



Hong Kong

November 2021

HONG KONG ICAC CHARGES 4 INDIVIDUALS WITH CONSPIRACY TO DEFRAUD OVER “BACKDOOR LISTING” OF A LISTED COMPANY AND MONEY LAUNDERING

On 19 November 2021, Hong Kong’s Independent Commission Against Corruption (the “**ICAC**”) charged four individuals with conspiracy to defraud The Stock Exchange of Hong Kong Limited (the “**HKEX**”), Main Board-listed Asia Resources Holdings Limited (“**Asia Resources**”), and its board of directors and shareholders for concealing or failing to disclose a “backdoor listing” agreement when placing convertible notes to increase Asia Resources’ share capital and money laundering. The individuals involved are Chim Pui-chung, 75, a substantial shareholder of Asia Resources at the time, Ricky Chim Kim-lun, 52, then chairman of Asia Resources (“**Ricky Chim**”); Wong Poe-lai, 65, an associate of a merchant named in the charge (“**Wong**”)¹; and Ma Zhonghong, 48, the merchant (“**Ma**”)² (collectively, the “**Defendants**”). The ICAC investigation followed the Securities and Futures Commission’s (“**SFC**”) referral of a corruption complaint. After completing its investigation, the ICAC sought legal advice from the Department of Justice, which advised that charges be laid against the Defendants.

HKEX’s Requirements for Reverse Takeovers

The case acts as a reminder of the HKEX’s stringent rules on reverse takeover transactions (i.e. backdoor listings) and listed companies’ obligations to keep the market informed. The requirements for reverse takeovers of HKEX-listed companies are set out in Chapters 14 and 19 of the HKEX’s Main Board and GEM Listing Rules, respectively. The HKEX will treat a listed company proposing a reverse takeover as if it were a new listing applicant, requiring it to issue a listing document, pay the initial listing fee

and appoint a sponsor to assist it with its listing application and conduct due diligence as required by the HKEX Listing Rules and Paragraph 17 of the SFC’s Code of Conduct for Persons Licensed by or Registered with the SFC. The HKEX Listing Rules require listed companies to publish an announcement of a proposed reverse takeover as soon as possible. Prior to the publication of an announcement, information regarding a reverse takeover must be kept confidential, and if confidentiality cannot be maintained, the listed company should apply to the HKEX for a trading halt or suspension of trading pending publication of the announcement.³ Alternatively, if the HKEX is satisfied that the purpose of the transaction is not to achieve a backdoor listing, the HKEX will instead classify it as an extreme transaction under Listing Rule 14.06(C). Extreme transactions are not treated as new listings: they require the listed company to publish a circular to shareholders, appoint a financial adviser and obtain shareholders’ approval for the transaction.

ICAC Charges of Conspiracy to Defraud and Offence under s.25(1) Organized and Serious Crimes Ord.

The Defendants were charged with the following:

- i) Chim Pui-chung, Ricky Chim and Ma were jointly charged with two counts of conspiracy to defraud, contrary to Common Law; and

¹ https://www.icac.org.hk/en/press/index_id_1227.html

² https://www.icac.org.hk/en/press/index_id_1229.html

³ Listing Rule 14.37

- ii) Ma and Wong were jointly charged with one count of dealing with property known or reasonably believed to represent proceeds of an indictable offence, contrary to Section 25(1) of the Organized and Serious Crimes Ordinance (“OSCO”).

No plea was entered when the Defendants appeared in the Shatin Magistrates’ Courts on 19 November 2021. Acting Principal Magistrate Mr. Jason Wan Siu-ming adjourned the cases to 28 February 2022 for mention.

Charge 1 (Count 1): Conspiracy to defraud Asia Resources, its board of directors and shareholders

It is alleged that between 1 July 2013 and 15 November 2015, Chim Pui-chung, Ricky Chim and Ma conspired together and with other persons to defraud Asia Resources, its board of directors and shareholders by dishonestly:

- i) concealing or failing to disclose that an agreement had been entered among and between Ma, Chim Pui-chung and Ricky Chim that Ma would pay about \$210 million to Chim Pui-chung in exchange for control 70% to 75% of the entire issued share capital of Asia Resources (the “**Illicit Agreement**”);
- ii) causing the board of directors of Asia Resources to approve, and causing Asia Resources to proceed with the placing of its new shares and the placing of convertible notes (“**CN Agreement**”), in order to increase the share capital of Asia Resources thereby facilitating the execution of the Illicit Agreement;
- iii) falsely representing in Asia Resources’ announcements and circulars that no director or shareholder of Asia Resources had a material interest in the CN Agreement and that no shareholder of Asia Resources was required to abstain from voting at the special general meeting of Asia Resources for the approval of the CN Agreement (“**SGM**”); and

- iv) causing the shareholders of Asia Resources to pass the resolution in relation to the CN Agreement at the SGM.

Charge 1 (Count 2): Conspiracy to defraud the HKEX

It is alleged that between 1 July 2013 and 15 November 2015, Chim Pui-chung, Ricky Chim and Ma conspired together and with other persons to defraud the HKEX by dishonestly:

- i) concealing or failing to disclose the Illicit Agreement;
- ii) concealing or failing to disclose the purpose of the CN Agreement;
- iii) falsely representing in the announcements and circulars of Asia Resources that no director or shareholder of Asia Resources had a material interest in the CN Agreement and no shareholder of Asia Resources was required to abstain from voting at the SGM;
- iv) causing the HKEX not to take prompt action to seek clarification with Asia Resources on the CN Agreement, and/or causing the HKEX to approve the publication by Asia Resources of the announcements and circulars in relation to the CN Agreement.

Charge 2: Dealing with property known or believed to represent proceeds of an indictable offence

It is alleged that between 24 October 2013 and 24 January 2014, Wong and Ma, knowing or having reasonable grounds to believe that convertible notes issued by Asia Resources in the principal amount of HK\$42 million, in whole or in part, directly or indirectly represented the proceeds of an indictable offence, dealt with the said property, contrary to Section 25(1) of the OSCO.

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