

Hontex ordered to make \$1.03 billion buy-back offer over untrue IPO prospectus

20 Jun 2012

The Court of First Instance today granted orders sought by the Securities & Futures Commission (SFC) in its proceedings against Hontex International Holdings Company Limited (Hontex) to make a repurchase offer to investors who subscribed for Hontex shares in the initial public offering or purchased them in the secondary market (Note 1).

These orders were made by the Hon Mr Justice Harris on the basis of a statement of agreed facts signed this morning between the SFC and Hontex after 12 days of trial in the Court of First Instance (Note 2).

The orders require Hontex to pay a further sum of \$197,755,503 into the Court within 28 days, adding to the amount of \$832,244,497 already frozen under the interim orders, to convene a shareholders' meeting to approve a resolution and then, upon approval, to take steps to repurchase the shares allotted to or purchased by approximately 7,700 public shareholders who are currently holding Hontex shares.

Mr Ashley Alder, the SFC's Chief Executive Officer said: "These are the first orders of this kind made under section 213 of the Securities and Futures Ordinance (SFO) to remediate a contravention of the SFO and represent an important milestone in the SFC's efforts to protect the investing public from the consequences of wrongdoing."

The repurchase price will be \$2.06 per share, being the closing price of the shares when trading was suspended by the Stock Exchange of Hong Kong, on 30 March 2010, at the direction of the SFC.

The repurchase offer will not be made to the controlling shareholders who have agreed to abstain from voting upon the repurchase resolution.

In resolving these proceedings, the SFC has not entered into any agreement or understanding with any person that would inhibit or prevent the commencement of any criminal proceedings arising from any of the facts and circumstances relating to Hontex's IPO prospectus.

In the statement of agreed facts provided to the Court this morning, Hontex has acknowledged that it was reckless in allowing materially false and misleading information to be included in its prospectus which induced investors to subscribe and purchase its shares and that it contravened section 298 of the SFO (Note 3).

The total amount available for the repurchase is \$1,030,000,000 comprising \$832,244,497, being the total amount frozen by interim orders made on 29 March 2010 and an additional \$197,755,503 which the Court orders Hontex to pay within 28 days (Note 4).

The repurchase scheme will be managed by administrators appointed by the Court (Note 5).

Hontex shareholders will be able to choose whether to approve the repurchase scheme and, if it is approved, whether to accept or reject the repurchase offer.

Hontex has acknowledged that the amounts stated in its IPO prospectus in respect of its turnover for the years ended 31 December 2006, 2007 and 2008 were materially false and misleading as was its profit before tax. Hontex has also agreed that the value of its cash and cash equivalents for the years ended 31 December 2007, 2008 and 30 June 2009 were materially false and misleading and the number of franchise stores disclosed in the IPO prospectus, as at 31 December 2008 and 8 December 2009, was also false and misleading.

The SFC alleged that the IPO prospectus materially overstated turnover of the Hontex Group for the years ended 31 December 2006, 2007 and 2008 by approximately RMB 380,934,125, RMB 708,894,820 and RMB 974,733,321 respectively and that profit before tax was overstated in the same financial years by approximately RMB 102,935,289 RMB 185,001,887 and RMB 298,286,785 respectively.

Additionally, the SFC alleged that the IPO prospectus overstated cash and cash equivalents held by the company for the years ended 31 December 2007, 2008 and 30 June 2009, by approximately RMB 66,629,463, RMB 165,262,910 and RMB 204,536,101 respectively and, as at 31 December 2008 and 8 December 2009, the number of franchise stores was overstated by 8 and 37.

In admitting a contravention of section 298, neither Hontex nor its directors and the other defendants are admitting any criminal contravention of this provision nor can they be taken to have done so.

Hontex does not agree the extent of the overstatements alleged by the SFC because it cannot verify the true position. Nonetheless it has accepted that these figures in the IPO prospectus were materially false.

The Court also ordered that Hontex pay the SFC's costs fixed in the sum of \$7,000,000.

The SFC would like to acknowledge and publicly thank the China Securities Regulatory Commission for its assistance in the investigation of this case.

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Notes:

1. Hontex was listed on the Stock Exchange of Hong Kong on 24 December 2009. The two wholly owned subsidiaries of Hontex which are also parties to the proceedings are Easy Venture International Limited and First Heritage Limited. The proceedings were commenced under section 213 of the SFO on 29 March 2010 freezing up to \$997.4 million held by Hontex and two of its subsidiaries.
2. The SFC alleged in the proceedings that Hontex contravened section 298 and section 300 of the SFO and/or section 342F of the Companies Ordinance and/or section 384 of the SFO. In agreeing the statement of facts, Hontex is agreeing that it contravened section 298 of the SFO. This is sufficient to trigger the Court's power, under section 213 of the SFO, to make remedial orders if it decides to do so.
3. Section 298 of the SFO, which is a market misconduct provision, prohibits the distribution of materially false or misleading information that is likely to induce another person to subscribe or buy securities if the person knows or is reckless as to whether the information is false or misleading.
4. The Court of First Instance made interim orders in these proceedings freezing up to \$997.4 million held by Hontex and two of its subsidiaries following an urgent application by the SFC on 29 March 2010. The SFC was only able to trace \$832,033,926 of this amount.
5. The administrators are Mr Stephen Liu Yiu Keung, Mr David Yen Ching Wai and Ms Koo Chi Sum of Ernst & Young. Their fees will be paid by Hontex.
6. Under the orders, Hontex is required to convene a shareholders' meeting within two months of today's date to approve a resolution to make the repurchase offer. The repurchase offer is required to be approved by shareholders first under Cayman Islands law which is where Hontex is incorporated. Assuming the resolution is approved, the administrators will manage the repurchase scheme under a protocol to be agreed by the SFC.
7. Please also see SFC's press releases dated [8 April 2010](#), [7 September 2010](#), [12 November 2010](#), [19 May 2011](#), [15 June 2011](#), [8 August 2011](#), [3 October 2011](#), [28 November 2011](#) and [12 December 2011](#).

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