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Former director of DBA Telecommunication (Asia) Holdings Limited convicted of issuing false or misleading announcement

11 Apr 2019

The Eastern Magistrates' Court today convicted Mr Chan Wai Chuen, former chief financial officer, company secretary and an executive director of DBA Telecommunication (Asia) Holdings Limited (DBA) for his role in a false or misleading statement in DBA's announcement in a prosecution brought by the Securities and Futures Commission (SFC) (Notes 1 & 2).

On 28 March 2013, DBA published its results announcement for the year ended 31 December 2012 on the Stock Exchange of Hong Kong Limited's (SEHK) website. The SFC's investigation revealed that DBA's financial statements, which Chan was allegedly involved in its preparation and publication at the time, had not been agreed by the auditors, as required under the Rules Governing the Listing of Securities on the SEHK (Listing Rules).

As a result, DBA's statement that the results announcement complied with the applicable disclosure provisions of the Listing Rules was false or misleading in a material particular, in breach of section 384 of the Securities and Futures Ordinance (SFO) (Notes 3 & 4).

In convicting Chan, the Magistrate found that when DBA's results announcement was published, Chan knew that there were outstanding audit works and that the financial statements had not been agreed by the auditors but in any event, proceeded with its publication. As an officer of DBA, Chan was liable for DBA's breach under section 390 of the SFO.

Chan was fined \$60,000 and ordered to pay the SFC's investigation costs.

End

Notes:

1. DBA is listed on the Main Board of the SEHK. Trading of DBA shares has been suspended since 6 June 2013.
2. Chan resigned from all his positions in DBA with effect from 27 September 2013.
3. Under section 384 of the SFO, it is a criminal offence to provide false or misleading information in a material particular to the SFC via the SEHK. Under section 390 of the SFO, where the commission of an offence under the SFO by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or any person who was purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence.
4. On 28 June 2018, DBA pleaded guilty to one count of offence under section 384 of the SFO. Please see the SFC's press release dated [28 June 2018](#).

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DBA電訊（亞洲）控股有限公司前董事被裁定發出虛假或具誤導性公告罪成

2019年4月11日

東區裁判法院今天在證券及期貨事務監察委員會（證監會）提出的檢控程序中，裁定DBA電訊（亞洲）控股有限公司（DBA）前首席財務官、公司秘書及執行董事陳偉銓（男），參與在DBA公告中作出虛假或具誤導性陳述的罪名成立（註1及2）。

2013年3月28日，DBA在香港聯合交易所有限公司（聯交所）網站上刊發截至2012年12月31日止年度的業績公告。證監會的調查顯示，陳當時涉嫌參與擬備及刊發的DBA財務報表並未按照《聯交所證券上市規則》（《上市規則》）的規定獲得核數師同意。

因此，DBA指該業績公告已符合《上市規則》的適用披露規定的陳述，在要項上屬虛假或具誤導性，違反了《證券及期貨條例》第384條（註3及4）。

裁判官在裁定陳罪成時指，當DBA刊發該業績公告時，陳明知尚有核數工作未完成，而且有關財務報表並未獲核數師同意，但仍不顧情況，繼續發表該公告。根據《證券及期貨條例》第390條，陳作為DBA的高級人員，須為DBA的違法行為承擔法律責任。

陳被罰款60,000元，並被命令繳付證監會的調查費用。

完

備註：

1. DBA現時在聯交所主板上市，而其股份自2013年6月6日起一直暫停買賣。
2. 陳已於2013年9月27日辭去在DBA的所有職務。
3. 根據《證券及期貨條例》第384條，透過聯交所向證監會提供在要項上屬虛假或具誤導性的資料屬刑事罪行。根據《證券及期貨條例》第390條，凡任何法團所犯在本條例下所訂的罪行，經證明是在該法團的任何高級人員或看來是以該身分行事的人協助、教唆、慫恿、促致或誘使下犯的，或是在該人的同意或縱容下犯的，或是可歸因於該人罔顧實情或罔顧後果的，則該人與該法團均屬犯該罪行。
4. 2018年6月28日，DBA承認一項《證券及期貨條例》第384條所指的罪行。請參閱證監會2018年6月28日的新聞稿。

最後更新日期：2019年4月11日