

SFC suspends former responsible officer of ICBCI Securities for eight months for failures related to IPO shares subscription

10 Dec 2014

The Securities and Futures Commission (SFC) has suspended the licence of Mr Dick Ma Tor Fuk for eight months from 5 December 2014 to 4 August 2015 for failures in relation to his role in the initial public offering of [Powerlong Real Estate Holdings Limited](#) (Powerlong) in 2009 (Notes 1 & 2).

Ma was formerly a responsible officer of ICBC International Securities Limited (ICBCI Securities) which acted as one of the joint lead managers in the listing of Powerlong.

An SFC investigation found that Ma, at the material time, had failed to:

- ensure that all placees referred by Powerlong for the subscription of its shares allotted through its listing (the Offer Shares) were independent from Powerlong before making a declaration to The Stock Exchange of Hong Kong Limited (SEHK) on behalf of ICBCI Securities to that effect (Note 3);
- conduct customer due diligence on the placees and satisfy himself on reasonable grounds that the subscriptions originated from them; and
- diligently supervise his subordinate in conducting customer due diligence and be satisfied on reasonable grounds that the subscriptions originated from the placees.

The SFC found that the placees were referred by Powerlong to ICBC International Capital Limited (ICBCI Capital), which in turn referred them to its affiliate ICBCI Securities to open accounts for the placees' subscription of the Offer Shares. Ma accepted the subscriptions without conducting or causing know-your-client due diligence as required under the Code of Conduct, failing to find out their financial situation or confirm their independence from Powerlong (Notes 4, 5 & 6).

Ma also failed to perform ongoing scrutiny to ensure that the subscriptions were consistent with his knowledge of the placees' financial situation.

In addition, the SFC found that Ma signed a confirmation that the placees were all independent – as required by the SEHK under the Listing Rules – despite knowing that he did not have sufficient evidence to make the confirmation.

End

Notes:

1. Ma was accredited to ICBC International Securities Limited between November 2008 and February 2011 and is licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity. He is currently not accredited to any licensed corporation.
2. Powerlong was listed on the Main Board of The Stock Exchange of Hong Kong Limited in 2009.
3. "Placees" refers to investors who subscribed for the offer shares via the international tranche.
4. ICBCI Capital was one of the joint sponsors and bookrunners in the initial public offering of Powerlong in 2009.
5. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission
6. ICBCI Securities and ICBCI Capital were reprimanded and fined in a separate disciplinary action. Please see the SFC's press release dated 21 May 2014.

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

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STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has suspended the licence of Mr Ma Tor Fuk Dick (**Ma**) as a representative in all regulated activities and the approval for him to act as a responsible officer for 8 months pursuant to section 194(1) of the Securities and Futures Ordinance (**SFO**). Ma is licensed as a representative under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) regulated activity. He was accredited to ICBC International Securities Limited between November 2008 and February 2011. Ma is currently not accredited to any licensed corporation.

Summary of facts

2. In light of an anonymous complaint which alleged that ICBC International Capital Limited (**ICBCI Capital**), one of the joint sponsors and bookrunners in the listing of Powerlong Real Estate Holdings Limited (**Powerlong**) in 2009, and ICBC International Securities Limited (**ICBCI Securities**), one of the joint lead managers in such listing (collectively **ICBCI**), had procured nominee accounts to subscribe for shares allotted through Powerlong's listing and that such subscriptions were financed by Powerlong, the SFC conducted an investigation into the process adopted by ICBCI in underwriting such shares (the **Offer Shares**).
3. The SFC's investigation reveals that Ma has failed to:-
 - (a) ensure that all placees referred by Powerlong (the **Placees**) were independent from Powerlong before submitting a Marketing Statement (**Form D**) on behalf of ICBCI Securities to the Stock Exchange of Hong Kong Limited (**SEHK**) declaring that none of the shares of Powerlong had been placed with its directors, their associates, any existing shareholders or nominees of any of the foregoing in accordance with rule 5 in Appendix 6 of the Rules Governing the Listing of Securities on the SEHK (**Listing Rules**), in breach of GP 2 and paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**);
 - (b) conduct customer due diligence on the Placees despite knowing that they were referred by Powerlong to open accounts with ICBCI Securities for the purpose of subscribing for the Offer Shares in its placement, in breach of paragraph 5.1 of the Code of Conduct;
 - (c) satisfy himself on reasonable grounds about the identity of the Placees

as to whether they were ultimately responsible for originating the instructions in relation to their subscriptions given their apparent lack of capability to finance their subscriptions, in breach of paragraph 5.4 of the Code of Conduct; and

- (d) diligently supervise his subordinate in carrying out her duties set out in sub-paragraphs (b) and (c) above, in breach of paragraph 4.2 of the Code of Conduct.

Failing to ensure placee independence before submitting Form D to the SEHK

- 4. Rule 9.11(35) of the Listing Rules requires the lead broker to file Form D and a placee list with the SEHK, confirming, among other things, the number of placees, the number of shares placed and the independence of the placees.
- 5. In accordance with rule 9.11(35) of the Listing Rules, Ma on behalf of ICBCI Securities signed and filed Form D which was dated 5 October 2009.
- 6. In fact, Form D and a letter vouching placee independence were signed and filed by Ma with the SEHK even though he had not received independence confirmations from all of the Placees at the time of filing.
- 7. The SFC is of the view that Ma failed to ensure that all Placees were independent from Powerlong before submitting Form D to the SEHK declaring that none of the Offer Shares had been placed with the nominees of Powerlong's directors or their associates or any existing shareholder, in breach of GP2 and paragraph 12.1 of the Code of Conduct.

Failing to conduct customer due diligence and perform ongoing scrutiny, and supervising subordinate to do the same

- 8. Paragraph 5.1 of the Code of Conduct provides that a licensed person should take all reasonable steps to seek information and establish from its clients their financial situation, investment experience and investment objectives. Under paragraph 4.2 of the Code of Conduct, a licensed person should ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.
- 9. The ICBCI Group¹ Compliance Manual contained relevant provisions regarding the obtaining of such information from clients. Staff members of ICBCI Securities were expected to take reasonable steps to ensure that know-your-client requirements (**KYC**) in respect of clients of the ICBCI Group are satisfied when opening client accounts.
- 10. Notwithstanding the above requirements, Ma and his subordinate considered that since the Placees, who were friends and families introduced by Powerlong, were referred by ICBCI Capital, ICBCI Capital should have been satisfied with the background of such Placees before referring them to ICBCI Securities. As a result, no KYC checks of the Placees were conducted by Ma and his subordinate.

¹ The ICBCI Group comprises various entities, including but not limited to ICBCI Capital and ICBCI Securities.

11. Further, neither Ma nor his subordinate were aware of the regulatory requirements or the requirement set out in the Compliance Manual to obtain information in respect of a client's financial situation, investment experience and investment objectives. As such, no such information was obtained.
12. Due to insufficient demand, the Offer Shares were re-priced. Upon Powerlong's request, ICBCI Capital informed ICBCI Securities that the level of margin financing would have to be increased so that the subscription sizes of some Placees could be boosted in order to prevent Powerlong's listing from falling through. Subsequently, orders of some Placees suddenly surged by as much as tenfold.
13. Although such subscriptions far exceeded the declared net worth of some Placees, Ma and his subordinate failed to perform ongoing scrutiny of the transactions in these Placees' accounts. Further, they took the view that the Placees may not necessarily be allocated with the number of Offer Shares which they had subscribed for. As it turned out, some Placees were allocated with Offer Shares in an amount of up to a possible 100 times their declared net worth.
14. Without having firstly, conducted KYC checks or ascertained clients' financial situation and secondly, supervised his subordinate in doing the same which was in breach of the Compliance Manual and paragraph 5.1, as well as paragraph 4.2 of the Code of Conduct respectively, subscriptions for Offer Shares under the names of clients, including the Placees were accepted by Ma and his subordinate.

Failing to satisfy oneself on reasonable grounds that the Placees were ultimately responsible for originating the instructions in relation to their subscriptions, and supervising subordinate to do the same

15. Paragraph 5.4 of the Code of Conduct provides that a licensed person should satisfy himself on reasonable grounds about the identity of the placees referred by an issuer as to whether they were ultimately responsible for originating the instructions.
16. After Powerlong referred the Placees to ICBCI Capital, which made arrangements with ICBCI Securities to open accounts for them for the subscription of Offer Shares, there was a sudden boost in subscriptions of four strategic Placees.
17. Some of the Placees appeared not to have the financial capability to settle their allocation of Offer Shares since their subscriptions and allocations were greater than their declared net worth. Nevertheless, Offer Shares were booked into accounts under their names which triggered massive debit balances.
18. Ma failed to conduct KYC to satisfy himself on reasonable grounds that these Placees were the persons ultimately responsible for originating the instructions and that they had the financial capability to pay for their subscriptions; and to properly supervise his subordinate to do so, in breach of paragraphs 5.4 and 4.2 of the Code of Conduct.

Conclusion

19. The SEHK relies on the lead broker/distributor to ensure independence of placees. A lead broker/distributor should not give SEHK a confirmation that all placees are independent before taking proper steps to satisfy itself that they are indeed independent. KYC is a fundamental duty of a licensed person and it is a continuing duty. Further customer due diligence should be performed whenever new information about the customer comes to light. Ma's conduct falls short of the standard expected of him.
20. In coming to the decision to take disciplinary action set out in paragraph 1 against Ma, the SFC has taken into account Ma's personal circumstances, including his wife's serious illness, and the fact that Ma has no previous disciplinary record.