

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)

28 September 2016

Directors have clear obligations to ensure that assets of the listed issuer are properly safeguarded, their application is proper and is in the interest of the listed issuer and the shareholders as a whole.

Directors must also give due consideration to compliance with the Exchange Listing Rules at the time a proposed transaction is being considered. Post event justifications and self-serving interpretations of the Exchange Listing Rules will not be tolerated, particularly where shareholder approval should have been sought.

Directors must take an active interest in the affairs of the listed issuer and actively involve themselves in the decision-making process at board meetings.

The Exchange continues to view seriously directors' breach of duties under the Exchange Listing Rules and will take disciplinary actions against delinquent directors.

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

CENSURES:

- (1) **Mingyuan Medicare Development Company Limited ("Company")** (Stock Code: 233) for failing to disclose a major transaction and obtain prior shareholders' approval in breach of Rules 14.34 and 14.40 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("**Exchange Listing Rules**");

FURTHER CENSURES the following former executive directors ("**ED**"), non-executive director ("**NED**"), and independent non-executive directors ("**INED**") of the Company

- (2) **Mr Yao Yuan**, former ED and chairman ("**Mr Yao**");
- (3) **Mr Zhao Chao**, former ED ("**Mr Zhao**");
- (4) **Mr Zhou Li Qun**, former ED ("**Mr Zhou**");

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- (5) **Mr Yu Ti Jun**, former NED (“**Mr Yu**”);
- (6) **Mr Lee Sze Ho Henry**, former INED (“**Mr Lee**”); and
- (7) **Mr Tang Yan Qin**, former INED (“**Mr Tang**”)

AND CRITICISES:

- (8) **Mr Chien Hoe Yong Henry**, former ED (“**Mr Chien**”);

(The directors identified at (2) to (8) above are collectively referred to as the “**Relevant Directors**”.)

for their breaches of Rule 3.08(f) of the Exchange Listing Rules and their obligations under the Director’s Declaration and Undertaking given to The Stock Exchange of Hong Kong Limited (“**Exchange**”) in the form set out in Form B of Appendix 5 to comply with the Exchange Listing Rules to the best of their ability and to use their best endeavours to procure the Company’s rule compliance (collectively, “**Undertakings**”).

The Listing Committee also states that the conduct of Mr Yao, Mr Zhao, Mr Zhou, Mr Yu, Mr Lee and Mr Tang in the matter will be taken into account in the Exchange’s assessment of their suitability to be appointed directors of listed issuers on the Exchange in future under Rule 3.09 and the equivalent rule in the GEM Listing Rules.

On 28 June 2016, the Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Undertakings.

FACTS

On 23 December 2013, the Company’s wholly-owned subsidiary (“**Subsidiary**”) paid RMB396 million (“**Payment**”) to an unrelated PRC entity, Beijing Nong Long Investment Management Company Limited (“**BNL**”).

The Payment was made pursuant to an agreement dated 23 December 2013 between the Subsidiary and BNL under which BNL agreed to exchange the Payment into Hong Kong dollars within three months, at an agreed exchange rate and subject to a service charge by BNL, and deposit the converted Payment in Hong Kong dollars into the Company’s designated bank account on or before 22 March 2014. If BNL could not fulfil its duty, it would refund the Payment within three working days after 22 March 2014 (collectively, “**Arrangement**”). No interest was payable, and no security or collateral was provided by BNL for the Payment.

The Company asserted that the purpose of the Arrangement was to earn significant foreign exchange gain as the Company expected a potential devaluation of Renminbi vs Hong Kong dollars towards the end of 2013.

Mr Lu Chung (“**Mr Lu**”), the chairman and legal representative of the Subsidiary and younger brother of Mr Yao, the Company’s then chairman, recommended the proposed Arrangement to the Company and the Subsidiary. He represented the Company in all discussions and dealings with BNL, and the contact with the Officials (defined below) in relation to the Arrangement. All information received by the Company and its directors about BNL, the proposed Arrangement, and all related matters was provided by Mr Lu.

Mr Lu informed the Company that:

- (a) The Arrangement was introduced to him by certain senior government official(s) in Beijing (“**Officials**”).
- (b) The Officials did not wish their identity and/or officials posts to be revealed.
- (c) 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 Subsidiary.
- (d) 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 the Company.

The Company did not conduct any due diligence on the proposed Arrangement and did not take any steps to verify any of the information received from Mr Lu. In causing the Subsidiary to enter into the Arrangement, the Company and its directors relied on “*guanxi*”, the introduction by the Officials and their assurance given to the Company. The Company did not know the relationship between the Officials and BNL or whether the Officials controlled, supervised, or otherwise legally represented BNL. As far as the Company was aware, the Officials did not hold any positions within BNL. The Company did not know how the Officials would honour the assurance it provided.

The Company and the 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 Subsidiary would have to start a legal action against BNL to recover the Payment. The reliance on the Officials was a risk that the Company was prepared to accept when approving the Arrangement.

The Company did not consult professional advisers regarding the Arrangement whether on its Exchange Listing Rule implications or compliance with applicable laws and regulations as may be required in respect of the foreign exchange arrangements involved in the Arrangement.

The term of the Arrangement was subsequently extended to the end of May 2014. In agreeing to the extension, the Company again relied on the reassurance by the Officials, as relayed to it by Mr Lu, that BNL would fulfil its obligations under the Agreement.

The Company's results for the year ended 31 December 2013 ("**Results**") were approved at the Company 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 the directors of the Company (except Mr Chien who had indicated that he would not be attending the board meeting).

On 9 June 2014, the Company announced full recovery of the Payment in June 2014. However, in the course of the Company's audit of the results for the year ended 31 December 2014 ("**FY2014**"), the Company's auditors ("**Auditors**") could not verify that the Company's relevant subsidiary actually owned the bank balance as of 31 December 2014 of RMB420 million which, according to the Company, included the RMB396 million allegedly recovered ("**Bank Balance issue**"). The Auditors advised the Company 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 remained suspended (since 1 April 2015) pending, among other matters, publication of outstanding financial results and resolution of the Bank Balance issue.

LISTING COMMITTEE'S FINDINGS OF BREACH

Having considered the Listing Department's submissions and the submissions of the Company and the Relevant Directors, the Listing Committee concluded as follows:

Company - Breach of Rules 14.34 and 14.40

The Listing Committee found that the Payment constituted financial assistance by the Company to BNL. It was a non-exempt transaction subject to requirements under Chapter 14 of the Exchange Listing Rules. Based on the size of the Payment, it constituted a major transaction subject to the announcement requirement under Rule 14.34 and shareholder approval requirement under Rule 14.40 of the Exchange Listing Rules.

The Payment was only disclosed, with delay, on 31 March 2014. The Company had not obtained shareholders' approval before the Payment was made. The Listing Committee concluded that the Company breached Rules 14.34 and 14.40 of the Exchange Listing Rules.

Internal Controls

The Listing Committee also concluded on the materials and submissions presented that the Company did not have adequate and effective internal controls at the relevant time to ensure the Company's compliance with the Exchange Listing Rules and the Relevant Directors' performance of duties as, among other things,

- (1) The Company had not demonstrated it had at the relevant time adequate internal controls, (a) governing due diligence, consideration and approval of proposed investments, acquisitions or arrangements; and (b) to ensure the Company's compliance with the Exchange Listing Rules.
- (2) No adequate procedures were put in place to ensure the board members' effective monitoring of the operations of the Company and its subsidiaries ("**Group**"), performance and its trading and financial position and in a timely manner.

- (3) The Company adopted a practice of not supplying draft financial results to the directors who would not be attending the board meeting convened to consider and approve the results. However, regardless of whether the directors could or would attend the relevant board meeting, they remained responsible collectively and individually to ensure the accuracy and completeness of the results and were obliged to review and comment on the draft results. No prudent management of a listed company would permit such a practice.

Relevant Directors – Breach of Rule 3.08(f) and Undertakings

The Relevant Directors were in office when the Payment was made.

Mr Zhou, Mr Yao and Mr Zhao participated in approving the Arrangement either at the board meeting of the Subsidiary or the Company before the Payment was made. Mr Lee and Mr Tang confirmed that they had knowledge of the Arrangement in December 2013. They all had knowledge of the Payment at the relevant time (“**Directors with Knowledge**”).

At all relevant time, Mr Chien had no knowledge of the Arrangement and the Payment as the Company did not inform Mr Chien and did not involve him in the consideration and approval of the same. Mr Chien became aware of the Payment from the Results published on 31 March 2014.

Mr Yu did not attend the board meeting of the Company on 23 December 2013 when the board approved the Arrangement. He made conflicting submissions in the course of the Exchange’s investigation on whether he had knowledge of the Payment in December 2013 (“**Requisite Knowledge**”). His earlier submissions asserted he had knowledge but he denied knowledge in subsequent submissions.

According to Mr Chien, (a) he tendered his “*first resignation*” in November 2013 but agreed to stay on until replacement arrangements were put in place; (b) he informed the Company that he would only review and give advice to the board on the Company’s transactions but he no longer wished to take part in any decision-making process; and (c) he had since been denied access to the Company’s financial information and documents. According to the Company, Mr Chien asked the Company to cease sending him any information in relation to the Company as “*he resigned as ED and he wanted to serve as a NED from 1 November 2013.*” Mr Chien resigned on 24 April 2014 as announced by the Company.

Four board meetings of the Company were held in 2013. Mr Chien did not attend any of them.

Mr Yao, Mr Zhao, Mr Zhou, Mr Lee and Mr Tang

The Listing Committee concluded that each of these five Directors with Knowledge breached (a) Rule 3.08(f) (i.e. failed to apply such degree of skill, care and diligence as may reasonably be expected of him with his knowledge and experience and holding his office within the Company); and (b) his Undertaking to use his best endeavours to procure the Company’s compliance with the Exchange Listing Rules in that:

- (a) notwithstanding his knowledge of the Arrangement at the relevant time,
 - (i) he did not procure that the Company conduct any due diligence at all of any aspect of the proposed Arrangement, BNL, or the Officials;
 - (ii) he approved the Arrangement and the related Payment merely on the basis of the scant, general and unverified information provided by Mr Lu;
 - (iii) he did not consider and take steps to ensure that the Company's interests in the Arrangement were protected and safeguarded including (1) failing to require the provision of collateral or any guarantee of the Company's full recoupment of the Payment in accordance with the terms of the Arrangement in due course, and (2) failing to require that interest be paid on the funds paid over to BNL under the Arrangement;
 - (iv) he did not obtain or procure the Company to obtain professional advice or consult the Exchange to ensure the Company's compliance with the Exchange Listing Rules in relation to the Arrangement; and any applicable PRC laws and regulations in relation to the foreign exchange involved in the Arrangement before committing the Company to the Arrangement;
 - (v) he did not ensure that the Company complied with the Exchange Listing Rules in relation to the Arrangement and the related Payment; and
- (b) he did not ensure that the Company had adequate and effective internal controls in place to ensure the Company's compliance with the Exchange Listing Rules and directors' close and effective monitoring of the Group's financial and trading position.

The Listing Committee also concluded that by reason of his breach of Rule 3.08(f) referred to above, each of the five Directors with Knowledge also breached his Undertaking to comply with the Exchange Listing Rules to the best of his ability.

Mr Chien

The Listing Committee concluded that Mr Chien breached Rule 3.08(f) and his Undertakings for the following reasons:

- (a) When he became aware or should have become aware of the Payment from the Results published on 31 March 2014, he did not make enquiries with the directors of the Company including for example, the reasons and authorization of the Payment, due diligence conducted on it, its merits, the non-recovery of the Payment, its write-off, why he had not been informed of the Payment at any time and the Exchange Listing Rule implications of the Payment.
- (b) He did not ensure the Company had adequate internal controls in place as in the case of the five Directors with Knowledge.
- (c) He failed to perform his director's duties in other respects, he being a long standing Chief Executive Officer ("**CEO**") and ED of the Company at the relevant time (since 2002):

- (i) At all relevant times, Mr Chien was held out as the CEO and an ED of the Company with him being identified as such in all of the Company's disclosure. In any event, despite his assertion of tendering his "*first resignation*" in November 2013, Mr Chien acknowledged that he remained in office until he resigned on 24 April 2014. There was nothing disclosed to the shareholders/market which suggested any modification or reduction of his responsibilities at any time. Until 24 April 2014, Mr Chien had the responsibilities of an ED and the CEO of the Company regardless of whatever private arrangements he might or might not have had with the Company. However since November 2013, Mr Chien had limited his performance of director's duty to reviewing and giving advice to the board on the Company's transactions and removed himself from the board decision making process.
- (ii) Mr Chien did not attend all four board meetings in 2013.
- (iii) Mr Chien did not attend the board meeting on 31 March 2014 to review and approve the Results (although the Results were signed off by the board of directors of which he was still a member). According to Mr Chien, he did not attend the meeting as the Company had not provided him with the draft Results; and his request for meetings with the financial controller and the Auditors to discuss the draft Results did not meet with any positive response. Mr Chien ought to have brought the issue to the attention of all other board members to be considered and addressed by the board. There was nothing to suggest he did so. Neither did he notify the Exchange. He chose to remain in office, did not take any action and did not resign until 24 April 2014.
- (iv) As an ED and the CEO of the Company, Mr Chien had clear obligations as a matter of law to the Company to act in the best interest of the Company and use his skills for the benefit of the Company. His conduct and failure to act as described at (i) to (iii) above demonstrated a clear derogation and abdication of his responsibilities toward the Company and a clear breach of Rule 3.08(f) by him.

Mr Yu

Mr Yu made conflicting submissions. He endorsed the Company's submissions and made his earlier written submissions to the Exchange (collectively, "**Earlier Submissions**") which showed that he had the Requisite Knowledge at the relevant time. However in his subsequent submission, he denied he had the Requisite Knowledge and submitted that he had signed the Earlier Submissions at the Company's request as the Company prepared them and passed them to him to sign and return telling him that "*it was in the interest of the Company*".

Mr Yu also contended that since his "*retirement*" in February 2013, he had not participated in the Company's operations. However he also acknowledged despite his repeated requests to resign, the Company did not reply.

The Listing Committee, having considered all information and materials available, found that on balance of probabilities, the Earlier Submissions were more credible and on this basis, made the finding that Mr Yu had the Requisite Knowledge at the relevant time. On this basis, the Committee found that Mr Yu had committed the same breaches of Rule 3.08(f) and his Undertakings as the five Directors with Knowledge referred to above.

REGULATORY CONCERN

The Listing Committee considers the breaches and the Relevant Directors' conduct in this matter serious. The Listing Committee expresses strong disapproval of the conduct (and lack of action) on the part of the Relevant Directors for the following reasons:

- (a) A substantial sum was involved.
- (b) No due diligence was conducted at all before the Payment was made.
- (c) The fact that it was the first time that the Company engaged in the arrangement of this nature as that of the Arrangement rendered it even more important to conduct thorough due diligence. However the directors who had knowledge of the Arrangement at the relevant time failed to do so. They simply approved the Arrangement and the associated Payment based on the general, scant and unverified information provided by Mr lu. They did not consider and ensure that safeguards were built into the terms of the Arrangement to ensure that the Company's interests in the Arrangement were adequately protected.
- (d) For those of the Relevant Directors who became aware or ought to have become aware of the Payment from the Results whether in draft or as published, they did not make any enquiries at all. They clearly failed to take an active interest in the Company's affairs. Their detached and passive attitude clearly fell short of the standard expected of directors of listed companies. Their lack of knowledge of the Arrangement and the Payment was attributable in part to the internal control deficiencies for which all the Relevant Directors were also responsible.
- (e) In limiting his performance of his own director's duty, Mr Chien deprived the Company and its shareholders of the benefit of his expertise, attention and participation in the management and operations of the Company including the consideration and decision making regarding material transactions and application of the Group's assets.
- (f) Shareholders of the Company and investors had been prejudiced in terms of their right to the timely receipt of disclosure about the Arrangement and the Payment. Shareholders had been deprived of their right (under the Exchange Listing Rules) to decide whether to approve the Arrangement before the Payment was made.
- (g) The full recovery of the Payment alleged by the Company might be questionable with the Bank Balance issue identified by the Company's Auditors.
- (h) The Bank Balance issue was one primary reason causing the Company's delay in publishing its audited FY2014 results and the prolonged suspension of the trading of the Company's shares since 1 April 2015.
- (i) The case revealed serious internal control deficiencies and poor corporate governance in the Company.

In the view of the Listing Committee, the Relevant Directors' conduct and failure to act in this matter was unacceptable and was a dereliction of their duties as directors of the Company.

SANCTIONS

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

- (1) censure the Company for its breach of Rules 14.34 and 14.40 of the Exchange Listing Rules;
- (2) censure each of Mr Yao, Mr Zhao, Mr Zhou, Mr Yu, Mr Lee and Mr Tang for his breach of Rule 3.08(f) and his Undertakings; and
- (3) criticise Mr Chien for his breach of Rule 3.08(f) and his Undertakings.

The Listing Committee also states that the conduct of Mr Yao, Mr Zhao, Mr Zhou, Mr Yu, Mr Lee and Mr Tang in the matter will be taken into account in the Exchange's assessment of their suitability to be appointed directors of listed issuers on the Exchange should any of them seek to be so appointed in future under Rule 3.09 and the equivalent rule in the GEM Listing Rules.

The Listing Committee further directs:

- (1) The Company to appoint an independent Compliance Adviser (as defined in Rule 3A.01 namely, any corporation or authorised financial institution 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 under Rule 3A.19 or Rule 3A.20 to undertake work as a Compliance Adviser) satisfactory to the Listing Department on an ongoing basis for consultation on Exchange Listing Rules compliance for two years within four weeks from the publication of this news release. The Company is to submit the proposed scope of retainer to the Listing Department for comment before appointment of the Compliance Adviser. The Compliance Adviser shall be accountable to the Audit Committee of the Company.
- (2) As a pre-requisite of any future appointment as a director of any company listed on the Exchange, each of the former directors, Mr Yao, Mr Zhao, Mr Zhou, Mr Yu, Mr Lee, Mr Tang and Mr Chien, who is not currently a director of any other company listed on the Exchange, (a) attend 24 hours of training on Exchange Listing Rules compliance, director's duties and corporate governance matters together with four hours on Exchange Listing Rule Chapter 14 compliance (altogether 28 hours) provided by the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Listing Department 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 Listing Department with the training provider's written certification of full compliance.
- (3) The Company is to publish an announcement to confirm that the direction in paragraph (1) above has been fully complied with within two weeks after the fulfillment of such direction.
- (4) The Company is to submit drafts 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.

- (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.

For the avoidance of doubt, the Exchange confirms that the sanctions and directions detailed in this news release apply only to the Company and the Relevant Directors identified above and not to any other past or present board members of the Company.