

Singapore Exchange Securities Trading Limited
Listings Disciplinary Proceeding No: SGX-LDC-2019-001

**IN THE MATTER OF A DISCIPLINARY PROCEEDING
UNDER THE SGX-ST LISTING MANUAL MAINBOARD RULES**

BETWEEN

SINGAPORE EXCHANGE SECURITIES TRADING LIMITED

(Company Registration No. 197300970D)

(the “Exchange”)

AND

NG CHEOW CHYE

NG CHEOW LENG

SI YOK FONG @ CHIN YOK FONG

(collectively, the “Relevant Persons”)

GROUND OF DECISION

This document constitutes the written grounds of decision of the SGX Listings Disciplinary Committee (“LDC”) as required under Mainboard Rule 1417(1), and is prepared for the Exchange and the Relevant Persons who are parties to SGX-LDC-2019-001 (the “Parties”).

All capitalised terms used herein without definition shall have the meanings assigned to them in the Notice of Charge.

This document is confidential and meant to be read by the Parties and their legal representatives only, until such time as this grounds of decision is published by the Exchange pursuant to Mainboard Rule 1418(1).

I. CHARGES BROUGHT BY THE EXCHANGE

1. The Exchange has brought one charge against each of the Relevant Persons who were, at the material time, executive directors of Datapulse Technology Limited (the “**Company**”), a company listed on the Mainboard of the SGX-ST.
2. The charge against each of the Relevant Persons is as follows:

“On 28 September 2017, you caused Datapulse Technology Limited to breach Listing Rule 1206(1) by failing to ensure that the Company provided in its Circular all information necessary to allow shareholders to make a properly informed decision on the disposal of its property situated at 15A Tai Seng Drive Singapore 535225.”¹

Relevant rules

3. Mainboard Rule 1206(1) states:

“Any circular sent by an issuer to its shareholders must contain all information necessary to allow shareholders to make a properly informed decision or, if no decision is required, to be properly informed.

(Emphasis added.)”

¹ *The charge, as drafted, is for breaching Mainboard Rule 1206(1) by failing to provide shareholders with the necessary information in the Circular which was issued on 12 September 2017, whereas the Exchange’s arguments against the Relevant Persons extended to the failure to inform shareholders about developments that occurred in the period after the Circular was issued and before the EGM. The LDC queried counsel for the Relevant Persons if they were taking any objection to the limited manner in which the Charge has been drafted. Counsel for the Relevant Persons confirmed that they were not taking any such objection and were prepared to meet the Exchange’s case as presented. Given this confirmation, the LDC did not find it necessary to address any need to amend the charge.*

4. Mainboard Rule 1402(6) states:

“For the purposes of this Chapter, a Relevant Person is deemed to have contravened a Relevant Rule when a Relevant Person has caused another Relevant Person to omit to do an act which resulted in breach of a Relevant Rule.”

II. FINDINGS OF THE LDC

5. At the hearing held on 17 September 2020, the LDC, having considered the written and oral submissions of the Exchange and the Relevant Persons, unanimously found that the Relevant Persons are liable for the charge brought against each of them by the Exchange.

Pertinent facts

6. On 31 July 2017, the Company announced that it had granted an option to a purchaser for the sale of its sole manufacturing premises at 15A Tai Seng Drive Singapore 535225 (the **“Tai Seng Property”**). On 7 August 2017, the Company announced that it was granted an option (the **“Option”**) to purchase a property located at 5 Toa Payoh West Singapore 318877 (the **“Toa Payoh Property”**).
7. To complete its acquisition of the Toa Payoh Property, the Company required the approval of Jurong Town Corporation, which included the approval of the National Environment Agency (**NEA**) for the Company’s proposed use of the Toa Payoh Property for its manufacturing activities. On 4 September 2017, NEA rejected the Company’s proposed use of the Toa Payoh Property for its manufacturing activities (**“1st NEA Rejection”**). On 8 September 2017, the Company submitted an appeal to NEA to request NEA’s reconsideration.
8. On 12 September 2017, the Company issued a Circular (the **“Circular”**) to provide shareholders with information on the proposed disposal of the Tai Seng Property (**“Proposed Disposal”**). The Circular informed shareholders that the Proposed Disposal was a major transaction which must be made conditional upon shareholders’ approval under Chapter 10 of the Mainboard Listing Manual. Shareholders were requested to vote on the Proposed Disposal at an extraordinary general meeting (**EGM**) held on 28 September 2017.
9. On 14 September 2017, the Company submitted a second appeal to NEA. On 22 September 2017, NEA rejected the Company’s appeals of 8 September 2017 and 14 September 2017 (**“2nd NEA Rejection”**).
10. At the EGM on 28 September 2017, 99.61% of shareholders present and voting at the EGM approved the resolution on the Proposed Disposal. On the same day, the Company announced that it had obtained shareholders’ approval for the Proposed Disposal.

Relevant Persons' arguments

11. The LDC considered the arguments of the Relevant Persons defending against the Charge, which are summarized as follows:
 - (a) the NEA Rejections were not material and/or necessary information for shareholders to make an informed decision on the Proposed Disposal because (i) the Proposed Disposal and the relocation of the Company's operations to the Toa Payoh Property were separate and independent transactions, and (ii) the NEA rejections did not jeopardise the continuation of the Company's manufacturing operations; and
 - (b) the Charge is not made out because the Relevant Persons did not cause the alleged breach as (i) they had taken all reasonable steps to ensure compliance by informing the chairman of the board about the NEA rejections, and (ii) they had relied on the chairman of the board, who is a senior and experienced lawyer, for advice on the Company's disclosure obligations.

LDC's conclusions

12. The LDC did not agree with the arguments of the Relevant Persons for the reasons set out below.
13. The NEA rejections were material and/or necessary information for shareholders to make an informed decision
 - 13.1. The LDC found that the NEA rejections constituted material and/or necessary information that was necessary to enable the shareholders of the Company to make a properly informed decision on the Proposed Disposal at the EGM.
 - 13.2. From a reading of the Circular, it was clear that the acquisition of the Toa Payoh Property was related to and an important part of the context of the Proposed Disposal. As such, it was reasonable to expect shareholders to have been informed of any material developments affecting the company's proposed acquisition of the Toa Payoh Property. The natural questions that would have arisen in shareholders' minds as a result of the NEA's rejections of the company's appeals were whether there would be any impact on the Company's continued operations, what were the Company's alternatives, and whether it was still prudent to proceed with the Proposed Disposal in circumstances where it was not possible to acquire the Toa Payoh Property as replacement premises.
 - 13.3. In support of the view that the circumstances surrounding the acquisition of the Toa Payoh Property was something that shareholders should have been informed of, the LDC noted that before the issuance of the Circular, the Company had made two prior public announcements, on 7 August 2017 and 4 September 2017, when the Option was granted and when its validity was extended. The Company also made another announcement on 18 September 2017 to disclose its acceptance of the Option. In the 7 August 2017 announcement, shareholders were informed that the proposed

acquisition of the Toa Payoh Property was subject to, inter alia, JTC giving its approval to the use of the property for manufacturing media storage products. In the 4 September 2017 announcement, shareholders and potential investors were advised to note that the acquisition was subject to conditions precedent and to exercise caution when trading in the Company's shares. The timing of these announcements coming shortly before the issuance of the Circular and the 28 September EGM, the reference to the Toa Payoh Property in the Circular itself, and the fact that the conditions precedent for the acquisition of the Toa Payoh Property were highlighted to shareholders and potential investors in public announcements all lend support to the fact that the NEA rejections were material information which ought to have been disclosed to shareholders before they voted on the Proposed Disposal.

13.4. The LDC also noted that in the process of obtaining the Exchange's approval to waive the requirement under Mainboard Rule 1019(1) to obtain shareholders' approval to grant an option to purchase the Tai Seng Property, the Company had represented to the Exchange that it had identified new premises and would be *concurrently* completing the acquisition of the replacement property with the Proposed Disposal. The Company also gave the Exchange the assurance that there would be minimal downtime and the operations of the Company would be unaffected by the relocation. The LDC found that this further supported the view that the two transactions were not totally separate and independent. Consultation with the Exchange, and the representations made in the process, must be treated seriously. Given these representations, it was not open for the Relevant Persons to subsequently assert that the transactions were entirely independent of and unrelated to each other and/or to argue that the NEA's rejections in relation to Toa Payoh Property were completely irrelevant or immaterial to shareholders in deciding whether to approve the Proposed Disposal.

13.5. The LDC further considered the Relevant Persons' argument that the NEA Rejections did not pose a risk to the Company's manufacturing operations for various reasons. The LDC was of the view that even if the Relevant Persons had feasible alternative relocation or other plans for the Company, the circumstances adversely affecting the acquisition of the Toa Payoh Property were still a matter that shareholders should have been informed of in order to have the opportunity to ask questions at the EGM. Hence, withholding the information on the NEA Rejections deprived shareholders of the chance to ask questions and make a properly informed decision in relation to the Proposed Disposal.

14. Relevant Persons' liability for the charge

14.1. The Relevant Persons separately argued that they had not *caused* the alleged breach as they had taken all reasonable steps to ensure compliance by timeously informing the chairman of the board of the NEA rejections. They explained that their roles were to oversee the management and operations of the Company, and as laymen they did not have the requisite legal experience or knowledge to ensure the Company's compliance with its regulatory requirements. Therefore, they deferred to the views of the independent directors, and the chairman of the board in particular, for guidance on all matters relating to the Company's announcements.

- 14.2. The LDC found this position untenable. By undertaking the role of directors, each of the Relevant Persons is personally accountable for the responsibilities incumbent upon that role. Under Singapore's disclosure-based regime, the onus is on all directors to ensure proper disclosure to shareholders. This is a duty of fundamental importance and cannot be discharged by mere delegation to a fellow director or the chairman of the board.
- 14.3. The LDC was of the view that it is clear, under Mainboard Rule 1205, that each director is required to accept responsibility for the accuracy of the information in a circular sent to shareholders and to ensure that shareholders have all material information relevant to any resolution proposed to be passed. Furthermore, the Directors' Responsibility Statement set out in paragraph 11 of the Circular, stated that the Directors of the Company collectively and individually accepted full responsibility for the accuracy of the information given in the Circular and confirmed that the Circular constituted full and true disclosure of all the material facts about the Proposed Disposal.
- 14.4. The LDC found that the 2nd NEA Rejection was material information relating to the proposed acquisition of the Toa Payoh Property. Notwithstanding that the Relevant Persons had knowledge of the 2nd NEA Rejection on 22 September 2017, they failed to ensure that the Company disclosed this material information to shareholders before or at the EGM on 28 September 2017. In these circumstances, the Relevant Persons had failed to ensure that the Company provided all the information necessary to enable shareholders to make a properly informed decision on the disposal of the Tai Seng Property.
- 14.5. In the course of their submissions, the Relevant Persons had also relied on the decision of the High Court in *Madhavan Peter v. Public Prosecutor and other appeals* [2012] 4 SLR 613 ("**Madhavan Peter**") to argue that the Relevant Persons had reasonably relied on the chairman of the board, a senior lawyer, to advise them on any needed disclosures, and it was therefore not improper of them not to make the disclosure as the chairman of the board had not advised them to do so.
- 14.6. The LDC is of the view that the decision in *Madhavan Peter* is not applicable to the present case as the facts are markedly different. In *Madhavan Peter*, the directors were acquitted of the charges for non-disclosure because they had expressly sought and received external legal advice that disclosure was not necessary. In the present case, the evidence does not disclose that the Relevant Persons even sought legal advice from the chairman as to whether a disclosure needed to be made in respect of the NEA rejections. Additionally, the LDC found that the chairman of the board had not, in fact, given any advice to the Relevant Persons to the effect that disclosure was not necessary. The chairman of the board gave evidence before the LDC that he had not been aware of an email containing the 2nd NEA Rejection which had been forwarded to him by one of the Relevant Persons until the Exchange questioned him in November 2018. Regardless whether the chairman was actually aware of the 2nd NEA Rejection, the LDC found that the Relevant Persons had not sought the chairman's advice and, in any event, had not been advised by the chairman of the board that disclosure was not necessary. These circumstances are far removed from the facts in *Madhavan Peter*. Furthermore, it is questionable if the principle in *Madhavan Peter* extends to a

situation where the relevant legal advice is not sought from external legal counsel but from fellow directors who happen to be lawyers.

- 14.7. For all the above reasons, the LDC finds each of the Relevant Persons guilty of the charge levelled against them.

III. SANCTIONS IMPOSED BY THE LDC ON THE RELEVANT PERSONS

15. The LDC considered the written representations of the Exchange and the Relevant Persons on the sanctions to be imposed, and has decided to issue public reprimands to the Relevant Persons. The LDC's decision is unanimous.
16. As directors of the Company, the Relevant Persons must be held responsible for ensuring that shareholders are given full disclosure of all material information on matters requiring shareholder approval. This responsibility is a foundation of Singapore's disclosure-based regime. The Relevant Persons had failed to disclose material and necessary information to shareholders about the Proposed Disposal which was necessary to enable the shareholders to make an informed decision at the EGM. Furthermore, the Relevant Persons' failure to disclose the material information had been a conscious omission.
17. The LDC also considers it proper to impose this sanction in the public interest, as a deterrence against such actions as had been taken by the Relevant Persons and in order to emphasise the importance of directors' responsibility for disclosure obligations.

END