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SFC obtains court orders against current and former directors of First China to compensate the company RMB18.69 million

19 Jan 2015

The Court of First Instance has ordered three current and former directors of First China Financial Network Holdings Ltd (First China), to pay a total sum of RMB18,692,000 with interest as compensation to First China following findings of misconduct (Notes 1 & 2).

The three directors are First China's current chairman, Mr Wang Wenming, its current chief executive officer Mr Lee Yiu Sun and former chairman Mr Richard Yin Yingneng.

Following a contested trial, the court found that Wang, Lee and Yin breached their duties to First China when they agreed to pay RMB18,692,000 special dividend to Fame Treasure Ltd.

First China had earlier purchased GoHi Holdings Ltd (GoHi) and issued an announcement to the market on 16 December 2008 stating that the payment was part of a mutual understanding and agreement with Fame Treasure Ltd at the time of the acquisition of GoHi.

The Securities and Futures Commission (SFC) argued and the court found that this was not the case and there had never been any such mutual understanding or arrangement (Note 3).

The court found that Wang, Lee and Yin caused First China to make a payment that First China was not required to make at all and ordered them to repay this amount to First China.

A further hearing will be scheduled to determine whether disqualification orders should be made against Wang, Lee and Yin (Note 4).

During the trial, it was revealed that a written resolution was recently passed by a non-executive director and four independent non-executive directors of First China to provide an indemnity to Wang and Lee for all professional and legal fees incurred by them concerning the defence of the SFC's petition and all legal costs claimed by the SFC as a result.

The court found the indemnity was plainly inappropriate and a poor reflection on the company's corporate governance. Consequently, Wang and Lee have either repaid or are in the course of repaying the legal costs First China paid on their behalf.

"Listed company directors have a duty to safeguard shareholders' funds. This means they should only be used for proper company purposes and the payment to Fame Treasure Ltd was clearly not for a proper purpose," the SFC's Executive Director of Enforcement, Mr Mark Steward said.

"The SFC will continue to hold listed company directors to account and seek orders to remediate corporate losses where appropriate," he added.

End

Notes:

1. First China was listed on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited on 11 January 2002 (stock code 8123). The group provides financial services, such as stock brokerage, information and research, securities and futures trading, corporate finance and wealth management services.
2. The SFC commenced proceedings under section 214 of the Securities and Futures Ordinance (SFO) in November 2012. For details, please see the SFC's press release dated [12 November 2012](#). The case was heard before the Hon Mr Justice Anthony Chan in the Court of First Instance in November and December 2014. A copy of the decision is available on the judiciary website www.judiciary.gov.hk.
3. A [summary](#) of the SFC's petition is attached to the SFC's press release dated 12 November 2012 which sets out the details of the transactions.
4. Under section 214 of the SFO, 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.

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證監會取得法庭命令要求首華財經現任及前任董事向該公司賠償人民幣1,869萬元

2015年1月19日

原訟法庭裁定首華財經網絡集團有限公司（首華財經）三名現任及前任董事犯有失當行為，頒令他們須向首華財經支付合共人民幣18,692,000元連同利息作為賠償（註1及2）。

該三名董事為首華財經現任主席王文明（男）、現任行政總裁李耀新（男）及前任主席尹應能（男）。

法庭在抗辯審訊後裁定，王、李及尹因同意向譽寶有限公司支付人民幣18,692,000元的特別股息，違反了其對首華財經的職責。

首華財經較早前買入GoHi Holdings Ltd (GoHi)，及在2008年12月16日向市場發出公告，表示有關付款是在收購GoHi時與譽寶有限公司所訂立的共識協議的一部分。

證券及期貨事務監察委員會（證監會）提出爭議，指有關共識協議並不存在，法庭的裁決同意這個觀點（註3）。

法庭裁定王、李及尹促使首華財經作出其根本無須作出的付款，及命令他們向首華財經付還有關款項。

該案件將排期再作聆訊，以決定應否向王、李及尹發出取消資格令（註4）。

在審訊期間揭露，首華財經的一名非執行董事及四名獨立非執行董事近期通過了一項書面決議，向王和李就他們在與證監會的呈請作出抗辯時所招致的所有專業和法律費用，以及證監會因此而要求索回的全部法律費用，提供彌償。

法庭認為有關彌償顯然並不恰當，並且反映該公司的企業管治水平欠佳。因此，王和李已償還或正在償還首華財經代他們支付的法律費用。

證監會法規執行部執行董事施衛民先生（Mr Mark Steward）表示：“上市公司董事有責任保障股東資金的安全，股東資金只應用作適當的公司用途，而向譽寶有限公司付款顯然不是適當用途。”

他續稱：“證監會將繼續在適當情況下，促使上市公司董事對企業損失承擔責任，並尋求法庭頒令就有關的企業損失作出補救行動。”

完

備註：

1. 首華財經（股份代號8123）於2002年1月11日在香港聯合交易所有限公司創業板上市。該集團提供金融服務，例如股票經紀、資訊與研究、證券和期貨交易、機構融資及財富管理服務。
2. 證監會於2012年11月根據《證券及期貨條例》第214條展開法律程序。詳情請參閱證監會2012年11月12日的新聞稿。案件於2014年11月及12月在原訟法庭陳健強法官（Hon Mr Justice Anthony Chan）席前進行聆訊。法庭就此案作出的決定載於司法機構網站（www.judiciary.gov.hk）。
3. 證監會2012年11月12日的新聞稿附有證監會呈請書的摘要，當中載述有關交易的詳情。
4. 根據《證券及期貨條例》第214條，若法院裁定某公司的事務曾以涉及虧空、欺詐或其他失當行為的方式處理，而某人須為此負全部或部分責任的話，則法院可作出命令，取消該人出任公司董事的資格，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。

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