

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 Baytacare Pharmaceutical Co., Ltd.
(Delisted, Previous Stock Code: 8197), 12 Directors and four Supervisors

Directors owe a fiduciary duty to the company. They must act in the best interests of the company and its shareholders. In particular, they must dispel any conflict or perception of conflict in respect of transactions entered into by the Company. Any wilful withholding of material information required to be disclosed under the GEM Listing Rules is unacceptable and prejudicial to the interests of shareholders.

Directors of a listed issuer must meet the required standard of skill, care and diligence under the GEM Listing Rules. They must take an active interest in the affairs of the company. They are also responsible for ensuring that the company establishes and maintains appropriate and effective internal control systems.

A director must comply with his Undertaking to cooperate with an investigation by the Exchange. Failure to cooperate without reasonable excuse is an extremely serious matter.

Supervisors of a listed issuer play an important role in procuring the company to comply with the GEM Listing Rules. They must use their best endeavours to procure such compliance by the company and its directors as they have undertaken to the Exchange to do so.

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The GEM Listing Committee of The Stock Exchange of Hong Kong Limited (GEM Listing Committee)**CENSURES:**

- (1) **Baytacare Pharmaceutical Co., Ltd. (Company)** (previous stock code: 8197) (the listing of the Company's shares on the Exchange was cancelled with effect from 18 March 2020 under Rule 9.14A of the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited (**GEM Listing Rules**), for breaching Rules 17.15, 17.22, 17.101(3), 19.34, 19.38, 19.40, 19.41, 20.33, 20.34 and 20.44 of the GEM Listing Rules principally by failing to comply with the procedural requirements in relation to a number of transactions;

FURTHER CENSURES:

- (2) **Mr Wang Shao Yan (Mr Wang)**, former executive director (**ED**) of the Company for breaching Rules 5.01(1) to (6) of the GEM Listing Rules and his obligations under the *Declaration and Undertaking with regard to Directors* given to the Exchange in the form set out in Appendix 6B to the GEM Listing Rules (**Director's Undertaking**) by failing to comply to the best of his ability, and use his best endeavours to procure the Company's compliance, with the GEM Listing Rules;

AND STATES in the Exchange's opinion, by reason of Mr Wang's failure to discharge his responsibilities under the GEM Listing Rules, had Mr Wang remained on the board of directors of the Company (**Board**), his retention of office would have been prejudicial to the interests of investors.

The GEM Listing Committee also CENSURES:

- (3) **Ms Cui Bing Yan (Ms Cui)**, ED of the Company;
- (4) **Mr Guo Ai Qun (Mr Guo)**, ED (formerly non-executive director (**NED**) of the Company;
- (5) **Mr Cao Yang (Mr Cao)**, NED of the Company;
- (6) **Mr Chen You Fang (Mr Chen)**, independent non-executive director (**INED**) of the Company;
- (7) **Mr Shi Peng (Mr Shi)**, former NED of the Company;

(8) **Ms Hui Lai Yam (Ms Hui)**, former INED of the Company;

(9) **Mr Yang Yu Lin (Mr Yang)**, former INED of the Company,

for breaching Rule 5.01(6) of the GEM Listing Rules, and the Director's Undertaking by failing to comply to the best of their ability, and use their best endeavours to procure the Company's compliance, with the GEM Listing Rules;

AND CENSURES:

(10) **Mr Qin Hai Bo (Mr Qin)**, former ED of the Company;

(11) **Mr Jiang Xiao Bin (Mr Jiang)**, former ED of the Company;

(12) **Mr Zhao Zhen Xing (Mr Zhao)**, former INED of the Company;

for breaching Rule 5.01(6) of the GEM Listing Rules, and the Director's Undertaking by failing to comply to the best of their ability, and use their best endeavours to procure the Company's compliance, with the GEM Listing Rules, and to cooperate in the investigation conducted by the Listing Division (**Division**);

AND STATES that the conduct of Mr Qin, Mr Jiang and Mr Zhao in this matter will be taken into account in assessing his suitability to be a director of a company listed on the Exchange.

(The directors identified at (2) to (12) above together with (17) Mr Gao below are collectively referred to as the **Relevant Directors**.)

FURTHER CENSURES:

(13) **Ms Lin Xia Rong (Ms Lin)**, supervisor of the Company;

(14) **Ms Han Xue (Ms Han)**, former supervisor of the Company;

(15) **Ms Yang Li Xue (Ms Yang)**, former supervisor of the Company; and

(16) **Ms Meng Shu Hua (Ms Meng)**, former supervisor of the Company,

for breaching their obligations under their *Declaration and undertaking and acknowledgement in respect of an issuer incorporated in the People's Republic of China* given to the Exchange in the form set out in Appendix 6C to the GEM Listing Rules (**Supervisor's Undertaking**) by (a) failing to comply to the best of their ability with, and use their best endeavours to procure the Company and the Relevant Directors and Mr Gao to act at all times in accordance with, the articles of association of the Company (**Articles**); and (b) use their best endeavours to procure the Company and the Relevant Directors / Mr Gao to comply with the GEM Listing Rules.

(The supervisors identified at (13) to (16) above are collectively referred to as the **Supervisors**.)

And the Listing Review Committee (LRC) on review

CENSURES:

(17) **Mr Gao Zhi Kai (Mr Gao)**, former INED of the Company;

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this Statement of Disciplinary Action apply only to the Company, the Relevant Directors and Supervisors, and not to any other past or present directors or supervisors of the Company.

HEARINGS

On 21 October 2020, the GEM Listing Committee conducted a hearing into the conduct of the Company, the Relevant Directors and the Supervisors in relation to their obligations under the GEM Listing Rules, the Director's Undertaking and the Supervisor's Undertaking.

On 14 April 2021, the LRC conducted a hearing of the review application of Mr Gao with respect to the findings of breaches and sanctions imposed by the GEM Listing Committee (**LRC Review**).

KEY FACTS

Loan Agreement/Advancement

On 27 December 2016, the Company entered into a loan agreement (**Loan Agreement**) with a third party, under which the Company obtained a short-term loan in the sum of RMB45 million (**Loan**).

The Loan Agreement was entered into by Mr Wang on behalf of the Company without approval from the Board at the time. The Loan proceeds were paid to a company controlled by Mr Wang and/or his father (**Recipient**) which was not a Group company (**Advancement**).

The entering into of the Loan Agreement and the Advancement constituted a major transaction of the Company. The Company did not comply with the requirements under the GEM Listing Rules.

In 2016 and 2017, the assets ratios of the Advancement as at the half yearly ends, quarterly period ends and annual financial year ends of the Company exceeded 8 per cent. The Company did not announce the Advancement or include the required information about the Advancement in its half-year, quarterly or annual reports.

The lender under the Loan Agreement commenced court proceedings in the PRC to recover the Loan. The Company consequently made provision for litigation liabilities of around RMB38.2 million in its consolidated financial statements for the year ended 31 December 2018.

Chinese Medicine Agreement

On 10 January 2017, a subsidiary of the Company entered into an agreement to purchase Chinese medicine for RMB40 million from a company of which the father of Mr Wang was a substantial shareholder (**Chinese Medicine Agreement**).

The entering into of the Chinese Medicine Agreement constituted a connected transaction of the Company. The Company did not announce the transaction or seek its shareholders' approval as required under the GEM Listing Rules.

The vendor did not deliver the Chinese medicine as agreed, and an impairment loss of prepayment made by the Company of RMB19 million was recognized.

Acquisition Agreement

On 20 January 2017, the Company entered into an agreement to acquire 190 school buses and a monitoring system at a consideration of RMB68 million (**Acquisition Agreement**). As at 31 December 2017, the Company had paid RMB34.5 million as deposits under the Acquisition Agreement.

The Company disclosed the Acquisition Agreement in its announcement dated 9 July 2018. It accepted that the entering into of the Acquisition Agreement constituted a major transaction of the Company but that it had not complied with the requirements under the GEM Listing Rules.

The vendors did not deliver the school buses and monitoring system as agreed. Full impairment loss of the deposits paid was recognized in the consolidated financial statements of the Company for the year ended 31 December 2018.

Settlement Agreement

In September 2012, a company in which Mr Wang's father owned an approximately 97 per cent equity interest was ordered by the PRC court to make payment in the total sum of RMB35 million to a third party pursuant to a lawsuit.

On 20 January 2017, Mr Wang, on behalf of the Company, entered into an agreement to guarantee, jointly and severally with himself, the said liabilities of his father's company up to the maximum amount of RMB35 million (**Settlement Agreement**).

The liabilities of the company of Mr Wang's father were subsequently satisfied in full by Mr Wang. No payments were made by the Company.

The Settlement Agreement was announced by the Company on 29 March 2018. In this announcement, the Company accepted that the entering into of the Settlement Agreement constituted a discloseable and connected transaction under the GEM Listing Rules, and that it had failed to comply with the relevant procedural requirements.

CG Code Compliance Statement

In 2016 and 2017, the Company did not provide members of its Board with monthly updates of its performance, position and prospects as set out in paragraph C.1.2 of the Corporate Governance Code and Corporate Governance Report under Appendix 15 to the GEM Listing Rules (**CG Code**).

Notwithstanding the above, the Company, in its interim and annual reports for 2016 and 2017, confirmed that it had complied with paragraph C.1.2 of the CG Code.

GEM LISTING RULE REQUIREMENTS

- (a) Rule 17.15 provides that where the relevant advance to an entity from the issuer or any of its subsidiaries exceeds 8 per cent under the assets ratio defined under Rule 19.07(1), the issuer must announce the required information about the advance.
- (b) Rule 17.22 requires the Company to include information about the advance in the half-year, quarterly or annual report as applicable if the circumstances giving rise to a disclosure obligation under Rule 17.15 continue to exist at the Company's half yearly or quarterly period end or annual financial year end.
- (c) Rule 19.34 provides that the Company shall inform the Division and submit an announcement to the Exchange for publication after the terms of, *inter alia*, a discloseable transaction and major transaction are agreed.
- (d) Under Rules 19.38, 19.40 and 19.41, the Company is required to seek its shareholders' approval and issue a circular for any major transaction.
- (e) Rules 20.33, 20.34 and 20.44 provides that any connected transaction is subject to announcement, shareholders' approval and circular requirements.
- (f) Paragraph C.1.2 of the CG Code requires the management to provide all members of the Board with monthly updates giving a balanced and understandable assessment of the Company's performance, position and prospects in sufficient detail to enable the Board as a whole and each director to discharge their duties under Rule 5.01 and Chapter 17 of the GEM Listing Rules.
- (g) According to Rule 17.101(3), the Company must give considered reasons for any deviation from the CG Code in its half-year and annual reports.
- (h) Rule 5.01 provides that the Exchange expects the 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. Specifically Rule 5.01(1) imposes a duty to "*act honestly and in good faith in the interests of the company as a whole*"; and Rule 5.01(6) imposes 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*".

- (i) Under the Director's Undertaking, the Relevant Directors are under an obligation to comply to the best of their ability, and to use their best endeavours to procure the Company's compliance, with the GEM Listing Rules. They also undertake to cooperate in any investigation conducted by the Division, including answering promptly and openly any questions addressed to them.
- (j) The Supervisor's Undertaking requires the Supervisors to, among other things, comply to the best of their ability with, and use their best endeavours to procure the Company and the Relevant Directors to act at all times in accordance with, the Articles, and use their best endeavours to procure the Company and the Relevant Directors to comply with the GEM Listing Rules.

FINDINGS OF BREACH

The GEM Listing Committee considered, to the extent made, the written and oral submissions of the Listing Division, the Company, the Relevant Directors and the Supervisors, and concluded as follows:

Company's breaches

The GEM Listing Committee noted that the Company admitted its breaches of Rules 19.34, 19.38, 19.40, 19.41, 20.33, 20.34 and 20.44 in respect of the Acquisition Agreement and Settlement Agreement.

In respect of the Loan Agreement, the Company confirmed in its announcement dated 9 July 2018 that the obligations thereunder remained binding on it despite alleging that it was entered into by Mr Wang without the Board's approval. The Company also accepted that the Recipient, of which Mr Wang's father admitted he had *de facto* control, was a connected person of the Company. The GEM Listing Committee accordingly concluded that the Company breached Rules 19.34, 19.38, 19.40, 19.41, 20.33, 20.34 and 20.44 in respect of the Loan Agreement and Advancement.

The assets ratios in respect of the Advancement as at (a) the date on which it was made, (b) half yearly ends, (c) quarterly period ends and (d) annual financial year ends for 2016 and 2017 ranged from around 16 per cent to around 42 per cent. The GEM Listing Committee therefore concluded that the Company further breached Rules 17.15 and 17.22 in respect of the Advancement.

The Chinese Medicine Agreement was entered into by a subsidiary of the Company as the purchaser. The vendor under the agreement was the Recipient, which as accepted by the Company was its connected person. The GEM Listing Committee concluded that the Company breached Rules 20.33, 20.34 and 20.44 in respect of the Chinese Medicine Agreement.

The Company accepted that it did not give detailed reasons for its deviation from paragraph C.1.2 of the CG Code in its interim and annual reports for 2016 and 2017. The GEM Listing Committee concluded the Company breached Rule 17.101(3) (a) for its annual reports, and Rule 17.101(3)(b) for its interim reports, for 2016 and 2017.

Internal Control Deficiencies

The GEM Listing Committee (as confirmed and also found by the LRC in respect of the LRC Review of Mr Gao) found that the Company did not have in place adequate and effective internal controls.

At the material time, Mr Wang effectively had access to and control of the primary bank accounts of the Group. Eleven payments in the total sum of RMB54.5 million were made purportedly pursuant to the Acquisition Agreement and Chinese Medicine Agreement, and nine of them exceeded RMB1 million. According to the internal procedures of the Company, for each of those payments which exceeded RMB1 million, an application should have been submitted to the Board or its shareholders for approval. The GEM Listing Committee found that there were no internal controls put in place to ensure the above procedures would be observed.

Further, at the material time Mr Wang also had control over the use of the chops of the Company. The Company did not put in place checks and balances over Mr Wang's management of the Company's business to mitigate potential abuse of power or associated risks and conflicts of interest.

The GEM Listing Committee also found that the Company did not have adequate internal procedures for procuring its compliance with the requirements for notifiable and connected transactions under the GEM Listing Rules.

Directors' breaches*Mr Wang*

The GEM Listing Committee concluded that he breached (i) Rules 5.01(1) to (6); and (ii) his Director's Undertaking to comply to the best of his ability with the GEM Listing Rules and use his best endeavours to procure the Company's compliance with the GEM Listing Rules:

- (a) The Advancement and the Settlement Agreement, which were prohibited under the Articles and the Company's internal procedures, gave rise to serious conflict of interest on the part of Mr Wang. The transactions did not confer any commercial benefit to the Company, and Mr Wang failed to obtain the Board's approval before entering into the relevant agreements.
- (b) He procured the payments under the Acquisition Agreement and Chinese Medicine Agreement. A significant portion of them was impaired, and he did not take any steps to ensure the prepayments would be safeguarded. He also unnecessarily exposed the Company to a potential liability of RMB35 million under the Settlement Agreement.
- (c) He intentionally withheld information about the relevant agreements from the Board, which were required to be disclosed under the GEM Listing Rules.
- (d) He failed to ensure the Company had in place proper internal controls for its compliance with the GEM Listing Rules.
- (e) Considering the circumstances surrounding the relevant events, in particular Mr Wang's lack of regard to his obligations under the GEM Listing Rules and the interests of the Company and investors, the GEM Listing Committee considered that Mr Wang failed to discharge his responsibilities under the GEM Listing Rules.

The other Relevant Directors

The GEM Listing Committee also concluded that they breached (i) Rule 5.01(6); and (ii) their Director's Undertakings to comply to the best of their ability with the GEM Listing Rules and use their best endeavours to procure the Company's compliance with the GEM Listing Rules:

- (a) Between 2016 and 2017, no payment application was submitted to the Board under its payment procedures. During this period, the Group also recorded a sharp decrease in its cash and bank balance. However, none of the other Relevant Directors enquired or took appropriate follow-up action about this. The GEM Listing Committee noted that Ms Cui, Mr Guo, Mr Cao and Mr Chen admitted their failure to discharge their duties.
- (b) When Mr Wang was in office, the other Relevant Directors purported to have monitored the Company's operations by reviewing its draft financial results/reports and attending formal meetings during which they were considered and approved. They did not receive from the Company monthly updates referred to in paragraph C.1.2 of the CG Code between 2016 and 2017. Yet, they did not take any other steps to ensure the Company's affairs were properly supervised.
- (c) They failed to put in place adequate internal controls over the Company's affairs, in particular the operation of the bank accounts. They failed to take steps to ensure checks and balances were in place to monitor Mr Wang's conduct, which gave rise to the room for abuse by him. They also failed to ensure the Company had in place adequate procedures for ensuring its compliance with the GEM Listing Rules.

LRC Review

- (d) In the LRC Review, the LRC upheld the GEM Listing Committee's decision with respect to Mr Gao. Amongst other matters, the LRC also confirmed its view that it should have been evident to Mr Gao as an INED and a member of the audit committee there were serious short-comings with the internal financial controls of the Company. The failure to provide oversight over the actions of management made it much easier for the conduct and actions of Mr Wang to take place. The LRC acknowledged Mr Gao had cooperated with the investigation into the Company's affairs conducted by the Division but did not consider this (or other matters identified by Mr Gao) to be mitigating factors sufficient to alter the sanction recommended by the Division in the context of the overall failures identified.

Mr Qin, Mr Jiang and Mr Zhao

Separately, the GEM Listing Committee also concluded that they breached their Director's Undertakings to cooperate in the investigation conducted by the Division, including answering promptly and openly any questions addressed to them:

- (a) In the course of the Division's investigation, the Exchange sent investigation letters and reminder letters to Mr Qin and Mr Zhao at their last known addresses. The letters were deemed to be validly served on them, and they did not respond. The GEM Listing Committee concluded that they failed to respond to the Exchange's enquiry without reasonable or valid reasons, and therefore breached their Director's Undertakings to cooperate with the Division's investigation.
- (b) In the course of the Division's investigation, the Exchange also sent an investigation letter to Mr Jiang. Despite the Exchange's reminders, Mr Jiang only responded by a bare denial of knowledge of the matter. He failed to address the Division's enquiries, in particular, those concerning his fulfilment of his duties. The GEM Listing Committee concluded that he breached his Director's Undertaking to cooperate with the Division's investigation.

Supervisors' breaches

The GEM Listing Committee concluded that the Supervisors breached their Supervisor's Undertakings to (a) comply to the best of their ability with, and use their best endeavours to procure the Company and the Relevant Directors to act at all times in accordance with, the Articles; and (b) use their best endeavours to procure the Company and the Relevant Directors to comply with the GEM Listing Rules:

- (a) They failed to carry out their supervisory duties under the Articles. They did not ensure there were in place proper checks and balances to prevent abuse of power by the Company's directors. They also failed to enquire about the sharp decrease in the Group's cash and bank balance between 2016 and 2017 and the absence of any applications to make payments resulting in such decrease. They simply relied on the information set out in the Company's financial results and reports.
- (b) The Articles prohibit the provision by the Company of a loan to or loan guarantee for its directors or connected persons of its directors. The Supervisors did not take any steps to ensure such prohibitions would be enforced. They also failed to ensure the Company's payment approval procedures would be implemented.
- (c) They failed to ensure the Company had in place adequate procedures for ensuring the Company and its Directors' compliance with the GEM Listing Rules.

REGULATORY CONCERN

The GEM Listing Committee regarded the breaches in this matter as serious:

- (a) Directors owe a fiduciary duty to the company. It is therefore of paramount importance that each director acts honestly and in good faith in the interests of the company.
- (b) This case reveals a serious concern over Mr Wang's integrity as a director of a listed issuer. The transactions under the Loan Agreement/Advancement and the Settlement Agreement were prejudicial to the best interests of the Company and its investors. Mr Wang was in a conflicted position when he decided to enter into those transactions.
- (c) The evidence also suggested that Mr Wang intentionally breached the internal policies of the Company. He circumvented the payment procedures of the Company and failed to obtain approval from the Board / the Company's shareholders before arranging and approving the payments. He also failed to observe the prohibitions against the provision by the Company of loans to and loan guarantees for the Company's directors or their connected persons set out in the Articles. The circumstances surrounding the breaches demonstrated his complete lack of regard to GEM Listing Rule compliance.
- (d) There were also serious corporate governance issues in this case. Apart from reviewing the draft financial results/reports and attending formal meetings in which they were considered, none of the other Relevant Directors took any substantive steps to ensure the Company's affairs would be monitored properly. They placed heavy, if not total, reliance on Mr Wang in respect of monitoring the Company's affairs, which was not justified or warranted in the circumstances. The evidence also suggested that none of the Relevant Directors took steps to ensure the Company's internal controls in respect of payment approval or GEM Listing Rule compliance were adequate and properly implemented.
- (e) Directors also have an obligation to ensure the company's affairs are properly and adequately supervised. They must take an active interest in the issuer's affairs and follow up anything untoward that comes to their attention. A director does not satisfy the required levels of skill, care and diligence if he pays attention to the issuer's affairs only at formal meetings.
- (f) The transactions caused substantial losses to the Company and significantly disrupted its operations.

- (g) It is of utmost importance that a director cooperates with the Division's investigation to enable the Exchange to discharge its function to maintain and regulate an orderly market. Failure to respond to the Division's enquiries in connection with an investigation of possible GEM Listing Rule breaches without reasonable excuse is viewed in a very serious light.

SANCTIONS AND DIRECTIONS

Having made the findings of breach stated above, and having concluded that the breaches were serious, the GEM Listing Committee decided to:

- (1) censure the Company for its breaches of Rules 17.15, 17.22, 17.101(3), 19.34, 19.38, 19.40, 19.41, 20.33, 20.34 and 20.44;
- (2) censure Mr Wang for his breaches of Rules 5.01(1) to (6) and his Director's Undertaking; and
- (3) state that, in the Exchange's opinion, by reason of Mr Wang's failure to discharge his responsibilities under the GEM Listing Rules, had Mr Wang remained on the Board, his retention of office would have been prejudicial to the interests of investors.

The GEM Listing Committee (or in the case of the Relevant Director Mr Gao in the LRC Review, the LRC) decided to:

- (4) censure all other Relevant Directors for their breaches of Rules 5.01(6) and their Director's Undertakings;
- (5) censure all Supervisors for their breaches of their Supervisor's Undertakings;
- (6) direct that, as a pre-requisite of any future appointment as a director of any company listed on the Exchange, Mr Guo, Ms Cui, Mr Cao, Mr Chen, Mr Jiang, Mr Qin, Mr Shi, Ms Hui, Mr Yang and Mr Zhao attend 24 hours of training on regulatory and legal topics including GEM Listing Rule compliance. The training must include three hours on each of (i) directors' duties; (ii) the CG Code; (iii) GEM Listing Rule requirements on notifiable transactions; and (iv) GEM Listing requirements on connected transactions, to be provided by training providers approved by the Division. The training is to be completed, and the training provider's written certification of full compliance is to be provided to the Division, before the effective date of any such appointment; and

- (7) direct that Mr Gao (a) attend 24 hours of training on regulatory and legal topics including GEM Listing Rule compliance. The training must include at least three hours on each of (i) directors' duties; (ii) the CG Code; (iii) GEM Listing Rule requirements on notifiable transactions; and (iv) GEM Listing Rule requirements for connected transactions, to be provided by training providers approved by the Division and completed within 90 days from the date of the decision letter of the GEM Listing Committee; and (b) provide the Division with the training provider's written certification of full compliance within two weeks after training completion.

Hong Kong, 8 June 2021