



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
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Toronto ON M5H 3S8

**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
BOYUAN CONSTRUCTION GROUP, INC.**

ORDER

WHEREAS on May 30, 2013, the Ontario Securities Commission (the “Commission”) issued a Notice of Hearing pursuant to subsection 127(1) and section 127.1 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the “*Act*”) in relation to Boyuan Construction Group, Inc. (the “Respondent”);

AND WHEREAS the Respondent and Staff of the Commission (“Staff”) entered into a settlement agreement dated May 30, 2013 (the “Settlement Agreement”) in which they agreed to a settlement of the proceeding commenced by the Notice of Hearing, dated May 30, 2013, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing and the Statement of Allegations, and upon hearing submissions from counsel for Staff and the Respondent;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED that:

1. The Settlement Agreement is approved;
2. The Respondent shall be required to retain Control Solutions International, Inc. or such other consultant that is not unacceptable to Staff (the “Consultant”), at the Respondent’s expense, in order to conduct a comprehensive examination and review of its internal controls over financial reporting, policies and procedures, training,

ethics and compliance with financial and other reporting requirements of Ontario securities law, as set out in the Terms of Reference for the Consultant, attached hereto. The Consultant shall be required to provide reports to the Respondent's board of directors, its audit committee and Staff, and the Respondent shall be required to implement such changes;

3. The Respondent shall, contemporaneously with the signing of this Order, voluntarily pay to the Commission the sum of \$200,000, to be designated for allocation to or for the benefit of third parties or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, in accordance with subsection 3.4(2)(b) of the *Act*; and
4. The Respondent shall, contemporaneously with the signing of this Order, pay Staff's investigation costs in the amount of \$100,000.

DATED at Toronto this 4th day of June, 2013.

"James D. Carnwath"

James D. Carnwath, Q.C.

TERMS OF REFERENCE FOR THE CONSULTANT

Respondent agrees to comply with the following undertakings:

A. Retention of a Consultant

i. Boyuan shall retain, pay for, and enter into an agreement with an independent consultant ("Consultant"), not unacceptable to Staff, to conduct a comprehensive examination and review of the areas specified below and to make recommendations to Boyuan's board of directors and Staff. The Consultant's compensation and expenses shall be borne exclusively by Boyuan, and shall not be deducted from any amount due under the provisions of the Order at Schedule "A" of the Settlement Agreement (the "Order").

ii. The agreement with the Consultant ("Agreement") shall provide that the Consultant examine:

- a. The policies, procedures and effectiveness of Boyuan's internal accounting controls and its internal controls over financial reporting and disclosure, including, but not limited to, related party transactions and cash receipts and disbursements;
- b. The policies, procedures, and effectiveness of Boyuan's regulatory and compliance functions, including the operations of any committees or other mechanisms established to review and approve transactions or for the purpose of preventing the recording of transactions or financial reporting results in a manner that is not in compliance with International Financial Reporting Standards ("IFRS");
- c. Boyuan's training of its accounting staff concerning financial reporting and IFRS and compliance with the financial and other reporting requirements of Ontario securities law;
- d. Boyuan's ethics and compliance policies, including the adequacy and effectiveness of any whistleblower procedures designed to allow employees and others to report confidentially matters that may bear on Boyuan's financial reporting obligations;
- e. Boyuan's records management and retention policies and procedures, including without limitation such procedures with respect to e-mail and other electronically stored information;

- f. The functioning of Boyuan's audit committee, including the audit committee's policies and procedures and the methods for the selection of its members; and
- g. Boyuan's policies and procedures concerning its communications with its outside auditors.

B. Consultant's Reporting Obligations

i. The Consultant shall issue a report to Boyuan's board of directors, its audit committee, and to Staff in English within three months of appointment, provided however, that the Consultant may seek to extend the period of review for one additional three-month term by requesting such an extension from Staff. After consultation with Boyuan, Staff shall have discretion to grant such extension for the period requested if deemed reasonable and warranted.

ii. The Consultant's report shall address the Consultant's review of the areas specified in paragraph A.ii above and shall include a description of the review performed, the conclusions reached, the Consultant's recommendations for any changes or improvements to Boyuan's policies and procedures for a company of its size and industry, as the Consultant reasonably deems necessary to conform to the law and best practices, and a procedure for implementing the recommended changes or improvements.

iii. Boyuan shall adopt all recommendations contained in the Consultant's report, provided, however, that within forty-five days of its receipt of the report, Boyuan shall in writing advise the Consultant and Staff of any recommendation that it considers to be unnecessary or inappropriate. With respect to any recommendation that Boyuan considers unnecessary or inappropriate, Boyuan need not adopt that recommendation at that time but shall propose in writing to the Consultant an alternative policy, procedure, or system designed to achieve the same objective or purpose, for consideration by the Consultant.

iv. As to any recommendations of the Consultant with respect to which Boyuan and the Consultant do not agree, including any recommendations that Boyuan considers unnecessary or inappropriate, such parties shall attempt in good faith to reach an agreement within ninety days of the issuance of the Consultant's report. In the event Boyuan and the Consultant are unable to

agree on an alternative proposal, Boyuan shall abide by the determinations of the Consultant, or apply to the Commission to resolve the disagreement.

v. Boyuan shall retain the Consultant for a period of twelve months from the date of appointment in accordance with paragraph C below. After the Consultant's recommendations become final pursuant to paragraph B above, the Consultant shall oversee the implementation of such recommendations and provide a report to Boyuan's board of directors, its audit committee, and to Staff twelve months after appointment concerning the progress of the implementation. If, at the conclusion of this twelve-month period, less than all the recommendations of the consultant (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters, Staff may, in its discretion, direct Boyuan to extend the Consultant's term of appointment until such time as all recommendations (to the extent deemed significant by Staff) have been substantially implemented for at least two successive fiscal quarters.

vi. In addition to the reports identified above, the Consultant shall provide Boyuan's board of directors, its audit committee, and Staff with such documents or other information concerning the areas specified in paragraph A.ii above as any of them may request during the pendency or at the conclusion of the review.

C. Terms of Consultant's Retention

i. Within forty-five days after the date of entry of the Order, Boyuan will submit to Staff a proposal setting forth the identity, qualifications, and proposed terms of retention of the Consultant. Staff, within thirty days of such notice, will either (a) deem Boyuan's choice of Consultant and proposed terms of retention not unacceptable or (b) require Boyuan to propose an alternative Consultant and/or revised proposed terms of retention within fifteen days. This process will continue, as necessary, until the proposed Consultant and retention terms are not unacceptable to Staff.

ii. The Consultant shall have reasonable access to all of Boyuan's books and records and the ability to meet privately with Boyuan's personnel and auditors. Boyuan shall instruct and otherwise encourage its officers, directors, and employees to cooperate fully with the review conducted by the Consultant, and inform its officers, directors, and employees that failure to

cooperate with the review may be grounds for dismissal, other disciplinary actions, or other appropriate actions.

iii. The Consultant shall have the right, as reasonable and necessary in his or her judgment, to retain, at Boyuan's expense, legal counsel, accountants, and other persons or firms, other than officers, directors, or employees of Boyuan, to assist in the discharge of the Consultant's obligations. Boyuan shall pay all reasonable fees and expenses (as reasonably documented) of any persons or firms retained by the Consultant.

iv. The Consultant shall make and keep notes of interviews conducted, and keep a copy of documents gathered, in connection with the performance of his or her responsibilities, and require all persons and firms retained to assist the Consultant to do so as well.

iv. If the Consultant determines that he or she has a conflict with respect to one or more of the areas described in paragraph A.ii above, he or she shall delegate his or her responsibilities with respect to that subject to a person who is chosen by the Consultant and who is not unacceptable to Staff.

vi. For the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, solicitor-client, auditing, or other professional relationship with Boyuan, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such, and shall require that any firm with which the Consultant is affiliated or of which the Consultant is a member, or any person engaged to assist the Consultant in performance of the Consultant's duties under the Order, not, without prior written consent of Staff, enter into any employment, consultant, solicitor-client, auditing, or other professional relationship with Boyuan, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.