



SFC's response to the Hon Kenneth Leung's enquiries

We refer to the letter dated 7 January 2013 from the Clerk to the Legislative Council Panel on Financial Affairs (the Panel) to the Secretary for Financial Services and the Treasury, under which it is noted that the Panel members would like to discuss policy issues concerning the regulation of and licensing regime for corporate finance advisers and the enforcement actions taken by the Securities and Futures Commission (the SFC) against unlicensed parties, at the Panel meeting to be held on 4 February 2013. Please find below our response to these issues.

Regulation of and licensing regime for corporate finance advisers

Under the Securities and Futures Ordinance (the SFO), the SFC is empowered to license corporations and individuals. From a licensing perspective, the key factors that would trigger a licensing obligation are whether a person is carrying on a business in a *regulated activity* (as defined in Parts 1 and 2 of Schedule 5 of the SFO) or holding himself out as carrying on such business in a regulated activity, and if so, whether such business is carried on in Hong Kong.

Under the SFO, any corporation which carries on in Hong Kong a business in giving advice in respect of, among other things, an application for the listing on the SEHK of any securities, compliance with the Listing Rules, matters falling within the ambit of the Codes on Takeovers and Mergers and Share Repurchases, or any offer to dispose of securities to or acquire securities from the public, or advising listed corporations concerning corporate restructuring in respect of securities, is required to hold a licence for Type 6 regulated activity (advising on corporate finance). This is subject to limited exemptions, for example, the corporate finance advice is given by a corporation solely to its wholly owned subsidiary or its holding company which holds all its issued shares.

Enforcement actions taken against unlicensed parties

Under section 114 of the SFO, it is an offence for a person to carry on business in a regulated activity or for a person to hold himself out as carrying such a business unless the person is licensed by the SFC or authorised as a financial institution under section 119 or permitted to provide automated trading services under section 95.

The SFC maintains a program for detecting and taking action against unlicensed activity. In the last 3 years, the SFC has initiated over 90 investigations into suspected unlicensed activity leading to 19 criminal prosecutions in which 16 persons have been convicted and 2 have been acquitted. Another case is currently on foot and pending a hearing. All prosecutions have been the subject of media releases issued by the SFC on their completion. These cases include cases both where the person was charged with carrying on regulated activities without a license and cases where the allegation focussed on whether the person had held out he was carrying on such a business. A table of these prosecutions is attached.

(a) Concluded litigations

Item	Defendants	Case Ref./ Case Name	Offence	No. of summons issued	Date of summons Issued	Result / Status	Date of conviction/ Court	No. of summons convicted	Fine (\$)	Costs(\$)
1	MA Siu Kwan Alex	501/EN/305 Hong Kong Business Agency Group Limited	S114(1)(b) of SFO, S114(8)(b) of SFO, S390(1) of SFO (As officer aiding and abetting a corporation without reasonable excuse to hold itself out as carrying on a business of dealing in securities without a licence)	1	9/9/2010	PG	07/10/2010 Eastern	1	5,000	12,500
2	Hong Kong Business Agency Group Limited	501/EN/305 Hong Kong Business Agency Group Limited	S114(1)(b) of SFO, S114(8)(b) of SFO (Without reasonable excuse holding out as carrying on a business of dealing in securities without a licence)	1	9/9/2010	PG	07/10/2010 Eastern	1	5,000	12,500
3	LEE Chi Ying	502/EN/177 Lee Chi Ying of CITIC Securities Brokerage (HK) Limited	S114(3)(a) of SFO, S114(9) of SFO (Performing a regulated function in relation to a regulated activity carried on as a business, without a licence)	1	20/10/2010	PG	25/11/2010 Eastern	1	5,000	6,390
4	YEUNG Hoi Fan	503/EN/160 hk.myblog.yahoo.com/futureswin123	S109(1)(a) of SFO (Issuing advertisements relating to carrying on regulated activities without a licence)	4	8/2/2011	PG	10/03/2011 Eastern	4	6,000	10,000
	YEUNG Hoi Fan	503/EN/160 hk.myblog.yahoo.com/futureswin123	S114(1)(a) of SFO, S114(8) of SFO (Carrying on a business of advising on futures contracts without a license)	1	8/2/2011	PG	10/03/2011 Eastern	1	1,500	-
5	HO Ka Ho	503/EN/160 hk.myblog.yahoo.com/futureswin123	S109(1)(a) of SFO (Issuing advertisements relating to carrying on regulated activities without a licence)	4	8/2/2011	PG	10/03/2011 Eastern	4	6,000	-
	HO Ka Ho	503/EN/160 hk.myblog.yahoo.com/futureswin123	S114(1)(a) of SFO, S114(8) of SFO (Carrying on a business of advising on futures contracts without a license)	1	8/2/2011	PG	10/03/2011 Eastern	1	1,500	10,000
6	Billion Global Asset Management Limited	503/EN/157 Billion Global Asset Management	S114(1)(b) of SFO, S114(8) of SFO (Holding out as carrying on a business in asset management without a licence)	1	14/2/2011	Found Guilty	06/09/2011 Eastern	1	10,000	20,002
7	CHAN Chun Wai	503/EN/157 Billion Global Asset Management	S114(1)(b) of SFO, S114(8) of SFO, S390(1) of SFO (Holding out as carrying on a business in asset management without a licence)	1	14/2/2011	Found Guilty	06/09/2011 Eastern	1	5,000	10,001
	CHAN Chun Wai	503/EN/157 Billion Global Asset Management	S109(1)(a) of SFO (Issuing an advertisement relating to carrying on regulated activities without a licence)	1	14/2/2011	Found Guilty	06/09/2011 Eastern	1	5,000	10,001
8	LAU Kam To	501/EN/318 Lau Kam To and website: andylaupower.xanga.com	S114(1)(a) of SFO, S114(8) of SFO (Carrying on a business in a regulated activity namely advising on securities, without a licence)	1	2/3/2011	PG	20/04/2011 Eastern	1	2,000	15,000
	LAU Kam To	501/EN/318 Lau Kam To and website: andylaupower.xanga.com	S109(1)(a) of SFO (Issuing advertisements relating to carrying on of regulated activities without a licence)	3	2/3/2011	PG	20/04/2011 Eastern	3	3,000	-
9	YANG Kane	503/EN/153 Eminent Investments (Asia Pacific) Limited	S114(1)(b) of SFO, S114(8) of SFO, S390 of SFO (Holding out as carrying on a business in regulated activities without a license)	1	22/3/2011	PG	28/04/2011 Eastern	1	3,000	26,417
10	Eminent Investments (Asia Pacific) Limited	503/EN/153 Eminent Investments (Asia Pacific) Limited	S114(1)(b) of SFO, S114(8) of SFO (Holding out as carrying on a business in regulated activities without a license)	1	22/3/2011	PG	28/04/2011 Eastern	1	5,000	26,417
11	LAW Look Tend	500/EN/742 Leung Man Ki	S114(1)(a) of SFO (Carrying on a business in a regulated activity namely advising on securities, without a licence)	1	27/6/2011	PG	26/09/2011 Eastern	1	10,000	2,701

Prosecutions related to unlicensed activities from 2 Jan 2010 to 8 Jan 2013 (by date of summons issued)

Annex

	LAW Look Tend	500/EN/742 Leung Man Ki	S109(1)(a) of SFO (Issuing advertisements relating to carrying on of regulated activities without a license)	6	27/6/2011	PG	26/09/2011 Eastern	6	12,000	16,207
12	LEUNG Bing Yiu	500/EN/742 Leung Man Ki	S114(1)(a) of SFO (Carrying on a business in a regulated activity namely advising on securities, without a licence)	1	27/6/2011	PG	26/09/2011 Eastern	1	25,000	18,909
13	LO Kam Chung	503/EN/161 Peter Sun and website www.petersun.kinsuneng.com	S114(1)(a) of SFO, S114(8) of SFO (Carrying on a business in a regulated activity namely advising on securities, without a licence)	1	17/10/2011	PG	15/12/2011 Eastern 11/05/2012 Court of First Instance	1	10,000 and 80 hours of community service to be completed within 12 months]	25,652
14	LITTLEWOOD Simon	501/EN/298 Golden Bridge Merchant Bank and Simon Littlewood	S114(3)(b) of SFO, S114(9)(b) of SFO (Without reasonable excuse holding out as performing regulated functions in relation to regulated activities carried on as a business without a licence)	1	17/10/2011	PG	03/11/2011 Eastern	1	5,000	37,360
15	Universal Insurance Consultants and Brokers Limited	500/EN/779 Tracy Li Chui Chun and Lau Chun Yin	S114(3)(a) of SFO, S114(9) of SFO, S89 of CPO (Aiding and abetting the performance of a regulated function in relation to a regulated activity carried on as a business, without a licence)	2	8/6/2012	Acquittal	31/12/2012 Eastern	-	-	-
16	AU Mei Chun	500/EN/779 Tracy Li Chui Chun and Lau Chun Yin	S114(3)(a) of SFO, S114(9) of SFO, S89 of CPO (Aiding and abetting the performance of a regulated function in relation to a regulated activity carried on as a business, without a licence)	2	8/6/2012	Acquittal	31/12/2012 Eastern	-	-	-
17	LAU Chun Yin	500/EN/779 Tracy Li Chui Chun and Lau Chun Yin	S114(3)(a) of SFO, S114(9) of SFO (Performing a regulated function in relation to a regulated activity carried on as a business, without a licence)	1	8/6/2012	PG	16/08/2012 Eastern	1	10,000	7,494
18	CHAU Chi Ho	500/EN/779 Tracy Li Chui Chun and Lau Chun Yin	S114(3)(a) of SFO, S114(9) of SFO (Performing a regulated function in relation to a regulated activity carried on as a business, without a licence)	1	8/6/2012	PG	16/08/2012 Eastern	1	10,000	7,494
			Total:					34	145,000	275,045

(b) Ongoing litigation

Item	Defendants	Case Ref./ Case Name	Offence	No. of summons issued	Date of summons Issued	Result / Status	Date of conviction/ Court	No. of summons convicted	Fine (\$)	Costs(\$)
1	Guardian Trust Company (Asia) Limited	501/EN/329 Guardian Trust Company (Asia) Limited	S114(1)(b) of SFO - Securities & Futures Ordinance, S114(8) of SFO - Securities & Futures Ordinance (Holding out as carrying on a business of dealing in securities and asset management)	1	18/5/2012	Adjourned plea				