# Yeap Wai Kong *v* Singapore Exchange Securities Trading Ltd
# [2012] SGHC 103

**Case Number** : Originating Summons No 72 of 2012

**Decision Date** : 09 May 2012

**Tribunal/Court** : High Court

**Coram** : Philip Pillai J

**Counsel Name(s)** : Tan Cheng Han SC and Angie Tan An Qi (TSMP Law Corporation) for the applicant; Davinder Singh SC, Una Khng, Pardeep Singh Khosa, Isaac Lum and Harpreet Kaur Dhillon (Draw & Napier LLC) for the respondent.

**Parties** : Yeap Wai Kong — Singapore Exchange Securities Trading Ltd

*Administrative Law – Judicial review*

9 May 2012 Judgment reserved.

**Philip Pillai J:**

## 1. Introduction

1 This application raises two issues: first, whether the Singapore Exchange Securities Trading Limited's ("SGX-ST") public reprimand of a director of an SGX-ST listed company is susceptible to judicial review? And second, if it is, whether the applicant was accorded a fair hearing as required by the rules of natural justice?

2 The applicant, who was, during the material time, a non-executive director of China Sky Fibre Chemical Limited ("China Sky" or "Company"), applied for leave to apply for a quashing order of the SGX-ST's reprimand of him, on 16 December 2011 ("SGX-ST Reprimand") and was granted leave. The gist of his complaint is that SGX-ST reprimanded him in breach of the rules of natural justice.

## 2. Judicial Review

3 Judicial review is the limited means through which the court holds bodies exercising a "public" function to fundamental thresholds of legality. It is to be emphasised that in judicial review the court is not concerned with the merits or correctness of the decision under review. Judicial review is not an appeal to the court nor does the court substitute its own judgment for that of the decision-maker. In the exercise of its supervisory jurisdiction, the court confines itself to reviewing the decision making process, to ensure that the process met the standards of "legality, rationality and procedural propriety" (per Lord Diplock in *Council of Civil Service Union v. Minister for the Civil Services* [1985] A.C. 374). Since judicial review is confined to decisions which are characterised as being of a public function, it is unavailable for the enforcement of private law rights, for which private law and other court processes are readily available.

## 3. Is the SGX-ST's Reprimand susceptible to Judicial Review?

4 The foundations of Singapore law on judicial review are the common law principles as they have developed in England prior to the influence and impact of the European Union law, the latter having no application to Singapore. Accordingly it is necessary for this court to return to the pre-1972 bedrock

judicial review principles, and to apply those principles to the present case. In considering post-1972 judicial review decisions in England, care has to be taken to extract only those common law principles where these principles have not morphed into English law judicial review principles as a result of European Union law, such as the European Convention on Human Rights which was incorporated into English law by the 1998 UK Human Rights Act. A similar cautionary approach is warranted when considering judicial review decisions by the Australian courts which have been shaped by the Australian Administrative Decisions (Judicial Review) Act 1977 which has no application to Singapore.

5 Michael Fordham, *Judicial Review Handbook*, 2nd ed, 1997 (at p 5) provides a useful bird's eye distillation of the court's approach to judicial review at pages 145, 148 and 172:

> Judicial review is: the means by which High Court judges scrutinise public law functions, intervening as a matter of discretion, to quash, prevent, require, clarify or compensate, not because they disagree with the merits judgment, but so as to right a recognisable public law wrong, whether, unlawfulness, unreasonableness or unfairness. The applicant is a person with sufficient interest, who lacks any suitable alternative remedy, and who must commence proceedings promptly." "Judicial review is a contextual, discretionary jurisdiction which is changing dramatically and incrementally. (At p. 145)
>
> Courts promote their interventionist capacities, driven by the rule of law and aversion to inconsistency and abuse: Judicial review is the Courts' way of enforcing the rule of law: ensuring that public decision-making is undertaken according to law and is accountable to law. In other words, reminding public bodies that they are not above the law. (At p.148)
>
> Courts adopt a primary deference, preserving for public bodies a margin of responsibility and choice: Public decision-makers exist for a purpose and there must necessarily be questions which it are for them, rather than judges, to decide.
>
> Principles of judicial review are a Court-struck balance, faithful to both vigilance and restraint: The tension between vigilance and restraint is a main undercurrent of judicial review, responsible for producing the principles which govern the supervisory jurisdiction. (At p.172)

6 The foundational common law principles in England have as their starting point the source test ("Source Test"), which was then extended by the nature test ("Nature Test") to take into account the changing public governance landscape. The development from the statutory Source Test where the court looks to whether the body had its origins in statutes, to the Nature Test where the court looks at the nature of the decision, is discernable in the following sequence of the seminal English judgments. In *Reg v Criminal Injuries Compensation Board*, *Ex parte Lain* [1967] 2 QB 864, *per* Lord Parker CJ at 882 where he describes the limits of the origins of certiorari, (today the quashing order):

> ... They have varied from time to time being extended to meet changing conditions. At one time the writ only went to an inferior court. Later its ambit was extended to statutory tribunals determining a *lis inter partes*. Later again it extended to cases where there was no *lis* in the strict sense of the word but where immediate or subsequent rights of a citizen were affected. The only constant limits throughout were that it was performing a public duty. Private or domestic tribunals have always been outside the scope of certiorari since their authority is derived solely from contract, that is, from the agreement of the parties concerned. ... We have, as it seems to me reached the position when the ambit of certiorari can be said to cover every case in which a body of persons of a public as opposed to a purely private or domestic character has to determine matters affecting subjects provided always that it has a duty to act judicially. Looked at in this way the board in my judgment comes fairly and squarely within the jurisdiction

of this court...

7 At 884 to 885, Diplock LJ observed:

> ... If new tribunals are established by acts of government, the supervisory jurisdiction of the High Court extends to them if they possess the essential characteristics upon which the subjection of inferior tribunal to the supervisory control of the High Court is based. What are these characteristics? It is plain on the authorities that the tribunal need not be one whose determinations give rise directly to any legally enforceable right or liability. Its determination may be subject to certiorari notwithstanding that it is merely one step in the process which may have the result of altering the legal rights or liabilities of a person to whom it relates...

8 In *Reg v Panel on Take-overs and Mergers, ex parte Datafin plc And Another* [1987] 1 QB 815 ("*Datafin*"), Sir John Donaldson MR described the same development in the following manner at 838:

> ... The Criminal Injuries Compensation Board, in the form which it then took, was an administrative novelty. Accordingly it would have been impossible to find a precedent for the exercise of the supervisory jurisdiction of the court which fitted the facts. Nevertheless the court not only asserted its jurisdiction, but further asserted that it was a jurisdiction which was adaptable thereafter. ...In all the reports it is possible to find enumerations of factors giving rise to the jurisdiction but it is a fatal error to regard the presence of all those factors as essential or as being exclusive of other factors. Possibly the only essential elements are what can be described as a public element, which can take many forms, and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to its jurisdiction...
>
> [emphasis added]

9 In the modern era, public policy is increasingly effected not only by government and statutory bodies but also through self-regulating entities in sectors where the domain nature and complexity of the sector requires front- line expertise coupled with back-line regulators to regulate the relevant sector. The question arose in England in *Datafin*, with respect to the then newly created London Panel on Take-overs which operated the City Code on Take-overs and Mergers ("London Panel"). The legal question there (and in this application) was succinctly framed by Sir John Donaldson in *Datafin* at 828 in the following terms:

> … whether the courts of this country have any jurisdiction to control the activities of a body which de facto exercises what can only be characterised as powers in the nature of public law powers...

10 While the London Panel "oversees and regulates a very important function of the United Kingdom financial market ... [it performs] this function without visible means of legal support" (see *Datafin* at 824*)*. The court also noted that the London Panel had no "statutory, prerogative or common law powers and it is not in a contractual relationship with the financial market or those who deal in that market" (see *Datafin* at 825).

11 While lacking statutory authority, Sir John Donaldson MR noted (at 826) that the Panel:

> … exercises immense power *de facto* by devising, promulgating, amending and interpreting the City Code on Take-overs and Mergers, by waiving or modifying of the code in particular circumstances, by investigating and reporting upon the alleged breaches of the code and by application or threat of sanctions. These sanctions are no less effective because they are applied

indirectly and lack a legally enforceable base.

...

The unspoken assumption, which I do not doubt is a reality, is that the Department of Trade and Industry or, as the case may be, the Stock Exchange or other appropriate body would in fact exercise statutory powers or contractual powers to penalise the transgressors.

12 Sir John Donaldson MR was mindful that financial markets required speed and certainty of decisions. He agreed with the observation of Lord Diplock in *Reg v Inland Revenue Commissioners, Ex parte National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 642 to 643 that in the context of judicial review of such decisions, the procedural need to apply for leave for prerogative orders would:

... prevent the time of the court being wasted by busybodies with misguided or trivial complaints of administrative error, and to remove the uncertainty in which public officers and authorities might be left as to whether they could safely proceed with administrative action while proceedings for judicial review of it were actually pending even though misconceived.

In many cases of judicial review where the time scale is far more extended than in the financial markets, the decision-maker who learns that someone is seeking leave to challenge his decision may well seek to preserve the status quo meanwhile and, in particular, may not seek to enforce the decision pending a consideration of the matter by the court. If leave is granted, the court has the necessary authority to make orders designed to achieve this result, but usually the decision-maker will give undertakings in lieu. All this is but good administrative practice. However, against the background of the time scales of the financial market, the courts would not expect the panel or those who should comply with its decisions to act similarly. In that context the panel and those affected should treat its decisions as valid and binding, unless and until they are set aside. Above all they should ignore any application for leave to apply of which they become aware, since to do otherwise would enable such applications to be used as a mere ploy in take-over battles which would be a serious abuse of process of the court and could not be adequately penalised by awards of costs. [p.840]

13 The observations of Lloyd LJ in *Datafin (at 847)* on the spectrum between a statutory source and contractual/consensual private decision-makers are also instructive:

...If the source of the power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. If, at the other end of the scale, the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review: see *Reg. v National Joint Council for the Craft of Dental Technicians* (*Dispute Committee*), *Ex parte Neate* [1953] 1 QB 704.

But in between these extremes there is an area in which it is helpful to look not just at the source of the power but at the nature of the power. If the body in question is exercising public law functions, or if the exercise of its functions have public law consequences, then that maybe sufficient to bring the body within the reach of judicial review. It may be said that to refer to "public law" in this context is to beg the question. But I do not think it does. The essential distinction, which runs through all the cases to which we referred, is between a domestic or private tribunal on the one hand and a body of persons who are under some public duty on the other.

14 However, Lloyd LJ noted at 848 that to hold that the Source Test was the sole test of whether a decision is subject to judicial review would be to impose an artificial limit on the developing law of judicial review. He concluded that, quite apart from the Source Test, the court would also apply the Nature Test. In the event that he was wrong and if the only test applicable was the Source Test, Lloyd LJ was prepared to consider that the London Panel was established "under the authority of the Government" such that it satisfied the Source Test (at 849).

15 This process of development of the law of judicial review is summarised in the following terms by *Judicial Remedies in Public Law*, Clive Lewis QC (Sweet & Maxwell 2009) at para 2-003:

> In the past, the courts focussed primarily on the source of the power in determining whether a body was a public one subject to judicial review. Now, however, the modern approach is to consider whether the exercise of a power, or performance of a duty involves a "public element", which can take many different forms, and the exclusion from jurisdiction of bodies whose sole source of power is a consensual submission to its jurisdiction." The source of a power or duty remains an important indication of the public law nature of a body or bodies created by statute or acting under powers derived from the prerogative will usually be public law bodies for the purposes of judicial review. *Other non-statutory bodies may, however, be performing public law functions and may be subject to judicial review in respect of those functions. Factors such as the nature of the function, the extent to which there is any statutory recognition or underpinning of the body or the function in question and the extent to which the body has been interwoven into a system of governmental regulation may indicate that the body performs public functions and is, in principle, subject to judicial review in respect of those function.* The principal exclusion from the scope of judicial review now is bodies who acquire jurisdiction over individuals by virtue of contract. These are seen as private and not public bodies.
>
> [emphasis added]

16 The preceding account of the foundational common law judicial review principles demonstrates the vitality of the common law in upholding the rule of law by adjusting to meet changing public governance landscapes. Only where the sole source of a decision-maker's power is contractual or consensual would such decision-maker not be susceptible to judicial review.

17 In Singapore, our courts have in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR 644, *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 and *ACC v CIT* [2010] 1 SLR 273, applied both the Source Test and the Nature Test.

***The Regulatory Structure and Framework of the Singapore Securities and Futures Market***

18 As SGX-ST is not a statutory body, I proceed next to analyse the following factors in this order, the extent to which it is interwoven into the legislative and regulatory matrix, whether the reprimand function has a statutory underpinning and finally its nature, to determine whether the SGX-ST Reprimand isto be characterised as a public function within the Nature Test.

*(i) Legislative and regulatory matrix*

19 The primary statutory regulator of the securities and futures market in Singapore under the Securities & Futures Act (Cap 289, 2006 Rev Ed) ("SFA"), is the Monetary Authority of Singapore (the "MAS"). Its securities and futures regulatory powers and functions are described below [20- 21]. The SGX-ST is a company incorporated under the Companies Act (Cap 50, 2006 Rev. Ed). The SGX-ST operates a securities market, whilst the Singapore Exchange Derivatives Trading Ltd ("SGX-DT")

operates a futures and derivatives market. Both SGX-ST and SGX-DT are approved exchanges and are held by Singapore Exchange Ltd, an approved holding company of both SGX-ST and SGX-DT under s 81U SFA.

20 The SGX-ST describes itself in its website in the following terms:

> SGX as a Self Regulatory Organisation
>
> The SGX is a listed exchange and frontline regulator. SGX is considered a self regulatory organization ("an SRO"). SGX bears commercial responsibilities in addition to its regulatory duties."
>
> Regulatory Organization Structure
>
> SGX undertakes various regulatory functions to promote a fair, orderly and transparent marketplace as well as a safe and efficient clearing system. These functions are handled by the following regulatory departments:
>
> Issuer Regulation
>
> Catalist Regulation
>
> Member Supervision
>
> Market Surveillance
>
> Enforcement
>
> Risk Management
>
> Clearing Risk
>
> Regulatory Development & Policy

21 SGX-ST is an approved exchange under s 16 of the SFA. S 16(1)(c) SFA provides that an approved exchange in discharging its obligations under the SFA is to have particular regard to the interests of the investing public, and is not to act contrary to the interests of the public. S16(1)(e) obliges it to maintain business and listing rules which make satisfactory provision for a fair, orderly and transparent market in securities that are traded, and to regulate and supervise its members. Section 16(1)(f) SFA provides that it is to enforce compliance with its business and listing rules. Amendments to its business and listing rules may be directed by and in any event require the approval of MAS. Section 24 SFA expressly provides that the business rules of the approved exchange shall be deemed to be and operate as a binding contract between the exchange and each member and the members *inter se*. S 25 SFA, introduces a statutory enforcement process under which the SGX-ST's business or listing rules may be enforced or effected further by a court order issued to the company or its associated persons. Acquisitions of defined minimum thresholds of substantial shareholdings in SGX-ST require prior MAS approval under s 27 SFA. In an emergency, the MAS is accorded emergency powers to direct SGX-ST to take prescribed actions under s 34 SFA. The appointments of SGX-ST's chairman, chief executive and directors of the SGX-ST require the prior approval of the MAS under s 28 SFA. The listing of the SGX-ST itself requires the MAS's approval under s 30 SFA. The MAS is empowered under s 46 SFA to issue directions to the SGX-ST, on pain of a criminal offence for non-compliance.

*(ii) Statutory underpinning of the reprimand function*

22 The SFA prescribes that the SGX membership and listing rules are to satisfactorily provide a fair, orderly and transparent market for the trading of listed securities. A fair and transparent market is contingent on the timely and accurate disclosure of material information. A review of SGX-ST's Listing Manual reveals a two-pronged approach to ensuring a fair and transparent market for trading of listed securities.

23 The first approach is to impose on the listed company the obligation to comply with the Listing Manual and to make timely, continuing and periodic disclosures, as prescribed in SGX-ST's Listing Manual Chapter 7 "Continuing Obligations". This Chapter 7 contains Part II "Equity Securities-Immediate Announcements" and Part III "Equity Securities-Periodic Reports". This corporate disclosure obligation is underscored by the Company's Listing Undertaking issued to the SGX-ST under authority of a board resolution. Where the listed company defaults or contravenes these continuing disclosure obligations, SGX-ST Listing Manual Chapter 13 provides for trading halts, suspension and delisting. Rule 1302 enables the Exchange to grant a trading halt to enable an issuer to disclose material information or suspend trading at the request of the issuer. Suspension of trading may be imposed by the Exchange where an issuer is unable or unwilling to comply with or contravenes a listing rule. Rule 1305 provides that the Exchange may delist an issuer by removing an issuer from its Official List if it is unable or unwilling to comply with, or contravenes a listing rule.

24 The second approach is consonant with developments in other global stock exchanges, including the Hong Kong Stock Exchange: *i.e.* the SGX-ST has introduced powers to publicly reprimand executive and non-executive directors of listed companies for non-compliance with the Listing Manual. The second approach is expressed in SGX-ST's Listing Manual, Part IV "Equity Securities-Other Obligations". Rule 720(4), which was introduced in 2011, provides:

> Where the Exchange is of the opinion that a director or key executive officer of an issuer has:
>
> (a) wilfully contravened or wilfully caused the issuer to breach the Listing Rues; or
>
> (b) wilfully contravened any relevant laws, rules and regulations; or
>
> (c) refused to extend cooperation to the Exchange or other regulatory agencies in an investigation of wrongdoing related to the issuer such that doubts are cast on the directors' ability to discharge their duties as directors,
>
> the Exchange may take the necessary actions including but not limited to:-
>
> Publishing the names of the individual directors or key executive officers with relevant information about the contravention or failure to extend cooperation; and
>
> Objecting to appointments of the individual directors or key executive officers to the board of directors of other issuers.

It is not disputed that Rule 720 has been properly enacted and approved by the MAS in accordance with s 23 SFA.

*(iii) Nature of reprimand function*

25 A public reprimand of directors of a listed company by the SGX-ST, a front-line securities regulator, carries financial and business implications. Some of the possible implications may be gleaned from Lord Denning's observations in *Re Pergamon Press Ltd* [1970] 3 All ER 535 ("*Re Pergamon Press*") in relation to inspectors' reports issued by inspectors under the English Companies Act. While such inspectors only have powers to 'investigate and report', they may,

> … if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some; they may condemn others; they may ruin reputations or careers. Their report may lead to judicial proceedings. It may expose persons to criminal prosecutions or to civil actions. It may bring about the winding-up of the company...

26 In *Re Pergamon Press*, the English Court of Appeal considered and held that such inspectors were bound by the principles of natural justice. The English Court of Appeal then set a limited scope of fair hearing as being appropriate to the inspectors' function: before the inspectors could condemn or criticise a person, they must give the person a fair opportunity for correcting or contradicting what was said again him.

27 What then are the potential implications of a SGX-ST public reprimand of a listed company's directors? SGX-ST is a vital part of the institutional ecosystem of Singapore's financial sector. It operates an open and international securities market within the 24/7 global network of securities markets. SGX-ST's public reprimand of a listed company's directors accordingly may potentially impact a director domestically and internationally in several ways, depending on his background. These include: adverse business reputational implications, implications on their continued service on board committees and directorships of other listed companies and other professional and financial services licence implications.

28 In the light of the above, the legislative and regulatory matrix of the Singapore securities market, the statutory underpinning of the reprimand power and the nature of the reprimand function, the reprimand power would, in my view, properly be characterised as a public function within the Nature Test and consequently susceptible to judicial review for minimum compliance with the standards of "legality, rationality and procedural propriety".

**4. What is the scope of duty to act fairly?**

29 The common law prescribes minimum standards of procedural propriety by requiring a fair hearing and the absence of bias. There is no one-size-fits-all template for a fair hearing. What constitutes a fair hearing depends on the nature and context of the decision. What then constitutes a fair hearing, when directors fail to comply with the relevant exchange listing rules to disclose material information, in the context of the securities market where the timely and accurate disclosure of material information is critical?

30 I find considerable guidance from Lord Mustill's elaboration of the relevant factors, which are equally applicable regardless of whether the Source Test or the Nature Test is applicable. *R v. Secretary of State for the Home Department, ex parte Doody* [1994] 1 AC 531 at 560 D-G:

> What does fairness require in the present case? My Lords, I think it unnecessary to refer by name or to quote from, any of the oft-cited authorities in which the courts have explained what is essentially an intuitive judgment. They are far too well known. From them, I derive that (1) where an Act of Parliament confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances. (2) the standards are not immutable. They may change with the passage of time, both in general and in their application to decisions

of a particular type. (3) The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects. (4) An essential feature of the context is the statute which creates the discretion, as regards both its language and the shape of the legal and administrative system within which the decision is taken. (5) Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; of both. (6) Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer.

31 In short, fairness, in the context of disclosure of information in the securities market, requires that the person affected is informed of the case against him and that he has an opportunity to make representations before the decision.

***The unfolding chronology of events leading up to the SGX-ST Reprimand***

32 It is the applicant's case that the SGX-ST did not accord him with a fair hearing in that: (i) SGX-ST had not given him any notice or information that they were considering or intending to impose a sanction on him and (ii) SGX-ST should have informed him of the case against him and given him a right to be heard.

33 I next turn to set out the chronology of events leading to the SGX-ST's reprimand of all the directors of China Sky on 16 December 2011, in order to evaluate whether the applicant had been given notice that SGX-ST intended to reprimand him, whether he was notified of the case against him and whether he had an opportunity to make representations.

34 China Sky is a company incorporated in the Cayman Islands. Its principal business is the manufacture and sale of chemical fibres. China Sky is the ultimate investment holding company for Quanzhou Tianyu Chemical Fibre and Weaving Co Limited, a company incorporated as a foreign investment enterprise in the People's Republic of China. China Sky has been listed on the SGX-ST Main board since 3 October 2005, and is commonly referred to in the market as an S-Chip stock.

35 The applicant was a non-executive, independent director and member of the Audit Committee (together with Mr Lai Seng Kwoon and Mr Er Kwong Wah) of China Sky from 2 May 2011 to 5 January 2012, when he and they resigned. At the material time the other directors of China Sky, all of whom are China residents were Mr Huang Zhong Xuan (Chief Executive Officer) ("CEO"), Mr Cheung Wing Lin (Non-Executive Chairman), Mr Song Jiang Sheng (Executive Director) and Mr Wang Zhi Wei (Non-Executive Director). The Group Financial Controller of China Sky at the material time was Mr Sunny Hui San Wing ("CFO").

***April 2011: SGX-ST's queries China Sky's Annual Report 2010***

36 The story unfolded in April 2011 when China Sky issued its Annual Report 2010 ("the AR 2010"). The SGX-ST reviewed the AR 2010, and having noticed several discrepancies, queried the Company on 19 April 2011 and asked the Company to provide the information in an announcement. The primary matters relevant to this application are as follows: (collectively "the Discrepancies"):

(a) Not having previously reported any Interested Party Transactions ("IPTs") in its Annual Reports for the financial years 2007, 2008 and 2009, China Sky's AR 2010 reported that the

aggregate value of the IPTs for the financial year 2009 was RMB 1.5 million (S$300,000) and for the financial year 2010 was RMB 866,000 (S$173,000). The AR 2010 did not however reveal any particulars of these IPTs nor was the interested person(s) in these transactions identified ("the IPT Discrepancy").

(b) China Sky's AR 2010 reported that the Group had paid an unnamed third party ("the Third Party"), under an agreement signed in 2006, a RMB 149 million deposit. The Third Party would acquire the land use rights from the relevant Chinese authority and transfer such rights to the Group. China Sky's AR 2010 reported that it had not yet obtained the land use rights certificate for this land. It also reported that it had paid a further deposit of RMB 114 million for construction work on this land. The AR 2010 did not reveal the identity of the Third Party, the details of the land, the reasons for payment notwithstanding non-receipt of the land use rights certificate or the reason for payment for construction on this same land prior to receipt of the certificate ("the Land Discrepancy").

37 China Sky's announcements on SGXNET on 22 April 2011 generated further SGX-ST queries which led to the following Company announcements:

(a) That the previously reported IPT amounts had been erroneous and had to be revised downwards and that these were professional fees paid to SK Lai & Co, an accounting firm owned by Mr Lai Seng Kwoon, the Chairman of the Audit Committee and an independent director.

(b) That the Third Party in the land transaction was Fujian Fuyuan Chemical Fiber Co Ltd ("Fujian Fuyuan"), and that the RMB 114 million paid for the construction on the land was non-refundable. It also disclosed that the Company had decided to defer its expansion and completion of the land acquisition in light of the global financial crisis of 2008/2009.

***May 2011 to 23 August 2011 non-disclosures resulting in show cause letter***

38 There followed in April 2011 further announcements correcting the 22 April 2011 announcement and raising the land acquisition price to RMB 168 million instead of the RMB 149 million previously announced. SGX-ST issued a further query on 27 April 2011 which led to another announcement on 29 April 2011 which made further corrections and explanations.

39 On 2 May 2011 China Sky announced the appointment of the applicant as independent director and member of the reconstituted Audit Committee. On 3 May 2011, China Sky announced that in order to enhance their corporate governance practices, they had appointed Rodyk & Davidson as legal advisor to conduct a review of the existing corporate governance procedures to identify weaknesses and recommend measures to address them, and that the applicant would be overseeing the implementation of measures, if any, recommended by Rodyk & Davidson.

40 From 16 May 2011 until 16 November 2011, a period of six months, the SGX-ST sent repeated email requests for information, clarification and production of documents to China Sky's CFO, many of which were copied to the CEO and to all the Audit Committee members. The CFO repeatedly replied assuring SGX-ST that the Company would provide the documents requested and attempted to arrange for the CEO and the Audit Committee members to meet SGX-ST's officers to discuss the matter face-to-face. Notwithstanding these assurances, no documents relating to the Land Discrepancy were provided to the SGX-ST.

41 On 14 June 2011, China Sky's lawyers Loo Partners sent an email to the SGX-ST attaching a letter from the CEO. This email was copied to the applicant and the CFO. The CEO requested an

appointment to meet the SGX-ST officers in the letter, and added the following:

> 5. Furthermore, your request has raised some concerns. The information supporting documents you have requested we provide contain confidential trade secrets relating to the Group's strategic and operational matters.
>
> 6. We remain unclear how such information is relevant to SGX *qua* regulator. We nevertheless want to remain engaged to meet your expressed concerns and in this regard, we request you identify clearly to us the relevance of the information requested by reference to the Rules and prudential standards we are required to meet.
>
> 7. The impression gleaned from our continued engagement with SGX and the manner in which some issues are phrased may, we suggest, give the impression to shareholder and the investing public that the Company and its management is being investigated for unidentified wrongdoings. We trust that you would agree such an impression is both inaccurate and unhealthy for the Company's well being.

42 On 1 July 2011 China Sky issued an announcement to the effect that the land acquisition agreement, the subject of the SGX-ST's Land Discrepancy queries, had been rescinded and RMB 263 million would be repaid. It is noteworthy that the amount of RMB 263million matches the total of the RMB 149 million land cost and RMB 114 million construction cost previously announced.

43 Further attempts were made to arrange meetings with the SGX-ST officers. On 11 August 2011 the SGX sent an email at 3.05 pm to the CFO, copied to management and all the Audit Committee members, stating *inter alia*:

> ... the Company has not cooperated with us and has refused to provide us with the documents to substantiate the Company's representations in responses to the Exchange's queries. Therefore we are of the view that unless the Company is able to show that it is willing to comply with our rules and requests, it will not be fruitful to have further meetings on these same points repeatedly. Unless the Company submits all the required documents before the meeting and shows its sincerity in complying with our rules, convening more meetings at short notices would not be fruitful.

44 The applicant himself sent an email a few minutes later at 3.09 pm to the SGX-ST, urging them to meet with China Sky's management. This email was copied to China Sky's lawyers, the CFO and all the Audit Committee Members.

### *23 August 2011: SGX-ST's Show Cause letter to China Sky & Board for breaches of Listing Rules*

45 Following the lapse of about 3 months from the first SGX-ST query, SGX-ST sent an email to China Sky's CEO and all the Audit Committee members on 23 August 2011, attaching a letter dated the same day, which was addressed to the Board of Directors ("SGX-ST Board Show Cause Letter"). The letter particularised and cited each of China Sky's breaches of the Listing Rules and concluded in the following terms:

> In view of the foregoing, the Exchange intends to issue a public reprimand and reserves the right to take any further action as necessary.
>
> Please show cause why relevant disciplinary actions should not be taken against the Company for

the above breaches. Please respond to this letter by 30 August 2011. If we do not hear from you by the stipulated date, the Exchange will decide on the appropriate actions to take, without further reference to you.

46 On 24 August 2011 the CFO sent an email attaching a letter, copied to all the Audit Committee members. The letter was signed off by the CEO as "Executive Director and Chief Executive Officer, On behalf of the Board", and was addressed to the Board of Directors and the SGX-ST. It read:

1. The Board of Directors of the Company ("the Board") refers to your letter of 23 August 2011 ("Show Cause Letter").

2. In view of the nature and number of queries contained in the Show Cause Letter and with a view to giving a comprehensive response, the Board shall be most grateful if the Exchange would grant the Company an extension of 4 weeks from 30 August 2011, which is 27 September 2011 to file its response to the Show Cause Letter.

3. In the meantime, the Company reserves all its rights, including (but not confined to) those enshrined in the rules of natural justice and due process.

The SGX-ST by email of 25 August 2011 granted the extension of time request and confirmed that there would be no further extension to this final timeline.

47 On 23 August 2011, SGX-ST sent a separate show cause letter to Mr Lai in his personal capacity as an independent director of China Sky and as the Chairman of the Audit Committee for his personal breaches of the Listing Manual, asking him to show cause why SGX-ST should not issue a public reprimand against him. He similarly requested for an extension of time and was granted an extension of time to 27 September 2011.

48 On 27 September 2011, China Sky replied by letter and announcement, including a 20 page detailed reply to SGX-ST's Board Show Cause Letter. The same day, Mr Lai's personal solicitors, Shook Lin & Bok, replied on his behalf to SGX-ST on the separate personal show cause letter to Mr Lai.

***3 November 2011: SGX-ST's Document Directive***

49 On 3 November 2011, SGX-ST sent an email to the CEO, the CFO and all the Audit Committee members, attaching a letter directive addressed to the Board of Directors. This Directive directed both the Company and Mr Lai to provide the documents requested by the SGX-ST by 9 November 2011, "failing which the Exchange will take the view that the Company and SK Lai's views cannot be substantiated." ("Document Directive"). The Document Directive was sent by email to the CEO, the CFO and all the Audit Committee members. The Document Directive sought the production of the following documents:

(a) Minutes of all Audit Committee meetings approving all the IPTs;

(b) Board minutes (or extracts thereof) regarding the IPTs;

(c) Statutory declarations by the company secretary for each of the minutes submitted to SGX-ST, declaring that these minutes constituted a fair and true disclosure of the proceedings of the meetings;

(d) A list of all the IPT transactions specifying the dates on which each transaction was entered into, the description of each transaction, the amount paid, whether Board or Audit Committee approval was obtained for each transaction and the amounts disclosed in the annual reports; and

(e) All signed agreements entered into for the provision of the IPT services.

50 The Document Directive, addressed to the China Sky Board of Directors, was emailed by the SGX-ST to each of the Audit Committee members. On 4 November 2011, the CEO wrote a letter, which was signed on behalf of the Board and addressed to the Board and to the SGX-ST, requesting a further extension of time in light of the preparation and finalization of the Company's third quarter results and received a same day email from the SGX-ST in the following terms:

> As the Company is fully aware, this is not the first time we are asking for the documents. In addition, the Company should have been prepared to submit evidence of their claims in their response to our show cause letter. As we have requested for these documents since May 2011 and we have been informed that the Company had been gather since May 2011, we are of the view that the company has been given sufficient time to make the submission of the documents requested.

51 On 9 November 2011, China Sky's CFO sent an email to SGX-ST attaching soft copies of its Audit Committee and Board minutes relating to the IPTs for the period between 9 November 2005 to 24 February 2011. This email was copied to all the Audit Committee members. The CFO promised to provide the remaining documents and explanations the following week. This was the first time that China Sky had provided any documents to SGX-ST. There then followed an email on 11 November 2011, which provided a PDF copy of a China Sky Circular Board resolution (signed by 6 of the 7 directors) dated 14 May 2011, which ratified all past IPTs from 2006 to 2010 and attached copies of earlier internal audit reports/proposals now being ratified by this board circular resolution.

***16 November 2011 SGX-ST Special Auditor Directive to China Sky Board***

52 On 16 November 2011 SGX-ST issued its second directive to the China Sky Board of Directors ("Special Auditor Directive"), to appoint a Special Auditor. This Special Auditor Directive was sent by email to the CEO and all the Audit Committee Members. The Special Auditor Directive letter was addressed to the "Board of Directors" of China Sky and also mentioned each director by name and designation. The name and designation of the applicant was unaccountably omitted but the applicant confirmed that he received it. This Special Auditor Directive required China Sky:

> … to immediately appoint an independent special auditor, acceptable to the Exchange, to investigate the affairs of the company. The appointment and the terms of reference for the Special Audit must be carried out in consultation with the Exchange and the independent members of the Audit Committee. The special auditor should investigate the nature of the transactions surrounding the repairs and maintenance costs, the circumstances surrounding (and subsequent return) of the Fujian Land and major acquisitions and the interested person transactions conducted with its independent director. As the investigations will also involve the transactions with the Company's AC Chairman, please ensure that the committee overseeing the special audit is independent of the matters to be investigated. Kindly make an immediate announcement of this matter.
>
> We look forward to your full and expeditious cooperation so that the Company can resolve to bring proper closure to its outstanding issues.

53 On 17 November 2011 the Company announced this Special Auditor Directive and that the Board would be meeting on an urgent basis to consider the directive.

54 On 22 November 2011 the Company announced an Update on the Regulatory Actions by SGX-ST and other Authorities in Relation to the Proposed Appointment of Special Auditors, issued by the CEO, by order of the Board, which stated *inter alia*:

> … the matters raised by SGX in support of the Special Auditor Directive have been disclosed and dealt with in the Company's audited financial statements for the years 2006 to 2010 and its various announcements issued over the years. The Company's independent auditors have rendered unqualified opinions on these financial statements for all these years.
>
> With respect to Repairs and Maintenance Costs that:
>
> The same costs were also disclosed in the audited financial statements as included in the Annual Report 2009 and this same Annual Report was tabled and approved by the Company's Annual General Meeting held on April 22, 2010.
>
> With respect to the Fuyuan Land that:
>
> The Company has made appropriate announcements both on April 22, 2011 in response to these queries. Also that it had announced that the Company had rescinded the transaction.
>
> With respect to the IPTs that:
>
> The rationale and details of these transactions had been announced.
>
> The Board will be seeking legal and professional advice to respond to this directive from SGX. The Board's primary responsibility is to protect and preserve the value of all stakeholders. It will work expeditiously to resume trading of its shares upon receipt of legal and professional advice.

55 SGX-ST sent an email attaching a letter on 22 November 2011 to the CFO, CEO and all the Audit Committee members. The letter was addressed to the "Board of Directors" and also "Attention-ed" to each director by name and position, asking for information as to when legal and professional advice would be obtained and when they would comply with the Special Auditor Directive, and stated that SGX-ST looked forward to their full cooperation in working expeditiously and keeping the market informed. China Sky's lawyers, Loo Partners sent an email to SGX-ST on 24 November 2011 to confirm that the CEO would be "liaising with all the relevant parties with a view to apprise (*sic*) the Board on the legal implications of your Directive dated 16 November 2011".

56 Following repeated queries from SGX-ST the Company announced on 30 November 2011 the appointment of Asia Ascent Law Corporation ("Asia Ascent") as its legal counsel to advise on the Special Auditor Directive. The SGX-ST asked the Company, in an email copied to all the Audit Committee members, when the Company intended to comply with the Exchange's Special Auditor Directive and set a deadline of 2 December 2011 for the formal appointment by the Company of the Special Auditor all the Audit Committee Members. Asia Ascent, the lawyers, replied to SGX-ST by email copied to all the Audit Committee members, stating that they needed time to advise the Board on the Directive. SGX-ST replied the same day, copied to the same persons, that:

> The Board should be mindful that it is obliged to act in the interests of shareholders as a whole in respect of the Company's state of affairs and to take appropriate actions. As prolonged

suspension is not in the interests of shareholders, we require the Company to comply with the Directive to formally appoint the special auditors by 5 December 2011.

57 On 1 December 2011, Asia Ascent informed SGX-ST by email that they had been appointed to advise China Sky on the Special Auditor Directive. In their second email that day to the SGX-ST, they requested that "all contact between the Exchange and the various individuals comprising the Board of Directors, the CFO and the Company Secretary of our clients be directed through our office henceforth for clarity of communication". Both these emails were copied to the CFO and all the Audit Committee members.

58 On 2 December 2011, SGX-ST replied to Asia Ascent by email copied to the CFO and all the Audit Committee members, which stated that:

> ... the Board should be mindful that it is obliged to act in the interests of shareholders as a whole in respect of the Company's state of affairs and to take appropriate actions.

59 On 6 December 2011, SGX-ST sent a letter addressed to the "Board of Directors" of China Sky, copied by email to the CFO, Asia Ascent and all the Audit Committee members. This letter was also "Attention-ed" to every director by name, including the applicant. It read:

> To date the Company has yet to comply with the Directive. We are of the view that this delay is unacceptable as more than two weeks have lapsed since the Directive was issued. There has been more than sufficient time for the Company to appoint the special auditors.
>
> We therefore require the Company to formally appoint the special auditors in compliance with the Directive by 8 December 2011. No extension of time will be granted.
>
> If the Company fails to appoint the special auditors by 8 December 2011, it will be in breach of the Directive. We will not hesitate to take to further action against the Company.

60 On 8 December 2011, Asia Ascent emailed SGX-ST, copied to all the Audit Committee members and the CFO, attaching Asia Ascent's letter copied to clients. This letter stated "Accordingly, the Board instructs us to urge you to state categorically your basis for the issue of the Directive. Each Director of the Board is aware of his fiduciary duty to act in the best interests of the Company and intend to continue to act accordingly". It asked SGX-ST to furnish the following:

> …
>
> a. Confirmation that the Directive is limited to the matters raised in paragraphs 2 (1), (iii) and (vii) of the Show Cause Letter;
>
> b. If so, whether and if so what portion of our clients' response dated 27th September 2011 in relation thereto justifies the issuance of the Directive;
>
> c. Confirmation as to whether the Directive was issued in response to any fact, matter or complaint not contained in our clients' response dated 27th September 2011; and
>
> d. Confirmation if you are disputing our clients' rights to appoint us to advise them on the Directive.
>
> We await your response and trust that you would act expeditiously as the board would have to consider the timing of the lifting of the suspension once all material facts are made known to all

the stakeholders.

61 On 12 December 2011, Asia Ascent forwarded by email to SGX-ST, a letter dated 9 December 2011 signed by the CEO, "on behalf of the Board of China Sky". This email was not copied to all the Audit Committee members and stated that:

> ...we [China Sky] would like to know the basis of relevance of your queries, demand for information and documents on these transactions, directive and appointment of a special auditor to investigate these transactions.
>
> …
>
> From the abovementioned incidents, it appears that the Company and the Board are being investigated by you for matters and the nature of such investigation is ambiguous to the Company. That being the case, the Company believes that you state the grounds of your investigation and the authority of your right to investigate. Please also state the basis, rationale, scope and extent of this investigation. It is important that the Company and the Board be properly, legally and professionally guided and advised if indeed, an investigation is underway.
>
> The Company reiterates that it has no intention to conceal any material information from or mislead the investing public. It is noteworthy that the queries raised by the SGX were based on the information published by the Company voluntarily, either in its annual reports and/or announcements. In addition, these transactions queried by you had been properly disclosed and approved (if applicable) by the Board; and the same had been disclosed, reviewed and audited by the Company' auditors."

62 The letter also confirmed that the SGX-ST's response was to be sent to Asia Ascent and all contact and correspondence between SGX-ST and "the various individuals comprising the Board, the CFO and the Company Secretary should continue to be directed through [them]".

63 Mr Er Kwong Wah affirmed in his affidavit, that this letter was based on an earlier draft which was circulated to the directors in or around mid-November 2011, on the applicant's suggestion. It is not disputed by the applicant that the applicant as one of all the Audit Committee members received all the material SGX-ST emails. The applicant does not dispute that all the Company's announcements and communications with the SGX-ST sent by the CEO by order of the Board had been seen and approved by all China Sky directors prior to their issue.

64 Asia Ascent sent SGX-ST a letter dated 12 December 2011 referring to a telephone conversation between SGX-ST's Mr Richard Teng and the CEO in which they observed that this telephone conversation was in "breach of the established protocol that all communication with our clients must be effected through our office". There followed an account of what transpired in this telephone conversation, and a request that SGX-ST furnish "exact and specific details of documents and information" which had not been provided and the "nature and details of punishment" and to "state the precise provision of relevant law, including any provision of the Listing Manual in support thereof."

***16 December 2011 SGX-ST Reprimand of all directors of China Sky Board***

65 On 16 December 2011, SGX-ST issued and announced the Reprimand:

> **Singapore Exchange reprimands China Sky Fibre Chemical Limited and the Directors of its**

**Board**

1. Singapore Exchange Limited reprimands China Sky Fibre Limited ("the Company") and the Directors of its Board for failing to comply with the Exchange's directive ("the Directive") pursuant to Listing Rule 704(14) to appoint a Special Auditor. The Company persistently failed to comply despite every opportunity offered to the Company and its Board.

2. The Directive arose because the Exchange has concerns over various issues, chiefly, certain interested party transactions ("IPTs") between the Company and its Audit Committee ("AC") Chairman, Lai Seng Kwoon, the aborted acquisition and development of land in China and certain repairs and maintenance costs (collectively, the "Special Audit Issues"). The company made contradictory statements and disclosures which were not substantiated when queried by the Exchange. Coupled with the unusual nature of the transactions and having regard to all the circumstances, the Exchange considered the interest of the Company's shareholders and the investing public would be best served with the appointment of a Special Auditor to investigate the Special Audit Issues.

3. On 16 November 2011, pursuant to Listing Rule 704(14), the Exchange issued the Directive. The appointment and terms of reference for the Special Auditor were to be carried out in consultation with the Exchange. As is the practice, the Special Auditor was to report to the independent members of the Audit Committee and the Exchange.

4. On 17 November 2011, the Board of Directors (the "Board") requested a trading suspension of the Company's shares on its own accord and announced the Directive. It further stated that the Board would be meeting on an urgent basis to consider the Directive and "to make the necessary announcements as needed."

5. On 22 November 2011, the Board announced that it would "be seeking legal and professional advice to respond to this directive from SGX. The Board's primary responsibility is to protect and preserve the value of all stakeholders. It will work expeditiously to resume trading of its shares upon receipt of appropriate legal and professional advice. Appropriate announcements will be made as and when they are available." ON the same day, the Exchange asked the Board to provide timelines for its appointment of its legal and professional advisors and for the appointment of a Special Auditor. On 30 November 2011, the Company announced its appointment of a legal advisor but did not inform the Exchange nor disclose when it would comply with the appointment of the Special Auditor.

6. The Company failed to appoint a Special Auditor even though sufficient time was accorded. This was despite the Board's representation that it will work expeditiously to comply with the Directive. Further delay was unacceptable. On 6 December 2011, the Exchange gave a deadline of 8 December 2011 for the Company to comply with the Directive. The Company failed to do so. Instead the Company wrote three letters to the Exchange. The letters made clear that the Company continued to refuse to comply with the directive for the appointment of the Special Auditor.

7. The Exchange takes a serious view of the Board's disregard of the Directive. The Exchange had given the Board numerous opportunities to respond to the Special Audit Issues and had carefully considered the responses. The Directive is made in the interest of the shareholders, and is taken only after careful and deliberate consideration. The Special Audit Report will provide clarity on the matters to be investigated. The Exchange's concern is heightened when the Company not only failed to appoint the Special Auditor but instead aggressively resisted the

Directive.

8. The Exchange reiterates that it will continue to communicate directly with any officer of any listed company. The Exchange will not allow any issuer to dictate how it regulates listed companies.

9. The Exchange reprimands the Company, and each and every one of the Board, namely Cheung Wing Lin, Huang Zhong Xuan, Song Jian Sheng, Wang Zhi Wei, Lai Seng Kwoon, Er Kwong Wah and Yeap Wai Kong for their flagrant disregard of the Directive and for their non-compliance with the Directive in breach of Listing Rule 704(14).

10. It is in the interest of the Company and its shareholders for the Special Audit to be carried out immediately and the trading suspension lifted. The continued suspension of trading in the Company's shares is not in the interest of shareholders.

The Annexure to the Reprimand set out in extensive detail, particulars of the discrepancies and omissions of material disclosure of the IPT and Land Discrepancies, previously set out in the SGX-ST Board Show Cause Letter of 23 August 2011, which warranted an independent review and report by a Special Auditor.

***19 December 2011 to 27 January 2012: Post-Reprimand Events***

66 On 19 December 2011, the CEO issued an announcement by order of the Board stating the following:

The Company and each of its Directors wish to inform its shareholders that it/he maintains that the Reprimand was wholly unjustifiable and issued without merit. The Company and the Directors are in the midst of reviewing SGX's allegations as set out in the Reprimand. The Company shall revert with a response in due course.

67 This was followed on 21 December 2011 by a further announcement by the CEO by order of the Board stating *inter alia*:

1. The Company and its Directors wish to express their total disagreement with the Reprimand. The Reprimand was unwarranted, issued without any merit and clearly showed a total disregard of the interest of the shareholders and the circumstances leading to and surround our response to the SGX's directive dated 16 November 2011 ("SA Directive")

...

5. At a shareholders meeting held on November 30, 2011, in discussing the SA Directive, shareholders present had encouraged the Board to seek clarification from the SGX before appointing the Special Auditor as they noted that such an appointment would not be in their best interest in that, among other things, the appointment will cause the Company to incur substantial costs, will cause unnecessary disruptions to the Company's business and operations, will distract the management's attention when they ought to focus on the Company's businesses under the prevailing adverse economic condition and will interfere with the annual audit process.

...

9. The Company would be issuing another announcement on the points raised in the Annexure

of the Reprimand. It will continue to attempt to work with the SGX and to address any legitimate concerns which the SGX may have. The Directors shall continue to act in the best interest of the company and without fear or favour and shall not yield to any pressure from any person if in doing so would not be in the best interest of the Company. The Company will continue to apprise the shareholders, as and when they become available.

68 On 22 December 2011 the CEO by order of the Board issued a response to the SGX-ST Reprimand Annexure. In short, its position was that with respect to the IPT and Land Discrepancies, adequate disclosure had been made following the announced responses to SGX's queries. Further:

> 18. The Company notes that whilst the SGX has regarded the transactions described in the Annexure as unusual, there have been no express allegations of accounting irregularities or fraudulent practices. In short, the usual reasons giving rise to concerns necessitating the appointment of Special Auditors for companies listed on the SGX are clearly absent. Accordingly we maintain that an appointment of Special Auditors would be unwarranted and clearly not in the best interest of the Company and its shareholders.
>
> ...
>
> 20. In light of our response to the Reprimand as set out herein, we urge the SGX to justify the issuance of the SA Directive requiring an appointment of Special Auditors to be made by the Company as the proposed course would clearly be inconsistent with the best interest of the Company and its shareholders.

69 On 22 December 2011, Mr Er Kwong Wah issued an announcement in which he explained that he had been travelling and had not seen or approved the Company's announcements of 21 and 22 December 2011. He announced that "in practice all announcements from the company, particularly the ones concerning the Reprimand, Special Audit Directive and SGX Regulatory Actions must be approved by all Directors before issue". Later the same day, the applicant issued an announcement:

> I note with concerns the recent unfortunate developments between the Company and the SGX. I have and will continue to encourage the Board to work closely with the SGX, in particular, to comply with the Listing Rules in the best interest of the Company and its stakeholders.
>
> Given that the common goal of the Company and the SGX is to act in the best interest of the shareholders, I shall continue with my efforts to facilitate such compliance with the Listing Rules and work towards the best interest of the Company and its stakeholders.

70 Mr Lai Seng Kwoon issued a same day announcement:

> I align with Mr Yeap Wai Kong and adopt the contents of his statement. I also record the continuing position of the directors to work in the best interest of the Company and the stakeholders.

71 On 29 December 2011 the SGX-ST sent an email, copied to the CEO and all the Audit Committee members, attaching a letter addressed to the Board of Directors and also "Attention-ed" to every director by name and position, which the CEO announced the following day. It stated:

> 3. The scope of the Special Audit has been clearly set out in the Directive. There is no basis for the Company to use these two belated requests for clarification as an excuse for its continued failure to comply with the Directive.

...

4. The exchange has consulted the Monetary Authority of Singapore. The Exchange hereby orders the Company to cease all non-compliance by 5 January 2012 and appoint a Special Auditor, acceptable to the Exchange, on an immediate basis and without further delay. The date of 5 January 2012 is final.

72 On 5 January 2012, there was no announcement by China Sky of the appointment of any Special Auditor. The same day, the applicant and the two other Audit Committee members announced their immediate resignations from the board of China Sky.

73 The applicant wrote a letter of complaint on 9 January 2012 to the Chairman and CEO of the SGX-ST copied to the Chairman and CEO of the MAS setting out his complaint and requested an apology for the reprimand. He received an interim and then a fuller reply from the SGX-ST which did not accede to his request for an apology. In February 2012 the applicant sought leave under O 53 ROC for a quashing order to quash the SGX-ST Reprimand on grounds of a breach of natural justice and was granted leave for this hearing.

**5. Was the applicant accorded a fair hearing prior to the SGX Reprimand?**

74 The issue turns on whether the applicant was given notice that the SGX-ST was intending to reprimand him, the case against him and whether he was accorded an opportunity to make representations.

75 From 16 May 2011 to 23 August 2011, the SGX-ST sent repeated emails to China Sky's CFO, all copied to the applicant as an Audit Committee member, raising queries on the IPT and Land Discrepancies announcements which only raised further questions. For 3 months, the directors approved the Company's announcements containing corrections of earlier announcements which raised more queries. The failure to make the required disclosures resulted in the SGX-ST Board Show Cause Letter of 23 August 2011 which was addressed to the Board of Directors, emailed to the applicant and received by all the directors. The letter which was entitled "CHINA SKY CHEMICAL FIBRE CO. LTD (THE "COMPANY") LISTING RULE BREACHES, meticulously pinpointed the particular Company announcements and set out the non-disclosures and misleading disclosures against the specific Listing Manual Rules that had been breached and concluded:

In view of the foregoing, the Exchange intends to issue a public reprimand and reserves the right to take any further action as necessary.

Please show cause why relevant disciplinary actions should not be taken against the Company for the above breaches. Please respond to this letter by 30 August 2011.If we do not hear from you by the stipulated date, the Exchange will decide on the appropriate actions to take, without further reference to you.

76 It is clear from the foregoing that the applicant had been provided with full particulars of the breaches of the Listing Manual and with notice that SGX-ST intended to publicly reprimand and reserved the right to take further action. The applicant's counsel submitted that as this letter was addressed to the Company, it was not addressed to the applicant as an individual director. It is beyond dispute that the SGX-ST Board Show Cause Letter, which is expressly addressed to the Board of Directors, is necessarily meant to and does include every director. It was received by every director. The submission in this factual context, that the show cause letter addressed to and received by the Board of Directors does not put the individual directors on notice of an intended

reprimand and the case against each of them carries no weight. It is further on record that the Board of Directors took legal advice on this letter (see [44] above).

77 It is clear from para 3 of the SGX-ST Board Show Cause Letter that the SGX-ST intended to issue a public reprimand. The only relevant provision of the Listing Manual relating to a public reprimand is Rule 720 and relates only to directors of listed companies, and not the companies themselves. In short, all the directors were given unequivocal notice that SGX-ST intended to publicly reprimand them. They were all also given full particulars of the case against them. They were given opportunity to provide documents required under the Documents Directive of 6 November 2011 and finally to appoint a special auditor to review and report on the same continuing non-disclosures by the Special Auditor Directive of 16 November 2011. The SGX-ST Reprimand of 16 December 2011 came only after a lapse of six months of continuing non-disclosures, non-compliance with consequential Directives and directors' approved Company announcements signifying a refusal to make or procure accurate material disclosures as repeatedly requested by SGX-ST.

78 During these six months, the Board of Directors, the CEO and CFO and all the Audit Committee members, including the applicant, were in direct communication with the SGX-ST on these matters and had full opportunity to explain or make representations, if they so wished. Quite apart from China Sky's original lawyers, the Company had appointed Asia Ascent to advise them on the Special Auditor Directive. The Company's letter to the SGX-ST on 24 August 2011 in response to the SGX-ST Board Show Cause Letter expressly invoked their rights to "natural justice and due process" (see [44] above). If any individual director wished to put his personal representation upon receipt of the SGX-ST Board Show Cause Letter of 23 August 2011, which was at variance with their subsequent directors' approved Company announcements and communications to SGX-ST, he had full opportunity to do so. There is nothing on record to show that any of the directors saw any need to procure the announcement of the material information set out in SGX-ST's Board Show Cause Letter, nor comply with the subsequent Directives whose objectives were to provide independent verification of the same material information. Instead, during this period, the directors approved China Sky announcements and communications, which *ex facie* repeatedly and unequivocally refused to do so.

79 Since an orderly transparent securities market is contingent on the timely and accurate disclosure of material corporate information, the lapse of time from May 2011 to December 2011 during which no disclosure was made as requested by the SGX-ST, despite the full knowledge and approval of all the directors, is troubling. The Document Directive, and later the Special Auditor Directive were both the consequence of the continuing failure to provide accurate material disclosure of the IPT and Land Discrepancies raised by the China Sky AR 2010.

80 The applicant next argues that he personally had not been accorded a fair hearing on two grounds. Firstly that the original show cause letter of 23 August 2011 was addressed only to the Board of Directors. The succeeding Document Directive of 2 November 2011 was similarly addressed to the Board of Directors. The Special Auditor Directive of 16 November 2011 was addressed to the Board of Directives and additionally "Attention-ed" to the individually named directors but inexplicably omitted the applicant by name. The applicant was a recipient of all these operative SGX-ST emails letters and Directives. Nothing turns on the omission of his name from the Special Auditor Directive. The applicant cannot deny that the SGX-ST Board Show Cause Letter and the Directives were addressed to the Board of Directors of which he is a member or that they put him on notice of their contents. The applicant's final argument that SGX-ST ought to have issued him additionally with a personal show cause letter is without merit as he had received the SGX-ST Board Show Cause Letter and Directives, all of which were all addressed to and received by him as a board member.

81 The applicant is aggrieved that he was reprimanded by the SGX-ST. He joined the China Sky

board and Audit Committee shortly after the SGX-ST queried China Sky's AR 2010. He actively engaged in attempting to arrange for the CEO and CFO to meet the SGX-ST officers to resolve the problems. Even after the Special Auditor Directive he is recorded in the minutes of the board meeting of 19 November 2011 of having urged the company to comply with the Special Auditor Directive. His well-meaning efforts at urging compliance and arranging meetings appear to have distracted him from fully appreciating the significance of the SGX-ST Board Show Cause Letter and the subsequent Directives.

## 6. Conclusion

82 The SGX-ST fully and substantively accorded the applicant a fair hearing by having given him notice of its intention to reprimand, particulars of the case against him and full opportunities between August to December 2011 to be heard.

83 Application dismissed.

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