

CHARLTONS
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INSIDER DEALING IN HONG KONG

2024

INTRODUCTION

Securities and Futures Ordinance (SFO) contains:

- civil market misconduct offences (Part XIII)
- criminal market misconduct offences (Part XIV)

6 types of market misconduct:

- insider dealing
- false trading
- price rigging
- disclosure of information about prohibited transactions
- disclosure of false and misleading information inducing transactions
- stock market manipulation

Civil market misconduct cases are dealt with by the Market Misconduct Tribunal (MMT)

Criminal market misconduct cases are dealt with by the courts



WHAT IS INSIDER DEALING?



Broadly, insider dealing occurs when:

A person connected with an HKEX-listed company ("Listco") has privileged information, which could impact the company's share price when it becomes publicly known, deals or procures someone else to deal in Listco's securities or their derivatives to make a profit or avoid a loss before the information is made public

OR

A person obtains information from another person they know to be connected with a Listco + deals or procures another person to deal in Listco's securities or their derivatives to make a profit or avoid a loss before the information is made public

7 CIRCUMSTANCES OF INSIDER DEALING UNDER THE SFO (ss 270 + 291)

1. Person with inside information deals in shares of a corporation with which he is connected – ss 270(1)(a) + 291(1)(a)

A person connected with a Listco has information they know is inside information and

- **deals** in Listco's listed securities or their derivatives OR in those of a related corporation OR
- **counsels or procures another person** to deal in Listco's listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them

2. Take-over offer - bidder deals in target's shares ss 270(1)(b) + 291(2)

A person who is contemplating or has contemplated making a **take-over offer** for a Listco + **knows the information** that the offer is contemplated, or is no longer contemplated, is inside information:

- **deals in** the Listco's listed securities or their derivatives or those of a related corporation otherwise than for the purpose of the take-over
- **counsels or procures another person** to deal in Listco's listed securities or derivatives otherwise than for the purpose of the takeover



3. Person connected with a Listco leaks inside information about it – ss. 270(1)(c) + 291(3)

When a person connected with a Listco:

- **has information** they know is inside information;
- **discloses the information**, either directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will use the information to deal, or counsel or procure another person to deal, in Listco's listed securities or their derivatives or those of a related corporation



4. Bidder leaks take-over information – ss. 270(1)(d) + 291(4)

A person who is contemplating or has contemplated making a take-over offer for a Listco + knows that the information that the offer is contemplated or no longer contemplated is inside information, discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will use the information to deal or to counsel or procure another person to deal in the Listco's listed securities or their derivatives or those of a related corporation

5. Recipient of inside information from person connected with a Listco deals in Listco's listed securities or their derivatives – ss. 271(1)(e) + 291(5)

Deals in the Listco's listed securities or their derivatives or those of a related corporation

OR

Counsels or procures another person to deal in those listed securities or derivatives

6. Recipient of inside information about a takeover deals in the target's shares – ss. 270(1)(f) + 291(6)

When a person has received, directly or indirectly, from a person they know or have reasonable cause to believe is contemplating or no longer contemplating making a take-over offer for a Listco, information to that effect which they know is inside information in relation to the Listco +

- deals in Listco's listed securities or their derivatives or those of a related corporation; or
- counsels or procures another person to do so



7. Person with inside information seeks to facilitate dealing on overseas market – ss. 270(2) + 291(7)

When a person knowingly has inside information +

counsels or procures another person to deal in Listco's listed securities or their derivatives or those of a related corporation, knowing or having reasonable cause to believe that the other person will deal in those securities or derivatives **outside Hong Kong on an overseas stock market;** or

discloses the inside information to another person knowing or having reasonable cause to believe that they or some other person will use the inside information to deal, or counsel or procure another person to deal, in the Listco's listed securities or their derivatives or in those of a related corporation outside Hong Kong on an overseas stock market

INSIDER DEALING – DEFINITIONS

“SECURITIES”

- a) shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body (incorporated or unincorporated), or a government or municipal government authority
- b) rights, options or interests (whether described as units or otherwise) in, or in respect of, any of the foregoing; and
- c) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, any of the foregoing



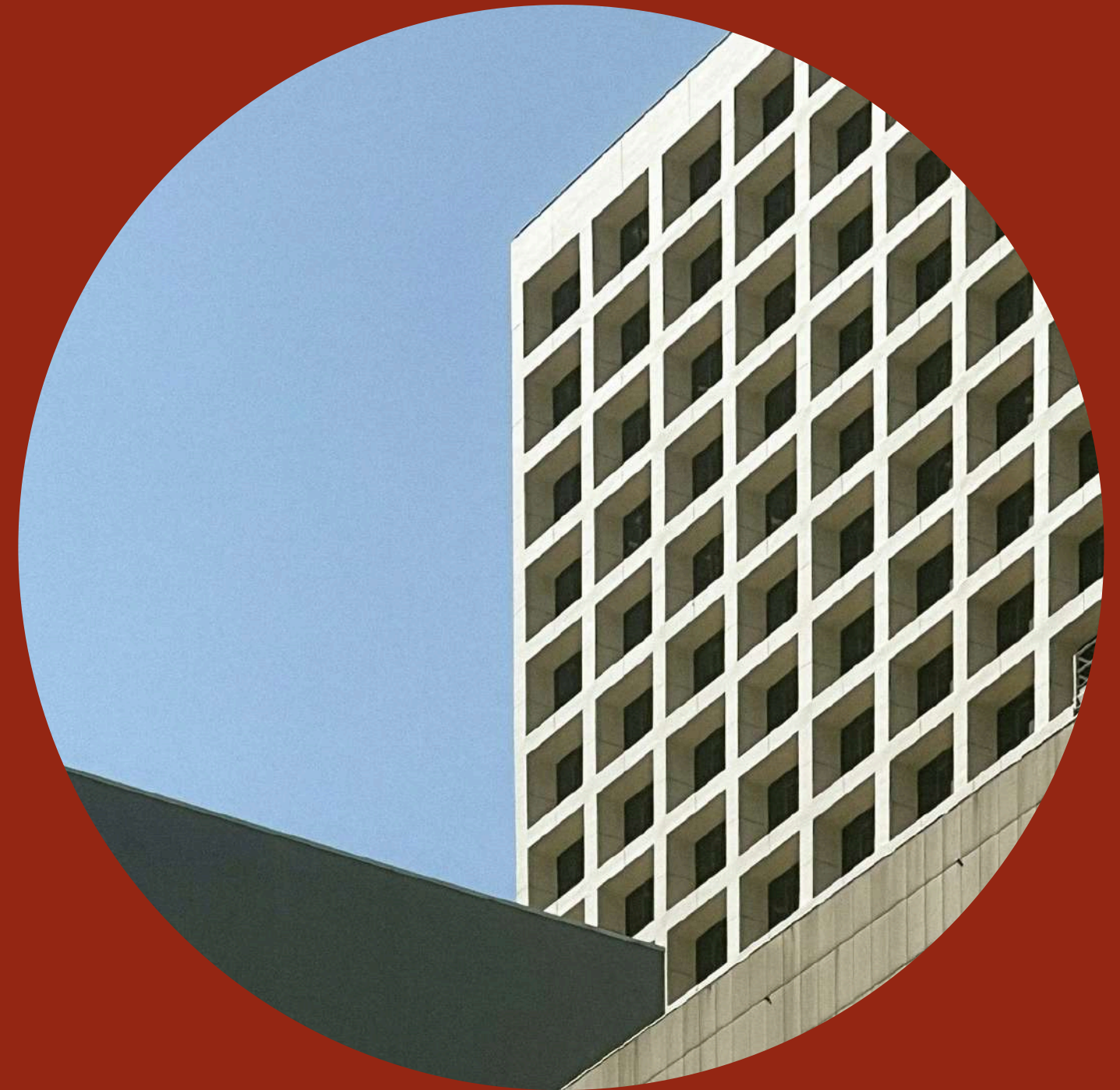
DEFINITION OF “SECURITIES” (CONT’D)

d) interests in a collective investment scheme

e) any interests, rights or property commonly known as securities (whether in the form of an instrument or not) and

f) structured products not falling within paragraphs (a) to (e) where a structured product is defined as:

(i) an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of:



DEFINITION OF “SECURITIES” (CONT’D)

(ii) changes in the price, value or level (or a range within the price, value or level) of any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; or

(iii) the occurrence or non-occurrence of any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or both the issuer and the guarantor)



DEFINITION OF “SECURITIES” (CONT’D)

Definition of “structured product” (Cont’d)

(iv) a regulated investment agreement; and

(v) any interests, rights or property the SFC prescribes as structured products (Section 392 of the SFO)

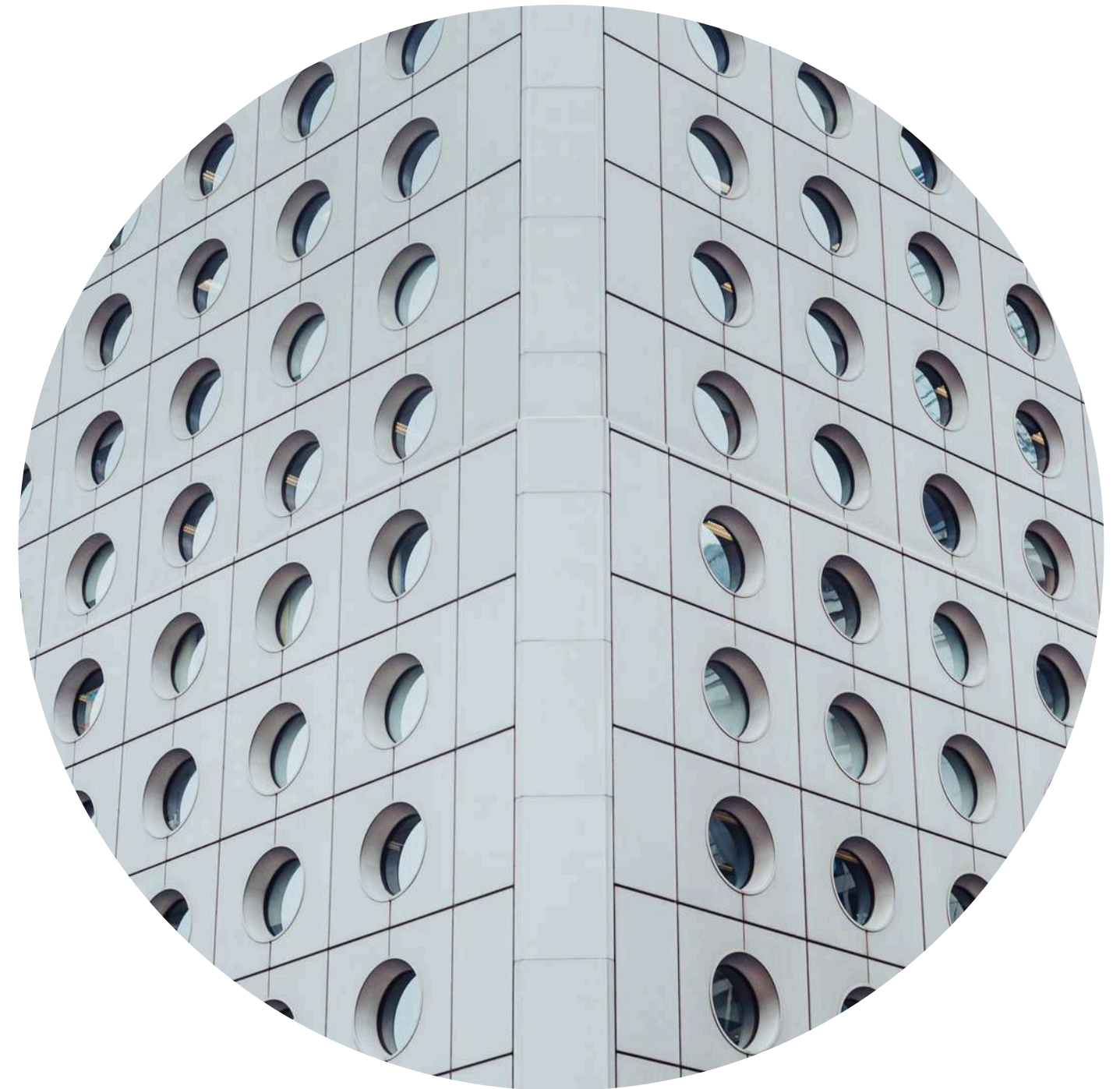


INSIDER DEALING IN FOREIGN-LISTED SECURITIES

SFO definition of “listed” securities:

- HKEX-listed securities
- issued unlisted securities
- unissued securities
- suspended shares treated as “listed”

Insider dealing offences cover securities listed on the Hong Kong Stock Exchange and do not extend to securities listed on overseas exchanges (unless they are dual listed in Hong Kong).



LANDMARK CASE: SFC V. YOUNG BIK FUNG & OTHERS: FACTS

Betty was a lawyer seconded to a HK bank working on its takeover by tender offer of Taiwan-listed Hsinchu Bank

She knew of proposed takeover + tender offer price before the public announcement

Sister of one of solicitors opened a securities account in HK and purchased >1.5 million Hsinchu shares before announcement

Sept 2006 - tender offer announced. Sister accepted the offer for all the shares + distributed profits of approx. HK\$2.7 million among defendants

YOUNG BIK FUNG (CONT'D)



Due to case's extra-territorial feature,
Court relied on s. 300 SFO

S. 300 applied because offer to buy the shares
was made in HK

Sister's acceptance of the tender offer in HK would
also have brought case within s. 300

Betty's misuse of material price sensitive information
+ breach of dealing restrictions amounted to a
scheme or act of deception under s. 300

- Court of Final Appeal – s.300 applied in respect of securities listed outside HK, provided “substantial activities constituting the crime” occurred in HK
- New amendments will extend insider dealing to cover insider dealing conducted in HK involving securities listed on overseas stock markets or their derivatives

YOUNG BIK FUNG (CONT'D)

PERSONS CONNECTED WITH A CORPORATION

ss. 247 + 287

- a director or employee of the co. or a related co.
- a substantial shareholder in the co. or a related co.
- their position may reasonably be expected to give them access to inside information due to a professional or business relationship between:
 - i) the person and that co., a related co., an officer or substantial shareholder of either co; or
 - ii) the person being a director, employee or partner of a substantial shareholder of the corporation or a related corporation



PERSONS CONNECTED WITH A CORPORATION (CONT'D)



- the person has access to inside information by virtue of being connected (within the meaning above) with another corporation where the information relates to a transaction (actual or contemplated) involving both corporations or one of them and the listed securities of the other or their derivatives, or to the fact that such transaction is no longer contemplated or
- the person was connected with the corporation (within the meaning above) at any time in the 6 months before any relevant dealing
- a corporation is connected with another corporation if any of its directors or employees are connected
- ss. 248 + 288 — any public officer, member or employee of certain bodies who in such capacity obtains inside information about a corporation is deemed to be connected with that corporation



CORPORATION

The definition of “corporation” includes companies which are listed in Hong Kong but incorporated abroad

“RELATED CORPORATIONS”

Two or more corporations are “**related corporations**” of each other if one of them is:

- the holding company or subsidiary of the other
- a subsidiary of the holding company of the other

Corporations are also related if the same individual:

- controls composition of the board of directors of 2 or more corporations
- controls >50% of the voting power at general meetings of one or more corporations
- holds >50% of the issued share capital (excluding any part with no right to participate beyond a specified amount on a profit or capital distribution) of 2 or more corporations



INSIDE INFORMATION DEFINED

s. 245(1) SFO defines “inside information” in relation to a corporation as specific information about:

- the corporation
- a shareholder or officer of the corporation or
- the corporation’s listed securities or their derivatives

which **is not generally known** to the persons who are accustomed, or would be likely, to deal in the corporation’s listed securities

but would, if it were generally known to them, be likely to **materially affect the price** of the listed securities





INSIDE INFORMATION MUST BE “SPECIFIC”

Information will be specific if it is capable of being identified, defined and unequivocally expressed

FIRSTONE INTERNATIONAL HOLDINGS LTD

Information will be sufficiently specific:

“if it carries with it such particulars as to a transaction, event or matter, or proposed transaction, event or matter, so as to allow that transaction, event or matter, to be identified and its nature to be coherently described and understood”

INSIDE INFORMATION MUST BE “SPECIFIC” (CONT’D)



Information does not need to be precise to be considered specific

It is not necessary that all particulars or details of the transaction, event or matter are precisely known

Information can still be deemed specific even if it has a vague quality

Contrast with mere rumours, vague hopes and worries, and unsubstantiated conjecture

INSIDE INFORMATION IS “NOT GENERALLY KNOWN”

SFC Guidelines on Disclosure of Inside Information

- Information that is not generally known to the market
- Rumours or media speculation does not mean information is “generally known”
- Information in the media, analyst research reports or electronic subscription databases cannot be assumed to be generally known to the market
- Considerations:
 - how widely the information is disseminated
 - whether information is accurate and complete
 - whether the information is reliable

INFORMATION IN THE MEDIA, ANALYST RESEARCH REPORTS OR ELECTRONIC SUBSCRIPTION DATABASES

- whether the sources contain all the information that would need to be disclosed as inside information under s. 307B(3) SFO, so that there are no material omissions which could make the disclosure false or misleading
- whether the market will realise that the information in these sources reflects information known to the corporation and
- whether the information will be regarded as speculation or opinion of persons outside the corporation

If the information known to the market is incomplete or has material omissions, or doubts exist as to its bona fides, it cannot be considered to be “generally known”



- **The information must be price sensitive**
- **The effect must be material**



**INFORMATION THAT
IS LIKELY TO HAVE A
MATERIAL EFFECT ON
THE LISTED
SECURITIES' PRICE**

INFORMATION THAT IS LIKELY TO HAVE A MATERIAL EFFECT ON THE PRICE OF THE LISTED SECURITIES

Materiality standard — whether the information on the particular share would influence persons who would be likely to deal in the share, in deciding whether or not to buy or sell it

- test is hypothetical
- no fixed thresholds of price movements or quantitative criteria
- magnitude of share price movement after information becomes publicly known is not conclusive - may be due to mixed impact of information released and other factors



DEALING IN SECURITIES

s. 249 SFO – a person deals, whether they act as principal or agent

Agreeing to deal and buying or selling the right to deal are also “dealing”

WHAT IS NOT INSIDER DEALING?

THE DEFENCES ss. 271 + 292

DEFENCES

The dealing, counselling or procuring was made:

- for the sole purpose of acquiring qualifying shares as a director or intending director of a corporation;
- in good faith in performance of an underwriting agreement for the listed securities or derivatives in question; or
- in good faith as a liquidator, receiver or trustee in bankruptcy



CHINESE WALL DEFENCE

A corporation (eg an investment bank or sponsor firm) may have a defence if:

- there were effective internal controls in place (a “Chinese wall”) to ring-fence inside information in the possession of any directors or employees; and
- each individual who made the decision for the corporation to deal, or counsel or procure a dealing, in the relevant listed securities or derivatives did not have access to the inside information at that time and did not receive advice from those in possession of that information



INNOCENT PURPOSE DEFENCE

It is a defence if:

- the purpose for which the person dealt in, or counselled or procured another to deal in, the listed securities or their derivatives, or disclosed information, DID NOT include the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for themselves or another, by using the inside information
- the person dealt, or counselled or procured another to deal, in a corporation's listed securities or their derivatives as agent, IF:
 - he did not select or advise on the selection of the listed securities or derivatives; and
 - he did not know that the person for whom he acted was connected with that corporation or had the inside information



OFF-MARKET DEALINGS

It is a defence if the dealing occurred off-market in Hong Kong and:

- the person dealing in listed securities or their derivatives and the other party:
 - entered into the dealing directly with each other; and
 - at the time of the dealing, the other party knew, or ought reasonably to have known, of the inside information OR
- where a person counselled or procured another person to deal in listed securities or their derivatives, he counselled or procured the other party to enter into the dealing directly with him + at that time the other party knew, or ought reasonably to have known, of the inside information.



OFF-MARKET DEALINGS (CONT'D)

It is a defence where a person dealt in listed securities or their derivatives, but did not counsel or procure the other party to deal,

IF

at the time of the dealing the other party knew, or ought reasonably to have known, that the person was a person connected with the corporation

OFF-MARKET DEALINGS (CONT'D)

A person has a defence if they counselled or procured another to deal in listed securities or their derivatives + :

- the other person did not counsel or procure the other party to the dealing to deal in the listed securities or derivatives; and
- at the time he counselled or procured the other person to deal, the other party to the dealing knew, or ought reasonably to have known, that the other person was a person connected with the corporation



OFF-MARKET DEALINGS (CONT'D)

A defence is available to a person who deals or counsels or procures another to deal in a corporation's listed securities or their derivatives where:

- the person acted in connection with any dealing under consideration or the subject of negotiation, or in the course of a series of such dealings, with a view to facilitating the accomplishment of the dealing or series of dealings; and
- the inside information was market information arising directly out of their involvement in the dealing or series of dealings



MARKET INFORMATION – DEFINITION (S.292)

Market information includes information containing one or more of the following facts:

- that there has or is to be, or has not been or will not be, a dealing in listed securities or their derivatives, or that such dealing is under consideration or negotiation
- the quantity and price or price range of the listed securities or their derivatives involved; and
- the identity of the persons involved



DEALINGS

“Dealing” subject to the rules of a recognised clearing house has a defence where the deal is entered into by the clearing house with a clearing participant for the purposes of the clearing and settlement of a market transaction

DEFENCE FOR TRUSTEES or PERSONAL REPRESENTATIVES

ss.272 + 293 defence for a trustee or personal representative who deals in, or counsels or procures a dealing, in listed securities or their derivatives:

- acting on advice obtained in good faith from a person appearing to be an appropriate person to provide that advice +
- where that person does not appear to be someone who would be insider dealing if they dealt in the listed securities or their derivatives

DEFENCE FOR PERSONS EXERCISING SUBSCRIPTION RIGHTS

ss.273 + 294 defence for a person who dealt in listed securities or their derivatives:

- in exercising a right to subscribe for, or otherwise acquire, those securities or their derivatives where that right was granted or derived from securities held before the person became aware of the inside information

INNOCENT PURPOSE DEFENCE

SFC V. YIU HOI YING CHARLES & OTHERS

- the respondents, Mr. Yiu and Ms. Wong held 6 million shares + 10 million shares in Asia Telemedia Limited (Asia Telemedia), respectively
- Asia Telemedia owed HK\$58 million to Goodpine Limited
- Goodpine Limited served a statutory demand and said it would issue a winding-up petition against Asia Telemedia if the debt was not repaid within 21 days
- Mr. Yiu + Ms. Wong sold their shares making profits of HK\$5.3million + HK\$5.1million, respectively, when the ATML share price surged

SFC alleged:

- respondents' knowledge of Goodpine Limited's statutory demand was inside information
- they engaged in insider dealing when they relied on that information to dispose of their shares at a profit



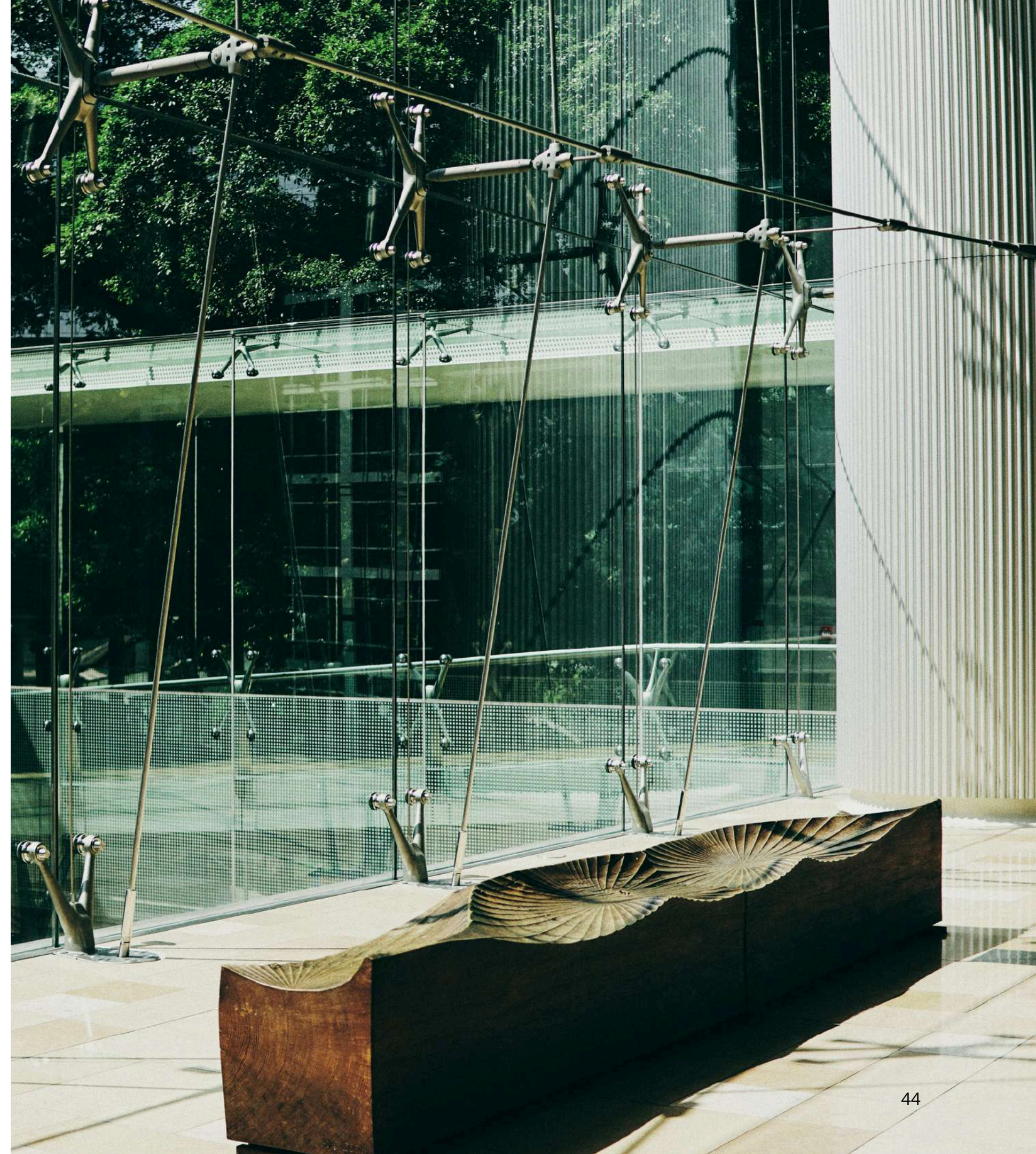
INNOCENT PURPOSE DEFENCE (CONT'D)

- Mr. Yiu + Ms. Wong relied on the innocent purpose defence – they sold because of share price rise – not the inside information
- MMT (+ later the Court of Appeal) accepted that defence
- CFA rejected it in a 4-to-1 decision for the SFC
- CFA said using inside information means turning the possession of inside information into action
- Mere withholding or non-disclosure of inside information is insufficient to show use of the inside information - the inside information must be exploited for financial advantage
- Respondents knew ATML share price was artificially high because of the inside information they possessed + sold the shares to profit from that knowledge



INNOCENT PURPOSE DEFENCE (CONT'D)

- MMT orders against Mr. Yiu and Ms. Wong:
 - 3-year disqualification order against Mr. Yiu
 - HKICS disciplinary referral order against Ms. Wong
 - 3-year cold shoulder orders, cease and desist orders, disgorgement orders, and Government + SFC cost orders



MMT PROCEEDINGS

SFC can institute proceedings before MMT under s. 252 to determine:

- whether any market misconduct has taken place
- the identity of the persons engaged in market misconduct +
- the amount of any profit gained or loss avoided as a result of the market misconduct



MMT PROCEEDINGS (CONT'D)

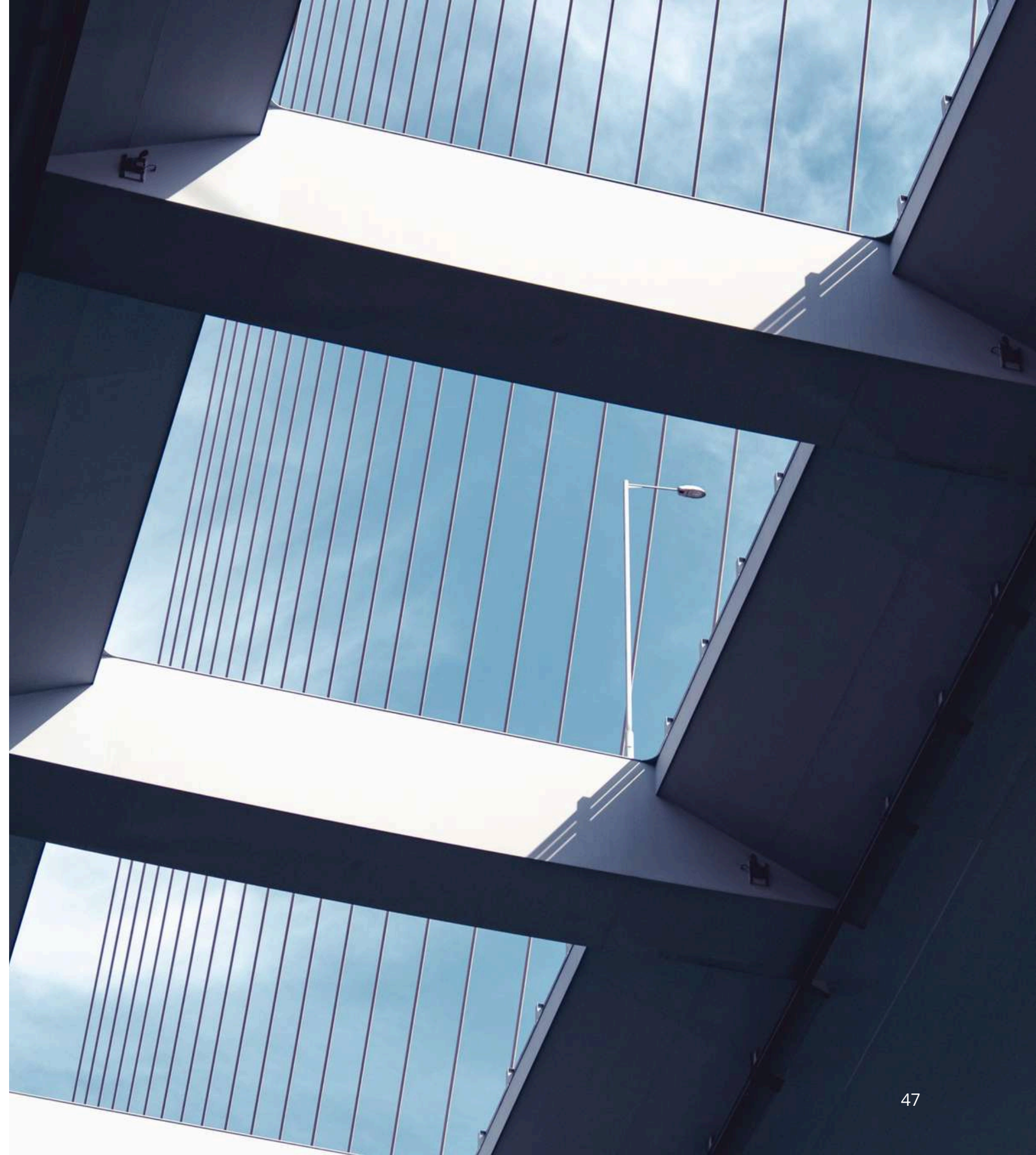
MMT can identify a person as having engaged in insider dealing if:

- they committed insider dealing
- the insider dealing was committed by a corporation of which the person is an officer with their consent or connivance OR
- another person committed insider dealing + they assisted or connived with that person in the perpetration of the insider dealing, knowing that the conduct constituted or might constitute insider dealing



MMT PROCEEDINGS (CONT'D)

- Civil standard of proof applies
- Must be satisfied that a person has engaged in insider dealing on the balance of probabilities
- MMT has powers to receive evidence, compel the giving of evidence, and prevent publication of evidence received
- s. 253(4) – permits the MMT to consider self-incriminatory evidence



SFC V. CHENG CHAK NGOK: FACTS

- Mr. Cheng was the executive director, CFO + company secretary of ENN Energy Holdings Limited (ENN)
- He obtained information re:
 - ENN's proposed acquisition of China Gas
 - the timing of the announcement of the general offer (the Announcement) +
 - the offer price
- Mr. Cheng used 3rd party's securities account to buy China Gas shares just prior to the Announcement, making HK\$3 million profit when he then sold the shares
- but MMT not satisfied on the balance of probabilities that Mr. Cheng dealt in the shares at the material times
- insider dealing could not be proved



SFC'S GROUNDS FOR APPEAL

SFC specified 4 grounds of appeal:

1. MMT had erred in law in:
 - misdirecting itself that the inquiry was adversarial in nature
 - misdirecting itself that burden of proof applied and rested with the SFC +
 - failing to exercise its investigative powers under the SFO
2. MMT had applied the criminal standard of proof
3. MMT erred in concluding that it could not be satisfied that Mr. Cheng had engaged in insider dealing on a balance of probabilities
4. MMT failed to consider exercising its investigative powers under the SFO before reaching its conclusion



PRINCIPLES SET BY THE COURT OF APPEAL IN SFC V. CHENG CHAK NGOK

Nature of MMT Inquiry

- the nature of the MMT's inquiry on market misconduct is civil and inquisitorial

Standard of Proof

- on a balance of probabilities
- case law - the standard of proof will be proportional to the seriousness of the allegations

Burden of Proof

- Only relevant in adversarial proceedings
- In inquisitorial proceedings, no party has the burden of proof



DECISION OF THE COURT OF APPEAL

Standard of proof

- MMT had not properly evaluated the available evidence and was wrong in applying the criminal standard
- MMT had been mistaken in insisting that the SFC meet the higher criminal burden of proof

Burden of proof

- MMT incorrectly imposed the burden of proof on the SFC - no burden of proof in an inquisitional inquiry
- SFC is only required to present evidence and information to the MMT, which should investigate the facts to reach a decision on the balance of probabilities

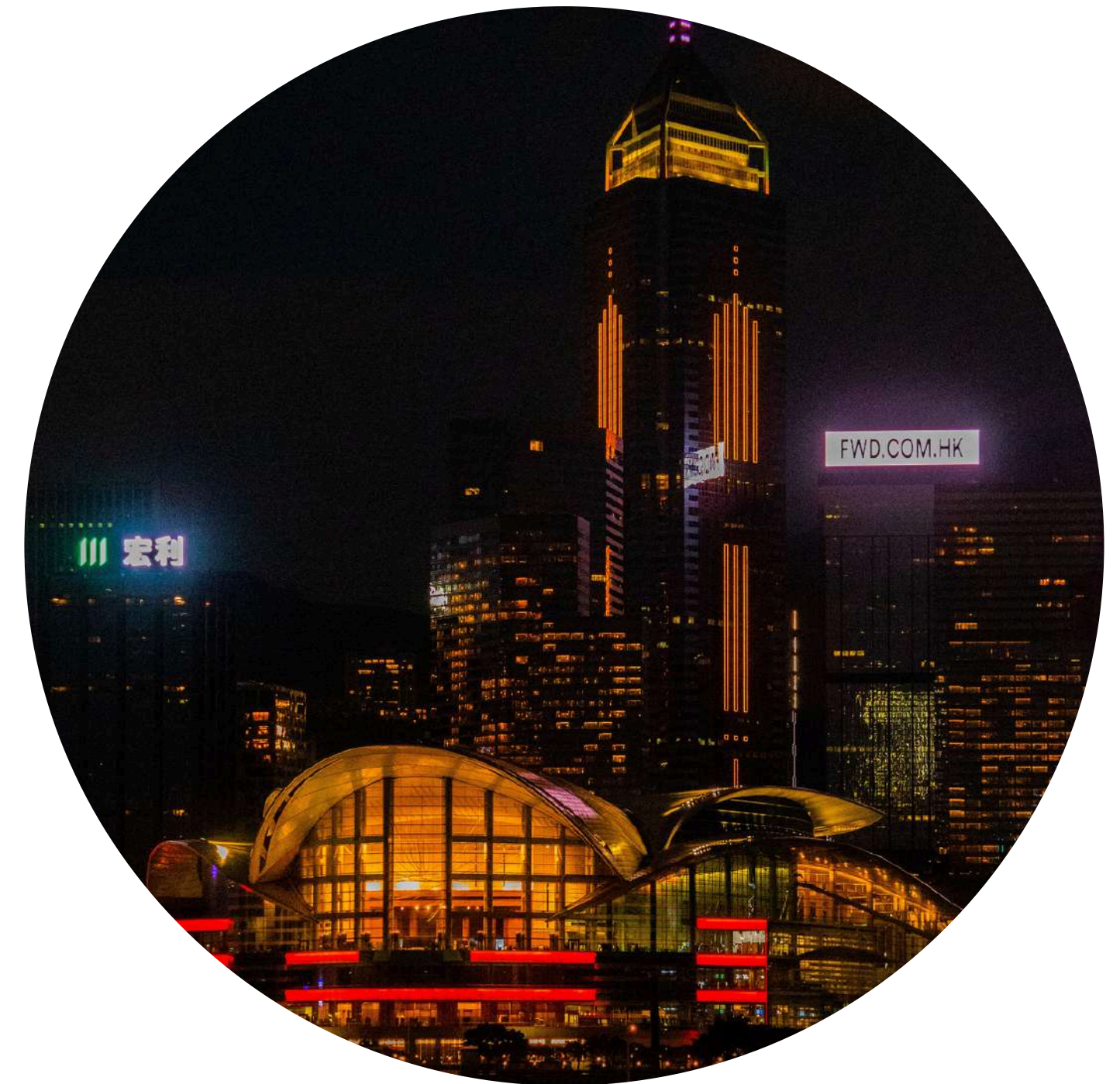
Remittal

- CA upheld the SFC's appeal and remitted the matter to MMT to determine whether Mr. Cheng had dealt in the shares



MMT RETRIAL

- MMT concluded it was more probable than not that Mr. Cheng dealt in the shares from the following evidence:
 - Mr. Cheng received all correspondence + statements re. the securities accounts
 - Clear correlation between the share trading + the acquisition of inside information
 - Correlation between Mr. Cheng's whereabouts + the IP address from which orders were placed
 - No 3rd party nominee or other individual would have been in a position to place the orders
- Following orders were made:
 - 54-month disqualification order
 - 52-month cold shoulder order
 - cease and desist order
 - disgorgement order (almost HK\$3 million)
 - Government + SFC costs orders
 - HKICPA disciplinary referral order



MMT ORDERS

s. 257(1) SFO



1 a disqualification order

2 cold-shoulder order

3 cease and desist order

4 disgorgement order

5 cost orders

6 a disciplinary referral

- SFO s.257(2) – MMT can take into account previous convictions in Hong Kong
- SFO ss. 253(2) + 254(6) – maximum fine of HK\$1million + maximum 2 years' imprisonment for failure to comply

APPEALS



May appeal to the Court of Appeal on a point of law

Need to obtain leave of the Court of Appeal for an appeal based on a question of fact (s. 266)

In the case of SFC disciplinary actions, can appeal to the SFAT

SFAT proceedings are civil in nature + use the civil standard of proof

MMT CASE – RE. CHINA HUIYUAN JUICE GROUP LTD

- Ms. Sun Min had bought around 8.6 million shares of China Huiyuan Juice Group Ltd.
- She made a profit of HK\$55.1 million + when she sold the shares within 48 hours after the public announcement of the company's take-over by Coca-Cola
- No direct evidence that she received inside information
- She denied having inside information or knowledge of the take-over
- SFC's case centred on circumstantial evidence



MMT CASE - CHINA HUIYUAN JUICE GROUP LTD (CONT'D)

- MMT held - if the identity of the connected person who passed on the inside information could not be ascertained, the MMT would decide, based on all available evidence, whether a compelling inference could be drawn
- MMT inferred that the information came from an insider even though the insider's identity could not be ascertained
- The inside information in the diary must have come from Ms. Sun or she must have known of the information



MMT CASE – WARDERLY INTERNATIONAL HOLDINGS LIMITED

- Former company secretary (Lo) + lender and potential investor (Luu) held Warderly shares
- Mid-2006 - Warderly had cash flow problems
- Lo + Luu sold their shares in March + April 2007
- SFC alleged Lo + Luu engaged in insider dealing as, when they sold their shares, they had price sensitive information concerning Warderly's poor financials, which was not publicly known + avoided losses by selling their shares



MMT CASE – WARDERLY INTERNATIONAL HOLDINGS LIMITED (CONT'D)

SFC alleged the following events were “inside information”:

- tightening of banking facilities from July 2006, overdue loans, rescheduled payments, demand letters + writs issued by banks + lenders
- a HK\$2 million loan from Luu in Nov. 2006 at a 5% monthly interest rate
- further loans from Luu totalling HK\$7.2 million at a 5% interest rate in Dec. 2006
- Warderly’s failure to repay the loans + interest due to Luu when they became due in Jan. 2007 +/-or
- a HK\$10 million loan from Mr. Luu in Feb. 2007 at a 3% monthly interest rate which was secured by 50 million Warderly shares



MMT CASE - WARDERLY INTERNATIONAL HOLDINGS LIMITED (CONT'D)

MMT decision - the information regarding Warderly's poor financial state was already known to the public + there was no adverse impact on the stock price

The information was therefore not inside information and Lo + Luu were found not to have engaged in insider dealing

CRIMINAL LIABILITY



All forms of market misconduct are liable to prosecution as a criminal offence under Part XIV SFO – maximum penalty is 10 years' imprisonment + a fine up to HK\$10 million

The court can also make disqualification, cold shoulder + disciplinary referral orders

Non-compliance is an offence liable to a maximum fine of HK\$1 million + up to 2 years' imprisonment

NO DOUBLE JEOPARDY

- A person who has been subject to criminal proceedings under Part XIV may not be subject to MMT proceedings if:
 - those proceedings are still pending or
 - no further criminal prosecution could be brought against that person again under Part XIV in respect of the same conduct + vice versa (ss. 283 + 307)
- Decision as to whether to take civil or criminal proceedings is made by the Secretary for Justice
- SFC can institute summary criminal proceedings before a magistrate for less serious market misconduct offences



CIVIL LIABILITY: PRIVATE RIGHT OF ACTION

- SFO creates a private right of civil action against the perpetrator in favour of anyone who has suffered a pecuniary loss as a result
- unless it is fair, just + reasonable that the perpetrator should not be liable (ss. 281 + 305)
- A person is taken to have committed market misconduct if:
 - he has perpetrated any market misconduct
 - a corporation of which he is an officer perpetrated the market misconduct with his consent or connivance
 - any other person committed market misconduct + he assisted or connived with that person in perpetrating the market misconduct, knowing that such conduct constitutes or might constitute market misconduct
- Not necessary to have a finding of market misconduct before civil proceedings, but findings are admissible as prima facie evidence



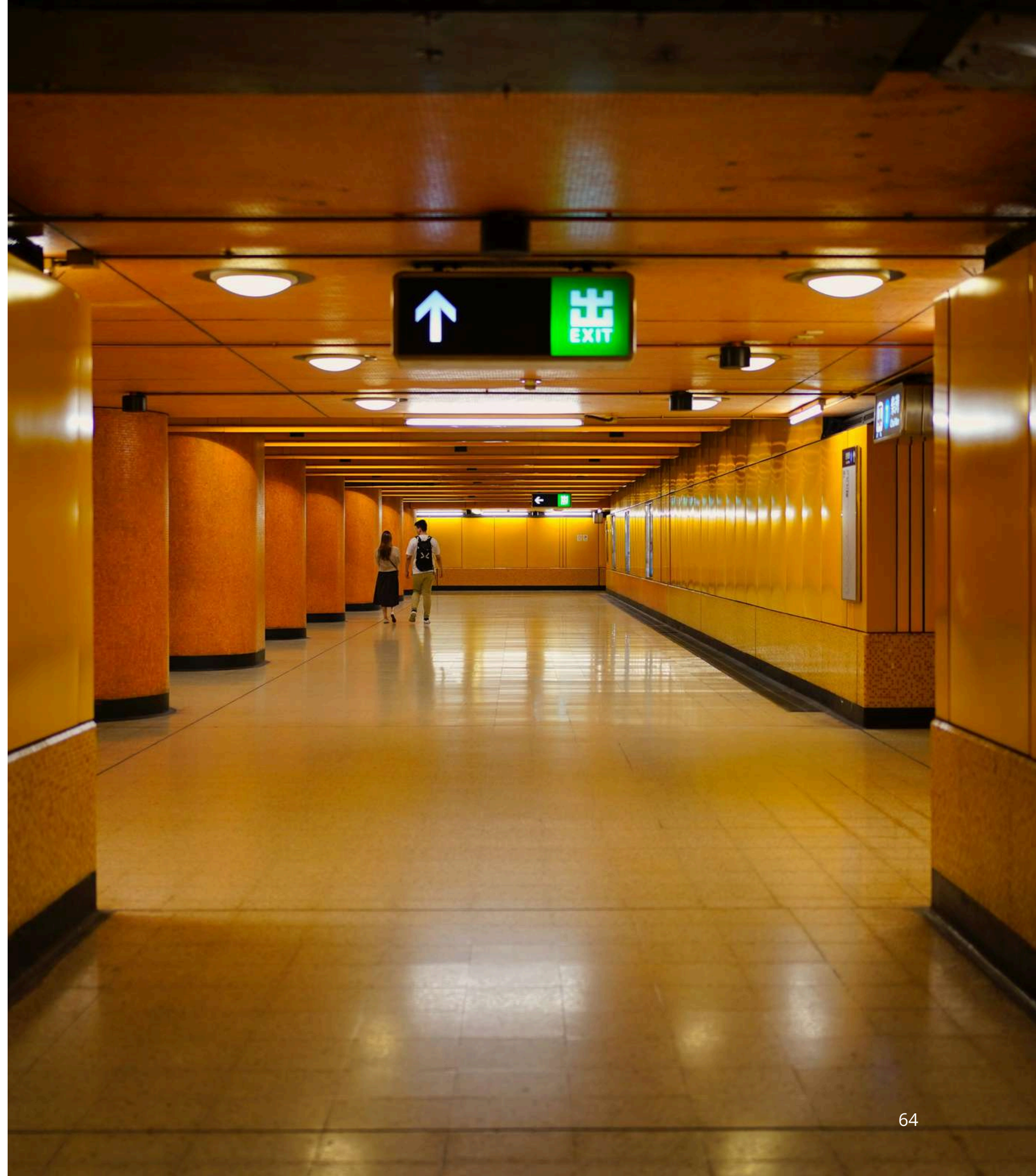
TRANSACTIONS NOT VOID OR VOIDABLE

ss. 280 + 304 SFO - a transaction is not void or voidable by reason only that it constitutes market misconduct

OFFICERS' LIABILITY

Officers' Duty

- s. 279 SFO – duty on every Listco officer to take reasonable measures regularly to ensure that proper safeguards are in place to prevent it from perpetrating any market misconduct
 - “officer of a corporation” includes a director, manager or secretary of, or any other person involved in the management of, the Listco
- s. 258 SFO – where a corporation has been identified as having been engaged in market misconduct + the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the corporation of the duty imposed on him under s.279, the MMT can make one or more orders even if that person has not been identified as having engaged in market misconduct himself





LIABILITY

- s. 390 SFO – where it is proved that an offence committed was aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to the recklessness of, any officer of the corporation, or any person purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence + liable to be punished in accordance to Part XIV

DISCIPLINARY PROCEEDINGS

- Any regulated person who is guilty of misconduct or who, in the opinion of the SFC, is not a fit and proper person to be or to remain the same type of regulated person, is subject to a range of disciplinary procedures under Part IX SFO
- “Misconduct” = any contravention of the SFO or of the terms of any licence issued or registration
- Examples of disciplinary orders:
 - revocation or suspension of a person's licence in respect of all or any regulated activities
 - a fine not exceeding the greater of HK\$10 million or 3 times the profit gained or loss avoided
 - prohibition orders
 - suspension or revocation of approval as a responsible officer



DISCIPLINARY PROCEEDINGS (CONT'D)

- The definition of “Persons” in the disciplinary proceedings provisions:
 - Corporations licensed under the SFO
 - Their Responsible Officers + persons involved in their management
 - Authorised financial institutions + their executive officers, persons involved in the management of their regulated business + individuals named in their register as carrying on a regulated activity



PROCEEDINGS UNDER S. 213 THE SFO

s. 213 – on the application of the SFC,
CFI can grant orders to prevent or
remedy breaches of the SFO + other
relevant ordinances

PROCEEDINGS UNDER SECTION 213 OF THE SFO (CONT'D)

s. 213 of the SFO also covers:

- aiding, abetting or assisting, counselling or procuring another person to commit a breach of the SFO
- inducing, by threats, promises or otherwise, another person to commit a breach of the SFO
- directly or indirectly being knowingly involved in, or a party to, a breach of the SFO
- attempting or conspiring with others to commit a breach of the SFO



PROCEEDINGS UNDER S. 213 SFO – REMEDIES

Injunctions + orders

- requiring the person to take steps to restore the parties to a transaction to the position they were in before the transaction OR
- restraining or prohibiting a person from acquiring, disposing of or dealing in any property



SFC v. TIGER ASIA

- Tiger Asia received confidential + price sensitive information regarding placements of the shares of 2 banks
- It then took short positions in the banks' shares before the placings were announced to the public + made a substantial profit
- Tiger Asia also manipulated the CCB share price downwards during the closing auction session
- Court ordered Tiger Asia + the 2 senior officers to pay around HK\$45.3 million to investors affected by their insider dealing

Case confirmed CFI's ability to make orders sought by SFC under s. 213 even in the absence of a prior finding of insider dealing by the MMT or a criminal court



HKSAR V. DU JUN

- Du Jun was convicted of insider dealing in the shares of China Resources Holdings and sentenced to 6 years' imprisonment + fined HK\$1.7 million
- In civil s. 213 proceedings, court granted a restoration order against Du Jun, ordering him to pay approximately HK\$24 million to 237 affected investors

Case illustrates that SFC can pursue criminal insider dealing proceedings + s. 213 civil proceedings for investor compensation



RE. TELEEYE HOLDINGS LIMITED ("TELEEYE")

- 2016 - Ms. Yik acted as TeleEye's controlling shareholder's representative in negotiating proposed takeover of TeleEye
- She bought 22.7 million TeleEye shares through accounts she controlled before the takeover was announced
- TeleEye's share price rose by 70% on announcement of the takeover
- She then sold 15 million shares making a profit of almost HK\$13 million
- SFC brought s. 213 proceedings
- 2017: COFI granted Mareva injunction over Ms. Yik's assets + 2 other defendants agreed to pay HK\$13 million into court



RE. TELEEYE HOLDINGS LIMITED

CONT'D

- 2021 - Ms. Yik convicted of insider dealing
- She was a person connected to TeleEye – acted as seller's representative in negotiations with buyer + involved in negotiating takeover
- That information was “specific information” + not generally known – not in dispute
- Material impact on share price was shown
- Ample evidence that Ms. Yik was aware the information was inside information
- 2 other defendants also convicted – they dealt in TeleEye shares having information they knew was inside information which they received from someone they knew to be connected with TeleEye
- In s. 213 proceedings, court ordered payment of HK\$13 million to share sale counterparties



CHOW CHIU CHI

- Dec. 2020 - Eastern Magistrates' Court convicted Mr. Chow (Chow), co. sec. of China Automation of insider dealing in its shares
- Chow sentenced to 45 days' imprisonment + fined HK\$45,000
- Chow purchased 534,000 shares through his wife's securities account on learning of a possible general offer + being directed to arrange suspension of trading in the Company's shares on 11 April 2016
- Trading was suspended on afternoon of 11 April + China Automation published an announcement on 12 April about the possible general offer
- On resumption of trading on 13 April, the share price rose 18.81% from the previous closing price
- In April 2016, Chow sold China Automation shares realising HK\$7,417 profit
- Notional profit of the remaining unsold shares was HK\$36,865
- Chow, by virtue of his position, had access to inside information + used it to profit from trading shares gaining an unfair advantage in the market



SFC V. CHAN PAK HOE PABLO

- Chan was found guilty of insider dealing and initially sentenced to 240 hours of community service + ordered to pay SFC's investigation costs
- On review, Eastern Magistrates Court sentenced Chan to 4 months' imprisonment + fined HK\$120,000
- On appeal, the CFI restored the original sentence - the Magistrate lacked jurisdiction to grant the application for review of a sentence once notice of appeal had been lodged
- CFA reversed that decision – a pending appeal against one part of a Magistrate's decision does not preclude review of another part. The 4 months' imprisonment + fine were restored
- Hon. Justice Ribeiro affirmed that the appropriate sentencing for insider dealing cases is a custodial sentence + a fine to disgorge all profits made from insider dealing



INSIDER DEALING IN LISTCO PRIVATISATIONS

BLOOMAGE BIOTECHNOLOGY CORPORATION LIMITED (“BLOOMAGE”) PRIVATISATION

- Former executive general manager of China CITIC Bank International Limited, Mr Wu, worked on a loan to finance the privatisation of Main Board-listed Bloomage
- Wu bought >1 million Bloomage shares before the privatisation was made public + made HK\$3 million on share sale after the privatisation was announced

I.T LIMITED PRIVATISATION

- Suspected insider dealing in shares of I.T. Limited (“IT Ltd”)
- Ms Tsang was a manager at an investment bank and allegedly tipped off Mr. Kwok re. privatisation of IT Ltd
- They bought 2.8 million IT Ltd shares before the planned privatisation was announced
- When share price rose 44.8% on announcement of the privatisation, they sold the shares making a profit of > HK\$4 million
- May 2023: COFI granted freezing orders over assets of Ms Tsang + Mr. Kwok under s.213 SFO

INSIDER DEALING IN LISTCO PRIVATISATIONS

ELEC & ELTEK INTERNATIONAL COMPANY LIMITED POSSIBLE PRIVATISATION

- Wong Pak Wai, personal assistant of the chairman and executive director of a company proposing the potential privatisation of Elec & Eltek Internation Company Limited
- Wong purchased 3,000 shares prior to the announcement was made public and made profit of HK\$19,080
- Sentenced to 240 hours of community services due to profit size and Wong's early admission

INSIDER DEALING - Recent Cases

CHINA FORESTRY HOLDINGS COMPANY LIMITED

- False and misleading information in the Company's prospectus and annual results
- Former CEO sold 119 million shares avoiding HK\$353 million loss knowing of the false or misleading information and of further information likely to be uncovered by auditors
- MMT was satisfied that when he sold his shares, he knew revelations could severely impact the Company's share price

BRIGHT SMART SECURITIES INTERNATIONAL (H.K.) LIMITED

- Aug. 2022 – SFC issued restriction notice to Bright Smart – an SFC-licensed broker – freezing assets held in a client account holding proceeds of suspected insider dealing
- As Bright Smart was not suspected of insider dealing, the notice did not affect its operations or other clients
- SFC considered that the issue of the restriction notice was desirable and served the interests of the investing public as it prevented dissipation of proceeds of suspected insider dealing held in clients' accounts



2023 Consultation Conclusions

SFC Consultation Conclusions on Proposed Amendments to Enforcement-related Provisions of the SFO published in August 2023:

- Proposed amendments will broaden territorial scope of HK's insider dealing regime
- Current regime does not apply to:
 - securities that are only listed overseas (or their derivatives), even if relevant conduct is perpetrated in HK
 - insider dealing involving HK-listed securities (or their derivatives) where relevant conduct is perpetrated outside HK
- Proposed amendments will extend SFO insider dealing to include:
 - insider dealing perpetrated in HK involving securities listed on overseas stock markets or their derivatives +
 - insider dealing perpetrated outside HK, if it involves HK-listed securities or their derivatives



INSIDER DEALING IN HK INVOLVING OVERSEAS-LISTED SECURITIES (OR THEIR DERIVATIVES)

- Difference in nature and amount of relief between s. 300 + insider dealing
- E.g. Young Bik Fung case: the s. 213 restoration order granted based on the section 300 contravention was to return the profits from the illicit trades to the bank
- However, if the restoration order had been based on a contravention of the insider dealing provisions (ss. 270 or 291), the order would have been calculated on the basis of restoring the affected investors impacted by the illicit trades to the position they were in before entering into the share sale



INSIDER DEALING IN HONG KONG INVOLVING OVERSEAS-LISTED SECURITIES (OR THEIR DERIVATIVES) (CONT'D)

- In another previous case, an HK-licensed intermediary dealt in overseas-listed securities before the announcement of a placing exercise
 - Intermediary had inside information provided by another HK-based intermediary when the dealing occurred
 - Apart from the mechanics of trading, the acts relating to the offence occurred in HK
 - Inadequate evidence to demonstrate suspect engaged in fraudulent or deceptive acts – precluded action under s. 300 SFO
- S. 300 is a criminal offence: criminal standard of proof applies
 - No civil equivalent provision under Part XIII



INSIDER DEALING IN HONG KONG-LISTED SECURITIES OR THEIR DERIVATIVES WHICH TAKES PLACE OUTSIDE HK

- To determine territorial jurisdiction, SFC applies common law test of whether a substantial measure of the crime's activities took place in HK
- More than 60% of insider dealing cases between 2017-2021 related to insider dealing perpetrated outside HK in HK-listed securities or their derivatives
- SFO insider dealing regime will be extended to cover any act which takes place outside Hong Kong involving HK-listed securities or their derivatives
- SFC - Licensed intermediaries should report any breaches of any insider dealing provisions to the SFC under section 12.5 of the Code of Conduct for Persons Licensed by or Registered with the SFC



PROPOSED AMENDMENTS TO SFO INSIDER DEALING REGIME

- Amend definition of “listed” in ss. 245(2) + 285(2) to include overseas-listed securities + their derivatives
 - Definition currently only covers securities listed on a “recognised stock market”, i.e. the stock market operated by HKEX, or their derivatives
- Add new section to to expand territorial scope of insider dealing to cover acts of insider dealing involving:
 - HK-listed securities or their derivatives regardless of where they occur +
 - overseas-listed securities or their derivatives if any one or more of such acts occur in HK provided the conduct is also unlawful in the relevant jurisdiction
 - but acts in relation to overseas listed-securities only unlawful if the conduct is also unlawful in jurisdiction of the securities’ listing
- Repeal ss. 270(2) + 291(7) re. dual-listed shares which will be redundant





PROPOSED AMENDMENTS TO S271(5)

- Section 271(5) of the SFO - Off-market dealings defence
 - to make the defence available to insider dealing involving overseas-listed securities or their derivatives
- Align the 2 mens rea formulations for insider dealing taking place through disclosure of inside information by adopting formulation in ss. 270(2)(b) + 291(7)(b)
 - Mens rea element for ss. 270(2)(b) + 291(7)(b) which apply to dual-listed securities or their derivatives is met if:
 - person disclosing inside information knows or has reasonable cause to believe that the other person to whom the information is disclosed “or some other person” will deal
 - Mens rea element of other ss 270 + 291 sub-sections which apply to securities listed only in HK or their derivatives is met if:
 - person disclosing inside information knows or has reasonable cause to believe that only “the other person” to whom the information is disclosed will deal in the listed securities or their derivatives
 - The formulation of mens rea that applies to HK-listed securities or their derivatives is currently narrower - does not cover “some other person” dealing

SFC Consults on Market Sounding

- In October 2023, the SFC issued a consultation paper on the proposed guidelines for market soundings
- “Market Sounding” - A well established practice involving market participants sharing information with prospective investors before announcing a transaction to assess investor interest in a potential transaction or aid in determining its details (e.g., its size, pricing, structure and selling method)
- Proposed Guidelines - SFC proposes a common set of core principles that all Disclosing Persons and Recipient Persons will need to follow when conducting market sounding, which covers 6 areas:
 - Market Integrity
 - Governance
 - Policies and procedures
 - Information barrier controls
 - Review and monitoring controls
 - Authorised communication channels
- Proposed Guidelines apply to disclosure of all non-public information - not just inside information

