



## **THE STOCK EXCHANGE OF HONG KONG LIMITED**

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

28 January 2014

**The Listing Committee of The Stock Exchange of Hong Kong Limited ("Listing Committee") censures:**

- (1) Huscoke Resources Holdings Limited ("Company") (Stock Code: 704) for breaching the then Rule 13.09(1) of the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("Exchange Listing Rules"), which required an issuer to disclose, as soon as reasonably practicable, any information which (a) was necessary to enable shareholders and the public to appraise the position of the group; (b) was necessary to avoid the establishment of a false market in the issuer's securities; or (c) might be reasonably expected materially to affect market activity in and the price of its securities.**

**The Listing Committee further censures the following current and former executive directors of the Company ("Executive Directors"):**

- (2) Mr Gao Jian Guo ("Mr Gao");**
- (3) Mr Li Bao Qi ("Mr Li"); and**
- (4) Mr Cheung Ka Fai ("Mr Cheung"), resigned on 31 July 2012;**

**for their respective breaches of their obligations under the Declaration and Undertaking with regard to Directors given to the Exchange in the form set out in Appendix 5b to the Exchange Listing Rules in failing to use their best endeavours to procure the Company's Exchange Listing Rule compliance ("Undertaking").**

**The Listing Committee further criticises the following non-executive director ("NED") and independent non-executive directors ("INEDs"):**

- (5) Mr Wu Ji Xian ("Mr Wu");**
- (6) Mr Lau Ka Ho ("Mr Lau");**
- (7) Mr Lam Hoy Lee, Laurie ("Mr Lam"); and**
- (8) Mr To Wing Tim ("Mr To")**

**for their respective breaches of the Undertaking.**

**(The Executive Directors, NED and INEDs are collectively referred to as the "Relevant Directors".)**

On 6 December 2013, the Listing Committee conducted a hearing into the conduct of the Company and the Relevant Directors in relation to their obligations under the Exchange Listing Rules and the Undertaking.

## **Facts**

### The Company and its business

The Group was and is principally engaged in trading and production of coke and coal-related ancillary business. It was profitable during the financial years from 2009 to the six months ended 30 June 2011 (“**1H2011**”) inclusive (net profit ranging from \$24.3 million to \$194.6 million).

At the material time, the Group conducted its business operation solely through GRG Huscoke (Shan Xi) Ltd. (山西金岩和嘉能源有限公司) (“**PRC Co.**”), a 90 per cent indirectly owned subsidiary company in the People’s Republic of China (“**PRC**”). Hence, the Group’s business performance was fully reflected in the monthly management accounts of the PRC Co. (“**PRC Accounts**”), which were circulated to the Executive Directors and the PRC Co. management during their monthly visit to the PRC manufacturing site on the 15<sup>th</sup> day of each month. They discussed the same on-site and over the telephone on an on-going monthly basis.

The Company acquired a coke export trading business in May 2008 which included a coke export agency agreement (“**Agreement**”). The Agreement entitled the Group to have an exclusive right to export coke provided by a supplier. The export tax increased from 25 per cent to 40 per cent in August 2008. Since then, the Group had ceased its coke export business.

### Results for the six months ended 30 June 2011 (“**1H2011 Results**”)

The Company’s 1H2011 Results, announced on 26 August 2011, reported \$1,069.5 million revenue, \$180.4 million gross profit and \$45.4 million net profit, representing 30.9 per cent and 20.6 per cent increase and 44.3 per cent decrease respectively as compared with the corresponding period in 2010.

### PRC Co.’s financial performance for the second half of the financial year ended 31 December 2011 (“**2H2011**”) reflected in the PRC Accounts

The Company’s financial performance deteriorated significantly during 2H2011. Since August 2011, the PRC Accounts had been recording a monthly net loss for five consecutive months.

### Relevant Directors had been aware of the decreasing trend in gross profit margin and its cause since 26 August 2011

At the Board meeting on 26 August 2011 to approve the 1H2011 Results announcement, the Relevant Directors were aware of the decreasing trend in gross profit margin due to the cost increase caused by certain mines consolidation plans. They also discussed such trend during their Board meeting on 19 September 2011.

### PRC Accounts for October and November 2011 showed continuing further deterioration

On 15 November 2011, the PRC Accounts for October 2011 available and circulated to the Executive Directors had recorded a net loss for each of the three consecutive months since August 2011. The gross profit margin also dropped for three months from 19.7 per cent for July to 16.1 per cent for October 2011 and the year-to-date financial performance significantly lagged behind the financial year ended 31 December 2010 (“**FY2010**”).

On 15 December 2011, the PRC Accounts for November 2011 available and circulated to the Executive Directors had recorded a net loss for each of the four consecutive months since August 2011.

At the Board meeting of 29 December 2011, Mr Cheung updated all the Relevant Directors in respect of the latest decreasing trend in gross profit margin. Since the trend in the fourth quarter of 2011 was steady and the positive gross profit position remained unchanged, all the Relevant Directors considered it not appropriate to publish a profit warning announcement until a full picture of other factors that might affect the gross profit came out.

### Impairment test for the Agreement suggested potential significant impairment loss

On 12 January 2012, the Company finished the first draft annual impairment test and discounted cashflow forecast for its intangible asset (comprising the Agreement) (“**Impairment Test**”). Mr Cheung passed the test results to the Company’s auditors for consideration. It showed that the net present value of the Agreement was \$395.18 million (which suggested that an impairment loss of \$328 million would be expected based on the carrying book value of \$723.18 million at that time).

### PRC Accounts for December 2011

On 15 January 2012, the PRC Accounts for December 2011 were available and circulated to the Executive Directors. In mid-January 2012, they discussed the first draft Impairment Test results.

### WTO ruling

On 30 January 2012, the Company was aware of a ruling by the World Trade Organisation (“**WTO**”) that the PRC government violated its rules in unfairly restricting its export of nine types of materials including coke. Under its ruling, the WTO requested the PRC government to reduce its export tax and relax the export restrictions in respect of those materials. The Company explained that the Executive Directors therefore decided to wait and see if the PRC government would act in response to the ruling. The Company considered that the PRC government might change the coke export policy which could be favourable to the Company’s business and that the factors to be taken into account in the Impairment Test might change significantly and impairment in respect of the Agreement might no longer be necessary.

On 2 February 2012, the Executive Directors had the first draft of the Group’s consolidated management accounts for the financial year ended 31 December 2011 (“**FY2011**” and “**FY2011 Accounts**” respectively).

### NED and INEDs were briefed by Mr Cheung in mid-February 2012

In mid-February 2012, in telephone conversations between Mr Cheung and each of the NED and INEDs, Mr Cheung informed them briefly of the gross profit margin drop, the possible remedial measures by the PRC government to the WTO ruling and the progress of the Impairment Test, and expressed the concerns about the drop in gross profit margin.

On 27 February 2012, the second draft of the FY2011 Accounts was prepared and available to Mr Cheung, the Company's chief accountant and the auditors.

Up to early March 2012, the PRC government did not change the tax policy for coke export notwithstanding the WTO ruling.

### Profit warning announcement issued on 6 March 2012 ("PWA")

On 6 March 2012 at 6.32pm, the Company issued the PWA, stating that it expected to record a loss for FY2011 as compared to a profit for FY2010. On the next trading day, the Company's share price dropped about 7.5 per cent from \$0.159 to the lowest of \$0.147 and at close 5.7 per cent to \$0.150. The trading volume increased to 8.6 million shares, which was 1.143 times the past 10-day average.

### FY2011 results issued on 28 March 2012

On 28 March 2012 at 6.35am, the Company announced its FY2011 results. It recorded a loss of \$483.3 million for FY2011, including an impairment loss in respect of the Agreement of \$435 million. On that day, the Company's share price dropped 37.6 per cent from \$0.133 to the lowest of \$0.083 and at close 16.5 per cent to \$0.111. The trading volume increased to 49.9 million shares, which was about 12.6 times the past 10-day average.

### **Exchange Listing Rule requirements**

Unless otherwise stated, reference to Rule 13.09 in this news release refers to the rule in force at the material time to 31 December 2012.

Rule 13.09(1) required issuers to disclose, as soon as reasonably practicable, any information which (a) was necessary to enable shareholders and the public to appraise the position of the group; (b) was necessary to avoid the establishment of a false market in the Company's securities; or (c) which might be reasonably expected materially to affect market activity in and the price of its securities.

Note 11(ii) to Rule 13.09 further elaborated that the obligation must be discharged without delay where to the knowledge of the directors there was such a change in the Company's financial condition or the performance of its business or the Company's expectation of its performance that knowledge of the change was likely to lead to substantial price movement.

### **Listing Committee's findings of breach**

The Listing Committee considered the written and oral submissions of the Listing Division, the Company and the Relevant Directors and concluded as follows:

### Company's breach of Rule 13.09(1)

The Company was required but failed to publish an announcement disclosing the significant deterioration in its financial performance during 2H2011 as soon as reasonably practicable in breach of Rule 13.09(1).

### Information in the public domain

For the financial year ended 31 December 2009 (“**FY2009**”) and FY2010, the Company reported a net profit of \$107.2 million and \$194.6 million respectively. As compared with the first half of FY2010 (“**1H2010**”), the Company reported favourable growth in revenue to \$1,069.5 million (30.9 per cent increase) and gross profit to \$180.4 million (20.6 per cent increase) for 1H2011. However, certain deterioration signals in its financial performance were also shown, including increase in the costs of sales (33.2 per cent increase), distribution costs, administrative expenses and finance costs (totalled 246 per cent increase), resulting in drop in gross profit margin (from 18.3 per cent to 16.9 per cent) and net profit (44.3 per cent decrease/drop) for 1H2011.

The Company did not indicate in its 1H2011 interim report or any other announcement during 2H2011 to the market that there was a possibility that it would suffer a further and significant deterioration in its financial performance during 2H2011. There was neither previous disclosure that forewarned or hinted to the market about the magnitude of the significant further deterioration and the impairment loss in respect of the Agreement nor the possibility of its turning from profit making into incurring a loss for 2H2011.

### Significant deterioration in the Group's financial performance during 2H2011 not within market expectation

While the 1H2011 Results had deteriorated as compared with the 1H2010 results, there was significant further deterioration in 2H2011 resulting in the poor performance for the FY2011 results. As compared with 1H2011, the further deterioration during 2H2011 included (a) revenue slowdown from \$1,069.5 million for 1H2011 to \$777.5 million for 2H2011, a drop of 27.3 per cent; and (b) the gross loss of \$2.5 million for 2H2011 in contrast with the gross profit of \$180.4 million for 1H2011 (a drop of 101.4 per cent), resulting in a negative gross profit margin of 0.32 per cent (1H2011: 16.9 per cent).

Furthermore, a 32.9 per cent increase in administrative expense for 2H2011 (from \$37.4 million in 1H2011) was another factor which contributed to the significant further deterioration of the Company's financial performance during 2H2011.

The significant deterioration of the Group's financial performance during 2H2011 was aggravated by the following items, namely (a) loss regarding modification and early redemption of bonds (totalled \$20.7 million), (b) loss on derivative financial instruments (\$36.8 million), (c) impairment loss on goodwill (\$10.7 million), and (d) impairment loss in respect of the Agreement (\$435 million), which totalled \$503.2 million.

The further deterioration in 2H2011 was significant and not within market expectation based on information in the public domain at the material time.

Without a timely warning with the necessary material information, the market would reasonably have expected that the Company's financial performance for 2H2011 would not significantly deviate from the 1H2011 Results.

The deterioration was discloseable under Rule 13.09(1)

The Listing Committee therefore concluded that the significant further deterioration during 2H2011 was discloseable under Rule 13.09(1), which was also admitted by the Company and the Relevant Directors when the PWA was published on 6 March 2012.

When Rule 13.09(1) obligation arose

The Listing Committee noted the following and concluded that the Company's disclosure obligation arose in or the latest by mid-January 2012:

1. 15 November 2011: when the PRC Accounts for October 2011 were circulated to the Executive Directors:
  - (i) The PRC Co. recorded a net loss for each of the three consecutive months since August 2011 ranging from RMB2.86 million to RMB4.78 million;
  - (ii) The gross profit margin continued to drop for three months from 19.7 per cent for July to 16.1 per cent for October 2011;
  - (iii) Since July to October 2011, the PRC Co. had incurred a cumulative net loss of RMB6.77 million (the 1H2011 net profit merely reached about 23.3 per cent of that of FY2010 (\$45.4 million vs \$194.6 million)); and
  - (iv) When it reached the fourth quarter of FY2011 (which was, without making it known to the investors, a season of relatively low margin for the Group), the net profit of the PRC Co. up to October 2011 was only about 53.1 per cent of the Group's net profit for the previous year (RMB85.8 million vs RMB161.5 million (equivalent to \$194.6 million)). The Company would therefore be unlikely to catch up with the difference within the following two months.
2. 15 December 2011: when the PRC Accounts for November 2011 available to the Executive Directors showed that the PRC Co. had recorded a net loss for four consecutive months since August 2011, with a cumulative net loss of RMB8.84 million. Its gross profit margin continued to drop for four months from 19.7 per cent to 14.9 per cent. The net profit up to November 2011 was only about 51.8 per cent of the Group's net profit for FY2010 (RMB83.7 million vs RMB161.5 million) and there had been no improvement in respect of its financial performance since the previous month.
3. 12 January 2012: when the first draft Impairment Test was finished and passed to the auditors, Mr Cheung was (or should have been) aware that there was a potential significant impairment loss of \$328 million to be recorded for FY2011.

4. Mid-January 2012: when the PRC Accounts for December 2011 available to the Executive Directors showed that the PRC Co.'s gross profit margin further dropped from 14.9 per cent to 13.6 per cent for December 2011 and the net profit went further down from RMB83.7 million to RMB75.2 million (i.e. a further monthly net loss (RMB8.56 million) for five consecutive months was incurred), and when the Executive Directors discussed the first draft Impairment Test results in mid-January 2012. Based on the financial information available from the PRC Accounts for December 2011, the Company's FY2011 results could have shown a huge net loss of about \$237.4 million after taking into account the potential impairment loss of \$328 million (which had not yet included selling, distribution and administrative expenses, finance costs or year-end adjustments to be recorded). However, the Executive Directors decided to review the calculation for the Impairment Test with the auditors before deciding if an impairment was to be made.
5. 2 February 2012: when all Executive Directors had the first draft of the FY2011 Accounts which showed that the Group's full-year net profit (\$15 million before deducting various year-end adjustments) was much less than that of FY2010 and would be insufficient to cover the proposed amount of the impairment loss in respect of the Agreement (\$328 million).
6. Mid-February 2012: when Mr Cheung had telephone discussions with the NED and each of the INEDs and expressed the concerns about the drop in gross profit margin.
7. 27 February 2012: when the second draft of the FY2011 Accounts was prepared and available to Mr. Cheung, the Company's chief accountant and the auditors. Even without taking into account the impairment loss in respect of the Agreement and other itemised losses which had yet to be determined, the Group would incur \$75.6 million loss for FY2011.

#### Relevant Directors' breach of Undertaking

The Listing Committee found that the Relevant Directors breached their Undertaking.

#### Executive Directors

At the material time, the Executive Directors were responsible for daily management and operation of the Company. They were circulated with the PRC Accounts on the 15<sup>th</sup> day of every month. They were aware of the financial deterioration of the Company in 2H2011 (which was reflected in the PRC Accounts). They had clear responsibility to (a) closely and carefully monitor the Company's business and financial performance; (b) consider and assess the Company's Rule 13.09(1) obligations; (c) escalate the issues to the Board for consideration; and (d) if necessary, cause the Company to consult external professional advisers and/or the Exchange to ensure that the Company complied with Rule 13.09(1).

Since 15 November 2011 after receipt of the PRC Accounts for October 2011 to 6 March 2012, "best endeavours" would have required the Executive Directors to:

1. Bring the significant financial deterioration for 2H2011 and the first draft Impairment Test results to the attention of the entire Board for information, consideration and discussion on Rule implications and compliance earlier than they did in mid-February 2012;

2. Procure the Company to consult external professional advisers or the Exchange as to the Company's Rule 13.09(1) obligations arising from the financial deterioration; and
3. Take steps to procure disclosure under Rule 13.09(1) earlier than they actually did with publication of the PWA only on 6 March 2012.

Although the Executive Directors contended that they had considered issuing a PWA during around August 2011 to January 2012, they were unable to state exactly when they had such consideration or provide any documentary evidence in support.

#### NED and INEDs

Although the NED and INEDs did not receive the monthly PRC Accounts for 2H2011, the first draft Impairment Test results or the first draft FY2011 Accounts as the Executive Directors had, the NED and INEDs were aware of the decreasing trend in gross profit margin at the Board meeting on 26 August 2011 and updated at the Board meetings on 19 September 2011 and 29 December 2011. Although the updates were given orally by Mr Cheung, that did not exonerate them from a duty as directors to proactively ask the management for more detailed financial information of the Group, proactively monitor its financial performance during 2H2011, and ensure that the Company complied with its Rule obligations in a timely manner in view of the "red flags".

The Listing Committee believed that use of best endeavours would have required the NED and INEDs to ensure that they were aware and kept regularly informed of the Group's financial performance during 2H2011 and to consider Listing Rule implications. They should also have proactively monitored the Group's financial performance for 2H2011 after realising the declining trend in gross profit margin and the 1H2011 significant net profit drop since the Board meeting on 26 August 2011, and sought professional advice if appropriate.

The conduct of the NED and INEDs on the facts of this case demonstrated a lack of proactivity on their part, and was inconsistent with the use of best endeavours required under their Undertaking.

Furthermore, by mid-February 2012 when Mr Cheung had telephone discussion with the NED and INEDs, the NED and INEDs had known for certain about the significant deterioration in the Group's performance for FY2011.

By reason of the facts and circumstances outlined above, the Listing Committee found that each of the Relevant Directors breached his Undertaking to use his best endeavours to procure the Company's compliance with Rule 13.09(1), in that having knowledge of the further significant deterioration in the Company's financial performance in 2H2011, he failed to procure the publication of the PWA as soon as reasonably practicable.

#### Regulatory Concern

The Hong Kong securities market is disclosure-based. Investors and shareholders rely on information in the public domain to make their investment decisions. Timely disclosure by listed issuers of relevant information of their financial performance is thus crucial to enable shareholders and investors to make informed investment decisions.



The Listing Committee regarded the breaches in this matter serious:

1. The following signals indicating significant further deterioration were obvious and significant and discoverable during 2H2011 or shortly after the year-end based on the PRC Accounts but the PWA was only made on 6 March 2012:
  - (a) The decreasing trend in gross profit margin in respect of the PRC Co. throughout 2H2011;
  - (b) The five consecutive monthly net losses suffered by the PRC Co. since August 2011; and
  - (c) The Company's revenue slowdown from \$1,069.5 million for 1H2011 to \$777.5 million for 2H2011 and the gross loss of \$2.5 million incurred for 2H2011 in contrast with the gross profit of \$180.4 million for 1H2011.
2. The delay in disclosing the further significant deterioration for 2H2011 was at least 1 month and 22 days.
3. Over the period of delay, there were a number of occasions on which the Relevant Directors could have taken steps to inform the shareholders and investors. However, they took no such action.
4. At no time did the Company (and the Relevant Directors) seek professional advice in respect of its Rule 13.09(1) obligation in the above circumstances.
5. Between the dates when the disclosure obligation arose (in or the latest by mid-January 2012) and when the PWA was published (on 6 March 2012), there was trading in the Company's shares. The shareholders/investors who bought or sold shares during that period did not trade on an informed basis in that they were unaware of the true financial position of the Company.
6. The conduct and lack of action shown by the Relevant Directors in this matter suggested a serious failure on their part, collectively and individually, to understand the Company's obligations and the actions required of them personally in due performance of their Undertaking as well as the proper understanding of Rule 13.09(1) requirements as they then were. The Relevant Directors clearly breached their Undertaking.

### **Sanctions and Directions**

Having made the findings of breach stated above, and having concluded that the breaches were serious, the Listing Committee:

- (1) censures the Company for breaching Rule 13.09(1);
- (2) censures each of the Executive Directors, namely Mr Gao, Mr Li and Mr Cheung for their respective breaches of their Undertaking; and
- (3) publicly criticises the NED, namely Mr Wu, and each of the INEDs, namely Mr Lau, Mr Lam and Mr To for their respective breaches of their Undertaking.

Further, the Listing Committee directs as follows:

- (1) The Company is to appoint an independent Compliance Adviser (“**Compliance Adviser**”) (as defined in Chapter 3A of the Exchange Listing Rules namely, an entity licensed or registered under the Securities and Futures Ordinance (“**SFO**”) for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor) satisfactory to the Listing Division on an ongoing basis for consultation on compliance with the Exchange Listing Rules for two years within two months from the publication of this news release. It is to submit the proposed scope of retainer to the Listing Division for comment before such appointment. The Compliance Adviser shall be accountable to the Company’s Audit Committee.
- (2) Each of the Relevant Directors (except Mr Cheung) (who remains a current director of the Company) (a) is to attend 24 hours of training on Exchange Listing Rule compliance, director’s duties and corporate governance matters (including 4 hours on (i) current Rule 13.09 compliance and (ii) inside information disclosure under the SFO both effective on 1 January 2013) provided by the Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors or other course providers approved by the Listing Division, to be completed within 180 days from the publication of this news release; and (b) is to provide the Listing Division with the course provider’s written certification of compliance within two weeks after training completion.
- (3) Mr Cheung, who has resigned as a director of the Company but who is a director of another company listed on the Exchange, (a) is to attend 24 hours of training on Exchange Listing Rule compliance, director’s duties and corporate governance matters (including 4 hours on (i) current Rule 13.09 compliance and (ii) inside information disclosure under the SFO both effective on 1 January 2013) provided by the Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors or other course providers approved by the Listing Division, to be completed within 180 days from the publication of this news release; and (b) is to provide the Listing Division with the course provider’s written certification of compliance within two weeks after training completion.
- (4) The Company is to 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 those directions. The last announcement required to be published under this requirement is to include the confirmation that all directions in (1) to (2) above have been complied with. The Company is to submit drafts of the announcements for the Listing Division’s comment and may only publish the announcements after the Listing Division has confirmed it has no further comment on them.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Company and the Relevant Directors identified above and not to any other past or present members of the Company’s Board of Directors.