

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Morgan Dragon Development Corp., Re, 2014 ABASC 6

Date: 20140103

**Morgan Dragon Development Corp.,
John Cheong (aka Kim Meng Cheong) and Herman Tse**

Panel: Stephen Murison
Fred Snell, FCA

Representation: Raman Gill
for Commission Staff

Decision: 3 January 2014

I. INTRODUCTION

[1] Staff (**Staff**) of the Alberta Securities Commission (the **Commission**) seek the reciprocation of certain sanctions imposed by the Ontario Securities Commission (the **OSC**) in a 10 April 2013 order (the **OSC Order**) against Morgan Dragon Development Corp. (**MDDC**), John Cheong (aka Kim Meng Cheong) (**Cheong**) and Herman Tse (**Tse** and, together with MDDC and Cheong, the **Respondents**).

[2] We received affidavit evidence from Staff, but no other evidence and no submissions from any party.

II. BACKGROUND

[3] The Respondents, in an April 2013 settlement agreement with OSC staff (the **OSC Settlement**), acknowledged that, from September 2007 through July 2011, they raised approximately \$5 247 000 by selling limited partnership units primarily through employees of MDDC. In this regard, MDDC and Cheong admitted to acting (directly or through MDDC employees) contrary to Ontario securities laws and the public interest by (i) engaging or holding themselves out as engaging in the business of trading in securities without the requisite registration (or an available registration exemption) and (ii) distributing securities without a prospectus (or an available prospectus exemption). Cheong and Tse admitted to acting contrary to Ontario securities laws and the public interest in that, as directors, officers and "directing minds" of MDDC, they authorized, permitted or acquiesced in MDDC's and its employees' violations of Ontario securities laws.

[4] In the OSC Order an OSC panel approved the OSC Settlement and, among other things under Ontario securities laws:

- reprimanded each Respondent;
- prohibited each of the Respondents, for five years, from trading in or acquiring securities (with a carve-out for each of Cheong and Tse), using exemptions, and acting as a registrant; and
- prohibited Cheong and Tse, for five years, from acting as an investment fund manager or promoter, or as a director or officer of a registrant, of an investment fund manager or of MDDC or certain related corporate entities.

III. ANALYSIS

[5] The statutory preconditions to the application of section 198(1.1) of the *Securities Act* (Alberta) (the **Act**) are satisfied here. Staff's affidavit evidence satisfies us that the Respondents received adequate notice of this application, and were given an opportunity to be heard. Further, the Respondents are – and agreed to be – subject to the OSC Order, whereby a securities regulatory authority imposed sanctions, conditions, restrictions or requirements on them.

[6] We must also be satisfied that applying section 198(1.1) of the Act will, in the public interest, protect Alberta investors and the Alberta capital market (*Re Leemhuis*, 2008 ABASC 585 at para. 12). Here, the Respondents' capital-market misconduct crossed provincial borders. Indeed, the Respondents acknowledged in the OSC Settlement that their "organized campaign of telephone solicitation" targeted residents of Alberta and other western Canadian provinces. In

the circumstances, we are persuaded that an order reciprocating sanctions imposed by the OSC Order, to the extent contemplated by the notice of hearing, will, in the public interest, serve the protective purpose of section 198(1.1).

IV. SANCTIONS ORDERED

[7] For the reasons given, pursuant to section 198(1.1) of the Act we order in the public interest that:

- under section 198(1)(b) of the Act, the Respondents must cease trading in or purchasing securities, for five years from 10 April 2013, except that this order does not preclude each of Cheong and Tse from trading in or purchasing securities through a registrant (who has first been given a copy of this decision and the OSC Order) for the account of his registered retirement savings plan (as defined in the *Income Tax Act* (Canada)), but only after payment in full of the administrative penalty and costs ordered against him in the OSC Order; and
- under section 198(1)(b.2), the Respondents are reprimanded;
- under section 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to the Respondents, for five years from 10 April 2013;
- under section 198(1)(d), each of Cheong and Tse must resign all positions he holds as a director or officer of any of MDDC, Morgan Dragon Capital Fund Inc., Morgan Dragon Land Holding Inc., Morgan Dragon Management Inc. (collectively, the **Prohibited Companies**);
- under section 198(1)(e), each of Cheong and Tse is prohibited from becoming or acting as a director or officer (or both) of any registrant or investment fund manager, or of any of the Prohibited Companies, for five years from 10 April 2013;
- under section 198(1)(e.2), for five years from 10 April 2013:
 - MDDC is prohibited from becoming or acting as a registrant; and
 - each of Cheong and Tse is prohibited from becoming or acting as a registrant, investment fund manager or promoter.

3 January 2014

For the Commission:

"original signed by"
Stephen Murison

"original signed by"
Fred Snell, FCA