
Enforcement News

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30 May 2007

SFC Secures First Disqualification of Director for Misconduct

The SFC today obtained orders in the High Court against Mr Yick Chong San, a former director of Riverhill Holdings Limited, a company previously listed on the Growth Enterprise Market (Note 1).

Today's orders, which were made by the Honourable Madam Justice Kwan, disqualify Yick from being a director or directly or indirectly involved in the management of any listed company, subsidiary or affiliate, without the leave of the Court, for four years. The order is to take effect in 21 days.

This is the first time the SFC has applied to the High Court seeking a disqualification order based on misfeasance or misconduct (Note 2).

In summary, the SFC alleged that Yick:

- breached his duties as a director in failing to exercise the degree of skill and care expected of a person of his knowledge and experience and in accordance with the standards required under Hong Kong law; and
- repeatedly failed to ensure Riverhill fully complied with the GEM Listing Rules, in particular he failed to keep Riverhill's shareholders properly informed as required.

The SFC's allegations concerned a decision by Yick to pledge \$10 million of Riverhill's money (which had been raised by Riverhill directly from its shareholders in the IPO) to secure a loan for a third party.

The SFC alleged this involved a misuse of the funds because it was contrary to representations made in Riverhill's prospectus and no information was given to

shareholders about any changes in the use of the IPO funds (as promised in the prospectus) and as required by the GEM Listing Rules.

As well, Yick failed to take proper skill and care in entering into the deal and did not ensure the company's funds were recoverable or properly secured on commercial terms. Yick also failed to disclose the transaction to shareholders and to the market despite being required to do so under the GEM Listing Rules.

The third party defaulted on the loan and Riverhill lost the entire \$10 million reducing its net asset value by more than 20%.

The SFC also alleged similar breaches in relation to unsecured loans totalling about \$25 million authorised by Yick to employees of Riverhill and other third parties. Although these loans were ultimately repaid, Yick failed to exercise proper care and skill. Again these loans were not disclosed to shareholders as required under the GEM Listing Rules.

The SFC was also concerned that the moneys loaned to the employees were used to open accounts with brokers through which Yick then directed trading in securities for Riverhill.

As Yick agreed to a summary of facts, the matter was dealt with by the Court today without the need for a full trial.

Mr Mark Steward, SFC's Executive Director of Enforcement, said: "This is the first time a listed company director has been disqualified for misconduct under the Securities and Futures Ordinance. Yick's failure to act in the best interests of Riverhill and to properly inform the market represents serious misconduct. Today's Court decision should send a positive message to investors that listed company directors are required to place the interests of the company and its shareholders first – not last."

Ends

Notes:

1. Yick is an accountant. In addition to being an executive director of Riverhill, he was also the Chief Financial Officer. He resigned as a director of Riverhill on 23 July 2003. Riverhill was incorporated in 2000 under the laws of the Cayman Islands. The company was engaged in the provision of technology related services.

2. Under section 214 of the Securities and Futures Ordinance, the SFC may make an application to the Court where it appears that at any relevant time the business

or affairs of a listed company have been conducted in a manner that:

- (a) is oppressive to the shareholders;
- (b) involves defalcation, fraud, misfeasance or misconduct towards the listed company or its shareholders;
- (c) results in shareholders not receiving all the information with respect to its affairs or business that they might reasonably expect; or
- (d) is unfairly prejudicial to the shareholders.

The SFC has commenced a second application seeking disqualification orders against five former directors of GP Nano Technology Group Limited. Please see [press release](#) issued on 30 March 2007 for details.

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