

The report of the Market Misconduct Tribunal into dealings  
in the shares of ABC Communciations (Holdings) Limited  
in and between February 2008 to May 2008

**Part II : The Orders of the Tribunal pursuant to section 257(1) of the  
Securities and Futures Ordinance, Cap 571**

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## **Abbreviations**

ABC	ABC Communications (Holdings) Limited
Blue Mountain	Blue Mountain Hong Kong Group Limited
China Water	China Water Industry Group Limited
Jinan Hong Quan Water	Jinan Hong Quan Water Supply Limited
Mega Mount	Mega Mount Group Limited
Mr Vico Hui	Mr Hui Ho Luek, Vico
Mr Vincent Sze	Mr Sze Chun Ning, Vincent
SFC	Securities and Futures Commission
Smart Giant	Smart Giant Group Limited
The Ordinance	Securities and Futures Ordinance

## CHAPTER 5

### ORDERS

283. On 21 October, 2011 the Tribunal informed the parties that it had delivered Part I of its Report to the Financial Secretary on 20 October 2011 and that it proposed to make that Report available to the parties on 24 October 2011. Further, that a hearing was to be held on 31 October 2011 at which the Tribunal would receive material and consider making consequential orders. The parties were invited to make such written submissions as they wished to make in advance of that hearing, at which the Tribunal would consider oral submissions, if any.

284. The Tribunal has received written and oral submissions from the Presenting Officer and Mr Harris, SC on behalf of Mr Vincent Sze. However, it has received no submissions whatsoever from or on behalf of Mr Wang Chao or Mr Guo Ai Wen, neither of whom were present nor represented at the hearing on 31 October 2011. The Presenting Officer has provided the Tribunal with detailed claims for orders to be made in favour of the SFC and the Government for their costs and expenses. The Secretary of the Tribunal has provided with Tribunal with similar material in respect of its costs and expenses. A summary of those costs and expenses and the calculation of an apportionment of those costs and expenses in the orders made in respect of Mr Vincent Sze is at **Appendix 11**.

#### *Submissions on behalf Mr Vincent Sze*

285. Mr Harris has identified a range of circumstances said to be relevant to a consideration by the Tribunal of the appropriate orders to make in respect of Mr Vincent Sze. In particular, he invites the Tribunal to accept that Mr Vincent

Sze has cooperated fully throughout with both the SFC and the Tribunal. In respect of the issue of orders by the Tribunal against Mr Vincent Sze in relation to the costs and expenses of the SFC and the Government, including the Tribunal itself, Mr Harris accepted that it was appropriate that the Tribunal make such orders. Of the apportionment of liability to Mr Vincent Sze in the making of such orders, Mr Harris invited the Tribunal to have regard to the fact that three persons were specified in the Financial Secretary's Notice. Accordingly, so he submitted, Mr Vincent Sze ought not to be ordered to pay more than one third of those costs and expenses.

#### *A CONSIDERATION OF THE SUBMISSIONS*

286. Section 257 of the Ordinance empowers the Tribunal to make a range of orders “ ... in respect of a person identified as having engaged in market misconduct”. Mr Vincent Sze is the only person so identified by the Tribunal in Part I of its report.

287. The Tribunal determined (paragraph 233) that, for circumstances beyond its control, in particular that for most of the period of these proceedings he was incarcerated in prison and Hainan, Mr Wang Chao was not afforded “a reasonable opportunity to be heard” by the Tribunal, in consequence of which the Tribunal was precluded from identifying him as having engaged in market misconduct. Nevertheless, the Tribunal determined (paragraph 241) that Mr Wang Chao was in control of the account in the name of Mr Guo Ai Wen with First Shanghai at all material times and that the latter acted merely as his nominee. Further, there was no evidence that Mr Guo Ai Wen was possessed of relevant information. Also, the Tribunal determined (paragraph 282) that the profit gained in that account, as a result of the market misconduct, was \$1,669,955.00. That was a profit gained by Mr Wang Chao and nobody else. The Tribunal noted (paragraph 48) that on 28 September 2009 all the monies in

the account in the name of Mr Guo Ai Wen with First Shanghai were transferred to an account in the name of Mr Wang Chao with the same institution.

*Section 257(1)(d) : disgorgement of profit*

288. It follows that, although the Tribunal has determined that a profit was made as a result of market misconduct, the profit was not made by a person it has identified as culpable of market misconduct. It follows that no order of disgorgement of that profit may be made pursuant to section 257(1)(d) of the Ordinance.

*Section 257(1)(a) : an order that a person shall not act as a director or take part in the management of a listed corporation*

289. At all material times Mr Vincent Sze was a director of China Water. He was complicit in the use of a ‘proof of funds’ that had been obtained in respect of only wholly-owned subsidiary of China Water, namely Super Sino, in the steps he took to acquire a publicly listed company. The ‘proof of funds’, which had been obtained for the use of China Water only, was used to misrepresent to the representatives of those who controlled ABC that those funds were available to the potential buyers in the acquisition of a controlling interest in ABC. They were not.

290. Furthermore, Mr Vincent Sze played an active part in the attempts that were made to effect premature payment of the monies payable by China Water for the acquisition by its wholly owned subsidiary Smart Giant of the one share of Blue Mountain. The conditions provided under the contract between Smart Giant and Mega Mount were not met and, clearly, premature payment was not in the interest of China Water. A substantial part of those monies was used by Mr Vincent Sze to defray the costs of and related to the acquisition of a controlling interest in ABC.

291. Also, Mr Vincent Sze played an active part in the advances of monies by China Water to Mr Vico Hui that were unsecured and advanced without interest. It is clear, that in return Mr Vico Hui did nothing to benefit China Water. Those payments were not in the interest of China Water. In due course, it was Mr Vico Hui who directed that the monies paid to Mega Mount by China Water were paid into the account of Allan Ip & Co, from where a substantial part of those monies were made available ultimately to Mr Vincent Sze for his use as described earlier.

292. In all the circumstances, we are satisfied that it is appropriate that the Tribunal order that Mr Vincent Sze shall not be a director of a listed company, or in any way be concerned or take part in the management of a listed company, for four years.

*Section 257(1)(e) and (f) : an order in respect of the costs and expenses of the Government and the SFC*

293. Section 257(1)(e) and (f) of the Ordinance provide that the Tribunal may make an order in respect of the costs and expenses reasonably incurred by the Government and the SFC respectively in relation or incidental to the investigation of the conduct of a person determined to be culpable of market misconduct and in respect of the proceedings before the Tribunal.

294. The Tribunal is satisfied that, taking a broad approach to the matter, it is appropriate to determine that Mr Vincent Sze bear only one third of the cost and expenses of the SFC and the Government in the investigation conducted prior to the proceedings before this Tribunal, namely \$182,114.80 and \$187,723.24 respectively.

295. However, that approach is not appropriate in respect of the proceedings themselves. The Tribunal was informed by the Presenting Officer in the second preliminary hearing on 26 July 2010 that Mr Wang Chao was incarcerated in prison in Hainan, although he expressed a desire, which he said he was unable to fulfil, to participate and be represented in these proceedings. Accordingly, the determination ultimately reached by the Tribunal, namely that circumstances were such that Mr Wang Chao had not been afforded a reasonable opportunity to be heard in the proceedings before the Tribunal, was one that from the outset was most likely to be made. In consequence, as is apparent from Part I of our Report, the extensive enquiries that the Tribunal made into the conduct of Mr Wang Chao, in particular his interest in Jinan Hong Quan Water and in the monies ultimately generated by the sale of Blue Mountain's interest in that company to Smart Giant, were directed at establishing the relationship between Mr Vincent Sze and Mr Wang Chao. That evidence was sought primarily so that the Tribunal could consider the case of Mr Vincent Sze, not that in respect of Mr Wang Chao. Clearly, that was relevant to determining whether or not Mr Vincent Sze was culpable of market misconduct as a 'tipper' of the relevant information to Mr Wang Chao, contrary to section 270(1)(d) of the Ordinance.

296. The Tribunal determined (paragraph 241) that the account in the name of Mr Guo Ai Wen at First Shanghai was controlled throughout by Mr Wang Chao, for whom Mr Guo Ai Wen was a mere nominee. Furthermore, the Tribunal determined that there was no evidence that Mr Wang Chao gave Mr Guo Ai Wen the relevant information. Although the account in the name of Mr Guo Ai Wen played a central role in the consideration of the Tribunal, it was clear from an early stage of the proceedings, as the Tribunal determined ultimately, that in common with many others Mr Guo Ai Wen occupied the role of a mere nominee of Mr Wang Chao.

297. In those circumstances, taking a broad approach to the matter, we are satisfied that Mr Vincent Sze ought to bear two thirds of the costs and expenses of the proceedings in the Tribunal, namely \$325,574.30 in respect of the SFC and \$3,484,858.11 in respect of the Government.

#### *ORDERS*

298. Pursuant to Section 257 of the Ordinance for the Tribunal makes the following orders in respect of Mr Vincent Sze :

- (i) pursuant to section 257(1)(a), that he shall not, without the leave of the Court of First Instance, be a director of a listed corporation or in any way, directly or indirectly, be concerned or take part in the management of a listed corporation for the period of four years with effect from 3 November 2011;
- (ii) pursuant to section 257(1)(e) that he shall pay to the Government the sum of \$3,672,581.00; and
- (iii) pursuant to section 257(1)(f) that he shall pay to the Securities and Futures Commission the sum of \$507,689.00.

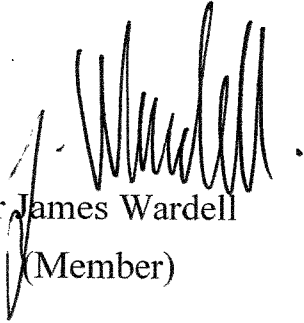
299. Further, pursuant to section 264(1) of the Ordinance the Tribunal directs that notice be given to register this order in the Court of First Instance.





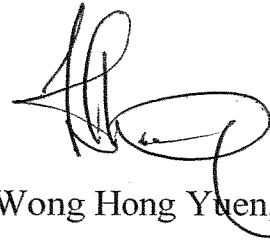
The Hon Mr Justice Lunn

(Chairman)



Mr James Wardell

(Member)



Mr Wong Hong Yuen, Peter

(Member)

Dated 2 November 2011

## CORRIGENDA

The following are errors (underlined) and their corrections in Part I of our Report :

1. Paragraph 93

*“7 May 2007 : President Securities facility agreement*

*By an agreement dated 7 May 2007 ...”*

are errors. The correct date is 7 May 2008.

2. Paragraph 239

“Why would he decide to do so eight months after the ABC shares had lain untouched in the account?”

is an error. The correct reference is to “the China Water shares”, as is stated correctly at paragraph 256.

3. Appendix 5

“Blue Mount” is an error. The correct reference is to Blue Mountain.