



Market Announcement

10 April 2019

Pan Asia Corporation Ltd (ASX: PZC) – Removal from Official List

Description

Pan Asia Corporation Ltd ('PZC') will be removed from the Official List effective immediately in accordance with Listing Rule 17.12.

ASX Limited ('ASX') has formed the view under Listing Rule 17.12 that it is appropriate to remove PZC from the Official List. ASX's reasons for forming that view are outlined in the attached letter from ASX to PZC dated 18 March 2019 ('Show Cause Letter'). For completeness, ASX also attaches PZC's response to the Show Cause Letter dated 29 March 2019 ('PZC Response').

ASX acknowledges that PZC has cured some of the breaches of the Listing Rules outlined in the Show Cause Letter by lodging with ASX its outstanding annual report and financial statements for the year ended 30 June 2018 and its quarterly cash flow and quarterly activity reports for the three months ended 30 September 2018 and 31 December 2018. ASX further acknowledges that PZC has undertaken to lodge its outstanding financial statements for the half year ended 31 December 2018 when they have been prepared and to make corrective disclosure of the matters it has failed to properly disclose under Listing Rule 3.1. However, in ASX's view, the PZC Response did not adequately address the breaches of Listing Rules 11.1 and 11.2 outlined in the Show Cause Letter and therefore PZC has not demonstrated good reasons why it should not be removed from the Official List.

Issued by

James Rowe
State Manger, Listings Compliance (Perth)



18 March 2019

Mr Brett Crowley
Company Secretary
Pan Asia Corporation Ltd

By email: brett@crowley.net.au

Dear Mr Crowley

Proposed removal of Pan Asia Corporation Ltd ('PZC') from the ASX Official List

ASX refers to the following:

New Emerald Coal Pty Ltd

- A. PZC's announcement entitled '*Proposed Acquisition of Sizeable QLD Coal Assets*' released on the ASX Market Announcements Platform ("MAP") on 10 December 2015 disclosing that:
 - (a) PZC had entered into a binding but conditional term sheet to acquire 100% of the shares in United Queensland Resources Pty Ltd ("QUR"), thereby acquiring QUR's subsidiary New Emerald Coal Pty Ltd ("NEC"), which holds coal assets in Queensland; and
 - (b) QUR and NEC are related parties of PZC.
- B. PZC's quarterly cash flow report released on MAP on 31 October 2017 disclosing PZC had lent to its related party NEC \$368,000 "in respect of [the] Teresa Coal Project" during the September 2017 quarter.
- C. PZC's announcement entitled "*NEC - Voluntary Administration*" released on MAP on 29 November 2017 clarifying that negotiations are proceeding with NEC for the acquisition of its assets, which exclude the Teresa Coal tenements, and that NEC is a related party of PZC and therefore any acquisition would be subject to approval of PZC shareholders.
- D. PZC's quarterly cash flow report released on MAP on 30 January 2018 disclosing PZC had lent its related party NEC a further \$691,000 "in respect of the NEC coal assets" during the December 2017 quarter.
- E. PZC's announcement entitled, '*PZC Loan*' released on MAP on 12 February 2018 disclosing the terms of the loan between PZC and NEC including that the principal amount of the loan was up to \$1,500,000 and the current amount outstanding was \$1,059,000 at a 12% interest rate per annum.
- F. PZC's request for voluntary suspension released on MAP on 13 February 2018 requesting PZC's shares to be suspended due to the acquisition of NEC being expected to result in PZC being required to re-comply with Chapters 1 and 2 of the Listing Rules. ASX notes that this request was made at ASX's direction and that PZC's shares have been continuously suspended since then.
- G. PZC's quarterly cash flow report released on MAP on 27 April 2018 disclosing PZC had lent its related party NEC a further \$16,000 "in respect of the NEC coal assets" during the March 2018 quarter.
- H. PZC's announcement entitled, '*NEC – Voluntary Administration*' released on MAP on 25 May 2018 disclosing that on 21 May 2018 NEC had been placed into voluntary administration and a receiver had been appointed.
- I. PZC's quarterly activity report released on MAP on 27 July 2018 indicating that PZC had made available a loan of \$1,068,915 bearing an interest of 12% "to further [the NEC] transaction".

Sale of TCM

- J. PZC's announcement entitled '*Potential Cash Sale of Interest in TCM Project*' released on MAP on 12 May 2017 disclosing:
- (a) the entry into a heads of agreement with Glory Merry Limited ("GM") for the sale of PZC's 75% interest in the PT Transcoal Minergy Coal Project in South Kalimantan Indonesia ("TCM");
 - (b) the receipt by PZC of USD \$500,000 from GM as a pre-payment and receipt of a further USD \$500,000 from GM to be paid to an independent consultant to carry out an updated feasibility study on the TCM project.

- K. PZC's announcement entitled '*Sale of TCM*' released on MAP on 8 November 2018 disclosing:
- (a) the entry into a share purchase agreement between PZC and an associate of GM for the sale of TCM;
 - (b) the receipt by PZC of USD \$2,000,000, being the tranche 1 payment contemplated under the share purchase agreement ("Tranche 1 Payment");
 - (c) that the tranche 2 payment of USD \$1,600,000 is due by 29 January 2019 on the condition PZC has obtained shareholder approval for the transaction by that date ("Tranche 2 Payment"); and
 - (d) that PZC would issue 30 million shares at \$0.002 per share to the joint venture partner of PZC as consideration for their 25% interest in TCM.

ASX notes that PZC has yet to make any announcement to the market about whether it has received the Tranche 2 payment or the status of the sale of TCM given that the deadline for the Tranche 2 payment has passed.

- L. The draft notice of annual general meeting provided to ASX on 13 November 2018, which included a resolution pursuant to Listing Rule 11.2 approving the disposal of TCM and ASX's email dated 19 November 2018 providing comments on the draft notice of annual general meeting.

ASX notes that PZC still has not submitted the disposal of TCM to its shareholders for approval under Listing Rule 11.2 but appears to have at least partially completed that disposal (see paragraphs K(b) above and N below), a clear breach of Listing Rule 11.2.

ASX Queries

- M. ASX's email on 25 January 2019 querying the status of the loan to NEC and the external administration of NEC, which resulted in the provision by PZC to ASX of the following documents on 25 February 2019:
- (a) **Secured Loan Agreement** – an agreement between PZC and NEC detailing that in addition to the AUD \$1,071,000 already loaned to NEC, PZC would loan NEC a further USD \$1,500,000 at an interest rate of 8% per annum secured by a general security agreement over all the assets and undertakings of NEC present and future, with a repayment date of 30 June 2019.
 - (b) **General Security Agreement** - agreement between PZC and NEC detailing the grant by NEC of an all asset security to PZC to secure all moneys owing by NEC to PZC.
 - (c) **Share Purchase Agreement** – agreement between PZC and the shareholders of NEC for the purchase of 100% issued capital in NEC in consideration for fully paid ordinary shares in PZC at a price of \$0.003 equal to \$40,000,000 less any amount of any indebtedness of NEC to PZC.
 - (d) **The Deed of Company Arrangement** for NEC dated 11 September 2018 ("DOCA"). PZC is not a party to the DOCA.

ASX notes that the arrangements reflected in these documents were not announced to the market when they were entered into, a clear breach of Listing Rule 3.1.

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- N. ASX's email on 25 January 2019 querying how PZC obtained a further USD \$1,500,000 to loan to NEC in light of PZC's cash position per its last quarterly report for the June quarter 2018 and the response by PZC on 25 February 2019 that it obtained the cash from the Tranche 1 Payment it had received pursuant to the sale of the TCM project.

Guidance on pre-emptive loans

- O. Paragraph 3.5 'Pre-emptive loans' in ASX's proposed revised ASX Listing Rules Guidance Note 12 released for public consultation on 28 November 2018, which provides:

"Occasionally, a listed entity that is proposing a significant transaction (such as an acquisition or merger) with another entity, will lend money to that entity (or an associated entity) ahead of the transaction completing. These loans can raise particular issues where ASX exercises its discretion to require security holder approval to the transaction under Listing Rule 11.1.2 and/or re-compliance with ASX's admission and quotation requirements under Listing Rule 11.1.3. This is especially so if those requirements are not subsequently met.

If the listed entity has entered into such a loan before notifying ASX of the transaction under Listing Rule 11.1, ASX expects the entity to disclose full details of the loan in that notification for release to the market. If the entity enters into the loan after notifying ASX of the transaction under Listing Rule 11.1, ASX expects the entity to issue a market announcement with full details of the loan immediately upon entering into the loan.

If the amount of the loan is material and the transaction is one where ASX has exercised, or may exercise, its discretions under Listing Rule 11.1.2 or 11.1.3, upon learning of the loan, ASX is likely to make enquiries of the entity (to the extent not already disclosed in its market announcements) as to:

- *its reasons for making the loan;*
- *when the loan is expected to be repaid;*
- *what due diligence the entity has undertaken to satisfy itself of the borrower's capacity to repay the loan;*
- *for what purposes can the borrower use the proceeds of the loan and what (if any) safeguards has the entity put in place to ensure that the borrower does not use the loan for other purposes; and*
- *what (if any) safeguards has the entity put in place to ensure that the loan will be repaid in full if the transaction ultimately does not proceed.*

ASX is likely to publish these queries and the entity's response to the market.

If ASX forms the view that the loan is being used as a means of passing across some of the consideration for the transaction ahead of its approval under Listing Rule 11.1.2 or re-compliance under Listing Rule 11.1.3 or otherwise is seeking to pre-empt a decision required from security holders or ASX under those rules, ASX will regard this as a serious breach of the Listing Rules and take appropriate remedial action. This may include:

- *suspending the quotation of the entity's securities until the breach has been rectified;*
- *directing the entity to cancel or demand repayment of the loan;*
- *where Listing Rule 11.1.3 applies, exercising its discretion not to re-admit the entity to the official list; and/or*
- *terminating the entity's listing on ASX for breach of the Listing Rules."*

In line with this guidance, ASX considers that the loan by PZC to NEC constitutes a breach of Listing Rule 11.1 having regard to the following:

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- Based on the information provided and available to ASX, ASX has made a determination that the acquisition of NEC by PZC is one which attracts Listing Rules 11.1.2 and 11.1.3.
 - At the date of the Secured Loan Agreement between PZC and NEC, PZC had already loaned NEC \$1,071,000, and pursuant to the agreement PZC would loan NEC a further USD \$1,500,000 (“Loan”).
 - The Loan is secured by an all asset security over NEC.
 - The Loan is not intended to be repaid but off set against the consideration under the Share Purchase Agreement.
 - ASX is of the view that the Loan is being used as a means of passing across part of the consideration for the NEC transaction ahead of PZC’s seeking shareholder approval under Listing Rule 11.1.2 and re-complying under Listing Rule 11.1.3. The Loan has the effect of seeking to pre-empt a decision required from shareholders. This is magnified by the fact that NEC is subject to a Deed of Company Arrangement and there is a serious risk that NEC does not have the financial standing to repay the Loan.
- P. The failure of PZC to lodge its 30 June 2018 full year accounts with ASX by the due date of 28 September 2018 in breach of Listing Rule 4.5 (a breach that is still subsisting).
- Q. The failure of PZC to lodge its 31 December 2018 half-year accounts with ASX by the due date of 15 March 2019 in breach of Listing Rule 4.2A.
- R. The failure of PZC to lodge any quarterly activity reports or quarterly cash flow reports since its June 2018 quarter in breach of Listing Rules 5.3 and 5.5.
- S. Listing Rule 17.12, which provides:
- ASX may at any time remove an entity from the official list if, in ASX’s opinion, any of the following applies.*
- *The entity is unable or unwilling to comply with, or breaks, a listing rule.*
 - *The entity has no quoted securities.*
 - *It is appropriate for some other reason.*

As outlined below, ASX considers that PZC is in clear breach of Listing Rules 3.1, 4.2A, 4.5, 5.3, 5.5, 11.1 and 11.2. In light of the seriousness of these breaches, unless PZC can demonstrate good reason to the contrary, ASX considers it appropriate to terminate the PZC’s admission to the Official List under Listing Rule 17.12.

Unless PZC can show good reason to the contrary, ASX proposes to remove PZC from the Official List pursuant to Listing Rule 17.12 with effect **on and from the close of trade on 5 April 2019**.

If you wish to provide submissions as to why PZC should not be removed from the Official List under Listing Rule 17.12, please ensure they are sent to me by email at ListingsCompliancePerth@asx.com.au no later than **5:00 PM AWST on Friday, 29 March 2019**.

ASX reserves the right to release a copy of this letter to the market under Listing Rule 18.7A so that the market is informed of the reasons why ASX has taken this action against PZC. If you have any queries regarding this letter please contact me immediately.

Yours sincerely

James Rowe
State Manager, Listings Compliance (Perth)

29 March 2019

Mr James Rowe
State Manager
Listings Compliance (Perth)

Email: ListingsCompliancePerth@asx.com.au

Dear Mr Rowe

Proposed removal of Pan Asia Corporation Limited ("PZC") from the ASX Official List

Pan Asia Corporation Limited ("PZC" or "the Company") refers to your letter dated 18 March 2019 ("18 March Letter"), and provides the following submissions and **attached** documentation demonstrating good reasons as to why PZC should not be removed from the Official List via the exercise of ASX's discretion under Listing Rule 17.12.

This submission further sets out certain remedial actions, a number of which have already been completed, which PZC will undertake to rectify, as far as is possible, the breaches of the Listing Rules that have occurred.

Capitalised terms used in this letter have the same meaning given to them as provided for in ASX's letter to us dated 18 March 2019, unless otherwise indicated.

1. Background

PZC acknowledges that ASX considers that the circumstances as described in the 18 March Letter indicate that PZC has breached Listing Rules 3.1, 4.2A, 4.5., 5.3, 5.5, 11.1 and 11.2. PZC also notes that the ASX considers these breaches to be serious enough to warrant removal from the Official List.

The Company sets out below the reasons as to why it is not appropriate for ASX to exercise its discretion under Listing Rule 17.12 in this circumstance. The overall goal of this submission is to demonstrate that the Company acknowledges those breaches, has already taken action to rectify those breaches and set out a remedial action plan that once implemented will allow the Company to comply with Chapters 1 and 2 of the Listing Rules and seek re-admission to the Official List.

Below, we have responded to ASX's concerns regarding each of the abovementioned Listing Rules.

2. Listing Rule 3.1: Disclosure of Material Information

ASX identifies that the arrangements reflected in the Secured Loan Agreement, General Security Agreement, Share Purchase Agreement and Deed of Company Arrangement (collectively, the "Transaction") were not announced to the market when they were entered into, which constitutes a breach of Listing Rule 3.1.

The fact that an announcement was not made is not in dispute and PZC accepts this as a breach of Listing Rule 3.1.

However, the Company notes that it has been suspended since 13 February 2018. During this time, the Company has broadly continued to inform the market about the acquisition of NEC. The Company

believes that if breaches of Listing Rule 3.1 have occurred, they have not resulted in prejudice to shareholders as trading in shares has not been possible. While the breach is acknowledged, the Company submits that this breach does not warrant removal from the Official List and to do so would not be supported by precedent.

The Company confirms that upon release of its announcement (in a form acceptable to ASX) and documentation required under Listing Rules 4.2A, 4.5, 5.3 and 5.5, the Company will be in compliance with Listing Rule 3.1.

The Company notes that many other ASX listed entities have received correspondence from ASX regarding a breach of Listing Rule 3.1 and subsequently found to have breach Listing Rule 3.1, but were not subject to removal from the Official List. Some examples include:

- (a) Byte Power Group Limited (ASX: PBG) which was found to have breached Listing Rule 3.1 in 2019 and was fined \$33,000 for an alleged failure to disclose to ASX that software development for its proposed cryptocurrency exchange was not advanced and that testing of the system software was not going to be undertaken by the end of the year;
- (b) Bellamy's Australia Limited (ASX: BAL) which was found to have breached Listing Rule 3.1 in 2017 and was fined \$66,000 for an alleged failure to comply with its continuous disclosure obligations after failing to inform the ASX that it was unlikely to achieve market consensus forecasts for the 2017 financial year;
- (c) Adairs Limited (ASX: ADH) which was found to have breached Listing Rule 3.1 in 2017 by failing to inform the ASX that its forecast figures for the 2017 financial year would be materially lower than the market consensus; and
- (d) Sirtex Medical Limited (ASX: SRX) which was found to have breached Listing Rule 3.1 in 2017 by failing to inform the ASX of lower projected dose sales growth between November and December 2016.

PZC notes that removal from the Official List was not pursued in any of the above cases. The Company submits that the stated failure to comply with Listing Rule 3.1 does not in and of itself warrant removal from the Official List and further submits that the breaches outlined above are of a more serious nature than those that have been committed by PZC. This is particularly the case where the Company's shares have been suspended from trading during the relevant period, removing the potential for investors to have been prejudiced by the non-disclosure.

Where ASX believes that market disclosure is still currently insufficient, the Company is more than willing to remedy this disclosure in consultation with ASX and in a form acceptable to ASX.

To this end the Company provides a draft announcement **attached** to these submissions, which the Company considers will bring the market up to date regarding the Transaction.

3. Listing Rules 4.2A and 4.5: Half year disclosure and annual disclosure

ASX notes that PZC has failed to lodge the following:

- (a) 30 June 2018 full year accounts by the due date of 28 September 2018; and
- (b) 31 December 2018 half-year accounts by the due date of 15 March 2019.

While we acknowledge that this constitutes a breach of the Listing Rules, we note that as PZC has been suspended from trading during this period, the Company is of the view that failure to lodge accounts has not resulted in any prejudice to shareholders.

We acknowledge ASX's concerns and **attach** a copy of the 30 June 2018 full year accounts to this letter for your reference. The 31 December 2018 half-year accounts are in the process of being prepared.

The Company's accounts will also be regularised in connection with seeking readmission to the Official List.

4. Listing Rules 5.3 and 5.5: Quarterly reporting for mining exploration entities

ASX notes that PZC has failed to lodge any quarterly activity reports or quarterly cash flow reports since its June 2018 quarter.

While we appreciate that this constitutes a breach of the Listing Rules, we note that as PZC has been suspended from trading during this period and is of the view that failure to lodge these accounts has not resulted in any prejudice to shareholders.

We acknowledge ASX's concerns and **attach** copies of the reports to this letter for your reference.

The Company's reports will also be regularised in connection with seeking readmission to the Official List.

5. Listing Rules 11.1 and 11.2: Change to activities

ASX notes that it considers the Loan by PZC to NEC to be a breach of Listing Rule 11.1, that the acquisition of NEC by PZC is one which attracts the operation of Listing Rules 11.1.2 and 11.1.3, and that the Loan was used as a means of passing across part of the consideration for the NEC transaction ahead of PZC's seeking shareholder approval under Listing Rule 11.1.2 and re-complying under Listing Rule 11.1.3.

ASX further asserts that the Loan has the effect of seeking to pre-empt a decision required by shareholders, and that there is a serious risk that NEC does not have the financial standing to repay the loan. ASX highlights in its letter the loan made by Pan Asia to NEC, and in particular that these dealings with NEC, breached paragraph 3.5 "Pre-emptive loans" in ASX's proposed revised ASX Listing Rules Guidance Note 12 released for public consultation on 28 November 2018 ("Amended Guidance Note 12").

ASX has concluded in its letter that in line with this guidance, ASX considers that the loan by PZC to NEC constitutes a breach of Listing Rule 11.1. The Company notes that the Loan was made prior to the release by ASX of Amended Guidance Note 12. The Company considers that as Amended Guidance Note 12 is not yet operative and as it was not aware of the amended guidance at the time of the Loan, the Company's failure to comply with Amended Guidance Note 12 does not justify the removal of PZC from the Official List.

The Company intends to put the Transaction to shareholders for approval pursuant to Chapter 11. The Company also intends to put to shareholders a resolution regarding the disposal of TCM. The Company submits that ASX's decision whether to delist the Company should be deferred until shareholders have had an opportunity to vote on those resolutions and respectfully submits that it would be precipitous for ASX to delist the Company before the shareholder meeting has occurred.

We note that part 9 of Amended Guidance Note 12 states that if an entity engages in breach of Listing Rule 11.1, ASX may direct the entity to convene a meeting of security holders to approve the transaction under Listing Rule 11.1.2. The Company submits that obtaining shareholder approval is the appropriate course of action.

The Company accepts that shareholders may determine that the Transaction is not in the best interests of PZC. In the event that shareholder approval is not obtained then the Company will maintain its security and seek repayment from NEC on the terms of the Loan and Security documentation. The Company may also be willing to consider that the Loan be repaid separately to the completion of the Share Purchase Agreement, if shareholders believe this to be appropriate.

Since becoming aware of ASX's issues with the Loan and Transaction PZC has met with NEC and obtained in-principle agreement to satisfy repayment of the Loan by replacing the Loan with a conditional purchase agreement for a proportion of the shares in Teresa Coal Pty Ltd that are held by NEC. In the event that ASX is agreeable to this change in the structure of the Transaction then relevant announcements can be made and appropriate resolutions can be put to shareholders.

The Company accepts that it has not maintained strict compliance with the Listing Rules for the above reasons, but submits that the breaches identified by ASX are capable of being remedied, principally by way of the Company bringing its disclosure up to date, putting the relevant resolutions to shareholders to vote and completing the process of seeking readmission to quotation.

The Company acknowledges ASX's concerns and is willing to negotiate a remedial action plan to ensure that PZC is not removed from the Official List. The Company's proposed plan is summarised below.

6. Remedial Action

PZC is willing to work with ASX and all other parties involved in the Transaction to implement a recommended course of action or solution as ASX sees fit to address the concerns raised by ASX.

The Company remains of the view that in the present circumstances and in light of the fact that the Company has been suspended from trading since 13 February 2018, the Company's breaches of the Listing Rules, though acknowledged, have caused no unjust prejudice to shareholders or the market generally. We further note that the Company has been keeping the market informed of the impact of the Transaction as a whole since late 2017.

The Company is of the view that the Transaction will deliver value to shareholders after a 12+ month long suspension and is ready and able to work with ASX to determine what measures are suitable to ensure that ASX's concerns are addressed and to ensure the Company is not delisted prior to shareholder consideration of the Transaction.

In summary the remedial action will comprise:

- (a) The release of all information required under Listing Rules 4.2A, 4.5, 5.3 and 5.5 - copies of which, with the exception of the half-year report currently being prepared, are included with this submission;
- (b) The release of an announcement to address the TCM disposal, the Loan, the breaches of the Listing Rules, the acquisition of NEC and the proposed timetable for re-admission and re-compliance - a draft of which is provided with this submission for comment by the ASX;
- (c) The preparation and dispatch of a Notice of Meeting to approve the TCM disposal and the Transaction - a draft of which is provided with this submission;
- (d) The preparation of all documents and materials necessary to complete the re-compliance of the Company with Chapters 1 and 2 of the Listing Rules.

7. Conclusion

The Company believes that PZC should not be removed from the Official List of ASX as it is in the best interest of shareholders to be readmitted to the Official List following the acquisition of New Emerald Coal Pty Ltd. PZC is currently suspended and is fully committed to re-complying with Chapters 1 and 2 of the Listing Rules at which point the market and the Company can move forward on a fully informed and complaint basis.

PZC assures ASX that it is willing to comply with the Listing Rules and will work with ASX to determine the best course of remedial action and ensure that the Company is not delisted.

PZC further requests that any decision to delist the Company be deferred provided that the Company progresses and implements the remedial action above in accordance with a reasonable timetable which will be released to the market. PZC understands that ASX would reserve its rights in the event that PZC does not implement the remedial action to ASX's satisfaction.

Please contact me if any further information is required or if a meeting would be beneficial to further address ASX's concerns.

Yours sincerely



Michael Pixley