

HKEX Disciplinary Actions in Q1 2024

In the first quarter of 2024, the Stock Exchange of Hong Kong Limited (**HKEx**) continued its clamp down on corporate misconduct by Hong Kong-listed companies, disciplining Global Uin Intelligence Holdings Limited for misappropriation of company assets, China Gas Industry Investment Holdings Co Ltd in relation to unauthorised lending and Xinming China Holdings Limited for unauthorised borrowing arrangements. Certain directors of the companies were also disciplined for breaches of their directors' duties including, in the case of Global Uin Intelligence Holdings Limited, misappropriation of company assets.

The actions demonstrate the HKEx's continued determination to improve the corporate governance of listed companies. While the HKEx's sanctioning powers are limited to the issue of reputational sanctions, such as reprimands and criticism, the Securities and Futures Commission (**SFC**) may also intervene in certain cases of misconduct, as seen in the case of Global Uin Intelligence Holdings Limited.

1. Misconduct by Former Directors of Global Uin Intelligence Holdings Limited

The HKEx and the SFC brought a joint disciplinary action against two former directors of GEM-listed Global Uin Intelligence Holdings Limited (formerly Global Dining Holdings Limited) for breaches of their fiduciary duties as company directors. The company's two former executive directors and controlling shareholders misappropriated the company's listing proceeds for their personal use through sham arrangements.

The company's first annual report after its 2020 listing reported listing expenses that were materially higher than disclosed in its listing document. The increase in listing expenses was due to a Singapore dollar 1 million fee and discretionary bonus paid to an IPO consultant in Singapore. The related service agreement was not disclosed in the listing document, nor was the payment notified to the professional parties and other board members.

The payment was re-routed to the two former directors who used the funds to repay amounts they owed to the company. The GEM Listing Committee found that the directors had committed serious breaches of the fiduciary duties they owed to the company, GEM List Rules 5.01 and 17.55B and their director's undertakings.

- **Breaches of directors' fiduciary duties under GEM Listing Rule 5.01**

In misappropriating the company's assets, the two directors breached their fiduciary duties under GEM Listing Rule 5.01 which includes duties to: act honestly and in good faith in the interests of the company as a whole; act for a proper purpose; be answerable to the issuer for the application or misapplication of its assets; and avoid actual and potential conflicts of interest and duty.

The directors acted dishonestly and contrary to the company's interests. They failed to avoid an obvious conflict between their interests and those of the company and abused their position as directors. They also misled the company's shareholders and the public.

- **Breach of GEM Listing Rule 17.55B**

The directors were also found to have breached the requirement under GEM Listing Rule 17.55B to provide accurate, complete and up-to-date information in responding to enquiries and investigations by the SEHK and SFC. They intentionally avoided providing evidence, including information about their bank accounts and bank statements, and deliberately obstructed the investigation by providing false or misleading information to prevent the detection of their misconduct.

- **Breach of Director's Undertaking (then Appendix 6A to the GEM Listing Rules)**

Both directors were additionally in breach of their director's undertakings to (among others) comply with the GEM Listing Rules to the best of their ability, procure the company's compliance with the Listing Rules, and cooperate in any investigation conducted by the Division, including by answering promptly and openly any questions addressed to them, and promptly producing the originals or copies of any relevant documents.

The HKEX publicly censured both directors and subjected them to director unsuitability statements – that is a statement that the individuals are unsuitable to occupy a position as a director or within senior management of the company or any of its subsidiaries.

The SFC's investigation into the alleged misappropriation continues.

2. Disciplinary Action against China Gas Industry Investment Holdings Co Ltd. and a Former Director

The HKEx has criticised China Gas Industry Investment Holdings Co Ltd (**China Gas**) and criticised and publicly reprimanded one of its former directors, for using the company's funds to make loans without disclosing this as a proposed use of its IPO funds, nor the risks involved, in its prospectus. The former director had also conducted four transactions on behalf of the company without obtaining board approval or consulting the company's sponsor and compliance adviser. Please see the HKEX's statements of disciplinary action against [China Gas](#) and the former director, [Mr. David Chen](#).

Shortly before and after listing on the HKEx, China Gas used a significant proportion of its funds to provide three unsecured loans and subscribe for a loan note (together, the **Transactions**). None of the Transactions were disclosed in the prospectus, which the former director had signed off on before the listing date. The director had entered into all the Transactions without seeking the approval of the board or the advice of the China Gas' sponsor and compliance adviser. He approved the Transactions after conducting only cursory due diligence. According to the company's auditor, China Gas did not receive any amounts due in the year ended 31 December 2020, and the auditor's request that the board commission an independent investigation into the matter led to a delay in the company publishing its annual results and reports for that financial year and the subsequent half-year. Ultimately, China Gas made a full loss allowance on the receivables arising from the Transaction in the aggregate sum of approximately RMB184.4 million.

The former director was found to have breached:

- **HKEx Listing Rule 2.13(2)** – the requirement for information provided in any announcement or corporate communication (which includes a prospectus) to be accurate and complete in all material respects and not misleading or deceptive.

- **HKEx Listing Rule 3.08** – directors’ obligation (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; and
- **Director’s Declaration and Undertaking (then Appendix 5B)** – directors’ obligation to comply with the HKEx Listing Rules and use best endeavors to procure the company’s Listing Rule compliance.

China Gas was in breach of:

- **HKEx Listing Rules 13.46(2)(a), 13.48(1), 13.49(1) and 13.49(6)** given the late publication and dispatch its annual and interim results and reports; and
- **HKEx Listing Rules 2.13(2) and 11.07** for failing to provide sufficient, true and accurate information in the prospectus to enable investors to make an informed assessment of the company’s financial assets, financial position, potential risk and future cash requirements.

A settlement was reached between China Gas, Mr. Chen and the Listing Division in this matter.

3. Disciplinary Action against Three Directors of Xinming China Holdings Limited

The HKEx disciplined three current directors of XinMing China Holdings Limited (**XinMing**), executive director, chairman and chief executive officer, Mr. Chen Chengshou (**Mr. Chen**); executive director, Mr. Feng Cizhao (**Mr. Feng**); and non-executive director, Ms Gao Qiaoqin (**Ms. Gao**), (together, the **Directors**). The disciplinary actions related to an impairment loss resulting from a number of loans made to one of Xinming’s subsidiaries, Chongqing Xinming Property Company Limited (**Chongqing Xinming**).

When Chongqing Xinming had cash flow problems and was unable to secure funding, Mr. Chen, XinMing’s controlling shareholder, chairman, CEO and executive director, offered to borrow funds on its behalf from private investors (**Lenders**) through a company he owned with his wife outside the listed group, Xinming Group Limited (**XGL**). XGL was named as the borrower in the loan agreements, although the intention was that Chongqing Xinming would use the funds and repay the loans.

XGL borrowed a total of RMB 501.5 million on behalf of Chongqing Xinming, of which it repaid RMB 283 million. The loans were originally made interest free, but in 2017, the Lenders demanded annual default interest of 24% to be charged retroactively as a condition of extending the outstanding loans’ repayment date. To avoid disruption to Chongqing Xinming’s business, Mr. Chen agreed to pay the default interest demanded by the Lenders without informing Xinming’s board of directors. XGL then repaid the outstanding principal and default interest on Chongqing Xinming’s behalf. Chongqing Xinming repaid the principal of the loans to XGL, but not the amount of default interest.

At Mr. Chen’s suggestion, Mr. Feng recorded the paid default interest paid by XGL to the Lenders as “other receivables” in Chongqing Xinming accounts on the assumption that a refund of the default interest would be negotiated later. In 2020, Xinming recorded an impairment loss of RMB 49.4 million on its “other receivables”. The Directors did not inform the rest of the board about the loans or the Lenders’ demand for default interest. Information on the loans was not circulated to the board in board updates and the loans were not recorded in Xinming’s accounts for the years ended 31 December 2016 and 2017.

HKEx Listing Rule Breaches

The Listing Committee found the three Directors to be in breach of the following:

- **HKEx Listing Rule 3.08** – Each of the three directors was found to have breached their obligations as directors under Rule 3.08 to exercise due care, skill and diligence in respect of the loans entered into on behalf of Chongqing Xinming. Mr. Chen was also considered to have failed to avoid conflicts of interest and duty. The conduct highlighted by the Listing Committee as constituting breaches of the Listing Rules included the directors’ failure to:
 - bring the loans to the attention of the board and obtain board approval;

- ensure compliance with the company's internal controls; and
- obtain proper documentation of the loans.

Mr. Chen additionally failed to avoid his conflict of interest as a director of the company and the owner of XGL. He did not inform the board of the Lenders' demand for default interest and agreed to pay it without informing the board. This prevented the company from acting to protect its interests.

HKEx Sanctions Imposed

The HKEx censured the directors and required them to attend training on regulatory and legal topics and HKEx Listing Rule compliance, directors' duties and the Corporate Governance Code's requirements.

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