

June 2017 Legal and Regulatory Update

Top stories

Largest disgorgement order for disclosing false information ([SFC press release](#); [full Market Misconduct Tribunal \(“MMT”\) report Part 1](#) ; [Part 2](#))

What you should know:

- **Nature of market misconduct:** “accounting fraud” in published audited accounts and results announcements (“disclosing false or misleading information inducing transactions”, s.277(1), Securities and Futures Ordinance)
- **Background:** in Dec 16, the MMT found Greencool Technology Holding’s former Chairman/CEO, 3 former directors, and former financial controller and Company Secretary (“FCCS”) liable for grossly overstating the Group’s asset value for years 2000 to 2004 (broad range: RMB487 million-1,062 million, around 43 - 80 % of total net assets)
- “Accounting fraud” principally related to the Group’s **PRC subsidiaries**
- **Disgorgement order** on former Chairman/CEO — approximately \$482m of profit from disposal of company shares plus interest
- **Disqualification order** as a director or take part in the management of a listed company or specified corporation (former Chairman/CEO and directors: 5 years; FCCS: 3 years)
- **Cold shoulder orders** (former Chairman/CEO) — not to directly or indirectly deal in any securities, and specified financial instruments, for 5 years
- **Cease and desist orders** (4 former directors): any future market misconduct will be a criminal offence
- **“Qualified Accountant” (under GEM rules) and Company Secretary role:**
 - FCCS did not play any knowing role in the fraud
 - Defence that his role had been confined to “Group level matters” rejected, being inconsistent with GEM requirements
 - Found negligent, as to whether information in the accounts was false or misleading
- **HKICPA recommended to make a disciplinary action** against FCCS

What you should do/watch out for:

- The largest disgorgement order made by the MMT to date
- FCCS also found liable for market misconduct, despite not being a director
- “Qualified Accountant” role in a “group of companies” context
 - No defence: the fact of being asked to confine supervisory role “at group level” only

Legislation

[The Companies \(Amendment\) Bill 2017](#) seeks to require companies incorporated in Hong Kong to maintain beneficial ownership information.

What you should know/watch out for:

- A company incorporated in Hong Kong will be required to:
 - (i) Take reasonable steps to **ascertain** the individuals and legal persons (including companies) that have significant control over it; give notice to them and obtain information about their identities; and
 - (ii) Maintain a **register of significant controllers** containing required particulars, for inspection by law enforcement officers upon demand
- “**Significant control**”: broadly means more than 25% of voting rights/shareholdings, or ability to exercise control through other means (e.g. the right to appoint or remove a majority of directors)
- Listed companies are exempted
- The proposals seek to keep Hong Kong’s regulatory regime in line with international requirements of Financial Action Task Force (“FATF”) of which it is a party
- Reflects the increasing significance of **anti-money laundering** efforts, beyond the financial services sector