STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined KTF Capital Management Limited (**KTFCM**) (formerly known as Forchn International Asset Management Co. Limited and Rega Technologies Limited)[1] $400,000, pursuant to section 194 of the Securities and Futures Ordinance (**SFO**) in that it failed to:

   (a) maintain its required level of liquid capital between 13 and 18 December 2018 (**Relevant Period**); and

   (b) notify the SFC when it became aware of its inability to comply with the financial resources requirements; and misrepresented to the SFC that it maintained sufficient liquid capital during the Relevant Period when enquiries were made about its liquid capital calculations.

2. These failures constitute a breach of General Principles (**GP**) 2 (Diligence), GP 7 (Compliance) and paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**), section 146(1) of the SFO, and rules 4, 6(1) and 55(1)(a) of the Securities and Futures (Financial Resources) Rules (**FRR**).

Summary of facts

3. On 13 December 2018, KTFCM subscribed, on a proprietary trading basis, for the shares of Fosun Tourism Group (stock code: 1992) (**Shares**) upon its initial public offering on the Main Board of The Stock Exchange of Hong Kong Limited. KTFCM's subscription, which was financed by a loan (**Loan**), gave rise to a liquid capital deficit.

4. After the subscription was completed, KTFCM entered into an assignment agreement (**Agreement**) in relation to the Shares and the Loan and backdated its execution date in an attempt to retrospectively prevent the liquid capital deficit from arising.

Failure to maintain its required liquid capital

5. Rule 4 of the FRR provides that a licensed corporation shall at all times maintain financial resources in the amount required of it under Part 3 of the FRR.

6. Rule 6(1) of the FRR provides that a licensed corporation shall maintain at all times liquid capital which is not less than its required liquid capital (i.e. approximately HK$2.8 million in the case of KTFCM during the Relevant Period).

[1] KTFCM is licensed under the SFO to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities.

7. Rule 27(1)(a) of the FRR (Proprietary positions of licensed corporations) provides that a licensed corporation must include in its liquid assets listed shares that it beneficially owns at market value, less the haircut amounts in relation to the securities concerned. In the present instance, the haircut percentage applicable to the Shares when calculating KTFCM's liquid assets was 30%, in accordance with item(1)(c) of Table 1 in Schedule 2 to the FRR.

8. Rule 44(1)(a) and (g) of the FRR (Concentrated proprietary positions) provides that where a licensed corporation holds for its own account listed shares and the net market value of any such securities which are of the same description equals 25% or more of its required liquid capital, it must include in its ranking liabilities, where the net market value is 51% or more of its required liquid capital, 10% of such net market value. In the present instance, the net market value of the Shares held by KTFCM for its own account was around HK$50.4 million during the Relevant Period, which was more than HK$700,000 (i.e. 25% of its required liquid capital) and HK$1.43 million (i.e. 51% of its required liquid capital). Therefore, KTFCM was required to include in its ranking liabilities HK$5.04 million (i.e. 10% of net market value of the Shares).

9. KTFCM did not anticipate these adverse FRR implications arising from its proprietary trading of the Shares due to an oversight. The SFC's re-computation of KTFCM's liquid capital position, after taking into account that the Agreement was in fact backdated (see paragraphs 14 and 15 below), shows that KTFCM breached rules 4 and 6(1) of the FRR for failing to maintain its required level of liquid capital from 13 to 18 December 2018. The deficit in FIAM's liquid capital was close to HK$20 million.

10. In view of the matters set out in paragraphs 5 to 9 above, the SFC finds that KTFCM has failed to comply with GP 2 (Diligence) of the Code of Conduct which requires it to act with due skill, care and diligence in the best interests of its clients and the integrity of the market.

Failure to comply with notification requirements and making misrepresentation to the SFC

11. Rule 55(1)(a) of the FRR provides that a licensed corporation shall notify the SFC in writing as soon as reasonably practicable and in any event within one business day after it becomes aware that its liquid capital falls below 120% of its required liquid capital.

12. Section 146(1) of the SFO provides that if a licensed corporation becomes aware of its inability to maintain financial resources in accordance with the specified amount requirements that apply to it, it shall as soon as reasonably practicable notify the SFC by notice in writing of that fact.

13. The SFC's investigation shows that KTFCM's liquid capital fell below 120% of its required liquid capital (i.e. HK$3.36 million) and the required level of approximately HK$2.8 million during the Relevant Period (see paragraph 9 above). By 17 December 2018, KTFCM became aware of these facts, which triggered the notification obligations under rule 55(1)(a) of the FRR and section 146(1) of the SFO.

14. On around 19 December 2018, KTFCM entered into the Agreement pursuant to which it assigned the Shares and the Loan to a third party. There is no evidence that such an agreement had been reached before or at the time of KTFCM's subscription of the Shares. Nevertheless, in order to prevent a liquid capital deficit

from arising, KTFCM backdated the execution date of the Agreement to 12 December 2018 in an attempt to have the Shares and Loan derecognised from its balance sheet on the same day when KTFCM subscribed for the Shares.

15. Despite KTFCM's awareness of its liquid capital deficit since 17 December 2018, the SFC was not notified of the deficit until 26 April 2019 by KTFCM's auditors, after they identified the deficit during audit fieldwork of KTFCM's accounts for the year ended 31 December 2018. When the SFC enquired about its liquid capital calculations in May 2019, KTFCM misrepresented that it maintained sufficient liquid capital during the Relevant Period. KTFCM subsequently clarified that the Agreement was in fact backdated and failed to provide a credible explanation to justify the backdating of the Agreement.

16. In view of the matters set out in paragraphs 11 to 15 above, the SFC concludes that KTFCM has breached rule 55(1)(a) of the FRR and section 146(1) of the SFO.

17. In view of the matters set out in paragraphs 3 to 15 above, KTFCM's failure to comply with the relevant FRR requirements means that it has also failed to comply with GP 7 (Compliance) and paragraph 12.1 of the Code of Conduct which require KTFCM to comply with all regulatory requirements applicable to the conduct of its business activities.

Conclusion

18. Having considered all relevant circumstances, the SFC is of the opinion that KTFCM is guilty of misconduct and its fitness and properness to carry on regulated activities have been called into question.

19. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has had regard to its Disciplinary Fining Guidelines and has taken into account all relevant circumstances, including:

    (a) the FRR represent significant statutory safeguards for the interests of the investors in the market;

    (b) KTFCM's liquid capital deficit was significant in light of its operations but lasted for only a short period of time;

    (c) KTFCM misrepresented to the SFC that it maintained sufficient liquid capital during the Relevant Period by backdating the Agreement;

    (d) KTFCM's cooperation with the SFC in resolving the disciplinary proceedings;

    (e) KTFCM's financial situation; and

    (f) KTFCM's otherwise clean disciplinary record.