

# Feb/Mar 2021 Legal and Regulatory Update

## Top stories

**SFC obtained disqualification orders (s. 214, Securities and Futures Ordinance)** in the Court of First Instance against the former CEO and executive director of Long Success International (Holdings) Limited. They were disqualified from being a director or taking part in the management of any corporation in Hong Kong, without leave of the Court, for a period of **3 years**. SFC proceedings against other former directors are still ongoing. ([Press release](#))

The case involves **profit guarantee** under the company's acquisition of equity interest in a target (for HK\$190m in 2009). Target failed to achieve the profit amount under agreed terms. Former chairman (and executive director) signed various confirmation letters with the seller, agreeing to (i) **defer** the seller's payment (ii) finally to **forfeit** such payment (around HK\$30.1m) which was not approved by the board.

The two former directors admitted breach of fiduciary as well as common law duties to **act in the interest of the company** and/or **exercise due and reasonable skill, care and diligence**.

Specifically:

- approving a confirmation letter without making **sufficient enquiries** or **requesting further information**, which was prejudicial and of no discernible benefit to the company
- failing to **monitor, make enquiries or follow up** with the profit guarantee during the relevant period

## Also in this issue

### Legislation

(i) [The Competition Commission issued infringement notices](#) to seven entities, including six hotel groups and a tour counter operator, for **facilitating a cartel arrangement** between two competing travel service providers, to fix and/or control prices of tourist attractions/transportation tickets sold at certain hotels.

While “**cartels**” (infringing the “**First Conduct**” rule) has been an **enforcement focus**, this is the **first case against “facilitators”**.

The entities passed on pricing information between these two competitors in circumstances where they had actively contributed to the implementation of the price fixing agreement.

The Commission considers the use of **infringement notices** and **getting commitments**, instead of bringing actions in the Competition Tribunal, as the most appropriate approach proportionate to the circumstances.

In the infringement notices, the seven entities admitted that they had contravened the Competition Ordinance and committed to take concrete measures to effectively enhance competition compliance.

*What you should watch out for/do:*

- “**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 HK
- Not only cartelists, but **third parties** who **facilitate anti-competitive conduct** between competing businesses are liable

(ii) [The Securities and Futures and Companies Legislation \(Amendment\) Bill 2021](#) was gazetted, towards the development of an uncertificated securities market in HK.

(Background: read our [Apr 20 legal update](#) for the relevant **consultation conclusions**)

A key aim is to enable investors to hold securities in their own name and without paper documents. **To issuers**, there is **better transparency** in terms of the real owners of its securities. This also facilitates **more efficient and direct communication** between issuers and investors.

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