



FCA fines listed company £4.6 million for failure to communicate, implement and monitor policy for related party transactions

What happened?

The Financial Conduct Authority has imposed a fine of £4,651,200 on Asia Resource Minerals plc (formerly Bumi plc) for various breaches of the Listing Rules which deal with related party transactions. The FCA has made it clear that it is not sufficient for a company with a premium listing simply to create and approve a policy for related party transactions. Instead the company must make sure that the policy is communicated, implemented and monitored. Companies which have operations in jurisdictions which are unfamiliar with the Listing Rules should recognise that this may represent a significant challenge.

Why did the FCA impose a fine?

The Company was fined for:

- breaches of the following Listing Rules which deal with related party transactions:
 - LR 11.1.10R (*modified requirements for smaller related party transactions*);
 - LR 11.1.11R (*aggregation of related party transactions in any 12 month period*);
 - LR 8.2.3R (*company with a premium listing must obtain the guidance of a sponsor before entering into any transaction which is or may be a related party transaction*);
- being in breach of, what was then, Listing Principle 2 (*now LP 1 – a listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations*); and
- a breach of DTR 4.1.3R (*requirement to publish annual financial report within four months of financial year end*).

What went wrong?

Asia Resource Minerals plc (the **Company**) is admitted to the premium listed segment of the Official List although it is currently subject to a takeover offer from Asia Coal Energy Ventures Limited. The Company holds 84.7% of the share

capital of PT Berau Coal Energy Tbk (the **Subsidiary**) (which is itself listed on the Indonesian Stock Exchange). Between 2011 and 2013, the Subsidiary entered into a number of transactions which were not at the relevant time identified as related party transactions. As a result the requirements of the Listing Rules in respect of those transactions were not satisfied.

In particular the Company:

- did not inform the FCA in writing of the details of the proposed transactions;
- did not provide the FCA with written confirmation from an independent adviser acceptable to the FCA that the terms of the proposed transaction were fair and reasonable as far as the shareholders of the Company were concerned;
- did not undertake in writing to the FCA to include details of the transaction in the Company's next published annual accounts; and
- failed to obtain the guidance of a sponsor in order to assess the application of the Listing Rules to the transactions.

Although the Company had a policy for dealing with related party transactions and had established a conflicts committee, the FCA identified a significant number of failings including:

- there was insufficient monitoring by the Company to ensure that the policy on related party transactions was being implemented across the Subsidiary;
- the conflicts committee provided limited oversight of the Subsidiary, did not act effectively and did not hold frequent meetings;
- there was inadequate training in relation to the policy. In particular, the Company did not compel the attendance of the Subsidiary's senior management at relevant training sessions, did not take adequate steps to follow up on the non-attendance by senior management at those sessions, did not provide sufficient follow up training and did not keep adequate training records; and

- the Company did not check the adequacy of the information received from the Subsidiary and failed to maintain an accurate list of related parties (in accordance with the terms of its policy on related party transactions).

What do we need to do?

Although the fine reflects the specific circumstances of Asia Resource Minerals plc and PT Berau Coal Energy Tbk, **the decision demonstrates the importance of ensuring that a listed company operates an effective policy for dealing with related party transactions.**

The FCA has made it clear that it is not sufficient for a company with a premium listing simply to create and approve a policy for related party transactions. Instead the company must make sure that policy is communicated, implemented and monitored.

Companies with a premium listing should as a result consider their own policy and procedures for dealing with related party transactions. In particular a listed company should:

- 1 make sure that policies and procedures for dealing with related party transactions have been **implemented effectively**;
- 2 check that the procedures, systems and controls in place will **identify and record potential related party transactions** before they are entered into;
- 3 consider whether **directors, senior managers and others** would benefit from **training** on the underlying rules on related party transactions;
- 4 make the **training available to directors, senior management and other key staff** who may be involved in transaction reporting;
- 5 keep a record of who has received training on related party transactions; and
- 6 where there is sufficient uncertainty as to whether a proposed transaction is a related party transaction **consult a sponsor**.

Contact

If you would like any further information on related party transactions then please speak to your usual contact at Burges Salmon or:



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