

Hong Kong Market Misconduct Tribunal Rejects Hong Kong SFC Case in CITIC Pacific

April 10, 2017 | Client Update

The Market Misconduct Tribunal (MMT) delivered its decision in CITIC Limited (formerly CITIC Pacific) case on April 10, 2017. The MMT found that none of the executive directors at the relevant time were engaged in misconduct and provisionally awarded costs against the SFC.

Significantly, the MMT determined that under s.277(1) of the Securities and Futures Ordinance:

- material adverse change is a concept distinct from price sensitive information which would be judged objectively independent of perceptions of the investing public;
- a material adverse change was a change in the company's financial position of such significance that it undermined the company's financial integrity in all the circumstances for an enduring period; and
- decisions made by executives must be judged within their relevant temporal framework and that judgments calls made by executives are entitled to a margin of appreciation.

As the first case decided by the MMT on the meaning of the term 'no material adverse change', this decision provides clarification on the scope of this term, being a legal and regulatory requirement for announcements under Chapter 14A of the Listing Rules, and indicates how the MMT would likely distinguish between 'material adverse change' and 'price sensitive information' in the future.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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