

Court of Final Appeal dismisses Tiger Asia appeal

30 Apr 2013

In a landmark ruling, the Court of Final Appeal today dismissed the appeal of Tiger Asia Management LLC (Tiger Asia) and three of its officers, Mr Bill Sung Kook Hwang, Mr Raymond Park and Mr William Tomita (collectively the Tiger Asia parties) against legal proceedings brought by the Securities and Futures Commission (SFC) under section 213 of the Securities and Futures Ordinance (SFO) (Note 1).

The Court dismissed the challenge straight after hearing submissions by Queen's Counsel for the Tiger Asia parties. It will deliver reasons later (Note 2).

This brings to an end Tiger Asia's challenge on the jurisdiction of Hong Kong's courts to hear this case under section 213 of the SFO.

The SFC's Executive Director of Enforcement Mr Mark Steward said: "Today's decision by the Court of Final Appeal vindicates our position and our strategy in seeking remedial orders under section 213. We are pleased this issue has been resolved in our favour."

The SFC commenced legal proceedings under section 213 of the SFO against the Tiger Asia parties in August 2009 seeking remedial orders and injunctions in relation to allegations that the Tiger Asia parties had contravened Hong Kong's insider dealing and market manipulation laws in dealing in shares of Bank of China Limited (BOC) and China Construction Bank Corporation Limited (CCB) during 2008 and 2009 (Note 3).

The Tiger Asia parties argued that the Court had no jurisdiction under section 213 of the SFO to find that there had been a contravention of these laws without a pre-existing criminal conviction or a Market Misconduct Tribunal finding.

The SFC, however, argued that section 213 of the SFO provides for a free-standing remedy and that the legislation intended remedial and preventative orders to be available separately from criminal or deterrent sanctions.

Section 213 of the SFO provides that where a person has contravened any relevant provision of the SFO, the Court of First Instance has power to make a number of orders, including injunctions and orders requiring the person to take such steps as the Court directs to restore the parties to any transaction to the position in which they were before the transaction was entered into. This provision gives the Court jurisdiction to make remedial orders, amongst other orders, where contraventions have been committed.

End

Notes:

1. Tiger Asia was founded in 2001 and is a New York-based asset management company that specialises in equity investments in China, Japan and Korea. All of its employees are located in New York. Tiger Asia has no physical presence in Hong Kong.
2. The panel of judges at today's Court of Final Appeal hearing comprised The Hon Chief Justice Geoffrey Ma, The Hon Mr Justice Ribeiro, PJ, The Hon Mr Justice Chan, The Hon Mr Justice Bokhary, NPJ, and The Rt Hon the Lord Hoffmann, NPJ.
3. In respect of trading in CCB shares, the SFC alleges that: (a) on 6 January 2009, before the market opened, a placing agent in Hong Kong invited Tiger Asia to participate in a proposed placement of CCB shares in Hong Kong by the Bank of America Corporation; (b) the placing agent told Tiger Asia about the size and the discount range of the proposed placement; (c) this information was confidential and price sensitive and Tiger Asia and the three senior officers knew this; (d) Tiger Asia then short-sold a total of 93 million CCB shares on 6 January 2009 before the news of the CCB placement was made public; (e) Tiger Asia covered its short sales out of the placement shares that it bought on 7 January 2009 at a discount to the prevailing market price; and (f) Tiger Asia made a substantial notional profit of \$29.9 million.

In respect of trading in BOC shares, the SFC alleges that: (a) Tiger Asia was given advance notice and was invited to participate in two placements of BOC shares by UBS AG and Royal Bank of Scotland on 31 December 2008 and 13 January 2009 respectively; (b) Tiger Asia was provided with details of both placements after being told and agreeing the information was confidential and price sensitive; (c) Tiger Asia also agreed not to deal in BOC shares after receiving the information; (d) Tiger Asia short sold 104 million BOC shares before the placement by UBS AG on 31 December 2008 making a notional profit of \$8.6 million; and Tiger Asia sold 256 million BOC shares before the placement by Royal Bank of Scotland on 13 January 2009 (of which 251 million shares were short sales) making a notional loss of around \$10 million.

The SFC also alleges downward manipulation of CCB share price by Tiger Asia at the time of the short sales.

Please see the SFC's press releases dated 20 August 2009 and 26 April 2010, 21 June 2011 and 23 February 2012.

