

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)

This decision emphasises the importance of directors conducting appropriate due diligence and exercising independent judgement in relation to all aspects of their role. The appointment of directors to the board in a non-transparent manner is unacceptable and can lead to consequences other than just a lack of due process. A director wilfully withholding material information required to be disclosed under the Exchange Listing Rules is unacceptable and prejudicial to the interest of shareholders. The disclosure of material information to shareholders is a vital component of an orderly, informed and fair market.

Directors have a duty to safeguard the assets of the listed issuer. They must take an active interest in the issuer's affairs and ensure that proper due diligence is conducted in all transactions entered into. Failure to do so on their part exposes the listed issuer to risks and possible dissipation of its assets.

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.

The Listing Committee of The Stock Exchange of Hong Kong Limited ("Listing Committee")

CENSURES:

- (1) **Mr Yao Yuan ("Mr Yao")**, former NED of the China Ding Yi Feng Holdings Limited ("**Company**") (Stock Code: 612) for his breaches of Rule 13.51C, Rules 3.08(a) and (f) of the *Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited* ("**Exchange 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 5B to the Exchange Listing Rules ("**Undertaking**") by failing to comply, and use best endeavours to procure the Company's compliance, with the Exchange Listing Rules and to cooperate with the Listing Division's ("**Division**") investigation into possible breaches of the Exchange Listing Rules;

FURTHER CENSURES:

- (2) **Mr Yao Zhixiang ("Mr Z Yao")**, former non-executive director ("**NED**") of the Company;
- (3) **Mr Shi Minqiang ("Mr Shi")**, former NED of the Company;

for breaching Rule 13.51C and Rule 3.08(f) of the Exchange Listing Rules, and the Undertaking by failing to comply, and use best endeavours to procure the Company's compliance, with the Exchange Listing Rules and to cooperate with the Division's investigation;

.../2

STATES in the Exchange's opinion, by reason of their wilful breaches of Rules 13.51C, 3.08(a) and/or Rule 3.08(f), had Mr Yao, Mr Z Yao and Mr Shi remained in office, their retention of office would have been prejudicial to the interests of investors;

AND DIRECTS that should Mr Yao, Mr Z Yao and Mr Shi wish to become a director of any issuer listed or to be listed on the Exchange in the future, their conduct in this matter is to be taken into account in assessing their suitability.

The Listing Committee also **CRITICISES**:

- (4) **Mr Luk Hong Man Hammond** (“**Mr Luk**”), executive director (“**ED**”) and chief executive officer of the Company;
- (5) **Mr Zhang Xi** (“**Mr Zhang**”), ED of the Company;
for breaching Rule 3.08(f) of the Exchange Listing Rules, and the Undertaking by failing to comply with the Exchange Listing Rules to the best of their ability; and

FURTHER CRITICISES:

- (6) The Company, **China Ding Yi Feng Holdings Limited**, for failing to publish its annual results and annual report for the year ended 31 December 2015 (“**FY2015 Results**” and “**FY2015 Report**”, respectively) within the times stipulated under the Exchange Listing Rules in breach of Rules 13.49(1) and 13.46(2).

(The directors identified at (1) to (5) above are collectively referred to as the “**Relevant Directors**”.)

For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this news release 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.

HEARING

On 4 February 2020, the Listing Committee conducted a hearing (“**Hearing**”) into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Undertakings.

Prior to the Hearing, the Company, Mr Luk and Mr Zhang:

- (a) admitted the breaches of the Exchange Listing Rules and their Undertakings (where applicable) as described above; and
- (b) accepted the respective sanctions imposed on them by the Listing Committee as set out below.

EXCHANGE LISTING RULE REQUIREMENTS

- (a) Under Principle A4 of the Corporate Governance Code, Appendix 14 “*there should be a formal, considered and transparent procedure for the appointment of new directors*”;

- (b) Rule 13.51(2) requires an issuer to announce information pertaining to its directors upon any changes occurring or appointment of new directors. Under Rule 13.51C, directors of an issuer must procure and/or assist the issuer to comply with Rule 13.51(2);
- (c) Rule 3.08 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 under Rule 3.08(a), a duty to “*act honestly and in good faith in the interests of the Company as a whole*”; and Rule 3.08(f), 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*”;
- (d) Pursuant to their respective Undertakings, the Relevant Directors were under an obligation to comply to the best of their ability with the Exchange Listing Rules and to use their best endeavours to procure the Company’s Rule compliance. They have also undertaken to cooperate in any investigation by the Division; and
- (e) Rules 13.49(1) and 13.46(2) require that a listed issuer publish and despatch its respective annual results and annual report for a financial year not later than three and four months respectively after the end of the financial year.

KEY FACTS AND THE LISTING COMMITTEE’S FINDINGS OF BREACH

This case concerned a number of issues. The Listing Committee, having considered the written and/or oral submissions of the Listing Division, the Company, Mr Luk, Mr Zhang and Mr Shi, made findings of breach as set out below.

Issue 1: Approval of the appointment of Mr Z Yao and Mr Shi

- (1) Mr Z Yao and Mr Shi were introduced to the Company by Mr Yao. Mr Z Yao is Mr Yao’s brother, and Mr Shi is a relative of Mr Yao’s spouse.
- (2) At the time of their appointments, the independent non-executive directors (“**INEDs**”) (who were also members of the nomination committee) had indicated more information was required before they could consider the appointments. Rather than following the appropriate nomination committee process, a board meeting was convened to discuss the appointments on 7 October 2015 with Mr Z Yao and Mr Shi sitting outside the meeting room.
- (3) The appointments of Mr Z Yao and Mr Shi were approved by a majority of the board at the meeting on the basis of limited qualification and experience details, a one-time site visit by Mr Luk and Mr Zhang to Mr Z Yao’s retail premises in Guangzhou and an assertion that Mr Shi was well connected. The INEDs did not vote.
- (4) The Company did not obtain the Purported Confirmations from Mr Z Yao or Mr Shi (see Issue 2 below) until 12 October 2015, after the appointments were approved.

Committee's findings

The Listing Committee concluded that Mr Luk and Mr Zhang breached (i) Rule 3.08(f); and (ii) their Undertakings to comply with the Exchange Listing Rules to the best of their ability:

- (a) Mr Luk and Mr Zhang convened the board meeting on 7 October 2015 despite the available information being insufficient for the consideration of an appointment of a director of a listed company and the INEDs' express concerns and insistence that further information was required.
- (b) They proceeded to approve the appointments without the further information or the Purported Confirmations (even though it was not known they were inaccurate at the time).
- (c) The appointment process was clearly not duly considered or transparent.

Issue 2: Provision of information as directors upon appointment

- (1) Mr Yao was appointed a NED on 4 June 2015, and Mr Z Yao and Mr Shi were appointed on 7 October 2015 (in the circumstances described in Issue 1 above).
- (2) The Company obtained written confirmations from each director that (i) he had not been engaged in any litigation as a defendant in Hong Kong or in any other jurisdiction; and (ii) he was aware of the requirements under Rule 13.51(2) to disclose and announce of his personal particulars such as relationships with other directors, previous criminal convictions, investigations by any judicial, regulatory or government authority but he did not have any such information required to be brought to the attention of the board ("**Purported Confirmations**").
- (3) However, it later transpired that
 - (a) as to Mr Yao, he was classified on a "*list of wanted economic fugitives/internet wanted persons*" issued by the Guangzhou Police; had previously been imprisoned for six months; and under an alias "Yao Aigong", was included on a "*list of persons who lack credibility*" on the Guangzhou Judgment Website since March 2015;
 - (b) as to Mr Z Yao, he was also on the "*list of persons who lack credibility*" on the Guangzhou Judgment Website since March 2015; and
 - (c) as to Mr Shi, he was related to Mr Yao through Mr Yao's spouse.

Committee's findings

The Listing Committee concluded that Mr Yao, Mr Z Yao and Mr Shi breached (i) Rule 13.51C; (ii) Rule 3.08(f); and (iii) their Undertakings to comply with the Exchange Listing Rules to the best of their ability and to use their best endeavours to procure the Company's compliance:

- (a) The Purported Confirmations given by each of Mr Yao, Mr Z Yao and Mr Shi at the time of their appointment were clearly inaccurate and misleading. The required information under Rule 13.51(2), which was relevant and material to their character and suitability as directors, had existed prior to their appointments as NED and should have been disclosed to the Company.
- (b) Each of Mr Yao, Mr Z Yao and Mr Shi wilfully withheld this information in breach of Rule 13.51C; this was a clear failure to exercise due skill, care and diligence as directors.

Issue 3: Suspected misappropriation

- (1) Mr Yao introduced the Company to commercial acceptance bills in the People's Republic of China which led to its investment in a RMB25m bill of exchange ("**25m Bill**") in September 2015 and a RMB30 million bill of exchange ("**30m Bill**") in October 2015.
- (2) In late October 2015, due to the need for funds, the Company considered an early redemption of the 30m Bill. To assist this, Mr Yao suggested swapping the 30m Bill with three RMB10 million bills of exchange ("**10m Bills**") ("**Bill Replacement**").
- (3) Mr Luk and Mr Zhang did not seek board approval for the Bill Replacement; they believed the replacement could be done as long as the 10m Bills were issued by, and endorsed to, the same parties as the 30m Bill. No further due diligence was carried out by Mr Luk or Mr Zhang.
- (4) On the evening on 2 November 2015, Mr Yao informed Mr Luk that he had the three 10m Bills ready for replacement. Mr Luk asked the company secretary to return to the office to assist where she met Mr Yao's personal assistant. Mr Zhang approved the Bill Replacement that evening after receiving telephone images of the three 10m Bills from the company secretary. The 30m Bill was then handed over to parties related to Mr Yao and delivered to Guangzhou.
- (5) In December 2015, during the course of preparation of the FY2015 audit, Mr Luk and Mr Zhang discovered discrepancies between the name chops of the 25m Bill and the three 10m Bills.
- (6) According to the investigation report dated 3 May 2016 commissioned by the Company's Special Investigation Committee ("**Investigation Report**") to look into this matter, the 10m Bills were likely to have been forged. It was stated in the same report that Mr Yao purported to have no knowledge of the exact day of delivery of the 10m Bills and how they were delivered.
- (7) The Company impaired the full acquisition cost of the 30m Bill in the FY2015 Results causing a loss of RMB24 million to the Company.

Committee's findings

As to Mr Yao, the Listing Committee concluded he breached (i) Rules 3.08(a) and (f); and (ii) his Undertaking to comply with the Exchange Listing Rules to the best of his ability:

- (a) The circumstances surrounding the Bill Replacement and the events that took place on the night of 2 November 2015 strongly inferred that Mr Yao was likely to be involved or at least connected. There was no evidence to show why the Bill Replacement had to take place at such short notice and in that way.
- (b) Mr Yao's denial of knowledge of the Bill Replacement was unacceptable. His conduct demonstrated that he was not acting honestly and in good faith in the interests of the Company as a whole and that he was wilful in the denial of the facts.
- (c) The Listing Committee regarded Mr Yao's breaches in this matter serious and considered that he wilfully failed to comply with his obligations under the Exchange Listing Rules as a director.

As to Mr Luk and Mr Zhang, the Listing Committee concluded they also breached (i) Rules 3.08(f); and (ii) their Undertakings to comply with the Exchange Listing Rules to the best of their ability:

- (d) They failed to exercise due skill, care and diligence in approving the Bill Replacement based on bare representations by Mr Yao without making enquiries or considering issues as to the legal validity and transferability of the Company's investment from the 30m Bill to the three 10m Bills.
- (e) Given their lack of experience and knowledge in investments in commercial acceptance bills, they should have taken more active interest and caution in such investment. However, they did not consider that due diligence in relation to the authenticity of the three 10m Bills was necessary and Mr Zhang had allowed the Bill Replacement to go ahead on the strength of telephone images of the three 10m Bills and comparing the parties stated in a superficial manner.

Issue 4: Delay in publication of FY2015 Results and FY2015 Report

- (1) The financial year end for the Company was 31 December. Accordingly, the dates for publication of the FY2015 Results and FY2015 Report were 31 March 2016 and 30 April 2016 respectively.
- (2) The Company's auditors ("**Auditors**") did not finalise the FY2015 audit until after review of the Investigation Report.
- (3) The Company published the FY2015 Results on 22 July 2016 and FY2015 Report on 18 August 2016.

Committee's findings

The Listing Committee concluded the Company breached Rules 13.49(1) and 13.46(2):

- (a) Whilst it noted that the delay in publication of the FY2015 Results and FY2015 Report could have been a consequence of, amongst others, the investigation into the suspected misappropriation, the Auditor's request to review the Investigation Report prior to finalising the FY2015 audit was not unreasonable.
- (b) Nonetheless, there was a 14 to 15 weeks' delay in the publication of the FY2015 Results and FY2015 Report.

Issue 5: Breach of Undertaking to cooperate with the Listing Division's investigation

- (1) Mr Yao, Mr Z Yao and Mr Shi were removed as directors of the Company on 20 July 2016. The Division sent enquiry letters to each of Mr Yao, Mr Z Yao and Mr Shi in March 2017 to their last known addresses on the records of the Exchange.
- (2) Despite reminder letters being sent to each director, the Division did not receive any responses to the enquiries.
- (3) The enquiry letters and reminder letters sent to the Mr Yao, Mr Z Yao and Mr Shi had not been returned to the Division undelivered. Pursuant to the Undertakings, the letters were deemed to have been served on the directors.

Committee's findings

Since the enquiry letters were not returned undelivered, by their failure to respond to the Division's enquiry letters, the Listing Committee concluded that each of Mr Yao, Mr Z Yao and Mr Shi breached their Undertakings to cooperate with the Division in its investigations.

REGULATORY CONCERN

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

- (a) Newly appointed directors must provide accurate and complete information about themselves to the listed issuer to ensure the latter's full compliance with its disclosure obligation under Rule 13.51(2). Failure to do so deprives the Company, the market and its investors of information pertaining to suitability considerations and gives rise to the risks of unsuitable individuals being appointed. Mr Yao, Mr Z Yao and Mr Shi in this case were clearly wilful in withholding such material information.
- (b) The Exchange views the due performance of directors' duties seriously. Directors of a listed issuer have clear duties to safeguard assets of the listed issuer (including its subsidiaries). They must exercise due care in approving transactions and ensure that proper due diligence was conducted and care was taken in the execution of a transaction. Failure to do on their part exposes the listed issuer to risks stemming from possible dissipation of corporate assets.
- (c) The suspected misappropriation involved a substantial sum. The investment in the 30m Bill amounted to some 8.5 per cent of the Company's total assets as at 30 June 2015 and 25.7 per cent of its cash and cash equivalents during the same period. The Company did not receive any of the proceeds otherwise receivable under the 30m Bill. The entire acquisition cost of RMB24 million was written off, causing a substantial loss to the Company.

- (d) Mr Yao's conduct was particularly egregious, calling into question his suitability and integrity as a director:
- (i) his purported ignorance of the circumstances surrounding the Bill Replacement is deplorable given the apparent involvement and connection from the time the Bill Replacement was first discussed until execution;
 - (ii) he failed to disclose material information upon his appointment and proceeded to sign a confirmation that he did not possess any information that needed be brought to the attention of the Board; and
 - (iii) further he introduced persons related to him to become NEDs of the Company, who, as it turned out, also withheld material information concerning themselves. Mr Yao could have also made that information known to the Company at the time; however, he failed to do so.
- (e) Compliance with the disclosure requirements for the timely and accurate publication of annual results and financial information is of fundamental importance to ensure the maintenance of (i) a fair and orderly market for the trading of securities in Hong Kong and (ii) confidence in such market. The delay in publication of the FY2015 Results and FY2015 Report deprived shareholders of the Company of timely information necessary to allow them to make a properly informed assessment of the Company.
- (f) The delay in publication of the FY2015 Results and FY2015 Report also resulted in four months' suspension of trading of the shares of the Company. As such, the shareholders and investors were deprived of the opportunity to trade in the Company's shares.
- (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 Exchange Listing Rule breaches without reasonable excuse is viewed in a very serious light.

SANCTIONS

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

- (1) censure Mr Yao for his breaches of Rules 13.51C, 3.08(a), 3.08(f), his Undertaking to the Exchange and his failure to cooperate with the Division's investigation;
- (2) censure Mr Z Yao and Mr Shi for their breaches of Rules 13.51C, 3.08(f), their Undertakings to the Exchange and their failure to cooperate with the Division's investigation;
- (3) state that, whilst Mr Yao, Mr Z Yao and Mr Shi have been removed from office as directors of the Company, had they remained in office, and given their conduct amounting to a wilful breach of his directors duties under Rule 3.08(a) and/or (f), in the opinion of the Exchange, their retention of office would have been prejudicial to the interests of investors; and
- (4) direct that Mr Yao, Mr Z Yao and Mr Shi's conduct in this matter is to be taken into account in the Exchange's assessment of their suitability should they wish to become directors of any issuer listed or to be listed on the Exchange in the future.

The Listing Committee also

- (5) criticises Mr Luk and Mr Zhang for their breaches of Rule 3.08(f) and their Undertakings to the Exchange; and
- (6) criticises the Company for its breaches of Rules 13.49(1) and 13.46(2).

Hong Kong, 22 April 2020