

# CNPLAW'S PARTNER, MR SUBRAMANIAN PILLAI FEATURED IN ARTICLE ON "MAS SEEKS FURTHER BOOST TO ENFORCEMENT POWER WITH AMENDMENTS TO SECURITIES AND FUTURES ACT"

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MAS seeks a further boost to enforcement power with amendments to Securities and Futures Act.

A gradual increase in the Monetary Authority of Singapore's (MAS) enforcement powers and the streamlining of its enforcement process for market misconduct cases are likely to be its key focus this year, a consultant said.

This was palpable in the recent amendments to the Securities and Futures Act which seek to enhance MAS supervision and enforcement powers.

The recent Securities and Futures (Amendment) Bill made a number of proposed changes including measures aimed at strengthening the enforcement regime while increasing MAS' powers to carry out enforcement action against market misconduct.

Most notably, the bill clarified that the prohibition under Section 199 applies regardless of whether it has a significant effect on the market price of securities. The existing s 199 prohibits disclosures of statements that are false or misleading in a material aspect and are likely to have an effect on the market price of securities.

## **Material impact**

The amendments to s 199 are a direct result of the interpretation of that section in a ruling by the Singapore High Court in the Airocean case in 2012. The three accused, who were former directors of Airocean, were acquitted because the court was not satisfied that the information released by Airocean had a significant impact on its share price, said Subramanian Pillai, partner at CNPLaw LLP, formerly known as Colin Ng & Partners LLP, who represented one of the accused in the case five years ago.

Hemali Mehta, senior consultant at Bovill Asia in Singapore, said the original wording of s 199 and its interpretation in the landmark ruling for the Airocean case rendered this provision to be unenforceable unless a false or misleading statement could be linked to having a material impact on the price of the relevant securities in question, which is difficult to prove sometimes.

"According to MAS, making false or misleading disclosures may or may not significantly impact prices of security but they could still sway an investor's investment decision in that particular security, which is not sufficiently captured under the current wording for Section 199," she said.

MAS said in the second reading of the bill that its ability to take enforcement action against material false or misleading disclosures which may wrongly influence persons to trade in the market should not be constrained by the requirement of a significant price effect.

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## **Increasing MAS' enforcement power**

The proposed amendments to s 199 are much-needed clarifications and address the gap in interpretation, Hemali said, adding that they will also increase MAS' enforcement power. The clarifications also send a strong message to companies, directors and senior management, highlighting to them the consequences of making false or misleading statements or disclosures.

"Once in force, the prohibition under Section 199 will apply regardless of whether there is a significant price effect. In other words, a materially false or misleading statement will not need to be linked to a significant change in the price or value of the relevant securities or a significant market effect before bringing enforcement actions pursuant to Section 199," she said.

## **Standardising civil penalty**

The bill also seeks to enhance the civil penalty regime by standardising the maximum penalty that can be imposed in all civil cases to more than S\$2 million or three times the amount of benefits gained or losses avoided. MAS said this will ensure that the civil penalty quantum is commensurate with the gravity of the offence rather than being restricted by the value of the benefits gained or losses avoided by the offender.

Under the existing civil penalty regime, the minimum civil penalty is S\$50,000, while the maximum penalty imposed on an individual is capped at three times the benefits gained or losses avoided. The existing civil penalty is S\$50,000 if the benefits gained or losses avoided are small, but where there is no benefit gained or loss avoided, the civil penalty can be much higher, capped at S\$2 million. MAS felt the two outcomes were incongruous.

## **MAS given priority over civil penalty claims**

MAS has also sought to increase its powers with regard to civil penalty claims. The bill has proposed that MAS be given priority in the event that unsecured claims are accrued when a person contravenes the Securities and Futures Act. This will strengthen MAS' ability to prevent third-party creditors from diverting funds which it has frozen under the civil penalty regime toward repaying the contravening person's private debts.

"This is in line with priority that is accorded to government claims in other civil proceedings taken by the government. This also reduces the potential for dissipation of a defendant's assets, which may cause MAS' civil penalty claims to be nothing more than paper judgments," MAS said in the second reading.

Unsecured debts are largely debts not backed by collateral, including personal loans, overdraft facilities or any liabilities to suppliers, among others. This amendment to the bill would give MAS greater powers to recover the civil penalty imposed on the contravening person because it would give the regulator priority over other unsecured creditors with respect to the funds of the contravening person, Pillai said.

"This means that the contravening person cannot get away without paying the civil penalty. It ensures that

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once the penalty is imposed, it must be paid to the regulator. This was not part of the Securities and Futures Act before," he said.

## **Market misconduct will not be tolerated**

MAS' move to strengthen the enforcement regime against market misconduct seeks to demonstrate that misconduct will not be tolerated in Singapore's financial services sector. Pillai said for Singapore to remain relevant as a leading financial centre in the world, it is important for MAS to demonstrate that market misconduct is taken seriously in Singapore and that strong action will be taken against those involved in such misconduct.

"We take a serious view of market misconduct; the regime is strictly enforced and the penalty is served if one is found liable. The proposed amendments to the Act go a long way in reinforcing these tenets," he said.

"Independent reviews shine a light on the processes of both benchmark operators and submitters, and provide an additional line of defence against criminal benchmark manipulation," he said.

*Patricia Lee is chief correspondent, banking and securities regulation, Asia* Copyright © Thomson Reuters 2017. All rights reserved. The article was first published on Thomson Reuters' Regulatory Intelligence and Compliance Complete.

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