



THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)
(the “Exchange”)

3 January 2008

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

- 1. Sanmenxia Tianyuan Aluminum Company Limited (the “Company”) (Stock Code: 8253);**
- 2. Mr Tan Yu Zhong, an executive director of the Company (“Mr Tan”);**
- 3. Mr Xiao Chong Xin, an executive director of the Company (“Mr Xiao”); and**
- 4. Mr Li Yong Zheng, a former executive director of the Company resigned on 28 November 2005 (“Mr Li”).**

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

- 1. Mr Yan Li Qi, a non-executive director of the Company (“Mr Yan”);**
- 2. Mr Song Quan Qi, an independent non-executive director of the Company (“Mr Song”);**
- 3. Mr Zhu Xiao Ping, an independent non-executive director of the Company (“Mr Zhu”); and**
- 4. Mr Chan Nap Tuck, an independent non-executive director of the Company (“Mr Chan”).**

On 16 October 2007, the GEM Listing Committee conducted a hearing into the conduct of, among others, the Company, Mr Tan, Mr Xiao, Mr Li, Mr Yan, Mr Song, Mr Zhu and Mr Chan (collectively, the “Relevant Directors”) in relation to the obligations under the GEM Listing Rules and the Director’s Declaration, Undertaking and Acknowledgement given by each of the Relevant Directors to the Exchange in the form set out in Appendix 6 Form B to the GEM Listing Rules (the “Director’s Undertaking”).

Facts

The disciplinary hearing was in connection with the following eight cases of alleged breaches of the GEM Listing Rules:

- Case 1 - on 11 July 2005, the Company entered into an agreement with Guang Dong Development Bank Joint Stock Limited Company, Anyang Branch to provide a guarantee in the amount of RMB20 million in favour of Sanmenxia Lakeside Fruit Juice Beverage Co. Ltd. (“Lakeside”), without charging a fee or obtaining any security from Lakeside. The guarantee was provided pursuant to certain cross guarantee arrangements between the Company and Lakeside.

The amount of the guarantee represented 1.62 per cent and 10.57 per cent of the Company's asset ratio and consideration ratio respectively.

- Case 2 - on 20 July 2005, the Company entered into an agreement with Shanghai Pudong Development Bank, Zhengzhou Branch, Jiankang Lu Sub-branch to provide a guarantee in the amount of RMB30 million in favour of SMX Dicastal Wheel Manufacture Co. Ltd ("Dicastal"), without charging a fee or obtaining any security from Dicastal. The guarantee was provided pursuant to certain cross guarantee arrangements between the Company and Dicastal.

The amount of the guarantee represented 2.43 per cent and 15.93 per cent of the Company's asset ratio and consideration ratio respectively.

- Case 3 - on 8 August 2005, the Company entered into an agreement with Bank of Communications, Zhengzhou Branch to provide a guarantee in the amount of RMB8 million in favour of Sanmenxia Jiashi Wheel Hubs Co., Ltd. ("Jiashi"), without charging a fee or obtaining any security from Jiashi. Jiashi was owned as to 48 per cent by Sanmenxia Tianyuan Aluminum Group Limited ("Tianyuan Group"), the controlling shareholder of the Company holding 67.02 per cent of the Company's issued capital. The guarantee was provided pursuant to certain cross guarantee arrangements between the Company and Jiashi.

The amount of the guarantee represented 0.65 per cent and 4.59 per cent of the Company's asset ratio and consideration ratio respectively.

- Case 4 - on 21 and 22 November 2005, the Company entered into two agreements with Guang Dong Development Bank Joint Stock Limited Company, Huanghe Lu Branch, Zhengzhou and Commercial Bank of Zhengzhou, Yanzhuang Branch respectively to provide two separate guarantees in the respective amount of RMB20 million and RMB50 million both in favour of Henan Taloph Pharmaceutical Stock Co. Ltd. ("Taloph"), without charging a fee or obtaining any security from Taloph. The guarantees were provided pursuant to certain cross guarantee arrangements between the Company and Taloph.

The amount of the guarantees when aggregated pursuant to Rule 19.22 represented 5.66 per cent and 41.69 per cent of the Company's asset ratio and consideration ratio respectively.

- Case 5 - on 17 February 2006, the Company entered into two agreements with Zhengzhou City Rural Credit Cooperative, Lianheyong Sales Department to provide guarantees in the aggregate amount of RMB18.5 million in favour of Zhengzhou Joysun Industrial Group Co. Ltd ("Joysun"), without charging a fee or obtaining any security from Joysun. The guarantees were provided pursuant to certain cross guarantee arrangements between the Company and Joysun.

The amount of the guarantees when aggregated pursuant to Rule 19.22 represented 1.50 per cent and 9.53 per cent of the Company's asset ratio and consideration ratio respectively.

- Case 6 - on 22 February 2006, the Company entered into an agreement with China Construction Bank Corporation, Zhengzhou Jingwei Sub-branch to provide a guarantee in the amount of US\$12 million (equivalent of RMB97.2 million) in favour of Henan Zhongfu Industrial Co. Ltd. (“Zhongfu”), without charging a fee or obtaining any security from Zhongfu. The guarantee was provided pursuant to certain cross guarantee arrangements between the Company and Zhongfu.

The amount of the guarantee represented 10.02 per cent and 50.46 per cent of the Company’s asset ratio and consideration ratio respectively.

- Case 7 - on 20 and 21 July 2006, during the vetting process of the circular issued by the Company dated 4 August 2006 (the “Circular”) in relation to the provision of the guarantees in Cases 1 to 6 (the “Guarantees”), the Listing Division was advised by the Company’s solicitors that the Company was unable to obtain a letter from the Company’s financial advisers or auditors, as required by Rule 19.66(4) to confirm that institutions providing banking facilities to the Company had confirmed in writing the existence of such facilities.

On 4 August 2006, the Company despatched the Circular which included the statement that “the Directors, including the independent non-executive Directors, are of the opinion that the Company will have sufficient working capital for its present requirements.”

- Case 8 - the Company’s financial year ended on 31 December each year. Pursuant to Rules 18.48A and 18.49, the Company was required to despatch the annual report of the Company for the year ended 31 December 2005 (the “2005 Annual Report”) and publish the annual results of the Company for the year ended 31 December 2005 (the “2005 Annual Results”) on or before 31 March 2006. However, the Company only published the 2005 Annual Results on 12 June 2006 and despatched the 2005 Annual Report on 19 June 2006, giving rise to a delay of 73 days and 80 days respectively.

Disclosure in respect of the Guarantees, i.e. Cases 1 to 6, was first made to the Listing Division on 15 May 2006. The Company made public the Guarantees by issue of an announcement dated 22 May 2006.

The Listing Division alleged that the Company failed to comply with the following requirements under the GEM Listing Rules:

1. Cases 1, 2 and 5 - the transaction(s) under each of these cases constituted a discloseable transaction within the meaning of Rule 19.06(2). Failure of the Company to comply with the notification and announcement requirements under Rules 19.34 and 19.38 at the time when the respective Guarantees were provided constituted breaches of Rules 19.34 and 19.38;
2. Case 3 - the transaction constituted a connected transaction within the meaning of Rule 20.13(3). Failure of the Company to comply with the announcement requirement at the time when the guarantee was provided in August 2005 constituted a breach of Rule 20.47;

3. Cases 4 and 6 - the transaction(s) under each of Cases 4 and 6 constituted a major transaction within the meaning of Rule 19.06(3). Failure of the Company to comply with the notification, announcement and independent shareholders' approval requirements under Rules 19.34, 19.38 and 19.40 at the time when the respective guarantees were provided constituted breaches of Rules 19.34, 19.38 and 19.40;
4. Case 7 - the Company's failure to provide a "comfort letter" or proof regarding the existence of its banking facilities, whilst the Circular stated that the Company would have sufficient working capital for its present requirements amounted to a breach of Rule 19.66(4); and
5. Case 8 - the Company's delay in despatching the 2005 Annual Report and the publication of the 2005 Annual Results constituted breaches of Rules 18.48A and 18.49.

Further, the Listing Division alleged that each of the Relevant Directors breached the Director's Undertaking.

In addition, the Listing Division also alleged that Mr Tan, being the Company's Compliance Officer at the material time, breached Rule 5.20(1) for failing to advise and assist the Board in implementing procedures to ensure the Company's compliance with the GEM Listing Rules and the Director's Undertaking to comply to the best of his ability with the GEM Listing Rules.

Decision

The GEM Listing Committee concluded, among other things, that:

- (i) the Company breached:
 - Rules 19.34 and 19.38 of the GEM Listing Rules in respect of Cases 1, 2 and 5;
 - Rule 20.47 of the GEM Listing Rules in respect of Case 3;
 - Rules 19.34, 19.38 and 19.40 of the GEM Listing Rules in respect of Cases 4 and 6;
 - Rule 19.66(4) of the GEM Listing Rules in respect of Case 7; and
 - Rules 18.48A and 18.49 of the GEM Listing Rules in respect of Case 8.
- (ii) Mr Tan breached both Rule 5.20(1) of the GEM Listing Rules and the Director's Undertaking for failing to comply to the best of his ability with the GEM Listing Rules and to use best endeavours to procure the Company to comply with the GEM Listing Rules in respect of Cases 1, 2, 4, 5, 6, 7 and 8;
- (iii) Mr Xiao breached the Director's Undertaking for failing to use best endeavours to procure the Company to comply with the GEM Listing Rules in respect of Cases 1, 2, 4, 5, 7 and 8;
- (iv) Mr Li breached the Director's Undertaking for failing to use best endeavours to procure the Company to comply with the GEM Listing Rules in respect of Cases 1, 2, 3 and 4;
- (v) Mr Yan breached the Director's Undertaking for failing to use best endeavours to procure the Company to comply with the GEM Listing Rules in respect of Case 5; and

- (vi) each of Mr Song, Mr Zhu and Mr Chan breached the Director's Undertaking for failing to use best endeavours to procure the Company to comply with the GEM Listing Rules in respect of Cases 1 to 8.

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

- a public censure on the Company, Mr Tan, Mr Xiao and Mr Li for their respective breaches mentioned in (i) to (iv) above; and
- a public statement which involved criticism on Mr Yan, Mr Song, Mr Zhu and Mr Chan for their respective breaches mentioned in (v) and (vi) above.

In arriving at its decision to impose a public statement which involves criticisms on the three independent non-executive directors of the Company, i.e. Mr Song, Mr Zhu and Mr Chan, for breaching the Director's Undertaking to use best endeavours to procure the Company's compliance with the GEM Listing Rules in respect of Cases 1 to 8, the GEM Listing Committee took into account the fact that the responsibilities and undertakings of independent non-executive directors were no less onerous than those of the other directors and that these three directors were members of the Company's audit committee since its establishment in June 2004. The GEM Listing Committee was of the view that the audit committee was the most important committee outside of the Company's Board of Directors with regard to the assurance of proper financial reporting as well as all matters relating to internal control and compliance. These three individuals should therefore also accept full responsibility for the Company's breaches in Cases 1 to 8.

Further, the GEM Listing Committee made directions on the following:

- (i) the Company to retain an independent professional adviser (the "Adviser") to conduct a thorough review of and make recommendations to improve the Company's internal controls for GEM Listing Rules compliance in relation to notifiable and connected transactions, and thereafter to provide written reports of the Adviser to the Listing Division;
- (ii) the Company to retain a compliance adviser for consultation on compliance matters on an ongoing basis for a duration of two years; and
- (iii) each of the Relevant Directors to undergo training on compliance and corporate governance matters.

For the avoidance of doubt, the Exchange confirms that:

- the public censure only applies to the Company, Mr Tan, Mr Xiao and Mr Li and not to any other past or present member of the Board of the Company; and
- the public statement which involves criticism only applies to Mr Yan, Mr Song, Mr Chan and Mr Zhu and not to any other past or present member of the Board of the Company.

Richard Williams, Head of Listing, commented: “In this case the Company has, through the action or inaction of its management committed a catalogue of breaches of the GEM Listing Rules concerning the disclosure, shareholders’ approval and financial reporting requirements. There are a few observations which I would make in respect of this decision.

First, the Exchange views the failure to disclose and obtain prior independent shareholders’ approval for notifiable and connected transactions very seriously because of the potentially serious adverse impact on the market and investor confidence. The timely release of financial reports within the time-frame established by the Rules is also very important as it serves to safeguard shareholders’ and investors’ interests in enabling them to make informed investment decisions. The nature and characteristics of the breaches underline the obligation of the directors to give due prominence to compliance with the Rules in conducting the business affairs of listed companies.

Second, the decision highlights the board of directors’ individual and collective accountability for listing rule compliance. The Committee has made it clear that the responsibilities and undertakings of independent non-executive directors are no less onerous than those of other directors, particularly if they are also members of the audit committee being the internal body outside the board of directors charged with the function of assuring proper financial reporting as well as all matters relating to internal control and compliance. In this case, the independent non-executive directors being members of the audit committee were held to be fully responsible for all the Company’s breaches, even though they may not have had any direct involvement in the underlying transactions or events.

In addition, the role and duties of compliance officers in advising and assisting issuers to implement measures for procuring compliance with the listing rule requirements should not be underestimated. Whilst the board of directors as a whole is ultimately accountable for listing rule compliance, a more onerous standard is expected of the compliance officer in taking positive and active steps to ensure that the issuer has in place an adequate and effective compliance regime.

Finally, the decision continues to demonstrate that in addition to punishing past misconduct through the imposition of public censures, the Committee will, where appropriate, seek to encourage enhanced standards of corporate governance and compliance by directing a review of the issuer’s internal controls, improvement on such controls, the appointment of an external compliance adviser and that directors to undergo training on compliance and corporate governance matters. The breaches in this case are indicative of a lack of an effective control system within the issuer and proper understanding on the part of the management as to their obligations under the GEM Listing Rules. Such remedial measures seek to encourage and promote listing rule compliance and thus seek to prevent further breaches of the GEM Listing Rules by the issuer and its management going forward.”