

**SFC's Allegations against Respondents**  
**(an extract from the SFC's Petition filed with the Court)**

**A. Former Chairman and directors of the Inno-Tech Holdings Limited ("Company") involved**

1. The 1<sup>st</sup> Respondent ("**Wong Yuen Yee**") was one of the founders of the Group (as defined below). She was an executive director of the Company from 1 April 2002 to 19 January 2011 and the Chairman of the Company as at the time of her resignation. Wong Yuen Yee was described in the Company's annual report for 2007/2008 dated 29 September 2008 ("**07/08 Annual Report**") and the Company's annual report for 2008/2009 dated 29 September 2009 ("**08/09 Annual Report**") as being responsible for formulating and monitoring the Group's overall strategic plan and development. As at the date of the 08/09 Annual Report, she had over 17 years of experience in the field of property development and management in both the PRC and Hong Kong.
2. The 2<sup>nd</sup> Respondent ("**Wong Yao Wing, Robert**") was an executive director of the Company from 1 April 2002 to 31 January 2011. He was the Deputy Chairman and Compliance Officer of the Company as at the time of his resignation. Wong Yao Wing was described in the 07/08 Annual Report and 08/09 Annual Report as being responsible for the Group's corporate management and strategic planning for the Group's overall business. As at the date of the 08/09 Annual Report, he had over 25 years of experience in the field of information technology, and had also been working in commercial sectors for over 12 years as senior management.
3. The 3<sup>rd</sup> Respondent ("**Wong Kwok Sing**") was one of the founders of the Group. He was an executive director of the Company from 1 April 2002 to 23 March 2010. He is the brother of Wong Yuen Yee. Wong Kwok Sing was described in the 07/08 Annual Report and 08/09 Annual Report as being responsible for the Group's daily operation and customer services, and sale and marketing activities for promoting the Group's products and services. As at the date of the 08/09 Annual Report, he had about 20 years of experience in the information technology industry and extensive experience in marketing, research and business development in the Asia Pacific Region and Eastern Europe.
4. The 4<sup>th</sup> Respondent ("**Lam Shiu San**") was an executive director of the Company from 1 April 2002 to 1 June 2010. He was described in the 07/08 Annual Report and the 08/09 Annual Report as the chief technology officer of the Group, and was responsible for monitoring the hardware and software development of the Group, and was also in charge of all the technical issue of the Group's projects. As at the date of the 08/09 Annual Report, he had approximately 15 years' experience in software development, network infrastructure design, system administration and portal site development.
5. The 1<sup>st</sup> to 4<sup>th</sup> Respondents (collectively the "**Directors**") were wholly or partly responsible for the business or affairs of the Company having been so conducted.

**B. Other relevant entities**

6. The 5<sup>th</sup> Respondent is the Company, which was incorporated in Bermuda on 19 November 2001 as a limited liability company, and was registered in Hong Kong under the now repealed Part XI of the Companies Ordinance (Cap. 32) as an oversea company on 1 March 2002. Its shares (Stock Code: 8202) were listed on the Growth Enterprise Market Board of the Stock Exchange of Hong Kong Limited on 12 August 2002 and remain so listed as at the date of the Petition.
7. At all material times:-
  - a. The Company has a number of subsidiaries (together “**the Group**”).
  - b. The present proceedings involve two wholly-owned subsidiaries of the Company, namely Inno Hotel Investment & Management Holdings Limited (“**Inno Hotel**”) and Inno Gold Mining Limited (“**Inno Gold**”), and the Directors were the only, or the majority of, directors of these subsidiaries of the Company at the material times.
8. The present proceedings is concerned with the Company’s acquisitions and subsequent disposals of:
  - a. Interests in three hotel properties in the PRC, namely: (i) the Xindu Hotel, Nos.106 and 107 Guangming Road, Kaiping, the PRC (the “**Xindu Hotel Property**”); (ii) the Changlin Hotel, Nos. 216 and 218, Tianjin Street, Jilin City, Jilin Province, the PRC (the “**Changlin Hotel Property**”); and (iii) the Kaiping Hotel, No.22 Xijiao Road, Zhang Sha, San Bu Town, Kaiping City, Guangdong Province, the PRC (the “**Kaiping Hotel Property**”); and
  - b. Interests in the De Xing City Zhang Jia Fan Gold Mine in the PRC (the “**Gold Mine**”).

**C. Acquisition of hotels**

9. On 5 November 2007, Inno Hotel entered into two Share Transfer Agreements (“**STA**”)s with Smart Boom Development Limited (“**Smart Boom Development**”).
  - a. By the STA in respect of Sunny Team Corporation Limited (“**Sunny Team**”), Inno Hotel would acquire the entire issued share capital of Sunny Team for the consideration of RMB13.5 million. Sunny Team held the Xindu Hotel Property, located in Kaiping, PRC.
  - b. By the STA in respect of China Earn Limited (“**China Earn**”), Inno Hotel would acquire the entire issued share capital of China Earn for the consideration of RMB14 million. China Earn held the Changlin Hotel Property, located in Jilin, PRC.
10. As recorded in the Minutes of a Meeting held by the board of directors of the Company on 5 November 2007, all of the Directors attended the meeting and approved the aforesaid acquisitions of Sunny Team and China Earn.
11. On or about 6 November 2007 and 28 November 2007, the Company issued an Announcement and a Circular respectively in respect of Inno Hotel’s acquisition of Sunny Team and China Earn.

12. On 4 February 2008, Inno Hotel entered into a third STA with Smart Boom Investments Limited (“**Smart Boom Investments**”) to acquire the entire share capital of Homesmart Properties Limited (“**Homesmart**”), which held the Kaiping Hotel Property, located in Kaiping, PRC.
13. As recorded in the Minutes of a Meeting held by the board of directors of the Company on 4 February 2008 and which all of the Directors attended, the Directors approved the aforesaid acquisition of Homesmart.
14. On or around 5 February 2008 and 15 February 2008, the Company issued an Announcement and a Circular in respect of Inno Hotel’s acquisition of Homesmart.

**D. Termination of one STA**

15. On 29 May 2009, Inno Hotel entered into a Termination Agreement with Smart Boom Development to terminate the STA in relation to the acquisition of China Earn. The deposit of RMB 3.3 million paid by Inno Hotel was forfeited by Smart Boom Development.

**E. Disposal of hotels**

16. By two STAs, both dated 26 June 2009, and as recorded in the Minutes of a Meeting held by the board of directors of the Company on 26 May 2009, which was attended by all the Directors, Inno Hotel agreed to dispose of the entire issued share capital of Sunny Team and Homesmart to Timewon Limited and Main Move Limited respectively for RMB 2 million each.
17. On or about 26 June 2009, the Company issued an Announcement about the disposal of its interests in Sunny Team and Homesmart.

**F. Failure to carry out adequate investigation into or due diligence prior to the acquisition of the three hotels**

18. The Directors failed to carry out adequate investigation into or due diligence in respect of the Xindu Hotel Property, the Changlin Hotel Property or the Kaiping Hotel Property before procuring or permitting the Company to acquire Sunny Team, China Earn and Homesmart holding these hotels through its wholly-owned subsidiary, Inno Hotel and/or procuring and/or permitting it to acquire them. Insofar as the Directors delegated the decision to acquire these hotels to the Hotel Management Team of the Company or staff team in the PRC, assuming that the Hotel Management Team and staff team in the PRC existed, the Directors failed adequately or properly to supervise the Hotel Management Team or staff team and/or to ensure that the Hotel Management Team or staff team properly investigated and/or carried out due diligence in respect of the said hotels.
19. Save that the Directors have suggested that a Hotel Management Team of the Company or staff team in the PRC was responsible for selecting and assessing the three hotels for acquisition, and that the Directors themselves had no involvement in that process, the Company and the Directors have been unable to provide any evidence as to or identify how the decisions were made to acquire

the Xindu Hotel Property, the Changlin Hotel Property and the Kaiping Hotel Property (through their respective holding companies). Nor have the Company and the Directors been able to provide details or evidence as to any adequate due diligence having been conducted by or on behalf of the Directors, or having been considered by the Directors, before the three hotels were acquired through their respective holding companies. The Directors did not set up any system or take steps to ensure that proper due diligence was carried out, whether via the Hotel Management Team or otherwise.

20. Amongst the records and documents provided by the Company, there is no document prepared in the name of the Hotel Management Team or staff team in the PRC, be it in the form of assessments, analysis or any other form of reports. There is also no record or document suggesting any review or comment made by the Directors of any records or analysis in relation to the acquisitions of the three hotels through their respective holding companies. Nor have the Directors been able to identify any such documents, or any process by which the same were considered.
21. When deciding whether Inno-Tech should acquire the three hotels through their respective holding companies, and if so, the fair and reasonable consideration to be paid for them, the Directors ought to have considered, *inter alia*: first, the value of the buildings which formed the hotels and the land on which the hotels were built; secondly, any liabilities and debts that might be associated with the hotels and/or the companies holding the hotels; and thirdly, the profitability and prospects of business at the hotels. In the present case, the Directors' consideration of the first abovementioned factor was wholly inadequate, and there is no evidence that the Directors considered either the second or third abovementioned factors at all.
22. There is in existence a valuation report dated 3 October 2007 prepared by a PRC valuation company, 北京京港房地產估價有限公司 in respect of the Xindu Hotel Property. However, other than that valuation report, there are no finalised valuation reports in respect of the three hotels prepared at the time of acquisition of the companies holding these hotels. In particular, although draft valuation reports were prepared by BMI Appraisals Limited in respect of the Xindu Hotel Property and the Changlin Hotel Property, both are dated 13 December 2007, namely after 5 November 2007, the date on which Inno Hotel entered into the two STAs in respect of the entire issued share capital of Sunny Team and China Earn, the companies which indirectly held the Xindu Hotel Property and the Changlin Hotel Property respectively. In the premises, the Directors gave wholly inadequate consideration to the value of the buildings which formed the hotels and the land on which the hotels were built.
23. There is no evidence that the Directors considered the second abovementioned factor, namely liabilities and debts. In particular, there is no evidence that the Directors considered the two loans owed by Sunny Team and Homesmart to Smart Boom Development and Smart Boom Investments respectively, as evidenced by the two loan assignments dated 25 June 2008 and 27 June 2008 respectively, by which these two loans, owed by Sunny Team and Homesmart respectively, were assigned to Inno Hotel. This was so despite the size of the debts which formed the subject-matter of the two loan assignments.

24. The debt owed by Sunny Team that was assigned to Inno Hotel was in the sum of HK\$14,651,519.40, which at the then exchange rate of around HK\$1 to RMB0.89 was around RMB13 million. The debt owed by Homesmart that was assigned to Inno Hotel was in the sum of HK\$21,920,049.68, which was around RMB19.5 million at the then exchange rate of around HK\$1 to RMB0.89. In other words, the debts associated with Sunny Team and Homesmart roughly equated to the consideration that Inno-Hotel was paying to acquire those companies. Yet there is no evidence of the Directors giving any consideration to these matters.
25. There is also no evidence of the Directors having considered the third abovementioned factor, namely the question of profitability or business prospects in respect of the three hotels.
26. Given the very substantial debts associated with Sunny Team and Homesmart pursuant to the abovementioned loan assignments, the profitability of the Xindu Hotel Property and the Kaiping Hotel Property was particularly crucial. The Directors ought to have been particularly astute with regard to the question of whether there was a viable way of generating significant profits before deciding whether Inno-Tech should acquire Sunny Team and Homesmart through Inno Hotel.
27. In light of the paucity or absence of documentation and consideration by the Directors, the only reasonable inference is that the Directors did not conduct adequate investigation or due diligence in respect of the Xindu Hotel Property, the Changlin Hotel Property and the Kaiping Hotel Property prior to the Directors deciding that the Company should acquire the companies holding these properties through Inno Hotel. Further, the Directors have been unable to provide with details of the alleged Hotel Management Team, and it is to be inferred that the Hotel Management Team allegedly responsible for carrying out due diligence in respect of the three subject hotels did not exist.
28. Further or alternatively, any delegation by the Directors to the Hotel Management Team or staff team in the PRC (if such existed) fell far short of the standard of a reasonable director:
- (1) The Directors did not in any way direct or supervise the carrying out of adequate investigation or due diligence.
  - (2) The Directors did not require or receive any proper or written report on investigation or due diligence, or discuss any such report.
29. By reason of the matters aforesaid, the acquisitions of the companies holding the three hotels were made in a wrongful and negligent manner, the Directors engaged in bad management, and the Directors culpably neglected their duties pleaded above. The Directors' failure to carry out or have carried out any adequate investigation or due diligence in respect of the Xindu Hotel Property, the Changlin Hotel Property and the Kaiping Hotel Property was all the more reprehensible given the Directors knew that the acquisitions of these hotels were subject to due diligence.

30. The Directors' failure to carry out any adequate investigation or due diligence (or consider the same) in respect of the three hotel properties, and the Directors' failure to direct or supervise the Hotel Management Team or staff team in the PRC (if such existed), or require them to carry out adequate investigation or due diligence and to report to the Directors, were in breach of the Directors' duty to exercise due and reasonable skill, care and diligence in acting as directors of the Company and further their duty properly to supervise the affairs of Inno Hotel, a wholly-owned subsidiary of the Company.
31. In the premises, the conduct of the Directors in and in relation to the acquisition of the companies holding the three hotels constituted misfeasance or other misconduct on the part of the Directors in relation to the affairs of the Company, including in respect of investments made by the Company via its subsidiary, Inno Hotel, under section 214(1)(b) of the Securities and Futures Ordinance ("**Ordinance**"), and/or unfair prejudice under section 214(1)(d) of the Ordinance.

**G. Failure to negotiate the consideration for the companies holding the three hotels**

32. The Directors failed to negotiate the consideration for any of the companies holding the three hotels prior to procuring or permitting the Company to acquire the companies holding the hotels through Inno Hotel and/or procuring and/or permitting Inno Hotel to acquire them.
33. The Company and/or the Directors have not produced or been able to identify any evidence as to any negotiation (either at arm's length or at all) in respect of the consideration for Sunny Team, China Earn and Homesmart.
34. Accordingly, in breach of their duty of care to exercise due and reasonable skill, care and diligence in the course of acting as the executive directors of the Company and also their duty of care properly to supervise the affairs of the Company's subsidiaries, including Inno Hotel, the Directors wrongfully failed to negotiate, either at arm's length or at all, the consideration for any of Sunny Team, China Earn or Homesmart. In the circumstances, the Directors' conduct in and in relation to the acquisitions of the companies holding the three hotels constituted misfeasance or other misconduct on the part of the Directors in relation to the affairs of the Company, including in respect of investments made by the Company via its subsidiary, Inno Hotel, and falls within sections 214(1)(b) and/or unfair prejudice under section 214(1)(d) of the Ordinance.

**H. Acquisition of the Gold Mine**

35. Inno Gold acquired a 62.6% (being 13.6% + 1.8% + 47.2%) interest in Gaofeng Holding Co. Limited ("**HK Gaofeng**"), which held a total of 81.5% interest in the Gold Mine in the following manner:
- (1) HK Gaofeng was an investment holding company incorporated in Hong Kong, and through its wholly owned subsidiary, Jiu Jiang Gaofeng

Mining Company Limited (九江高豐礦業有限公司, “**Jiu Jiang Gaofeng**”), held an 81.5% interest in the Gold Mine.

- (2) On or about 27 March 2009, Wong Chung Pong, Christopher (“**Christopher Wong**”), Dragon Emperor International Limited (“**Dragon Emperor**”) and the Company entered into a Memorandum of Understanding in respect of the Company’s proposed acquisition of part of the shares of HK Gaofeng. Although Inno Gold rather than the Company made the acquisition (as described below), it is clear from this Memorandum of Understanding, which was signed by the Company, that the Company was making the acquisition through its subsidiary, Inno Gold and/or that the Company procured Inno Gold to make the acquisition.
  - (3) By an Agreement for the Sale and Purchase in relation to the entire issued share capital in Dragon Emperor dated 6 May 2009, which was supplemented by a Supplemental Agreement dated 26 August 2009 and a Second Supplemental Agreement dated 8 September 2009, Inno Gold acquired the entire issued share capital of Dragon Emperor from Christopher Wong (who owned 10% of the shares) and Ou Yang Ying (who owned 90% of the shares) for the consideration of HK\$21,636,364. Dragon Emperor held 13.6% in HK Gaofeng.
  - (4) Also on 6 May 2009, Inno Gold acquired from Christopher Wong an additional 1.8% shareholding in HK Gaofeng for the consideration of HK\$2,863,636.
  - (5) By an Option Deed dated 15 May 2009 and a Supplemental Option Deed dated 2 June 2009, Christopher Wong granted a call option to Dragon Emperor in respect of interests up to 47.2% of the issued share capital of HK Gaofeng.
  - (6) By an Agreement dated 9 June 2009 relating to the sale and purchase of shares in HK Gaofeng, Dragon Emperor exercised a call option previously granted by Christopher Wong and acquired another 47.2% shareholding in HK Gaofeng for the consideration of HK\$75,000,000. Accordingly the total consideration paid by or through Inno Gold in respect of the interests acquired in HK Gaofeng was HK\$99,500,000.
36. As recorded in the Minutes of the board of directors of the Company dated 27 March 2009, 6 May 2009 and 8 September 2009 respectively, the Minutes of the board of directors of Inno Gold dated 6 May 2009 and the Minutes of the board of directors of Dragon Emperor dated 15 May 2009, 2 June 2009, 9 June 2009, 8 September 2009 and 27 October 2009 respectively, the aforementioned acquisition of interests in the Gold Mine were approved by the Directors.
37. On or about 6 May 2009 and 10 June 2009, the Company issued two Announcements about its acquisition of interests in HK Gaofeng.
38. On or about 11 September 2009, the Company issued a Circular about its acquisition of interests in HK Gaofeng, which had been approved by the Directors at a board meeting of the Company on 8 September 2009. In the section headed “Recommendations” at page 21 of the Letter from the Board in the Circular dated

11 September 2009, the Directors (in their capacity as Directors of the Company) stated that they believed that the acquisition was in the interests of the Company and the shareholders as a whole, and accordingly, they recommended that the independent shareholders vote in favour of the resolution at the special general meeting in relation to the acquisition.

#### **I. Disposal of the Gold Mine**

39. By an Agreement for the Sale and Purchase in relation to the entire issued share capital in Inno Gold dated 7 October 2010 and which was supplemented by six supplemental agreements dated 31 December 2010, 17 January 2011, 31 January 2011, 18 February 2011, 4 March 2011 and 1 April 2011, the Company agreed to dispose of the entire issued share capital of Inno Gold for the consideration of HK\$15,000,000 to Gold Concept Investments Limited.
40. As recorded in Minutes of the board of directors of the Company held on 7 October 2010, which was attended by Wong Yuen Yee and Wong Yao Wing (as Wong Kwok Sing and Lam Shiu San had already resigned at the material time), this transaction and the Agreement for the Sale and Purchase in relation to the entire issued share capital in Inno Gold dated 7 October 2010 were approved by the board of directors of the Company. Further, at this meeting, the board of directors of the Company also approved the final draft of the Announcement in respect of the disposal of Inno Gold.
41. On or about 7 October 2010 and 13 April 2011, the Company made an Announcement and issued a Circular respectively about the disposal of its interest in HK Gaofeng.

#### **J. Failure to carry out adequate investigation into or due diligence prior to the acquisition of the Gold Mine**

42. The Directors failed to carry out any adequate investigation into or due diligence in respect of the Gold Mine before procuring or permitting the Company to acquire a 62.6% interest of HK Gaofeng which held 81.5% interest in the Gold Mine through its wholly-owned subsidiary, Inno Gold and/or procuring and/or permitting it to acquire the Gold Mine.
43. Save and except: (i) a valuation report dated 5 May 2009 in respect of the value of a 15.4% non-controlling interest of the Management Agreement dated 26 March 2009 entered into between Jiu Jiang Gaofeng and the Gold Mine as at 28 April 2009 by Greater China Appraisal Limited (the “**Greater China Appraisal**”); (ii) a Feasibility Study Report issued by Ha Er Bin Gold Design Institute dated February 2008 (the “**1,200 ton/day FSR**”); (iii) another Feasibility Study Report issued by Ha Er Bin Gold Design Institute, also dated February 2008, which stated that the feasible maximum daily mining capacity was 150 ton/day (the “**150 ton/day FSR**”), as opposed to 1,200 ton/day as per the 1,200 ton/day FSR; (iv) a PRC legal opinion dated 11 May 2009 issued by Jingtian & Gongcheng Attorneys at Law; and (v) an undated one-page document purporting to be supplementary due diligence, enclosing a few documents issued by the PRC Government, the Directors have not produced any documents or records in relation to any investigation into or due diligence carried out by the Company or Inno Gold in



respect of the Gold Mine. There is also no record or document suggesting any review or comment made by the Directors of any records or analysis in relation to the acquisition of the Gold Mine. Nor have the Directors been able to identify any such documents, or any process by which the same were considered.

44. In light of such paucity or absence of documentation and consideration by the Directors, the only reasonable inference is that the Directors did not conduct any sufficient investigation or due diligence in respect of the Gold Mine prior to the Directors deciding that the Company should acquire the interest in the company holding part of the Gold Mine through Inno Gold.
45. The Directors' failure to carry out or have carried out any adequate investigation or due diligence in respect of the Gold Mine was all the more reprehensible given that the Directors clearly knew that the acquisition of the Gold Mine was subject to due diligence, and was in breach of the Directors' duty to exercise due and reasonable skill, care and diligence in acting as directors of the Company and further their duty properly to supervise the affairs of Inno Gold, a wholly-owned subsidiary of the Company.
46. In the premises, the conduct of the Directors in and in relation to the acquisition of the Gold Mine constituted misfeasance or other misconduct on the part of the Directors in relation to the affairs of the Company, including in respect of investments made by the Company via its subsidiary, Inno Gold, under section 214(1)(b) of the Ordinance, and/or unfair prejudice under section 214(1)(d) of the Ordinance.

**K. Failure to assess the suitability or appropriateness of investing in the Gold Mine**

47. At the time when the Company decided to invest in the Gold Mine through its subsidiary, Inno Gold, and/or to procure or permit Inno Gold to do so, the Company did not have any directors with sufficient knowledge about gold mining or who were otherwise equipped to make a properly informed decision when approached by Christopher Wong and invited to purchase interests in the Gold Mine. As set out below, the Directors failed to assess or to obtain any independent assessment of whether an investment in the Gold Mine was a commercially suitable or appropriate one for the Company.
48. Only on 26 June 2009, after the Company acquired interests in the Gold Mine through Inno Gold, did the Company appoint two directors of Inno Gold (referred to below) who had experience in and/or knowledge of gold mining.
49. In breach of their duty to exercise due and reasonable skill, care and diligence and their duty to properly supervise the affairs of the Company's subsidiaries, including Inno Gold, the Directors failed to ensure that they had advice from persons with due qualifications as to the suitability or appropriateness of the investment when taking the decision to approve the investment in the Gold Mine and/or procuring or permitting Inno Gold to invest in it. The conduct of the Directors fell short of the standards of care and skill to be expected of them in relation to the affairs of the Company and the Company's investments through its

subsidiary, Inno Gold, and constituted misfeasance or other misconduct on the part of the Directors in relation to the affairs of the Company, including in respect of investments made by the Company via its subsidiary, Inno Gold, under section 214(1)(b) of the Ordinance, and/or unfair prejudice under section 214(1)(d) of the Ordinance.

**L. Failure to negotiate the consideration for the interest in the Gold Mine**

50. The Directors failed to negotiate the consideration for the Gold Mine prior to procuring or permitting the Company to acquire the interest in the Gold Mine through Inno Gold and/or procuring and/or permitting Inno Gold to acquire the interest in the Gold Mine.

51. In numerous documents, the Directors have alleged that the consideration for the Company's acquisition of interests in the Gold Mine through its subsidiary, Inno Gold, was arrived at after arm's length negotiation.

52. However, the Company and/or the Directors have not produced or been able to identify any evidence as to any negotiation (either at arm's length or at all) in respect of the consideration for any of the Company's abovementioned acquisitions of interests in the Gold Mine through its subsidiary, Inno Gold.

53. Accordingly, in breach of their duty of care to exercise due and reasonable skill, care and diligence in the course of acting as the executive directors of the Company and also their duty of care properly to supervise the affairs of the Company's subsidiaries, including Inno Gold, the Directors wrongfully failed to negotiate, either at arm's length or at all, the consideration for the Gold Mine. In the circumstances, the Directors' conduct in and in relation to the acquisition of the interest in the Gold Mine constituted misfeasance or other misconduct on the part of the Directors in relation to the affairs of the Company, including in respect of investments made by the Company via its subsidiary, Inno Gold, under section 214(1)(b) of the Ordinance, and/or unfair prejudice under section 214(1)(d) of the Ordinance.

**M. Failure to assess the purchase price of the interest in the Gold Mine properly**

54. The Directors failed properly, adequately or competently to assess the purchase price of the interest in the Gold Mine before permitting or procuring the Company to invest in the Gold Mine through its subsidiary, Inno Gold. In particular, the Directors (who had no prior experience in gold mining in general or the purchase of gold mines in particular) did not possess sufficient ability to assess the purchase price of the interest in the Gold Mine, and in particular whether it was in the interests of the Company's shareholders to purchase at the price at which the purchase was approved, yet they failed to obtain independent expert evidence or advice in respect of the same.

55. In deciding that the Company, through its subsidiary Inno Gold, should invest in the Gold Mine at the agreed consideration, the Directors relied upon the Greater

China Appraisal's Valuation Report dated 5 May 2009. In both the Announcements dated 6 May 2009 and 10 June 2009 respectively, the Company stated that the consideration was determined after arm's length negotiation with reference to the Greater China Appraisal's Valuation Report dated 5 May 2009, and that the Directors considered the consideration to be fair and in the interests of the shareholders as a whole.

56. In the Circular dated 11 September 2009 about the acquisition of interests in the Gold Mine, the Company stated at page 11 that the Directors had ensured the assumptions made by Greater China Appraisal in another valuation report prepared by Greater China Appraisal dated 11 September 2009 were reasonable and had been made after due and careful enquiry by taking the following steps:

- (1) Conducting a site visit to the Gold Mine and attending meetings with existing management and operational staff at the Gold Mine;
- (2) Attending meetings and telephone conferences with geologists, legal and accounting experts, mining operators and mining technical experts in the PRC; and
- (3) Obtaining a legal opinion from the Company's PRC legal advisers about the mining rights of the Gold Mine.

57. However, there is no documentary evidence (and the Directors have been unable to identify any) in respect of any site visits or any meetings and telephone conferences with geologists, accounting experts, mining technical experts or mining operators. Further, Wong Yuen Yee and Wong Yao Wing both stated that they essentially left the question of valuation to Greater China Appraisal. In the premises, it is to be inferred that no such visits, meetings or conferences took place, and that the Directors relied solely on the valuation conducted by Greater China Appraisal in reaching their conclusion as to the appropriateness of the consideration. It is further to be inferred that the Directors, in relying uncritically on the valuation conducted by Greater China Appraisal in this regard, failed properly to give any independent consideration as to whether the consideration was fair and in the interests of the shareholders as a whole.

58. Further, in deciding that the Company should purchase the interest in the Gold Mine through Inno Gold, the Directors failed to appreciate or take into account the question of capital expenditure. As can be seen from page 23 of the Greater China Appraisal's Valuation Report dated 11 September 2009, the valuation by Greater China Appraisal relies upon incremental capital expenditure of RMB 12.538 million in 2009 and RMB 43.54 million in 2010 in order to arrive at a maximum production scale of 1,200 ton/day. Despite the reference to the aforementioned capital expenditure in the Greater China Appraisal's Valuation Report dated 11 September 2009 at Appendix VII to the Circular dated 11 September 2009 about the acquisition of the interest in the Gold Mine, in the Letter from the Board included in that Circular, the Directors mentioned only the estimated EBITDA, which was derived from a forecast income statement which did not take into consideration the incremental capital expenditure, without referring to the corresponding required capital expenditure. A reasonable director who had perused the draft Greater China Appraisal's Valuation Reports dated 5 May 2009 and 1 September 2009 and/or the 1,200 ton/day FSR ought to have appreciated that capital expenditure was required, and ought to have realised that

such capital expenditure ought to have been reflected in the Letter from the Board.

59. Further, Christopher Wong discussed the topic of capital expenditure with one or more of the Directors, and stated that both he and the Company needed to inject capital expenditure in order for the Gold Mine to reach the capacity of 1,200 ton/day.
60. Accordingly, notwithstanding that they were aware of the necessity to incur capital expenditure to achieve the estimated EBITDA, the Directors did not properly take into account the question of capital expenditure before deciding that the Company should invest in the Gold Mine through Inno Gold.
61. The production scale figure of 1,200 ton/day FSR appear to come from pages 63 and 69 of the 1,200 ton/day FSR. Although the date of the aforesaid report is stated to be February 2009 at page 32 and Appendix VII of the Circular dated 11 September 2009, there does not appear to have been any up-to-date Feasibility Study Report dated February 2009.
62. However, the 150 ton/day FSR stated that the feasible maximum daily mining capacity was 150 ton/day, as opposed to 1,200 ton/day as per the 1,200 ton/day FSR.
63. There is no satisfactory explanation from the Directors as to why the Company adopted the figures in the 1,200 ton/day FSR in preference to those in the 150 ton/day FSR, or why the Company decided that a mining capacity of 1,200 ton/day (as opposed to 150 ton/day) could be achieved. Further, there is no indication that Greater China Appraisal or any other party was asked to verify the figures in the Feasibility Study Reports, even though the Feasibility Study Report(s) had been provided to the Company by Christopher Wong, one of the vendors of the Gold Mine. It is to be inferred that the Directors adopted the 1,200 ton/day capacity figure without any proper basis to do so, and that no other party was asked by the Directors to verify the said figures.
64. Accordingly, in breach of their duty of care to exercise due and reasonable skill, care and diligence in the course of acting as the executive directors of the Company and also their duty of care properly to supervise the affairs of the Company's subsidiaries, including Inno Gold, the Directors wrongfully failed properly to assess the purchase price of the Gold Mine before allowing the Company to acquire interests in the Gold Mine through its subsidiary, Inno Gold. The Directors did not possess the ability properly to assess the purchase price of the interest in the Gold Mine, and having insufficient skills, they ought to have obtained independent expert advice, but they failed to do so. The Directors were also negligent in failing to appreciate and/or ensure that the valuation of the Gold Mine took into account capital expenditure, and they failed to obtain an explanation of the differing figures in the Feasibility Study Reports and/or to obtain any verification of those figures.
65. In the circumstances, the Directors' conduct during the process by which they decided that the Company should invest in the Gold Mine through Inno Gold amounted to misfeasance or other misconduct on the part of the Directors in

relation to the affairs of the Company, including in respect of investments made by the Company via its subsidiary, Inno Gold, under section 214(1)(b) of the Ordinance, and/or unfair prejudice under section 214(1)(d) of the Ordinance.

**N. Failure to give adequate consideration to who would be appropriate to appoint as directors and/or who to put in charge in respect of gold mining matters**

66. The Directors failed adequately to consider who to appoint as directors of Inno Gold or who to put in charge of the Company's investments in gold mining.
67. After the Company acquired interests in the Gold Mine through Inno Gold, on or about 26 June 2009, the Company appointed two directors of Inno Gold, namely Mr. Webster and Dr. Yang who allegedly had experience in and/or knowledge of gold mining. The Company issued an Announcement dated 26 June 2009 in respect of such appointments.
68. Prior to his appointment as a director of Inno Gold, Mr. Webster had been a director of Dragon Emperor from 12 December 2007 to 15 May 2009, when that company was partly owned and controlled by Christopher Wong prior to Inno Gold's acquisition of Dragon Emperor.
69. Dr. Yang was recommended by Christopher Wong to be appointed as a director of Inno Gold.
70. Given the Directors' lack of knowledge of the gold mining industry, the Directors were not in a proper position to assess the suitability or appropriateness of appointing Mr. Webster and Dr. Yang as directors of Inno Gold. The Directors have been unable to identify any satisfactory evidence of their having given any proper consideration to the candidates for directorships of Inno Gold, and it is to be inferred that they did not do so. In particular, the Minutes of a meeting of the board of directors of Inno Gold on 26 June 2009 record the biographies of only Mr. Webster and Dr. Yang having been considered by the Directors, and no other candidates. All the Directors were present at that meeting. The Directors have been unable to provide or identify any evidence that they took advice from persons with due qualifications as to who was suitable or appropriate to be appointed, and it is further to be inferred that they did not do so.
71. The Directors' failure to give adequate consideration (or to take advice from persons with due qualifications) as to who would be suitable or appropriate to appoint as directors and/or who to put in charge in respect of gold mining matters was a breach of their duty of care to exercise due and reasonable skill, care and diligence in the course of acting as the executive directors of the Company and also their duty of care to properly supervise the affairs of the Company's subsidiaries, including Inno Gold. Such conduct fell short of the standards of care and skill to be expected of them in managing the affairs of the Company and the Company's subsidiaries, including Inno Gold. This constituted misfeasance or misconduct and/or unfairly prejudicial conduct under sections 214(1)(b) and/or (d) of the Ordinance.

**O. Failure to supervise the running of the Gold Mine properly**

72. The Directors failed properly to supervise the running of the Gold Mine.
73. When the Company acquired interests in the Gold Mine from Christopher Wong, Christopher Wong was the Chief Operating Officer of the Gold Mine. After the Company, through Inno Gold, purchased interests in the Gold Mine from Christopher Wong, who owned the remaining 37.4% shareholding of HK Gaofeng after such purchase by Inno Gold, the Company and Inno Gold retained Christopher Wong as the Chief Operating Officer responsible for the gold mining operation of the Group, without considering any other candidates. By the Announcement dated 10 June 2009, the Company stated that upon completion of the Agreement dated 9 June 2009 by which Dragon Emperor would acquire 47.2% of the issued share capital of HK Gaofeng, the vendor (namely Christopher Wong) would be appointed Chief Operating Officer responsible for the gold mining operation of the Group.
74. An expansion plan in respect of the Gold Mine was described by the Company at pages 17 and 18 of the Company's Circular dated 13 April 2011. However, some time after the Company acquired interests in the Gold Mine, an opportunity for a drilling program arose. Although it was possible to simultaneously carry out both the drilling program and also the expansion plan, the Directors relied upon the advice of Christopher Wong and elected to seek to complete the drilling program first. According to Wong Yuen Yee, the Directors had asked Christopher Wong whether the forecast yearly output of the Gold Mine would be met if the drilling program were completed first, and he had answered in the affirmative. The Directors relied upon Christopher Wong's assertion, and agreed to complete the drilling program first.
75. There is no record of the Directors having considered whether to adopt the drilling plan or the expansion plan first, or together and it is to be inferred that they did not do so. It is also to be inferred that they did not conduct any further evaluation or obtain independent expert advice. Instead, they left Christopher Wong to run the Gold Mine as the Chief Operating Officer whilst failing to supervise Christopher Wong properly or at all.
76. The Directors' conduct in this regard was in breach of their duty of care at common law to exercise due and reasonable skill, care and diligence in the course of acting as the executive directors of the Company, and in breach of their duty of care at common law to properly supervise the affairs of the Company's subsidiaries, including Inno Gold. This constituted misconduct or misfeasance in relation to the affairs of the Company, including in respect of investments made by the Company via Inno Gold, under section 214(1)(b) of the Ordinance, and/or unfair prejudice under section 214(1)(d) of the Ordinance.

**P. Liability of the Directors under sections 214(1)(b) and/or (d) of the Ordinance**

77. At the material times that the abovementioned matters took place, the Directors were and each of them was responsible, whether individually or collectively, for

the conduct of the business or affairs of the Company and/or its subsidiaries whose business and affairs also constituted the business and affairs of the Company. By reason of the matters set out above, the Directors have failed to conduct the business and affairs of the Company (including failure to supervise its subsidiaries) with the necessary degree of skill, care, diligence and competence as is reasonably expected of persons of their knowledge and experience and holding their offices and functions within the Company. They have thereby acted in breach of their duty of care owed to the Company.

78. In the premises, the Directors have conducted the business or affairs of the Company in a manner:

- (1) involving misfeasance or misconduct towards the Company, its members or any part of its members; and/or
- (2) unfairly prejudicial to its members or any part of its members.

79. The Directors' aforesaid conduct has caused loss and damage to the Company.