FOI 046-2023

Memo

ASIC

Australian Securities & Investments Commission

TO:	s 22 [redacted], Senior Lawyer, Corporations
FROM:	s 22 [redacted], Analyst, Corporations
RE:	**XPD Soccer Gear Group Limited - application for an extension of time to hold annual general meeting**
FILE REF:	PMR 2018/12282
DATE:	21 May 2018

APPLICATION

1. On 30 April 2018, XPD Soccer Gear Group Limited ACN 169 695 283 (the **Company, XPD**) applied for an extension of time to hold its annual general meeting (**AGM**) for the financial year ended 31 December 2017 (the **Application**). Under Chapter 2G of the *Corporations Act 2001* (the **Act**) the Company is required to hold its AGM by no later than 31 May 2018. The Company is seeking an extension until 31 August 2018 from the requirements of section 250N(2) of the Act.

BACKGROUND

2. On 11 October 2017, the Company was suspended from official quotation by ASX Limited (**ASX**) pending the release of an announcement clarifying a director's interests in the securities of the Company.

3. The Company and ASX have subsequently exchanged multiple letters in relation to the directors' interests in XPD.

4. On 3 January 2018 the Company held a general meeting in which only one special resolution was proposed; to change the Company's name to EWG Holding Group Limited, the resolution failed on a show of hands.

5. On 29 March 2018 the Company released an announcement detailing the following changes made to the board:

   (a) Wayne Reid resigned from the board on 14 February 2018;

   (b) Simon Lill and Neil Sheather had joined the board as Australian-resident directors, with Mr Lill taking the role of Chairman;

(c) Lifang Zhang had joined the Company and would share the role of Company Secretary with Mr Sheather; and

(d) Tony Zhen Lu had resigned as Company Secretary yet remained on the board as a non-executive director.

6. On 18 April 2018 the ASX released a letter addressed to the Company on the ASX announcements platform (**18 April Letter**). The 18 April Letter disclosed that ASX would not remove the Company from the official list with immediate effect. Rather, ASX would consider reinstating the Company's shares to official quotation subject to certain conditions being met by 31 July 2018. If the conditions were not met by 31 July 2018 the Company would be removed from the official list on 1 August 2018.

SUBMISSIONS

7. The Application submitted that an extension should be granted as:

"The Company is based in China and listed in Australia. It has had substantive difficulties with Board changes and management through the last 6 months and has been focussing on stopping its delisting from the ASX. A new Board has been compiled and is improving Corporate Governance and have commenced outstanding audit activities."

8. On 1 May 2018 ASIC requested further submissions from the Company in respect of how XPD satisfied the test in *ASIC Regulatory Guide 44 Annual general meeting: Extension of time* (**RG 44**) at RG 44.17. ASIC also drew the company's attention to section 249HA of the Act, which requires that at least 28 days' notice of the annual general meeting must be given to members.

9. On 17 May 2018 the Company provided additional information specifically addressing the Act and ASIC's policy (**Further Submissions**). The Further Submissions provided the following additional information in respect of the Company:

(a) communication issues between the Board and a Chinese speaking substantial shareholder (Chou Qin International Co., Ltd (**Chou Qin**) have caused difficulties in determining what relevant interest in the Company's shares are held by Chou Quin. Jiameng Zhang (**Mr Zhang**) (a current director of XPD) is associated with Chou Qin and together, Chou Qin and Mr Zhang hold a relevant interest in 21.13% of the voting power in the Company;

(b) the difficulty in establishing the relevant interest of Chou Qin and Mr Zhang was exacerbated by the nature of a non-recourse loan agreement that Chou Qin entered into with Gallus Financial Management Limited. Under this

agreement, Chou Qin pledged all rights, title and interest in 206,000,000 shares in XPD to secure a loan in the total sum of $20 million;

(c) in the first half of 2017 Chou Qin transferred a number of shares to unrelated third parties off market;

(d) the Company is currently examining the movements of shares and have issued tracking notices to a number of nominee companies that have been active in the movement of those shares during 2017 or are currently holding significant parcels of shares; and

(e) due to the issues disclosed in the points above the Company did not commence, and was not able to complete, its financial accounts and accordingly would not be in a position to present its accounts to members at the AGM.

10. The Further Submissions also attached copies of the 18 April Letter and the Company's most recent Form 604 (released to the market on 8 May 2018).

11. The Further Submissions contended that the approval of the Application was in the best interests of the shareholders of the Company as:

(a) without all matters disclosed in the Application and Further Submissions being resolved (particularly ascertaining the relevant interest of the Chou Qin/Zhang association and the new board members settling in) that it would be *"impractical and unreasonable to insist that XPD not be allowed an extension of time to hold its AGM"*; and

(b) "XPD has fielded calls and emails from aggrieved shareholders and is aware of dissent through chat forums. It would clearly be in the best interests of those shareholders to allow XPD an extension of time in which to hold its AGM which would allow shareholders a reasonable time in which to consider the financial statements and consider whether they should vote for persons being nominated as directors."

s 37(2)(b), s 47C, s 47E (d)

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[redacted]

s 37(2)(b), s 47C, s 47E (d)

[redacted]

s 37(2)(b), s 47C, s 47E (d)

[redacted]

RECOMMENDATION

28. For the reasons set out above I recommend that the Application is refused.