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# SFC obtains disqualification orders against former chairman and executive directors of Inno-Tech Holdings Limited

4 Oct 2019

The Securities and Futures Commission (SFC) has obtained disqualification orders in the Court of First Instance against former chairman and executive director, Ms Wong Yuen Yee, and three former executive directors, namely, Mr Robert Wong Yao Wing, Mr Wong Kwok Sing and Mr Lam Shiu San, of Inno-Tech Holdings Limited (Inno-Tech) (Notes 1, 2 & 3).

They were disqualified from being a director or taking part in the management of any corporation in Hong Kong, without leave of the Court, for a period of three years effective from 3 October 2019.

Disqualification orders were made after all of them admitted that they were in breach of their duty to exercise due and reasonable skill, care and diligence in the course of acting as directors of Inno-Tech by failing to:

- carry out adequate investigation into or due diligence prior to the acquisitions of the interests in three Mainland hotels in 2007 and 2008; and
- negotiate the consideration for these acquisitions.

In granting the orders, the Honourable Mr Justice Lam accepted that there was no dishonesty, bad faith, illicit gain or conflict of interest involved in their conduct and that the three-year disqualification period is appropriate in the circumstances.

End

Notes:

1. Inno-Tech was listed on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited on 12 August 2002. Wong Yuen Yee, Robert Wong Yao Wing, Wong Kwok Sing and Lam Shiu San were executive directors of Inno-Tech from 1 April 2002 until their resignations on 19 January 2011, 31 January 2011, 23 March 2010 and 1 June 2010 respectively.
2. The SFC commenced proceedings under section 214 of the Securities and Futures Ordinance (SFO) against the former chairman and executive directors of Inno-Tech in January 2015. Please see the SFC's press release dated [9 March 2015](#).
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, amongst others, involving defalcation, fraud, misfeasance or other misconduct towards it or its members.

Page last updated : 4 Oct 2019

HCMP 241/2015

[2019] HKCFI 2463

**IN THE HIGH COURT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
COURT OF FIRST INSTANCE**

MISCELLANEOUS PROCEEDINGS NO 241 OF 2015

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IN THE MATTER OF Inno-Tech Holdings  
Limited

and

IN THE MATTER OF Section 214 of the  
Securities and Futures Ordinance, Cap 571

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BETWEEN

SECURITIES AND FUTURES  
COMMISSION

Petitioner

and

WONG YUEN YEE

1<sup>st</sup> Respondent

WONG YAO WING, ROBERT

2<sup>nd</sup> Respondent

WONG KWOK SING

3<sup>rd</sup> Respondent

LAM SHIU SAN

4<sup>th</sup> Respondent

INNO-TECH HOLDINGS LIMITED

5<sup>th</sup> Respondent

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Before: Hon G Lam J in Court

Date of Hearing: 3 October 2019

Date of 3 October 2019

Judgment:

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J U D G M E N T

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1. This is an application by the Securities and Futures Commission (“**Commission**”), by petition, pursuant to s 214 of the Securities and Futures Ordinance (Cap 571), for disqualification orders against the 1<sup>st</sup> to 4<sup>th</sup> respondents arising out of their conduct of the affairs of Inno-Tech Holdings Ltd (“**Company**”).
2. The parties have reached agreement on both the factual basis of the application and the proposed period of disqualification in relation to each respondent. On that basis, on the application of the parties, this application is dealt with by way of a summary process that has come to be known as the *Carecraft* procedure.[\[1\]](#) An opening statement and an agreed statement of facts have been submitted upon which the court is asked to determine whether a disqualification order should be made and, if so, the length of disqualification. These statements will be appended to my judgment when it is published in writing. It is therefore unnecessary for me to describe the facts except to give a brief outline.[\[2\]](#)
3. The Company was incorporated in Bermuda in 2001 and its shares were listed on the Growth Enterprise Market Board of the Stock Exchange of Hong Kong Limited in August 2002 and remain so listed. It was an investment holding company and engaged in business as a group through its subsidiaries (“**Group**”).
4. The 1<sup>st</sup> to 4<sup>th</sup> respondents were the only executive directors of the Company at the material times. The 1<sup>st</sup> respondent was one of the founders of the Group, an executive director of the Company from April 2002 to January 2011 and the Chairman of the Company at the time of her resignation. She was responsible for formulating and monitoring the Group’s overall strategic plan and development.
5. The 2<sup>nd</sup> respondent was an executive director of the Company from April 2002 to January 2011, and the Deputy Chairman and Compliance Officer of the Company at the time of his resignation, with responsibility for the Group’s corporate management and strategic planning for its overall business.
6. The 3<sup>rd</sup> respondent was an executive director of the Company from April 2002 to March 2010, responsible for the Group’s daily operation and customer services and sale and marketing activities.

7. The 4<sup>th</sup> respondent was an executive director of the Company from April 2002 to June 2010 and, at the material times, the chief technology officer of the Group, with responsibilities for monitoring hardware and software development and all the technical issues of the Group's projects.

8. From 2003 the core businesses of the Group had been the sales of a self-developed interactive terminal and a home automation product and the provision of intranet design for residential communities in the Mainland. In 2007, the Company adopted the strategy of expanding into the hotel industry by providing hotel management services and owning and managing hotel assets.

9. The complaints in the petition concern the acquisition by the Group of interests in three hotels as well as a goldmine in the Mainland, which turned out to be disastrous investments from the point of view of the Company. The investments in two of the hotels were disposed of at a fraction of their acquisition price: the Xindu Hotel, acquired for RMB 13.5m, was disposed of at RMB 2m; the Kaiping Hotel, acquired for RMB 20m, was disposed of also at RMB 2m. The acquisition of the third hotel was aborted with the loss of the deposit paid in the sum of RMB 3.3m. The investment in the goldmine also resulted in a loss but, as recorded in the opening statement, the Commission has decided, for pragmatic reasons, not to pursue the allegations concerning the goldmine.

10. As far as the hotels are concerned, the allegations that are now accepted by the respondents are that they failed to carry out adequate investigation into or due diligence in respect of the hotels before procuring or permitting the Group to make the relevant acquisitions. The respondents gave wholly inadequate consideration of the value of the buildings and the land of the hotels, and failed to consider altogether the liabilities and debts that might be associated with the hotels or the companies holding them, and the profitability and prospect of business at the hotels. They failed to direct or supervise the hotel management team of the Group in the investigation or due diligence, and failed to ensure they receive from the team proper report on their investigation or due diligence. In the circumstances, the respondents accept that the acquisitions were made in a "wrongful and negligent manner", that they "engaged in poor management", "culpably neglected their duties", and acted "in breach of [their] duty to exercise due and reasonable skill, care and diligence in acting as directors of the Company". The respondents also admit that apart from obtaining draft valuation reports, they failed to negotiate the consideration for the acquisitions, and therefore breached their duty to exercise due and reasonable skill, care and diligence as directors of the Company.

11. On this basis, it is agreed between the parties, and I accept, that the business or affairs

of the Company had been conducted by the respondents in a manner involving misfeasance or misconduct towards the Company and/or unfairly prejudicial to its members, within the meaning of s 214(1)(b) and (d). The jurisdiction of the court to make disqualification orders under s 214(2)(d) is therefore engaged.

12. The period of disqualification that the parties have proposed by agreement is 3 years, which is within the lowest bracket, for relatively less serious cases: see eg *Re First China Financial Network Holdings Ltd (Disqualification Decision)* [2015] 5 HKLRD 530. I accept that the salient facts against the respondents and the degree of their culpability are similar and that there is, therefore, no need to distinguish between the lengths of their disqualification. I also accept that the length of disqualification appropriate for their conduct should fall into the first bracket of below 5 years.

13. On behalf of the respondents, Mr Isaac Chan has stressed that there was no dishonesty, bad faith, illicit gain or conflict of interests in relation to the respondents' conduct impugned, and that the essence of the complaints against them is negligence and incompetence. Other than the rule concerning the duty of skill, care and diligence, there was no breach of the GEM listing rules. It is not in dispute that the respondents had, at the time, consulted professional consultants and valuers before agreeing to the considerations for the acquisitions. Further, while the acquisition price of the Xindu Hotel and Kaiping Hotel was RMB 13.5m and RMB 20m respectively, part of the consideration was paid out of the assets acquired and the true out-of-pocket expenditure for the Group for the acquisitions was only RMB 5m and RMB 18m respectively. The disposal prices of both the Xindu Hotel and the Kaiping Hotel could also have been adversely affected by the worldwide financial crisis in 2008. Mr Chan also submits that the conduct criticised related to specific acquisitions in late 2007 and early 2008 and did not involve or demonstrate any systemic failings in the general operation and management of the Company. Mr Chan points out the respondents' admissions, enabling the petition to be dealt with summarily as against them, have resulted in significant saving of time and costs for all. Finally, he submits that the disqualification of the respondents, even for 3 years, will have a significant impact on their careers in company management.

14. Taking into account all the circumstances, including the mitigating factors advanced by Mr Chan on behalf of the respondents, I consider that the period of 3 years is appropriate for the respondents in the present case, and there will be an order accordingly. By agreement, there will be no order as to costs.

(Godfrey Lam)  
Judge of the Court of First Instance  
High Court

Mr Victor Dawes SC and Ms Queenie Lau, instructed by the Securities and Futures Commission, for the Petitioner

Mr Isaac Chan, instructed by Tso, Au, Yim & Yeung, for the 1<sup>st</sup> to 4<sup>th</sup> Respondents

The 5<sup>th</sup> Respondent was excused from attendance

### **Appendix**

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## **SCHEDULE FOR *CARECRAFT* PROCEDURE IN RESPECT OF THE 1<sup>ST</sup>, 2<sup>ND</sup>, 3<sup>RD</sup> AND 4<sup>TH</sup> RESPONDENTS**

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### **Part I – Opening Statement**

#### **A. Introduction**

1. On 30 January 2015, the Securities and Futures Commission (the “**Petitioner**”) presented a petition (the “**Petition**”) under section 214 of the Securities and Futures Ordinance (Cap. 571) (the “**Ordinance**”) in HCMP No. 241 of 2015 seeking:

(a) An order that Inno-Tech Holdings Limited (the “**Company**”), shall bring in its name civil proceedings against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and/or 4<sup>th</sup> Respondents to seek recovery of compensation or damages for the loss and damage suffered by the Company as a result of the 1<sup>st</sup> to 4<sup>th</sup> Respondents’ breach of duty of care at common law, in relation to:

(i) the acquisitions and/or subsequent disposals of two hotel properties:  
(1) the Xindu Hotel, Nos. 106 and 107 Guangming Road, Kaiping, the PRC (the “**Xindu Hotel Property**”), and (2) the Kaiping Hotel, No. 22 Xijiao Road, Zhang Sha, San Bu Town, Kaiping City, Guangdong Province, the PRC (the “**Kaiping Hotel Property**”);

(ii) the acquisition and/or subsequent termination of the acquisition of the Changlin Hotel, Nos. 216 and 218, Tianjin Street, Jilin City, Jilin Province, the PRC (the “**Changlin Hotel Property**”); and/or

(iii) the acquisition and/or subsequent disposal of interests in the De Xing City Zhang Jia Fan Gold Mine in the PRC (the “**Gold Mine**”).

(b) In the alternative to (a) above, an order, pursuant to section 214(2)(e) of the Ordinance, that the 1<sup>st</sup> to 4<sup>th</sup> Respondents, and each of them, shall pay compensation or damages to the Company for such of the Company and/or Inno Hotel Investment & Management Holdings Limited (“**Inno Hotel**”) and/or Inno Gold Mining Limited’s (“**Inno Gold**”) losses as the Court shall find to be caused by the 1<sup>st</sup> to 4<sup>th</sup> Respondents’ breach of duty of care at common law, together with interest thereon pursuant to section 48 of the High Court Ordinance (Cap. 4);

(c) An order pursuant to section 214(2)(d) of the Ordinance, that the 1<sup>st</sup> to 4<sup>th</sup> Respondents shall not, for such periods as the Court shall consider appropriate, without leave of the Court:

(i) be, or continue to be, a director, liquidator, or receiver or manager of the property or business, of any listed or unlisted company in Hong Kong including the Company and of its subsidiaries and affiliates; and

(ii) in any way directly or indirectly be concerned, or take part, in the management of any listed or unlisted company in Hong Kong including the Company or any of its subsidiaries and affiliates.

(d) Such further or other orders, accounts or inquiries as may be necessary for the purpose of any order made under section 214(2)(b) or 214(2)(e) of the Ordinance as the Court thinks fit.

(e) An order for the 1<sup>st</sup> to 4<sup>th</sup> Respondents to pay the costs of the Petitioner.

2. On 10 March 2015, the Company commenced proceedings against the 1<sup>st</sup> to 4<sup>th</sup> Respondents in HCA No. 489 of 2015. Thus, paragraphs (1), (2) and (4) of the prayers sought in the Petition (as set out in paragraphs 1(a), 1(b) and 1(d) above) were no longer necessary, and were deleted from the prayers in the Amended Petition dated 29 December 2016.

## **B. Purpose of this opening statement**

3. Subject to the approval of this Court, the Petitioner and the 1<sup>st</sup> to 4<sup>th</sup> Respondents have agreed to dispose of these proceedings against the 1<sup>st</sup> to 4<sup>th</sup> Respondents by way of the summary procedure sanctioned in *Re Carecraft Construction Co. Ltd.* [1996] 1 WLR 172.

4. For the purpose of disposing of these proceedings by way of the *Carecraft* procedure, this Honourable Court is invited to assess what orders should be made based on this statement of agreed facts.

5. For completeness, it is purely for pragmatic reasons that the Petitioner agrees to the disposal of these proceedings against the 1<sup>st</sup> to 4<sup>th</sup> Respondents by way of the *Carecraft* procedure on the basis of this Statement of Agreed Facts. The fact that the Petitioner does not pursue the allegations concerning the Gold Mine against the 1<sup>st</sup> to 4<sup>th</sup> Respondents in these proceedings:

(a) is not a reflection on the merits of the Petitioner's case against the 1<sup>st</sup> to 4<sup>th</sup> Respondents with respect to the Gold Mine; and

(b) does not prevent and should not be taken to prevent the Company from continuing to pursue the proceedings in HCA No. 489 of 2015 against the 1<sup>st</sup> to 4<sup>th</sup> Respondents with respect to all of its claims, including those with respect to the Gold Mine.

## **Part II - Statement of Agreed Facts (for the purposes of a *Carecraft* settlement between the Petitioner and the 1<sup>st</sup> to 4<sup>th</sup> Respondents)**

### **A. The Company**

1. The Company was incorporated in Bermuda on 19 November 2001 as a limited liability company, and was registered in Hong Kong under the now repealed Part XI of the Companies Ordinance (Cap. 32) as an overseas company on 1 March 2002. Its shares (Stock Code: 8202) were listed on the Growth Enterprise Market Board (“GEM”) of the Stock Exchange of Hong Kong Limited on 12 August 2002 and remain so listed as at the date hereof.

2. The registered office of the Company is situated at Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda. At the material times, the Company's principal place of business in Hong Kong was situated at Room 606, 6/F, MassMutual Tower, 38 Gloucester Road, Wanchai, Hong Kong.

3. As at 31 December 2014, the authorized share capital of the Company was

HK\$300,000,000 divided in 3,000,000,000 ordinary shares of HK\$0.1 each. The amount of the capital issued and paid up or credited as paid up was HK\$79,624,678.4.

4. At all material times:

(1) The Company was and is an investment holding company, and made and makes investments via its various subsidiaries.

(2) Up to 2002, the Company was principally engaged in the provision of intranet design for residential communities and electronic property management software consultancy.

(3) In 2003, the Company and its subsidiaries (the “**Group**”) launched a self-developed interactive terminal product called “i-panel” and became a sales agent of a home automation product called “Apbus”. Since then, the domestic sales of i-panel and Apbus and the provision of intranet design for residential communities in the People’s Republic of China (“**PRC**”) have been the core businesses of the Company.

(4) As stated by the Company at page 6 of each of its annual report for 2007/2008 dated 29 September 2008 (the “**07/08 Annual Report**”) and annual report for 2008/2009 dated 29 September 2009 (the “**08/09 Annual Report**”), the dual corporate strategy of the Group was to strengthen its existing business and at the same time identify and capitalize new opportunities to achieve financial growth for the Group and to maximize shareholders’ value.

(5) As explained in Section D of the Company’s Announcement dated 6 November 2007 in respect of the acquisitions of Sunny Team Corporation Limited (“**Sunny Team**”) and China Earn Limited (“**China Earn**”) (the “**06.11.07 Announcement**”) and also Section B of the Company’s Announcement dated 5 February 2008 in respect of the acquisition of Homesmart Properties Limited (“**Homesmart**”) (the “**05.02.08 Announcement**”), it was the dual corporate strategy of the Company to strengthen its existing business, and at the same time seek opportunities to expand into the medical industry and hotel industry utilizing its electronic software solutions as a platform. The expansion strategy of the Group into the hotel industry comprised: (i) provision of hotel management services; and (ii) owning and managing hotel assets. The acquisition of Sunny Team and China Earn, and hence the Xindu Hotel Property and the Changlin Hotel Property, was a first step for the Group to implement the second limb of the expansion strategy, and the acquisition of Homesmart, and

hence the Kaiping Hotel Property was a further step.

## **B. The Management of the Company**

5. The 1<sup>st</sup> to 4<sup>th</sup> Respondents (collectively, the “**Directors**”) were at all material times the only executive directors of the Company.

6. At all material times, each of the Directors owed to the Company a duty of care at common law to exercise due and reasonable skill, care and diligence in the course of acting as the executive directors of the Company. The Directors were also obliged to comply with, *inter alia*, Rule 5.01 of the GEM Listing Rules.

7. In addition, as directors of the Company, being a holding company that made investments through subsidiaries, the Directors owed a duty of care at common law to the Company to supervise the affairs of the Company’s subsidiaries properly, and in particular, Inno Hotel, one of the Company’s wholly-owned subsidiaries. The Directors were the only directors of Inno Hotel at the material times. The affairs of Inno Hotel were also the affairs of the Company as the holding company.

## **C. The Directors**

8. The 1<sup>st</sup> Respondent was one of the founders of the Group. She was an executive director of the Company from 1 April 2002 to 19 January 2011 and the Chairman of the Company as at the time of her resignation. The 1<sup>st</sup> Respondent was described in the 07/08 Annual Report and the 08/09 Annual Report as being responsible for formulating and monitoring the Group’s overall strategic plan and development. As at the date of the 08/09 Annual Report, she had over 17 years of experience in the field of property development and management in both the PRC and Hong Kong.

9. The 2<sup>nd</sup> Respondent was an executive director of the Company from 1 April 2002 to 31 January 2011. He was the Deputy Chairman and Compliance Officer of the Company as at the time of his resignation. The 2<sup>nd</sup> Respondent was described in the 07/08 Annual Report and the 08/09 Annual Report as being responsible for the Group’s corporate management and strategic planning for the Group’s overall business. As at the date of the 08/09 Annual Report, he had over 25 years of experience in the field of information technology, and had also been working in commercial sectors for over 12 years as senior management.

10. The 3<sup>rd</sup> Respondent was one of the founders of the Group. He was an executive director of the Company from 1 April 2002 to 23 March 2010. He is the brother of the 1<sup>st</sup> Respondent. The 3<sup>rd</sup> Respondent was described in the 07/08 Annual Report and the 08/09

Annual Report as being responsible for the Group's daily operation and customer services, and sale and marketing activities for promoting the Group's products and services. As at the date of the 08/09 Annual Report, he had about 20 years of experience in the information technology industry and extensive experience in marketing, research and business development in the Asia Pacific Region and Eastern Europe.

11. The 4<sup>th</sup> Respondent was an executive director of the Company from 1 April 2002 to 1 June 2010. He was described in the 07/08 Annual Report and the 08/09 Annual Report as the chief technology officer of the Group, and was responsible for monitoring the hardware and software development of the Group, and was also in charge of all the technical issue of the Group's projects. As at the date of the 08/09 Annual Report, he had approximately 15 years of experience in software development, network infrastructure design, system administration and portal site development.

#### **D. The hotels**

12. At all material times:

(1) Inno Hotel-P Limited (formerly known as Terborley Investments Limited) was a company incorporated in the British Virgin Islands. It was at all material times a wholly owned subsidiary of the Company through Inno Hotel Group Limited (formerly known as Vitaville Investments Limited), an intermediate holding company incorporated in the British Virgin Islands.

(2) Inno Hotel was a wholly owned subsidiary of Inno Hotel-P Limited and, indirectly, of Inno Hotel Group Limited and the Company.

13. At all material times, the Directors were directors of Inno Hotel as well as of the Company. Further, at all material times, there were no other directors of Inno Hotel.

(1) The 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents were directors of Inno Hotel from 21 May 2007 onwards and at all material times thereafter.

(2) The 3<sup>rd</sup> Respondent was a director of Inno Hotel from 21 May 2007 to 1 April 2010.

#### *The acquisitions – a summary*

14. Between 5 November 2007 and 4 February 2008, the Company acquired or agreed to acquire interests in three hotel properties in the PRC, namely: the Xindu Hotel Property, the Changlin Hotel Property and the Kaiping Hotel Property. The Company subsequently

disposed of its interests in the Xindu Hotel Property and the Kaiping Hotel Property on 26 June 2009, and terminated the agreement to acquire an interest in the Changlin Hotel Property on 29 May 2009. In summary:

(1) With the knowledge, consent and participation of the Directors, Inno Hotel acquired the issued share capital of two holding companies. Also with the knowledge, consent and participation of the Directors, Inno Hotel subsequently disposed of the issued share of two holding companies. The details are as follows:-

<b>Date of Acquisition</b>	<b>Company Acquired</b>	<b>Company's Material Asset</b>	<b>Acquisition Price</b>	<b>Date of Disposal</b>	<b>Disposal Price</b>
5 November 2007	Sunny Team	Xindu Hotel Property	RMB13.5 million	26 June 2009	RMB 2 million
4 February 2008	Homesmart	Kaiping Hotel Property	RMB20 million	26 June 2009	RMB 2 million

(2) With the knowledge, consent and participation of the Directors, Inno Hotel also entered into a Share Transfer Agreement (“**STA**”) dated 5 November 2007 in respect of the acquisition of China Earn for RMB14 million, which indirectly held the Changlin Hotel Property. However, Inno Hotel subsequently entered into a Termination Agreement on 29 May 2009 in respect of that transaction and did not proceed with that transaction resulting in a loss of deposit paid.

#### *The acquisitions – the details*

15. On 5 November 2007, Inno Hotel entered into two STAs with Smart Boom Development Limited (“**Smart Boom Development**”):

(1) By the STA in respect of Sunny Team, Inno Hotel would acquire the entire issued share capital of Sunny Team for a consideration of RMB13.5 million. On the date of completion, Sunny Team would indirectly hold the Xindu Hotel Property, located in Kaiping, PRC, via Guangzhou Shanghui Hotel Management Company Limited (“**GSHMCL**”), a wholly foreign-owned enterprise established in Guangzhou which was a wholly owned subsidiary of Sunny Team. By Clauses 2.1 and 3.1(5) of the STA in respect of Sunny Team, the acquisition was

conditional upon, *inter alia*, completion of a due diligence review of Sunny Team's affairs to the satisfaction of Inno Hotel on or before 31 January 2008.

(2) By the STA in respect of China Earn, Inno Hotel would acquire the entire issued share capital of China Earn for a consideration of RMB14 million. On the date of completion, China Earn would indirectly hold the Changlin Hotel Property, located in Jilin, PRC, via a wholly foreign-owned enterprise to be established in the PRC and be wholly owned by China Earn. By Clauses 2.1 and 3.1(5) of the STA in respect of China Earn, the acquisition was conditional upon, *inter alia*, completion of a due diligence review of China Earn's affairs to the satisfaction of Inno Hotel on or before 31 January 2008.

16. As recorded in the Minutes of a Meeting held by the board of directors of the Company on 5 November 2007 (the "**05.11.07 Minutes**"), all of the Directors attended the meeting. Various documents were tabled at the meeting, including: (1) draft STAs in respect of the acquisitions of Sunny Team and China Earn; and (2) a draft of the 06.11.07 Announcement to be issued by the Company in relation to the two acquisitions. As recorded at paragraphs 7.2(a) and (c) of the 05.11.07 Minutes, the Directors all resolved that the aforesaid draft STAs and the draft of the 06.11.07 Announcement be approved, and approved the aforesaid acquisitions of Sunny Team and China Earn.

(1) At paragraph 5.2 of the 05.11.07 Minutes, the Directors noted paragraphs A1 and A2 of the draft of the 06.11.07 Announcement, which are referred to at paragraph 17 below and which, in summary, stated that the consideration for each of Sunny Team and China Earn was fair and reasonable.

(2) As recorded at paragraph 5.3 of the 05.11.07 Minutes, the 1<sup>st</sup> Respondent as Chairman reported that the two draft STAs were conditional upon fulfilment of various conditions on or before 31 March 2008, including the following:

*“(e) completion of the due diligence review of the affairs of Sunny Team and the Sunny Team WFOE or China Earn and the China Earn WFOE (as the case may be) to the satisfaction of [Inno Hotel] on or before 31 January 2008;*

*(f) approval of the Acquisitions by the board of directors of [Inno Hotel] and the Company, respectively.”*

(3) As recorded at paragraph 7.1 of the 05.11.07 Minutes, the 1<sup>st</sup> Respondent as Chairman drew the attention of the Directors to the paragraph headed “Reasons for the acquisition of the hotel assets” in the draft of the 06.11.07 Announcement. The Directors are recorded as having read the paragraph and

concurred that the acquisition of Sunny Team and China Earn, and hence the Xindu Hotel Property and the Changlin Hotel Property, was a move in furtherance of the Group's strategy to expand into the hotel industry in the PRC.

(4) Also recorded at paragraph 7.1 of the 05.11.07 Minutes is the Directors' view that the terms of the draft STAs were fair and reasonable and in the interest of the shareholders (of the Company) as a whole.

(5) According to paragraph 7.2(e) of the 05.11.07 Minutes, a working committee comprising any two directors of the Company was constituted and empowered to take all such actions as were necessary to give effect to the acquisitions of Sunny Team and China Earn.

17. By the 06.11.07 Announcement in respect of Inno Hotel's acquisition of Sunny Team and China Earn, the draft of which was approved by all the Directors at the meeting of the board of directors of the Company on 5 November 2007, the Company stated, *inter alia*, as follows:

(1) Inno Hotel, a wholly-owned subsidiary of the Company, had entered into STAs in relation to the acquisition of the entire issued share capital of Sunny Team for a consideration of RMB13.5 million and the entire issued share capital of China Earn for a consideration of RMB14 million.

(2) As these acquisitions were from the same vendor, these two acquisitions would be aggregated under Rule 19.23 of the GEM Listing Rules for the purpose of determining the relevant classification of the transaction. These two acquisitions in aggregate constituted a discloseable transaction under Rule 19.08 of the GEM Listing Rules.

(3) At paragraphs 1 and 2 of Section A of the 06.11.07 Announcement, that the consideration for these two acquisitions had been arrived at after arm's length negotiation between the parties taking into account the cost of acquisition of the Xindu Hotel Property and the Changlin Hotel Property by the vendor. The Directors considered the consideration to be fair and reasonable having considered:

(a) The present good conditions of the state of the Xindu Hotel Property and Changlin Hotel Property;

(b) That the consideration for Sunny Team and China Earn respectively represented a less than 10% premium over the acquisition costs of the

vendor; and

(c) The market value of properties of similar size and quality within the proximity of the two hotels, based on the market knowledge of the Directors and the senior management of the Company.

(4) At paragraph 3 of Section A of the 06.11.07 Announcement, conditions precedent of the two STAs in respect of Sunny Team and China Earn include:

*“(e) completion of the due diligence review of the affairs of Sunny Team and the Sunny Team WFOE or China Earn and the China Earn WFOE (as the case may be) to the satisfaction of [Inno Hotel] on or before 31 January 2008;*

*(f) approval of the Acquisitions by the board of directors of [Inno Hotel] and the Company, respectively.”*

(5) At paragraph 3 of Section A of the 06.11.07 Announcement, that the conditions set out in paragraph 3 of Section A could be waived at the discretion of Inno Hotel. Further, if any of the conditions could not be fulfilled or waived by 31 March 2008, either of the STAs would be terminated and the vendor would have to refund such amount of the consideration which it had received (without interest) to Inno Hotel.

(6) In Section D of the 06.11.07 Announcement, that it was the dual corporate strategy of the Company to strengthen its existing business, and at the same time seek opportunities to expand into the medical industry and hotel industry utilizing its electronic software solutions as a platform.

(7) In Section D of the 06.11.07 Announcement, that the Directors and members of the senior management of the Group had substantive experience in real estate management and the hospitality business. Leveraged on the experience of the Directors and the senior management of the Group, the Directors believed the Group was able to further expand and develop in the hotel industry.

(8) In Section D of the 06.11.07 Announcement, that the Directors were of the view that the terms of the STAs in respect of the Company's acquisitions of Sunny Team and China Earn were fair and reasonable and in the interest of the Company and its shareholders as a whole.

18. On or about 28 November 2007, the Company issued a Circular approved by the

Directors in respect of the acquisitions of Sunny Team and China Earn. The contents of the Circular are very similar to the 06.11.07 Announcement, and the Circular contained the matters referred to in the preceding paragraph.

19. On 4 February 2008, Inno Hotel entered into a STA with Smart Boom Investments Limited (“**Smart Boom Investments**”) to acquire the entire share capital of Homesmart for a consideration of RMB20 million. On the date of completion, Homesmart would indirectly hold the Kaiping Hotel Property, located in Kaiping, PRC, via Guangzhou Homesmart Hotel Management Company Limited (“**GHHMCL**”), a wholly foreign-owned enterprise which was to be established in Guangzhou and would be a wholly owned subsidiary of Homesmart. By Clauses 2.1 and 3.1(4) of the STA in respect of Homesmart, the acquisition was conditional upon, *inter alia*, completion of a due diligence review of Homesmart’s affairs to the satisfaction of Inno Hotel within three months of the signing of the STA.

20. As recorded in the Minutes of a Meeting held by the board of directors of the Company on 4 February 2008 (the “**04.02.08 Minutes**”) and which all of the Directors attended, the Directors approved the aforesaid acquisition of Homesmart.

(1) As recorded at paragraph 4.1 of the 04.02.08 Minutes, the Directors noted that Inno Hotel had entered into a STA with Smart Boom Investments to acquire the entire share capital of Homesmart.

(2) As recorded at paragraph 4.4 of the 04.02.08 Minutes, the Directors noted that the STA with Smart Boom Investments was conditional upon fulfilment of various conditions on or before 3 May 2008 (in other words, within three months of the signing of the STA), including the following:

*“(d) completion of the due diligence review of the affairs of Homesmart and the Homesmart WFOE to the satisfaction of [Inno Hotel] on or before 3 May 2008;*

*(e) approval of the Acquisition by the board of directors of [Inno Hotel] and the Company, respectively.”*

(3) At paragraph 4.6 of the 04.02.08 Minutes, the Directors noted that the consideration of RMB20 million was arrived at after arm’s length negotiation between the parties taking into account the draft valuation of the Kaiping Hotel Property as at 31 January 2008 prepared by an independent property valuer of RMB20,000,000. The Directors considered the consideration to be fair and reasonable having considered: (i) the valuation of the independent property valuer and (ii) the present good condition and convenient location of the Kaiping Hotel

Property.

(4) As recorded at paragraph 6 of the 04.02.08 Minutes, the Directors noted the dual corporate strategy of the Company to strengthen its existing business, and at the same time seeking opportunities to expand into the medical industry and hotel industry utilizing its electronic software solutions as a platform.

(5) Paragraph 6 of the 04.02.08 Minutes also recorded that the expansion strategy of the Company and its subsidiaries into the hotel industry comprised: (i) provision of hotel management services; and (ii) ownership and management of hotel assets. The STAs entered into by the Group on 5 November 2007 in respect of Sunny Team and China Earn was the first step forward to the second limb of the expansion strategy and acquisition of property interests in hotel assets. The acquisition of Homesmart was a further step to implement the second limb of the expansion strategy.

(6) Further, paragraph 6 of the 04.02.08 Minutes also recorded that the Directors and members of the senior management of the Group had substantive experience in real estate management and hospitality business. Leveraged on the experience of the Directors and the senior management of the Group, the Directors believed that the Group was able to further expand and develop in the hotel industry.

(7) Paragraph 6 of the 04.02.08 Minutes also recorded that the Directors had carefully considered the terms of the STA in respect of the acquisition of Homesmart, and were of the opinion that they were normal commercial terms and fair and reasonable and in the interests of the Company and the shareholders as a whole.

(8) The Directors resolved to approve the terms of the STA, and a working committee comprising any two directors of the Company was constituted and empowered to, *inter alia*, finalise the 05.02.08 Announcement in respect of that transaction and take all such actions as were necessary to give effect to the acquisition of Homesmart. This was recorded at paragraphs 6(a), (c)(ii) and (c)(iii) of the 04.02.08 Minutes.

21. By the 05.02.08 Announcement in respect of Inno Hotel's acquisition of Homesmart, a draft of which was approved by all of the Directors at the meeting of the board of directors of the Company in 4 February 2008, the Company stated, *inter alia*, as follows:

(1) Inno Hotel, a wholly-owned subsidiary of the Company, had entered into a

STA in relation to the acquisition of the entire issued share capital of Homesmart for a consideration of RMB20 million.

(2) The Company referred to the 06.11.07 Announcement in respect of the acquisitions of Sunny Team and China Earn. As those earlier two acquisitions and the subject acquisition involved acquisitions of property interests from the same beneficial owner within a 12 month period, the three acquisitions would be aggregated under Rule 19.23 of the GEM Listing Rules for the purpose of determining the relevant classification of the transaction. These acquisitions in aggregate constituted a discloseable transaction under Rule 19.08 of the GEM Listing Rules.

(3) At paragraph 1 of the 05.02.08 Announcement, that the “*consideration is arrived at after arm’s length negotiation between the parties taking into account of the valuation of the Kaiping Hotel Property as at 29 January 2008 prepared by an independent property valuer of RMB20,000,000. The valuation was prepared on an open market basis by the Comparison Approach assuming sale in the existing state of the Kaiping Hotel Property subject to existing tenancies and by making reference to comparable sales evidence as available in the relevant market. The Directors consider the consideration to be fair and reasonable having considered: (i) the valuation of the independent property valuer and (ii) the present good condition and convenient location of the Kaiping Hotel Property. The Company intends to finance the payment of the consideration with internal resources.*”

(4) At paragraph 1 of Section A of the 05.02.08 Announcement, conditions precedent of the STA in respect of Homesmart include the following:

*“(d) completion of the due diligence review of the affairs of Homesmart and the Homesmart WFOE to the satisfaction of [Inno Hotel] on or before the Long Stop Date [which was defined to mean any date within three months from the date of the STA];*

*(e) approval of the Acquisition by the board of directors of [Inno Hotel] and the Company, respectively.”*

(5) At paragraph 1 of Section A of the 05.02.08 Announcement, that the conditions set out in paragraph 1 of Section A could be waived at the discretion of Inno Hotel. Further, if any of the conditions could not be fulfilled or waived by the Long Stop Date, the STA would be terminated and the vendor would have to refund such amount of the consideration which it had received (without interest) to Inno Hotel.

(6) In Section B of the 05.02.08 Announcement, that it was the dual corporate strategy of the Company to strengthen its existing business, and at the same time seek opportunities to expand into the medical industry and hotel industry utilizing its electronic software solutions as a platform.

(7) In Section B of the 05.02.08 Announcement, that the Directors and members of the senior management of the Group had substantive experience in real estate management and the hospitality business. Leveraged on the experience of the Directors and the senior management of the Group, the Directors believed that the Group was able to further expand and develop in the hotel industry.

(8) In Section B of the 05.02.08 Announcement, that the Directors were of the view that the terms of the STA in respect of the Company's acquisition of Homesmart were fair and reasonable and in the interest of the Company and its shareholders as whole.

22. On or about 15 February 2008, the Company issued a Circular in respect of the acquisition of Homesmart. The contents of the Circular are very similar to the 05.02.08 Announcement, and the Circular contained the matters referred to in the preceding paragraph.

#### *The termination*

23. On 29 May 2009, Inno Hotel entered into a Termination Agreement with Smart Boom Development to terminate the STA in relation to the acquisition of China Earn. The deposit of RMB3.3 million paid by Inno Hotel was forfeited by Smart Boom Development.

#### *The disposals*

24. By two STAs, both dated 26 June 2009, and as recorded in the Minutes of a Meeting held by the board of directors of the Company on 26 June 2009, which was attended by all the Directors, Inno Hotel agreed to dispose of the entire issued share capital of Sunny Team and Homesmart to Timewon Limited and Main Move Limited respectively for RMB2 million each.

25. On or about 26 June 2009, the Company issued an Announcement about the disposal of its interests in Sunny Team and Homesmart.

26. The 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent attended a meeting of the board of directors of Inno Hotel on 30 June 2009, and unanimously approved and authorized any one director to execute and deliver the instruments of transfer and bought and sold notes in respect of

the transfer of the entire issued share capital of Sunny Team and Homesmart to Timewon Limited and Main Move Limited respectively, as well as any other necessary or desirable documents to give effect to that share transfer.

**E. The 1<sup>st</sup> to 4<sup>th</sup> Respondents' breaches of duties of care**

*Failure to carry out adequate investigation into or due diligence prior to the acquisition of the three hotels*

27. The Directors failed to carry out adequate investigation into or due diligence in respect of the Xindu Hotel Property, the Changlin Hotel Property or the Kaiping Hotel Property before procuring or permitting the Company to acquire Sunny Team, China Earn and Homesmart holding these hotels through its wholly-owned subsidiary, Inno Hotel and/or procuring and/or permitting it to acquire them. In particular:

(1) Insofar as the Directors delegated the decision to acquire these hotels to a team of staff in the PRC responsible for hotel management (the “Hotel Management Team”), they did so without adequately or properly supervising it and/or ensuring that it properly investigated and/or carried out the due diligence in respect of the said hotels.

(2) The Directors did not have much knowledge about the Hotel Management Team or contact with them, and were unable to give any details about them, including even as to where such Hotel Management Team was based, for example which city in the PRC.

(3) Insofar as the Directors delegated the decision to acquire these hotels to the Hotel Management Team, they failed to give any or proper instructions to, or give any or satisfactory supervision of, the Hotel Management Team to assess the hotels for acquisition, and the Directors failed to seek any report from the Hotel Management Team.

(4) The Company and the Directors have been unable to provide any evidence as to or identify how the decisions were made to acquire the Xindu Hotel Property, the Changlin Hotel Property and the Kaiping Hotel Property (through their respective holding companies).

(5) The Directors also failed to set up a system or take steps to ensure that proper due diligence was carried out through the Hotel Management Team or otherwise.

28. When deciding whether the Company should acquire the three hotels through their

respective holding companies, and if so, the fair and reasonable consideration to be paid for them, the Directors ought to have considered, *inter alia*: first, the value of the buildings which formed the hotels and the land on which the hotels were built; secondly, any liabilities and debts that might be associated with the hotels and/or the companies holding the hotels; and thirdly, the profitability and prospects of business at the hotels.

29. The Directors' consideration of the first factor as set out in paragraph 28 above was wholly inadequate, and they failed to consider the second or third factors whether sufficiently or at all. In particular:

(1) As regards the first abovementioned factor, apart from a valuation report dated 3 October 2007 prepared by a PRC valuation company, 北京京港房地產估價有限公司 in respect of the Xindu Hotel Property, there were no finalized valuation reports in respect of the three hotels prepared at the time of the acquisition of the companies holding these hotels. Instead, draft valuation reports were prepared by BMI Appraisals Limited in respect of the Xindu Hotel Property and the Changlin Hotel Property, but those draft reports were both dated 13 December 2007 and therefore post-dated the date on which Inno Hotel entered into the two STAs (i.e. 5 November 2007) in respect of the entire issued share capital of Sunny Team and China Earn, the companies which indirectly held the Xindu Hotel Property and the Changlin Hotel Property respectively. In the premises, the Directors gave wholly inadequate consideration to the value of the buildings which formed the hotels and the land on which the hotels were built.

(2) As regards the second abovementioned factor, the Directors failed to give any consideration to the liabilities and debts that might be associated with the hotels and/or the companies holding the hotels, which were ultimately assigned to Inno Hotel. In particular, the debt owed by Sunny Team which was assigned to Inno Hotel on 25 June 2008 was in the sum of HK\$14,651,519.40, which at the then exchange rate of around HK\$1 to RMB0.89 was about RMB13 million. The debt owed by Homesmart that was assigned to Inno Hotel on 27 June 2008 was in the sum of HK\$21,920,049.68, which was around RMB19.5 million at the then exchange rate. In other words, the debts associated with Sunny Team and Homesmart roughly equated to the consideration that Inno Hotel paid to acquire those companies. The Directors also negligently failed to appreciate that the representations and guarantees that the Xindu Hotel Property and the Kaping Hotel Property were free of encumbrances as stated in the relevant STAs were incorrect.

(3) As regards the third abovementioned factor, the Directors failed to give any consideration to the profitability or business prospects of the three hotels. Whilst there is a reference to “*the Profits Method based on capitalization of the hotel’s operating profits in 2007*” at page 2 of the draft valuation report dated 13 December 2007 in respect of the Xindu Property Hotel, page 2 of the draft valuation report dated 13 December 2007 in respect of the Changlin Hotel Property and page 2 of the draft valuation reports dated February 2008 (marked “Draft 1” and “Draft 2”) and dated 31 January 2008 (marked “Draft 3”) in respect of the Kaiping Hotel Property, those draft reports do not contain any information about the “Profits Method” mentioned, nor are there any information or details about the hotels’ operating profits.

30. By reason of the matters aforesaid, the Directors did not conduct adequate investigation or due diligence in respect of the Xindu Hotel Property, the Changlin Hotel Property and the Kaiping Hotel Property prior to the Directors deciding that the Company should acquire, through Inno Hotel, the companies holding these properties.

31. Furthermore, the delegation by the Directors to the Hotel Management Team fell far short of the standard of a reasonable director in that the Directors failed to (1) in any way direct or supervise the carrying out of adequate investigation or due diligence, and (2) require or receive any proper or written report on investigation or due diligence, or discuss any such report.

32. By reason of the matters aforesaid, the acquisitions of the companies holding the three hotels were made in a wrongful and negligent manner, the Directors engaged in poor management, and culpably neglected their duties stated above, even though the Directors knew that the completion for acquisitions of these hotels were subject to proper due diligence as shown in the 05.11.07 Minutes and 04.02.08 Minutes.

33. The Directors’ failure to carry out any adequate investigation or due diligence (or consider the same) in respect of the three hotel properties, and the Directors’ failure to direct or supervise the Hotel Management Team, or require them to carry out adequate investigation or due diligence and to report to the Directors, were in breach of the Directors’ duty to exercise due and reasonable skill, care and diligence in acting as directors of the Company, Rule 5.01 of the GEM Listing Rules, and further their duty properly to supervise the affairs of Inno Hotel, a wholly-owned subsidiary of the Company.

*Failure to negotiate the consideration for the companies holding the three hotels*

34. The Directors admit that they failed to negotiate the consideration for any of the companies holding the three hotels prior to procuring or permitting the Company to acquire the companies holding the hotels through Inno Hotel and/or procuring and/or permitting Inno Hotel to acquire them.

35. The 06.11.07 Announcement in respect of Inno Hotel's acquisitions of Sunny Team and China Earn stated at paragraphs 1 and 2 of Section A that the consideration for these two acquisitions had been arrived at after arm's length negotiation between the parties taking into account the cost of acquisition of the Xindu Hotel Property and the Changlin Hotel Property by the vendor. The 05.11.07 Minutes, at which the Directors approved the STAs in respect of those two acquisitions, expressly noted at paragraph 5.2 the aforementioned two paragraphs in the draft of the 06.11.07 Announcement. Similarly, paragraph 4.6 of the 04.02.08 Minutes and page 3 of the 05.02.08 Announcement in respect of Inno Hotel's acquisition of Homesmart state that the consideration for Homesmart was arrived at after arm's length negotiation between the parties taking into account the draft valuation of the Kaiping Hotel Property.

36. However, apart from obtaining the draft valuation reports, the Directors have failed to negotiate the consideration for acquiring Sunny Team, China Earn and/or Homesmart.

37. Accordingly, in breach of their duty of care to exercise due and reasonable skill, care and diligence in the course of acting as the executive directors of the Company and also their duty of care properly to supervise the affairs of the Company's subsidiaries, including Inno Hotel, the Directors wrongfully failed to negotiate, either at arm's length or at all, the consideration for any of Sunny Team, China Earn or Homesmart.

#### **F. The Directors' Liability**

38. In the circumstances, the Directors conducted the business or affairs of the Company in a manner described within section 214(1)(b) and/or (d) of the Ordinance, namely:

- (1) involving misfeasance or misconduct towards the Company, its members or any part of its members; and/or
- (2) unfairly prejudicial to its members or any part of its members.

#### **G. Proposal for disqualification**

39. On the basis of the above agreed facts:

- (1) The parties agree and submit that it would be appropriate for a disqualification order to be made against each of the 1<sup>st</sup> to 4<sup>th</sup> Respondents under

s.214(2)(d) of the Ordinance under which he or she (as the case may be) shall not, for a period of 3 years and without the leave of the Court, be or continue to be a director of or in any way, whether directly or indirectly, be concerned, or take part, in the management of any corporation in Hong Kong; and

(2) If the Court disposes of these proceedings by way of the *Carecraft* procedure pursuant to this Schedule, the parties agree that there shall be no order as to the costs of the present proceedings, and the parties shall waive all their respective claims for costs awarded under any of the previous orders made in these proceedings.

Dated this        day of        2019.

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Securities and Futures Commission  
Petitioner

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Messrs. Tso Au Yim & Yeung  
Solicitors for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>  
Respondents

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[\[1\]](#) After the English case of *Re Carecraft Construction Co. Ltd.* [1994] 1 WLR 172.

[\[2\]](#) A summary of the circumstances giving rise to the petition and the principal allegations made therein may be found in my decision in these proceedings on the question of discovery dated 30 December 2016 and reported at [2017] 1 HKLRD 788.

