

## Statement on the liability of valuers for disclosure of false or misleading information

Listed companies often engage professional valuers to value assets they own or propose to buy. Corporate disclosure documents such as prospectuses, announcements/circulars and financial statements listed companies publish may rely on or incorporate these valuations.

If a listed company discloses false or misleading information in a corporate disclosure document and the false or misleading information is connected with a valuer's valuation, the valuer may be liable for any false or misleading information related to that valuation.

Firstly, a person who discloses, circulates or disseminates materially false or misleading information, or authorises or is concerned in the disclosure, circulation or dissemination of such information may contravene section 277 of the Securities and Futures Ordinance (**SFO**) and be civilly liable if the person knows that, or is reckless or negligent as to whether, the information is false or misleading as to a material fact or through the omission of a material fact. If that person knows, or is reckless as to whether, the information is false or misleading, he may alternatively commit a criminal offence under section 298 of the SFO<sup>1</sup>. Accordingly a valuer may be liable if it has authorised or was concerned in a listed company's disclosure of false or misleading information and the valuer knows that, or is reckless or negligent as to whether the information is false or misleading, under sections 277 or 298 of the SFO.

Secondly, if a valuer contravenes section 277 or section 298 of the SFO, the SFC may also bring proceedings under section 213 of the SFO for remedial orders, including an order that the valuer pay compensation to restore any person to any transaction to the position they were in before the transaction was entered into<sup>2</sup>. A valuer may be liable to compensate investors who subscribe for, sell or buy listed company shares at an under-value or over-value if the valuation contributed to the information in the corporate disclosure document being false or misleading.

Separately, if a valuation is included in a prospectus with the consent of the valuer, the valuer may be civilly liable<sup>3</sup> to pay compensation to investors who subscribed for shares or debentures in the company on the faith of the prospectus and suffered loss or damage by reason of any untrue or misleading statement in the prospectus made by the valuer.

The SFC is more likely to investigate the involvement of a valuer in the disclosure of false or misleading information by a listed company if it appears to the SFC that:

1. the valuer knew or should have known that the valuation and/or any of the underlying assumptions is not reasonable and fair;

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<sup>1</sup> The information must be likely to induce investment decisions or have a material price effect.

<sup>2</sup> Section 213(2)(b) of the SFO enables the Court to order that a person, who has been involved in a contravention of the SFO, knowingly or otherwise, take such steps as the Court may direct, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into.

<sup>3</sup> Under sections 40 and 342E of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, which apply respectively to prospectuses in respect of shares or debentures in companies incorporated in Hong Kong and companies incorporated outside Hong Kong.



2. the valuer has made an obvious mistake in the valuation;
3. the valuer has not exercised the degree of skill and care which is ordinarily exercised by reasonably competent members of the profession; and
4. the valuer has lost independence or impartiality in performing the valuation. For example, if a valuer, who the listed company instructed to produce the valuation, advised the vendor of the target company to amend key terms of sales agreements, e.g. the unit price and transaction volume of the sales agreements, which were the basis for the revenue projection used in the valuation of the target company.