

## TAKEOVERS AND MERGERS PANEL

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### Panel Decision

In relation to a referral to the Takeovers and Mergers Panel (the "Panel") by the Executive for a ruling on whether SouthGobi Resources Limited ("SouthGobi", stock code 1878) should be considered a "public company in Hong Kong" within the meaning of the Codes on Takeovers and Mergers and Share Buy-backs (the "Codes")

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#### Introduction

1. The Panel met on 19 June 2014 to consider a referral by the Executive under section 10.1 of the Introduction to the Codes as the Executive considered there to be particularly novel, important or difficult points at issue.
2. The Panel was asked to determine whether SouthGobi should be considered a "public company in Hong Kong" within the meaning of section 4.2 of the Introduction to the Codes in light of changes to the information and/or representations made in SouthGobi's initial application to the Executive in 2008 and further submissions in 2009 resulting in SouthGobi obtaining a ruling from the Executive on 28 September 2009 that it would not be considered to be a "public company in Hong Kong" for the purposes of the Codes (the "2009 Ruling").

#### Background and facts

3. SouthGobi was incorporated in British Columbia, Canada, in February 2002. SouthGobi is currently principally engaged in mining, exploring and developing coal deposits in the South Gobi region of Mongolia.
4. SouthGobi has a primary listing on the main board of the Toronto Stock Exchange ("TSX"). SouthGobi's shares were first listed on the TSX Venture Exchange in 2003 and the listing was subsequently transferred to the main board of the TSX prior to its secondary listing on The Stock Exchange of Hong Kong Limited ("SEHK") on 29 January 2010.
5. SouthGobi's substantial shareholders are Turquoise Hill Resources Limited ("Turquoise Hill", formerly known as Ivanhoe Mines Limited) which holds about 56% of SouthGobi's issued shares and China Investment Corporation ("CIC") which holds about 16%.
6. On 17 September 2008, SouthGobi applied to the Executive for a ruling that SouthGobi would not be considered as a "public company in Hong Kong" within the meaning of the Codes and therefore the Codes would not apply to SouthGobi on completion of its secondary listing on the SEHK. This initial application was supplemented by further submissions dated 13 October 2008 and 19 August 2009 (collectively, the "Pre-Listing Application").
7. The 2009 Ruling confirmed that SouthGobi should not be regarded as a public company in Hong Kong for the purposes of the Codes. The 2009 Ruling stated that the Executive should be informed immediately of any material change to any of the information provided and/or representations made so that the Executive might determine whether the 2009 Ruling should remain valid. This was reflected in SouthGobi's prospectus dated 15 January 2010 which stated that the 2009 Ruling might be reconsidered by the SFC in the event of a material change of information provided to the SFC.

8. In May 2014, SouthGobi approached the Executive regarding whether SouthGobi should continue to be regarded as not being a public company in Hong Kong for the purposes of the Codes. On 4 June 2014, SouthGobi applied to the Executive for a ruling that it is not a public company in Hong Kong for the purposes of the Codes. The matter was referred to the Panel by the Executive under section 10.1 of the Introduction to the Codes as the Executive considered there to be particularly novel, important or difficult points at issue.

### **The relevant provisions of the Codes**

9. Section 4.1 of the Introduction to the Codes states:

*“The Codes apply to takeovers, mergers and share buy-backs affecting public companies in Hong Kong, companies with a primary listing of their equity securities in Hong Kong and REITs (as defined in the REIT Guidance Note) with a primary listing of their units in Hong Kong.”*

10. Section 4.2 of the Introduction to the Codes states:

*“In order to determine whether a company is a public company in Hong Kong the Executive will consider all the circumstances and will apply an economic or commercial test, taking into account primarily the number of Hong Kong shareholders and the extent of share trading in Hong Kong and other factors including:-*

- (a) the location of its head office and place of central management;*
- (b) the location of its business and assets, including such factors as registration under companies legislation and tax status; and*
- (c) the existence or absence of protection available to Hong Kong shareholders given by any statute or code regulating takeovers, mergers and share buy-backs outside Hong Kong.”*

### **The case of the Executive in summary**

11. Section 4.1 of the Introduction to the Codes provides that the Codes apply to every company that obtains a primary listing in Hong Kong irrespective of its country of incorporation, location of management or place of business or assets. The Codes do not however apply to a company with a secondary listing in Hong Kong unless it is a “public company in Hong Kong” within the meaning of the Codes.
12. The Executive submitted that in determining whether a company is a “public company in Hong Kong”, the starting point under section 4.2 of the Introduction to the Codes is to consider the number of public shareholders and extent of share trading in Hong Kong, which factors need to be considered in the context of the size of the company in question and the relative proportion of its shareholders and share trading activity in Hong Kong. If the relative proportion of shareholders and share trading activity in Hong Kong is small, then the Executive stated that it should not be asserting jurisdiction whereas if the relative proportion is not small the other factors in section 4.2 of the Introduction to the Codes should be considered. Whilst the number of shareholders in Hong Kong and the extent of trading in Hong Kong are the primary factors to be taken into account, the Executive submitted that there is flexibility provided in terms of the weight to be given to the remaining factors.
13. Factors (a) and (b) in section 4.2, consider whether the company in question has sufficient connection with Hong Kong that it is appropriate to apply the protection of the Codes to its

shareholders – the greater the level of connection, the more likely it is that the Codes should apply.

14. A company with a secondary listing on the SEHK must, by definition, also have a primary listing overseas and in deciding whether or not to apply the Codes to such a company, the Executive will also take into account whether alternative protection is available to Hong Kong investors under factor (c).
15. The Executive did not agree with the suggestion made by Turquoise Hill that following a ruling that the Codes do not apply to a secondary listed company, the main factor to determine whether that status has changed is the continuance of shareholder protection in the primary listing market and the other factors should only be considered in extreme cases. The Executive submitted that such a proposition is not supported by the wording of section 4.2 to the Introduction to the Codes or the Panel's decision in the 2011 Husky Energy case. The Executive referred to the following direction made by the Panel in that case:

*“With regard to the primary factors set out in section 4.2 of the Introduction to the Codes, which are the number of Hong Kong shareholders and the extent of share trading in Hong Kong, the status of Husky under section 4.2 should be kept under review on an on-going basis by the Executive following the listing when trading volumes on the TSX and the Stock Exchange have been established.”*

16. The Executive stated that whether a company has been the subject of a ruling that it is a public company in Hong Kong for the purposes of the Codes or, on the other hand, has been the subject of a ruling that it is not a public company in Hong Kong, if there is any material change to any of the information relating to the factors set out in section 4.2 to the Introduction to the Codes presented to the Executive in connection with such ruling, the Executive should be informed immediately so that it may determine whether such ruling should continue to remain valid in light of any such change in circumstances.
17. Further, the Executive stated the fact that it did not attempt to assert jurisdiction in the possible proportional takeover bid by Aluminum Corporation of China Limited (“Chinalco”) in April 2012 (which offer lapsed in September 2012) should not have a bearing on the current decision. The Executive stated that it had not been approached by SouthGobi to seek clarification as to whether it should have continued to be regarded as not being a “public company in Hong Kong” for the purposes of the Codes at that time and that the proportionate trading volumes of SouthGobi's shares in Hong Kong were much lower at that time than they have been recently.

#### *Number of Hong Kong shareholders and extent of share trading in Hong Kong*

18. At the time of the Pre-Listing Application, the shares of SouthGobi were yet to be listed on the SEHK and accordingly the relative proportion of Hong Kong shareholders and share trading activity were matters for speculation. In the Pre-Listing Application, SouthGobi submitted to the Executive that it expected:
  - approximately 6.8% of its shares would be held on the Hong Kong register and approximately 93.2% of its shares would be held on the Canadian register (*subsequent to the Pre-Listing Application, the total offer size (Hong Kong offer and international offer) which took place in conjunction with the secondary listing on the SEHK was increased and there was a partial exercise of the over allotment option in February 2010, following which around 15% of SouthGobi's shares were held on the Hong Kong register*);
  - Turquoise Hill would hold approximately 73.5% of SouthGobi's shares following the secondary listing on the SEHK and that excluding Turquoise Hill's shareholding from the

liquidity analysis, approximately 74% of SouthGobi's remaining shares would be held on the Canadian register and 26% on the Hong Kong register (*Turquoise Hill in fact held approximately 57% of SouthGobi's shares following the secondary listing on the SEHK and partial conversion in March 2010 of a debenture held by CIC*);

- trading volumes in Hong Kong would not exceed those in Canada in the short to medium term excluding one-off occasions such as the first day of trading in Hong Kong.

19. The information provided to the Panel was that:

- approximately 34.5% of SouthGobi's issued shares are held on the Hong Kong register and approximately 65.5% are held on the Canadian register;
- excluding the respective shareholdings of SouthGobi's two substantial shareholders, CIC and Turquoise Hill, the Hong Kong register represents approximately 65.45% of the remaining shares and the Canadian register represents approximately 34.55%;
- since late 2012, there has been a distinct shift in trading in SouthGobi's shares to Hong Kong (with the exception of three months) and over the past five months the total monthly trading volume in Hong Kong ranged between 80% and 96% of total trading in SouthGobi's shares, with an average of 84%.

20. The Executive did not agree with SouthGobi's suggestion that the Hong Kong shareholder base should be calculated on the basis of the number of shareholders with Hong Kong addresses. The Executive asserted that the shareholder base test is designed to establish the proportion of public shareholders in Hong Kong and the Codes are intended to afford protection to "shareholders who are affected by takeovers, mergers and share buy-backs" (section 1.2 of the Introduction to the Codes). The Codes are intended to protect overseas shareholders as well as domestic shareholders and the correct test is to consider the proportion of shares registered in Hong Kong versus the proportion registered in Canada. The Executive submitted that to look at addresses would be meaningless as many interests are held through BVI companies and other offshore holding entities.

21. CIC owns approximately 16% of SouthGobi's issued shares which are held on the Hong Kong register and represent nearly 48% of the shares on the Hong Kong register. The Executive did not believe that the fact that a single shareholding represents a significant proportion of the Hong Kong register should detract from the fact that the Hong Kong register represents a significant proportion of SouthGobi's issued shares.

22. In all the circumstances, the Executive considered the increase in the number of shares held on the Hong Kong register to be a material change to the information provided and/or representations made in the Pre-listing Application.

23. As to the "extent of trading in Hong Kong", the Executive considered the correct measure to be the relative proportion of trading in the shares of SouthGobi on the SEHK compared with the relative proportion of trading on the TSX.

24. The Executive considered there to be a material increase in both of the primary factors set out in section 4.2 of the Introduction to the Codes; namely, the number of Hong Kong shareholders and the extent of trading in Hong Kong compared with the information provided and representations made in the Pre-Listing Application.

25. The Executive did not consider the proportionate increase in shares on the Hong Kong register and level of trading in the shares in Hong Kong to be a temporary fluctuation but rather considered there to have been a distinct and continuing shift over a period of time such

that it is appropriate to apply the Codes to SouthGobi. In the Executive's view, these changes alone were sufficient to result in SouthGobi being a public company in Hong Kong for the purposes of the Codes even if there were found to be no changes to the three secondary factors set out in section 4.2 to the Introduction to the Codes.

26. With regard to the other factors set out in section 4.2 of the Introduction to the Codes, the Executive's position was as follows:

*(a) Location of head office and place of central management*

In SouthGobi's Pre-listing Application, it confirmed that its head office and place of central management were in Canada. The Executive considered there to have been a material shift of management presence away from Canada to Mongolia, Hong Kong and China with senior managers performing functions that are not required to be carried out in Mongolia being predominately based in Hong Kong. According to information provided by SouthGobi, the average overall management time spent by its four senior managers could be broken down as to 50% in Mongolia, 34% in Hong Kong, 4% in Canada and 13% in China and other places. Of these, SouthGobi's President and sole Executive Director spends 100% of his time based in Mongolia, the Chief Financial Officer spends 79% of his time in Hong Kong and the Chief Commercial Officer spends 50% of his time in Hong Kong.

*(b) Location of business and assets*

At the time of the Pre-Listing Application, SouthGobi's operational assets were located in Mongolia and Indonesia. Currently, all SouthGobi's operational assets are located in Mongolia. The Executive did not consider there to be any material change in respect of the location of SouthGobi's business and assets for the purposes of section 4.2 of the Introduction to the Codes.

*(c) Existence or absence of protection available to Hong Kong shareholders given by any statute or code regulating takeovers, mergers and share buy-backs outside Hong Kong*

SouthGobi confirmed that there have been no material changes to the Canadian takeovers regime since the time of the Pre-Listing Application and all shareholders of SouthGobi, including Hong Kong shareholders, still have the full protection of the Canadian takeovers regime. This was accepted by the Executive.

27. The Executive considered that there has been a material and continuing shift of shareholder base and trading away from Canada to Hong Kong. In addition, the Executive considered that SouthGobi's place of central management has moved away from Canada to Asia with certain senior managers performing support functions based predominately in Hong Kong.
28. The Executive was of the view that there has been a material change in the information provided and/or representations made in the Pre-Listing Application and that in the current changed circumstances SouthGobi should be regarded as a "public company in Hong Kong" within the meaning of section 4.2 to the Introduction to the Codes and the Codes should apply to SouthGobi.

## **The case of SouthGobi in summary**

### *Number of Hong Kong shareholders and extent of share trading in Hong Kong*

29. SouthGobi submitted that there are a number of different types of company to which section 4.2 of the Introduction to the Codes may apply: such as unlisted public companies, overseas

listed companies that do not have a secondary listing in Hong Kong and companies that have a secondary listing in Hong Kong. If the company were unlisted, SouthGobi opined that the Executive would presumably look at shareholders with a Hong Kong address. If a different test is applied to companies with a secondary listing (that is to say, to look at the shares on the Hong Kong register rather than the addresses of the beneficial holders) that may result in secondary listed companies being treated more harshly than unlisted companies. SouthGobi submitted that the register only reflects where shareholders have chosen to hold their shares or execute their trades and shareholders may move their shares about between registers for any number of reasons.

30. SouthGobi submitted that the number of Hong Kong shareholders for the purposes of section 4.2 should be calculated on the basis of the number of shareholders with Hong Kong addresses. SouthGobi further submitted that it would be a distortion of the plain meaning of the words “the number of Hong Kong shareholders” to consider only relative proportions of public shareholders.
31. SouthGobi stated that an analysis covering 88.23% of the Canadian register had not identified any Hong Kong beneficial owners on the Canadian register. Further, SouthGobi submitted that not all shares held on the Hong Kong register may be held by shareholders having addresses in Hong Kong. SouthGobi stated that whilst it was unable to identify the name or location of the beneficial owners on the Hong Kong register without conducting a disclosure request exercise under section 329 of the Securities and Futures Ordinance, SouthGobi estimated (based upon an analysis carried out in December 2013 of 72.86% of the Hong Kong register and assuming that all of the remaining 27.14% that was not analyzed comprised shareholders with Hong Kong addresses) that, at most, around 11.4% of SouthGobi’s total shares were held by shareholders with a Hong Kong address.
32. SouthGobi stated that much of the expansion of shares on the Hong Kong register is attributable to the holding of CIC which is held on the Hong Kong register and accounts for 16% of SouthGobi’s issued shares and nearly 48% of the shares on the Hong Kong register.
33. SouthGobi submitted that the number of shares on the Hong Kong register represents approximately 34% of SouthGobi’s issued shares or about half the number of shares on the Canadian register. SouthGobi further submitted that shareholders holding through the Hong Kong register, excluding CIC, hold shares representing about 18% of SouthGobi’s total issued shares, which SouthGobi argued represents a marginal increase over the approximately 15% of SouthGobi’s total shares which were on the Hong Kong register following the secondary listing on the SEHK.
34. SouthGobi stated that an analysis of the number of shareholders is more difficult and less indicative of materiality than the number of shares. SouthGobi submitted that there are 802 shareholders on the complete register of members which includes the holdings of Hong Kong Securities and Clearing Company (“HKSCC”), CDS Clearing and Depository Services Inc. (Canada’s national securities depository, clearing and settlement hub) and Turquoise Hill which together account for 99.9% of the shares in issue. Of the remaining 799 registered shareholders, around 720 are on the Hong Kong register. The largest registered shareholder in Hong Kong is HKSCC Nominees Limited. SouthGobi stated that based upon shareholder mailing requests, behind HKSCC’s holding there are at least 621 beneficial shareholders holding through 259 Central Clearing and Settlement System (known as CCASS) participants. SouthGobi estimated that the numbers of beneficial owners are probably roughly equivalent between the Hong Kong register and the Canadian register with perhaps slightly more holding through the Canadian register than the Hong Kong register.
35. Since the time of secondary listing on the SEHK on 29 January 2010, both the average monthly and daily volumes of shares traded on the TSX taken as an average over the entire

period exceed the average volumes of shares traded on the SEHK. In addition, over the same period, the total number of shares traded on the TSX exceeds the total number of shares traded on the SEHK.

36. SouthGobi asserted that the extent of share trading in Hong Kong should not be limited to the relative percentages of trading on the TSX and the SEHK which it opined is just a product of liquidity. Overall volumes of trading should be considered. SouthGobi submitted that the volume of trading in its shares on the TSX has decreased in recent months whereas it does not consider there to have been a material increase in trading volumes in Hong Kong since the time of the secondary listing. It was also submitted that where there have been spikes in the level of trading, the greater part of the volume of those spikes has been on the TSX. SouthGobi submitted that it does not think that the proportionate shift in trading to Hong Kong is a permanent shift.
37. With regard to the other factors set out in section 4.2 of the Introduction to the Codes, SouthGobi's position was as follows:

*(a) Location of head office and place of central management*

SouthGobi's head office remains in Canada which is where SouthGobi is incorporated and tax resident. SouthGobi's annual general meetings are held in Canada. Previously SouthGobi had interests in development and exploration projects in Indonesia and Mongolia, which early stage projects were managed effectively from Canada. However as SouthGobi's Ovoot Tolgoi coal mine in Mongolia entered the production phase, it narrowed its focus and divested non-core assets. At the same time, the location and focus of SouthGobi's senior managers naturally shifted and became more concentrated on its production assets in Mongolia. SouthGobi's CEO and key operational managers are based in Mongolia and senior managers performing support functions that are not required to be in Mongolia are predominantly based in Hong Kong. Some senior managers divide their time between various locations.

*(b) Location of business and assets*

All SouthGobi's operational assets are in Mongolia.

*(c) Existence or absence of protection available to Hong Kong shareholders given by any statute or code regulating takeovers, mergers and share buy-backs outside Hong Kong*

There has been no material change since the Pre-Listing Application.

**The case of Turquoise Hill in summary**

38. Turquoise Hill submitted that SouthGobi was determined not to be a public company in Hong Kong at the time of its secondary listing on the SEHK. Further, in April 2012, Chinalco announced a takeover bid for SouthGobi under which it offered to acquire 60% of SouthGobi's shares from shareholders on a proportionate basis. Turquoise Hill submitted that the Codes were not considered to apply to this transaction which was governed purely by Canadian takeover bid requirements. Chinalco's bid lapsed in September 2012. Turquoise Hill further submitted that there has been public disclosure that the Codes do not apply to SouthGobi in its prospectus issued in connection with its secondary listing on the SEHK, on the SFC's website and by updates of SouthGobi regarding its secondary listing status (made annually up to last year when the requirement was removed). Turquoise Hill stated that the market should have been able to rely upon such public disclosures, that the application of the Codes may be a price sensitive matter and that it may have affected trading decisions of market participants.

39. The Canadian takeovers regime affords a “private agreement” exemption which in essence would allow a party to acquire 20% or more of the shares in SouthGobi without such party being required to make a general offer to all shareholders provided certain parameters are met, including the purchase price not exceeding 115% of the market price and the number of sellers not exceeding 5. The “private agreement” exemption was disclosed in the prospectus issued by SouthGobi in connection with its secondary listing on the SEHK. Should the Codes apply to SouthGobi, the “private agreement” exemption would not be available as there is no equivalent exemption in the Codes. It was submitted by Turquoise Hill that this may reduce the transactional options open with regard to SouthGobi, which possibly might have adverse commercial consequences and might not be in the best interests of shareholders.
40. Turquoise Hill submitted that as a matter of policy, it would seem to be flawed logic for the SFC to confirm prior to a secondary listing that the Codes do not apply only to reverse that position if the secondary listing has been successful enough to encourage an appreciable measure of share ownership on the Hong Kong register and trading on the SEHK.
41. Turquoise Hill further submitted that where the SFC has confirmed that the Codes do not apply to a company with a secondary listing in Hong Kong, the main factor to determine whether that status has changed is the continuance of the shareholder protections in the market where such company has its primary listing. Turquoise Hill submitted that such protections remain in place in the case of SouthGobi.
42. Turquoise Hill argued that the other factors in section 4.2 to the Introduction to the Codes should also be taken into account but should be given appropriate weight considering that all investors who purchased shares on the SEHK have done so based upon the public disclosure that the Codes do not apply and in reliance upon the protections in the market where SouthGobi has its primary listing.
43. Turquoise Hill supported the arguments advanced by SouthGobi.
44. Turquoise Hill further pointed out that during the last 12 months there was only one month when the trading volume exceeded 5 million shares and that month showed a strong weighting in favour of Canada.

#### **The decision and the reasons for it**

45. Following consideration of all the submissions by the Executive and the parties present and the materials presented, the Panel endorses the Executive’s view that the current situation represents a material change from the information provided and/or representations made to the Executive in the Pre-Listing Application and upon which the 2009 Ruling was premised and that the current situation is such that SouthGobi should be regarded as a public company in Hong Kong for the purposes of the Codes.
46. The 2009 Ruling confirmed that SouthGobi should not be regarded as a public company in Hong Kong for the purposes of the Codes. The 2009 Ruling stated that the Executive should be informed immediately of any material change to any of the information provided and/or representations made so that the Executive might determine whether the 2009 Ruling should remain valid. This position was reflected in SouthGobi’s prospectus dated 15 January 2010 which stated that the 2009 Ruling might be reconsidered by the SFC in the event of a material change of information provided to the SFC. It is clear that the market has been made aware that SouthGobi’s status under the Codes might change in the event of any material change to any of the information provided or representations made to the SFC.
47. In assessing the status of a company with a secondary listing in Hong Kong which has been determined not to be a public company in Hong Kong for the purposes of the Codes, it is not

the case that the main factor to determine whether that status has changed is the continuance of the shareholder protections in the market where such company has its primary listing.

48. In determining whether a company is a “public company in Hong Kong” for the purposes of the Codes, section 4.2 of the Introduction to the Codes states that the primary factors to be taken into account are the number of Hong Kong shareholders and the extent of share trading in Hong Kong. The 2011 Panel decision in the Husky Energy case confirmed that these two factors are the primary factors to be considered.
49. At the time of the 2009 Ruling, prior to SouthGobi’s secondary listing in Hong Kong, the number of Hong Kong shareholders and extent of trading in Hong Kong was yet to be known. In its representations to the Executive in connection with the “number of Hong Kong shareholders and the extent of share trading in Hong Kong”, SouthGobi estimated that following the secondary listing in Hong Kong:
  - approximately 93.2% of SouthGobi’s shares in issue were likely to be held on the TSX (meaning on the Canadian register) and approximately 6.8% of its shares were likely to be held on the SEHK (meaning on the Hong Kong register);
  - excluding shares held by Turquoise Hill, SouthGobi’s controlling shareholder, from the liquidity analysis, approximately 74% of SouthGobi’s remaining shares post secondary listing on the SEHK were still expected to be held on the TSX (meaning the Canadian register) and therefore implicitly 26% would be held on the Hong Kong register;
  - trading volumes in Hong Kong would not exceed those in Canada in the short to medium term.
50. The percentage of SouthGobi’s shares on the Hong Kong register is now over 30% compared with the estimate of 6.8% at the time of the 2009 Ruling. SouthGobi has suggested that the number of Hong Kong shareholders should be determined by reference to the number of shareholders with Hong Kong addresses. Section 1.2 of the Introduction to the Codes states that the Codes are intended to afford protection to “shareholders who are affected by takeovers, mergers and share buy-backs” – the protection afforded by the Codes is not limited to investors resident in Hong Kong but includes overseas investors as well. It is appropriate to have regard to the proportion of shares registered in Hong Kong compared with the proportion registered in Canada.
51. SouthGobi’s substantial shareholders are Turquoise Hill, which holds about 56% of SouthGobi, and CIC, which holds about 16%. SouthGobi has pointed out that CIC holds its shares in Hong Kong and these shares represent 16% of the total shares and almost 48% of the shares registered in Hong Kong. The fact that one shareholder holds a significant proportion of the shares in Hong Kong does not detract from the fact that the shares on the Hong Kong register now represent a significant percentage of the total shares in issue. Turquoise Hill’s holding of shares represents 85.45% of the shares registered in Canada. Excluding CIC’s and Turquoise Hill’s respective shareholdings, shares registered in Hong Kong represent 65.45% of the remaining shares whereas the shares on the Canadian register represent only 34.55%. There has been a material increase in the shares on the Hong Kong register compared with the estimate provided in the Pre-Listing Application such that a significant proportion of SouthGobi’s total shares are held on the Hong Kong register and almost two-thirds of the shares held by shareholders other than Turquoise Hill and CIC (SouthGobi’s two substantial shareholders) are held on the Hong Kong register.
52. With regard to the extent of trading in the shares in Hong Kong, since October 2012, trading in SouthGobi’s shares in Hong Kong has represented over half of the total traded volume with the exception of three months, (December 2012, October 2013 and November 2013). Over

the past six months, the monthly trading volume in Hong Kong has ranged between 72% and 96% of total trading in the shares. There has been a clear and material shift in the relative proportion of trading volume from Canada towards Hong Kong compared with the estimate provided in the Pre-Listing Application.

53. In addition to the above primary factors, section 4.2 of the Introduction to the Codes states that other factors are to be taken into account including:
  - (a) the location of the company's head office and place of central management;
  - (b) the location of the company's business and assets, including such factors as registration under companies legislation and tax status; and
  - (c) the existence or absence of protection available to Hong Kong shareholders given by any statute or code regulating takeovers, mergers and share buy-backs outside Hong Kong.
54. At the time of the Pre-Listing Application, both SouthGobi's head office and place of central management were located in Canada. Whilst SouthGobi's head office remains in British Columbia and its AGMs are held in British Columbia, SouthGobi no longer has only one place of management and some of its senior management divide their time between various locations including Hong Kong. According to SouthGobi, its senior management on average spend 34% of their total time in Hong Kong, 4% in Canada, 50% in Mongolia and 13% elsewhere. Notable for spending time in Hong Kong are the CFO who spends 79% of his time in Hong Kong and the Chief Commercial Officer who spends 50% of his time in Hong Kong. SouthGobi's company secretarial function and general counsel function are based in Hong Kong. There has been some shift in management time away from Canada primarily to Mongolia and to a lesser extent Hong Kong. Having carefully considered this factor, the Panel did not consider it to have a material bearing on its decision. The Panel notes that it is now very common for companies with a primary listing on the SEHK to have substantially all of their management, assets and business outside Hong Kong.
55. SouthGobi remains incorporated in Canada and is resident there for tax purposes. All of SouthGobi's operating assets are located in Mongolia. The Panel did not consider this factor to have a material bearing on its decision.
56. It has been submitted to the Panel that there has not been any material change in the protection available to Hong Kong shareholders of SouthGobi given by any statute or code regulating takeovers, mergers and share buy-backs in British Columbia and Canada since the matter was considered by the Executive in making its ruling in 2009. The Panel did not consider this factor to have a material bearing on its decision.
57. Based primarily upon the material changes in the number of Hong Kong shareholders as reflected in the proportions of shares held on the Hong Kong and Canadian registers, and in particular the relative proportions held by the public (excluding Turquoise Hill and CIC), and the extent of trading in the shares in Hong Kong as reflected in the proportionate trading volumes on the SEHK and in Canada, the 2009 Ruling that SouthGobi should not be considered a public company in Hong Kong for the purposes of the Codes is no longer valid and SouthGobi should be considered a public company in Hong Kong within the meaning of section 4.2 of the Introduction to the Codes. The Codes should therefore apply to SouthGobi.
58. If there is any material change to any of the information relating to the factors set out in section 4.2 to the Introduction to the Codes, the Executive should be informed immediately so that it may determine whether this ruling should continue to remain valid in light of any such change in circumstances.

59. The Panel authorized that the fact that the Panel had decided that the Codes now apply to SouthGobi could be contained in an announcement to be issued by SouthGobi on the SEHK in advance of publication of this decision if the directors of SouthGobi consider the decision to be price sensitive information concerning SouthGobi.

24 June 2014

Parties present at the hearing:

The Takeovers Executive

SouthGobi Resources Limited, advised by Dorsey & Whitney

Turquoise Hill Resources Limited, advised by Norton Rose Fulbright