



# **Securities and Futures Ordinance**

**HKSI 13 August 2002**



# Market misconduct offences



# Provisions

- ◆ Civil and criminal provisions generally identical
- ◆ Securities and futures provisions generally identical
- ◆ Provisions cover 4 types of conduct:
  - insider dealing
  - forms of market manipulation and related abuses
  - disclosure of false or misleading information
  - fraud, deception or misrepresentation in an individual transaction (Part XIV only)



# Insider dealing

- ◆ Insider dealing provisions largely existing provisions with some changes in wording and layout
- ◆ Main changes:
  - apply to securities of a listed corporation which will be listed (eg grey market trading before a 2<sup>nd</sup>ary issue)
  - Clarifies that relevant information covers information about a listed corporation's officers and shareholders
  - power to create new defences (“safe harbours”)
  - will be made criminal offence for 1<sup>st</sup> time



# Insider dealing

- ◆ Insider dealing defences clarified – previously not clear whether applied to dealing, tipping or disclosure liability – coverage of each defence now clear (ss 271-3 & 292-4)
- ◆ New defences:
  - for insiders (“connected persons”) trading on the knowledge of their own trading activities and those facilitating such trading (eg broker helping person build up takeover stake and merchant bank hedging such activity) (ss 271/292(8) & (10))
  - for a person (eg merchant bank) who introduces a person to trade with a substantial shareholder of a listed corporation who the other person knows or should know is a substantial shareholder (ss 272/292(7))



# Market manipulation

- ◆ Modelled on existing Hong Kong law or Australian law with mental element/defences made clearer
- ◆ Securities and futures provisions generally identical
- ◆ 3 types:
  - false trading
  - price rigging
  - stock market manipulation (securities only)



## False trading

- ◆ Securities and futures
- ◆ Intentionally or recklessly create false or misleading appearance of active trading, with respect to market or price (ss 274/295(1) & (2))
- ◆ On market wash sales or matched orders with reverse onus no prohibited purpose defence (securities only) (ss 274(5)-(7)/295(5), (7) & (8))
- ◆ Transact (including cross market) intentionally or recklessly creating or maintaining artificial price (ss 274/295(3) & (4))



# Price rigging

- ◆ Securities and futures
- ◆ Maintain, increase, reduce, stabilise or cause fluctuations in price of securities or futures through wash sale (securities only) or artificial or fictitious transaction or device (ss 275/296(1) & (2))
- ◆ Reverse onus “no prohibited purpose” defence for wash sales limb (ss 275(4)/296(5))
- ◆ Price effect must be intentional or reckless on artificial/fictitious transaction/device limb



# Stock market manipulation

- ◆ Securities only
- ◆ Transact in corp's securities, increasing price of securities with intention of inducing person to subscribe or purchase or refrain from selling corp's or related corp's securities (ss 278/299(1)(a) & (2)(a))
- ◆ Transact in corp's securities, reducing price of securities with intention of inducing person to sell or refrain from purchasing corp's or related corp's securities (ss 278/299(1)(b) & (2)(b))
- ◆ Transact in corp's securities, maintaining or stabilising price securities with intention of inducing person to subscribe or purchase or sell corp's or related corp's securities or refrain from doing so (ss 278/299(1)(c) and (2)(c))



# Disclosing information about prohibited transactions

- ◆ Securities and futures
  
- ◆ Disclose etc information that price of securities or futures increased, reduced, maintained or stabilised etc because of prohibited transaction if person or associate:
  - party to transaction or
  - receive or expect to receive benefit (ss 276/297)
  
- ◆ Under “benefit limb”, a defence if acting in good faith or benefit not from party to transaction or associate



## Disclosing false or misleading information

- ◆ Disclose etc false or misleading information knowing, reckless or negligent (civil only) as to whether it is false or misleading being info that is likely to induce subscription, sale or purchase of securities or dealing in futures or increase, reduce, maintain or stabilise price (ss 277/298)
  
- ◆ Defences:
  - mere “conduit” - printers, publishers etc
  - live broadcast
  - internet hyperlink



## Safe harbour rules

- ◆ Civil and criminal liability safe harbours - ie defences (ss 282/306)
- ◆ SFC may make rules which create defences
- ◆ Must be in public interest
- ◆ Public consultation and modifications in consultation with Financial Secretary
- ◆ Tabled in LegCo and subject to amendment



# Global markets - international enforcement

- ◆ Market manipulation provisions expressly apply to:
  - conduct in HK that affects overseas markets
  - conduct overseas that affects HK markets
- ◆ Necessary to adapt to reality of globalised markets



# Global markets - international enforcement

- ◆ In line with US, UK, Australian and Singaporean approach
- ◆ Insider dealing provisions apply to HK listed and dual listed securities
- ◆ Invited comment on extension of insider dealing laws as for market manipulation laws - only negative response
- ◆ Conduct that affects overseas markets from Hong Kong only punishable in Hong Kong if punishable overseas (ss 282/306)



## Summary

- ◆ Insider dealing gaps covered
- ◆ Insider dealing defences clarified
- ◆ More effective market manipulation provisions
- ◆ More effective international enforcement