



THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

28 November 2005

The Listing Committee of The Stock Exchange of Hong Kong Limited (the “Listing Committee”) censures the following parties for breaching the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Exchange Listing Rules”):

- 1. HyComm Wireless Limited (the “Company”);**
- 2. Mr Lai Yiu Keung, Chairman and an executive director of the Company (“Mr Lai”);**
- 3. Ms Chung Lai Ha, an executive director of the Company (“Ms Chung”);**
- 4. Mr Kwok Chong, Anthony, an executive director of the Company (“Mr Kwok”); and**
- 5. Mr Lai Chi Kin, a former executive director of the Company resigned on 24 May 2005 (“Mr CK Lai”).**

Further, the Listing Committee criticises the following parties for breaching the Exchange Listing Rules:

- 1. Mr Tang Xueyi, a former executive director of the Company resigned on 11 September 2002 (“Mr Tang”); and**
- 2. Mr Cheung Kin Keung, a former executive director of the Company resigned on 10 May 2001 (“Mr Cheung”).**

On 2 August 2005, the Listing Committee conducted a hearing into the conduct of the Company, Mr Lai, Ms Chung, Mr Kwok, Mr CK Lai, Mr Tang and Mr Cheung (collectively, the “Relevant Directors”) in relation to the obligations under the then Rules 14.26(6)(a) and 14.29 and Rules 3.08(a) and (d) of the Exchange Listing Rules and the Declaration and Undertaking with regard to Directors given by each of the Relevant Directors to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (the “Director’s Undertaking”).

Facts

By an agreement dated 2 June 2000 (the “Disposal Agreement”) signed between the Company and Mr Lai, the Company sold to Mr Lai the entire issued share capital in its five subsidiaries (the “Sale Group”). One of these companies was Plotio Investment Limited (“Plotio”).

The Listing Division alleged that the Company breached the then Rule 14.26(6)(a) in failing to obtain prior shareholders' approval and the then Rule 14.29 in failing to issue circulars in relation to three sets of connected transactions (which had their origin in or relevance to the Disposal Agreement directly or indirectly) by way of financial assistance to connected persons as follows:

1. Mr Lai's non-payment of outstanding consideration under the Disposal Agreement (the "First Connected Transaction")

Under the Disposal Agreement, Mr Lai was required to pay the balance of the consideration (HK\$14,949,000), which was non-interest bearing and secured by 120,000,000 shares in the Company beneficially held by Mr Lai, on or before 10 July 2002. Mr Lai did not make the payment in full or in part on the due date. The non-payment was uncovered during the annual audit of the Company's account for the year ended 31 March 2002 in July 2002.

2. The Group's transfer of funds to Mr Lai's current account (the "Second Connected Transaction")

The Audit also found that, in the year ended 31 March 2002, funds had been transferred from the Group to various companies within the Sale Group at Mr Lai's request and authorisation. These were recorded as sums due from Mr Lai's current account with the balance due from Mr Lai's current account as at 31 March 2002 (inclusive of the HK\$14,949,000 referred to in (1) above) being HK\$19,616,000. Such loans were interest-free, unsecured without any repayment date and were not therefore on normal commercial terms or granted in the ordinary course of the Company's business.

3. The Group's transfer of funds to Plotio (the "Third Connected Transaction")

The Audit further found that, although the inter-company indebtedness was net off as required under the Disposal Agreement and despite a prohibition against fund transfers between the Sale Group and other companies of the Group from 1 July 2000, the Group continued to transfer funds to Plotio, at Mr Lai's authorisation between December 2000 and 31 March 2002. The balance due from Plotio as at 31 March 2002 was HK\$3,336,000. Such loans were interest-free, unsecured without any repayment date and were not therefore on normal commercial terms or granted in the ordinary course of the Company's business.

After discovery of the breach, the Company had negotiations with Mr Lai on how to settle the outstanding sums due from Mr Lai and Plotio. At the Board meeting on 22 August 2002, the Board considered the matter and approved the settlement terms reached with Mr Lai and Plotio over the payment of the outstanding sums. The Company published an announcement on 30 August 2002 disclosing the relevant matters and issue a circular on 20 September 2002. At the EGM held on 18 October 2002, the Company's independent shareholders approved all the transactions and the settlement terms.

According to the Company, all outstanding payments had been cleared by Mr Lai and Plotio by 21 February 2003. The Company's subsequent annual accounts for the year ended 31 March 2003 confirmed that there was no payment due from Mr Lai or Plotio.

As Mr Lai was a substantial shareholder and a director of the Company, he was a connected person of the Company. Following completion of the Disposal Agreement, Plotio became a company controlled and beneficially owned by Mr Lai, hence an associate of Mr Lai and in turn, a connected person of the Company. As a result, the Group's transactions or arrangements resulting in the relevant loans due from Mr Lai and Plotio were connected transactions subject to Chapter 14 of the Exchange Listing Rules in force at the time.

The Company did not disclose or obtain shareholders' prior approval in relation to all three connected transactions or issue circular on them to its shareholders. The Company therefore breached the then Rules 14.26(6)(a) and 14.29.

The Division expressed concerns about the Board procedures and corporate governance of the Company.

Decision

The Listing Committee concluded that:

- (i) the Company breached the then Rules 14.26(6)(a) and 14.29 in respect of the First Connected Transaction, the Second Connected Transaction and the Third Connected Transaction (from the completion of the Disposal Agreement, ie 10 July 2001);
- (ii) Mr Lai breached Rule 3.08(a) in failing to act honestly and in good faith in the interests of the Company as a whole; and Rule 3.08(d) in failing to avoid actual and potential conflicts of interest and duty;
- (iii) Mr Lai breached the Director's Undertaking for failing to comply to the best of his ability with the Exchange Listing Rules from time to time in force; and
- (iv) Each of Mr Lai, Ms Chung, Mr Kwok, Mr CK Lai, Mr Tang and Mr Cheung breached the Director's Undertaking for failing to use his/her best endeavours to procure that the Company complied with the Exchange Listing Rules.

The Listing Committee noted that Mr Lai played a central role in causing the fund transfers and bringing about the Company's breach of the Exchange Listing Rules.

Sanctions

The Listing Committee decided to impose the following sanctions on the parties:

- a public censure on the Company, Mr Lai, Ms Chung, Mr Kwok and Mr CK Lai for their respective breaches mentioned in (i) to (iv) above; and
- a public statement which involves criticism on Mr Tang and Mr Cheung for their respective breaches mentioned in (iv) above.

In arriving at its decision on the sanctions against the Relevant Directors, the Listing Committee took into account the fact that Mr Cheung and Mr Tang had resigned as directors of the Company in May 2001 and September 2002 respectively.

Richard Williams, Head of Listing commented “The Exchange Listing Rules contain safeguards for the benefit of minority shareholders to protect them from prejudice as a result of transactions executed with connected parties. This case demonstrates once again that the Exchange views seriously any failure by an issuer to obtain independent shareholder approval prior to providing connected persons and in particular controlling shareholders with material financial assistance.

The decision of the Committee is also noteworthy in that they found that Mr Lai who played a central role in the transactions giving rise to the breaches had acted in breach of his personal obligations as a director under the Exchange Listing Rules. These breaches concern amongst other things his obligation to act in the best interests of the Company as a whole and to avoid actual or potential conflicts of interest in relation to his dealings in the affairs of the Company. The Committee’s action concerning this element of the case demonstrates the importance attached by the Exchange to the relevant transactions being conducted and executed with the highest standards of integrity and probity for the benefit of all shareholders.”