

# An Overview of SFC Investigation\*

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- \* Last updated as at 30 October 2023.
- \* Please read together with the Disclaimer on the following slide.

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# Agenda

- A. The Source of Power under SFO
- B. Confidentiality and LPP
- C. Loss of Right of Silence and Privilege Against Self-Incrimination
- D. Useful Checklist / Employment Issues



# A. The Regulatory objectives of SFC - SFO s.4

- s.4 The regulatory objectives of the Commission are –

- (a) to maintain and promote the fairness, efficient, competitiveness, transparency and orderliness of the securities and futures industry;

...

- (c) to provide protection for members of the public investing in or holding financial products;

- (d) to minimize crime and misconduct in the securities and futures industry;

...

- (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.

See SFO Cap. 571 - [https://www.elegislation.gov.hk/hk/cap571?xid=ID\\_1438403465238\\_001](https://www.elegislation.gov.hk/hk/cap571?xid=ID_1438403465238_001)



# A. The Source of the Power – SFO s.5

- s.5 Functions and powers of [Securities and Futures] Commission

(1) The functions of the Commission are ...

...

(b) to supervise, monitor and regulate –

(i) **the activities** carried on by ... persons carrying on activities regulated by the Commission ...

...

(d) to promote, encourage **and enforce the proper conduct, competence and integrity** of persons carrying on activities regulated by the Commission ...

...

(f) to take such steps as it considers appropriate to **ensure that the relevant provisions are complied with;**

...

(m) to promote, encourage and **enforce**

(i) the adoption of **appropriate internal controls and risk management systems** by persons carrying on activities regulated by the Commission ....


- See more provisions in SFO (18 Parts, 450 sections, 10 Schedules, 39 subsidiary legislation ...)

- **One of the LONGEST, MOST COMPLEX statutes in Hong Kong**

- **SFC is empowered to regulate Virtual Assets under AMLO Cap 615 since 1 June 2023.**

- **Challenging the Power of SFC?**

# A. Quick Guidance

Target	SFO Sections	Purpose / Power
<b>ListCo;</b> A related company of the ListCo	<a href="#">s.179(1)</a> <a href="#">(i)</a> <a href="#">s.179 (1)</a> <a href="#">(ii)</a>	s.179 enables the SFC to investigate suspected misconduct in relation to ListCo...  The authorized person may require ListCo / other person to: (a) Produce records and documents (b) Provide or make explanations or statements
<b>Intermediaries</b>	<a href="#">s.180</a>	s.180 allows the SFC to authorize a person to investigate whether an intermediary is complying with relevant requirements under the SFO and the licensing regime (including Codes and Guideline).
Transactions   To develop new line of enquiry	<a href="#">s.181</a>	s.181 enables the SFC to obtain information in relation to transactions in securities and similar products for the purpose of enabling or assisting the SFC to perform its functions and for assisting a foreign regulator.
<b>Misconduct / Offence by a person</b>	<a href="#">s.182</a>  <a href="#">s.183</a>	Under s.182, the SFC may appoint an investigator where it has <b>reasonable cause to believe:</b> ...(1)(a) ... an <b>offence</b> [under SFO] ... may have been committed ... (b) ... <b>a person</b> may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with ....(i) dealing ... (ii) management of investment ...(iii) ... structured product ....  s.183 gives the investigator powers to “compel” the target to produce / explain... (see offences provided in <a href="#">s.184</a> )

# A. Evidential Threshold

Terminology	Standard
Reasonable Grounds for Suspect	This relatively low threshold is appropriate for the investigating stage. Suspicion is a state of conjecture or surmise where proof is lacking and is far cry from prima facie proof. See <i>P v Commissioner of the Independent Commission Against Corruption (2007) 10 HKCFAR 293 Para 26</i> .
Reasonable Cause to Believe	It requires more objective evidence than suspicion, but again, <b>does not require proof</b> . See <i>George v Rockett (1990) 64 ALJR 384 at 389</i> .

There is commentary that the threshold of s.182/s.183 may equate to a reasonable suspicion (i.e., even lower than “reasonable cause to believe”), because:

SFC must have reasonable cause to believe the offence or defined misconduct **“MAY”** have occurred.

# A. The Source of the Power - SFO s.179

- **s.179 Power to require production of records and documents concerning listed corporations, etc.**

(1) Where in relation to a corporation which **is or was listed** –

(a) it appears to the Commission that there are circumstances suggesting ... the business of the corporation has been conducted -

(i) with intend to defraud its creditors ...

(ii) for any fraudulent or unlawful purpose; or

(iii) in a manner oppressive to its members ...

.....

an authorized person may ... give a direction to –

**(i) the corporation**

**(ii) ... a related corporation of the corporation**

**(iii) ...[Authorised FI]; (iv) ... auditor ...**

**(v) any other person**

requiring the production, within the time and at the place. ... of any record and document ....

.....

(5) An authorized person shall not give any direction under subsection (1)(i) or (ii) to require the production of any record or document **unless the authorized person has reasonable cause to believe that the record or document relates to the affairs of the corporation** to which the direction is to be given or a corporation of which such corporation is, or was at the material time, a related corporation.

Extended to  
banks,  
auditors  
etc...

The SFC is likely to  
be in possession in  
evidence or to have  
received a credible  
complaint!!!





# A. The Source of the Power - SFO s.180

- **s.180 Supervision of intermediaries and their associated entities**

(1) Subject to subsections (9) and (10), an authorized person may **at any reasonable time**, for the purpose of ascertaining whether an intermediary or an associated entity of an intermediary **is complying or has complied with**, or **is likely to be able to comply with**, the requirement specified in subsection (2) --

(a) **enter** (i) in the case of an intermediary -

(A) ... **its premises** ...

...

(b) **inspect, and make copies** or otherwise record details of ...

(i) **the business** ...

(ii) **any transaction** ... by a related corporation ... or associated entity ...

(iii) any transaction ... by the intermediary ....

(c) **make inquiries of** -

(i) the intermediary or the associated entity ... (ii) a related corporation ... (iii) subject to subsection (7), any other person ... whom the **authorized person has reasonable cause to believe** to has information relating to ... (b)

(3) ... an authorized person ... may require ...

(i) ... to give ... access to any record ... in (1)(b)

(ii) answer any questions regarding the record or document.

# A. The Source of the Power - SFO s.181

- **s.181 Information relating to transactions**

(1) An authorized person may ... require –

(a) a person **registered as the holder** of securities in a register of members kept under the Companies Ordinance (Cap. 622) ....

(b) a person whom the authorized person has reasonable cause to **believe holds any securities, futures contract, leveraged foreign exchange contract, OTC derivative product, or an interest in any securities ... or collective investment scheme;**

(c) a person who, the authorized person has reasonable cause to believe **has acquired or disposed of any securities** ... whether directly or through a nominee, trustee or agent, and whether as beneficial owner, nominee, trustee, agent or otherwise;

(d) a licensed person ....

to furnish to him any of the information specified in subsection (2) within the time and in the form ....

(2) ... (a) ... name and aliases, address, telephone .... (b) ... quantity ... (c) ... instructions ...

[C.f. s.181 may not abrogate Privilege against self-incrimination in AA v SFC \[2019\] 2 HKLRD 16.](#)




[Return to Quick Guidance](#)

# A. The Source of the Power - SFO s.182

- s.182 Investigation by Commission

(1) Where –

Warning: criminal or civil? e.g., see Dual Regime 

(a) the Commission has reasonable cause to believe that **an offence** ... may have been committed;

(b) the Commission has reasonable cause to believe that **a person** may have engaged in **defalcation, fraud misfeasance or in connection with** –

(i) dealing in any securities or futures contract ...


(ii) the management of investment ...

(iii) offering or making any structured product ...

(iv) giving advice in relation to the allotment ... acquisition ... investment ...

(v) any transaction involving securities margin financing;

....

(c) the Commission **has reasonable cause to believe** that market misconduct may have taken place; 

(ca) ... **breach of disclosure requirement** ... (d) ... **not in the public interest**. ...

SFC is likely to be in possession in evidence or to have received a credible complaint!!!

(a) A person under investigation or

(b) A person has relevant information?

# A. The Source of the Power - SFO s.183

- **s.183 Conduct of investigation**

(1) The person under investigation or a person whom the investigator has reasonable cause to believe has in his possession **any record or document** which contains ... information relevant to an investigation under section 182 ... **shall -**

(a) **produce to the investigator**... within the time and at the place ...

(b) if required ... give the investigator an explanation or further particulars ...

(c) attend before the investigator at the time and place ...

(d) give the investigator all assistance ... reasonably able to give ...

(2) An investigator may ... require the person ... to verify ... by statutory declaration ...

(3) ... if ... not within his knowledge ... an investigator may ... require the person to verify ... by statutory declaration ...

....

(6) The Commission may, with the consent of the Secretary for Justice, cause a report under this section to be published.

How about passwords for email / digital device? You may have to comply with SFC's request ...

# A. The Source of the Power - SFO s.184

- **s.184 Offences in relation to investigations**

(1) A person who, **without reasonable excuse** –

(a) fails to produce ... under section 183(1)(a);

(b) fails to give an explanation ... under section 183(1)(b) ;

(c) fails to attend before the investigator ... under section 183(1)(c);

(d) fails to answer a question ... under section 183(1)(c);

(e) fails to comply with section 183(1)(d); or

(f) fails to comply with a requirement under section 183(2) or (3),

commits an offence ....

(2) A person –

(a) (i) ... purportedly complying ... 183(1)(a) ... **false or misleading** in a material particular; (ii) ... purportedly complying ... 183(1)(b) ... false or misleading in a material particular; (iii) ... purportedly answering ... 183(1)(c) ... false or misleading in a material particular; or (iv) ... purportedly responding ... 183(1)(d) ... false or misleading in a material particular and

(b) who knows ... is **reckless** ... commits an offence ....

[See s.184 Annotations](#) 

[See case law on Reasonable Excuse](#) 

# A. The Source of the Power - SFO s.184

- **s.184 Offences in relation to investigations**

(3) A person who (a) with intend to defraud ... (b) being an officer or employee of a corporation, with intend to defraud causes or allows the corporation .... commits an offence ...

(4) A person is not excused from complying with a requirement imposed on the person by an investigator under section 183 only on the ground that to do so might tend to incriminate the person.

- No right of silence !!!

- (also in [s.179\(16\)](#)). 

- May be shared with foreign authorities. See [s.186](#)   
and AA& EA v Securities and Futures Commission  
[2019] 3 HKC 187, [2019] 2 HKLRD 16

# B. Confidentiality – SFO s.378

- s.378 Preservation of secrecy, etc.

[See: Secrecy Provisions from SFO](#)

(1) Subject to subsection (13A), except in the performance of a function under, or for the purpose of carrying into effect or doing anything required or authorized under, any of the relevant provisions, a **specified person**— (Amended 6 of 2014 s. 39)

(a) shall preserve and aid in preserving secrecy with regard to any matter coming to his knowledge by virtue of his appointment under any of the relevant provisions, or in the performance of any function under or in carrying into effect any of the relevant provisions, or **in the course of assisting any other person in the performance of any function** under or in carrying into effect any of the relevant provisions;

(b) **shall not communicate any such matter to any other person;**

...

(2) Nothing in subsection (1) applies to –

...

(c) the disclosure of information for the purpose of seeking advice from, or giving advice by, **counsel or a solicitor** or other professional adviser acting or proposing to act in a professional capacity in connection with any matter arising under any of the relevant provisions;

.....

(7) While information is disclosed by a specific person .... (a) **the person to whom the information is so disclosed** ... shall not disclose the information ...

Two separate  
secrecy  
obligations:  
“sender” +  
“receiver”

It's unlikely that you will receive a cold-call from SFC for investigation!

# B. Confidentiality and LPP

- LPP distinguished from Confidentiality.
- Legal Profession Privilege in s.380

## 380. Immunity

...


(4) Subject to subsection (5), nothing in this Ordinance affects any claims, rights or entitlements which would, apart from this Ordinance, **arise on the ground of legal professional privilege.**

(5) Nothing in subsection (4) affects any requirement under this Ordinance **to disclose the name and address of a client of a legal practitioner** (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

- **Litigation privilege**
- **Legal advice privilege**
  - See *Citic Pacific Ltd v Secretary for Justice* (No. 2) [2015] 4 HKLRD 20 (CA) (next slide)



# B. Confidentiality and LPP

- **Citic Pacific Ltd v Secretary for Justice** – [Huge investment loss in Forex Derivatives in 2007](#) 
- CFI judge found: “The document relates to, or the communication includes, gathering of information from ‘third parties’ being employees of the plaintiff other than the Group Legal Department” were not protected by LPP.
- CFI judge also concluded: the client of the legal advisers was the Group Legal Department and the other employees of the plaintiff (including a Mr Ricky Choy who was a qualified solicitor in the Company Secretariat Department and had communicated with the external lawyers in respect of the matter) should be regarded as “third parties”.
- **Overtaken by Court of Appeal:**
  1. **LPP was a fundamental right entrenched by art.35 of the Basic Law** ... It was necessary in a society in which the restraining and controlling framework was built upon a belief in the rule of law that communications between clients and lawyers, whereby the clients were hoping for the assistance of the lawyers’ legal skills in the management of their affairs, should be secure against the possibility of any scrutiny from others.
  2. **An internal confidential document**, not being a communication with a third party, which was produced or brought into existence **with the dominant purpose that it or its contents be used to obtain legal advice was privileged from production.**
  3. **The client in the context of legal advice privilege was simply the corporation ...**

# C. Privilege against Self-Incrimination – Declaration under SFO s.187

## 187. 导致入罪的证据在法律程序中的使用

(1) ... (a) 获授权人... (b) 调查员 ... (c) 金管局调查员 ... 须确保该人已先获告知或提醒... 第 (2) 款的限制 ...

(2) 而该解释或陈述或说明、该解释或详情... 可能会导致该人入罪，而该人在提供或作出该解释或陈述... 前又声称如此，则该要求及该解释或陈述 ... 不得在法院进行的刑事法律程序中接纳为针对该人的证据 ... 除被控犯第 179(13)、(14) 或 (15)、184 或 184D 条或第 219(2) (a)、253(2) (a) 或 254(6) (a) 或 (b) 条或《刑事罪行条例》(第 200 章) 第 V 部所订罪行或被控犯作假证供罪，则就该等罪行而进行的刑事法律程序属例外

## 187. Use of incriminating evidence in proceedings

(1) ... (a) an authorized person ... (b) an investigator ... or (c) an MA investigator ... shall ensure that the person has first been informed or reminded ... the limitation by subsection (2) ....

(2) ... the explanation or statement ... or further particulars, or the answer ... might tend to incriminate the person and the person so claim before providing or making the explanation or statement ... then the requirement as well as the explanation or statement ... **shall not be admissible in evidence against the person** in criminal proceedings in a court of law other than those in .... Under section 179(13), (14) .... or ....

TO make s.187 Declaration before EACH and EVERY Question!!!!

# C. Dual Regimes under SFO – both Civil and Criminal Proceedings\*

- The same facts may give rise to both market misconduct conduct and criminal offences.
- See SFO Cap 571 -> Part XIII (ss.245 ~ 284) -> Division 1 -> s.245:
- [DOJ's consent is needed under Part XIII](#)

“[market misconduct](#) (市場失當行為) means :

- (a) insider dealing;
- (b) false trading within the meaning of section 274;
- (c) price rigging within the meaning of section 275;
- (d) disclosure of information about prohibited transactions within the meaning of section 276;
- (e) disclosure of false or misleading information inducing transactions within the meaning of section 277; or
- (f) stock market manipulation within the meaning of section 278

- See SFO Cap 571 -> Part XIV “Offences Relating to Dealings in Securities and Futures Contracts, etc. (ss. 285 ~ 307)
- s.291 – Offence of inside dealing
- s.295 – Offence of false trading
- s.296 – Offence of price rigging
- s.297 – Offence of disclosure of information about prohibited transaction
- s.298 – Offence of disclosure of false or misleading information inducing transactions
- s.299 – Offence of stock market manipulation

\* In addition to power of disciplinary actions.

[Return to s.182](#)

# C. No Double Jeopardy

- **Section 307** No further proceedings after Part XIII market misconduct proceedings

(1) Notwithstanding anything in this Part, no criminal proceedings may be instituted against any person under this Part in respect of any conduct if— (Amended 9 of 2012 s. 26)

(a) proceedings have previously been instituted against the person under section 252 in respect of the same conduct; and

(b) (i) those proceedings remain pending; or

(ii) by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person under section 252 in respect of the same conduct.

(2) Subsection (1) does not apply in relation to any proceedings instituted under section 252 without the consent of the Secretary for Justice under section 252A(1). (Added 9 of 2012 s. 26)

- **Section 283** No further proceedings after Part XIV criminal proceedings

# C. Privilege against Self-Incrimination in Criminal Proceedings

- In *Lee Fuk Hing v HKSAR* (2004) 7 HKCFRA 600, 17 December 2004
  - There was a right to silence, in consequence of which suspected persons in Hong Kong should be — and routinely were — given a caution informing them in unqualified terms that they need not speak. In the whole of these circumstances, it was inappropriate in Hong Kong to use a person's silence against him in any way. A person's right of silence would otherwise become a possible source of entrapment.
- In *Secretary for Justice v Lam Tat Ming & Another* (2000) 3 HKCFAR 168, 26 June 2000
  - **If the confession was involuntary, it was inadmissible** and must be excluded; the court had no discretion in such a case. If the confession was voluntary, it was admissible, but was then subject to the court's residual discretion to exclude it.
- In *Li Defan & Another v HKSAR* (2002) 5 HKCFAR 320, 14 March 2002
  - In an appropriate case, a judge had the power to comment that the jury might, but need not, consider that the prosecution case on a particular issue relevant to guilt, **was strengthened by the absence of the accused** from the witness box. However, those cases in which such comment was permissible and, even if permissible, necessary, would be **exceptional and each case must depend upon its own facts.**

# C. Privilege against Self-Incrimination in Civil Proceedings

- In *Pacific Electric Wire & Cable Co Ltd v Texan Management Ltd* [2013] HKCU 2163 (unreported, CACV 90-96/2012, 12 September 2013), [2013] HKCA 501 – Para 106

(1) In **certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.**

(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: **in other words, there must be a case to answer on that issue.**

(4) If the reason for the witness's absence or silence satisfies the court, then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.”

# C. Koon Wing Yee v Inside Dealing Tribunal (1 of 3)

- *Koon Wing Yee v Inside Dealing Tribunal (2008) 11 HKCFAR 170, 18 March 2008*
- **Facts:**

*Xs were investigated for possible insider dealing. Although Xs claimed the privilege against self-incrimination, they were compelled to answer questions under first, s.33(4) and 33(6) of Securities and Futures Commission Ordinance (Cap.24) (SFCO) (repealed), before the commencement of proceedings; and second, under s.17 of the Securities (Insider Dealing) Ordinance (Cap.395) (SIDO) (repealed), before the Insider Dealing Tribunal (the Tribunal). The Tribunal, applying the civil standard of proof, found Xs guilty of insider dealing. It imposed on Xs: orders for their disqualification under s.23(1)(a) of SIDO; orders for disgorgement of their gain under s.23(1)(b); penalties under s.23(1)(c); and orders that they pay the inquiry's expenses under s.27. The Court of Appeal (CA) allowed Xs' appeal.*
- **One issue before the CFA: Whether breach of privilege against self-incrimination and/or right to silence?**

# C. Koon Wing Yee v Inside Dealing Tribunal (2 of 3)

- *Koon Wing Yee v Inside Dealing Tribunal (2008) 11 HKCFAR 170, 18 March 2008*
  - The privilege against self-incrimination was an integral part of the right to a fair trial under art.10, which was closely linked to the presumption of innocence. The art.10 privilege extended to answers compulsorily obtained before the commencement of criminal proceedings (HKSAR v Lee Ming Tee & Another (2001) D 4 HKCFAR 133, Saunders v United Kingdom (1997) 23 EHRR 313 applied). (See paras.81–82.)
  - ... s.33(4) and 33(6) of SFCO violated art.10 even though the answers were obtained before the issue of the “Salmon letters”, which might be regarded as commencement of the proceedings. Further, s.33 did not satisfy the test of proportionality: s.33 authorised the use of compulsorily obtained answers to questions which went to the very core of a case of insider dealings and so constituted the complete abrogation of the right to silence; **the direct use prohibition was limited to criminal proceedings, and questions and answers could be used directly, inter alia, in the Tribunal;** and there was nothing to show that a direct use prohibition on such answers which excluded use in the Tribunal would not have been enough to achieve the Legislature’s rational and legitimate aim to eliminate insider dealing.



# C. Koon Wing Yee v Inside Dealing Tribunal (3 of 3)

- *Koon Wing Yee v Inside Dealing Tribunal (2008) 11 HKCFAR 170, 18 March 2008*
- *Proceedings before the IDT under the Securities (Inside Dealing) Ordinance Cap. 398 (repealed) were criminal proceedings, notwithstanding that they were intended by legislature to be civil proceedings.*
- *What is a criminal charge?*
  - *(a) The classification of the offence under domestic law*
  - *(b) The nature of the offence; and*
  - *(c) The nature and severity of the potential sanctions.*
- *(b) and (c) carry substantially greater weight than (a).*
- *In Koon Wing Yee case, the sanctions available to IDT under section 23(1)(c) of the Ordinance include a financial penalty up to three times the profit made or loss avoided ... This was comparable to a fine, and its purpose was punitive and deterrent. The proceedings therefore involved the determination of a criminal charge ....*

# C. Derivative Use of “Inadmissible” Evidence

- In *HKSAR v Lee Ming Tee (2001) 4 HKCFAR 133, [2001] HKCU 1460*
  - Where the privilege was abrogated in its entirety, the scope of its substituted protection, if any, became a matter of statutory construction. As a matter of construction, **where the use prohibition conferred in place of an abrogated privilege was limited, other use was inferentially permitted**. The prohibition in s.145(3A) was framed in limited terms. It prohibited use of questions and answers obtained in the course of an inspection as evidence in criminal proceedings against the person giving the answers. It therefore inferentially permitted derivative use of the questions and answers. Other provisions in the Ordinance favoured a construction opposed to any derivative use immunity. **Further, there was no free-standing common law concept of derivative use immunity, independent of the privilege.** Accordingly, as a matter of statute and common law, the prosecution was entitled to make derivative use of the materials handed to the police. (see **Headnote (3)**)
- **Hence, there is NO restriction on the “derivative use” of such material to:** (c.f. [s.255 in MMT](#))
  - Develop new lines of enquiry;
  - Identify sources of independent evidence;
  - Assist in formulating applications for search warrants.
- **The law has always drawn a distinction between (inadmissible) compelled answers and (admissible) derivative evidence. See Para 77 in A v Commissioner of ICAC (2012) 15 HKCFAR 362**
- **C.f. . The general rule in common law: no exclusion of the “fruit of the poisonous tree”:**

# C. Obligation of Self-Reporting

- Code of Conduct – Para 12.5 – Notification to the Commission

A licensed or registered person, as a firm, should report to the Commission immediately upon the happening of any one or more of the following:

(a) **any material breach, infringement of or non-compliance with any law, rules, regulations, and codes** administered or issued by the Commission, the rules of any exchange or clearing house of which it is a member or participant, and the requirements of any regulatory authority which apply to the licensed or registered person, or where it suspects any such breach, infringement or non-compliance whether by:

(i) itself; or

(ii) persons it employs or appoints to conduct business with clients or other licensed or registered persons,

giving particulars of the breach, infringement or non-compliance, or suspected breach, infringement or non-compliance, and relevant information and documents;

...

(f) any material breach, infringement or non-compliance of **market misconduct provisions set out in Part XIII or Part XIV of the Securities and Futures Ordinance** that it reasonably suspects may have been committed by **its client**, giving particulars of the suspected breach, infringement or non-compliance and relevant information and documents ...

**Q: Self-incrimination? A waiver?**

# D. Useful Checklist

## Before attending the Statutory Interview

- Understand the Privilege against Self-Incrimination?
- Remember to claim protection under s.187? (“I wish to make a claim that my answer may tend to incriminate me, for the purpose of claiming protection under s.187 of the SFO...”)
- Prepare to give the best possible answer? (exculpatory facts, mitigating facts, legal defence etc...)
- Understand that “providing answers which **are NOT TRUE, or are FALSE, or MISLEADING** in any material particular will constitute a serious criminal offence (see [s.184](#)).
- Arrange legal advisor(s) to accompany?
- Understand the process might be a long journey (of many years)?

## During the Interview

- To make an s.187 Claim before answering EACH and EVERY question.
- To listen very carefully to each and every question.
- To only answer the specific question from the investigator – Do not provide more information than is necessary.
- To answer questions by reference to your personal knowledge – Do not speculate.
- If provided with a document, read carefully and consider: (i) who? (ii) when? (iii) what?
- If in doubt, ask a break for private consultation with your lawyers.

# D. Employment Issues

- Can you ask the Employer to hire a lawyer for you?
  - Fact-sensitive
  - Even if there might be a lawyer for YOU, does the lawyer have any conflict of interest in acting for you?
  - Do you have any contractual arrangement in place? Say, indemnities, director's liability insurance?
  - What is the scope of the coverage?
  - Time limit?
  - Excluded liabilities?
  - Bonus? Salary Tax?
  - Duty to cooperate in any internal investigation?
    - Common law duty in *Associated Dominion Assurance Society Pty Ltd v Andrew* (1949) 49 SR (NSW) 351
    - “a duty lies upon an employee in general terms to give information to his employer such as is within the scope of his employment and which relates to the mutual interest of employer and employee ....”

# Thank You!



杜劲松说

微信扫描二维码，关注我的公众号



Duke Du

中国香港 中西区



扫一扫上面的二维码图案，加我为朋友。