

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Tenwow International Holdings Limited (Delisted, Previous Stock Code: 1219) and Nine Directors

SANCTIONS AND DIRECTIONS

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

CENSURES:

- (1) **Tenwow International Holdings Limited** (previous stock code: 1219) (**Company**) (the listing of the Company's shares on the Exchange was cancelled under Rule 6.01A with effect from 13 November 2020);

AND FURTHER CENSURES:

- (2) **Mr Lin Jian Hua**, former executive director of the Company (**ED**), Chief Executive Officer and Chairman of the Company;
- (3) **Mr Lin Qi**, ED at the date of delisting and former Chairman of the Company;
- (4) **Mr Yeung Yue Ming**, ED of the Company at the date of delisting;
- (5) **Ms Au Lai Hang**, former ED of the Company; and
- (6) **Mr Lam Boris Hang**, former ED, Chief Financial Officer and Company Secretary of the Company,

AND CRITICISES:

- (7) **Mr Liu Zhao**, non-executive director (**NED**) of the Company at the date of delisting;
- (8) **Mr Cheung Warren Yui Kai**, former independent non-executive director (**INED**) of the Company;
- (9) **Mr Liu Chang Tzong**, former INED of the Company; and
- (10) **Mr Wang Long Gen**, former INED of the Company,

.../2

(the directors identified at (2) to (10) above are collectively referred to as the **Relevant Directors**),

AND STATES that in the Exchange's opinion, by reason of the wilful and/or persistent failure of Mr Lin Jian Hua and Mr Lin Qi to discharge their responsibilities under the Listing Rules, had the Company remained listed, their retention of office would have been prejudicial to the interests of investors.

The Listing Committee further directed Mr Yeung Yue Ming, Ms Au Lai Hang, Mr Lam Boris Hang, Mr Liu Zhao, Mr Cheung Warren Yui Kai, Mr Liu Chang Tzong and Mr Wang Long Gen to attend, as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange, 24 hours of training on regulatory and legal topics including Listing Rule compliance. The training must include at least three hours on each of (a) directors' duties; (b) the Corporate Governance Code; (c) Listing Rule requirements for notifiable and connected transactions; and (d) Listing Rule requirements for financial reporting.

SUMMARY OF FACTS

This case concerns the non-disclosure of financial assistance provided by the Company to a connected person, and the Company's delay in publishing its financial results.

Credit Line Contract

On 23 August 2017, a subsidiary of the Company (**Tenwow Food**) entered into a credit line contract with a bank (**Credit Line Contract**), which allowed a company 97 per cent owned by Mr Lin Jian Hua and his wife (**Tiansheng Warehouse**) to use up to RMB340 million of its credit line (**Financial Assistance**). The Credit Line Contract was (i) entered into by Mr Lin Jian Hua (who was the then Chairman, CEO and an ED of the Company) without the knowledge of the board of directors at the time, and (ii) discovered after a substantial amount of funds had been debited in late May 2018 from the bank account of Tenwow Food (after Mr Lin Jian Hua stopped turning up for work in early May 2018).

Tiansheng Warehouse is an associate of Mr Lin Jian Hua and a connected person of the Company. Accordingly, the Credit Line Contract, which allowed Tiansheng Warehouse to use a significant amount of its credit line, constituted financial assistance by the Company to a connected person and therefore a connected transaction of the Company subject to the announcement, circular and independent shareholders' approval requirements under Chapters 14 and 14A of the Listing Rules. However, the Company failed to comply with such requirements.

Prepayment Agreements

Between 1 January 2016 and 1 June 2017, six subsidiaries of the Company (**Six Subsidiaries**) entered into seven agreements with two suppliers (**Suppliers**) for the purchase of goods (**Prepayment Agreements**). Prepayments totalling approximately RMB1.7 billion had been paid.

An independent forensic investigation into, among other things, the Prepayment Agreements (**Forensic Investigation**) discovered that there were serious deficiencies in the Company's internal controls. For example, the Six Subsidiaries (a) transferred funds to the Suppliers without supporting documents, (b) made payments to the Suppliers which were only supported by bank payment receipts (with the exception of a few which attached payment application forms signed by Mr Lin Jian Hua and the former financial controller of Tenwow Food), and (c) when Mr Lin Jian Hua was on business trips, Mr Lin Qi (son of Mr Lin Jian Hua) would sign payment documents on behalf of Mr Lin Jian Hua without making enquiries.

Delays in Financial Reporting

The Company failed to publish its (a) interim results and report for the six months ended 30 June 2018, (b) annual results and report for the year ended 31 December 2018 and (c) interim results and report for the six months ended 30 June 2019 within the timelines stipulated by the Listing Rules (**Outstanding Results and Reports**).

According to the Company, the delay in publication of the Outstanding Results and Reports was due to, among other things, the Forensic Investigation and the resignation of the then INEDs (i.e. Mr Cheung Warren Yui Kai, Mr Liu Chang Tzong and Mr Wang Long Gen) on 24 August 2018.

LISTING RULE REQUIREMENTS*Company*

Rules 13.46(2)(a), 13.48(1), 13.49(1) and 13.49(6) stipulate the respective timelines for the publication or despatch of a listed issuer's preliminary announcement of interim and annual results and reports.

Rule 14.34 provides that a listed issuer must publish an announcement as soon as possible after the terms of, among other things, a discloseable or a major transaction have been finalised.

Rules 14A.35 and 14A.36 provide that a listed issuer must announce a connected transaction as soon as practicable after its terms have been agreed, and that the connected transaction must be conditional on independent shareholders' approval at a general meeting held by the listed issuer.

Rule 14A.46 provides that a listed issuer must send a circular to shareholders in respect of the connected transaction that must be conditional on shareholders' approval.

Directors

Under Rules 3.08, 3.16 and 13.04 of the Listing Rules, the board is collectively responsible for the Company's management and operations, and the directors are collectively and individually responsible for ensuring the Company's full compliance with the Listing Rules.

Under Rule 3.08, the directors are expected, 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, meaning that every director must, in the performance of his duties as a director:

- (a) act honestly in good faith in the interests of the company as a whole;
- (b) act for proper purpose;
- (c) be answerable to the issuer for the application or misapplication of its assets;
- (d) avoid actual and potential conflicts of interest and duty;
- (e) disclose fully and fairly his interests in contracts with the issuer; and

- (f) 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.

Directors of listed issuers are required to provide to the Exchange a Declaration and Undertaking (**Undertaking**), under which each director, among other things, undertakes that he shall (i) comply to best of his ability with the Listing Rules, and (ii) use his best endeavours to procure the Company's compliance with the Listing Rules.

LISTING COMMITTEE'S FINDINGS OF BREACH

Following a hearing, the Listing Committee concluded as follows:

- (1) The Company breached (a) Rules 14.34, 14A.35, 14A.36, and 14A.46 in respect of the Financial Assistance, and (b) Rules 13.46(2), 13.48(1), 13.49(1) and 13.49(6) in respect of the Outstanding Results and Reports.
- (2) The Company did not have adequate and effective internal controls.
- (3) Each of the Relevant Directors breached Rule 3.08(f) and their respective Undertakings for failing to use their best endeavours to ensure that the Company had adequate and effective internal controls:

- (a) Given that Mr Lin Jian Hua was both the then Chief Executive Officer and Chairman of the board, there should have been a clear division of his responsibilities in respect of the management of the board and the day-to-day management of the Company's business. However, the evidence indicated that he was the ultimate decision-maker and had unfettered power over decision-making.

There was no or insufficient segregation of Mr Lin Jian Hua's duties, or proper checks and balances in place, to help ensure that he followed the Company's policies and procedures, and that any non-compliance could be identified and followed up.

- (b) The internal audit function of the Company should be independent and adequately resourced, and the scope of internal audits should be comprehensive and reviewed periodically. However, its internal audit function lacked independence and was inadequately resourced, as it was only staffed by one employee who reported to a member of the senior management, which resulted in certain transactions being excluded from the scope of the internal audit.

The evidence provided was insufficient to demonstrate that (i) the scope of the internal audit was comprehensive and reviewed properly, and (ii) the internal audit department was adequately supervised. To ensure independence, the internal audit team should report to the Audit Committee and/or to the board.

- (c) There were established internal control policies and procedures, but these were not properly implemented, reviewed and updated, or were deficient.

For example, the procedures for the use of company chops and for the provision of credit to third parties and related parties were not strictly followed, which contributed to Mr Lin Jian Hua being able to arrange and execute the Credit Line Contract (and procure the Financial Assistance) without informing and obtaining approval from the board.

The deficiencies in, and the failure to strictly implement, the internal controls relating to the accounts payable process and prepayments contributed to a substantial amount of prepayments being made to the Suppliers of the Prepayment Agreements without conforming to the relevant policies and procedures, or where there was no requirement to make any prepayment.

- (d) The geographical base of a director should not be an excuse for not having oversight of, taken a proactive role in and/or made necessary enquiries into overall affairs of the Company (including its subsidiaries wherever incorporated).
- (4) In addition to the breaches in paragraph (3) above, Mr Lin Jian Hua breached Rule 3.08(a) to (e):
- (a) The evidence indicated that Mr Lin Jian Hua executed the Credit Line Contract on behalf of Tenwow Food and that he improperly exercised his powers as a director and failed to avoid conflicts of interest and duty in respect of the transaction. He arranged and executed the Credit Line Contract even though (i) it had not been considered and approved by the board, (ii) he had conflicts of interest and duty, and (iii) the transaction did not confer any benefit to the Company and prejudiced its interests. He should have called a board meeting for the purpose of considering and approving the transaction, during which he would have had to declare his conflicts of interest, as well as abstain from voting.
 - (b) Mr Lin Jian Hua also failed to comply with the Company's internal control procedures, to report the Credit Line Contract (and the Financial Assistance) to the board, and to procure the Company's Rule compliance in respect of the transaction.
- (5) Mr Lin Jian Hua's conduct in respect of the Financial Assistance is egregious and he wilfully and/or persistently failed to discharge his responsibilities under the Listing Rules.
- (6) Further, the Listing Committee regarded Mr Lin Qi's breaches of Rule 3.08(f) and the Director's Undertaking as serious and his conduct showed his willful and/or persistent failure to discharge his responsibilities under the Listing Rules. The Listing Committee noted in particular that:
- (a) Mr Lin Qi is Mr Lin Jian Hua's son. As set out in the report on the findings of the Forensic Investigation, while Mr Lin Jian Hua was away on business, Mr Lin Qi would sign the payment application forms upon receiving his father's verbal instructions and after obtaining approval from the then chief financial officer of Tenwow Food. However, Mr Lin Qi did not make enquiries into the identity of the payee or the purpose of the payment.

- (b) Mr Lin Qi was, at the material time, the deputy general manager of the Group as well as a director of Tenwow Food. According to the Company's announcement dated 13 February 2020, the board acknowledged that Mr Lin Qi might not have performed his duties properly.
- (c) Further, although Mr Lin Qi was only appointed as a director of Tenwow Food in May 2017, the Listing Committee would expect him to have taken an active interest in, and gained a good understanding of, Tenwow Food's operations, internal controls and governance practices, so that, he could, where necessary, raise issues, concerning the internal control of Tenwow Food with the board. However, there was no evidence that he took such steps.

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 Company and the Relevant Directors, and not to any other past or present members of the board of directors of the Company.

Hong Kong, 15 June 2021