

September 18 Legal and Regulatory Update

Top stories

Competition Commission's third case vs "cartels"

The Competition Commission commenced proceedings in the Competition Tribunal against three construction companies and two individuals for "market sharing" (i.e. allocated customers) and "price fixing" activities around June-Nov 17, regarding renovation services at a public rental housing estate in San Po Kong. (i.e. "cartel actions", in contravention of **First Conduct Rule**). (Click: [press release](#); [Q+A](#)).

The Commission has to date brought **three cases, all relating to "cartels"**. This case is the second one on renovation services at public rental housing estates. (Click: [Mar 17 update](#) (case on IT services/ "bid rigging"); [Aug 17 update](#))

It is, however the **first time** an action is brought **against individuals**.

What you should know/watch out for:

- "First Conduct Rule" means — parties acting together with an **agreement**, and/or engaged in a **concerted practice**, whose **object or effect** is "to prevent, restrict or distort" competition in Hong Kong
- Reinforces that "cartel actions" i.e. **price fixing, market sharing, and bid-rigging**, is a **priority enforcement area**
- As the **first case against individuals**, the Commission highlighted its "deterrent message" that not only companies may be liable
- This case stemmed from a **public complaint**. The Commission encourages the public to report suspected cartel practices
- All companies must steer clear of cartel practices. Those **already involved** in such practices should consider approaching the Commission for **leniency**

Also in this issue

Regulators

- (i) [New HKEX FAQs on Notifiable and Connected Transaction Rules relating to Lease Transactions \(following new HKFRS/IFRS 16 "Leases"\)](#)

HKFRS/IFRS 16 (“Leases”) will be effective for **accounting periods beginning on and after Jan 2019**, introducing changes in the accounting treatment of “leases”. This is a **useful FAQ** clarifying how **Notifiable (Chapter 14) and Connected Transactions (Chapter 14A) Rules** will apply to “leases”, in light of the different treatment under accounting principles.

What you should know/watch out for:

- Issuers are not required to re-comply with (new treatment under) Chapter 14/14A rules, for leases or framework agreements entered into before the adoption of the new accounting standards
- Adoption of new accounting standards is therefore **more than an “accounting matter”**. For example, **issuers involved in leasing of major assets** should consider whether the change in accounting models may affect **key performance ratios, debt covenants and structure or pricing of transactions**

(ii) [HKEX consultation paper](#) on proposed suspension for issuers with “disclaimer” or “adverse audit opinion” on their financial statements. (Click: [press release](#))

Trading may resume once the issuer has addressed the issues giving rise to the disclaimer/adverse opinion, provided comfort that such disclaimer/adverse opinion would no longer be required, and disclosed sufficient information for investors to assess its updated financial positions.

What you should know/watch out for:

- Under (recently adopted) Listing Rules, HKEX may delist a Main Board issuer after a trading suspension of a continuous 18 months
- Proposed effective date: **preliminary results announcements for financial years commencing on or after 1 January 2019**. (Issuers currently with a disclaimer or adverse opinion on their financial statements will not be required to suspend share trading, unless they continue to receive such opinion on their financial statements for the financial years commencing on or after 1 Jan 2019)

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