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Court of Appeal confirms SFC's power to freeze assets in suspected insider dealing cases

The Court of Appeal today rejected an application by three defendants seeking to overturn in the Court of Final Appeal several injunction orders to prevent dissipation of assets in an on-going insider dealing investigation.

On 22 May 2009, the Court of Appeal allowed an application by the Securities and Futures Commission (SFC) to reinstate orders previously made under section 213 of the Securities and Futures Ordinance (SFO) (Note 1). These orders effectively froze the proceeds of share dealings which are under investigation as suspected illegal insider dealing.

The Court of Appeal decision was important because it confirms:

- the SFC has statutory authority under section 213 of the SFO to apply to the court for orders to freeze assets in cases of suspected insider dealing;
- proceedings under section 213 are entirely free-standing and not contingent or conditional on there being other substantive proceedings on foot, including proceedings in the Market Misconduct Tribunal;
- the court may grant permission to serve legal proceedings on persons outside of Hong Kong, where claims are made under section 213, so as to bring them within the jurisdiction of the Hong Kong courts; and
- the court may grant orders to restore all the parties to transactions to their respective former positions where those transactions contravene the SFO. In other words, orders under section 213 may be "...restitutionary in nature and ... would provide compensation to those who have sustained losses through the wrongdoing in question, in the present case, insider dealing" (Note 2).

This was the first time the Court of Appeal has been required to consider the nature and extent of the remedies available under section 213 of the SFO.

End

Notes:

1. Section 213 of the SFO empowers the court to make injunctions and other civil orders on the application of the SFC.
2. The Court of Appeal's judgment of 22 May 2009 can be found on the Judiciary website at www.judiciary.gov.hk (Ref: CACV 319/2008, Securities and Futures Commission v "C" and others). Please also see SFC [press release](#) dated 29 May 2009 for details.