



XPD Soccer Gear Group Limited  
ABN 96 169 695 283

Level 1, Exchange Tower  
530 Little Collins Street Melbourne VIC 3000  
Telephone: (03) 9909 7412

27 September 2018

ASX Limited  
20 Bridge Street  
Sydney, NSW 2000

**Response to ASX Letter of 17 August 2018 and Reinstatement to Trading**

XPD Soccer Gear Group Limited ("XPD" or "Company") has provided a response to the ASX's queries of 17 August 2018 as per the attached. Further the Company has been in regular communication with the ASX through this process, and has been advised by the ASX that the Company will be reinstated to trading at the commencement of trading on 28 September 2018.

The Company confirms that it is in compliance with ASX Listing Rule 3.1 and will continue to discharge its Continuous Disclosure obligations.

**End**

27 September 2018

ASX Limited  
20 Bridge Street  
Sydney, NSW 2000

Attn: Ms. Luxmy Wigneswaran

Dear Ms. Wigneswaran,

**ASX Letter 17 August 2018**

XPD Soccer Gear Group Limited ("XPD" or "Company") refers to the letter from the ASX of 17 August 2018 and responds in kind as below.

1. Mr. Jiada Zhang did not receive any fees. We have forwarded through separate email confirmation from Mr. Zhang of same.
2. None of the Hong Kong agents received any fees. We have forwarded through separate email confirmation from those agents of same.
3. We have forwarded, under separate email, a detailed opinion from Zhong Yin Law Firm who we have deemed to have suitable qualifications to provide such advice. Further information about them can be found at the following link.

<http://www.zhongyinlawyer.com/Home/About>

In summary the advice states that:

*"Chaoda chose a **common practice** of Chinese companies in the practice of transferring money in order to transfer money to XPD in a faster way.";* and

*"It is difficult to absolutely confirm whether this practice is legal or illegal – what we can advise is that it is accepted."*

4. The legal opinion received from Zhong Yin Law Firm references two distinct account types captured in the Administrative Regulations of the People's Republic of China on Foreign Exchange (Revised in 2008).
  - i. The Current Account refers to any transaction account used for international receipts and payments involving goods, services, earnings and frequent transfers.
  - ii. The Capital Account refers to any transaction account for international receipts and payments that result in any changes to the company's balance sheet.

The transfer of funds from the PRC to external jurisdictions for the payment dividends is considered a current account transaction.

The legal advice then further states that:

*According to Article 10 of Provisions on the Foreign Exchange Administration of Domestic Direct Investment of Foreign Investors, foreign-funded enterprises which need to remit funds out of China for reasons such as capital decrease, liquidation, advance recovery of investment, and distribution of profits may, upon registration as legally required, purchase foreign exchange and make international payments at banks.*

Article 10 is very specific about the mechanism to transfer funds for distribution of profits –

ie dividend payments - and hence transferring funds for the purposes of a dividend payment via the mechanisms previously utilised by XPD would not be acceptable under Chinese laws.

To commence this process the Company needs to register with the State Administration of Foreign Exchange (SAFE) and then to seek approval from that authority to transfer funds for the purposes of a dividend.

The Company has commenced the SAFE Registration process under the assistance of Zhong Yin Law Firm which, if achieved, is estimated to take approximately two months.

It would then be the decision of the Board as to whether to make a dividend payment. The Company did announce on 31 August 2018 that:

*"Given the deterioration in the trading conditions and the Company's ongoing consideration of funds transferability between the PRC and Australia, the Board has decided it is not in a position to pay a dividend"*

The Company will review its dividend position on completion of the full year audit.

If SAFE Registration is achieved, and if the Board has approved a dividend payment, XPD would then require approval from SAFE to transfer funds to Australia to complete the dividend payment.

In such circumstances the Board would not announce a dividend prior to achieving the final SAFE approval.

5. The Board of XPD have reviewed and approved the recommendations of the Steinepreis Paganin review. This has been appropriately documented in the Board minutes.

We attach to this letter a detailed plan and timetable for the implementation of the recommendations contained within the Corporate Governance Review provided by Steinepreis Paganin. The plan and timetable is inserted in red within the previously released Corporate Governance Review.

Yours sincerely,



**Simon Lill**  
Director



**Neil Sheather**  
Director

## **XPD CORPORATE GOVERNANCE REVIEW**

We have undertaken a corporate governance review of XPD Soccer Gear Group Limited (**XPD** or **Company**) based on documentation provided by the Company to us, together with a review of the past 24 months of announcements made by XPD on the Australian Securities Exchange (**ASX**), with particular reference to the detailed queries as made by ASX and responses provided by XPD.

Please note that our review was undertaken specifically for the purpose of making recommendations for changes in the corporate governance practices of XPD, it is not intended to set out the deficiencies of the past corporate governance practices, nor is it seeking to comment on the past conduct or actions of the current or previous major shareholders or current or previous directors.

We have addressed these issues by considering each heading under the proposed corporate governance plan that we recommend the Company adopt (see Annexure A) and recording what action we consider should be taken to address the issue.

### **SCHEDULE 1 - BOARD CHARTER**

#### **Current Position**

The Board is presently comprised of Mr Jiameng Zhang as the CEO and Managing Director, Mr Simon Lill as chairman and Mr Neil Sheather as a non-executive director and joint company secretary. The majority of the Board are non-executive directors, with Messrs Lill and Sheather having been appointed as representatives by Mejority Capital Limited (**Mejority**), an ASX listed entity and a shareholder in XPD.

There have also been a significant number of resignations from the Board in the past 12 months, including the Chairman, Deputy Chairman and Chairman of the Audit and Risk committee. We have not interviewed these parties as to their reasons for resigning, as this was not within our brief, however it remains open for us to do so if instructed.

#### **Recommendations**

*Recommendation 1* - The Board should seek the appointment of at least 1 additional non-executive independent director (within the guidelines contained in the proposed corporate governance plan under section 2(d)), preferably 2, given the operations and financial results of the Company. There is no recommended time period for this to occur however we recommend it be completed within the next 12 months.

At least 1 of these directors should have a financial background in Australia, with the preference that the other director has experience in retail in China. This would then ensure that the current Board has an appropriate mix of skills for a company of the nature of XPD.

**We will seek to appoint a further non-executive Australian director with additional financial experiences, as well as a suitably experienced Director with retail experience in China within the next 12 months.**

*Recommendation 2* – The Board should convene formal board meetings at a minimum of once every 2 months, for a minimum of 6 Board Meetings annually, with at least 2 of those meetings being held face-to-face at the operational premises of the Company in China. A Chinese/English translator must be present at these meetings, and with Ms Lifang Zhang present in her role as joint company secretary, and being bi-lingual, this will satisfy this requirement for the present time.

This is considered to be critical as it is necessary for all Directors to be in a position to openly converse via a translator and for that translator to be in an official role for the Company and understanding the implications of complying with the Australian corporate governance requirements. It should be noted the Ms Lifang Zhang is not in any way related to the CEO and Managing Director, Mr Jiameng Zhang, and that she is resident in Australia and works with Mr Lill on other ASX related matters for a separate public company.

We have been having regular fortnightly conferences as a Board with Ms Zhang interpreting. We will commit to a Board Meeting every two months and a face to face meeting once every 6 months.

*Recommendation 3* – the non-executive Board members should conduct separate interviews when in China with executive management unrelated to the CEO and Managing Director, in order to ensure that it is satisfied with the status of the business and is in a position to independently verify the ongoing operations of the Company.

This will be undertaken with the assistance of Ms Zhang on our next trip to China, which will most likely be in the new calendar year but prior to full year audit sign off.

*Recommendation 4* – At a minimum, the Board should comprise of at least 2 ASX experienced directors (currently met by the appointments of Mr Lill and Mr Sheather) and an experienced ASX company secretary must be appointed who has bi-lingual skills (currently met by the joint appointment of Mr Sheather and Ms Zhang).

Done.

*Recommendation 5* – The Audit and Risk Committee must be maintained and meet at the same times as the Board meetings in China.

This will be done biannually as per recommendation 2.

*Recommendation 6* – The Company should consider the appointment of a joint chief financial officer who is Australian based. This person will be the conduit between the operational and financial staff in China and the Board (as a whole) and will be able to better co-ordinate the audit processes in a timely manner and assist the joint company secretaries on ASX compliance matters.

The Board currently outsources its CFO work to Mr Mark Ma. He is a member of CPA Australia and currently a director at Jaquillard Minns Chartered Accountant based in Adelaide. He is a Mandarin speaker and hold Master Degree of Accounting & Finance from the University of Adelaide. The Board accepts that Mr Ma is a suitably qualified person and expects to continue to work with him through the next 12 months in the same role.

## **SCHEDULE 2 – CORPORATE CODE OF CONDUCT**

We recommend that this section be adopted by the Company in full as the Company appears to be lacking in a framework that sets out proper corporate conduct.

As set out in the plan, the purpose of this Corporate Code of Conduct is to provide a framework for decisions and actions in relation to ethical conduct in employment. It underpins the Company's commitment to integrity and fair dealing in its business affairs and to a duty of care to all employees, clients and stakeholders.

This section has been adopted in full.

## **SCHEDULE 3 – AUDIT AND RISK COMMITTEE CHARTER**

### ***Current Position***

The Company has experienced significant delays in the reporting of financial information and this must be corrected in order to fully comply with the legislative and reporting regime in Australia.

### ***Recommendations***

*Recommendation 1* - We recommend that this section in the Corporate Governance Plan be adopted by the Company in full so as to ensure there is appropriate oversight over significant matters affecting the financial reporting by the Company.

The Company has made significant steps forward since the new Board was in place and does not anticipate delays in financial reporting into the future.

*Recommendation 2* - This will be achieved with the appointment of an additional non-executive director with financial experience, which will allow this committee to comprise of 3 members of the Board, together with the eventual appointment of a joint chief financial officer in Australia as set out in our commentary in Schedule 1 above.

This has been addressed.

*Recommendation 3* – The joint company secretary, Ms Lifang Zhang should be appointed as the secretary of this committee.

Ms Zhang will be appointed as secretary once the Company has been reinstated to ASX trading.

#### **SCHEDULE 4 – REMUNERATION COMMITTEE CHARTER**

While this charter should be adopted, we would recommend that at this stage the remuneration committee should not yet be a separate committee and remuneration matters should be dealt with by the Board.

The new Australian Directors expect to have more detailed discussions with the Chinese director about remuneration packages of key executives next time the parties meet in person.

#### **SCHEDULE 5 – NOMINATION COMMITTEE CHARTER**

While this charter should be adopted, we would recommend that at this stage the nomination committee should not yet be a separate committee and nominations should be dealt with by the Board.

The Charter will be formally adopted at Board level with a separate committee set up when warranted.

#### **SCHEDULE 6 – PERFORMANCE EVALUATION POLICY**

This section sets out the process for a performance appraisal that should be adopted by the Board.

This process will be adopted and formally addressed the next time the Board meets in person.

#### **SCHEDULE 7 – CONTINUOUS DISCLOSURE POLICY**

##### **Current Position**

The Company did not have a sufficiently robust system in place to ensure that the obligations under the continuous disclosure regime in Australia were met in a timely manner, nor it would appear there was sufficient education of the non-Australian directors of the need for that timely disclosure. In addition, the language barrier possibly exacerbated the issue.

This is a common educational issue for non-Australian directors, particularly those without the necessary experience at a public company level and the language barrier does present certain challenges to ensure the implications of the need to disclose are understood and what is required to be disclosed are clear.

The new Board Members are aware of continuous disclosure obligations as a result of their roles on other Australian ASX Boards. The confusion of an ever changing Board during 2017 did result in many disclosure oversights. The new Board Members have brought stability to the exercise and believe that the continuous disclosure obligations have and will continue to be improved.

##### **Recommendations**

*Recommendation 1* - This section in the Corporate Governance Plan should be adopted by the Company in full so as to ensure there is appropriate oversight over significant matters affecting the continuous disclosure obligations of the Company and that the procedures and policies set out in the plan are followed.

This has been adopted.

*Recommendation 2* – A detailed memorandum be circulated setting out the legal principles applying to continuous disclosure in Australia (translated for all Directors) and separate question and answer sessions be held at the next 2 Board meetings to discuss the requirements.

This memorandum has been requested and the Board Minutes of the next 2 Board meetings will appropriately disclose the discussions.

*Recommendation 3* – The appointment of a bi-lingual company secretary with ASX experience and therefore the ability to converse effectively with the Chinese management (including the CEO and Managing Director) will ensure that all relevant disclosures can be considered and acted on in a timely manner. It is noted that this has been completed.

Ms. Lifang Zhang has played this role as joint Company Secretary and will continue to do so until such stage as the Board deems her ASX experience suitable.

*Recommendation 4* – A sub-committee be appointed comprising the CEO/Managing Director, the joint company secretaries and an Australian director, which committee will meet to consider the status of all potential disclosure matters at least monthly, and which committee has the delegated authority to draft the necessary announcement on all continuous disclosure matters for consideration by the Board, to ensure that all announcements are then made promptly, without delay.

The Board plans to continue its fortnightly conference calls and will discuss all potential disclosure matters at these conference calls, minuting them as required.

## **SCHEDULE 8 – RISK MANAGEMENT**

We recommend that this section in the Corporate Governance Plan be adopted by the Company in full so as to ensure there is appropriate oversight over significant risk management matters affecting the Company.

The Company has adopted this section in full.

## **SCHEDULE 9 – TRADING POLICY**

Following our review, it is clear that trading in shares of the Company has not been in compliance with the relevant trading policy parameters and the Director/Key Management Personnel disclosures and the required substantial holder notices from major shareholders associated with Key Management Personnel were originally defective and/or lodged late. This is an important area that must be strictly complied with as to ensure the market is fully informed at all relevant times.

The new Board Members are aware of the Company's Trading Policy and continuous disclosure obligations in respect of Director's and Key Management Personnel. The confusion of an ever-changing Board during 2017 did result in many disclosure oversights. The new Board Members have spent some time unravelling the web of share sales by the KMP's and consequently are comfortable that the most relevant KMP, Mr Jiameng Zhang is well aware of his disclosure obligations as it relates to personal share sales.

*Recommendation 1* - This section in the Corporate Governance Plan should be adopted by the Company in full so as to ensure there is appropriate oversight over significant matters affecting the trading of shares of the Company by Key Management Personnel and that the approval and notification requirements set out in the plan are followed.

This section has been adopted.



*Recommendation 2* - A detailed memorandum be circulated setting out the legal principles applying to the relevant notification requirements (translated for all Directors) and separate question and answer sessions be held at the next 2 Board meetings to discuss the requirements.

This memorandum has been requested and the Board Minutes of the next 2 Board meetings will appropriately disclose the discussions.

*Recommendation 3* – any proposed sale of shares in the Company must first be notified in writing to all Directors not associated with the seller (assuming the seller is a Director controlled entity) and the non-associated Directors confirm in writing that the sale will comply with the trading policy.

This recommendation has been adopted.

*Recommendation 4* – all off-market transfers must first be approved by the Board.

This recommendation has been adopted.

## **SCHEDULE 10 – DIVERSITY POLICY**

We recommend that this section in the Corporate Governance Plan be adopted by the Company in full.

This section has been adopted.

## **SCHEDULE 11 – SHAREHOLDER COMMUNICATION STRATEGY**

We recommend that this section in the Corporate Governance Plan be adopted by the Company in full.

This section has been adopted.



