

Former executive directors of Wah Sang Gas disqualified for misconduct

25 May 2009

The Securities and Futures Commission (SFC) has obtained orders in the High Court to disqualify two former executive directors of Wah Sang Gas Holdings Ltd (Wah Sang Gas, now renamed Binhai Investment Co Ltd).

The orders disqualify Mr Shum Ka Sang, former chairman, chief executive officer and executive director of Wah Sang Gas, and Mr Shen Yi, its former chief operating officer and executive director, from being directors or being involved in the management of any listed company, without leave of the court, for a period of six years (Note 1).

The disqualification order against Shum and Shen, made by the Honourable Madam Justice Kwan on 22 May 2009, will take effect on 12 June 2009.

The decisions follow an investigation by the SFC into the affairs of Wah Sang Gas, a listed company in the business of construction of gas pipelines, gas connection services, production and sale of gas, through subsidiaries in the Mainland.

The SFC suspended trading in shares of Wah Sang Gas on 6 April 2004 because of concerns that the company's financial statements contained false or misleading information (Note 2).

Following investigations by the SFC and by Wah Sang Gas (under new management), the company published in July 2007 a final results announcement for the year ended 31 March 2004 in which the company acknowledged that:

- there had been falsification of transaction and accounting records resulting in significant over-statement of revenue, sales and fixed assets etc;
- the company had identified over-statements of approximately RMB 764,103,000 (HK\$720,444,000) which needed to be adjusted in the company's financial records; and
- the company reported subsequent substantial losses for the 2004, 2005, 2006 and 2007 financial years (Note 3).

The SFC contended that Shum and Shen occupied positions of significant responsibility during the period in which the falsification occurred.

The SFC alleged that Shum and Shen failed to exercise reasonable skill, care and diligence, to act in the best interests of the company and its members, to ensure the company accurately accounted for its business activities and disclosed them correctly in their published financial statements.

The SFC did not allege that Shum and Shen were responsible for making or causing false entries to be made in the company's accounting records nor was there evidence to do so.

Instead, the SFC argued they were negligent or reckless and failed to discharge their duties properly, and alleged that:

- Shum failed in his duty as chairman and CEO, by appointing officers whom he knew were not capable of handling the company's financial transactions, entrusting daily operations to Shen when he knew Shen did not know much about finance; failed to ensure the board was kept informed and ignored specific warnings about deficiencies in the accounting records from the company's auditors and the company's audit committee; and
- Shen, as COO, had responsibility for the company's financial and accounting systems and failed in his supervisory duty to prevent such systemic falsifications and deficiencies in the company's affairs.

In ordering the six-year disqualifications, the court took into account their co-operation with the SFC.

"The investing public needs to be protected from company directors who negligently or recklessly abuse the trust placed in them. In this case, massive fraud flourished under incompetent, unreliable

management who will have no part to play in the company's ongoing affairs nor in the affairs of any other listed company for six years. The SFC will continue its programme to enforce proper standards of conduct by listed company directors," said Mr Mark Steward, the SFC's Executive Director of Enforcement. (Note 4)

End

Notes:

1. The SFC commenced proceedings against Shum and Shen in May 2008. Please see [SFC press release](#) dated 3 September 2008.
2. The SFC considered the company's Resumption Proposal and permitted trading in its shares to resume on 12 May 2009. Please see the company's announcement made on 11 May 2009.
3. For more information about the over-statement of the company's financial position and the reconstruction of accounts, please see the financial results for the year ended 31 March 2004 filed with the Stock Exchange of Hong Kong (SEHK) on 11 July 2007 as well as the financial results for the three subsequent years filed with the SEHK on 15 February 2008. The losses reported by the company have been the subject of investigation by both Mainland and Hong Kong authorities. No criminal charges have been laid.
4. Section 214 of the Securities and Futures Ordinance empowers the SFC to make an application to the court for disqualification of directors where at any relevant time the business or affairs of a listed company have been conducted in a manner that:
 - is oppressive to the shareholders;
 - involves defalcation, fraud, misfeasance or misconduct towards the listed company or its shareholders;
 - results in shareholders not receiving all the information with respect to its affairs or business that they might reasonably expect; or
 - is unfairly prejudicial to the shareholders.

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