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Jail sentence and fine against insider dealer restored after final appeal

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The Court of Final Appeal (CFA) today reinstated, in part, the original jail sentence and the fine against Mr Pablo Chan Pak Hoe who was convicted of one count of insider dealing.

Chan was initially sentenced at the Eastern Magistracy in August 2010 to serve 240 hours of community service after he was found guilty of insider dealing in shares of Universe International Holdings Ltd (Universe) between 2 May and 19 June 2008 when he acted as a representative of the controlling shareholder in a proposed takeover of Universe by another company. Chan, who used inside information about the takeover negotiations to buy Universe shares, sold the shares at a 40% higher price once the negotiations were announced.

The Securities and Futures Commission (SFC) applied for a review of the sentence and Chan was subsequently sentenced to serve four-month imprisonment and pay a fine of \$120,000 which represented the profit from his insider dealing.

Chan then appealed to the Court of First Instance which agreed that a term of imprisonment of “at least 6 months” was the starting point for an insider dealing conviction, but reinstated the community service order on a technical ground (Note 1 and 2).

The CFA today overturned the technical ground and, as a consequence, the majority of the Court reinstated the \$120,000 fine and the original jail sentence with a reduction of one month after taking into account Chan already completed his 240 hours of community service (Note 3).

The Hon Mr Justice Ribeiro of the CFA agreed with the Court of First Instance that, save for exceptional circumstances, the appropriate sentence for insider dealing should be immediate imprisonment coupled with a fine which, at the very least, removes a defendant’s unjust profits (Note 4).

End

Notes:

1. Please see SFC’s press releases dated [5 August 2010](#), [19 August 2010](#), [14 September 2010](#) and [23 August 2011](#).
2. The technical ground was whether the Court could review its sentence when there was an appeal against conviction. The Court of First Instance ruled that it could not. The Court of Final Appeal has ruled otherwise in today’s decision.
3. The appeal was prosecuted by the Prosecutions Division of the Department of Justice.
4. See HKSAR v Chan Pak Hoe Pablo (FACC 1/2012), Court of Final Appeal, para 50 – 52. A copy of the decision may be found at <http://legalref.judiciary.gov.hk/lrs/common/ju/newjudgments.jsp>.

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