

MEDIA NOTIFICATION

24 June 2021

BURSA MALAYSIA SECURITIES PUBLICLY REPRIMANDS AND/OR FINES XIN HWA HOLDINGS BERHAD AND 2 DIRECTORS

Bursa Malaysia Securities Berhad [Registration No.: 200301033577 (635998-W)] (Bursa Malaysia Securities) has publicly reprimanded Xin Hwa Holdings Berhad (XINHWA) and 2 of its directors for breaches of the Bursa Malaysia Securities Main Market Listing Requirements (Main LR). In addition, the 2 directors of XINHWA were imposed total fines of RM150,000.

XINHWA was publicly reprimanded for breach of paragraph 8.23(1) of the Main LR in respect of the advances and payments on behalf made by Xin Hwa Trading & Transport Sdn Bhd (XHTT), a wholly owned subsidiary of XINHWA, between 1 January 2017 to 31 December 2018 to or in favour of:-

- XINHWA's unlisted holding company, NF Capital Management Sdn Bhd (NF Capital) amounting to RM256,629; and
- 2 directors of XINHWA and XHTT (i.e. Ng Aik Chuan and Ng Yam Pin) and 1 director of the subsidiary, XHTT (i.e. Eng Peng Lam @ Ng Peng Lam) (collectively referred to as the Directors) for their personal expenses amounting to RM516,384.

These advances and payments were prohibited under paragraph 8.23(1) of the Main LR which states that except as otherwise prohibited under the law or in relation to a foreign corporation, the relevant laws of the place of incorporation and subject to subparagraph (2), a listed issuer or its subsidiaries not listed on any stock exchange may only:-

- (a) lend or advance any money; or
- (b) guarantee, indemnify or provide collateral for a debt, (provision of financial assistance) to or in favour of the following:-
 - (i) directors or employees of the listed issuer or its subsidiaries;
 - (ii) persons to whom the provisions of financial assistance -
 - (aa) is necessary to facilitate the ordinary course of business of the listed issuer or its subsidiaries; or
 - (bb) pursuant to the ordinary course of business of the listed issuer or subsidiaries; such as the provision of advances to its sub-contractors or advances made to clients in the ordinary course of its moneylending business; or
 - (iii) the subsidiaries, associated companies or joint arrangements of the listed issuer, the listed issuer (in the case of the subsidiaries providing the financial assistance) or its immediate holding company which is listed.

Ng Aik Chuan and Ng Yam Pin, the Managing Director and Executive Director of XINHWA respectively had breached:-

- (1) paragraph 16.13(b) of the Main LR for permitting knowingly or where they had reasonable means of obtaining such knowledge, XINHWA to commit the breach of paragraph 8.23(1) of the Main LR in respect of the prohibited financial assistance to NF Capital and the Directors; and
- (2) paragraph 8.23(2)(a)(i) read together with paragraph 8.23(1)(a)(ii) of the Main LR for failing to ensure that the advances and payments on behalf made by XHTT to or in favour of several companies amounting to RM2,871,867 during the 15-months financial period ended 31 March

2017 until the financial year ended 31 March 2019 were fair and reasonable to XINHWA and not to the detriment of the company and its shareholders.

The directors were imposed the following penalties for the breaches:-

No.	Director	Penalty
1.	Ng Aik Chuan Managing Director	Public Reprimand and Fine of RM100,000
2.	Ng Yam Pin Executive Director	Public Reprimand and Fine of RM50,000

The finding of breach and imposition of the above penalties on XINHWA and the directors were made pursuant to paragraph 16.19 of the Main LR upon completion of due process and after taking into consideration all facts and circumstances of the matter including the materiality of the breaches; impact of the breach to XINHWA and shareholders/investors and the roles, responsibilities, knowledge, involvement and interest of the directors.

Bursa Malaysia Securities views a contravention of paragraph 8.23 of the Main LR seriously as it is one of the key investor protection requirements which serve to ensure proper preservation and employment of the Company's assets/funds.

BACKGROUND

On 14 February 2019, XINHWA announced that the Board of Directors had been alerted of alleged irregularities on some transactions and payments and had appointed KPMG Management & Risk Consulting Sdn. Bhd. (KPMG) to conduct an independent review on these allegations.

Based on KPMG's independent review findings announced on 11 June 2019, it was noted, amongst others, that:-

- the subsidiary's company funds had been used to pay personal expenses of the executive directors. These payments were partially made out of directors' fees and the remaining payments were recognised as debts owed by the directors to the company which had since been repaid;
- there were payments made on behalf of a substantial shareholder (i.e. NF Capital) which had since been fully repaid; and
- there were provisions of financial assistance to several companies in the form of interest-free advances and payments mainly related to those companies' operating expenses.

XINHWA and the directors had represented, amongst others, that:-

- the arrangements on the advances and payments made to or in favour of NF Capital and the Directors (in excess of the accrued directors' fees/salaries) were not loans or intended to be financial assistance. At the material time, the arrangements were purely done for convenience sake to relieve the directors from having to spend time for personal errands and were not intended for the directors to benefit from the company's resources;
- the advances and payments made to or in favour of several companies were deposits or prepayments in essence and the business arrangements were all done in the interest of XINHWA;
- the advances were not substantial and had been duly accounted, fully repaid and no financial losses had been done to XINHWA; and
- there were no fraud or irregularities noted and the Board had taken the recommendations to improve on the internal controls and ceased these practices.

The representations did not absolve/mitigate the breaches and penalties in view of the clear requirements under paragraph 8.23(1) of the Main LR. In particular, the directors had failed to ensure that the financial assistance to the several companies were fair and reasonable to XINHWA and not to the detriment of the company and its shareholders particularly as:-

- there was no written agreement/document to formalise the arrangements/transactions with the companies and the terms and conditions including the repayment of the financial assistance;
- there was no evidence of proper due diligence/feasibility study/assessment undertaken on the business arrangements/transactions and provision of financial assistance to the companies including their ability to repay the advances; and
- the financial assistance to the companies were not brought to the attention of or highlighted/escalated to the Board for proper deliberation to ascertain if it was fair and reasonable.

Further, notwithstanding that the financial assistance had been repaid, the breaches by XINHWA and the directors involved a series of financial assistance provided to various parties/companies over a period of approximately 3.5 years since XINHWA was listed on 30 June 2015 until 22 January 2019 which were in contravention of paragraph 8.23(1) and paragraph 8.23(2)(a)(i) of the Main LR. It was also noted that the advances and payments to or in favour of NF Capital and the Directors for their personal expenses involved the interest of Ng Aik Chuan and Ng Yam Pin and they had directly or indirectly benefitted from the same.

A breach of paragraph 8.23 of the Main LR warranted a deterrent penalty involving a public reprimand and fines so as to underline the serious view taken by Bursa Malaysia Securities on such breach and remind the directors on the proper discharge of their duties to ensure compliance of paragraph 8.23 of the Main LR.

A higher penalty was imposed on Ng Aik Chuan, the Managing Director in view of his primary role/involvement in the business arrangements with the parties and approving the advances and payments which were mainly based on his verbal instructions.

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About Bursa Malaysia

Bursa Malaysia is an exchange holding company incorporated in 1976 and listed in 2005, and has grown to be one of the largest bourses in ASEAN today. Bursa Malaysia operates and regulates a fully-integrated exchange offering a comprehensive range of exchange-related facilities, and is committed to *Creating Opportunities, Growing Value*. Learn more at www.bursamalaysia.com.

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