

1 August 2011

## SFC seeks disqualification and compensation orders against former directors of EganaGoldpfeil (Holdings) Ltd

The Securities and Futures Commission (SFC) has commenced proceedings in the Court of First Instance, seeking disqualification and compensation orders against three former directors of EganaGoldpfeil (Holdings) Ltd (EHL) for alleged misconduct (Notes 1 and 2).

The SFC is seeking an order to disqualify Mr David Wong Wai Kwong, Mr Peter Lee Ka Yue, and Mr Chik Ho Yin and an order that they compensate the EHL group for its losses estimated at \$2.13 billion (Note 3). Wong, Lee and Chik were former executive directors of EHL.

The SFC's allegations concern the following:

- a) An independent review by KPMG of certain EHL receivables revealed that the recoverability of those receivables (doubtful receivables) amounting to about \$2.55 billion as at September 2007 appeared doubtful. These receivables consisted of trade debts, payments under promissory notes and other prepayments for investments. The doubtful receivables were owed by eight debtor corporations (doubtful debtors). EHL eventually made full impairment provisions for the doubtful receivables as losses totalling \$2.6 billion.
- b) SFC's investigation revealed that the directors and/or controllers of at least seven of the doubtful debtors were nominee directors and/or bank signatories appointed by Wong and acted under the instructions of Wong.
- c) After the doubtful debtors received payments from the EHL group purportedly under the promissory notes and investment agreements, they immediately transferred the money to other doubtful debtors and other companies or people under the control of or related to Wong. Substantial parts of the money were eventually routed back to the EHL group on the same day and appear to be round-robin transactions. Other parts of the funds were eventually transferred to companies connected to Wong.
- d) In all, the fund flows connected to the doubtful receivables did not appear to be consistent with their purposes recorded in the books and records of EHL and the related underlying transactions appeared to be bogus.
- e) Wong, Lee and Chik approved the transactions and signed the cheques giving rise to the doubtful receivables. The SFC alleges that they failed to carry out proper inquiry and perform appropriate due diligence before causing or permitting the group to enter into the transactions and parting with substantial sums of money. The SFC further alleges that, as a result, they caused or permitted the misapplication or misuse of EHL's funds, and exposed the group to unnecessary and unreasonable risk of losses.

The SFC contends that EHL's losses arising from the doubtful receivables were caused by the three former directors' breaches of:

- their fiduciary duty to act in good faith and in the best interests of the group, and to avoid conflicts of interest
- breaches of the duty of care under common law to exercise due and reasonable skill, care and diligence
- rules 3.08 and 3.09 of the Listing Rules of the Stock Exchange of Hong Kong Ltd.

A [summary](http://www.sfc.hk) of the SFC's petition can be found on the SFC website ([www.sfc.hk](http://www.sfc.hk)).

End

Notes:

1. EHL was listed on the main board of the Stock Exchange of Hong Kong Limited (SEHK) on 25 June 1993. At the request of the company, trading in its shares has been suspended since 12 September 2007. EHL is now in liquidation. EHL was placed in the third stage of delisting by the SEHK with effect from 30 December 2010.
2. Under section 214 of the Securities and Futures Ordinance, the Court of First Instance may make orders disqualifying a person from being a company 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, or unfairly prejudicial to its members. The court may also order a company to bring proceedings in its own name against any person specified in the order, or make any order the court considers appropriate.
3. The estimated amount of the proposed compensation order is less than the total losses as a result of the doubtful receivables because two of the companies of the EHL Group to which such losses were caused have been dissolved and therefore compensation order is not applicable to these two dissolved companies.

Page last updated: 1 August 2011

## SUMMARY OF PETITION

### The Group

1. EganaGoldpfeil (Holdings) Limited (“**the Company**”) is a limited company incorporated in the Cayman Islands on 7 December 1990. Its shares (Stock Code: 048) were listed on the Main Board of the Stock Exchange of Hong Kong Limited (the “**SEHK**”) on 25 June 1993 and remain so listed as at the date hereof. At the request of the Company, trading in its shares was suspended with effect from 9:30 a.m. on 12 September 2007 and remains so suspended as at the date hereof.
2. On 6 March 2009, the High Court of the HKSAR appointed Messrs. Edward Middleton and Fergal Power, both of KPMG, to act jointly and severally as provisional liquidators of the Company. On 29 July 2009, the High Court of the HKSAR ordered that the Company be wound up.
3. The subsidiaries of the Company included the following:-
  - 3.1 Centreline Group Limited (“**Centreline**”);
  - 3.2 Eco-Haru Mfr. Holdings Limited (“**Eco-Haru**”);
  - 3.3 Egana Investments (Pacific) Limited (“**Egana Investments**”);
  - 3.4 Egana Marketing (Suisse) Incorporation (“**Egana Marketing**”);
  - 3.5 Egana of Switzerland (Far East) Limited (“**Egana of Switzerland**”);
  - 3.6 Egana.com Inc. (“**Egana.Com**”);
  - 3.7 Towercham Limited (“**Towercham**”); and
  - 3.8 Bartelli Leather Products Limited (“**Bartelli**”).
4. The Company and its aforesaid subsidiaries will hereafter collectively be referred to as the “**Group**” or the “**Group Companies**”.

### The Doubtful Receivables

5. On 7 August 2007, the Company announced that on 1 August 2007, KPMG were appointed to conduct an independent review of the Company’s financial

- position based on an agreed scope and procedure in the interests of the stakeholders of the Company. The scope of KPMG's work included a review and comment on the Group's receivables.
6. On 31 August 2007, the Company announced that based on KPMG's review to-date, it appeared that the recoverability of certain receivables totalling, as at 31 August 2007, approximately HK\$2.28 billion (comprising approximately HK\$605 million in trade receivables and approximately HK\$1.67 billion in interest bearing deposits) was sufficiently uncertain as to make it likely that provisions would need to be made in the Group's accounts in relation to at least a proportion of those receivables.
  7. **By 10 September 2007, further doubtful receivables amounting to HK\$272.55 million were identified bringing the total amount of the doubtful receivables to approximately HK\$2,547.55 million ("Doubtful Receivables").**
  8. In the Annual Report 2006/2007 of the Company released on 6 November 2007 incorporating the financial results of the Group up to 31 May 2007, it was stated that KPMG had completed its review on 16 October 2007 and expressed serious reservations on the recoverability of certain receivables, promissory notes and cash equivalents totalling approximately HK\$1.6 billion as at 31 May 2007 and approximately HK\$1.0 billion arising subsequent to that date. As a result, the board considered it prudent to make full provisions for the doubtful receivables and promissory notes, with approximately HK\$1.6 billion having been charged to the profit and loss account during the financial year ended 31 May 2007 and approximately HK\$1.0 billion to be charged in the following financial period beginning on 1 June 2007.
  9. In the Interim Report 2007/2008 of the Company released on 28 February 2008 incorporating the financial results of the Group for the 6 months up to 31 November 2007, it was stated that the board considered it prudent to make full impairment provisions for the doubtful receivables identified by KPMG with approximately HK\$1.0 billion provision being made to the unaudited consolidated profit and loss account for the six months ended 30 November 2007. Those provisions were above and beyond the provisions made in the

audited accounts of the Group for the year ended 31 May 2007. It was further stated that the trading operations which gave rise to those provisions had all substantially ceased by 30 November 2007 and no further material provisions in that respect were expected by the board.

10. It is apparent that the Company is insolvent, as a result of the Doubtful Receivables being irrecoverable.

11. The Doubtful Receivables can be classified into 4 broad categories:-

11.1 Trading Business;

11.2 Promissory Notes;

11.3 Strategic Investments; and

11.4 the Richemont Transaction.<sup>1</sup>

12. **A total of 8 debtors (“Debtors”) have been identified** as being indebted to the Group in respect of the Doubtful Receivables:-

12.1 Luen Fung Limited (“**Luen Fung**”);

12.2 Global Kent Limited (“**Global Kent**”);

12.3 House of Brands Inc. (“**House of Brands**”);

12.4 Goloda Enterprises Limited (“**Goloda**”);

12.5 Upbest Asia Company Limited (“**Upbest Asia**”);

12.6 Uni-Star Corporation (“**Uni-Star**”);

12.7 Asia Top Group Holdings Limited (“**Asia Top**”); and

12.8 Elite Choice Group Limited (“**Elite Choice**”).

---

<sup>1</sup> The Richemont Transaction gave rise to HK\$759.80 million of the Doubtful Receivables, made up as follows:-

- a) Two “Deeds of Debt”, executed by Uni-Star, in the amounts HK\$140 million and HK\$89.80 million (totalling HK\$229.80 million) to Egana.Com and Egana Investments respectively;
- b) A “Deed of Debt” in the amount of HK\$360 million executed by Goloda to Centreline; and
- c) A Memorandum of Agreement entered into by Centreline and Elite Choice concerning the proposed acquisition from Elite Choice’s wholly owned subsidiary, Maedler Koffer GmbH (“**Maedler**”), of a two year fixed licence and right of option for renewal of a certain trademark licence and acquisition of the Goldpfeil shops operated by Maedler in Germany, pursuant to which an escrow sum of HK\$170 million was paid by Centreline to Elite Choice.

13. Below is a breakdown of the Doubtful Receivables by nature and category:-

| Debtor  | Trading Business (HK\$m) | Promissory Notes* (HK\$m) | Strategic Investments (HK\$m) | Richemont Transaction (HK\$m) | Total (HK\$m)   |
|---|--------------------------|---------------------------|-------------------------------|-------------------------------|-----------------|
| Luen Fung   | 258.64                   |                           |                               |                               | 258.64          |
| Global Kent   | 198.71                   |                           |                               |                               | 198.71          |
| House of Brands   | 79.17                    |                           |                               |                               | 79.17           |
| Goloda  | 69.38                    |                           | 134.5                         | 360                           | 563.88          |
| Upbest Asia   |                          | 439.50                    | 265.00                        |                               | 704.50          |
| Uni-Star  |                          | 34.00                     |                               | 229.80                        | 263.80          |
| Asia Top  |                          | 36.30                     |                               |                               | 36.30           |
| Elite Choice  |                          |                           |                               | 170.00                        | 170.00          |
|   | <b>605.90</b>            | <b>509.80</b>             | <b>399.50</b>                 | <b>759.80</b>                 | <b>2,275.00</b> |
| Further doubtful receivables identified post- 31 Aug 2007 |                          |                           |                               |                               |                 |
| House of Brands   | 12.85                    |                           |                               |                               | 12.85           |
| Elite Choice  |                          |                           | 259.70                        |                               | 259.70          |
|   | <b>618.75</b>            | <b>509.80</b>             | <b>659.20</b>                 | <b>759.80</b>                 | <b>2,547.55</b> |

\* Interest receivable is not included

14. The cheque payments giving rise to the Doubtful Receivables, board minutes approving the transactions and the transaction documents were signed by former executive directors of the Company, namely Wong Wai Kwong David (“Wong”), Lee Ka Yu Peter (“Lee”) and/or Chik Ho Yin (“Chik”) (as the case may be) on behalf of the Group Companies (collectively “the Directors”).
15. KPMG had serious reservations about the genuineness and/or commercial rationale of the subject transactions with the Debtors, and considered that the recoverability of the Doubtful Receivables to be doubtful.
16. In summary, the following are some of the extraordinary features of, or relating to, the Doubtful Receivables :-
- 16.1 The Debtors had good repayment history but suddenly all of them simultaneously had difficulties in repayment.

- 16.2 Other than Goloda, the Debtors were all connected with two of the Nominees (discussed below) and some of them shared common addresses.
- 16.3 Upbest Asia was put into liquidation on or around 1 August 2007 and dissolved by 8 August 2007 in Macau. Yet, Wong produced two bank drafts totalling HK\$10 million issued by banks in Macau on 16 August 2007 and 21 August 2007 respectively, which he claimed to be repayments from Upbest Asia. Also, Upbest Asia's registered address in Macau was only a residential address.
- 16.4 The Debtors could not be located at their business addresses.
- 16.5 Despite demands for repayment during the period from about August to October 2007, no reply or payment had been received from the Debtors.
- 16.6 The trading business, accounting for about 25% of the Group's unaudited turnover, was handled exclusively by Wong himself whereas other normal trading businesses of the Group were handled by various departments/teams.
- 16.7 All the Debtors and the Group Companies (except Towercham) happened to maintain bank accounts at the same branch of Wing Hang Bank.
- 16.8 The timing of the trading business was suspicious as the majority of the relevant transactions were recorded in the last two months prior to the interim report date or financial year end (31 May) and settlements were usually made in the months immediately after the relevant reporting dates, i.e. January and February for the interim reporting date and June for the financial year end.
- 16.9 The timing and amounts of some of the trade receivable payments to the Company matched suspiciously with the timing and amounts of some payments out of the Company for the promissory notes.

- 16.10 All the promissory notes, though issued by different Debtors, happened to bear the same interest rate of 7% p.a.
- 16.11 The promissory notes, though issued by different Debtors, were identical in terms of layout, style and font size. Similar spelling mistakes appeared in the purchase orders, delivery notes, etc. of the Debtors. These documents were also of the same format, suggesting that the documents of the supposedly unrelated Debtors might have come from a single source instead.
- 16.12 No legal advice was sought or due diligence performed on the counterparties to the various doubtful transactions, notwithstanding the large sums placed with them.
- 16.13 There were not any board minutes or documents detailing the commercial reasons and rationale behind the transactions.
- 16.14 There was not any record, e.g. shipping or customs documents, evidencing actual physical delivery of goods concerned.
- 16.15 None of the three recipients of the earnest monies paid by the Group was registered or had a significant presence in Hong Kong.
- 16.16 The debtor's obligation to repay under the Deeds of Debt was expressed to be only on a "best endeavours" basis.

### **The Nominee Directors**

17. According to information provided to the SFC, the directors and/or bank account operators of 7 of the 8 Debtors were nominees acting under the instruction of Wong. The nominees in question were:-

17.1 A;

17.2 B;

17.3 C;

17.4 D; and

17.5 E,

(together the “**Nominees**”)<sup>2</sup>.

18. According to information provided to the SFC:-

18.1 A agreed to act as nominee director of Elite Choice, Global Kent and Asia Top at the request of Wong. He also signed cheques and transaction documents of Elite Choice and Global Kent, and arranged bank transfers and prepared transaction documents of Upbest Asia, under Wong’s instructions.

18.2 B agreed, at the request of Wong, to act as nominee director of Asia Top, Uni-Star and Global Kent, and at the request of Wong, he set up Luen Fung and arranged for D and E to act as its nominee directors. B also signed and arranged cheques and transaction documents of Asia Top, Uni-Star and Luen Fung under Wong’s instructions.

18.3 D became a nominee director of Luen Fung upon B’s arrangement. She signed blank cheques of Luen Fung jointly with E as arranged by B.

18.4 E became a nominee director of Luen Fung upon B’s arrangement. She signed blank cheques of Luen Fung jointly with D, and blank papers with Luen Fung’s company chop, as arranged by B.

18.5 C was recruited by Wong as an accounting manager of a company secretarial firm controlled by the Wong with A as nominee director. C agreed to act as nominee director of Goloda, and signed cheques and transaction documents of Goloda under Wong’s instructions. She also prepared documents of Upbest Asia under Wong’s instructions.

---

<sup>2</sup>The names of the Nominees have been redacted in this summary.

19. In all, 7 of the Debtors (except House of Brands) were controlled by Wong or his nominees. However, Wong personally handled and/or supervised the business and money dealings of the Group with (among others) House of Brands, such as giving instructions to the Company's Assistant Accounting Manager (the "**Accounting Manager**") in this regard.

### **Cash flow analysis**

20. Based on the SFC's review and analysis of the available documentation in respect of the Doubtful Receivables by its in-house forensic accountant, **certain round robin transactions ("Round Robin Transactions") and partial round robin transactions ("Partial Round Robin Transactions") have been identified in relation to the transactions giving rise to the Doubtful Receivables, involving funds initially flowing out of the Group and later remitted back to the Group on the same day.** In particular, it appears that approximately HK\$615.75 million was, after several layers of transfers via third parties, later remitted back to the Group on the same day. The following is a summary of the Round Robin Transactions and Partial Round Robin Transactions which have been identified.

### **In respect of the Promissory Notes**

21. As earlier mentioned, of the Doubtful Receivables, a total of HK\$509.80 million related to promissory notes (16 in total) issued by Upbest Asia, Asia Top and Uni-Star between November 2006 and May 2007. Taking into account the two bank drafts totalling HK\$10 million produced by Wong as purported partial repayments from Upbest Asia in August 2007, **the total fund outflows made by the Group to these 3 Debtors (i.e. Upbest Asia, Uni-Star and Asia Top) in relation to the 16 promissory notes were HK\$519.8 million.**
22. Out of the total of HK\$519.8 million paid out to the 3 Debtors in relation to the promissory notes:-

- 22.1 HK\$335,645,284 was, after several layers of transfers via third parties (i.e. persons or companies outside the Group), later remitted back to the same or different Group companies on the same day;
- 22.2 HK\$149,767,120 was, after several layers of transfers through third parties, remitted to two other third parties, namely (i) Upbest Finance Co Ltd (“Upbest Finance”) to the extent of HK\$138,752,404 and (ii) Upbest Securities Co. Ltd (“Upbest Securities”) to the extent of approximately HK\$11,014,716;
- 22.3 the SFC is unable to draw any conclusion in relation to the fund flow of the remaining sum of HK\$34,387,596 (out of the HK\$519.8 million). These funds were found to be last transferred to some third parties, namely, Info Express Limited (“Info Express”) and Agnes Shen.
23. The third parties mentioned in paragraph 22 above are Asia Top, Elite Choice, Goloda, Green View Worldwide Limited (“Green View”), Hover Technologies Limited (“Hover”), Info Express, Luen Fung, Uni-Star, World Crown Limited (“World Crown”), Upbest Finance, Upbest Securities, Agnes Shen, A and B.
24. Except for Agnes Shen and Upbest Finance, (and Upbest Securities in respect of which the SFC has not reviewed its bank account opening information and therefore cannot comment), all the other third parties were connected with each other either by being one of the Debtors or by being controlled by one or more of the Nominees and/or by sharing the same telephone or fax number, and/or the same address.
25. As regards Agnes Shen, Upbest Securities and Upbest Finance, Wong informed the SFC during his interview that Agnes Shen was a client of his when he was working at International Taxation Advisory Services Limited (a company of which Wong was a director and 50% shareholder). Upbest Finance and Upbest Securities are, and were at all material times, subsidiaries of Upbest Group Limited, a company listed on the SEHK (stock code 335). At all material times

until his resignation on 3 August 2007, Wong was an independent non-executive director of Upbest Group Limited.

26. As regards Info Express, while the SFC does not have its bank account information, A has told the SFC that he has acted as its nominee director and bank signatory, and had signed bank documents and other documentation on behalf of this company, in accordance with Wong's instructions.
27. The HK\$335.65 million mentioned in paragraph 22.1 above related to 8 Round Robin Transactions and 5 Partial Round Robin Transactions.
28. Round Robin Transactions: a total of 8 fund outflows, totalling HK\$278,200,000, were paid out of the Group companies in relation to 8 promissory notes issued by Upbest Asia. These funds were, after layers of transfers via third parties, remitted back to the same or different Group companies later on the same day. The following table summarises the identities of the Group companies which received the funds in the Round Robin Transactions:-

| <b>Promissory Note ("PN") Date</b> | <b>PN Amount (HK\$)</b> | <b>PN Issuer</b> | <b>Paying Group Company</b> | <b>Group Company Recipient of funds on the same day</b> |
|------------------------------------|-------------------------|------------------|-----------------------------|---|
| 30/11/2006                         | \$25M                   | Upbest Asia      | Egana Investments           | Egana Marketing/Eco-Haru/Egana Investments              |
| 4/12/2006                          | \$18.2M                 | Upbest Asia      | Eco-Haru                    | Eco-Haru  |
| 3/1/2007                           | \$45M                   | Upbest Asia      | Egana Investments           | Egana Investments                                       |
| 3/1/2007                           | \$36M                   | Upbest Asia      | Eco-Haru                    | Egana Investments                                       |
| 2/5/2007                           | \$37M                   | Upbest Asia      | Eco-Haru                    | Eco-Haru  |
| 2/5/2007                           | \$37M                   | Upbest Asia      | Egana Marketing             | Egana Marketing   |
| 3/5/2007                           | \$40M                   | Upbest Asia      | Eco-Haru                    | Eco-Haru  |

|              |                 |             |                 |                 |
|--------------|-----------------|-------------|-----------------|-----------------|
| 3/5/2007     | \$40M           | Upbest Asia | Egana Marketing | Egana Marketing |
| <b>Total</b> | <b>\$278.2M</b> |             |                 |                 |

29. Partial Round Robin Transactions: A total of 5 fund outflows, totalling approximately HK\$141.6 million, from the Group companies in relation to 5 promissory notes issued by Upbest Asia and Asia Top were involved. Of the HK\$141.6 million, about HK\$57.45 million was, after layers of transfer via third parties, later remitted back to the same or different Group companies on the same day, while about HK\$83.77 million was remitted to third parties. The following table summarises the identities of Group company recipients involved in the Partial Round Robin Transactions:-

| <b>PN Date</b> | <b>PN Amount (HK\$)</b> | <b>PN issuer</b>           | <b>Group Company Payor</b>  | <b>Group Company Recipient (HK\$ &amp; Name)</b>   |
|----------------|-------------------------|----------------------------|-----------------------------|--|
| 29/11/2006     | \$15M<br>\$15M          | Upbest Asia<br>Upbest Asia | Eco-Haru<br>Egana Marketing | \$18.15M<br>The Company                            |
| 30/11/2006     | \$29.3M                 | Upbest Asia                | Egana Marketing             | \$4M<br>Egana Marketing/Eco-Haru/Egana Investments |
| 4/5/2007       | \$46M                   | Upbest Asia                | Eco-Haru                    | \$34.99M<br>Egana Marketing/Eco-Haru               |
| 28/2/2007      | \$36.3M                 | Asia Top                   | Egana Investments           | \$0.31M Egana.com                                  |
| <b>Total</b>   | <b>\$141.6M</b>         |                            |                             | <b>\$57.45M</b>                                    |

In respect of the Strategic Investments

30. As earlier mentioned, of the Doubtful Receivables, a total of HK\$659.2 million was due from 3 Debtors, namely, Goloda, Upbest Asia and Elite Choice. These receivables were related to 4 potential strategic investments made by the Group, namely, (i) further investment in House of Brands, (ii) the Fortunoff Project, (iii) investment in Garant AG, and (iv) acquisition of Goldpfeil shops and

franchising right from Elite Choice. The total actual fund outflow was HK\$429,263,137 because part of the payment in relation to the Fortunoff Project was made by assigning certain receivables due from Hover, valued at HK\$229.94 million on 13 June 2007, to Upbest Asia.

31. Out of the total actual fund outflow of HK\$429,263,137 in relation to the aforesaid proposed investments, approximately HK\$280.1 million was, after several layers of transfers via third parties, later remitted back to the same or different Group companies on the same day. The following table summarises the identities of the Group company recipients in these Partial Round Robin transactions:-

| <b>Strategic Investment</b>                | <b>Amount paid (HK\$)</b> | <b>Name of paying Group Company</b> | <b>Group Company Recipient (HK\$ &amp; Name)</b>        |
|--|---------------------------|-------------------------------------|---|
| Acquisition in House of Brand              | \$134.5M                  | Eco-Haru                            | \$134.33M<br>Egana Marketing/Eco-Haru/Egana Investments |
| Fortunoff Project                          | \$35.06M                  | Eco-Haru                            | \$34.06M<br>Egana of Switzerland                        |
| Investment in Garant AG                    | \$148.2M                  | Eco-Haru                            | \$111.71M<br>Eco-Haru                                   |
| Acquisition of shops and franchising right | \$111.5M                  | Centreline                          | --  |
| <b>Total</b>                               | <b>\$429.26M</b>          |                                     | <b>\$280.1M</b>   |

32. The third parties mentioned in paragraph 31 above are Beltec Group Inc. (“**Beltec Group**”), Elite Choice, Goloda, Green View, Luen Fung, Uni-Star, Upbest Finance, Upbest Asia, World Crown, A and B. Other than Beltec Group and Upbest Finance, the others were connected with each other either by having been identified as one of the Debtors or as having been controlled by one or more of the Nominees and/or by sharing the same telephone/fax number, and/or the same address.

33. There is no apparent commercial reason or rationale for the aforesaid Round Robin Transactions or Partial Round Robin Transactions, and the SFC has not been unable to determine the true underlying purpose of those transactions.

**Liability of the Directors under section 214 of the Ordinance**

34. Wong:

34.1 appointed or caused to be appointed nominee directors/bank signatories for at least seven of the Debtors and caused or procured them to act in accordance with his instructions;

34.2 controlled the nominee directors/bank signatories of a number of those companies other than the Debtors through which funds of the Group have been identified as flowing in Round Robin and Partial Round Robin transactions, including Green View, Info Express, Hover and World Crown;

34.3 handled and/or supervised the Group's transactions and money transfers with the Debtors, including those transactions giving rise to the Doubtful Receivables. In particular, he:

34.3.1 gave instructions to the Company's Secretary Manager on the drafting of the content of board minutes approving such transactions;

34.3.2 instructed the Accounting Manager to handle the billing and payment arrangements in respect of "Indent Sales" involving all of the Debtors except Asia Top and Upbest Asia, and provided the Accounting Manager with purchase orders of these companies and instructed her to prepare invoices and delivery notes/cargo receipts accordingly;

34.3.3 instructed the Accounting Manager to prepare cheques of Group Companies in respect of payments to the Debtors and obtain the signatures of Lee and/or Chik to the same;

- 34.3.4 instructed the Accounting Manager to prepare blank cheques of Group Companies and to obtain the signatures of Lee and/or Chik to the same;
- 34.3.5 caused or procured Lee and Chik to sign cheques and other documentation (including board minutes approving transactions after payments had already been made by the Group) on behalf of Group Companies in respect of the transactions giving rise to the Doubtful Receivables;
- 34.4 caused the relevant Group Companies to lend money to/invest in companies controlled by himself, at commercially unfavourable or unrealistic terms, and without obtaining any security for the Group in respect of such transactions; and/or
- 34.5 failed to carry out, or cause to be carried out, proper procedures and due inquiries and diligence before allowing or permitting the Group Companies to enter into the transactions involving very substantial payments to third parties, which gave rise to the Doubtful Receivables.
35. Lee has accepted that he might have signed the relevant cheques and documents in relation to the transactions giving rise to the Doubtful Receivables without paying attention to or knowing the details of the transactions and sometimes without having seen the supporting documents. He admitted signing some blank cheques and blank papers handed to him by the Accounting Manager when he was about to leave Hong Kong and that he had a habit of doing so, and he did not know how the blank cheques and blank papers would be used. Lee also said that he would sign cheques even though he had not participated in the relevant transactions because he was an authorised bank signatory of the relevant subsidiaries in Hong Kong.
36. Chik has said that he signed relevant cheques, documents and board minutes of the Group's subsidiaries in respect of the transactions giving rise to the Doubtful Receivables. The board minutes were prepared only after the payments had already been made and they were only paper meetings. Chik said

he signed the documents without making any enquiry about the underlying transactions, when he was asked to do so by Wong. Chik also signed blank cheques and blank papers when he was about to leave Hong Kong. Chik stated that, as far as he was aware, there was no procedure, and no due diligence was performed, to verify the authenticity or the recoverability of the loans and investment transactions giving rise to the Doubtful Receivables handled by Wong.

37. Further, Chik:

37.1 was present at some of the meetings held between Wong and the Accounting Manager when Wong explained what he wanted the Accounting Manager to do as regards the billing and payment arrangements for Indent Sales;

37.2 had on occasions instructed the Accounting Manager to issue cheques of specific Group Companies in respect of payments for promissory notes, apparently on the instructions of Wong; and

37.3 had on occasions given instructions to the Company's Secretary Manager on what the content of board minutes of the Group Companies should contain in respect of transactions with the Debtors.

38. By reason of the matters aforesaid:-

38.1 There was large scale misapplication or misuse of the Group Companies' funds giving rise to the Doubtful Receivables. After credit of HK\$220,178.16 received by the Group in September 2007, the total amount of the receivables outstanding is HK\$2,455,306,710.94 and US\$11,751,629.77, making a total of approximately HK\$2,547,321,972.03;

38.2 At least 7 of the 8 Debtors were controlled by Wong, and Wong had a massive conflict of interest when he caused or procured or permitted the Group Companies to enter into the relevant transactions with the Debtors or some of them;

- 38.3 The relevant transactions giving rise to the Doubtful Receivables were not genuine or commercial transactions;
- 38.4 Substantial round robin flows of funds were used to hide the movement of the Group Companies' funds for illegitimate purposes;
- 38.5 There was an absence of proper procedures, or due inquiries and due diligence carried out by the Directors before the Group Companies entered into substantial transactions and made substantial payments to third parties;
- 38.6 The Directors failed to consider whether it was in the Group Companies' best interests to enter into the relevant transactions giving rising to the Doubtful Receivables, and failed to take any or any reasonable steps to protect the interests of the Group Companies;
- 38.7 The Directors have caused, allowed or permitted the Group Companies to part with their funds in circumstances where the Group Companies were plainly exposed to unnecessary and/or unreasonable risks of losses.
39. In the premises, the business or affairs of the Company have been conducted in a manner:-
- 39.1 involving defalcation, fraud, misfeasance or other misconduct towards the Company, its members or part of its members; and
- 39.2 unfairly prejudicial to its members or any part of its members.
40. The Directors were wholly or partly responsible for the business or affairs of the Company having been so conducted as aforesaid.
41. The SFC further contends that the losses arising from the Doubtful Receivables suffered by the Group Companies were caused by the Directors' breaches of fiduciary duty to act in good faith and in the best interests of the Group Companies and to avoid conflicts of interest and/or breaches of the duty of care at common law to exercise due and reasonable skill, care and diligence and/or breaches of Rules 3.08 and 3.09 of the Listing Rules, and the Directors are liable to compensate or make good the losses suffered by the Group Companies.