

## Tackling insider dealing: Levelling the playing field

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Insider dealing has long been a permanent item on the agenda of financial regulators worldwide, including Hong Kong's Securities and Futures Commission (**SFC**), primarily due to the unfair market it creates as a result of information asymmetry.

The SFC can bring criminal charges or commence civil proceedings when pursuing those involved in insider dealing. A criminal conviction in the Magistrate's Court, the District Court or High Court can result in imprisonment, with a High Court conviction for insider dealing having the potential to result in up to 10 years' imprisonment and a HK\$10 million fine. The SFC may also seek relief in the form of civil penalties in Market Misconduct Tribunal proceedings or through disciplinary proceedings (against regulated persons).

The SFC has also recently introduced two proposals to tackle insider dealing more effectively:

1. **Insider dealing regime** – Expanding the territorial scope of the legislative regime to include (a) any acts of insider dealing involving Hong Kong-listed securities or their derivatives, regardless of where they occur, and (b) any acts of insider dealing involving overseas-listed securities or their derivatives, if any one or more of such acts occur in Hong Kong (provided the misconduct is also unlawful in the relevant overseas jurisdiction);
2. **Market sounding guidance** – Introducing guidelines to provide clarity on its expectations relating to market soundings, requiring intermediaries to (among other things) implement robust governance, effective policies and internal control procedures to prevent the misuse and leakage of non-public information they are entrusted with during market soundings, keep records of their market soundings, as well as follow specific requirements based on whether they are disclosing or receiving such information.

The SFC is drafting legislative amendments in relation to the first proposal following the conclusion of a public consultation, and is considering feedback received from the consultation of the second proposal. A key concern relating to the second proposal is its broad application to "non-public information" (which is not defined) rather than inside information.

Great care should be taken by market participants when handling inside information (and confidential information more broadly). Our team can assist on a full range of issues, including:

- Drafting, reviewing or amending internal policy and procedures relating to inside information and confidential information;
- Advising on all aspects of the insider dealing regime, obligations relating to disclosure of inside information, regulatory expectations on market soundings, and related matters; and

- Assisting and advising on all stages of investigation and enforcement action by regulators and law enforcement agencies, including criminal proceedings.

Please do not hesitate to reach out to Kyle Wombolt or Hannah Cassidy if you need any assistance.



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