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SFC Obtains Injunction in Insider Dealing Investigation

The High Court has ordered that an interim injunction obtained by the SFC on 27 July 2007 should continue until further order. The interim injunction freezes the disposal of \$46,595,033 by a person who is under investigation by the SFC for suspected insider dealing (Note 1).

The judgement was handed down on 29 November 2007 and published today on the Judiciary website at www.judiciary.gov.hk (Court reference: HCMP 1407/2007).

The orders were made against "A", a person whose name is suppressed by order of the court.

The SFC informed the court that "A" bought several million shares in CITIC Resources Holdings Ltd (CITIC Resources), a Hong Kong listed company and a smaller number of shares in Chinatrust Financial Holdings Co Ltd, a Taiwanese listed company between February and April this year. "A", an SFC licensee, was working in Hong Kong for an SFC licensed firm at the time (the firm's name has also been suppressed by order of the court). At the time the firm held confidential information concerning the shares which were purchased by "A". Accordingly, the SFC commenced an investigation into suspected insider dealing in relation to the Hong Kong listed shares on 20 June 2007.

The SFC applied to freeze the money because of fears that, unless stopped by court order, he is likely to transfer his assets, including the profits of his trading, out of Hong Kong which would frustrate any disgorgement or financial penalty orders if a finding is made that he was insider dealing (Note 2). The SFC's concerns were based on a number of matters including:

- neither "A" nor his wife are employed any longer in Hong Kong;
- "A" told the SFC he is currently residing with his parents in a military residence in Beijing (he has been out of Hong Kong since 16 July 2007 apart from one short trip back to Hong Kong) (Note 3);
- "A" had been trying to transfer or sell his liquid assets and refused to enter into any voluntary arrangements concerning his assets pending the completion of the investigation.

"A" applied to the High Court to dismiss or vary the interim injunction and the case was heard by The Hon Madam Justice Kwan on 28 November 2007. The court today published reasons for the ruling which can be found at www.judiciary.gov.hk (Court reference: HCMP 1407/2007) (Note 4).

In the decision, the court found that section 213 of the Securities and Futures Ordinance

"...does empower the court to make an order to restrain the disposal of property where it appears to

the SFC that a person has breached the provisions of the Ordinance and would come under a potential financial liability, whether this be disgorging of profits or a penalty in a disciplinary action. The value of the property to be subject to restraint would be by reference to the anticipated action that may be taken regarding the breach, and may include both the elements of profits and penalty, as these consequences are not mutually exclusive.” (at para 23)

This is the first time the SFC has asked the court for orders of this kind in relation to an ongoing investigation into insider dealing.

The Court has also recently rejected challenges by “A” in two separate proceedings against the SFC’s investigation (Note 5).

The SFC will not disclose any further details about the investigation, which is continuing.

Ends

Notes:

1. The original application made by the SFC on 27 July 2007 was made in chambers (not open to the public) and could not be publicised. The latest ruling, which was made on 29 November 2007, was made in chambers (open to the public) and the reasons were published today.
2. The SFC calculated the amount of \$46,595,033 by assessing the notional profit of his suspected insider trading and multiplying it by two taking into account that, because “A” is licensed by the SFC, he may be liable, under section 194 of the SFO, to a penalty of up to three times the profit and also liable to a profit disgorgement order imposed by the Market Misconduct Tribunal. The notional profit is calculated by reference to the price of the shares when purchased by “A” and the increase in share price that can be attributed to the inside information (taking into account the actual increase in share price after the inside information is announced to the market). An insider dealer may also be liable to criminal prosecution in which the maximum penalty is \$10,000,000 and/or 10 years in jail. However, generally a person cannot be prosecuted for a criminal offence if they are outside the jurisdiction of Hong Kong’s court system.
3. On one occasion, since 16 July 2007, “A” returned to Hong Kong to be interviewed by the SFC. However, he refused to answer any questions on the grounds the SFC was not permitted to audio record his answers. This objection was rejected by the High Court last month (see SFC [press release dated 2 November 2007](#) “High Court Affirms the SFC’s Power to Audio Record Investigation Interviews”).
4. The orders that have been made are only interim orders. They do not indicate that the court has made any final determination that “A” has committed any offence or contravention.
5. Please see SFC [press releases dated 18 December 2007](#) “Court Dismisses Another Challenge to SFC Investigation” and dated [2 November 2007](#) “High Court Affirms the SFC’s Power to Audio Record Investigation Interviews” for details.