

## SFC seeks court orders against former chairman and directors of Sinogreen

8 Oct 2014

The Securities and Futures Commission (SFC) has commenced legal proceedings in the Court of First Instance against the former chairman, Mr Tong Shek Lun, and two former executive directors, namely Ms Kinny Ko Lai King and Ms Regina Chung Wai Yu, of Sinogreen Energy International Group Limited (Sinogreen) (Notes 1 & 2).

The SFC alleges that Tong, Ko and Chung had breached their duties as directors of Sinogreen in disposing of a subsidiary in 2008 resulting in loss to Sinogreen. The SFC is seeking court orders that the three former directors be disqualified as company directors and pay compensation to Sinogreen for the loss allegedly caused by their misconduct (Notes 3 & 4).

The SFC's action follows an investigation into Sinogreen's disposal of a subsidiary which engaged in the manufacturing of printed circuit boards on the Mainland (the Disposal). The SFC alleges that:

- in the course of negotiating the Disposal with the purchaser, Tong entered into a secret agreement with the purchaser via a private company and received a secret profit of US\$1 million (Note 5).
- Tong was required to and failed to make full and proper disclosure of his interests in the arrangement with the purchaser to Sinogreen, his fellow directors, the Stock Exchange of Hong Kong Limited (SEHK) and Sinogreen's shareholders.
- Ko and Chung failed to act with due care and diligence and to make full and proper inquiries about the Disposal before approving it.
- Tong, Ko and Chung failed to ensure Sinogreen fully complied with disclosure and approval requirements under the Listing Rules of SEHK (Note 6).

End

Notes:

1. Sinogreen, formerly known as Karce International Holdings Company Limited, was listed on the Main Board of the Stock Exchange of Hong Kong Limited (SEHK) on 13 March 1998. Sinogreen was principally engaged in the business of the manufacture of and trading in electronic products, conductive silicon rubber keypads, printed circuit boards, and telecommunication products and investment holdings.
2. The legal proceedings were commenced under section 214 of the Securities and Futures Ordinance (SFO). The first hearing of the petition presented by the SFC will be heard in the Court of First Instance on 16 December 2014.
3. Under section 214 of the SFO, the court may, among other things, make orders to disqualify a person from being a director or being involved, directly or indirectly, in the management of any corporation for up to 15 years, if the person is found to be wholly or partly responsible for the company's affairs having been conducted in a manner involving defalcation, fraud, misfeasance or other misconduct towards it or its members or resulting in members not having been given all the information that they might reasonably expect. The court may also order a company to bring proceedings in its own name against any person specified in the order and may make any other order it considers appropriate.
4. The disposal concerns the selling of 100% of the equity interest in Jet Master Limited (Jet Master) by Sinogreen's indirect wholly owned subsidiary, China Ample Investments Limited (China Ample) to KFE Hong Kong Limited (KFE Hong Kong) in 2008. Jet Master held Dongguan Tai Shan Electronics Co Limited, which ran a factory manufacturing printed circuit boards on the Mainland (the PCB factory).
5. The SFC alleges that the total considerations for the Disposal was originally set at US\$ 4 million as per an initial term sheet dated 28 July 2008. Pursuant to the term sheet, Sinogreen would, among other things, undertake to help KFE Hong Kong upgrade the sewage facilities of the PCB factory. On 12 and 26 September 2008, Tong, on behalf of Sinogreen, signed sale and purchase agreements with KFE Hong Kong which stipulated that the considerations for the Disposal would be US\$3 million only. Also on 26 September 2008, Tong signed a consultancy agreement (Consultancy Agreement) on behalf of his wholly owned company called Extract Group Limited (Extract Group) with KFE Hong Kong, pursuant to which Extract Group would take up the sewage upgrading project for the PCB factory and receive consultancy fees of US\$1 million.
6. The SFC alleges that when taking into account the Consultancy Agreement the Disposal should have been treated as a major transaction and a connected transaction under the Listing Rules of SEHK, and thus

Sinogreen had failed to comply with the disclosure and approval requirements applicable to a major transaction and a connected transaction.

[A summary of the material events and the allegations is posted on the SFC website](#)

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SFC's Allegations against Respondents  
(an extract from the SFC's Petition filed with the Court)

Former directors of the Company involved

1. The 1st Respondent ("**Tong Shek Lun**") was the founder of the Company and the Chairman and Managing Director. He was responsible for formulating the overall business strategy, strategic planning and business development of the Group. He has been involved in the trading of watches and clocks from 1980 to 1991 before he established the Group. It is stated in the 2008 Annual Report of the Company that the 1st Respondent has more than 19 years experience in the electronic industry.
2. The 2nd Respondent ("**Ko Lai King Kinny**") was an Executive Director of the Company. She was responsible for the overall administration and human resources management of the Group. She joined the Group in November 1991 and has over 19 years experience in the electronic industry.
3. The 3rd Respondent ("**Chung Wai Yu Regina**") was an Executive Director of the Company. She was responsible for the overall sales and marketing of the products manufactured by the Group. The 3rd Respondent holds a bachelor of arts degree in religious studies from the Hong Kong Baptist College, a diploma in business management from the Hong Kong Management Association and a master degree in strategic marketing from the University of Hull in the United Kingdom. It is stated in the 2008 Annual Report of the Company that the 3rd Respondent joined the group in August 1993 and has over 16 years experience in sales and marketing of products manufactured by the Group.
4. The 1st, 2nd and 3rd Respondents resigned from their positions as executive directors of the Company on 2 March 2009, 8 October 2008 and 8 October 2008 respectively.

## Other Relevant entities

### 5. At all material times:-

- a. The Company comprises of a number of wholly-owned subsidiaries (together "**the Group**").
- b. One of the Group's indirect wholly-owned subsidiary is Dongguan Tai Shan Electronics Co., Limited ("**Tai Shan**"), which is a company established in The People's Republic of China (the "**PRC**") and whose principal activity is the manufacture and sale of printed circuit boards ("**PCB**").
- c. Tai Shan is wholly and beneficially owned by Jet Master Limited ("**Jet Master**"), which is an investment holding company incorporated in the British Virgin Islands on 2 January 1997 and is and was at all material time a wholly owned subsidiary of China Ample. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are the directors of Jet Master.
- d. China Ample Investments Limited ("**China Ample**"), is a company incorporated in the British Virgin Islands on 6 November 2003 and is and was at all material time wholly and beneficially owned by the Company.

## The Sale of the PCB Business

6. On 30 July 2008, the Company announced that it had entered into a non-binding term sheet (the "Term Sheet") with, amongst others, a company listed on the Centrex Market of Nagoya Stock Exchange in Japan, setting out the parties' intention in relation to a possible disposal of the entire issued shares of Jet Master, together with Tai Shan, (together, the "**Disposal Target**") at an intended consideration of US\$4 million ("**First Announcement**").
7. The seller under the Term Sheet was the Company, and the purchaser was KFE Hong Kong Co., Ltd ("**KFE Hong Kong**") which is a company incorporated in Hong Kong and is a subsidiary of KFE Japan Co., Ltd ("**KFE Japan**"), a company listed on the Centrex Market of Nagoya Stock Exchange in Japan. The Term Sheet was signed by Tong Shek Lun on behalf of the Seller and signed by Takaro Harada, the Chief Executive Officer on behalf of the Purchaser.

8. Under the Term Sheet, the consideration for the proposed disposal was stated to be US\$4 million, which was broken down as follows:-
- (1) Approximately US\$1.9 million for the Disposal Target's factory land, production set up and property;
  - (2) Approximately US\$1.1 million for the Disposal Target's machinery; and
  - (3) Approximately US\$1 million for the Disposal Target's sewage facilities together with the licences. The Term Sheet stipulated that the Company would undertake to assist KFE Hong Kong and Tai Shan to upgrade the Disposal Target's sewage facilities together with the licence from the current sewage rate of 300 tons per day to 800 tons per day.
9. On 12 September 2008, China Ample entered into a sale and purchase agreement with KFE Hong Kong for the disposal of the Group's PCB business at a consideration of US\$3 million (the "**SPA**"). The SPA was signed by Tong Shek Lun on behalf of China Ample, the Vendor and signed by Takaro Harada on behalf of KFE Hong Kong, the Purchaser.
10. Tong Shek Lun, Ko Lai King and Chung Wai Yu signed minutes of board meeting (the "**Board Minutes**"), dated the same day as the SPA, unanimously resolving, *inter alia*, that:-
- (1) The proposal to enter into the SPA and an agreement supplemental to it was in the commercial interest of the Company;
  - (2) The form and substance of the supplemental agreement be approved and that any one director be authorised to sign it on behalf of Company;
  - (3) The form and substance of the announcement tabled be approved and arranged for publication.

#### 26 September 2008

11. On 26 September 2008, China Ample signed a further agreement in exactly the same form as the SPA, and two supplemental sale and purchase agreements, with KFE Hong Kong. The aforementioned agreements were all signed by the Tong Shek Lun on behalf of China Ample as the Vendor and signed by Takaro Harada on behalf of KFE Hong Kong as the Purchaser. Their effect was to

dispose of the Group's PCB business. The total purchase price was stated to be US\$3 million, payable by the Purchaser in the manner set out in the SPA.

12. The SPA was concerned only with the sale of the PCB business to KFE Hong Kong (including a sewage licence for 300 ton of sewage per day) and did not include an upgraded licence for sewage facilities as contemplated in the Term Sheet. However it did contain an undertaking that China Ample would use all its reasonable endeavours to assist KFE Hong Kong to upgrade the sewage facilities of the PCB business and to obtain a licence for those upgraded facilities.
13. On the same day, KFE Hong Kong signed a consultancy agreement appointing Extract Group Limited as a consultant, which consultancy agreement was signed by Tong Shek Lun on behalf of Extract Group Limited and signed by Takaro Harada on behalf of KFE Hong Kong (the "**Consultancy Agreement**"). Extract Group Limited is a company incorporated in the British Virgin Islands in 2007. It was wholly owned and controlled by Tong Shek Lun.
14. Under the Consultancy Agreement, Extract Group Limited agreed to provide and carry out the following services in the PRC:
  - i. Carrying out research on KFE Hong Kong's manufacturing arm in the PRC existing sewage condition, namely Dongguan Tai Shan Electronics Co., Ltd, a company incorporated under the laws of the PRC.....
  - ii. Planning and designing sewage upgrade plans including, but not limited to, constructing sewage facilities up to 800 tons per day, for the manufacturing arm of KFE Hong Kong in the PRC;
  - iii. Liaising with any professionals and government officials in the PRC for sewage upgrade and related licencing of the manufacturing arm of KFE Hong Kong;
  - iv. Reporting to KFE Hong Kong as KFE Hong Kong may request in writing as to performance of the Services;

- v. Any other related services to be carried out in the PRC as the parties may agree from time to time.

15. The consultancy fee was agreed at US\$1 million to be paid to Extract Group Limited in the manner set out in the Consultancy Agreement.

#### The Company's announcement of the sale of the PCB business

16. On 26 September 2008, the Company issued a public announcement informing its shareholders and the investing public, inter alia, that:-

- (1) On 12 September 2008, China Ample had entered into the SPA to dispose of the Group's PCB business to KFE Hong Kong at a total consideration of US\$3 million;
- (2) Given that the relevant percentage ratios under Rule 14.07 of the Listing Rules for the Disposal under the S&P Agreement are less than 25% but greater than 5%, the Disposal constitutes a discloseable transaction of the Company under the Listing Rules which is subject to the reporting, publication of announcement and circular requirements but is exempt from the shareholders approval requirement under Chapter 14 of the Listing Rules (the "**Second Announcement**").

#### The Company's Circular issued on 17 October 2008

17. On 17 October 2008, the Company issued a circular to its shareholders, providing them with information in relation to the SPA (the "**Circular**"). The Circular stated inter alia, that:-

- (1) the consideration for the sale of the PCB business under the SPA was US\$3 million;
- (2) Given that the relevant percentage ratios under Rule 14.07 of the Listing Rules for the Disposal under the S&P Agreement are less than 25% but greater than 5%, the Disposal constitutes a discloseable transaction of

the Company under the Listing Rules which is subject to the reporting, publication of announcement and circular requirements but is exempt from the shareholders' approval requirement under Chapter 14 of the Listing Rules.

The Annual Report 2008 of the Company published on 29 April 2009

18. The Company published its Annual Report 2008 (for the year ended 31 December 2008) on 29 April 2009 which stated (at page 124 thereof), inter alia, that:-

- (1) On 12 September 2008, the Group has entered into a conditional sale and purchase agreement to sell (i) the entire issued share capital of Jet Master and the entire registered capital of Tai Shan which was wholly owned by Jet Master and (ii) the factory land, production set up, properties with relevant licenses and the lease, machinery and sewage facilities. Subsequently on 26 September 2008, the Group has entered into a supplementary agreement to sell the entire inventory of Tai Shan as at 30 September 2008 at market value. The disposal was completed on 30 September 2008.
- (2) The total consideration for the disposal was HK\$30,209,000, representing cash payment of HK\$22,784,000 and the subscription of shares worth HK\$7,425,000, with a net cash inflow arising on the disposal of HK\$22,784,000.

19. The terms of the Consultancy Agreement and the US\$1 million paid to Extract Group Limited were not disclosed in the Second Announcement, the Circular or the Annual Report 2008 of the Company.

High Court Action No. 457 of 2010

20. In a High Court action in Hong Kong brought by KFE Hong Kong against Extract Group Limited, (HCA 457/2010), KFE Hong Kong claimed that total consideration payable by it for the purchase of the PCB business was US\$4 million, which was divided into 2 parts: (1) acquisition of the Disposal Target for a consideration of US\$3 million by way of the SPA; and (2) consultancy services for procurement of an



upgraded sewage licence for a fee of US\$1 million pursuant to the Consultancy Agreement. It claimed that the Company had nominated Extract Group Limited as the consultant to enter into the Consultancy Agreement with it.

21. In that same action, Extract Group Limited alleged that the Consultancy Agreement was ancillary to and was to be construed in accordance with the SPA.

False and/or misleading representations made to the shareholders of the Company and the public and/or material non-disclosures

22. The Second Announcement and the Circular contained the following false representations and/or material non-disclosure, namely:

- (1) The representation that the Group disposed of the PCB Business for a total consideration of US\$3 million is false, in that the total consideration paid by KFE Hong Kong in relation to the sale of the PCB Business was in truth US\$4 million;
- (2) The representation that the sale of the PCB Business was considered a discloseable transaction is false, in that the payment of a total consideration of US\$4 million made it a major transaction by reference to the applicable percentage ratios under Chapter 14 of the Listing Rules thereby requiring shareholders' prior approval;
- (3) The failure to disclose the existence of the Consultancy Agreement, its connection with the SPA and the ownership or control of Extract Group Limited;
- (4) The failure to disclose that the Disposal was a connected transaction as defined in Chapter 14A of the Listing Rules.

23. The Annual Report 2008 of the Company published on 29 April 2009 contained the following material non-disclosures, namely:

- (1) The failure to disclose the existence of the Consultancy Agreement, its connection with the SPA and the ownership or control of Extract Group Limited;
- (2) The failure to disclose that the Disposal was a connected transaction as defined in Chapter 14A of the Listing Rules.

#### Breaches of the Listing Rules

24. In connection with the sale of the PCB business, the Company has committed numerous breaches of the Listing Rules, in particular:-

- (1) The failure to notify the SEHK of the proposed sale of the PCB business and to demonstrate to the SEHK as to whether or not Extract Group Limited and KFE Hong Kong should be regarded as connected persons, in breach of Rules 14A.05 and Rule 14A.11 of the Listing Rules;
- (2) The failure to disclose in the Second Announcement and the Circular the true extent of the total consideration for the sale of the PCB business, in breach of Rules 14A.56(2), 14A.58(3)(a) and 14A.59(2) of the Listing Rules;
- (3) The failure to observe the reporting, announcement and independent shareholders' approval requirements under Rules 14A.45, 14A.47 and 14A.48 of the Listing Rules;
- (4) publishing the Annual Report 2008 which did not describe the connected relationship between the 1<sup>st</sup> Respondent and Extract Group Limited and did not disclose the nature and extent of the connected person's interest in the transaction, in breach of Rules 14A.45(2), 14A.45(3) and 14A.45(5) of the Listing Rules;
- (5) publishing the Annual Report 2008 which contained information which was not accurate or complete in all material respects and/or was misleading or deceptive, in breach of Rule 2.13(2) of the Listing Rules;

- (6) Tong Shek Lun being a director of the Company who had a material interest in Extract Group Limited and/or the Consultancy Agreement, should not have voted on any board resolution approving the SPA, in breach of Rule 13.44 of the Listing Rules.

Liability of Tong Shek Lun, Ko Lai King Kinny and Chung Wai Yu Regina under section 214 of the SFO

25. Tong Shek Lun, being the Chairman and Executive Director of the Company at all material times:-

- (1) was fully aware of the full terms of the sale of the PCB Business (including the true amount of the consideration payable);
- (2) ought not to have signed the Consultancy Agreement on behalf of Extract Group Limited without making full and proper disclosure of his interests in Extract Group Limited and the matters mentioned in sub-paragraph (1) above to the Company, his fellow directors, the SEHK and the Company's shareholders;
- (3) knew or ought to have known that the Company made numerous false and/or misleading representations to the shareholders of the Company and the public, and/or failed to make full and proper disclosure of material facts or matters, and/or breached the Listing Rules in numerous ways, as particularised above;
- (4) caused and permitted or allowed these to happen.

26. Ko Lai King Kinny and Chung Wai Yu Regina, as Executive Directors of the Company at all material times:-

- (1) knew or ought to have known, by making full and proper inquiries of the Company's business and affairs, of the 1<sup>st</sup> Respondent's interests in Extract Group Limited, the full terms of the sale of the PCB business (including the true amount of the consideration payable);

- (2) knew or ought to have known that the Company made numerous false and/or misleading representations to the shareholders of the Company and the public, and/or failed to make full and proper disclosure of material facts or matters, and/or breached the Listing Rules in numerous ways, as particularised above;
- (3) caused and permitted or allowed these to happen.

27. Further, Tong Shek Lun, Ko Lai King Kinny and Chung Wai Yu Regina were collectively and individually responsible for ensuring the Company's full compliance with the Listing Rules, but failed to do so.

28. By reason of the matters aforesaid, by Tong Shek Lun, Ko Lai King Kinny and Chung Wai Yu Regina have acted in breach of their Fiduciary Duties and or the common law duty of care owed to the Company in that they:-

- (1) caused and/or procured the Company to reduce the consideration under the SPA from US\$4 million as stated under the Term Sheet to US\$3 million without proper justification and/or against the best interest of the Company;
- (2) diverted to Extract Group Limited, which was owned and controlled by the 1<sup>st</sup> Respondent, the business opportunity of the Company to provide consultancy services to KFE Hong Kong in relation to the upgrade to the sewage facilities, including to obtain a licence for those upgraded facilities, which was a mature business opportunity actively pursued by the Company;
- (3) caused, procured, assisted and/or otherwise knowingly permitted Extract Group Limited to enter into the Consultancy Agreement with KFE Hong Kong against the best interest of the Company; and/or
- (4) caused and permitted or otherwise allowed the happening of the misappropriation to the 1<sup>st</sup> Respondent and/or Extract Group Limited the sum of US\$1 million paid by KFE Hong Kong under the Consultancy Agreement.

- (5) Failed to provide to the Company and/or its members full and complete information concerning the disposal of the PCB business, as set out above.

30. By reason of the matters set out above, the business or affairs of the Company have been conducted by Tong Shek Lun, Ko Lai King Kinny and Chung Wai Yu Regina in manner:

- (1) oppressive to its members or any part of its members within the meaning of section 214(1)(a) of the SFO; and/or
- (2) involving defalcation, misfeasance or other misconduct towards its members (or part a thereof) within the meaning of section 214(1)(b) of the SFO; and/or
- (3) resulting in its members or any part thereof not having been given all the information with respect to its business affairs that they might reasonably expect within the meaning of section 214(1)(c) of the SFO; and/or
- (4) unfairly prejudicial to the members of the Company (or a part thereof) within the meaning of section 214(1)(d) of the SFO.