

Court dismisses judicial review application against SFC

4 May 2012

The Court of First Instance has dismissed an application for judicial review by a financial institution (named 'X' under an anonymity order) which is currently the subject of a disciplinary action by the Securities and Futures Commission (SFC) (Note 1).

The application for judicial review was concerned principally with decisions made by the SFC in the disciplinary proceedings to refuse disclosure of certain documents which X, through its solicitors, had requested. These documents included the referral of the case to the SFC by the Hong Kong Monetary Authority (HKMA) and various internal documents and working papers created by staff of the HKMA (the HKMA documents) (Note 2).

The SFC refused disclosure of the HKMA documents because they did not constitute or contain any relevant evidence. All relevant evidence, including evidence relied on by the SFC and evidence that might disprove the SFC's concerns or assist X's case, had been disclosed or made available to X.

The Court of First Instance dismissed X's application and found there was nothing wrong in the SFC's decision not to disclose the HKMA documents to X (Note 3).

The SFC's disciplinary proceeding against X is continuing.

End

Notes:

1. As the disciplinary proceedings have not been concluded, the judicial review proceedings were not held in open court and the financial institution was granted an anonymity order.
2. The SFC is able to commence disciplinary proceedings against persons licensed by or registered with the SFC for misconduct. The disciplinary proceedings are brought under Part IX of the Securities & Futures Ordinance (Cap 571). A decision made by the SFC to impose a disciplinary sanction on a person under this process is not final or operative unless and until the person has had a chance to seek a hearing before an independent tribunal, the Securities & Futures Appeals Tribunal, which is chaired by a High Court judge. The SFC commenced disciplinary proceedings against X on 25 May 2011 when it issued a Notice of Proposed Disciplinary Action to X containing the SFC's preliminary views as to X's conduct, reasons for those views and the proposed sanctions. The Notice sought X's response pending a decision to be made by the SFC.
3. On 17 April 2012, the Court of First Instance handed down its judgment and ordered that it be made public subject to hearing the parties in writing within 14 days. The judgment was published today and a copy is available on the Judiciary's website (www.judiciary.gov.hk).

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