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## Enforcement News

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9 September 2008

### **SFC seeks disqualification, compensation orders against former chairman, former and current executives of Styland Holdings**

The Securities and Futures Commission (SFC) has commenced proceedings in the High Court against the former chairman, a former executive director, and two current executive directors of Styland Holdings Limited (Styland) (Note 1).

The SFC alleges the four directors breached their duties to the company resulting in Styland incurring substantial losses in a number of transactions. The SFC is seeking orders that the four directors (or any of them):

- be disqualified as company directors; and
- pay compensation to Styland for losses allegedly caused by their misconduct.

The four directors are former chairman, Mr Kenneth Cheung Chi Shing, current executive directors, Ms Yvonne Yeung Han Yi and Ms Miranda Chan Chi Mei and former executive director Mr Steven Li Wang Tai (the four directors).

The SFC also alleges that Cheung breached his duty to the company in a number of transactions in which he is alleged to have received (directly or indirectly) financial benefits totaling \$79 million. The SFC alleges these transactions should have been disclosed to shareholders (and the market) and required shareholder approval which was not sought or given. The SFC also alleges Yeung breached her duty through allegedly connected transactions not authorised by the company's shareholders (which the SFC asserts should have been authorised by the shareholders), receiving financial benefits totaling \$6.95 million.

The SFC attaches a [summary](#) of the transactions in issue and the allegations made against the four directors in the proceedings.

This is the first time the SFC has commenced action seeking compensation for a listed company or sought orders for the commencement of compensation proceedings by the listed company against company directors for alleged misconduct (Note 2).

This action is concerned with three important issues: first, the obligations of listed company directors to ensure shareholders are given a proper opportunity to scrutinise transactions that require their authorisation. This raises the key issue of disclosure of information to both shareholders and the market generally. Secondly, the extent to which Hong Kong law recognises the special responsibilities entrusted to a chairman of a listed company and thirdly the ambit of the court's jurisdiction under section 214 of the Securities and Futures Ordinance to order compensation to be paid to a listed company.

The High Court is scheduled to hear the petition on 17 December 2008.

End

Notes:

1. Styland was listed on the main board on 5 December 1991. The group's business includes securities dealing, property investment, general trading and infrastructure development. The SFC ordered suspension of trading in the shares of Styland on 23 December 2002. Trading resumed in June 2003 but was suspended again at Styland's request on 21 April 2004 pending an announcement of a possible rights issue. Trading remains suspended.

2. Under section 214 of the Securities and Futures Ordinance, the court 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 being conducted in a manner involving defalcation, fraud or other misconduct. The court may also order a company to bring proceedings in its own name against any person specified in the order and may make any other order it considers appropriate.

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

**Transactions entered into by the Company and/or its subsidiaries during the period from 1999 to 2001 ("the Relevant Period")**

4. During the Relevant Period, save for Angelina Swee Yan Goh and Henry Bing Kwong Chan who resigned on 2 October 1999 and 4 May 2000 respectively, Cheung Chi Shing Kenneth, Yeung Han Yi Yvonne, Li Wang Tai Steven and Chan Chi Mei Miranda (the Directors) were the only executive directors and thus in control of the Company. Some of them were at the same time directors and also in control of those subsidiaries of the Company involved in the transactions described below.
  
5. During the Relevant Period, the Directors have caused the Company and/or its subsidiaries to enter into a number of transactions with the following parties:-
  - 5.1. Inworld Holdings Limited ("Inworld Holdings") and Kevin Ngai Kwok Kin ("Kevin Ngai") (Section D).
  
  - 5.2. Cyber World Technology Limited ("Cyber World") (Section E).
  
  - 5.3. Kipton Limited ("Kipton") and Sheng Da Investment Holding (Hong Kong) Limited ("Sheng Da") (Section F).
  
  - 5.4. Gold Cloud Agents Limited ("Gold Cloud") (Section G).
  
  - 5.5. West Marton Group Limited (West Marton") (Section H).
  
  - 5.6. Well Pacific Investments Limited ("Well Pacific") (Section I).

**D. Inworld Holdings and Kevin Ngai**

D(1). Subscription for 36 newly issued shares in Inworld Holdings on 5 July 1999

6. By an agreement dated 5 July 1999 (“the Subscription Agreement”), Iwana Company Limited (“Iwana”), an indirect wholly owned subsidiary of the Company, subscribed for 36 newly issued shares in Inworld Holdings (known as Eastern United Services Limited prior to 7 October 1999) at a consideration of \$20,000,000 or \$555,555.56 per share. Under the Subscription Agreement, the purchase price would become payable only upon completion which was scheduled to take place on or before 15 May 2000.
7. Notwithstanding such contractual stipulation and prior to the allotment of the subscription shares, \$15,495,500 (approximately 80% of the consideration) was paid to Inworld Holdings by Styland (Hong Kong) Limited (“Styland HK”) and Styland Finance Company Limited (“Styland Finance”), both of which were wholly owned subsidiaries of the Company, on behalf of Iwana before the completion on 15 May 2000. At all material times, Yvonne Yeung, Steven Li and Miranda Chan were directors of Styland Finance whereas all the Directors were directors of both Iwana and Styland HK.
8. Inworld Holdings was incorporated in the British Virgin Islands (“BVI”) on 11 July 1997. As at the date of the Subscription Agreement, Kevin Ngai and Joyview International Limited (“Joyview”, a company owned by Alan Chan Wai Lun (“Alan Chan”)) were the shareholders of Inworld Holdings and its directors were Kevin Ngai and Yick Chong San (“Yick”). When the Subscription Agreement was entered into, however, Inworld Holdings had no major assets and liabilities and had in fact not commenced business.
9. Kevin Ngai is the nephew of Yvonne Yeung. On or about 18 August 2000, he was appointed as a director of Oriental Max Investment Limited (renamed Styland Datareach Computer Technology Limited (“Styland Datareach”) on 15 September 2000), a subsidiary of the Company. Kevin Ngai was thus at all material times a connected person of the Company under Rule 14.03(2)(a)(ii) of the Rules Governing the Listing of Securities on the Stock Exchange applicable at the time (“Listing Rules”), and additionally according to the definition of

“*connected person*” in Chapter One of the Listing Rules after 18 August 2000. Yvonne Yeung, Steven Li and Miranda Chan were directors of Styland Datareach who resolved in favour of appointing Kevin Ngai as an additional director.

10. In approving the Subscription Agreement, the Directors relied solely on a business plan and discounted cash flow projections provided by Kevin Ngai and Alan Chan both of which were completely speculative on the profitability of Inworld Holdings. Moreover, no due diligence exercise has ever been carried out by the Directors, whether by engaging independent professionals or otherwise, to assess the value of Inworld Holdings’ shares or the viability of its profit forecasts.
11. On or about 30 June 1999, just 5 days before the date of the Subscription Agreement, Inworld Holdings granted Kevin Ngai and Joyview options to subscribe for 51 and 23 shares at par value, i.e. US\$1.00 each. The grant of such options was expressly stated in the Subscription Agreement and thus brought to the attention of the Directors, but none of them had objected thereto or questioned why those options were granted at par value only. Not only did the Directors fail to take any step to ensure that the terms of the Subscription Agreement would prevent any unfair dilution of the interest of Iwana in Inworld Holdings, they acquiesced in if not actively facilitated such dilution.
12. In or about June 2000, Kevin Ngai and Joyview exercised their share options and were allotted 50 and 14 shares respectively. As a result, the shareholding of Iwana in Inworld Holdings was reduced from 26% to 15.9%.
13. The subscription by Iwana for the shares in Inworld Holdings was a connected transaction under the Listing Rules. In failing to obtain the prior approval of its shareholders and make proper notification and disclosure after the terms of the subscription were agreed, the Company had acted in breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules. It was not until almost 4 years later, on 3 June 2003, and upon request by the Stock Exchange, that the subscription was disclosed.

D(2). Loan facility of \$105,000,000 granted by Iwana to Kevin Ngai on 3 May 2000

14. On 3 May 2000, which was less than two weeks before the completion under the Subscription Agreement, Iwana granted to Kevin Ngai a loan facility of up to \$105,000,000. The entire sum was then drawn down in three tranches on 9 May 2000 (\$30,000,000), 25 May 2000 (\$20,000,000) and 29 June 2000 (\$55,000,000).
15. Iwana accepted Kevin Ngai's 101 shares (including those shares which he would be allotted upon exercise of the share options granted on 30 June 1999 referred to above) in Inworld Holdings as collateral for the loan facility. In addition, Kevin Ngai gave the contractual warranty that the value of Inworld Holdings was not less than \$600,000,000 at the material time and that he would obtain an independent valuation to that effect within 3 months of executing the loan facility agreement.
16. On or about 13 July 2000, subsequent to both the execution of and drawdown under the loan facility agreement, Kevin Ngai obtained and produced to the Directors a report prepared by Chesterton Petty, in which it was concluded that the value of Inworld.com was between \$635,000,000 and \$741,000,000. In arriving at this conclusion, Chesterton Petty had applied a discounted cash flow method of valuation on the basis of financial information and forecasts furnished by Inworld Holdings. Moreover, Chesterton Petty did not express any opinion in the report on the viability of the business of Inworld Holdings or the reasonableness or attainability of the assumptions underlying the financial forecasts.
17. The loan facility was a connected transaction under the Listing Rules. In failing to obtain the prior approval of its shareholders and make proper notification and disclosure after the terms of the loan facility were agreed, the Company had acted in breach of Rules 14.26(6)(a), 14.29(1) and 14.29(2) of the Listing Rules. It was not until more than 3 years later, on 3 June 2003, and upon request by the Stock Exchange, that the loan facility was disclosed.

18. In approving the grant of loan facility to Kevin Ngai, the Directors have clearly failed to exercise the degree of skill, care, diligence and competence as is reasonably expected of persons of their knowledge and experience and holding their offices and functions with the Company:-

18.1. Pursuant to the loan facility agreement, Kevin Ngai was only required to produce an independent valuation report of Inworld Holdings within three months after the transaction. In fact, the entire loan had been drawn down well before the report was actually produced.

18.2. When the loan facility was approved and granted, the Directors had failed to assess whether Kevin Ngai's 101 shares in Inworld Holdings constituted adequate security. While accepting such collateral implied that each share in Inworld Holdings was worth about \$1,039,604 at the material time, this was almost double the price paid by Iwana when it subscribed for 36 shares in Inworld Holdings just ten months earlier.

18.3. Such difference was not justified by the Directors and could not be justified by the business performance of Inworld Holdings because the latter had incurred a net loss of approximately \$4,216,000 for the period from 30 August 1999 to 30 June 2000 alone.

19. As regards this loan facility of \$105,000,000, the Petitioner has conducted a fund tracing exercise which reveals the following.

19.1. On 9 May 2000:-

19.1.1. upon request by Kevin Ngai, the Company on behalf of Iwana transferred the first tranche of \$30,000,000 of the loan to the bank account of Inworld Holdings;

19.1.2. Inworld Holdings paid \$28,000,000 by cheque to Extra Yield Resources Limited, of which Yick was at that time the sole director and authorised bank signatory; and

19.1.3. Extra Yield Resources Limited paid \$25,000,000 by cheque (signed by Yick and Kevin Ngai) to KC (Investment) Limited, whose directors were at all material times Kenneth Cheung and Yvonne Yeung and whose shares were owned as to 1% by Yvonne Yeung and as to 99% by K.Y. Limited, whose sole shareholder was at all material times Kenneth Cheung.

19.2. On 29 June 2000, Styland HK and Crosby Design (Far East) Company Limited (“Crosby”) jointly on behalf of Iwana transferred the third tranche of \$55,000,000 of the loan facility to the bank account of Inworld Holdings. Styland HK and Crosby were both subsidiaries of the Company, and Yvonne Yeung, Steven Li and Miranda Chan were at all material times directors of Crosby. Later, on 7 July 2000:-

19.2.1. Inworld Holdings paid \$9,000,000 by cheque to Ebbing Hill Services Limited (“Ebbing Hill”) whose director and authorised bank signatory was Li Sui Hang, an employee who worked for Kevin Ngai at Inworld (Hong Kong) Limited, which was at all material times a subsidiary of Inworld Holdings;

19.2.2. Ebbing Hill paid a total sum of \$8,950,000 by cheques to Colindale Enterprises Limited (“Colindale”) whose director and authorised bank signatory at the material time was Szeto Suet Kwan, an employee in the accounts department of Inworld (Hong Kong) Limited from 1999 to 2000; and

19.2.3. Colindale paid \$2,000,000 by cheque to Kenneth Cheung; and \$6,950,000 by cheque to UBS AG, which then credited the same to the personal bank account of Yvonne Yeung.

19.3. Further, out of the third tranche of \$55,000,000:-

19.3.1. on 30 June 2000, Inworld Holdings paid \$25,200,000 by cheque to Carmona International Limited (“Carmona”) whose director and authorised bank signatory was then Ting Wai Man, a subordinate of Yick who joined Riverhill in 2000;

19.3.2. Carmona immediately paid \$25,000,000 by cashier order dated 30 June 2000 to Styland Finance; and

19.3.3. out of the \$25,000,000 paid to Styland Finance:-

(a) \$4,000,000 was paid on 5 July 2000 by cheque to Mona Leung Yuk Kit (“Mona Leung”), who had been an employee of the Company until July 1999; and

(b) \$21,250,000 was transferred on 12 July 2000 to Styland HK, the reason for which is unknown to the Petitioner as at the date of this Petition.

20. A chart showing the above fund flows is attached at Appendix I hereto.

D(3). Sale of 10 Inworld Holdings shares back to Kevin Ngai and Alan Chan on 15 May 2000

21. On 15 May 2000, viz. the completion date under the Subscription Agreement, Iwana sold one share and nine shares in Inworld Holdings back to Kevin Ngai and Joyview respectively at the original price of \$555,555 per share under the Subscription Agreement. As the purchase price would be paid two years after completion, each of Kevin Ngai and Joyview then executed a share charge over the sale shares in favour of Iwana.

22. This transaction could not be justified commercially and did not appear to be in the best interests of the Company and/or Iwana. As pleaded above, on 3 May

2000, the Directors accepted Kevin Ngai's 101 shares in Inworld Holdings as collateral for the loan facility of \$105,000,000 granted by Iwana, thereby implying a valuation on their part of \$1,039,604 for each share in Inworld Holdings. However, less than two weeks later, Iwana sold 10 Inworld Holdings shares back to Kevin Ngai and Joyview at the much lower price of \$555,555 per share.

23. This sale to Kevin Ngai was a connected transaction under the Listing Rules. In failing to obtain the prior approval of its shareholders and make proper notification and disclosure after the terms of the sale were agreed, the Company had acted in breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules. It was again not until more than 3 years later, on 3 June 2003, and upon request by the Stock Exchange, that the sale was disclosed.

D(4). Further acquisition of 45 Inworld Holdings shares by Iwana from Kevin Ngai on 31 August 2000

24. By an agreement dated 31 August 2000, Iwana purchased 45 ordinary shares in Inworld Holdings from Kevin Ngai at a consideration to be satisfied by setting off against the sum of \$107,781,438.36 which was then owed by Kevin Ngai to Iwana under the loan facility which the latter had granted on 3 May 2000.
25. This transaction again could not be justified commercially and did not appear to be in the best interests of the Company and/or Iwana. In agreeing to the purchase price, this acquisition gave an implied valuation of about \$2,400,000 per share in Inworld Holdings, which was a significant increase from either the subscription price that Iwana agreed to pay on 5 July 1999, or the purchase price it received on 15 May 2000. There was no justification for such increase. Subsequently, the Company wrote off \$93,882,949 as an impairment loss in its accounts for the year ended 31 March 2002.
26. Such further acquisition was a connected transaction under the Listing Rules. In failing to obtain the prior approval of its shareholders and make notification and disclosure after the terms of the acquisition were agreed, the Company had

again acted in breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules. Again, it was not until 3 June 2003 and upon request by the Stock Exchange that the purchase was disclosed.

27. The net result of this series of transactions referred to in paragraphs 19 to 39 above was that Iwana had paid approximately \$120,000,000 to acquire 71 shares in Inworld Holdings, the book value of which fell to just \$16,120,345 in about 30 months as at 31 March 2002. In the meantime, Kenneth Cheung and Yvonne Yeung had either personally or through their companies received a total sum of \$33,950,000.

D(5). Shareholder's loans from Iwana to Inworld Holdings

28. The Company expressly acknowledged in its audited accounts for the year ended 31 March 2001 the "*prevailing unfavourable economic environment in the high technology sector*". Nevertheless, Iwana, with funding from Styland HK, had advanced a total of \$13,558,847 to Inworld Holdings in the period from 13 November 2000 to 10 September 2001. It is notable that in extending these shareholder's loans, Iwana had neither entered into any written loan agreement with nor requested the provision of any guarantee or security from Inworld Holdings.
29. In seeking to justify such injection of capital despite the adverse circumstances, the public and the shareholders of the Company were informed that the above advances had been made as a result of an agreement amongst the shareholders of Inworld Holdings to inject working capital into the latter proportionate to their respective shareholding. However, as at the date of this Petition, the Petitioner has failed to obtain, nor are the Directors able to adduce, any evidence that any of the other shareholders of Inworld Holdings had injected any capital to it, whether in accordance with their shareholding or otherwise.
30. Iwana eventually wrote off approximately \$5,280,000 of its shareholder's loans to Inworld Holdings as a result of the reorganisation of the Inworld Group:-

- 30.1. On 20 September 2001, Inworld Holdings, Iwana and other shareholders of Inworld Holdings entered into a Swap and Merge Deed for the purpose of corporate reorganisation of the Inworld Group. As stated in the Swap and Merge Deed, Inworld Holdings at that time owed Iwana a sum of \$14,001,847 representing all outstanding advances previously made by Iwana with interest.
- 30.2. As part of the reorganisation mechanism, Iwana agreed to release and discharge Inworld Holdings from \$12,195,029 of the said debt, and the other parties to the Swap and Merge Deed, namely Kevin Ngai, Joyview and Jet Concord Inc., agreed to pay Iwana a total sum of \$6,915,801.
- 30.3. On 29 November 2001, Iwana assigned the remaining \$1,806,819 of the debt owed by Inworld Holdings to Globemax Pacific Limited at a consideration of the exact amount of such debt.
31. The grant of such shareholder's loans to Inworld Holdings was a connected transaction under the Listing Rules. In failing to obtain the prior approval of its shareholders and make notification and disclosure after Iwana agreed to grant the shareholder's loans to Inworld Holdings, the Company had acted in breach of Rules 14.26(6)(a), 14.29(1) and 14.29(2) of the Listing Rules. It was again not until 3 June 2003 and upon request by the Stock Exchange that such loans to Inworld Holdings were disclosed.

**E. Cyber World**

32. By an agreement dated 13 January 2000, Global Eagle Investments Limited ("Global Eagle"), an indirect wholly owned subsidiary of the Company, acquired 40 shares (40% of the issued share capital) in Cyber World from Zelma's Company Limited ("Zelma") at a consideration of \$148,000,000. At that time, Kevin Ngai was a director of Cyber World whereas Yick was both a director and shareholder of Zelma.

33. The investment in Cyber World turned out to be a serious failure, with the Company eventually writing off \$91,762,611 as an impairment loss in its accounts for the year ended 31 March 2002. Furthermore, in 2001, pursuant to certain restructuring arrangements undertaken by Cyber World for the purpose of its listing on the Growth Enterprise Market of the Stock Exchange, the Styland Group had agreed to and did exchange its interest in Cyber World for an interest in the latter's holding company Riverhill, of which Yick was an executive director and shareholder. Upon the listing of Riverhill on 1 June 2001, Global Eagle's interest therein was diluted to 28%.
34. As regards this acquisition of Cyber World, the Petitioner has also conducted a fund tracing exercise which reveals the following.
- 34.1. On 21 March 2000, the Company on behalf of Global Eagle remitted \$39,000,000 as part of the purchase price to Zelma and on 22 March 2000:-
- 34.1.1. Zelma paid \$39,000,000 by cheque to Kenneth Cheung; and
- 34.1.2. Yvonne Yeung issued five cheques all dated 22 March 2000 drawn on the personal bank account of Kenneth Cheung in the total sum of \$35,345,694.94 in favour of the Company to pay for his subscription in a rights issue.
- 34.2. On 30 March 2000, the Company on behalf of Global Eagle remitted another \$49,300,000 as part of the purchase price to Zelma and on or about 31 March 2000:-
- 34.2.1. Zelma paid \$1,612,624 by cheques to each of Li Sui Hang and Chu Ching Kei (staff of Inworld (Hong Kong) Limited) who then, on 31 March 2000 and at the direction of Kevin Ngai, paid the same amount by cheques to Styland Finance for no discernable reason;

34.2.2. Zelma paid \$16,284,042 by cheque to Kingsway Investments Group Limited which then on 1 April 2000 paid \$5,863,874 by two cheques to Styland Finance for no discernable reason; and

34.2.3. Zelma paid \$29,790,710 to Extra Yield Resources Limited (of which Yick was then the sole director and authorised bank signatory) which then on 1 April 2000 paid \$4,238,859 by two cheques to Styland Finance again for no discernable reason.

35. A chart showing the above fund flows is attached at Appendix II hereto.

**F. Kippton and Sheng Da**

36. The Company through a wholly owned subsidiary Wealth Fine Limited (whose name was changed to Styland Infrastructure Limited (“Styland Infrastructure”) in 1998/1999) acquired 4,000 shares (40% of the issued share capital) in Kippton back in November 1997 and increased its shareholding therein to 49% some time in 1998. Kippton was a 51% beneficial owner of Sheng Da, which cooperated with a sino-foreign joint venture in the development and operation of a toll expressway in the People’s Republic of China.

37. By an agreement dated 31 August 2000 and a supplemental deed dated 25 September 2000, Styland Infrastructure acquired 3,100 shares (31% of the issued share capital) in Kippton at an aggregate consideration of \$46,581,430.60. At the same time, by an assignment agreement dated 31 August 2000, Simplex Inc. (another wholly owned subsidiary of the Company) purchased the debt of \$15,835,008.40 owed by Kippton to one of its shareholders.

38. By another agreement dated 28 September 2000, Styland Infrastructure acquired 9,551 shares (4.68% of the issued share capital) in Sheng Da at an aggregate consideration of \$18,608,092.

39. Such acquisitions by Styland Infrastructure of Kippton and Sheng Da in 2000 were disclosable transactions under the Listing Rules. In failing to make any or

any proper disclosure of them, the Company had acted in breach of Rules 14.13(1) and 14.13(2) of the Listing Rules. It was not until almost 3 years later on 3 June 2003, and upon request by the Stock Exchange, that the acquisitions were disclosed.

40. As regards the above acquisitions of Kippton and Sheng Da, the Petitioner has again conducted a fund tracing exercise which reveals the following.

40.1. On 6 September 2000, Styland HK on behalf of Styland Infrastructure paid \$54,416,439 by cheque to Elephant Tusk Holdings Limited (“Elephant Tusk”), the nominated payee for the purpose of the acquisition of Kippton whose director and authorised bank signatory was again Li Sui Hang, after which:-

40.1.1. Elephant Tusk issued a cash cheque of \$19,526,339 which was paid into the bank account of West Marton on 7 September 2000. On 8 September 2000, West Marton paid \$10,000,000 to Zelma and \$9,526,339 to Cyber Cycle Consultants Limited (whose director and authorised bank signatory was Kevin Ngai) which then paid \$9,526,000 to Zelma on the same day; and

40.1.2. on 7 September 2000, Elephant Tusk issued another cash cheque of \$19,969,045 which was paid into the bank account of Balaton Development Limited (whose authorised bank signatory was Alan Chan) and the latter paid \$19,000,000 to Zelma on 7 September 2000 and 8 September 2000.

40.2. Earlier on 31 August 2000, Zelma paid \$43,800,000 by cheque to Styland Finance, which cashed in the cheque on 14 September 2000 and remitted \$43,750,000 to Styland HK on 18 September 2000 for no discernable reason.

- 40.3. On 28 September 2000, Styland HK on behalf of Styland Infrastructure paid \$16,108,092 by cheque to Elephant Tusk (the nominated payee again for the purpose of the acquisition of Sheng Da), after which:-
- 40.3.1. on 30 September 2000, Elephant Tusk paid \$15,980,000 by cashier order to Key Success Enterprises Limited (“Key Success”) whose director and sole authorised bank signatory was Kevin Ngai; and
- 40.3.2. on 3 October 2000, Key Success issued a cash cheque of \$10,000,000 which was paid into the bank account of KC (Investment) Limited.
41. A chart showing the above fund flows is attached at Appendix III hereto.

**G. Gold Cloud**

42. By an agreement dated 30 October 2000, Iwana sold 15 shares in Gold Cloud to Companion Marble (BVI) Limited (“Companion Marble”) at a consideration of \$38,000,000 in cash.
43. Companion Marble was a connected person of the Company, and thus the sale was a connected transaction, under Rule 14.26 of the Listing Rules. In failing to obtain the prior approval of its shareholders and make proper notification and disclosure after the terms of the sale were agreed, the Company had acted in breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules. It was not until 3 June 2003, and upon request by the Stock Exchange, that the sale was disclosed.
44. Furthermore, on or about 22 August 2002, Iwana paid \$3,000,000 to Kenneth Cheung allegedly as commission for his introduction of Companion Marble as the purchaser in the above sale and his assistance in the negotiation of the deal. There was no written agreement relating to this belated payment.

45. Such payment of commission to Kenneth Cheung was again a connected transaction under the Listing Rules. In failing to disclose it until one year later on 20 August 2003, the Company had acted in breach of Rule 14.25(1) of the Listing Rules.

## **H. West Marton**

### **H(1). Acquisition of a 90% interest in West Marton on 10 October 2000**

46. By a letter of intent dated 5 August 2000, Data Store Investments Limited (“Data Store”), an indirect wholly owned subsidiary of the Company, agreed to acquire 54 shares (90% of the issued share capital) in West Marton from Fu Tsin Man (“Raymond Fu”) at a consideration of \$120,000,000 or \$2,222,222 per share. Raymond Fu was a high school classmate of Kevin Ngai and Alan Chan and once an employee of Inworld Holdings.
47. On 10 October 2000, Raymond Fu and Data Store entered into a formal sale and purchase agreement in respect of the West Marton shares.
48. At the time of the acquisition, West Marton had three wholly owned subsidiaries: New Great China Technology Holdings Limited (“New Great China”), Stylish Vogue Incorporated (“Stylish Vogue”) and e-Union Information Science & Technology (Shenzhen) Co Limited.
49. According to Raymond Fu, the estimated net worth of New Great China was \$323,748,562. However, at the time of the acquisition, West Marton had no meaningful commercial activity except the provision of internet portal services through a worldwide website (known as “chineseyes.com” and held by New Great China) and the design of various websites. In fact, West Marton had been trading at a loss at the time when the decision to acquire it was made: at 31 July 2000, the unaudited net liabilities of West Marton were approximately \$500,000 and for the period from 1 April 2000 to 31 July 2000, West Marton reported an unaudited net loss of approximately \$200,000.

50. In approving the acquisition, the Directors have failed to carry out adequate due diligence of West Marton and obtain independent professional advice regarding its value. As admitted by the Directors, their decision to pay \$120,000,000 in the acquisition was made not only by reference to a self-serving business plan with profit forecasts prepared and provided by Raymond Fu in which he gave an estimated net worth of \$323,748,562 for New Great China alone, but also the price which Iwana had paid in the acquisition of Inworld which was clearly an unrelated and irrelevant transaction.

H(2). Sale of 30% interest in West Marton to Joyview and Kevin Ngai on 10 August 2001

51. The Company then disposed of 30% of its interest in West Marton within just ten months after its acquisition to connected persons at a much lower price.

52. By two separate agreements dated 10 August 2001, Data Store sold:-

52.1. 6 shares (10% of the issued share capital) in West Marton to Kevin Ngai at a consideration of \$7,000,000; and

52.2. 12 shares (20% of the issued share capital) in West Marton to Joyview at a consideration of \$14,000,000.

53. While it was later alleged that one reason for the disposals was to replenish the general working capital of the Company in the light of losses which it had suffered, the aggregate consideration obtained in these transactions with Kevin Ngai and Joyview suggested a valuation of approximately \$1,166,667 per share of West Marton, which was a drastic but unexplained reduction from that of \$2,222,222 which the Company, through Data Store, paid Raymond Fu just 10 months earlier.

54. In its belated Announcement on 8 August 2002, the Directors explained that the consideration for the disposals to Kevin Ngai and Joyview were negotiated and

determined with reference to the net value of West Marton at the material time of approximately \$70,000,000 arrived at by a discounted cash flow approach based on a five-year profit forecast of the West Marton Group from 1 July 2001 to 30 June 2006. This was considerably less than the estimate of \$323,748,562 suggested by Raymond Fu and accepted by the Directors only 10 months earlier, and showed that the investment in West Marton was clearly a serious failure.

55. The Company incurred significant losses in the West Marton investment:-

55.1. By August 2001, only 10 months after the Company had acquired a 90% interest in West Marton for \$120,000,000, it wrote down the carrying value of its investment in West Marton to only \$24,000,000.

55.2. As at 31 March 2002, the carrying value of the Company's remaining 60% interest in West Marton had been written down to \$8,000,000, with the Company booking \$72,000,000 as provision for impairment loss.

55.3. The West Marton Group had incurred unaudited consolidated net losses of about \$886,000 and \$2,079,000 for the two years ended 31 March 2001 and 31 March 2002; and had unaudited consolidated net liabilities of about \$1,169,000 and \$3,247,000 as at 31 March 2001 and 31 March 2002 respectively.

56. The disposals to Kevin Ngai and Joyview were connected transactions under the Listing Rules. In failing to obtain the prior approval of its shareholders and make proper notification and disclosure after the terms were agreed, the Company had again acted in breach of Rules 14.26(2), 14.29(1) and 14.29(2) of the Listing Rules. It was not until 8 August 2002 that the Company disclosed the transactions.

## **I. Well Pacific**

57. By an agreement dated 29 August 2001, Yick purchased 17,500 shares (35% of the issued share capital) in Well Pacific at a consideration of \$40,000,000. He paid a deposit of \$500,000.
58. By a deed of novation dated 7 September 2001, Yick assigned to Ever-Long Investments Holdings Limited (“Ever-Long”) and Iwana, both of which were wholly owned subsidiaries of the Company, all his rights and benefits under the above agreement dated 29 August 2001. The aggregate consideration under the deed of novation was \$22,000,000. As a result, Ever-Long and Iwana held respectively 8,850 and 8,650 shares in Well Pacific.
59. In other words, the Company had acquired via its subsidiaries 17,500 shares in Well Pacific at an aggregate consideration of \$61,500,000, which was settled in September 2001.
60. In approving the acquisition, the Directors have failed to carry out adequate due diligence of Well Pacific and obtain independent professional advice regarding its value. In particular, it was unexplained and in any event hardly justified for the Company to pay an acquisition price of \$61,500,000, when Yick was only asked to pay \$40,000,000 a week before. While the Directors later publicly asserted that the consideration had been determined on an arm’s length basis with reference to a limited review report drafted by an independent accounting firm, the said report (prepared by Grant Thornton) was undated and again self-serving as it was prepared and furnished to the Company by the vendors. Furthermore, the accountants had never expressed any view on the value of Well Pacific.
61. The acquisition of Well Pacific turned out to be another investment disaster. In just seven months after the acquisition, as at 31 March 2002, the Company booked \$21,500,000 as provision for impairment loss in Well Pacific. For the next financial year ended 31 March 2003, the Company booked \$14,400,000 as provision for impairment loss in the same investment.

62. As regards the acquisition of Well Pacific, the Petitioner has also conducted a fund tracing exercise which reveals the following.

62.1. On or about 14 September 2001, Ever-Long paid \$19,975,714 as part of the acquisition price of Well Pacific to Mona Leung, who then:-

62.1.1. on divers dates from 14 September 2001 to 18 September 2001 paid a total sum of \$10,900,000 by cheques to Detailed Decision Corporation, whose director and authorised bank signatory was a Jerry Wai Leung Yip (“Jerry Yip”), a non-executive director of the Company in the period from 14 July 1999 to 31 March 2003; and

62.1.2. on 14 September 2001 paid \$9,000,000 by cheque to Profits Return Limited of which Jerry Yip was also the authorised bank signatory.

62.2. On 17 September 2001, Detailed Decision Corporation paid \$1,000,000 by cheque to Profits Return Limited.

62.3. On divers dates from 18 September 2001 to 20 September 2001, Detailed Decision Corporation and Profits Return Limited paid Styland Finance \$9,886,658.45 and \$10,000,000 respectively for no discernable reason.

63. A chart showing the above fund flows is attached at Appendix IV hereto.

**J. Breach of fiduciary duties by Kenneth Cheung and Yvonne Yeung**

64. Kenneth Cheung, whether himself or through his companies, has received sums totalling \$79,000,000, all of which were funds of the Company and/or its subsidiaries:-

- 64.1. \$39,000,000 in March 2000 out of the purchase price paid to Zelma by the Company in the acquisition of Cyber World (Section E and Appendix II);
  - 64.2. \$27,000,000 in May 2000 out of the loans advanced to Kevin Ngai by Iwana (Section D(2) and Appendix I);
  - 64.3. \$10,000,000 in September 2000 out of the purchase price paid by Styland HK to Elephant Tusk in the acquisition of Kippton and Sheng Da (Section F and Appendix III); and
  - 64.4. \$3,000,000 in August 2002 in the form of commission paid by Iwana in the sale of its 15 shares in Gold Cloud (Section G).
65. Yvonne Yeung personally received \$6,950,000 in May 2000 out of the loans advanced to Kevin Ngai by Iwana (Section D(2) and Appendix I).
66. In receiving such sums without disclosing the same to and/or obtaining the approval of the shareholders of the Company, Kenneth Cheung and Yvonne Yeung have acted in breach of:-
- 66.1. their fiduciary duties owed to the Company; and
  - 66.2. Rules 3.08(a), (d) and (e) of the Listing Rules.
67. Further or alternatively, in causing or permitting the Company to enter into the transactions in relation to Inworld Holdings and Kevin Ngai pleaded in Section D above, whereby Kevin Ngai (a nephew of Yvonne Yeung) has obtained personal benefits directly or indirectly at the expense of the Company, Kenneth Cheung and Yvonne Yeung have acted in breach of their fiduciary duties owed to the Company.
68. In the premises, Kenneth Cheung and Yvonne Yeung have conducted the business or affairs of the Company in a manner:-

- 68.1. oppressive to its members or part of its members other than themselves;
- 68.2. involving defalcation, misfeasance or misconduct towards the Company, its members or part of its members other than themselves;
- 68.3. resulting in its members or part of its members (other than themselves) not having been given all the information with respect to its business or affairs that they might reasonably expect; and
- 68.4. unfairly prejudicial to its members or part of its members other than themselves.

**K. Serious mismanagement of the Company**

69. In failing to carry out any or any adequate due diligence and/or obtain independent professional valuation advice in causing or permitting the Company and/or its subsidiaries to enter into the following transactions, which resulted in substantial and unjustified losses, the Directors have failed to exercise the degree of skill, care, diligence and competence as is reasonably expected of persons of their knowledge and experience and holding their offices and functions with the Company and acted in breach of Rules 3.08(f) and 3.09 of the Listing Rules:-
  - 69.1. the transactions relating to Inworld Holdings (Section D);
  - 69.2. the acquisition of Cyber World (Section E);
  - 69.3. the transactions relating to West Marton (Section H); and
  - 69.4. the acquisition of Well Pacific (Section I).
70. In the premises, the Directors have conducted the business or affairs of the Company in a manner:-

- 70.1. involving defalcation, misfeasance or misconduct towards the Company, its members or part of its members other than themselves; and
- 70.2. unfairly prejudicial to its members or part of its members other than themselves.

**L. Recurrent breaches of the Listing Rules**

71. During the Relevant Period, when the Directors were at all material times in office and thus control of the Company, they have caused the Company to act repeatedly in breach of the Listing Rules as regards the following transactions:-
  - 71.1. Iwana's subscription for 36 newly issued shares in Inworld Holdings on 5 July 1999 (Section D(1));
  - 71.2. Iwana's grant of \$105,000,000 loan facility to Kevin Ngai on 3 May 2000 (Section D(2));
  - 71.3. Iwana's sale of 1 share in Inworld Holdings back to Kevin Ngai on 15 May 2000 (Section D(3));
  - 71.4. Iwana's further acquisition of 45 shares in Inworld Holdings from Kevin Ngai on 31 August 2000 (Section D(4));
  - 71.5. Iwana's advance of shareholder's loans to Inworld Holdings in the period from 13 November 2000 to 10 September 2001 (Section D(5));
  - 71.6. Styland Infrastructure's acquisition of 3,100 shares in Kipton and 9,551 shares in Sheng Da on 31 August 2000 (Section F);

- 71.7. Iwana's sale of 15 shares in Gold Cloud to Companion Marble on 30 October 2000 (Section G);
- 71.8. Iwana's payment of \$3,000,000 commission to Kenneth Cheung for his assistance in its sale of 15 shares in Gold Cloud to Companion Marble (Section G); and
- 71.9. Data Store's sale of 6 shares and 10 shares in West Marton to Kevin Ngai and Joyview respectively on 10 August 2001 (Section H(2)).
72. By virtue of the Declaration and Undertaking given and signed by the Directors under the Listing Rules, they have undertaken to comply to the best of their ability with the Listing Rules from time to time in force.
73. Further, given that the Directors are obliged by Rule 3.12 of the Listing Rules to accept and have at all material times accepted full responsibility, collectively and individually, for the Company's compliance with the Listing Rules, they are responsible for the repeated non-compliance set out in paragraph 84 above.
74. On 23 December 2004, the Listing Division of the Stock Exchange commenced disciplinary proceedings against the Company and the Directors. On 8 April 2008, the Listing Committee of the Stock Exchange concluded that there had been breaches of the Listing Rules by the Company and each of the Directors and decided to impose a range of sanctions against the same. The Company and three of the Directors applied for a review of the said decision of the Listing Committee and the review hearing took place on 18 August 2008. The outcome of the review is not known as at the date of this Petition.
75. In the premises, by causing or failing to prevent, negligently or deliberately, the Company from committing the above breaches of the Listing Rules, the Directors have been grossly incompetent and/or negligent and have conducted the business or affairs of the Company in a manner:-

- 75.1. involving defalcation, misfeasance or misconduct towards the Company, its members or part of its members other than themselves; and
- 75.2. resulting in its members or part of its members (other than themselves) not having been given all the information with respect to its business or affairs that they might reasonably expect.