



THE STOCK EXCHANGE OF HONG KONG LIMITED
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)
(the “Exchange”)

7 February 2013

The Listing Committee of The Stock Exchange of Hong Kong Limited (the “Listing Committee”) criticises China Molybdenum Co., Ltd. (the “Company”) (stock code: 3993) for its breach of Rules 14.34, 14A.47 and 14A.52 of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (“Exchange Listing Rules”).

The Listing Committee further criticises the following current/former executive directors of the Company (together “EDs”):

- (1) Mr Duan Yuxian (“Mr Duan”), resigned with effect from 24 October 2012;**
- (2) Mr Li Chaochun (“Mr CC Li”);**
- (3) Mr Wu Wenjun (“Mr Wu”);**
- (4) Mr Li Faben (“Mr FB Li”); and**
- (5) Mr Wang Qinxi (“Mr Wang”),**

for their respective breaches of their Director’s Declaration and Undertaking given by each of them to the Exchange in the form set out in Appendix 5, Form H to the Exchange Listing Rules, for failing to use their best endeavours to procure the Company’s compliance with the Exchange Listing Rules (the “Director’s Undertaking”).

On 28 February 2012, the Listing Committee conducted a hearing into the conduct of the Company and of each of the EDs in relation to their obligations under the Exchange Listing Rules and the Director’s Undertaking.

On 28 August 2012, the Listing Committee conducted a disciplinary (review) hearing (the “**Disciplinary (Review) Hearing**”) on the application by the Company and the EDs for a review of the decisions of and the sanctions imposed by the Listing Committee at first instance.

The Company and the EDs applied to the Listing Appeals Committee for a further review of the decision of and the sanctions imposed by the Listing Committee at the Disciplinary (Review) Hearing. In January 2013, the Company and the EDs then decided to withdraw their application for review.

Listing Committee’s findings of fact

Both the Listing Committee at first instance and the Listing Committee on review considered the written and/or oral submissions of the Listing Division, the Company and the EDs and made the following findings of fact:

By announcement of 27 December 2009, the Company disclosed that it had on 22 December 2009 entered into a loan agreement granting RMB1,150 million loan (the “**Loan**”) to Luoyang Construction Investment and Mining Co., Ltd. (“**Borrower**”), a state-owned enterprise then wholly-owned by Luoyang Municipal Construction and Development Investment Co., Ltd. (the “**Guarantor**”). The Loan was for the Borrower’s acquisition of all or any part of Xuzhou Huanyu Molybdenum Co., Ltd (“**Xuzhou Huanyu**”, which owned 90 per cent of Luoyang Fuchuan Mining Co., Ltd., “**Luoyang Fuchuan**”), or Luoyang Fuchuan (which owned 100 per cent of the Shangfanggou molybdenum mine, “**SFG Mine**”). The Borrower acquired 50 per cent of Xuzhou Huanyu in mid-January 2010.

By an administrative allocation of 24 February 2010 by the State-owned Assets Supervision and Administrative Commission (“**SASAC**”), the Borrower was allocated from the Guarantor to Luoyang Mining Group Co., Ltd (“**LMG**”), the Company’s controlling shareholder, also a state-owned enterprise under the Luoyang Municipality’s supervision.

On 25 February 2010, the Company entered into a supplemental agreement (the “**Supplemental Agreement**”) with the Borrower and LMG, by which LMG agreed to transfer its interests in certain companies (including the Borrower and Luanchuan Huqi Mining Company Limited, which owned 10 per cent of the SFG Mine, “**Huqi Mining**”) to the Company by 10 April 2010 subject to the terms of that agreement. The contemplated transactions constituted discloseable and connected transactions of the Company.

LMG did not make the transfers to the Company by 10 April 2010 in accordance with the Supplemental Agreement. The Company commenced arbitration proceedings on 12 April 2010 to enforce the Supplemental Agreement. The arbitration award granted by the Luoyang Arbitration Committee on 19 April 2010 required LMG to transfer its interests in the Borrower and Huqi Mining to the Company within 30 days.

The Company completed its acquisition from LMG of (a) the Borrower on 22 April 2010 and (b) Huqi Mining on 5 May 2010 (“**Acquisition**”).

The Company first disclosed the existence of the Supplemental Agreement in its announcements of 14 and 20 April 2010, and eventually properly announced it with all relevant details required by the Exchange Listing Rules on 17 May 2010. On the same day 17 May 2010, the Company applied for a waiver from the requirement for independent shareholders’ approval. On 19 May 2010, the Division notified the Company by telephone that, since the waiver application was made after the completion of the transaction, the Division would not consider the application to grant a waiver. On 18 June 2010, the Exchange rejected the application in writing as the Acquisition had been completed on 5 May 2010 and the Exchange did not generally grant waivers retrospectively. The Company’s shareholders ratified the Acquisition on 31 October 2010.

There was no Board meeting to consider the Supplemental Agreement before it was entered into; however, all EDs, namely Mr Duan, Mr CC Li, Mr Wu, Mr FB Li and Mr Wang had been aware of the Supplemental Agreement since the beginning of its negotiation. Mr Duan, Mr CC Li and Mr Wu were fully involved in the negotiation. Chairman Mr Duan signed the Supplemental Agreement on behalf of the Company. Vice Chairman/ED Mr CC Li was responsible for supervising the Company's compliance matters, and in direct contact with the Company's Hong Kong legal advisers, including receiving legal advice regarding Exchange Listing Rule implications of the relevant transactions and enforcement of the arbitration award without prior independent shareholders' approval.

Relevant Rules

Having considered the written and/or oral submissions of the Listing Division, the Company and the EDs and made the findings of fact referred to above, both the Listing Committee at first instance and the Listing Committee on review concluded as follows:

Rule 14.34 requires that, as soon as possible after the terms of a notifiable transaction have been finalised, the Company must inform the Exchange and publish an announcement.

Rule 14A.47 requires notification, reporting and disclosure by way of an announcement regarding a connected transaction. Rule 14A.52 further requires that a connected transaction must be made conditional on approval by independent shareholders at the time when the connected transaction is entered into.

Listing Committees' findings of breach

Company

The contemplated transactions under the Supplemental Agreement, given their sizes and the relationship between LMG and the Company, constituted discloseable and connected transactions of the Company. Both the Listing Committee at first instance and the Listing Committee on review found that the Company was required to comply with the reporting, announcement and independent shareholders' approval requirements regarding the Supplemental Agreement under Rules 14.34, 14A.47 and 14A.52. The Listing Committee at first instance found these obligations arose by 25 February 2010 (when the Supplemental Agreement was signed), or alternatively on 19 April 2010 (when the arbitration award was granted). The Listing Committee on review found these obligations arose by 25 February 2010 (when the Supplemental Agreement was signed).

As the Company only announced the existence of the Supplemental Agreement on 14 April 2010 (which should have been announced as soon as practicable after 25 February 2010) and eventually the relevant transactions on 17 May 2010 with details required by the Exchange Listing Rules, there was an unreasonable delay on the part of the Company to make the required announcement. The Company also failed to make the Supplemental Agreement subject to independent shareholders' approval, and completed the acquisitions without prior shareholders' approval. It therefore also breached Rule 14A.52.

Both the Listing Committee at first instance and the Listing Committee on review concluded that the Company breached Rules 14.34, 14A.47 and 14A.52 by failing to disclose in a timely manner the Supplemental Agreement and to make it subject to independent shareholders' approval.

Both the Listing Committee at first instance and the Listing Committee on review further noted from the representations made that:

- the Supplemental Agreement was drafted internally and neither the Company nor LMG obtained legal advice;
- the EDs were, by their own admission, aware of the Exchange Listing Rule implications of the relevant transactions under the Supplemental Agreement as early as 22 to 24 February 2010 but they did not consult legal advisers;
- the Company also considered that arrangements required confidentiality at the time. It was keen to proceed to arbitration as soon as possible, so as to secure a 50 per cent interest in Xuzhou Huanyu that was beyond challenge. It was essential for the Company to secure such interest at all cost; and
- after being alerted by its Hong Kong legal advisers regarding Listing Rule implications, the Company questioned the advice and requested these advisers to obtain a waiver from the Exchange.

It was of particular concern to the Listing Committee at first instance and the Listing Committee on review that:

- the Company could and should have consulted, on a confidential basis and in a timely manner, its Hong Kong legal advisers and/or the Exchange before signing of the Supplemental Agreement and/or before proceeding to arbitration and/or completion of the transaction, but failed to do so; and
- in any event the Company after receiving legal advice still did not take action towards Rules compliance. Instead, it questioned the advice after internal discussion, completed the Acquisition without seeking any consultation with the Exchange and then requested the Company's legal advisers to obtain a waiver from the Exchange, and proceeded to complete the relevant acquisitions before the outcome of its waiver application was known.

Executive Directors

Both the Listing Committee at first instance and the Listing Committee on review concluded that each of the EDs, having at all material times involvement in and/or knowledge of the negotiation, and the terms of the Supplemental Agreement, failed to procure the Company's compliance with Rules 14.34, 14A.47 and 14A.52 regarding the Supplemental Agreement.

Each of the EDs therefore breached his Director's Undertaking by failing to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules.

Both the Listing Committee at first instance and the Listing Committee on review also found that the Company did not have adequate internal controls by which Exchange Listing Rules compliance might be achieved. The materials provided demonstrated that the internal controls, if any, were flawed in that apart from the designation of compliance personnel, there was no clear structure to ascertain (through timely consultation with professionals or the Exchange) or ensure (through internal clearance procedures) the Company's compliance with the Exchange Listing Rules. Accordingly, both the Listing Committee at first instance and the Listing Committee on review also concluded that each of the EDs failed to conduct himself as required by and in breach of his Director's Undertaking through failing to establish and/or maintain adequate internal controls by which Exchange Listing Rules compliance may be achieved by the Company.

Sanctions

Compliance with the Exchange Listing Rules forms the foundation of market transparency and integrity as well as shareholder protection, and it is not optional. Even if there are compelling commercial considerations to complete a transaction, this does not justify non-compliance with the Exchange Listing Rules.

Both the Listing Committee at first instance and the Listing Committee on review criticise:

- (1) the Company for its breaches of Rules 14.34, 14A.47 and 14A.52 of the Exchange Listing Rules referred to above; and
- (2) EDs, namely Mr Duan, Mr CC Li, Mr Wu, Mr FB Li and Mr Wang for their respective breaches of their Director's Undertaking, in that (a) having knowledge of the Supplemental Agreement since its negotiation, they failed to procure the Company's compliance with the Exchange Listing Rules; (b) they failed to establish and/or maintain adequate internal controls to address Exchange Listing Rules compliance; and (c) they failed to ensure that the Company sought or abided by adequate legal advice.

The Listing Committee on review concluded that there were no grounds for removing or lessening the sanctions imposed on the Company and the EDs.

Further, the Listing Committee on review directed that:

- (1) the Company:
 - (a) (i) retain within two weeks from the publication of this News Release an independent professional adviser satisfactory to the Listing Division ("**Adviser**") to conduct a thorough review of and make recommendations to improve the Company's internal controls to ensure compliance with Chapters 14 and 14A of the Exchange Listing Rules; and (ii) provide the Listing Division with the Adviser's written report containing such recommendations within two months from the date of publication of this News Release. The Company is to submit the proposed scope of retainer to the Listing Division for comment before the appointment of the Adviser;

- (b) furnish the Listing Division with the Adviser's written report on the Company's full implementation of the Adviser's recommendations within a further period of two months; and
 - (c) appoint an independent professional adviser satisfactory to the Listing Division on an ongoing basis for consultation on Exchange Listing Rules compliance ("**Compliance Adviser**") for a period for two years within two weeks from the date of publication of this News Release. The Company is to submit the proposed scope of retainer to the Listing Division for comment before the appointment of the Compliance Adviser. The Compliance Adviser shall be accountable to the Audit Committee of the Company;
- (2) each of the EDs undergo 24 hours of training on Exchange Listing Rules compliance, director's duties and corporate governance matters to be given by the Hong Kong Institute of Chartered Secretaries, the Hong Kong Institute of Directors or other course providers approved by the Listing Division. Such training to be completed within 180 days from the date of publication of this News Release. The Company is to provide the Listing Division with the training provider's written certification of full compliance with this training requirement by these Directors within two weeks after training completion; and
- (3) the Company publish an announcement to confirm full compliance with each of the directions set out in (1) and (2) above within two weeks after the respective fulfillment of each of the directions. The Company is to submit drafts of the announcements for the Division's comment and may only publish the announcements after the Division has confirmed it has no further comment on them. The last announcement required to be published under this requirement is to include the confirmation that all directions at (1) and (2) above have been complied with.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Company and the EDs and not to any other past or present member of the Company's Board of Directors.