

## STATEMENT OF DISCIPLINARY ACTION

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Exchange's Disciplinary Action against Zhejiang Prospect Company Limited (Delisted, previous stock code: 8273), Ten Current and Former Directors and Five Supervisors

### SANCTIONS

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

### CENSURES:

- (1) **Zhejiang Prospect Company Limited** (Delisted, previous stock code: 8273) (**Company**);
- (2) **Mr Fei Guo Yang**, former Chairman and executive director (**ED**) of the Company (**Mr Fei GY**);
- (3) **Mr Hong Guo Ding**, former ED and compliance officer of the Company (**Mr Hong GD**);
- (4) **Mr Hong Chun Qiang**, ED of the Company (at the date of delisting);
- (5) **Mr Li Zhang Rui**, former non-executive director (**NED**) of the Company (**Mr Li**);
- (6) **Mr Tang Cheng Fang**, NED of the Company (**Mr Tang CF**) (at the date of delisting);
- (7) **Ms Tang Jing Jing**, former NED of the Company (**Ms Tang**);
- (8) **Mr Tang Jing Qi**, NED of the Company (**Mr Tang JQ**) (at the date of delisting);
- (9) **Mr Ma Hong Ming**, independent non-executive director (**INED**) and chairman of the audit committee (**AC**) of the Company (at the date of delisting);
- (10) **Mr Lu Guo Qing**, INED of the Company and AC member (at the date of delisting);
- (11) **Mr Wang He Rong**, INED of the Company and AC member (at the date of delisting);
- (12) **Mr Hong Jin Shui**, Supervisor of the Company (at the date of delisting);
- (13) **Mr Chen Jin Long**, Supervisor of the Company (at the date of delisting);
- (14) **Mr Feng Yun Lin (Mr Feng)**, Supervisor of the Company (at the date of delisting);

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(15) **Mr Wang Ye Gang**, Supervisor of the Company (at the date of delisting);

(16) **Ms Lin Ya**, Supervisor of the Company (at the date of delisting).

(The directors identified at (2) to (11) above are collectively referred to as the **Relevant Directors**; and the supervisors identified at (12) to (16) above are collectively referred to as the **Relevant Supervisors**.)

#### **AND STATES:**

in the Exchange's opinion, had the Company remained listed / had they remained on the board of directors of the Company (**Board**), the retention of office by the Relevant Directors (except Ms Tang and Mr Tang JQ) would have been prejudicial to the interests of investors.

**AND FURTHER DIRECTS** each of Ms Tang and Mr Tang JQ to attend 21 hours of training on regulatory and legal topics including Listing Rule compliance, 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**

##### Transactions

At a Board meeting on 3 January 2017, the Relevant Directors (except Mr Li, who did not attend, but was informed of the meeting) unanimously passed a resolution which gave approval to the Company's procurement personnel to purchase steel to hedge against the risk of a possible future increase in the price of steel, and to purchase bank acceptance bills at a discount for the purposes of settling the Company's accounts payable.

In respect of approving execution of contracts, the procurement personnel were supervised by and reported to Mr Fei GY. Mr Fei GY was further responsible for supervising the Company's daily operations, including approval of any general transactions, and updating and reporting to the Board regarding any new business developments.

After the Board meeting on 3 January 2017, the procurement personnel represented the Company in entering into a total of 28 transactions in 2017 and early 2018 (collectively, **Transactions**). Most of the Transactions were purportedly for purchasing steel and/or bank acceptance bills. One was purportedly the submission of a tender for supplying steel to a property developer. All of the Transactions involved making prepayments, or paying guarantee deposits, to the counterparties. All of the Transactions were approved by Mr Fei GY. However, Mr Fei GY did not report any of the Transactions to the Board or take steps to procure the Company's compliance with the GEM Listing Rules (**GLRs**), including procuring the Company to consult professional advisers on the GLR implications of the Transactions.

The prepayments / guarantee deposits amounted to a total of RMB365.4 million. Each of the Transactions was cancelled within a month, following which the prepaid amounts were refunded to the Company. This pattern of transactions was repeated monthly throughout 2017 and to February 2018, and the forensic accountants engaged by the Company on 2 May 2019 to look into the Transactions for facilitating the 2017 and 2018 audits believed the overall effect was analogous to the Company providing revolving loans to the counterparties. In particular:

- (a) In 2017, the Company paid RMB271.2 million under the Transactions, purportedly for purchasing steel. However, all of the Transactions were cancelled without any steel being delivered. Instead, throughout 2017, the Company only bought RMB15.3 million's worth of steel, which it acquired in unrelated transactions. Notably, the individual purchase amount under each of the relevant Transactions was greater than the total amount of steel actually bought by the Company during the entire year.
- (b) Pursuant to the Transactions, the Company prepaid RMB67.1 million purportedly for purchasing bank acceptable bills in 2017. Again, all were cancelled within a month. Throughout the year, the Company actually only bought RMB8.48 million's worth of bills, which were again acquired in unrelated transactions.
- (c) The counterparties in all the steel purchase Transactions received full prepayment from the Company, without ever supplying any steel to the Company.
- (d) The Company claimed that the prepayments in respect of the bank acceptance bills were not just for settling the Company's accounts payable but also for earning interest, as the relevant agreements contained interest terms. However, the agreements did not contain terms about when such interest should be paid. Whilst each relevant Transaction was cancelled within a month, the total interest income of RMB117,500 was only paid to the Company in 2018.
- (e) Six out of the nine counterparties to the Transactions were related parties of the Company. Over 95 per cent (or RMB347.25 million) of the payments under the Transactions was paid to the six related parties. In particular, Mr Hong GD was a director of two of these counterparties to the Transactions which accounted for RMB239.3 million out of the total sum of RMB365.4 million in respect of the Transactions (ie over 65 per cent).
- (f) Two counterparties to the Transactions were connected persons of the Company:
  - (i) Mr Tang CF held 42.23 per cent of the equity interest in a company which in turn held 90 per cent of the equity interest in one of the two counterparties. As a result, that counterparty constituted an associate of Mr Tang CF and thus a connected person to the Company under the GLRs.
  - (ii) Mr Feng held 30 per cent of the equity interest in another counterparty. Hence that counterparty was an associate of Mr Feng and thus a connected person to the Company under the GLRs.
- (g) Four of the Transactions were marked as "Loan" in the Company's bank statements.

On 26 March 2018, the Company announced that it would be unable to publish its 2017 financial results by 26 March 2018, and might not be able to dispatch its 2017 annual report to its shareholders by 31 March 2018, as it required additional time to provide some information to its auditors to perform and finalize the audit work. The audit work was ongoing because, amongst other things, the auditors considered that the Transactions lacked commercial rationale.

An independent investigation committee comprising all of the Company's INEDs engaged external professional advisers to review the Company's relevant internal control system in light of the Transactions, and the manner in which the Company complied with the GLRs. The internal control review showed that there were material deficiencies in the Company's internal controls for procuring compliance with Chapters 19 and 20 of the GLRs. These deficiencies existed

notwithstanding that the Company had been directed by the GEM Listing Committee in 2012 to conduct a thorough review of its internal controls and to make necessary improvements. This direction was made pursuant to a disciplinary action in which the GEM Listing Committee also imposed public censures on the Company and all the Relevant Directors (except Ms Tang and Mr Tang JQ) in this action in respect of the Company's breach of the notifiable transaction requirements regarding a very substantial acquisition and a major transaction. The Company has not updated its internal controls since 2013, including its list of connected persons.

On 20 August and 30 November 2018, and 12 June 2019, the Company announced the Transactions and their GLR implications.

As a result of the Company's failure to publish and/or dispatch the 2017 financial results and annual report, trading in the Company's shares was suspended on 3 April 2018. The Company has not published any annual, interim or quarterly results or reports since then, and was eventually delisted on 2 September 2019.

Mr Hong GD, Mr Li and the Relevant Supervisors failed to respond to the Listing Division's enquiry letters and reminders.

### **GLR REQUIREMENTS**

GLRs 18.03, 18.48A, 18.49, 18.53, 18.66, 18.78 and 18.79 require issuers to dispatch to their shareholders and/or publish their quarterly, interim and annual results and reports within certain prescribed periods.

GLRs 17.15 and 17.16 require issuers to announce immediately thereafter details under GLR 17.17 of any advance to an entity which exceeds 8 per cent and where applicable, increases by 3 per cent or more from that previously disclosed under GLR 17.15, under the assets ratio.

GLRs 19.34 (before 1 March 2019), 19.38 and 19.40 impose notification, announcement, circular and shareholder approval requirements on major transactions.

GLRs 20.33, 20.34 and 20.44 require issuers to comply with the announcement, circular and independent shareholder approval requirements for connected transactions.

GLR 5.01 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 GLR 5.01(1), (2), (4), (5) and (6), a director has duties to act honestly and in good faith in the interests of the issuer as a whole, act for proper purpose, avoid potential and actual conflicts of interest and duty, disclose fully and fairly his interests in contracts with the issuer, 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, and take an active interest in the issuer's affairs and follow up anything untoward that comes to his attention.

GLR 5.20 requires a compliance officer, at a minimum, to advise on and assist the board of directors of an issuer in implementing procedures to ensure that the issuer complies with the GLRs and other relevant laws and regulations applicable to the issuer.

Pursuant to the Declaration and Undertaking with regards to Directors (**Director's Undertaking**) (Appendix 6B to the GLRs), 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 GLRs, and cooperate in any investigation conducted by the Exchange, and update his contact details with the Exchange.

Each Relevant Supervisor was subject to the Supervisor's Declaration and Undertaking (**Supervisor's Undertaking**) (Appendix 6C to the GLRs) which imposes duties to cooperate and update the contact details with the Exchange similar to that of directors referred to above.

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

The GEM Listing Committee found as follows:

- (1) The Company breached GLRs 18.03, 18.48A, 18.49, 18.53, 18.66, 18.78 and 18.79 for failing to publish and/or dispatch the 2017 and seven subsequent sets of financial results and reports.
- (2) The Company breached GLRs 17.15, 17.16, 19.34, 19.38, 19.40, 20.33, 20.34 and 20.44 in respect of the Transactions.
- (3) There were material deficiencies in the Company's internal controls for procuring compliance with Chapters 17, 19 and 20 of the GLRs, including, among others, the failure to keep the internal controls up to date since 2013. After the direction imposed by the GEM Listing Committee in 2012, the Company made an effort to improve the internal controls. However, the Relevant Directors allowed discipline around internal controls to slip back quickly. The Company had no effective system to identify material transactions involving an outflow of funds, so that such transactions/payments could be escalated to the Board, if the payments were returned to the Company before the end of the calendar month in which the payment was made. The Company put a substantial amount of money at risk (the Transactions involved a total sum of over RMB365 million) without proper checks.
- (4) Mr Fei GY breached GLRs 5.01(1), (2) and (6) and his Director's Undertaking by failing (i) to act in good faith in the interests of the Company as a whole, (ii) to act for proper purpose and (iii) to apply such degree of skill, care and diligence as may reasonably be expected, in conducting and managing the Transactions.
- (5) Mr Hong GD and Mr Tang CF breached their duties under GLR 5.01(4), (5) and (6), and their Director's Undertakings by failing to disclose their interests in some of the counterparties to the Transactions and avoid the resulting conflicts in respect of some of the Transactions. Mr Hong GD, being the Company's compliance officer, also breached GLR 5.20 by failing to take steps, and advise on and assist the Board in implementing procedures, to ensure that the Company complied with the GLRs.
- (6) All the Relevant Directors (except Mr Tang JQ) breached:
  - (i) GLR 5.01(6) and their Director's Undertakings to comply with the Rules to the best of their ability. The issue regarding the purchase of steel for hedging and bank acceptance bills for settling accounts payable was considered important to the Company and was put forward for the Board's discussion at the meeting on 3 January 2017. However, after authorising the procurement personnel to carry out such purchase, the Relevant Directors (except Mr Tang JQ and Mr Fei GY) failed to follow up with Mr Fei GY and/or the procurement personnel in respect of the procurement activity (including ensuring proper execution thereof); and
  - (ii) their Director's Undertakings to use their best endeavours to procure the Company's compliance with the GLRs by ensuring that the Company implemented

and maintained adequate and effective internal controls for procuring compliance with Chapters 19 and 20 of the GLRs. The GEM Listing Committee was not convinced of certain Relevant Directors' submissions that they were not aware of the Transactions (including those between the Company and the counterparties relating to them).

- (7) Mr Tang JQ breached his Director's Undertaking to use his best endeavours to procure the Company's GLR compliance (see (6)(ii) above).
- (8) Mr Hong GD, Mr Li and the Relevant Supervisors breached their Director's Undertakings or Supervisor's Undertakings (where applicable) to cooperate in the Exchange's investigation.
- (9) The failure of the Relevant Directors (except Ms Tang and Mr Tang JQ) to discharge their responsibilities under the GLRs was persistent, warranting a public statement that, had the Company remained listed / they remained on the Board, their retention of office would have been prejudicial to the interests of investors.

## **CONCLUSION**

The GEM Listing Committee decided to impose the sanctions and direction 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, the Relevant Directors and the Relevant Supervisors, and not to any other past or present members of the board of directors or supervisory board of the Company.

Hong Kong, 7 December 2021