

Civil Enforcement of Securities Violations in Hong Kong Section 213 of the Securities and Futures Ordinance

June 4, 2013 | Client Update | 2-minute read

Court of Final Appeal decision endorses representative securities claims brought by the SFC to compensate aggrieved investors

Litigation to compensate investors for alleged breaches of securities laws is not prevalent in Hong Kong unlike jurisdictions such as the United States with a broad class action regime and an active tradition of recourse before the civil courts. This may change over time, given the recent recommendation of Hong Kong's Law Reform Commission that a class action regime be adopted, but that change does not appear to be imminent.

In the meantime, the Securities and Futures Commission are embracing a significantly more active civil enforcement strategy based on section 213 of the Securities and Futures Ordinance. Section 213 is a broadly worded provision allowing the SFC to obtain a range of protective and restorative orders against any person who has breached the Securities and Futures Ordinance or related legislation.

The jurisdictional challenge brought by Tiger Asia Management LLC (Tiger Asia), a New York-based asset management company that specializes in equity investments in Asia, against the Securities and Futures Commission's reliance on section 213 was determined on April 30, 2013. The Court of Final Appeal, Hong Kong's highest court, endorsed the propriety of the SFC proceeding for the benefit of investors and, in the context of market misconduct, confirmed that relief under section 213 is free-standing and not contingent or conditional on there being proceedings before the Market Misconduct Tribunal or the criminal courts.

This briefing examines the broader significance of Section 213 and its emergence as a central component of the SFC's enforcement strategy.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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