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SFC seeks disqualification orders against former senior executives of Sunlink International Holdings

The Securities and Futures Commission (SFC) has commenced proceedings in the High Court, seeking orders to disqualify Mr Andy Wong Shu Wing, a former chairman and executive director of Sunlink International Holdings Ltd (Sunlink) and Mr Lee Chak To, a former chief financial officer of Sunlink as company directors for alleged misconducts (Notes 1 and 2).

The SFC alleges that Wong and Lee

- failed to manage Sunlink with the necessary degree of skill, care, diligence and competence as is reasonably expected of persons of their knowledge and experience and holding their offices and functions within Sunlink; and
- failed to ensure Sunlink complied with disclosure requirements under the Listing Rules of the Stock Exchange of Hong Kong (SEHK).

The SFC alleges that the breaches of Wong and Lee centred on a number of material events in October and November 2008 concerning the financial position of Sunlink, which the SFC alleges should have been disclosed to its members, the general investing public and the SEHK.

These included:

- the mounting pressure from banks for the repayment of bank loans and the threat of legal proceedings being issued against Sunlink and its subsidiaries by the banks for repayment;
- the winding up petition being presented against Sunlink by a supplier for failure to pay trade debts;
- serious liquidity problem resulting from customers refusing to settle purchases as a result of product defects;
- occurrence of labour strikes in Sunlink's factory on the Mainland causing disruption to rectification of defective products; and
- the appointment of an independent financial adviser for debt restructuring.

The first hearing of the petition was heard in the High Court today. A [summary](#) of the material events and the allegations is posted on the SFC website (www.sfc.hk).

End

Notes :

1. Sunlink was listed on the main board of SEHK in March 2003. The company is principally engaged in the sales of semiconductors, terminals and accessories for automobiles tracking and monitoring system, industrial wireless and communication modules and devices. Trading in the shares of Sunlink has been suspended since 2 December 2008.

2. Under section 214 of the Securities and Futures Ordinance, the court may, inter alia, make orders to disqualify 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 or other misconduct towards it or its members.

Page last updated: 20 January 2011

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

The Company

- 1 Sunlink International Holdings Ltd (“the Company”) was incorporated in the Cayman Islands under the Companies Law as an exempted company on 5 July 2002. Its shares (Stock Code: 2336) were listed on the Main Board of the Stock Exchange of Hong Kong Limited (the “SEHK”) on 3 March 2003 and remained so listed as at the date of the Petition.
- 2 The Company and its subsidiaries will hereinafter be collectively referred to as the “Group”.

The former management of the Company and its business

- 3 In the Company's Annual Report 07 published on 28 April 2008, it was stated, inter alia, that:-
 - a. The Company acted as an investment holding company. The principal activities of its subsidiaries included manufacturing and trading of computer components, trading of electronic products and parts, provision of technology solutions, and design and production of electronic parts.
 - b. The 1st Respondent was an Executive Director and Chairman of the Company, and the 2nd Respondent was the Chief Financial Officer and Company Secretary of the Company.
 - c. The 1st Respondent was responsible for formulating the Group's overall corporate strategies and business development, and also for convening and chairing Board meetings. The 1st Respondent was the founder of the Group and had over 20 years of experience in the electronic and wireless communication industries.

- d. The 2nd Respondent was responsible for the Group's financial and tax reporting.
 - e. The Company had an authorized share capital of HK\$300,000,000 divided into 3,000,000,000 shares of HK\$0.10 each, and an issued share capital of 1,864,680,000 shares.
 - f. The 1st Respondent had interest in 32.63% of the issued share capital of the Company, of which 30.63% was held through a BVI company called Best Eagle International Limited which was beneficially owned by the 1st Respondent.
- 4 According to a Shareholding Disclosure Form 3A dated 11 December 2008, the 1st Respondent's interest in the Company had increased to 33.38% of its issued share capital.

The Company's current position

- 5 At all material times up to 2 December 2008, the Company had four Executive Directors, namely, (i) the 1st Respondent, (ii) Choi Tat Kai, (iii) Han Yang, and (iv) Liu Shun Keung, and three Independent Non-Executive Directors, namely, (i) Yeung Ming Tai, (ii) Professor Sun Hanxu, and (iii) Chan Kwok Ming Daniel.
- 6 On 1 December 2008, a winding up petition was presented against the Company by a trade creditor, Gold Star International Holdings Limited ("**Gold Star**").
- 7 At the request of the Company, trading in its shares was suspended with effect from 9:30 a.m. on 2 December 2008 and remains so suspended as at the date hereof.
- 8 On 2 December 2008, one of the Executive Directors of the Company (namely, Choi Tat Kai) resigned.

- 9 On 17 December 2008, two other Executive Directors (namely, Han Yang and Liu Shun Keung) and all three Independent Non-Executive Directors of the Company resigned.
- 10 On 19 December 2008, the 2nd Respondent resigned as Chief Financial Officer and Company Secretary of the Company.
- 11 On 24 December 2008, the High Court of the HKSAR appointed Messrs. Stephen Liu Yiu Keung and David Yen Ching Wai, both of Ernst & Young Transactions Limited, to act jointly and severally as provisional liquidators of the Company.
- 12 On 6 January 2009, the Company published an announcement regarding the aforesaid winding up petition and appointment of provisional liquidators.
- 13 On 12 October 2009, three Independent Non-Executive Directors were appointed to the Board of Directors of the Company, namely, Tso Shiu Kei Vincent, Young Meng Cheung Andrew and Poon Ka Lee Barry.
- 14 On 1 March 2010, the 1st Respondent resigned as Executive Director of the Company.
- 15 On 12 May 2010, the SEHK placed the Company in the third delisting stage. The SEHK intended to cancel the listing of the Company after the six-month period (i.e. 11 November 2010) if the Company did not provide a viable resumption proposal. As at the date hereof, the Company has not yet been delisted.
- 16 The Company and some of its subsidiaries are currently undergoing certain proposed restructuring, and a resumption proposal has been submitted to the SEHK. The details of the proposed restructuring and resumption proposal are not material to the Petitioner's complaints in the present Petition.

The financial position of the Company as at 31 December 2007, 30 June 2008 and 31 December 2008

17 According to the Company's Annual Report 07 published on 28 April 2008, as at 31 December 2007:-

- a. The Group had total assets of approximately HK\$568.5 million, and a net equity of HK\$305.817 million.
- b. The Group had current assets of HK\$553.332 million, current liabilities of HK\$262.479 million, and net current assets of HK\$290.853 million.
- c. The Group had bank balances and cash of approximately HK\$100.8 million. The total facilities granted to the Group by its bankers amounted to approximately HK\$221.0 million.
- d. The turnover of the Group grew 62.8% to HK\$1,314.9 million, the net profit of the Group increased 297.2% to HK\$100.6 million, and the earning per share rose 183.4% to HK cents 5.81.

18 According to the Company's Interim Results for the six months ended 30 June 2008 released on 18 September 2008:-

- a. The Group had total assets of approximately HK\$732.163 million, and a net equity of HK\$401.044 million.
- b. The Group had current assets of HK\$701.675 million, current liabilities of HK\$329.501 million, and net current assets of HK\$372.174 million.
- c. The Group had bank balances and cash of approximately HK\$70.131 million. The total facilities granted to the Group by its bankers amounted to approximately HK\$223.3 million.
- d. For the six months up to 30 June 2008, the turnover of the Group increased approximately 77.5% to HK\$857.8 million, the net profit of

the Group increased by approximately 2.5 times to HK\$94.6 million, and the earning per share rose to HK cents 5.07.

- 19 However, according to the Company's Final Results Announcement for the year ended 31 December 2008 published on 31 March 2010:-
- a. The Group had total assets of HK\$724,000 only, and net liabilities of HK\$234.058 million.
 - b. The Group had current assets of HK\$724,000, current liabilities of HK\$234.782 million, and net current liabilities of HK\$234.058 million.
 - c. The Group had bank balances and cash of HK\$724,000.
 - d. The turnover of the Group dropped to HK\$857.810 million, the net loss for the year of the Group was HK\$534.851 million, and the loss per share was HK cents 28.68. This loss included (i) an amount of HK\$272.032 million in respect of loss on deconsolidation of certain subsidiaries ("**Deconsolidated Subsidiaries**"), (ii) an amount of HK\$14.025 million in respect of impairment on investment costs in the Deconsolidated Subsidiaries, and (iii) an amount of HK\$139.819 million in respect of impairment on amounts due from the Deconsolidated Subsidiaries.
- 20 It is clear that during the second half of 2008, the financial position of the Company had worsened dramatically, from being a prosperous and profitable company with substantial assets to an insolvent company with few assets and huge liabilities. Nevertheless, the Company and its officers, including the 1st and 2nd Respondents, failed to disclose to its members and the general investing public the Company's rapidly deteriorating financial conditions prior to the public announcement on 6 January 2009 of the aforesaid winding up petition and appointment of provisional liquidators, in breach of the relevant disclosure obligations under the Listing Rules of the SEHK (the "**Listing Rules**"), full particulars whereof will be set out below.

The Company's deteriorating financial condition in the second half of 2008

- 21 In the Company's Interim Results for the six months ended 30 June 2008 released on 18 September 2008, it was stated that the Group delivered the best interim profit since listing on the SEHK in 2003. The share price of the Company closed at HK\$0.425 on 19 September 2008, representing an 11.8% increase of the closing price on the previous day. Its share price increased further to HK\$0.48 on 24 September 2008.
- 22 However, since the Company's share price reached its peak at HK\$0.48 on 24 September 2008, it had fallen to close at HK\$0.118 on 23 October 2008, representing an accumulated decrease of 75%, whereas the Hang Seng Index had dropped from 18,961 to 13,760 (i.e. by 27%) over the same period. Also, the closing price of HK\$0.118 represented a significant 13% drop from the closing price of HK\$0.136 on the previous day.
- 23 On 23 October 2008, upon the request of the SEHK, the Company published an announcement stating that it had noted the recent decrease in the price of its shares, but was not aware of any reasons for such change or any matter discloseable under the general obligation imposed by Rule 13.09 of the Listing Rules.
- 24 In truth and in fact, the Company was experiencing serious financial difficulties starting from around September 2008, details of which are set out below.
- (i) **Failure to repay bank debts when due**
- 25 In September 2008, there were already discussions between the Company and 7 bank creditors, namely, Hang Seng Bank, DBS Bank (Hong Kong) Ltd, Bank of Communications Co Ltd, Wing Hang Bank, Shanghai Commercial Bank Ltd, Citic Ka Wah Bank and Bank of China (Hong Kong) Ltd (the "**Bank Group**") concerning the Group's financial position and outlook, following the Group's failure to repay amounts due on banking facilities.

26 Hang Seng Bank:

- a) By written demands dated 31 October 2008, Hang Seng Bank demanded the Company and various subsidiaries of the Company for repayment of approximately HK\$42.9 million and US\$0.8 million due to the bank.
- b) The above demands were followed by Statutory Demands dated 11 November 2008 issued by Messrs. Li, Kwok & Law on behalf of Hang Seng Bank on the Company and its subsidiaries, followed by further demand letters dated 28 November 2008.

27 Bank of Communications Co Ltd:

By written demands dated 10 November 2008 issued by Deacons on behalf of Bank of Communications Co Ltd, the Company and its subsidiaries were demanded to repay approximately HK\$29.3 million and US\$0.16 million due to the bank.

28 Bank of China (Hong Kong) Limited:

By written demands dated 10 and 12 November 2008 respectively, Bank of China (Hong Kong) Ltd demanded the Company's subsidiary (Sunwave Development Limited) to repay overdue indebtedness of approximately HK\$1.125 million and HK\$3.717 million. By a further written demand dated 17 November 2008, Messrs. Tsang, Chan & Wong on behalf of Bank of China (Hong Kong) Ltd demanded the Company to repay approximately HK\$14.9 million due to the bank.

29 Wing Hang Bank:

By written demands dated 17 November 2008, Wing Hang Bank demanded the Company and various subsidiaries of the Company for repayment of approximately HK\$25.4 million and US\$0.2 million due to the bank.

30 DBS Bank (Hong Kong) Ltd:

By written demands dated 21 November 2008, DBS Bank (Hong Kong) Ltd demanded the Company's subsidiaries for repayment of approximately HK\$31.38 million, US\$37,230, HK\$670,000 and CNY1.3 million due to the bank.

31 Shanghai Commercial Bank Ltd:

By written demands dated 28 November 2008, Shanghai Commercial Bank Ltd demanded the Company's subsidiaries for repayment of over HK\$22.32 million and US\$0.6 million due to the bank.

32 The Company and its subsidiaries failed to meet or satisfy the aforesaid demands made by its bank creditors.

(ii) **Failure to repay trade debts due to Gold Star**

33 Since October 2008, Gold Star, a supplier to the Group, had been chasing the Group to repay a trade debt of HK\$8.6 million under two outstanding invoices dated 6 June 2008 and 3 July 2008 respectively. Demand letters were sent on 21 October 2008 and 28 October 2008 threatening legal proceedings unless payment was made within 7 days. Eventually, a Statutory Demand dated 4 November 2008 was served on the Company stating that winding-up proceedings would be commenced within 21 days unless full payment was made in the meantime.

34 As no payment was made by the Company to Gold Star, on 1 December 2008 a winding up petition was presented against the Company. At the adjourned hearing of the petition on 1 November 2010, this Honourable Court ordered the hearing of the petition to be further adjourned to 9 May 2011.

(iii) **Appointment of Ernst & Young to conduct Limited Financial Review and assist in the preparation of Debts Restructuring Proposal**

35 On 21 November 2008, at the request of Wing Hang Bank, the Company appointed Ernst & Young ("EY") to conduct a Limited Financial Review and assist in the preparation of a Debts Restructuring Proposal of the Company. The appointment letter was signed by the 1st Respondent on behalf of the Company.

36 Under the said appointment, the scope of services to be provided by EY to the Company in respect of the Limited Financial Review included the following:-

- “(i) Meeting with the directors and senior management of the Company (“the Management”) to understand the structure, activities, operation and other relevant issues of the Listed Co.;
- (ii) Reviewing the currently available information including the Company’s latest audited financial statements, its unaudited management accounts as at 31 October 2008 (or the latest available date) reflecting detailed information on the assets and liabilities.
- (iii) Analyse the bank indebtedness due by the Group as at the latest practicable date;
- (iv) Reviewing and discussing with the Management the Company’s monthly profit & loss and cash flow forecasts for the next 12 months (“Forecasts”) and the reasonableness of the underlying assumptions used in preparing the forecasts;
- (v) Preparing a report on the above issues (“the Report”) for presentation to you and the bank creditors.”

37 The following is revealed from the Limited Financial Review Report prepared by EY dated 10 December 2008:-

- a) As stated in the management accounts, as at 30 June 2008, the total assets of the Group amounted to approximately HK\$702 million, with the largest asset being “debtors, deposits and prepayment” amounting to HK\$528 million. However, the accounts receivables turnover was low due to technical defects in the Company’s latest products, in consequence of which the customers had refused to settle their purchases until the problems were rectified.
- b) The Group was currently unable to meet its principal and interest repayments as and when they fell due. The total principals and interests in arrears amounted to approximately HK\$205 million as at 31 October 2008.
- c) The Group relied heavily on their trade receivables to produce cash flow to settle the principal and interest payments to bank creditors. However, the Group was facing a cash flow problem because most of the trade debts were pending collection while the banks were tightening up their credit facilities.
- d) In the Estimated Realisable Value of Assets and Liabilities (Liquidation Analysis), it was stated that, of the HK\$732 million of total assets (as at

30 June 2008) the estimated realisable value would only be HK\$45 million, and there would be a total deficiency of about HK\$483 million.

(iv) **The first all bank creditors meetings on 26 November 2008**

38 On 26 November 2008, the first all bank creditors meeting was held at the invitation of the Company. Present at the meeting were the 1st and 2nd Respondents, representatives of EY and representatives of the Bank Group (save and except for Hang Seng Bank and DBS Bank (Hong Kong) Ltd).

39 At the first all bank creditors meeting:-

- a. Stephen Liu of EY reviewed the Company's current financial status as set out in an "Information Memorandum" and "Summary of Bank Loans as at 31 October 2008".
- b. The Information Memorandum indicated that the Company had
 - i. total debts of \$333.2 million (comprising HK\$204.9 million of debts to bank creditors, HK\$89.6 million of debts to trade creditors, and HK\$38.7 million debts to the Revenue), and
 - ii. total assets of HK\$731.12 million, the bulk of which (HK\$627.66 million) was made up of (i) inventory (HK\$99.48 million) and (ii) debtors, deposits and prepayments (HK\$528.18 million).
- c. The 1st and 2nd Respondents explained that the financial difficulties of the Company were attributable to-
 - i. technical breakdown of its products causing huge damage to the Company, in particular affecting its relationship with strategic partners such as China Mobile, as well as its debtors and suppliers;
 - ii. misjudgement of the current situation; and
 - iii. miscommunication with bank creditors.
- d. The 1st Respondent further mentioned that a placing was being arranged through Optima Capital with a view to raise about HK\$36 million, of which one third of the funds (about HK\$12 million) would be used to repay the bank creditors and the remaining two thirds of the funds (about HK\$24 million) would be used as working capital.

(v) **The attempted placing of new shares**

40 On 26 November 2008, the Company made a public announcement regarding a proposed placing of new shares.

41 In the announcement, it was stated, inter alia, that:-

- a) The Company and Taiwan Securities (Hong Kong) Company Limited (“**Placing Agent**”) had entered into a Placing Agreement dated 25 November 2008, pursuant to which the Company had conditionally agreed to place, through the Placing Agent on a best efforts basis, up to 360,000,000 Placing Shares at the Placing Price of HK\$0.1 per Share.
- b) The maximum number of 360,000,000 Placing Shares represented approximately 19.31% of the existing issued share capital of the Company and approximately 16.18% of the entire issued share capital of the Company as enlarged by the Placing.
- c) The gross proceeds from the Placing would be HK\$36,000,000. The net proceeds from the Placing would amount to approximately HK\$34,900,000 and was intended to be used for general working capital of the Company and reducing the bank borrowings of the Group.

42 In a section of the said announcement under the heading “Reasons for the Placing and Use of Proceeds”, it was stated that:-

“The Directors consider that the Placing will strengthen the financial position of the Group and provide an opportunity to raise further capital for the Group. The Directors further consider that it would be a prudent approach for the Company to reduce its reliance on debt financing by capital to be raised from equity financing, given the current market condition and the cost associated with the debt financing. Accordingly, the Directors are of the view that the Placing is fair and reasonable and in the interests of the Company and its Shareholders as a whole”.

43 There was no mention whatsoever in the said announcement about the dire financial condition of the Company at that time, including its failure to pay

substantial debts due to banks and suppliers and wages to workers. There was no mention in the announcement of the statutory demands that had been served on the Company. Also, there was no mention of the fact that EY had been appointed to conduct a Limited Financial Review and assist in the preparation of a Debts Restructuring Proposal of the Company.

44 The proposed placing of new shares did not come to fruition eventually.

(vi) **The second all bank creditors meetings on 10 December 2008**

45 On 10 December 2008, the second all bank creditors meeting was held. Present at the meeting were the 1st and 2nd Respondents, representatives of EY and representatives of the Bank Group.

46 At the second all bank creditors meeting:-

- a) Stephen Liu, in addition to highlighting various aspects of the Limited Financial Review Report, stated that the Company had relocated all its books and records to its PRC office about one month ago, which apparently was in breach of the Companies Ordinance.
- b) The 1st Respondent stated that the outstanding wages owing to the PRC workers were approximately HK\$2 million in early November 2008. However, the outstanding amount had increased to about HK\$3.6 million as at the date of the meeting. Since the Company was unable to pay the outstanding wages, the PRC workers were on strike and the operation of the Shenzhen office had come to a halt.
- c) The 2nd Respondent claimed that the books and records of the Company and its subsidiaries had been moved to the Shenzhen office because of taxation reasons and business expansion, and they were being shifted back to the Hong Kong office but the progress was very slow due to the workers' strike at the Shenzhen office.

47 In what follows, the aforesaid (i) failure to pay bank debts when due and demands or statutory demands issued by or on behalf of the bank creditors for repayment of the debts, (ii) failure to pay trade debts due to Gold Star and the statutory demand issued by Gold Star, (iii) appointment of EY to conduct a

Limited Financial Review and assist in the preparation of Debts Restructuring Proposal, (iv) dire financial condition of the Group as revealed in the Limited Financial Review Report, (v) first and second all bank creditors meetings, and (vi) failure to pay wages to PRC workers since early November 2008, will collectively be referred to as the “**Events**”.

Relevant Listing Rules

48 The following Listing Rules are relevant:-

Rule 3.08(f)

“The board of directors of a listed issuer is collectively responsible for the management and operations of the listed issuer. The Exchange expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. This means that every director must, in the performance of his duties as a director ... apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the listed issuer.”

Rule 13.04

“The directors of an issuer are collectively and individually responsible for ensuring the issuer’s full compliance with the Exchange Listing Rules.”

Rule 13.09(1)

“Generally and apart from compliance with all the specific requirements in this Chapter, an issuer shall keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group’s sphere of activity which is not public knowledge) which:-

- (a) is necessary to enable them and the public to appraise the position of the group; or*
- (b) is necessary to avoid the establishment of a false market in its securities; or*
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.”*

Notes 4 and 11 to Rule 13.09(1)

- “4. *The question of timing of the release of an announcement to the market is crucial, having regard to its possible effect on the market price of the issuer’s listed securities. The overriding principle is that information which is expected to be price-sensitive should be announced immediately it is the subject of a decision. Failure to follow this principle may result in the Exchange imposing a temporary suspension of dealings.*
11. *The issuer must notify the Exchange, members of the issuer and other holders of its listed securities without delay where:-*
- ...
- (ii) *to the knowledge of the directors there is such a change in the issuer’s financial condition or in the performance of its business or in the issuer’s expectation of its performance that knowledge of the change is likely to lead to substantial movement in the price of its listed securities;*
- ...

It is the responsibility of the directors of the issuer to determine what information is material in the context of the issuer’s business, operations and financial performance. The materiality of information varies from one issuer to another according to the size of its financial performance, assets and capitalisation, the nature of its operation and other factors. An event that is ‘significant’ or ‘major’ in the context of a smaller issuer’s business and affairs is often not material to a large issuer. The directors of the issuer are in the best position to determine materiality. The Exchange recognises that decisions on disclosure require careful subjective judgments, and encourages issuers to consult the Exchange when in doubt as to whether disclosure should be made.”

Rule 13.10

“An issuer shall respond promptly to any enquiries made of the issuer by the Exchange concerning unusual movements in the price or trading volume of its listed securities or any other matters by giving such relevant information as is available to the issuer or, if appropriate, by issuing an announcement in accordance with rule 2.07C containing a statement to the effect that the issuer is not aware of any matter or development that is or may be relevant to the unusual price movement or trading volume of its listed securities and shall also respond promptly to any other enquiries made of the issuer by the Exchange.”

Note 1 to Rule 13.10

“If the enquiry relates to unusual movements in the price or trading volume of securities and the directors of the issuer are aware of any matter that might have relevance to such movements, an announcement clarifying the situation should be issued...”

Rule 13.12

“The issues set out in rules 13.13 to 13.19 should be viewed on a group basis, including those arising either from a direct relationship or indirectly through subsidiaries and affiliated companies.”

Rule 13.19

“A general disclosure obligation will arise when there is a breach of the terms of loan agreements by the issuer, for loans that are significant to the operations of the issuer, such that the lenders may demand immediate repayment of the loans and where the lenders have not issued a waiver in respect of the breach.”

Breach of disclosure obligations

49 The Company failed to disclose the Events or any of them to its members, the general investing public and the SEHK, in breach of the Listing Rules.

a. Rule 13.09

i. The Events constituted material and/or price sensitive information in that they clearly demonstrated that the Company was in very serious financial difficulties. The Company ought to have disclosed the Events to its members, the general investing public and the SEHK, but failed to do so. At no time prior to the announcement on 6 January 2009 of the winding up petition presented by Gold Star and the appointment of provisional liquidators were the members of the Company and the general investing public informed that the Company was in serious financial difficulties.

b. Rule 13.10

- i. The Company was aware of its serious financial difficulties and ought to have responded truthfully to the SEHK when enquiry was made by the SEHK concerning the unusual movement in the share price of the Company. Instead, the Company made a standard negative announcement on 23 October 2008 stating that it was not aware of any reasons for the unusual price movement (13% drop from the closing price HK\$0.136 on the previous day) or any matter discloseable under the general obligation imposed by Rule 13.09 of the Listing Rules.
- c. Rule 13.19
- i. The bank loans mentioned in paragraphs 26 to 31 above were significant to the operations of the Company. The Company ought to have disclosed to its members, the general investing public and the SEHK its failure to repay the bank debts when due as well as the demands or statutory demands issued by or on behalf of the bank creditors for repayment of the debts, but failed to do so.

50 The Board of Directors of the Company were also in breach of Rules 3.08(f) and 13.04 of the Listing Rules in failing persistently to ensure compliance with the Listing Rules by the Company.

Liability of the 1st and 2nd Respondent under section 214 of the Ordinance

- 51 By reason of the matters aforesaid, the business or affairs of the Company have been conducted in a manner:-
- a) involving misfeasance or other misconduct towards the Company, its members or part of its members;
 - b) resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; and/or
 - c) unfairly prejudicial to its members or part of its members.

- 52 The 1st Respondent, as the Chairman and an Executive Director of the Company at all material times, was wholly or partly responsible for the business or affairs of the Company having been so conducted as aforesaid.
- 53 The 2nd Respondent, as the Chief Financial Officer of the Company at all material times, was or ought to have been aware of the Company's dire financial conditions and should have kept the Board of Directors of the Company, including the 1st Respondent, fully informed of the same. The 2nd Respondent failed to do so, which contributed to the aforesaid breaches of the Listing Rules by the Company and its Board of Directors. In the premises, the 2nd Respondent was also partly responsible for the business or affairs of the Company having been so conducted as aforesaid.