

The Hong Kong Chartered Governance Institute

Submission

The Securities and Futures Commission

Consultation Paper on:

Proposed Amendments to Enforcement-Related Provisions of the Securities and Futures Ordinance

The Hong Kong Chartered Governance Institute 香港公司治理公會

(Incorporated in Hong Kong with limited liability by guarantee)

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By email only: enfconsultation@sfc.hk

The Securities and Futures Commission

54/F, One Island East
18 Westlands Road
Quarry Bay
Hong Kong

Dear Sirs

Consultation Paper on Proposed Amendments to Enforcement-Related Provisions of the Securities and Futures Ordinance

We refer to the consultation paper (**Consultation Paper**) on the above topic. Terms and expressions used under this submission (**Submission**) are as defined under the Consultation Paper.

About HKCGI

The Hong Kong Chartered Governance Institute (HKCGI), formerly known as The Hong Kong Institute of Chartered Secretaries (HKICS), is the only qualifying institution in Hong Kong and the Mainland of China for the internationally recognised Chartered Secretary and Chartered Governance Professional qualifications.

With over 70 years of history and as the Hong Kong/China Division of The Chartered Governance Institute (CGI), the Institute's reach and professional recognition extend to all of CGI's nine divisions, with more than 40,000 members and students worldwide. HKCGI is one of the fastest growing divisions of CGI, with a current membership of over 6,800, 300 graduates and 3,000 students with significant representations within listed companies and other cross industry governance functions.

Believing that better governance leads to a better future, HKCGI's mission is to promote good governance in an increasingly complex world and to advance leadership in the effective governance and efficient administration of commerce, industry and public affairs. As recognised thought leaders in our field, the Institute educates and advocates for the highest standards in governance and promotes an expansive approach which takes account of the interests of all stakeholders.

Support for the proposals

Subject to our observations, our Institute is firmly committed to and supports the proposed amendments to the SFO under the Consultation Paper to enable the SFC to protect the interests of the investing public better and uphold the reputation of Hong Kong's financial markets through more effective enforcement action.

Specifically, we agree with the proposals to amend the SFO to:

1. Cover the regulatory gap under s.213 to enable the SFC to apply to the CFI for injunctions and other orders after exercising a power under section 194 or 196, SFO against a regulated person.
2. Limit the exemption to s.103(1), SFO set out in section 103(3)(k), with consequential amendments to section 103(3)(j) to accord with the originally intended purposes of section 103.
3. Extend the scope of the insider dealing provisions of the SFO to cover insider dealing perpetrated outside of Hong Kong if it involves any securities listed on a recognised stock market in Hong Kong or their derivatives.

In relation to the proposal to extend insider dealing in Hong Kong to securities or derivatives listed overseas, we need more clarity on the scope of the proposed legislation to comment further. For example, would insider dealing be determined by reference to Hong Kong or the law of the overseas jurisdiction? How would our mutually exclusive criminal or civil regime work if there are no corresponding regimes in the overseas jurisdictions, or if the regimes are mutually inclusive? Concerning criminalising this type of conduct, would this amount to a 'thought crime' meaning taking steps to commit insider dealing being the yardstick to find criminal liability, or would there be a need to have actual insider dealing committed in the overseas jurisdiction? From the governance perspective, we recommend more guidance and investor education if a change is made to the SFO's reach beyond Hong Kong.

If there are any questions, please feel free to reach out to Ellie Pang FCG HKFCG(PE), Chief Executive, HKCGI or Mohan Datwani FCG HKFCG(PE), Deputy Chief Executive, HKCGI at 2881 6177 or research@hkcgi.org.hk.

Yours sincerely

For and on behalf of
The Hong Kong Chartered Governance Institute



Ernest Lee FCG HKFCG(PE)
President