

Former China Sky CEO Huang Zhong Xuan pays civil penalty of \$2.5 million and offers to surrender 10% of his shareholdings in China Sky

Singapore, 12 February 2015... The Monetary Authority of Singapore (MAS) has entered into a settlement agreement with Mr Huang Zhong Xuan (Huang), former chief executive officer (CEO) of China Sky Chemical Fibre Co., Ltd (China Sky), under which Huang will pay a civil penalty of \$2.5 million for making misleading public disclosures and failing to make the required disclosures to the market thereby contravening the Securities and Futures Act (SFA).

2. Under the settlement, Huang will also make an offer to surrender 10% of his shareholding in China Sky, equivalent to 15,416,121 shares. The surrender or cancellation of Huang's shares will increase the net asset value per share for existing China Sky shareholders. The offer is expected to be approved by China Sky's board of directors. Huang has also undertaken not to assume the role of a company director or be involved in the management of any entity listed on the Singapore Exchange (SGX) for three years.

3. Huang has admitted to making misleading statements in announcements to the market relating to China Sky's purchase and subsequent aborted acquisition of a piece of land in Fujian, China (Fujian Land), in contravention of Section 199(c) of the SFA. These include misleading disclosures relating to the use of the Fujian Land, incorrectly depicting the transaction counterparty as an independent third party when it was a related company, and providing a false reason for the delay in the transfer of the land use rights to China Sky's subsidiary.

4. Huang has also admitted to contravening Section 203 of the SFA relating to China Sky's failure to make prompt and proper disclosure to the market in relation to the Fujian Land acquisition. More details of Huang's contraventions are included in the ANNEX.

5. The Commercial Affairs Department (CAD) commenced investigations in February 2012 for Huang's contravention of the SFA provisions. CAD, in consultation with MAS and the Attorney General's Chambers, subsequently agreed to discontinue criminal investigations so that the civil penalty settlement could take place.

6. The \$2.5 million civil penalty will be paid from the US\$3.7m in Huang's Singapore bank account. The account was frozen under a High Court injunction that MAS obtained in 2013. The injunction prevented Huang's assets from being dissipated, ensuring that there were sufficient funds in Singapore for the payment of the civil penalty.

7. MAS' Assistant Managing Director (Capital Markets), Mr Lee Boon Ngiap, said, "MAS takes a strong stance against market misconduct and spares no effort in investigating possible transgressions. The offer by Huang to surrender 10% of his shareholdings in China Sky is the first negotiated settlement of its kind, directly benefitting existing shareholders of China Sky. We will continue to work closely with other statutory agencies to enforce the law against those who commit offences in our securities markets, whether they are based in Singapore or overseas."

8. Mr Tan Boon Gin, Director of CAD, "Cases like this have jurisdictional issues that make case resolution challenging. This case has come to a successful resolution through close collaboration between MAS, CAD and SGX, as well as assistance rendered by the authorities and regulators in the People's Republic of China. The settlement is a fair and equitable one which is commensurate with the severity of the breaches. It not only ensures that Huang is punished for his misconduct, but his offer to surrender his shares is a remedial measure that will benefit existing China Sky shareholders. We assure market participants that we will explore all viable avenues with the relevant agencies, including our overseas counterparts, to make wrongdoers account for what they have done."

Notes to Editor:

(A) The civil penalty regime

(i) A civil penalty action is not a criminal action and does not attract criminal sanctions. The civil penalty regime, designed to complement criminal sanctions and provide a nuanced approach to combat market misconduct, became operational at the beginning of 2004.

(ii) Under Section 232 of the SFA, MAS may enter into agreements with any person for that person to pay, with or without admission of liability, a civil penalty for a contravention of any provision of Part XII of the SFA. Civil penalty may be up to three times the amount of the profit gained or loss avoided by that person as a result of the contravention, subject to a minimum of \$50,000 (if the person is not a corporation) or \$100,000 (if the person is a corporation). Where the contravention did not

result in the person gaining a profit or avoiding a loss, the civil penalty may be up to \$2 million, subject to a minimum of \$50,000.

(iii) In determining the appropriate quantum of civil penalty, MAS takes into consideration all facts and circumstances relating to the contravention and the contravening person, including the degree of seriousness of the misconduct, the extent of impact of the misconduct on the market, the need for effective deterrence and other relevant characteristics of the case.

(B) Section 199 of the SFA

Under Section 199 of the SFA, no person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce other persons to subscribe for, buy or sell securities or have the effect of raising, lowering, maintaining or stabilising the market price of securities, if, when he makes the statement or disseminates the information, he does not care whether the statement or information is true or false or he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

(C) Section 203 of the SFA

Under Section 203 of the SFA, an entity, a trustee or a responsible person of collective investment scheme whose securities or units of a collective investment scheme are listed for quotation on a securities exchange, shall not intentionally, recklessly or negligently fail to notify the securities exchange of such information as required to be disclosed by the securities exchange under the listing rules or any other requirement of the securities exchange.

(D) Section 331 of the SFA

Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer of the body corporate, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

ANNEX

Agreed Statement of Facts

Introduction

Huang Zhong Xuan (“Huang”) is the former executive director and chief executive officer (“CEO”) of China Sky Chemical Fibre Co. Ltd (“China Sky”), a company listed on the Singapore Exchange Securities Trading Limited (“SGX”). As the executive director and CEO, Huang had control over the management and operations of China Sky and was responsible for making the relevant disclosures to the market, on behalf of China Sky.

Investigations

2 In February 2012, following the suspension of China Sky’s shares from trading in November 2011, the Commercial Affairs Department of Singapore (“CAD”) investigated into possible breaches of the Securities and Futures Act (the “SFA”) by Huang. The CAD will be discontinuing its investigations in view of a civil penalty settlement to be entered into between the Monetary Authority of Singapore (the “MAS”) and Huang.

Contraventions by Huang

Section 199(c) SFA

3 Huang contravened section 199(c) of the SFA by making statements that were misleading in a material particular to the market on behalf of China Sky. The misleading statements relate to China Sky’s acquisition (and subsequent aborted acquisition) of a piece of land in Quanzhou Harbour, Fujian Province, China (“Fujian Land”). The misleading disclosures were made to the market in several announcements by Huang on behalf of China Sky, without Huang caring whether the statements made were true or false. This is despite Huang having had the opportunity to clarify the earlier misstatements made but did not do so.

4 The details of the misleading statements are as follows:

4.1 Misleading disclosures on the true nature of the acquisition arrangement

4.1.1 China Sky made several misleading disclosures as to the nature of the acquisition of the Fujian Land. The announcements implied or expressly provided that a sale and purchase agreement was in place for the acquisition of the Fujian Land;

4.1.2 On 28 November 2006, China Sky announced that it had managed to secure an offer for the Fujian Land, with an area of around 600 mu, at a very reasonable price;

4.1.3 On 22 April 2011, China Sky stated that its subsidiary, Mega Force Investments Limited ("**Mega Force**"), had in 2006, entered into an agreement with one Fujian Fuyuan Chemical Fibre Co., Ltd ("**Fujian Fuyuan**") to acquire the Fujian Land;

4.1.4 On 29 April 2011, China Sky expressly referred to a sale and purchase agreement that Mega Force entered into with Fujian Fuyuan on 5 December 2006 for the acquisition of the Fujian Land;

4.1.5 On 1 July 2011, China Sky represented that Mega Force had initiated negotiations with Fujian Fuyuan to rescind the agreement for the acquisition of the Fujian Land;

4.1.6 In actual fact, there was never any sale and purchase agreement in existence between Mega Force and Fujian Fuyuan for the acquisition of the Fujian Land;

4.1.7 The agreement referred to by China Sky was instead a share purchase agreement between China Sky's wholly-owned subsidiary, Winburg Company Ltd ("**Winburg**"), and Mr. Zhang Zhi Meng ("**Mr Zhang**"), the original director and shareholder of Mega Force, for the acquisition of Mr Zhang's 100% interest in Mega Force on 2 December 2006 ("**Share Purchase Agreement**"). In so doing, Winburg would gain full control of Fujian Fuyuan and the Fujian Land as Mega Force was the sole shareholder of Fujian Fuyuan, and Fujian Fuyuan in turn had control over the Fujian Land.

4.1.8 The alleged rescission of the sale and purchase agreement between Mega Force and Fujian Fuyuan was in fact a termination agreement entered into between Winburg and Mr Zhang on 27 June 2011.

4.2 *Wrong identity of the payee for the deposit*

4.2.1 On 1 March 2010, China Sky issued its financial statements for financial year ended 31 December 2009 (FY 2009) wherein China Sky reported that it had paid deposits amounting to RMB 149 million for the acquisition of land use rights. When SGX queried China Sky regarding to whom the deposits were paid, China Sky replied on 13 March 2010 that the deposits were paid to the local authority of Quanzhou Harbour;

4.2.2 In April 2011, China Sky sought to clarify the earlier misstatement but again wrongly announced that this deposit had been paid to Fujian Fuyuan, through an indirect wholly owned subsidiary of China Sky, Mega Force, in 2006.

4.2.3 In reality, the deposit paid by China Sky was in fact the full consideration which Winburg paid to Mr Zhang for his 100% interest in Mega Force.

4.3 *Misleading disclosures regarding the independency of the counterparty to the acquisition arrangement*

4.3.1 In China Sky's Annual Report 2010, it was stated that China Sky had made a deposit of RMB 149 million to an "independent third party" for the acquisition of the Fujian Land;

4.3.2 On 22 April 2011, China Sky announced that the "third party" referred to in its Annual Report was Fujian Fuyuan, a company incorporated in Quanzhou, China, whose shareholder was an individual third party that was independent and not related to the China Sky Group;

4.3.3 On 29 April 2011, China Sky reiterated the independency of the shareholder of the third party, stating that it "wishes to confirm that the individual third party, being the shareholder of Fujian Fuyuan, is independent and is not related to the Group";

4.3.4 In reality, this alleged deposit RMB 149 million was the full consideration paid to Mr Zhang for the acquisition of his interest in Mega Force, as stated at paragraph 4.2.3 above.

4.3.5 Although at the time of the acquisition in November 2006, Mega Force and Fujian Fuyuan, which is wholly owned by Mega Force, were independent third parties from the China Sky Group, however Mega Force and Fujian Fuyuan were no longer independent third parties by the time China Sky made the relevant announcements in 2011, as a result of the Share Purchase Agreement.

4.3.6 Therefore, at the time of China Sky's announcements in 2011, it appeared to the market that China Sky was dealing with an independent third party when this was no longer the case.

4.3.7 Investors would have viewed the payment of this RMB 149 million differently if they had known that this RMB 149 million might not have been paid pursuant to an arms-length agreement with an independent third party for the sale and purchase of the Fujian Land.

4.4 *Misleading disclosures relating to the use of the Fujian Land*

4.4.1 In the Share Purchase Agreement referred to in paragraph 4.1.7 above, Zhang was obliged to apply to convert the Fujian Land from agricultural use to non-agricultural use. If this was not achieved, the Share Purchase Agreement may be rescinded and Zhang would be obliged to refund the purchase price to Winburg.

4.4.2 On 13 March 2010, China Sky disclosed that it had acquired the Fujian Land with the intention to expand upstream into the production of a key raw material used in its production of nylon yarns. On 22 April 2011, China Sky disclosed that the Fujian Land was situated on an industrial site;

4.4.3 This was misleading as at the time of the acquisition, the land use rights for the Fujian Land were actually for agricultural and forestry purposes and had not been converted to industrial purposes. China Sky also failed to disclose that there would be a need to convert the land use rights from agricultural to non-agricultural purposes;

4.4.4 The market would have been concerned that China Sky was investing a substantial sum of RMB 149 million into an acquisition of a piece of land for the production of nylon yarns, when that piece of land had been allocated for agricultural not industrial purposes.

4.5 *Misleading statements as to the payments for the Fujian Land*

4.5.1 In China Sky's Annual Reports for FY2009 and FY2010, it was disclosed that the total consideration for the Fujian Land was RMB168,725,000;

4.5.2 However, on 22 April 2011, China Sky announced that the total consideration of the Fujian Land was RMB 149 million, out of which China Sky had paid 88% of the total consideration, with 12% outstanding;

4.5.3 On 25 April 2011, China Sky issued another announcement, purportedly clarifying that the total consideration for the Fujian Land was RMB168 million instead of RMB149 million, and that the RMB 149 million paid by China Sky amounted to 88% of the total consideration of RMB168 million;

4.5.4 In actual fact, RMB 149 million was the total consideration paid by China Sky for the acquisition of the Fujian Land, through the Share Purchase Agreement, and this sum had already been paid in full by China Sky between 19 December 2006 and 24 December 2007.

4.6 *Misleading disclosures relating to the delay in the transfer of the land use rights to China Sky*

4.6.1 On 22 April 2011, China Sky disclosed that although Fujian Fuyuan possessed the requisite land title, the transfer of the land title had yet to be effected as the approval for the transfer from a local entity, Fujian Fuyuan, to Mega Force, a foreign entity incorporated in the British Virgin Islands, was "very extensive".

4.6.2 On 29 April 2011, China Sky repeated that the reason for the delay of the transfer of the land title was because Fujian Fuyuan had encountered difficulties in its transfer application to Mega Force, due to Mega Force being a foreign entity;

4.6.3 In reality, there was never in existence any application by Fujian Fuyuan for any land use rights to be transferred to Mega Force.

Section 203 SFA

5 Under Rule 703 of SGX Listing Rules, a company must immediately disclose any information concerning it or its subsidiaries which would, *inter alia*, be likely to have a material effect on the price or value of its securities. Further, under the then Rule 704(15)(c) read with Rules 1010(3) and 1010(5) of SGX Listing Rules, an issuer is required to immediately disclose "*any acquisition of shares which result in a company becoming a subsidiary or an associated company of the issuer*", providing information about the "*aggregate value of the consideration*", "*the value of assets acquired*", amongst others. In relation to the acquisition of the Fujian Land, China Sky recklessly, with Huang's connivance, failed to disclose or immediately disclose the following information as required under the said rule, thereby causing China Sky to be in breach of Section 203 of the SFA:

5.1 that the acquisition of the Fujian Land was pursuant to a Share Purchase Agreement between Winburg and Mr Zhang;

5.2 that the seller of the land was Mr Zhang and not Fujian Fuyuan, as announced, by way of the Share Purchase Agreement;

5.3 that by entering into a share purchase agreement with Mr Zhang, Fujian Fuyuan became a wholly owned subsidiary of China Sky and China Sky would in turn, gain control of the Fujian Land;

5.4 that the total consideration paid for the acquisition of Mr Zhang's shares was RMB 149 million and not RMB 169 million.

5.5 the value of assets acquired through the acquisition of Mr Zhang's shares in Mega Force, including *inter alia*, the value of Fujian Fuyuan;

5.6 that the land has not been approved for non-agricultural purposes yet; and

5.7 that the total envisaged cost for development of the Fujian Land would be about RMB 5 billion, out of which RMB 1 to 5 billion would be used for the construction of basic facilities.

6 The above breaches by China Sky were committed in the period where Huang was the executive director and Chief Executive Officer of China Sky. Accordingly, Huang is deemed to have contravened Section 203 read with Section 331(1) of the SFA.

7 Huang has admitted to the above contraventions of the SFA.

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