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Headnote

Mutual Reliance Review System for Exemptive Relief Applications - bid made in accordance with the laws of Hong Kong exempted from the take-over bid requirements - *de minimis* exemption unavailable because Hong Kong not recognized jurisdiction

Applicable British Columbia Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 105 – 108, 110 and 114(2)(c)

IN THE MATTER OF THE SECURITIES LEGISLATION OF BRITISH COLUMBIA AND ONTARIO

AND

IN THE MATTER OF THE MUTUAL RELIANCE REVIEW SYSTEM FOR EXEMPTIVE RELIEF APPLICATIONS

AND

IN THE MATTER OF HUACHEN AUTOMOTIVE GROUP HOLDINGS COMPANY LIMITED, MR. WU XIAO AN, MR. HONG XING, MR. SU QIANG, CLSA LIMITED AND BRILLIANCE CHINA AUTOMOTIVE HOLDINGS LIMITED

MRRS DECISION DOCUMENT

WHEREAS the local securities regulatory authority or regulator (the “Decision Maker”) in each of the provinces of British Columbia and Ontario (the “Jurisdictions”) has received an application from Huachen Automotive Group Holdings Company Limited (“Huachen”), Mr. Wu Xiao An, Mr. Hong Xing, Mr. Su Qiang, Mr. He Tao (collectively the “Management Directors” and, together with Huachen, the “Offerors”), CLSA Limited (“CLSA”) and Brilliance China Automotive Holdings Limited (the “Target” and, together with the Offerors and CLSA, the “Applicants”) for a decision under the securities legislation of the Jurisdictions (the “Legislation”) that the formal take-over bid requirements in the Legislation, including the provisions relating to delivery of an offer and take-over bid circular and any notices of change or variation thereto, delivery of a directors’ circular and any notices of change or variation thereto, minimum deposit periods and withdrawal rights, take-up of and payment for securities tendered to a take-over bid, disclosure, financing, restrictions upon purchases of securities, identical consideration and collateral benefits (collectively, the “Take-over Bid Requirements”) shall not apply to the all cash offer (the “Offer”) made by CLSA

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for and on behalf of the Offerors to acquire securities of the Target not already owned by the Offerors;

AND WHEREAS under the Mutual Reliance Review System for Exemptive Relief Applications (the “System”) the Ontario Securities Commission is selected as the principal regulator for this application;

AND WHEREAS, unless otherwise defined, terms herein have the meaning set out in National Instrument 14-101;

AND WHEREAS the Applicants have represented to the Decision Makers that:

1. Huachen is a People’s Republic of China (“PRC”) state-owned limited liability company which was established under the laws of the PRC on September 16, 2002 and is wholly beneficially owned by the Liaoning Provincial Government. Huachen’s principal place of business is located in Shenyang City, Liaoning Province, PRC. Huachen’s principal business is the investment in automotive-related companies in the PRC.
2. As at the date hereof, Huachen has a registered capital of RMB 200,000,000.
3. Neither Huachen nor the Target is, or has any intention of becoming, a reporting issuer under the laws of any province in Canada.
4. The Target is a corporation incorporated under the laws of the country of Bermuda. The Target’s registered office is located at Cedar House, 41 Cedar Avenue, Hamilton, HM12, Bermuda. The Target’s principal place of business in Hong Kong is located in Rooms 2303-2306, 23rd Floor, Great Eagle Centre, 23 Harbour Road, Wanchai, Hong Kong. The Target is an investment holding company. The principal activities of the Target’s subsidiaries are the manufacturing and selling of minibuses, sedans and automotive components in the PRC.
5. The authorized share capital of the Target consists of 5,000,000,000 ordinary shares with a par value US\$0.01 each (the “Ordinary Shares”). As at the date hereof, 3,666,052,900 Ordinary Shares (including Ordinary Shares in the form of ADSs (as defined below)) were issued and outstanding.
6. The Ordinary Shares (not including Ordinary Shares in the form of ADSs (as defined below)) are currently listed on The Stock Exchange of Hong Kong Limited. American depository shares (“ADSs”), representing 100 Ordinary Shares each, are listed and posted for trading on The New York Stock Exchange, Inc. under the symbol “CBA”.

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7. As at November 19, 2002, the register of ADS holders maintained by The Bank of New York (in its capacity as the depositary for the ADSs) indicated that one resident of Ontario is the registered holder of 500 ADSs, representing 50,000 Ordinary Shares (or approximately 0.0014% of the Ordinary Shares then outstanding), and one resident of British Columbia is the registered holder of 150 ADSs, representing 15,000 Ordinary Shares (or approximately 0.0004% of the Ordinary Shares then outstanding).
8. On December 18, 2002, as a result of arm's length negotiations, Huachen purchased approximately 39.446% of the Ordinary Shares then outstanding from another shareholder of the Target at a price of HK\$0.10 per Ordinary Share.
9. Also on December 18, 2002, Huachen granted call options to each of the Management Directors in respect of an aggregate of approximately 9.446% of the Ordinary Shares, which call options are exercisable for a period of three years commencing approximately six months after the completion of the Offer at a price of HK\$0.95 per Ordinary Share.
10. Pursuant to the Hong Kong Code on Takeovers and Mergers (the "Hong Kong Takeovers Code") of the Hong Kong Securities and Futures Commission ("HKSF"), Huachen and any party acting in concert with Huachen, by virtue of having acquired over 30% of the voting rights of the Target, are required to make the conditional mandatory Offer for all of the Ordinary Shares and all securities convertible into Ordinary Shares that are not already owned by Huachen and any party acting in concert with Huachen.
11. By virtue of entering into call option agreements with Huachen, the Management Directors are presumed, under the Hong Kong Takeovers Code, to be acting in concert with Huachen. As a result, the Management Directors and Huachen have agreed to join together to make the conditional mandatory Offer required to be made under the Hong Kong Takeovers Code.
12. CLSA is making the Offer for and on behalf of the Offerors (other than in the United States where the Offer is being made by the Offerors directly). CLSA is a registered securities dealer registered under the Securities Ordinance (Chapter 333 of the Laws of Hong Kong).
13. The Offer is being made in accordance with the laws of Hong Kong, including the requirements of the Hong Kong Takeovers Code and the rules of the HKSF, and not pursuant to any exemptions from such requirements. The Offer is also being made pursuant to an exemption from certain U.S. tender

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offer rules provided by Rule 14d-1(c) under the Securities Exchange Act of 1934 (as amended) of the United States.

14. The Offer is being extended to all holders (other than the Offerors) of Ordinary Shares, ADSs and securities convertible into Ordinary Shares (such as options granted to employees of the Target). The Offer is required to remain open for acceptance for at least 28 days following the date on which documents setting out the terms of the Offer (the "Offer Documents") are first posted. CLSA delivered the Offer Documents to the Target shareholders on January 9, 2003 and the Offer will remain open until at least February 5, 2003.
15. The Offerors cannot rely on the *de minimis* exemption from the Take-over Bid Requirements because the Decision Makers have not recognized Hong Kong for this purpose in the Legislation.
16. The Offer will be made on the same terms and conditions to the shareholders of the Target resident in Canada as those applicable to Target shareholders residing outside Canada.
17. The Offer Documents and all other material relating to the Offer, including any amendments, sent by or on behalf of the Offerors to Target shareholders residing outside Canada shall concurrently be sent to the Target shareholders resident in Canada and filed with the Decision Makers.

AND WHEREAS under the System, this decision document evidences the decision of each of the Decision Makers (the "Decision");

AND WHEREAS each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the Decision has been met;

THE DECISION of the Decision Makers under the Legislation is that the Applicants are exempt from the Take-over Bid Requirements in connection with the Offer made by CLSA, for and on behalf of the Offerors, to the Target shareholders resident in Canada, provided that:

- (a) the Offer and all amendments to the Offer are made in compliance with the laws of Hong Kong, including the Hong Kong Takeovers Code; and
- (b) the Offer Documents and all other materials relating to the Offer, including any amendments, that are sent by or on behalf of the Offeror to Target shareholders residing outside Canada are concurrently sent to

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Target shareholders resident in Canada and copies of such material are filed contemporaneously with the Decision Maker in each Jurisdiction.

DATED this 27th day of January, 2003.

Howard I. Wetston
Robert L. Shirriff