

Safe Harbours

- The four safe harbours cover –
 - (a) information prohibited from being disclosed by a Hong Kong court or under Hong Kong statutes;
 - (b) information concerning an incomplete negotiation or proposal, which is consistent with the existing approach under Stock Exchange of Hong Kong Limited's Listing Rules and the takeovers regime administered by the SFC;
 - (c) information which is a trade secret. A trade secret generally refers to proprietary information owned by a corporation used in the trade or business in which the corporation operates. This may concern inventions, manufacturing processes or customer lists; and
 - (d) very rare circumstances when the need to maintain and

safeguard financial stability overrides the benefit of making public a given piece of information. One example would be the provision to listed banking institutions of liquidity support by Government or central banks in times of financial crisis, immediate disclosure of which could lead to a loss of confidence in the institution, which might in turn adversely affect the banking system as a whole.

- Apart from the above safe harbours, there may be circumstances that a disclosure of PSI would mean a contravention against legal prohibition in other jurisdictions, especially if the concerned listed corporation has major business activities outside Hong Kong. To cater for the practical needs of such corporations, the Bill will empower the SFC to grant waivers to listed corporations on a case-by-case basis, if the disclosure is prohibited by legislation or a court outside Hong Kong, or if the prohibition is made by a law enforcement agency outside Hong Kong or a government authority outside Hong Kong exercising a statutory power of that place.

Civil Sanctions

- The Bill proposes imposing civil sanctions on listed corporations and their “officers” breaching the statutory PSI disclosure requirement, and that alleged breaches be handled by the MMT.

The MMT may impose the following civil sanctions -

- (a) disqualification of the “officer” from being a director or otherwise involved in the management of a listed corporation for up to five years;
- (b) a “cold shoulder” order on the “officer” (i.e. the person is deprived of access to market facilities) for up to five years;
- (c) a “cease and desist” order on the listed corporation or “officer” (i.e. an order not to breach the statutory disclosure requirement again);
- (d) a regulatory fine up to \$8 million on the listed corporation, each of the directors and/or the chief executive¹ respectively;²

¹ Chief executive is defined under s.308(1) of SFO as “the person employed or otherwise engaged by a corporation who, either alone or together with one or more persons, is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the corporation”.

² Compared with our consultation proposals in 2010, the Bill has extended the regulatory fine to cover chief executive as well, in light of the consideration that like directors, chief executive plays a much more prominent role than other “officers” who are not directors in a listed corporation, and that he is head of the staff of the corporation. Both directors and the chief executives have already been subject to specific statutory requirements under the SFO which do not apply to other “officers”.

- (e) an order that any body of which the “officer” is a member be recommended to take disciplinary action against him;
- (f) payment of costs of the civil inquiry and/or the SFC investigation by the listed corporation or “officer”;
- (g) such order as is necessary to ensure that the listed corporation takes appropriate action to prevent a similar breach of the disclosure requirement. This includes -
 - i. ordering an “officer” to undergo training;
 - ii. ordering a listed corporation to appoint an independent professional adviser to review its compliance procedure; and
 - iii. ordering a listed corporation to appoint an independent professional adviser to advise on compliance matters.