



香港中文大學
The Chinese University of Hong Kong

Centre for Financial Regulation and Economic Development

金融規管與經濟發展研究中心



FACULTY OF LAW

Working Paper No. 13

September 2013

Insider Dealing Law in Hong Kong

Arthur Yan¹

Abstract

Although prohibited since the 1970s, insider dealing has only become a crime in Hong Kong since 2002. After briefly discussing the reasons for and against the prohibition of insider dealing, this paper outlines the legislative history of the regulatory mechanism for insider dealing in Hong Kong, and critically analyses the current regulatory regime. This paper argues that the law should be made simpler, fairer, and to conform better to basic civil liberty.

This paper can be downloaded from the [Social Sciences Research Network at Abstract No. 2322774](#).

¹ Juris Doctor, Faculty of Law, Chinese University of Hong Kong

Contents

1. Introduction	4
2. Arguments for and against prohibition.....	5
Arguments for prohibition	5
Arguments against prohibition.....	7
Conclusion	8
3. The regulatory mechanism in Hong Kong	9
Legislative History.....	9
The current mechanism.....	10
Core concepts.....	10
Prohibited acts.....	12
Exceptions and defenses	12
Dual enforcement regime.....	13
Other proceedings	15
4. Implementation and enforcement.....	18
Criminal prosecutions	18
Prosecutions in the MMT.....	19
5. Constitutional and administrative law concerns.....	21
Nature of proceedings in the MMT – civil or criminal?.....	21
Lack of impartiality.....	25
6. Evaluation and recommendations	26
Simplify the law	26
Make it fairer	27
Respect civil liberty	27
Consider alternative enforcement	28
Conclusion	29
Bibliography	30
Statutes.....	30

Legislative Council debates	30
Cases	30
IDT and MMT reports.....	31
Secondary sources.....	31

1. Introduction

Insider dealing can be generally defined as dealing on material, non-public (i.e., inside) information about a company by insiders for personal gain. Tipping, the disclosure of inside information to others by insiders, also falls under the concept. Although it is a widely recognized form of market misconduct, and is regulated in all of the major financial markets², scholars and regulators differ on whether, how, and why insider dealing should be regulated.

This paper discusses the legal regulation of insider dealing in Hong Kong. It:

- critically examines the rationales for regulating insider dealing,
- introduces the regulatory mechanism for insider dealing in Hong Kong,
- discusses issues arising from implementation of the mechanism, with an emphasis on constitutional issues, and
- makes recommendations for improvement.

² Bainbridge, Stephen *Insider trading* Edward Elgar 2011

2. Arguments for and against prohibition

Arguments for prohibition

The local authority and the judiciary have provided several reasons for regulating insider dealing, but usually with little elaboration. Here we examine the suggested reasons critically with the help of overseas jurisprudence³.

Insider dealing is a kind of fraud⁴.

In common parlance, fraud is usually associated with active misrepresentation, such as when a fraudster claims that he can cure people of terminal cancer for a huge fee. Insider dealing typically takes place on impersonal exchanges. The insider does not make any misrepresentation to his counterparty. How is insider dealing fraudulent?

The courts in the United States have for decades struggled with the problem of applying a general anti-fraud rule to combat insider dealing⁵, and have in different times adopted different theories of how insider dealing is fraudulent. In gist, the problem is that mere unfairness in itself is seen as insufficient in rendering insider dealing fraudulent; something more is required. Its latest theory, the misappropriation theory, posits that a fiduciary duty exists between people who are given privileged access to inside information and the source of the information. Secret dealing for personal gain represents dishonest misappropriation of that information by the fiduciary from his principal, as he deprives him of his right to exclusive use of that information. This makes the conduct fraudulent⁶.

Additionally, the United Kingdom's Fraud Act 2006 provides a sophisticated definition of fraud. The relevant sections of the Act create criminal liability if a person dishonestly, and for the purpose of personal gain:

1. makes false representation,
2. fails to disclose information to another where he is under a legal duty to disclose, or

³ Unless otherwise cited, this chapter relies principally on: Wang, William & Steinberg, Stephen *Insider trading* Oxford 2010

⁴ *SFC v Chan Pak Hoe Pablo* [2012] 1 HKLRD A5, [64]

⁵ 10(b), Securities Exchange Act 1934

⁶ *US v O'Hagan* 521 U.S. 642; Above 1, 701

3. abuses a position of trust.

In Hong Kong, officers of listed corporations are now required by statute to disclose inside information as soon as reasonably practicable, and non-disclosure is only accepted for defined purposes⁷. On top of this, the presence of insider dealing prohibition means that insiders clearly have a legal duty to disclose any inside information to his counterparty or abstain from dealing. Additionally, employees and professionals generally occupy a position of trust in relation to their employers and clients, and any secret misuse of information gained in dealing for personal profit breaches that trust. Hence, in the present context, insider dealing falls squarely under the concept of fraud.

Insider dealing is not a victimless crime⁸.

1. Market participants as victim

A major argument against considering those who sold / bought from insider dealer as victims is that they would have sold / bought at that price anyway. The Court of First Instance, in *Chan Pak Hoe Pablo*⁹, quoting *R v McQuoid*¹⁰, rebuts this by arguing that if that party had access to the information, he would not have traded at that price. Using the common law language of causation, but for the insider's failure to disclose, the counterparty would not have traded. The problem with this explanation is that it applies equally well to all those who traded on that securities contemporaneously when the prohibited trade took place, making the potential list of 'victims' undeterminable, and the insiders' potential liabilities unduly large.

2. Transaction counterparty as victim

Steinberg and Wang¹¹ provide an alternative explanation of how the insider's 'trade', as opposed to 'nondisclosure', causes loss. They argue that, although the counterparty of the trade would have executed the trade at the same price anyway, there is always someone on the margin who could have bought the stock at the price of the trade or would not have made a sell at that price but for the insider's trade. When the insider has more of the stock, someone else must have less. That someone is the victim of the trade, although in most cases the victim is impossible to in fact identify. This analysis

⁷ Pt XIVA, Securities and Futures Ordinance, Cap571

⁸ Above 3, [67]

⁹ Ibid

¹⁰ (2009) EWCA Crim 1301

¹¹ Above 2, 74

is accepted by the United States Supreme Court in *O'Hagan*¹².

Since victims in the market usually would not even know they have been victimized, they are not in a position to take action to protect their rights, unless the culprit is identified by a regulatory body. This justifies central regulation of insider dealing.

3. Issuer as victim

As the misappropriation theory shows, the issuer of the securities, who grants access to its confidential information in confidence to its fiduciaries, has its confidential information misappropriated from it in insider dealing. It is also a victim of insider dealing. That it is bound by disclosure rules, and could not have profited the way the insider did does not detract from the fact that they are wronged by the insider. Often, it also suffers reputational loss. Moreover, the corporation's cost of capital may rise as investors could be less willing to invest in corporations whose insiders collect much of the expected gain through insider dealing.

The lack of any effective way in which corporations can monitor and prevent fiduciaries from dealing on inside information adds to the need for government regulation.

✚ **Insider dealing is unfair. It undermines confidence in the integrity of the market.**¹³

This has been identified as the chief mischief the local law addresses¹⁴. If an exchange allows insider dealing, insider dealers' informational advantage would allow them to consistently profit from other market players. This is akin to gambling using loaded dice. This not only raises moral issues, but also deters participants from entering the market. This decreases liquidity in the market and weakens its ability in performing its essential functions, such as resource allocation and price discovery.

Arguments against prohibition

Manne¹⁵ provided two major arguments against outlawing insider dealing. Manne argues that insider dealing increases market efficiency as others would look onto

¹² Above 5, 656

¹³ Goyne, Eugene *Fairer markets: the SFO and more effective market misconduct laws* SFC 2003 http://www.sfc.hk/web/doc/EN/legislation/securities/others/fair_markets.pdf

¹⁴ International City Holdings Limited – Report of the Insider Dealing Tribunal dated 27 Mar 1986, 11; above 12

¹⁵ Manne, Henry *Insider Trading and the Stock Market* Free Press 1966

insiders' deals as trading signals. This drives the market price closer to its 'true' value. This has attracted attacks from many sides. First, even if insider dealing is unregulated so that insiders do not have to hide their identities from law enforcers, insiders would often have incentive to hide their identities so as to rip more of the profit themselves. Hence, the signaling effect is weak. And, in most cases the information would anyway be disclosed fully shortly, hence the gain in market efficiency through insider dealing's imprecise signaling function is minimal.

The second argument Manne advances is that insider dealing is an efficient way to recompense company managers. However, the market is inherently unpredictable. Managers would not be able to foresee what their reward will be. Also, the free-rider problem is hard to solve, as the typist who contributed minimally may be as well placed as the executives to profit through insider dealing. Moreover, this also provides perverse incentives for corporate managers to manipulate corporate endeavors for personal trading gains.

Conclusion

On balance, the case for regulating insider dealing is much stronger than the case against it. Where insiders' duty to disclose or abstain from trading with inside information is established, any insider dealing in breach of such rule, or other fiduciary duties, is a form of fraud. Insider dealing generates specific, but unidentifiable trade victims, and harms the securities issuers' interest. The market as a whole also losses as investors shun the unfair market.

3. The regulatory mechanism in Hong Kong

Legislative History

Insider dealing was first outlawed in Hong Kong following securities law reform prompted by the 1973 market crash¹⁶. However, the relevant provisions, contained in the Securities Ordinance¹⁷, were never implemented.

The 1978 amendment of the SO ushered in the first actually-implemented insider dealing regime. The government decided that criminal courts are ill-suited for tackling insider dealing, since obtaining sufficient evidence would often be impossible¹⁸. An Insider Dealing Tribunal with no formal sanctioning power was instead established. Aside from ‘naming and shaming’ the perpetrators, it was intended that additional sanctions would come from organizations such as professional bodies of which the individuals were members, and companies of which the individuals were directors or employees¹⁹. The IDT adopts an inquisitorial approach, has wider latitude in receiving evidence (including compelled evidence), and uses a lower standard of proof than the criminal courts²⁰.

The lack of sanctioning power was found to render the 1978 regime ineffective²¹. In another wave of financial law reforms prompted by another market crash in 1987, the Securities (Insider Dealing) Ordinance²² was enacted. Most of the existing provisions in the SO were kept. ‘Tippees’ and ‘takeover bidders’ liabilities were introduced²³. The S(ID)O did not make insider dealing a crime, but substantially increased the IDT’s sanctioning power. The IDT may:

- disqualify an insider dealer from acting as a director of a listed company,

¹⁶ *Second Report of the Company Law Reform Committee on Company Law Reform Hong Kong 1973*

¹⁷ 1973, Cap333

¹⁸ Hong Kong Legislative Council *Official Record of Proceedings*, 12th October 1977, 65

¹⁹ *ibid*

²⁰ *Re Chow Chin-Wo and others* [1987] HKLR 73

²¹ Lafa Holdings Limited – Report of the Insider Dealing Tribunal dated 22 Feb 1990, 71; Securities Review Committee *The Operation and Regulation of the Hong Kong Securities Industry Hong Kong 1988*, 323

²² 1990, Cap395

²³ Hong Kong Legislative Council *Official Record of Proceedings*, 12th July 1989

- order the perpetrator to
 - disgorge profit made,
 - pay a penalty of up to three times the profit gained or loss avoided, and
 - pay the government’s expense in relation to the inquiry.

The current mechanism

A number of legislations regulating the financial markets were passed in the 1990s. The Securities and Futures Ordinance²⁴, enacted in 2002, consolidated the various ordinances and instituted major regulatory reforms. The SFO, as amended from time to time, is the current regime in force.

The S(ID)O was regarded as effective in dealing with insider dealing, hence its provisions were largely reenacted in the SFO. However, to bring insider dealing in line with other market misconducts, insider dealing becomes a criminal offence punishable by a maximum penalty of \$10,000,000 fine and 10 years’ imprisonment²⁵. The rest of this chapter outlines the current regime.

Core concepts

The substantive conception of what constitute insider dealing has remained largely constant in the different legislative regimes since 1973, despite dramatic changes in applicable punishments²⁶. It comprises two principal elements²⁷:

A. Inside information

The information must be specific, not generally known, and likely to have a material effect on the price of the listed securities²⁸. Pursuant to a recent change in listed corporations’ disclosure requirement, ‘relevant information’, the term previously in use, has been renamed ‘inside information’. The two labels are equivalent. The interpretations by tribunals on the concept of ‘relevant information’ continue to apply. These have been summarized in the Securities and Futures Commission’s *Guidelines*

²⁴ 2002. All legislative citations hereafter refer to SFO, unless otherwise stated.

²⁵ s291

²⁶ *Leung Chi Keung v MMT* [2012] 2 HKLRD 786, 798

²⁷ *Ibid* 802

²⁸ s245 & 285

*on Disclosure of Inside Information*²⁹.

B. Person connection

To engage insider dealing liability, a personal nexus must exist between the person and the corporation in which he has inside information. They fall into three groups³⁰:

1. Connected persons³¹

This comprises five sub-groups:

- i. Substantial shareholders³², directors, and employees³³ of the corporation, or its related corporation³⁴,
- ii. Persons connected by professional or business relationship³⁵,
- iii. Transaction counterparties privy to inside information³⁶,
- iv. Public officers and specified persons³⁷, and
- v. Group i to iii insiders within the 6 months preceding the relevant contravention³⁸.

2. Take-over bidders³⁹

These are persons contemplating or have contemplated making a take-over offer⁴⁰ for the corporation.

²⁹ 2012

<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openConclusionAppendix?refNo=10CP2&appendix=4>

³⁰ s247 & 287

³¹ s247(2) & 287(2). A corporation is regarded as a 'person' connected to another corporation if any of its directors / employees is a person connected to that corporation.

³² Substantial shareholders are persons who are interested in 5% or more nominal value of the share capital of the corporation. s247(3) & 287(3). See s250 & 286 for definition of 'Interest in securities'.

³³ s247(1)(a)&(b); s287(1)(a)&(b)

³⁴ See Sch1 for definition

³⁵ s247(1)(c) & 287(1)(c)

³⁶ s247(1)(d) & 287(1)(d)

³⁷ s248 & 288

³⁸ s247(1)(e) & 287(1)(e)

³⁹ s270(1)(b) & 291(2)

⁴⁰ See Sch1 for definition.

3. Tippees⁴¹

These are persons who knowingly received inside information from insiders⁴².

Prohibited acts⁴³

1. Dealing, and counseling or procuring

All three groups of insiders with inside information are prohibited from:

- i. dealing⁴⁴, and
- ii. counseling or procuring another person to deal⁴⁵

in the listed securities of the corporation (and its related corporation), and their derivatives⁴⁶.

2. Disclosing

Connected persons and take-over bidders, but not tippees, are prohibited from disclosing inside information to others, knowing or having reasonable cause to believe that he will use it for the purpose of ‘dealing’, or ‘counseling or procuring’.

3. Overseas prohibition⁴⁷

All three groups are prohibited from ‘counseling or procuring’ or ‘disclosing’ in relation to overseas markets.

Exceptions and defenses

The legislation provides several exceptions and defenses (safe harbors) for legitimate activities that would otherwise be caught under the prohibition. These allow, for example, underwriters to perform their functions in good faith⁴⁸.

⁴¹ s270(1)(e),(f) & 291(5),(6)

⁴² See legislation for *mens rea* requirements.

⁴³ s270 & 291

⁴⁴ See s249 & 289 for definition.

⁴⁵ Hong Kong Worsted Mills Limited–Report of the Insider Dealing Tribunal dated 18 Nov 1997, 26: “To counsel is to order, advise, encourage or persuade...[T]o procure means to produce by endeavour.”

⁴⁶ See legislation for definitions and *mens rea* requirements.

⁴⁷ s270(2) & s291(7)

⁴⁸ s271 & 292. See legislation for detailed provisions.

Dual enforcement regime

Prior to the SFO, the IDT deals with insider dealing cases, while other forms of market misconducts are criminal offences dealt with by the criminal courts. As is common in many major financial centers⁴⁹, the SFO provides parallel civil and criminal regimes to regulate market misconducts, including insider dealing⁵⁰. Provisions in the two regimes mirror each other. The SFC, the central regulatory body for securities and futures market in Hong Kong, may choose to commence proceeding through either route, but not both, in respect of the same conduct (i.e. no double jeopardy)⁵¹.

The SFC makes the decision to choose the criminal or civil route in accordance with the Department of Justice's Prosecution Policy⁵². This involves the duo consideration of

1. sufficiency of evidence, and
2. public interest.

The SFC's Head of Enforcement recently explained that:

*'SFC gives priority to criminal proceedings over MMT [Market Misconduct Tribunal] proceedings where the conduct in question can be established to the criminal standard of proof and it is in the public interest to prosecute the case. The SFC will not commute what is otherwise a criminal offence into a civil contravention.'*⁵³

The SFO's 2012 amendment streamlined the process for instituting MMT proceedings. The SFC can now make the decision itself, instead of through the Financial Secretary⁵⁴. This is subject to the Secretary of Justice's consent, which may be withheld only if criminal proceedings in respect of the same conduct are contemplated⁵⁵.

⁴⁹ Alexander, R.C.H. *Insider Dealing and Money Laundering in the EU* Ashgate 2006

⁵⁰ Pt XIII, XIV

⁵¹ s283 & 307

⁵² Above 12, 8

⁵³ Steward, Mark *Market Misconduct: Prevention, Detection and Deterrence* NICE Actimize Conference, 8. http://www.sfc.hk/web/doc/EN/speeches/speeches/11/Mark_20110616.pdf

⁵⁴ s252

⁵⁵ s252A

Civil route – Market Misconduct Tribunal

Arguing that the IDT's lower standard of proof and less restrictive rules of evidence made it effective in combating insider dealing, the authority broadened its remit to cover different kinds of market misconducts in the SFO, and renamed it the Market Misconduct Tribunal⁵⁶. Modeled on the IDT, the MMT uses the civil standard of proof and has less procedural safeguards than the criminal courts. The use of compelled evidence is allowed. Persons who fail to comply with orders of the MMT commit an offence and are potentially liable to imprisonment⁵⁷. The Tribunal consists of a chairman (who must be a judge as defined in the SFO⁵⁸), and two ordinary members⁵⁹. The object of MMT proceedings is to determine⁶⁰:

1. whether market misconduct has taken place,
2. the identity of person engaged, and
3. the amount of profit gained or loss avoided as a result of the misconduct.

The applicable standard of proof caused some confusion in the past. In *Koon Wing Yee*⁶¹, the CFA clarified that, in civil matters, the standard remains one of 'balance of probability' even in serious cases, which means that the tribunal should consider that the occurrence of the event was more likely than not. But the tribunal should also be mindful that allegations that are more serious in nature are less likely to have occurred, and hence more cogent evidence is needed to establish the allegation on the balance of probability.

Penalties

Due to human rights concern, the MMT cannot impose high fines (unlike the IDT in S(ID)O, which can impose fines up to 3 times of the amount of the illicit gain). It can nonetheless order wrongdoers to disgorge to the government profit gained or loss avoided as a result of the misconduct, and to pay the government's and the SFC's costs and expenses in relation to the proceeding and investigation⁶². The disciplinary

⁵⁶ See s245 for definition.

⁵⁷ s253(3)

⁵⁸ s245(1)

⁵⁹ Sch9

⁶⁰ s252

⁶¹ [2008] 3 HKLRD 372, [89].

⁶² s257

referral order is also available, whereby the Tribunal gives notice to a relevant body to consider taking disciplinary action against persons identified.

Furthermore, the MMT has expanded power to make:

1. Disqualification order: disqualify those found guilty of market misconduct from a broader range of positions for up to 5 years;
2. Cold shoulder order: Prohibit the person from dealing in securities and financial products for up to 5 years;
3. Cease and desist order: Order the person not to engage in specified form of market misconduct.

Criminal route

The SFO empowers the SFC to summarily prosecute market misconduct offences on its own⁶³. On summary conviction, the market misconduct offences (including insider dealing) are punishable by a maximum of \$1,000,000 fine and 3 years' imprisonment, instead of \$10,000,000 fine and 10 years' imprisonment on conviction on indictment. The decision to prosecute cases as indictable offences is made by the Director of Public Prosecutions. Normally, this decision is made based on an assessment of the likely sentence if the defendant is convicted⁶⁴.

Aside from imposition of fine and terms of imprisonment, the court may, upon convicting the person of market misconducts, make disqualification order, cold shoulder order, and disciplinary referral order⁶⁵.

Other proceedings

Over-emphasis on the 'dual regime' may give the misimpression that insider dealers only face proceeding in either the MMT or the criminal courts. In fact, insider dealers may also face the below listed proceedings in conjunction with the dual regime.

1. Disciplinary action

The SFC regulates the operation of the securities and futures market through a licensing regime⁶⁶. Persons and corporations are only allowed to perform a broad

⁶³ s388

⁶⁴ Above 52, 3

⁶⁵ s303(2)

⁶⁶ PtV

range of regulated functions if they are appropriately licensed or registered. Perpetrators identified by the MMT or the criminal courts often have their licenses revoked and banned from the market for long periods of time, as they are not ‘fit and proper’ to be licensed⁶⁷.

2. Civil action by victims

While MMT proceedings are called the ‘civil’ regime, it does not decide civil liability⁶⁸. Instead, the SFO provide victims who have suffered pecuniary loss as a result of market misconducts an express cause of action to seek damages in civil proceedings⁶⁹. While victims might be able to issue a claim using other pre-existing causes of actions, the rule is introduced to make the claim procedurally easier⁷⁰. Adverse determinations by the MMT create a rebuttable presumption against the defendant. The extent of liability is subject to the test of whether compensation is fair, just, and reasonable⁷¹.

These provisions do not otherwise affect common law or other statutory rights. Hence, a company may conceivably sue a director for the profit he gained through breach of fiduciary duties, even though the company might not have suffered any direct pecuniary loss⁷².

3. Section 213 proceedings – are they free-standing?

Where any person has contravened the SFO, section 213 allows the SFC to apply to the CFI for various civil remedies, such as freezing injunctions and annulment of transactions. Wrongdoers may also be required to disgorge profit and pay damage to victims as the court see fit⁷³. The SFC’s utilization of this as a third way (beside the dual regime) to start free-standing insider dealing proceedings has proved controversial, as this use was not originally envisioned⁷⁴. In *Tiger Asia*⁷⁵, the CFI

⁶⁷ E.g. *Tsien Pak Cheong David v SFC* [2011] 3 HKLRD 533

⁶⁸ *Luk Ka Cheung v MMT* [2008] HKEC 1943, [48-49]

⁶⁹ s281 & 305

⁷⁰ *Report of the Bills Committee on Securities and Futures Bill and Baking (Amendment) Bill 2000* CB(1) 1217/01-02, [132]

⁷¹ s281(2)

⁷² Bokhary, Kemal *Insider Dealing: Identifying and Tackling It (1984)* 14 HKLJ 11

⁷³ *HKSAR v Du Jun* [2012] HKEC 1280, [168-174]

⁷⁴ Chalk, Richard & Madgwick, Kate *Crouching tigers and the SFC Hong Kong Lawyer* May 2012 <http://law.lexisnexis.com/webcenters/hk/At-Issue/Crouching-tigers-and-the-SFC>

⁷⁵ [2012] 2 HKLRD 281

struck out such a proceeding for abuse of process, but was overturned by the Court of Appeal. The Court of Final Appeal upheld the CA's decision that s213 empowered the CFI to decide whether a person has contravened the SFO, and that it was not an abuse of process for the SFC to apply to the CFI for reliefs under s213 without first pursuing the case through the dual enforcement regime⁷⁶.

The CFA argued that, as a matter of construction, the wording of the provision plainly conferred such power to the SFC and the CFI⁷⁷. The Court held that, when instituting s213 proceedings, the SFC acts not as a prosecutor in the general public interest (which it does when using the dual enforcement regime), but as a 'protector of the collective interests of the persons dealing in the market who have been injured by market misconduct.'⁷⁸ Such proceedings therefore are more akin to individuals suing for damages than prosecutions under the dual regime. As the purpose served by s213 proceedings is civil in character, they do not attract the need for protection accorded to defendants facing proceedings under the dual regime. If proceedings are brought in the criminal court (or the MMT) against the same set of facts after the CFI has made determination in s213 (or s305⁷⁹) proceedings, the criminal court or the MMT would make its decision independently of the previous decisions, and the decision reached may well be different⁸⁰. Hence there is no problem of the SFC sidestepping civil protection inherent in the dual regime through s213 proceedings, which are free-standing and self-contained.

⁷⁶ [2013] HKEC 703

⁷⁷ Ibid [8];[15]

⁷⁸ Ibid [16]

⁷⁹ See paragraphs in this chapter under 'Civil action by victims'

⁸⁰ Above 75, [17-18]

4. Implementation and enforcement

Criminal prosecutions

After an initial hiatus in the first few years of the SFO's inception, the SFC has in recent years been prosecuting insider dealers in criminal courts regularly, and with frequent successes. As the SFC discloses in *Ma Hon Yeung*⁸¹, it has since May 2007 adopted a practice of referring all suspected insider dealing cases to the DPP for consideration. Since then, at least 15 individuals have been convicted of insider dealing in 9 different cases in the criminal courts⁸².

Some notable cases

- ***Sino Gold* – first conviction**⁸³

Through her work at a subsidiary of Sino Gold, a finance manager learnt that a major debtor would default on loan provided by Sino Gold, thus affecting its financial position. She disposed of her shareholding and avoided a loss of about \$60,000. She was convicted by the magistrate court in 2008. A suspended sentence was imposed; additionally she was fined \$200,000, and ordered to pay \$20,533 in cost to SFC.

- ***Egana* – first jail sentence**⁸⁴

An investment banker working on the privatization of Egana Jewellery procured his relatives and girlfriend to deal in the company's shares. The banker and his girlfriend, deemed the main culprits, together made a profit of \$440,000, and were respectively sentenced to 26 months' and 12 months' imprisonment. Three other relatives, deemed less culpable, were given community service order and fined.

- ***Du Jun* – highest sentence imposed thus far**⁸⁵

Du, then the managing director of Morgan Stanley's Fixed Income Department, was found guilty of buying some \$87 million worth of shares in a listed company in which

⁸¹ [2009] HKDC 1236

⁸² Data compiled from SFC annual reports, enforcement notices, and court judgments.

⁸³ SFC *First conviction of insider dealing under the SFO*
<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=08PR110>

⁸⁴ Above 76

⁸⁵ *HKSAR v Du Jun* [2009] HKDC 1646

he had inside information. He was deemed to have made a profit of \$23,324,121. Seven years of imprisonment (later amended down to six by the CA) was imposed.

Sentencing

The CA in *Du Jun*⁸⁶ refused to lay down sentencing guideline for insider dealing, giving as the reason that culpability and circumstances in different cases differ greatly. However, it approved the lower court's decision to use sentencing guideline for theft in breach of trust as reference⁸⁷. It also endorsed the list of eight considerations suggested in *R v McQuoid*⁸⁸ as relevant to sentencing insider dealing cases. These include factors like the level of planning and sophistication of the crime, and the amount of profit made. In a later case⁸⁹, the CFA approved of the view that, save in exceptional circumstances, immediate imprisonment is the appropriate sentence for insider dealing.

Prosecutions in the MMT

Relatively fewer cases have been heard in the MMT. In all, it has submitted completed reports on eight cases (five of which relates to insider dealing) since it commenced the first proceeding in 2007⁹⁰. One other insider dealing case is currently being heard.

Does MMT deal only with cases at the lower end of culpability?

In *Tsien Pak Cheong David*, the CA held that the Securities and Futures Appeals Tribunal⁹¹ was entitled to consider the fact that the case was brought before MMT and not the criminal courts as "demonstrat[ing] that the case was at the lower end of insider dealing cases"⁹². The validity of that claim as a general proposition is doubtful.

In this case, Tsien, an equity salesman with JP Morgan, was found to have tipped off two fund managers about a corporation's pending share-placement. The fund managers traded on that information and avoided a total notional loss of over

⁸⁶ Above 72

⁸⁷ *HKSAR v Ng Kwok Wing* [2008] 4 HKLRD 1017

⁸⁸ Above 9

⁸⁹ *HKSAR v Chan Pak Hoe Pablo* [2012] HKEC 941, [50-52]

⁹⁰ MMT Reports <http://www.mmt.gov.hk/eng/reports/reports.htm>

⁹¹ s216. SFAT reviews SFC's regulatory decisions.

⁹² Above 66, [71-75]

\$2,000,000 for their funds. All three of them stood to gain indirectly from the illegal activities.

In another case⁹³ involving an elaborate plot to cover up the true identity of the takeover bidder, the MMT held that a takeover bidder perpetrated insider dealing by knowingly disclosing inside information about the bid to another person. That person made an illicit gain of over \$1,600,000 through dealing on that information not for the purpose of the bid.

These two cases involved insider dealing perpetrated by experienced market players central to the operation of financial markets, and involved large sums of money. Although the parties stood to gain only indirectly through the dealings, the severity of these cases does not seem to be lower than the *Sino Gold* case discussed above, where an employee was criminally convicted for having avoided a loss of \$60,000 through insider dealing.

The suggestion that the MMT only deals with less serious cases is at variance with the legislative materials, where the justifications for establishing the IDT and the MMT have always been the need to make prosecution of insider dealing cases easier through more relaxed standard of proof and rules of evidence (see chapter 3).

In response to the author's enquiry, the SFC stated that:

“[i]f the test for criminal proceedings is not met, but there is sufficient evidence to prove insider dealing to the required civil standard, we may bring proceedings before [MMT]”.

Hence the proposition needs be read as confined to the particular circumstances of the case, where such an inference might be drawn only because the SFC seemed to have deliberately chosen to proceed in the MMT despite sufficient evidence for criminal prosecution is available⁹⁴.

⁹³ ABC Communications Limited – Report of the MMT dated 20 Oct 2011.

⁹⁴ [75]

5. Constitutional and administrative law concerns

Nature of proceedings in the MMT – civil or criminal?

The propriety of arming the IDT with substantial sanctioning power, stopping just short of criminalization, so that the accused may be deprived of civil liberty safeguards available in criminal courts was seriously doubted in the bill stage of the S(ID)O⁹⁵. This issue also featured prominently in the legislative process of the SFO. Whether the use of compelled evidence contravenes the right against self-incrimination received special attention⁹⁶. This is partly addressed by the provision that evidence given in MMT proceedings is not admissible in other proceedings, save in some confined situations⁹⁷.

There were also serious uncertainties about whether the courts would view the MMT as deciding ‘criminal’ guilt, thereby engaging a higher standard of proof for the prosecution, and the defendants’ right against self-incrimination as provided for in the Bill of Rights⁹⁸. To avoid this, the MMT was not given the power to impose high fines, a power the IDT possessed. Additional penalties in the form of ‘cease and desist’ and ‘cold shoulder’ orders were added to beef up the MMT’s sanctioning power as a consequence⁹⁹.

Koon Wing Yee

The courts have since made determinations on some of these issues. In *Koon*¹⁰⁰, the CFA was asked to decide whether the IDT’s proceedings involve the determination of ‘criminal charge’ because of its power to impose fine or to order disqualification. Relying on the European Court of Human Rights’ jurisprudence on materially the same provisions, the court held that three criteria determined whether a charge is ‘criminal’:

1. Classification of the offence under domestic law,

⁹⁵ Hong Kong Legislative Council *Official Record of Proceedings*, 25th July 1990

⁹⁶ Above 69, 37

⁹⁷ s255

⁹⁸ Art11, Bill of Rights Ordinance, Cap383

⁹⁹ Above 12

¹⁰⁰ Above 60

2. Nature of the offence, and
3. Nature and severity of the potential sanction.

Obviously, MMT proceedings are classified locally as civil. However, following *Engel*¹⁰¹, the court held the first factor to be of little substantive significance. The other two factors were more important.

On the nature of the offence, the court held that insider dealing undoubtedly amounted to very serious misconduct. Its dishonest nature, and the fact that it was criminalized in the SFO, was considered, as was the fact that the provisions apply to the public generally, not to a limited group of persons. These factors suggested that the charge is criminal in nature.

As for civil characteristics, it was suggested that there are the absences of:

1. a formal charge,
2. conviction constituting criminal record, and
3. provision for imprisonment.

The first two characteristics were discounted by the court, arguing that protection of fundamental rights must be grounded on matters of substance, not form.

Following the United Kingdom's decisions, the CFA held that the third factor, the nature and severity of the potential sanction, was the most important. Disqualification order was viewed as primarily protective, with any deterrent effect being merely incidental, and does not make proceedings criminal in character.

On the other hand, the court viewed that the amount of financial penalty, which can be up to treble the amount not only of the gain that the insider dealer derived personally, but also those gained by anyone else as a result of the insider dealing, as substantial, and amounted to punishment for serious misconduct. IDT proceedings were thus held to involve determination of criminal charge.

As the proceedings are criminal in nature, the use of compelled evidence amounted to a breach of the right to silence. The court rejected the argument that the difficulty in proving insider dealing provided justification for derogating from the privilege against self-incrimination, since the compelled answers to questions went to the core of a case of insider dealing, and constitute a complete abrogation of the right, even though the right is of a derogable nature.

¹⁰¹ *Engel and Others v Netherlands* (1979-80) 1 EHRR 647

In the end, the court held that by striking out the financial penalty provision, thereby removing the reason for characterizing the proceedings as criminal, the proceedings can be restored to its intended ‘civil’ character. The overall regime thus remained largely unscathed.

It is notable that the nature of the offence was held to be of a “very serious and dishonest nature¹⁰²”, and “can be readily characterized as criminal conduct”¹⁰³. This suggests that any significant penalty would likely tip the balance and make the overall proceeding ‘criminal’. This is of relevance in examining the MMT regime.

Chau Chin Hung¹⁰⁴

In *Chau*, proceedings of the MMT were challenged on largely the same grounds. This being a CFI judgment, the approach in *Koon* was followed. The new orders available to the MMT (i.e. ‘cease and desist’, and ‘cold shoulder’ orders) were held to serve the same essentially protective purpose as disqualification order in the IDT, and thus are deemed unproblematic.

As for monetary fine, unlike the IDT, the MMT does not have the power to impose high fines. It can order disgorgement of profit only. The court held that the disgorgement order is grounded on the idea that perpetrators of infractions should not be allowed to retain their ill-gotten gain¹⁰⁵, and is not penal in character. The fact that the penalty was paid to the government, and the person may still be liable to pay additional compensation to victims was dismissed by the court, citing rather unconvincingly as the reason that the two consequences should be viewed as separate and ought not be mixed¹⁰⁶.

As for the power to make cost awards (for cost and expenses incurred by the Government and the SFC in relation to the proceeding), the court brusquely held that it is compensatory in nature in a two-lined paragraph, equating it with civil courts’ power to make costs award¹⁰⁷. This is highly questionable.

The power to make cost order was first given to the IDT in the S(ID)O. In exercising

¹⁰² Above 60, [50]

¹⁰³ Ibid, [47]

¹⁰⁴ [2008] HKEC 1581

¹⁰⁵ Ibid, [42]

¹⁰⁶ Ibid, [49]. In *Du Jun* (above 72), the criminal fine imposed by CFI was substantially reduced by CA so that the defendant would not be out of means to pay potential compensation to victims.

¹⁰⁷ Ibid, [52]

this power, the IDT expressly pointed out that the cost regime cannot be equated with the regime for civil cases, which is compensatory in character between private litigants. The tribunal found it debatable to what extent the state should be recompensed for prosecuting its citizens, and pointed out that there is no standard rule in criminal cases that persons convicted should pay prosecution's cost, as this poses the danger of pressuring persons charged not to contest the charges¹⁰⁸.

In fact, whether high cost order will be considered 'punitive' had raised legislators' concern at the bill stage¹⁰⁹. Their concerns were assuaged, *inter alia*, by the fact that such costs had been maintained at a reasonable magnitude in the IDT (the highest amount awarded in the three-year-period before 2001 was \$260,000)¹¹⁰.

This is no longer the case. Cost orders imposed by the MMT are often of crippling magnitude. For example, a trainee solicitor who tipped off her then-lover and together made notional profits of about \$74,000 were ordered to pay \$1,160,000 in costs (15 times the total notional profit), while her then-lover was ordered to pay \$642,000 in costs, as well as to disgorge the notional profit¹¹¹. The severity of the order is compounded by the fact that the trainee solicitor was likely to be of limited means, as the facts showed that she relied on her then-lover's loan (totaling just \$115,000) to complete her legal qualification course shortly before committing the offence¹¹². Prohibitively high cost order is the norm, not the exception in the MMT. In fact, in the eight MMT reports completed thus far, only in one other case had cost order of a lesser amount been made¹¹³.

The judgment in *Chau* had failed to engage with these considerations. While the case was appealed to the CA¹¹⁴, these above issues were not discussed. The question of cost order has yet to be considered by the CFA. Further judicial consideration on this seems inevitable. As discussed, given the serious nature of the offence, it seems likely that the highly punitive cost order would be found to make the overall proceeding 'criminal', and, like the IDT's financial penalty, need to be struck out.

¹⁰⁸ Success Holdings Limited – Report of the Insider Dealing Tribunal dated 24 Jun 1994, [11.8]

¹⁰⁹ Above 69, 37-38

¹¹⁰ Ibid

¹¹¹ Mirabell International Holdings Limited – Report of the MMT dated 23 Jul 2010, [203-204]

¹¹² Ibid, [61-63]

¹¹³ Sunny Global Holdings Limited – Report of the MMT dated 21 Jul 2008

¹¹⁴ [2009] HKEC 2101

Lack of impartiality

The IDT, and the MMT, sits as a panel that comprises a judge and two lay members. The members are appointed at the sole discretion of the Chief Executive. At the bill stage of the SFO, suggestions were made that a panel of members be established. This was rejected as the Government believed it is more important to retain the flexibility to appoint members with the necessary expertise in any given case. This lack of safeguard to ensure the independence of members has attracted academic criticism, as the members may be tainted by commercial interest and other influences¹¹⁵.

The concern is not without foundation. In *Cheung*¹¹⁶, it was held that a lay member has ‘probably’ committed a criminal form of misconduct through improper disclosure of confidential materials, and making false representation to the tribunal about the nature of his relationship with one of the accused¹¹⁷. The CA, however, held that as the breaches first occurred when the hearing had almost concluded, and it was not shown that the member did not participate properly in the deliberation process, the tribunal’s decision was safe.

In another case concerning *Koon Wing Yee*¹¹⁸, the impartiality of the IDT was challenged on a structural level. The applicant argued that since the executive branch of the government controlled most aspects of an IDT inquiry, and an inquisitorial approach allowing the use of compelled evidence is used, which ultimately result in a finding where money is paid to the government, the overall process lacked impartiality.

The CFA held that the design of the IDT has sufficient features that enhanced its independence. These include that a judge chairs the tribunal, and the rights of subjects to be heard and be represented. Importantly, the court pointed out that appeal to the CA is integral to the scheme. This thus makes good any potential deficiencies in the right to fair hearing.

¹¹⁵ Hsu, Berry Fong-Chung et al. *Financial markets in Hong Kong* Oxford 2006, [8.26]

¹¹⁶ [2000] 1 HKLRD 807

¹¹⁷ *Ibid*, 821G

¹¹⁸ [2010] HKEC 334

6. Evaluation and recommendations

Simplify the law

In Hong Kong, the primary justification for regulating insider dealing is its unfair and market-disrupting nature¹¹⁹. It is deemed unfair for innocent market participants to trade with those who have marked informational advantage. Under this analysis, whether the person has a personal connection with the corporations which the inside information relate to is of little, if any, significance. Elements such as breach of trust and misappropriation of information affect culpability, but can be dealt with in sentencing.

The existing provisions subtly, but illogically, differentiate between primary insiders: connected persons and takeover bidders, and secondary insiders: tippees. While primary insiders are prohibited from ‘dealing’, ‘counseling or procuring’, and ‘disclosing’, secondary insiders are generally only prohibited from ‘dealing’ and ‘counseling or procuring’. Such a distinction, however, was absent in relation to overseas prohibition¹²⁰. There seems to be no obvious justification for making such distinctions, especially when viewed from the fairness perspective. Whether the perpetrator is a primary or secondary insider, and wherever the misdeed take place, the dishonest and unfair nature of the act does not change.

As *Leung Chi Keung*¹²¹ and the case law reviewed there shows, the ‘person connection’ requirement introduces significant complexities to this area of law. Is a retired chairman ‘connected’ to a company? Does an equity salesman occupy a position which, when viewed objectively, may reasonably be expected to give him access to inside information about another company? (And he must be acquitted if he does not, even if he had actual access¹²²). These do not help make the market fairer.

In this regards, Australia has demonstrated the way to go. ‘Insider dealing’ should be transformed into a crime of ‘trading with informational advantage’¹²³. Anyone who knowingly receives inside information should not be allowed to make illicit gain on

¹¹⁹ See Chapter 2.

¹²⁰ See Chapter 3 for the detailed provisions.

¹²¹ Above 25

¹²² Ibid, 808

¹²³ Ibid, 799

that information. Some European states, like Denmark and Spain, have also adopted similar rules, and there are suggestions that this should be adopted by the European Union¹²⁴. This approach would make the scope, as well as the rationale, of insider dealing prohibition clearer.

Make it fairer

As the CFA held in *Koon*¹²⁵, the structure of the MMT is largely satisfactory regarding its impartiality. However, the behavior of ordinary member has caused some difficulties. This problem can be addressed through, as in the United Kingdom's Financial Services and Markets Tribunal (which performs largely the same functions as the MMT), using legally-qualified persons with significant experience as members¹²⁶; or, as suggested in the bill stage, using a panel of designated members with pre-screening. Specific expertise can be obtained through appointment of experts in trials.

Respect civil liberty

As the above chapter on the challenges regarding the constitutionality of MMT proceedings shows, even if the overall procedure does not technically constituted breach of fundamental rights, it come dangerous close to. The overall arrangement does not conform in spirit to the 'generous interpretation' our highest court say it gives to provisions protecting fundamental rights¹²⁷.

Stop the use of compelled evidence in the MMT

Confronted with essentially the same problem, the British authority demonstrated that they take fundamental rights more seriously. In 1999¹²⁸, in reforming their financial markets law, their market abuse regime, which largely overlaps with the market misconduct regime in Hong Kong, come under scrutiny. Like here, the use of compelled evidence, when the accused face significant sanctions, aroused particular attention. While the Government believed that the proceedings would be classified as civil by the courts, they recognized that the civil-criminal distinction in fact constitutes a continuum, with the regime in question located in the middle. Hence they took the right-respecting step of foregoing the use of compelled evidence in the

¹²⁴ Above 49, 231

¹²⁵ Above 60

¹²⁶ Swan, Edward & Virgo, John *Market Abuse Regulation* Oxford 2010, [12.05]

¹²⁷ Above 60, [63]

¹²⁸ Joint Committee on Financial Services and Markets *Minutes of evidence* UK 19 May 1999

market abuse regime¹²⁹.

This step should also be taken in Hong Kong. The MMT should stop using compelled evidence. For purely disciplinary actions, which are more clearly regulatory in nature, compelled evidence may be justified. Hence, while the SFC may not use such evidence in MMT proceedings, they can use it to discipline regulated persons, thus its ability to protect the market would not be significantly reduced even if these were banned in the MMT.

Abolish or reform the cost order

Another issue is the standard of proof. The CFA in *Koon*¹³⁰ held that the BORO requires the standard of proof beyond reasonable doubt to be applied when the proceedings involve a determination of criminal charge. Aside from the harsh cost order, which ought to be abolished (or its use be sufficiently constrained), other elements of the MMT regime has been examined by the CFA to be civil in character and are in conformity with human rights requirement. Thus, with the abolition of the use of compelled evidence and cost order, the regime would be brought back to a right-respecting ‘middle-ground’ in the civil-criminal continuum it was designed to operate in. Additionally, as the balance of probability standard in itself takes into account the seriousness of the conduct, this goes some way to justify the use of such a standard where the proceedings have a mixed, ‘middle-ground’ character.

Abolish the MTT?

Alternatively, the abolition of the MMT might be considered. As we have seen, its introduction was mainly justified on the insurmountable difficulties of proving market misconducts in the criminal courts. In relation to insider dealing, the data do not support that claim. In fact, more cases have been successfully prosecuted in the criminal courts than in the MMT. Without considering other market misconducts, we cannot fully appraise the utility of the MMT here. However, the data do suggest that the institutional value of the MMT should be reassessed.

Consider alternative enforcement

The recent amendment to the SFO that put the obligation of corporations to make timely disclosure of inside information on a statutory footing is relevant to the regulation of insider dealing¹³¹. Insider dealing is of value when insiders possess

¹²⁹ Please refer to above 120, Cap14

¹³⁰ Above 60

¹³¹ Above 28

inside information. If the timely disclosure of inside information is strictly enforced, the opportunities for insider dealing greatly diminish.

Insider dealing is an insidious crime, with difficult-to-prove *mens rea* requirements. Non-disclosure is different. Once knowledge of inside information, which can be readily inferred from the situation, is proved, the liability is strict, unless corporation officers can point to certain defined defenses.

Hence, if the amendments suggested above diminish the regulatory effectiveness of the SFC in any way, it can be offset by focusing resources onto ensuring that disclosure obligations are conscientiously met. As such contraventions are easily detected and proved, the probability of getting caught is high, regular enforcement could hope to achieve a good deterrent effect. This might prove more effective than preventing insider dealing through prosecuting insider dealers, where the difficulties of detection and prosecution, especially when tippees are used, are much higher¹³².

Conclusion

The prohibition of insider dealing in Hong Kong is regularly enforced, with the courts increasingly willing to impose deterring sentences. The legal regime can be made simpler, fairer, and to conform better to fundamental rights. Suitable changes are suggested.

¹³² Clarke, Ronald & Felson, Marcus, eds. *Routine activity and rational choice* Transaction 1966

Bibliography

Statutes

Bill of Rights Ordinance, Cap 383

Securities Exchange Act 1934

Securities Ordinance, Cap 333

Securities (Insider Dealing) Ordinance, Cap 395

Securities and Futures Ordinance, Cap 571

Legislative Council debates

Hong Kong Legislative Council *Official Record of Proceedings*, 12th October 1977

Hong Kong Legislative Council *Official Record of Proceedings*, 12th July 1989

Hong Kong Legislative Council *Official Record of Proceedings*, 25th July 1990

Cases

Chau Chin Hung and others v MMT [2008] HKEC 1581

Chau Chin Hung and others v MMT [2009] HKEC 2101

Cheung and Another v IDT [2000] 1 HKLRD 807

Engel and Others v Netherlands (1979-80) 1 EHRR 647

HKSAR v Chan Pak Hoe Pablo [2012] HKEC 941

HKSAR v Du Jun [2012] HKEC 1280

HKSAR v Ma Hon Yeung [2009] HKDC 1236

HKSAR v Ng Kwok Wing [2008] 4 HKLRD 1017

Koon Wing Yee v IDT [2008] 3 HKLRD 372

Koon Wing Yee v IDT [2010] HKEC 334

Leung Chi Keung v MMT [2012] 2 HKLRD 786

Luk Ka Cheung v MMT [2008] HKEC 1943

R v McQuoid (2009) EWCA Crim 1301
Re Chow Chin-Wo and Others [1987] HKLR 73
SFC v Chan Pak Hoe Pablo [2012] 1 HKLRD A5
SFC v Tiger Asia [2012] 2 HKLRD 281
SFC v Tiger Asia [2013] HKEC 703
Tsien Pak Cheong David v SFC [2011] 3 HKLRD 533
US v O'Hagan 521 U.S. 642

IDT and MMT reports

ABC Communications Limited – Report of the MMT dated 20 Oct 2011.
Hong Kong Worsted Mills Limited–Report of the IDT dated 18 Nov 1997
International City Holdings Limited – Report of the IDT dated 27 Mar 1986
Lafe Holdings Limited – Report of the IDT dated 22 Feb 1990
Mirabell International Holdings Limited – Report of the MMT dated 23 Jul 2010
Success Holdings Limited – Report of the IDT dated 24 Jun 1994
Sunny Global Holdings Limited – Report of the MMT dated 21 Jul 2008

Secondary sources

Alexander, R.C.H. *Insider Dealing and Money Laundering in the EU* Ashgate 2006
Bainbridge, Stephen *Insider trading* Edward Elgar 2011
Bokhary, Kemal *Insider Dealing: Identifying and Tackling It* (1984) 14 HKLJ 11
Chalk, Richard & Madgwick, Kate *Crouching tigers and the SFC Hong Kong Lawyer*
May 2012
<http://law.lexisnexis.com/webcenters/hk/At-Issue/Crouching-tigers-and-the-SFC>
Clarke, Ronald & Felson, Marcus eds. *Routine activity and rational choice*
Transaction 1966
Goyne, Eugene *Fairer markets: the SFO and more effective market misconduct laws*
SFC 2003
http://www.sfc.hk/web/doc/EN/legislation/securities/others/fair_markets.pdf

Hsu, Berry Fong-Chung et al. *Financial markets in Hong Kong* Oxford 2006

Joint Committee on Financial Services and Markets *Minutes of evidence* UK 19 May 1999

Manne, Henry *Insider Trading and the Stock Market* Free Press 1966

MMT Reports <http://www.mmt.gov.hk/eng/reports/reports.htm>

Report of the Bills Committee on Securities and Futures Bill and Baking (Amendment) Bill 2000 CB(1) 1217/01-02

Second Report of the Company Law Reform Committee on Company Law Reform Hong Kong 1973

Securities Review Committee *The Operation and Regulation of the Hong Kong Securities Industry* Hong Kong 1988

SFC *Court of Final Appeal to hear Tiger Asia case*
<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=12PR38>

SFC *First conviction of insider dealing under the SFO*
<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=08PR110>

SFC *Guidelines on Disclosure of Inside Information*
<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openConclusionAppendix?refNo=10CP2&appendix=4>

Steward, Mark *Market Misconduct: Prevention, Detection and Deterrence* NICE Actimize Conference
http://www.sfc.hk/web/doc/EN/speeches/speeches/11/Mark_20110616.pdf

Swan, Edward & Virgo, John *Market Abuse Regulation* Oxford 2010

Wang, William & Steinberg, Stephen *Insider trading* Oxford 2010