



THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)
(the “Exchange”)

27 June 2013

The Listing Appeals Committee of The Stock Exchange of Hong Kong Limited (the “Listing Appeals Committee”) publicly criticise the following parties for breaching the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Exchange Listing Rules”):

- (1) Pearl Oriental Oil Limited (formerly known as Pearl Oriental Innovation Limited, the “Company”) (stock code: 632);**
- (2) Mr Wong Yuk Kwan (alias: Wong Kwan), an executive director of the Company (“Mr Wong”);**
- (3) Dr Lew Mon Hung, a former executive director of the Company (resigned on 13 March 2013) (“Dr Lew”);**
- (4) Mr Cheung Kwok Yu, a former executive director of the Company (resigned on 13 March 2013) (“Mr Cheung”); and**
- (5) Mr Zhou Li Yang, an executive director of the Company, (resigned on 25 May 2011 and re-appointed on 10 April 2013) (“Mr Zhou”).**

Background and Timeline

On 10 January 2012, the Listing Committee conducted a hearing into the conduct of the Company and Mr Wong, Dr Lew, Mr Cheung and Mr Zhou (together the “**Directors**”) in relation to their obligations under the Exchange Listing Rules and the Director’s Declaration and Undertaking given by each of the Directors to the Exchange in the form set out in Appendix 5 Form B to the Exchange Listing Rules (the “**Director’s Undertaking**”).

The Listing Committee at first instance found the Company and the Directors in breach of the Listing Rules as alleged by the Listing Division and decided to impose public sanctions on them.

The Company, Mr Wong, Dr Lew, Mr Cheung and Mr Zhou (the “**Review Parties**”) requested a review of the decision and the public sanctions imposed on them by the Listing Committee at first instance.

On 5 June 2012, a review hearing was held before the Listing Disciplinary (Review) Committee (the “**Review Committee**”).

The Review Committee on review upheld the decision of the Listing Committee at first instance. It concluded that there were no grounds for removing or lessening the sanctions imposed on the Review Parties by the Listing Committee at first instance.

On 19 June 2013, the Listing Appeals Committee conducted a further disciplinary (review) hearing on the application by the Review Parties for a review of the decision and sanctions imposed on them by the Review Committee.

Breaches alleged by the Listing Division

On 9 December 2009 at 9:33 am, at the Company's request, trading in the Company's shares was suspended pending release of an announcement of a share placing. Between 9 and 11 December 2009, the Company entered into 24 agreements (the "**First Batch Agreements**") with the Vendor (Orient Day Developments Limited ("**Orient Day**")) and various purchasers in relation to Orient Day's sale of 115,680,000 existing shares and subscription of 115,680,000 new shares of the Company (the "**First Top Up Placing**"). Orient Day was at the time and is a company beneficially owned by Mr Wong. Both placing price and subscription price were \$1.02 per share.

On 11 December 2009 (Friday):

- (1) At 18:00, the Board approved the First Top Up Placing and the English version of the announcement on the First Top Up Placing (the "**First Announcement**"). The Board agreed that as it would take time to translate into Chinese, the First Announcement would be published on 13 December 2009 (Sunday).
- (2) At 19:31, the Company requested trading resumption on Monday 14 December 2009.

Between 11 and 13 December 2009, the Company entered into additional eight agreements (the "**Second Batch Agreements**") with Orient Day and various other purchasers. This related to further top up placing of another 115 million shares, again all at \$1.02 per share.

The First Announcement was posted on the HKEx website in the evening of Sunday 13 December 2009. According to this announcement:

- (1) The 115,680,000 sale shares represented approximately 11.38% of the existing issued share capital of the Company of 1,016,237,960 shares as at the date of the First Announcement; and approximately 10.22% of the issued share capital of the Company of 1,131,916,960 shares as enlarged by the Subscription.
- (2) The gross proceeds from the Subscription would be approximately HK\$118 million. The net proceeds of approximately HK\$114 million from the Subscription was intended to be used partly for general working capital of the Group and partly for possible acquisition of overseas energy and natural resources projects.

On Monday 14 December 2009 at 9:30 am, trading of the Company's shares resumed. At no time before trading resumption did the Company inform the Division of the further top up placing or the signing of the Second Batch Agreements. After trading hours, the Board approved the further top up placing of 65 million shares (the "**Second Top Up Placing**"); and published the announcement of the Second Top Up Placing (the "**Second Announcement**") in the evening.

Between 9 and 13 December 2009, the Directors were involved in one or more steps as to the negotiation, drafting, consideration and approval of the First Batch Agreements and the Second Batch Agreements. Mr Wong also signed the First and Second Batch Agreements on behalf of Orient Day. The Directors approved the First Top Up Placing and the First Announcement on 11 December 2009. When the First Announcement was published on 13 December 2009, the Directors were aware that the Second Batch Agreements had been signed. The First Announcement did not disclose anything about the further top up placing which was contemplated at the time of its approval and publication. The Directors did not cause the Company to inform the Division before 9:30 am on 14 December 2009 and did not include in the First Announcement information about the further top up placing which was at an advance stage of preparation. They did not withdraw the trade resumption application (made on 11 December) before trading resumed on at 9:30 a.m. on 14 December 2009.

Had the Directors disclosed to the Exchange of the further top up placing before 9:30 am on 14 December 2009, the Exchange would not have permitted share trading to resume pending disclosure of the Second Top Up Placing.

Findings of Breach by the Listing Committee at first instance

The Listing Committee at first instance concluded as follows:

- (1) The Company breached Rules 2.13(2), 6.06, and 13.09 of the Exchange Listing Rules; and
- (2) Each of the Directors breached the Director's Undertaking for failing to use his best endeavours to procure the Company's compliance with the Listing Rules.

Breach of Rule 2.13(2)

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

The Listing Committee at first instance concluded that:

- (1) Whether or not some of the Second Batch Agreements were signed on 11 December 2009 was not relevant. The facts remain that, by the evening of 13 December 2009 when the Company published the First Announcement, each of the Directors was aware that the Second Batch Agreements had been signed.
- (2) Whether or not the Second Batch Agreements were subjected to oral conditions precedent (as now contended by the Directors) which might result in the further top up placing not proceeding was also not relevant. The facts remain that, between 9 and 13 December 2009 and immediately prior to the publication of the First Announcement, the Directors had direct knowledge of and active involvement in the negotiation, consideration, drafting and approval of the First Batch Agreements and the Second Batch Agreements, and that in any event the transactions were in a very advanced state.

- (3) Information relating to the further top up placing under the Second Batch Agreements (which was under contemplation by the Directors immediately prior to the publication of the First Announcement) was information material to the Company's shareholders and investors and ought to have been disclosed to them as:
- (a) It could be as much as 100% increase in the scale of the top up placing conducted by the Company within a short period of time on the basis of 115,000,000 shares under the Second Batch Agreements. Although in the end only 65,000,000 shares were actually involved in the Second Top Up Placing as announced in the Second Announcement, it represented a 35% increase in the volume of shares placed in the two transactions in aggregate.
 - (b) Top up placing has the effect of diluting the shareholdings of existing shareholders of the Company.
 - (c) The following information was crucial to the Company's shareholders and investors in appraising the Company's position for the purpose of making informed investment decisions:
 - i. Information as to the number of shares involved in the placing, percentage of the Company's existing issued share capital and the percentage of the enlarged issued share capital as a result of the placing;
 - ii. Terms of the placing (including, whether subject to any condition precedent or not);
 - iii. The fact that the Company conducted fund raising exercise in such a short period of time and in such scale; and
 - iv. How the Company intended to apply the proceeds raised.
- (4) The First Announcement was therefore incomplete in a material respect and misleading.
- (5) The Company thus breached Rule 2.13(2) in that the First Announcement disclosed only the First Top Up Placing without disclosure of the further top up placing which was contemplated at the time of its approval and publication.

Breach of Rule 6.06

Rule 6.06 provides that where trading has been suspended, the issuer of the relevant securities shall notify the Exchange of "*any additional reasons which the issuer wishes the Exchange to take into account in the Exchange's determination whether or not the suspension of dealing in the issuer's securities should be continued*".

Note 1 to Rule 6.06 further provides that "*it is the responsibility of the issuer of the suspended securities to provide the Exchange with all relevant information, which is within the knowledge of the issuer, to enable the Exchange to take an informed decision whether or not the suspension of trading in that issuer's securities continues to be appropriate*".

The Listing Committee at first instance concluded that the Company breached Rule 6.06 as the Company failed to provide the Exchange with information regarding the further top up placing before 9:30 am on 14 December 2009, which was relevant to the Exchange's consideration whether to permit trading resumption on 14 December 2009.

Breach of Rule 13.09

Rule 13.09(1) requires issuers to disclose, as soon as reasonably practicable, any information relating to the group which: (a) is necessary to enable the Exchange, shareholders and the public to appraise the position of the group, (b) is necessary to avoid the establishment of a false market in the issuer's securities, or (c) might be reasonably expected materially to affect market activity in and the price of its securities.

Paragraph 6 of the Guide on Disclosure of Price-Sensitive Information (the "**Guide**") published by the Exchange in 2002 states that:

"an issuer may face unexpected and significant events and there are many events which can affect prices and market activity. It is thus vital for the issuers to make a prompt assessment of the likely impact of these events on their share price activities and decide consciously whether the relevant information would be price-sensitive and need to be disclosed. If necessary, issuers should request a suspension in the trading of its securities until a formal announcement can be made (Division's emphasis). Some common examples of such events include: ... fund raising exercises."

The Listing Committee at first instance concluded that the Company also breached Rule 13.09:

- (1) For the same reasons set out in paragraph (3) under "Breach of Rule 2.13(2)", information relating to the further top up placing was discloseable under Rule 13.09(1);
- (2) The disclosure obligation arose on 13 December 2009 when the last of the Second Batch Agreements was signed; and
- (3) The situations in (1) and (2) rendered it necessary for the Company to contact the Division no later than the morning of 14 December 2009 before trading hours to advise the further top up placing being prepared, withdraw its application to resume trading and request a continuation of the trading suspension pending an announcement of the further top up placing.

By reason of its failure to request a continuation of trading suspension on 14 December 2009 pending publication of an announcement on the further top up placing, the Company breached Rule 13.09.

Directors' breach of the Director's Undertaking

The Listing Committee at first instance further concluded that, in relation to the Company's breach of Rules 2.13(2), 6.06 and 13.09, each of the Directors breached his Director's Undertaking for failing to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules. Despite their knowledge and involvement in the First Top Up Placing and the further top up placing under the Second Batch Agreements between 9 and 14 December 2009,

- (1) the Directors have not prevented the Company's rule breach;
- (2) they did not include proper disclosure of the further top up placing in the First Announcement. They did not inform the Exchange of the further top up placing or take any other steps to procure and ensure that such information was provided to the Exchange before 9:30 am 14 December 2009. They did not: (a) withdraw the trade resumption request (made on 11 December 2009); and (b) request continuation of trading suspension pending publication of an announcement or the further top up placing; and
- (3) to ensure the Company's rule compliance they ought to have consulted professional advisers and/or the Listing Division.

The Listing Committee at first instance decided to censure:

- (a) the Company for its breaches of Rules 2.13(2), 6.06 and 13.09 of the Exchange Listing Rules; and
- (b) each of the Directors, namely Mr Wong, Dr Lew, Mr Zhou and Mr Cheung for breach of the Director's Undertaking.

Further, the Listing Committee directed that:

- (1) the Company (a) appoint an independent Compliance Adviser (as defined in Chapter 3 of the Exchange Listing Rules namely, an entity 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) satisfactory to the Division on an ongoing basis for consultation on Exchange Listing Rule compliance for two years within two weeks from publication of the Press Release, and (b) submit the proposed scope of retainer to the Division for comment before such appointment. The Compliance Adviser shall be accountable to the Company's Audit Committee.
- (2) Mr Wong, Dr Lew and Mr Cheung, who remain current directors of the Company, undergo 24 hours of training covering 8 core topics together with 4 hours on continuing obligations provided by Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors or other course providers approved by the Division, within 90 days from the publication date of the Press Release.

- (3) Mr Zhou, who has resigned as a director of the Company and who is not currently a director of any other company listed on the Exchange, (a) attend training as a pre-requisite of future appointment as a director of any company listed on the Exchange, of 24 hours of training covering 8 core topics together with 4 hours on continuing obligations provided by Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors or other course providers approved by the Division, before the effective date of any such appointment; and (b) provide the Division with the course provider's written certification of compliance within two weeks after training completion.
- (4) the Company publish an announcement to confirm full compliance with each of the directions set out in (1) and (2) above within two weeks after the respective fulfillment of each of the directions. The Company is to submit drafts of the announcements for the Division's comment and approval before publication. The last announcement required to be published under this requirement is to include the confirmation that the directions at (1) and (2) above have been fully complied with.

Decision of the Review Committee

The Review Committee upheld the decision of the Listing Committee at first instance and endorsed the sanctions imposed on the Company and each of the Directors by the Listing Committee at first instance.

Review by the Listing Appeals Committee

The Review Parties applied for a further review to the Listing Appeals Committee of the decision and public sanctions imposed on them by the Review Committee.

Decision and Sanctions

The Listing Appeals Committee noted the decisions of the Listing Committee at first instance dated 8 February 2012 and the Review Committee dated 24 July 2012. The Listing Appeals Committee, having considered the submissions made by the Review Parties and the Listing Division, endorsed and confirmed the findings of breach made by the Review Committee against the Review Parties.

The Listing Appeals Committee determines to impose:

- (1) A public statement which involves criticism on the Company for its breaches of Rules 2.13(2), 6.06 and 13.09 of the Exchange Listing Rules.
- (2) A public statement which involves criticism on each of the Directors, namely Mr Wong, Dr Lew, Mr Zhou and Mr Cheung for breach of the Director's Undertaking.

Further, the Listing Appeals Committee endorses the directions made by the Review Committee with amendments to take into account the resignation of Dr Lew and Mr Cheung as executive directors of the Company, and the re-appointment of Mr Zhou as an executive director of the Company, and they are as follows:

- (1) The Company (a) appoint an independent Compliance Adviser (as defined in Chapter 3 of the Exchange Listing Rules namely, an entity 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) satisfactory to the Division on an ongoing basis for consultation on Exchange Listing Rule compliance for two years within two weeks from publication of the Press Release, and (b) submit the proposed scope of retainer to the Division for comment before such appointment. The Compliance Adviser shall be accountable to the Company's Audit Committee;
- (2) Mr Wong and Mr Zhou who remain current directors of the Company, undergo 24 hours of training covering 8 core topics together with 4 hours on continuing obligations provided by Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors or other course providers approved by the Division, within 90 days from the publication date of the Press Release;
- (3) Dr Lew and Mr Cheung who have resigned as directors of the Company and who are not currently directors of any other company listed on the Exchange, (a) attend training as a pre-requisite of future appointment as a director of any company listed on the Exchange, of 24 hours of training covering 8 core topics together with 4 hours on continuing obligations provided by Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors or other course providers approved by the Division, before the effective date of any such appointment; and (b) provide the Division with the course provider's written certification of compliance within two weeks after training completion; and
- (4) The Company publish an announcement to confirm full compliance with each of the directions set out in (1) and (2) above within two weeks after the respective fulfillment of each of the directions. The Company is to submit drafts of the announcements for the Division's comment and approval before publication. The last announcement required to be published under this requirement is to include the confirmation that the directions at (1) and (2) above have been fully complied with.

The Listing Appeals Committee reached its decision predominantly on the basis of the reasons set out in the Listing Committee's decisions. The Listing Appeals Committee formed the view that there was no evidence of an intention to mislead the market on the part of the Company and the Directors and have therefore determined to reduce the sanction of public censure imposed by the Review Committee to a public statement which involves criticism on the Company and the Directors.

For the avoidance of doubt, the Exchange confirms that this public statement which involves criticism applies only to the Company and the Directors and not to any other past or present members of the Company's Board of Directors.