

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Link Holdings Limited (Stock Code: 8237) and Two Former Directors

SANCTIONS AND DIRECTION

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

CENSURES:

(1) **Link Holdings Limited** (Stock Code: 8237) (**Company**);

IMPOSES A PREJUDICE TO INVESTORS' INTERESTS STATEMENT against:

(2) **Mr Ngan Iek**, former Chairman and executive director (**ED**) of the Company (**Mr Ngan**);
and

(3) **Datuk Siew Pek Tho**, former ED of the Company (**Datuk Siew**).

(The directors identified at (2) to (3) above are collectively referred to as the **Relevant Directors**.)

The statement made in respect of Mr Ngan and Datuk Siew above is made in addition to a public censure against each of them. The Prejudice to Investors' Interests Statement is a statement that, in the Exchange's opinion, had Mr Ngan and Datuk Siew remained on the board of directors of the Company (**Board**), the retention of office by them would have been prejudicial to the interests of investors.

AND FURTHER DIRECTS:

an independent review of the Company's internal controls for procuring compliance with the continuing obligations under Chapters 17 and 18 of the GEM Listing Rules (**Rules**).

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SUMMARY OF FACTS

On 21 June 2020, the Company announced that it had raised funds of approximately \$25 million (**Funds**) by issuing a series of new convertible bonds (**New Bonds**). This fundraising was stated to be for the purpose of repaying certain bonds (**Old Bonds**) which were going to mature on 30 November 2020.

However, the Relevant Directors, who are brothers-in-law and were the only EDs of the Company at the relevant time, instead used most of the Funds to repay certain shareholder loans advanced by Mr Ngan to the Company group (**Group**). In particular, from 26 July to 29 November 2020, repayments of approximately \$20 million were made using the Funds. As a result, the Company did not have sufficient funds to redeem the Old Bonds on their maturity, and the Company defaulted (**Default**).

The Relevant Directors kept both the repayments and the Default to themselves: they did not inform the other directors about them, and did not procure the Company to announce them. Similarly, there had been no discussion or disclosure about any change in the use of the Funds from that announced in June 2020.

The other directors became aware of the Default and the change in the use of the Funds about one to four days before the Company published the 2020 annual report on 31 March 2021. There was no disclosure about the change in the use of the Funds, and only very limited disclosure about the Default, in the 2020 annual report, but the other directors procured the Company to announce these matters on 12 April 2021.

RULE REQUIREMENTS

Under Rule 17.21, the Company is required to announce any breach of a loan agreement by the Group if the loan is significant to the Group's operations, and the lender may demand its immediate repayment and has not waived the breach.

Rules 18.07 and 18.32(8)(c) require the Company to disclose in its annual report details of the use of proceeds from the issue of convertible bonds including, among others, whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the Company, and the reasons for any material change in the use of the funds.

Rule 5.01 provides that the Relevant Directors must fulfil both fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. Under that Rule, each of the Relevant Directors must, amongst other matters, act in the interests of the Company as a whole, act for proper purpose, avoid conflicts of interest and duty, 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 Company.

Rule 5.20 imposes obligations on Datuk Siew as the Company's compliance officer to, among others, advise on and assist the Board in implementing procedures to ensure that the Company complies with the Rules.

Each of the Relevant Directors is subject to the obligations in the director's undertaking to the Exchange in the form of the then Appendix 6A to the Rules (**Undertaking**), which include, among others, that he would comply with the Rules to the best of his ability and use his best endeavours to procure the Company's Rule compliance.

GEM LISTING COMMITTEE'S FINDINGS OF BREACH

The GEM Listing Committee found as follows:

Company

The Company breached Rule 17.21 as it failed to announce the Default by 1 December 2020. The amount of the Old Bonds was significant to the Group's operation. If the Company redeemed the Old Bonds, the Group would not have sufficient working capital for operation.

The Company further breached Rules 18.07 and 18.32(8)(c) because it failed to disclose the change in the use of the Funds in its 2020 annual report published on 31 March 2021.

The Company admitted these Rule breaches.

The Company had engaged external consultants to review its internal controls annually, but there remained deficiencies in its system for managing shareholder loans. For instance, there was no mechanism in place to ensure compliance with the requirements for approval of payments, or to ensure that any non-compliance would be identified and/or remedied. There was also no mechanism to allow the Board to monitor the shareholder loans, and/or give any necessary approvals, in the event that a director had a conflict of interest.

Relevant Directors

The Relevant Directors breached their duties under Rule 5.01 and the Undertakings, and their failure to discharge their responsibilities under the Rules was wilful and/or persistent.

Failure to avoid conflicts of interests

In relation to the use of the Funds and the management of the Old Bonds, they failed to act in the best interests of the Company, or for a proper purpose, or with reasonable skill, care and diligence.

They failed to declare to the Board their interests in the shareholder loan repayments, and consequently there was a serious failure to avoid their conflict of interests. Mr Ngan placed his personal interests before those of the Company and its shareholders.

The Relevant Directors were aware of the financial position of the Group, including the possible financial impact on the Group that could arise if there was a default under the Old Bonds. They should reasonably have known that such a default was likely when they used the Funds to repay Mr Ngan, an unsecured creditor of the Company, rather than redeeming the Old Bonds. They effectively sought to prioritise Mr Ngan over other creditors and shareholders.

The Relevant Directors should have taken steps to avoid or address their conflicts. They should have at least: (i) informed the other directors of Mr Ngan's requests for repayment of his shareholder loan, (ii) discussed with the other directors the Group's financial position in light of the liabilities under the Old Bonds and Mr Ngan's repayment requests, and (iii) refrained from taking part in the Company's decision-making process as to how to handle Mr Ngan's requests for repayment, including whether any of the Funds should be used to repay Mr Ngan instead of the Old Bonds. If they were unclear about how to manage the conflict, or about any Rule compliance issues, then they should have sought professional advice. However, they failed to do so.

Failure to disclose information

By keeping all of these matters to themselves, the Relevant Directors breached their duties and caused the Company to breach the Rules. There were multiple failures in this regard. In particular, there should have been disclosure about each of (i) the shareholder loan repayments, (ii) the change in the use of the Funds, and (iii) the Default. Each of these matters was connected in this case, but a separate disclosure obligation arose independently for each matter. However, the Relevant Directors wrongfully kept the rest of the Board and the investing public in the dark.

Datuk Siew also breached Rule 5.20 as the compliance officer of the Company. He should have advised on and assisted the Board to ensure that the Company complied with the Rules, particularly in relation to the disclosure of the change in the use of the Funds and the Default. However, he failed to do so.

CONCLUSION

The GEM Listing Committee 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, 16 May 2024