

SFC obtains court order to wind up China Metal Recycling (Holdings) Limited

26 Feb 2015

The Court of First Instance today ordered that China Metal Recycling (Holdings) Limited (China Metal Recycling) be wound up in the public interest on the application of the Securities and Futures Commission (SFC) (Notes 1 & 2).

This is the first time that the SFC obtained a court order to wind up a Hong Kong-listed company under section 212 of the Securities and Futures Ordinance for the purpose of protecting the company's minority shareholders, creditors and the investing public.

The SFC alleged that the affairs of China Metal Recycling involved a highly complex, sophisticated and dishonest scheme spanning Hong Kong, Macao, the Mainland and the United States of America (US).

The scheme inflated China Metal Recycling's performance, revenue and profit dating back to the time of its IPO prospectus in 2009 and becoming larger and more complex in the subsequent years until it was brought to an end when the SFC commenced these proceedings in July 2013.

The scheme involved the use of China Metal Recycling's wholly owned off-shore subsidiary in Macao, Central Steel (Macao Commercial Offshore) Limited (Central Steel Macao) which was the conduit for a substantial part of the company's annual profits between 2007 and 2012 and was also a factory for generating false documents and instruments by which these profits were falsified.

It also involved fake shipments of scrap metal between the US and the Mainland, false shipping documents, false accounts, and highly complex round robin transactions spanning continents.

The aggregate revenue and gross profit of China Metal Recycling for the years 2007 to 2009 appears to have been overstated by around 46% or over HK\$8 billion and 72% or over HK\$1 billion respectively (Notes 3 & 4).

By way of illustration, Central Steel Macao made 431 payments totalling around US\$2.4 billion to its purported key suppliers in the US and Hong Kong in 2012. About 98% of the funds were passed on to its purported customers and eventually circulated back to Central Steel Macao through a multitude of bank accounts, all through multiple entities set up around the world yet controlled centrally within China Metal Recycling.

There was no sign of the scheme terminating or at least curtailing in scale after the IPO, or even after the SFC has started investigating into the matter. Quite the contrary, the fictitious circulation of funds increased both in terms of the amounts and its complexity.

The former management of the company and its subsidiaries prior to the appointment of the provisional liquidators denied any impropriety and, until recently, opposed the SFC's case. However, without accepting any liability, the former management withdrew from the case and took no part in the hearing.

After considering the SFC's evidence, the Hon Mr Justice Harris today granted the order to wind up China Metal Recycling (Note 5).

"This is an audacious and dishonest scheme using multiple secret nominees established all around the world to deceive Hong Kong investors and creditors into believing this company had a track record and a performance that it simply did not have. It has been stopped and control will vest with independent, court appointed liquidators. The liquidators will be able to conduct an independent assessment of the company's real position, in the best interests of all those with a financial interest in the case," the SFC's Executive Director of Enforcement, Mr Mark Steward said.

"This has been a very challenging investigation, an unparalleled dogged pursuit to uproot this misconduct in as many parts of the world as the company falsely claimed its containers had travelled. The SFC will continue this pursuit to combat corporate misconduct like this and there is no

doubt our work in this matter is not finished yet," he added.

The SFC would like to acknowledge and thank the China Securities Regulatory Commission, the US Securities and Exchange Commission, the Netherlands Authority of the Financial Markets and the Monetary Authority of Macao for their assistance in the investigation of this case.

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Notes:

1. China Metal Recycling was incorporated in the Cayman Islands on 18 July 2007. On 10 June 2009, it issued a Prospectus for Global Offering. On 22 June 2009, its shares were listed on the Main Board of the Stock Exchange of Hong Kong Limited. About HK\$1,685 million, net of listing expenses, were raised by the initial public offering of the company. Trading in shares of China Metal Recycling has been suspended since 28 January 2013.
2. On 26 July 2013, the SFC presented a petition to the Court of First Instance to wind up China Metal Recycling under section 212 of the Securities and Futures Ordinance (SFO) and obtained an order to appoint Cosimo Borrelli and Jocelyn Chi Lai Man, both of Borrelli Walsh Limited, as joint and several provisional liquidators for China Metal Recycling. Section 212 of the SFO permits the SFC to apply for a winding-up order against companies if it appears to the SFC that it is desirable in the public interest to do so, and the Court may grant the order on the ground that it is just and equitable to wind up those companies.
3. The SFC investigated a total of approximately 1,042 bills of lading purportedly issued between 2007 and 2013. The SFC alleged that a vast majority of them were false and did not represent a genuine shipment of scrap metal.
4. The SFC alleged that the revenue of China Metal Recycling for 2007, 2008 and 2009 has been overstated by approximately HK\$659,918,377, HK\$2,331,953,304 and HK\$5,072,802,416 and that its gross profit has been overstated in the same financial years by approximately HK\$83,440,317, HK\$302,369,733 and HK\$710,522,588.
5. The Hon Mr Justice Harris indicated he would deliver reasons for his decision in due course.

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