

# Case study – Nanjing Everest Building Materials

Reading materials for Shareholder disputes at Hong Kong Listed Companies webinar series

## Background facts

Nanjing Everest Building Materials Group Limited (the “**Listco**”) is a Nanjing-based company listed on the HKSE and a major producer of building materials in the PRC. It owns a number of plants across the country, and supplies materials mostly to the domestic market and to Thailand. Its current shareholding structure is as follows:

- 26% - Mr Chen Hong (“**Mr Chen**”), Chairman and founder of the Listco, who beneficially owns the shares through his nominee company K2 Company Limited
- 25% - Thai Power Industrial Limited (“**Thai Power**”), a Thai-based construction company
- 19% - HK Bauhinia Group Limited (“**HK Bauhinia**”), a property developer in Hong Kong
- 30% - Public shares

The Listco has 5 Executive Directors and 3 INEDs (the “**Board**”). Both Mr Chen and his wife, Ms Chen Feng, are Executive Directors of the Listco.

## Proposed resolutions

The Board has recently requisitioned an EGM to propose the passing of two resolutions:

1. The entering into of a subscription agreement for allotting new shares, representing 15% of the existing share capital of the Listco to a new shareholder, Renaissance Forestry Group Limited (another major supplier of building materials in an adjacent province) (“**New Shares**”); and
2. The granting of an employee share option scheme which would provide for the issuance of a pool of new shares representing 10% of the existing share capital. All of the existing Executive Directors and around 200 employees will be entitled to participate (“**Employee Share Option Scheme**”).

If both resolutions were passed and the options fully exercised, the new shareholding of the Listco would become as follows:

- 21.67% - Mr Chen (through his nominee company).
- 20.83% - Thai Power
- 15.83% - HK Bauhinia
- 12.5% - Renaissance Forestry Group
- 4.17% - Employee Share Option Scheme participants
- 25% - Public shares

## Thai Power’s suspicions

Thai Power suspects that these proposed resolutions are driven by Mr and Mrs Chen’s ulterior motives. These background events are relevant:

- The Listco has recently proposed to sell its plant in the Guangdong Province together with the land it occupies (the “**Guangdong Sale**”). Thai Power is opposed to the sale as it believes that both the land and the plant are of a high strategic value to the company. It further suspects that Mr and Mrs Chen stand to benefit personally from the sale, thus putting their personal interests before the Listco’s.

- As Thai Power has lost confidence in the Board which appears to only follow the orders of Mr and Mrs Chen, it requisitioned an EGM to propose their removal. Thai Power also sought to nominate their own directors to the Board, as it has had no representation all along. The action failed, however, resulting in a serious breakdown in relationship between Thai Power and the Chens. From the incident it also became clear that the other shareholder, HK Bauhinia, is friendly with the couple.

Thai Power now suspects that the proposed issue of New Shares and the Employee Share Option Scheme represent a plot by Mr & Mrs Chen to bring in more allies and to dilute its shareholding. By doing so, Thai Power's shareholding would be reduced to below 25% and its ability to oppose the passing of special resolutions would be taken away.

Further, if the resolutions were passed, the Listco could more easily proceed with the Guangdong Sale and Thai Power fears this would cause real harm to its shareholders.

## Stopping the EGM?

The EGM is due to take place at 3 p.m. on Monday, 25 July, at Conrad Hotel in Hong Kong.

Just a few days earlier (on Wednesday 20 July), Thai Power issues an "unfair prejudice" petition against K2 Company Limited (as majority shareholder) and Mr and Mrs Chen (as Executive Directors) based on allegations of wrongdoings and unfair conducts committed by the pair (the "**Petition**").

An injunction application is also made to restrain the Listco from holding the EGM pending the resolution of the complaints set out in the petition (the "**Injunction**").

The Petition and Injunction applications are served on the same day, with the hearing for the injunction application due to take place on Friday, 22 July which is less than 48 hours away.

## Mr & Mrs Chen's response

The Chens are adamant that they have done nothing wrong, and that the proposed resolutions are commercially sound and necessary for the long-term interests of the group:

- The issuance of New Shares to Renaissance Forestry Group is a bona fide commercial decision reached after proper consultation with independent professionals. Renaissance is a dominant force in the wood industry and therefore a strategic partner: as shareholder, it could provide Nanjing Everest with a steady source of wood supply and a significant price advantage.
- The Employee Share Option Scheme represents a genuine alternative remuneration scheme in lieu of cash bonuses.

Furthermore, Mr & Mrs Chen believes the Guangdong Sale is commercially advantageous as the land prices in the province are at a record high therefore it would be a ripe time to capitalise on the gain and use the money for re-investment elsewhere.

Mr & Mrs Chen further suspect that the real motive of Thai Power is to take over the Listco in the long run. By holding a majority stake in Nanjing Everest, Thai Power would gain an advantage over its competitors in the Thai market: Thai Power has been accused by the media of using its financial prowess to stifle competition in Thailand for a long time.

## Further reading for Session 3

At the hearing on Friday, 22 July, the Court grants the interim injunction to prevent the Listco from holding the EGM. The matter is adjourned for further argument of the application on inter partes basis in weeks' time. During the 4-week period, the Listco and the applicant each has the opportunity to file one round of affidavit evidence.

**Series contacts:**



**Gary Yin**

Partner, Dispute Resolution

[gary.yin@simmons-simmons.com](mailto:gary.yin@simmons-simmons.com)



**Christopher Ma**

Partner, Corporate & Commercial

[christopher.ma@simmons-simmons.com](mailto:christopher.ma@simmons-simmons.com)



**Paul Li**

Senior Consultant, Dispute Resolution

[paul.li@simmons-simmons.com](mailto:paul.li@simmons-simmons.com)



**Claudia Yiu**

Partner, Corporate & Commercial

[claudia.yiu@simmons-simmons.com](mailto:claudia.yiu@simmons-simmons.com)



**Eric Chan**

Consultant, Dispute Resolution

[eric.chan@simmons-simmons.com](mailto:eric.chan@simmons-simmons.com)