

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.

證監會取得針對漢能薄膜發電集團有限公司前主席及現任董事的取消資格令及法庭命令

2017年9月4日

證券及期貨事務監察委員會（證監會）今天在原訟法庭取得針對漢能薄膜發電集團有限公司（漢能）前主席李河君（男）和四名現任獨立非執行董事趙嵐（女）、王同渤（男）、徐征（男）及王文靜（男）的取消資格令（註1）。

李不得擔任香港任何上市或非上市法團的董事或參與法團管理工作，為期八年，亦被飭令促致漢能的母公司漢能控股集團有限公司（漢能控股）及／或其聯屬公司就多份銷售合同支付結欠漢能的所有未償付應收款項（註2）。

法庭亦頒令趙和王同渤在四年內不得擔任法團董事，以及徐和王文靜在三年內不得擔任法團董事（註3）。

基於李承認失職，法庭裁定他的失職行為的性質十分嚴重，而這是考慮到：

- 他作為漢能主席兼執行董事，以及同時作為漢能和漢能控股的最終控制人，造成明顯及嚴重的利益衝突；
- 所涉金額龐大；及
- 有關失職行為維持的時間。

法庭認為，李的違規行為並非只是由於不勝任或疏忽所致，因為當中涉及明顯的利益衝突，而李顯然較側重於漢能控股及聯屬公司的利益，而不是漢能的利益。李亦沒有以合理的謹慎和勤勉盡責的態度，處理漢能一家內地附屬公司在2014年3月提供予漢能控股的一筆人民幣9億元的未披露貸款。漢能沒有根據《上市規則》向其股東披露有關貸款及尋求他們的批准（註4）。

基於趙、王同渤、徐及王文靜承認失職，法庭同意他們不但沒有勝任董事的能力，而且顯然對他們作為董事的責任視若無睹；尤其是，他們：

- 沒有對漢能的業務模式的可行性作出適當披露，而合理的董事理應對此提出質疑；
- 沒有適當地評估關連方的財務狀況以至它們因進行關連交易而結欠的應收款項的可回收性；及
- 沒有採取恰當措施，以追討該等應收款項，及因而沒有以漢能的最佳利益行事。

證監會法規執行部執行董事魏建新先生（Mr Thomas Atkinson）表示：“上市公司的董事應時刻以公司利益為先。在此個案中，涉事董事將關連方的利益置於上市公司的利益之上，公然漠視他們的責任。證監會將繼續採取行動，追究上市公司董事與企業失當行為有關的責任。”

證監會於2015年7月15日暫停漢能股份的買賣。漢能股份的買賣仍然暫停。漢能已表示有意尋求恢復其股份的買賣。漢能須向證監會董事局提交披露文件，供證監會董事局考慮漢能恢復股份買賣的要求。當中應提供有關該公司、其活動、業務、資產、負債、財務表現及前景的詳細資料，以釋除導致證監會暫停漢能股份買賣的疑慮。證監會董事局不保證會同意漢能的股份可在香港聯合交易所有限公司（聯交所）恢復買賣（註5）。

完

備註：

1. 漢能在聯交所主板上市。證監會透過根據《證券及期貨條例》第214條展開法律程序取得有關命令。請參閱證監會2017年1月23日的新聞稿。
2. 繼證監會於2017年1月展開法律程序後，李已就漢能控股及／或其聯屬公司虧欠的金額簽立一份以漢能作為受益人的保證契據。一家由李全資擁有的公司Hanergy Option Limited亦已簽立一份股份抵押，將1,367,000,000股漢能股份抵押予漢能，以擔保李在保證契據下的責任。由於已簽立保證契據及股份抵押，證監會不再需要尋求法庭命令要求李簽立保證契據。
3. 針對李、趙、王同渤、徐及王文靜的取消資格令已於2017年9月4日起生效。
4. 漢能控股在2014年6月前已全數償還貸款。
5. 證監會根據《證券及期貨(在證券市場上市)規則》（《在證券市場上市規則》）第8條暫停漢能股份的交易。根據《在證券市場上市規則》第9條，被證監會根據《在證券市場上市規則》第8條暫停股份交易的上市公司可向證監會作出申述。經考慮申述後，證監會可准許股份在某些條件規限下恢復交易，或取消股份的上市地位。證監會根據《在證券市場上市規則》第9條的權力，僅可由證監會會議行使，不得轉授。

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