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Newsletter

SEC CLARIFIES THE DEFINITIONS OF GROUP COMPANIES FOR DETERMINING INSIDER TRADING

The Securities and Exchange Act B.E. 2535 (1992) (the "SEC" Act) defines an insider as a person or persons who possess inside information related to a securities issuing company (the "Insider"). Insiders are prohibited from purchasing or selling securities of a securities issuing company or disclosing information to third parties. If an Insider purchases or sells securities, shares information related to the company or securities, such actions constitute insider trading under the SEC Act.

The SEC Act and sub-regulations had not provided a definition of or guidelines on defining groups and/or entities related to a securities issuing company for the purposes of identifying potential Insiders. Therefore, the SEC has issued a new notification that defines the characteristics of the companies that constitute a group or entity related to a securities issuing company.

This notification is particularly important for any parent company, subsidiary or associate company that may be related to a security issuing company, as the new notification clarifies presumptions to include these entities as potential Insiders.

Presumptions for identifying Insiders under the SEC Act

An Insider is determined based on two presumptions. The first presumption applies to persons that directly engage with a securities issuing company. The second presumption applies to persons that indirectly engage with a securities issuing company.

The first presumption includes individuals, as follows:

- i. directors, executives and employees of the securities issuing company;
- ii. auditors, financial advisors, and legal advisors whose duties are related to inside information; and
- iii. employees of the SEC and the Stock Exchange who are in the position to access inside information through performance of duties.

Individuals under the first presumption will be presumed, without consideration of other actions, to possess insider information.

The second presumption includes individuals, as follows:

- i. any shareholder of the securities issuing company who holds more than five percent of shares; and
- ii. any directors, executives, controlling persons, employees or workers of a business in the group of the securities issuing company, who holds a position, is responsible for, or capable of accessing inside information.

Individuals under this presumption are presumed to be an Insider if it is discovered that they have traded securities in a manner which differs from their normal practice.

SEC Notification clarifications

The SEC announced the Notification of the Securities and Exchange Commission No. GorKor. 15/2563 re: Determination of Characteristics of Businesses in a Group of Securities Issuing Companies (the "Notification") in order to provide clarity and define what constitutes a group or entity related to a securities issuing company.

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The Notification states that the following companies are in the same group as the securities issuing company:

- i. parent companies;
- ii. subsidiaries; and
- iii. associate companies.

The definitions of the above companies are as defined in the existing regulations related to the issuance and offer for sale of securities (the Notification of the Securities and Exchange Commission Kor Jor. 17/2551 Determination of Definitions in Notifications relating to Issuance and Offer for Sale of Securities).

As with the guidelines for individuals under the second presumption, group companies included in the Notification are presumed to be Insiders if it is discovered that they have traded securities in a different manner than which differs from their normal practice.

If you require any advice on any of the issues raised in this briefing please contact the authors listed in the right hand column.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact bd@mhm-global.com.