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GEM LISTING COMMITTEE CENSURES L & A INTERNATIONAL HOLDINGS

The GEM Listing Committee of the Stock Exchange of Hong Kong Limited (**HKEx**) has censured L & A International Holdings Limited (**L&A**) and five of its directors (the **Relevant Directors**) for granting share options to ten individuals within the black-out period, in breach of GEM Listing Rule 23.05 and the terms of L&A's share option scheme¹ (**Share Option Scheme**). L&A also breached other GEM Listing Rules in failing to do the following in a timely manner: announce the granting of the options; disclose the exercise of those options; ensure the accuracy and completeness of the relevant announcements; and consult its compliance adviser before publishing those announcements. The Relevant Directors breached their undertakings and their director's duties under the GEM Listing Rules by failing to ensure L&A's regulatory compliance.

The Share Option Scheme and the Grant

Before listing on the GEM, L&A adopted its Share Option Scheme on 25 September 2014. Clause 5.2 of the Share Option Scheme states that no option may be granted during the black-out period (beginning on the earlier of: (i) the date of the directors' meeting to approve L&A's results; and (ii) the deadline for L&A to publish an announcement of its results and ending on the date of the results announcement). The black-out period notified to HKEx ran from 13 July 2016 to 12 August 2016.

During the black-out period, on 22 July 2016, the Relevant Directors approved the granting of 200 million share options to each of ten grantees, totalling 2 billion options. L&A did not disclose this grant on its Monthly Return of Equity Issuer on Movements in Securities on 5 August 2016. Eight of the ten grantees exercised their options between 20 and 21 August 2016, and the 1.6 billion relevant shares were allotted to them on 22 August 2016. The grant was not announced until 23 August 2016, one month after it was approved. In that announcement, L&A did not disclose that eight of the grantees had already exercised their options; the shares under those options were referred to as "to be issued" upon exercise of the options. On 24 August 2016, L&A issued an inside information announcement (in relation to a dispute concerning a voluntary conditional offer), where it still referred to the shares under the options as "to be issued". Later on the same day, L&A filed a Next Day Disclosure Return that showed that those shares had been issued.

GEM Listing Committee Conclusions on L&A's Breaches of GEM Listing Rules

The GEM Listing Committee held a hearing into the conduct of L&A and the Relevant Directors on 2 October 2018. It concluded that L&A had breached GEM Listing Rules 23.05, 23.06A, 17.27A(1), 17.27(2)(b), 17.27B, 17.56(2) and 6A.23(1), and that the Relevant Directors had breached GEM Listing Rules 5.01 and 5.03 and undertakings that they have signed.

¹ https://www.hkex.com.hk/News/News-Release/2018/181211news?sc_lang=en

Restriction on the time of grant of options (GEM Listing Rule 23.05)

GEM Listing Rule 23.05 provides that a listed issuer may not grant options after inside information has come to its knowledge, until it has announced that information, and may not grant options during the black-out period. L&A argued that the words “may not” were permissive and therefore the requirement under that rule was not mandatory. It also claimed that it was not in possession of inside information at the time it granted the options as it had not yet started preparing its financial results for Q1 2016.

The GEM Listing Committee found that the words “may not” were restrictive in Rule 23.05 and thus prohibit issuers from granting options during a black-out period. That prohibition is absolute and applies irrespective of whether the issuer has knowledge of inside information.

Timely disclosure of the grant (GEM Listing Rules 23.06A, 17.27A(1), 17.27(2)(b))

The GEM Listing Committee concluded that L&A failed to announce the grant as soon as possible, as required by GEM Listing Rule 23.06A. The grant was approved on 22 July 2016, but was announced on 23 August 2016. Furthermore, in relation to their allotment of 1.6 billion shares to eight of the ten grantees on 22 August 2016, L&A failed to file a Next Day Disclosure Return on the following day as required by GEM Listing Rules 17.27A(1) and 17.27(2)(b). L&A filed their Next Day Disclosure Return one day late on 24 August 2016.

Accurate and complete information in corporate communications (GEM Listing Rules 17.27B and 17.56(2))

The Monthly Return of Equity Issuer on Movements in Securities (**Monthly Return**) that L&A filed on 5 August 2016 did not disclose the grant of options approved by L&A on 22 July 2016. L&A’s announcement of the grant on 23 August 2016, and the inside information announcement on 24 August 2016, failed to mention the allotment of 1.6 billion shares to eight of the grantees on 22 August 2016. The GEM Listing Committee concluded that these omissions amounted to breaches of GEM Listing Rules 17.27B, which requires Monthly Returns to disclose the number of securities that may be issued pursuant to options (such as those under L&A’s grant) and 17.56(2), which requires all announcements and corporate communications to be accurate and complete in all material respects and not be misleading or deceptive.

Consult and seek advice from the compliance adviser on a timely basis (GEM Listing Rule 6A.23(1))

L&A did not consult their compliance adviser before approving the grant on 22 July 2016. They only provided the compliance adviser with a draft of the announcement of the grant on 22 August 2016, one day before it was released on 23 August 2016. The GEM Listing Committee concluded that L&A breached GEM Listing Rule 6A.23(1), which requires listed issuers to consult their compliance advisers on a timely basis before publishing any regulatory announcement, circular or financial report.

GEM Listing Committee Conclusions on the Relevant Directors’ Breaches of Duties and Undertakings

GEM Listing Rule 5.01 requires the directors of listed issuers to, *inter alia*:

- act honestly and in good faith in the interests of the listed issuer as a whole;
- act for proper purpose; 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 listed issuer.

During the listing process, directors are required to submit a Declaration and Undertaking in the form set out in Appendix 6A to the GEM Listing Rules (**Director’s Undertaking**). In that document, directors undertake to, among other things, comply with the GEM Listing Rules to the best of their ability and use their best endeavours to procure that the listed issuer complies with the GEM Listing Rules.

The GEM Listing Committee concluded that the Relevant Directors breached GEM Listing Rules 5.01(1), (2) and (6) by:

- approving the grant of share options during the black-out period without consulting L&A’s compliance adviser (despite being aware of the requirement under GEM Listing Rule 23.05);
- failing to show how the 22 July 2016 approval to grant share options at a nominal consideration would be in L&A’s apparent interest or to its commercial benefit, other than to retain one of the grantees, who was a director, shareholder and main designer of L&A. The

options resulted in the issue of shares which diluted the voting rights of existing shareholders by 6.25% which also raised questions as to the fair treatment of existing shareholders;

- failing to check with L&A's company secretary and/or the senior financial manager in charge of GEM Listing Rule compliance, or the compliance officer, as to the progress of the grant of share options and failing to procure L&A to announce that grant until over a month after it was approved;
 - causing some of the share option holders under the grant to be initially excluded from the voluntary conditional offer that was received on 22 July 2016 through late disclosure of the grant;
 - approving the publication of announcements of the option grant and inside information, despite those announcements containing inaccurate and misleading description of the relevant shares as "to be issued", even though 1.6 billion of those shares had already been issued; and
 - failing to procure L&A to consult its compliance adviser in respect of the grant of share options on 22 July 2016 and the announcement of the approval of that grant as soon as possible.
- three of the Relevant Directors must each attend 24 hours of training on GEM Listing Rule compliance and directors' duties, to be completed within 90 days;
 - the two former directors of L&A must complete the same training before any future appointment as a director of any company listed on HKEx;
 - L&A must publish an announcement to confirm that the first two directions above have been fully complied with within two weeks after the fulfilment of those directions. A draft of this announcement must be submitted to the Listing Department of HKEx for approval before publication;
 - any changes necessary and any administrative matters which may emerge in the management and operation of any of the above directions must be directed to the Listing Department for approval. The Listing Department could refer matters of concern to the GEM Listing Committee.

The GEM Listing Committee also concluded that the Relevant Directors breached their Director's Undertakings by failing to comply with the GEM Listing Rules to the best of their ability, as described above, and failing to use their best endeavours to procure L&A's compliance with the GEM Listing Rules. One of the Relevant Directors was also L&A's compliance officer; he failed to ensure L&A's compliance with the GEM Listing Rules and to discharge his duties as compliance officer, in breach of GEM Listing Rule 5.20(1).

GEM Listing Committee Sanctions Imposed on L&A

The GEM Listing Committee decided to censure L&A and the Relevant Directors for their breaches of the GEM Listing Rules. They also directed that:

- L&A must appoint an independent compliance adviser for two years;

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