

STATEMENT OF DISCIPLINARY ACTION

Exchange's Disciplinary Action against Brilliance China Automotive Holdings Limited (Stock Code: 1114) and Three Former Directors

SANCTIONS

The Stock Exchange of Hong Kong Limited (**Exchange**)

CENSURES:

- (1) **Brilliance China Automotive Holdings Limited (Company, together with its subsidiaries, Group);**

IMPOSES:

A DIRECTOR UNSUITABILITY STATEMENT and CENSURE against:

- (2) **Ms Ma Nina**, former executive director (**ED**) of the Company (**Ms Ma**);
- (3) **Mr Yan Bingzhe**, former ED of the Company (**Mr Yan**); and

A PREJUDICE TO INVESTORS' INTERESTS STATEMENT and CENSURE against:

- (4) **Mr Sun Baowei**, former ED of the Company (**Mr Sun**).

(The directors identified at (2) to (4) above are collectively referred to as the **Relevant Directors**.)

The Director Unsuitability Statement is a statement that, in the Exchange's opinion, each of Ms Ma and Mr Yan is unsuitable to occupy a position as director or within senior management of the Company or any of its subsidiaries.

The Prejudice to Investors' Interests Statement is a statement that, in the Exchange's opinion, had Mr Sun remained on the board of directors of the Company (**Board**), the retention of office by him would have been prejudicial to the interests of investors.

SUMMARY OF FACTS

Financial assistance and conflict of interest

During the audit of the Company's annual results for the year ended 31 December 2020 (**2020 Annual Results**), the auditor discovered that Shenyang JinBei Automotive Industry Holdings Co., Ltd. (**SJAI**), a wholly-owned subsidiary of the Company, had provided a number of guarantees (**Guarantees**) for the benefit of the Company's then controlling shareholder, Huachen Automotive Group Holdings Company Limited (**Huachen**, together with its subsidiaries, **Huachen Group**). Legal proceedings had been commenced against SJAI to enforce the Guarantees.

The discovery of the Guarantees led to the Company's delayed publication of its 2020 Annual Results and two independent investigations (**Independent Investigations**). The findings were announced by the Company on 16 November 2021 and 19 August 2022.

The Independent Investigations revealed further financial assistance provided between 2019 and 2021 by a number of wholly-owned subsidiaries of the Company, including SJAI, to and for the benefit of the Huachen Group and other entities as a result of Huachen's influence. The total amount of the relevant financial assistance (**Financial Assistance**) exceeded RMB53.4 billion, which included:

- (1) Guarantees provided by SJAI in 2020 in the total sum of around RMB5.9 billion as security for bank financing of the Huachen Group;
- (2) Deposit pledges provided by SJAI between 2019 and 2020 in the total sum of over RMB4 billion (**Deposit Pledges**) as security for bank acceptance bills issued by the Huachen Group and a subsidiary of Dalian Huaxia Northern Investment Company Limited (**Dalian Huaxia**, together with its subsidiaries, **Dalian Huaxia Group**); and
- (3) Fund transfers made between 2019 and 2021 with a fund outflow of around RMB43.5 billion by the Company's subsidiaries (**Fund Transfers**) to the Huachen Group, Dalian Huaxia Group, and Shenyang Brilliance Automobile Co., Ltd. and its subsidiary (**Shenyang Automobile Group**). The Fund Transfers to the Huachen Group were not tracked by any written agreements.

The Relevant Directors held senior positions within Huachen. They were in a clear conflict of interest position with regard to their duties owed to the Company and to Huachen. Each of them was involved in the provision of the Financial Assistance to varying degrees. They did not report the Financial Assistance to the Board.

Relevant Director	Position(s) in Huachen	Position(s) in Company's Group	Involvement in the Financial Assistance
Ms Ma	Head of capital management department; Deputy chief accountant	ED of Company; director of Shenyang XingYuanDong Automobile Component Co., Ltd. (XYD), a wholly-owned subsidiary of Company and the then sole shareholder of SJAI	Ms Ma was the key player in respect of the provision of all Financial Assistance. She had knowledge of and was involved in arranging the Guarantees and Deposit Pledges. She permitted the Fund Transfers to take place, whilst simultaneously acting as the head of Huachen's capital management department, which had arranged the transactions.
Mr Yan	Chairman and legal representative	ED and CEO of Company	Mr Yan was involved in some of the Financial Assistance. He signed the board resolutions of Huachen whereby it was resolved that Huachen would apply for a credit line and a loan extension, to be jointly guaranteed by SJAI and another subsidiary of Huachen. He was aware of the Guarantees and the threatened legal proceedings enforcing the Guarantees but failed to report them to the Board.
Mr Sun	Supervisor of capital management department	ED of Company; director of XYD	Mr Sun was involved in some of the Financial Assistance. He, as a director of XYD, approved some of the Fund Transfers to the Dalian Huaxia Group. He failed to report them to the Board. He was aware of the Guarantees and the threatened legal proceedings enforcing the Guarantees but failed to report them to the Board.

As a result of the Financial Assistance, the Group made a provision of RMB1.9 billion for the estimated loss due to the Guarantees, suffered a loss of RMB4 billion by reason of the Deposit Pledges, and a loss of around RMB2.4 billion as a result of the Fund Transfers.

The Financial Assistance involved advances to an entity, connected transactions, notifiable transactions and a very substantial disposal (see table below for details), subject to announcement, circular, (independent) shareholders' approval and/or annual reporting requirements under Chapters 13, 14 and/or 14A of the Listing Rules. The Company did not comply with any of these requirements in a timely manner.

Recipient Group	Deposit Pledges	Guarantees	Fund Transfers	Classification (aggregated)
(amounts shown in RMB million)				
During FY2019				
Huachen Group	-	-	2,584	Discloseable and connected transaction
Dalian Huaxia Group	300	-	9,898	Major transaction; advance to an entity
During FY2020				
Huachen Group	1,040	5,898	1,337	Major and connected transaction; advance to entity
Dalian Huaxia Group	2,706	-	23,199	Very substantial disposal; advance to an entity
Shenyang Automobile Group	-	-	1,610	Discloseable transaction
During FY2021				
Dalian Huaxia Group	-	-	2,070	Discloseable transaction
Shenyang Automobile Group	-	-	2,004	Discloseable transaction
Total	4,046	5,898	42,702 Net:(1,900)	

Delayed publication of financial statements

The discovery of this extensive and hidden Financial Assistance also resulted in the Company failing to publish and despatch the following financial results and reports within the deadlines imposed by the Listing Rules:

Results / Reports	Due date	Publication date	Delay	Rule
FY2020 annual results	31/03/2021	29/07/2022	16 months	13.49(1)
FY2020 annual report	30/04/2021	08/09/2022	16 months	13.46(2)(a)
FY2021 interim results	31/08/2021	29/07/2022	11 months	13.49(6)
FY2021 interim report	30/09/2021	08/09/2022	11 months	13.48(1)
FY2021 annual results	31/03/2022	26/08/2022	5 months	13.49(1)
FY2021 annual report	30/04/2022	22/09/2022	4 months	13.46(2)(a)
FY2022 interim results	31/08/2022	07/09/2022	8 days	13.49(6)

Failure to cooperate

Ms Ma and Mr Yan did not cooperate in the investigation by the Exchange.

RULE REQUIREMENTS

Rule 13.13 requires a listed issuer to announce an advance to an entity if the assets ratio exceeds 8 per cent.

Rules 13.46(2), 13.48(1), 13.49(1) and 13.49(6) provide that a listed issuer must publish by the respective prescribed time limits its interim and annual results and/or reports.

Rules 14.34, 14.38A, 14.40 and 14.41 provide that a listed issuer must publish an announcement as soon as possible after the terms of a major transaction have been finalised. For major transactions, the listed issuer is required to send a circular to its shareholders, and the transaction must be made conditional on approval by the shareholders. Rules 14.48 and 14.49 impose additional requirements for a very substantial disposal that it must be made conditional on approval by shareholders in a general meeting.

A connected transaction is subject to written agreement, announcement, circular and independent shareholders' approval, independent board committee and independent financial adviser requirements under Rules 14A.34, 14A.35, 14A.36, 14A.39, 14A.44 and 14A.46. Pursuant to Rule 14A.49, a listed issuer must disclose in its annual report the required particulars of connected transactions entered into during the year.

Rule 3.08 provides that directors must fulfil both fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. Under Rule 3.08, directors must, amongst other matters, act honestly and in good faith in the interests of the issuer as a whole, be answerable to the issuer for the application or misapplication of its assets, avoid actual and potential conflict of interest and duty and 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.

Under Rules 3.09B and 3.09C, a director has obligations to:

- (a) comply with the Listing Rules to the best of his/her ability;
- (b) use his/her best endeavors to procure the issuer's compliance with the Listing Rules; and
- (c) cooperate in any investigation conducted by the Exchange, which includes promptly and openly answering any questions, promptly providing any documents and attending any meeting or hearing requested of him/her.

ACCEPTANCE OF SANCTION

The Company accepts its breaches and the sanction imposed upon it by the Listing Committee as set out in this Statement of Disciplinary Action.

LISTING COMMITTEE'S FINDINGS OF BREACH

Company

The Company breached Rules 13.13, 14.34, 14.38A, 14.40, 14.41, 14.48, 14.49, 14A.34, 14A.35, 14A.36, 14A.39, 14A.44, 14A.46 and 14A.49 in respect of the Financial Assistance.

The Company further breached Rules 13.46(2), 13.48(1), 13.49(1) and 13.49(6) by reason of the delay in publishing and dispatching its financial results and reports.

Relevant Directors

The conflict of interest is clear in this case given the Relevant Directors' positions and involvement in the Financial Assistance. Ms Ma procured all, and Mr Yan and Mr Sun procured some, of the Financial Assistance for the benefit of Huachen or as a result of Huachen's influence with no apparent commercial benefit to the Company.

The Relevant Directors failed to discharge their fundamental duties as directors of the Company to avoid or properly manage their conflict of interest, or report the Financial Assistance to the Board. By reason of such failure, the Board did not have the opportunity to consider whether the Financial Assistance was in the interests of the Company and its shareholders as a whole, take steps to manage the risks involved and/or manage conflict of interest. It also deprived the Company's shareholders of their right to receive information and vote on the relevant Financial Assistance which required shareholders' approval. The Relevant Directors also failed to procure and ensure the Company's Rule compliance. Their conduct amounted to a wilful and/or persistent failure to discharge their responsibilities under the Listing Rules.

The Relevant Directors therefore breached their director's duties under Rule 3.08, and their obligations to comply with the Listing Rules to the best of their ability and to use their best endeavours to procure the Company's Rule compliance, now set out in Rule 3.09B. A Prejudice to Investors' Interests Statement is applicable in view of the conduct of Ms Ma, Mr Yan and Mr Sun in relation to the Financial Assistance.

Further, Ms Ma and Mr Yan breached their obligations set out in Rule 3.09C by failing to cooperate in the investigation by the Exchange, which constituted a serious breach of the Listing Rules. Their obligation to provide information reasonably requested by the Exchange did not lapse after they ceased to be a director of the Company. Given their non-cooperation, a Director Unsuitability Statement is imposed on each of Ms Ma and Mr Yan.

CONCLUSION

The Listing Committee decided to impose the sanctions set out in this Statement of Disciplinary Action.



For the avoidance of doubt, the Exchange confirms that the above sanctions apply only to the Company and the Relevant Directors, and not to any other past or present directors of the Company.

Hong Kong, 27 August 2024