

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Kaisun Holdings Limited (Stock Code: 8203) and Seven Directors

SANCTIONS AND DIRECTIONS

The Stock Exchange of Hong Kong Limited (**Exchange**)

CENSURES:

(1) **Kaisun Holdings Limited (Company);**

IMPOSES A PREJUDICE TO INVESTORS' INTERESTS STATEMENT and **CENSURE** against:

- (2) **Mr Chan Nap Kee Joseph**, Executive Director (**ED**) of the Company (**Mr Chan**);
(3) **Mr Yang Yong Cheng**, ED of the Company (**Mr Yang**);

CENSURES:

- (4) **Mr Liew Swee Yean**, Independent Non-Executive Director (**INED**) of the Company (**Mr Liew**);
(5) **Dr Wong Yun Kuen**, former INED of the Company (**Dr Wong**);
(6) **Mr Siu Siu Ling Robert**, former INED of the Company (**Mr Siu**);
(7) **Mr Brian Ralph Anderson**, former INED of the Company (**Mr Anderson**); and

CRITICISES:

- (8) **Dr Chow Pok Yu Augustine**, former ED of the Company (**Dr Chow**).
(The directors identified at (2) to (8) above are collectively referred to as the **Relevant Directors**.)

The Prejudice to Investors' Interests Statement is a statement that, in the Exchange's opinion, the retention of office by Mr Chan and Mr Yang is prejudicial to the interests of investors.

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AND FURTHER DIRECTS:

A review of the Company's internal controls for procuring compliance with Chapter 19 of the GEM Listing Rules (**GEM Rules**);

The appointment of a Compliance Adviser for two years;

The publication of an announcement of the Securities Transactions (as defined below) and the Up Energy Loans/ Payments (as defined below) in compliance with GEM Rules 19.34 and 19.58; and

21 hours of training on regulatory and legal topics and GEM Rule compliance for Mr Liew and Dr Wong (to be completed within 90 days), and for Dr Chow, Mr Siu and Mr Anderson (as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange).

HEARINGS

On 12 March 2024, the GEM Listing Committee conducted a hearing (**Disciplinary Hearing**) into the conduct of the Company and the Relevant Directors in relation to their obligations under the GEM Rules and the Undertakings.

On 5 June 2024, the Listing Review Committee conducted a hearing of the review application of Mr Chan and Mr Yang in respect of the findings of breaches and sanctions imposed against them by the GEM Listing Committee.

SUMMARY OF FACTS

The Company advanced loans (**Loans**) to, and made professional fee payments (**Payments**) on behalf of, Up Energy Development Group Limited (**Up Energy**) (now delisted, previous stock code: 307). The Company also entered into transactions to acquire securities of two other listed issuers (**Securities Transactions**). All these transactions were not compliant with the announcement and/or shareholder approval requirements for notifiable transactions under Chapter 19 of the GEM Rules.

The Up Energy Loans/ Payments

1. Between 11 December 2015 and 31 December 2019, the Company advanced the Loans to, and made Payments on behalf of, Up Energy in numerous instances for a total sum of HKD39.3 million. A loan of HKD15 million was advanced by the Company to Up Energy in December 2015. The Payments were made by the Company on behalf of Up Energy pursuant to a funding agreement entered into in August 2017 (**Funding Agreement**). At the time the Company entered into the Funding Agreement, Up Energy was already undergoing provisional liquidation for restructuring purposes, and already owed the Company the entire balance of the HKD15 million loan. The Loans and the Payments (collectively, **Up Energy Loans/ Payments**) were provided without any security to protect the Company's position. The Payments were also provided whilst Up Energy was undergoing the said provisional liquidation and in clear financial difficulty. Although the Funding Agreement contained various protections for the Company in the form of conditions precedent and similar requirements, they had not been complied with before funding was provided to Up Energy.
2. On 5 January 2022, the shares of Up Energy were delisted from the Exchange.
3. On 15 May 2023, the Company published its quarterly report for the three months ended 31 March 2023, stating that Up Energy was still undergoing liquidation.
4. According to the Company's quarterly report for the nine months ended 30 September 2022, the Company had not recovered the whole sum from Up Energy, with an outstanding balance of approximately HKD9.3 million of the principal of the loans/ payments.

The Securities Transactions

5. Between 5 December 2019 and 14 January 2020, the Company carried out 18 transactions to acquire 98 million shares of EJE (Hong Kong) Holdings Limited (now delisted, previous stock code: 8101) for an aggregated consideration of HKD14 million.
6. On 9 September 2020, the Company acquired 13.2 million shares of Tesson Holdings Limited (stock code: 1201) for a consideration of HKD6.2 million.

RULE REQUIREMENTS

GEM Rule 19.34 (as then in force) provides that a listed issuer must inform the Exchange and publish an announcement as soon as possible after the terms of, amongst others, a discloseable transaction and/or a major transaction, have been finalised.

GEM Rule 19.40 provides that a major transaction must be made conditional on approval by shareholders.

GEM Rule 5.01 provides that directors, both collectively and individually, are expected 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, directors must be answerable to the issuer for the application or misapplication of its assets (GEM Rule 5.01(3)), and 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 (GEM Rule 5.01(6)). GEM Rule 5.01 provides that directors must also take an active interest in the issuer's affairs and must follow up anything untoward that comes to their attention.

GEM Rule 5.20 (as then in force) provides that a compliance officer must, as a minimum, advise on and assist the board in implementing procedures to ensure that the listed issuer complies with the GEM Rules and other applicable laws and regulations.

Pursuant to the Director's Undertaking to the Exchange (**Director's Undertaking**) (in the form set out in the then Appendix 6A to the GEM Rules), each director is required to comply to the best of his ability, and to use his best endeavours to procure the listed issuer's compliance, with the GEM Rules.

EXCHANGE'S FINDINGS OF BREACH

The Exchange found as follows:

The Company

1. The Company, as admitted at the Disciplinary Hearing, breached GEM Rules 19.34 and/or 19.40 in respect of the Up Energy Loans/ Payments and the Securities Transactions as set out below.

The Up Energy Loans/ Payments

2. The Up Energy Loans/ Payments constituted financial assistance by the Company to Up Energy. The Company was obliged to announce these transactions as soon as possible after their terms had been finalised. However, the transactions have never been fully announced in accordance with the GEM Rules. Whilst there was some disclosure on the Up Energy Loans/ Payments in the Company's 2021 annual report, the disclosure: (a) was not in a standard announcement in compliance with GEM Rule 19.34; (b) did not contain all information that is required in an announcement (as set out in GEM Rule 19.58); and (c) did not disclose the GEM Rule implications of the transactions. The limited disclosure in the 2021 annual report was therefore not a permissible substitute for the primary requirement to announce the transactions under the GEM Rules, and in any event, was late by approximately 2.5-6.5 years.
3. Furthermore, the Up Energy Loans/ Payments should have been aggregated under GEM Rule 19.22, given (a) their common purpose (i.e. financial assistance to Up Energy, as admitted by the Company), (b) their common recipient/ beneficiary (i.e. Up Energy), and (c) their proximity in time. After aggregation, the Up Energy Loans/ Payments constituted a major transaction. The Company was therefore required, but failed, to obtain shareholder approval for the Up Energy Loans/ Payments.
4. Accordingly, the Company breached GEM Rules 19.34 and 19.40 for its failure to (a) announce the Up Energy Loans/ Payments as soon as possible after their terms had been finalised and (b) obtain shareholder approval for them.

The Securities Transactions

5. The Company was required under GEM Rule 19.34 to announce the Securities Transactions, which constituted discloseable transactions, at the time when their terms were finalised.
6. Similar to the Up Energy Loans/ Payments, there was some disclosure on the Securities Transactions in the Company's 2021 annual report. However, for the same reasons in respect of the Company's breaches regarding the Up Energy Loans/ Payments as set out above, such limited disclosure was not a permissible substitute for the primary requirement to announce the transactions under the GEM Rules, and was late by approximately 21-30 months.
7. Accordingly, the Company breached GEM Rule 19.34 for its failure to announce the Securities Transactions as soon as possible after their terms had been finalised.

The Relevant Directors

8. The Relevant Directors, as admitted at the Disciplinary Hearing, breached their duties under GEM Rule 5.01 and Director's Undertakings in respect of the Up Energy Loans/ Payments and/or the Securities Transactions, and the Company's internal controls as set out below. In the case of Mr Chan and Mr Yang, their failure to discharge their responsibilities under the GEM Rules was persistent.
9. Mr Yang and Dr Chow also breached their duties as compliance officers of the Company under GEM Rule 5.20.

The Up Energy Loans/ Payments

10. Mr Chan and Mr Yang had close involvement in, and knowledge of, the Up Energy Loans/ Payments. Mr Chan signed seven loan agreements which led to a majority of the Loans by value (HKD15 million). Also, he and Mr Yang approved at a board meeting the Company's entering into of the Funding Agreement to provide funding to Up Energy, including making the Payments on behalf of Up Energy.
11. Given their close involvement in, and knowledge of, the Up Energy Loans/ Payments, Mr Chan and Mr Yang had a particular responsibility to ensure the Company's GEM Rule compliance in respect of the transactions. However, they did not seek professional advice to support their alleged view at the time that the Payments made pursuant to the Funding Agreement did not amount to financial assistance to Up Energy.
12. The other Relevant Directors who were on the board at the time were also aware of the Up Energy Loans/ Payments (note: Dr Chow was also on the board at the time but he resigned in late December 2016). They also had a duty to ensure the Company's GEM Rule compliance in respect of the transactions, but did not take any steps in that regard.
13. The Relevant Directors also had a duty to protect the Company's assets. As mentioned above, the Up Energy Loans/ Payments were provided without any security, and the Company entered into the Funding Agreement whilst Up Energy was undergoing provisional liquidation and in clear financial difficulty. The Relevant Directors did not demonstrate to have assessed, addressed or mitigated the risks of providing further funding to Up Energy in those circumstances, or the risks of waiving Up Energy's compliance with its obligations or conditions precedent under the Funding Agreement. There was no contemporaneous evidence or credible basis to support their asserted belief or views at that time that (a) Up

Energy had substantial assets; (b) the risk of default by Up Energy was low; and (c) the possibility of a successful debt restructuring and trading resumption of Up Energy was high – factors which had allegedly been taken into account in deciding to make the Loans/ Payments. The Exchange noted that conflicting submissions were made regarding the Relevant Directors' asserted belief about Up Energy's assets, in particular whether any due diligence on such assets had been conducted prior to entering into the Funding Agreement. This further called into question the credibility of their assertions.

14. The Relevant Directors failed to procure the Company's GEM Rule compliance in respect of the Up Energy Loans/ Payments and protect the Company's assets. Accordingly, they breached GEM Rule 5.01 and their Director's Undertakings. Mr Yang and Dr Chow also breached GEM Rule 5.20 for their failure to discharge their duties as compliance officers to procure the Company's GEM Rule compliance, in particular seeking shareholders' approval, in respect of the transactions.

The Securities Transactions

15. Mr Yang was the compliance officer of the Company at the time. He also sat on an investment committee that approved the Securities Transactions. He had a particular responsibility to supervise the committee and procure the Company's GEM Rule compliance.
16. However, Mr Yang did not provide any advice or comment, or seek professional advice, on GEM Rule compliance. Mr Yang placed near complete reliance on two company secretaries to ensure GEM Rule compliance, but it was not clear if any training on GEM Rule compliance had been provided to them, and there was no evidence that Mr Yang had followed up with them to ensure GEM Rule compliance.
17. Mr Yang therefore failed to discharge his duty as a director and use his best endeavours to procure the Company's GEM Rule compliance in respect of the Securities Transactions, in breach of GEM Rule 5.01 and his Director's Undertaking. He also breached GEM Rule 5.20 for his failure to discharge his duties as a compliance officer.

Internal Controls

18. The Company did not have any internal controls that were relevant and applicable to the Up Energy Loans/ Payments and the Securities Transactions. There were no: (a) policies or procedures on internal controls, risk management and GEM Rule compliance that were relevant and applicable to the transactions at issue, or (b) regular internal reviews of those internal controls matters for the three years before the start of, and during, the period when

the transactions at issue took place.

19. The internal control deficiencies were particularly serious given that the Company had already received a warning letter from the Exchange in September 2017 in relation to a breach of GEM Rule 19.34 (**2017 Warning Letter**). That warning was issued after taking into account the Company's statement, in its announcement of 11 April 2017, that it had taken remedial action and had engaged an external consultant to review its internal controls. However, there was no evidence during the Exchange's investigation that any such remedial action had been taken to strengthen its internal controls since the 2017 Warning Letter. While the Company and the Relevant Directors provided a supplemental submission at a late stage of the disciplinary process on the appointment of a compliance adviser for a period of 15 months from October 2022, the Exchange noted that such appointment occurred only after the transactions at issue had taken place.
20. The Relevant Directors failed to take steps to ensure that the Company had adequate internal controls. They failed to arrange sufficient training for themselves and others in the Company on GEM Rule compliance and corporate governance. Mr Yang and Dr Chow, as compliance officers, failed to advise on and assist the board in implementing procedures to ensure the Company's GEM Rule, legal and regulatory compliance.
21. The Relevant Directors therefore failed to ensure that the Company had established adequate and effective internal controls and risk management systems. Accordingly, they breached GEM Rule 5.01 and their Director's Undertakings. Further, Mr Yang and Dr Chow breached GEM Rule 5.20 for their failure to discharge their duties as compliance officers.

CONCLUSION

The Exchange decided to impose the sanctions and directions set out in this Statement of Disciplinary Action.

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

Hong Kong, 10 December 2024