

## SFC obtains \$420 million compensation for GOME over breaches of directors' duties by former chairman and wife in share repurchase

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The former chairman of GOME Electrical Appliances Holding Limited (GOME or the Company), Mr Wong Kwong Yu, and his wife Ms Du Juan, a former director of GOME, have agreed to compensate GOME \$420 million in an agreement with the Securities and Futures Commission (SFC) to rectify their breaches of duties as directors of GOME and to resolve proceedings commenced by the SFC under section 213 of the Securities and Futures Ordinance in connection with certain share repurchases (Share Repurchase) by the Company.

Under the agreement, which follows mediation, Wong and Du have also agreed to take a number of remedial steps for full and final resolution of the SFC's proceedings (Note 1).

The SFC will stay its proceedings and take no further action in respect of this case, provided these steps are completed.

The SFC commenced proceedings against Wong, Du and two companies in August 2009 alleging that Wong and Du organised the Share Repurchase, which took place between 22 January and 5 February 2008, to raise cash to repay a \$2.4 billion personal loan to a financial institution which was due by 11 February 2008 (Note 2).

Wong directed GOME to repurchase the majority of the 136,937,000 shares originally held by him which constituted approximately 70% of the total number of shares repurchased by GOME in the Share Repurchase (Note 3).

For the purposes of resolving the SFC's proceedings and seeking ratification from the minority shareholders, Wong and Du have agreed that they have breached their directors' duties to GOME to act properly and in the best interests of GOME and to avoid making any unauthorized or improper gain at the expense of GOME.

In summary, they have accepted that:

- they failed to ensure the Share Repurchase was properly authorized by GOME's board;
- Wong did not make full disclosure of such personal interest as he may have had in the Share Repurchase as a seller of the GOME shares; and
- given such personal interest as he may have had in the Share Repurchase, Wong should not have participated in the meeting of the executive directors that authorized the Share Repurchase nor should he have participated in implementing the Share Repurchase (Note 4).

To resolve these matters, Wong and Du have agreed to pay GOME an aggregate amount of \$420,608,765.75, representing the gains, together with accrued interest, received by Wong as a result of his sale of GOME shares to GOME as part of the Share Repurchase and the loss incurred by GOME (Note 5).

Based upon the advice of an independent expert appointed by the SFC, the SFC has determined that the gains that Wong received in connection with the Share Repurchase comprise three components:

- the discount that would have applied to the sale of the same parcel of GOME shares by way of private placement at the time ie, the amount that GOME would have saved had those shares been paid by way of private placement rather than in the market;
- the benefit caused by the increase in GOME's share price due to the heavy demand for GOME shares during the Share Repurchase period; and
- the gains earned from the sale of an additional 7,137,000 shares originally held by Wong to other purchasers which occurred at the highest prices during the Share Repurchase period.

Wong and Du have also agreed to requisition a special general meeting of the Company (SGM) and to prepare a notice of meeting to be sent to all shareholders of GOME in which they will seek shareholders' resolutions to ratify the Share Repurchase and their breaches of directors' duties to the

Company. Payment of the compensation is dependent upon GOME's independent shareholders passing the ratification resolution.

The SFC considers the amount proposed to be paid to GOME, subject to approval at the SGM, constitutes a proper expiation of the gains of Wong and the loss to GOME as a result of the breaches by Wong and Du. Wong and Du also agreed to pay all costs involved in convening and holding the SGM and will pay the SFC's legal costs.

Upon payments of the sums as stated above and the ratification of the relevant breaches of Wong and Du arising from the Share Repurchase being obtained at the SGM, the SFC will terminate the proceedings and not initiate any further action in respect of this matter (Note 6).

In entering into the agreement with Wong and Du, the SFC took into account:

- the agreement will enable GOME to receive in full the compensation calculated on the basis of the independent expert valuation without the costs and risks of separate legal proceedings;
- Wong and Du have accepted their wrongdoings as aforementioned and by paying a sum higher than their own valuation, they can now do right by GOME and its minority shareholders (Note 7);
- GOME shareholders will be given an opportunity to consider whether to approve the resolutions to ratify various breaches by Wong and Du; and
- the agreement will bring the matter to an appropriate end for the benefit of the minority shareholders of GOME.

The SFC's Executive Director of Enforcement, Mr Mark Steward, said: "Hong Kong listed companies are not personal fiefdoms. Corporate actions must be properly authorized, they must have proper purposes and fundamentally directors must take into account the best interests of the company and all its shareholders. It is right that the minority shareholders will now have the opportunity to scrutinise the matter for themselves and decide whether the misconduct should be ratified."

"The SFC will continue to take what action is necessary to ensure the interests of the investing public are adequately protected and, where appropriate, to ensure listed company directors are accountable for breaches of duty that harm the interests of the company and the market," Mr Steward added.

End

Notes:

1. The parties agreed and jointly appointed Mr John L Saunders, SBS, a former High Court Judge, to serve as an independent mediator to mediate the matter.
2. The SFC's proceedings were commenced under section 213 of the Securities and Futures Ordinance. The Court of First Instance granted an interim injunction to freeze assets of up to \$1,655,167,000 in August 2009. The injunction against the two companies was later discharged on 8 September 2009 upon deposit with the court of share certificates representing 779,255,678 shares of GOME (the value of which was approximately equivalent at the then share price to the value of assets frozen under the injunction) and the injunction against Du was discharged on 2 March 2011. Please see the SFC's press releases dated [7 August 2009](#), [8 September 2009](#) and [3 March 2011](#).
3. Between 22 January 2008 and 5 February 2008, GOME bought back on-market an aggregate of 129.8 million of its shares worth approximately \$2.2 billion.
4. On 22 May 2007, the shareholders of GOME granted a general mandate for share repurchases where to do so was in the best interests of the Company on terms favourable to the Company. On 21 January 2008, the Share Repurchase was authorized by a meeting of the executive directors of the Company but no notice of meeting had been sent to the non-executive directors. The minutes of meeting recorded that the executive directors considered that in view of the sub-prime event in the US and the appreciation of the renminbi, the share price was below its intrinsic value, GOME had not identified any investment opportunity and the Share Repurchase was in the best interests of the Company. The resolution approving the Share Repurchase was not accompanied by any analysis of these or any other matters. The Share Repurchase commenced the next day. Under Rule 10.06(2) of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited, GOME is prevented from repurchasing any shares held by Wong under an on-market offer and under Rule 2 of the SFC's Codes on Takeovers and Mergers and Share Repurchases (now known as Codes on Takeovers and Mergers and Share Buy-backs), any off-market purchase of Wong's shares by GOME would have required prior approval of the SFC. In the circumstances, both these rules were breached.
5. The amount alleged by the SFC in calculating the gains accrued to Wong is less than the amount that was frozen by the court when the SFC commenced these proceedings as it follows revised expert advice obtained by the SFC on the proper approach to be made in valuing the unauthorized gains of Wong and the loss to GOME. The calculation of interest is based on the prime rate plus 2% per annum from 5 February 2008 until payment is made by Wong into court or other arrangement is agreed with the SFC.
6. Assuming the resolution is approved, the SFC will file a Notice of Discontinuance to the court.
7. The amount to be paid by Wong and Du is more than the amount suggested by the independent expert

valuation retained by them. However, they have agreed to pay the amount determined by valuation of an independent expert appointed by the SFC in the interest of resolving the litigation in a manner which will without any shadow of doubt cause GOME to receive full compensation.

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