

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 Company's failure to provide annual reports that are accurate and complete in all material respects and not misleading as well as the directors' failure to perform their fiduciary duties, being part of the Exchange's themes of enforcement that were adopted in 2014 and revised in 2017.

This decision underlines the importance of maintaining a clear division of responsibilities within the Board and management of the Company so as to ensure a balance of power and authority and that power is not concentrated in any one individual.

This decision also reminds directors to ensure the adequacy of the issuer's resources, staff qualifications and experience, training programs, and other things, for the purpose of maintaining the issuer's risk management and internal control systems as well as compliance with the Exchange Listing Rules.

The Listing Committee of the Exchange ("Committee")

CENSURES:

- (1) **Boer Power Holdings Limited ("Company")** (Stock Code: 1685) for failing to ensure the annual reports for the financial year ending 31 December 2013 and 2014 (collectively, **"2013 & 2014 Annual Reports"**) were accurate and complete in all material respects and not misleading, in breach of Rule 2.13(2) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (**"Exchange Listing Rules"**).

AND:

- (2) **Mr Huang Liang ("Mr Huang")**, a former executive director (**"ED"**) of the Company who resigned on 5 February 2016 for:
 - (a) Misapplying the Company's assets with respect to the Loans, in breach of Rule 3.08(c);

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- (b) Failing to apply such degree of skill, care and diligence required and expected of him in the discharge of his director's duties by (i) not disclosing the Loans and the Financing of Loans to the Board; (ii) not recording the Loans and the Financing of Loans in the Company's books and records; (iii) forging (as described in the Company's submission) the Group's bank statements to conceal the Loans and the Financing of Loans; (iv) not properly reviewing the 2013 & 2014 Annual Reports to ensure it was accurate and complete in all material respects and not misleading; (v) not ensuring the Company had adequate and effective internal controls and risk management systems; and (vi) taking advantage of his control over the Group's bank accounts, chops/seals and books and records, in breach of Rule 3.08(f);
- (c) Failing to use his best endeavours to procure the Company's Rule compliance and for him to comply with the Exchange Listing Rules to the best of his ability in breach of his obligations under his Undertaking given to the Exchange in the form set out in Appendix 5b to the Exchange Listing Rules (collectively, "**Undertaking**");

AND:

- (3) **Mr Qian Yixiang** ("**Mr Qian**"), an ED of the Company;
- (4) **Mr Qian Zhongming** ("**Mr Z Qian**"), an ED of the Company;
- (5) **Ms Jia Lingxia** ("**Ms Jia**"), an ED of the Company; and
- (6) **Mr Zha Saibin** ("**Mr Zha**"), an ED of the Company

for breach of:

- (a) Rule 3.08(f) as described in paragraphs (2)(b)(iv) and (v) above;
- (b) Their respective Undertakings as described in paragraph (2)(c) above;

AND:

- (7) **Mr Huang** and **Mr Z Qian** for failing to cooperate in the investigation of the Listing Department in breach of their obligations under their respective Undertakings ("**Undertaking to Co-operate**").

(Mr Huang, Mr Qian, Mr Z Qian, Ms Jia and Mr Zha are collectively referred to as "**Directors**")

On 20 March 2018, the Committee conducted a hearing into the conduct of, *inter alia*, the Company under the Exchange Listing Rules and the Directors in relation to their obligations under the Exchange Listing Rules and their respective Undertakings.

FACTS

From 30 October 2012 to 24 June 2014, a subsidiary of the Company (“**Subsidiary-A**”) factored (“**Factoring Arrangement**”) RMB1.403 billion of its trade receivables (“**Factored Amount**”) due from nearly 200 of its customers (“**Customers**”) to various banks (“**Banks**”) for the sum of RMB1.281 billion (“**Factoring Payment**”). As a result of the Factoring Arrangement, the Customers would settle the Factored Amount directly with the Banks.

From 6 February 2013 to 24 December 2014, the Customers were purportedly in financial difficulties. Mr Huang procured Subsidiary-A (without the Board’s knowledge or approval) to pay RMB1.226 billion to the Banks in partial settlement, on behalf of the Customers, of the Factored Amount (“**Financial Assistance**”).

The Financial Assistance was undocumented and in the form of interest-free and unsecured loans to the Customers which were repayable on demand (“**Loans**”). The Loans were financed by two bank loans (“**Bank Loans**”), a loan from a related entity (“**Related Entity Loan**”) and the Group’s operating cash (collectively, “**Financing of Loans**”).

Mr Huang had control of the Group’s bank accounts, chops/seals and books and records. As a result, Mr Huang was able to (and did) issue the Loans and acquire the Financing of Loans without (a) the Board’s knowledge/approval or (b) recording the same in the Group’s books and records.

The Board did not discover the Loans and the Financing of Loans until 18 March 2016. After the said discovery, Mr Huang purportedly admitted to Ms Jia that he thought the Loans would be repaid before they were required to be recorded in the books and records and he had forged (as described in the Company’s submission) the Group’s bank statements for the purpose of concealing the same.

On 30 March 2016, the Loans and the Financing of Loans were disclosed in the Company’s annual report for the year ended 31 December 2015 (“**2015 Annual Report**”) together with the prior year adjustments (“**PYA**”) made to the Groups’ financial statements in the 2013 & 2014 Annual Reports to reflect the Loans and the Financing of Loans. The impact of the PYA was an (a) understatement of the Group’s “trade and other receivables” in the 2013 & 2014 Annual Reports by RMB200 million and RMB940 million respectively; and (b) overstatement of the Group’s “cash and cash equivalent” in the 2014 Annual Report by RMB621 million.

The 2013 & 2014 Annual Reports did not disclose the Loans and the Financing of Loans.

The Company submits the Board would have discovered the Loans and the Financing of Loans earlier if not because of Mr Qian’s and management’s trust in Mr Huang. The Company further admits (a) its internal controls team, who oversaw the Company’s internal processes had been ineffective and failed in this instance due to the lack of human resources and inadequate understanding of the Factoring Arrangement; and (b) it has not systemically implemented or adhered to various internal policies and procedures, namely, it failed to, *inter alia*, recognise the Loans as account receivables and book the Loans.

COMMITTEE'S FINDINGS OF BREACH

The Committee considered the written and/or oral submissions of the Listing Department, the Company and the Directors (except Mr Huang) and concluded:

- (1) **The Company breached Rule 2.13(2) for the reasons that** the 2013 & 2014 Annual Reports were incomplete and inaccurate and misleading in that they failed to disclose the Loans and the Financing of Loans.
- (2) **The Company did not have, at the material time, adequate internal controls and risk management systems for the reasons that:**
 - (a) The Company admitted (i) its internal control team had been ineffective at the time due to lack of human resources and inadequate understanding of the Factoring Arrangement; and (ii) it did not systematically adhere to various internal control policies and procedures; and
 - (b) The Company did not have any controls in place to monitor/manage the power, control and trust given to Mr Huang over the Group's bank account, chops/seals and book and records, which ultimately allowed Mr Huang to issue the Loans and acquire the Financing of Loans without the Board's knowledge or approval.
- (3) **Mr Huang breached Rule 3.08(c) and (f) and his Undertaking for the reasons that:**
 - (a) In breach of Rule 3.08(c), he misapplied the Company's assets for (i) the Company's funds were used towards the Loans without the Board's approval or knowledge; (ii) the Bank Loans were used for purposes other than their intended purpose of purchasing equipment; and (iii) exposed the Company to financial risk which could impact on the Company's cash liquidity by reason of the Related Entity Loans being repayable on demand, in breach of Rule 3.08(c);
 - (b) In breach of Rule 3.08(f), he failed to exercise skill, care and diligence that was reasonably required and expected of him for he was the sole individual who had full knowledge of the Loans and the Financing of Loans and he intentionally (i) did not disclose the same to the Board; (ii) did not record the same in the books and records; (iii) forged (as described in the Company's submission) the Group's bank statements to conceal the Loans and the Financing of Loans; (iv) did not properly review the 2013 & 2014 Annual Reports to ensure they were accurate and complete in all material respects and not misleading; (v) took advantage of his control over the Group's bank accounts, chops/seals and books and records; and (vi) to ensure that the Company had adequate and effective internal controls and risk management systems; and

- (c) He failed to comply with the Undertaking to (i) use his best endeavours to procure the Company's Rules compliance; and (ii) comply with the Exchange Listing Rules to the best of his ability.

(4) Mr Qian, Mr Z Qian, Ms Jia and Mr Zha breached Rule 3.08(f) and the Undertaking for the reasons that:

- (a) They failed to exercise skill, care and diligence that was reasonably required and expected of them to properly review the 2013 & 2014 Annual Reports, particularly when (i) they were directors of Subsidiary-A and a manager and/or members of senior management of the related entity; and (ii) Subsidiary-A and the related entity were counterparties to the Loans and the Financing of Loans, respectively;
- (b) They failed in their, collective and individual, responsibility to ensure that the Company had established and maintained appropriate and effective risk management systems and internal controls; and
- (c) They failed to comply with the Undertaking to (i) use their best endeavours to procure the Company's compliance with the Exchange Listing Rules; and (ii) comply with the Exchange Listing Rules to the best of their abilities.

(5) Mr Huang and Mr Z Qian breached the Undertaking to Co-operate

- (a) In the course of the Listing Department's investigation, the Exchange sent an enquiry letter to Mr Huang at his last known address. Mr Huang did not respond to the Exchange's enquiry letter. The Committee found Mr Huang failed to respond to the Exchange's enquiry without reasonable or valid reasons and have therefore breached his Undertaking to Co-operate with the Listing Department's investigation. Such a breach will be taken into account in the Exchange's consideration of suitability of Mr Huang should he wish to be appointed as a director of listed issuers in Hong Kong in the future under Rule 3.09, which requires that each director of a listed issuer must satisfy the Exchange that he has the character, experience and integrity and is able to demonstrate a standard of competence commensurate with his position as a director of a listed issuer; and
- (b) In the course of the Listing Department's investigation, the Exchange sent an enquiry letter to Mr Z Qian. Approximately 3.5 months after the issuance of the enquiry letter, Mr Z Qian requested additional time to respond. Given Mr Z Qian's response, which was received nearly 4 months later and consisted only of a short paragraph, the Committee found Mr Z Qian's conduct to have breached his Undertaking to Co-operate with the Listing Department's investigation.

REGULATORY CONCERNS

The Committee regards the breaches in this matter serious since:

- (1) The Exchange Listing Rules are designed to ensure that investors have a continued confidence in the market and they are kept fully informed by the Company, as well as to maintain a fair and orderly market. The intention of Rule 2.13 is aimed to achieve this purpose. The Company failed to comply with Rule 2.13 by not disclosing the Loans and the Financing of Loans. Consequently, the shareholders were deprived of their right to receive accurate and complete information concerning the Company's affairs;
- (2) The Loans and the Financing of Loans were of a substantial amount (ie RMB1.226 billion) and RMB749.08 million of the Loans remain outstanding (as at 31 January 2017);
- (3) The Loans and the Financing of Loans appeared to have had a market impact on the investors for the Company's share price dropped 30.14 per cent from \$8.76 to \$6.12 (whilst HSI only dropped 0.12 per cent) the next trading day after the Loans were disclosed on 30 March 2016. The trading volume was also 12 times more than its average volume of the preceding 10 trading days;
- (4) The Directors failed to maintain a clear division of responsibilities within the Board and the management of the Company so as to ensure (i) a balance of power and authority; and (ii) the power is not concentrated on any one individual. The lack of division of responsibilities within the Board undermines the Board's accountability to the Company and its shareholders as well as exposes the Company to risks of non-compliance with the Exchange Listing Rules;
- (5) The Directors delegated their duties to others (such as accounting firms) and neglected to discharge their duties. Delegation of their functions does not absolve them from their responsibilities and the Directors are required to take an active interest in the Company's affairs. In this case, the failure by the Directors to take an active interest in reviewing the accounts and financial reports of the Company contributed to the breach by the Company of Rule 2.13; and
- (6) The Company admitted its internal control team was ineffective due to inadequate human resources and understanding of the Factoring Arrangement. Yet it disclosed in its annual report for the year ending 31 December 2015 that its internal controls system was "*adequate and effective*". The conflicting statements highlight the Company's failure to give sufficient prominence and attach sufficient importance towards its internal controls and its requirements to establish and maintain good corporate governance within the Company.

However, the Committee notes that this is not a case of the Directors' misunderstanding of the Exchange Listing Rules, but rather, they were complacent in allowing Mr Huang to have control of the Group's financial affairs with limited supervision. Also, the Company has taken steps to enhance its internal control and risk management systems by, *inter alia*, providing training to its staff.

SANCTIONS

Having made the findings of breach stated above, and having concluded the breaches are serious notwithstanding the remedial actions taken, the Committee is highly critical of and decides to:

CENSURE:

- (1) The Company for its breach of Rule 2.13(2);
- (2) Mr Huang for breach of Rule 3.08(c) and (f) and his Undertaking;
- (3) Mr Qian, Mr Z Qian, Ms Jia and Mr Zha for breach of Rule 3.08(f) and their respective Undertakings;
- (4) Mr Huang and Mr Z Qian for breach of their respective Undertakings to Co-operate;

AND STATES THAT:

- (5) Mr Huang's 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 any issuer listed or to be listed on the Exchange in the future.

The Committee further directs:

- (1) Mr Qian, Mr Z Qian, Ms Jia and Mr Zha to each (a) attend 24 hours of training on Exchange Listing Rule compliance and director's duties, including 4 hours of training on corporate governance and internal controls ("**Training**"), to be 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. The Training is 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.
- (2) The Company to publish an announcement to confirm that the direction in paragraph (1) above has been fully complied with within two weeks after the respective fulfillment of the direction.

- (3) The Company to submit a draft of the announcement referred to in sub-paragraph (2) 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.
- (4) 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 (3) above are to be directed to the Listing Department for consideration and approval. The Listing Department should refer any matters of concern to the Committee for determination.

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

Hong Kong, 16 May 2018