

Court of Final Appeal gives reasons for dismissal of Tiger Asia appeal

10 May 2013

The Court of Final Appeal today delivered its reasons for judgement after dismissing 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 by the Tiger Asia parties on 30 April 2013 (Note 2).

The Rt Hon the Lord Hoffmann NPJ, with whom all judges agreed, said, amongst other things, in the judgement, that:

- it "simply does not follow" that the creation of criminal and Market Misconduct Tribunal (MMT) procedures for dealing with market misconduct means that such procedures are intended to be exhaustive for determining whether there has been a contravention;
- the remedies under section 213 of the SFO serve a different purpose from the penalties that can be imposed under the criminal and MMT processes;
- in proceedings under section 213, the SFC acts "not as a prosecutor... but as protector of the collective interests of the persons dealing in the market who have been injured by market misconduct"; and
- the question of whether a person has committed a criminal offence remains entirely a matter for the criminal court and is not a matter that is determined in proceedings under section 213 which are plainly civil proceedings.

The SFC's Executive Director of Enforcement, Mr Mark Steward, said: "The SFC welcomes this decision and these reasons that confirm the court's free-standing jurisdiction to grant remedies in proceedings under section 213, where it is appropriate to do so."

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 comprised The Hon Chief Justice Geoffrey Ma, The Hon Mr Justice Ribeiro, PJ, The Hon Mr Justice Chan, PJ, The Hon Mr Justice Bokhary, NPJ, and The Rt Hon the Lord Hoffmann, NPJ.
3. A copy of today's judgement is available on the Judiciary website at www.judiciary.gov.hk.
4. For more information, please see the SFC's press releases dated 20 August 2009 and 26 April 2010, 21 June 2011, 23 February 2012 and 30 April 2013.

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