

INSIDE INFORMATION AND INSIDER DEALING: TIPS AND REMINDERS FOR LISTED COMPANIES

The Securities and Futures Commission (SFC) has recently **commenced** Market Misconduct Tribunal (MMT) proceedings in connection with alleged insider dealing and late disclosure of inside information relating to the securities of Hong Kong listed company, Dickson Concepts (International) Limited (**Dickson Concepts**). This is a timely reminder of the importance for listed companies and their officers to understand their obligations on inside information and market misconduct under the Securities and Futures Ordinance (SFO) and to ensure robust internal policies and procedures on inside information are established and regularly reviewed.

Inside information and insider dealing rules

Broadly speaking, the SFO regulates the disclosure of inside information, insider dealing and other market misconduct in respect of listed corporations, and contains procedures which allows the SFC to pursue either civil proceedings through the MMT or criminal proceedings through the criminal courts.

Disclosure of inside information - the SFO requires a listed corporation to, as soon as reasonably practicable after any inside information¹ has come to its knowledge, disclose the information to the public unless certain safe harbours apply.² If the information has (or ought reasonably to have) come to the knowledge of an officer of the corporation in the performance of their role as an officer, the knowledge of that information may be attributed to the corporation. "Officer" includes a director, manager, company secretary and any other person involved in the management of the corporation. There is a separate Listing Rule disclosure obligation to announce information necessary to avoid a false market in its securities.

Duty of officers - every officer must take reasonable measures from time to time to ensure proper safeguards exist to prevent a breach of a disclosure requirement. If a corporation breaches a disclosure obligation, an officer whose intentional, reckless or negligent conduct resulted in the breach, or who had not taken all reasonable measures to ensure proper safeguards exist, is also in breach.

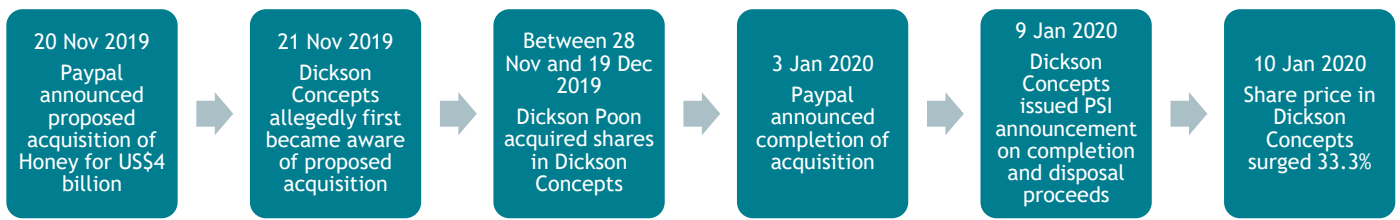
Insider dealing - includes (amongst other things) when a person connected with a listed corporation (e.g. director, employee, substantial shareholder), with information he knows to be inside information, deals (or counsels or procures another person to deal, knowing or having reasonable cause to believe the other person will deal) in the listed securities of the corporation.

Background to the Dickson Concepts proceedings

The inside information in question relates to the disposal of a 3.73% stake held by Dickson Concepts in an unlisted company - Honey Science Corporation (**Honey**).

¹ Broadly speaking, inside information is specific information about the listed corporation, its shareholders, officers, listed securities or their derivatives, which is not generally known to the public, but would if generally known be likely to materially affect the price of the listed securities.

² Safe harbours include (amongst others) information concerning an incomplete proposal or negotiation or a trade secret, provided the company has taken reasonable precautions for preserving the confidentiality of the information and confidentiality of the information has been preserved.



In Dickson Concepts' financial statements, the investment in Honey was booked as "Unlisted equity securities", without any reference to Honey. This indicates the impact of the Honey acquisition on Dickson Concepts³ may not have been generally known until the company's announcement on 9 January 2020. The SFC is commencing MMT proceedings against (i) Dickson Poon and his investment holding company (Equity) for alleged insider dealing and (ii) Dickson Concepts and two executive directors for alleged late disclosure of inside information. In the SFC's view, there was a seven-week delay in disclosure.

Tips and reminders for listed companies and their officers

1. Although the MMT has not yet decided on the Dickson Concepts proceedings, the SFC has once again demonstrated its willingness to seek individual accountability for breach of a disclosure requirement.

In this case, it is commencing MMT proceedings against not just the listed company for alleged late disclosure of inside information, but also two executive directors for allegedly failing to properly perform an officer's duty (i.e. taking reasonable measures to ensure proper safeguards exist), and for breach of a disclosure requirement due to their intentional, reckless or negligent conduct. It is worth noting the provisions could in theory apply more widely to every officer of the company and the MMT has in previous cases found non-executive directors in breach of the disclosure requirement.

2. It is the responsibility of every officer to ensure proper safeguards exist to prevent a breach of disclosure requirement by the company. In light of point 1 above, it is even more important for directors (executive and non-executive) to take a proactive role in ensuring internal policies and procedures are in place, sufficiently comprehensive and robust, and periodically reviewed to ensure the timely identification and handling of potential inside information.

As a starting point, reference can be made to SFC [guidance](#) for examples of reasonable measures to ensure proper safeguards exist, such as measures to:

- identify and escalate key financial and operational data in a structured and timely manner;
- establish controls for monitoring relevant business and corporate developments;
- maintain and regularly review a sensitivity list identifying factors or developments which are likely to give rise to the emergence of inside information; and
- document the disclosure policies and procedures.

However, each listed company should implement measures that cater to its specific circumstances.

3. An officer's knowledge of inside information could be attributed to the listed company. It is therefore imperative for directors and senior management (as well as those who may be exposed to inside information) to receive regular training on the legal and regulatory obligations, and relevant internal policies and procedures to ensure they understand how to identify and handle inside information (including escalation

³ The US\$148 million proceeds from the disposal represented a gain of approx. HK\$929 million over Dickson Concept's net book value of the investment as at 30 September 2019.

procedures). The training should be tailored to focus on categories of potential inside information that are more relevant to the company.

Slaughter and May can assist in delivering bespoke training on inside information and market misconduct to directors of listed companies, as well as reviewing internal compliance policies. Please feel free to get in touch with your usual Slaughter and May contact.

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