

香港聯合交易所有限公司

(香港交易及結算所有限公司全資附屬公司)

THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Compliance with the Exchange Listing Rules' disclosure requirements is crucial to maintaining an orderly, informed and fair market for the trading of securities in Hong Kong.

Directors are expected to review and approve all of the Company's announcements. The conduct which gives rise to sanction in this case arose from the Director's reliance on the Chief Financial Officer to oversee the Company's compliance with the Exchange Listing Rules and finalisation of the interim report. The Exchange reminds Directors that the delegation of their functions does not absolve them from their responsibilities or from applying the required levels of skill, care and diligence.

Directors are also expected to regularly review the Company's risk management system to ensure the adequacy of staff qualifications, staff experience and training programmes.

The Listing Committee of the Exchange ("Listing Committee")

CENSURES:

- (1) **Zall Smart Commerce Group Limited** ("Company") (Stock Code: 2098) for failing to disclose the Share Charge as soon as reasonably practicable after it was executed and in the Interim Report, in breach of Rules 13.17 and 13.21 of the Exchange Listing Rules Governing the Listing of Securities of The Stock Exchange of Hong Kong Limited ("Exchange Listing Rules");

AND FURTHER CRITICISES:

- (2) **Mr Yan Zhi** ("Mr Yan"), an executive director ("ED") and Chairman of the Company;
- (3) **Mr Cui Jinfeng** ("Mr Cui"), an ED of the Company;
- (4) **Dr Yu Gang** ("Dr Yu"), an ED of the Company;
- (5) **Mr Peng Chi** ("Mr Peng"), an ED of the Company (formerly an independent non-executive director ("INED") of the Company from 20 June 2011 to 11 April 2016);

.../2

- (6) **Mr Wei Zhe, David** (“Mr Wei”), an ED of the Company (formerly an INED of the Company from 11 April 2016 to 28 June 2017);
- (7) **Mr Wang Chuang** (“Mr Wang”), a former ED of the Company who resigned on 10 April 2017;
- (8) **Mr Cheung Kai Fai** (“Mr Cheung”), an INED of the Company;
- (9) **Mr Wu Ying** (“Mr Wu”), an INED of the Company

for failing to (a) procure the Company to disclose the Share Charge as soon as reasonably practicable after it was executed and in the Interim Report; (b) ensure that the final draft of the Interim Report disclosed the Share Charge; (c) ensure there were explicit internal controls regarding the disclosure of a pledge of shares by a controlling shareholder and; (d) ensure the risk management system included additional training on disclosures under the Exchange Listing Rules for the CFO, in breach of their respective Undertaking to use their best endeavours to procure the Company’s compliance with the Exchange Listing Rules.

(Mr Yan, Mr Cui, Dr Yu, Mr Peng, Mr Wei, Mr Wang, Mr Cheung and Mr Wu are collectively referred to as “Directors”)

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

SETTLEMENT

As a consequence of settlement, the Company and the Directors admit their respective breaches asserted by the Listing Department above and accept the sanctions and directions imposed on them by the Listing Committee as set out below.

FACTS

On 3 June 2016, the Company’s controlling shareholder executed a charge in favour of the Industrial Bank Hong Kong Branch (“Bank”), pursuant to which, the Company’s controlling shareholder charged 888 million shares (“Shares”) of the Company to the Bank as security (“Share Charge”) for a term loan facility of \$500 million, which was granted by the Bank to the Company. The Shares represent 8.26 per cent of the Company’s issued share capital. The controlling shareholder is wholly owned by Mr Yan and he signed the Share Charge on behalf of the controlling shareholder.

The Share Charge was not disclosed as soon as reasonably practicable after it was executed or in the Company’s interim report for the 6 months ended 30 June 2016 (“Interim Report”). The Company’s professional advisors advised the Company’s Chief Financial Officer (“CFO”) that it is mandatory to disclose the Share Charge in the Interim Report, but the CFO did not share that information with the Directors or tell them that disclosure was mandatory.

The Directors had knowledge of the Share Charge as part of the term loan, but not the need to disclose it, and they had delegated to the CFO the responsibility of *inter alia* supervising the Company's compliance with the Exchange Listing Rules and finalising the Interim Report.

The Company acknowledged that, at the relevant time, it did not have any specific and explicit internal controls concerning the disclosure of the Share Charge issued by the Company's controlling shareholder, although there were controls over disclosures under the Exchange Listing Rules more generally. The Company took remedial actions to review and revise its internal controls to include specific procedures concerning disclosure of a charge/pledge issued by controlling shareholders.

Other remedial steps taken by the Company include (a) the disclosure of the Share Charge on 24 November 2016; (b) hiring an Exchange Listing Rules experienced compliance staff member to assist the CFO; and (c) providing training to the Directors, CFO, managerial and compliance staff of the Group on *inter alia* risk management and internal controls.

The Company and all Directors were forthright, cooperative, and helpful, providing information and documents, to the Listing Department during the course of the investigation.

LISTING COMMITTEE'S FINDINGS OF BREACH

On the basis of the facts and circumstances as set out above and with the Company and the Directors admitting the Listing Department's assertion of breaches, the Listing Committee has the following findings:

- (1) **Company breached Rules 13.17 and 13.21 of the Exchange Listing Rules for the reason that** it did not disclose the Share Charge as soon as reasonably practicable after its execution or in the Interim Report given that the obligations under the Share Charge was still subsisting as at 30 June 2016.
- (2) **Company did not have, at the material time, explicit internal controls for the reason that** it did not have at the material time any specific internal control procedures concerning the disclosure of the Share Charge issued by the Company's controlling shareholder.
- (3) **Company could have, at the material time, had a better risk management system for the reasons that:**
 - (a) The Board gave the CFO broad responsibility in (i) overseeing the Company's compliance with the Exchange Listing Rules with respect to the disclosure of the Share Charge; and (ii) finalising the Interim Report; and
 - (b) The Company did not give additional training on disclosures under the Exchange Listing Rules to its staff during the term of their employment in order to help them fulfill their respective duties.
- (4) **The Directors breached their respective Best Endeavour Undertaking for the reasons that:-**

- (a) The Directors failed to procure the Company to disclose the Share Charge as soon as reasonably practicable after it was executed and in the Interim Report;
- (b) The Directors failed to ensure the final draft of the Interim Report disclosed the Share Charge before it was published; and
- (c) The Directors failed to ensure the Company had updated its internal controls and risk management systems for the reasons set out in paragraphs (2) and (3) above.

REGULATORY CONCERNS

These matters give rise to a number of serious concerns over corporate governance and compliance with the Exchange Listing Rules:

- (1) It is imperative that the Company discloses the Share Charge as soon as reasonably practicable after it was executed and in the Interim Report. Failure to do so deprives shareholders of important information (such as the Share Charge) which enables them to make informed decisions and maintain a continued confidence in the market;
- (2) This case reveals a serious concern over the Board's lack of review and approval of the final Report. The Board is responsible and accountable for the contents of any public announcements or documents that are published and disseminated by the Company. The Board must ensure the published announcements are accurate and complete. Failure to do so undermines transparency, trust and confidence in the market;
- (3) The Company displayed corporate governance deficiencies. The purpose of maintaining effective internal control and risk management system is to increase the Company's accountability to its shareholders. The failure of the Board to oversee and review, on an ongoing basis, the effectiveness of the Company's and its subsidiaries' internal control and risk management systems including the adequacy of training provided to directors, senior management and staff on the Exchange Listing Rules, exposes the Company to risks of non-compliance with the Exchange Listing Rules;
- (4) Directors have a collective and individual responsibility to fulfill their director's duties. Whilst directors are permitted to delegate their functions such delegation does not absolve them from their responsibilities. They should not over rely on the CFO or senior management to ensure the Company's compliance with the Exchange Listing Rules. The director's failure to more closely supervise and monitor the CFO/senior management exposes the Company to risks of (a) the CFO/senior management independently ignoring professional advice and making decisions concerning the Company's compliance with the Exchange Listing Rules without the Board's knowledge or approval; (b) binding the Company to the contents of an Interim Report which has not been finally reviewed or approved by the Board; and (c) non-compliance with the Exchange Listing Rules.

SANCTIONS

Having made the findings of breach stated above, and having concluded the breaches are serious, the Listing Committee decides to:

CENSURE:

- (1) The Company for breaches of Rules 13.17 and 13.21 of the Exchange Listing Rules; and

CRITICISE:

- (2) Mr Yan, Dr Yu, Mr Cui, Mr Wang, Mr Peng, Mr Wei, Mr Cheung and Mr Wu for a breach of their respective Undertaking to use their best endeavours to procure the Company's compliance with the Exchange Listing Rules.

Hong Kong, 6 July 2018