

26 June 2012

## SFC seeks court orders against former Chairman and Chief Executive Officer of China Asean Resources Limited

The Securities and Futures Commission (SFC) has commenced proceedings under section 214 of the Securities and Futures Ordinance against Mr James Li Nga Kuk and Mr Li Wo Hing, former Chairman and Chief Executive Officer of Medical China Limited, now known as China Asean Resources Limited (CARL) respectively.

The SFC is seeking court orders that Li Wo Hing pay an estimated \$10.7 million compensation to CARL for loss or damage caused by his alleged misconduct and that Li Wo Hing and James Li be disqualified from acting as directors for seven years and four years respectively (Note 1).

The SFC alleges that:

- a) On 28 and 29 December 2004, Li Wo Hing and James Li issued two cheques of CARL, totalling about \$10.7 million. CARL and Li Wo Hing claimed that the cheques were to settle trade debts owed to two US suppliers. However, the SFC found that the money was subsequently transferred to Li Wo Hing and various persons related to him. The SFC alleges that the payments were not supported by any legitimate reason and amounted to misappropriation of company assets, the practical effect of which was to benefit Li Wo Hing and the persons related to him.
- b) On 23 December 2004, CARL announced the sale of the entire shareholding of a Mainland subsidiary to a buyer for \$5 million. The buyer was declared to be an independent third party in the announcement and the subsequent circular, which Li Wo Hing issued on behalf of CARL. However, the SFC found that Li Wo Hing ultimately funded the \$5 million the buyer paid. The SFC alleges that the announcement and circular were therefore false and misleading.
- c) The SFC also found that in 2002 a US supplier of CARL had terminated the distributorship of a subsidiary of CARL. However, on 19 February 2003, James Li issued on behalf of CARL an announcement which stated, among other things, that there had been no change in the distribution right of its group since 19 December 2001, the date of its IPO prospectus. The SFC alleges that the announcement was false and misleading. CARL did not announce termination of the distributorship until 7 April 2003.
- d) Li Wo Hing and James Li had adopted a practice in which James Li signed blank cheques of CARL without inquiring into or even knowing their purposes, putting the assets of CARL at risk.

The SFC alleges that Li Wo Hing and James Li had therefore breached their duties as directors owed to CARL.

The estimated \$10.7 million compensation sought by the SFC from Li Wo Hing is equivalent to the two cheque payments mentioned in (a) above.

The Court of First Instance today granted leave to hear the cases of Li Wo Hing and James Li together on 26 September 2012.

End

Notes:

1. The company was known as Medical China Limited at the material times. It was listed on the Main Board of the Stock Exchange of Hong Kong Limited on 31 December 2001.
2. A [summary](#) of the material events and the allegations is posted on the SFC website.

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## SUMMARY OF PETITION

### **A. The directors of the Company involved**

1. At all material times in the years 2004 and 2005, Li Wo Hing and Li Nga Kuk James (“James Li”) were two of the executive directors of Medical China Limited (renamed China Asean Resources Limited on 8<sup>th</sup> October 2007) (“the Company”).
2. At all material times James Li and Li Wo Hing had the following interest (direct and indirect) in the shares in the Company:-
  - (1) James Li:
    - (a) 2004: 32,800,000 (3.93%);
    - (b) 2005: 32,800,000 (3.93%);
  - (2) Li Wo Hing:
    - (a) 2004: 245,120,000 (29.36%);
    - (b) 2005: 245,120,000 (29.36%).

### **B. Other relevant individuals and entities**

3. At all material times:-
  - (1) a Hong Kong company known as Tat Lung Medical Treatment Technology Limited (“**Tat Lung HK**”) was an indirect wholly owned subsidiary of the Company.
  - (2) a Mainland company known as Tat Lung Medical Treatment Technology (Shenzhen) Limited (“**Old Tat Lung**”) was a wholly owned subsidiary of Tat Lung HK until, at the latest, 14<sup>th</sup> January 2005.
  - (3) a Mainland company known as Tat Lung Medical Technology (Shenzhen) Limited (“**New Tat Lung**”) was a wholly owned subsidiary of the Company.

- (4) Blessford International Limited (“**Blessford**”) was a company incorporated in the British Virgin Islands (“**BVI**”). Its sole director and shareholder was Yau Sai Tim, who is a nephew of Li Wo Hing.
- (5) Artop Development Limited (“**Artop**”) was a company incorporated in the BVI. It was owned and controlled by Li Wo Hing.
- (6) Infologic Developments Limited (“**Infologic**”) was a company incorporated in the BVI. Its sole shareholder and director was Leung Shu Keung (“**Leung**”). Leung was a friend of Li Wo Hing.
- (7) Radio Therapeutics Corporation (“**RTC**”) was a manufacturer of medical products based in the USA. It was acquired by Boston Scientific Corporation (“**BSC**”) in or about December 2001. Prior to 8<sup>th</sup> November 2002, Old Tat Lung was the distributor of RTC’s products in the Mainland under a letter of appointment sent by RTC to Old Tat Lung dated 17<sup>th</sup> October 2001.
- (8) Everiris LLP (“**Everiris**”) was a company incorporated in Maryland, USA.

**C. Payments of \$5,420,657.28 and \$5,291,947.98 to Blessford**

4. By a cheque dated 28<sup>th</sup> December 2004 drawn by the Company on its bank account, the Company paid \$5,420,657.28 to Blessford. The cheque was signed by Li Wo Hing and James Li on behalf of the Company. By another cheque dated 29<sup>th</sup> December 2004 drawn by the Company on its bank account, the Company paid a further sum of \$5,291,947.98 to Blessford. The cheque was signed by Li Wo Hing and James Li on behalf of the Company. (The two payments are referred to collectively as “**the Payments**”.)
5. Blessford was not a creditor of the Company or any of its subsidiaries.
6. On 29<sup>th</sup> December 2004, Blessford transferred \$10,700,000 from its bank account to Artop’s bank account. The transfer application form was signed by Yau Sai Tim on behalf of Blessford.

7. Upon receiving the deposit of \$10,700,000, various payments totaling approximately the same amount as the deposit were made by Artop to Li Wo Hing and people associated with him in January and February 2005. It appears no legitimate reason existed for making the Payments to Blessford, the practical effect of which was to benefit Li Wo Hing and persons associated with him.
  
8. The Company and Li Wo Hing had attempted to explain these transfers:
  - (1) By a series of correspondence between the Company (all signed by Li Wo Hing on behalf of the Company) and The Stock Exchange of Hong Kong Limited (“**HKSE**”) and by documents produced by the Company to the SFC in the course of its investigation, the Company asserted, in effect:
    - (a) under a purported undated Chinese “Liability Assignment Agreement” among Old Tat Lung, New Tat Lung and RTC (“**the Purported RTC Novation Agreement**”), it was agreed that debts of RMB5,773,000 owed by Old Tat Lung to RTC were to be novated, and the burden of the debts were transferred, to new Tat Lung.
    - (b) under another purported undated Chinese “Liability Assignment Agreement” among Old Tat Lung, New Tat Lung and “Everiris Medicaï (sic) Systems, LLC” (“**the Purported Everiris Novation Agreement**”), it was agreed that debts of RMB5,635,924.60 owed by Old Tat Lung to “Everiris Medicaï (sic) Systems, LLC” were to be novated, and the burden of the debts were transferred, to new Tat Lung.
    - (c) the Payments were made by the Company on behalf of New Tat Lung by way of repayment of amounts due from Old Tat Lung to two suppliers, RTC and “Everiris Medical System Co. (sic)”. The Company made the repayments under an unsigned Chinese written authorization dated 1 December 2004 issued by New Tat Lung (“**the Purported Authorization**”). Under the Purported Authorization, New Tat Lung authorized alternatively requested the Company to repay: (i) trade debts of

\$5,420,600 to RTC and (ii) trade debts of \$5,291,900 to Everiris Medical System.

- (d) the last purchase by Old Tat Lung from RTC (which gave rise to the debt purportedly repaid by the Company on behalf of New Tat Lung) was made during April/May 2003.
  - (e) the debt repayments were acknowledged by: (i) a purported receipt dated 31<sup>st</sup> December 2004 signed by an unknown person on behalf of “Radio Therapeutics Co. Ltd.” (“**the Purported RTC Receipt**”); and (ii) a purported receipt dated 1<sup>st</sup> January 2005 signed by an unknown person on behalf of “Everiris Medical System Co.” (“**the Purported Everiris Receipt**”).
- (2) However, the investigation by the SFC has unveiled:
- (a) contrary to the Company’s suggestion, RTC had already terminated Old Tat Lung’s distributorship via a letter dated 8<sup>th</sup> November 2002 and BSC did not have any records of sales by RTC to Old Tat Lung in 2003 which could result in a trade debt balance of \$5,429,657.28 or any similar amount.
  - (b) The Company purported to produce invoices issued by RTC in support of the existence of the trade debts due to RTC. However, BSC had no records of RTC issuing these invoices.
  - (c) the Purported RTC Novation Agreement was purportedly signed on behalf of RTC by one Sharon Riddle. However she had already left the employment of RTC in 2003 and could not have signed the Purported RTC Novation Agreement on behalf of RTC or at all. Even if she had signed it, she would have had no authority to do so. Further, the purported signature of Sharon Riddle on this document was obviously different from the signature of Sharon Riddle on the distributorship letter from RTC to Old Tat Lung dated 17<sup>th</sup> October 2001 referred to in paragraph 3(7) above.

- (d) BSC had no record in its system: (i) of the existence of an entity called “Radio Therapeutics Co. Ltd.” (which was the name used on the Purported RTC Receipt); (ii) of any activities in the account of Old Tat Lung after 12 March 2004 on which date a receipt of US\$786 brought the balance down to zero; or (iii) of any receivable, or receipt, of any sum of \$5,420,600 on 31 December 2004 (as was purportedly evidenced by the Purported RTC Receipt) or at all.
  - (e) both the Purported RTC Receipt and the Purported Everiris Receipt contained the same grammatical mistakes. The same style and usage of language was used by a Gordon Lui Che Kin (a financial consultant of the Company) in preparing the letter dated 15 August 2006 on behalf of the Company in response to queries raised by HKSE. The SFC alleges that the documents were not prepared by RTC or Everiris but were in fact both drafted by Gordon Lui and that he did so at Li Wo Hing’s instructions or request.
  - (f) the repayment was said to be repayment to RTC and Everiris. However, the Company was unable to produce cheques issued in favour of RTC or Everiris. In fact, the Payments were made to Blessford which were then channeled to Li Wo Hing and associated people.
- (3) Despite his above initial explanations, Li Wo Hing gave the following alternative explanation for the Payments at a later stage of the SFC’s investigation:
- (a) the Payments were not by way of repayment of trade debts.
  - (b) instead, the trade debts were repaid in the Mainland to Everiris and RTC.
  - (c) the repayments were made in cash in his presence and that of Sun Sizhong and Wu Sihui, both Mainland residents and finance staff of Old Tat Lung.

- (d) The repayments were made from his personal funds and the Payments (which were eventually disbursed, through Artop, to himself and various persons associated with him) were “his personal acts” and reimbursement of those personal payments.
- (4) The SFC alleges that the explanation was undermined or discredited by:
- (a) the facts and matters referred to in (2) above.
  - (b) none of Li Wo Hing, Sun Sizhong or Wu Sihui was able to name or identify the people who received the cash on behalf of Everiris or RTC.
  - (c) Li Wo Hing was unable to satisfactorily explain why Everiris or RTC wanted to be repaid in cash in the Mainland.
  - (d) Li Wo Hing was unable to satisfactorily explain or give documentary evidence to show how he found the large amount of cash that was allegedly used to repay RTC and Everiris in the Mainland.
  - (e) Li Wo Hing was unable to provide any evidence that he had in fact brought such large amount of cash to the Mainland.
  - (f) at or around the same time as the Payments, two payments of \$6,200,000 and \$7,000,000 were made to the Company by Infologic on 28 and 29 December 2004 respectively. Both payments were procured by Li Wo Hing, and ultimately traced back to Li Wo Hing’s funds via various entities associated with or acting under his instructions. Li Wo Hing was unable to satisfactorily explain why he had to use such a roundabout way to give the Company money so it could make the Payments to reimburse himself.



**D. The Tat Lung Sale Agreement and the contents of the Tat Lung Sale Announcement and the Tat Lung Sale Circular**

9. On 20 December 2004, Tat Lung HK agreed to sell its entire shareholding in Old Tat Lung to Madam Wang You Ling ("**Madam Wang**") for \$5,000,000 ("**the Tat Lung Sale Agreement**").

10. The Company announced the Tat Lung Sale Agreement in an announcement on 23 December 2004 ("**the Tat Lung Sale Announcement**"). By a Circular issued by the Company dated 14 January 2005 ("**the Tat Lung Sale Circular**") it was announced that the sale had been completed. Li Wo Hing issued the Tat Lung Sale Announcement and the Tat Lung Sale Circular on behalf of the Company.

11. The Tat Lung Sale Announcement described Madam Wang in the following terms:

*"The Company confirms that to the best of the knowledge, information and belief of the Board and the board of [Tat Lung HK] having made all reasonable enquiries, [Madam Wang] is a third party independent of the Company and connected persons of the Company. Save and except for being the Purchaser under the [Tat Lung Sale Agreement], [Madam Wang] has no previous business dealings with the Group or its connected persons. The Company understands that [Madam Wang] is a merchant carrying on business in the PRC".*

12. The Tat Lung Sale Circular described Madam Wang in the following terms:

*"The Company confirms that to the best of the knowledge, information and belief of the Board and the board of [Tat Lung HK] having made all reasonable enquiries, [Madam Wang] is a third party independent of the Company and connected persons of the Company. Save and except for being the Purchaser under the [Tat Lung Sale Agreement], [Madam Wang] has no previous business dealings with the Group or its connected persons. The Company understands that [Madam Wang] is a merchant carrying on business in the PRC".*

13. In fact, and contrary to the contents of the Tat Lung Sale Announcement and the Tat Lung Sale Circular, Madam Wang was not a third party independent of people connected to the Company; nor was she a person who has had no previous business dealings with people connected to the Company:
- (1) Madam Wang paid the purchase price of \$5,000,000 under the Tat Lung Sale Agreement to the Company on 30 December 2004.
  - (2) however, the payment by Madam Wang was in fact funded by payments from Li Wo Hing via various entities associated with and acting under his instruction.
  - (3) in an interview conducted on 10 June 2009, Li Wo Hing purported to explain that:
    - (a) Madam Wang had first paid the purchase price to him in Renminbi (RMB). Most of the payment had been in cash.
    - (b) since the transaction required payment to be made in Hong Kong Dollars, Li Wo Hing then paid Hong Kong Dollars to her to enable her to pay the Company in Hong Kong Dollars.
  - (4) however, Li Wo Hing had produced no evidence of the payment of the alleged funds by Madam Wang to him in RMB.
  - (5) accordingly, Madam Wang's payment of the purchase price under the Tat Lung Sale Agreement was funded by Li Wo Hing, who was a connected person of the Company.
  - (6) Madam Wang was therefore, contrary to the Tat Lung Sale Announcement and the Tat Lung Sale Circular, not a "third party independent of the Company and connected persons of the Company". Nor was she, at the date of the Tat Lung Sale Circular, a person with "no previous business dealings with the Group or its connected persons".

**E. Termination by RTC of Old Tat Lung's distributorship on 8 November 2002**

14. As mentioned above, by letter dated 17 October 2001, RTC appointed Old Tat Lung as its exclusive distributor from October 2001 to October 2003.
15. By a letter dated 8 November 2002, BSC (which had, by then, acquired RTC) informed Old Tat Lung that Old Tat Lung's distributorship with RTC would be terminated immediately.
16. The letter was addressed to James Li, who was aware of its contents.
17. Notwithstanding the receipt of the letter, James Li on behalf of the Company issued an announcement on 19<sup>th</sup> February 2003 which stated:  
  
*"There has been no change in the sole and exclusive distribution right of the Group for the sale, distribution and marketing of radio frequency ablation system in the PRC and Hong Kong since 19 December 2001, the date of the Prospectus".*
18. The Announcement was false and misleading, in that at the time of its issue, Old Tat Lung's sole distributorship with RTC had already been terminated.
19. It was not until 7 April and 3 June 2003 that the Company announced that Old Tat Lung's sole distributorship of RTC products had been terminated, following a further letter from BSC confirming that fact.

**F. Practice of signing cheques in blank**

20. James Li was resident in the USA at all material times.
21. At all material times, Li Wo Hing and James Li, the then executive directors of the Company, were the authorized signatories of the Company's bank accounts.

22. A practice developed between James Li and Li Wo Hing whereby James Li would sign the Company's cheques in blank without the amount or the payee filled in, and leave them to be signed by another signatory as and when cheques had to be issued for the Company.
23. James Li did not inquire into, and did not know, the purpose of the blank cheques at the time when he signed them.

**G. Misconduct by Li Wo Hing and James Li**

24. As directors of the Company, Li Wo Hing and James Li each owed the following duties to the Company:
  - (1) to exercise reasonable care and diligence in their management of the Company.
  - (2) to act in good faith and in the best interests of the Company.
  - (3) to exercise reasonable care and diligence to implement a sound and prudent system of financial control to minimize the risk of misappropriation of corporate assets.
  - (4) not to place themselves in a position where their interest might conflict with their duties to the Company.
  - (5) not to misappropriate assets or property of the Company, whether for personal gain or at all.
25. Further, under Rule 5.01 of the GEM Listing Rules, Li Wo Hing and James Li were individually and collectively responsible for fulfilling their fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law and were further required to, among other things: (i) act honestly and in good faith in the interests of the Company as a whole; (ii) act for proper purpose; (iii) be answerable to the Company for the application or misapplication of its assets; and (iv) apply such degree of skill, care and diligence as

may be reasonably expected of a person of their knowledge and experience and holding their office within the Company.

26. In relation to the facts and matters set out in section C above:

- (1) the Payments amounted to misappropriation of the Company's assets, in that they were paid to Blessford without any proper or legitimate reason.
- (2) the Payments were procured by Li Wo Hing and he received \$2 million personally out of the Payments.
- (3) in doing so he had acted in breach of his duties as a director of the Company and has conducted the business or affairs of the Company in a manner:
  - (a) involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members; and
  - (b) unfairly prejudicial to its members or any part of its members,

27. In relation to the facts and matters set out in section D above:

- (1) the Tat Lung Sale Announcement and Tat Lung Sale Circular were false and misleading in the manner set out in Section D.
- (2) both the Tat Lung Sale Announcement and the Tat Lung Sale Circular were issued by Li Wo Hing on behalf of the Company's board.
- (3) in causing or allowing the Tat Lung Sale Announcement and the Tat Lung Sale Circular to be made, Li Wo Hing had conducted the business or affairs of the Company in a manner resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect.

28. In relation to the facts and matters set out in Section E:

- (1) the Company's Announcement dated 19 February 2003 was false and misleading in the manner set out on Section E.
- (2) the Announcement was issued by James Li on behalf of the Company.
- (4) in causing or allowing the Announcement to be made, James Li had conducted the business or affairs of the Company in a manner resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect.

29. In relation to the facts and matters set out in Section F above:

- (1) the practice set out in Section F above exposed the Company to significant risks of financial misconduct and irregularity in that:
  - (a) there was no control or monitoring by James Li as to the way in which corporate funds would be applied.
  - (b) it exposed the Company to the risk that Li Wo Hing (being the only other signatory whose signature was required for the operation of the Company's bank account) would be able to procure payment of corporate funds for improper or illegitimate purposes.
- (2) both James Li and Li Wo Hing were privy to such practice. The cheques for the Payments (in Section C) were signed pursuant to such arrangement.
- (3) in implementing such a system of financial management, James Li and Li Wo Hing had acted in breach of their duties to the Company and had conducted the business or affairs of the Company in a manner involving defalcation, fraud, misfeasance or other misconduct towards it or its members or any part of its members.