

# Is your company complying with the inside information disclosure regime in Hong Kong?

**KPMG Risk Consulting**  
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Since implementation of the inside information regime in January 2013, the Securities and Futures Commission (SFC) has conducted regular reviews of corporate announcements including inside information announcements. Those announcements relate to, but are not limited to, profit alerts or profit warnings. Listed companies are reminded of the importance of ensuring compliance with the provisions of Part XIVA of the SFO, as well as the relevant provisions under the listing rules relating to the general obligation of disclosure.

## Disclosure of inside information

Under section 307A(1) of Part XIVA the Securities and Futures Ordinance (Cap. 571) (SFO), inside information is specific information that is about (i) the corporation; (ii) a shareholder or officer of the corporation; or (iii) the listed securities of the corporation or their derivatives and is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would, if generally known to them, be likely to materially affect the price of the listed securities. The SFC has published a Guideline on Disclosure of Inside Information (the SFC Guidelines) to assist listed corporations to comply with their obligations to disclose inside information under Part XIVA of the SFO. In addition, Rule 13.09 of the Main Board Listing Rules and Rule 17.10 of the GEM Listing Rules require that a listed company must, as soon as reasonably practicable after consultation with the Exchange, announce the information necessary to avoid a false market in its securities.

## Typical issues & possible enforcement actions

The number of inside information announcements published by listed companies has increased rapidly over the years since 2013. This indicates that the listed companies have raised awareness of their disclosure obligations in general. However, the trend should be interpreted with caution. Merely making more announcements does not imply a listed company has in place a mature and robust inside information framework.

The SFC is empowered to make inquiries and/or conduct investigations to assess the readiness of the inside information framework of any listed company. We have identified some common issues in relation to the inside information framework of listed companies:

Enforcement could be imposed through the existing powers vested in the SFC, with breaches being escalated to the Market Misconduct Tribunal (MMT). In addition to requiring the company to pay all costs associated with the inquiry, the MMT can then enforce a series of civil sanctions on the corporation or its officers. Civil action against any breach of the inside information disclosure requirement, by a corporation and/or an officer, may be liable to:



**PROCESS** – Untimely disclosure of inside information; publishing false and misleading announcements



**PEOPLE** – Roles and responsibilities are not clearly defined for inside information events; no training on regulation changes, or refresher training to confirm policy requirements



**MONITORING** – Limited independent review of disclosures/non-disclosure decisions



A regulatory fine of up to HKD 8 million on the listed corporation, each of the directors, and/or chief executive respectively (s.307N(1)(d))



A recommendation for disciplinary action to any body of which the officer is a member (s.307N(1)(g))



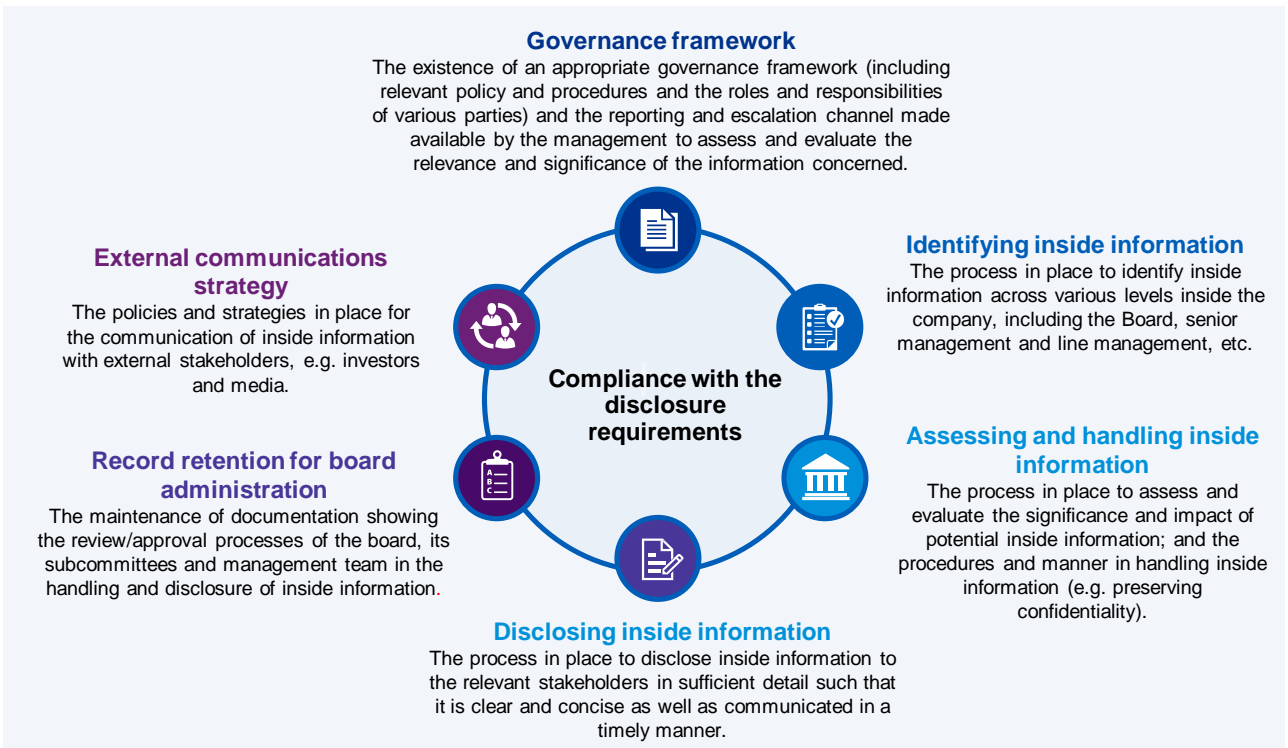
Disqualification from being involved in any form of management with a listed or specified corporation for up to five years (s.307N(1)(a))



An order for safeguards to be implemented to avoid future breaches, including training and/or appointment of independent professional advisors (s.307N(1)(h))

# Elements of a sound inside information mechanism

We have worked closely with a number of organisations including licensed corporations and listed companies in the region to improve their inside information mechanism. We understand sound and effective procedures and internal controls for the handling and dissemination of inside information comprise six elements in the following areas:



## How KPMG can help

We have been engaged to review the inside information framework and provide director trainings by a number of listed companies in Hong Kong. Our team comprises professionals with valuable experience in managing the expectations of regulators regarding report requirements and client communications. Our services include:

### Independent review of procedures for compliance with the inside information disclosure regime

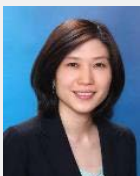
We are able to adapt our approach and perform a systematic review of process and controls that are in place at your company regarding compliance with the inside information regulations and internal policies. The review could serve as a:

- Health check to strengthen your company's inside information framework; or
- Compliance review after enforcement action has been imposed on the company.

### Director training on inside information disclosure regime, directors' duties and corporate governance

We provide customised trainings for directors and other relevant stakeholders on various training topics, including but not limited to (a) directors' responsibilities, (b) latest corporate governance updates, (c) inside information requirements, and (d) risk management and internal controls.

## Contact us for more information



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