

Client Update

SFO Section 300 used by the Hong Kong SFC to combat insider dealing in respect of securities listed overseas

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The Court of First Instance (the “Court”) made an important decision on Friday in relation to the judicial interpretation of section 300 of the Securities and Futures Ordinance (the “SFO”), which prohibits the use of fraudulent or deceptive schemes in transactions involving securities.

BACKGROUND

This case concerned, among other things, confidential and materially price sensitive information regarding Standard Chartered Bank’s (“SCB”) tender offer for all of the shares of Hsinchu International Bank Co Ltd (“Hsinchu Bank”), a corporation listed on the Taiwan Stock Exchange, in 2006.

A solicitor named Young Bik Fung (“Young”), who was employed in private practice and seconded to SCB at the material time to work on the tender offer, was given access to confidential and price sensitive information in relation to the tender offer, including SCB’s decision to make a firm offer and the exact price of the offer.

Prior to the announcement of the tender offer, Young allegedly bought, and tipped off her boyfriend and his two sisters to buy, Hsinchu Bank shares, which resulted in a total profit of HK\$2.685 million.

The Court held that such behavior amounted to fraud or deception within the meaning of section 300 of the SFO because Young owed duties to her employer and their client, SCB, including the duty to refrain from using inside information for personal gain.

SIGNIFICANCE

The insider dealing provisions in the SFO, i.e., sections 270 and 291, are subject to a jurisdictional limitation, i.e., their applications are limited to securities listed on the Hong Kong Stock Exchange. This judicial decision sends a clear message to all market participants that the Securities and Futures Commission (“SFC”) may now investigate and prosecute insider dealings in respect of shares listed overseas.

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Please do not hesitate to contact us with any questions.