

SFC commences MMT proceedings against AcrossAsia Limited, its Chairman and CEO for late disclosure of inside information

27 Jul 2015

The Securities and Futures Commission (SFC) has commenced proceedings in the Market Misconduct Tribunal (MMT) against AcrossAsia Limited (AcrossAsia) for failing to disclose highly sensitive inside information as soon as reasonably practicable (Note 1).

The SFC has also commenced proceedings in the MMT against Mr Albert Saychuan Cheok, the Chairman of AcrossAsia, and Mr Vicente Binalhay Ang, the Chief Executive Officer of AcrossAsia, for their reckless or negligent conduct causing the alleged breach by the company of the provisions of the statutory corporate disclosure regime.

This is the first set of proceedings in the MMT brought by the SFC in relation to the disclosure obligations imposed on listed companies under the Securities and Futures Ordinance since they became effective on 1 January 2013 (Note 2).

The SFC's allegations arise from the litigation in Indonesia between AcrossAsia and its subsidiary, PT First Media Tbk (PT First Media). At dispute was the failure of AcrossAsia to repay the money owed to PT First Media. The litigation led to enforcement proceedings by PT First Media against AcrossAsia, including insolvency-related proceedings in Indonesia against AcrossAsia by way of a petition dated 20 December 2012 and a summons dated 28 December 2012. These proceedings sought, among other things, to suspend AcrossAsia's obligation for payment of debts temporarily to enable a composition plan to be presented to PT First Media and to appoint an Indonesian judge and administrators to manage AcrossAsia's assets (Note 3).

Copies of the court documents, which were in Bahasa Indonesian, were received by AcrossAsia's Hong Kong office on 2 January 2013, and their English translations were circulated to Cheok and Ang on 4 January 2013. However, AcrossAsia did not disclose such information to the public until 17 January 2013 after the Indonesian court made these insolvency-related orders against AcrossAsia on 15 January 2013. AcrossAsia sought a suspension of trading on 15 January 2013 and when trading resumed on 22 February 2013, the share price fell by 22.5%.

The SFC alleges that the issue of the insolvency-related proceedings in Indonesia together with their contents were specific information regarding AcrossAsia, highly price sensitive and not generally known to the public at the material time because these proceedings threatened AcrossAsia with loss of control of its major asset, including its stake in PT First Media in Indonesia, and could lead to AcrossAsia being put into liquidation.

End

Notes:

1. AcrossAsia was listed on the Growth Enterprise Market of The Hong Kong Stock Exchange on 13 July 2000.
2. A copy of the SFC's Notice commencing the MMT proceedings is available on the MMT's website (www.mmt.gov.hk).
3. The action taken by PT First Media was to recover the principal loan of US\$44 million plus interest accrued pursuant to a loan facility agreement entered into between PT First Media and AcrossAsia on 30 June 2011. AcrossAsia failed to repay the loan when it fell due on 30 June 2012.

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**IN THE MATTER OF THE LISTED SECURITIES OF
ACROSSASIA LIMITED (STOCK CODE 8061)**

**NOTICE TO THE MARKET MISCONDUCT TRIBUNAL
PURSUANT TO SECTION 307I(2) OF AND SCHEDULE 9 TO THE
SECURITIES AND FUTURES ORDINANCE CAP 571 (“ORDINANCE”)**

Whereas it appears to the Securities and Futures Commission (“**Commission**”) that a breach of disclosure requirement within the meaning of sections 307B and 307G of Part XIVA of the Ordinance has or may have taken place in relation to the securities of AcrossAsia Limited (Stock Code 8061) listed on the Stock Exchange of Hong Kong Limited, the Market Misconduct Tribunal is hereby required to conduct proceedings and determine:

- (a) whether a breach of a disclosure requirement has taken place; and
- (b) the identity of any person who is in breach of the disclosure requirement.

**Persons and/or corporate bodies appearing to the Commission to have breached
or may have breached a disclosure requirement**

- (1) AcrossAsia Limited (“**AAL**”)
- (2) Albert Saychuan Cheok (“**Cheok**”)
- (3) Vicente Binalhay Ang (“**Ang**”)

Statement for institution of proceedings

- 1. AAL is a Cayman Islands-incorporated company whose securities have since 13 July 2000 been listed on the Growth Enterprise Market of the Hong Kong Stock Exchange.
- 2. At all material times, Cheok was AAL’s Chairman and Ang was its Chief Executive Officer.
- 3. AAL is an investment holding company. Its major asset at the material times was and still is a 55.1% holding and controlling interest in PT First Media Tbk (“**First Media**”), a company whose securities have been listed on the Stock Exchange of Indonesia since 2007. First Media and its subsidiaries (collectively, “**First Media Group**”) are engaged in the provision of digital telecommunication services such as, *inter alia*, broadband internet and cable

TV services. AAL's income and profit is derived from the business operations of the First Media Group.

4. On 30 June 2011, AAL entered into a loan facility agreement with First Media of that date (“**Facility Agreement**”) whereby AAL availed itself of a US\$44 million loan from First Media (with an interest rate of 4.75% per annum) for the purpose of providing general working capital and for business development. The facility was for a period of three months which was to be automatically rolled over for a duration of up to one year (i.e. by 30 June 2012).
5. On 30 August 2012, First Media commenced arbitration proceedings against AAL at the Indonesian National Board of Arbitration (“**BANI**”) to recover the principal loan of US\$44 million that was due on 30 June 2012 pursuant to the terms of the Facility Agreement but remained unpaid by AAL. At the conclusion of these proceedings, an arbitration award was granted in favour of First Media against AAL on 12 September 2012 ordering AAL to pay First Media the principal amount of the loan together with interest in the total amount of US\$46,774,403 (“**BANI Award**”). The BANI Award was registered in the Central Jakarta District Court (“**CJDC**”) on 13 September 2012 and was received by AAL on 14 September 2012 upon which trading in its securities was suspended.
6. The BANI Award was disclosed to the public via an announcement titled “Price Sensitive Information and Resumption of Trading” on 20 September 2012 wherein the Board of AAL stated that the BANI Award was “*considered to constitute price sensitive information of the Company and is therefore subject to disclosure requirement under Rule 17.10 of the GEM Listing Rules*”.
7. On 24 September 2012, the CJDC declared that the BANI Award may be enforced. On 27 September 2012, First Media applied to the CJDC to enforce the BANI Award.
8. An Official Summons was issued by the CJDC on 1 October 2012 and served on AAL on 3 October 2012 requiring AAL to be present in court on 16 October 2012 for an “Official Warning” to settle the BANI Award in favour of First Media.
9. An “emergency meeting” of the Board of Directors of AAL was held on 3 October 2012 to discuss the ramifications of the Indonesian proceedings, the BANI Award in particular. At this meeting, attended *inter alia* by Cheok and Ang, it was made clear that any breach of the Indonesian court rulings would “*potentially have serious material adverse effects on the company*”;

Indonesian counsel had advised that the potential consequence of a failure to comply with the Indonesian Court's order would include the following:

“(1) First Media could seek to take further actions in Indonesia to seize assets of [AAL], which comprised primarily of shares in First Media and such assets are situated in Indonesia;

(2) First Media could seek to take further actions in Indonesia with a view of winding up [AAL]; and

(3) Upon occurrence of one or both of the foregoing, this is likely to impact on [AAL]'s ability to carry on its business as a going concern and may also have an effect on [AAL]'s ability to maintain its listing status.”

10. On 16 October 2012, the Chief Judge of the CJDC adjourned the Official Warning Summons for further hearing/warning on 30 October 2012, on which date the hearing/warning was further adjourned to 27 November 2012.

11. On 7 November 2012, AAL published its Third Quarterly Report 2012 in which the Indonesian proceedings were referred to.

12. On 27 November 2012, the Chief Judge of the CJDC gave a final warning to AAL to pay the BANI Award (which had become an Indonesian judgment debt) within 8 days, namely, by 5 December 2012. AAL did not make the payment.

13. On 20 December 2012, First Media filed a “Petition for Suspension of Obligation for Payment of Debts (PKPU)” against AAL (“**PKPU Petition**”). It was stated in §8 of the PKPU Petition that the petition was submitted pursuant to “*Article 222 paragraph (3) of Law No. 37 of 2004 on Bankruptcy and Suspension of Obligation for Payment of Debts (PKPU) (hereinafter referred to as ‘the Law on Bankruptcy and Suspension of Obligation for Payment of Debts’)*” on the basis that the Debtor (AAL) could not continue paying its debts that had been due and payable and may present a composition plan that included an offer to pay all or part of their debts to the Creditor. On the face of the petition, First Media sought, *inter alia*:

(a) The temporary suspension of obligation for payment of debts against AAL for 45 days;

(b) The appointment of a supervisory judge from the Commercial Court or the CJDC to supervise the process of suspension of obligation for payment of debts;

- (c) The appointment of administrators to manage the assets of AAL; and
 - (d) An order that the administrators so appointed summon First Media, AAL and known creditors to appear before the Commercial Court at the CJDC on a date not later than 45 days from the date of the Court's ruling on the PKPU Petition.
14. The PKPU Petition was registered with the Indonesian Court on 26 December 2012. A Summons dated 28 December 2012 (“**Summons**”) was issued by the CJDC to AAL summoning AAL to appear in court on 4 January 2013 to give testimony at the hearing of the PKPU Petition.
 15. AAL received a copy of the PKPU Petition and the Summons, in the original Indonesian Bahasa language, by facsimile dated 2 January 2013. English translations of these documents were provided to AAL on 4 January 2013 and circulated amongst its officers, including Cheok and Ang.
 16. The issue of the PKPU Petition and the Summons together with the information contained therein was ‘inside information’ within the meaning of section 307B of the Ordinance in that those documents contained information which was:
 - (a) about AAL; and
 - (b) was not generally known to the persons who were accustomed or would be likely to deal in the listed securities of AAL but would if generally known to them have been likely to materially affect the price of those securities.
 17. Such inside information came to the knowledge of Cheok and Ang, officers of AAL, on or about 4 January 2013 in the course of their performing functions as officers of AAL; and a reasonable person, acting as an officer of AAL, would have considered that the information was inside information in relation to AAL.
 18. Once such information came to the knowledge of Cheok and Ang AAL was obliged, pursuant to section 307B(1) of the Ordinance, to disclose that information to the public as soon as reasonably practicable. However, Cheok and Ang failed to ensure that AAL disclose, and AAL did not disclose, that information to the public in a timely manner until 17 January 2013.
 19. From 8 January 2013 to 15 January 2013, Cheok and Ang were in Jakarta, Indonesia, to attend the hearing of the PKPU Petition before the Indonesian Commercial Court, wherein an order granting the PKPU Petition was made by the Indonesian Commercial Court on 15 January 2013.

20. In the meantime, the Commission had via the Hong Kong Stock Exchange been demanding that AAL issue a holding announcement relating to the Indonesian proceedings. AAL eventually issued a Holding Announcement at 19:33 on 17 January 2013 in those circumstances.
21. Accordingly, AAL failed to disclose any information to the public pertaining to the PKPU Petition or the Summons, which constituted inside information, as soon as reasonably practicable after the inside information came to the knowledge of AAL on or about 4 January 2013 and was therefore in breach of a disclosure requirement pursuant to section 307B(1) of the Ordinance.
22. It was the responsibility of Cheok and Ang, as officers of AAL, to ensure that AAL complied with its disclosure obligation. They failed to so ensure; their reckless or negligent conduct as described in paragraphs 17 and 18 above resulted in AAL's breach of a disclosure requirement, and they were therefore also in breach of a disclosure requirement pursuant to section 307G(2)(a) of the Ordinance.
23. By reason of all the matters set out above:
 - (a) AAL failed or may have failed to disclose to the public inside information (within the meaning ascribed to it under section 307A of the Ordinance) constituted by the PKPU Petition and the Summons as soon as reasonably practicable after the said inside information had come to its knowledge, contrary to section 307B(1) of the Ordinance;
 - (b) Cheok and Ang, both officers of AAL, were or may be guilty of reckless or negligent conduct in failing to ensure AAL's compliance with its disclosure obligation, wherein such conduct resulted in the breach of a disclosure requirement by AAL. Cheok and Ang were accordingly also in breach of a disclosure requirement pursuant to section 307G(2)(a) of the Ordinance.

Dated this the 22nd day of July 2015

Securities & Futures Commission
Securities and Futures Commission