

Court of Appeal upholds Du Jun's insider dealing convictions

20 Sep 2012

The Court of Appeal today upheld the insider dealing convictions of Mr Du Jun, former managing director of Morgan Stanley Asia Ltd (Morgan Stanley), for insider dealing in shares of CITIC Resources Holdings Ltd (CITIC Resources) but varied the sentence and fine imposed on him.

Du was jailed for seven years and fined \$23.3 million on 18 September 2009 after being convicted on ten counts of insider dealing following a trial in the District Court (Note 1).

Du appealed both his convictions and the sentence to the Court of Appeal.

The Court of Appeal today upheld the trial judge's findings that, on nine occasions between 15 February and 30 April 2007, Du purchased a total of 26.7 million shares of CITIC Resources for \$86 million while he was part of a team of Morgan Stanley's bankers advising Hong Kong-listed CITIC Resources on a proposed deal to acquire oil field assets in China.

The Court of Appeal also upheld the trial judge's finding that Du counselled or procured his wife to deal in CITIC Resources shares on 27 February 2007.

Accordingly all convictions were upheld.

However, the Court of Appeal reduced Du's term of imprisonment from seven years to six years and lowered the fine to \$1.688 million.

In reducing the fine, the Court of Appeal took into account the ongoing civil proceedings commenced by the Securities and Futures Commission (SFC) against Du under section 213 of the Securities and Futures Ordinance in which the SFC is seeking remedial orders against Du for the benefit of his trading counterparties (Note 2). The SFC's civil proceedings were adjourned pending the outcome of Du's criminal proceedings and further adjourned pending this appeal.

The Hon Mr Justice Stock VP who delivered the judgment on behalf of the Court of Appeal considered that, although the fine was intended to ensure Du did not profit from his crimes, in this case, the effect of the size of the fine was to:

"deprive the applicant's (Du) trading counterparties of the amounts which might be available to them pursuant to the provisions of section 213 of the Ordinance...It seems to us the laudable objective of the section 213 proceedings...would in the particular circumstances of this case be defeated if fines were imposed at the expense of counterparties entitled to damages" (Note 3).

Du paid his fine out of a fund of money (initially totalling \$46.5 million) that was frozen by an interim order obtained in the SFC's section 213 proceedings. An amount of approximately \$7.5 million remains frozen under that order. The SFC will now apply to have the amount by which the fine has been reduced paid back into the frozen funds to be held pending further order by the Court in those proceedings (Note 4).

End

Notes:

1. Please see SFC's press releases dated [10](#) and [18 September 2009](#).
2. Please see SFC's press release dated [18 December 2007](#).
3. Please refer to paragraph 167 and 173 of the judgment, which will be available on the judiciary website www.judiciary.gov.hk.
4. After the time period for Du to seek leave to appeal this decision to the Court of Final Appeal has elapsed and, if no such application is made, the SFC will proceed to take steps to prosecute the section 213 case against Du.

