

SFC files Statement of Claim against Hontex

3 Oct 2011

The Securities and Futures Commission (SFC) has filed its Statement of Claim in its proceedings against Hontex International Holdings Company Limited (Hontex) following orders made by the Court of First Instance on 22 July 2011 (Note 1).

In the Statement of Claim, the SFC alleges that, on 14 December 2009, Hontex issued and distributed a prospectus which contained a number of material overstatements.

In particular, the SFC alleges the prospectus materially overstated turnover of the Hontex Group for the years ended 31 December 2006, 2007 and 2008 which the SFC alleges was overstated by approximately RMB 380,934,125, RMB 708,894,820 and RMB 974,733,321 respectively; profit before tax of the Group which the SFC alleges was overstated in respect of the same financial years by approximately RMB 102,935,289 RMB 185,001,887 and RMB 298,286,785 respectively as well as the value of cash and cash equivalent balances and the number of franchise stores (Note 2) .

The SFC is seeking a number of orders, under section 213 of the Securities and Futures Ordinance (SFO), including injunctions and orders requiring Hontex to take steps to effect a return of subscribed capital to the public shareholders of the company.

The Court has made interim orders freezing up to \$997.4 million held by Hontex and its four subsidiaries following an urgent application by the SFC on 29 March 2010. However, the total amount of money required to fund the proposed return of capital to all public shareholders, together with interest, is likely to exceed this amount (Note 3).

The case has been set down for trial starting on 4 June 2012.

Separately, the SFC has also sought leave to appeal the refusal of the Hon Mr Justice Harris to rule whether the Court of First Instance has jurisdiction to determine whether a person has contravened the provisions of the SFO and the Companies Ordinance which the SFC alleges in the Hontex case. The issue of jurisdiction arises because of the Hon Mr Justice Harris' decision in the case against Tiger Asia Management LLC (Tiger Asia).

Last Wednesday, the Hon Mr Justice Harris of the Court of First Instance refused to grant such leave in this case. The SFC will seek leave from the Court of Appeal to appeal the Hon Mr Justice Harris' decision given the importance of the issue. The SFC will apply for any such appeal, if one be permitted by the Court of Appeal, to be consolidated with the SFC's appeal in the Tiger Asia case (Note 4).

The SFC considers there is a strong need to clarify the jurisdiction of the Court of First Instance in section 213 cases generally and, in this case, before the parties are obliged to expend significant resources in preparation for the scheduled trial in 2012.

End

Notes:

1. Hontex was listed on the Stock Exchange of Hong Kong on 24 December 2009. The four wholly owned subsidiaries of Hontex which are also parties to the proceedings are Easy Venture International Limited, Star Guide Investments Limited, Prosper Advance International Limited and First Heritage Limited. The proceedings were commenced under section 213 of the SFO. The SFC made the original application on 29 March 2010 and obtained an interim injunction ex parte on the same day. Earlier this year, the SFC sought final orders in its proceedings. However, the Court considered the SFC should file a Statement of Claim so that the SFC's allegations are set out in formal pleadings. Hontex is required to file a defence to the allegations within 56 days.

2. The SFC alleges that Hontex has contravened section 298 and section 300 of the SFO and/or section 342F of the Companies Ordinance (CO) and/or section 384 of the SFO. Section 298 of the SFO 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. Section 298 is a market misconduct provision. Section 300 of the SFO prohibits the fraudulent conduct or the use of any device or scheme with an intention to

deceive. Section 384 of the SFO prohibits false or misleading information being given to the Stock Exchange of Hong Kong and the SFC in compliance with a legal requirement. Section 342F of the CO prohibits untrue statements in prospectuses.

3. The Court of First Instance made interim orders in this proceeding freezing up to \$997.4 million held by Hontex and its four subsidiaries following an urgent application by the SFC on 29 March 2010.

4. On 21 June 2011, the Court of First Instance ruled, in proceedings against Tiger Asia and three of its officers, that the Court did not have jurisdiction under s 213 of the SFO to determine a contravention of the market misconduct provisions found in both Parts XIII and XIV of the SFO without the matters having been determined in a criminal court or the Market Misconduct Tribunal first. The Court subsequently struck out the SFC's case. The SFC has appealed this decision to the Court of Appeal and the appeal will be heard on 7 February 2012.

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