Charltons - Hong Kong Law Newsletter - 24 December 2012

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# SFC Encourages Inside Information Disclosure Before The Statutory Disclosure Regime Comes Into Effect On 1 January 2013

The Securities and Futures Commission (**SFC**) has published a reminder to listed companies to make all necessary price sensitive information (**PSI**) announcements in the run up to 1 January 2013 to ensure that their PSI disclosures are up-to-date when the new statutory disclosure obligation comes into force. The SFC's news release can be accessed [on their website](http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=12PR135) ([see archive](SFC_encourages_companies_to_disclose_inside_information.pdf)).

The key features of the new statutory regime under the new Part XIVA of the Securities and Futures Ordinance are:

* an obligation on a corporation to disclose PSI (called **Inside Information** in the new legislation) as soon as reasonably practicable after the information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation;
* a maximum fine of HK$8 million for:
  + a corporation in breach of the obligation;
  + a director or chief executive if the corporation's breach is a result of (i) any intentional, reckless or negligent conduct on their part or (ii) their failure to take all reasonable measures to ensure that proper safeguards exist to prevent the corporation breaching the statutory disclosure requirement; and
* an obligation on officers to take all reasonable measures to ensure the existence of proper safeguards to prevent the corporation breaching the disclosure obligation. The SFC Guidelines on Disclosure of Inside Information (providing guidance on the disclosure obligation) stress the responsibility of officers, including non-executive directors, to ensure that appropriate systems and procedures are put in place and reviewed periodically to enable the corporation to comply with the disclosure requirement. Officers with an executive role also have a duty to oversee the proper implementation and functioning of the procedures and to ensure the detection and remedy of material deficiencies in a timely manner. The particular needs and circumstances of the listed corporation should be taken into account in establishing appropriate systems and procedures.

The SFC commenced a consultation service for corporations on the new regime on 1 December 2012.

Charltons published a more detailed newsletter previously on the new PSI disclosure regime, available [here](/newsletters/hklaw/en/2012/155/nl-hklaw-20120511-155.html). The SFC Guidelines on Disclosure of Inside Information can be viewed on the [SFC's website](http://en-rules.sfc.hk/net_file_store/new_rulebooks/h/k/HKSFC3527_4262_VER10.pdf). ([see archive](SFC_Guidelines_on_Disclosure_of_Inside_Information.pdf)).

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