

SFC obtains disqualification and court orders against former chairman and current directors of Hanergy Thin Film Power Group Limited

4 Sep 2017

The Securities and Futures Commission (SFC) today obtained disqualification orders in the Court of First Instance against the former chairman, Mr Li Hejun, and four current independent non-executive directors, Ms Zhao Lan, Mr Wang Tongbo, Mr Xu Zheng and Mr Wang Wenjing, of Hanergy Thin Film Power Group Limited (Hanergy) (Note 1).

Li was disqualified from being a director or being involved in the management of any listed or unlisted corporation in Hong Kong for eight years. He was also ordered to procure Hanergy's parent company, Hanergy Holding Group Limited (Hanergy Holding) and/or its affiliates to pay all outstanding receivables due to Hanergy under various sales contracts (Note 2).

The Court has also ordered that both Zhao and Wang Tongbo be disqualified for four years and Xu and Wang Wenjing be disqualified for three years (Note 3).

On the basis of Li's admissions, the Court found that his breaches of duties were of a very serious nature, having regard to:

- his position as the chairman and executive director of Hanergy and the ultimate controller of both Hanergy and Hanergy Holding, which created a patent and serious conflict of interests;
- the very substantial amounts involved; and
- the period of time over which the breaches of duties took place.

The Court held that Li's breaches were not the result of incompetence or negligence only, as there was a clear conflict of interests situation and Li plainly preferred the interests of Hanergy Holding and affiliates to that of Hanergy. He also failed to exercise reasonable care and diligence in connection with an undisclosed loan of RMB900 million provided by a Mainland subsidiary of Hanergy to Hanergy Holding in March 2014. Hanergy failed to disclose the loan to its shareholders and to seek their approval in accordance with the Listing Rules (Note 4).

The Court agreed that, on the basis of their admissions, Zhao, Wang Tongbo, Xu and Wang Wenjing were not only incompetent but they also exhibited a marked indifference to their responsibilities as directors, in particular they:

- failed to make appropriate disclosure about the viability of Hanergy's business model which a reasonable director should have questioned;
- failed to properly assess the financial positions of the connected parties and hence the recoverability of the receivables due from them as a result of these connected transactions; and
- failed to take proper steps to recover these receivables, and so did not act in Hanergy's best interest.

"Listed company directors should always put the company's interests first. In this case, these directors flouted their responsibilities by putting the interests of connected parties before that of the listed company. The SFC will continue to take action to hold listed company directors accountable for corporate misconduct," Mr Thomas Atkinson, the SFC's Executive Director of Enforcement said.

On 15 July 2015, the SFC suspended trading in the shares of Hanergy. The trading suspension remains in place.

Hanergy has indicated its intention to seek a resumption of the trading in its shares. Hanergy is required to submit a disclosure document to the Board of the SFC for it to consider Hanergy's request for resumption of trading. The disclosure document should provide detailed information on the company, its activities, business, assets, liabilities, financial performance and prospects to address the SFC's concerns that led it to suspend trading in Hanergy's shares. There is no assurance that the SFC Board will agree that the trading of Hanergy's shares on the Stock Exchange of Hong Kong Limited (SEHK) may resume (Note 5).

End

Notes:

1. Hanergy is listed on the Main Board of the SEHK. The SFC obtained the orders by commencing proceedings under section 214 of the Securities and Futures Ordinance. Please see the SFC's press release dated [23 January 2017](#).
2. Following the commencement of proceedings by the SFC in January 2017, Li has executed a deed of guarantee in favour of Hanergy in respect of the amount owed by Hanergy Holding and/or its affiliates. Hanergy Option Limited, a company wholly-owned by Li, has also executed a share charge in respect of 1,367,000,000 shares of Hanergy in favour of Hanergy to secure the obligation of Li under the deed of guarantee. As a result of the execution of the deed of guarantee and the share charge, the SFC no longer needs to seek a Court order requiring Li to execute a deed of guarantee.
3. The disqualification orders made against Li, Zhao, Wang Tongbo, Xu and Wang Wenjing became effective on 4 September 2017.
4. Hanergy Holding repaid the loan fully by June 2014.

5. The SFC suspended the trading in the shares of Hanergy under section 8 of the Securities and Futures (Stock Market Listing) Rules (SMLR). Under section 9 of the SMLR, a listed company, whose shares have been suspended by the SFC under section 8 of SMLR for trading, may make representations to the SFC. Upon such representations, the SFC may permit trading to resume subject to conditions or cancel the listing. The powers of the SFC under section 9 of SMLR may only be exercised by a meeting of the SFC and are not delegable.

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