
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded and fined Ever-Long Securities Company Limited (**Ever-Long**)¹ \$3 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**).
2. The disciplinary action is taken in respect of Ever-Long's failure to discharge its duties as the sole sponsor in the listing application (**Listing Application**) of Coastal Corporation Limited (**Coastal**) on the Growth Enterprise Market (**GEM**) of The Stock Exchange of Hong Kong Limited (**SEHK**), in that Ever-Long has failed to:
 - (a) perform proper due diligence on the following material issues in relation to a business arrangement (**Chartering Arrangement**) between one of Coastal's two operating subsidiaries (**Coastal's Subsidiary**) and a top customer (**Top Customer**) of Coastal and its subsidiaries (**Group**):
 - (i) the rationale for entering into the Chartering Arrangement;
 - (ii) **the operations as well as the legality and compliance of the Chartering Arrangement;** and
 - (iii) the Group's reliance on deemed connected transactions in relation to the Chartering Arrangement;
 - (b) when submitting the Listing Application, ensure that all material issues known to Ever-Long which, in its reasonable opinion, were necessary for the consideration of whether Coastal was suitable for listing and whether the listing of Coastal's securities was contrary to the interest of the investing public or to the public interest, were disclosed in writing to SEHK; and
 - (c) before the submission of the Listing Application, come to a reasonable opinion that the information in the Application Proof² was substantially complete except in relation to matters that by their nature could only be dealt with at a later date, and ensure that all material information as a result of the due diligence had been included in the Application Proof.

Summary of facts

Background

¹ Ever-Long is licensed under the SFO to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 4 (advising on securities) and Type 6 (advising on corporate finance) regulated activities.

² According to the Rules Governing the Listing of Securities on GEM of SEHK (**GEM Listing Rules**), the "Application Proof" refers to a draft listing document that is required to be substantially complete and is submitted to SEHK together with a listing application form for the purpose of listing equity securities of a new applicant.

3. The Group was a provider of vessel chartering services based in Singapore. It specialised in providing vessels for fuel oil bunkering and fuel cargo transportation in Singapore and the Southeast Asia region³. According to the Application Proof, the Group focused on vessel chartering and did not engage in the bunkering operation business, which was highly regulated in Singapore, for a number of strategic, financial and operational reasons.
4. On 7 October 2016, Ever-Long submitted Coastal's first Listing Application (**First Application**) together with an Application Proof to SEHK. Ever-Long re-submitted Coastal's Listing Application twice, on 26 May 2017 and 31 January 2018 respectively, due to the lapse of more than six months from the previous application⁴.
5. Between November 2016 and July 2018, SEHK raised various questions and comments on the Chartering Arrangement to which Ever-Long submitted responses as well as eight revised versions of the Application Proof.
6. Despite such responses and revised versions of the Application Proof, **the SFC expressed deep concerns about certain fundamental issues in relation to the Chartering Arrangement** and sought Coastal's reply to the same in July 2018. Coastal and Ever-Long did not respond to the SFC's concerns.
7. SEHK informed Ever-Long on 1 August 2018 that the Listing Application submitted on 31 January 2018 had lapsed.

The Chartering Arrangement

8. Between September 2011 and December 2013, Coastal's Subsidiary leased three bunker crafts to one of Coastal's connected persons under the GEM Listing Rules (**Connected Person A**), which enabled Connected Person A to fulfil its bunkering operation orders by supplying bunker oil to its customers in Singapore.
9. Between January 2014 and September 2017, Coastal's Subsidiary leased five bunker crafts to the Top Customer (**Chartering Arrangement**), an independent third party, which enabled the Top Customer to provide bunkering services to its customers including another connected person of Coastal (**Connected Person B**).
10. The chartering income attributed to the Chartering Arrangement accounted for more than half of the Group's revenue for each of the financial years ended 30 June 2015, 2016 and 2017.
11. Upon entering into the Chartering Arrangement, Coastal's Subsidiary had effectively changed its operation model from leasing its vessels to a connected person of Coastal to leasing its vessels to an independent third party.

A. Inadequate due diligence on material issues in relation to the Chartering Arrangement

³ Bunkering is the process of supplying fuel oil from bunker crafts to receiving crafts, and in short means refuelling of the receiving crafts.

⁴ The track record periods (**TRPs**) of the three Listing Applications were (i) the two financial years ended 30 June 2016; (ii) the two financial years ended 30 June 2016 and nine months ended 31 March 2017; and (iii) the three financial years ended 30 June 2017 respectively.

The Group's rationale for entering into the Chartering Arrangement

12. According to the information provided by Ever-Long to SEHK, one of the reasons for Coastal's Subsidiary to enter into the Chartering Arrangement was that with the Top Customer taking up the role as the charterer of vessels and bunker operator, Coastal's connected persons could avoid incurring the additional resources required for complying with revised standards on bunkering operations issued by the **Maritime and Port Authority of Singapore (MPA)**.
13. Ever-Long was aware before the First Application that all bunker craft operators in Singapore waters need to be licensed and accredited by the MPA. Ever-Long was also aware that **the Top Customer did not obtain a bunker craft operator licence from the MPA**.
14. In the circumstances, Ever-Long ought to have considered whether the Top Customer's lack of licence would have had an impact on its ability to discharge its role under the Chartering Arrangement. This would, in turn, call into question Coastal's professed reasons for entering into the Chartering Arrangement and cast doubt on the reasonableness and legality of the transactions between Coastal's Subsidiary and the Top Customer.
15. However, Ever-Long failed to critically assess the rationale for entering into the Chartering Arrangement from the perspective of the Top Customer's qualification to fulfil its role thereunder vis-à-vis its licensing status, whether before or after the submission of the First Application.
16. **The Application Proof stated that the Top Customer's professional experience and good know-how in bunkering was another reason for Coastal's Subsidiary to enter into the Chartering Arrangement. However, information available to Ever-Long showed that the Top Customer was only established shortly before the commencement of the Chartering Arrangement**, which appeared to contradict the disclosure in the Application Proof. Notwithstanding this, Ever-Long did not conduct reasonable due diligence on this issue.
17. Before the submission of the First Application, Ever-Long conducted a due diligence interview with one of the Top Customer's directors, and Coastal engaged a search agent to perform a know-your-client search on the Top Customer. However, neither of these due diligence steps yielded information that verified the Top Customer's experience or know-how in bunkering.
18. There is no evidence that Ever-Long undertook further due diligence on this issue before the submission of the First Application.
19. After the submission of the First Application, Ever-Long obtained the customer evaluation form of Coastal's Subsidiary on the Top Customer, engaged a search agent to carry out independent background searches on the Top Customer's directors and shareholders, and obtained an employment application form which showed the working experience of one of the Top Customer's directors.
20. However, such post-First Application due diligence effort remained inadequate as none of the findings from such due diligence provided any objective factual basis to support that the Top Customer and/or its management team had professional experience and good know-how in bunkering.

21. Ever-Long appeared to have placed substantial reliance upon and merely accepted the representations by Coastal's directors regarding the Top Customer's experience and know-how at face value without performing appropriate independent verification and due diligence.

The operations of the Chartering Arrangement

22. The descriptions of the operation model of the Chartering Arrangement in the Application Proof and the agreements governing the Chartering Arrangement (**Charterparty Agreements**) were at odds with the assumptions underlying two legal opinions concerning the Chartering Arrangement obtained by Coastal and Coastal's Subsidiary (**Two Legal Opinions**) and other evidence that were available to Ever-Long. Further, even between the assumptions underlying the Two Legal Opinions, there were inconsistencies regarding the operation model of the Chartering Arrangement.
23. For example, while, consistent with the Charterparty Agreements which provided that the Top Customer was in technical control of the operations of the bunker crafts, the Application Proof stated that the Group did not engage in bunkering operation and the Top Customer hired the vessels of Coastal's Subsidiary for the purpose of providing bunkering services, by contrast, the assumptions underlying the Two Legal Opinions and other evidence before Ever-Long showed that it was Coastal's Subsidiary, and not the Top Customer, which had technical control of the operations of the bunker crafts.
24. On a similar vein, while the Charterparty Agreements provided that the Top Customer was responsible for employing and paying the cargo officers of the bunker crafts, the assumptions underlying the Two Legal Opinions and other evidence before Ever-Long showed that the cargo officers of the bunker crafts were hired by Coastal's Subsidiary with the costs then reimbursed by the Top Customer.
25. By May 2017, Ever-Long was made aware by its legal advisor of some of such contradictions. However, there is no evidence that Ever-Long conducted follow-up due diligence to inquire further into and/or reconcile such contradictions.
26. In other words, Ever-Long did not conduct adequate due diligence to identify and reconcile the inconsistencies regarding the operation model of the Chartering Arrangement. As such, Ever-Long failed to have a thorough knowledge of the operations of the Chartering Arrangement, which would be a pre-requisite for a sound understanding of Coastal, including its business and performance as well as financial condition and prospects.

Legality and compliance of Coastal's business operations

27. The Top Customer's lack of bunker craft operator licence was potentially in contravention of the licensing requirements of the MPA. Coastal's Subsidiary was also potentially in breach of the terms and conditions of its own bunker craft operator licence by effectively outsourcing its bunkering operations to the Top Customer⁵. This cast serious doubt on the legality and compliance of Coastal's

⁵ Coastal's Subsidiary possessed a bunker craft operator licence issued by the MPA through the period between 2011 and 2017. One of the conditions of the licence was that Coastal's Subsidiary "shall not transfer, assign, sublet, share, part with or otherwise dispose any of its

operations vis-à-vis the Chartering Arrangement (**Legality Issue**). The Legality Issue in turn called into question Coastal's suitability for listing.

28. Ever-Long did not take any due diligence steps before submitting the First Application to confirm whether the Top Customer needed a bunker craft operator licence for its role under the Chartering Arrangement, and whether the operation model of the Chartering Arrangement would be in compliance with the applicable laws and/or regulations. Ever-Long also did not make enquiries into the Legality Issue with the MPA or obtain a legal opinion which covered, addressed and provided a sufficient basis to support that reasonable due diligence had been conducted on the Legality Issue.
29. It was only five months after the First Application, when the SEHK raised concerns and questions about the rationale behind the Chartering Arrangement, that Ever-Long started looking into the Legality Issue by making enquiries with the MPA and seeking the Two Legal Opinions.
30. Ever-Long relied on Coastal's directors' view that the Chartering Arrangement met the MPA's licensing requirements without examining such view with professional scepticism; nor did it resolve the discrepancies between the basis of that view and the other information known to it.
31. Further, Ever-Long's reliance on the Two Legal Opinions as its due diligence on the Legality Issue and to support its position that the Chartering Arrangement would unlikely breach the laws and regulations of Singapore and the terms and conditions of the bunker craft operator licence of Coastal's Subsidiary was misplaced. This was because of the limited scope of instructions given to the legal advisors for the Two Legal Opinions, and the contradictions in relation to the assumptions underlying the Two Legal Opinions which were apparent from the face of the same.
32. As such, Ever-Long did not conduct adequate due diligence to ascertain how the operation model of the Chartering Arrangement could have complied with the licensing requirements of the MPA given the Top Customer's lack of licence, and whether and/or how the operation model of the Chartering Arrangement would expose Coastal's Subsidiary, Coastal and/or its business operations to legal and compliance risks.

The Group's reliance on deemed connected transactions

33. The Application Proof stated that while the transactions between Coastal's Subsidiary and the Top Customer did not strictly fall into the scope of transactions with connected persons as defined in Chapter 20 of the GEM Listing Rules, Coastal's directors considered it prudent to deem the transactions between them as connected transactions under the GEM Listing Rules, and present these transactions as such in the Application Proof, by virtue of Connected Person B being a connected person of Coastal and a customer of the Top Customer, and the Top Customer being the Group's largest customer.
34. The Application Proof disclosed the percentage at which the Top Customer generated revenue from the provision of bunkering services to Connected

rights, duties, liabilities, obligations and privileges under the terms and conditions of this Licence".

Person B (**Percentage**), and the amount of Coastal's deemed connected transactions arising from the Top Customer's vessel chartering fees payable to Coastal's Subsidiary attributable to revenue from Connected Person B. Such disclosure appears to have been based on three Excel files (**Three Excel Files**) containing financial information of the Top Customer that Ever-Long had access to.

35. While the Three Excel Files contained some financial information of the Top Customer, such information was lacking in relevant details which were required for Ever-Long to verify the basis and accuracy of the disclosure in relation to the deemed connected transactions between Coastal's Subsidiary and the Top Customer in the Application Proof. Ever-Long failed to conduct reasonable due diligence to ascertain and ensure the basis and accuracy of the relevant disclosure.
36. For example, while the Three Excel Files showed that the Top Customer's total revenue comprised (a) income from bunkering and trading services (excluding barging services) (not broken down by customers) and (b) barging fees (broken down by customers), the calculation of the Percentage only took into account the Top Customer's barging fees derived from Connected Person B. It is unclear from the face of the Three Excel Files whether any of the Top Customer's income from bunkering was derived from Connected Person B, and if so, why that was not taken into account in calculating the Percentage. There is no evidence that Ever-Long did any due diligence to find out.
37. Further, information in the Three Excel Files suggests that Connected Person A was also a customer of the Top Customer's during the TRPs. However, there was no specific disclosure in the Application Proof about any deemed connected transactions attributable to Connected Person A. Ever-Long did not ascertain why this was the case or the reason for treating and disclosing the Top Customer's revenue attributable to Connected Person A in a manner different from Connected Person B.
38. Based on the matters set out in paragraphs 12 to 37 above, Ever-Long failed to exercise reasonable judgment on the nature and extent of due diligence work needed, and conduct such reasonable due diligence work, to acquire a sound understanding and thorough knowledge of the Group's business arrangement with its largest customer during the TRPs.
39. By virtue of its due diligence failures, Ever-Long has failed to satisfy itself in relation to the accuracy and completeness of the relevant disclosures in the Application Proof, and, in breach of paragraph 17.4(c)(i) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**), come to a reasonable opinion before submitting the Listing Application that Coastal was in compliance with all relevant listing qualifications under Chapter 11 of the GEM Listing Rules, which provided, among other things, both the listing applicant and its business must, in the opinion of SEHK, be suitable for listing.
40. Ever-Long has also breached:
 - (a) General Principle 2 of the Code of Conduct and paragraph 5.1 of the Corporate Finance Adviser Code of Conduct (**CFA Code of Conduct**) which require a licensed corporation to act with due skill, care and diligence, in the best interests of its clients and the integrity of the market;

- (b) General Principle 7 and paragraph 12.1 of the Code of Conduct, and paragraph 1.5 of the CFA Code of Conduct which require a licensed corporation to comply with, and implement and maintain measures appropriate to ensuring compliance with, all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market;
- (c) paragraphs 17.2(b) and 17.4(a)(i) of the Code of Conduct which require a sponsor to perform all reasonable due diligence on the listing applicant before submitting the listing application;
- (d) paragraph 17.3(a)(i) of the Code of Conduct which requires a sponsor to, based on reasonable due diligence, have a sound understanding of the listing applicant, including its business and performance, financial condition and prospects, operations and structure;
- (e) paragraphs 17.6(a) and 17.6(h) of the Code of Conduct, and paragraph 3 of Practice Note 2 (**PN2**) to the GEM Listing Rules which require a sponsor to exercise reasonable judgment on the nature and extent of due diligence work needed in relation to the listing applicant having regard to all relevant facts and circumstances;
- (f) paragraph 17.6(b) of the Code of Conduct and paragraph 2 of PN2 to the GEM Listing Rules which require a sponsor to examine with professional scepticism the accuracy and completeness of statements and representations made, or other information given, to it by the listing applicant or its directors;
- (g) paragraph 17.6(c) of the Code of Conduct which requires a sponsor not to merely accept statements and representations made and documents produced by the listing applicant or its directors at face value, to perform appropriate verification procedures, and to undertake additional due diligence to ascertain the truth and completeness of the information provided by a listing applicant when it becomes aware of circumstances that may cast doubt on the information provided to it or otherwise indicated a potential problem or risk;
- (h) paragraph 17.6(d)(ii), (vi), (vii) and (ix) of the Code of Conduct which requires a sponsor to, regarding the preparation of a listing document:
 - (i) achieve a thorough understanding of the listing applicant including its business;
 - (ii) assess the business performance, financial condition, development, prospects and any financial projection or profit forecast;
 - (iii) assess the legality and compliance of the business operations and whether the listing applicant is subject to any material legal proceedings or disputes; and
 - (iv) undertake independent verification of all material information;
- (i) paragraph 17.6(e)(iv) and (v) of the Code of Conduct which requires a sponsor to conduct independent due diligence steps in relation to material matters; and

- (j) paragraph 17.6(g)(ii), (iii) and (iv) of the Code of Conduct which requires a sponsor to, where it engages a third party to assist it to undertake specific due diligence tasks:
 - (i) consider the scope and extent of the tasks to be performed by the third party;
 - (ii) assess the results of the work performed by the third party and arrive at its own opinion whether the work provides a sufficient basis to determine that reasonable due diligence has been conducted and whether further due diligence is required; and
 - (iii) assess whether the results of the work are consistent with other information known to the sponsor including that derived from its other due diligence work.

B. Failure to disclose a known material issue in writing to SEHK

- 41. Notwithstanding Ever-Long's knowledge of the Top Customer's lack of licence and the materiality of the same to Coastal's suitability for listing, Ever-Long did not disclose the Top Customer's unlicensed status and/or any associated legal and regulatory risks in (a) all versions of the Application Proof; and (b) its submissions to SEHK, until after SEHK's query on whether the Top Customer possessed the requisite licences, permits and approvals.
- 42. By failing to disclose a known material issue in writing to SEHK, Ever-Long has breached:
 - (a) paragraph 17.4(d) of the Code of Conduct which requires a sponsor to, when submitting the listing application, ensure that all material issues known to it which, in its reasonable opinion, are necessary for the consideration of whether firstly, the listing applicant is suitable for listing; and secondly, the listing of the applicant's securities is contrary to the interest of the investing public or to the public interest are disclosed in writing to SEHK; and
 - (b) General Principle 2 of the Code of Conduct and paragraph 5.1 of the CFA Code of Conduct.

C. Failure to ensure the completeness of information in the Application Proof

- 43. In failing to disclose the Top Customer's lack of licence and the associated legal and regulatory risks in all versions of the Application Proof, Ever-Long has also breached:
 - (a) paragraphs 17.4(a)(ii) and 17.4(b) of the Code of Conduct which require a sponsor to, before submitting the listing application, ensure that all material information as a result of the due diligence has been included in the Application Proof; and come to a reasonable opinion that the information in the Application Proof is substantially complete except in relation to matters that by their nature can only be dealt with at a later date; and

- (b) General Principle 2 of the Code of Conduct and paragraph 5.1 of the CFA Code of Conduct.

Conclusion

- 44. The SFC is of the view that Ever-Long is guilty of misconduct.
- 45. In deciding the disciplinary sanction set out in paragraph 1, the SFC has had regard to its Disciplinary Fining Guidelines and has taken into account all relevant considerations, including:
 - (a) the need to send a strong message to the industry and market that sponsor failures will not be tolerated;
 - (b) certain due diligence was not conducted and material information was not disclosed until after queries were made by SEHK;
 - (c) the lapse of the Listing Application averted any harm to members of the investing public;
 - (d) Ever-Long's cooperation with the SFC in resolving the SFC's concerns; and
 - (e) **Ever-Long's financial position – but for the firm's financial position and cooperation with the SFC in resolving the SFC's concerns, the SFC would have imposed a \$13.5 million fine against it.**