

16 July 2019

Ms Kate Kidson  
Principal Adviser  
Listings Compliance (Melbourne)  
ASX Limited

By email: ListingsComplianceMlebourne@asx.com.au

Dear Ms Kidson

**ASX Correspondence**

We refer to your email to ViaGold Capital Limited (**VIA**) on Friday 12 July 2019 (**Email**).

In the Letter, ASX has requested some additional clarification regarding:

- (i) queries raised by ASX arising from the legal opinion from K-Bright Law Firm dated 8 April 2016 regarding the acquisition by VIA of its interest in Changzhou Hailin Rare Earth Company Limited (**Changzhou Hailin**), which interest is held indirectly via Polygoal Capital Limited and Shenzhen Xunda Investment Co. Limited (**SXIC**); and
- (ii) the explanation provided by VIA for the timing of the 'Profit Guidance' release by VIA to the market on 3 June 2019.

Please see the following responses to the queries raised by ASX arising from the legal opinion from K-Bright Law Firm:

1. **Can VIA confirm whether Zhou Hailin and Zhou Xing hold their respective interest in Changzhou Hailin free of encumbrance (aside from that created by them favour of Xunda / SXIC to give effect to the "60% economic interest" held by SXIC in Changzhou Hailin)?**

Yes, Zhou Hailin and Zhou Xing hold their respective interests in Changzhou Hailin free of encumbrance. Attached is a copy of a report from National Enterprise Credit Information Publicity System confirming that the shareholders of Chanzhou Hailin hold their interest free of encumbrance.

2. **Can VIA confirm whether Changzhou Hailin has all the necessary environmental approvals to operate lawfully?**

Yes, Changzhou Hailin has all the necessary environmental approvals to operate lawfully. Attached is a copy of the Approval Notice issued by the Environment Protection Bureau of Jintan, Changzhou City confirming that Changzhou Hailin has the environmental approval for production.

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3. **Can VIA confirm whether the interest created in Changzhou Hailin by the Equity Pledge Agreement is in force and that all legal and administrative steps required for that interest to be legally enforceable have been taken?**

The Equity Pledge Agreement (**EP Agreement**) is regarded by all parties and the local authority as a binding agreement between the parties. This is the case despite it not being registered legally by the local Industrial and Commercial Bureau.

VIA has been advised by the local authority that, until the relevant local regulation has been updated to provide for the variable interest entity (VIE) investment structure used by VIA in the acquisition of its interest in Changzhou Hailin, it will not, as a practical matter, be able to register the EP Agreement. However, the local authority has confirmed it will register the EP Agreement as soon as it can and, while the EP Agreement may not be legally registered, all parties and the local authority regard it as binding. This position has been confirmed by VIA's local lawyers.

Please see the following responses to the further queries from ASX regarding the explanation provided by VIA for the timing of the 'Profit Guidance' release by VIA to the market on 3 June 2019.

4. **If Changzhou Hailin's management decided not to notify VIA until "all relevant remedial action had been taken, including notifying of [sic] the incident to the local police", why was the matter reported to the police on May 7 2019 (as noted in the Notice issued by Jintan Branch of Changzhou Public Security Bureau dated 4 June 2019), which is around 2 weeks after VIA says it was notified by its auditors?**

Two separate factors explain the apparent delay in the police report. First, while Changzhou Hailin's management became aware of the inventory loss in April 2019, it was not immediately aware that there had been any material loss of inventory or that the incident (and the consequent loss) was the result of a third party's criminal conduct. It only became aware of those facts after initiating its own investigation of the incident.

Second, the local police paid several visits to both Changzhou Hailin and to the warehouse (and its owner) to make inquiries of the relevant parties and gather information before they permitted Changzhou Hailin management to file a formal report. This process is common practice as, in significant criminal cases like the present scenario, the police will undertake an initial investigation before the formal filing of a report in order to avoid false reports and the consequent waste of their manpower and resources.

5. **Noting that the incident occurred at a third-party location, please clarify exactly when Changzhou Hailin became aware of the incident (even if, at this stage, it wasn't aware of how much stock was stolen and how much damaged stock could be recovered).**

Changzhou Hailin became aware of the incident in early to mid-April 2019. The incident was first discovered by an employee who was undertaking an inventory check and was reported to the Operation Manager, Mr. Liu. At that time, knowledge of the incident was limited to the fact that part of the inventory had been moved to the sidewalk adjacent to the warehouse. The exact details as to what had happened were not known and it was not believed that any material quantity of the inventory had either been stolen or damaged at that time.

As Mr. Zhou Hailin was absent on a business trip at that time, Mr. Liu did not inform him of the incident until he returned in mid to late April 2019.

6. **Is the Zhou Hailin who is noted as the informant in the police notice the same person who holds 29% of the issued share capital of SXIC, 51% of the issued share capital of Changzhou Hailin, and was a vendor of Polygoal to VIA?**

Yes. Zhou Hailin (the informant noted in the police report) holds:

- (a) 28.91% of the issued share capital of SXIC;
- (b) 51% of the issued share capital of Changzhou Hailin,
- and was one of the vendors of Polygoal to VIA.

**7. If the answer to item 6 is “yes”:**

**7.1 Does Mr Zhou have an involvement in the day-to-day management of Changzhou Hailin?**

Yes. Mr. Zhou is involved in the management of Changzhou Hailin. He is also the management representative of Changzhou Hailin who usually attends the monthly management meetings at VIA's offices in Guangdong to report on the business and activities of Changzhou Hailin to VIA's senior management.

**7.2 Can VIA explain with greater particularity why Mr Zhou appears not to have immediately notified VIA of the incident upon discovery, given his history with the parties and understanding of Changzhou Hailin's accounting classification as a subsidiary of VIA and relevance of its operations to VIA's income and earnings?**

Mr. Zhou was away on a business trip when the incident happened and was not informed of the incident until he returned to Changzhou in mid to late April.

On becoming aware of the incident, Mr Zhou commissioned an internal investigation into it (as noted above in response to item 4). He also included reference to the incident in his report to VIA for the April 2019 management meeting (at VIA's offices in Guangdong), which report, because management meetings are held at month end, was not received by VIA until shortly after it had become aware (on 25 April 2019) of the incident, but not all details of it, via its auditor.

The investigation into the incident commissioned by Mr Zhou focussed on gaining an understanding of the facts, the quantum of the inventory loss and the return of the inventory to the warehouse. Initially, as noted above, the Changzhou Hailin management team did not believe that any material quantity of inventory had either been stolen or damaged.

When it became clear to Changzhou Hailin that both the inventory had been illegally removed from the warehouse and that inventory had been lost and/or damaged, the Changzhou management team:

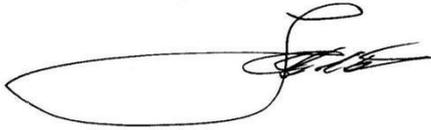
- (a) reported the incident to the local police;
- (b) initiated a more detailed investigation of the inventory to determine the extent of the inventory losses (both stolen and damaged beyond remediation) and, more importantly, initiated further analytical work on the damaged inventory to determine the appropriate course of action to maximise the recovery (remediation) of that stock (which work is still ongoing); and
- (c) changed its work practices and issued instructions to all management that they ought to report immediately on every event or incident, no matter the circumstances.

Relevantly, neither Mr Zhou nor the Changzhou Hailin believed at that time, or in May 2019, that VIA's auditor would insist on a full impairment of the inventory as:

- (d) a significant quantity of the inventory had been recovered; and
- (e) to the extent that inventory had been lost or damaged, compensation would be recovered and/or the damaged inventory would be capable of being remediated.

We trust that the above responses satisfactorily address the ASX's further queries. If ASX does for any reason require any further information concerning the inventory loss and the timing of the announcement by VIA to the market of its profit downgrade, please do not hesitate to email or call. My contact details are below.

Yours faithfully



Peter Leung  
Director, Company Secretary  
**ViaGold Capital Limited**



12 July 2019

**Mr Peter Leung**  
Company Secretary  
Viagold Capital Limited  
53 Bilian Road  
Jida District, Zhuhai  
GUANGDONG, CHINA

By email

Dear Mr Leung

**Viagold Capital Limited ('VIA')**

We refer to our letter dated 25 June 2019 (the "First Query") and to VIA's response received 11 July 2019. Further to the queries and responses in those letters, ASX asks VIA to respond separately to each of the following questions and requests for information:

1. The legal opinion from K-Bright Law Firm (see question 2 d. from the First Query) noted that:
  - it had not confirmed whether the interest in Changzhou Hailin held by Zhou Hailin and Zhou Xing was not also subject to an encumbrance in favour of a state-owned enterprise;
  - whether Changzhou Hailin held the required environmental approvals; and
  - the Equity Pledge Agreement, being one of the agreements by which SXIC was considered to have a 60% controlling interest in Changzhou Hailin,<sup>1</sup> had not been registered.

Please confirm whether:

- a. Zhou Hailin and Zhou Xing hold their respective interest in Changzhou Hailin free of encumbrance (aside from that which creates the "60% economic interest" held by SXIC in Changzhou Hailin);
  - b. Changzhou Hailing has all the necessary environmental approvals to operate lawfully; and
  - c. the interest created in Changzhou Hailin by the Equity Pledge Agreement is in force and that all legal and administrative steps required for that interest to be legally enforceable have been taken.
2. With reference to VIA's answer to question 5 from the First Query:
    - a. If Changzhou Hailin's management decided not to notify VIA until "all relevant remedial action had been taken, including notifying of [sic] the incident to the local police", why was the matter reported to the police on May 7 2019 (as noted in the copy of the Notice issued by Jintan Branch of Changzhou Public Security Bureau dated 4 June 2019 you provided in response to the First Query), which is around 2 weeks after VIA says it was notified by its auditors?

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<sup>1</sup> the other being a call option agreement, operating agreement, voting rights / proxy agreement, and exclusive technology consulting agreement, as referred to in VIA's release on the Market Announcements Platform dated 8 April 2016 entitled "Part 2 of 2 – ViaGold – Notice of EGM (IER)".

- b. Noting that the incident occurred at a third-party location, please clarify exactly when Changzhou Hailin became aware of the incident (even if, at this stage, it wasn't aware of how much stock was stolen and how much damaged stock could be recovered).
- c. Is the informant referred to in the police notice the same Zhou Hailin who holds 29% of the issued share capital of SXIC, 51% of the issued share capital of Changzhou Hailin, and was a vendor of Polygoal to VIA?
- d. If the answer to question 2.c. is "yes":
- i. Does Mr Zhou have an involvement in the day-to-day management of Changzhou Hailin?
  - ii. Can VIA explain with greater particularity why Mr Zhou appears not to have immediately notified VIA of the incident upon discovery, given his history with the parties and understanding of Changzhou Hailin's accounting classification as a subsidiary of VIA and relevance of its operations to VIA's income and earnings?

#### **When and where to send your response**

This request is made under listing rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **9:30 AM AEST Tuesday, 16 July 2019**.

You should note that if the information requested by this letter is information required to be given to ASX under listing rule 3.1 and it does not fall within the exceptions mentioned in listing rule 3.1A, VIA's obligation is to disclose the information "immediately". This may require the information to be disclosed before the deadline set out in the previous paragraph and may require VIA to request a trading halt immediately.

If you wish to request a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;
- that you are not aware of any reason why the trading halt should not be granted; and
- any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted.

You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under listing rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [ListingsComplianceMelbourne@asx.com.au](mailto:ListingsComplianceMelbourne@asx.com.au). It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

#### **Listing rules 3.1 and 3.1A**

In responding to this letter, you should have regard to VIA's obligations under listing rules 3.1 and 3.1A and also to Guidance Note 8 *continuous disclosure: listing rules 3.1 – 3.1B*. It should be noted that VIA's obligation to disclose

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information under listing rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

**Suspension**

If you are unable to respond to this letter by the time specified above ASX will likely suspend trading in VIA's securities under listing rule 17.3.

**Enquiries**

If you have any queries or concerns about any of the above, please contact me immediately.

Yours sincerely

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**Kate Kidson**

Principal Adviser, Listings Compliance

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