

SFC seeks to wind up China Metal Recycling (Holdings) Limited

29 Jul 2013

The Securities and Futures Commission (SFC) has presented a petition to the Court of First Instance to wind up China Metal Recycling (Holdings) Limited (China Metal Recycling).

This is the first time the SFC has applied to the court under section 212 of the Securities and Futures Ordinance (SFO) to wind up a Hong Kong-listed company to protect the interests of the company's shareholders and creditors, and the investing public (Note 1).

The SFC has also obtained orders from the court to appoint Cosimo Borrelli and Jocelyn Chi Lai Man, both of Borrelli Walsh Limited, as joint and several provisional liquidators for China Metal Recycling.

These applications follow an SFC investigation that found evidence suggesting that China Metal Recycling has overstated its financial position in the prospectus used for its initial public offering in 2009 and in its annual report for 2009. The SFC alleges that this was achieved by inflating the size of the company's business and the amount of revenue generated by its major subsidiary. The SFC alleges that an overwhelming majority of the subsidiary's purported purchases from its three major suppliers for the financial years ended 31 December 2007, 2008 and 2009 were fictitious by escalating amounts in each successive year.

The SFC's investigation also found evidence showing that the suspected exaggeration of China Metal Recycling's financial situation remains a current issue that would affect its 2012 financial results, which to date remain unissued.

The Hon Mr Justice Harris granted the provisional liquidators wide powers to investigate and manage China Metal Recycling's affairs. The immediate effect of the appointment of the provisional liquidators and the presentation of the winding-up petition is to:

- suspend the powers of the current board of directors over the management of the company's affairs;
- place administrative control over the company in the hands of the provisional liquidators; and
- make void any disposition of the company's property, and any transfer of shares or alteration in the status of the members of the company, unless the court otherwise orders.

The matter will return to the court on 2 August 2013 for a hearing as to whether the court will continue the appointment of the provisional liquidators. At that hearing, China Metal Recycling may appear and will have an opportunity to address the SFC's allegations and the order made against the company.

Trading in China Metal Recycling's shares was voluntarily suspended on 28 January 2013. On 28 March 2013, the company announced that the Stock Exchange of Hong Kong Ltd (SEHK) had imposed the conditions for the resumption of trading in the company's shares. Those conditions have not yet been satisfied and the trading in the company's shares remains suspended (Note 2).

The SFC's investigation is continuing.

End

Notes:

1. Section 212 of the SFO permits the SFC to initiate winding-up proceedings under the Companies Ordinance against companies if it appears to the SFC that it is desirable in the public interest to do so, and on the grounds that it is just and equitable to wind up those companies.
2. The conditions that must be satisfied before the SEHK allows trading in the company's shares to resume are: (i) to publish a clarification announcement addressing the allegations in the two reports issued on 28 January and 27 February 2013 by Glaucus Research Group; (ii) to provide third party assurance on the disclosure in the clarification announcement such as the publication of the audited financial statements for the year ended 31 December 2012 with an unqualified audit opinion; and (iii) to engage a forensic specialist to conduct a forensic review.