

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against KEYNE LTD (Formerly Known as Nine Express Limited) (Stock Code: 9) and Six Directors

SANCTIONS AND DIRECTIONS

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

CENSURES:

- (1) **Keyne Ltd** (formerly known as Nine Express Limited) (Stock Code: 9) (**Company**);
- (2) **Ms Qian Ling Ling**, Chairman and ED of the Company (**Ms Qian**);
- (3) **Mr Zhang Li**, CEO and ED of the Company (**Mr Zhang**);
- (4) **Mr Xiang Junjie**, ED of the Company (**Mr Xiang**);
- (5) **Mr Tang Ping Sum**, INED and Audit Committee chairman of the Company (**Mr Tang**);
- (6) **Mr Tsui Pui Hung, Walter**, INED and Audit Committee member of the Company (**Mr Tsui**);
and
- (7) **Mr Chiu Sin Nang, Kenny**, former INED and Audit Committee member of the Company (**Mr Chiu**).

(The directors identified at (2) to (7) above are collectively referred to as the **Relevant Directors**.)

AND FURTHER DIRECTS:

- (1) Mr Zhang to attend 29 hours of training on regulatory and legal topics including Listing Rule compliance; and
- (2) Each of Ms Qian, Mr Xiang, Mr Tang, Mr Tsui and Mr Chiu to attend 26 hours of training on regulatory and legal topics including Listing Rule compliance.

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HEARINGS

On 28 November 2022, 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.

On 22 March 2023, the Listing Review Committee conducted a hearing of the review application of Mr Tang, Mr Tsui and Mr Chiu in respect to the findings of breaches and sanctions imposed by the Listing Committee.

SUMMARY OF FACTS

The Pledge Agreements

On 27 March 2018 and 9 April 2019, the Subsidiary, an indirect wholly-owned subsidiary of the Company, entered into the 2018 and 2019 Pledge Agreements respectively (**Pledge Agreements**). Under the Pledge Agreements, properties owned by the Subsidiary were pledged as collateral to secure the repayment obligations of an entity (the **Borrower**) indirectly wholly-owned by Mr Zhu Boheng, the controlling shareholder of the Company, and Ms Qian, who is Mr Zhu's mother and an ED of the Company, in respect of an **Entrusted Loan** in the sum of RMB 500 million (**Arrangement**). The Borrower is a connected person to the Company. As stated in the Company's announcement of 29 April 2020, in return for entering into the Pledge Agreements, the Company and its subsidiaries (**Group**) would enjoy part of the Entrusted Loan. Each of the Pledge Agreements constituted a major and connected transaction of the Company subject to announcement, circular and shareholders' approval requirements under the Listing Rules.

Mr Zhang, the director involved in the transaction, was not conversant with the Listing Rules and so did not report the Pledge Agreements to the Board for discussion and approval at the relevant time.

The Pledge Agreements were not announced until 29 April 2020, a delay of over one to two years since the execution of the Pledge Agreements. No shareholders' approval was sought. The Entrusted Loan was repaid in full and the pledge was subsequently released.

The RMB 200 million loan

In the Circular relating to the Pledge Agreements published by the Company on 30 December 2020 (**Circular**), the Company stated that in return for the Subsidiary's entry into the Pledge Agreements, the Controlling Shareholder of the Company committed to advance no less than RMB 200 million to the Company. In fact, the advance was to be made under four Facility Agreements dated 12 October 2017, 17 January 2018, 30 January 2018 and 9 February 2018. The Facility Agreements were said to be interest free and without any collateral as security.

The Controlling Shareholder is Keyne Holdings Limited (a company wholly owned by Mr Zhu). There was no written agreement for the RMB 200 million loan. The RMB 200 million loan had been drawn down between April 2018 and February 2019 pursuant to the Facility Agreements. The loan was subsequently repaid.

Since the RMB 200 million loan was advanced in return for the Subsidiary's entry into the Pledge Agreements, it also constituted a major and connected transaction subject to announcement, circular and shareholders' approval requirements under the Listing Rules. The Company did not comply with such procedural requirements. Neither the connected nature of the Pledge Agreements nor the RMB 200 million loan were disclosed in the Company's Annual Report 2018 and 2019.

Incomplete Disclosure

The disclosures in the Announcement were not complete in material respects in breach of Rule 2.13(2): (a) they were silent and/or unclear as to the precise nature of the Arrangement; (b) they failed to disclose important details namely that the "enjoyment" of part of the Entrusted Loan was in fact a commitment by the Controlling Shareholder to advance funds to the Group under pre-existing Facility Agreements that were granted on the basis that no collateral/security be provided; and (c) they failed to inform the Company's shareholders and the public that under such Arrangement, in the event the Controlling Shareholder failed to honour its commitment under the Facility Agreements, there would be no recourse against the Controlling Shareholder since the pledge of the Chengdu Property was made in favour of the Bank to secure the Borrower's obligations only.

The Annual Report 2019 disclosed the Arrangement but did not disclose the connected nature of the parties.

Internal Controls

The Company was not able to locate its internal control policies and procedures for disclosure of connected parties / transactions or for related Rule compliance at the relevant time. Based on an internal controls review by the Company's internal controls department in 2018, it was found that the Company lacked sufficient written internal controls procedures to ensure Rule compliance on notifiable transactions and connected transactions. At the time, the INEDs (members of the Audit Committee of the Company) had reviewed the internal controls report and concluded they were satisfied with the internal controls systems and that no presentation to the board was required. A similar review was conducted for financial year ended 2019 and the same issues were identified.

In 2020, the Company engaged an external consultant to conduct a further internal review of its internal controls system. Again the issues persisted. In its internal controls report, the external consultant found that, *inter alia*, (a) at the corporate level, the Company had not devised any management systems to govern notifiable transactions and connected transactions in compliance with the Rules; and (b) at the operation level, the Company's investment policy and treasury policy in place had not included the requirements under Ch.14 and 14A of the Rules.

LISTING RULE REQUIREMENTS

Rule 2.13(2) provides that the information contained in any announcement or corporate communication required pursuant to the Rules must be accurate and complete in all material respects and not be misleading or deceptive.

Rules 14.34, 14.38A, 14.40 and 14.41 provide that a listed issuer must announce as soon as possible after the terms of a major transaction have been finalised. For major transactions, the listed issuer is required also to publish a circular and seek independent shareholders' approval for the transaction.

Rules 14A.34, 14A.35, 14A.36, 14A.39 and 14A.46 provide that a listed issuer must enter into a written agreement for and announce a connected transaction as soon as practicable after its terms have been agreed. The listed issuer is required to seek shareholders' approval, set up an independent board committee and appoint an independent financial adviser, and publish a circular to the shareholders accordingly.

Rules 14A.71 and 14A.72 provide that a listed issuer's annual report must contain information on the connected transactions conducted in that financial year and specify whether a transaction is a connected transaction in its annual report.

Under Rules 3.08, 3.16 and 13.04, the Board is collectively responsible for the Company's management and operations, and the Directors are collectively and individually responsible for the Company's compliance with the Listing Rules.

Rule 3.08 provides that the Exchange expects directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. These duties include a duty to apply such degree of skill, care and diligence as may reasonably be expected of a person of his/her knowledge and experience and holding his/her office within the issuer.

Each director is subject to the obligations in the Director's Undertaking, which include, among others, that he/she will comply with the Listing Rules to the best of his/her ability; and to use his/her best endeavours to procure the Company's compliance with the Listing Rules.

FINDINGS OF BREACH

The Exchange found as follows:

- (1) The Company breached Rule 2.13(2) in respect of the Announcement and the Annual Report 2019. The omissions in the Announcement as to the nature of the Arrangement were material; and independent shareholders were deprived of relevant information to enable them to be properly apprised of the affairs of the Company. The Announcement and the Annual Report 2019 were therefore incomplete in material respects.
- (2) The Company breached Rules 14.34, 14.38A, 14.40, 14.41, 14A.35, 14A.36, 14A.39, 14A.46, 14A.71 and 14A.72 in relation to the Pledge Agreements. The Pledge Agreements were major and connected transactions. There was a delay in making the announcement of the Pledge Agreements and they were not approved by independent shareholders. The Company admitted these breaches.
- (3) The Company breached Rules 14.34, 14.38A, 14.40, 14.41, 14A.34, 14A.35, 14A.36, 14A.39, 14A.46, 14A.71 and 14A.72 in relation to the RMB 200 million loan. The RMB 200 million loan was financial assistance to the Company secured by the Pledge Agreements and hence a major and connected transaction. The Company did not announce, issue a circular and/or seek shareholders' approval for the RMB 200 million

loan.

- (4) There were considerable deficiencies in the Company's internal controls and risk management systems which contributed to the aforesaid Rule breaches.
- (5) The Relevant Directors breached Rule 3.08 and their Directors' Undertakings by failing to use their best ability to comply with the Rules and use their best endeavours to procure the Company to comply with the Rules:
 - (i) Given his role/ positions in the Company and the Subsidiary, Mr Zhang should have considered the Rules implications in respect of the Pledge Agreements and the Commitment at the relevant time. He admitted that he was not conversant with the Rules. This is unacceptable. His failure to inform the Board of the transactions deprived the Company of due consideration of potential issues and risks associated with them.
 - (ii) The Relevant Directors, in particular the audit committee members (Mr Tang, Mr Tsui and Mr Chiu), were aware of the internal controls deficiencies that were identified by the Company's internal controls department. They did not take sufficient steps to address the issues raised in 2018. The same internal controls issues were identified again in 2019 and also by an external consultant in 2020. The Relevant Directors are individually and collectively responsible to ensure that the Company establishes and maintains an adequate and effective internal controls and risk management system. Given the persistent and continued failures as identified, they have failed to discharge their duties in this respect.
 - (iii) The Relevant Directors ratified the Arrangement. For Ms Qian, Mr Zhang and Mr Xiang, the Listing Committee found that they should have reviewed the Announcement before it was issued. They should have appreciated that the information contained therein was incomplete.

CONCLUSION

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

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

Hong Kong, 9 May 2023