SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

SFC
證監會

Guidelines on Disclosure of Inside Information

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Introduction

1. On 1 January 2013 ("**Commencement Date**"), amendments to the Securities and Futures Ordinance ("**SFO**") (Cap. 571) come into effect to provide for a new Part XIVA under the SFO giving statutory backing to one of the most important principles in the Rules Governing the Listing of Securities ("**Listing Rules**") on the Stock Exchange of Hong Kong Limited ("**Stock Exchange**"). The provisions under Part XIVA impose a general obligation of disclosure of price sensitive, or "inside" information by listed corporations ("**corporations**")[1].

2. These Guidelines are published by the Securities and Futures Commission ("**SFC"**) under section 399 of the SFO to assist corporations to comply with their obligations to disclose inside information under Part XIVA of the SFO. However, they are not an exhaustive examination of the disclosure obligations as set out in the SFO nor can they be relied upon as an authoritative legal opinion. The obligations to disclose inside information depend upon the facts of each case.

3. These Guidelines provide examples and discuss issues on particular situations to illustrate the SFC's views on the operation of the provisions as set out in the SFO. They do not have the force of law.

4. As the definition of the new term "inside information" in Part XIVA of the SFO is the same as that of "relevant information" used in section 245 in Part XIII of the SFO in connection with insider dealing, the Guidelines have quoted the decisions of the tribunals in Hong Kong with regard to the meaning of "relevant information". The decisions of the tribunals in relation to insider dealing, and "relevant information" are relevant for the purposes of determining what constitutes "inside information" and may assist in determining when an obligation to disclose information arises under the SFO. For the avoidance of doubt, the Guidelines are intended to assist listed corporations and their officers to fulfil their obligations under Part XIVA. As the Guidelines do not concern the provisions of Part XIII and Part XIV other than the definition of "relevant information", they have no application to the operation of Part XIII and Part XIV of the SFO.

5. Although the Guidelines summarise the key aspects of what has been viewed by the tribunals in Hong Kong as constituting "relevant information", it is important to recognise that the set of circumstances or events will not be the same in each case and every case turns on its own facts. Understanding the principles underlying the obligations will help listed corporations and their officers to comply with the disclosure requirements. This summary is not intended to be exhaustive, is included for guidance only, and may not represent the latest legal authority.

6. The term "inside information" is used in the legislation because the provisions are concerned with information that is known to an officer, or "insider", of a corporation but not generally known to the market. The term "inside information" is also used in a similar context in the securities regulations of the European Union.

7. The obligations to disclose inside information under Part XIVA of the SFO are separate and distinct from the disclosure requirements under the Listing Rules and those under the Codes on Takeovers and Mergers and Share Repurchases ("**Takeovers Codes**").

[1] Where depositary receipts are issued, the corporation whose shares in respect of which the depositary receipts are issued is the listed corporation for the purposes of Part XIVA of the SFO.

Background

8. The statutory requirements to disclose inside information are central to the orderly operation and integrity of the market and underpin the maintenance of a fair and informed market.

9. To comply with the obligations, corporations should consider their own circumstances when deciding whether any inside information arises and how it should be disclosed properly to the public. Disclosure should be made in a manner that provides for equal, timely and effective access by the public to the information disclosed.

10. To strike an appropriate balance between encouraging timely disclosure of inside information and preventing premature disclosure which might prejudice a corporation's legitimate interests, the SFO provides for appropriate Safe Harbours to permit a corporation to withhold the disclosure of inside information in specified circumstances.

11. From one month before the Commencement Date, the SFC will provide a consultation service to assist corporations to understand how to apply the disclosure provisions. We will provide the consultation service initially for a period of 2 years and will then review whether it is necessary to continue the service for an additional period. We envisage that most questions will relate to the application of the Safe Harbours. The SFC is not in a position to judge whether in the circumstances of a particular corporation certain information is likely to materially affect the price of a corporation's listed securities, and accordingly, is not able to offer advice to a corporation on whether a particular piece of information is inside information.

12. In case of doubt, listed corporations are encouraged to consult the SFC, the contact details of which are available on the SFC website at www.sfc.hk.

What may constitute inside information?

13. Section 307A(1) of the SFO states that " 'inside information', in relation to a listed corporation, means specific information that –

(a) is about –

(i) the corporation;

(ii) a shareholder or officer of the corporation; or

(iii) the listed securities of the corporation or their derivatives; and

(b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities."

14. The definition of **inside information** is the same as that of "relevant information" used in section 245 of the SFO which applies to insider dealing. The term "relevant information" has been the subject of consistent and definitive interpretation by tribunals in Hong Kong over many years and those decisions will continue to offer guidance as to the meaning of the new term **inside information**.

15. Paragraphs 16 to 34 below summarise the key aspects of what has been viewed by tribunals as constituting "relevant information". A list of cases handled by the Insider Dealing Tribunal and the Market Misconduct Tribunal relevant to the interpretation of "relevant information" is set out in **Appendix A**. It is important to recognise that the set of factual circumstances or events will not be the same in each case. In particular, the circumstances in which insider dealings are regarded to have taken place would be different from the context in which the obligation to disclose may arise and thus the interpretative guidance available from these decisions may not apply. Nevertheless, understanding the principles underlying the obligations should help listed corporations and their officers to comply with the disclosure requirements. This summary is not intended to be exhaustive.

16. There are three key elements comprised in the concept of **inside information**. They are –

(a) the information about the particular corporation must be **specific**;

(b) the **information must not be generally known** to that segment of the market which deals or which would likely deal in the corporation's securities; and

(c) the information would, if so known be **likely to have a material effect on the price of the corporation's securities**[2].

Inside information must be specific information

17. Inside information must be specific information. Specific information is information which has the following characteristics –

(a) The information is capable of being identified, defined and unequivocally expressed.

Information concerning a company's affairs is sufficiently specific if it carries with it such particulars as to a transaction, event or matter, or proposed transaction, event or matter, so as to allow that transaction, event or matter to be identified and its nature to be coherently described and understood.[3]

(b) The information may not be precise.

It is not necessary that all particulars or details of the transaction, event or matter be precisely known. Information may still be specific even though it has a vague quality and may be broad which allows room, even substantial room, for further particulars[4]. For instance, information that a company is having a financial crisis would be regarded to be specific, as would contemplation of a forthcoming share placing even if the details are not known. However, specific information is to be contrasted with mere rumours, vague hopes and worries, and with unsubstantiated conjecture.[5]

[2] See p.34 of the IDT report dated 6 August 2009 on Harbour Ring International Holdings Limited

[3] See p.58-59 of the IDT report dated 2 April 2004 and 8 July 2004 on Firstone International Holdings Limited

[4] See p.235-236 of the IDT report dated 5 August 1995 on Public International Investments Ltd

[5] See p.20-21 of the IDT report dated 8 September 2006 and 14 December 2006 on Asia Orient Holdings Limited

(c) Information on a transaction contemplated or at a preliminary state of negotiation can be specific information but vague hopes and wishful thinking may not be specific information.

The fact that a transaction is only contemplated or under negotiation and has not yet been subjected to any formal or informal final agreement does not necessarily cause the information concerning that contemplated course of action or negotiation to be non-specific. However, a vague hope or wishful thinking that a transaction will occur or come to fruition does not amount to sufficient contemplation or preliminary negotiation of that transaction.

To constitute specific information, a proposal, whether described as under contemplation or at a preliminary stage of negotiation, should have more substance than merely being at the stage of a vague exchange of ideas or a "fishing expedition". Where negotiations or contacts have occurred, for these to be considered specific information there should be a substantial commercial reality to such negotiations which goes beyond a merely exploratory testing of the waters and which is at a more concrete stage where the parties intend to negotiate with a realistic view to achieving an identifiable goal.[6]

Inside information must be information that is not generally known

18. By its very nature, inside information is information which is known only to a few and not generally known to the market, the market being defined as those persons who are accustomed or would be likely to deal in the listed securities of that corporation.[7] In some instances, the investor group or class who are accustomed or would be likely to deal in the listed securities of that corporation may be a large one, comprising not only professional dealers and investors with elaborate networks for obtaining information, but also those of the investing public including small investors who deal in the particular category of stocks to which the corporation belongs.[8]

19. Even though there might be rumours, media speculation or market expectation as to an event or a set of circumstances of a corporation, these cannot be equated with information which is generally known to the market. There is a clear distinction between actual knowledge of the market about a hard fact which is properly disclosed by the corporation and speculation or expectation of what might have happened about a corporation which obviously requires proof.[9]

20. It is not uncommon that information relating to a corporation is found in media comments, analyst research reports or electronic subscription databases, which may consist of published historical information, market commentary, speculation, rumour or even information leaked from various sources. However, press speculation, reports and rumours in the market cannot be automatically taken to be information generally known to the market, even though in some cases the media reports might have a wide circulation.[10]

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[6] See p.60-61 of the IDT report dated 2 April 2004 and 8 July 2004 on Firstone International Holdings Limited

[7] See p.70 of the IDT report dated 10 April 2000 and 15 June 2000 on Hanny Holdings Limited

[8] See p.237-238 of the IDT report dated 5 August 1995 on Public International Investments Ltd

[9] See p.258 of the IDT report dated 5 August 1995 on Public International Investments Ltd

[10] See p.57-58 of the IDT report dated 22 February 1990 on Lafe Holdings Limited

21. In deciding whether information is generally known by virtue of being the subject of media comments, covered in analysts' reports or carried on news service providers, a corporation should consider not only how widely the information has been disseminated but also the accuracy and completeness of the information disseminated and the reliance that the market can place on such information. A corporation should consider in particular whether –

    (a) these sources contain the full information that would need to be disclosed as required under section 307B(3) so that there are no material omissions which may make the disclosure false or misleading (see paragraphs 39 and 43);

    (b) the market will realise that the information in these sources reflects the information known to the corporation; and

    (c) the information will be regarded as speculation or opinion of persons outside the corporation.

    Where the information known to the market is incomplete or there are material omissions or there are doubts as to its bona fides, such information cannot be regarded as generally known and accordingly full disclosure by the corporation is necessary.

22. Notwithstanding the above, a piece of information is regarded as generally known if it consists of readily observable matter such as general external developments e.g. changes in commodity prices, foreign exchange rates and interest rates, outbreak of pandemic diseases and occurrence of natural disasters or general public information e.g. disclosure of interests by directors and shareholders pursuant to Part XV of the SFO.

Inside information is information that is likely to have a material effect on the price of the listed securities

23. Corporations with potential inside information need to assess promptly whether or not the information is likely to have a material price effect. It would not be sufficient to meet the test of "likely to have a material price effect" if the information is likely to cause a mere fluctuation or slight change in price. For information to constitute inside information, there must be likelihood that the information would cause a change in the price of sufficient degree to amount to a material change.[11]

24. Generally information that is likely to have a material effect on the price of the listed securities is important information concerning a corporation. But the converse is not necessarily true. Some important information or information of great interest concerning a corporation may excite comment but may not be information that would be likely to have a material effect on the price of the securities. Similarly, some important information may be of a neutral or mixed nature that may influence some investors to buy and others to sell, but which would not be likely to affect the price either up or down to a material degree.[12]

25. Information that is *likely* materially to affect the price is information which *may well* materially affect the price. Put another way, it is more likely than less likely that the price will be affected materially. The further element of the statutory test concerns materiality.

[11] See p.58-59 of the IDT report dated 22 February 1990 on Lafe Holdings Limited

[12] See p.20 of the IDT report dated 10 March 2005 on HKCB Holding Company Ltd & Hong Kong China Ltd

It may be that what is a material price increase in one case may not necessarily be a material price increase in another case. It all depends on the share and the circumstances obtaining at the time.[13]

26. The standard by which materiality is to be judged is whether the information on the particular share is such as would influence persons who are accustomed or would be likely to deal in the share, in deciding whether or not to buy or whether or not to sell that share. A movement in price which would not influence such an investor may be termed immaterial. Price is, after all, to a large extent determined by what investors do. If generally known, it is the impact of the information on persons who are accustomed or would be likely to deal in the share, and thus on price, which has to be judged.[14]

27. The test of whether the information is likely to materially affect the price is a hypothetical one in that it has to be applied at the time the information becomes available. The exercise in determining how the general investor would behave if he was in possession of that piece of information has necessarily to be an assessment at the time the disclosure was to take place.[15]

28. It is clear that fixed thresholds of price movements or quantitative criteria alone are not a suitable means of determining the materiality of a price movement. For example, the volatility of "blue-chip" securities is typically less than that of small, less liquid stocks and "blue-chip" securities usually move within ranges narrower than those of small stocks. While a certain percentage movement for a small company stock might be seen immaterial, the same (or even lower) percentage movement if applied to a large company stock might be considered material by virtue of the stock's nature and size. In determining whether a material effect is likely to occur, the following factors should be taken into consideration –

    (a) the anticipated magnitude of the event or the set of circumstances in question in the context of the totality of the corporation's activity;

    (b) the relevance of the information as regards the main determinants of the price of the listed securities;

    (c) the reliability of the source;

    (d) market variables that affect the price of the listed securities in question (These variables could include prices, returns, volatilities, liquidity, price relationships among securities, volume, supply, demand, etc.).

29. Whilst the actual magnitude of the share movement once the information becomes publicly known indicates the extent of probable change the information might have brought about was it known to the market at the time, this evaluation is by no means conclusive. It is possible that the actual price change on the day the information is released is moderate because of the mixed impact arising from the information released and other extraneous factors or considerations. It is possible that a material price movement may have been pre-empted by the fact that the share price has already declined substantially in the period leading up to the release of the information. Care

[13] See p.41 of the IDT report dated 5 March 1997 on Hong Kong Parkview Group Limited

[14] See p.41 of the IDT report dated 5 March 1997 on Hong Kong Parkview Group Limited (the terminology of which is adjusted to reflect the terminology used in Part XIVA)

[15] See p.19-20 of the IDT report dated 10 March 2005 on HKCB Holding Company Ltd & Hong Kong China Ltd

must be taken to ascertain whether and how the investors' response once the information is stripped of its confidentiality and becomes public knowledge is attributable to the information released and / or affected by other events or considerations.[16]

Management accounts

30. In the ordinary course of running the business, directors and officers are likely to possess information concerning the corporation not generally known to the market. It is therefore necessary to distinguish between information about day-to-day activities, and on the other hand, significant events and matters which are likely to change a corporation's course or indicate that there has been a change in its course.[17]

31. Generally the mere knowledge of the content of draft annual or interim accounts prior to their publication or internal management accounts would not be specific information. However, knowledge of substantial losses or profits made by a corporation even though the precise magnitude is not yet clear would be specific information and accordingly may be inside information. The facts and figures in every case will be different and every case turns on its own facts. To constitute inside information the difference between the results which the market might predict and the results the directors or officers know must be significant.[18]

32. As stated by the Insider Dealing Tribunal in Chevalier (OA) International Limited, "what percentage is deemed to be "material" or "significant" or "substantial" in an insider dealing case may vary and it would be dangerous to lay down any hard and fast or arithmetic test[19]". Examples of relevant facts and key aspects which have been viewed by tribunals as constituting "material" in some insider dealing cases are set out in **Appendix B**.

33. In assessing what results the market might predict for a corporation, account must be taken of information previously disclosed by the corporation including past results, statements and any forecasts issued by the corporation. Reference should also be made to profit projections by analysts and the availability of data and information about the corporation in financial journals and publications from which a sophisticated investor may logically deduce the corporation's results. However, it would be inadvisable to consider these research reports or financial publications to be information generally known to the market because the market means "the persons who are accustomed or would be likely to deal in the listed securities of the corporation" which might include smaller investors who are unable to perform or follow professional analyses.[20]

34. Although there might be a substantial amount of financial and economic information circulated in the market, it is not unusual that profit forecasts made by different analysts vary considerably and media reports contain inconsistencies. As such analysts' reports, financial journals and media reports often fall short of providing information which is accurate, complete and not misleading or deceptive. Accordingly, a corporation should not normally treat these as information that is generally known and disclosure of any inside information would be necessary.

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[16] See p.59-60 of the IDT report dated 22 February 1990 on Lafe Holdings Limited

[17] See p.72-73 of the IDT report dated 10 April 2000 and 15 June 2000 on Hanny Holdings Limited

[18] See p.35-36 of the IDT report dated 23 July 1998 of Ngai Hing Hong Company Limited

[19] See p.73 of the IDT report dated 10 July 1997 on Chevalier (OA) International Limited

[20] See p.62-70 of the IDT report dated 10 July 1997 on Chevalier (OA) International Limited

Examples of possible inside information concerning the corporation

35. There are many events and circumstances which may affect the price of the listed securities of a corporation. It is vital for the corporation to make a prompt assessment of the likely impact of these events and circumstances on its share price and decide consciously whether the event or the set of circumstances constitutes inside information that needs to be disclosed. The following are common examples of such events or circumstances where a corporation should consider whether a disclosure obligation arises.

- Changes in performance, or the expectation of the performance, of the business;
- Changes in financial condition, e.g. cashflow crisis, credit crunch;
- Changes in control and control agreements;
- Changes in directors and (if applicable) supervisors;
- Changes in directors' service contracts;
- Changes in auditors or any other information related to the auditors' activity;
- Changes in the share capital, e.g. new share placing, bonus issue, rights issue, share split, share consolidation and capital reduction;
- Issue of debt securities, convertible instruments, options or warrants to acquire or subscribe for securities;
- Takeovers and mergers (corporations will also need to comply with the Takeovers Codes that include specific disclosure obligations);
- Purchase or disposal of equity interests or other major assets or business operations;
- Formation of a joint venture;
- Restructurings, reorganizations and spin-offs that have an effect on the corporation's assets, liabilities, financial position or profits and losses;
- Decisions concerning buy-back programmes or transactions in other listed financial instruments;
- Changes to the memorandum and articles (or equivalent constitutional documents);
- Filing of winding up petitions, the issuing of winding up orders or the appointment of provisional receivers or liquidators;
- Legal disputes and proceedings;
- Revocation or cancellation of credit lines by one or more banks;

- Changes in value of assets (including advances, loans, debts or other forms of financial assistance);
- Insolvency of relevant debtors;
- Reduction of real properties' values;
- Physical destruction of uninsured goods;
- New licenses, patents, registered trademarks;
- Decrease or increase in value of financial instruments in portfolio which include financial assets or liabilities arising from futures contracts, derivatives, warrants, swaps protective hedges, credit default swaps;
- Decrease in value of patents or rights or intangible assets due to market innovation;
- Receiving acquisition bids for relevant assets;
- Innovative products or processes;
- Changes in expected earnings or losses;
- Orders received from customers, their cancellation or important changes;
- Withdrawal from or entry into new core business areas;
- Changes in the investment policy;
- Changes in the accounting policy;
- Ex-dividend date, changes in dividend payment date and amount of dividend; changes in dividend policy;
- Pledge of the corporation's shares by controlling shareholders; or
- Changes in a matter which was the subject of a previous announcement.

36. However, the above list of events or circumstances should not be treated as definitive in terms of meaning that the information in question, if disclosed, will have a material price effect. It is a *non-exhaustive and purely indicative* list of the type of events or circumstances which might constitute inside information. The fact that an event or a set of circumstances does not appear on the list does not mean it cannot be inside information. Nor does inclusion in the list mean that it automatically is inside information. It is the materiality of the information in question that needs to be considered. Information which is likely to materially affect the price of the securities should be disclosed.

37. Moreover, corporations should take into account that the materiality of the information in question will vary widely from entity to entity, depending on a variety of factors such as the entity's size, its course of business and recent developments, the market sentiment about the entity and the sector in which it operates. For example, what may constitute material information to one party to a contract may be immaterial to another party.

Similarly, cancellation of a credit line by a bank which is material to an entity facing liquidity problems may be immaterial to another entity which is highly liquid.

When and how should inside information be disclosed?

38. Section 307B(1) of the SFO states that –

"A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public."

39. Section 307B(3) of the SFO states that –

"Without limiting subsection (1), a listed corporation fails to disclose the inside information required under that subsection if –

(a) the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(b) an officer of the corporation knows or ought reasonably to have known that, or is reckless or negligent as to whether, the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact."

40. A corporation must disclose any inside information to the public *"as soon as reasonably practicable"* unless the information falls within any of the Safe Harbours as provided in the SFO. For this purpose, "as soon as reasonably practicable" means that the corporation should immediately take all steps that are necessary in the circumstances to disclose the information to the public. For example, if a corporation faces an event that might significantly affect its business and operations, the necessary steps which the corporation should immediately take prior to the issue of a public announcement may include ascertaining sufficient details, internal assessment of the matter and its likely impact, seeking professional advice where required and verification of the facts.

41. Before the information is fully disclosed to the public, the corporation should ensure that the information is kept strictly confidential. Where the corporation believes that the necessary degree of confidentiality cannot be maintained or that confidentiality may have been breached, it should immediately disclose the information to the public.

42. If a corporation needs time to clarify the details of, and the impact arising from, an event or a set of circumstances before it is in a position to issue a full announcement to properly inform the public, the corporation should consider issuing a "holding announcement" which –

(a) details as much of the subject matter as possible; and

(b) sets out reasons why a fuller announcement cannot be made.

The corporation should make a full announcement as soon as reasonably practicable.

43. The information contained in an announcement must not be false or misleading as to a material fact, or false or misleading through the omission of a material fact. To comply with this requirement, the information must be accurate and complete in all material respects and not be misleading or deceptive, and there are no omissions that would

make the information misleading. The information must be presented in a clear and balanced way, which requires equal disclosure of both positive and negative facts.

44. There are circumstances where confidentiality has not been maintained and the corporation is not able to make an announcement, be it a full announcement or a holding announcement. In such cases, the corporation should consider applying for a suspension of trading in its securities until disclosure can be made. The fact that trading in the securities of the corporation is suspended in no way lessens the obligations of a corporation to disclose inside information to the public as soon as reasonably practicable.

45. Section 307C(1) of the SFO states that –

"*A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed*."

46. Section 307C(2) of the SFO states that –

"Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public."

47. To fulfil the obligation to disclose to the public, a corporation should disclose inside information to the market as a whole so that all users of the market have equal and simultaneous access to the same information.

48. Section 307C(2) provides a corporation with certainty that disclosure by way of the electronic publication system operated by the Stock Exchange meets its obligation to ensure that the public has equal, timely and effective access to the inside information it discloses. Accordingly the SFC would expect a corporation to use this channel for dissemination of inside information. In addition, under the Listing Rules, a corporation is required to publish announcements of inside information through the electronic publication system of the Stock Exchange.

49. A corporation may implement additional means to disseminate information such as issuing a press release through news or wire services, holding a press conference in Hong Kong and / or posting an announcement on its own website; however, using such means of themselves are unlikely to be sufficient to satisfy the obligation to ensure equal, timely and effective access by the public to the information.

Responsibility for compliance and management controls

50. Section 307B(2) of the SFO states that –

"*For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if –*

(a) 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; and

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation."

51. Section 307G of the SFO states that –

"*(1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.*

(2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation –

(a) whose intentional, reckless or negligent conduct has resulted in the breach; or

(b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,

is also in breach of the disclosure requirement."

52. Although the disclosure obligation rests with the corporation, the corporation is a legal entity which cannot act on its own. The corporation can only act through its "controlling mind", which encompasses its officers. Therefore, under section 307B(2), the corporation is considered to have knowledge of the inside information when (a) one or more of its officers knows or ought reasonably to have known that information in the course of performing functions as officers of the corporation **and** (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation. In applying the test under subsection 307B(2)(b), a reasonable officer would consider whether the information is inside information based on his knowledge of all relevant facts and circumstances at the time; such information cannot be judged in hindsight taking account of factors that were not reasonably known at the time.

53. According to Part 1 Schedule 1 of the SFO, an "officer", in relation to a corporation, means "a director, manager or secretary of, or any other person involved in the management of, the corporation". As a general principle, one must look to the object of the legislation and the context to determine the meaning of the term "manager". In the context of Part XIVA, in considering whether a person is a "manager", the person's actual responsibilities are more important than the person's formal title. A "manager" normally refers to a person who, under the immediate authority of the board, is charged with management responsibility affecting the whole of the corporation or a substantial part of the corporation. A person is normally regarded to be "involved in the management of the corporation" if the person discharges the role of a "manager". A "secretary" means a company secretary which has the meaning ascribed to it under the Companies Ordinance (Cap. 32).

54. The corporation should establish and maintain appropriate and effective systems and procedures to ensure any material information which comes to the knowledge of one or more of its officers be promptly identified, assessed and escalated for the attention of the Board of directors to decide about the need for disclosure. This would require a timely and structured flow to the Board of information arising from the development or occurrence of events and circumstances so that the Board can decide whether disclosure is necessary.

55. In ensuring compliance with the obligation to disclose inside information in relation to any material changes in the corporation's financial condition, in the performance of its business or in its expectation as to its performance, the Board should establish and maintain appropriate and effective reporting procedures which ensure a timely and structured flow of relevant financial and operational data.

56. It is ultimately the responsibility of the corporation's officers to ensure that the corporation complies with the disclosure obligation. Officers are obliged to take all reasonable measures to ensure proper safeguards exist to prevent the corporation from breaching the statutory disclosure requirement, which would include the creation and maintenance of appropriate internal control and reporting systems. If a breach on the part of the corporation is attributable to the failure to take all reasonable measures to ensure that proper safeguards exist by, or to any intentional, reckless or negligent conduct of, any officers, the officers concerned would also be liable.

Officers' liability

57. An officer would only have liability under section 307G(2)(a) **if** (i) the listed corporation is in breach of a disclosure requirement; **and** (ii) the officer's intentional, reckless or negligent conduct resulted in the breach.

58. In the situation where an officer has actual knowledge of information which should have been disclosed the meaning of "intentional", "reckless" and "negligent" can be summarised as follows –

(a) The requirement for conduct to be intentional means that there must be evidence that the officer intended the corporation not to disclose information that was required to be disclosed under a disclosure requirement.

(b) The requirement for conduct to be reckless means that the officer was aware that there was a risk that by not disclosing the information the corporation may breach a disclosure requirement and it was in the circumstances known to him unreasonable to take the risk.

(c) The requirement for conduct to be negligent means the officer failed to exercise such care, skill or foresight as a reasonable officer in his situation would exercise to ensure or cause the corporation to comply with a disclosure requirement.

Assuming a corporation has implemented reasonable measures to prevent a breach, an officer who acts in good faith and in accordance with all his fiduciary duties without actual knowledge of the information or involvement in the corporation's breach is unlikely to be personally liable under any of the elements discussed above.

Obligations of non-executive directors

59. Given the unitary nature of a board and the indivisible legal duties of all directors, both executive directors and non-executive directors should exercise due care, skill and diligence to fulfil their roles and obligations. However, as acknowledged in the

Corporate Governance Code issued by the Stock Exchange[21], non-executive directors normally are not involved in the daily operations of a corporation and would usually rely on a corporation's internal controls and reporting procedures to ensure that, where appropriate, material information is identified and escalated to the board as a whole. It is for this reason that the board's responsibility for establishing and monitoring key internal control procedures is of particular significance for non-executive directors as this is an area where they are more likely to be directly involved. It is therefore more likely that sections 307G(1) and 307G(2)(b) will be of direct relevance to them.

Reasonable measures

60. Under sections 307G(1) and 307G(2)(b), officers must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement. In this respect, officers, including non-executive directors, are responsible to ensure that appropriate systems and procedures are put in place and reviewed periodically to enable the corporation to comply with the disclosure requirements. Officers with an executive role would also have a duty to oversee the proper implementation and functioning of the mechanisms and ensure that any material deficiencies are detected and resolved in a timely manner. In developing the systems and procedures, boards should take into account the particular needs and circumstances of the corporation. The following provides examples of measures which should be considered when establishing systems and procedures. These are not hard and fast rules and should not be taken as a definitive or exhaustive list. It would depend on the specific circumstances to determine whether there was a breach of section 307G(1) or section 307G(2)(b) and the absence of some of the examples below would not be conclusive.

    (a) Establish controls for monitoring business and corporate developments and events so that any potential inside information is promptly identified and escalated.

    (b) Establish periodic financial reporting procedures so that key financial and operating data is identified and escalated in a structured and timely manner.

    (c) Maintain and regularly review a sensitivity list identifying factors or developments which are likely to give rise to the emergence of inside information.

    (d) Authorize one or more officer(s) or an internal committee to be notified of any potential inside information and to escalate any such information to the attention of the board.

    (e) Maintain an audit trail of meetings and discussions concerning the assessment of inside information.

    (f) Restrict access to inside information to a limited number of employees on a need-to-know basis. Ensure employees who are in possession of inside information are fully conversant with their obligations to preserve confidentiality.

[21] See Listing Rule Appendix 14 - A.6.2. The functions of non-executive directors should include: (a) participating in board meetings to bring an independent judgement to bear on issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct; (b) taking the lead where potential conflicts of interests arise; (c) serving on the audit, remuneration and other governance committees, if invited; and (d) scrutinising the corporation's performance in achieving agreed corporate goals and objectives, and monitoring performance reporting.

(g) Ensure appropriate confidentiality agreements are in place when the corporation enters into significant negotiations.

(h) Disseminate inside information via the electronic publication system operated by the Stock Exchange before the information is released via other channels, such as the press, wire services or posting on the corporation's website.

(i) Designate a small number of officers or executives with the appropriate skills and training to speak on behalf of the corporation when communicating with external parties such as the media, analysts or investors.

(j) Develop procedures to review presentation materials in advance before they are released at analysts' or media briefings.

(k) Record briefings and discussions with analysts or the media afterwards to check whether any inside information has been inadvertently disclosed.

(l) Develop procedures for responding to market rumours, leaks and inadvertent disclosures.

(m) Provide regular training to relevant employees to help them understand the corporation's policies and procedures as well as their relevant disclosure duties and obligations.

(n) Document the disclosure policies and procedures of the corporation in writing and keep the documentation up to date.

(o) Publish the disclosure policies and procedures of the corporation so that the media and other stakeholders understand the corporation's statutory disclosure obligations.

Safe Harbours that allow non-disclosure of inside information

61. To strike an appropriate balance between requiring timely disclosure of inside information and preventing premature disclosure which might prejudice a corporation's legitimate interests, the SFO provides for Safe Harbours which permit a corporation to withhold disclosure of inside information under specified circumstances. Section 307D of the SFO sets out the Safe Harbours –

"*(1) A listed corporation is not required to disclose any inside information under section 307B if and so long as the disclosure is prohibited under, or would constitute a contravention of a restriction imposed by, an enactment or an order of a court.*

(2) A listed corporation is not required to disclose any inside information under section 307B if and so long as –

(a) the corporation takes reasonable precautions for preserving the confidentiality of the information;

(b) the confidentiality of the information is preserved; and

(c) one or more of the following applies –

(i) the information concerns an incomplete proposal or negotiation;

(ii) the information is a trade secret;

(iii) the information concerns the provision of liquidity support from the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66) or from an institution which performs the functions of a central bank (including such an institution of a place outside Hong Kong) to the corporation or, if the corporation is a member of a group of companies, to any other member of the group;

(iv) the disclosure is waived by the Commission under section 307E(1), and any condition imposed under section 307E(2) in relation to the waiver is complied with."

(3) For the purposes of subsection (2) –

(a) a listed corporation has not failed to take reasonable precautions for preserving the confidentiality of any inside information only because the corporation has, in the ordinary course of business, disclosed the information to any person who –

(i) requires the information to perform the person's functions in relation to the corporation; and

(ii) by virtue of any enactment, rule of law, contract, or the articles of association of the corporation, is under a duty to the corporation not to disclose the information to any other person; and

(b) in those circumstances, the confidentiality of the information is to be regarded as having been preserved.

(4) Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if –

(a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and

(b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved."

Where disclosure is prohibited by law

62. By virtue of section 307D(1), no statutory disclosure is required for information where disclosure would breach an order made by a Hong Kong court or any provisions of other Hong Kong statutes. For example, under section 30 of the Prevention of Bribery Ordinance (Cap. 201), it is unlawful for a person to disclose details of an investigation of

the Independent Commission Against Corruption, except for disclosure matters which are carved out from that prohibition. If a corporation or any of its officers is subject to an investigation by the ICAC and such investigation constitutes inside information, disclosure would not be required to the extent that it is prohibited statutorily. Nonetheless, disclosure of other information which would not contravene the relevant statutory requirement is still required.

63. The Safe Harbour under section 307D(1) does not apply to information the disclosure of which is prevented by contract. A corporation cannot justify not making the disclosure by virtue of the terms of an agreement which require the parties entering into the agreement not to disclose information about the agreement or the transaction that is the subject of the agreement. The terms and conditions of a contract do not override the statutory requirement.

Where disclosure is withheld in other circumstances

64. To rely on a Safe Harbour under section 307D(2), a corporation must satisfy each of subsections (a) **and** (b) **and** one paragraph of subsection (c). We discuss subsections (a) and (b) first and deal with subsection (c) below at paragraph 71.

Preservation of confidentiality

65. The requirements of the Safe Harbour under subsections 307D(2)(a) and (b) are that the corporation must take reasonable measures to preserve the confidentiality of the information and that the confidentiality of the information is preserved. In this regard, the corporation needs to ensure that knowledge of information is restricted to those who need to have access to it and that recipients of the information are aware that the information is confidential and recognise their obligations to maintain the information confidential. Where the information has not been kept confidential or there has been a leak, whether intentionally or inadvertently, these conditions will not be fulfilled and any Safe Harbour will no longer apply.

66. If there are unexplained changes to the share price of the corporation's securities or if there are comments about the corporation in the media or analysts' reports, this may indicate that confidentiality has been lost. It would be more likely to indicate that confidentiality has been lost where comments about the corporation are significant and credible and the details are reasonably specific or the market moves in a way that appears to be referrable to such comments.

67. The requirement to preserve confidentiality under subsection 307D(2)(a) is not breached if information is given to another person who needs the information to fulfil the person's duties and functions in relation to the corporation and provided that the person owes the corporation a duty of confidentiality. The information should be given on the basis that restricts its use to the stated purpose and the recipient should recognise the resulting obligations. The categories of persons who may receive the information include the following –

    (a) the corporation's advisers and advisers of other persons involved in the matter in question;

    (b) persons with whom the corporation is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or placees of the securities of the corporation);

(c) the corporation's lenders;

(d) the corporation's major shareholders; and

(e) any government department, statutory or regulatory body or authority (e.g. SFC, Stock Exchange).

68. A corporation should note that the wider the group of recipients of inside information the greater the likelihood of a leak. If, during the period in which the corporation has decided to withhold disclosure, any inside information is released from any source, however inadvertent, the Safe Harbour no longer applies and public disclosure by the corporation is required.

69. If a corporation has availed itself of any of the Safe Harbours, it should keep under review whether confidentiality of the information has been maintained. If confidentiality has been lost, the Safe Harbour no longer applies and the corporation must disclose the inside information as soon as reasonably practicable. The corporation should normally prepare a draft announcement (albeit a holding announcement) to be kept updated ready for publication if it becomes apparent that confidentiality has not been maintained. In addition, the corporation should consider recording the reasons for relying on the Safe Harbour and the steps taken in preserving and monitoring confidentiality.

70. Where confidentiality has been lost and hence the Safe Harbour under section 307D(2)(b) falls away, if a corporation proves that it has taken reasonable measures to monitor the confidentiality and that it has made disclosure as soon as reasonably practicable once it becomes aware of the leakage, the corporation shall not be regarded to be in breach of the disclosure requirement.

Categories of information

71. The requirement of the Safe Harbours under subsection 307D(2)(c) is that the information falls into one or more of the categories as prescribed in paragraphs (i) to (iv) of that subsection. If the information is not, or if it loses that character, then the requirement is not satisfied.

72. ***Where information concerns an incomplete proposal or negotiation***. No statutory disclosure is required for information concerning incomplete proposals or negotiations. The following are examples –

- when a contract is being negotiated but has not been finalised;
- when a corporation decides to sell a major holding in another corporation;
- when a corporation is negotiating a share placing with a financial institution; or
- when a corporation is negotiating the provision of financing with a creditor.

73. Where a corporation in financial difficulty and is in negotiations with third parties for funding, the Safe Harbour provides relief from disclosure in respect of the negotiations and the status of progress of those negotiations. However the Safe Harbour does not allow the corporation to withhold disclosure of any material change in its financial

position or performance which led to the funding negotiations and, to the extent that this is inside information, should be the subject of an announcement.

74. ***Where information concerns a trade secret***. No statutory disclosure is required for information that is a trade secret. A trade secret generally refers to proprietary information owned by a corporation –

(a) used in a trade or business of the corporation;

(b) which is confidential (i.e. not already in the public domain);

(c) which, if disclosed to a competitor, would be liable to cause real or significant harm to the corporation's business interests; and

(d) the circulation of which is confined to a limited number of persons on a need-to-know basis.

Trade secrets may concern inventions, manufacturing processes or customer lists. For example, a corporation with a new pharmaceutical product may withhold disclosure until after completing the registration of the patent for the product. However, a corporation cannot regard the commercial terms and conditions of a contractual agreement or the financial information of a company as trade secrets as these are not proprietary information or rights owned by the corporation.

75. ***Where information concerns the provision of liquidity support***. No statutory disclosure is required for information concerning the provision of liquidity support from the Exchange Fund of the Government or from an institution which performs the functions of a central bank, including one located outside Hong Kong. The liquidity support may be provided to the corporation or, if the corporation is a member of a group of companies, to any other member of the group. The entity receiving the liquidity support is normally a banking institution which may be registered in or outside Hong Kong.

76. ***Where disclosure is waived by the SFC***. There are circumstances where disclosure of the information is prohibited under or would constitute a contravention of a restriction imposed by –

(a) legislation of a place outside Hong Kong;

(b) an order of a court exercising jurisdiction under the law of a place outside Hong Kong;

(c) a law enforcement agency of a place outside Hong Kong; or

(d) a government authority of a place outside Hong Kong in the exercise of a power conferred by legislation of that place,

especially where the corporation or certain of its subsidiaries are incorporated or operate outside Hong Kong. In these cases, the SFC may, on application by a corporation, grant an exemption to waive disclosure of the information if it considers appropriate to do so. An exemption granted may be unconditional or subject to specified conditions. No statutory disclosure is required for information for which an

exemption has been granted and any conditions imposed in relation to the exemption have been complied with.

77. An application to the SFC to exempt disclosure of the information must be made in writing. The application should contain a clear explanation of why the exemption is requested in the circumstances and include all relevant details and information necessary for the SFC to consider the matter. Where applicable, the application should include an appropriate legal opinion to set out all relevant issues. The application should be accompanied by a fee which is payable pursuant to the Securities and Futures (Fees) Rules.

78. The application would be considered by an SFC executive committee that would make a first instance decision after considering all relevant facts and circumstances. If the waiver is rejected by the executive committee, the corporation may request the decision be reviewed by a committee appointed by the Commission for the purposes of handling reviews ("**Review Committee**"). A request for such a review must be made by the applicant to the Review Committee within 2 business days after the refusal of the waiver. Any member of the SFC who was involved in the first instance decision will not participate in the deliberations of the Review Committee in considering the review. A decision made by the Review Committee will be final and binding.

Guidance on particular situations and issues

Dealing with media speculation, market rumours and analysts' reports

79. Corporations are generally under no obligation to respond to media speculation, market rumours or analysts' reports. However, if a corporation has inside information and relies on a Safe Harbour to withhold disclosure subject to the preservation of confidentiality, the existence of media speculation, market rumours or analysts' reports about the corporation might indicate that matters intended to be kept confidential have leaked. In particular, where media speculation, market rumours or analysts' reports are largely accurate and the information underlying the speculation, rumours or reports constitutes inside information, it is likely that confidentiality has been lost, thus the Safe Harbour falls away and public disclosure is required. Accurate and extensive rumours and media speculation, even where included in analysts' reports, are unlikely to represent information that is generally known and accordingly disclosure by the corporation is necessary.

80. If a corporation does not have inside information but media reports or market rumours carry false or untrue information, the corporation is not obliged to make further disclosure under the SFO. This notwithstanding, under the Listing Rules, the Stock Exchange may require a corporation to provide disclosure or clarification beyond that required by the SFO, for example the issue of a negative announcement to confirm that a rumour is false. The fact that the corporation issues an announcement as requested by the Stock Exchange for the purposes of the Listing Rules would not in itself imply that the corporation has failed to meet the disclosure obligation for inside information under the SFO. If a corporation wishes to respond to rumours, the corporation should do so by making a formal announcement, rather than making a remark to a single publication or by way of a press release. This will ensure that the whole market is equally and properly informed.

81. A corporation should ensure that no inside information is given when answering an analyst's questions or reviewing an analyst's draft report. It is inappropriate for a

question to be answered, or draft report corrected, if doing so involves providing inside information. When analysts visit the corporation, care should be taken to ensure they do not obtain inside information.

82. In some circumstances, a corporation does not have inside information but an analyst's report contains errors or misinterpretations by, for example, using out of date data, or misreading or misinterpreting historical information of the corporation especially where the corporation's business is complex and / or comprised of many different divisions. In such cases, unless the corporation knows of inside information relevant to the analyst's report which has not been disclosed, strictly speaking the corporation is not obliged to make a correction or clarification under the SFO. It may nevertheless be appropriate, as a matter of good practice, for the corporation to clarify historical information and correct any factual errors in the analyst's assumptions which are significant to the extent that they may mislead the market, provided any clarification is confined to drawing the analyst's attention to information that has already been made available to the market. If the corporation becomes aware of inside information that would correct a fundamental misconception in the report, public disclosure of such information would be necessary. Nonetheless, a corporation is under no legal obligation to track reports prepared by third parties.

83. No analyst, investor or journalist should receive a selective release of inside information.

Internal matters

84. A corporation may consider internal issues in its day-to-day running which may involve matters of supposition or of an indefinite nature and where premature disclosure of the information may be more misleading than informative. Such information is not specific information. This might include, for example, the development of a new technology, the planning of a major redundancy program or the possibility of a substantial price cut in its products. Consideration of these matters with hypotheses or scenarios would not normally constitute inside information. However, once these matters become specific or definite, they may constitute inside information.

85. Similarly, a corporation may from time to time generate internal reports for management purposes. For example, an internal marketing research report may indicate that a new product to be launched by a competitor may pose a significant challenge that needs to be addressed as one possible outcome could be a significant loss of sales. The mere possibility that without a successful response the corporation could face a serious decline in profits does not automatically trigger an obligation to disclose. However, if after time the competitor's new product has significantly reduced sales, then the fact of the change in trading performance, shown by regular performance monitoring, may constitute inside information.

Corporation listed on more than one exchange

86. If the securities of a corporation are listed on more than one stock exchange, the corporation should synchronise the disclosure of inside information as closely as possible in all markets in which the securities are listed. In general, the corporation should ensure that inside information is released to the public in Hong Kong at the same time it is given to the overseas markets. If inside information is released to another market when the market in Hong Kong is closed, the corporation should issue an announcement in Hong Kong before the Hong Kong market opens for trading.

87. If necessary, the corporation may request a suspension of trading in its securities pending the issue of the announcement in Hong Kong.

Publications by third parties

88. Publications by industry regulators, government departments, rating agencies or other bodies may affect the price of, or market activity in, the securities of the corporation. If such publications when they become public knowledge are expected to have significant consequences directly affecting the corporation this may be inside information that should be disclosed by the corporation with an assessment of the likely impact of those events.

External developments

89. Corporations are not expected to disclose general external developments, such as foreign currency rates, the market price of commodities or changes in a taxation regime. However, if the information has a particular impact on the corporation this may be inside information that should be disclosed by the corporation with an assessment of the likely impact of those events.

In the course of preparing periodic and other structured disclosures

90. A corporation may be required in a number of circumstances to prepare disclosure in prescribed structured formats pursuant to the relevant laws and listing rules, for example, regular periodic financial reports, circulars and listing documents. In the course of preparing these prescribed disclosure documents, a corporation may become aware of inside information previously unknown to the directors and officers, or information in respect of a matter or financial trend which may have crystallised into inside information.

91. A corporation should be aware that inside information which requires disclosure may emerge during the preparation of these disclosures, in particular periodic financial information, and that the corporation cannot defer releasing inside information until the prescribed document is issued. Separate immediate disclosure of the information is necessary.

Appendix A

List of cases handled by the Insider Dealing Tribunal and the Market Misconduct Tribunal

The following is a list of insider dealing cases handled and published by the Insider Dealing Tribunal and the Market Misconduct Tribunal as at 31 May 2012. Details of these cases can be found on the Insider Dealing Tribunal website at http://www.idt.gov.hk/ and the Market Misconduct Tribunal website at http://www.mmt.gov.hk/

Insider Dealing Tribunal

1) Founder Holdings Limited – Report of the IDT dated 5 Nov 2009

2) Harbour Ring International Holdings Limited (currently known as Hutchison Harbour Ring Limited) – Report of the IDT dated 6 Aug 2009

3) Vanda Systems and Communications Holdings Limited – Report of the IDT dated 26 Mar 2007

4) Tingyi (Cayman Islands) Holding Corp – Report of the IDT dated 11 Jan 2007

5) Dransfield Holdings Limited (later renamed China Merchants DiChan (Asia) Limited; now known as Pearl Orient Innovation Limited) – Report of the IDT dated 22 Dec 2006

6) Siu Fung Ceramics Holdings Limited – Report dated 18 Mar 2004 (1st Report), 25 Oct 2004 (2nd Report), 14 Mar 2006 (3rd Report) & 2 Nov 2006 (4th Report)

7) Asia Orient Holdings Limited – Report of the IDT dated 8 Sep 2006 & 14 Dec 2006

8) Cheong Ming Investments Limited (formerly Cheong Ming holdings Limited) – Report of the IDT dated 3 Aug 2006 & 14 Sep 2006

9) Easy Concepts International Holdings Limited (subsequently renamed as 21CN CyberNet Corporation Limited and known as CITIC 21CN Company Limited) and Easyknit International Holdings Limited – Report of the IDT dated 19 Jan 2006

10) Gilbert Holdings Limited – Report of the IDT dated 11 May 2005 & 15 Dec 2005

11) HKCB Holding Company Ltd & Hong Kong China Ltd (now renamed Lippo China Resources Ltd) – Report of the IDT dated 10 Mar 2005 (1st Part), 9 Aug 2005 (2nd Part) & 20 Mar 2008 (3rd Part)

12) Chinney Alliance Group Limited – Report of the IDT dated 24 Dec 2004

13) Firstone International Holdings Limited – Report of the IDT dated 2 Apr 2004 & 8 Jul 2004

14) Stime Watch International Holding Limited – Report of the IDT dated 6 Dec 2003 & 14 Feb 2003

15) China Apollo Holdings Limited – Report of the IDT dated 31 Jan 2002 & 6 Jun 2002

16) Indesen Industries Company Limited (now known as Central China Enterprises Limited) – Report of the IDT dated 2 Nov 2001

17) Hanny Holdings Limited (formerly known as Hanny Magnetics (Holdings) Limited) – Report of the IDT dated 10 Apr 2000 & 15 Jun 2000

18) Chinese Estates Holdings Limited – Report of the IDT dated 6 May 1999

19) Ngai Hing Hong Company Limited – Report of the IDT dated 23 Jul 1998

20) Chee Shing Holdings Limited – Report of the IDT dated 30 Mar 1998 & 21 Jun 2001

21) Emperor (China Concept) Investments Limited – Report of the IDT dated 8 Jun 1998

22) Hong Kong Worsted Mills Limited (now renamed as Beijing Development (H.K.) Limited) – Report of the IDT dated 18 Nov 1997 & 21 Jan 1998

23) Chevalier (OA) International Limited – Report of the IDT dated 10 Jul 1997

24) Hong Kong Parkview Group Limited – Report of the IDT dated 5 Mar 1997

25) Yanion International Holdings Limited – Report of the IDT dated 29 Oct 1996

26) Public International Investments Ltd – Report of the IDT dated 5 Aug 1995

27) Success Holdings Limited – Report of the IDT dated 24 Jun 1994

28) Lafe Holdings Limited – Report of the IDT dated 22 Feb 1990

29) International City Holdings Limited – Report of the IDT dated 27 Mar 1986 (Vols. I & II)

Market Misconduct Tribunal

30) Chaoda Modern Agriculture (Holdings) Limited – Report of the MMT dated 26 Apr 2012

31) ABC Communications (Holdings) Limited – Report of the MMT dated 20 Oct 2011

32) Mirabell International Holdings Limited – Report of the MMT dated 23 Jul 2010

33) China Overseas Land and Investment Limited – Report of the MMT dated 8 Jul 2009

34) Sunny Global Holdings Limited – Report of the MMT dated 21 Jul 2008

Appendix B

Examples of previous insider dealing cases: materiality

Case	Relevant facts	Factors relevant to materiality
China Apollo Holdings Limited (IDT report dated 31 Jan 2002 & 6 Jun 2002)	- On 7 Dec 1995, before the listing, the Company published a prospectus which included its actual business results to 30 Jun 1995 and a profit forecast for the year ended 31 Dec 1995 amounting to not less than $190 million. It was listed on 19 Dec 1995. - On 21 May 1996, the Company announced its final results to the year ending 31 Dec 1995 which disclosed a profit attributable to shareholders of $192 million. The figure included an exceptional gain of $15.8 million made on the sale of a long-term investment held by a major subsidiary pursuant to a sale and purchase agreement dated 26 Dec 1995. - Without the inclusion of the exceptional gain, the Company would not meet the profit forecast in the prospectus. The prospectus, however, had stated that the profit forecast did not include any exceptional items in the calculation and that the directors did not expect any exceptional items to arise during the year to 31 Dec 1995. - At the time of the issue of the prospectus, only the directors were in possession of information relating its results up to and including Oct 1995. It was apparent that sales deteriorated in the second half of 1995, rendering the attainment of profit forecast of not less than $190 million impossible.	- The tribunal accepted the evidence of the non-expert and expert witnesses. On the evidence, the investors' response was wholly attributable to the information released on 21 May 1996. The tribunal had no doubt that had the market known of the Company's poor trading results for the 2nd half of 1995 before that date, this information would have been likely to have had a material impact on the price of its shares, both on the flotation and in subsequent trading up to 21 May 1996.[1] - It was certainly information, which had it been known during the relevant time would have been likely to cause more than a mere fluctuation, or a slight change in the Company's share price.[2]
Hanny Holdings Limited (IDT report dated 10 Apr 2000 & 15 Jun 2000)	- On 3 Jan 1994, the Company published its interim results for the 6 months ended 30 Sep 1993 with an increased profit attributable to shareholders of $82.36 million, compared to $60.08 million for the same period in 1992. The announcement expressed a bullish sentiment on the Company's performance for the year ended 31 Mar 1994. - But, it was subsequently discovered from draft accounts that the year end results for	- The tribunal accepted the accuracy of the expert witness's evidence. The tribunal had no doubt that if the information of what was really happening at the Company from about 11 Jul 1994 onwards had been shared with the investing public it would have brought about a material drop in the value of the Company's shares. The very nature and extent of the

[1] See p.47 of the IDT report of China Apollo Holdings Limited dated 31 January 2002 & 6 June 2002

[2] *Ibid*

Case	Relevant facts	Factors relevant to materiality
	the year ended 31 Mar 1994 were in fact facing a significant loss. - One of the earliest of these accounts (bearing a date of 11 Jul 1994) showed that just one company in the Group was looking at a loss of over HK$100 million compared to a profit of HK$18 million at the end of the previous year. - On 2 Sep 1994, the Company announced its year end results showing that the profit decreased by 76%.	Company's reversal of fortunes makes that obvious.[3] - If further proof was needed, the reaction to the Company's results when they were formally published on 2 Sep 1994 was sufficient. Despite a major fall in value over the previous weeks (share price dropped by 33% over 5 weeks from 13 Jul to 22 Aug 1994), when the Company's year-end position was spelt out in black and white the drop in value continued. Between 2 and 7 Sep 1994, share price dropped another 15% over 5 trading days.[4]
Ngai Hing Hong Company Limited (IDT report dated 23 Jul 1998)	- On 21 Jul 1995, the then financial controller of the Company (who was also the company secretary and an executive director) purchased 1 million shares of the Company. - At the time of his purchase, the financial controller possessed the following information which was not in public possession: • The Company's consolidated accounts for the 9 months up to 31 Mar 1995 showed a total profit of approximately $47.1 million. • The Company's management accounts for 11 months up to 31 May 1995 showed a profit before adjustments of approximately $71.4 million. - Information in the public domain at that time was limited to knowledge that: • The interim results for the first 6 months of the year showed a profit of approximately $20.8 million. • The annual result for the previously year 1993/94 showed a profit of approximately $35 million.	- The facts and figures in every case will be different and every case turns on its own facts.[5] - To constitute relevant information, the difference between the results which the public might predict and the results which the insider knows must be significant. If it were not significant the share price would not be materially affected.[6] - To arrive at a decision in each case the tribunal must make a judgement from the combined effect of the figures themselves, the expert evidence concerning those figures and the insider's own testimony either admitting or explaining those figures.[7] - Based on the totality of the evidence coupled with the absence of any submissions to the contrary the tribunal was satisfied that the difference between what the financial controller of the Company knew and the likely investors of the Company knew at the material time was sufficiently significant and

[3] See p.100 of the IDT report of Hanny Holdings Limited dated 10 April 2000 & 15 June 2000
[4] *Ibid*
[5] See p.36 of the IDT report of Ngai Hing Hong Company Limited dated 23 July 1998
[6] *Ibid*
[7] *Ibid*

Case	Relevant facts	Factors relevant to materiality
	- If the public wanted to estimate the final profit for year 1994/95, they would probably double the half yearly figure and arrive at a figure of about $40 million which represents an improvement over the 1993/94 figure of about 14% whereas the financial controller of the Company knew that the unaudited accounts for 11 months of the year in fact represented an improvement in profit over the previous year of about 105%. - Due to adjustments, the annual figure which was subsequently published on 18 Sep 1995 showed a profit of $60.9 million (an improvement of over 70%).	material to constitute relevant information.[8]
Chevalier (OA) International Limited (IDT report dated 10 Jul 1997)	- From the date of its incorporation in 1988 until the financial year 1992/93, the Company had always made a profit; however, the size of its profits got smaller each year from $45.9 million in 1989 to $4.5 million in 1992. - On 13 Jan 1993, the Company announced its half yearly loss of $16.9 million (up to 30 Sep 1992). - The Company's monthly management account showed the following accumulated losses in the subsequent months after the first half year – up to Oct 1992: $24.66 million; Nov 1992: $28.91 million; Dec 1992: $35.60 million; Jan 1993: $43.90 million (i.e. the half yearly loss of $16.9 million doubled in the space of 3 months and increased by a factor of 2.8 in 5 months). These monthly management accounts were circulated to the directors of the Company on a monthly basis from 16 Jan 1993 to 1 Apr 1993. - On 12 Aug 1993, the Company announced its final figures for the financial year 1992/93. For the year ended 31 Mar 1993, the Company incurred a total loss of $84.5 million. - The share price of the Company fell from 40 cents at the close on 11 Aug 1993 to	- What does "materially" mean? Synonyms include considerably, substantially, significantly. Authority on the meaning is sparse.[9] - When gauging materiality it is obviously more helpful to look at percentages than actual cents. In the accountancy profession a movement up or down of 5% or more is deemed to be material.[10] - What percentage is deemed to be "material" or "significant" or "substantial" in an insider dealing case may vary and it would be dangerous to lay down any hard and fast or arithmetic test.[11] - At the end of the day the tribunal can only hazard an educated guess as to how the market would have reacted.[12]

[8] *Ibid*, see p.38
[9] See p.72 of the IDT report of Chevalier (OA) International Limited dated 10 July 1997
[10] *Ibid*
[11] *Ibid*, see p.73
[12] *Ibid*

Case	Relevant facts	Factors relevant to materiality
	31 cents on 25 Aug 1993 (over 10 trading days). - As at early May 1993, the alleged insider would have known that the final loss for the year ended 31 Mar 1993 would be not less than $54 million, taking into consideration the previous trend, adjustments and other factors, before the announcement of the final figure. The question to be determined was whether this loss was "material".	
Lafe Holdings Limited (IDT report dated 22 Feb 1990)	- The Company reported a profit of $22.13 million for the half year ended 30 Jun 1988 in its interim report dated 22 Sep 1988. - The Company's internal management account revealed that the accumulated net profit for the year continued to rise to reach a peak of $28.7 million on 31 Aug 1988. However, beginning with September to the end of that year, the Company incurred losses – for Sep: $2.78 million; for Oct: $5.9 million; for Nov: $2.35 million and for Dec: $7.77 million, making a total loss of $18.8 million for the 4 months ended Dec 1988. - The effect of those losses was that the Company's net profits for the year dropped dramatically from the accumulated total of $28.7 million at the end of Aug 1988 to $9.9 million at the end of Dec 1988. - The then chairman (who was also the managing director and principal shareholder) of the Company possessed the information of the management accounts for Dec 1988 in the middle of Mar 1989. - In the period between 24 Nov 1988 and 5 May 1989, the chairman sold 99.3% of his shareholding (i.e. 175.13 million shares of the Company). In particular, 161.82 million shares were sold between 1 Mar 1989 and 5 May 1989. - The results for the year ended Dec 1988 were published on 5 May 1989.	- Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the likelihood of change of sufficient degree in any given circumstances to amount to a material change. [13] - The share price declined steeply from $0.94 to $0.53 i.e. almost 44% during the period from 1 Mar to 5 May 1989. It is perhaps not surprising, taking into account the overall decline from $1.10 in mid-Feb 1989, that when the results were actually released on 5 May 1989, they did not have a major impact and the price fell some 5 cents in the ensuing week, i.e. about 10%, which may nevertheless be thought by no means immaterial. However, had the results come out at the times the sales by the chairman were procured, the fall could have well been greater. [14] - Having regard to all the evidence and the foregoing considerations the tribunal was satisfied that both the information in the monthly accounts for Sep, Oct and Nov 1988 that losses had occurred in those months, and the information that the total losses for the last 4 months of 1988 amounted to 18.8 million, revealed by the Dec accounts, was each on its own likely to produce a material change, i.e. a substantial fall, in the

[13] See p.58-59 of the IDT report of Lafe Holdings Limited dated 22 February 1990

[14] *Ibid*, see p.59-60

Case	Relevant facts	Factors relevant to materiality
		Company's share price, if it had become generally available during the period ending 5 May 1989 and beginning 1 Mar 1989 or even earlier.[15]

[15] *Ibid*, see p.62