING**

On 23 January 2018, the Committee conducted a hearing into the conduct of the Relevant Directors in relation to their obligations under GLR5.01(6), GLR5.20 and their Director’s Undertakings.

The Relevant Directors did not contest the disciplinary proceeding and accepted the Listing Department’s findings and recommended sanctions/directions.

## FACTS

In June 2015, the Company announced that the assets of a subsidiary, Changhong Overseas Development Limited (“**CHOD**”), had been misappropriated by an employee of CHOD in the period from about 2013 to 2015, through unauthorised sales and forged documents (“**Incident**”) and the Company had reported it to the Hong Kong Police.

At all material times, CHOD engaged in the business of trading of consumer electronic products and components (“**Trading Business**”) which was the single business segment of the Company between 2006 and 2012.

At the board meeting on 7 June 2013, the Company decided to focus on its newly acquired information technology business and downsize the Trading Business. Present at the board meeting were five EDs, namely, Mr Tang, Mr Zhu, Ms Shi, Mr Wu and Mr Yu, and four INEDs, namely, Mr Chan, Mr Ip, Mr Sun and Mr Cheng. Mr Zhao and Mr Xiang, who did not attend the board meeting, had knowledge of the downsizing decision no later than 11 June 2013 when the Company announced the downsizing.

With the downsizing of CHOD, there was an incremental reduction of staff members of CHOD from 2013 to 2015. By October 2014, CHOD’s staff members were reduced to four. The staff cut had the result of impairing the pre-existing checks and balances and segregation of duties put in place in CHOD’s internal procedures. The relevant staff member of CHOD took up the dual roles of both inputting and checking/approving sales entries in the business process of CHOD. He was thus able to override the internal controls and perpetrate the suspected misappropriation.

Mr Tang was an ED of the Company from November 2006 to April 2016, and the Company’s Compliance Officer from July 2007 to August 2014. He was present at the board meeting on 7 June 2013. He was the general manager (“**GM**”) of CHOD from 2012 to August 2014, and also a director and the chairman of CHOD from May 2013 to April 2016.

Mr Rong was an ED of the Company from June 2011 to 14 April 2013. On 15 April 2013, he became the Assistant to the President of the Company. Mr Rong also held various management positions in CHOD since April 2010 (assistant to GM from April 2010, deputy GM from August 2012, a director of CHOD from May 2013 and GM from August 2014). Accordingly, at all material times, Mr Rong was closely and directly involved in the supervision of CHOD.

The Company’s ED and Chairman Mr Zhao persistently did not attend the Company’s Board and general meetings: he only attended one out of 37 Board meetings from FY2013 to FY2015 (none in FY2013, none in FY2014, and one out of 14 held in FY2015). He did not attend any of the six annual/special general meetings of the Company held in FY2013 to FY2015.

## **GLR REQUIREMENTS & DIRECTOR'S UNDERTAKING**

GLR5.01 provides 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. Specifically, under GLR5.01(6), 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*”.

Under GLR5.20, the Compliance Officer of a listed issuer has responsibilities which “*must include, as a minimum ... (1) advising on and assisting the board of directors of the issuer in implementing procedures to ensure that the issuer complies with the GLR ...*”.

The Relevant Directors were under an obligation, pursuant to their respective Director's Undertakings, to comply to the best of their ability with the GLR.

## **GEM LISTING COMMITTEE'S FINDINGS OF BREACH**

The Committee considered the written and/or oral submissions of the Listing Department (“**Department**”) and the Relevant Directors and concluded as follows:

### Breach of GLR5.01(6) by the Relevant Directors (excluding Mr Rong)

The Committee found that each of the Relevant Directors (excluding Mr Rong) had failed to apply the requisite skill, care and diligence as may be reasonably expected of him/her under GLR5.01(6), and was therefore in breach of GLR5.01(6).

Exercise of care, skill and diligence under GLR5.01(6) requires that each of the Relevant Directors (excluding Mr Rong) apply his/her mind and take steps to ensure existing internal controls continued to be implemented properly and effectively in CHOD notwithstanding the downsizing of CHOD's business operations. This is required in order to protect the assets of CHOD against possible misappropriation or abuse by those involved in CHOD's business process. This was not done. The reduction of the staff members of CHOD impaired the checks and balances and segregation of duties within the internal controls of CHOD, and the Incident took place undetected for two years resulting in significant adverse impact to CHOD and the Company.

Mr Tang also held key management positions in CHOD and was a director of CHOD. Given Mr Tang's direct responsibilities and his close involvement in the management and supervision of CHOD, the Committee found that Mr Tang's breach of GLR5.01(6) was more serious than that of Mr Zhao, Mr Zhu, Ms Shi, Mr Xiang, Mr Wu, Mr Yu, Mr Chan, Mr Ip, Mr Sun, and Mr Cheng.

Breach of GLR5.01(6) by Mr Rong

Mr Rong was a director of the Company from 2011 to 14 April 2013. Like Mr Tang, Mr Rong held key management positions in CHOD. In particular, he became a director of CHOD from May 2013. Despite his ceasing to be a Director of the Company from 15 April 2013, Mr Rong has been closely involved in managing/supervising CHOD since 2010 and at the relevant time when the Incident occurred. He had the responsibility to ensure that CHOD continued to have adequate checks and balances in place in the course of the implementation of CHOD's downsizing. Mr Rong has failed to do so.

Under GLR3.10 and GLR3.11, the Committee's disciplinary jurisdiction extends to making findings of breaches of the GLR by directors of subsidiaries of listed issuers and imposing sanctions on them.

Having considered the overall circumstances, the Committee also found that Mr Rong breached GLR5.01(6); and further that as with Mr Tang, his breach was more serious than that of Mr Zhao, Mr Zhu, Ms Shi, Mr Xiang, Mr Wu, Mr Yu, Mr Chan, Mr Ip, Mr Sun, and Mr Cheng.

Breach of GLR5.01(6) by Mr Zhao

The Committee found that Mr Zhao further breached GLR5.01(6) by reason of his persistent absence from Board meetings and general meetings of the Company.

Breach of GLR5.20 by Mr Tang

The Committee also found that Mr Tang breached GLR5.20 as he had failed to comply with his Compliance Officer's duty by failing to ensure that internal controls in CHOD were properly implemented and remained adequate following the downsizing decision and in the course of its implementation.

GLR5.20 expressly provides that advising and assisting the Board in implementing internal control procedures was only a "minimum" requirement. Mr Tang's duties as Compliance Officer included ensuring that internal controls in CHOD remained adequate and were properly implemented notwithstanding the downsizing of CHOD's business.

Breach of Director's Undertakings

By reason of their respective breaches of GLR5.01(6) (and for Mr Tang, also his breach of GLR5.20), each of the Relevant Directors also breached his/her Director's Undertaking to comply with the GLR to the best of his/her ability.

For the avoidance of any doubt, the Department did not assert, and the Committee does not make any finding of any breach of the GLR by the Company.

## **REGULATORY CONCERN**

The Committee regards the breaches in this matter as serious, as losses arising from fabricated transactions were estimated to be approximately \$62 million as of November 2016. There is also the cost of appointment of various professional parties ie the forensic accountant, and the legal advisers in dealing with the aftermath of the Incident. As a result, CHOD became insolvent and was forced to terminate its business operations. Further, the suspected misappropriation went on for two years without being detected by the Relevant Directors or the internal control system.

There are important regulatory messages to be sent by the Exchange in this case.

- (1) Compliance with the GLRs and the adequacy and proper implementation of internal control systems should have equal prominence in the minds of listed company directors with that of business performance and strategy. It is not acceptable to relegate these functions to one of minor importance and/or to delegate these to someone else in the company without reporting channels to the Board.
- (2) Directors are ultimately and collectively responsible for the compliance culture of the Company. They cannot abrogate their responsibilities.
- (3) Setting up the framework and documentation for internal controls is only partial fulfillment of directors' duties. Directors must take care not to become complacent. They need to take a proactive approach to ensure proper implementation of the internal controls taking into account any major change (whether in the direction, scale, components or otherwise) in the business operations of the listed issuer and its subsidiaries.
- (4) Board meetings act as a channel of communication among Board members. Attendance by directors is important. In particular, the chairman's attendance is crucial as he should provide leadership to the Board, and be available to respond to questions and enquiries in relation to matters of the Company. Even if he cannot physically attend certain Board meetings, he could and should try to participate by other means (eg by telephone or video conference, as may be permissible under the Company's bylaws, or applicable laws and regulations).
- (5) Directors are expected and required to actively participate in Board meetings to discuss and be actively involved in the decision making at Board meetings. Post Board meeting follow-up discussions with other Directors and receiving information from other directors do not achieve the purpose of enabling communication and discussion among all the Directors so as to come to Board decisions together.

Had the Relevant Directors fulfilled their duties, they might have uncovered the suspected misappropriation sooner and reduced the loss exposure of the Company.

## **SANCTIONS**

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

- (1) censure Mr Zhao, Mr Tang and Mr Rong; and
- (2) criticise Mr Zhu, Ms Shi, Mr Wu, Mr Yu, Mr Xiang, Mr Chan, Mr Ip, Mr Sun and Mr Cheng

for their respective breaches of GLR5.01(6), GLR5.20 and their Director's Undertakings.

The Committee further directs that:

- (1) Those of the Relevant Directors who remain in office as at the date of this News Release, namely, Mr Zhao, Mr Zhu, Ms Shi, Mr Chan, Mr Ip, Mr Sun and Mr Cheng, are to use their best endeavours to procure that 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 Rule 6A.19 or Rule 6A.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 two years 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 including that the Compliance Adviser shall be accountable to the Audit Committee of the Company;
  - (c) publish announcements to confirm that the directions in paragraph (1)(a) above and paragraph (4) below have been fully complied with within two weeks after the respective fulfilment of the directions; and
  - (d) submit drafts of the announcement referred to in paragraph 1(c) above for the Department's comment and may only publish the announcement(s) after the Department has confirmed it has no further comment on them.

- (2) In the event that the Company does not take action as set out in any of paragraphs (1)(a) to (d) above, the Department may investigate the reasons, and possible non-compliance with the directions at paragraph (1) above by the directors identified in that paragraph; and where appropriate, take separate regulatory action.
- (3) Following appointment of the Compliance Adviser, any changes necessary and any administrative matters which may emerge in the management and operation of the direction of appointment of Compliance Adviser during the period of appointment are to be directed to the Department for consideration and approval. The Department should refer any matters of concern to the Committee for determination.
- (4) Each of the current directors namely, Mr Zhao, Mr Zhu, Ms Shi, Mr Chan, Mr Ip, Mr Sun and Mr Cheng is to (a) attend 24 hours of training on GLR compliance, director's duties and corporate governance matters ("**Training**") provided by 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 90 days from the publication of this News Release; and (b) provide the Department with the Training provider's written certification of full compliance within two weeks after Training completion.
- (5) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, each of the former directors who is not currently a director of any other company listed on the Exchange namely, Mr Tang, Mr Rong, Mr Xiang, Mr Wu and Mr Yu is to (a) attend the Training as a pre-requisite of any future appointment as a director of any company listed on the Exchange, to be completed before the effective date of any such appointment; and (b) provide the Department with the Training provider's written certification of full compliance.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Relevant Directors and not to the Company or any other past or present members of the Board of directors of the Company.

Hong Kong, 27 March 2018