

## SFC commences proceedings against Greencool's former chairman and seeks to freeze \$1.59 billion of his assets to compensate investors

23 Jun 2014

The Securities and Futures Commission (SFC) has instituted proceedings in both the Court of First Instance (CFI) and the Market Misconduct Tribunal (MMT) against former chairman and chief executive officer, Mr Gu Chujun, and other senior executives of Greencool Technology Holdings Limited (Greencool), alleging market misconduct involving grossly overstating the company's financial accounts for the years ended 31 December 2000 to 2004 (Note 1).

The commencement of these proceedings simultaneously in the CFI and the MMT follows seven years of investigation work across several jurisdictions, making it the SFC's most complex investigation during this period.

The proceedings before the CFI have been commenced under section 213 of the Securities and Futures Ordinance against Gu, seeking, among other things, an injunction to freeze assets beneficially owned by Gu up to the value of about \$1.59 billion and an order for damages to compensate more than 1,300 minority shareholders.

The SFC is alleging that Gu directed the massive fraud and should be ordered to compensate the minority shareholders who were induced to acquire Greencool shares on the strength of the distorted financial results (Note 2).

In the MMT proceedings, the SFC alleges Gu and eight other former senior executives of Greencool, namely, Mr Zhang Xihan, Mr Hu Xiaohui, Mr Liu Congmeng, Mr Xu Wanping, Mr Chen Changbei, Mr Fan Jiayan and Ms Margaret Man, and its former company secretary, Mr Henry Mok Wing Kai, were involved in gross overstatements of Greencool's sales, profit, trade receivables, bank deposits, overstating Greencool's net asset value and severely understating its bank loans, in annual reports and results announcements released between 2001 and 2005 (Notes 3 & 4).

The SFC alleges that as a result of the overstatement of bank deposits and the non-disclosure of the bank loans, the net asset value of Greencool for the financial years ended 31 December 2000 to 2004 was overstated by approximately RMB487 million, RMB653 million, RMB982 million, RMB1,062 million and RMB904 million respectively which represents 43% to 80% of Greencool's total net assets in these years.

The SFC has identified assets in Hong Kong, namely shares in other Hong Kong listed companies, which the SFC alleges are held for the benefit of Gu by nominees (Note 5).

The SFC is seeking interim orders freezing these shares for the purposes of facilitating compensation orders, if such orders are made by the CFI in the section 213 proceedings. The amount that the SFC is seeking to freeze, up to \$1.59 billion, is:

- the estimated losses suffered by minority shareholders together with accrued interest;
- the estimated gains received by Gu as a result of his alleged market misconduct together with accrued interest; and
- other costs that the CFI or the MMT may require Gu to pay in connection with both proceedings.

End

Notes:

1. Greencool was listed on the Growth Enterprise Market (GEM) of The Stock Exchange of Hong Kong Limited (SEHK) on 13 July 2000. On 1 August 2005, trading in Greencool shares was suspended and Greencool was subsequently delisted on 18 May 2007. On 5 March 2010, Greencool was struck off the register of non-Hong Kong companies by the Registrar of Companies of Hong Kong.
2. None of these minority shareholders have been able to realise their investments which have since 18 May 2007 become valueless when Greencool was delisted from the GEM of the SEHK.
3. The SFC alleges that the nine senior executives of Greencool have contravened section 277 of the

Securities and Futures Ordinance which prohibits the distribution of materially false or misleading information that is likely to induce another person to subscribe for or buy securities or is likely to have a price effect on the company's securities.

4. The Notice to the MMT which contains the statement setting out the grounds for commencing the MMT proceedings and a synopsis will be available on the MMT website ([www.mmt.gov.hk](http://www.mmt.gov.hk)).
5. The SFC alleges a parcel of more than 100 million H shares in Hisense Kelon Electrical Holdings Limited (formerly Guangdong Kelon Electrical Holdings Limited) (Hisense Kelon), a company formerly associated with Gu, are held secretly for the benefit of Gu. These shares are currently frozen by another interim order of the CFI in an application by Hisense Kelon based on the company's ongoing investigation into the beneficial ownership of these shares.

## 證監會向格林柯爾前主席展開法律及研訊程序並尋求凍結其15.9億元資產以向投資者作出賠償

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證券及期貨事務監察委員會（證監會）已分別在原訟法庭及市場失當行為審裁處（審裁處）向格林柯爾科技控股有限公司（格林柯爾）前主席及首席執行官顧繼軍以及其他高層人員展開法律程序和研訊程序，指他們犯了涉及嚴重誇大該公司截至2000年至2004年12月31日止年度的財務帳目的市場失當行為（註1）。

上述法律程序及研訊程序是證監會進行歷時七年跨越多個司法管轄區的調查工作後，同時在原訟法庭及審裁處展開，這是證監會在這段期間內最複雜的調查工作。

證監會已根據《證券及期貨條例》第213條在原訟法庭席前展開針對顧的法律程序，尋求（其中包括）法庭頒布強制令凍結顧實益擁有價值高達約15.9億元的資產，以及頒令向超過1,300名少數股東作出損害賠償。

證監會指該宗龐大的詐騙案是在顧的指示下進行，故此顧應被飭令向受經扭曲的財務業績誘使而購買格林柯爾股份的少數股東作出賠償（註2）。

在審裁處的研訊程序中，證監會指顧及另外八名格林柯爾前高層人員張細漢（男）、胡曉輝（男）、劉從夢（男）、徐萬平（男）、陳長備（男）、樊家言（男）及萬紅（女）以及其前公司秘書莫永佳（男）涉嫌於2001年至2005年期間發表的年報及業績公告中，嚴重誇大格林柯爾的銷售額、溢利、應收帳款和銀行存款、誇大格林柯爾的資產淨值以及嚴重少報其銀行貸款（註3及4）。

證監會指，由於銀行存款被誇大及銀行貸款未被披露，格林柯爾於截至2000年至2004年12月31日止財政年度的資產淨值分別被誇大約人民幣4.87億元、人民幣6.53億元、人民幣9.82億元、人民幣10.62億元及人民幣9.04億元，相當於格林柯爾在該些年度的總淨資產值的43%至80%。

證監會已識別出被指由代名人為顧的利益所持有的在港資產，即其他香港上市公司的股份（註5）。

證監會正尋求法院頒布臨時命令以凍結該等股份。假如原訟法庭在根據第213條展開的法律程序中頒布賠償令，上述臨時命令能夠便利該等賠償令的執行。證監會尋求凍結的金額高達15.9億元，相等於：

- 少數股東的估計損失連同累計利息；
- 顧從其被指干犯的市場失當行為為所得的估計收益連同累計利息；及
- 原訟法庭或審裁處就有關法律程序及研訊程序而可能要求顧支付的其他費用。

完

備註：

1. 格林柯爾於2000年7月13日在香港聯合交易所有限公司（聯交所）創業板上市。2005年8月1日，格林柯爾的股份暫停買賣，該公司隨後於2007年5月18日被撤銷上市資格。2010年3月5日，格林柯爾被香港公司註冊處處長從非本地公司名冊中剔除。
2. 自格林柯爾在2007年5月18日被撤銷於聯交所創業板的上市資格後，該等少數股東的投資已變得毫無價值，至今無一能將其投資變現。
3. 證監會指，格林柯爾的九名高層人員違反了《證券及期貨條例》第277條。該條規定，凡任何資料在要項上屬虛假或具誤導性，並相當可能會誘使他人認購或購買證券，或相當可能對該公司的證券價格造成影響，均不得分發該資料。
4. 證監會向審裁處發出的通知及案情概要將載於審裁處網站（[www.mmt.gov.hk](http://www.mmt.gov.hk)），列明證監會在審裁處展開研訊程序的理據。
5. 證監會指，代名人為顧的利益秘密地持有超過1億股海信科龍電器股份有限公司（海信科龍）的H股股份。海信科龍前稱廣東科龍電器股份有限公司，是一家之前與顧有關聯的公司。目前該等股份正被海信科龍向原訟法庭申請頒發的另一項臨時命令所凍結，海信科龍是依據該公司正在進行的一項有關該等股份的實益擁有權的調查而向原訟法庭作出上述申請。

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