

SFC lodges Notice of Appeal in Tiger Asia case

9 Sep 2011

The Securities and Futures Commission (SFC) filed a Notice of Appeal today seeking to appeal the order of the Court of First Instance to strike out the SFC's proceedings against Tiger Asia Management LLC and three of its officers (collectively the Tiger Asia parties) in which the SFC seeks orders in relation to their alleged contraventions of Hong Kong's insider dealing and market manipulation laws (Note 1 & 2).

The Court of First Instance decided, in summary, that the Court had no jurisdiction to determine whether the Tiger Asia parties had committed the alleged contraventions because the intention of the Securities and Futures Ordinance (SFO) was to confer an exclusive jurisdiction on the criminal courts and the Market Misconduct Tribunal (MMT) to determine whether there had been a contravention of the market misconduct provisions in the SFO.

The SFC contends and will argue this is wrong and that the intention and purpose of section 213 of the SFO is to give the SFC an independent, self-standing remedy that is additional to the criminal process and the MMT.

Moreover, the SFC will argue that the SFC's proceedings against the Tiger Asia parties are in precise accordance with the legislative intention and the proper construction of section 213 and the SFO (Note 3).

The SFC has also asked the Court of Appeal for an expedited hearing of the appeal.

End

Notes:

1. Please see the SFC's press releases dated [20 August 2009](#), [26 April 2010](#), [21 June 2011](#) and [14 July 2011](#).
2. The Court's decision will be available on the Judiciary's website (www.judiciary.gov.hk).
3. See Consultation Document issued with the Securities and Futures Bill – White Bill in April 2000, paragraph 11.20. See also comments made in the Court of Appeal's judgment in *SFC v C* [2009] 4 HKLRD 315 where Le Pichon JA said in paragraph 38 (with which Cheung J agreed) that "relief under section 213(2) is entirely free standing and is not contingent or conditional on there being proceedings in the Market Misconduct Tribunal...Thus, the relief sought in s213 proceedings is entirely self-contained".

Page last updated : 1 Aug 2012