

SFC seeks court orders against chairman, current and former directors of Minth Group Limited

15 Apr 2014

The Securities and Futures Commission (SFC) has commenced legal proceedings in the Court of First Instance against the chairman, two current executive directors and a former executive director of Minth Group Limited (Minth) (Notes 1 & 2).

The SFC is seeking disqualification orders against Mr Chin Jong Hwa, chairman and executive director of Minth, Mr Shi Jian Hui, chief executive officer and executive director of Minth, Mr Zhao Feng, vice president and executive director of Minth, and Mr Mu Wei Zhong, former chief operating officer and executive director of Minth.

The SFC's action follows its investigation into the acquisitions of 100% of the equity interest in Magic Figure Investments Limited (Magic Figure) and Talentlink Development Limited (Talentlink HK) by Minth's subsidiary, Decade (HK) Limited (Decade), in 2008.

The SFC alleges that Chin, Shi, Zhao and Mu had breached their directors' duties to Minth in the acquisitions resulting in loss to Decade. At the material time, Chin is a substantial shareholder of Minth.

Specifically, the SFC alleges that:

- The sellers in the acquisitions, Mr Hsu Chun Wei (nephew of Chin) and Ms Hsu Hsiao Ling (niece of Chin) were nominees of Chin and therefore not third parties independent of Minth. Chin was in fact the true beneficial owner of the issued shares in Magic Figure and Talentlink HK. A total of \$99 million was paid by Decade for the purpose of the acquisitions and not RMB25.9 million as claimed in the Interim Report 2008 issued on 22 September 2008, and further that the bulk of the total consideration paid by Decade ended up in bank accounts controlled by Chin. Chin, therefore, acted in breach of his fiduciary duty owed to Decade and caused loss to Decade because of his material interests in the acquisitions. Chin also failed to disclose any of this to Minth, Decade and/or Minth's board of directors.
- Minth also falsely represented in its Interim Report 2008 that the sellers in the acquisitions were independent third parties and that the acquisitions resulted in a net cash inflow of RMB30 million.
- Minth falsely represented in its announcement dated 12 June 2009 that the financial assistance to Mr Hsu and Ms Hsu given by Chin, which had been allegedly in place since 2007, was only ultimately repaid to Chin after the acquisitions had been completed by way of proceeds from completion of the acquisitions.
- Minth failed to disclose in its circular to the shareholders dated 10 July 2009 to approve, confirm and ratify the acquisitions the true extent to which the consideration of the acquisitions ultimately went to the bank accounts controlled by Chin. Minth also failed to disclose in the circular a property loan made by the wife of Chin to Mr Hsu and Ms Hsu.
- Shi, Zhao and Mu failed to make full and proper inquiries of Chin's interests in the acquisitions, the true relationship and the financial assistance between Chin and Mr Hsu/Ms Hsu, and the manner in which the consideration was eventually disbursed, and failed to ensure Minth's full compliance with the Listing Rules of SEHK.

The SFC is also seeking court orders that Chin pay \$99 million compensation to Decade for loss or damage caused by his alleged misconduct.

End

Notes:

1. Minth was listed on the Main Board of the Stock Exchange of Hong Kong Limited (SEHK) on 1 December 2005. The principal activities of Minth's associates and subsidiaries were design, manufacturing, processing, developing and sales of exterior automobile body parts and moulds of passenger cars.
2. The first hearing of the petition presented by the SFC under section 214 of the Securities and Futures Ordinance (SFO) will be heard in the Court of First Instance on 9 July 2014. 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

involving defalcation, fraud, misfeasance or other misconduct towards it or its members or resulting in members not having been given all the information that they might reasonably expect.

3. A [summary](#) of the material events and the allegations is posted on the SFC website.

Page last updated : 15 Apr 2014

證監會尋求法院向敏實集團有限公司主席、多名現任及前任董事作出頒令

2014年4月15日

證券及期貨事務監察委員會（證監會）已在原訟法庭對敏實集團有限公司（敏實）的主席、兩名現任執行董事及一名前執行董事展開法律程序（註1及2）。

證監會正尋求對敏實主席兼執行董事秦榮華（男）、敏實行政總裁兼執行董事石建輝（男）、敏實副總裁兼執行董事趙鋒（男）及敏實前首席運營官兼執行董事穆偉忠（男）發出取消資格令。

證監會對敏實附屬公司Decade (HK) Limited (Decade) 於2008年收購Magic Figure Investments Limited (Magic Figure) 及Talentlink Development Limited (Talentlink HK) 100%股權作出調查後，決定採取上述行動。

證監會指秦、石、趙及穆在收購交易中違反了對敏實所負有的董事責任，以致Decade蒙受損失。在關鍵時間，秦是敏實的大股東。

具體而言，證監會指：

- 上述收購中的賣方徐鈞維（秦的外甥）及徐曉琳（秦的外甥女）是秦的代名人，故並非獨立於敏實的第三方。秦實際上是Magic Figure及Talentlink HK的已發行股份的真正實益擁有人。Decade為收購交易支付了合共9,900萬元，而非如敏實在2008年9月22日刊發的2008年中期報告中所指的人民幣2,590萬元，加上大部分由Decade支付的總代價最終被存入由秦控制的銀行帳戶。因此，秦的行為違反其對Decade所負有的受信責任，並因其於收購交易中擁有重大利益而導致Decade蒙受損失。秦亦沒有就上述事項向敏實、Decade及／或敏實的董事會作出任何披露。
- 敏實在2008年中期報告中亦作出虛假陳述，指收購交易的賣方是獨立第三方，並指收購事項產生人民幣3,000萬元的現金流入淨額。
- 敏實在2009年6月12日的公告中作出虛假陳述，指秦自2007年已向徐先生及徐女士提供財務資助，並指最終在收購後以收購收益的形式歸還予秦。
- 敏實沒有在2009年7月10日為批准、確認及追認收購交易而寄發予股東的通函中，披露收購交易的代價最終存入由秦控制的銀行帳戶的真正金額。敏實亦沒有在上述通函中披露秦的妻子曾向徐先生及徐女士作出一筆物業貸款。
- 石、趙及穆沒有對秦於收購交易中的利益、秦與徐先生／徐女士之間的真正關係及財務資助，以及代價的最終償付方式作出完整及適當的查詢，亦沒有確保敏實完全遵守聯交所的《上市規則》。

證監會正尋求法庭頒令秦須就其涉嫌干犯的失當行為所引致的損失或損害，向Decade作出9,900萬元的賠償。

完

備註：

1. 敏實在2005年12月1日在香港聯合交易所有限公司（聯交所）主板上市，其聯營公司及附屬公司的主要業務為設計、製造、加工、開發和銷售乘用車的汽車外部車身零部件和模具。
2. 原訟法庭將於2014年7月9日就證監會根據《證券及期貨條例》第214條提出的呈請進行首次聆訊。根據《證券及期貨條例》第214條，若法庭裁定某公司的事務曾以涉及對該公司或其成員作出虧空、欺詐、不當行為或其他失當行為的方式處理，或導致其成員未獲提供他們可合理期望獲得的所有資料，而某人須為此負全部或部分責任的話，則法庭可（其中包括）作出命令，取消該人出任董事的資格，或飭令該人在不超過15年的期間內，不得直接或間接參與任何法團的管理。
3. 上述重要事件及證監會作出的指控的撮要已載於證監會網站。

最後更新日期：2014年4月15日

SFC's Allegations against Respondents (an extract from the SFC's Petition filed with the Court)

A. Current or former directors of the Company involved

1. The 1st Respondent ("**Chin Jong Hwa**") is the Chairman and an Executive Director of the Company and a director of various subsidiaries of the Group. He founded the Group in March 1997 and is the controlling shareholder of the Company. It is stated in the 2012 Annual Report of the Company that Chin Jong Hwa has experience of over 25 years in management in the auto-parts industry and has been leading the management team since the founding of the Group, and he had approximately 40.53% shareholding interest in the Company through Linkfair Investments Limited ("**Linkfair**"), a company wholly owned by Chin Jong Hwa, which held 436,664,000 Shares as at 31 December 2012.

2. The 2nd Respondent ("**Shi Jian Hui**") is the Chief Executive Officer ("**CEO**") and an Executive Director of the Company and a director of various subsidiaries of the Group. It is stated in the 2012 Annual Report of the Company that Shi Jian Hui has experience of almost 20 years in the Chinese auto-parts industry since he joined one of Chin Jong Hwa's companies in 1993. Prior to his current position as CEO, he assumed responsibility as general manager of operations (including leading both overseas and domestic business departments), head of the R&D Centre and was in charge of Human Resources Departments for the Group as a whole. Shi Jian Hui joined the Group in March 1997 and was appointed as a Director on 14 July 2005.

3. The 3rd Respondent ("**Mu Wei Zhong**") was the Chief Operating Officer ("**COO**") and an Executive Director of the Company. It is stated in the 2008 Annual Report of the Company that Mu Wei Zhong has experience of over 20 years in engineering. Before joining one of Chin Jong Hwa's companies in 1993, the 3rd Respondent worked at

Zhejiang Shipyard as an assistant engineer, and was later in charge of the Group's overseas business and operations and before that served in various members of the Group as a member of the production management team, sales manager, deputy manager, financial controller and general manager successively. The 3rd Respondent joined the Group in March 1997 and was appointed as a Director on 14 July 2005. He was re-designated from an Executive Director to a Non-Executive Director on 21 March 2012, and resigned as non-executive Director with effect from 19 December 2012.

4. The 4th Respondent ("**Zhao Feng**") is the Vice President and an Executive Director of the Company and a director of various subsidiaries of the Group with overall responsibilities for the Group's sales. It is stated in the 2012 Annual Report of the Company that Zhao Feng has over 14 years of experience in management. Since joining the Group, he has worked successively as a purchase officer, manager of the business department and deputy general manager of business operations. He joined the Group in March 1999 and was appointed as a Director on 22 December 2006.

B. Other relevant individuals and entities

5. One of the wholly owned subsidiaries of the Company is the 6th Respondent, Decade (HK) Limited ("**Decade**"), a company incorporated in Hong Kong on 18 September 2007. At all material times, Chin Jong Hwa was and is the sole director of Decade.
6. Mr Hsu Chun Wei ("**Mr Hsu**") and Ms Hsu Hsiao Ling ("**Ms Hsu**") are the nephew and niece respectively of Chin Jong Hwa, their mother (deceased) being an elder sister of Chin Jong Hwa. According to information provided by the Company, in about 2007 Chin Jong Hwa lent about US\$10,000,000 to Mr Hsu and Ms Hsu to finance their investments

in China, including investments in Magic Figure Investments Limited (“**Magic Figure**”) and Talentlink Development Limited (“**Talentlink HK**”).

Magic Figure

7. Magic Figure is a limited company incorporated in the British Virgin Islands on 25 October 2006.
8. Between 17 November 2006 and 22 May 2008, Mr Hsu was the sole director of Magic Figure. On 22 May 2008, Mr Hsu ceased to act as director of Magic Figure, and Chin Jong Hwa was appointed and became the sole director of Magic Figure.
9. Between 17 November 2006 and 22 May 2008, Mr Hsu was apparently also the sole shareholder of Magic Figure, holding 1 issued share in Magic Figure with a par value of US\$1.00. On 22 May 2008, Mr Hsu transferred the 1 issued share in Magic Figure to Decade.
10. According to information provided by the Company, Magic Figure was at all material times an investment holding company and its principal investments were two wholly owned subsidiaries both established in the PRC on 17 January 2007, namely, Jiaxing Guowei Automotive Parts Co., Ltd (嘉興國威汽車零部件有限公司) (“**Jiaxing Guowei**”) and Jiaxing Situ Automotive Parts Co., Ltd (嘉興思途汽車零部件有限公司) (“**Jiaxing Situ**”), which held land use rights in two pieces of land both located at Jiachuang Road Eastside, Canada Jiaxing Science and Industrial Park, Jiaxing City, PRC (“**Land**”). Up to June 2009, neither Jiaxing Guowei nor Jiaxing Situ had, since their respective dates of establishment, commenced any trading and production operations.

Talentlink HK

11. Talentlink HK is a limited company incorporated in Hong Kong on 27 September 2007.
12. Between 27 September 2007 and 22 May 2008, Ms Hsu was the sole director of Talentlink HK. On 22 May 2008, Ms Hsu ceased to act as director of Talentlink HK, and Chin Jong Hwa was appointed and became the sole director of Talentlink HK.
13. Between 28 September 2007 and 27 June 2008, Talentlink Development Limited (BVI) ("**Talentlink BVI**") was the sole shareholder of Talentlink HK, holding 10,000 issued shares in Talentlink HK with a par value of HK\$1.00 each. On 27 June 2008, Talentlink BVI transferred the 10,000 issued shares in Talentlink HK to Decade.
14. According to information provided by the Company, Talentlink HK was at all material times an investment holding company and its principal investment was a wholly owned subsidiary established in the PRC on 21 December 2006, namely, Huzhou Minhai Automotive Parts Co Ltd (湖州敏海汽車零部件有限公司) ("**Huzhou Minhai**"). Up to June 2009, Huzhou Minhai had not, since its date of establishment, commenced any trading and production operations.

Talentlink BVI

15. Talentlink BVI is a limited company incorporated in the British Virgin Islands on 18 April 2005.
16. Chin Jong Hwa was the sole director of Talentlink BVI from 23 May 2005 to 4 January 2007. On 4 January 2007, Chin Jong Hwa ceased to act as director of Talentlink BVI and Ms Hsu was appointed and became the sole director of Talentlink BVI.

17. Chin Jong Hwa was also the sole shareholder of Talentlink BVI from 23 May 2005 to 22 July 2005, holding 1 issued share in Talentlink BVI with a par value of US\$1.00. On 22 July 2005, Chin Jong Hwa transferred the 1 issued share in Talentlink BVI to Sino Case Development Limited, a company owned and controlled by Chin Jong Hwa. On 4 January 2007, Sino Case Development Limited transferred the 1 issued share in Talentlink BVI to Ms Hsu.

C. The Acquisition

18. On 29 April 2008, Decade entered into a written agreement (the “**Magic Figure Agreement**”) with Mr Hsu to acquire the only issued share in Magic Figure for a cash consideration of US\$3,186,639. The Magic Figure Agreement was signed by Mr Wang Xiao Ai, the authorised representative of Mr Hsu, as vendor and Chin Jong Hwa on behalf of Decade as purchaser.

19. Also on 29 April 2008, Decade entered into a written agreement (the “**Talentlink HK Agreement**”) with Talentlink BVI to acquire all the issued shares in Talentlink HK for a cash consideration of US\$525,400. The Talentlink HK Agreement was signed by Mr Wang Xiao Ai, the authorised representative of Ms Hsu, as vendor and Chin Jong Hwa on behalf of Decade as purchaser.

20. The acquisitions of Magic Figure and Talentlink HK under the above agreements will hereinafter collectively be referred to as the “**Acquisition**”.

21. Although it was not mentioned in either the Magic Figure Agreement or Talentlink HK Agreement that Decade had also assumed the obligations to ensure that the liabilities of Magic Figure and Talentlink HK to other parties (other than inter-company balances

between Magic Figure and Talentlink HK) would be repaid at the time of the Acquisition, in the Due Diligence Report dated 16 April 2008 prepared in connection with the proposed Acquisition which was considered by the Board of Directors of the Company at a meeting held on 20 April 2008, it was stated that the Company would have to take over the liabilities of Magic Figure and Talentlink HK if it were to acquire the two companies.

22. The total amount of the liabilities of Magic Figure which Decade agreed to discharge was approximately US\$8,957,000 (HK\$69,417,000), and the total amount of the liabilities of Talentlink HK which Decade agreed to discharge was approximately HK\$19,300.

23. Accordingly, the total consideration paid by Decade in relation to the acquisition of Magic Figure and Talentlink HK was approximately HK\$100,642,000 (approximately RMB88,593,000), made up of (i) the cash consideration of US\$3,186,639 under the Magic Figure Agreement, (ii) the cash consideration of US\$525,400 under the Talentlink HK Agreement, (iii) the total amount of the liabilities of Magic Figure agreed to be discharged by Decade in the sum of approximately US\$8,957,000, and (iv) the total amount of the liabilities of Talentlink HK agreed to be discharged by Decade in the sum of approximately HK\$19,300.

D. The fund flows

24. Under the Acquisition, Decade had to make the following payments:-

- (1) the cash consideration of US\$3,186,639 payable to Mr Hsu under the Magic Figure Agreement;

- (2) the cash consideration of US\$525,400 payable to Talentlink BVI under the Talentlink HK Agreement;
- (3) the total amount of approximately US\$8,957,000 to discharge Magic Figure's liabilities to its creditor(s);
- (4) the total amount of approximately HK\$19,300 to discharge Talentlink HK's liabilities to its creditor(s).

25. Decade apparently discharged its obligations referred to above by making three payments (totalling US\$12,712,039) on 29 and 30 April 2008.

26. However, the total amount of US\$12,712,039 paid by Decade on 29 and 30 April 2008, together with other relatively small amounts in various bank accounts, ended up in bank accounts of 1st Respondent, his wife, and/or companies owned and/or controlled by Chin Jong Hwa as follows:-

- (1) US\$3,190,000 in a joint account of Chin Jong Hwa and his wife;
- (2) US\$8,951,000 in an account of Rich Advance, a company owned and/or controlled by Chin Jong Hwa;
- (3) US\$201,000 in an account of State Star, a company owned and/or controlled by Chin Jong Hwa.

E. False and/or misleading representations made to the SEHK, the SFC, shareholders of the Company and public and/or material non-disclosure, and Breaches of Listing Rules

27. The Company has made numerous false and/or misleading representations to the SEHK, the SFC, the shareholders of the Company and the public, and/or failed to make full and proper disclosure of material facts or matters to them.

28. The Interim Report 2008 of the Company published on 22 September 2008 contained the following false representations and/or material non-disclosure, namely:

- (1) The representation that the Group acquired 100% of Talentlink HK and Magic Figure and their subsidiaries for a total consideration of RMB25,917,000 from third parties is false, in that (a) the total consideration for the Acquisition was in truth RMB88,593,000, and (b) the Group acquired or purportedly acquired Talentlink HK and Magic Figure and their subsidiaries from connected persons, not third parties.
- (2) The representation that the Acquisition resulted in a “net cash inflow” of RMB30,215,000 is false in that, instead of a “net cash inflow”, the Acquisition resulted in a “net cash outflow” of RMB32,462,000.
- (3) Further, there was a failure to disclose that the Acquisition was a connected transaction as defined in Chapter 14A of the Listing Rules.

29. The Company’s letter to the SEHK dated 12 December 2008 contained the following false representations:

- (1) The representation that the total consideration paid for the acquisition of Magic Figure and Talentlink HK and their subsidiaries was RMB25,917,000 is false, in that the total consideration for the Acquisition was in truth RMB88,593,000.

- (2) The description of Ms Hsu as an “independent third party” is false, in that she was Chin Jong Hwa’s niece and a connected person.
- (3) The description of Mr Hsu as an “independent third party” is false, in that he was Chin Jong Hwa’s nephew and a connected person.
- (4) The representation that Talentlink BVI, Ms Hsu and Mr Hsu were not related to any members of the senior management, employees, contractors, sub-contractors and business associates of the Group is false, in that they were all connected with Chin Jong Hwa.
- (5) The representation that the Acquisition was not a connected transaction subject to Chapter 14A of the Listing Rules is false, in that the contrary was the true position.

30. The Company’s letter to the SFC dated 23 January 2009 contained the following false representations:

- (1) The representation that the Acquisition was considered a minor acquisition is false, in that it was a substantial transaction by reference to the applicable percentage ratios under Chapter 14 of the Listing Rules, which involved the payment of a total consideration of RMB88,593,000.
- (2) The representation that no announcement was required in respect of the Acquisition under the Listing Rules, nor did it merit disclosure under Rule 13.09 of the Listing Rules is false, in that the contrary was the true position.

31. The Company’s letter to the SEHK dated 22 April 2009 contained the following false and/or misleading representation, namely, that the financing of Mr Hsu and Ms Hsu, which had been in place since 2007, was only ultimately repaid to Chin Jong Hwa after the Acquisition had been completed by way of proceeds from the Company’s completion

of the Acquisition, in that (a) there was no genuine financing of Mr Hsu and Ms Hsu as alleged or, alternatively (b) the alleged outstanding indebtedness of Mr Hsu and Ms Hsu (through Magic Figure) to Chin Jong Hwa (through State Star) had apparently been discharged on or before 29 April 2008 not from the sale proceeds arising from the Company's completion of the Acquisition.

32. The Company's announcement dated 12 June 2009 (the "**Announcement**") contained the following false and/or misleading representations and/or material non-disclosure:-

- (1) The representation that the financing of Mr Hsu and Ms Hsu by Chin Jong Hwa, which had been in place since 2007, was only ultimately repaid to Chin Jong Hwa after the Acquisition had been completed by way of proceeds from completion of the Acquisition is false and/or misleading, in that (a) there was no genuine financing of Mr Hsu and Ms Hsu as alleged or, alternatively (b) the alleged outstanding indebtedness of Mr Hsu and Ms Hsu (through Magic Figure) to Chin Jong Hwa (through State Star) had apparently been discharged on or before 29 April 2008 not from the sale proceeds arising from the Company's completion of the Acquisition.
- (2) There was a failure to disclose a loan made by the wife of 1st Respondent to Mr Hsu and Ms Hsu in relation to the purchase of two properties in Taiwan (the "**Property Loan**").
- (3) There was also a failure to disclose the true extent to which the consideration paid by Decade in relation to the Acquisition ultimately went to bank accounts belonging to or controlled by Chin Jong Hwa.

33. Likewise, the Company's Circular issued to its shareholders dated 10 July 2009 (the "Circular") failed to disclose the Property Loan and the true extent to which the consideration paid by Decade in relation to the Acquisition ultimately went to bank accounts belonging to or controlled by Chin Jong Hwa.

34. In connection with the Acquisition, the Company has committed numerous breaches of the Listing Rules, in particular:

- (1) failure to notify the SEHK of the proposed Acquisition and demonstrate to the SEHK as to whether or not Mr Hsu and Ms Hsu should be regarded as connected persons, in breach of Rule 14A.11 of the Listing Rules;
- (2) failure to observe the reporting, announcement and independent shareholders' approval requirements under Rules 14A.45, 14A.47 and 14A.48 of the Listing Rules;
- (3) publishing the Interim Report 2008 which contained information which was not accurate or complete in all material respect and/or was misleading or deceptive, in breach of Rule 2.13(2) of the Listing Rules;
- (4) publishing the Annual Report 2008 which did not fully describe the connected relationship between the parties to the Acquisition, did not disclose the purpose of the transaction, and did not disclose the nature and extent of the connected person's interest in the transaction, in breach of Rules 14A.45(2), 14A.45(3) and 14A.45(5) of the Listing Rules;

- (5) failure to disclose in the Announcement and the Circular the Property Loan or the true extent to which the consideration paid by Decade in relation to the Acquisition ultimately went to bank accounts belonging to or controlled by Chin Jong Hwa, in breach of Rules 14A.56(2), 14A58(3)(a) and 14A.59(2) of the Listing Rules.

F. Chin Jong Hwa was the true beneficial owners of Magic Figure, Talentlink HK, Talentlink BVI, and the Magic Figure Agreement and Talentlink HK Agreement are shams and are void or voidable

Magic Figure

35. Although Mr Hsu was apparently the sole shareholder of Magic Figure (with 1 issued share) at the time of the Magic Figure Agreement entered into between Mr Hsu and Decade, it is the SFC's case that in fact Chin Jong Hwa was at all material times the true beneficial owner of the 1 issued share in Magic Figure which Mr Hsu held as nominee for Chin Jong Hwa, and Chin Jong Hwa was at all material times in control of Magic Figure.
36. At all material times, Chin Jong Hwa was a director of Decade, and under a fiduciary duty to act in the best interests of Decade, to avoid any actual or potential conflicts of duty and interest, and not to deal with Decade without the full and informed consent of Decade.
37. Chin Jong Hwa had never disclosed his true interest in Magic Figure to the board of directors and shareholders of Decade prior to the making of the Magic Figure Agreement (which Chin Jong Hwa signed on Decade's behalf), and has failed to do so at any time thereafter.

38. In a undated letter signed by Chin Jong Hwa on behalf of Decade as well as on his own behalf to Credit Suisse, Singapore Branch (1 Raffles Link, #05-02, Singapore 039393), Chin Jong Hwa irrevocably and unconditionally warranted, represented and declared to the bank that Decade held the 1 issued share in Magic Figure as nominee for Chin Jong Hwa and he was the beneficial owner of the share. Further, Chin Jong Hwa, in consideration of the bank acting in reliance upon the aforesaid warranty, representation and declaration, agreed to indemnify and hold the bank harmless from and against any and all challenges, claims, loss, damage, costs, charges and/or expenses suffered and/or incurred by the bank as a result of or referable to the said declaration and all of the bank's actions in accordance thereof.
39. In the premises, Chin Jong Hwa, and his nominee (Mr Hsu), never intended to effect a genuine sale of the 1 issued share in Magic Figure to Decade, and Chin Jong Hwa retained, or purported to retain, full beneficial ownership of the 1 issued share in Magic Figure even after the purported sale thereof by Mr Hsu to Decade under the Magic Figure Agreement.
40. By reason of the matters aforesaid, the Magic Figure Agreement is a sham and void, or voidable upon the election of Decade and ought to be set aside.
41. Further, by causing or procuring Decade to enter into the Magic Figure Agreement and pay the cash consideration of US\$3,186,639 as well as the amount of US\$8,957,000 to discharge the outstanding liabilities of Magic Figure (totalling US\$12,143,639) under or pursuant to the Magic Figure Agreement in the aforesaid circumstances, Chin Jong Hwa acted in breach of his fiduciary duty owed to Decade causing the latter to suffer loss, in

that it has parted with US\$12,143,639 but has received in return only a bare legal title in respect of the 1 issued share in Magic Figure.

Talentlink BVI and Talentlink HK

42. Although Ms Hsu was apparently the sole shareholder of Talentlink BVI (with 1 issued share) and Talentlink BVI was apparently the sole shareholder of Talentlink HK (with 10,000 issued shares) at the time of the Talentlink HK Agreement entered into between Talentlink BVI and Decade, it is the SFC's case that in fact Chin Jong Hwa was at all material times the true beneficial owner of the 1 issued share in Talentlink BVI and the 10,000 issues shares in Talentlink HK, and Chin Jong Hwa was at all material times in control of both Talentlink BVI and Talentlink HK.
43. Chin Jong Hwa had never disclosed his true interest in Talentlink BVI and Talentlink HK to the board of directors and shareholders of Decade prior to the making of the Talentlink HK Agreement (which Chin Jong Hwa signed on Decade's behalf), and has failed to do so at any time thereafter, in breach of his fiduciary duty to act in the best interests of Decade, to avoid any actual or potential conflicts of duty and interest, and not to deal with Decade without the full and informed consent of Decade.
44. By reason of the matters aforesaid, the Talentlink HK Agreement is voidable upon the election of Decade and ought to be set aside.
45. Further, by causing or procuring Decade to enter into the Talentlink HK Agreement and pay the cash consideration of US\$525,400 under or pursuant to that agreement in the aforesaid circumstances, Chin Jong Hwa acted in breach of his fiduciary duty owed to

Decade causing the latter to suffer loss, in that it has parted with US\$525,4000 in return for an asset of questionable value (ie 10,000 shares in Talentlink HK).

F. Misconduct by the 4 directors of Minth

Misconduct of Chin Jong Hwa

46. Chin Jong Hwa, being the Chairman and an Executive Director of the Company at all material times:-

- (1) was fully aware of the true relationship between himself and Mr Hsu and Ms Hsu, his true interests in Magic Figure, Talentlink BVI and Talentlink HK, the true extent of the financial assistance (if any) that he and/or his wife had given to Mr Hsu and Ms Hsu, the full terms of the Acquisition (including the true amount of the consideration payable under the Acquisition), and the manner in which the consideration paid by Decade under the Acquisition was eventually disbursed or dealt with;
- (2) ought to have made full and proper disclosure of the matters mentioned in sub-paragraph (1) to the Company, his fellow directors, the SEHK and the Company's shareholders;
- (3) knew or ought to have known that the Company made numerous false and/or misleading representations to the SEHK, the SFC, the shareholders of the Company and the public, and/or failed to make full and proper disclosure of material facts or matters, and/or breached the Listing Rules in numerous ways, as particularised above;

(4) caused, permitted or allowed these to happen.

Misconduct of Shi Jian Hui, Mu Wei Zhong and Zhao Feng

47. Shi Jian Hui, Mu Wei Zhong and Zhao Feng, as Executive Directors of the Company at all material times: -

(1) knew or ought to have known, by making full and proper inquiries of the Company's business and affairs, of Chin Jong Hwa's true interests in Magic Figure, Talentlink BVI and Talentlink HK, the true relationship between Chin Jong Hwa and Mr Hsu and Ms Hsu, the true extent of the financial assistance (if any) that Chin Jong Hwa and/or his wife had given to Mr Hsu and Ms Hsu, the full terms of the Acquisition (including the true amount of the consideration payable under the Acquisition), and the manner in which the consideration paid by Decade under the Acquisition was eventually disbursed or dealt with;

(2) knew or ought to have known that the Company made numerous false and/or misleading representations to the SEHK, the SFC, the shareholders of the Company and the public, and/or failed to make full and proper disclosure of material facts or matters, and/or breached the Listing Rules in numerous ways, as particularised above;

(3) caused, permitted or allowed these to happen.

48. Further, all of the four directors were collectively and individually responsible for ensuring the Company's full compliance with the Listing Rules, but failed to do so.

49. In the premises, all of the four directors were wholly or partly responsible for the business or affairs of the Company having been conducted in a manner:

- (1) involving misfeasance or other misconduct towards the Company, its members or part of its members;
- (2) resulting in its members or part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; and/or
- (3) unfairly prejudicial to its members or part of its members.