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Skadden

Hong Kong Regulatory Update

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This Hong Kong regulatory update provides a brief overview of the principal Hong Kong regulatory developments in the preceding three months relevant to companies listed or proposed to be listed on The Stock Exchange of Hong Kong Limited (**HKEx**) and their directors, management and advisers. The updates include HKEx announcements and rule or guidance changes, Securities and Futures Commission (**SFC**) decisions and updates, and HKEx and SFC enforcement-related news. In this update we cover:

- HKEx Provides Guidance on Issues Related to "Controlling Shareholder" and Related Listing Rules Implications
- HKEx Updates Guidance Letter GL57-13 to Set Out the Consequence of Inadequate Redaction of an Application Proof and a PHIP for Publication Purpose
- HKEx Reports on Its Review of Listed Issuers' Corporate Governance Practices Disclosure
- Listing Committee Chairman Clarifies News Report Relating to the Joint Consultation Paper on Listing Regulation
- Shenzhen-Hong Kong Stock Connect Commenced on 5 December 2016
- Takeovers Panel Upholds Ruling on Offer for L&A International
- MMT Fines AcrossAsia and Its Officers HK$2 Million for Late Disclosure of Inside Information
- MMT Bans Andrew Left of Citron Research From Trading Securities in Hong Kong
- Court of Final Appeal Dismisses Leave Application of C.L. Management and Its Sole Owner
- The Listing Committee Criticises Global Sweeteners, and Censures Global Bio-chem and Its Former Directors, for Breaching the Listing Rules
- GEM Listing Committee Censures Chairman of China Nonferrous Metals for Breaching the GEM Listing Rules
- Listing Committee Censures Mingyuan Medicare for Breaching the Listing Rules

HKEx Provides Guidance on Issues Related to "Controlling Shareholder" and Related Listing Rules Implications

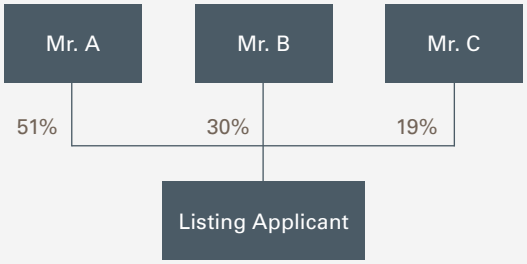
The HKEx published Guidance Letter GL-89-16 (**GL89-16**) to provide guidance on, among other things, the HKEx's interpretation of the definition of "controlling shareholder" under the rules governing the listing of securities on the exchange (**Listing Rules**).

Rule 1.01 of the Listing Rules defines "controlling shareholder" as any person who is or group or persons who are together:

- entitled to exercise or control the exercise of 30 percent (or such other amount as may from time to time be specified in the Code on Takeovers and Mergers as being the level for triggering a mandatory general offer) or more of the voting power at general meetings of the issuer; or
- in a position to control the composition of a majority of the board of directors of the issuer.

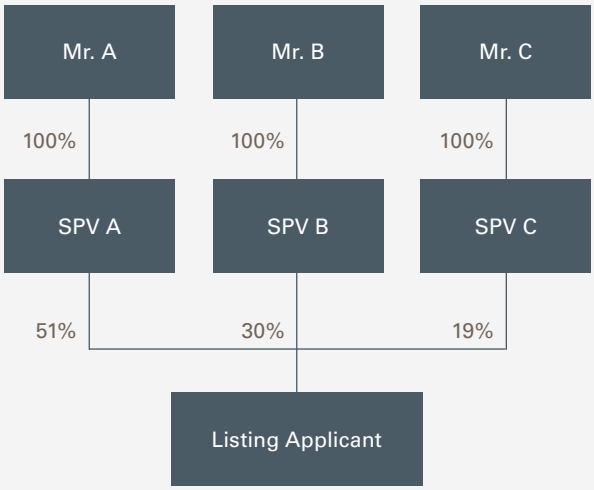
GL89-16 provides the following ownership structures by way of examples:

Example 1



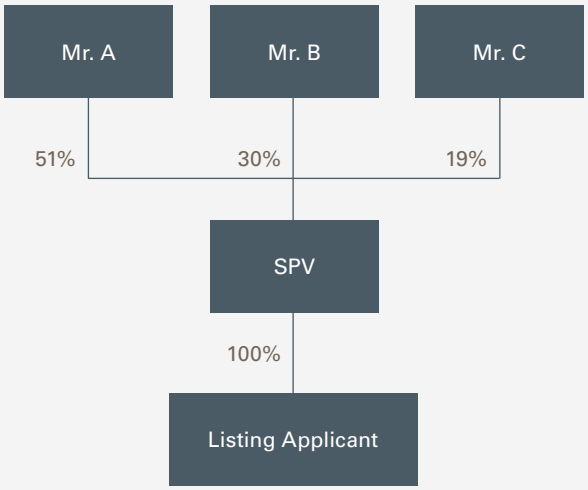
Each of Mr. A and Mr. B is considered a controlling shareholder of the listing applicant as each of Mr. A and Mr. B is entitled to exercise 30 percent or more of the voting power at general meetings of the listing application.

Example 2



Each of Mr. A, SPV A, Mr. B and SPV B is considered a controlling shareholder of the listing applicant as (i) each of SPV A and SPV B is entitled to exercise 30 percent or more of the voting power at general meetings of the listing applicant; and (ii) each of Mr. A and Mr. B is entitled to, through SPV A and SPV B respectively, control the exercise of 30 percent or more of the voting power at general meetings of the listing applicant.

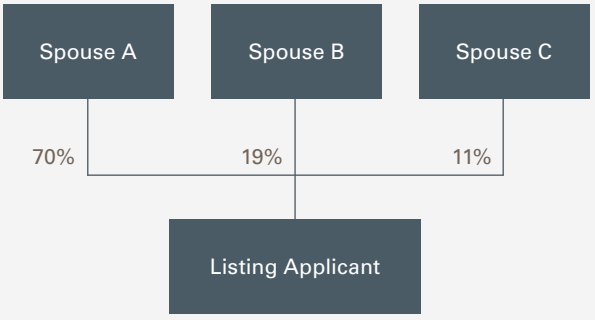
Example 3



SPV, which has 100 percent of the voting power at general meetings of the listing application, is considered a controlling shareholder of the listing applicant. Mr. A also falls within the definition of "controlling shareholder" of the listing applicant as Mr. A controls SPV by virtue of holding more than 50 percent of the voting interests in SPV.

Furthermore, on the basis that Mr. A, Mr. B and Mr. C have decided to restrict their ability to exercise direct control over the listing applicant by holding their interests through a common investment holding company, the HKEx will presume Mr. A, Mr. B and Mr. C to be a group of controlling shareholders of the listing application. If Mr. B and/or Mr. C do not consider themselves as part of the group of controlling shareholders, the listing applicant should provide a detailed submission rebutting this presumption.

Example 4



Although Spouse B is not individually entitled to exercise 30 percent or more of the voting power at general meetings of the listing applicant and hence does not fall within the definition of "controlling shareholder" under the listing rules, the HKEx will presume Spouse A and Spouse B to be a group of controlling shareholders by virtue of their relationship of being spouses. If Spouse B does not believe he/she is part of the controlling group of shareholders, the listing applicant should provide a detailed submission rebutting this presumption.

HKEx Updates Guidance Letter GL57-13 to Set Out the Consequence of Inadequate Redaction of an Application Proof and a PHIP for Publication Purpose

A listing applicant is required to publish its application proof (**Application Proof**) and its post-hearing information pack (**PHIP**) under the Listing Rules. Listing applicants are required to redact the Application Proof and PHIP in accordance with Guidance Letter GL56-13 in order for these documents not to constitute a prospectus under Section 2(1) of the Companies Ordinance, an advertisement under Section 38B(1) of the Companies Ordinance, or an invitation to the public in breach of Section 103 of the Securities and Futures Ordinance (**Relevant Laws**).

Inadequate redaction of information in the Application Proof or a PHIP for publication purpose is a breach of the Relevant Laws. The HKEx considers that the publication of unauthorised materials as a result of inadequate redaction of information in an Application Proof or a PHIP likely will condition the market ahead of a properly authorised prospectus and affect market perception of an upcoming offer. Therefore, the HKEx will take strict measures against such unauthorised published materials in order to "cool off" any undesirable impact on the market. These include requiring the immediate withdrawal of the unauthorised published materials and suspension of vetting of the application for up to a month from the date of withdrawal of the unauthorised published materials, causing the listing timetable to be delayed.

HKEx Reports on Its Review of Listed Issuers' Corporate Governance Practices Disclosure

The HKEx reviewed the corporate governance reports of 81 issuers with the financial year-end date of 30 June 2015 and analysed their compliance with the Corporate Governance Code and Corporate Governance Report (**Code**). This review, together with two earlier reviews (for issuers with financial year-end dates of 31 December 2014 and 31 March 2015), examined a total of 1,636 issuers' corporate governance reports.

All three reviews were performed in the past year, and they show that, whilst the issuers' compliance level with the Code was high, the quality of explanations given for deviating from Code provisions was varied and reflected a degree of "boilerplate" use. Furthermore, some issuers did not disclose board diversity policies and did not provide an explanation. David Graham, HKEx's chief regulatory officer and head of listing, added that "Issuers should avoid the temptation of 'box-ticking' and instead provide well-considered reasons for non-compliance with Code Provisions in corporate governance reports."

Listing Committee Chairman Clarifies News Report Relating to the Joint Consultation Paper on Listing Regulation

On 17 June 2016, the SFC and the HKEx jointly issued a consultation on proposed enhancements to the HKEx's decision-making and governance structure for listing regulations (**Consultation Paper**).

The Listing Committee, as a committee, made a submission in response to the Consultation Paper in November, which, as stated in the submission, represented the majority view of the Listing Committee (**the Listing Committee Submission**).

The Listing Committee Submission states that the Listing Committee recognises that the Hong Kong market changes over time and, therefore, it is important to review the structure of the regulatory regime periodically to ensure that the regime remains relevant and effective. However, while the Listing Committee supports the objectives outlined in the Consultation Paper, such as greater efficiency, transparency, accountability and coordination in the regulatory process, it did not believe the outlined changes in the Consultation Paper will achieve this in practice. Furthermore, the Listing Committee believes that the stated objectives of the Consultation Paper could be better achieved instead through enhancements to the current regulatory regime to ensure a closer and more effective working relationship between the SFC and the Listing Committee.

Shenzhen-Hong Kong Stock Connect Commenced on 5 December 2016

On 25 November 2016, the China Securities Regulatory Commission (**CSRC**) and the SFC approved the official launch by the Shenzhen Stock Exchange, HKEx, China Securities Depository and Clearing Corporation Limited and Hong Kong Securities Clearing Company Limited of mutual trading access between the Shenzhen and Hong Kong stock markets (**Shenzhen-Hong Kong Stock Connect**). Trading commenced on 5 December 2016.

The CSRC and the SFC also have agreed on the principles and arrangements for cross-boundary regulatory and enforcement cooperation relating to Shenzhen-Hong Kong Stock Connect and have signed a memorandum of understanding on regulatory and enforcement cooperation. In addition, the CSRC and the SFC have established arrangements and procedures for cross-boundary liaison and cooperation on any contingency or major event that affects the mutual trading access and for referring and handling investors' complaints.

Hong Kong Regulatory Update

Takeovers Panel Upholds Ruling on Offer for L&A International

On 22 July 2016, Favourite Number Limited informed L&A International Holdings Limited's (**L&A**) board of directors that it intended to make an offer for the shares of L&A with a combination of cash and securities as consideration. It subsequently came to light that in early July a concert party of Favourite Number Limited had dealt in L&A shares prior to the approach. As a result, the executive director of the SFC's Corporate Finance (**Takeovers Executive**) required the offeror to match the terms of its offer so that the consideration offered for each L&A share would have a value of at least equal to the highest purchase price paid by the concert party. The offer was announced publicly on 18 August 2016 on this basis.

Subsequently, L&A made an application requesting the Takeovers Executive to rule that the offer did not comply with the Code on Takeovers and Mergers (**Takeovers Code**) and should be altered so that the consideration offered to shareholders reflected the same ratio of cash to securities as contained in the offeror's earlier private letter to L&A's board. The Takeovers Executive ruled that the consideration offered already complied with the Takeovers Code as the purchases were made before the terms of the offer had been announced publicly. L&A applied to the panel to review the ruling.

On 22 September 2016, the Takeovers Panel upheld the Takeovers Executive's decision and concluded that there is no basis to alter the offer in the way requested by L&A. The panel agreed with the Takeovers Executive's ruling that the requirement to maintain the same ratio of cash to securities as requested by L&A only arises under the Takeovers Code if a concert party has purchased shares after the formal announcement of an offer.

MMT Fines AcrossAsia and Its Officers HK$2 Million for Late Disclosure of Inside Information

The Market Misconduct Tribunal (**MMT**) fined AcrossAsia Limited (**AcrossAsia**) HK$600,000, its former chairman Albert Saychuan Cheok HK$800,000, and its chief executive officer Vicente Binalhay Ang HK$600,000 after finding they had failed to disclose inside information to the public as soon as reasonably practicable as required under the Securities and Futures Ordinance (**SFO**).

This is the first time the MMT made a finding of breaches of the new disclosure obligations imposed on listed companies since they became effective on 1 January 2013.

AcrossAsia, Mr. Cheok and Mr. Ang admitted that they had been late in disclosing inside information about a petition filed by AcrossAsia subsidiary and major creditor PT First Media Tbk against AcrossAsia and a related summons. Mr. Cheok and Mr. Ang also admitted that they had been negligent, which resulted in AcrossAsia's breach of the disclosure requirement.

In late December 2012, PT First Media Tbk filed a petition under the Indonesian Law on Bankruptcy and Suspension of Obligation for Payment of Debts against AcrossAsia, and the Central Jakarta District Court issued a summons to AcrossAsia. AcrossAsia did not disclose this information until 17 January 2013.

The SFC alleged that the failure of AcrossAsia, Mr. Cheok and Mr. Ang to ensure timely disclosure of these court documents had resulted in the investing public not knowing about the possible insolvency of AcrossAsia, the possible loss of control over its major asset and, consequentially, the material increase in financial risks faced by AcrossAsia at the time.

MMT Bans Andrew Left of Citron Research From Trading Securities in Hong Kong

The MMT has ordered that Andrew Left of Citron Research be banned from trading securities in Hong Kong for the maximum period of five years without the leave of the court.

The MMT found that Mr. Left published a report on Citron Research's website using sensationalist language that Evergrande was insolvent and engaged in accounting fraud. It found these allegations were false and misleading and likely to alarm ordinary investors. Mr. Left had made these allegations recklessly or negligently with no understanding of the Hong Kong accounting standards that applied and without checking them with an accounting expert or seeking comment from Evergrande.

Court of Final Appeal Dismisses Leave Application of C.L. Management and Its Sole Owner

On 29 April 2014, C.L. Management Services Limited (**C.L. Management**) and its sole owner and director, Clarea Au Suet Ming, were convicted on three counts of holding out charges and acquitted of one count of carrying on a business in advising on corporate finance without a licence at the Eastern Magistracy after trial. An SFC investigation revealed that between October 2010 and January 2012, C.L. Management had entered into service agreements with three companies for advising on their listing applications. The court accepted that the scope of services under these service agreements constituted advising on corporate finance and, by entering into these service agreements, C.L. Management represented itself as being prepared to advise these three companies on their listing applications. The court also found Ms. Au guilty for giving consent to or conniving at the offences committed by C.L. Management.

They were fined a total of HK$1.5 million. Ms. Au also was sentenced to a total of six months' imprisonment suspended for 18 months. The Court of First Instance subsequently dismissed their appeals against the convictions and they applied for leave to appeal from the CFA. On 15 May 2016, the Court of Final Appeal dismissed C.L. Management and Ms. Au's application for leave to appeal against their convictions.

Hong Kong Regulatory Update

The Listing Committee Criticises Global Sweeteners, and Censures Global Bio-chem and Its Former Directors for Breaching the Listing Rules

The Listing Committee of the HKEx criticised Global Sweeteners Holdings Limited (**GSH**) for its failure to comply with the requirements under the Listing Rules in respect of certain financial guarantees for the benefit of a long-term supplier (**Supplier Guarantee**) and in respect of certain financial assistance to certain subsidiaries of Global Bio-chem Technology Group Company Limited (Stock Code: 809) (**GBT**), a controlling shareholder of GSH.

The Listing Committee also found that GBT and four of its former executive directors breached the provisions relating to advances to entities (Rules 13.13, 13.14 and 13.20) and major transactions (Rules 14.34, 14.38A, 14.40 and 14.41) in respect of the Supplier Guarantees entered into by GBT and its relevant subsidiaries. The Listing Committee censured GBT and the four former executive directors.

Supplier Guarantees

In or around November 2010, a subsidiary of GSH together with GBT and eight of GBT's subsidiary companies each granted a guarantee in favour of Bank of China (**BOC**) for the benefit of a long-term supplier for a maximum guaranteed amount of RMB3 billion. The supplier is beneficially owned by the labour union of the PRC employees of both GSH's and GBT's group of companies. The Supplier Guarantees were renewed for the years 2011 and 2012. In 2011, an additional subsidiary of GSH, formerly a subsidiary of GBT, also provided a Supplier Guarantee. In 2014 and 2015, the Supplier Guarantees were further renewed by GSH's subsidiary and four subsidiaries of GBT for maximum guaranteed amounts of RMB2.5 billion each year.

The Supplier Guarantees constituted (i) major transactions under Rule 14.06 (applicable percentage ratios either alone or aggregated exceeding 25 percent); and (ii) advances to an entity under Rule 13.13 (assets ratio over 8 percent), thereby subject to reporting, announcement and independent shareholders' approval.

GSH and GBT did not issue any announcement or circular or seek independent shareholders' approval for each of the Supplier Guarantees at the material time. Furthermore, GSH and GBT did not disclose details of the Supplier Guarantees in their annual and interim reports between 2010 and 2014. The Supplier Guarantees were not announced by GSH and GBT until 31 March 2015.

GBT Financial Assistance

In December 2014 and February 2015, two subsidiaries of GSH provided mortgages over property belonging to GSH in favour of Jilin Bank (**Mortgage A**) and China Merchants Bank (**Mortgage B**) respectively as security for banking facilities granted to certain subsidiary companies of GBT (**GBT Financial Assistance**).

The GBT Financial Assistance constituted (i) connected transactions; (ii) advances to an entity under Rule 13.13 (aggregate assets ratio over 8 percent); and (iii) major transactions under Rule 14.06 (applicable percentage ratios either alone or aggregated exceeding 25 percent) thereby subject to announcement and independent shareholders' approval.

GSH did not issue any announcement, circular or seek independent shareholders' approval for the GBT Financial Assistance at the material time. The GBT Financial Assistance was not disclosed until 31 March 2015.

Admission of Breaches

GSH stated that notwithstanding the internal controls and procedures in place at the time, they were not followed by the relevant directors and authorised signatories of the Supplier Guarantees and GBT Financial Assistance. By the announcement, GSH admitted its breaches of Rules 13.13, 13.14 and 13.20 and requirements under Chapters 14 and 14A of the Listing Rules in respect of the Supplier Guarantees and/or the GBT Financial Assistance.

The Listing Committee concluded that GSH breached:

- Listing Rules requirements for advances to entities (Rules 13.13, 13.14 and 13.20) and major transactions (Rules 14.34, 14.38A, 14.40 and 14.41) in respect of the Supplier Guarantees granted in 2010, 2011, 2012, 2013 and 2014; and
- Listing Rules requirements for advances to entities (Rule 13.13); major transactions (Rules 14.34, 14.38A, 14.40 and 14.41); and connected transactions (Rules 14A.35 and 14A.36) in respect of the GBT Financial Assistance provided in December 2014 and February 2015.

GEM Listing Committee Censures Chairman of China Nonferrous Metals for Breaching the GEM Listing Rules

The GEM Listing Committee censured Mei Ping, former executive director, chairman and compliance officer of China Nonferrous Metals Company Limited (**CNM**) at the material time, for his breaches of:

- director's duties under Rules 5.01(1) to (6) of the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (**GEM Listing Rules**);
- his duties as CNM's compliance officer under GLR 5.20; and
- his obligations under the Declaration and Undertaking With Regard to Directors given to HKEx for failing to comply to the best of his ability with the GEM Listing Rules and for failing to use best endeavours to procure CNM's GEM Listing Rules compliance.

In May and June 2014, Mei Ping entered into various guarantees (**Guarantees**) as legal representative of two wholly owned subsidiaries of CNM (**Two Subsidiaries**), in relation to loans borrowed by Shenzhen City First Create Investment Limited (**First Create**). Mei Ping did not inform the board or obtain board approval for the Guarantees. He and his brother, Mei Wei (a substantial shareholder of CNM), were directors and substantial shareholders of First Create at the relevant time. First Create was a connected person of CNM.

The Guarantees were major and connected transactions subject to the announcement, circular and independent shareholders' approval requirements under Chapters 19 and 20 of the GEM Listing Rules. Mei Ping's failure to inform the board about the Guarantees meant the board could not consider the matter and thus the company did not comply with the relevant GEM Listing Rules at the time.

The Two Subsidiaries were included as defendants/respondents in three legal proceedings and various arbitration cases (**Proceedings**) in mainland China by reason of First Create's default in repayment of the loans. CNM became aware of the Proceedings and hence the Guarantees at the end of December 2014 and an announcement was made on 22 January 2015 disclosing the Guarantees and the Proceedings.

According to Mei Ping, he executed the Guarantees under duress and/or undue influence as he had been harassed by creditors of First Create. He knew about the Proceedings before CNM discovered the Proceedings. He chose not to inform the board about the Guarantees and the Proceedings.

- CNM's auditors issued a disclaimer of opinion on CNM's annual results for the year ended 31 December 2014 (**2014 Annual Results**); some of the reasons given in its auditor's report referred to the lack of records relating to the Guarantees and the Proceedings. During the Listing Department's investigation, Mei Ping admitted his breaches of Rules 5.01(1) to (6) of the GEM Listing Rules.

The GEM Listing Committee concluded that Mei Ping breached Rules 5.01(1) to (6) of the GEM Listing Rules because:

- he failed to act in good faith in the best interest of CNM as a whole. The Guarantees did not confer any benefit to CNM and its subsidiaries (together "**CNC Group**") and its shareholders as a whole;
- he failed to procure any security from First Create for the Guarantees. The Guarantees put the CNM Group in substantial credit risk and the CNM Group was exposed to risk of default without any recourse to security in the event that First Create defaulted in repayment of the loans;
- he improperly exercised his powers as a director and was clearly in a conflicted position. He caused the Two Subsidiaries to enter into the Guarantees without: (i) ensuring that the board had considered and approved the same; (ii) avoidance of conflict of interest and duty by declaring his interests in the Guarantees (given that he was a majority shareholder and director of First Create) and abstaining from voting at meetings that should have been called for the purposes of considering and approving the Guarantees; and (iii) conferring any benefit to CNM;
- he placed his personal interests (getting rid of the alleged harassment) before the CNM Group's interests;
- by subjecting the CNM Group to significant credit risk, and because the CNM Group has been using its resources to defend the Proceedings, which deprived the CNM Group of funds otherwise available to it, he misapplied CNM's assets by procuring the entering into and execution of the Guarantees without proper authorisation/approval from the board and independent shareholders, and without proper purpose;
- his conduct fell below the reasonable expectations and requirements in exercising skill, care and diligence as a director of CNM under Rule 5.01(6) of the GEM Listing Rules. He did not inform or involve the board in respect of the entering into and execution of the Guarantees. There is no evidence that he considered, or took steps to address, the GEM Listing Rules implications relating to the Guarantees at the time of execution or after the event;
- by reason of his failure to inform the board of the Guarantees and the Proceedings in a timely manner, CNM did not have the opportunity to collate and keep any records relating to the Guarantees and the Proceedings. The lack of such records contributed to the reasons why the auditors issued a disclaimer of opinion on the 2014 Annual Results; and
- as executive director, chairman and compliance officer at the time, he failed to have proper regard to corporate governance, the need and importance to ensure that the Guarantees, and subsequently the Proceedings, were properly reported and considered by the board, and to ensure CNM's compliance with the GEM Listing Rules.

Furthermore, the GEM Listing Committee found that Mei Ping breached Rule 5.20 of the GEM Listing Rules because he, as compliance officer of CNM at the time, should have advised the board in respect of the requirements of the GEM Listing Rules arising from the Guarantees. In addition, Mei Ping breached his undertaking given to the HKEx under the GEM Listing Rules by failing to comply to the best ability with the GEM Listing Rules by virtue of his breaches of Rule 5.01(1) to (6) and 5.20 of the GEM Listing Rules and to use his best endeavours to procure CNM's compliance with the GEM Listing Rules.

Hong Kong Regulatory Update

Listing Committee Censures Mingyuan Medicare for Breaching the Listing Rules

The Listing Committee censured Mingyuan Medicare Development Company Limited (**Mingyuan Medicare**) for failing to disclose a major transaction and obtain prior shareholders' approval in breach of Rules 14.34 and 14.40 of the Listing Rules. It further censured six former directors of Mingyuan Medicare and criticised another former director in connection with such failings.

The penalties arose from a payment made on 23 December 2013 by Mingyuan Medicare's wholly owned subsidiary (**Mingyuan Medicare Subsidiary**) of RMB396 million (**Payment**) to an unrelated PRC entity, Beijing Nong Long Investment Management Company Limited (**BNL**).

Mingyuan Medicare asserted that the purpose of the Payment arrangement was to earn significant foreign exchange gain as Mingyuan Medicare expected a potential devaluation of Renminbi versus Hong Kong dollars toward the end of 2013.

Iu Chung (**Mr. Iu**), the chairman and legal representative of the Mingyuan Medicare Subsidiary and younger brother of Mingyuan Medicare's then chairman, recommended the proposed arrangement to Mingyuan Medicare and the Subsidiary. He represented Mingyuan Medicare in all discussions and dealings with BNL, and the contact with the Officials (defined below) in relation to the arrangement. All information received by Mingyuan Medicare and its directors about BNL, the proposed arrangement and all related matters was provided by Mr. Iu.

Mr. Iu informed Mingyuan Medicare that (i) the arrangement was introduced to him by certain senior government official(s) in Beijing (**Officials**); (ii) the Officials did not wish their identity and/or officials post to be revealed; (iii) BNL, a limited liability company incorporated in the PRC for the provision of investment-related advisory and management services to its clients, was a company associated/related to the Ministry of Finance of the PRC. It had all necessary licences and permits to legally carry out the arrangement in the PRC and had provided similar arrangements to other business contacts in Beijing before entering into the arrangement with the Mingyuan Medicare Subsidiary; and (iv) the Officials provided verbal assurance that BNL would be able to fulfil its obligations under the arrangement and that even if it could not, it would refund the Payment to Mingyuan Medicare.

The directors relied on the introduction by the Officials and their assurance given to Mingyuan Medicare in entering into the arrangement. Mingyuan Medicare did not know the relationship between the Officials and BNL or whether the Officials controlled, supervised or otherwise legally represented BNL. As far as Mingyuan Medicare was aware, the Officials did not hold any positions within BNL. The Listing Committee found that Mingyuan Medicare and the Mingyuan Medicare Subsidiary would not have any recourse against the Officials if the Officials decided not to use their "*influence or power*" to procure a refund by BNL. Should BNL fail to make repayments as required under the terms of the arrangement, the Mingyuan Medicare Subsidiary would have to start a legal action against BNL to recover the Payment. Furthermore, Mingyuan Medicare did not consult professional advisers with respect to the arrangement nor did it conduct any due diligence on the proposed arrangement or verify any of the information received from Mr. Iu.

Mingyuan Medicare's results for the year ended 31 December 2013 (**Results**) were approved at Mingyuan Medicare's board meeting on 31 March 2014 and published on the same day. The Results disclosed the Payment and the write-off of the entire amount of the Payment "*for prudence sake as the Directors were still in negotiation with [BNL] regarding repayment but no agreement had yet been concluded.*" On the same day shortly before the board meeting, the draft Results were circulated to all but one of the directors of the company.

On 9 June 2014, Mingyuan Medicare announced full recovery of the Payment. However, in the course of Mingyuan Medicare's audit of the results for the year ended 31 December 2014 (**FY2014**), the auditors could not verify that the group actually owned the bank balance as of 31 December 2014 of RMB420 million, which, according to Mingyuan Medicare, included the RMB396 million allegedly recovered (**the Bank Balance issue**). The auditors advised Mingyuan Medicare to conduct an independent forensic investigation into the Bank Balance issue. The auditors resigned with effect from 21 December 2015. As of 29 January 2016, the company had yet to publish its audited FY2014 results and trading in the shares of the company has been suspended since 1 April 2015.

The Listing Committee found that the Payment constituted financial assistance by Mingyuan Medicare to BNL. It was a nonexempt transaction subject to requirements under Chapter 14 of the Listing Rules. Based on the size of the Payment, it also constituted a major transaction subject to the announcement and shareholder approval requirement under Chapter 14 of the Listing Rules. Furthermore, the Listing Committee found that Mingyuan Medicare did not have adequate and effective internal controls at the time to ensure its compliance with the Listing Rules.

The Listing Committee found that the directors had breached Rule 3.08(f) of the Listing Rules by failing to apply such degree of skill, care and diligence as may reasonably be expected of persons of their knowledge and experience and holding their office within the company, as well as by their respective undertakings to the HKEx.