

# **WINSWAY COKING COAL HOLDINGS LIMITED**

## **(the “Company”)**

### **TERMS OF REFERENCE OF THE AUDIT COMMITTEE (the “Committee”)**

(adopted on 7 September 2010 and amended on [•] March 2012)

#### **Membership**

1. The Committee shall be appointed by the board of directors of the Company (the “Board”) from time to time from amongst the non-executive directors of the Company and shall consist of not less than three members, at least one of whom shall be an independent non-executive director with appropriate professional qualifications or accounting or related financial management expertise as required under Rule 3.10(2) of The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Listing Rules”).
2. The majority of the members of the Committee shall be independent non-executive directors of the Company.
3. The Chairman of the Committee shall be appointed by the Board and shall be an independent non-executive director of the Company.
4. The appointment of the members of the Committee may be revoked and new members can be appointed in their stead by resolutions passed by the Board and by the Committee respectively.
5. No alternate member of any member of the Committee may be appointed.
6. A former partner of the Company's existing auditing firm should be prohibited from acting as a member of the Committee for a period of one year from the date of his ceasing to be a partner of the firm or to have any financial interest in the firm, whichever is later.

#### **Attendance at meetings**

7. The Chief Financial Officer of the Company (or any officer(s) assuming the relevant functions but having a different designation) and a representative of the external auditors of the Company shall normally attend meetings of the Committee. Other members of the Board may be invited to attend a particular meeting in order to answer specific points or concerns of the Committee. Where an internal audit function exists, the head of internal audit should normally attend meetings. At least once a year the Committee shall meet with the external and internal auditors (if any) in the absence of any executive directors of the Company.
8. The Company Secretary of the Company shall be the secretary of the Committee.

#### **Frequency and proceedings of meetings**

9. Meetings shall be held not less than twice a year. Additional meetings should be held as and when the work of the Committee demands or at the request of the Board.

10. The Chairman of the Committee may convene additional meetings at his discretion.
11. The external auditors may request a meeting with the Committee if they consider it necessary.
12. The quorum of a meeting shall be two independent non-executive directors.
13. The meetings and proceedings of the Committee shall be governed by the provisions of the Articles of Association of the Company (as amended from time to time) (the “Articles”) regulating meetings and proceedings of the Board (so far as they are applicable), unless otherwise provided by these terms of reference or agreed by the Committee.

### **Annual General Meeting**

14. The Chairman of the Board shall invite the Chairman of the Committee to attend the Company’s Annual General Meeting. In the absence of the Chairman of the Committee, the Chairman of the Board shall invite another member of the Committee or failing this his duly appointed delegate to attend. Such attendee should be available to respond to shareholders’ questions on the Committee’s activities at the Annual General Meeting.

### **Authority**

15. The Committee is granted the authority to investigate any activity within these terms of reference and to direct all employees to cooperate as requested by members of the Committee.
16. The Committee is authorised by the Board to obtain external legal or other independent professional advice if required by the Committee and to invite the attendance of outsiders with relevant experience and expertise if it considers necessary.
17. The Committee shall report to the Board on any suspected fraud and irregularities, failures of internal control or suspected breaches of laws, rules and regulations which come to its attention in relation to the matters set out in these terms of reference and which are of sufficient importance to warrant the attention of the Board.
18. The Committee is to be provided with sufficient resources to perform its duties.

### **Responsibility**

19. The Committee is to serve as a focal point for communication between other directors, the external auditors and the internal auditors (where an internal audit function exists) of the Company as regards their duties relating to financial and other reporting, internal controls, external and internal audits and such other financial and accounting matters as the Board determines from time to time.
20. The Committee is to assist the Board in providing an independent review of the effectiveness of the financial reporting process, internal control and risk management system of the Company and its subsidiaries (the “Group”), overseeing the audit process and acting as the key representative body for overseeing the Group’s relations with the external auditor and performing other duties and responsibilities as may be assigned by the Board from time to time.

### **Duties, powers and functions**

21. The Committee is to:

- (a) be primarily responsible for making recommendations to the Board on the appointment, reappointment and removal of the external auditor, and to approve the remuneration and terms of engagement of the external auditor, and any questions of its resignation or dismissal;
- (b) review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process in accordance with applicable standards. The Committee should discuss with the external auditor the nature and scope of the audit and reporting obligations before the audit process commences;
- (c) develop and implement policy on engaging an external auditor to supply non-audit services. For this purpose, "external auditor" includes any entity that is under common control, ownership or management with the audit firm or any entity that a reasonable and informed third party knowing all relevant information would reasonably conclude to be part of the audit firm nationally or internationally. The Committee should report to the Board, identifying and making recommendations on any matters where action or improvement is needed;
- (d) monitor integrity of financial statements of the Company and the Company's annual report and accounts, half-year report and, if prepared for publication, quarterly reports, and to review significant financial reporting judgements contained in them. In reviewing the Company's annual report and accounts, half-year report and, if prepared for publication, quarterly reports before submission to the Board, the Committee should focus particularly on:-
  - (i) any changes in accounting policies and practices;
  - (ii) major judgmental areas;
  - (iii) significant adjustments resulting from audit;
  - (iv) the going concern assumptions and any qualifications;
  - (v) compliance with accounting standards; and
  - (vi) compliance with the Listing Rules and legal requirements in relation to financial reporting;
- (e) consider any significant or unusual items that are, or may need to be, reflected in the Company's annual report and accounts, half-year report and, if prepared for publication, quarterly reports and accounts, and should give due consideration to any matters that have been raised by the Company's qualified accountant, compliance officer or auditors;
- (f) review the Company's financial controls, internal control and risk management systems;
- (g) discuss the internal control system with the management of the Company to ensure that management has performed its duty to have an effective internal control system. This discussion should include the adequacy of resources, staff qualifications and experience, training programmes and budget of the Company's accounting and financial reporting function;

- (h) liaise with the Board, senior management of the Company and the person appointed as the Company's qualified accountant and the Committee must meet, at least twice a year, with the Company's auditors;
- (i) consider any major investigation findings on internal control matters as delegated by the Board or on its own initiative and management's response to these findings;
- (j) where an internal audit function exists, to ensure co-ordination between the internal and external auditors, and to ensure that the internal audit function is adequately resourced and has appropriate standing within the Company, and to review and monitor its effectiveness;
- (k) review the Group's financial and accounting policies and practices;
- (l) review the external auditor's management letter, any material queries raised by the auditor to management about accounting records, financial accounts or systems of control and management's response;
- (m) ensure that the Board will provide a timely response to the issues raised in the external auditor's management letter;
- (n) be familiar, through the individual efforts of its members, with the financial reporting principles and practices applied by the Group in preparing its financial statements;
- (o) review annually the external auditors' fees which have been negotiated with management of the Company;
- (p) review the extent of any non-audit services provided by the external auditors and consider whether the provision of such services will impair their independence or objectivity;
- (q) review and consider the budget or revised budget of the Company prepared by the Board;
- (r) evaluate the level of cooperation provided by the Company to the external auditors, including their access to all requested records, data and information; obtain comments from management of the Company regarding the responsiveness of the external auditors to the Group's needs; make enquiries with the external auditors as to whether there has been any disagreements with management of the Company which if not satisfactorily resolved would result in the issue of a qualified report on the Group's financial statements;
- (s) when the external auditors supply a substantial volume of non-audit services to the Group, to keep the nature and extent of such services under review, seeking to balance the maintenance of objectivity and value for money;
- (t) recommend to the Board any appropriate extensions to, or changes in, the duties of the Committee;
- (u) meet with the external auditors of the Company, at least annually, in the absence of the management of the Company, to discuss matters relating to its audit fees, any issues arising from the audit and any other matters the external auditors may wish to raise;

- (v) review arrangements that the employees of the Group can use, in confidence, to raise concerns about possible improprieties in financial reporting, internal control or other matters. The Committee should ensure that proper arrangements are in place for fair and independent investigation of these matters and for appropriate follow-up action; and
- (w) consider other topics, as defined or assigned by the Board from time to time.

### **Reporting Procedures**

- 22. The Committee should report to the Board on a regular basis on its decisions or recommendations.
- 23. Full minutes of the meetings of the Committee shall be kept by the secretary of the Committee, who shall send draft and final versions of minutes of meetings and all written resolutions of the Committee to all members of the Committee for their comment and records within a reasonable time after the meeting.
- 24. At the next meeting of the Board following a meeting of the Committee, the Chairman of the Committee shall report to the Board on the findings and recommendations of the Committee. At least once annually, the Committee should present a report in writing to the Board which addresses the work and findings of the Committee during the year.

### **Publication of the Terms of Reference**

- 25. A copy of these terms of reference will be posted on the websites of the Company and The Stock Exchange of Hong Kong Limited.