

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 China Yu Tian Holdings Limited  
(Delisted, Previous Stock Code: 8230) and seven directors

**Directors are individually and collectively responsible for procuring a listed issuer's compliance with the GEM Listing Rules. In fulfilling their duties, the Exchange expects directors to exercise sufficient skill, care and diligence. These requirements are important when directors are required to assess such matters as potential conflicts of interest and possible connected transactions to be entered into by an issuer or its subsidiaries.**

**The Company's breaches of the GEM Listing Rules in this case deprived investors and its shareholders of their right to timely receipt of information in relation to the loans granted by the Company, and its shareholders of their right to vote on such transactions. Such failure has a negative impact on market integrity and investors' confidence in our securities market.**

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

### **CENSURES:**

(1) **China Yu Tian Holdings Limited (Company)** (Delisted, Previous Stock Code: 8230)

for breaching Rules 6A.19, 6A.23, 17.55A, 20.33 and 20.34 of the Rules Governing the Listing of Securities on the GEM of the Exchange (**GEM Listing Rules** or **GLR**);

### **AND CENSURES:**

(2) **Ms Wang Xue Mei (Ms Wang)**, executive director (**ED**) of the Company (at the date of delisting); and

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- (3) **Mr Wang Jin Dong (Mr Wang)**, ED of the Company (at the date of delisting),

for breaching GLR 5.01(4) to (6) and their obligations under their respective Declarations and Undertakings with regard to Directors given to the Exchange in the form set out in Appendix 6 to the GEM Listing Rules (**Undertaking(s)**);

**AND CENSURES:**

- (4) **Mr Cheng Bo**, independent non-executive director (**INED**) of the Company (at the date of delisting);

- (5) **Mr Wang Zhong Hua**, INED of the Company (at the date of delisting);

- (6) **Mr Tang Xi Guang (Mr Tang)**, former ED of the Company;

- (7) **Mr Zhao Hai Bo (Mr Zhao)**, former ED of the Company; and

- (8) **Mr Huang Zhi Wei**, former INED of the Company,

for breaching GLR 5.01(6) and their respective Undertakings;

**AND FURTHER CENSURES:**

- (9) Ms Wang for breaching her obligations under GLR 5.20 as the then compliance officer of the Company;

**AND FURTHER STATES** that in the Exchange's opinion, by reason of:

- (a) Ms Wang, Mr Wang, Mr Cheng Bo and Mr Wang Zhong Hua's wilful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules, had the Company remained listed, their retention of office would have been prejudicial to the interests of investors; and
- (b) Mr Tang and Mr Zhao's wilful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules, had they remained on the board of directors of the Company (**Board**), their retention of office would have been prejudicial to the interests of investors.

The directors identified in (2) to (5) above are collectively referred to as the **Then-Current Directors**.

The directors identified in (4) to (8) above are collectively referred to as the **Remaining Directors**, and Ms Wang, Mr Wang and the Remaining Directors are collectively referred to as the **Relevant Directors**.

For the avoidance of doubt, the Exchange confirms that the sanctions 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 16 June 2020 and 18 January 2021, the GEM Listing Committee conducted hearings into the conduct of the Company and the Relevant Directors in relation to their obligations under the GEM Listing Rules and the Undertakings.

## FACTS

In January and April 2018, the Company and its subsidiary granted two loans up to US\$3,000,000 and RMB7,500,000 respectively to parties connected to Ms Wang and Mr Wang (**Loans**). The Loans were interest-free and without collateral, but personally guaranteed by Ms Wang. According to the Company, Ms Wang and Mr Wang proposed the Loans, as additional compensation to them for their below-market remuneration between 2016 and 2018, to each of the Remaining Directors over the telephone. Each of the Remaining Directors verbally approved the Loans but there was no documentation in this regard. Mr Wang signed the relevant Loan agreements on behalf of the lenders, and Ms Wang signed on behalf of the borrower of one of the Loans.

The Loans constituted connected transactions, but the Company did not publish an announcement nor seek independent shareholders' approval, as required under the GEM Listing Rules. The Company only disclosed the Loans as "*amounts due from related parties*" in its interim report for the six months ended 30 June 2018.

On 1 January 2019, the Directors approved an increase in the remuneration of Ms Wang and Mr Wang from RMB138,000 to RMB1,000,000 (**Remuneration Adjustment**) by way of a unanimous written resolution passed by all Relevant Directors.

Despite the Company's admission of its breaches of GLR 20.33 and 20.34, the Company did not publish an announcement or sought independent shareholders' ratification of the Loans.

During the course of the investigation conducted by the Listing Division (**Division**), the Company submitted that the two Loans had been fully repaid on 10 August 2018 and 21 December 2019 respectively and also provided supporting documentation purportedly evidencing full repayment. However, further materials came to the attention of the Division, which suggested that two bank advices provided by the Company might have been fabricated.

The Division subsequently made further enquiries with the Company and the Relevant Directors in relation to whether the Loans had been fully repaid. However, the Company, the Then-Current Directors, Mr Tang and Mr Zhao failed to respond such enquiries.

## **GEM LISTING RULE REQUIREMENTS**

### Company

GLR 20.33 and GLR 20.34 require the issuer respectively, to announce the connected transaction as soon as practicable after its terms have been agreed, and to obtain independent shareholders' approval.

GLR 6A.19 and GLR 6A.23 require the issuer respectively, to appoint a compliance adviser for the Fixed Period (as defined in Chapter 6A of the GEM Listing Rules), and to consult with and, if necessary, seek advice from its compliance adviser during the Fixed Period where a possible notifiable or connected transaction is contemplated.

GLR 17.55A states that an issuer must provide to the Exchange as soon as possible, or otherwise in accordance with time limits imposed by the Exchange, any information or explanation that the Exchange may reasonable require for the purpose of investigating a suspected breach of or verifying compliance with the GEM Listing Rules.

### Directors

Under GLR 5.01, the board of directors is collectively responsible for the company's management and operations. 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. These duties include avoiding actual and potential conflicts of interest and duty (GLR 5.01(4)), disclosing fully and fairly their interests in contracts with the issuer (GLR 5.01(5)), and applying such degree of skill, care and diligence as may reasonably be expected of a person of his/her knowledge and experience and holding his/her office within the issuer (GLR 5.01(6)).

GLR 5.20 requires the compliance officer to, among other things, advise on and assist the Board in implementing procedures to ensure the company's compliance with the GEM Listing Rules.

Directors are under an obligation, pursuant to their respective Undertakings, to comply to the best of their ability with the GEM Listing Rules, to use their best endeavours to procure the company's compliance with the GEM Listing Rules, and to cooperate in any investigation conducted by the Division.

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

The GEM Listing Committee considered the written and/or oral submissions of the Division, as well as the Company and the Relevant Directors, and concluded as follows:

#### Company's breaches

The GEM Listing Committee concluded that the Company breached:

- (a) GLR 20.33 and 20.34 by failing to comply with the announcement and prior shareholders' approval requirements in respect of the Loans;
- (b) GLR 6A.19 and 6A.23 by failing to appoint a compliance adviser for the full Fixed Period, and failing to consult with its compliance adviser when the Loans were contemplated; and
- (c) GLR 17.55A by failing to respond to the Division's enquiries.

#### Ms Wang's and Mr Wang's breaches

The GEM Listing Committee found that Ms Wang and Mr Wang breached GLR 5.01(4) to (6):

- (a) Despite their conflicts of interests, Ms Wang and Mr Wang took an active role in the proposal, approval and execution of the Loans.
- (b) Ms Wang and Mr Wang failed to disclose their interests in, as well as abstain from voting on, the resolution in respect of the Remuneration Adjustment.

- (c) By reason of Ms Wang and Mr Wang's limited understanding of the GEM Listing Rules, they did not take steps to procure the Company's compliance with GLR 6A.19, 6A.23, 20.33 and 20.34. After discovering the Company's breaches with respect to the Loans, they also failed to take steps to remedy such breaches by publishing an announcement and seeking independent shareholders' ratification.

In addition to the above breaches, the GEM Listing Committee also concluded that Ms Wang breached GLR 5.20 by failing, among other things, to ensure that a compliance adviser was appointed by the Company in accordance with GLR 6A.19, as well as consulted in respect of the Loans. In particular, she failed to identify the GEM Listing Rule implications of the Loans.

#### Remaining Directors' breaches

The GEM Listing Committee found that the Remaining Directors breached GLR 5.01(6) by failing to exercise sufficient skill, care and diligence in respect of the Loans and the Remuneration Adjustment:

- (a) The Remaining Directors verbally approved the Loans without convening a Board meeting to properly discuss and consider the Loans and relevant documentation, and without reviewing the loan agreements. They also failed to keep proper records documenting such approval.
- (b) Prior to their approval of the Loans and the Remuneration Adjustment, the Remaining Directors did not take steps to properly benchmark Ms Wang and Mr Wang's remuneration, other than reviewing general remuneration reports that were not appropriate comparables. The Remaining Directors also failed to identify Ms Wang and Mr Wang's conflicts of interest in respect of the Remuneration Adjustment.
- (c) By reason of the Remaining Directors' limited understanding of the GEM Listing Rules, they did not take steps to procure the Company's compliance with GLR 6A.19, 6A.23, 20.33 and 20.34. After discovering the Company's breaches with respect to the Loans, they also failed to take steps to remedy such breaches by publishing an announcement and seeking independent shareholders' ratification.

In addition to their breaches of GLR 5.01(6), the then members of the Remuneration Committee of the Company (Mr Cheng Bo, Mr Huang Zhi Wei and Mr Wang Zhong Hua) also failed to perform their duties as set out in the terms of reference of the Remuneration Committee, by failing to (a) establish a formal and transparent procedure for developing a remuneration policy, and (b) take steps to ensure that Ms Wang and Mr Wang were not involved in deciding their own remuneration.

### Relevant Directors' Breach of Undertakings

Given the Company and the Relevant Directors' breaches of the GEM Listing Rules as set out above, the GEM Listing Committee found that the Relevant Directors breached their Undertakings by failing to comply to the best of their ability with the GEM Listing Rules and to use their best endeavours to ensure that the Company complied with the GEM Listing Rules applicable to the Loans and the Remuneration Adjustment.

The GEM Listing Committee also found that the Then-Current Directors, Mr Tang and Mr Zhao breached their respective Undertakings by failing to cooperate with the Division in its investigation, which constitutes a breach of the Listing Rules. The Then- Current Directors also failed to use their best endeavours to procure the Company's compliance with GLR 17.55A by failing to respond to the Division's enquiries.

The Then-Current Directors, Mr Tang and Mr Zhao's breaches of the Undertaking were serious and their conduct showed their wilful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules. The ability to conduct an efficient and thorough investigation is essential to enable the Exchange to discharge its function to maintain and regulate an orderly market. Their failure to respond to the Division's enquiries hindered the Division's investigation and assessment of the relevant issues involving the Company, and the Relevant Directors' conduct and their compliance with the GEM Listing Rules.

### **REGULATORY CONCERN**

Directors are accountable to the issuer and its shareholders for their conduct. They have an obligation, among others, to avoid any potential or actual conflicts of interests, and to procure the issuer's compliance with the GEM Listing Rules. In respect of connected transactions, this involves, in this case, procuring the Company to publish an announcement and to obtain independent shareholders' approval.

The Exchange expects directors to be familiar with the provisions of the GEM Listing Rules, and, where appropriate, to proactively seek advice and assistance from professional parties, such as compliance advisers, prior to entering into transactions which are governed by the GEM Listing Rules.

The cooperation of listed issuers and directors in the Exchange's investigation into possible GEM Listing Rule breaches underpins the Exchange's ability to regulate issuers and directors, and is therefore of utmost importance in enabling the Exchange to discharge its function to maintain and regulate an orderly market.

## **SANCTIONS**

Having made the findings of breaches stated above, the GEM Listing Committee decided to:

- (1) censure the Company for its breaches of GLR 6A.19, 6A.23, 17.55A, 20.33 and 20.34;
- (2) censure Ms Wang for her breaches of GLR 5.01(4) to (6) and 5.20, and her Undertaking;
- (3) censure Mr Wang for his breaches of GLR 5.01(4) to (6) and his Undertaking;
- (4) censure the Remaining Directors for their breaches of GLR 5.01(6) and their respective Undertakings;
- (5) state that in the Exchange's opinion, by reason of Ms Wang, Mr Wang, Mr Cheng Bo and Mr Wang Zhong Hua's wilful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules, had the Company remained listed, their retention of office would have been prejudicial to the interests of investors; and
- (6) state that in the Exchange's opinion, by reason of Mr Tang and Mr Zhao's wilful and/or persistent failure to discharge their responsibilities under the GEM Listing Rules, had they remained on the Board, their retention of office would have been prejudicial to the interests of investors.

The GEM Listing Committee further directed:

- (1) Mr Huang Zhi Wei, as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Exchange, to attend 24 hours of training on Listing Rule compliance (including four hours each on (a) directors' duties and (b) notifiable and connected transactions) (**Training**), 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



- (2) Following the publication of this news release, any changes necessary and any administrative matters which may emerge in the management and operation of the direction set out in paragraph (1) above is to be directed to the Division for consideration and approval. The Division should refer any matters of concern to the GEM Listing Committee for determination.

Hong Kong, 30 March 2021