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泰國與台灣內線交易法律之比較研究

Insider Trading

Comparative Study between Thailand and Taiwan

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本論文係 Laksiga Thanaphruet (李思琪) 君 (學號:R07A21122) 在國立臺灣大學法律學系完成之碩士學位論文，於民國111年8月26日承下列考試委員審查通過及口試及格，特此證明

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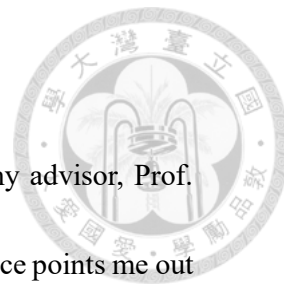
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中文摘要



內線交易對法律系學生而言，並非相當新穎的議題，然而卻相當引人入勝。2021 年初，泰國發生重大內線交易事件，最終卻未興起任何訴訟，不禁讓本文對內線交易法相關法制感到好奇。是否泰國之內線交易法制對一般投資大眾來說過於複雜？因而沒有人民敢於提起訴訟？或是現行法律制度存在什麼障礙讓人民難以獲得妥善的救濟？2016 年，泰國修正內線交易法，使我對於目前正在攻讀碩士學位的所在國家—台灣之相關制度更加好奇，台灣之內線交易法制已行之有年，實務上亦出現不少案件，對內線交易所生之爭議也有相當充分之討論。因此，本文欲探討泰國與台灣之內線交易法制之異同，並反思泰國現行內線交易規範是否有應該被改善之處。

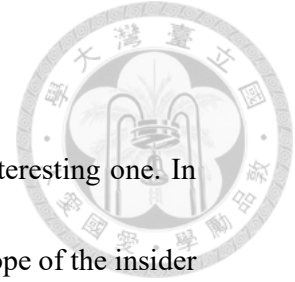
內線交易為證券市場違法交易行為之一。其主要概念為部分人士藉由其事先取得資訊而為相對之交易，然其他於資訊公開時始知悉該資訊之人卻無從得知，亦無法為交易決定，進而蒙受來自不公平資訊取得之不利對待。內線交易行為被認為先於他人而利用資訊所為的不公平行為。

本文將帶領讀者概覽內線交易法制。特別是本文的主要三個章節，將環繞在泰國及台灣內線交易法律規範之討論。第二章，本文將介紹泰國的內線交易規定以及資訊，內容將包含制度發展、現行規範以及重要判決整理。第三章，本文將簡單介紹台灣之內線交易法制，有鑑於本文係對於內線交易之基礎研究，因而欲自台灣法律基礎知識出發，並說明現行相關規範。第四章，本文將進行泰國跟台灣法律的比

較法研究，由於兩國皆屬於大陸法系，惟其內線交易之細節規範仍有所不同。希冀
得以藉由兩國法律之比較找出個別內線交易法制的優缺點，並探討泰國應如何借
鏡。第 5 章，從我以上的發現給予結論。

關鍵字：內線交易、內部人、證券交易法、泰國、台灣、行政制裁

ABSTRACT



Insider trading is not a new topic for law students, but it is an interesting one. In early 2021, a case occurred in Thailand that seemed to fall within the scope of the insider trading law, but any prosecution has not happened, which made me curious about the law. Is it too complicated for ordinary people or the investors to start the prosecution? Is there any obstruction from the current law? Thailand amended its insider trading law in 2016. This idea lead me to become more curious about Taiwanese law where I am currently studying my master degree. For this reason, I decided to dig into both Thai and Taiwanese law.

Insider trading is one of the illegal practices of trading on the stock exchange. The main idea is someone is able to access the information in advance and take unfair advantage from that information. Others who received the information at the informal publication will be at a disadvantage due to this inequitable access to information. This conduct is considered as an unfair action by using the information ahead of others.

In this thesis, I will lead the readers to a journey of insider trading law. Particularly, the three main chapters of this thesis are surrounding the insider trading law of Thailand and Taiwan. In Chapter 2, I am going to introduce and explore my home country, Thailand. This chapter relates to Thai insider trading law; history of law, the development and current law, and also case law. Chapter 3 of this thesis, I will provide the readers the

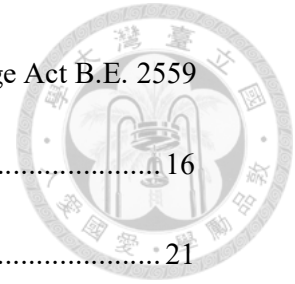
Taiwanese law. As the newbie to studying the Taiwanese insider trading, I will dig into the Taiwanese law, starting from the basic of law to the current law. Chapter 4, I will lead the readers to the comparative study between Thai and Taiwanese law. As both countries are a civil law system but there are some different inside. I will try to compare and find the pros and cons of each district's law. In chapter 5, a conclusion will be given on all of these findings.

Index terms – insider trading, insider, Securities and Exchange Act, Thailand, Taiwan, civil sanction

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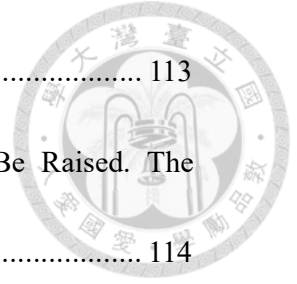
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Chapter 1 Introduction

Trading securities is one of the options for people to be able to invest their money and make a profit from their investment. The stock exchange market is huge and there are many sectors related to the market, for example, investors, companies and regulators. According to the types of investor statistics, the trading of local individual investors is calculated as more than 36 % of all investors in the market of Thailand from 1 January to 8 July 2022.¹ In case of Taiwan, the local individual also traded the securities in Taiwan's market at the proportion of more than 77% in 2021.² Individual investors have played a big role in the securities market. However, the retail investors are not specialized in the field of business therefore, the regulations and regulators have to create some instruments for the environment of the market.

The board of directors of a company is authorized to act on the behalf of the company,³ to bring the highest returns to the company and distribute to investors. There are some legal duties as specified in the law that the directors have to follow, for example,

¹ SET - Market Data - *Market Statistics*, (2022), https://classic.set.or.th/en/market/market_statistics.html (last visited Jul 11, 2022).

² *Summary Data of Stock Market (by Year) Annual Statistics - Taiwan Stock Exchange Corporation*, TWSE, <https://www.twse.com.tw/en/statistics/statisticsList?type=07&subType=232> (last visited Aug 11, 2022).

³ *Review Standards For Fiduciary Duties of Directors*, LAW ASIA (2017), <https://law.asia/review-standards-fiduciary-duties-directors/> (last visited Aug 11, 2022).

the fiduciary duty of directors.⁴ Director is a fiduciary who has been entrusted with the care of the company's valuables and is responsible for the company's interests.⁵ It is an obligation for the corporate officers to act in good faith and with care for the company and its shareholders.⁶ The fiduciary duties are important in the business because the duty is a tool to protect the company from any person who would act for their own interest which is in contrast with the company's interest.⁷

Before discussing about the law and regulation related to insider trading in Thailand and Taiwan, there is one issue that shall be discussed, there are some arguments about pros and cons of insider trading which lead to the issue that “shall the insider trading be banned by law?” There are some supportive opinions that the insider trading is not a bad thing but supports the economy and dynamic of the securities market well. Such issue sometimes is proposed to other types of white-collar crime like as gray areas and insider trading is one types of the crimes.⁸

One of the important elements for making the decision to trade the stock is

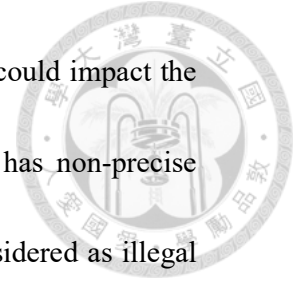
⁴ *Id.*

⁵ See John R. Boatright, *Wiley encyclopedia of management: Fiduciary Duty* 890 (2015).

⁶ *Fiduciary Duties of Corporate Officers and Directors*, OFLAHERTY (2020), <https://www.oflaherty-law.com/learn-about-law/fiduciary-duties-of-corporate-officers-and-director> (last visited Aug 11, 2022).

⁷ *Id.*

⁸ Peter J. Henning, *What's so bad about insider trading law?* 751 (2015).



information, when someone who has better precise information which could impact the price of stocks, it shall be considered as unfair to the outsider who has non-precise information.⁹ Therefore, in my aspect, the insider trading shall be considered as illegal in order to protect the investors in the market. It is the duty of law and lawmaker to pursue the bar of protection. In addition, the insider is not totally prohibited by law but there are some conditions that the insider shall follow. At this point, there are some differences in each jurisdiction in detail which will be described later. The insider is prohibited to trade such securities at a specific time which is before the public discloser.

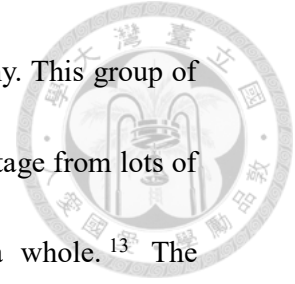
Although some scholars propose the advantage of insider trading, however, comparing between pro and con, the insider trading shall be considered as an illegal practice in the market for the following reasons.

1. In case that the insider trading is not restricted, the market's liquidity will be decreased.¹⁰
2. The Confidence of the investor will be decreased. The investor will face with feelings of unfairness and insecure¹¹ which impacts the overall securities market.
3. The employees of the company are the group of people who are the better-

⁹ Hayne E. Leland, *Insider Trading: Should It Be Prohibited?* 861 (1992).

¹⁰ *Id.*

¹¹ *Id.* at 862 ¶ 5.



informed¹² and take the advantage from the information in the company. This group of people considers as the small part of the market but takes a huge advantage from lots of outsider investors. The investors and the market are harmed as a whole.¹³ The acknowledgement of the inside information in advance by their duty of company and taking the advantage from such information shall be considered as unfair.

4. The directors and insiders have the responsibility and fiduciary duty to the company and shareholders,¹⁴ and such insider trading committed by the insider breaks such duty.

According to the reasons mentioned above, in terms of legal aspect, the insider trading shall be considered as illegal.

1.1 Objective of the Study

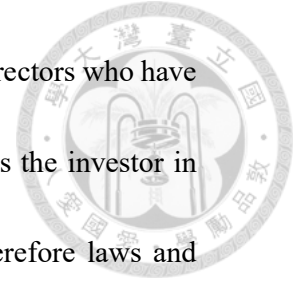
There are many types of unfair practices in securities markets and one of them is insider trading. An economic aspect, insider trading is trading by parties who are better informed than their trading partners.¹⁵ In terms of legal, insider trading refers to securities trading by someone who possessed non-public information and took advantage

¹² *Id.* at 863 ¶ 1.

¹³ Jennifer Moore, *What is Really Unethical about Insider Trading?*, 9 *The Act Guide to Ethical Conflicts in Finance* 171(1990).

¹⁴ *Id.* at 177.

¹⁵ Dennis W. Carlton & Daniel R. Fischel, *The Regulation of Insider Trading*, 35 *SLR*. 860 (1983).



of such information.¹⁶ Mostly illegal insider trading comes from the directors who have the power to access the information in advance. The damaged person is the investor in the securities market who is not at the same level as the directors therefore laws and regulations shall play the main role to protect the investor in the market. Because an illegal insider trading impacts and causes the damages to many investors and also the company. The company will lose confidence of the investors, it could lead the company to lose of capital investment from investors. On the other hand, the person who committed the insider trading, gained huge of money from the investors therefore, insider trading causes a wide range of damages to the investors, company, and securities market.

Thailand also considers insider trading as an unfair practice in the securities market therefore, there is the enactment of the Securities and Exchange Act (SEA) in order to prevent such unfair practice and also punish the offender who violated the law. There are some amendments of the Act to improve the efficiency of the law, however, there are some gaps in the legal issues. Taiwan also has the Securities and Exchange Act of Taiwan and especially better investor protection compares to Thailand. Therefore, the comparative study of both jurisdictions shall bring both jurisdictions the improvement of the law.

¹⁶ *Insider Trading is Illegal*, SEC (2022), <https://www.seclaw.com/insider-trading/> (last visited Aug 11, 2022).



1.2 Scope of the Study

First, this paper will introduce insider trading in Thailand. Starting by introducing the history of the SEA and introduction to Thai law in order to provide the basics of Thai laws and regulations. After that, the paper will point out the differences and the reason for the amendments of the Act, and then explain the recent SEA. Then, the paper will give the example of case studies both before and after the amendments of law. During the research of this paper, the writer found some interesting legal points that shall be distributed in this paper, and the last is the writer's suggestion.

Second, the writer would like to introduce Taiwan's insider trading, starting with the introduction to Taiwan Stock Exchange and also Taiwan law related to insider trading. Then, it is the study of the recent Securities and Exchange Act of Taiwan focusing on Article 157-1 and Article 171 which specified the penalties for violation of insider trading. The case study in Taiwan shall be explained and there are some interesting legal issues from the case study. This paper will study on a special non-profit organization of Taiwan, SFIPC, and point out the advantage for investors in case of having the Center in Taiwan. Then, the interesting legal point of Taiwan' study shall be proposed in this paper.

Finally, the main discussion of this paper, the comparative study between these two jurisdictions including regulations, penalties, investor protection, and time-consuming problem. Then some suggestions to Thai law shall be provided after the long journey of

study.



1.3 Layout of the Thesis

In Chapter 2, the study will focus on insider trading in Thailand, to understand the history and the root of securities trading in Thailand in many aspects, therefore the history and introduction of the market and law shall be introduced in this chapter. The recent law related to the insider trading, the SEA (as amended) shall be explained. The comparative study of the real case in Thailand, before and after the amendment, will be one of the best studies in this paper. Next, this chapter will present some interesting legal raised by the writer in order to the study in the future.

Then Chapter 3, it will discuss Taiwan's insider trading by introducing the Taiwan Stock Exchange and the background of Taiwan law. The main law related to insider trading law of Taiwan, the Securities and Exchange Act, focuses on Article 157-1 and also the penalties in case of violating the insider trading law as specified in Article 171. Then, this paper will present the case study in Taiwan and interesting legal issues from the case. Next, SFIPC will briefly introduce. Consequently, the paper will purpose the interesting legal issue related to Taiwan's jurisdiction.

Chapter 4 will present the comparative study between Thailand and Taiwan in various aspects. This paper will specifically provide suggestions on the legal aspect after the comparative study between two jurisdictions. Finally, Chapter 5 will provide the

conclusion of this study.



Chapter 2 The Case of Insider Trading Law in Thailand



2.1 Introduction

Nowadays, the movement of international capital has increased accordingly through the capital market. In addition to being a speculative tool for investors, it is also one of the methods for people to invest and also fundraise for the public and private sectors without having to go through commercial banks, which is the capital market. The capital market currently plays a main role in the Thai economy.¹⁷

The capital market is the main mechanism that efficiently mobilize, allocates, and monitors the utilization of economic resources.¹⁸ The Thai capital market can be divided into two eras, the first was called "Bangkok Stock Exchange", a private organization, and the next era was called "The Securities Exchange of Thailand."¹⁹

Security trading shall be on the basis of equality, the securities trading prohibition should be issued to the person who has known or possessed the non-public information²⁰,

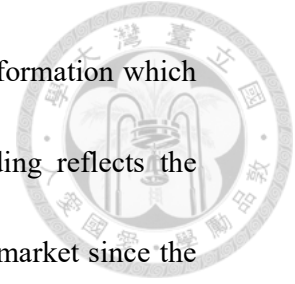
¹⁷ SEC Strategic Plan 2022-2024 Aims to Revive Thailand Toward Strength and Sustainable Growth, SEC (2022), https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=9360 (last visited Feb 13, 2022).

¹⁸ Get to Know Us, SEC, <https://www.sec.or.th/TH/Pages/AboutUs/Whatwedo.aspx> (last visited Feb 16, 2022).

¹⁹ History of the Stock Exchange of Thailand, SEC, https://www.set.or.th/en/about/overview/history_p1.html (last visited Feb 28, 2021).

²⁰ Kitipong Urapeepatapong, Palapa Chai-a-ya & Nitipong Boonyaleepun, *Securities and Exchange Act: Insider Trading - A New Regime with Wider Reach*, BAKERMCKENZIE (2016), https://www.bakermckenzie.com/-/media/files/insight/publications/2016/10/securities-and-exchange-act/al_bangkok_seact_oct16.pdf?la=en (last visited Dec 28, 2021).

otherwise, such person will unequally take the advantage from such information which could affect the market price and the other investors. Insider trading reflects the unfairness of securities trading and destroys the balance of the capital market since the insider can take an unusual advantage from utilizing the inside information.



2.2 History of the Securities Exchange of Thailand

2.2.1 Establishment of the Bangkok Stock Exchange

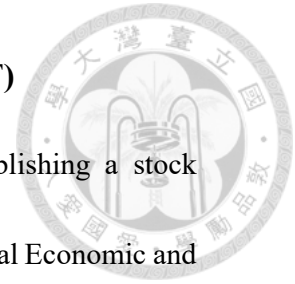
The establishment of the first Thai stock exchange began in July 1962 as a limited partnership, then "Bangkok Stock Exchange Co., Ltd. (BSE)" was registered as a limited company in the following year.²¹

BSE was a good venue for trading stocks but there were not that much attention to BSE in that time. The annual turnover was low, 160 million THB in 1968 and 114 million THB in 1969. Moreover, trading volume also consecutively decreased to 46 million THB in 1970 and lower to THB 28 million in 1971. The lowest turnover was only THB 26 million. Unfortunately, the BSE had to shut down in the early 1970s. The BSE was not as successful as it should be due to the lack of government support and as Thai people was still not having sufficient knowledge and understanding of the capital market.²²

²¹ *Id.*

²² *Id.*

2.2.2 Establishment of the Stock Exchange of Thailand (SET)



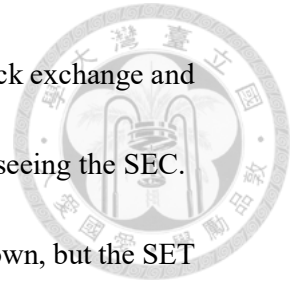
Although the BSE was not successful but the concept of establishing a stock exchange has caught the public's attention. Therefore, the Second National Economic and Social Development Plan (1967 - 1971) proposed a project for the establishment of the capital market for the first time.²³

Later in 1972, the government played the main role by amending "Announcement of the Executive Council No. 58 on the Control of Commercial Undertakings Affecting Public Safety and Welfare", after that in 1974, the SEA B.E. 2517 was promulgated with the objective of providing a central source for securities trading, promoting savings and fundraising in the country, and also the amendments of Provisions related to income, in order to allow people invest their savings in the capital market. In 1975, The Stock Exchange of Thailand (the English name at that time was The Securities Exchange of Thailand) operated for the first official trading and changed the English name to "The Stock Exchange of Thailand" (SET) on January 1, 1991.²⁴

Nowadays, the capital market regulatory structure is under the operation and supervision of the SET, the Securities and Exchange Commission (SEC), and the Ministry of Finance, respectively. The SET is responsible for regulating security trading in way of

²³ *Id.*

²⁴ *Id.*



transparency and fairness. The SEC is responsible for overseeing the stock exchange and related business sectors. The Ministry of Finance is responsible for overseeing the SEC.

As mentioned above, the BSE was not successful and had to shut down, but the SET is a successful security market according to the trading statistic as Fig. 2.1.

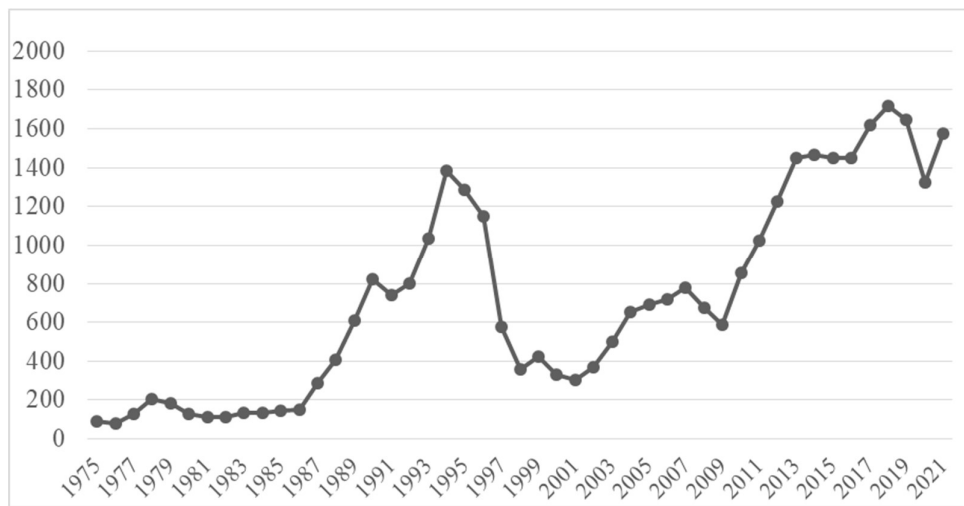


Fig. 2.1 Average SET Index since 1975 - 2021²⁵

The Fig. shows the performance of the market, starting from April 30, 1975 and the base value is 100 points.²⁶ It is an indicator calculated by the market capitalization-weighted price index which compares the current market value of all listed common shares, The Fig. 2.1 indicates the development of SET, starting from 100 points in 1975

²⁵ *Supra* note 1.

²⁶ *SET - Products & Services - SET Index Series*, SEC,

https://classic.set.or.th/en/products/index/setindex_p1.html (last visited Jul 15, 2022).

²⁷ *Id.*

and almost 50 years later, The SET Index shows the successful of the Thai market.²⁸

The SET Index is more than 1500 points in 2021.²⁹ However, there was some financial crisis during these 50 years which impacted to SET, for example, Black Monday in 1987,³⁰ Tom yum kung Crisis in 1977, one of the biggest financial crisis in Thailand, the SET index was extremely declined from 1,780 points to 200 points,³¹ Hamburger Crisis in 2008, Grexit in 2012, Brexit in 2016, and Covid-19 pandemic in 2020³². The average SET Index in 2019 was 1644.5 and in 2020 was 1324.41.³³ However, the average SET Index in 2021 was slightly and continuously inclined³⁴ in a result of the return to normalcy and easing of the quarantine requirements.³⁵

²⁸ *Id.*

²⁹ *Supra* note 1.

³⁰ Rewadee Panich, *The Linkage of U.S. Stock Markets and Asian Emerging Equity Markets*, 25 UTCC IJBE 134 (2019).

³¹ *What's the Thai Stock Market Going Through?*, BUALUANG (2017), <https://knowledge.bualuang.co.th/knowledge-base/setindex2518-2560/> (last visited Jul 15, 2022).

³² Chalita Rodpan & Supanee Buasook, *The Impact of the Covid-19 Outbreak on the Bankruptcy of Listed Companies on the Stock Exchange of Thailand*, 2021.

³³ *Supra* note 1.

³⁴ *Id.*

³⁵ Darana Chudasri, *SET Recovers as Covid Measures are Unveiled*, BANGKOK POST (2021), <https://www.bangkokpost.com/business/2146431/set-recovers-as-covid-measures-are-unveiled> (last visited Jul 15, 2022).

Table 2.1 Yearly Market Statistics in Terms of Total Turnover, Daily Average Turnover

Number of Transaction and Daily Average Transaction Deals from 2018 to 2021³⁶

Yearly Market Statistics				
(As of 30/06/2022)	2018	2019	2020	2021
Total Turnover*				
Volume (Million Shares)	3,086,113.00	3,953,349.00	4,547,680.00	7,224,335.00
Value (Million THB)	13,820,219.77	12,802,090.72	16,362,357.27	21,314,782.38
Daily Average Turnover*				
Volume (Million Shares)	12,596.38	16,202.25	18,714.73	29,976.50
Value (Million THB)	56,409.06	52,467.58	67,334.80	88,443.08
Number of Transaction Deals (Deals)	101,153,207	94,082,747	150,038,042	216,138,037
Daily Average Transaction Deals (Deals)	412,870	385,585	617,440	896,838
*Excluding Debentures and Convertible Debentures				

Table 2.1 shows some statistics of the market from 2018 to 2021 which continuously inclined although it was during the Covid-19 pandemic.

³⁶ *Supra* note 1.

Table 2.2 Yearly Cumulative Since 1 January to 8 July 2022³⁷

Yearly Cumulative Since 1 Jan - 8 Jul 2022				
Unit: Million THB Data as of 8 Jul 2022				
Investor Type	Buy		Sell	
	Value	%	Value	%
Local Institutions	730,844.70	7.36	822,565.73	8.28
Proprietary Trading	850,028.81	8.56	850,262.59	8.56
Foreign Investors	4,722,189.84	47.53	4,608,963.50	46.39
Local Individuals	3,632,101.74	36.56	3,653,373.28	36.77

Table 2.2 shows the investor type who invested in the SET, not only local individuals and institutions but foreign investors also have traded in the SET as the statistics of SET.³⁸ And the statistic indicates that foreign investors are interested in the SET as the percentage of trading in the Table.

2.3 Introduction to Thai Law

Laws and Regulations Regarding to Unfair Trading Practices, in the case of insider trading in Thailand

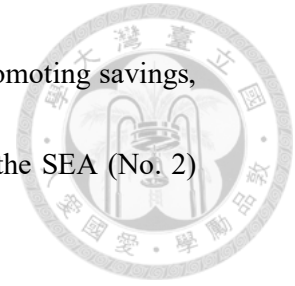
History of Securities Law in Thailand

In 1974, the first securities law was promulgated in Thailand, namely the SEA 1974,

³⁷ *Id.*

³⁸ *The Stock Exchange of Thailand - Investor Types*, SET (2022), <https://classic.set.or.th/mkt/investortype.do?language=en&country=US> (last visited Jul 11, 2022).

with the aim of providing a center for securities trading and also for promoting savings, and raising funds in the country. This Act was only amended once by the SEA (No. 2) B.E. 2527.³⁹



Subsequently, in 1992, the two aforementioned SEA were repealed and replaced by the SEA B.E. 2535 (the '92 Act) which came into force on May 16, 1992. The objective is to encourage the development and growth of the capital market for fundraising and investing in both the primary and secondary markets including the overall economic system of the country. The said law required the establishment of the SEC became an independent organization, responsible for overseeing and developing the capital market and the SEC had a responsibility to set the operating policy.⁴⁰

Thai Law Regarding to Unfair Trading Practices, the case of insider trading, can be divided into four periods;

2.3.1 Before the Amendment of the Securities and Exchange Act B.E. 2559 (2016)

A. The Stock Exchange of Thailand Act B.E. 2517 (1974)

In 1974, it was the first time of Thailand introduced the Securities Act. However,

³⁹ Siripong Chaiamnuaaysilp, *Legal Problems Concerning Unfair Securities Trading Practice: A Study of Insider Trading*, 2022.

⁴⁰ *Id.* at 56 ¶1.

there were no specific regulations related to insider trading provisions.⁴¹



B. After the Amendment of the Stock Exchange of Thailand Act B.E. 2527 (1984)

In 1984, the SEA (No. 2) B.E. 2527 was enacted, for amending the SEA B.E. 2517. Focusing on the Section 42 quinqué⁴² of the Act, this provision imposed both criminal and civil liability of insider trading for the first time in Thailand⁴³, and this provision is based on the principle of fiduciary duty of the United States of America to legislate the law.⁴⁵

C. The Promulgation of the Securities and Exchange Act B.E. 2535 (1992)

In 1992, the SEA B.E. 2535 was enacted. By virtue of Section 3⁴⁶ of this Act, the SEA, B.E. 2517, and the SEA (No. 2), B.E. 2527 was repealed.

Before the establishment of the SEC, there were many problems, for example, the agencies and laws were dispersed, the duplication of work and lacking of the coherence and continuity, therefore the SEC was established in order to solving the problems on 16 May 1992.⁴⁷

⁴¹ *Id.* at 55 ¶ 4.

⁴² SEA B.E. 2527, § 42 (1984) (Thailand).

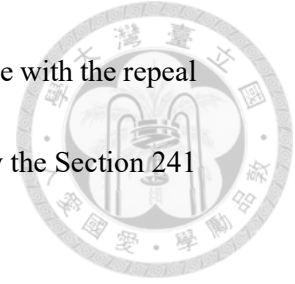
⁴³ *Supra* note 38, at 58 ¶ 6.

⁴⁵ *Id.*

⁴⁶ SEA B.E. 2535, § 3 (1992) (Thailand).

⁴⁷ *The Foundation of the SEC*, SEC (2022),

Moreover, the Section 42 quinqué was already expired in accordance with the repeal of the SEA (No.2) B.E. 2527, however, the Section had been replaced by the Section 241 of the SEA B.E. 2535.



This Section has defined insider trading as an act that could lead to criminal liability. However, the Section does not mention the civil liability such as in Section 42 quinqué of the SEA (No. 2), B.E. 2527. However, the terms used in Section 241 of the Act B.E. 2535 and the terms of 42 quinqué of the Act B.E.2527 are very similar, even though the structure of the provisions is different. The intention of '92 Act was amended to improve the investor protection and support effective enforcement of the SEA.⁴⁸

However, the overall of the '92 Act in terms of law enforcement was not good enough as the statistics of SEC. From 1992 to 2016, it was 25 years before amending the law, the statistics found that 52.98% of cases were in the process of the investigation officer, public prosecutor, and court. 41.32% were unsuccessful for the reasons of prescription (11.88%), non-prosecution order by the prosecutor (24.88%), and dismissal by court (4.56%).⁴⁹

<https://www.sec.or.th/EN/Pages/AboutUs/TheFoundationoftheSEC.aspx> (last visited Apr 2, 2022).

⁴⁸ Jinn-Min (Jimmy) Lin, *The Evolution of Securities Law in Thailand*, 2018.

⁴⁹ Natnicha Phasitthichot, *Essences in the Amendment of the Act Securities and Exchange B.E. 2535 3* (2017)

Table 2.3 Statistic of Insider Trading Case From 2007 to Early of December, 2016⁵⁰

Year	2016	2015	2014	2013	2012	2011	2010	2009	2008	2007
Number (Cases)	9	7	5	5	1	3	2	2	-	1
Criminal Fine (Million THB)	41.44	48.77	31.05	41.11	0.05	11.40	1.33	8.05	-	32.11

There is a study of the efficiency of the '92 Act in terms of enforcement, the study shows that the efficiency was low because the number of cases and offenders trended to increase as specified in Table 2.3.⁵¹

D. The Securities and Exchange Act B.E. 2535 as Amended

After the promulgation of SEA B.E. 2535 (1992), there are some amendments of the Act, which are;

1. The SEA (No. 2) B.E. 2542 (1999)
2. The SEA (No. 3) B.E. 2546 (2003)
3. The SEA (No. 4) B.E. 2551 (2008)
- 4. The SEA (No. 5) B.E. 2559 (2016)**

⁵⁰ Duangporn Arbhasil, *Enforcement Efficiency of Thai Insider Trading Laws*, 36 TU J. 15 (2017).

⁵¹ *Id.* at 14.

5. The SEA (No. 6) B.E. 2562 (2019)

However, from six times of amendments, there is only the SEA (No. 5) B.E. 2559 (2016), which is the fifth amendment of the SEA and comes into force in B.E. 2559 (2016), is amended the provisions related to insider trading. The sixth amendment of the SEA does not amend any provisions about the insider trading, therefore the author will focus on the fifth amendments which will be described and discussed in the next section.

E. Main Reasons for the Amendments of the Securities and Exchange Act in Connection with Unfair Trading of Securities

(1) The difficulties from burden of proof

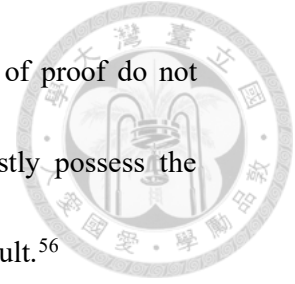
The previous law mostly focused on the criminal penalty and requires that criminal charges must be proven “beyond a reasonable doubt”⁵² which was not suitable for the insider trading law because the proof was mostly possessed by the offender.⁵³ The insider trading is one of the economic crimes,⁵⁴ the offense is even harder to prove than the other crimes because it is the technical term. The technical term requires the expertise in that field so it is difficult for the accuser to reach “beyond a reasonable doubt”. Even if there is sufficient evidence to prove, some case was dropped because the accuser does not have

⁵² Lin, *supra* note 48 at 13 ¶ 2.

⁵³ Urapeepatapong, Chai-a-ya and Boonyaleepun, *supra* note 20.

⁵⁴ Jatuporn Bunditkul, *Securities and Exchange Act B.E. 2535 (1992) : Presumption of Proof for Criminal Liability of Corporate Officer Pertaining to the Offence of Market Abuse*, 2008.

the expertise or the experience in this field.⁵⁵ Moreover such burden of proof do not respond well with the white-collar crime because the offenders mostly possess the evidence, therefore the tracking of criminal offenders' trail will be difficult.⁵⁶



(2) Inappropriate penalties

The penalties of insider trading were specified in Section 296 of the '92 Act; imprisonment not exceeding than two years or a fine from five hundred thousand THB to two million THB, or both.⁵⁷

Insider trading is an economic crime that damages the capital market and investors, when considering the proportion between such penalties and damages, such penalties were not appropriated. The offender gained a huge benefit, he will not be afraid of committing the crime because of such light penalties. Therefore, the penalties should be increased.

2.3.2 The Securities and Exchange Act B.E. 2559 (2016)

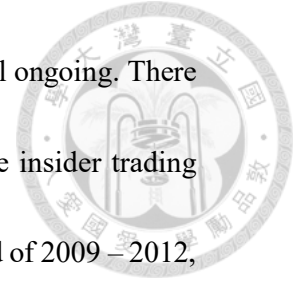
Introduction

Since 2008, the Thai Government has continually improved the law for more

⁵⁵ Lin, *supra* note 48, at 13 ¶ 2.

⁵⁶ Sakda Thanitcul & Tir Srinopnikom, *Monetary Penalties: An Empirical Study on the Enforcement of Thai Insider Trading Sanctions*, KJSS 1 (2018).

⁵⁷ SEA 1992, *supra* note 46, at § 296.



potential control the insider trading problems,⁵⁸ but the problem was still ongoing. There are regulators, SET and SEC, but the SEC's data record shows that the insider trading during the year of 2013-2016 had increased when compared to the period of 2009 – 2012, leading to the amendment of the SEA (No. 5) B.E. 2559.⁵⁹ The aim of the Act (No. 5) B.E. 2559 which was given on December 10, 2016, is to increase the clarity and comprehensiveness of measures to prevent injustice in securities trading, which are:

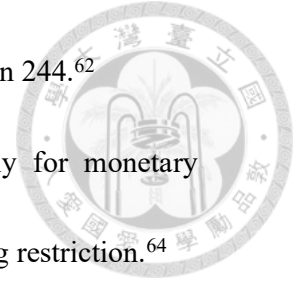
1. Definition of inside information has specified more clearly in Section 239.
2. Regulating the restriction of the person who knows or possesses inside information, therefore such person must present evidence in order to prove themselves from the legal presumption before entering into securities trading⁶⁰ in Section 242.
3. Imposing the legal presumption that who is presumed as having knowledge and possesses inside information in Section 243.⁶¹
4. Imposing the legal presumption, in case that person specified by the Act has traded securities in a different manner from his or her normal practice, he or she shall be

⁵⁸ Lin, *supra* note 48, at 9 ¶ 1.

⁵⁹ Jaruphat Sonaieam, *The Effects of the Amendment of the Securities and Exchange Act (No.5) B.E. 2559 on Directors: A Case Study of Insider Trading*, 2017.

⁶⁰ SEA 2016, § 242 (2016).

⁶¹ Sonaieam, *supra* note 59, at 2 ¶ 2.



presumed that have known and possessed the information in Section 244.⁶²

5. Imposing the civil sanctions, increasing penalties⁶³ especially for monetary penalties, suspension of the company position and securities trading restriction.⁶⁴

6. The person who assisted or facilitated another person in committing an offense related to insider trading shall be liable for the penalties as specified for such offenses.⁶⁵

Recent Amendments and Developments

As above mentioned, the SEA B.E. 2535 is amended for six times, but only the SEA (No. 5) B.E. 2559 (2016), which is the fifth amendment amended the provisions related to insider trading. This amendment was given on the 10th day of December B.E. 2559 and enforced from 11th December 1992 onwards.

(1) Definition of inside information has specified boarder and more clearly.

The '92 Act before amending, although there was no any explicit definition of inside information but limited that such information,⁶⁶ *the person has access by virtue of his office or position.*⁶⁷ Such limitation narrowed the definition of inside information which

⁶² SEA 2016, *supra* note 60, at § 244.

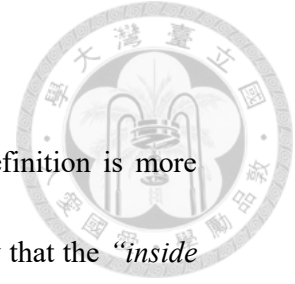
⁶³ Sonaie, *supra* note 59, at 3 ¶ 4.

⁶⁴ SEA 2016, *supra* note 60, at § 317/4.

⁶⁵ *Id.* at § 315.

⁶⁶ Arbhasil, *supra* note 50, at 18 ¶ 3.

⁶⁷ SEA 1992, *supra* note 46, at § 241.



made the offender use the gap to be acquitted.

The Fifth Amendment repealed such limitations therefore the definition is more boarder and also specified the definition of inside information to clarify that the “*inside information*” means information that has not been generally disclosed to the public and is material to the change of price or the value of securities.⁶⁸

(2) Regulating the restriction of the person who knows or possesses inside information⁶⁹

“No person who knows or possesses inside information related to a securities issuing company shall purchase or sell securities or enter into a derivatives contract related to securities, either for oneself or other persons, except in the following cases:

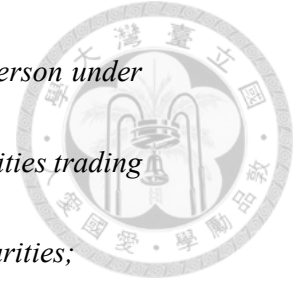
(a) action in compliance with the law, the court’s order, or the order of an agency with the legal power;

(b) action in accordance with the obligations to a derivatives contract that has been made before one becomes aware of or possesses inside information related to the securities issuing company; (c) action not agreed upon or

⁶⁸ SEA 2016, *supra* note 58, at § 239.

⁶⁹ *Id.* at § 242.

decided by oneself but assigned to an approved or registered person under the law on management of capital or investment to make a securities trading decision or enter into a derivatives contract related to such securities;



(d) action not having a characteristic of taking an advantage of other persons or any characteristic as specified in the notification of the SEC.”⁷⁰

This provision prevents such person from buying or selling the securities, including being unable to disclose the inside information to other people, unless such disclosure has been done by the power of exception of the Section 242. Those who know and possess the information, is restricted by the amendment Act, and such restriction is more explicit than the '92 Act;

i. “A way as to take advantage of other persons by using information material”⁷¹

Section 241 of the '92 Act specified that such act has to be done *in a way as to take advantage of other persons by using information material*, but the amended does not mention about this specific intent. The SEC has to put in some effort to find the evidence to prove that the offender commits the offense in a way as to take advantage of other

⁷⁰ *Id.*

⁷¹ SEA 1992, *supra* note 46, at § 241.



persons.⁷²

ii. “To disclose such information so that he will receive consideration from the person who engages in the aforesaid acts.”⁷³

Section 241 of the '92 Act required that the person who discloses the information, will receive some benefit from the person who engages in the disclosure, but the amended does not require this element.

iii. The exemption

The '92 Act did not clearly mention about any exemption, on the other hand, the amended Act explicitly specified about the exemption of disclosure, otherwise, the provision will presume that the insider violated the law. Therefore, it's the duty of the insider to declare the evidence that he falls into the exemption. It's not the duty of SEC to prove any specific intent.

The exemption is specified in Section 242 (1) (a) – (d) of the Fifth amendments.⁷⁴

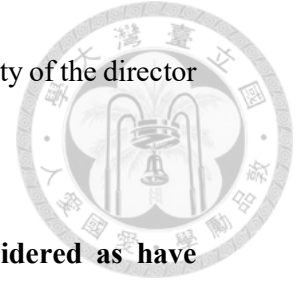
Therefore, in case that the director assigned the registered broker to make a securities trading decision instead of himself, if the broker decided to trade the securities without using the inside information from the director, he shall not be considered as committing

⁷² Sonaïem, *supra* note 59, at 19 ¶ 3.

⁷³ SEA 1992, *supra* note 46, at § 241.

⁷⁴ SEA 2016, *supra* note 60, at § 242.

the insider trading as specified in Section 242(1) (c). However, it is the duty of the director to find prove himself that he falls into the exemption.



(3) Imposing the legal presumption that who shall be considered as have known or possessed the inside information

Section 243 explicitly specified the legal presumption that who shall be presumed that have known or possessed the inside information, for example, director, employee who is able to access the insider information, legal advisor and financial advisor.⁷⁵

As specified in the Section, besides the director, there are many people who shall be presumed that have known or possessed the inside information, for example, employee who holds the position that enables them to access information. Examples are auditor, financial advisor and legal advisor,⁷⁶which were not mentioned in the '92 Act.

Although the '92 Act roughly specified about the director and some person, there were not clearly said that it was a legal presumption. Also, some person which mentioned in the Section 243 of the amended Act, were not mentioned in the '92 Act.

(4) Imposing the legal presumption, in case that such have traded securities or entered into a derivatives contract in a different manner from their normal practice,

⁷⁵ *Id.* at § 243.

⁷⁶ *Id.*

shall be presumed that have known and possessed the information in Section 244⁷⁷

Section 244 clearly specified, the following persons shall be presumed to have known and possessed the information in case that he has traded securities or entered into a derivatives contract in a different manner from their normal practice.⁷⁸ For example, the cohabiting couple of the persons under the Section 243 or the executive or worker of the group of the company who is able to access the inside information.⁷⁹

The Section 241(2) of '92 Act was only mentioned about anybody who holds the par value exceeding than five percent of securities by including the securities hold by such person's spouse and minor children.⁸¹

Comparing the 244 of the amended Act to the Section 241 of the '92 Act, it seems that the 244 is more detailed. Moreover, the amended Act is more updated and practical, for example, the Section 241(2) of the '92 Act mentioned that the value of the securities held by such person including the securities held by his spouse, on the other hand, the Section 244(1) of the amended Act, the value including both spouse or cohabiting couple.⁸²

⁷⁷ *Id.* at § 244.

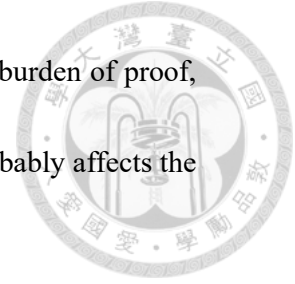
⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ SEA 1992, *supra* note 46, at § 241.

⁸² SEA 2016, *supra* note 60, at § 244(1).



The intention of issuing the presumption is to decrease the SEC's burden of proof, and also increase the proficiency in preventing the insider trading. It probably affects the director's company to face the burden of proof instead.⁸³

Such person must declare with the evidence to refute themselves from this presumption. Therefore, such person has an implicit duty to clarify themselves to the SEC that they are exempt from the legal presumption and are able to buy or sell the securities.

(5) Imposing the civil sanctions and increasing penalties of insider trading

i. Penalties of the offender committing an offense under the '92 Act

The enforcement of the '92 Act was basically based on criminal proceedings which naturally consume tons of time because it required the *beyond a reasonable doubt*. In addition, a formal criminal prosecution involved with many multiple government sectors, for example, prosecutor and court⁸⁴ which was not appropriate for white-collar crime. The penalties for insider trading of the '92 Act were criminal penalties, imposed covering imprisonment and/or fines as specified in Section 296.⁸⁵

Moreover, there were no additional penalties for the director who illegally commit the insider trading,⁸⁶ for example, even if the fine was completely paid by such director,

⁸³ Sonaïem, *supra* note 59, at 21 ¶ 1.

⁸⁴ Thanitcul & Srinopnikom, *supra* note 56, at 637 ¶ 2.

⁸⁵ SEA 1992, *supra* note 46, at § 296.

⁸⁶ Sonaïem, *supra* note 59, at 24 ¶ 2.

he will be able to continue being the director because the criminal case was settled.⁸⁷

ii. Penalties of the offender committing an offense under the Fifth

Amendment Act

Criminal Penalties

The amount of fine was increasing and not only based on the benefit received by the person who contravened the insider trading law,⁸⁸ as specified in Section 296 of the amendment.⁸⁹

Furthermore, paragraph 2 of the Section also specified the additional penalties for the person who is responsible for the operation of the company.

Civil sanctions

The Civil sanction which is an alternative mechanism was imposed in this amended Act and becomes the main tool for punishment in this day. In virtue of the law, the insider trading offenses could be settled by SEC through a Settlement Committee as specified in Section 317.⁹⁰ Regulators can prosecute the insider trading offenses in a various ways without initiating a criminal prosecution through the court.⁹¹ Such administrative

⁸⁷ Arbhasil, *supra* note 50, at 20 ¶ 1.

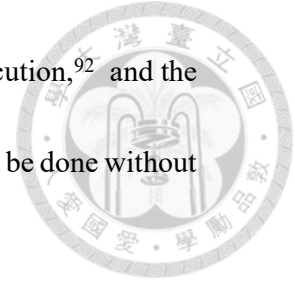
⁸⁸ *Id.* at 21 ¶ 1.

⁸⁹ SEA 2016, *supra* note 60, at § 296.

⁹⁰ Thanitcul & Srinopnikom, *supra* note 56, at 637 ¶ 3.

⁹¹ *Id.*

sanctions would be more effective than the conventional criminal prosecution,⁹² and the time-consuming obstacle was reduced because the civil proceeding could be done without intervention by a court.



Section 317/1(1):

“The following offences shall be deemed the offences whereby civil sanctions may be imposed on the offenders:

(1) committing unfair securities trading practice, which is an offence under Section 296”⁹³

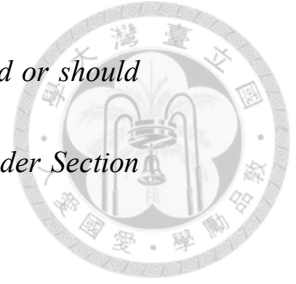
According to Section 317/4 and 317/5(1), civil sanctions shall be

(1) “a civil penalty shall be imposed at an amount not exceeding two times the benefit that such person received or should have received from committing such offence, but not less than five hundred thousand baht, and in cases where the benefit is incalculable, the civil penalty shall be imposed from five hundred thousand baht to two million baht”⁹⁴

⁹² *Id.* at 640 ¶ 3.

⁹³ SEA 2016, *supra* note 60 at § 317/1(1).

⁹⁴ *Id.*, at § 317/5(1).



(2) “a compensation at an equal amount to the benefit received or should have been received from committing an offence as specified under Section 317/1”⁹⁵

(3) “a suspension of trading in securities on the Stock Exchange or the over-the-counter center, or derivatives contracts on the Derivatives Exchange for a specified period not exceeding five years”⁹⁶

(4) “a bar from serving as a director or executive in a securities issuing company or a securities company within a specified period not exceeding ten years”⁹⁷

(5) “a reimbursement of investigative expenses incurred by the SEC Office”⁹⁸

(6) The person who assisted or facilitated for another person in committing an offence related to insider trading shall be liable to the penalties as specified for such offences.⁹⁹

The Fifth Amended Act added any person who assisted or facilitated another person

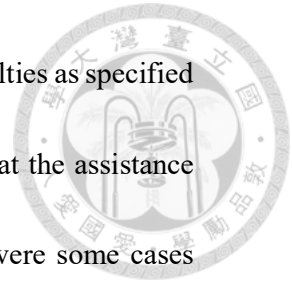
⁹⁵ *Id.*, at § 317/4(2).

⁹⁶ *Id.*, at § 317/4(3).

⁹⁷ *Id.*, at § 317/4(4).

⁹⁸ *Id.*, at § 317/4(5).

⁹⁹ *Id.*, at § 315.



in committing insider trading offenses shall also be held liable to the penalties as specified in the insider trading offense.¹⁰⁰ The '92 Act did not clearly specify that the assistance also shall be punished as specified for such offenses, therefore there were some cases before amending the Act that the accomplice was punished only “*by two-thirds of the punishment as provided for such offence*”¹⁰¹, because the Section 315 of the '92 Act did not mention that the assistance had to be punished as provided in such offenses.

Table 2.4 Comparison the SEA Between the 1992 Act and 2016 Act¹⁰²

Issues	1992 Act	2016 Act
Definition of Inside Information	X	Section 239
Discloser Information to others	To disclose such information so that he will receive consideration from the person who engages in the aforesaid acts (Section 241)	More specific To disclose inside information to other persons, either directly or indirectly and by any means, while one knows or ought reasonably to know that the receiver of such information may exploit such information for trading securities or entering into a derivatives contract related to such securities, either for the benefit of oneself or other persons (Section 242 (2))
Exemption for person, who knows or possesses the information, to	X	Section 242(1)(a)-(d)

¹⁰⁰ *Id.*

¹⁰¹ Criminal Code, § 86 (1956).

¹⁰² SEA 1992 and 2016, *supra* note 46 and 60.



trade the securities		
Legal Presumption	X	Section 243 and 244
Civil Sanction	X	Section 317/1, 317/4 and 317/5
The punishment of assistance	Section 86 of Criminal Code	Section 315

2.4 Case Study and Interesting Legal point

2.4.1 Case Study

A. Before the fifth amended Act

CP All Public Limited Company (CP ALL, 2013)

The four executives of CP ALL including executive board chairman Mr.Korsak Chairasmisak, two vice-chairmen (Mr. Piyawat Titasattavorakul and Mr. Pittaya Jearavisitkul) and the legal adviser to the company's board (Mr. Athueck Asvanund) was found the purchasing of Siam Makro Plc. (MAKRO) by taking the advantage from the inside information. Mr.Pittaya and Mr. Athueck did not directly purchase the securities, but purchased through Mr. Somsak Chiarawisithkul (brother of Mr. Pittaya) and Ms. Areeya Asvanund (the daughter of Mr. Athueck).¹⁰³

¹⁰³ Jon Fernquest, *Insider trading at CP All: Foreign investors demand action* BANGKOK POST (2015), <https://www.bangkokpost.com/learning/advanced/801656/insider-trading-at-cp-all-foreign-investors->

CP ALL had been negotiating with SHV Netherlands BV to buy MAKRO' shares at the price 787 THB per shares in total 154.43 million shares or 64.35% of MAKRO.¹⁰⁴

Such price was significantly higher than the market price. Then a tender offer would be required to CP ALL by the SEC. The price of wholesale MAKRO shares would just be skyrocketing, caused by the takeover.¹⁰⁵

The executives at CP ALL had the power to access such a share-purchasing plan, and took advantage from the inside information by purchasing the MAKRO shares at the low price before the public announcement.¹⁰⁶

The SET noticed the SEC about the situation and then the SEC started the investigation, and then found the guilty of executives by using the non-public information of the CP ALL to gain the benefit.

According to the SEC, Mr. Korsak bought 118,300 shares and Mr. Piyawat 5,000. Mr. Pittaya bought 7,500 shares through his brother, Mr. Somsak's account, while Mr. Athueck bought 6,000 via his daughter Ms. Areeya's account.¹⁰⁷

demand-action (last visited Apr 14, 2022).

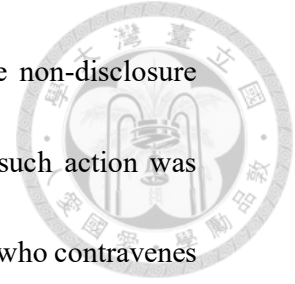
¹⁰⁴ *Id.*

¹⁰⁵ *CP All Chiefs Fined For Insider Trades*, BANGKOK POST (2015), <https://www.bangkokpost.com/business/783309/cp-all-chiefs-fined-for-insider-trades> (last visited Apr 14, 2022).

¹⁰⁶ *Id.*

¹⁰⁷ *The SEC Fines the Offenders For Using Inside Information to Buy MAKRO Shares*, SEC (2015), https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=6144 (last visited Apr 14, 2022).

The executives took advantage of the other persons by using the non-disclosure information to purchase the securities whether directly or indirectly, such action was wrongdoing and violated the Section 241 of the '92 Act.¹⁰⁸ The person who contravenes the Section 241 shall be liable to a fine as specified in Section 296.¹⁰⁹ For the two criminal accomplices violated the Section 241 with Section 86 of the Criminal Code.¹¹⁰



The SEC found the insider trading guilty of the executives and two criminal accomplices and fined them a total of 33.33 million THB.¹¹¹ The SEC imposed the highest fines on Mr. Korsak, CP ALL chairman Korsak Chairasmisak, at 30.23 million THB. Vice-chairman, Mr. Piyawat was fined 725,000 THB, vice-chairman Mr. Pittaya 979,500 THB, and Mr. Athueck 1.4 million THB. Mr. Somsak and Ms. Areeya were fined 333,333.33 THB each. All of them agreed to enter the settlement process.¹¹²

After the executives of the big company faced fines by the SEC, the local and foreign investors were shocked. The shares of CP ALL were 2.33% lost, in contrast with the stock market situation at that time.¹¹³ However, Mr. Korsak refused to resign from the position

¹⁰⁸ SEA 1992, *supra* note 46, at § 241.

¹⁰⁹ *Id.* at § 296.

¹¹⁰ Criminal Code, *supra* note 101.

¹¹¹ *Supra* note 105.

¹¹² *Id.*

¹¹³ Nuntawun Polkuamdee, *Foreign Investors Enter Fray Over CP All In Action*, BANGKOK POST (2015), <https://www.bangkokpost.com/business/800740/foreign-investors-enter-fray-over-cp-all-inaction> (last visited Apr 14, 2022).

and the parent company, CP Group did not require any action for his insider trading.¹¹⁴

According to the case, the weakness of the '92 Act were found as follows;

(1) The executives, after violating the insider trading law, are still able to remain in position as executives. There were no provisions of the '92 Act that punished or prohibited the director therefore, in case of Mr. Korsak, there were no provisions that could force him to resign.

However, if this case was considered by the Amended Act, Mr. Korsak shall be punished and additionally be prohibited from being the director within a specified period not exceeding ten years as specified in Section 317/4 (4).¹¹⁵

(2) A case could be settled by paying the fine

According to Section 317 of the '92 Act, the Settlement Committee shall have the power to settle offenses under Section 269, the case shall be regarded as settled when the offender has paid the fine as imposed by the Committee within the specified time.¹¹⁶ In case of CPALL, the company suffered from the huge loss after the investors acknowledged to the insider trading,¹¹⁷ but the case was settled when offenders only paid the fine without additional punishment.

¹¹⁴ *Id.*

¹¹⁵ SEA 2016, *supra* note 60, at § 317/4 (4).

¹¹⁶ SEA 1992, *supra* note 46, at § 317.

¹¹⁷ Polkuamdee, *supra* note 113.



Comparing to the Amended Act, there are some additional punishment such as Section 296 paragraph 2 and 317/4.

(3) The SEC faced with the burden of proof

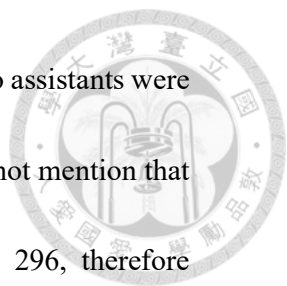
Although the CP ALL case, the SEC was successful in finding the evidence, and therefore prove that the executives violated the law, though the SEC faced many obstacles because there was no legal presumption in the '92 Act which contrasts with the Amended Act. The Amended Act imposed the legal presumption therefore the executives have the duty to declare themselves.

Although CP ALL case was not the first case related to the insider trading in Thailand, the case was extremely drawing attention because the amount of fine was higher than the other cases.¹¹⁸ The case showed that the SEC became more seriously investigating. Many directors also were more aware of the insider trading issue.

(4) The assistance in case of insider trading offence was punished only two-third of such offences.

The two executives purchased the MAKRO stock through Mr. Somsak and Ms. Areeya's account, therefore Mr. Somsak and Ms. Areeya shall be considered as the

¹¹⁸ Piset Settasatian, *Insider Trading with Corporate Governance*, THAIPUBLICA (2016), <https://thaipublica.org/2016/01/insider-trading-corporate-governance/?fbclid=IwAR01nOCNAE5ZR11iBK1ruhUFJf53T9XDyh-fDaijUoSdd7jm-mNrhTxVx8> (last visited Apr 14, 2022).



assistant of the principal to commit the insider trading. In the end, the two assistants were punished with the amount of 333,333.33 THB. Because the '92 Act did not mention that the insider trading's assistant had to be punished as provided in the 296, therefore generally using the Section 86 of the Criminal Code.¹¹⁹ The Section 296 of the '92 Act, the minimum fine was 500,000 THB,¹²⁰ by considering Section 86 of the Criminal Code, the two assistants shall be punished only two-thirds¹²¹ of the penalties as provided in such Section, therefore the two assistants had to pay the fine at the amount of 333,333.33 THB each.

However, considering the case with the Amended Act, Mr. Somsak and Ms. Areeya who renders assistance for Mr. Pittaya and Mr. Athueck in committing an offense as specified under Section 296 shall be liable for the penalties as specified for such offenses.¹²² Therefore the two assistance should be at least 500,000 THB each as specified in Section 296 and 315 of the Amended Act.

B. After the fifth amended Act

Inter Far East Energy Corporation Plc., (IFEC, 2018)

Mr. Supanan Rithpairote (Mr. Supanan), the chief executive officer of IFEC and Mr.

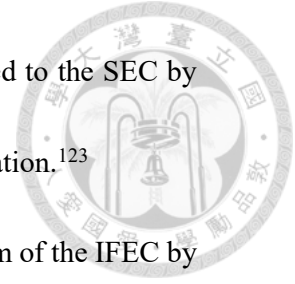
¹¹⁹ Criminal Code, *supra* note 101 § 86.

¹²⁰ SEA 1992, *supra* note 46, at § 296.

¹²¹ Criminal Code, *supra* note 101 § 86.

¹²² SEA 2016, *supra* note 60, at § 296.

Thanawat Chansuwan (Mr. Thanawat), the director of IFEC, complained to the SEC by several shareholders in case of taking advantage from the inside information.¹²³



Mr. Supanan and Mr. Thanawat acknowledged the financial problem of the IFEC by attending a board meeting on November 1, 2016. According to such awareness, the cutting loss was decided by the two by selling their own shares in the company before the public announcement.¹²⁴ The 10.15 million shares and the 978,000 shares were sold by Mr. Supanan and Mr. Thanawat, respectively.¹²⁵ The two violated Section 242 and was punished following Section 296 and 296/2 of the Amended Act.¹²⁶

The SEC had imposed the civil sanctions¹²⁷ to the two executives as specified in Section 317/1(1), and the two had to pay the fines and profits at an equal amount for committing an offense as specified in Section 317/4 (1) and (2). The total amount was 25.86 million THB, Mr. Supanan's fine was 22.89 million THB and Mr. Thanawat's was 2.97 million THB.¹²⁸

¹²³ Pathom Sangwongwanich, *SEC Fines IFEC Execs For Insider Trades*, BANGKOK POST (2018), <https://www.bangkokpost.com/business/1527334/sec-fines-ifec-execs-for-insider-trades> (last visited Apr 15, 2022).

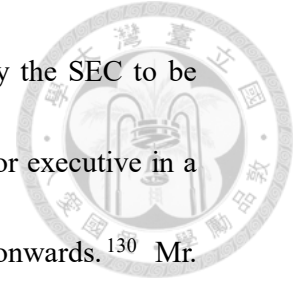
¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *The SEC Imposes Civil Sanctions on 2 Offenders on the Ground of Using Inside Information to Sell IFEC Shares*, SEC (2018), https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=7138 (last visited Apr 15, 2022).

¹²⁷ *Id.*

¹²⁸ *Id.*



Moreover, Mr. Supanan who was the CEO of IFEC demanded by the SEC to be dismissed from such position¹²⁹ and banned from serving as a director or executive in a securities issuing company for two years from September 9, 2018 onwards.¹³⁰ Mr.

Thanawat also was ordered by the SEC to be removed and a banned from being a director or executive in a securities issuing company for one year.¹³¹

According to the case, there are interesting legal issues as follows;

In cases where the offender refuses to comply with the imposed civil sanction, the SEC Office shall bring an action against the offender in the court for consideration.¹³²

The civil sanction was imposed on Mr. Suphanan by the Civil Sanction Committee. However, Mr. Suphanan refused to comply with the civil sanction. Then, the SEC proposed to the public prosecutor. Mr. Suphanan were filed a lawsuit by the public prosecutor on December 27, 2018 with the Civil Court in the Undecided Case No. Por. 7633/2561. However, the case was dismissed by Civil Court in the Decided Case No. Por. 5964/2562 on 12 November 2019.¹³³

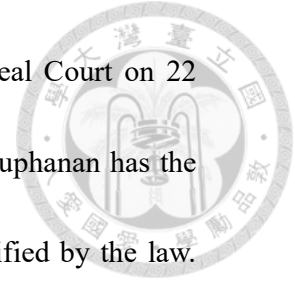
¹²⁹ Sangwongwanich, *supra* note 123.

¹³⁰ *The SEC Proposes to Public Prosecutor to Sue an Offender For Selling IFEC Shares by Using Inside Information*, SEC (2018), https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=7150 (last visited Apr 15, 2022).

¹³¹ Patom Sangwongwanich, *SEC Raps Former IFEC Boss*, BANGKOK POST (2018), <https://www.bangkokpost.com/business/1538286/sec-raps-former-ifec-boss> (last visited Apr 15, 2022).

¹³² SEA 2016, *supra* note 60 at § 317/8.

¹³³ *The Appeal Court Sentences the Offender in the Case of IFEC Insider Trading to the Highest Legal*



Later, the judgment of the Civil Court was opposed by the Appeal Court on 22 December 2020. The civil penalty given by the Appeal Court to Mr. Suphanan has the amount of 21,284,548.48 THB, which is the highest penalty rate specified by the law.

Including compensation for the benefits that would have been received from such offense at the amount of 10,642,274.24 THB, totaling 31,926,822.72 THB with the interest at 7.5 percent per year, starting from the case filing date onwards until the payment is made.¹³⁴

The case was final as the judgement of the Appeal Court.¹³⁵

Many cases were settled by fines paid before they got to the formal court procedure,¹³⁶ however, there are some cases in which the offender refused to comply with the civil sanction, then time-consuming will start. According to the case, from the public prosecutor filing the lawsuit on 27 December 2018 to the final judgment was given by the court on 22 December 2020, the SEC waited for 2 years to finish the case.

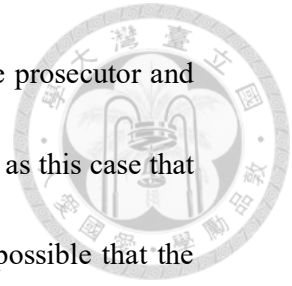
One of the intentions of the amendment is to reduce the involvement of authorities,

Penalty, (2021), https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=8729 (last visited Apr 15, 2022).

¹³⁴ *SEC Reveals the Appeal Court Adjudicates the Maximum Penalty Rate of Supanan Rittipairot, Using Internal Data to Sell IFEC Shares*, WORLD TODAY NEWS (2021), <https://www.world-today-news.com/sec-reveals-the-appeal-court-adjudicates-the-maximum-penalty-rate-of-supanan-rittipairot-using-internal-data-to-sell-ifec-shares/> (last visited Apr 15, 2022).

¹³⁵ *Supra* note 133.

¹³⁶ Nuntawun Polkuamdee, *SEC: Legal Violation Fines Totalled Over B2bn in 2019*, BANGKOK POST (2020), <https://www.bangkokpost.com/business/2002483/sec-legal-violation-fines-totalled-over-b2bn-in-2019> (last visited Apr 15, 2022).



however, if the offenders refused to comply with the civil penalties, the prosecutor and the Court still have to come in and get involved with the case¹³⁷ as same as this case that the offender refused to comply with the civil sanction. Moreover, it's possible that the prosecutor will issue a case as a non-prosecution order whenever there is not enough evidence.

2.4.2 Interesting Legal Point

A. Advantage and efficiency of the civil sanction; Statistic of the case from 2017 to now, how many cases could be finished by the civil sanction? How many cases that continue to file the lawsuit to the court?

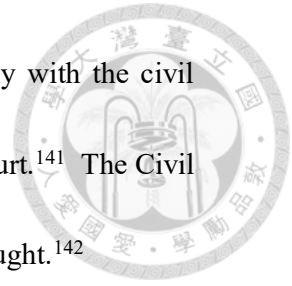
After the amendment since December 10, 2016, the law intends to catch up with the white-collar crime by imposing legal presumption and civil sanctions. When the Civil Sanction Committee approves, the SEC can impose the civil penalty.¹³⁸ In case the offender agreed to comply with the civil penalty specified by the Civil Sanction Committee, then a letter of consent must be signed by the offender.¹³⁹ The right to institute a criminal prosecution shall be extinguished after the payment of sanction fully

¹³⁷ *Enforcement of Civil Sanction*, SEC,

<https://www.sec.or.th/EN/Pages/LawandRegulations/CivilPenalty.aspx> (last visited Apr 15, 2022).

¹³⁸ *Id.*

¹³⁹ *Id.*



paid by the offender.¹⁴⁰ In case the offender does not agree to comply with the civil penalty, it is the duty of the SEC office to bring an action to the Civil Court.¹⁴¹ The Civil Court shall consider and impose the civil sanction after the action is brought.¹⁴²

Table 2.5 Statistic of Civil Sanction In Case of Insider Trading From 2017 to April 30,

2022¹⁴³

Year	Signing a letter of consent				Filing Case to Civil Court	
	Number (Persons)	Number (Cases)	Amount of Civil Penalties (THB)	Compensation at an equal amount to the benefit received (THB)	Number (Persons)	Number (Cases)
2022	21	2	18,129,462.49	7,674,292.00	-	-
2021	15	3	44,522,750.36	31,807,149.07	-	-
2020	9	4	35,081,833.50	27,761,360.00	3	1
2019	18	5	79,988,918.54	56,040,458.00	-	-
2018	12	6	23,512,404.72	16,455,809.00	12	2
2017	15	7	28,137,069.62	19,613,700.00	2	1

According to the table, the SEC inclines to impose the civil sanction on the offenders.

The offenders also considerably agreed with the sanction therefore, the number of filing the case to the Civil Court was slightly decreased.

As mentioned above, there are three monetary types of the civil sanction as specified

¹⁴⁰ SEA 2016, *supra* note 60 at § 317/7 ¶1.

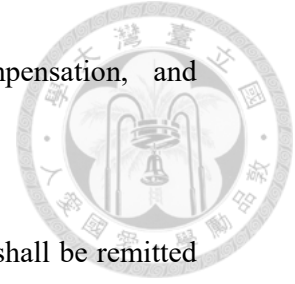
¹⁴¹ *Id.* at § 317/8.

¹⁴² *Supra* note 137.

¹⁴³ *Statistics of the Enforcement of Civil Sanction*, (2022), SEC,

<https://www.sec.or.th/TH/Documents/AnnualStatistics/enforce-statistic-civil-TH.pdf> (last visited Jul 15, 2022).

in Section 317/4 and 317/5(1), which are civil penalty, compensation, and reimbursement of investigative expenses of the SEC Office.¹⁴⁴



The civil penalty and the compensation as specified in the Table, shall be remitted to the Ministry of Finance.¹⁴⁵ And the other monetary sanction which is the reimbursement of investigative expenses shall be reimbursed to the SEC office.¹⁴⁶ The amount of the reimbursement from 2018 to 30 April 2022 respectively as follows, 43,824.00 THB, 965,972.99 THB, 769,441.98 THB, 1,171,993.07 THB and 466,285.95 THB.¹⁴⁷ The reimbursement relieves the SEC office of the burden in term of the expenses and help the SEC office smoothly go on the task.

B. Class action on securities litigation related to insider trading in Thai law

The damaged investor caused by the insider trading obtains their rights to litigate the lawsuit as “Class Action” under the Civil Procedure Code of Thailand, Section 222/1 to Section 222/49.¹⁴⁸ This type of civil proceedings helps the investors be able to bring the civil lawsuit as a group of people who share a common issues of law and fact.¹⁴⁹ It’s

¹⁴⁴ SEA 2016, *supra* note 60 at § 317/4 and 317/5(1).

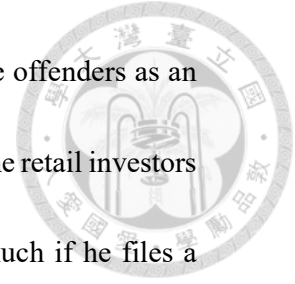
¹⁴⁵ *Id.* at § 317/12 and Emergency Decree on Digital Asset Businesses, § 99 (2018).

¹⁴⁶ SEA 2016, *supra* note 60 at § 317/12.

¹⁴⁷ *Supra* note 143.

¹⁴⁸ The Civil Procedure Code of Thailand B.E. 2558 (As Amended), § 222/1 to 222/49 (2015).

¹⁴⁹ Jatesada Nakhonkwang, *Class Action on Securities Litigation*, 2016.



extremely difficult for the retail investor to bring the lawsuit against the offenders as an individual therefore this type of civil proceeding shall be the benefit for the retail investors to file the lawsuit. The retail investors, who have not to gained that much if he files a lawsuit themselves, but have to be responsible for a number of litigation costs, therefore this may cause the retail investor to not file a lawsuit to remedy their own right.¹⁵⁰ The person in the class shares the expenses whether the court cost or the lawyer fee, therefore it lightens the load.

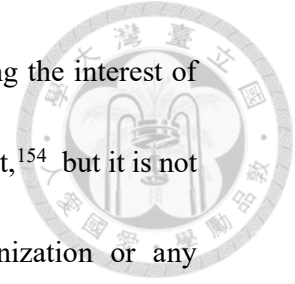
Insider trading is one of the offenses under the SEC, considered as a tort case. The plaintiff of a tort case, may be requested for a class action within one year from the day when the wrongful act and the person bound to make compensation become known to the injured person, or ten years from the day when the wrongful act was committed.¹⁵¹

However, there are some obstacles to the class action under Thai law. Under the Civil Procedure Code of Thailand requires the plaintiff, whether an individual or legal person, to be a member of the class.¹⁵² However, it is noted that to protect a large number of investors, The SEA imposes provisions that allow certain types of entities to be the “representative” of the investors to bring the lawsuit to a court, but the insider trading is

¹⁵⁰ *Id.*, at 50 ¶ 2.

¹⁵¹ *The Application of Class Action to the Offence or Liability Under the Securities and Exchange Act*, SEC, <https://www.sec.or.th/EN/Pages/LawandRegulations/ClassAction.aspx> (last visited Jul 14, 2022).

¹⁵² Civil Procedure Act, *supra* note 148, § 222/12 (5).



not included in the provision.¹⁵³ The SEA has the purpose of protecting the interest of investors and to supervise and to develop the efficiency of capital market,¹⁵⁴ but it is not found any provision under the SEA, to empower non-profit organization or any foundations to act on behalf of victims to bring the lawsuit against the defendants.¹⁵⁵ Therefore, it can be said that the damaged investors from insider trading whether it's a class action under Thai law, the private sector, who is the victim, has to protect their rights and benefit from their owns.

The Civil Procedure Code was amended¹⁵⁶ and added the class action into the Code in 2015¹⁵⁷ and there are some class action litigations related to environmental law¹⁵⁸ and consumer protection law¹⁵⁹ but it has not had any cases related to insider trading yet. Actually, there is no any private enforcement involved with the insider trading has

¹⁵³ Nakhonkwang, *supra* note 149 at 59 ¶ 1.

¹⁵⁴ Urapeepatapong, Chai-a-ya and Boonyaleepun, *supra* note 20.

¹⁵⁵ Nakhonkwang, *supra* note 149 at 195 ¶ 3.

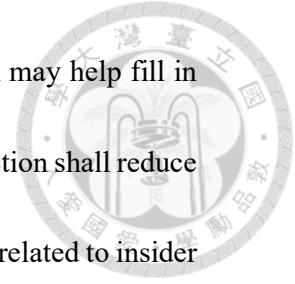
¹⁵⁶ See Ph.D. Piroj Wayupap, *Explanation of Civil Procedure Law Part 2 Title 2 Extraordinary Procedures in the Court of First Instance Chapter 4 Group Litigation*, 23-31 (2016).

¹⁵⁷ Prasit Ruamsin, *The Considerations of Class Action according to the Amendment of Civil Procedure Code 2015: Case Study on Cancellation of Class Action* (2015).

¹⁵⁸ *Class action*, THAIPUBLICA (2019), <https://thaipublica.org/2019/07/class-action03/> (last visited Jul 15, 2022).

¹⁵⁹ *The Court Dismissed the Class Action Lawsuit of DTAC Consumers*. (2018), <https://www.consumerthai.org/consumers-news/ffc-news/4648-ffc-dtac-031164.html> (last visited Apr 15, 2022).

occurred in Thailand yet.¹⁶⁰ It has been mentioned that the class action may help fill in the gap of inequalities of the justice accession because at least the class action shall reduce the cost of litigation,¹⁶¹ however, it seems like the class action litigation related to insider trading, has not helped fill such gap yet.



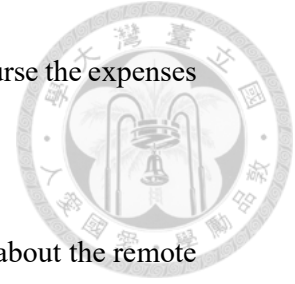
C. Tipper – tippee issue: Thailand considered the remote tippee as committed the insider trading

According to the Section 242(2) of SEA, the law specifies that anyone shall not disclose the inside information whether directly or indirectly to other persons, this shall be considered that Thai's law also considers about the tippee's liabilities. Moreover, there are some cases shows that Thai law recognize the tippee as the illegal practice under Thai law. For example, the TRUBB case, Ms. Panjama, while serving as assistant managing director of TRUBB, she acknowledged about the TRUBB's performance which impact to the securities price, then she purchased the TRUBB's securities and also disclosed this information to her brother and mother and both of them purchased the TRUBB's securities.¹⁶² The SEC applied the civil sanctions to Ms. Panjama, Mr. Attawit (her

¹⁶⁰ Chalaew Nakornchan & Nithi Phadongchai, *Law Enforcement of Market Misconduct of Securities Trading in the Stock Exchange of Thailand*, 6 Academics journal of Suvarnabhumi Institute of Technology 52 (2020).

¹⁶¹ See Auen Kunkeaw & Woranunya Chaithiamwong, *Class Action and Writ of Certiorari* 24 (1 ed. 2016).

¹⁶² *SEC Imposes Civil Sanctions on 3 Offenders for Insider Trading of TRUBB Shares*, SEC (2019), https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=7843&fbclid=IwAR3AcwGdiGSr_lpQd1MY



brother) and Ms. Thipawan (her mother) by paying civil fines and reimburse the expenses from the investigation to the SEC.¹⁶³

Although there is no specific explanation in the SEA of Thailand about the remote tippee and it has no any case happened yet but there is a clearer official explanation of this issue in the SEC's website that the remote tippee who is the second hand received the information from tippee, also considered as illegal under Thai SEA.¹⁶⁴

2.5 Opinion and Suggestion

Executives and directors of securities companies listed in Thailand must comply with the SEA. In the case of using the inside information by the directors, not only it is a violation of the law but also contraries to the fiduciary duty and duty of loyalty.¹⁶⁵ In addition, the executives who use the inside information to take the advantage in an abusive way, causes damages to shareholders, which contraries to the principles of corporate governance of the SET in regard to the equal treatment of shareholder.¹⁶⁶

qGIZINpNauxY5YVCgYGvu6oc65OFhnqxi1UAQNM (last visited Sep 19, 2022).

¹⁶³ *Id.*

¹⁶⁴ SEC, *Thai Market Misconduct*, SEC,

<https://www.sec.or.th/TH/Pages/LAWANDREGULATIONS/MARKETMISCONDUCT.aspx> (last visited Sep 18, 2022).

¹⁶⁵ Nipapat Wongwatthanadej, *Imposing the Fiduciary Duty as Supplementary Protection Mechanism for Investor or Customer Using Securities Brokerage Services in Thailand*, 7 Academics journal of the Office of the Judiciary (2015).

¹⁶⁶ Patcharaporn Pootranon & Veerakorn Samranweth, *Principles of Corporate Governance on Shareholders' Interests*, 67 Academics Journal Of the Office of the Judicial and Legal Affair 70 (2020).



The Fifth Amendment of the SEA was passed by the National Legislative Assembly, it was to raise the efficiency of law enforcement in order to increase the confidence of both Thai and foreign investors.¹⁶⁷

The amendment added some important provisions related to insider trading which are, imposing the legal presumption in Section 243 and 244,¹⁶⁸ and imposing the civil sanctions in Section 317/4 and 317/5(1).¹⁶⁹ The legal presumption helps the SEC reduce the burden of prove and the offenders have the duty to proof themselves instead.¹⁷⁰ In case of the civil sanction, empowering the SEC to prosecute the offenses directly without initiating the conventional prosecution through the court.¹⁷¹ Such sanctions would be more effective than the conventional prosecution in terms of agility. The enforcement of civil sanction is faster than the criminal sanction¹⁷² because the procedure shall be enforced following the Civil Procedure.¹⁷³ The SEC has power and flexibility to track

¹⁶⁷ Rinthiva Tiantitikul, *The Amendment of the Securities Exchange of Thailand Act B.E. 2559*, FPO (2016), <https://www.fpo.go.th/main/getattachment/Department/Bureau-of-Legal-Affairs/8/2338/CNT0016466-1.pdf.aspx> (last visited Jul 15, 2022).

¹⁶⁸ SEA 2016, *supra* note at 60 § 243 and 244.

¹⁶⁹ *Id.* at § 317/4 and 317/5(1).

¹⁷⁰ See Wichai Tantikulanan & Chulalak Tantikulanan, *Explanation of the Securities and Exchange Act B.E. 2535 (Latest Amendment B.E. 2562)* 39 (2019).

¹⁷¹ Thanitcul & Srinopnikom, *supra* note 56, at 637 ¶ 3.

¹⁷² See Sootpisal, *The Intensive Edition of the Securities and Exchange Act 6-20* (2019).

¹⁷³ Poon Laoutthapreecha, *Civil Sanctions and Criminal Sanctions Measures on the Securities and Exchange Act*, 12 TU L. J. 646 (2019).

the offenders and they have increased the duties to prove themselves following the legal presumption.



Although the civil sanction is more efficient in terms of the faster procedure, there are some disadvantages. In case that the offender agreed to comply with the sanction and made a payment in full, the case will be over because the right to institute a criminal prosecution shall extinguish as specified in Section 317/7 of SEA,¹⁷⁴ therefore the regulator shall consider whether an offender shall afraid of committing the insider trading if he could only pay the fine to end all of his offense. The SEA imposes the criminal liabilities for the offenders who committed the insider trading, therefore it shall be deemed that the insider trading is one of the serious offenses, it causes damages to tons of investors, but after imposing the civil sanction, there is no any criminal procedure since 2017 to April 2022 as the statistic of the criminal action of SEC.¹⁷⁵ Therefore, the regulator shall balance between the faster procedure and the punishment.

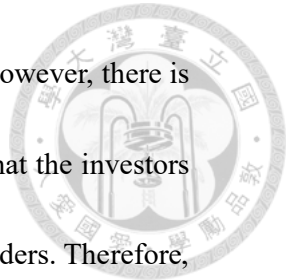
The Civil Procedure Code of Thailand was amended in 2015 and added the class action litigation into the code,¹⁷⁶ therefore at the present, the damaged investors obtain

¹⁷⁴ SEA 2016, *supra* note 60 at § 317/7.

¹⁷⁵ *Statistics of Criminal Actions*, SEC (2022),

<https://www.sec.or.th/EN/Documents/MarketDataEnforcement/enforce-statistic-criminal-EN.pdf> (last visited Jul 15, 2022).

¹⁷⁶ Ruamsin, *supra* note 157 at ¶ 2.



their rights to litigate the lawsuit whether as individual or class action. However, there is no any litigations related to the insider trading yet. It shall be deemed that the investors still lack of the knowledge and fund to bring the lawsuit against the offenders. Therefore, the government shall support investors in terms of litigation. In some countries, SEC has the power to be the representative of the damaged investors, and request the court for ordering the defendants to pay the damages¹⁷⁷ and in Taiwan, there is a non-profit foundation that provides the investors the litigation without any costs,¹⁷⁸ therefore the Thai regulator shall consider more about how to support damaged investors to initiate the litigation. Law in book is different from the law in action, as in practice, there is still no any damaged investors received the compensation from the offenders.

¹⁷⁷ Nakornchan and Phadongchai, *supra* note 160 at 51.

¹⁷⁸ *Introduction — Securities and Futures Investors Protection Center*, SFIPC (2022), <https://www.sfipc.org.tw/Mainweb/Article.aspx?L=2&SNO=I6M+rmmp+ncCQmZoO7Z28g==> (last visited Jul 18, 2022).

Chapter 3 The Case of Insider Trading in Taiwan



Introduction

Many Eastern Asian countries developed and transformed their own legal system by borrowing from European countries since the late 1800s.¹⁷⁹ Later, the U.S. played more role in the economic and political in the event of the World War II and the cold war.¹⁸⁰ Especially the law in the field of business and economics, was introduced to the Eastern Asian countries.¹⁸¹ Taiwan also, after the World War II, the U.S. law hugely influenced the Taiwan law system.¹⁸²

The history of development related to Taiwan law is not that long but complex.¹⁸³ Taiwan is a civil law jurisdiction,¹⁸⁴ which was earlier influenced by the Western law through Japan and China¹⁸⁵ and later influenced by the U.S. law. The reason why Taiwan's was later influenced by the U.S., was *to protect itself from a military invasion by the*

¹⁷⁹ Huan-Ting Wu, *Insider Trading, Informed Trading, and Market Mechanisms: A Comparative Perspective from Taiwan*, 2019.

¹⁸⁰ *Id.*

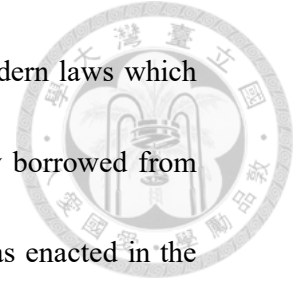
¹⁸¹ Hideki Kanda & Curtis J. Milhaupt, *Re-Examining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law*, 51 AM. J. COMP. LAW. 887-901 (2003).

¹⁸² Wu, *supra* note 179 at 45 ¶ 1.

¹⁸³ Tay-Sheng Wang, *Translation, Codification, and Transplantation of Foreign Laws in Taiwan*, 25 WASH. L. J. 307-308 (2016).

¹⁸⁴ Xiaomeng Zhang, *Taiwan Legal Research Guide*, NYU LAW (2012), <https://www.nyulawglobal.org/globalex/Taiwan.html> (last visited Jul 20, 2022).

¹⁸⁵ Wang, *supra* note 183 at 308 ¶ 2.



Communist China.¹⁸⁶ The securities transactions law is one of the modern laws which most of the Eastern Asian influenced by the U.S., Taiwan also mainly borrowed from U.S.¹⁸⁷ The first provision related to insider trading law of Taiwan was enacted in the Securities and Exchange Act. 1988.¹⁸⁸ The Chapter3 will respectively explain about Taiwan Stock Exchange, the history of Taiwan law, the recent Securities and Exchange Act related to insider trading, a case study, the Securities and Futures Investors Protection Center and interesting legal issues.

3.1 Introduction to the Taiwan Stock Exchange (TWSE)

Insider trading is the security trading of a company by someone who has the privilege to access non-public information which is considered as illegal.¹⁸⁹ And the introduction of the Thailand Stock Exchange is introduced in Chapter 2 therefore, in this chapter also shall provide fundamental information of TWSE where the insider trading is performed.¹⁹⁰

TWSE was licensed as Taiwan's first regulated exchange¹⁹¹, established on 23

¹⁸⁶ *Id.* at 321 ¶ 2.

¹⁸⁷ Ching-Ping Shao, *Beyond Uncertainty: Lower Courts' Defiance in Insider Trading Cases in Taiwan*, 10 NTU L. REV. 180-182 (2015).

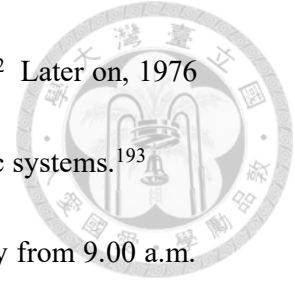
¹⁸⁸ *Id.* at 180 ¶ 3.

¹⁸⁹ *Insider trading*, Legal Information Institute (2022), LII, https://www.law.cornell.edu/wex/insider_trading (last visited Jun 5, 2022).

¹⁹⁰ Min-Hsien Chiang, *Insider Trading Performance in the Taiwan Stock Market*, 3 JIBE 239-256 (2004).

¹⁹¹ *Taiwan Stock Exchange (TWSE)*, TSFVM (2022), <https://www.tsfvm.com.tw/en/a01.aspx?id=2> (last

October 1961, and officially opened for trading on 9th February 1962.¹⁹² Later on, 1976 September 1st, clearing and settlement systems were moved to electronic systems.¹⁹³



Nowadays, the trading session of TWSE is open Monday to Friday from 9.00 a.m. to 1.39 p.m. Taipei standard time (GMT +8.00) without a lunch break.¹⁹⁴ TWSE plays the important role in Taiwan's economic as a key player in increasing business growth, fundraising, and supporting economy progress.¹⁹⁵ There are other two functions which are the responsibilities of TWSE. Firstly, the TWSE acts as a Central Counterparty (CCP), for providing clearing services and settlement guarantee, and the second, acts as a Securities Settlement System (SSS), for ensuring the transfer and delivery of funds and securities in the settlement.¹⁹⁶ TWSE also enacted the relevant provisions in the Securities and Exchange Act.¹⁹⁷

The Securities and Futures Bureau (SFB) of the Financial Supervisory Commission (FSC) has the duty to supervise the TWSE, therefore the highest supervisory body of the

visited Jun 5, 2022).

¹⁹² *Id.*

¹⁹³ *Timeline - Taiwan Stock Exchange Corporation*, TWSE (2022),

<https://www.twse.com.tw/en/page/about/company/history.html> (last visited Jul 20, 2022).

¹⁹⁴ *Trading Mechanism Introduction - Taiwan Stock Exchange Corporation*, TWSE (2022), <https://www.twse.com.tw/en/page/products/trading/introduce.html> (last visited Jul 6, 2022).

¹⁹⁵ *Welcoming Message - Taiwan Stock Exchange Corporation*, TWSE (2022), <https://www.twse.com.tw/en/page/about/company/welcome.html> (last visited Jul 6, 2022).

¹⁹⁶ *TWSE 臺灣證券交易所*, TWSE (2022), <https://www.twse.com.tw/zh/> (last visited Jul 6, 2022).

¹⁹⁷ *Id.* at 4 ¶ 3.

financial market is FSC¹⁹⁸ which is a central government agency.¹⁹⁹ FSC was originally named “Financial Supervisory Commission, Executive Yuan”, established on 2004, July 1st and later changed its name to the “Financial Supervisory Commission” on 2012, July 1st.²⁰⁰ The duty of FSC is to supervise financial policies and business,²⁰¹ develop the financial environment, and ensure consumers’ and investors’ interests.²⁰²



3.2 Introduction to Taiwan Law

Taiwan’s Securities and Exchange Act (TSEA, 證券交易法) came into force in 1968. The TSEA has prohibited securities fraud, fraudulent financial reporting and prospectus, short-swing trading, and market manipulation since 1968. However, there was no specific provision related to insider trading at that time.²⁰³ Later on 1988, TSEA was amended and insider trading has been prohibited and considered as illegal since then as specified in Article 157-1.²⁰⁴

¹⁹⁸ *Id.* at 4 ¶ 4.

¹⁹⁹ *Organization-Organizational Structure of the FSC-Financial Supervisory Commission*, FSC (2018), https://www.fsc.gov.tw/en/home.jsp?id=50&parentpath=0,1&mcustomize=onemessage_view.jsp&dataserno=20956&dtable=Organize (last visited Aug 12, 2022).

²⁰⁰ *Restructuring-Financial Supervisory Commission*, FSC (2019), <https://www.fsc.gov.tw/en/home.jsp?id=493&parentpath=0,1,332> (last visited Jul 6, 2022).

²⁰¹ *Id.* at 17.

²⁰² *Our Missions and Objectives-Financial Supervisory Commission*, FSC (2020), <https://www.fsc.gov.tw/en/home.jsp?id=338&parentpath=0,1,332> (last visited Jul 6, 2022).

²⁰³ Andrew Jen-Guang Lin, *The Challenges and Contemporary Issues of Taiwan’s Investor Protection System: A Model to Learn or to Avoid*, 11 NTU L. REV. 138 (2016).

²⁰⁴ Shao, *supra* note 187 at 182 ¶ 2.



3.2.1 The Provision Related to Insider Trading Was Enacted For the First Time in 1988

The provision was Article 157-1 of TSEA. The provision specified that the offenders who violated Article 157-1 would have to compensate such damages to other investors, and also be prosecuted. The penalized insider trading offenders were specified in Article 175 of TSEA which was 2 years of imprisonment.²⁰⁵ The original of Article 157-1, Paragraph 1 as follows:

“Upon knowing of any information that will have a material impact on the price of the securities of the issuing company, and prior to the public disclosure of such information, the following persons shall not purchase or sell shares of the company that are listed on an exchange or an over-the-counter market:

- 1. A director, supervisor, and/or managerial officer of the company.*
- 2. Shareholders holding more than 10% of company shares.*
- 3. Any person who has learned the information by reason of occupational or controlling relationship.*

²⁰⁵ *Id.*

4. Any person who has learned the information from any of the persons named
in the preceding three subparagraphs.”



3.2.2 The TSEA Amendment of 2000

According to the 1988 Act, the penalty for insider trading was specified in Article 175, however, the amended Act, the penalty was amended and specified in Article 171 of TSEA instead. Moreover, the amount of the maximum imprisonment was highly increased to seven years.²⁰⁶

3.2.3 The Amendment of 2004

The penalty of insider trading was continuously amended and became harsher. One of the improvements of the 2004 amendments was, the TSEA divided the level of the offense into two categories²⁰⁷;

1. The offenders who gained the interest lower than NT\$100, the penalty specified in Article 171 of the amendment of 2004, the imprisonment shall be up to 10 years, and can be fined up to NT\$200 million.

2. The serious offenders who committed the insider trading and gained an interest of over NT\$100 million, the minimum imprisonment is seven years. In case of the fine, the minimum amount was NT\$25 million and the maximum fine was up to NT\$500 million.

²⁰⁶ *Id.* at 183 ¶ 1.

²⁰⁷ *Id.*



3.2.4 The Amendment of 2006

Paragraph 1 of TSEA was revised and defined the phrase “information that will have a material impact on the prices of the securities” in detail as follows:

“ . . . information relating to the finances and businesses of the company, or the supply and demand of such securities on the market, or tender offer of such securities, the specific content of which will have a material impact on the price of the securities, or will have a material impact on the investment decision of a reasonably prudent investor.”

The above mentioned was the guidance, the sample, and the scope of the information which shall be deemed as the inside information and the means of disclosure.

Moreover, this amendment also specified the lockup period which is the insider shall be prohibited to trade the securities not only prior to the public announcement but also within 12 hours after the public announcement.²⁰⁸ However, this lockup period has been revised in 2010.

Paragraph 4 of Article 157-1 was revised, however, Paragraph 4 of the amendment of 2006 would be renumbered again as Paragraph 5 of the amendment of 2010.²⁰⁹

²⁰⁸ Securities & Future Institute, *Discussion on Important Practical Issues in Insider Trading - Scope of Material News and Time of Establishment* (內線交易重要實務問題探討—重大消息範圍及成立時點座談會) (2008).

²⁰⁹ Shao, *supra* note 187.



3.2.5 The Amendment of 2010

Paragraph 1 of Article 157-1 was revised once again in 2010. The important amended point is adding “actually” and “after the information is precise”²¹⁰ into the

Paragraph as follows;

“Upon actually knowing of any information that will have a material impact on the price of the securities of the issuing company, after the information is precise, and prior to the public disclosure of such information or within 18 hours after its public disclosure...”²¹¹

Therefore, the person shall be considered as committing insider trading when such person trades the securities upon “actually” knowing of any information that will have a material impact on the price of the securities of the issuing company, “after the information is precise” as specified in the Article 157-1.

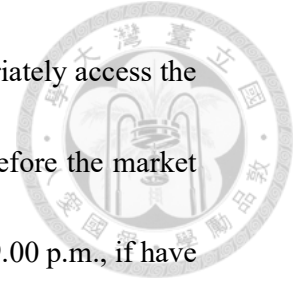
Another important amendment in 2010 is the “lockup period” extension from twelve hours²¹² to eighteen hours.²¹³ The insider is prohibited from trading the securities within 18 hours after the public announcement. The reason is to prevent the case that companies

²¹⁰ *Id.* at 184 ¶ 3.

²¹¹ TSEA, § 157-1 (2021) (Taiwan).

²¹² Ta-Wei Kuo, *A Comparative Study of the Underlying Policies Behind the Taiwanese and U.S. Tender Offer Legislation*, 2 NTU L. REV. 30 (2007).

²¹³ *Id.*



released the material information at night and investors will not appropriately access the information, then the investors could not make the decision properly before the market opens the next day.²¹⁴ For example, if the information is announced at 9.00 p.m., if have no this lockup time, the insider will be able to trade the securities in the next morning. Although there was twelve hours lockup time, the insider also will be able to trade the securities at 9.00 a.m. of the next morning. Therefore twelve hours of lockup time did not enough for some investors to analyze the investment information. The revised Article is extended to 18 hours, in case that the insider will be able to trade the securities on the opening time of the next trading day, the company shall announce the information before 3 p.m. today. Therefore, the main idea of this revision is to give the investors more time to analyze the information.²¹⁵

3.3 The Recent Securities and Exchange Act Related to Insider Trading

3.3.1 Article 157-1 of TSEA

A. The definition of insider trading is specified in Paragraph 1 and 2 of

²¹⁴ *Taiwan Legislative Yuan Passed Amendments to the Securities and Exchange Act to Strengthen Cross-Border Supervision and International Cooperation*. - 台灣國際專利法律事務所, TIPLo (2010), https://www.tiplo.com.tw/tw/tn_in.aspx?mnuid=1284&nid=44843 (last visited Jul 6, 2022).

²¹⁵ Yi-Fu Zhang, *Analysis of Components of Article 157-1 Prohibition of Insider Trading of the Securities and Exchange Act* (證券交易法第 157 條之 1 「禁止內線交易」 構成要件解析), *Securities Service Review* (證券服務), 664, 39.



the Article 157-1²¹⁶ as follows:

Paragraph1, Article 157-1 specified that

“upon actually knowing of any information that will have a material impact on the price of the securities of the issuing company, after the information is precise, and prior to the public disclosure of such information or within 18 hours after its public disclosure, the person holding such information shall not purchase or sell, in the person's own name or in the name of another ,shares of the company which are listed on an exchange or an over-the-counter market, or any other equity-type security of the company...”²¹⁷

Paragraph2, Article 157-1 specified that

"upon actually knowing of any information that will have a material impact on the ability of the issuing company to pay principal or interest, after the information is precise, and prior to the public disclosure of such information or within 18 hours after its public disclosure, the person holding such information shall not sell, in the person's own name or in the name of another,

²¹⁶ Insider Trading Taiwan Stock Exchange Corporation, TWSE (2022), https://www.twse.com.tw/en/page/investor/insider_trading.html (last visited Jun 6, 2022).

²¹⁷ TSEA, *supra* note 211 at §157-1

the non-equity-type corporate bonds of such company that are listed on an exchange or an over-the-counter market."²¹⁸



B. The element of insider trading according to the Article 157-1

(1) Subjects who are restricted to engage in insider trading as specified in

Paragraph 1 of the Article

The person who is specified in Subparagraph (1) – (5) of Article 157-1, shall not purchase or sell the securities whether in the person's own name or in the name of another.

Such person can be categorized as follows²¹⁹:

i. Insiders

- 1) The person as specified in Subparagraph 1²²⁰
- 2) The person as specified in Subparagraph²²¹

The calculation of the shareholding percentage included the shares held by the insider, its spouse, and minors and in another person's name as specified in Securities and Exchange Act Enforcement Rules §2²²²

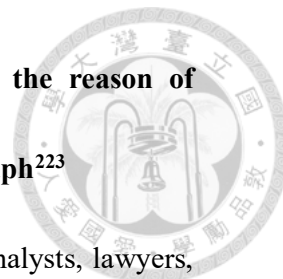
²¹⁸ *Id.* at ¶ 2.

²¹⁹ *Id.*

²²⁰ *Id.* at ¶ 1.

²²¹ *Id.*

²²² *Directions Concerning Securities Market Regulatory Matters for TWSE Listed Companies and Their Directors, Supervisors, and Major Shareholders*, TWSE (2012), <https://twse-regulation.twse.com.tw/ENG/EN/law/DAT08.aspx?FLCODE=FL072299> (last visited Jul 6, 2022).



ii. Defacto insiders who acknowledge the information by the reason of occupational or controlling relationship as specified in Subparagraph²²³

For example, securities firms, investment consultants, securities analysts, lawyers, accountants, police, and judicial officers acknowledge insider information from their own duties in the investigation of TSEA cases.²²⁴

iii. The person who has lost its status in the preceding three Subparagraphs within the last six months as specified in Subparagraph 4²²⁵

The main intention of this Subparagraph is to prevent malpractice from such person who recently lost their status.²²⁶

iv. Tippees who have acknowledged the information from any persons named in the preceding four Subparagraphs as specified in Subparagraph 5.

“Any person who has learned the information from any of the persons named in the preceding four subparagraphs.”²²⁷

²²³ TSEA, *supra* note 211 at §157-1 ¶ 1.

²²⁴ *Supra* note 216.

²²⁵ TSEA, *supra* note 211 at §157-1 ¶ 1.

²²⁶ *Supra* note 216.

²²⁷ TSEA, *supra* note 211 at §157-1 ¶ 1.



(2) Undisclosed material information

i. Material information shall mean

- 1) The information which impact on the securities price on the market²²⁸ and

Paragraph 5 of the Article explains the definition of “information that will have a material impact on the price of the securities”.²²⁹

For example, the company buys back its own shares, the company acquires or disposes of a major asset or suspension part or all of business transactions between the company and a principal client or supplier.²³⁰

- 2) Information that will have a material impact on the ability of the company to pay principal or interest as specified in Paragraph 2 of the Article.

Moreover, the "*Regulations Governing the Scope of Material Information and the Means of its Public Disclosure under Article 157-1 Paragraph 5 and 6, of the Securities and Exchange Act*" on Dec. 22, 2010 is promulgated by competent authority²³¹ According to the regulation outline, it contains 30 types of material information for consideration.

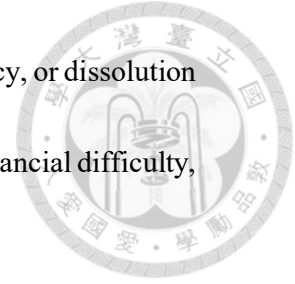
²²⁸ *Id.*

²²⁹ *Id.* at 157-1 ¶ 5.

²³⁰ Regulations Governing the Scope of Material Information and the Means of its Public Disclosure Under Article 157-1, Paragraphs 5 and 6 of the Securities and Exchange Act, 2 (2010) (TAIWAN).

²³¹ *Id.*

For example, the company is in proceedings for reorganization, bankruptcy, or dissolution or the company suffers a material loss, and the loss is likely to result in financial difficulty, suspension of business, or termination of business.²³²



(3) Actually know

(4) Date and time of trading

The person who falls into the Article shall not trade the securities prior to or within eighteen hours after its public disclosure.²³³

(5) The securities

The securities shall mean

i. shares of the company that is listed on an exchange or an over-the-counter market, or any other equity-type security of the company.²³⁴

ii. The non-equity-type corporate bonds of such company that is listed on an exchange or an over-the-counter market.²³⁵

²³² *Id.* at § 4.

²³³ TSEA, *supra* note 211 at §157-1 ¶ 1.

²³⁴ *Id.*

²³⁵ *Id.* at ¶ 2.



3.3.2 Penalties for Insider Trading

A. Criminal liability as specified in Article 171 of TSEA²³⁶

The person who has committed the insider trading as specified in Article 157-1 shall be imprisoned for not less than three years and not more than ten years. In terms of the fines, shall be imposed in the amount of not less than NT\$10 million and not more than NT\$200 million.²³⁷

However, in case of serious offenses, where the value gained by the commission of an offense under Article 157-1 is NT\$100 million or more, a sentence of imprisonment for not less than seven years shall be imposed, and in addition, thereto a fine of not less than NT\$25 million and not more than NT\$500 million shall be imposed.²³⁸

B. Civil compensation liabilities²³⁹

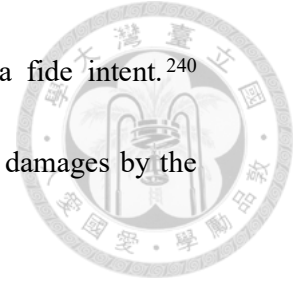
The civil liabilities can be separated into two levels, depending on the level of the damages. Firstly, the persons who violated Article 157-1, shall be liable for damages in the amount of the difference between the buy or sell price and the average closing price for ten business days after the date of public disclosure, to trading counterparts who on

²³⁶ *Supra* note 216.

²³⁷ TSEA, *supra* note 211 at §171 ¶ 1.

²³⁸ *Id.* at ¶ 2.

²³⁹ *Supra* note 216.



the day of the violation undertook the opposite-side trade with bona fide intent.²⁴⁰

Second, in case that the violation was severe, the court may treble the damages by the request of the counterpart trading in good faith.²⁴¹

However, the court has the power to reduce the damages where the violation is minor as specified in the Paragraph 3 of Article 157-1.²⁴²

3.4 Case Study

Taiwan Land Development Corp. (TLDC, 台灣土地開發)

TLDC is a real-estate developer company in Taiwan and had Mr. Su Teh-Chien (蘇德建) as the Chairman of the company²⁴³ in 2005.²⁴⁴ After Mr. Su was elected as the chairman, he, by the position as the chairman acknowledged that the company was facing a loss but would be sooner bailed out by a syndicated loan from several banks.²⁴⁵ On 14th and 21st July 2005,²⁴⁶ Mr. Su, Mr. Chao Chien-Ming(趙建銘), Mr. Yu Shih-Yu (游世一) who was a real estate developer, and Mr. Tsai Ching-Wen (蔡清文) who was the

²⁴⁰ TSEA, *supra* note 211 at §157-1 ¶ 3.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Cheng-yong Liu, *Discussion on Insider Trading Focusing on Tippee* (內線交易消息受領人之探討 以遠距消息受領人為中心), Mingchuan University Law Theory Series 24.

²⁴⁴ Matthew Strong, *Former Taiwan President's in-laws Start Prison Terms for Insider Trading*, Taiwan News (2021), <https://www.taiwannews.com.tw/en/news/4326085> (last visited Jun 12, 2022).

²⁴⁵ *Id.*

²⁴⁶ Records of the Taiwan Open Insider Trading Case (台開內線交易案大事記 社會 中央社) CNA, (2021), <https://www.cna.com.tw/news/asoc/202110140306.aspx> (last visited Jun 12, 2022).

Waterland Securities' board member had a meeting at a restaurant.²⁴⁷ During the meeting, Mr. Su disclosed the insider information that the company was approved by many banks for a syndicated loan which could value up the shares' price.²⁴⁸ Mr. Chao Yu-Chen (趙玉柱) who is the father of Mr. Chao Chien-Ming acknowledged the inside information from his son²⁴⁹ and bid the shares of TLDC for 5,000,000 shares on 25 July 2005²⁵⁰ before the public disclosure.²⁵¹ Then, after the disclosure, the price of TLDC's skyrocketed significantly.²⁵²

In 2006, Taipei District Prosecutor's office indicted 5 people including the Chaos, Mr. Su, Mr. Yu and Mr. Tsai for violating the TSEA.²⁵³

The case was time-consuming since 2006, and then the final appeals by the Chaos were rejected by the Supreme Court on 14th October 2021.²⁵⁴ After five times of retrials,

²⁴⁷ *Supra* note 244.

²⁴⁸ *High Court Sentences Chen Shui-bian's son-in-law*, TAIPEI TIMES, (2022), <https://www.taipeitimes.com/News/taiwan/archives/2022/01/01/2003770539> (last visited Jun 12, 2022).

²⁴⁹ Liu, C. Discussion on Insider Trading Focusing on Tippee (內線交易消息受領人之探討 以遠距消息受領人為中心). *Mingchuan University Law Theory Series*, 24.

²⁵⁰ *Supreme Court Orders Retrial of Chao's Insider Trading Case*, TAIWAN NEWS (2007), <https://www.taiwannews.com.tw/en/news/579070> (last visited Jun 12, 2022).

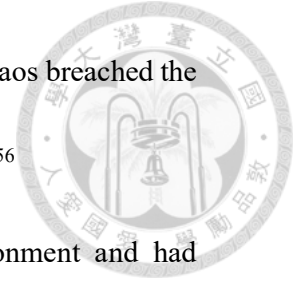
²⁵¹ *Supra* note 244.

²⁵² *Id.*

²⁵³ *Court Convicts son-in-law of Former President Chen*, TAIPEI TIMES (2018), <https://www.taipeitimes.com/News/taiwan/archives/2018/03/21/2003689727> (last visited Jun 12, 2022).

²⁵⁴ *Ex-president's in-laws Sent to Jail for Insider Trading*, TAIPEI TIMES (2021), <https://taipeitimes.com/News/taiwan/archives/2021/10/16/2003766211> (last visited Jun 12, 2022).

the final ruling was released.²⁵⁵ The Supreme Court decided that the Chaos breached the TSEA as same as the judgement of the High Court from October 2020.²⁵⁶



The punishment for older Chao received four years of imprisonment and had illegally gained NT\$35.17 million from committing insider trading as specified in the Paragraph 2 of Article 171.²⁵⁷

Mr. Su who disclosed the company's information received three years and eight months for imprisonment as specified in the Paragraph 2 of Article 171.²⁵⁸ In case of Mr. Yu, he was sentenced a jail term of four years and four months with the confiscation of NT\$66.47 million as specified in the Paragraph 2 of Article 171.²⁵⁹

In case of Chao Chien-Ming, he was not found that he bought any shares of TLDC or gained illegally but the Supreme Court found that he disclosed the obtained information to his father therefore, the Supreme court upheld the High Court's judgment which was sentenced three years and eight months.²⁶⁰ However, Mr. Tsai's case has not been

²⁵⁵ *Id.*

²⁵⁶ Sifa Yuan No.11 (司法院 108 年度金上重更五字第 11 號) [Judicial Yuan Interpretation No. 11] (2019) (Taiwan).

²⁵⁷ Zuigao Fayuan (最高法院) [Supreme Court], 110 Tai Shang Zi No. 1342 (110 年台上字第 1342 號) (2022). (Taiwan).

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*



finalized.²⁶¹

For this case, it was a long-running case in the history of Taiwan, starting from 2006.²⁶² Moreover, it was famous because the younger Chao is the former president Chen Shui-bian (陳水扁)'s son-in-law.²⁶³

According to the case, there are the interesting legal issues as follows;

1. The time-consuming the procedure

The case was indicated by the Taipei District Prosecutor in 2006 and it consumed the time more than 16 years to be finalized. Taiwan has no special procedure for insider trading, the prosecutor has faced the difficulties to find the evidence and the defenders have more room for argument. According to TLDC case, there were five times of retrials until the final ruling was released.

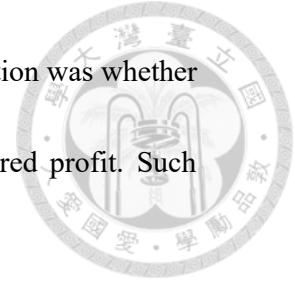
2. The serious offenses of TSEA is unclear.

In case that the interest gained is NT\$100 million or more, the punishment of the offender shall be as specified in the Paragraph 2 of Article 171. The minimum sentence shall be seven years of imprisonment which is a heavier sentence than the Paragraph 1 of the Article. In case of the TLDC case, many people get involved in the litigation, therefore

²⁶¹ *Supra* note 244.

²⁶² *Id.*

²⁶³ *Id.*



how should the illegal NT\$100 million shall be calculated.²⁶⁴ The question was whether the illegal interest shall be calculated as the individual profits or shared profit. Such unclear of the law led the trial to consume tons of time.

3. The remote tippee is liable for insider trading under Taiwan law.

“Tipper” is a person who obtains the non-disclosure information and discloses such information to a “tippee,” a person who took an unfair advantage of such information for trading the securities in the market.²⁶⁵ The remote tippee who indirectly acknowledged the information from the tipper and traded the securities by taking advantage from the information. However, in some jurisdictions, the remote tippee shall not be considered as committed the insider trading, for example, the United States. Although Taiwan’s insider trading law was influenced by Rule 10b-5,²⁶⁶ some topics are different. U.S. law is the common law system in which the court decision plays the main role in the system.²⁶⁷

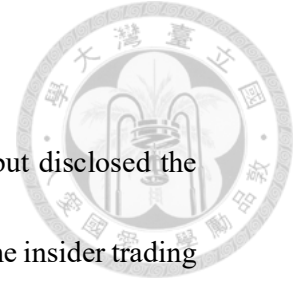
Therefore, the U.S. insider trading law does not stand still. The importance of court decisions related to tipper/tippee liability, for example, the theory of “personal benefit”

²⁶⁴ *Tightening Insider Trading Laws*, TAIPEI TIMES, (2021), <https://www.taipeitimes.com/News/editorials/archives/2021/10/27/2003766824> (last visited Jun 12, 2022).

²⁶⁵ Stephanie .M. Calderon, *Securities Law - Second Circuit Changes Tipping Jurisprudence Holding Close Relationship No Longer Needed for Tipper-Tippee Liability under Gift Theory - United States v. Martoma*, 894 F.3d 64 (2D Cir. 2017), 25 Suffolk Journal of Trial and Appellate Advocacy (2022).

²⁶⁶ Chao-Tsung Huang, *Exploring Tipper/Tippee Liability* (內線消息傳遞責任之探討), 67 法令月刊 97-121 (2016).

²⁶⁷ Harlan F. Stone, *The Common Law in the United States*, 50 HARV. L. REV. 6 (1936).



from the Supreme Court's *Dirk v. SEC*.²⁶⁸

According to Mr. Su who did not trade the company's securities but disclosed the inside information to other persons, Mr. Su who was the tipper violated the insider trading law. Mr. Chao Chien-Ming acknowledged the information from the tipper and disclosed the information to his father, Mr. Chao Chien-Ming was the first-hand tippee who learned the information directly from the tipper.²⁶⁹ The father of Mr. Chao, who did not directly acknowledge the information from the tipper but through his son, therefore the father was the remote tippee.²⁷⁰ Chao Chien-Ming was considered as violating insider trading therefore, it shall be deemed that the remote tippee also is considered as committed the insider trading under Taiwan law.

Mr. Su who was the tipper committed the insider trading under Article 171, Paragraph 2 of TSEA, he received the three years and eight months sentence.²⁷¹ The older Chao who was the remote tippee, received four years for imprisonment and had illegally gained NT\$35.17 million from committing the insider trading as specified in the Paragraph 2 of Article 171.²⁷²

²⁶⁸ Michael Perino, *Real Insider Trading*, 77 SSRN 1792 (2020).

²⁶⁹ *Supra* note 244.

²⁷⁰ *Id.*

²⁷¹ *Supra* note 257.

²⁷² *Id.*

3.5 Securities and Futures Investors Protection Center (SFIPC)



3.5.1 Introduction

The goal of private enforcement and public enforcement is different. The compensation of investors mostly comes from the private enforcement.²⁷³ Contrarily, in case of public enforcement, the fines will go directly to the government therefore, the investors will not be compensated through the public enforcement. Moreover, the private enforcement contains many forms to initiate the lawsuit, whether individual investors or class actions by lawyers or performed by a non-profit organization can initiate the lawsuit against the defendants.²⁷⁴ One of the typical forms of private enforcement is class action which is a procedural device that allows a larger group or “class” to file a lawsuit.²⁷⁵ Each class member has suffered from the same incident and was called to be joined in the class as a named plaintiff.²⁷⁶

In terms of insider trading, Taiwan has a non-profit organization that helps minority investors or individual investors bring a class action or direct legal action against the directors who breached the securities regulations.²⁷⁷ Taiwan’s Securities and Futures

²⁷³ Lin, *supra* note 203 at 133 ¶ 1.

²⁷⁴ *Id.*

²⁷⁵ *Class Action*, LII, https://www.law.cornell.edu/wex/class_action (last visited Jun 16, 2022).

²⁷⁶ *Id.*

²⁷⁷ Christopher C. Chen, *Enforcement of the Duties of Directors by the Securities and Futures Investors Protection Center in Taiwan*, SSRN 1-26 (2014).

Investors Protection Center (SFIPC) is a public-private mix foundation.²⁷⁸

The Securities Investor and Futures Trader Protection Act (SIPA) was enacted by the Legislative Yuan in July 2002.²⁷⁹ Then, the SFIPC was established in January 2003 with the help of the government.²⁸⁰ SFIPC became the first nonprofit organization which provides the protection services for investors.²⁸¹ The funding of SFIPC comes from both private side and public sites.²⁸² According to Investor Protection Act, it requires the private section to contribute the money based on the number of brokerage trade contracts.²⁸³ The public sections also partly contribute the money to the fund of SFIPC, considering the funding sources of SFIPC made the Center shall be considered as a public and private mix organization.²⁸⁴ As of December 2021, the value of SFIPC was more than NT\$ 8.4 billion including the initial fund, donations, and interests earned.²⁸⁵

Throughout more than 19 years of SFIPC, the Center operations many tasks in order to enhance the corporate governance,²⁸⁶ making protection of investors and future traders,

²⁷⁸ Yueh-Ping Yang, *The Developmental State and Corporate Governance* (2022).

²⁷⁹ Lin, *supra* note 203 at 136 ¶ 3.

²⁸⁰ *Id.* at 137 ¶ 1.

²⁸¹ *Id.* at 138 ¶ 2.

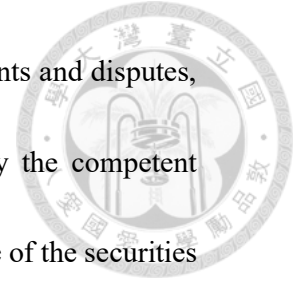
²⁸² Yang, *supra* note 278.

²⁸³ *Annual Report, SFIPC* (2021).

²⁸⁴ Yang, *supra* note 278.

²⁸⁵ *Annual Report, supra* note 283 at 20 ¶ 2.

²⁸⁶ Lin, *supra* note 203 at 137 ¶ 1.



for example, providing mediation services, resolving securities complaints and disputes, and completing any tasks related to investors' protection assigned by the competent authority and representing class action lawsuits.²⁸⁷ Insider trading is one of the securities fraud and securities market misconducts which harms the investors therefore it is an unavoidable task that the SFIPC has to deal with it. To initiate securities class actions in order to recover damages for investors is a special function of SFIPC, this kind of service is not normally provided by investor protection organizations.²⁸⁸ Moreover, SFIPC is more active and organized than the other charitable associations in terms of class action litigation.²⁸⁹

Helping investors establish claims through class action lawsuits is one of the tasks of SFIPC, the Center has won many civil cases against wrongdoing in the securities market.²⁹⁰ At the end of the year 2021, the SFIPC has filed 280 class action lawsuits on several major types of actions, involving more than 183,200 investors claiming a total of more than NT\$ 72.5 billion.²⁹¹ From 280 class action lawsuits, the total or partial victory goes to claimants in 69 cases, and the liabilities and awarding claimants which the

²⁸⁷ Annual Report, *supra* note 283 at 20 ¶ 2.

²⁸⁸ Lin, *supra* note 203 at 137 ¶ 2.

²⁸⁹ Kuan-Ling Shen, *Class Action in Taiwan: A New System Created Using the Theory of "Right of Procedure Options"*, 5 NTU L. REV. 67 (2010).

²⁹⁰ Annual Report, *supra* note 283 at 5 ¶ 3.

²⁹¹ *Id.* at 5 ¶ 2.

defendants have to compensate exceed NT\$ 27.9 billion.²⁹²

In 2021 alone, more than 7,900 investors in 11 class action lawsuits were assisted by SFIPC.²⁹³ The total claims was exceed than NT\$ 7.543 billion.²⁹⁴ The 11 class action lawsuits included 6 cases of false financial statements or financial information, 4 cases related to stock price manipulation (one case involved both false financial/business information and stock price manipulation), and 2 cases related to insider trading.²⁹⁵

3.5.2 Advantage for Investors

Even though the investors are able to bring these legal actions against the person who violated the law, in practice, the retail investors would be hesitant to bring the lawsuit against the defendants even though general litigation is already burdensome. Many resources will be wasted in the litigation, for example, time, ability, court costs, and lawyer fees. Especially, in the white-collar crime, when the position and ability of defendants are higher and more specialized in the field, therefore, the Center is the advantage for the investors to initiate the insider trading case.

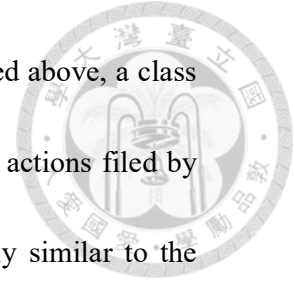
TFIPC provides many services in order to protect the investors and future traders, for example, consultation and complaint, dispute resolution via mediation, and class

²⁹² *Id.* at 6 ¶ 2.

²⁹³ *Id.* at 23 ¶ 1.

²⁹⁴ *Id.*

²⁹⁵ *Id.*



action which are the most relevant to insider trading topic. As mentioned above, a class action is a special feature of the SFIPC. Moreover, the securities class actions filed by SFIPC are different from Taiwan's Code of Civil Procedure but likely similar to the Consumer Protection Law of 1994.²⁹⁶ The SFIPC is authorized by the SIPA to use its own name to institute securities class actions against the defendants as long as the Center has been empowered by not less than 20 securities investors or futures traders.²⁹⁷ An opt-in mechanism is also adopted in the class action initiated by the Center, investors may delegate their rights to the Center within the period of time.²⁹⁸ However, the investor in the class may also withdraw from the class prior to the conclusion of oral arguments or examination of witnesses.²⁹⁹

Generally, when investors bring the lawsuit to the court, the investors will be responsible for court cost and lawyer fee, but in the case of SFIPC, the investors practically will not be required to pay the court cost to SFIPC at the time of empowerment because the SFIPC is desired to relieve the financial burden of investors.³⁰⁰ In case that the offenders hold the responsibility to compensate, the SFIPC shall deduct the necessary

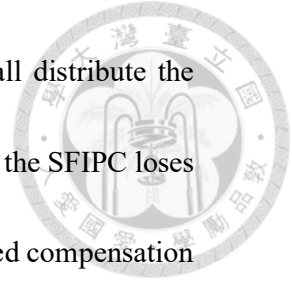
²⁹⁶ Guan-Wei Chao, *Saying is One Thing; Doing is Another? Analyzing the Chinese Nonprofit Organization Model in Investor Protection through the Taiwanese Experience*, 13 NTU L. REV. 69 (2018).

²⁹⁷ SIPA, § 28 (2020).

²⁹⁸ Chao, *supra* note 296 at 70 ¶ 2.

²⁹⁹ SIPA, *supra* note 297, at § 28.

³⁰⁰ Lin, *supra* note 203 at 165 ¶ 2.



litigation expenses from such compensation³⁰¹ after that the SFIPC shall distribute the compensation received in the litigation to the investors in the class.³⁰² If the SFIPC loses in the litigation and does not receive any reimbursement, or if the received compensation is not enough or less than the cost, such cost shall not be charged to the investors and shall be the burden of the SFIPC.³⁰³

The other advantage for the investors are, that investors will not be charged any attorney fees by the SFIPC. The staff lawyer of the SFIPC receives salary and bonus according to their performance and the volume of cases in that year, any compensations or settlement payment from the class action shall not be received by the staff.³⁰⁴

Therefore, the service from the Center encourages the investors to bring a lawsuit against the person who violated the law. The investors do have the other choice to initiate the litigation apart from initiating the lawsuit by themselves, and do not have face any expenses whether the court cost or lawyer fee and look for an experienced lawyer.

Therefore, in case that an insider trading case occurred, the insides who disclose the information or trade the securities by using the nonpublic material information or within 18 hours after the public disclosure, shall be considered as violating the insider trading

³⁰¹ *Id.*

³⁰² Chao, *supra* note 296 at 70 ¶ 2.

³⁰³ Lin, *supra* note 203 at 165 ¶ 2.

³⁰⁴ *Id.* at 166 ¶ 2.



law.³⁰⁵ The damaged investors who traded the same securities on the opposite side of the insiders on the same day have the right to sue the insiders,³⁰⁶ therefore the investors are able to empower the Center to bring a class action. As mentioned above, SFIPC is the entity with authority to bring civil actions on behalf of investors, any damaged investors who desired to participate in the class, shall follow the opt-in mechanism. One of the requirements is the number of members in the class, which shall not be less than 20 investors.³⁰⁷ The eligible investors shall follow the opt-in mechanism to join the class. Practically the investors have to fill out the “standardized Empowerment Form” prepared by the SFIPC for joining the class action SFIPC.³⁰⁸

The SFIPC encourages the damaged investors to join in the class by creating features for facilitating and informing the investors, the first page of the SFIPC’s website informs the latest news of the Center. For example, the Center is now accepting compensation applications in Lite-On Semiconductor Corp. in the case of insider trading.³⁰⁹ The SFIPC

³⁰⁵ TSEA, *supra* note 211 at § 157 and 171.

³⁰⁶ *Id.* at 157 ¶ 3.

³⁰⁷ Dana Muir, Junhai Liu & Haiyan Xu, *The Future of Securities Class Actions against Foreign Companies: China and Comity Concerns*, 46 U. Mich. J.L. Reform 1340 (2013).

³⁰⁸ Lin, *supra* note 203 at 169 ¶ 2.

³⁰⁹ *SFIPC Now Accepting Applications For Compensation in LITE-ON SEMICONDUCTOR CORP. (Stock Code: 5305, Delisted on November 30, 2020) Case (Individuals Suspected of Insider Trading)*, SFIPC (2022), <https://www.sfipc.org.tw/mainweb/Article.aspx?L=2&SNO=K5RyRtlDMRuoacnZ7Fidjg> (last visited Jun 16, 2022).



has already specified the eligibility requirements of the member in a class, the investors who suffer losses for selling the securities of the company on June 21 and 28, July 2, 3, 4, 5, 8, 9, 10, and August 1, 2 of 2019 are eligible in this class action. Such damaged investor shall provide all documents as required by the Center and send the documents to the Center within September 2, 2022.³¹⁰ Examples of the documents required by the Center are, the investor’s identity document, a copy of the investor’s financial institution account, two copies of “the Authorization Letter for Accessing Data”, four copies of the “Consent Letter of Litigation Authorization and Arbitration Implementation” and one copy of the “Consent Form for Collection, Processing and Use of Personal Information”³¹¹ After the investors prepared all the documents and filled all forms, then all documents and forms shall be sent to the SFIPC within the time specified by the Center.³¹² Therefore it shall be considered that all the investors have to do, is follow the SFIPC’s instructions.


3.5.3 Case Study

Cheng Ming-Shan and Chang Feng-ling alleged that they committed the insider trading of securities of the Chipbond Technology Corporation (“Chipbond”) and

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*



International Semiconductor Technology Ltd. (“IST”) from November to December 2009.³¹³ The two directors acknowledged the merger between Chipbond and IST before the public announcement and they took advantages of such information by purchasing shares of Chipbond and IST. Such trading was illegal and violated the TSEA.³¹⁴ The SFIPC was seeking for the damaged investors and the Center would file a civil lawsuit for seeking compensation on their behalf.³¹⁵ This is a case where the SFIPC helps the investors seek the member of the class and compensation. This application was announced on the website on 4 December 2015.³¹⁶ Any investors who sold Chipbond shares and suffered the damages on any following days, November 19, 20, 23, 24, 27 and, 30, 2009 are eligible for this application including the investors who sold IST shared on any following days, November 17, 18, 19, 20, 27, and 30 and December 2, 3 and 9, 2009.³¹⁷ In this case, there were 97 investors joined the class and the investors received the compensation.³¹⁸

³¹³ *SFIPC Now Taking Applications From Investors Seeking Compensation via Class-Action Lawsuit in Chipbond-IST Insider Trading Case Involving Defendants*, SFIPC (2015), <https://www.sfipc.org.tw/Mainweb/Article.aspx?L=2&SNO=RXJEEp9He/AtsyH+UDTeNw==> (last visited Aug 11, 2022).

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ Investor Protection Center Compensation Distribution Has Not Yet Been Collected Case Summary Table (投資人保護中心賠償款分配尚未領取案件彙總表), SFIPC (投資人保護中心) (Taiwan).



3.6 Interesting Legal Point

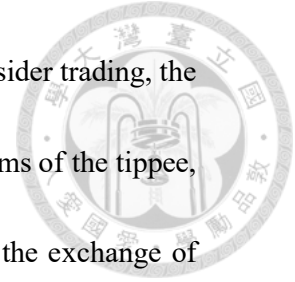
Tipper – tippee issue: Taiwan considered the remote tippee as committed the insider trading

“Tippee” is a person who acknowledged the non-public information from “tipper” and traded the securities based on the information.³¹⁹ In case of Tippee (“the first-hand tippee”), the securities law normally has already clearly regulated the regulation that the first-hand tippee shall be considered as illegal action. However, in case of remote tippee who did not acknowledge the information directly from the tipper, the remote tippee acknowledged the information from the first-hand tippee instead. There are one or more layers between remote tippee and tipper who is the insider,³²⁰ so in case of the remote tippee, it’s more complicated than the first-hand tippee. It’s challenging for the regulators and scholars in each country to decide whether the remote tippee shall be held liable for the insider trading law.

In case of U.S., starting from *Dirks v. SEC*, the United States Supreme Court

³¹⁹ Stephanie M. Calderon, *Securities Law - Second Circuit Changes Tipping Jurisprudence Holding Close Relationship No Longer Needed for Tipper-Tippee Liability under Gift Theory Liability under Gift Theory - United States v y - United States v. Martoma*, 894 F.oma, 894 F.3d 64 (2D Cir. 2017) 25 (2022), <https://dc.suffolk.edu/cgi/viewcontent.cgi?article=1516&context=jtaa-suffolk> (last visited Aug 15, 2022).

³²⁰ *Hello Newman! (and Chiasson): Second Circuit Decision Raises the Bar for Government to Prove Liability of “Remote Tippees” in Insider Trading Cases*, MINZ (2014), <https://www.mintz.com/insights-center/viewpoints/2014-12-15-hello-newman-and-chiasson-second-circuit-decision-raises-bar> (last visited Jun 12, 2022).



imposed the “personal benefit” theory for considering the violation of insider trading, the tipper must receive personal benefit whether directly or indirectly, in terms of the tippee, she must have acknowledged that the personal benefit associated with the exchange of the information.³²¹ According to *Dirks*, Some scholars mentioned that a remote tippee shall be liable only if the remote tippee reasonable should know or likely know that the disclosure was beneficial to her specifically.³²² Moreover, the Court *Dirks* was considered as the settled law for several years, and then *Newman*’s case came after that. *Newman* case increased the focus of the government in terms of remote tippee because Newman’s and Chiasson, who were the former hedge fund managers,³²³ did not acknowledge the information directly from the insider but through the market professionals.³²⁴ Therefore, the two defendants were remote tippees.

The Court of Southern District of New York decided that it was no requirement for the plaintiff who was the government to prove that the defendants knew that such tipping of insider tippers shall bring a personal benefit to the tipper, therefore Newman and

³²¹ Andrew C. Spacone, *The Second Circuit's Curious Journey Through the Law of Tippee Liability for Insider Trading: Newman to Martoma*, 24 ROGER WILLIAMS UNIV. LAW REV. 19 (2019).

³²² Austin J. Green, *(Beyond) Family Ties: Remote Tippees in a Post-Salman Era*, 85 FORDHAM L. REV. 2795 (2017).

³²³ *Supra* note 320.

³²⁴ Spacone, *supra* note 321 at 21 ¶ 3.

Chiasson violated the insider trading.³²⁵ However, the Second Circuit Court of Appeals stated that one of the requirements that the plaintiff must prove beyond a reasonable doubt, is the tippee knew about the insider tipper received a personal benefit as the result of the information disclosure.³²⁶ When the plaintiff could not prove such doubt, the conviction were vacated by the Court.³²⁷ Moreover, the *Newman* court specified more about the “gift” theory that the plaintiff required to prove the “meaningfully close personal relationship”³²⁸ between tipper and tippee.³²⁹

After the *Newman* case, there were two famous cases related to remote tippee which are *Salman* and *Martoma*. In short, Bassam Yacoub Salman who was a remote tippee, traded the securities by using the insider information acknowledged from his brother-in-law Michael Kara, who acknowledged the information by his older brother Maher Kara, who was the tipper.³³⁰ In case of *Martoma*, the Second Circuit clarified the “personal relationship requirement” that, as long as the tipper gifts the information with the expectation that the tippee will use such information for trading the securities, the nature

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.* at 22 ¶ 1.

³²⁹ *Id.* at 23 ¶ 2.

³³⁰ Kenneth I. Schacter & Grant R. Macqueen, *The Martoma Decision: The Second Circuit Tackles Insider Trading Post-Salman* (2017), <https://www.morganlewis.com/pubs/2017/08/the-martoma-decision-the-second-circuit-tackles-insider-trading-post-salman> (last visited Jul 6, 2022).

of the relationship between the tipper and the tippee is unimportant.³³¹

In both *Salman* and *Martoma*'s case related to the remote tippee, some requirements from *Newman* have been clarified, for example, "meaningfully close personal relationship" had been eliminated. However, there are some requirements in *Newman*'s case which has not been touched.³³² The requirement which requires the plaintiff to prove that the tippee knew of the personal benefit, is difficult for the plaintiff to prove.³³³ This is the reason why some remote tippees can take advantage of these requirements to be free from the offense.³³⁴

On the other hand, in Taiwan, some scholars believe that the recipients of the information should not be limited only the first-hand tippee who directly acknowledges the information from the insider, but should include those who indirectly learned the information from the first-hand tippee, the so-called "remote tippee".³³⁵ If the recipient of the information who is considered as illegal in Subparagraph 5 of Paragraph 1 of Article 157-1, is interpreted as limited to the first-hand tippee, then he does not trade the

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

³³⁵ Chao-bang Huang, *The Transmission and Tippee in Insider Trading Based on the 105-year No. 39 Criminal Judgment* (內線交易重大消息之傳遞與受領以 105 年度金訴字第 39 號刑事判決為例),

36 *The Securities and Futures Monthly* (證券暨期貨月刊) 20.

securities by himself but he forwards the information to the third party, then the second-hand recipient uses such information to make the profit by trading the securities instead,³³⁶ if the current law does not consider the remote tippee who also took the advantage from undisclosed information to conduct the trading as an illegal act, this limitation may result in an unlawful situation.³³⁷

3.7 Conclusion

Taiwan also considered the insider trading as an unfair practice under the TSEA of Taiwan. The main provisions are Article 157-1 and Article 171 of the TSEA. The restriction of trading time is not only before the public disclosure but also within eighteen hours after such disclosure. Investors in Taiwan's securities market are protected by the non-profit organization, SFIPC. The Center supports and provides various services to the investors, for example, mediation and class action. In case of insider trading, the Center helps the investors by initiating the class action litigation without any fees. It is easier for the investors in Thailand because they do not have to file a lawsuit by themselves, therefore it shall be deemed that the investor protection in Taiwan is more efficient than Thailand's. The next chapter of the paper will explain and do a comparative study in many aspects of this these two jurisdictions.

³³⁶ *Id.*

³³⁷ Liu, *supra* note 249.

Chapter 4 Comparative Study

Chapter 4 Comparative Study of Insider Trading Between Thailand and Taiwan



There are many ways to evolve and develop the law, comparative study is one of the methods. Comparing the law of different jurisdictions shall assist us to find a better solution for each jurisdiction. Learning from the similarity to the differences, could lead us to explore law in a different way.

This thesis analyzes insider trading law in Thailand and Taiwan as specified in Chapter 2 and Chapter 3, then in Chapter 4, it shall discover, explain and evaluate the similarities and differences³³⁸ between these two jurisdictions whether it's regulation, penalties, investor protection, legal presumption, civil sanction, and procedure. Moreover, I will give my opinion about these two jurisdictions and also do a comparative study in order to give suggestion.

4.1 Comparative Study in Terms of Regulations

³³⁸ See Ralf Michaels, *Comparative Law*, Oxford Handbook of European Private Law (2011).

Table 4.1 Comparison Between Thai Law and Taiwan Law In Terms of Regulation

	Thai Law (Thai SEA)	Taiwan Law (Art.157-1 of TSEA)
Definition of inside information	information that has not been generally disclosed to the public and is material to the change of price or the value of securities (Section 239) ³³⁹	any information that will have a material impact on the price of securities the issuing company or impact on the ability of the issuing company to pay principal or interest (Article 157-1) ³⁴⁰
Date and time of trading	prior to the public disclosure ³⁴¹	prior to the public disclosure of such information or within 18 hours after its public disclosure (Article 157-1) ³⁴²
No person who knows or possesses inside information company shall	purchase or sell securities or enter into a derivatives contract related to securities, either for oneself or other persons (Section 242) ³⁴³	purchase or sell, in the person's own name or in the name of another, shares of the company (Article 157-1) ³⁴⁴

³³⁹ SEA 2016, *supra* note 60, at § 239.

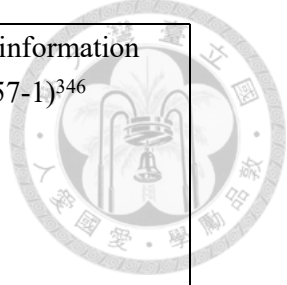
³⁴⁰ TSEA, *supra* note 211 at § 157-1.

³⁴¹ SEA 2016, *supra* note 60, at § 242.

³⁴² TSEA, *supra* note 211 at § 157-1.

³⁴³ SEA 2016, *supra* note 60, at § 242.

³⁴⁴ TSEA, *supra* note 211 at § 157-1.



	disclose inside information to other persons, either directly or indirectly and by any means, while one knows or ought reasonably to know that the receiver of such information may exploit such information for trading securities or entering into a derivatives contract related to such securities, either for the benefit of oneself or other persons (Section 242) ³⁴⁵	disclose inside information (Section 157-1) ³⁴⁶
Legal Presumption	Section 243, 244 ³⁴⁷	X
Civil Sanction	Section 317/1, 317/4 ³⁴⁸	X
Remote Tippee	Section 242(2)	Article 157-1

According to the Table, there are some similarities between both jurisdictions;

1. The definition of inside information, both jurisdictions are quite similar, the information that impact the price or value of the securities. Thai law only specified in one short sentence in Section 239, which is better than the '92 Act that it had no any definition mentioned, however, it could be the problem in the future and this topic will be raised in the future case. For Taiwan, there is the addition regulation mentions clearly that which

³⁴⁵ SEA 2016, *supra* note 60, at § 242.

³⁴⁶ TSEA, *supra* note 211 at § 157-1.

³⁴⁷ SEA 2016, *supra* note 60, at § 243 and 244.

³⁴⁸ *Id.* at § 317/1 and 317/4.



type of information shall be considered as the inside information. Such regulation is "*Regulations Governing the Scope of Material Information and the Means of its Public Disclosure Under Article 157-1, Paragraph 5 and 6, of the Securities and Exchange Act*", and 30 types of the material information are specified in the Act.

2. The restriction actions for any person who knows or possesses insider information, no person who knows or possesses inside information shall purchase or sell securities, either in his own name or in the name of another.

3. Two jurisdictions consider the remote tippee as one of the illegal practices. For Thai law, it has specified in the Section 242(2) about the tippee's and there are some cases that mentioned before in the Chapter 2. However, in terms of the remote tippee, the Thai SEA has not clearly mentioned but there is the official explanation from the SEC, therefore if there is a case related to remote tippee in the future, it has already clear that the remote tippee is considered as illegal under Thai law. In case of Taiwan, the Taiwan law has also specified in the Act and there are many cases happened in Taiwan as mentioned in the Chapter 3. Therefore, both jurisdictions consider the tippee and remote tippee as illegal under their own law.

However, there are some differences between Thai and Taiwan;

1. According to Article 157-1 of TSEA, there is the lockup time, although the information has already been disclosed to the public, the insider still not be able to trade

the securities within 18 hours after the disclosure. On the other hand, Thai law has not specified the lockup time as Taiwan does. The intention of lockup time is for the investor's benefit, protecting the investors in case that the company disclosed the information at the late night, then the investors will not have enough time to analyze the disclosure information.

2. Legal presumption, Thai law has the legal presumption in order to reduce the SEC's burden of proof. The offender will be responsible for the burden of proving himself that he has not committed any insider trading as specified in Section 243. Section 244, is the legal presumption in case that the person mentioned in the Section has traded securities or entered into a derivatives contract in a different manner from their normal practices.

3. Civil sanction is an alternative measure in law enforcement, there is a mixture of civil and criminal law.³⁴⁹ Thai law imposed the civil sanction in order to faster the procedure to punish the offender. The procedure is much faster than the conventional criminal procedure because the criminal procedure is much more complicated and the defendant has to carry the burden of proof,³⁵⁰ and also increases the chances of punishing

³⁴⁹ Mann, *Punitive Civil Sanctions: The Middleground between Criminal and Civil Law*, 101 YALE L.J. 1799 and 1815 (1992).

³⁵⁰ See Wichai Tantikulanan & Chulalak Tantikulanan, *Explanation of the Securities and Exchange Act B.E. 2535 (Amended in 2019)* 65 (2019).



the offenders.³⁵¹ After imposing the civil sanction, most the cases in Thailand are settled in the Civil Sanction procedure.³⁵² There are some countries that also imposed civil sanction, such as Singapore and Australia.³⁵³

4.2 Comparative of the Penalties

Table 4.2 Comparison Between Thai Law and Taiwan Law In Terms of Penalties

(Currency THB: TWD = 1:1)

	Thai	Taiwan
Criminal liabilities	Any person who contravenes Section 242, shall be liable to imprisonment for a term not exceeding two years or a fine from five hundred thousand THB to two million THB, or both (Section 296) ³⁵⁴	A person who has committed paragraph 1 or 2 of Article 157-1 shall be punished with imprisonment for not less than three years and not more than ten years, and in addition thereto, a fine of not less than NT\$10 million and not more than NT\$200 million (Article 171) ³⁵⁵
Criminal liabilities in terms of Serious offenses	If the offender has received or should have received a benefit from such offence, a fine not exceeding two times the benefit shall be imposed and in any case such fine shall not be less than the minimum amount as specified under Section 296, as the case	Where the value of property or property interests gained by the commission of an offense under the preceding paragraph is NT\$100 million or more, a sentence of imprisonment for not less than seven years shall be imposed, and in addition

³⁵¹ Pattamaporn Suwutthisastrin, *Criteria for Applying Civil Sanctions to Securities Offences*, 2016.

³⁵² See Table 2.5.

³⁵³ Suwutthisastrin, *supra* note 351 at 8 ¶3.

³⁵⁴ SEA 2016, *supra* note 60, at § 296 ¶1.

³⁵⁵ TSEA, *supra* note 211 at § 171.

	may be (Section 296/2) ³⁵⁶	thereto a fine of not less than NT\$25 million and not more than NT\$500 million may be imposed. (Article 171) ³⁵⁷
Special liabilities for directors, manager or person responsible for the operation	In cases where the person who contravenes Section 240 or Section 241 is a director, manager or any person responsible for the operation of a securities issuing company, such person shall be liable to imprisonment for a term not exceeding five years or a fine from one million THB to five million THB, or both (Section 296) ³⁵⁸	X
Civil compensation liabilities	Tort law	The persons who violated the Article 157-1, shall be liable for damages in the amount of the difference between the buy or sell price and the average closing price for ten business days after the date of public disclosure, to trading counterparts who on the day of the violation undertook the opposite-side trade with bona fide intent. (Section 157-1) ³⁵⁹

³⁵⁶ SEA 2016, *supra* note 60, at § 296/2.


³⁵⁷ TSEA, *supra* note 211 at § 171.

³⁵⁸ SEA 2016, *supra* note 60, at § 296 ¶ 2.

³⁵⁹ TSEA, *supra* note 211 at § 157-1.

Civil compensation liabilities in terms of severe violation	X	In case that the violation was severe, the court may treble the damages by the request of the counterpart trading in good faith (Section 157-1) ³⁶⁰
Civil Sanction	<p>Civil Sanction (Section 317/4 and 317/5(1))</p> <p>(1) a civil penalty shall be imposed at an amount not exceeding two times the benefit that such person received or should have received from committing such offence, but not less than five hundred thousand THB, and in cases where the benefit is incalculable, the civil penalty shall be imposed from five hundred thousand THB to two million THB</p> <p>(2) a compensation at an equal amount to the benefit received or should have been received from committing an offence as specified under Section 317/1</p> <p>(3) a suspension of trading in securities on the Stock Exchange or the over-the-counter center, or derivatives contracts on the Derivatives Exchange for a specified period not exceeding five years</p> <p>(4) a bar from serving as a director or executive in a securities issuing company or a securities company within a</p>	X

³⁶⁰ *Id.*

	specified period not exceeding ten years (5) a reimbursement of investigative expenses incurred by the SEC Office	
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According to the Table, there are the explanations as follows;

1. Criminal liabilities

Both jurisdictions specified the criminal liabilities. For Thai law, it is specified in the Section 296 of the SEA, in case of Taiwan, it is specified in the Article 171 of TSEA. According to the laws, Taiwan’s criminal liabilities are heavier than Thai’s. In case of fines, Thai’s is between five hundred thousand to two million THB,³⁶¹ on the other hand, Taiwan’s is between 10 million to 200 million TWD.³⁶² Taiwan’s fine is 20 times more than Thai’s. In case of imprisonment, Thai’s is not exceeding two years³⁶³but Taiwan’s is not less than 3 years and not more than 10 years,³⁶⁴ therefore only Taiwan’s minimum rate is more than the maximum rate of Thailand, therefore it shall be deemed that Taiwan’s criminal liabilities is heavier.

In an aspect of a serious offense, Thailand considers that the offender has received

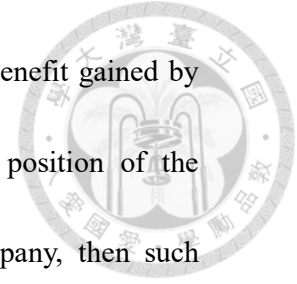
³⁶¹ SEA 2016, *supra* note 60, at § 296 ¶1.

³⁶² TSEA, *supra* note 211 at § 171.

³⁶³ SEA 2016, *supra* note 60, at § 296 ¶1.

³⁶⁴ TSEA, *supra* note 211 at § 171.

or should have received a benefit but does not consider the value of benefit gained by offenders as Taiwan does. Moreover, Thai law also considers the position of the offender,³⁶⁵ in case that the offender has responsibility in the company, then such offender shall be punished heavier.



2. Civil compensation liabilities

For Taiwan, there is a specific regulation for claiming compensation in the TSEA of Taiwan, Article 157-1, on the other hand, in case of Thailand, there is no civil compensation to the investors in the SEA, in case that the investors in Thailand wish to claim the compensation, then the tort law shall be complied.³⁶⁶

3. Civil Sanction

Civil sanction shall be enforced in case that the Civil Sanction Committee agreed with the SEC office.³⁶⁷ Although the penalties of civil sanction do not consist of the imprisonment, there are five types of the penalty to punish the offender. First, The civil penalty shall be imposed at the amount not exceeding two times of the benefit received or should have received from committing such offense, however, the minimum of the penalty shall not be less than five hundred thousand THB.³⁶⁸ Second, compensation at

³⁶⁵ SEA 2016, *supra* note 60, at §296 ¶2.

³⁶⁶ *Supra* note 151.

³⁶⁷ SEA 2016, *supra* note 60, at § 317/6.

³⁶⁸ *Id.* at § 317/4 (1).

an equal amount to the benefit received or should have been received from committing an offense.³⁶⁹ Third, a suspension of trading in securities for a specified period not exceeding than five years.³⁷⁰ Forth, the restriction to be a director or executive in securities company within a specified period but not exceeding ten years.³⁷¹ Last, a reimbursement of investigative expenses that the SEC Office has been paid.³⁷²



4.3 Comparative of the Investor Protection

4.3.1 Class Action (Thailand) V SFIPC (Taiwan)

In Thailand, in case that the investors are damaged by insider trading, he has to start the litigation by himself. Even though the retail investor of a company knows that someone committed the insider trading, it's certainly difficult for the damaged investor to start the litigation by himself.³⁷³ The retail investor is facing with the limitation in terms of knowledge and expenses when he decided to file a lawsuit against the offenders who mostly are the board of directors, managers or specialized persons. The recovery from the lawsuit probably could not cover the litigation cost. If every damaged investor skips litigating, it will not be a good impact on the country, and the offenders will not be afraid

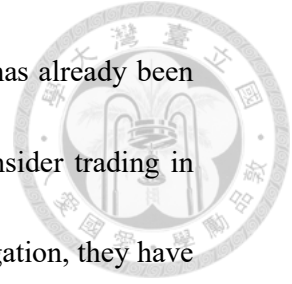
³⁶⁹ *Id.* at § 317/5 (1).

³⁷⁰ *Id.* at § 317/4 (3).

³⁷¹ *Id.* at § 317/4 (4).

³⁷² *Id.* at § 317/4 (5).

³⁷³ Yang, *supra* note 278.



of committing the insider trading. Although the class action litigation has already been applied in Thailand, there is no any class action litigation related to insider trading in Thailand. In case that the investors are desired to do the class action litigation, they have to comply with the Thai Civil Procedure Code.

In Thailand, an insider trading offense is considered as a tort case.³⁷⁴ The class action lawsuit can be initiated by the damaged investors who desired to claim compensation by the following steps. Firstly, forming a group or class with the other investors who have suffered and obtained the same rights deriving from the same facts and legal principles.³⁷⁵ Secondly, the evidence related to the claims shall be collected in order to claim the compensation.³⁷⁶ Lastly, the class shall find an expert lawyer to prepare the case before bringing the lawsuit to the court.³⁷⁷ According to the three steps above, it's not easy for the damaged investors who are not familiar with the legal path. How can he find the person who shall be qualified in the class, only the first step is not easy therefore, it's not surprising that why there is no case related to insider trading. Although SET, Lawyer Council Under the Royal Patronage and Thai Investor Association is trying

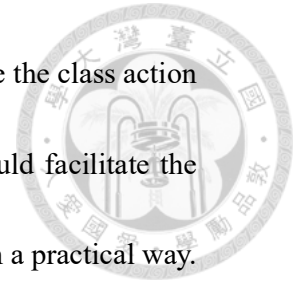
³⁷⁴ *Supra* note 151.

³⁷⁵ *Class Action Legal Proceedings Now Available in Thailand*, TILLEKE & GIBBINS (2015), <https://www.tilleke.com/insights/class-action-legal-proceedings-now-available-thailand/> (last visited Jun 26, 2022).

³⁷⁶ *Supra* note 151.

³⁷⁷ *Id.*

to coordinate, it's still enough to encourage the damaged investors to use the class action in a practice way.³⁷⁸ Class action litigation is one of the tools that could facilitate the damaged investors to claim the compensation,³⁷⁹ but it's not effective in a practical way.



There is no foundation or non-profit organization for helping the damaged investors in Thailand, unlike Taiwan. Taiwan has SFIPC which is a non-profit organization which assists the investors to initiate litigation against the offenders.³⁸⁰ SFIPC has the duty to initiate the class action for the damaged investors as long as the Center has been empowered by not less than 20 investors or futures traders.³⁸¹ In Taiwan, the opt-in mechanism is adopted in the class action case, indifferent in Thailand where an opt-out mechanism is adopted.³⁸² In case that the SFIPC won the case and received the compensation, the SFIPC shall deduct the necessary litigation expenses from such compensation³⁸³ after that the SFIPC shall distribute the compensation received in the litigation to the investors in the class. If the SFIPC loses in the litigation and does not receive any reimbursement, or if the received compensation is not enough or less than the cost, such cost shall not be charged to the investors and shall be the burden of the SFIPC

³⁷⁸ *Id.*

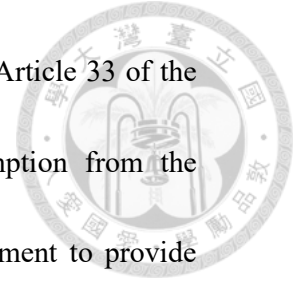
³⁷⁹ Nakhonkwang, *supra* note 149 at 298 ¶ 3.

³⁸⁰ Lin, *supra* note 203 at 137 ¶ 1.

³⁸¹ SIPA, *supra* note 297, at § 28.

³⁸² Nakhonkwang, *supra* note 149 at 292 ¶ 3.

³⁸³ SIPA, *supra* note 297, at § 33.



because the Center shall not seek for the remuneration as specified in Article 33 of the SIPA.³⁸⁴ By the power of SIPA, the Center received some exemption from the requirement of the litigation, such as the exemption from the requirement to provide security as specified in Article 34 of the SIPA,³⁸⁵ or the exemption from the court costs as specified in Article 35.³⁸⁶ Therefore, SIPC is more facilitates and encourages the damaged investors to claim the compensation from the offenders than the normal class action lawsuit in Thailand the investors have to initiate the lawsuit on their own.

4.3.2 Who Does the Compensation Belong To?

For Thailand, in case of money paid by the offender under Section 317/4 of SEA which is one of the civil sanctions, the SEC office shall deduct and reimburse the expenses following the Section 317/4(5), after that such money shall be submitted as public revenue as specified in Section 317/12 of Thai SEA.³⁸⁷ The civil penalty and compensation shall be remitted to the Ministry of Finance, the damaged investors totally do not involve and compensate with such money. However, some money shall be allocated to promote the education related to the securities trading, for example providing the internship opportunities in the summer period for the students who are interested in the securities

³⁸⁴ *Id.*

³⁸⁵ *Id.*, at § 34.

³⁸⁶ *Id.*, at § 35.

³⁸⁷ SEA 2016, *supra* note 60, at § 317/12.

field, in order to learn the securities law and also exchange the opinion with the SEC's officer,³⁸⁸ moreover, the SEC provides the scholarships to any person who pass the examination of the government and also the SEC's officer to study in leading educational institutions both domestically and internationally.³⁸⁹



In case that the damaged investors are desired to claim the compensation, they have to initiate the litigation by themselves whether through the class action litigation or individual as the tort case. Such litigation separates from the SEC's. Indifferent from Taiwan's, the compensation received by the SFIPC after deducting the expenses, the money will be divided and distributed to compensate the damaged investors. The compensation shall be deducted only for the necessary litigation expenses.

4.4 Time Consuming

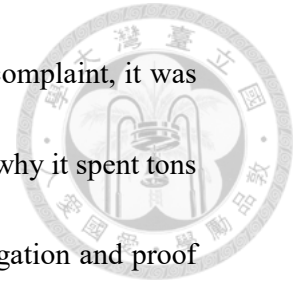
Civil Sanction V Conventional Procedure

Civil sanction is an alternative feature for the regulators. There are two features which are civil sanction and criminal sanction. The efficiency of the law enforcement related to insider trading under The 1992 Act, starting from 2007 to 2016 was low. The research shows that the length of the criminal fine procedure was from 1.5 to 5.5 years and approximately time was 2 to 4 years. The fastest procedure in case of criminal fine

³⁸⁸ *Internship with SEC*, <https://www.sec.or.th/th/pages/aboutus/apprentice.aspx> (last visited Aug 12, 2022).

³⁸⁹ *Scholarship*, <https://www.sec.or.th/TH/pages/aboutus/scholarship.aspx> (last visited Aug 12, 2022).

was 1.5 years and the longest was 5.5 years. In case of filing criminal complaint, it was approximately 10 years which is the end prescription period, the reason why it spent tons of time to prosecute was a criminal prosecution requires a clear investigation and proof of evidence.³⁹⁰ This is the reason why the civil sanction was imposed in Thai SEA.



³⁹⁰ Arbhasil, *supra* note 50.

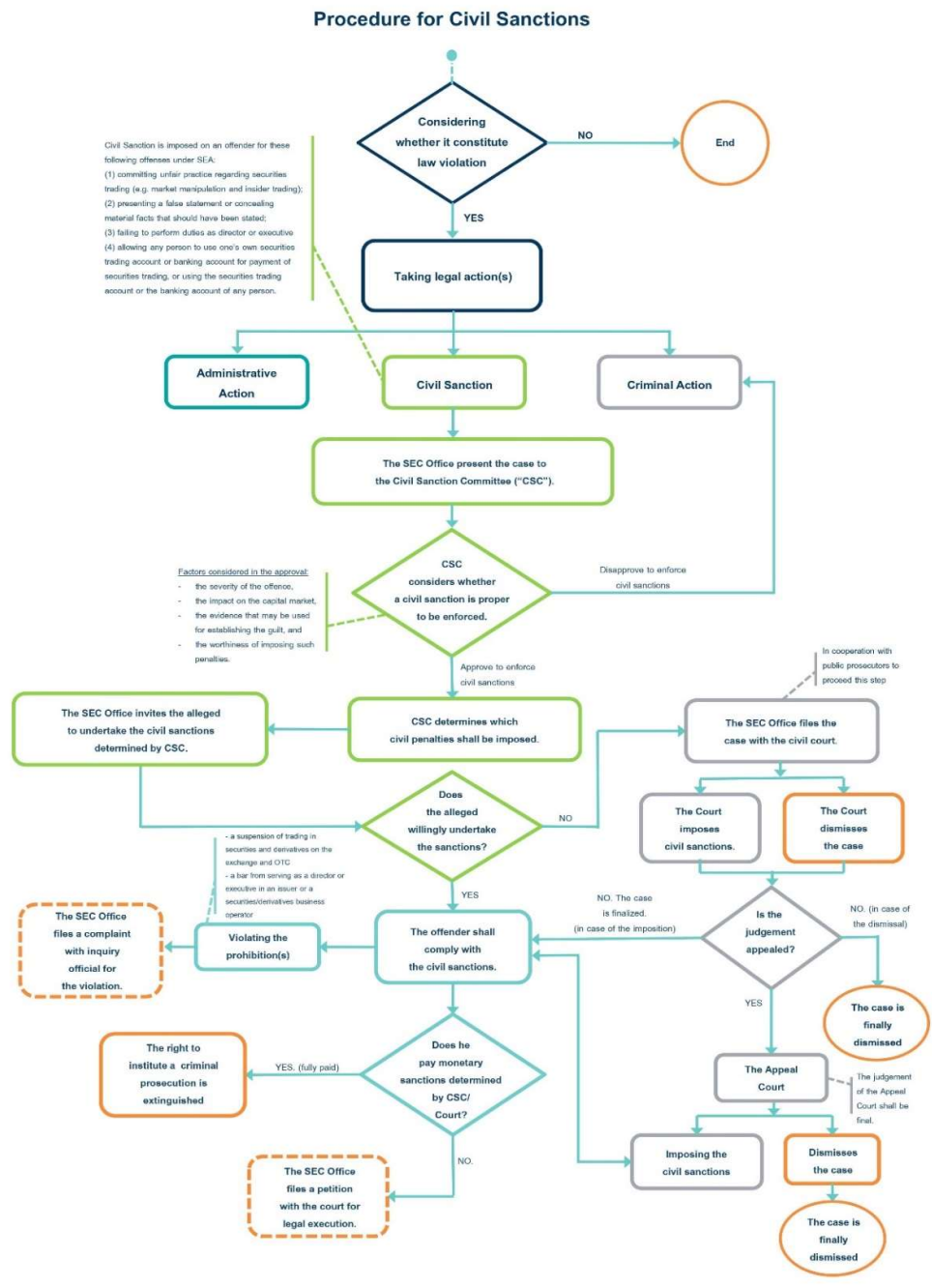


Fig. 4.1 Procedure for Civil Sanction³⁹¹

³⁹¹ Procedure for Civil Sanctions,

https://www.sec.or.th/TH/Documents/Enforcement/Civil%20Action_EN.pdf (last visited Jul 27, 2022).



In case that the insider trading offenses occurred and the SEC Office considers whether the legal action shall be initiated, then the SEC office has the power to consider whether it is appropriate to impose a civil sanctions on the offender.³⁹² If the SEC office considers that the civil sanction shall be imposed, then the SEC Office shall submit the case to the “Civil Sanction Committee (CSC)” for consideration, and in case that the CSC agrees with the SEC office, then a civil sanction shall be imposed to the offenders.³⁹³ There is a monthly meeting between the SEC Office and CSC for considering whether the civil sanction shall be imposed.

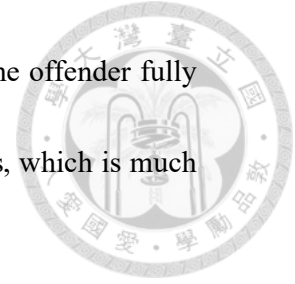
In case that the CSC is approved to enforce the civil sanctions, then the SEC Office shall invite the alleged to undertake the civil sanctions determined by CSC within 10 days. Then, the alleged has time to consider whether he willingly undertakes the sanctions within 7 days. If the offender agreed to comply with the civil sanction, then the offender shall sign a letter of consent prepared by the SEC Office and after the monetary sanctions determined by the CSC has been fully paid by the offender, the right to institute a criminal prosecution shall extinguish.³⁹⁴

According to Fig. 4.1, in case that the offender agreed to comply with the civil

³⁹² SEA 2016, *supra* note 60, at art. 317/6.

³⁹³ *Id.*

³⁹⁴ *Id.* at § 317/7.



sanction, the procedure from the SEC presents the case to CSC until the offender fully paid the monetary sanctions, which shall be finished within two months, which is much faster than the criminal action procedure.

On the other hand, if the offender unwillingly undertakes the sanction, then the SEC Office shall file the case to the Civil Court incorporation with the public prosecutor as specified in Paragraph 1, Section 317/8 of Thai SEA, and the Civil Procedure Code shall be applied to the procedure.³⁹⁵ After the court has passed a judgement or ordered a civil sanction, and the offender has made the payment in full, the right to institute criminal prosecution shall extinguish.³⁹⁶

In case where the offender agrees to comply with the sanctions but the offender fails to make the payment according to the letter of consent or fails to make the payment in full, the SEC Office shall file a petition with the court for enforcement according to the letter of consent within three years as from the date of default on payment.³⁹⁷

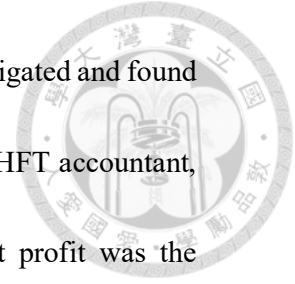
There are some case studies in case of the SEC Office file the lawsuit to the Civil Court incorporation with the public prosecutor as follows;

1. Hwa Fong Rubber (Thailand) Public Company Limited (HFT)

³⁹⁵ *Id.* at § 317/14.

³⁹⁶ *Id.* at § 317/8 ¶ 2.

³⁹⁷ *Id.* at § 317/7 ¶ 2.



SEC Office received the information from SET, then the SEC investigated and found that on October 10, 2019, Miss Tong Jai who was the deputy chief of HFT accountant, knew the inside information about HFT's quarter 3 of 2019, the net profit was the significant increase, she purchased the shares of the company in a total of 248,500 shares between October 15 to November 4, 2019, before the disclosure to the SET on November 6, 2019. Miss Tongjai violated the Section 242(1) and 243(2), which have penalties under Section 296 and 296/2 of the SEA.³⁹⁸

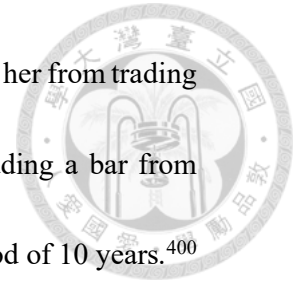
The CSC agreed with the SEC Office to enforce the civil sanction on Ms. Tongjai by imposing the civil penalties and returning the benefits has received or should have received from committing the offense, and reimbursing the expenses due to the investigation of offense at the amount of 722,116 THB, including the prohibition from being a director or executive in securities company for 12 months.³⁹⁹

However, Miss Tongjai did not agree to comply with the civil sanctions imposed by the CSC, therefore it shall be considered that Miss Tongjai did not agree to settle the case on the SEC's level, then the SEC Office incorporated with the public prosecutor to file the lawsuit against Miss Tongjai to the Civil Court. The SEC Office requested the Court

³⁹⁸ *The SEC Imposes Civil Sanctions on One Offender For Using Insider Information to Buy HFT Shares*, SEC (2021), https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=8929 (last visited Aug 13, 2022).

³⁹⁹ *Id.*

to impose the civil sanctions, at the amount of 722,116 THB, and prohibit her from trading in securities or entering into derivatives contracts for five years, including a bar from being a director or executive in an issuing securities company for a period of 10 years.⁴⁰⁰



2. Siam Global House Public Company Limited (GLOBAL)

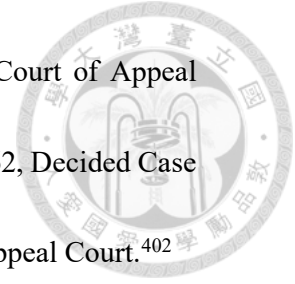
Mr. Surasak and Mr. Ekkamon, both parties purchased GLOBAL shares on August 22, 2012 based on inside information, after that the CSC approved to enforce of the civil sanction following the request of the SEC Office, however, Mr. Surasak and Mr. Ekkamon did not willingly agree to comply with the aforementioned civil sanction. Subsequently, on February 26, 2018, the public prosecutor filed a lawsuit against them to the Civil Court as submitted by the SEC Office to request the Court to impose civil sanctions against them.⁴⁰¹ It was an Undecided case No. Por. 1060/2561 between the SEC, the plaintiff and Mr. Surasak as the first defendant, and Mr. Ekkamon as the second defendant.

On February 25, 2019, the Civil Court issued a verdict in the Decided Case No. Por 899/2562, by imposing Mr. Surasak to pay 522,500 THB with interest at the rate of 7.5% per annum of the amount of 22,500 THB, from the date of filing until the payment is completed. In case of Mr. Ekkamon was imposed the payment of 333,333.33 THB, was

⁴⁰⁰ *Id.*

⁴⁰¹ *SEC Reveals that the Court of Appeal Upholds the Civil Court's Judgment Against the Offenders in the Case of Using Inside Information to Buy GLOBAL Shares*, SEC (2022), https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=8214 (last visited Aug 13, 2022).

to be remitted as state income. Subsequently, on May 26, 2020, the Court of Appeal upheld the judgement of the Civil Court. (Undecided Case No. 2374/2562, Decided Case No. 6984/2563), which the case shall be final as the judgement of the Appeal Court.⁴⁰²



This case was the first case related to the unfair trading practices enforced by civil sanctions and was filed lawsuit to the Civil Court and the Court had the final judgement. The total time-consuming of the case, starting from the prosecutor filing the lawsuit to the Court until the date of the Appeal Court passed the judgement, was a total of two years and three months, which shall be considered as a fast procedure.⁴⁰³

4.5 Suggestion to Thai Legal System

4.5.1 Shall Thailand Recognize the Lockup period as Taiwan Does?

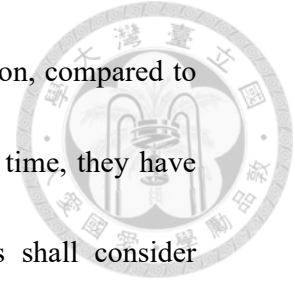
In Taiwan, when the inside information has been disclosed, the insiders has not been allowed to trade the securities yet, but the insider have to wait until the lockups time is due.⁴⁰⁴ The main reason is to protect the investor and to provide more time for the investor.

In Thai law, there is no specified the lockup period for the insider, therefore it shall be deemed that the insider allows trading the securities after the public disclosure. The

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ TSEA, *supra* note 211 at § 157-1.



investors in SET shall not have enough time to analyze such information, compared to the insiders who already acknowledge the information for a period of time, they have enough time to analyze the information. Therefore, Thai regulators shall consider imposing the lockup time in order to protect the investors.

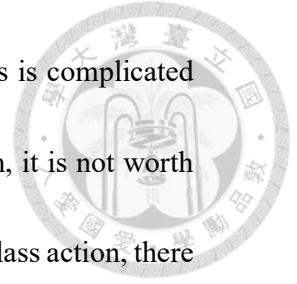
The lockup period in Taiwan is eighteen hours after the information has been disclosed to the public. However, Taiwan and Thailand's trading time are different. Taiwan's trading times is Monday to Friday from 9.00 a.m. to 1.39 p.m. without lunch break⁴⁰⁵but Thailand's is Monday to Friday from 9.30 a.m. to 12.30 p.m. and 2.00 p.m. to 5 p.m.⁴⁰⁶ Therefore, if Thai regulators consider imposing the lockup period for restricting the insider, the period of lockup shall be different from Taiwan because both jurisdictions have different trading times.

4.5.2 Considering the Establishment of Non-Profit Foundation for Investor Protection

As mentioned above, it has not had any class action litigation related to insider trading happened yet in Thailand, therefore it shall be deemed that any damaged investors have been compensated. The reason why it has not had any litigation initiated by damaged

⁴⁰⁵ *Supra* note 194.

⁴⁰⁶ *SEC Reveals that the Court of Appeal Upholds the Civil Court's Judgment Against the Offenders in the Case of Using Inside Information to Buy GLOBAL Shares*, SEC (2022), https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=8214 (last visited Jul 28, 2022).



investors related to insider trading initiated yet, initiating any litigations is complicated whether it's an individual or class action. In case of individual litigation, it is not worth doing, because the investor has the burden of many expenses. In case of class action, there are many steps to follow and especially it is the new litigation form, therefore, the investors are confused and it is harder to find a suitable lawyer who will be responsible for the case, and the lawyer fee shall be higher.

Therefore, the Thai regulators shall consider originating any center or foundation to raise higher investor protection. In case of Taiwan, there is the SFIPC, the SFIPC helps the damaged investors to gather together by the opt-in mechanism.⁴⁰⁷ If the Center has initiated a class action, then the investors who desired to join the class could fill out the form and send it to the Center through the website of SFIPC, it is easier for investors to claim the damages and it is encouraging the investors. Therefore the SFIPC is the center of the damaged investors, when the investors got the damages, they will try to contact the Center immediately. Indifferent to Thailand, when the damages occur, the investor is blind, he does not know how to claim the damages and then just ignores his damages and his right. Originating a protection center is not only for claiming the damages for the investor but also for punishing the offenders who gained tons of money and infringed the right of

⁴⁰⁷ Chao, *supra* note 296 at 70 ¶ 2.

investors. Law and enforcement should not allow such wrongdoing happened.

Moreover, if there is a center, the problem of finding the expert lawyer shall not appear. The damaged investors do not have to find a lawyer by themselves and the court also assured that the lawyer who is responsible for the class, is qualified. The investors are also assured that their damage will be managed by a qualified person without any costs or at a reasonable price. In case of Taiwan, the investors who join the class, have not to pay the lawyer fee. The lawyer fee shall be paid by the offenders in case that the Center won the case. Even if the Center lost the case, the investors shall not be worried about the fee because the Center shall not charge any fees from the damaged investors.⁴⁰⁸

As mentioned above, SFIPC has many advantages for investor, however, it shall be remarked that there are some discussion about the SFIPC's disadvantages. Some scholars mentioned about the overlapping between the territorial of the state bodies' enforcement actions and SFIPC's class action, moreover the efficiency of the non-profit organization shall not be able to compare with the private lawyer.⁴⁰⁹ Although the SFIPC is the non-profit organization, it is undeniable that the government section has relation with the organization, then the free-ride was taken by the SFIPC on the issue of investigation in

⁴⁰⁸ SIPA, *supra* note 297, at § 33.

⁴⁰⁹ Chao, *supra* note 295 at 73.

the level of public prosecutor agencies.⁴¹⁰



4.5.3 Thai Regulators Shall Consider the Specific Provision for Investors to Claim Their Damages as Taiwan Does.

Nowadays, Thailand has no specific regulation for investors, only the tort law has been applied. In general, the tort law is so broad, in some situations boarder law is more coverage, but sometimes it means a heavier burden of proof. In Thailand, an insider trading offense is considered as a tort case,⁴¹¹ therefore in case that the damaged investors are considered bringing class action litigation against the offenders, the investor shall comply with the Thai Civil Procedure Code. Although the burden of proof in a civil case is not as heavy as a criminal case, it is still too complicated for the investors.

Tort law of Thailand is specified in Section 420 of the Civil and Commercial Code, *“A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore.”*⁴¹² The principle of liability in the tort of Section 420 consists of 4 elements⁴¹³ which are 1. Committing a wrongful act whether willfully or negligently, 2. Unlawfully, 3. Damaged, 4. Causation; is one of the hardships for investors

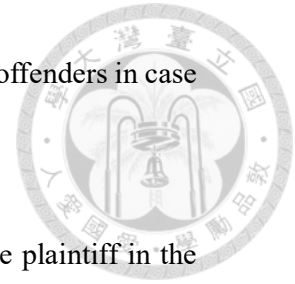
⁴¹⁰ *Id.* at ¶ 3.

⁴¹¹ *Supra* note 151 (last visited Jul 28, 2022).

⁴¹² Civil and Commercial Code, § 420 (1992).

⁴¹³ *See* Kittibodee Yaipool, *Torts Law: Introduction* 5 ¶ 1 (2012).

to prove. How can the investors prove that the damages occurred by the offenders in case of insider trading, it is difficult to even though for the expert lawyer.



Comparing specific provisions of Paragraph 3 of Article 157-1, the plaintiff in the tort law shall carry the heavier burden of proof under the Civil Procedure Code. Paragraph 3 of Article 157-1 specified in detail that who violated the insider trading law, such person shall hold the liabilities to the trading counterparts who on the day of violation undertook the opposite-side trade with bona fide intent,⁴¹⁴ and such Paragraph has already specified the number of damages which the plaintiff shall be compensated, therefore the plaintiff only carries of proving as specified in the requirement of the Paragraph.

4.5.4 The Criminal Liabilities in Terms of Fine Shall Be Raised. The Severity of the Penalties is not Enough to Prevent the Offense.

Although Thai SEA also has serious criminal liabilities, the standard of criminal liabilities in Section 296 shall be raised. The fine, starting from five hundred thousand to two million THB, is too low if considering the illegal benefit gained by the offenders, especially compared to Taiwan's fine which is 20 times more than Thai's.

Thai law specified the specific liabilities to the director or any person who has the responsibility for the operation of the company, the standard penalties for such person are

⁴¹⁴ TSEA, *supra* note 211 at § 157-1 ¶ 3.

heavier, starting from one million THB to five million THB, however, it's still too low.

4.5.5 Balance Between Faster Procedure and Severity of Punishment

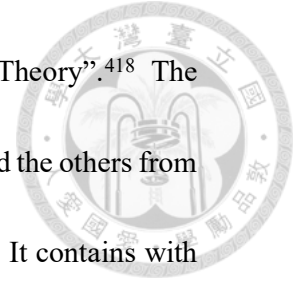
The offender who committed the insider trading should be seen to be punished in order to maintenance of confidence in the securities market.⁴¹⁵ The criminal penalties represent the heavier penalty compared to the civil sanction,⁴¹⁶ however sometimes the slower punishment, the less justice, therefore the regulator has to balance between these two.

There are many advantages of imposing the civil sanction which is the alternative feature, such as being less time-consuming, however, there are some advantages if the only civil sanction is enforced. In case that the CSC is approved to enforce of the civil sanctions presented by the SEC Office, and the offender has complied with the sanctions, then the right to institute a criminal prosecution is extinguished.⁴¹⁷ The offenders could end their violation by only payment without any criminal penalties, then it is an opportunity that the offender will not be afraid of committing the insider trading offense. Is the sanction not that dissuasive and the severity of the sanction is not enough?

⁴¹⁵ *The Adequacy and Efficacy of Civil Remedies for Insider Trading: A Comparative Critique*, S.J.L.S.338 (1998), https://www.jstor.org/stable/24867254#metadata_info_tab_contents.

⁴¹⁶ Bart Frijns, Aaron B. Gilbert & Alireza Tourani-Rad, *Do Criminal Sanctions Deter Insider Trading*, SSRN (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1972655 (last visited Aug 14, 2022).

⁴¹⁷ See Fig. 4.1



There is a theory related to the penology, which is “Deterrence Theory”.⁴¹⁸ The punishment shall be able to intimidate and deter the punished offender and the others from committing such offense because they are fearful of the punishment.⁴¹⁹ It contains with two main objectives. First, to restrain the punished offender from repeating the wrongdoing act (Incapacitation).⁴²⁰ Second, to restrain another person from committing such an offense because of the acknowledgement of the punishment.⁴²¹ Considering the Deterrence Theory, the civil sanction already have the potential to restrain the offenders from repeating the offense? Considering from statistic of civil sanction in case of insider trading from 2017 to April 30, 2022, the trend statistic from 2017 to 2022 is not that different,⁴²² therefore it could be deemed that the offenders and other people do not fear the civil sanction and then the offense still be committed.

Therefore, the criminal penalty such as imprisonment shall be reconsidered by the regulator. One of the favorable imprisonment is shaming.⁴²³ The white-collar crime offenders mostly have a reputation in society, therefore shaming probably be a mechanism

⁴¹⁸ See Nattawat Suttiyotin, Penology; *Unit 6 guidelines of Criminal Law and Advanced Criminology Jurisprudence* 3¶ 2 (2012).

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² See Table 2.5

⁴²³ Jacob Öberg, *Is it “Essential” to Imprison Insider Dealers to Enforce Insider Dealing Laws?*, 14 J.CORP. LAW STUD. 9(26) (2014).

to restrain the offender or the others to commit the crime.

4.5.6 Civil Sanction Can Be More Strengthen

I have suggested about the criminal liabilities shall be raised and the Severity of the Penalties is not enough. However, in the practical way, Thai regulators prefer to enforce the civil sanction more than criminal liabilities, therefore the other resolution is to strengthen the civil sanction.

Thai civil sanctions have many types of the punishment as specified in Section 317/4, for example, paying a civil penalty, reimbursement the investigation cost to SEC, and a bar from being the director within specified period but not exceeding than ten years. However, this is the SEC and CSC's power to decide whether which types of the civil sanction shall be imposed to the defendant. Therefore, in my opinion, the problem is not about the law but the Thai regulator shall be considered more carefully. Otherwise, the SEA shall specifically specified that which types of the civil sanctions shall be surely imposed to the defendant and which types can be the power of the SEC to decide to punish the defendant.



Chapter 5 Conclusion



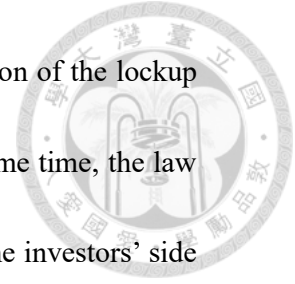
From the study of the provisions relating to unfair practice in securities trading, in the case of illegal insider trading in Thailand and Taiwan, whether it is regulation, cases, or interesting legal topics, it can be seen that the insider trading is the obstacle to efficiency in securities trading and securities market. Any investors in the market must be equal in terms of information and make the trading decisions by such information. Moreover, the insider trading also violates the corporate governance principles that the issuing company shall transparently disclose the information of the business and treat the shareholders equally, including the Board of Directors must be responsible for their duties.

In case that the insider acknowledges the information, then used such information to trade the securities before the public disclosure, it shall be considered as an unfairly practice to the investors who invested in the company, and such offense also damages the reputation and credibility of the company and the market. In this regard, Thailand and Taiwan's laws and regulations consider the insider trading as a crime, however, there are the differences in the detail, such as the regulations, severity of the penalties, the level of investor protection and the time-consuming of the procedure as follows;

1. Regulations

Lockup period; Taiwan's provision restricts the insider, starting from before the

public disclosure until eighteen hours after the discloser.⁴²⁴ The intention of the lockup period is to protect the investors as much as the law could do, at the same time, the law also has to consider the right of insiders. The law could not only take the investors' side because the insider also obtains his right to trade the securities.



Legal presumption; before the amendment of the Thai SEA, Thai regulators faced with a heavy burden of proof, therefore the SEA of Thai was amended in order to resolve such problem by imposing the legal presumption into the amendment Act. It is difficult to find and collect the evidence because the evidences are mostly kept by the offenders.

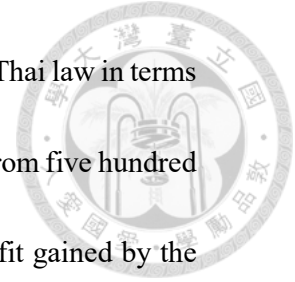
Civil sanction; the insider trading is considered as a white-collar crime which is mostly committed by an expert and high social status. It is difficult for regulators who is not specialize in the field, therefore it should be better to empower the regulator who is an expert in the field of securities trading which is the SEC. Therefore, the Amended Act empowers the SEC, the SEC office has the power to consider that an insider trading case shall be enforced by civil sanction or criminal action,⁴²⁵ and the consequence is less time-consuming in terms of legal procedure.

2. Penalties

Criminal liabilities; Thai's criminal penalties consist of standard criminal liabilities

⁴²⁴ TSEA, *supra* note 211 at § 157-1 ¶ 1.

⁴²⁵ SEA 2016, *supra* note 60, at § 317/6.



and serious criminal liabilities, however considering with Taiwan's fine, Thai law in terms of standard criminal liabilities is quite not reasonable. The fine, starting from five hundred thousand to two million THB, is too low if considering the illegal benefit gained by the offenders. Taiwan's fine is 20 times more than Thai's.⁴²⁶

Although, Thai law specified the specific liabilities to the director or any person who has the responsibility for the operation of the company, the standard penalties for such person is heavier, starting from one million THB to five million THB,⁴²⁷ but the fine is still too low.

In an aspect of serious offense, Thailand considers that the offender has received or should have received a benefit but does not consider the value of benefit gained by offenders as Taiwan does. A fine of the serious offense of Thai SEA is in form of a range, not less than the standard fine but not exceeding than two times of the received or should have received by the offender,⁴²⁸ this is the reason why Thai's regulator should consider adjusting the standard fine in Section 296.

Civil compensation liabilities; there is no specific civil compensation to the investors in the SEA of Thai, therefore the investors in Thailand have to compile with the tort law.

⁴²⁶ TSEA, *supra* note 211 at § 171 ¶1.

⁴²⁷ SEA 2016, *supra* note 60 at § 296 ¶2.

⁴²⁸ *Id.* at § 296/2.

Therefore investors in Thailand have to carry the burden of proof in the standard of Civil Procedure Code.



Civil sanction; Thai regulators usually use civil sanction in a practical way, and the criminal liabilities have much more complicated procedure which consumes tons of time, therefore the other resolution is to strengthen the civil sanction. First, the SEA shall be specifically specified which types of the civil sanction shall be imposed and such types are not the power of SEC. Second, Thai regulator may carefully impose the punishment on the defendant by imposing enough sanctions.

3. Level of the investor protection

As mentioned above, Thai law has no specific regulation for investors and the tort law shall be applied. Comparing specific provisions of Paragraph 3 of Article 157-1, the plaintiff in the tort law shall carry the heavier burden of proof. Paragraph 3 of Article 157-1 specified in detail that *who violated the insider trading law, such person shall hold the liabilities to the trading counterparts who on the day of violation undertook the opposite-side trade with bona fide intent*, and such Paragraph has already specified the amount of damages which the plaintiff shall be compensated. Therefore such provisions of Taiwan are clearer and facilitate the investors than Thai's tort law.

Moreover, Taiwan also has the SFIPC who helps the investors to bring litigation

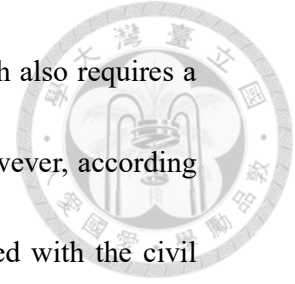
lawsuit against the offenders if there are at least 20 members in the class,⁴²⁹ then the SFIPC will continue the lawsuit instead of the investors. Having the Center raises the level of investor protection in Taiwan. In case of Thailand, not only does not have a specific law for facilitating damaged investors but also does not have any organization to help the investors, therefore the level of investor protection in Thailand shall be raised. In addition, money paid by the offender under Section 317/4 of SEA which is one of the civil sanctions, the SEC office shall deduct the expenses following Section 317/4(5), after that such money shall be submitted as public revenue as specified in Section 317/12 of Thai SEA, therefore the investors have no relation with this money.

4. Time-Consuming

Civil Sanction; Thailand imposed the civil sanction in order to reduce the time-consuming of the procedure and it is efficient. In case that the offender agreed to comply with the civil sanction, starting from the SEC office presents the case to CSC until the consent letter is signed by the offender, all procedures shall be finished within two months,⁴³⁰ which is much shorter than the criminal action. The criminal action requires a heavy burden of proof, the plaintiff has to prove beyond the reasonable doubt. However, in case that the offender does not agree with the civil sanction or does not completely pay

⁴²⁹ SIPA, *supra* note 297, at § 28.

⁴³⁰ *See* Fig. 4.1.



the monetary penalties, then the case has to go to the Civil Court which also requires a period of time until the Civil Court's judgement will be presented. However, according to the statistic of the SEC, it shall be deemed that the offenders agreed with the civil sanction in the recent year,⁴³¹ they completely paid the monetary penalties and signed the letter of consent.

According to the differences between the two jurisdictions, there are some suggestions as follows;

1. Thai regulators shall consider the lockup period in order to raise the protection of investors in the Thai market.
2. The standard of criminal liabilities in terms of fines shall be raised. The severity of the penalties is not enough to prevent the offense.
3. The standard criminal liabilities of any person who has the responsibility for the operation of the company shall be raised, a fine in the range of one million to five million THB as specified in Section 296 is too low.
4. Thailand shall consider creating a non-profit organization to help Thai investors in terms of litigation, mediation, and consultation as Taiwan has the SFIPC.
5. Thai regulators shall consider the specific provision for investors to claim their

⁴³¹ See Table 2.5.

damages as Taiwan does as specified in Paragraph 3, Article 157-1 of Taiwan SEA, in order to reduce the burden of proof on investors.

The suggestions in this paper shall be beneficial to any sections related to the securities business, especially Thai regulators. The writer hopes that the study and suggestions of this paper shall be a part of improvements of law, as well as raise the confidence of domestic and foreign investors in the Thai market.




REFERENCE



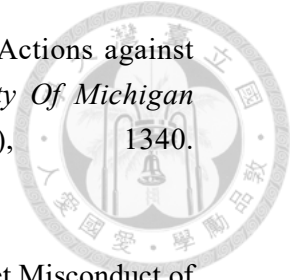
ENGLISH & THAI MATERIALS

A. Journal Article

- Arbhasil, D. (2017). Enforcement Efficiency of Thai Insider Trading Laws. *Thammasat Journal*, 36(1), 15.
- Calderon, S. (2022). Securities Law - Second Circuit Changes Tipping Jurisprudence Holding Close Relationship No Longer Needed for Tipper-Tippee Liability under Gift Theory - United States v. Martoma, 894 F.3d 64 (2D Cir. 2017). *Suffolk Journal Of Trial And Appellate Advocacy*, 25(1).
- Carlton, D., & Fischel, D. (1983). The Regulation of Insider Trading. *Stanford Law Review*, 35(5), 860. <https://doi.org/10.2307/1228706>
- Chen, C. (2014). Enforcement of the Duties of Directors by the Securities and Futures Investors Protection Center in Taiwan. *SSRN Electronic Journal*, 1-26. <https://doi.org/10.2139/ssrn.2588254>
- Chiang, M. (2004). Insider Trading Performance in the Taiwan Stock Market. *International Journal Of Business And Economics*, 3(3), 239-256.
- Green, A. (2017). (Beyond) Family Ties: Remote Tippees in a Post-Salman Era. *Fordham Law Review*, 85(6), 2795.
- Henning, P. J. (2015). What's so Bad about Insider Trading Law?, 70, *summer 2015*, 751.
- Huang, C. (2016). Exploring Tipper/Tippee Liability (內線消息傳遞責任之探討). *法令月刊*, 67(6), 97-121.
- Huang, C. The Transmission and Tippee in Insider Trading Based on the 105-year No. 39 Criminal Judgment (內線交易重大消息之傳遞與受領以 105 年度金訴字第 39 號刑事判決為例). *The Securities And Futures Monthly (證券暨期貨月刊)*, 36(2), 20.

- 
- Kanda, H., & Milhaupt, C. (2003). Re-Examining Legal Transplants: The Director's Fiduciary Duty in Japanese Corporate Law. *The American Journal Of Comparative Law*, 51(4), 887-901. Retrieved 12 August 2022.
- Kuo, T. (2007). A Comparative Study of the Underlying Policies behind the Taiwanese and U.S. Tender Offer Legislation. *National Taiwan University Law Review*, 2(1), 30.
- Laoutthapreecha, P. (2019). Civil Sanctions and Criminal Sanctions Measures on the Securities and Exchange Act. *Gradlawtu Journal Of The Faculty Of Law, Thammasat University*, 12(4), 646.
- Leland, H. E. (1992). *Insider Trading: Should It Be Prohibited?*, 100(4), 861-863.
- Lin, A. (2016). The Challenges and Contemporary Issues of Taiwan's Investor Protection System: A Model to Learn or to Avoid. *National Taiwan University Law Review*, 11(1), 138.
- Liu, C. Discussion on Insider Trading Focusing on Tippee (內線交易消息受領人之探討 以遠距消息受領人為中心). *Mingchuan University Law Theory Series*, 24.
- M. Calderon, S. (2022). Securities Law - Second Circuit Changes Tipping Jurisprudence Holding Close Relationship No Longer Needed for Tipper-Tippee Liability under Gift Theor Liability under Gift Theory - United States v y - United States v. Martoma, 894 F oma, 894 F.3d 64 (2D Cir. 2017) Stephanie . M. Caldero, 25(1). <https://dc.suffolk.edu/cgi/viewcontent.cgi?article=1516&context=jtaa-suffolk>.
- Mann, K. (1992). Punitive Civil Sanctions: The Middleground between Criminal and Civil Law. *The Yale Law Journal*, 101(8), 1799 and 1815. <https://doi.org/10.2307/796948>
- Moore, J. (1990). What is Really Unethical about Insider Trading? *The ACT Guide to Ethical Conflicts in Finance*, 9(3), 113-142. doi:10.1016/b978-1-85573-256-8.50014-1

Muir, D., Liu, J., & Xu, H. (2013). The Future of Securities Class Actions against Foreign Companies: China and Comity Concerns. *University Of Michigan Journal Of Law Reform*, 46(4), 1340. <https://doi.org/10.36646/mjlr.46.4.securities>



Nakornchan, C., & Phadongchai, N. (2020). Law Enforcement of Market Misconduct of Securities Trading in the Stock Exchange of Thailand. *Academics Journal Of Suvarnabhumi Institute Of Technology*, 6(1), 52.

Öberg, J. (2014). Is it “Essential” to Imprison Insider Dealers to Enforce Insider Dealing Laws?. *Journal Of Corporate Law Studies*, 14(1), 9(26). <https://doi.org/10.5235/14735970.14.1.111>

Panich, R. (2019). The Linkage of U.S. Stock Markets and Asian Emerging Equity Markets. *Journal Of School Of Economics, University Of The Thai Chamber Of Commerce*, 25(1), 134.

Perino, M. (2020). Real Insider Trading. *SSRN Electronic Journal*, 77(7), 1792. <https://doi.org/10.2139/ssrn.3338536>

Pootranon, P., & Samranweth, V. (2020). Principles of Corporate Governance on Shareholders 'Interests. *Academics Journal Of The Office Of The Judicial And Legal Affair*, 67(2), 70.

Shao, C. (2015). Beyond Uncertainty: Lower Courts 'Defiance in Insider Trading Cases in Taiwan. *National Taiwan University Law Review*, 10(2), 180-182. Retrieved 12 August 2022.

Spacone, A. (2019). The Second Circuit's Curious Journey Through the Law of Tippee Liability for Insider Trading: Newman to Martoma. *Roger Williams University Law Review*, 24(1), 19. Retrieved 12 August 2022.

Stone, H. (1936). The Common Law in the United States. *Harvard Law Review*, 50(1), 6. <https://doi.org/10.2307/1333183>

Thanitcul, S., & Srinopnikom, T. (2018). Monetary penalties: An Empirical Study on the Enforcement of Thai Insider Trading Sanctions. *Kasetsart Journal Of Social Sciences*, 1. doi: 10.1016/j.kjss.2018.01.013



The Adequacy and Efficacy of Civil Remedies for Insider Trading: A Comparative Critique. (1998), 338.
https://www.jstor.org/stable/24867254#metadata_info_tab_contents.

Wang, T. (2016). Translation, Codification, and Transplantation of Foreign Laws in Taiwan. *Washington International Law Journal*, 25(2), 307-308.

Wongwatthanadej, N. (2015). Imposing the Fiduciary Duty as Supplementary Protection Mechanism for Investor or Customer Using Securities Brokerage Services in Thailand. *Academics Journal Of The Office Of The Judiciary*, 7(1).

B. Books

Boatright, J. (2015). *Wiley encyclopedia of management: Fiduciary Duty* (p. 890). John Wiley & Sons.

Kunkeaw, A., & Chaithiamwong, W. (2016). *Class action and writ of certiorari* (1st ed., p. 24). Krungsiam Publishing.

Michaels, R. (2011). *Comparative Law, Oxford Handbook of European Private Law*. Oxford University.

Sootpisal Publishing. (2019). *"The Intensive Edition" of the Securities and Exchange Act* (pp. 6-20).

Suttiyotin, N. (2012). *Penology; Unit 6 guidelines of Criminal Law and Advanced Criminology Jurisprudence* (pp. 3 ¶ 2). Sukhothai Thammathirat University.

Tantikulan, W., & Tantikulan, C. (2019). *Explanation of the Securities and Exchange Act B.E. 2535 (amended in 2019)* (p. 65). Pimaskorn Limited Partnership.

Wayupap, P. (2016). *Explanation of Civil Procedure Law Part 2 Title 2 Extraordinary Procedures in the Court of First Instance Chapter 4 Group Litigation* (pp. 23-31). Krungsiam Publishing.

Yaipool, K. (2012). *Torts Law : Introduction* (pp. 5 ¶ 1). KCU.



C. Cases

Bassam Yacoub Salman, v. United States No. 15–628. (U.S. Supreme Court December 6, 2016).

Dirks v. SEC, 463 U.S. 646 (1983) (U.S. Supreme Court July 1, 1983).

Decided Case No. Por. 5964/2562. (Thai Civil Court November 12, 2019).

Decided Case No. Por 899/2562 (Thai Civil Court February 25, 2019).

Decided Case No. 6984/2563 (Thai Appeal Court May 26, 2020).

United States v. Martoma - 894 F.3d 64 (2d Cir. 2017) (United States Court of Appeal for the Second Circuit October 23, 2017).

United States v. Newman - 773 F.3d 438 (2d Cir. 2014) (United States Court of Appeals, Second Circuit. December 10, 2014).

D. Thai Legislations

Civil and Commercial Code (1992).

Criminal Code (1956).

Emergency Decree on Digital Asset Businesses, (2018).

The Civil Procedure Code of Thailand B.E. 2558 (As Amended) (2015).

The Securities Exchange of Thailand Act B.E. 2527 (1984).

The Securities Exchange of Thailand Act B.E. 2535 (1992).

The Securities Exchange of Thailand Act B.E. 2535 (As Amended) (1992).

The Securities Exchange of Thailand Act B.E. 2559 (As Amended) (2016).

E. Taiwan Legislations

Regulations Governing the Scope of Material Information and the Means of its Public Disclosure Under Article 157-1, Paragraphs 5 and 6 of the Securities and Exchange Act (2010). Taiwan.



The Securities and Exchange Act (2021). Taiwan.

The Securities Investor and Futures Trader Protection Act (2020). Taiwan.

F. Lectures

Ruamsin, P. (2015). *The Considerations of Class Action According to the Amendment of Civil Procedure Code 2015 : Case Study on Cancellation of Class Action*. Lecture, Judicial Training Institute

Yang, Y.-P. (2022, June). <https://www.coursera.org/lecture/taiwan-law-in-focus-economy-society-and-democracy/6-5-taiwans-investor-protection-center-pAgl2>. *W6 The Developmental State and Corporate Governance*. Taipei; Taiwan.

G. Reports

Annual Report – Securities and Futures Investors Protection Center. Sfipc.org.tw. (2021). Retrieved 15 June 2022, from <https://www.sfipc.org.tw/mainweb/Article.aspx?L=2&SNO=cETUAHMWj7bwkiS59QXNww==>.

Phasitthichot, N. (2017). *Essences in the Amendment of the Act Securities and Exchange B.E. 2535* (p. 3). SEC.

Securities & Future Instititue. (2008). *Discussion on Important Practical Issues in Insider Trading - Scope of Material News and Time of Establishment* (內線交易重要實務問題探討－重大消息範圍及成立時點」座談會).

SEC. (2022). *Statistics of Criminal Actions*. Retrieved 15 July 2022, from <https://www.sec.or.th/EN/Documents/MarketDataEnforcement/enforce-statistic-criminal-EN.pdf>.

H. Theses /Dissertations

Bunditkul, J. (2008). *Securities and Exchange Act B.E. 2535 (1992) : Presumption of Proof for Criminal Liability of Corporate Officer Pertaining to the Offence of Market Abuse* (Master of law). Chulalongkorn University.

Chaiamnuaaysilp, S. (2022). *Legal Problems Concerning Unfair Securities Trading Practice: A Study of Insider Trading* (Master of law). NIDA Wisdom Repository.

Lin, J. (2018). *The Evolution of Securities Law in Thailand*. University of Chicago.

Nakhonkwang, J. (2016). *Class Action on Securities Litigation (Master of law)*. Thammasat University.

Rodpan, C., & Buasook, S. (2021). *The Impact of the Covid-19 Outbreak on the Bankruptcy of Listed Companies on the Stock Exchange of Thailand* (Doctoral dissertation, Naresuan University). Thailand: NPSO.

Sonaiem, J. (2017). *The Effects of the Amendment of the Securities and Exchange Act (No.5) B.E. 2559 on Directors: A Case Study of Insider Trading* (Master of Arts). University of Thammasat. doi: 10.14457/TU.the.2017.1013

Suwutthisastrin, P. (2016). *Criteria for Applying Civil Sanctions to Securities Offences* (LL.M.). Chulalongkorn.

Wu, H. (2019). *Insider Trading, Informed Trading, and Market Mechanisms: A Comparative Perspective from Taiwan* (Doctor of the Science of Law (J.S.D.)). University of California, Berkeley.

I. Internet Sources

Bart Frijns, Aaron B. Gilbert & Alireza Tourani-Rad, Do Criminal Sanctions Deter Insider Trading (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1972655 (last visited Aug 14, 2022).

Court Convicts son-in-law of Former President Chen - Taipei Times. Taipei Times.com. (2018). Retrieved 12 June 2022, from <https://www.taipeitimes.com/News/taiwan/archives/2018/03/21/2003689727>.

Chao, G. (2018). Saying is One Thing; Doing is Another? Analyzing the Chinese Nonprofit Organization Model in Investor Protection through the Taiwanese Experience. *National Taiwan University Law Review*, 13(1), 69. Retrieved 12 August 2022.

Chudasri, D. (2021). *SET recovers as Covid Measures are Unveiled*. Bangkokpost Retrieved 15 July 2022, from <https://www.bangkokpost.com/business/2146431/set-recovers-as-covid-measures-are-unveiled>.

Class Action. (2019). Retrieved 15 July 2022, from <https://thaipublica.org/2019/07/class-action03/>.

Class Action. Legal Information Institute. Retrieved 16 June 2022, from https://www.law.cornell.edu/wex/class_action.

Class Action Legal Proceedings Now Available in Thailand - Tilleke & Gibbins. Tilleke & Gibbins. (2015). Retrieved 26 June 2022, from <https://www.tilleke.com/insights/class-action-legal-proceedings-now-available-thailand/>.

CP All Chiefs Fined for Insider Trades. <https://www.bangkokpost.com>. (2015). Retrieved 14 April 2022, from <https://www.bangkokpost.com/business/783309/cp-all-chiefs-fined-for-insider-trades>.

Directions Concerning Securities Market Regulatory Matters for TWSE Listed Companies and Their Directors, Supervisors, and Major Shareholders. TWSE (2012). Retrieved 6 July 2022, from <https://twse-regulation.twse.com.tw/ENG/EN/law/DAT08.aspx?FLCODE=FL072299>.

Enforcement of Civil Sanction Statistics of the enforcement of Civil Sanction. (2022). Retrieved 15 July 2022, from <https://www.sec.or.th/TH/Documents/AnnualStatistics/enforce-statistic-civil-TH.pdf>.

Ex-president's in-laws sent to jail for insider trading - Taipei Times. Taipei Times (2021). Retrieved 12 June 2022, from <https://taipeitimes.com/News/taiwan/archives/2021/10/16/2003766211>.



Fernquest, J. (2015). *Insider trading at CP All: Foreign investors demand action*. Bangkok Post Retrieved 14 April 2022, from <https://www.bangkokpost.com/learning/advanced/801656/insider-trading-at-cp-all-foreign-investors-demand-action>.

Fiduciary Duties of Corporate Officers and Directors. Oflaherty (2020). Retrieved 11 August 2022, from <https://www.oflaherty-law.com/learn-about-law/fiduciary-duties-of-corporate-officers-and-director>.

Get to Know Us. Retrieved 16 February 2022, from <https://www.sec.or.th/TH/Pages/AboutUs/Whatwedo.aspx>.

Hello Newman! (and Chiasson): Second Circuit Decision Raises the Bar for Government to Prove Liability of "Remote Tippees" in Insider Trading Cases. Mintz (2014). Retrieved 12 June 2022, from <https://www.mintz.com/insights-center/viewpoints/2014-12-15-hello-newman-and-chiasson-second-circuit-decision-raises-bar>.

High Court sentences Chen Shui-bian's son-in-law. Taipei Times (2022). Retrieved 12 June 2022, from <https://www.taipeitimes.com/News/taiwan/archives/2022/01/01/2003770539>.

History of the Stock Exchange of Thailand. Retrieved 28 February 2021, from https://www.set.or.th/en/about/overview/history_p1.html.

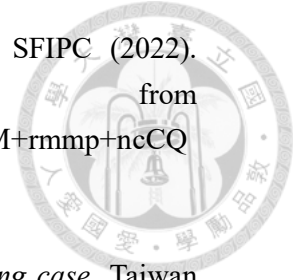
Insider Trading. Legal Information Institute. (2022). Retrieved 5 June 2022, from https://www.law.cornell.edu/wex/insider_trading.

Insider Trading is Illegal. SECLaw.com. (2022). Retrieved 11 August 2022, from <https://www.seclaw.com/insider-trading/>

Insider Trading Taiwan Stock Exchange Corporation. TWSE (2022). Retrieved 6 June 2022, from https://www.twse.com.tw/en/page/investor/insider_trading.html.

Internship with SEC. Retrieved 12 August 2022, from <https://www.sec.or.th/th/pages/aboutus/apprentice.aspx>.

Introduction – Securities and Futures Investors Protection Center. SFIPC (2022). Retrieved 18 July 2022, from <https://www.sfipc.org.tw/Mainweb/Article.aspx?L=2&SNO=I6M+rmmp+ncCQmZoO7Z28g==>.



News, T. (2007). *Supreme court orders retrial of Chao's insider trading case.* Taiwan News. Retrieved 12 June 2022, from <https://www.taiwannews.com.tw/en/news/579070>.

Organization-Organizational Structure of the FSC-Financial Supervisory Commission. FSC (2018). Retrieved 12 August 2022, from https://www.fsc.gov.tw/en/home.jsp?id=50&parentpath=0,1&mcustomize=onemessage_view.jsp&dataserno=20956&dtable=Organize.

Our Missions and Objectives-Financial Supervisory Commission. FSC (2020). Retrieved 6 July 2022, from <https://www.fsc.gov.tw/en/home.jsp?id=338&parentpath=0,1,332>.

Polkuamdee, N. (2015). *Foreign Investors Enter fray Over CP All in Action,* Bangkok Post, Retrieved 14 April 2022, from <https://www.bangkokpost.com/business/800740/foreign-investors-enter-fray-over-cp-all-inaction>.

Polkuamdee, N. (2020). *SEC: Legal Violation Fines Totalled over B2bn in 2019.* Bangkok Post. Retrieved 15 April 2022, from <https://www.bangkokpost.com/business/2002483/sec-legal-violation-fines-totalled-over-b2bn-in-2019>.

Procedure for Civil Sanctions. Retrieved 27 July 2022, from https://www.sec.or.th/TH/Documents/Enforcement/Civil%20Action_EN.pdf.

Records of the Taiwan Open Insider Trading Case 台開內線交易案大事記 社會 中央社 CNA. (2021). Retrieved 12 June 2022, from <https://www.cna.com.tw/news/asoc/202110140306.aspx>.

Restructuring-Financial Supervisory Commission. FSC (2019). Retrieved 6 July 2022, from <https://www.fsc.gov.tw/en/home.jsp?id=493&parentpath=0,1,332>.

Review Standards for Fiduciary Duties of Directors. Lawasia. (2017). Retrieved 11 August 2022, from <https://law.asia/review-standards-fiduciary-duties-directors/>.

Sangwongwanich, P. (2018). *SEC Fines IFEC Execs for Insider Trades*. Bangkok Post Retrieved 15 April 2022, from <https://www.bangkokpost.com/business/1527334/sec-fines-ifec-execs-for-insider-trades>. =

Sangwongwanich, P. (2018). *SEC Raps Former IFEC Boss*. Bangkok Post Retrieved 15 April 2022, from <https://www.bangkokpost.com/business/1538286/sec-raps-former-ifec-boss>.

Schacter, K., & Macqueen, G. (2017). *The Martoma Decision: The Second Circuit Tackles Insider Trading Post-Salman*. Retrieved 6 July 2022, from <https://www.morganlewis.com/pubs/2017/08/the-martoma-decision-the-second-circuit-tackles-insider-trading-post-salman>.

Scholarship. Retrieved 12 August 2022, from <https://www.sec.or.th/TH/pages/aboutus/scholarship.aspx>.

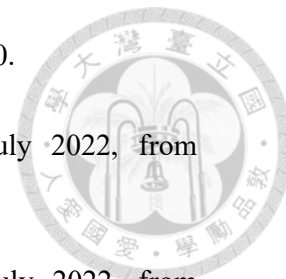
SEC Imposes Civil Sanctions on 3 Offenders for Insider Trading of TRUBB Shares. (2019, November 22). Retrieved September 19, 2022, from https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=7843&fbclid=IwAR3AcwGdiGSr_lpQd1MYqGIZINpNauxY5YVCgYGvu6oc65OFhnqxi1UAQNM

SEC Reveals the Appeal Court Adjudicates the Maximum Penalty Rate of Supanan Rittipairot, Using Internal Data to Sell IFEC Shares. World Today News. (2021). Retrieved 15 April 2022, from <https://www.world-today-news.com/sec-reveals-the-appeal-court-adjudicates-the-maximum-penalty-rate-of-supanan-rittipairot-using-internal-data-to-sell-ifec-shares/>.

SEC Reveals that the Court of Appeal Upholds the Civil Court's Judgment Against the Offenders in the Case of Using Inside Information to Buy GLOBAL shares. SEC. (2022). Retrieved 13 August 2022, from https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=8214.

SEC Strategic Plan 2022-2024 Aims to Revive Thailand Toward Strength and Sustainable Growth. (2022). Retrieved 13 February 2022, from

https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=9360.



SET - Market Data - Market Statistics. (2022). Retrieved 11 July 2022, from https://classic.set.or.th/en/market/market_statistics.html.2

SET - Products & Services - SET Index Series. Retrieved 15 July 2022, from https://classic.set.or.th/en/products/index/setindex_p1.html.

Settasatian, P. (2016). *Insider trading with Corporate Governance*. Retrieved 14 April 2022, from <https://thaipublica.org/2016/01/insider-trading-corporate-governance/?fbclid=IwAR01nOCNAE5ZR11iBK1ruhUFJf53T9XDyh-fDaijUoSdd7jm-mNrhTxVx8>.

SFIPC Now Accepting Applications for Compensation in LITE-ON SEMICONDUCTOR CORP. (Stock Code: 5305, Delisted on November 30, 2020) Case (Individuals Suspected of Insider Trading). – *Securities and Futures Investors Protection Center*. SFIPC (2022). Retrieved 16 June 2022, from <https://www.sfipc.org.tw/mainweb/Article.aspx?L=2&SNO=K5RyRtlDMRuoacnZ7Fidjg==>.

SFIPC Now Taking Applications from Investors Seeking Compensation via class-action Lawsuit in Chipbond-IST insider trading case involving defendants C – Securities and Futures Investors Protection Center. Sfipc.org.tw. (2015). Retrieved 11 August 2022, from <https://www.sfipc.org.tw/Mainweb/Article.aspx?L=2&SNO=RXJEEp9He/AtsyH+UDTcNw==>.

Shen, K. (2010). Class Action in Taiwan: A New System Created Using the Theory of “Right of Procedure Options. *National Taiwan University Law Review*, 5(1), 67. Retrieved 12 August 2022.

Strong, M. (2021). *Former Taiwan president’s in-laws start prison terms for insider trading* | *Taiwan News* | 2021-10-26 17:43:00. Taiwan News. Retrieved 12 June 2022, from <https://www.taiwannews.com.tw/en/news/4326085>.

Summary Data of Stock Market (by Year) Annual Statistics - Taiwan Stock Exchange Corporation. TWSE Retrieved 11 August 2022, from <https://www.twse.com.tw/en/statistics/statisticsList?type=07&subType=232>.



Taiwan Legislative Yuan Passed Amendments to the Securities and Exchange Act to Strengthen Cross-Border Supervision and International Cooperation. - 台灣國際專利法律事務所. Tiplo.com.tw. (2010). Retrieved 6 July 2022, from https://www.tiplo.com.tw/tw/tn_in.aspx?mnuid=1284&nid=44843.

Taiwan Stock Exchange (TWSE). TSFVM (2022). Retrieved 5 June 2022, from <https://www.tsfvm.com.tw/en/a01.aspx?id=2>.

Thai Market Misconduct. Retrieved September 18, 2022, from <https://www.sec.or.th/TH/Pages/LAWANDREGULATIONS/MARKETMISCONDUCT.aspx>

The Appeal Court Sentences the Offender in the Case of IFEC Insider Trading to the Highest Legal Penalty. (2021). Retrieved 15 April 2022, from https://www.sec.or.th/EN/Pages/News_Detail.aspx?SECID=8729.

The Application of Class Action to the Offence or Liability under the Securities and Exchange Act. SEC. Retrieved 14 July 2022, from <https://www.sec.or.th/EN/Pages/LawandRegulations/ClassAction.aspx>.

The Court Dismissed the Class Action Lawsuit of DTAC Consumers.. (2018). Retrieved 15 July 2022, from <https://www.consumerthai.org/consumers-news/ffc-news/4648-ffc-dtac-031164.html>.

The Foundation of the SEC. (2022). Retrieved 2 April 2022, from <https://www.sec.or.th/EN/Pages/AboutUs/TheFoundationoftheSEC.aspx>.

The SEC Fines the Offenders for Using Inside Information to Buy MAKRO Shares. (2015). Retrieved 14 April 2022, from https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=6144.

The SEC Imposes Civil Sanctions on 2 Offenders on the Ground of Using Inside Information to Sell IFEC Shares., SEC. (2018). Retrieved 15 April 2022, from https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=7138.

The SEC Imposes Civil Sanctions on One Offender for Using Insider Information to Buy HFT Shares. (2021). Retrieved 13 August 2022, from https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=8929.

The SEC Proposes to Public Prosecutor to Sue an Offender for Selling IFEC Shares by Using Inside Information. (2018). Retrieved 15 April 2022, from https://www.sec.or.th/TH/Pages/News_Detail.aspx?SECID=7150.

The Stock Exchange of Thailand - Investor Types. SET (2022). Retrieved 11 July 2022, from <https://classic.set.or.th/mkt/investortype.do?language=en&country=US>.

Tiantitikul, R. (2016). *The Amendment of the Securities Exchange of Thailand Act B.E. 2559.* FPO Retrieved 15 July 2022, from <https://www.fpo.go.th/main/getattachment/Department/Bureau-of-Legal-Affairs/8/2338/CNT0016466-1.pdf.aspx>.

Tightening Insider Trading Laws, Taipei times (2021). Retrieved 12 June 2022, from <https://www.taipeitimes.com/News/editorials/archives/2021/10/27/2003766824>.

Timeline - Taiwan Stock Exchange Corporation. TWSE (2022). Retrieved 20 July 2022, from <https://www.twse.com.tw/en/page/about/company/history.html>.

Trading Mechanism Introduction - Taiwan Stock Exchange Corporation. TWSE (2022). Retrieved 6 July 2022, from <https://www.twse.com.tw/en/page/products/trading/introduce.html>.

TWSE 臺灣證券交易所. TWSE. (2022). Retrieved 6 July 2022, from <https://www.twse.com.tw/zh/>.

Urapeepatapong, K., Chai-a-ya, P., & Boonyaleepun, N. (2016). *Securities and Exchange Act: Insider Trading - A New Regime with Wider Reach.* Bakermckenzie Retrieved 28 December 2021, from https://www.bakermckenzie.com/-/media/files/insight/publications/2016/10/securities-and-exchange-act/al_bangkok_seact_oct16.pdf?la=en.

Welcoming Message - Taiwan Stock Exchange Corporation. TWSE (2022). Retrieved 6 July 2022, from <https://www.twse.com.tw/en/page/about/company/welcome.html>.

What's the Thai Stock Market Going Through?. (2017). Retrieved 15 July 2022, from <https://knowledge.bualuang.co.th/knowledge-base/setindex2518-2560/>.

Zhang, X. (2012). *Taiwan Legal Research Guide*. Nyulawglobal Retrieved 20 July 2022, from <https://www.nyulawglobal.org/globalex/Taiwan.html>.



CHINESE MATERIALS

A. Article

Zhang, Y. Analysis of Components of Article 157-1 Prohibition of Insider Trading of the Securities and Exchange Act (證券交易法第 157 條之 1 「禁止內線交易」構成要件解析). *Securities Services (證券服務)*, 664, 39。

B. Cases

臺灣最高法院 110 年度台上字第 1342 號。

臺灣高等法院 108 年度金上重更五字第 11 號。

C. Report

Investor Protection Center Compensation Distribution has not yet Been Collected Case Summary Table (投資人保護中心賠償款分配尚未領取案件彙總表), SFIPC (投資人保護中心)。

D. Internet Source

Records of the Taiwan Open Insider Trading Case (台開內線交易案大事記 社會 中央社), CNA, (2021), <https://www.cna.com.tw/news/asoc/202110140306.aspx> (last visited Jun 12, 2022)。