

**DRAFT AMENDMENTS TO THE
SECURITIES AND FUTURES ACT (SFA)**

DISCLAIMER: This version of amendments is in draft form and subject to change. It is also subject to review by the Attorney-General's Chambers.

[The provisions that have been highlighted are provisions that were consulted upon in Annex 1 of the Consultation Paper on Proposed Amendments to the SFA issued on 11 February 2015. The provisions are subject to change and review by the Attorney-General's Chambers.]

PART XII MARKET CONDUCT

False or Misleading Statement

“False or misleading statements, etc.

199. No person shall make a statement, or disseminate information, that is false or misleading in a material particular and is likely —

- (a) to induce other persons to subscribe for any securities, securities-based derivative contracts, or units in a collective investment scheme;
- (b) to induce the sale or purchase of any securities, securities-based derivative contracts, or units in a collective investment scheme by other persons; or
- (c) to have the effect (whether material or otherwise) of raising, lowering, maintaining or stabilising the market price of any securities, securities-based derivative contracts, or units in a collective investment scheme,

if, when he makes the statement or disseminates the information —

- (i) he does not care whether the statement or information is true or false; or
- (ii) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Common Investor

Interpretation of this Division

214. In this Division —

...

“persons who commonly invest” shall mean one or more members of the public who deal in securities, securities-based derivative contracts, or units in a collective investment scheme of the type in question on a regular basis.

...

Maximum Civil Penalty Quantum

Civil penalty

232. —(1) Whenever it appears to the Authority that any person has contravened any provision in this Part, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part ~~which resulted in his gaining a profit or avoiding a loss~~, the court may make an order against him for the payment of a civil penalty of a sum not exceeding —

(a) ~~not exceeding~~ 3 times —

- (i) the amount of the profit that the person gained; or
- (ii) the amount of the loss that he avoided,

as a result of the contravention; or

(b) \$2 million equal to ~~\$50,000 if the person is not a corporation, or \$100,000 if the person is a corporation,~~

whichever is the greater.

(3) ~~The~~ If the court is satisfied on a balance of probabilities that the person has contravened a provision in this Part which did not result in his gaining a profit or avoiding a loss, the court may make an order against him for the payment of a civil penalty ordered under subsection (2) shall be of a sum not less than \$50,000 if the person is not a corporation and not more less than \$100,000 ~~2 million~~ if the person is a corporation.

(4) Notwithstanding subsections (2) and (3), the court may make an order against a person against whom an action has been brought under this section if the Authority, with the consent of the Public Prosecutor, has agreed to allow the person to consent to the order with or without admission of a

contravention of a provision in this Part and the order may be made on such terms as may be agreed between the Authority and the defendant.

(5) Nothing in this section shall be construed to prevent the Authority from entering into an agreement with any person to pay, with or without admission of liability, a civil penalty within the limits referred to in subsection (2) or (3) for a contravention of any provision in this Part.

(6) A civil penalty imposed under this section shall be paid into the Consolidated Fund.

(7) If the person fails to pay the civil penalty imposed on him within the time specified in the court order referred to in subsection (4) or specified under the agreement referred to in subsection (5), the Authority may recover the civil penalty on behalf of the Government as though the civil penalty were a judgment debt due to the Authority.

(8) Any defence that is available to a person who is prosecuted for a contravention of any provision in this Part, shall also be available to a defendant to an action under this section in respect of that contravention.”

236B. Liability of corporation when employee or officer commits contravention with consent or connivance of corporation

“...

(3) Where it appears to the Authority that a corporation is liable to be punished under subsection (1) for a contravention committed by a contravening person, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against the corporation to seek an order for a civil penalty in respect of that contravention as if the corporation had committed the contravention, whether or not such action is brought against the contravening person.

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the corporation is liable to be punished under subsection (1) for a contravention of any provision in this Part, ~~which contravention resulted in the corporation gaining a profit or avoiding a loss,~~ the court may make an order against the corporation for the payment of a civil penalty of a sum not exceeding —

- (a) ~~not exceeding~~ 3 times —
 - (i) the amount of the profit that the corporation gained;
 - (ii) or the amount of the loss that it avoided,

as a result of the contravention by the contravening person; or

- (b) \$2 million, ~~equal to \$100,000~~

whichever is the greater.

~~(5) The civil penalty ordered under subsection (4) shall be a sum not less than \$100,000. If the court in subsection (3) is satisfied on a balance of probabilities that the corporation is liable to be punished under subsection (1) for a contravention of any provision in this Part, which contravention did not result in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.~~

...”

236C. Civil penalty when corporation fails to prevent or detect contravention by employee or officer

“...

(3) If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), ~~which resulted in the corporation gaining a profit or avoiding a loss~~, the court may make an order against the corporation for the payment of a civil penalty of a sum not exceeding —

- (a) ~~not exceeding~~ 3 times —
 - (i) the amount of the profit that the corporation gained;
 - (ii) or the amount of the loss that it avoided,

as a result of the contravention by the contravening person; or

- (b) \$2 million, ~~equal to \$100,000~~

whichever is the greater.

~~(4) The civil penalty ordered under subsection (3) shall be a sum not less than \$100,000. If the court is satisfied on a balance of probabilities that the corporation has committed a contravention under subsection (1), which did not result in the corporation gaining a profit or avoiding a loss, the court may make an order against the corporation for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.~~

...”

236E. Liability of partnership and limited liability partnership when partner, etc., commits contravention with consent or connivance

“...

(4) If the court in subsection (3) is satisfied on a balance of probabilities that the partnership or limited liability partnership is liable to be punished under subsection (1) for a contravention of any provision in this Part, ~~which contravention resulted in the partnership or limited liability partnership gaining a profit or avoiding a loss,~~ the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not exceeding —

(a) ~~not exceeding 3 times~~ —

- (i) the amount of the profit that the corporation gained;
- (ii) or the amount of the loss that it avoided,

as a result of the contravention by the contravening person; or

(b) \$2 million, ~~equal to \$100,000~~

whichever is the greater.

~~(5) The civil penalty ordered under subsection (4) shall be a sum not less than \$50,000. If the court in subsection (3) is satisfied on a balance of probabilities that the partnership or limited liability partnership is liable to be punished under subsection (1) for a contravention of any provision in this Part, which contravention did not result in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order~~

~~against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.~~
...”

236F. Civil penalty when partnership or limited liability partnership fails to prevent or detect contravention by partner, etc.

“...

(3) If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), ~~which resulted in the partnership or limited liability partnership gaining a profit or avoiding a loss,~~ the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not exceeding —

(a) ~~not exceeding~~ 3 times —

(i) the amount of the profit that the corporation gained;

(ii) or the amount of the loss that it avoided,

as a result of the contravention by the contravening person; or

(b) \$2 million, ~~equal to \$100,000~~

whichever is the greater.

(4) The civil penalty ordered under subsection (3) shall be a sum not less than \$50,000. ~~If the court is satisfied on a balance of probabilities that the partnership or limited liability partnership has committed a contravention under subsection (1), which did not result in the partnership or limited liability partnership gaining a profit or avoiding a loss, the court may make an order against the partnership or limited liability partnership for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.~~

...”

236H. Civil penalty against officer of corporation, etc.

“...

(2) If the court is satisfied on a balance of probabilities that the contravening person has contravened a provision in this Part with the consent or connivance of the defendant, or as a result of any neglect on the

part of the defendant, ~~which contravention resulted in the defendant gaining a profit or avoiding a loss,~~ the court may make an order against the defendant for the payment of a civil penalty of a sum not exceeding —

(a) ~~not exceeding~~ 3 times —

- (i) the amount of the profit that the defendant gained; or
- (ii) the amount of the loss that he avoided,

as a result of the contravention by the contravening person; or

(b) \$2 million, ~~equal to \$100,000~~

whichever is the greater.

(3) The civil penalty ordered under subsection (2) shall be a sum not less than \$50,000. ~~If the court is satisfied on a balance of probabilities that the contravening person has contravened a provision in this Part with the consent or connivance of the defendant, or as a result of any neglect on the part of the defendant, which contravention did not result in the defendant gaining a profit or avoiding a loss, the court may make an order against the defendant for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$2 million.~~

...”

Priority of Debt

Division 6 – Miscellaneous

Recovery of sums due to the Authority

237A. Any sum that is due to, or any claim made by, the Authority under this Part may be sued for and recovered by the Authority under the Government Proceedings Act (Cap. 121) as if the sum was, or the claim was in relation to, a debt due to the Government.

PART XV
MISCELLANEOUS

Amendment to section 324

Power of court to prohibit payment or transfer of moneys, securities capital markets products, etc.

324. —(1) A court may, on an application by the Authority, make one or more of the orders referred to in subsection (1A), where —

- (a) an investigation is being carried out ~~under this Act~~ in relation to any act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;
- (b) a criminal proceeding has been instituted against a person for an offence under this Act; or
- (c) a civil proceeding has been instituted against a person under this Act, and the court considers it necessary or desirable to do so for the purpose of protecting the interests of any person to whom the person referred to in paragraph (a) or (b) or this paragraph (referred to in this section as the relevant person) is liable or may become liable to pay any moneys, whether in respect of a debt, or by way of penalties, damages or compensation or otherwise, or to account for any ~~securities, futures contracts, contracts in connection with leveraged foreign exchange trading capital markets product,~~ or other property.

(1A) The orders of court that may be made under subsection (1) are as follows:

- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or any person associated with the relevant person from making a payment in total or partial discharge of such debt that is due or accruing due to the relevant person, or to another person at the direction or request of the relevant person;

- (b) an order prohibiting, either absolutely or subject to conditions, a person holding moneys, ~~securities, capital markets products futures contracts, contracts in connection with leveraged foreign exchange trading,~~ or other property, on behalf of the relevant person or on behalf of any person associated with the relevant person, from paying, transferring or otherwise parting with possession of all or any of the moneys, ~~securities, futures contracts, contracts in connection with leveraged foreign exchange trading capital markets products,~~ or other property, to the relevant person, or to another person at the direction or request of the relevant person;
- (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending out of Singapore of moneys of the relevant person or of any person associated with the relevant person;
- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer of ~~securities capital markets products,~~ or documents of title to ~~securities, futures contracts, contracts in connection with leveraged foreign exchange trading capital markets products,~~ or other property of the relevant person or of any person who is associated with the relevant person, from a place or person in Singapore to a place or person outside Singapore (including the transfer of ~~securities capital markets products~~ from a register in Singapore to a register outside Singapore);
- (e) an order appointing —
 - (i) where the relevant person is an individual, a receiver, having such powers as the court orders, of the property or part of the property of the relevant person; or
 - (ii) where the relevant person is a corporation, a receiver or receiver and manager, having such powers as the court orders, of the property or part of the property of the relevant person;
- (f) where the relevant person is an individual, an order requiring the relevant person to deliver up to the court his passport «and such other documents as the court thinks fit;

- (g) where the relevant person is an individual, an order prohibiting the relevant person from leaving Singapore without the consent of the court.
- (2) Where an application is made to the court for any order referred to in subsection (1A), the court may, if the court is of the opinion that it is desirable to do so, before considering the application, make any interim order as it thinks fit pending the determination of the application.
- (3) Where the Authority makes an application to the court for the making of an order or interim order under this section, the court shall not require the Authority or any other person, as a condition of granting the order or interim order, to give any undertaking as to damages.
- (4) Where the court has made an order or interim order under this section, the court may, on application by the Authority or by any person affected by the order or interim order, rescind or vary the order or interim order.
- (5) An order or interim order made under this section may be expressed to operate for a period specified in the order or interim order or until the order or interim order is rescinded.
- (6) Any person who contravenes an order or interim order made by the court under this section that is applicable to him shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or to both.
- (7) Subsection (6) shall not affect the powers of the court in relation to the punishment for contempt of court.