

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

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Exchange's Disciplinary Action against Xinming China Holdings Limited (stock code: 2699) and its executive director

### SANCTIONS

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

### CRITICISES:

- (1) **Xinming China Holdings Limited** (Stock Code: 2699) ("**Company**") ; and
- (2) **Mr Chen Cheng Shou**, executive director, Chairman and Chief executive officer of the Company ("**Mr Chen**").

### SUMMARY OF FACTS

On 26 December 2018, Mr Chen, on behalf of a subsidiary ("**Relevant Subsidiary**") of the Company, entered into a guarantee agreement ("**Guarantee Agreement**") with an independent third party ("**ZM**"), under which the Relevant Subsidiary agreed to provide a guarantee for ZM in return for a guarantee fee.

It was intended by the parties that the guarantee provided by the Relevant Subsidiary would be used to facilitate ZM's application for a letter of credit.

Following the Guarantee Agreement, between 26 and 28 December 2018, Mr Chen on behalf of the Relevant Subsidiary entered into 7 pledge contracts with a bank and pledged certificates of deposits in the total sum of around RMB530 million ("**Pledge Contracts**"). By reason of the failure of ZM to settle the payments as agreed, the Pledge Contracts were terminated on 2 January 2019.

The Pledge Contracts constituted a major transaction. The Company did not comply with the procedural requirements under the Listing Rules.

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Mr Chen entered into the Pledge Contracts without notification to or authority from the board of directors of the Company. The Pledge Contracts exposed the Company to substantial financial risk and he did not take adequate steps to safeguard the assets of the Relevant Subsidiary that was pledged.

The Company and Mr Chen admitted their respective breaches and accepted the sanctions imposed upon them by the Listing Committee as set out below.

### **LISTING RULE REQUIREMENTS**

Rule 14.34 requires the Company to inform the Exchange and publish an announcement after the terms of a major transaction are finalised.

Under Rules 14.38A, 14.40 and 14.41, the Company is required to seek its shareholders' approval and issue a circular for any major transaction.

Rule 3.08 provides that directors, both collectively and individually, are expected to fulfil duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. Specifically, under Rule 3.08(f), directors have a duty to "*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 Director's Undertaking, each director is required to comply to the best of his ability, and to use his best endeavours to procure the Company's compliance, with the Listing Rules.

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

The Listing Committee found as follows:

- (1) The Company breached Rules 14.34, 14.38A, 14.40 and 14.41.
- (2) Mr Chen breached (a) Rule 3.08(f) and (b) his Director's Undertaking to comply with the Listing Rules to the best of his ability, and use his best endeavours to procure the Company's compliance with the Listing Rules:

- (i) The Pledge Contracts were entered into by Mr Chen without informing the board of directors of the Company. According to the internal procedures of the Company, the Pledge Contracts were subject to the Listing Rules and required to be announced. However, Mr Chen mistakenly believed that the Pledge Contracts were not discloseable under the Listing Rules. He did not take any steps to ensure the Company would comply with the applicable procedural requirements under the Listing Rules after the Pledge Contracts were entered into.
- (ii) The Pledge Contracts were intended to facilitate ZM's application for a letter of credit. However, according to the Pledge Contracts, the liability of ZM under a number of different types of contracts would also be covered. There were no formal safeguards put in place to ensure the scope of guarantee would be restricted.
- (iii) Furthermore, the Listing Committee noted Mr Chen had accepted that, when entering into the Pledge Contracts, he did not adequately address the risk associated with the possible default of ZM under the letter of credit.

## **CONCLUSION**

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

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

Hong Kong, 8 January 2021