



HKEx, SFC & HKMA Disciplinary Actions of August 2022

In August 2022, the Stock Exchange of Hong Kong Limited (the **HKEx**) published two disciplinary actions. The first involved three directors of Inno-Tech Holdings Limited (now delisted) which related to the company's non-compliance with a GEM Listing Committee direction made following a previous disciplinary action, and the company's publication of an inaccurate and misleading announcement.

The second HKEx disciplinary action related to Ping An Securities Group (Holdings) Limited (in liquidation) and two of its former directors for causing the company's subsidiary to grant around HK\$274 million in loans that were not repaid, and effecting three disposals of the company's subsidiaries which resulted in the company losing control of its subsidiaries without receiving any consideration.

The Securities and Futures Commission of Hong Kong (the **SFC**) published the results of two disciplinary actions concluded in August 2022. The first involved the SFC fining TC Capital International Limited HK\$3 million as IPO sponsor for failing to conduct reasonable due diligence on third party payments and to maintain proper records of the due diligence work allegedly done in relation to the listing application.

The second action was initiated by the SFC against two retail investors, Ms Chan Siu Tai and Ms Janice Chan, who were convicted of illegal short selling by the Eastern Magistrates' Court.

The Hong Kong Monetary Authority (**HKMA**) also published the result of its disciplinary action against Commerzbank AG, Hong Kong Branch for contraventions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance.

HKEx's Disciplinary Action against Three Directors of Inno-Tech Holdings Limited (delisted)

On 5 August 2022, the HKEx publicly censured and imposed a Prejudice to Investors' Interests Statement against three directors of now delisted Inno-Tech Holdings Limited (**Inno-Tech**): Mr Wong Kam Fai Samuel (**Mr Wong**), former executive director and Chief Executive Officer of Inno-Tech; Mr Zheng Pin (**Mr Zheng**), executive director and Chairman at the time of delisting; and Mr Cao Xinhua (**Mr Cao**), non-executive director at the time of delisting. The GEM Listing Committee found that Inno-Tech:

- had failed to comply with a GEM Listing Committee direction made following a previous disciplinary action; and
- published an inaccurate and misleading announcement in breach of the GEM Listing Rule requirements.

The HKEx's Statement of Disciplinary Action is available on the HKEx's website [here](#).

Publication of Announcement in Breach of HKEx GEM Listing Rules

On 7 January 2020, Inno-Tech publicly announced that it had appointed a new auditor to replace its former auditor, Elite. The announcement included a statement that both Elite and the board of Inno-Tech had confirmed that there were no matters surrounding the change that needed to be brought to the attention of the company's shareholders.

Prior to its publication, the announcement was approved at a board meeting at which Mr Wong (then executive director and CEO) represented to the board that Elite had given the confirmation referred to in the announcement. In fact, Elite had not given the confirmation making the announcement inaccurate and misleading. On 13 January 2020, Inno-Tech published an announcement clarifying that Elite had never given the confirmation and admitted its breach of Rule 17.56(2) of the GEM Listing Rules.

Non-compliance with GEM Listing Committee Direction

In September 2018, the GEM Listing Committee directed Inno-Tech to appoint an independent compliance adviser for two years following a previous disciplinary action against the company and its then directors. Inno-Tech then appointed three compliance advisers but for one year and nine months only. Each of the compliance advisers' contracts were terminated due to the company's failure to settle the advisers' fees. Mr Wong, who was appointed as executive director and CEO of the company in May 2019, persistently withheld payments to its compliance advisers during his tenure.

Between May and November 2020, the Listing Division made numerous enquiries of Inno-Tech and its directors with regards to the above matters. Mr Wong made no substantial response to the Listing Division's direct enquiries with him. At that time, Mr Zheng was an executive director and Mr Cao was a non-executive director. They were involved with the company's earlier responses to the Listing Division's enquiries and were therefore aware that Inno-Tech was being investigated. However, they did not procure the company to respond to the Listing Division's last enquiry letter.

HKEx Disciplinary Actions for Directors' Breach of Listing Rules and Director's Undertaking

The GEM Listing Committee found that Mr Wong breached GEM Listing Rule 5.01 and the Declaration and Undertaking with regard to Directors in the form of Appendix 6A to the GEM Listing Rules (**Undertaking**) in causing the company to publish an inaccurate and misleading announcement in breach of GEM Listing Rule 17.56(2), persistently withholding the company's payments to the compliance advisers, and failing to cooperate in the Listing Division's investigation.

Mr Zheng and Mr Cao also breached their obligations under the Undertaking to use their best endeavours to procure the company's compliance with GEM Listing Rule 17.55A (to provide information and documents reasonably required for the Listing Division's investigation) and to cooperate in the Listing Division's investigation.

The GEM Listing Committee therefore imposed a Prejudice to Investors' Interests Statement against the three directors, that is a statement that, in the Exchange's opinion, had they remained on the board of directors of the company, their retention of office would have been prejudicial to the interests of investors.

HKEx Disciplinary Action in relation to Ping An Securities Group (Holdings) Limited (in liquidation) and Two Former Directors

On 10 August 2022, the HKEx publicly censured Ping An Securities Group (Holdings) Limited (**Ping An Securities**) and two of its former directors, Mr Gong Qing Li, a former executive director, and Mr Lin Hong Qiao, a former executive director. It also imposed a Prejudice to Investors' Interests Statement against the two former directors. The sanctions related to the misapplication of the assets of Ping An Securities: the two former directors were responsible for causing the company's subsidiary to grant around HK\$274 million in loans that were not repaid, and effecting three disposals of the company's subsidiaries which caused the company to lose control of the subsidiaries without receiving any consideration. The HKEx's Statement of Disciplinary Action is available on the HKEx website [here](#).

Breaches of HKEx Listing Rules

From July to September 2018, a subsidiary of the company, which held a money lenders licence in Hong Kong, granted loans to three independent borrowers totalling approximately HK\$273.6 million. Each of the three loans constituted a major transaction under the HKEx Listing Rules and was subject to announcement, circular, and independent shareholders' approval requirements.

The loans were executed by Mr Gong and Mr Lin as members of an Executive Committee. Under its Terms of Reference, the Executive Committee could approve transactions on the company's behalf but could not approve transactions subject to the HKEx Listing Rules' reporting, announcement and/or shareholders' approval requirements. The Executive Committee was also required to report its decisions to the board. However, the other members of the Executive Committee and the board were unaware of the loans. The loans were not announced until October 2019, over a year after they were made. Shareholders' approval of the loans was not sought. The loans were never repaid and the loss suffered by Ping An Security amounted to 30% of its total losses recorded in 2019.

In July 2019, the board approved a disposal of its 60% equity interest in Lianrun Shanghai Information Technology Co., Ltd (**Lianrun**) at a consideration of RMB4 million. In August 2019, Mr Lin allegedly effected a trust arrangement whereby the purchaser would hold Lianrun on trust for Ping An Securities without paying any consideration. However, Ping An Securities lost control of Lianrun shortly after.

In September 2019, Mr Gong and Mr Lin disposed of Ping An Securities' interest in another subsidiary, Super Harvest Asset Management Limited (**SHAM**) for US\$1. Mr Gong and Mr Lin changed their directorships in SHAM as well as in SHAM's subsidiary, Super Harvest Global Fund SPC (**SHF**). The disposal was cancelled but the changes in directorships were not reinstated. In November, SHAM transferred the sole management share in SHF to a third party at a consideration of US\$1 under another alleged trust arrangement. No consideration was received by Ping An Securities and it lost control of SHF shortly after.

Both transactions were discloseable transactions under the Listing Rules. All the trust arrangements, save for the initial disposal of Lianrun, and the subsequent disposals of SHAM and SHF were not known to, or approved by, the board. The disposals were only announced in March and June 2020.

A Special Investigation Committee was established by Ping An Securities to investigate the alleged misconduct and found that Mr Gong was the mastermind who executed the disposals with assistance from Mr Lin and two others. However, the nature, substance, and commercial rationale behind the disposals remained difficult to explain due to insufficient information. Mr Lin later refused to respond to the company and Mr Gong did not respond at all. They also failed to cooperate with the investigation by the Listing Division.

Breach of HKEx Listing Rules Notifiable Transaction Requirements

Ping An Securities was found to have breached the announcement, circular and independent shareholders' approval requirements of HKEx Listing Rules 14.34, 14.38A, 14.40, and 14.41 in respect of each of the loans, and the announcement requirement of HKEx Listing Rule 14.34 in respect of each of the disposals. The loans and disposals were made on behalf of the company; the company delayed in making the announcements and the loans were not approved by the company's independent shareholders. Mr Gong and Mr Lin breached their director's duties under Rule 3.08 and their Undertakings.

As a result, the HKEx imposed a Prejudice to Investors' Interests Statement against Mr Gong and Mr Lin, and censured Ping An Securities and the two former directors.

SFC Reprimands and Fines TC Capital International Limited HK\$3 million

On 1 August 2022, the SFC reprimanded and fined TC Capital International Limited (**TC Capital**) HK\$3 million for failing to discharge its duties, namely to conduct reasonable due diligence and to maintain proper records of its due diligence, as the sponsor in the listing application of China Candy Holdings Limited (**China Candy**) on the Growth Enterprise Market (**GEM**). Mr Edward Wu Wen Guang (**Wu**) also had his licence suspended for failure to discharge his duties as a responsible officer and sponsor principal in charge of China Candy's listing application and supervision of the transaction team responsible for the listing application. The SFC's Statement of Disciplinary Action is available on the SFC website [here](#).

Failure to Conduct Reasonable Due Diligence on Third Party Payments

China Candy was a manufacturer of candies in Mainland China that sold candies in Mainland China and overseas. TC Capital, as the sole sponsor, re-submitted China Candy's listing application in September 2015, due to a lapse of more than six months from its initial application. In November 2015, China Candy was listed on GEM. At China Candy's request, trading in the shares of China Candy was suspended in December 2017; with China Candy explaining that it could not confirm the authenticity of certain bank information. The HKEX subsequently cancelled China Candy's listing on 31 December 2019.

Two top customers (**Customers**), who contributed a significant portion of China Candy's revenue – around 23% and 25% respectively, had settled most of their payments to China Candy through various third party payers. Third party payments are considered a red flag since they can be used to disguise the original source of funds and/or facilitate a fraudulent scheme. It was therefore essential that TC Capital, as sponsor, should conduct proper due diligence to understand the reasons for the third party payments and critically assess their legitimacy and veracity.

However, the issue of third party payments was not a matter that TC Capital had considered at the time. Wu claimed that while he was aware of the third party payments, although not the significant number, he saw no reason for any follow up due diligence. TC Capital's Transactions Team claimed that they were not even aware of the third party payments and therefore did not conduct further enquiries and/or assess whether such payment methods were legitimate. TC Capital submitted that there was no basis to conduct rigorous due diligence on the third party payments as it was a common practice for a Philippines business to use third party payment agents. There was however no evidence that this was the reason for the decision not to conduct due diligence on the third party payments at the time.

Breach of SFC Code of Conduct Sponsor Obligations

TC Capital failed to conduct all reasonable due diligence and exercise professional scepticism when conducting due diligence work on China Candy. TC Capital's failure to conduct proper due diligence in relation to the third party payments meant that it was unable to properly assess whether the use of third party payers by two top customers was material information that should be disclosed in the China Candy prospectus. TC Capital thus breached General Principle 2, Paragraphs 17.2(b), 17.4(a), and Paragraphs 17.6(a), (b), and (c) of the SFC's [Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission¹](#) (**SFC Code of Conduct**).

Failure to Maintain Proper Records of Sponsor Due Diligence Work

A sponsor is required to maintain proper and accurate records and to be able to provide a proper trail of work done upon request by the SFC. Records need to include the results of the sponsor's due diligence and its assessment of those results. The sponsor must be able to demonstrate that it has turned its mind to the question of what enquiries are necessary and reasonably practicable in the particular context and circumstances. Even where the sponsor concludes that a matter is not sufficiently material to warrant disclosure in the prospectus, it is expected to maintain documentation showing how it reached that conclusion. The SFC's [Report on Sponsor Theme Inspection Findings²](#) (March 2011) provides guidance on sponsors' obligations in the listing application process. Paragraphs 59 to 63 of that report cover sponsors' duty to maintain proper records of due diligence.

TC Capital was found to have failed to maintain proper records of the due diligence work which it claimed to have performed. There were no records showing that TC Capital had enquired about the third party payments and/or how it reached the conclusion that the third party payments were immaterial to warrant disclosure in the prospectus. There was also inconsistent information as to who owned the Customers. However, despite some Transaction Team members being aware of the discrepancy, there were no records showing that TC Capital had considered, and concluded that it was not concerned about, the discrepancy.

TC Capital was found to have breached General Principle 2, General Principle 7, and Paragraphs 12.1, 17.2(e) and 17.10 of the SFC Code of Conduct.

The SFC considered TC Capital's failures to be attributable to Wu, who was the sponsor principal in charge of the listing application and supervisor of the transactions team. He failed to properly discharge his duties and exercise due skill, care and diligence in handling his work. Wu thus breached General Principle 2, General Principle 9, Paragraph 4.2 and Paragraph 14.1 of the SFC Code of Conduct.

Hong Kong Retail Investors Convicted and Fined for Illegal Short Selling

On 18 August 2022, the Eastern Magistrates' Court convicted Ms Chan Siu Tai and her sister Ms Janice Chan after they pleaded guilty to illegal short selling. They were found to have breached section 170(1) of the Securities and Futures Ordinance which prohibits "naked" or "uncovered" short selling. That is to say it is an offence for a person to sell securities through the HKEx unless, at the time of sale, the person (or his client, if he is an agent) has a presently exercisable and unconditional right to vest the securities in the purchaser, or believes and has reasonable grounds to believe that he (or his client) has such a right. Section 170 does not apply to off-exchange short sales.

The proceedings were initiated by the SFC. The sisters were fined HK\$114,000 and ordered to pay for the SFC's investigation costs.

Between 19 June 2019 and 5 September 2019, the sisters had on 27 occasions placed orders to sell shares of seven listed securities on the HKEx when they did not own any of those shares. They later bought back the shares to cover their short sold positions, breaching Section 170(1) of the Securities and Futures Ordinance. The SFC's announcement of the conviction can be found on the website of the SFC [here](#).

HKMA Fines Commerzbank AG, Hong Kong Branch HK\$6 million for Breaches of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO)

On 26 August 2022, the HKMA announced that it had completed an investigation and disciplinary proceedings against Commerzbank AG, Hong Kong Branch (**Commerzbank**) for breaching the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**) and fined it HK\$6 million. The HKMA's statement of Disciplinary Action can be found on the HKMA website [here](#).

The HKMA had conducted an on-site examination and investigation into Commerzbank and found that Commerzbank contravened four provisions between 1 April 2012 and 30 June 2016 (**Relevant Period**), namely sections 3(1)(a), 3(4)(b), 19(1) and 19(3) of Schedule 2 to the AMLO.

Breaches of Sections 3(1)(a) and 3(4)(b) of Schedule 2 to the AMLO

The HKMA's sample review found that Commerzbank failed during the Relevant Period to carry out the specified customer due diligence measures with respect to 17 customers prior to establishing business relationships with them. The delays in conducting the due diligence measures ranged from 2 to 46 months. Section 3(1)(a) of Schedule 2 to the AMLO was therefore contravened.

Having been unable to comply with section 3(1)(a) of Schedule 2 to the AMLO, Commerzbank did not terminate the business relationship with 12 customers for periods ranging from 6 to 46 months. Commerzbank thus contravened section 3(4)(b) of Schedule 2 to the AMLO.

Breach of Section 19(1) of Schedule 2 to the AMLO

Commerzbank contravened section 19(1) of Schedule 2 to the AMLO as it failed to establish and maintain effective procedures for determining whether a customer or a beneficial owner of a customer is a politically exposed person. Before August 2015, Commerzbank conducted automated screenings for whether a customer was a politically exposed person, but not for whether the beneficial owner of a customer was a politically exposed person. Further, manual screenings to determine whether customers' beneficial owners were politically exposed persons were not conducted effectively, involving delays and failures to identify the beneficial owners of customers related to politically exposed persons.

Section 19(3) of Schedule 2 to the AMLO

In the Relevant Period, Commerzbank's standards regarding customer due diligence fell short of the standards described under the AMLO and the HKMA's Guideline on Anti-Money Laundering and Counter-Terrorist Financing for Authorised Institutions. The business procedures were allowed to go ahead when the approval from a line manager was obtained, even when proper customer due diligence had not been carried out. Furthermore, no requirements were established or maintained in any of Commerzbank's procedures or manuals for checking the completeness of customer due diligence before establishing a business relationship. Commerzbank therefore contravened section 19(3) of Schedule 2 to the AMLO.

The HKMA therefore fined Commerzbank HK\$6 million for contraventions of the AMLO.

[1] https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/codes/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission/Code_of_conduct_05082022_Eng.pdf

[2] https://www.sfc.hk/-/media/EN/files/ER/PDF/Sponsor-report_FINAL.pdf

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