

## STATEMENT OF DISCIPLINARY ACTION

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Exchange's Disciplinary Action against Three Former Directors of National Arts Group Holdings Limited (Delisted, Previous Stock Code: 8228)

### SANCTIONS AND DIRECTIONS

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

#### CRITICISES:

- (1) **Mr Chow Kai Weng**, former Chairman, CEO and executive director (**ED**) (**Mr Chow**) of National Arts Group Holdings Limited (**Company**);
- (2) **Mr Cheng Wang Chun**, former ED of the Company (**Mr Cheng**); and
- (3) **Mr Ho Leung Ting**, former ED of the Company (**Mr Ho**).

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

#### AND FURTHER DIRECTS:

15 hours of training on regulatory and legal topics and Listing Rule compliance (**Training**) for each of the Relevant Directors. The Training must include three hours on each of (a) directors' duties; and (b) the Corporate Governance Code, as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange.

### SUMMARY OF FACTS

The Relevant Directors approved the Company's acquisitions of two target companies which held certain property units under construction in two projects in Malaysia (**Acquisitions**) on 29 January 2021 and 29 November 2021 respectively. At the time of the Acquisitions, the target companies had not yet fully paid the developers for the property units, but the Company made full payment upfront for the Acquisitions by issuing new shares in the Company to the vendors with a total value of \$108.8 million. Construction was originally expected to be completed by the fourth quarter of 2022 and the end of March 2023 respectively.

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Under the terms of the Acquisitions, the vendors and/or their related parties agreed to assume the target companies' outstanding payment obligations to the developers. The Company was also provided with collateral, including guarantees and indemnities. In the first acquisition (**Acquisition 1**), there was a lock-up arrangement (**Lock-up**) in respect of the consideration shares allotted to the vendor (**Vendor 1**) for the first six to twelve months following completion. In the second acquisition (**Acquisition 2**), the vendor (**Vendor 2**) granted the Company a put option to sell the target company back to Vendor 2, but no lock-up was imposed over the consideration shares.

According to the Relevant Directors, after the Acquisitions, they had relied on the vendors' representatives (a Mr Chu Hin Ming Alfonso and a Mr Leung Tak Chee Frankie respectively) to orally update the Company in relation to both the construction progress and the outstanding payments to the developers.

Shortly after the completion of Acquisition 1, the Company agreed to change the Lock-up to allow Vendor 1 to deposit a significant portion of the consideration shares in Vendor 1's securities trading account in return for a personal guarantee from another individual. Although the Company would then become reliant on the credit of that individual for this aspect of the collateral, the Relevant Directors did not procure the Company to evaluate the individual's financial capability. The Relevant Directors also did not take steps, or put in place mechanisms, to ensure that the relevant consideration shares would not be sold without the Company's prior consent or knowledge. Shortly thereafter, Vendor 1 sold most of those shares without the Company's consent or knowledge.

Vendor 2 also sold the consideration shares in respect of Acquisition 2 shortly after completion of Acquisition 2.

The Company was ordered to be wound up by the Hong Kong Court on 28 June 2023, and its shares were delisted from the Exchange on 28 August 2023. As at the date of the Company's delisting, none of the property units had been delivered to the Company.

## **RULE REQUIREMENTS**

GEM Listing Rule (**GLR**) 5.01 provides that directors must fulfil both fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. Under that Rule, a director must, amongst other matters, 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.

## **GEM LISTING COMMITTEE'S FINDINGS OF BREACH**

The GEM Listing Committee found that the Relevant Directors breached their directors' duties under GLR 5.01 to exercise reasonable skill, care and diligence to safeguard the Company's interest in the Acquisitions.

According to the Company and the Relevant Directors, the Company was in a poor financial condition and had a very low level of cash and bank balance at the time of the Acquisitions. They believed the Acquisitions offered the prospect of a decent business return.

The Relevant Directors should have been aware that the Acquisitions involved at least two major risks: (a) the vendors and their related parties might not fulfil the outstanding payment obligations to the developers for the property units under construction, and (b) the property construction might not be completed.

Before the completion of Acquisition 2, the Exchange had drawn the Company's attention to the fact that another listed issuer had entered into a transaction involving parties that were similar to Acquisition 2, and had encountered problems including construction delays and difficulties in obtaining project updates. These problems had led to such listed issuer having to dispose of its investment prematurely.

The Relevant Directors failed in their duty to manage these risks in respect of the Acquisitions, even after being made aware that another listed issuer had encountered problems in a very similar transaction.

The Relevant Directors should have at least taken steps to conduct due diligence in respect of the financial capability of the vendors and their related parties to assess the potential credit risk both prior to the completion of the Acquisitions and consenting to the partial release of the Lock-up.

The due diligence conducted in respect of the Acquisitions was insufficient, and was largely limited to the property units and the target companies. The Relevant Directors did not procure the Company to evaluate whether the vendors and/or their related parties were financially capable of meeting their ongoing obligations, particularly regarding the outstanding payments to the developers, or compensating the Company in the event that the property units were not delivered.

The Relevant Directors should have taken steps to properly monitor the projects, including that payments were being made by the vendors and/or their related parties and the construction was progressing. They also failed to ensure receipt of timely updates on these matters.

The Relevant Directors claimed that they had relied on the vendors' representatives for oral updates. However, there was no evidence that any such updates had been provided. The Company and the Relevant Directors had also lost contact with the vendors' representatives.

The Relevant Directors should have ensured that mechanisms were in place to prevent the sale by Vendor 1 of the relevant consideration shares without the Company's prior consent or knowledge. However, they failed to do so before or after the partial release of the Lock-up. They did not even follow up with Vendor 1 to ensure that it did not sell the consideration shares after depositing them into its securities trading account.

**CONCLUSION**

The GEM 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 the Company or any other past or present directors of the Company.

Hong Kong, 24 September 2024