

# *An overview of insider dealing law and policy: a Chinese perspective (part one)*

Article

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# **An Overview of Insider Dealing Law and Policy: A Chinese Perspective**

## **(Part One)**

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## **Introduction**

Having developed rapidly and vigorously since the early 1980s, the securities markets in China have become an indispensable part of the real economy, playing a vital role in raising capital and promoting optimal resource allocation. According to the CSRC, by the end of 2018 there were 3,584 companies listed on China's two stock exchanges, and total market capitalisation was RMB 43.49 trillion,<sup>4</sup> equivalent to 48.31 percent of China's GDP and making China the second largest stock market in the world after the US.<sup>5</sup> The unfortunate corollary of the above achievements, however, has been a steep rise in abusive market practices. After a long period of consultation and heated debate, a new Securities Law of People's Republic of China was passed in the 15th session of the 13th Chinese National People's Congress of China in December 2019. There has never been a better time to revisit the laws on insider dealing in China with the enforcement of the new Securities Law on 1 March 2020.

This paper examines the features and causes of the high incidence of insider dealing during

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<sup>4</sup> See <[http://www.csrc.gov.cn/pub/csrc\\_en/about/annual/201910/P020191021577549600990.pdf](http://www.csrc.gov.cn/pub/csrc_en/about/annual/201910/P020191021577549600990.pdf)> accessed 7 April 2020.

<sup>5</sup> Yamei, 'China's Economy Expands 6.6 pct in 2018' (21 January 2019) <[http://www.xinhuanet.com/english/2019-01/21/c\\_137761945.htm](http://www.xinhuanet.com/english/2019-01/21/c_137761945.htm)> accessed 7 April 2020. China's GDP totaled 90.03 trillion yuan (about 13.28 trillion U.S. dollars) in 2018.

the opening up process of the economy. It will review how China's insider dealing regulation took a considerable time to arrive on the statute books by looking at the history of the regulation from the pre-liberalisation era to the present day. It will then assess existing legal measures to regulate insider dealing and seek to highlight weaknesses in the system.

## **Insider Dealing in Modern China's Securities Markets**

Although one would expect insider dealing to be fundamentally much the same in any country, there are disparities in the development level of different countries' securities markets, cultures and traditions, which result in insider dealing practices in different parts of the world often displaying a number of distinctive features. Such distinctive features of insider dealing in China will be examined together with the specific causes of insider dealing in China's financial markets, in order to gain a better understanding and to set out appropriate strategies to combat this abuse.

Securities markets have various functions, while China's securities markets have only one main function, namely that of instruments of finance. This situation can be traced back to the early 1980s. When China's securities markets were gradually reintroduced, they were initially seen as an experiment, with the Central People's Government of the People's Republic of China (Central Government) prepared to shut the markets down in the event of failure. The National People's Congress (the NPC) decided to entrust the securities markets with several important tasks, such as pooling funds for the reform of state-owned enterprises. However, the consequent fearfulness of investors, groping in the dark of the future of the securities market, led them to prefer short-term investments. The level of high speculation that characterises China's securities markets remains unchanged. The proportion of individual investors is large. Most of them, however, lack information on which investors may reasonably make an informed choice; rather, they blindly follow the trend, frequently purchasing and selling securities.

In securities markets characterised by such high levels of speculation, the role of those with privileged information, especially accurate information, is crucial. Rather than asking who divulged the crucial information and to whom, an individual investor would be more likely to do all he could to become a member of ‘the club of persons in the know’. The popular contention that to find inside information is the quickest and easiest way to become rich illustrates this mentality.<sup>6</sup> The consequence of such an attitude of connivance, even encouragement, is that insider dealing becomes increasingly prevalent. Of course, this mentality is not confined to China—it is simply human nature. In China, however, its implications are so much greater; given the relatively unsophisticated character of most investors, regulatory deficiencies and the high level of government in the markets both in terms of control and the number of civil servants and officials who trade.

It should be noted that ordinary investors are not the only ones in pursuit of speculative deals; listed companies are too. It seems that some listed companies simply want to exploit investors by locking in their money. By speculating in the securities markets, listed companies are easily able to achieve this goal. A close examination of the incidence of insider dealing in China’s securities markets reveals that financial intermediaries and their client listed companies often conspire to engage in insider dealing. *Hainan Minyuan Modern Agriculture Development Co, Ltd* is a typical example of the above, where two large shareholders in the company and two certified public accountants jointly abused bullish news in the 1996 interim report to obtaining huge profits.<sup>7</sup> By speculating in the securities markets, listed companies are easily able to achieve this goal.<sup>8</sup> Also financial intermediaries and their client listed companies often conspire to engage in insider dealing.<sup>9</sup> The motive for this collusion

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<sup>6</sup> Sunyan Zheng, *A Legal Analysis of Misconduct in the Securities Markets* (China University of Political Science and Law Press 2000) 20.

<sup>7</sup> Hui Huang, *International Securities Markets: Insider Trading Law in China* (Kluwer Law International 2006) 60.

<sup>8</sup> CSRC Administrative Sanction Decision (on *Qiong Minyuan*) [1999] No 29.

<sup>9</sup> Liang Yang, *Discussing Insider Dealing* (Peking University Press 2001).

Tong Lu and Yin Dang, ‘Three Ways to Governance Listed Companies and Intermediaries’ *Securities Daily* (22 February 2013) <<http://finance.stockstar.com/MT2013022200000413.shtml>> accessed 7 April 2020.

may be twofold. Some listed companies, in order to raise more capital through IPOs, seemingly choose to mislead investors by misrepresenting information.<sup>10</sup> In other cases, the management or board of directors of some companies are eager to rectify the shortfall caused by the company's normal business activities by engaging in insider dealing, thereby showing profits on their books and reassuring investors.<sup>11</sup> Even though profits are not guaranteed, stock trading using inside information such as the allotment and dividend plans of their own companies is less likely to result in losses.<sup>12</sup> However, not all companies have this expertise so they must turn to professionals, seeking the cooperation of veteran speculators such as investment consultancy firms and securities companies. Financial intermediaries, on the other hand, tempted by the possible extravagant profits to be had from insider dealing, require the active support of listed companies and their insiders. Consequently there is a real risk that these financial intermediaries, together with the listed companies, jointly use inside information to conduct insider dealing or even manipulate the markets.

Evidence of such practices is particularly abundant in the case of insider trading conducted by listed companies and securities companies working on their own or jointly. For a securities company, it is important to have a block of funds in order to extensively trade in a targeted company's shares. Such funds could be obtained, for example, by misappropriating client funds as seen in the *Xiangfan Shangzheng*.<sup>13</sup> On the other hand, enjoying a significant advantage that is the possession of material information concerning its own shares, a listed company could manipulate the disclosure of such information for the sake of insider dealing, for example delaying the disclosure of the information until the transaction is completed, or misrepresenting its financial circumstance in its annual report. This is well illustrated in *Hainan Minyuan Modern Agriculture Development Co, Ltd*, where the company

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<sup>10</sup> Sunyan Zheng, *A Legal Analysis of Misconduct in the Securities Markets* (China University of Political Science and Law Press 2000) 65-70.

<sup>11</sup> Feng Guo, *Financial Regulation and Securities Laws in the Era of Globalisation* (Intellectual Property Publishing House 2010).

<sup>12</sup> Yinghui Liu, 'Analysing the Characteristics and Reasons of Insider Dealing in China's Securities Markets' [2001] *Economic Affairs* 64, 64-65; CSRC Administrative Sanction Decision (on Zhou Xiaonan, Zhu Min, Zhu Aodi and Pan Qikang) [2013] No 29.

<sup>13</sup> CSRC Administrative Sanction Decision (on Xiangfan Shangzheng) [1994] No 13.

misrepresented bullish news in its 1996 interim report. Again, in the *Southern Securities Company and Beida Chehang Joint Stock Company*, a listed company and a securities company shared inside information to manipulate the market price of Beida's shares so that they rose almost 100 percent.<sup>14</sup> From reported cases, it appears that the involvement of an increasing number of government officials is of particular concern. The *Guan Weiguo Case* is a prime example and is regarded as the first insider dealing case in China.<sup>15</sup>

Companies are also subject to other statutory requirements, such as payment of tax according to law. These issues are again dealt with by competent departments in accordance with the law. Consequently, government officials working in all these departments are particularly well informed on many matters relating to these companies. In addition, regulatory officials will be fully conversant, for example, with their department's attitudes or decisions on the major issues facing various companies. Moreover, as China's securities markets have always relied heavily on government support and regulation, securities regulatory departments and their officials are able to keep a close watch on new trends in regulations. This may even be considered to be inside information. It is likely that some government insiders can even obtain more inside information than traditional corporate insiders. In these circumstances and given the rewards to be had, it is obviously hard to prevent insider trading by government insiders.<sup>16</sup>

Secondly, given that relevant government officials have huge influence on companies' business operations, some corporate insiders can abuse their privileged access to inside information to 'leak' it to officials from whom they may solicit specific support in order to 'smooth' relevant issues. From the officials' perspective, such practices enable them to make illegal gains in a short span of time, yet without involving transfer of cash or goods or directly

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<sup>14</sup> CSRC Administrative Sanction Decision (on Southern Securities Company and Beida Chehang Joint Stock Company) [1999] No 10.

<sup>15</sup> See generally Yunheng Wei, 'The Beginning and Ending of the Acceptance of Bribes Case of Guan Weiguo' (1994) 1 Qiao Yuan.

<sup>16</sup> Lihua Wu and Zhendong Liu, 'The SPP Briefed the Economic Data Leak Case: Two Involved Officials were Sentenced' *Economic Information* (28 October 2011) <<http://news.sohu.com/20111028/n323678073.shtml>> accessed 7 April 2020.

harming the economic interests of the persons requesting such support.

There is a consensus among academics and regulators that to a considerable extent Central Government has been responsible for shaping China's securities markets, perhaps an unavoidable outcome of China's transformation from a central-planned to a market-orientated economy. China's securities markets are also known as so-called 'government markets' or 'policy markets', referring not only to the significant influence of government policies on the market prices of securities, but also the excessive intervention of the government in financial markets which to a certain extent replaces market institutions.<sup>17</sup> This special role of the government in China's securities markets has not only been widely criticised by ordinary investors and researchers, but viewed as responsible for the prevalence of insider dealing in China.

As a considerable number of state-owned companies are listed on the stock exchanges, the government finds itself in the position of shareholder. It seems clear that Central Government is actively engaged in investment in the securities markets and has itself built up a large portfolio of shares. Thus, a complicated relationship exists between Central Government and the markets. On the one hand, Central Government, as a large shareholder of state-owned listed companies, is an active participator in the securities markets, entitled to all the statutory rights of a shareholder. On the other hand, to ensure the proper functioning of the markets, Central Government, as a statutory regulatory authority and enforcer, is authorised to oversee the securities markets and investigate any irregularity. In a system where government administration is mixed with company operation, the state-owned asset regulators, may be the source of much inside information.

A majority of the listed companies in China are state-owned, and their major shareholders

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<sup>17</sup> Xin Li and Qingsheng Tan, 'A Discussion on the Manifestations and Logics of "Policy-Backed" Stock Market in China' (2010) 29 *Market Modernisation* 29-30.

and directors are either related or appointed by the government. Although they also have a complete corporate governance structure, their operations are mostly controlled by the government. The decisions that may trigger fluctuations in stock prices, such as major investment, acquisition, merger and reorganisation plans, are made by the administrative authorities before asking the board to vote or submit it to a legal, but not necessarily fair, voting process at the shareholders' conference. When it comes to insider trading, investors tend to focus on what has happened inside the listed company, yet fail to recognise the overriding authority of those who stand behind the company. This is a major loophole in how insider trading is regulated today in China. The super-profits obtained by some special market players would not be possible without the information having been leaked through or by the government and its officials. The experience of both *Li Qihong* and *Liu Baochun* prove this point.<sup>18</sup>

Meanwhile, as we have seen another administrative actors are the regulatory authorities of the securities markets themselves.<sup>19</sup> They have the right to approve major projects that are closely linked to the stock price of the listed companies. Despite the growing maturity of China's securities market, the mind-set and approach to its operation is still built around the system of examination and approval. Every major step taken after the listing of the company must still be approved by the securities regulatory authorities. Given the huge temptations, it is very unreasonable to expect the staff of the regulatory bodies who are exposed to inside information to keep their lips sealed. The case of *Xiao Shiqing* mentioned earlier is just one such example.<sup>20</sup>

In addition, stemming from a mix of traditional Confucian and orthodox Communist concepts, most citizens have what could be termed a 'child-parent' complex (*fumu guan*) towards the government. They believe that if the government is a shareholder, it should also

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<sup>18</sup> *Li Qihong* (n 289) and *Liu Baochun & Chen Qiaoling* [2010] Nantong Intermediate People's Court, Jiangsu Province, Chuzhong Xinger Chuzi, No 5.

<sup>19</sup> *ibid.*

<sup>20</sup> *Xiao Shiqing* [2011] Zhengzhou Intermediate People's Court, Henan Province, Zheng Xingyi Chuzi, No 14.



assume unlimited liability for the deficits of any listed company it has invested in. As a result, Central Government seems to have taken upon itself too many tasks to be able to play any one role consistently, let alone the two most important—that of market overseer and regulator.

Another aspect of the dominant role played by China's government in the securities markets concerns government policy. Central Government has determined developmental and operational policies within the markets via the implementation of particular government policies, such as those regulating the taxation of securities or the size requirement for listed companies. Indeed, it would be no exaggeration to say that such policies have been a decisive factor in shaping China's securities markets. Some financial commentators even suggest that certain articles published in the *People's Daily*, the official voice of government, may be viewed as important indicators of future government moves in this context. For example, an article in its 15 December 1996 issue, under the heading 'Understanding China's Stock Market Correctly', sharply condemned a sudden jump in the stock market. As a result, two of China's stock markets, those in Shanghai and Shenzhen, suffered a major slump for three consecutive days, severely undermining investors' confidence.<sup>21</sup>

Many argue that Central Government has no alternative but to play multiple roles; as China's securities markets have not yet come of age. Investors lack sufficient knowledge of the markets—due in part to a paucity of information and perhaps the perceived unreliability of published financial information.<sup>22</sup> Accordingly, investors have acquired the habit of relying on government, a situation that to some extent serves to encourage government intervention and could open the door to abuse by its officials. There are pros and cons to this situation. As regards the market as a whole, government intervention tends to weaken the proper functioning of market mechanisms—thereby directly causing an imbalance between supply and demand, distorting investors' behaviour and stimulating more aggressive speculative

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<sup>21</sup> Lei Xiao, 'Empirical Studies of Insider Dealing in China's Stock Markets' [2005] *Finance and Economics* 26, 27.

<sup>22</sup> Jing Bian, 'Towards an Efficient Information Disclosure System in the Chinese Securities Market--A Comparative Study between Mainland China, the UK and Hong Kong' (PhD, Department of Financial and Management Studies, School of Oriental and African Studies, University of London 2010) 47-50.

investment. With regard to insider trading issues, the authoritative status of the government artificially increases the value of information relating to government policies, regulatory measures and actions, rendering it even more important than traditional corporate inside information. The premium placed on this information may then largely increase the possibility of government regulatory departments and their officials, especially those in charge of securities issues, engaging in insider trading, given that it is they themselves who issue or are privy to this information. It is also the case as we shall see, that they in large measure also police the law.

## **An Overview of the Move towards Insider Dealing Regulation in China**

It was not until 1914 when China, under the ruling of the Beiyang Government, had enacted its first modern securities regulation, the Stock Exchange Law 1914 (SEL 1914).<sup>23</sup> While containing ‘stock exchange’ in its name, there existed at the time no modern stock Chinese exchange in the sense of being run by Chinese.<sup>24</sup> The Law’s main purpose was to help the government ‘extort’ money from the public by issuing bonds rather than regulating the securities markets, which led to the inefficient implementation of the law and its relevant regulations and increased stock market speculation.<sup>25</sup> Nevertheless, the SEL 1914, article 33 deserves special mention here because it prohibited the disturbing of market prices by undue means. Considering that insider dealing affects the market price of the subject securities as aforementioned, article 33 may be regarded as the earliest anti-insider dealing provision in China.

In order to ensure the smooth issuance of government bonds and maintain tight control over

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<sup>23</sup> The foundation of this statute was set by the Qing Business Law by Imperial Order 1904 and the Bill of Qing Commercial Law 1910. Before it, securities markets only began to exist in China in the late nineteenth century and were subject to very few securities provisions, dispersed in a few commercial and corporate regulations.

<sup>24</sup> The stock exchange, which was called the ‘Maoqian Company’, emerged in China late in the Qing Dynasty. ‘Maoqian’ is an ancient Chinese word which means trading: Yingpu Yang, *On China's Stock Exchanges* (The Commercial Press 1930) 1.

<sup>25</sup> Zhiying Liu, ‘The Financial Unrest Caused by the Excess of Trust Companies and Stock Exchanges and the Management of the Chinese Stock Market in Modern Shanghai’ (2005) 3 *Nanjing Business Review* 9-11.

their transactions, the subsequent Nanking National Government drastically revised the SEL 1914.<sup>26</sup> In view of the high incidence of insider dealing and frequent involvement of government officials, the Ministry of Industry and Commerce enacted the Revised Stock Exchange Law 1935 (RSEL 1935) to address the problems of insider dealing and market manipulation.<sup>27</sup> Any public functionary was, under article 41 of the RSEL 1935, prohibited from speculating on the stock market through any intermediary; any violation was punishable by a fine of no less than twice, but not more than ten times the purchase or selling price.<sup>28</sup> The Ministry also appointed stock exchange inspectors to conduct thorough inspections of the operation of stock exchanges, especially investigating any suspicious movements of market prices of stocks.<sup>29</sup>

In addition to the RSEL 1935, article 10 of Revised Directive for Rules of Service of Government Officials 1933 provided that ‘all government officials were prohibited from directly or indirectly speculating, including simultaneously operating businesses or trading government bonds’; any violation would be subject to severe punishment. An employee’s superior could be convicted alongside the employee, if he, the superior, failed to report any irregular practice by a subordinate. It was also decreed that ‘any civilian who undersold government bonds should be charged with disturbing the smooth functioning of the financial system’.<sup>30</sup> Meanwhile, the Nanking National Government also enacted two Criminal Acts in 1928 and 1935, respectively, which contained a number of provisions concerning insider dealing.<sup>31</sup>

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<sup>26</sup> The period between 1927 and 1937 witnessed an unbridled issuing of government bonds, worth in total a staggering Yuan 2.5 billion, while there were very few non-governmental bonds in the markets. By the end of 1937 the transactions of public bonds on Shanghai securities markets had reached 98 percent of the market.

<sup>27</sup> There was no explicit provision concerning insider trading: Yuanzou Zheng, *Interpretation of Stock Exchange Law* (Shanghai World Book Publisher 1930) and *Stock Exchanges in Old Shanghai* (Shanghai Guji Publisher 1992) 294-300 and 301-306.

<sup>28</sup> Revised Law of Stock Exchange 1935, article 49.

<sup>29</sup> *ibid* article 43.

<sup>30</sup> *The Historical Data and Files of the Finance and Taxation of the Nanking National Government (1927-1937)* (China Financial & Economic Publishing House 1997) 726-727.

<sup>31</sup> A Complete Collection of Laws, Rules and Regulations 137-173.

The securities markets in China were gradually reduced and eventually disappeared as a result of the establishment of a planned economic structure since 1949.<sup>32</sup> The securities markets re-emerged in 1980s due to the economic reform initiated by Xiaoping Deng in 1978.<sup>33</sup> The re-emerge of the securities markets was accompanied with increasing amount of insider dealing. More regulations were called for. The first anti-insider dealing provision was found in the Interim Measures for Regulating Securities Companies 1990, which prohibited securities companies from indulging in market price manipulation, insider dealing, fraud or any other irregularity.<sup>34</sup> Without any enforceable or so-called 'functional provisions' this provision, although containing the term 'insider dealing', was considered a mere political announcement with very little legal value.<sup>35</sup>

In the following two years, local securities-related regulations, especially the anti-insider dealing provisions contained in the municipal regulations of the Shanghai and Shenzhen municipal governments (the hosts of the Shanghai and Shenzhen Stock Exchanges, respectively) became the main regulatory sources of insider dealing as the regulators of their respective stock exchanges.<sup>36</sup> For example, any department or individual was prohibited, under article 39(2) of the Regulatory Methods of Shanghai Securities Trade 1990, from using inside information to deal with securities, and the scope of 'insider' was provided by article 40.<sup>37</sup> Any violation of article 39 was punishable by a fine up to RMB 0.1 or 0.2 million, according to the severity of the circumstances.<sup>38</sup> Insider dealing was also prohibited under article 43(4) of Interim Measures for Regulating Stock Issuance and Trading 1991 and article 93 of Interim Measures for Supervising Listed Companies of Shenzhen 1992 (IMSLCSZ),

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<sup>32</sup> The securities markets in China went through a restrained-reformed-disappeared-reintroduced process. For a general overview, see please CSRC, *China Capital Markets Development Report* <<http://www.csrc.gov.cn/pub/newsite/yjzx/cbwxz/ebook/ChinaCapitalMarketsDevelopmentReport.pdf>> accessed 7 April 2020.

<sup>33</sup> For a brief account, see Zhenghua Li, 'The Third Plenum of the 11th Central Committee of the Communist Part of China and the Great Process of the Reformation and Opening Up' [2008] *The Research of China's Contemporary History*.

<sup>34</sup> The Interim Measures for Regulating Securities Companies 1990, article 17.

<sup>35</sup> Hui Huang, 'The Regulation of Insider Trading in China: A Critical Review and Proposals for Reform' 17 *Australian Journal of Corporate Law* 281, 291.

<sup>36</sup> The Shenzhen Stock Exchange was subordinate to the Shenzhen branch of the People's Bank of China from 1990 to 1993. It was then under the jurisdiction of the Shenzhen Securities Regulatory Commission (the SZSRC) from April 4, 1994 (the date the SZSRC was set up) until the establishment of the CSRC.

<sup>37</sup> Rules of Managing Listed Companies of the Shanghai Stock Exchange, article 40.

<sup>38</sup> *ibid*, article 75.

<sup>39</sup> while the former also imposed specific short-swing liability on senior managers of listed companies who traded in their previously held securities while in office.<sup>40</sup>

The local governments, the State Council and the Securities Committee of the State Council (SCSC) issued the Interim Provisions for the Management of the Issuing and Trading of Stocks 1993 (IPMITS 1993) and the Interim Measures on Prohibition of Securities Fraudulent Conducts (IMPSFC 1993). Both regulations established only administrative liability, with confiscation of illegally obtained profits (especially shares), a fine up to RMB 0.5 million, a warning or a concurrent warning.<sup>41</sup>

The IPMITS 1993 and the IMPSFC 1993 are often seen as landmarks in the history of China's securities legislation, as together they form the basic framework for insider dealing regulation. Problems, however, remain. On the one hand, as purely administrative regulations, they lacked the force of law. Nor did they fully address the problem of insider dealing by themselves. At the same time, certain crucial provisions, such as those regarding liability, are little more than formalities. Their enforcement often proved difficult. Nevertheless, academics generally agree that the promulgation of the two regulations did have certain albeit limited positive effect on curbing abusive practices in the securities markets.<sup>42</sup>

In 1997, the CSRC applied severe sanctions against several large security dealers who were pooling massive funds and manipulating the markets. By the end of 1998, 'the CSRC had

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<sup>39</sup> It is arguable that Interim Measures for Regulating Stock Issuance and Trading 1991, article 29, prohibited 'functionary of Party and government offices, personnel on active service, professional securities practitioners, the functionary of relevant securities regulatory organs' from purchasing or selling any securities regardless of whether or not they do so on the basis of inside information. As a result, it could conclude that the scope of insider in the IMSLCSZ was limited to directors, supervisors, managers and other senior employees of listed company, persons possessing inside information relating to securities trading and persons obtaining such information illegally.

<sup>40</sup> Article 41.

<sup>41</sup> Interim Measures of the Administration of Stock Exchanges 1993, article 72.

<sup>42</sup> There were only 15 cases reported from 1993 to 1995, 7, 4 and 4 respectively. The numbers of reported abusive practices suddenly increased to 16 and 18 in 1996 and 1997 respectively. Some argue that this sharp increase of the number of cases resulted from the exposure of the inherent weakness of the provisions of the IPMITS 1993 and the IMPSFC 1993 which were relatively effective in the first three years of their enforcement.

thoroughly investigated and punished 75 cases of unfair practices in the securities markets, which was a heavy blow to speculators and insiders'. The result was that 'for a certain period, manipulation of the securities markets more or less went into abeyance; insiders then behaved with caution and no longer cared brazenly to engage in insider dealing to manipulate the markets.'<sup>43</sup>

The next significant piece of legislation was Securities Law of the People's Republic of China which came into effect in 1998 (SL 1998). The SL 1998 provided powers to the CSRC to exercise centralised and unified regulation over the national securities markets and in particular to investigate and penalise violations of law or administrative regulations governing the securities markets. Building on the IPMITS 1993 and IMPSFC 1993, article 5 of the SL 1998 made a point of explicitly prohibiting insider dealing. As for the other provisions to curb irregularities in China's securities markets, especially insider dealing, these, though largely welcomed by legal and securities professionals, were viewed as difficult to enforce. As those familiar with China's legal history know, the main challenge will be practical and political restrictions on the enforcement of law through administrative action. Subsequently a further piece of legislation, the Securities Law 2005 (SL 2005) was brought in to provide the statutory framework for the new China anti- insider dealing regime.

Reiterating article 5 of the SL 1998, article 73 of the SL 2005 provides that no person with access to inside information on securities trading or with inside information obtained illegally may be permitted to take advantage of that information to engage in information- related securities trading.<sup>44</sup> Its content, however, not only does not contribute much in the way of a definition of insider trading, but also fails significantly to match that of article 75, considered to provide the standard definition of inside information. The SL 2005 further provides a broader scope of 'insider' (article 74) and 'insider dealing' (article 76) than before. It also makes some alterations to the nature of inside information in articles 67 and 75, with

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<sup>43</sup> Hongbian Wu, *The Regulation and Control of the Development of China's Securities Markets* (Law Press 2001) 55.

<sup>44</sup> *supra* note. 10. at 130.

corresponding sanctions against insider dealing in articles 76, 202 and 231.

To support the enforcement of the SL 2005, the CSRC, under the authorisation of the SL 2005, proposed the Directive on Identifying Insider Dealing in the Securities Markets 2007 (referred to as the ‘Insider Dealing Directive 2007’) and the Directive on Identifying Market Abuse in the Securities Markets 2007 (the ‘Market Abuse Directive 2007’) that provided guidance for determining whether behaviour amounts to insider dealing. The CSRC further produced Rules (Rules 2011) on the Registration of the Insiders of the Listed Companies in 2011. The Rules 2011 conferred the listed companies the power to investigate into cases of insider dealing. This was however, regarded as a weak point of the Rules 2011 because of the lack of incentives and deterrence of the listed companies themselves.<sup>45</sup>

On the criminal liability of insider dealing, insider dealing was made a criminal offence by Article 180 of the Criminal Law 1997 (CL1997). It has since gone through two amendments by Amendment I 1999 and Amendment VII 2009 to the CL1997. The Supreme People’s Procuratorate (SPP) had produced an Interpretation of Certain Issues Related to Specific Application of Laws in Handling Criminal Cases Involving Insider Dealing and Divulgence of Insider Information in 2012 (IID 2012) to provide detailed guidance on this.

Significantly, The SL 2005 was further amended in 2014 and 2020 respectively. The 2014 amendment focused on the expansion of the definition of ‘insider’ and the refinement of the concept of ‘inside information’. The latest 2020 amendment dramatically increased the cost for breaching insider dealing regulations by imposing considerably more monetary fine on insider dealing offenders.

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<sup>45</sup> Zhongming Cao, ‘Necessity of Criminal Sanctions in Combating Insider Dealing’ *National Business Daily* (10 October 2017) <<http://www.nbd.com.cn/articles/2017-10-10/1152874.html>> accessed 8 May 2020.

