



Hong Kong

December 2018

CFA ALLOWS APPEAL ON INSIDER DEALING OF ASIA TELEMEDIA SHARES

The Court of Final Appeal of Hong Kong has allowed the appeal¹ of the Securities and Futures Commission (**SFC**) against the Market Misconduct Tribunal's finding that two Asia Telemedia Limited (**Asia Telemedia**) executives did not engage in insider dealing.

Sections 270 and 291 of the Securities and Futures Ordinance (CAP 571 of the Laws of Hong Kong) (**SFO**) set out the definition of insider dealing in respect of a listed corporation. Broadly speaking, insider dealing occurs when a person deals in the shares of a listed company while in possession of inside information. The SFO defines inside information as (i) specific information about a corporation (or its shareholders, officers or listed securities or their derivatives) that is (ii) not generally known to persons who are accustomed or likely to deal in the listed securities of that corporation but which (iii) if generally known by such persons, would be likely to materially affect the price of those securities.

The two executives of Asia Telemedia (now renamed as Yunfeng Financial Group Limited), Mr. Charles Yiu Hoi Ying and Ms. Marian Wong Nam, had relied upon the defence provided under section 271(3) of the SFO², which provides that a person should not be regarded as having engaged in insider dealing if that person establishes that his/her purpose(s) for dealing in the shares in question did not include securing or increasing a profit or avoiding or reducing a loss by using inside information.

The Market Misconduct Tribunal found, and the Court of Appeal agreed, that the only reason that Mr. Ying and Ms. Wong sold their shares in Asia Telemedia was to profit from the price surge that was occurring at the time. The two executives knew of certain problems within Asia Telemedia that threatened the share price of the company, but claimed that they believed those problems would be resolved internally, and that those problems would ultimately not influence the market price of Asia Telemedia's shares.

However, the Court of Final Appeal held that Mr. Ying and Ms. Wong failed to establish that they did not use inside information to secure profits. In selling their Asia Telemedia shares, they took advantage of their knowledge that the prices at which they sold would not have been achievable if the inside information they possessed were publicly known. In doing so, they were using inside information and so were excluded from the defence under section 271(3) of the SFO. Their belief as to what may happen in the future (i.e. that Asia Telemedia's problems would be resolved) was irrelevant.

The only dissenting judgment came from Mr. Justice Tang PJ, who held that the defence under section 271(3) should be available to a defendant who can show that he/she would have proceeded with the transaction even if he/she did not have the inside information. According to the majority decision, however, the defendant must show that he/she would have proceeded with the transaction even if the inside information were known to the public.

¹ <https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR120>

² <http://www.hkii.hk/eng/hk/legis/ord/571/s271.html>

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