

PRESS RELEASE

SC sanctions Deloitte KassimChan and Hwang-DBS Securities Berhad for lapses in due diligence responsibilities

The Securities Commission (SC) on August 30, 2006 publicly reprimanded Deloitte KassimChan (Deloitte) and Hwang-DBS Securities Berhad (Hwang-DBS) for their failure to discharge due diligence responsibilities in the submission to the SC for the restructuring of Ocean Capital Berhad (Ocean) and for failure to inform the SC of a material change in circumstances that would have affected the SC's consideration.

Deloitte was also imposed with a sanction of non-acceptance of all types of submissions under section 32 of the Securities Commission Act 1993 where Deloitte acts as the reporting accountant, for a period of six months, with immediate effect.

The actions were taken against Deloitte in relation to its role as the reporting accountant and the preparer of the Long-Form Accountants' Report (LFAR) for Pasaraya Hiong Kong Sdn Bhd (Pasaraya Hiong Kong) and against Hwang-DBS in its capacity as the principal adviser for the restructuring scheme of Ocean.

The SC's investigations revealed that the audited accounts of Pasaraya Hiong Kong and the LFAR submitted to the SC in relation to the proposed restructuring scheme of Ocean contained false and misleading information. It was presented that the accounts of Pasaraya Hiong Kong, as audited by Deloitte, had registered a turnover of RM198.7 million and after-tax profit of RM8.5 million for its financial year ended 31 March 2003.

However, the SC's investigations revealed that Pasaraya Hiong Kong had overstated its sales by RM7.7 million. This amount of overstated sales did not have a corresponding cost attached to it, thus the whole amount was booked to profits. Had the overstatement not been made, there would have been a significant shortfall in the profits of Pasaraya Hiong Kong, thus affecting adversely the restructuring scheme of Ocean.

The SC's investigations further disclosed that Deloitte Tax Services Sdn Bhd, the tax agent for Pasaraya Hiong Kong, which is part of the Deloitte network of firms, was fully aware of the overstatement of the sales figures from a tax investigation and settlement that had taken place at the material time. Nevertheless, the information was not made known to the SC by Deloitte.

The failure of Deloitte, as the reporting accountant of Pasaraya Hiong Kong, to satisfactorily discharge its due diligence responsibility and to inform the SC of the overstatement of the sales figures of Pasaraya Hiong Kong, together with the resulting impact on the restructuring scheme of Ocean, is an extremely serious dereliction of duty.

The SC also found that Hwang-DBS, as the principal adviser, who was aware of the tax investigation, had failed to make reasonable enquiries and to keep track of the investigation that would have led to information on the overstatement.

Note to the Editor

1. Background on Ocean's Proposed Restructuring Scheme

Hwang-DBS had submitted an application for the restructuring of Ocean on 21 November 2003. In the said restructuring scheme, a new company, PHK Superstore Bhd (PHK Superstore) was to take over the listing status of Ocean. The scheme involved the injection of Pasaraya Hiong Kong, which was involved in the operation of supermarkets cum departmental stores, into PHK Superstore. Upon taking over the listing status of Ocean, the listing of PHK Superstore would be transferred from the Second Board to Main Board of Bursa Malaysia Securities Berhad.

The SC had approved the restructuring scheme on 13 May 2004. Subsequent to its approval, the SC was informed of the closure of Pasaraya Hiong Kong's outlets in December 2004. The closure of these outlets had a bearing on the future business operation of PHK Superstore as the business of Pasaraya Hiong Kong constituted the core and only business of PHK Superstore as represented in the scheme. Therefore, the closure of the outlets had rendered the entire restructuring proposal of Ocean/PHK Superstore to be no longer viable. On 29 March 2005, the SC revoked its approval.

2. Status of the criminal case

On 16 January 2006, Yap Kim Seng, Managing Director of Pasaraya Hiong Kong, pleaded guilty to a charge under section 32B(1) of the SCA for providing false information to the SC pertaining to Pasaraya Hiong Kong's revenue in connection with Ocean's restructuring exercise. The Court convicted and sentenced the Accused to two years jail. Yap Kim Seng is appealing against the custodial sentence of two years imprisonment and the appeal is pending.