

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)

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Three Current Directors of Xinming China Holdings Limited (Stock Code: 2699)

SANCTIONS AND DIRECTIONS

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

CENSURES:

- (1) **Mr Chen Chengshou (Mr Chen)**, executive director (**ED**), Chairman and Chief Executive Officer (**CEO**) of Xinming China Holdings Limited (Stock Code: 2699) (**Company**);
- (2) **Mr Feng Cizhao (Mr Feng)**, ED of the Company; and
- (3) **Ms Gao Qiaoqin (Ms Gao)**, non-executive director of the Company;

(The directors identified at (1) to (3) above are collectively referred to as the **Relevant Directors**.)

AND FURTHER DIRECTS:

Mr Chen to attend 18 hours of training on regulatory and legal topics and Listing Rule compliance, including at least three hours on each of (a) directors' duties; and (b) the Corporate Governance Code (**Training**), within 90 days; and

Mr Feng and Ms Gao to attend 15 hours of Training, within 90 days.

SETTLEMENT

The Relevant Directors agreed to settle this disciplinary action. They admitted their respective breaches as set out further below, and accepted the sanctions and directions imposed on them by the Listing Committee.

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SUMMARY OF FACTS

This matter concerns an impairment loss in connection with a number of loans obtained by one of the Company's subsidiaries, Chongqing Xinming Property Company Limited (**Chongqing Xinming**).

Loans

In early February 2016, Chongqing Xinming had cash flow difficulties and was unable to secure funding. At the time, Mr Chen was the controlling shareholder, ED, Chairman and CEO of the Company, and one of the directors of Chongqing Xinming. He offered to provide assistance to Chongqing Xinming by raising funds on its behalf through Xinming Group Limited (**XGL**), a company outside the Group which was privately owned by himself and his wife, Ms Gao. XGL would act as a borrower of loans (**Loans**) from certain private investors (**Lenders**).

Mr Feng acted as a representative of Chongqing Xinming. He negotiated and finalised the terms of the Loans with the Lenders. The intended structure was for XGL to be named as the borrower, but in practice Chongqing Xinming would be the entity to use and repay the Loans. In February 2016, XGL executed a loan agreement with the Lenders. The Lenders were prepared not to charge any interest for the Loans, provided that a 1 per cent handling fee was paid.

Between March and June 2016, XGL obtained RMB 178 million of Loans on behalf of Chongqing Xinming. Chongqing Xinming was able to repay these Loans in June 2016. However, the financial situation of Chongqing Xinming remained in a dire position. After discussion with the representatives of Chongqing Xinming, including Mr Feng, Mr Chen negotiated with the Lenders for the provision of additional loans to Chongqing Xinming.

Between August 2016 and January 2017, XGL obtained additional Loans from the Lenders in the sum of RMB 323.5 million. Chongqing Xinming was only able to repay a portion of these loans from August to December 2016 (around RMB 105 million), and requested XGL to liaise with the Lenders for a time extension for the repayment of the outstanding amounts.

Default interest

In January 2017, as one of the conditions to extend the repayment period of the outstanding Loans, the Lenders demanded default interest of 24 per cent per annum on the Loans, to be charged on a retroactive basis. Chongqing Xinming did not agree with the payment of the default interest rate, and asked XGL to continue negotiating with the Lenders.

No repayments of the Loans were made to the Lenders during 2017 due to ongoing negotiations about the default interest rate demanded.

In early 2018, hostile debt collectors were sent by the Lenders to the office of Chongqing Xinming to demand the immediate repayment of the outstanding Loans. To ensure the business operations of Chongqing Xinming would not be further disrupted, Mr Chen agreed to the payment of the default interest demanded by the Lenders without informing the Board of the Company. XGL proceeded to settle the outstanding principal and default interest on Chongqing Xinming's behalf. Chongqing Xinming repaid the remaining Loans principal to XGL, but not the default interest charged by the Lenders.

At Mr Chen's suggestion, Mr Feng recorded the default interest paid to the Lenders by XGL as "other receivables" in Chongqing Xinming's financial statements, on the basis that XGL would negotiate with the Lenders to procure a refund of the default interest paid. The basis for the Company's treatment of the default interest paid to the Lenders as "other receivables" was unclear, as well as the basis for the Company's belief that it would be able to recover such amounts from the Lenders.

Eventually, the Company recorded an impairment loss of RMB 49.4 million on its "other receivables" as at 31 December 2020.

Mr Chen, Mr Feng and Ms Gao, being Board members of the Company, did not inform the rest of the Board about the Loans or the Lenders' demand for default interest. The regular updates circulated to the Board did not contain any information about the Loans. Chongqing Xinming and XGL did not retain a copy of the agreement for the Loans. The Loans were also not reflected in the financial statements of the Company for the years ended 31 December 2016 and 31 December 2017.

LISTING RULE REQUIREMENTS

Rule 3.08 provides that the Exchange expects directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. These duties include a duty to (i) avoid actual and potential conflicts of interest and duty, and (ii) 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 issuer.

Pursuant to the Declaration and Undertaking with regard to Directors in the form set out in the then Appendix 5B to the Listing Rules (**Undertaking**), each director is under an obligation to comply with the Listing Rules to the best of his ability.

LISTING COMMITTEE'S FINDINGS OF BREACH

The Listing Committee found that Mr Chen, Mr Feng and Ms Gao breached Rule 3.08 and their Undertakings by failing to exercise due skill, care and diligence in respect of the Loans, and in the case of Mr Chen, by failing to avoid actual and potential conflicts of interest and duty:

- (1) The Relevant Directors entered into the Loans, or were aware of such Loans, without bringing the same to the attention of the Board for consideration and approval. They failed to ensure that the Company's internal control policies had been followed, and that proper documentation was retained in respect of the Loans.
- (2) Mr Chen failed to avoid a conflict of interest in his capacity as a director of the Company and the owner of XGL. He did not inform the Board about the Lender's demand for default interest, and agreed to pay the default interest without reporting to the Board. The Company was therefore unable to take steps to safeguard its own interests.

CONCLUSION

The Listing Committee decided to impose the sanctions and directions set out in this Statement of Disciplinary Action.

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

Hong Kong, 20 February 2024