

Sept/Oct 2020 Legal and Regulatory Update

Top stories

New judgment on disclosure of inside information

The Market Misconduct Tribunal (“MMT”) has found that CMBC Capital Holdings Limited and 6 former (*executive and independent non-executive*) directors **failed to disclose inside information as soon as reasonably practicable**, under the Securities and Futures Ordinance (“SFO”). ([SFC press release](#))

A 15-month disqualification order was imposed on the company’s former CEO and company secretary, plus a fine of \$1.2m. Its former chairman was fined \$900k. They admitted that their negligent conduct had resulted in the company’s breach of disclosure obligations.

It is a “**profit alert**” case. The company and the defendant directors admitted that they became aware of significant improvement in financial performance (*for the 5 months ended 31 August 2014*) around 13 October 2014 via **internal management accounts**. However, a “profit alert” was only announced on 7 November 2014 in relation to its interim results.

(For further details: our [Dec 18 legal update](#))

Also in this issue

Regulators

(i) SFC’s latest [Enforcement Reporter](#) highlights **market manipulation** by way of **stock investment scams via social media**. In these “**ramp and dump scams**”, fraudsters use different means to “ramp” up the share price of a listed company and then “dump” the shares to other investors at an artificially high price. They account for **20%** of market manipulation cases currently investigated by SFC.

Fraudsters typically pick **listed companies that are easier to manipulate** (*e.g. small market capitalisation, low market liquidity and high shareholding concentration*).

The report gives **examples** of how fraudsters gain trust of investors via social media (*e.g. posing as “investment teachers”*) etc.

Relevant provisions under the SFO regulating market misconduct include “**false trading**”, “**stock market manipulation**”, “**disclosure of false or misleading information inducing transactions**”.

(ii) SFC’s latest [Takeovers Bulletin](#) sets out a reminder on “exclusivity agreements” in the context of takeovers.

During negotiations which may lead to a general offer, the potential offeror may request the **potential vendors/ existing controlling shareholders** of an offeree company to enter into an “exclusivity agreement”. i.e. restricting, for a stated period of time, their ability to discuss with other potential offerors. Such arrangements are **generally acceptable**, subject to implications under the Takeovers Code (*e.g. special deal concerns under Rule 25*).

On the other hand, it is **normally not acceptable** for an **offeree company itself** to enter into such exclusivity agreements. Its **board of directors** must not do anything that may prohibit them from carrying out their **fiduciary duties**. i.e. advise the shareholders of all possible bids (*General Principles 8 and 9 of the Takeovers Code*).

(iii) HKEX published [conclusions on its consultation on Corporate Weighted Voting Rights](#) (“Corporate WVR”).

In light of diverse views and expectations as to how the proposed regime would operate in practice, HKEX decided to give the market more time. In the meanwhile, new grandfathering arrangements will be introduced to enable (*subject to conditions*) qualifying Greater China issuers controlled by Corporate WVR beneficiaries to seek secondary listings in Hong Kong.

(iv) HKEX published an [e-learning on Notifiable Transaction Rules](#).

Published by Practising Governance Limited

November 2020