

# SFC wins first High Court case to wind up a Hong Kong listed company on public interest grounds

The Hong Kong High Court recently handed down its reasons for ordering on 26 February 2015 that China Metal Recycling (Holdings) Limited ("China Metal Recycling") be wound up on public interest grounds.

## Overview

China Metal Recycling is a purported scrap metal business incorporated in the Cayman Islands and a registered non-Hong Kong company, and its shares were listed on the Main Board of the Hong Kong Stock Exchange on 22 June 2009.

On 22 December 2009, the SFC began to investigate whether persons might have engaged in the disclosure of false or misleading information inducing transactions in the shares of the China Metals Recycling. Trading in the company's shares was suspended on 28 January 2013.

On 26 July 2013, following the SFC's investigations, China Metal Recycling was placed into provisional liquidation.

On the same day, the SFC petitioned for the company's winding-up pursuant to section 212 of the Securities and Futures Ordinance ("SFO"), which gives the SFC standing to apply for a winding-up order when it considers that such relief is in the public interest. The Court may grant a winding-up order on the ground that it is just and equitable and after considering the circumstances of the case.

The Court (the Honourable Mr Justice Harris presiding) held that the evidence adduced by the SFC established that fraud on an industrial scale had been perpetrated by those in charge of China Metal Recycling on investors, the Stock Exchange, and others involved in the listing of the company, involving (amongst other things) "round-robin" flows of funds and bogus bills of lading.

The Court found that there was a carefully planned and implemented scheme to create accounts which significantly overstated the business and profit of the company for the purposes of its listing and thereafter; fraud which went directly to the integrity of the listing.

Harris J held that *"It is important that it is clear to those involved in the promotion of companies and the raising of finance in the equity markets that deceptive and misleading practices in the promotion of a company are likely to result in a winding up... Although the economic interests of creditors and minority shareholders are relevant in*

*determining (the) petition...the overarching consideration is the broader interest of market participants as a whole. That interest requires that serious misconduct is subject to unequivocal censure. The appropriate order in a case where a listing has been obtained by wholly dishonest fabrication of accounts would, in my view, almost invariably be a winding-up order."*

## Implications

This case involved the first public interest petition brought by the SFC to wind up a Hong Kong-listed company pursuant to section 212 of the SFO and demonstrates the Court's willingness to take the draconian step of winding-up a company where its listing involved serious fraud.

The case also demonstrates, following the *Hontex* and *Tiger Asia* cases, the SFC's ongoing attempts to exercise all of its available (and sometimes untested) powers to protect the investing public.

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