

Summary: HKEX Listing Committee censures Rosan Resources Holdings Limited (the “Company”) and directors for breach of “financial assistance” and “major transactions” rules

I. Background: chronology and key facts

This summary focuses on analyzing breaches by the Company, and the independent directors. (There are some fact-specific circumstances applicable to the executive directors and other non-executive directors, which are not summarized below).

(1) 2011 proposed acquisition by Subsidiary B

- Subsidiary B entered into a series of agreements with the vendor in **2011** to acquire its interest in the target
- It paid a total of RMB 111.5m as deposit (“**Sub B overpaid deposit**”), in excess of the amount due under the agreements
- The agreements were interpreted that, if the acquisition is not completed, vendor will refund deposit paid within three days or alternatively, within a reasonable time
- **31 Dec 2012**: Sub B entered into a **cancellation agreement** with the vendor to cancel the acquisition agreements. The vendor was allowed to refund the deposit (i) in two tranches (by 30 June and 31 Dec 2013 respectively, **i.e. delay by 6 to 11+ months**); (ii) without interest or security
- No announcement was made regarding the above agreements

(2) 31 Dec 2012 proposed acquisition by Subsidiary A

- On the same day of the cancellation agreement, Subsidiary A entered into an acquisition agreement with the same vendor -- to acquire its 60% interest in the same target for RMB 63m
- Subsidiary A made a total payment (“**Sub A Part Payment**”) of RMB 55m representing an “overpayment”, as some part was only due on completion (which never took place)
- Transaction **announced as a “discloseable transaction”** (consideration ratio: 24.78%); but did not mention Subsidiary B’s agreements and deposit deferral
- Draft Subsidiary A’s acquisition agreement circulated to all directors

(3) Termination by Subsidiary A and eventual refund of all amounts paid

- Subsidiary A terminated the acquisition in November 2013
- Total amount paid by Subsidiaries A and B settled by December 2013

(4) Auditors raised concerns at various audit committee meetings

- March and August 2012 (board meetings to consider 2011 final and 2012 interim results respectively) – noted audit committee minutes recorded auditors had raised concerns on Sub B overpaid deposit
- March 2013 (board meeting to consider 2012 annual results) — noted audit committee minutes recorded auditors had expressed concerns on Sub B overpaid deposit refund deferral, credit risks and impact on the Group’s financial position; and suggested the Company to take a more proactive steps to recover the amount

II. Listing Rule implications: Company’s breaches

- (1) Subsidiary B’s cancellation agreement in substance constituted a “**granting of credit**” (i.e., provision of “**financial assistance**” as defined under Rule 14A.10(4)) by the Company.
- (2) Factors considered: (a) the **amount** of fund involved (RMB 111.5m; consideration ratio: 43.86%), (b) the **length of time** allowed for the refund without interest or security (**i.e. 6 to 11+ months**), (c) its date of transaction, subject matter and effectively, the parties to it being the same as the Subsidiary B acquisition agreement, and (d) the Company had been deprived of the right to use such significant amount of fund during that period.
- (3) It also amounted to a “major transaction” (consideration ratio: 43.86%), subject to the announcement, circular and shareholders' approval requirements under Rules 14.34, 14.38A and 14.40 of the Exchange Listing Rules.
- (4) The two acquisitions should have been “aggregated” (consideration ratio would have become 68.64%).
- (5) Factors considered: (a) proximity in **timing**, (b) involvement of the **same counterparty** and **same set of assets**, (c) the Company's **credit risk exposure** at the relevant time.

III. Independent directors’ breaches of directors’ undertaking

The following factors applied to all independent directors found liable:

- (1) Rule 3.08 stated: “**directors do not satisfy ... if they pay attention to the listed issuers’ affairs only at formal meetings...must... take an active interest in the**

affairs of the company, and follow up anything untoward that comes to their attention.”

- (2) In this case, they did not address their minds to possible Listing Rule implications arising from the Company's transactions, raise such matters for discussion with the board of directors, and consult professional advisers as appropriate.
- (3) All of them were aware of the Subsidiary B acquisition, Sub B overpaid deposit, and the associated credit risks raised by the **auditors** since March 2012 when they considered 2011 annual results announcement.
- (4) When the **draft Sub A acquisition agreement** was circulated in December 2012, all of them should have been aware that the Subsidiary A would have to make payment to the vendor in addition to Sub B overpaid deposit, and such total amount exceeded the property value of the target
- (5) In any event, by March 2013 (by attending the board meeting or on publishing the **2012 annual results announcement**), all of them should have become aware that Sub B overpaid deposit had not been returned, and Subsidiary A made a further payment.
- (6) As **audit committee members**, they also failed to discharge their responsibilities, including failing to give due consideration of the auditor's concerns, did not raise Listing Rules implications of the transactions.

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