



SFC REPRIMANDS AND FINES ICBCI AND DEUTSCHE BANK

Introduction

The Securities and Futures Commission (**SFC**) has made two announcements in relation to the failings of, and penalties imposed, on Deutsche Bank Aktiengesellschaft (**Deutsche Bank**), and ICBC International Capital Limited (**ICBCI Capital**) and ICBC International Securities (**ICBCI Securities**) (collectively **ICBCI**). This newsletter will highlight the issues relating to the findings of the investigations and matters that were taken into account in deciding the penalties.

ICBCI Failures in Relation to their Role in Powerlong IPO

The SFC reprimanded and fined ICBCI Capital and ICBCI Securities \$12.5 million each in relation to their role in the initial public offering of Powerlong Real Estate Holdings Limited (**Powerlong**) in 2009.

It was found that the ICBCI had:

- failed to conduct know-your-client due diligence and perform ongoing scrutiny of accounts of certain placees referred by Powerlong (**Placees**¹) to ensure that the transactions being conducted were consistent with its knowledge of the Placees' financial situation and taking into account their source of funds;

- turned a blind eye to the lack of independence of Placees for the subscription of Powerlong's shares allotted through its listing (the **Offer Shares**) on The Stock Exchange of Hong Kong Limited (**SEHK**), even though a staff member of ICBCI Capital raised his suspicion that the Placees' orders belonged to Powerlong;
- facilitated the listing of Powerlong by ensuring that margin financing of as much as 50% (which was not generally granted in international primary placings) would be extended to the Placees despite its suspicion of their non-independence; and
- failed to use reasonable efforts to ensure that submissions to the SEHK were true, accurate and not misleading.
 - ICBCI Securities filed the Marketing Statement (known as Form D) and a letter vouching placee independence with the SEHK even though it had not received all independence confirmations from the Placees at the time of making the filing with the SEHK in October 2009.
 - ICBCI Capital filed a Sponsor's Declaration (known as Form E) to the SEHK without making any reasonable enquiries that the number of Offer Shares in public hands would satisfy the minimum percentage prescribed by Rule 8.08 of the Listing Rules.²

¹ "Placees" refers to investors who subscribed for the offer shares via the international tranche.

² Rule 8.08(1)(a) prescribes that an open market in the securities for which listing is sought means that at least 25% of the issuer's total issued share capital must at all times be held by the public.

Disciplinary action

It was taken into account that ICBCI has an otherwise clean record and ICBCI's cooperation to address the SFC's concerns was also acknowledged by the SFC.

ICBCI agreed to accept the disciplinary action and committed to engage a firm of independent reviewers to undertake a comprehensive review of its systems and controls, from which recommendations will be implemented to the satisfaction of the SFC.

Deutsche Bank Regulatory Breaches and Internal Control Failings

The SFC reprimanded and fined Deutsche Bank \$1.6 million for regulatory breaches and internal control failings.

Failure to disclose

Deutsche Bank failed to disclose to the SEHK the changes to its percentage holdings in the issued share capital of Up Energy Development Group Limited on 27 occasions from 21 January 2011 to 25 August 2011. Three of these occasions involved trading activity by Deutsche Bank; the remainder involved increases to the listed company's total issued share capital.

The SFC noted the circumstances under which a person is under a duty of disclosure according to the following sections of the Securities and Futures Ordinance (**SFO**):

S 310(1)	Where a person acquires an interest in or ceases to be interested in shares comprised in the relevant share capital of a listed corporation; or where any change occurs affecting a person's existing interest in shares in a listed corporation's share capital, then in the circumstances specified in section 313(1), he comes under a duty of disclosure.
S 311	The interests to be disclosed for the purposes of the duty of disclosure arising under section 310 are those in the shares comprised in relevant share capital of the listed corporation concerned.

S 313(1)	The circumstances referred to in section 310(1) are those where the person: (a) first acquires a notifiable interest; (b) ceases to have a notifiable interest; (c) has a notifiable interest but the percentage levels of his interest have changed; or (d) has a notifiable interest but the nature of his interest has changed.
S 315	The notifiable percentage level for notifiable interests is 5% and the specified percentage level for changes to notifiable interests is 1%.
S 324	Where a person comes under a duty of disclosure under section 310, he should give notification to the listed corporation concerned and the SEHK of the interests which he has, or ceases to have, in the shares of the listed corporation. The notification should be given at the same time or, if not practicable, one immediately after the other.
S 325(1)	Notification required by section 324 should be given within three business days after the day on which the relevant event occurs.

Failure to implement adequate internal controls

The SFC investigations also found that Deutsche Bank failed to implement adequate internal controls to ensure its positions in Hong Kong listed companies were properly monitored and disclosed to SEHK in compliance with the disclosure of interests requirements.

The electronic position monitoring system of Deutsche Bank that captures and monitors its positions globally did not automatically capture equity positions that were processed and settled under the settlement system used in Singapore in its fixed income division. The issue arose when Deutsche Bank failed to implement adequate procedures or training to guide the relevant business groups at Deutsche Bank to identify and report those equity positions that did not automatically feed into its electronic position monitoring system.

Disciplinary action

The SFC took into account the fact that Deutsche Bank reported the matter to the SFC and has since strengthened its internal controls on the monitoring and disclosure of its equity positions in Hong Kong listed companies.

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