

## Licenseses disciplined for forgery and sponsor failures

11 Oct 2011

The Securities and Futures Commission (SFC) has prohibited Mr Wan Ten Lok (also known as Philip Wan) and Mr Sunny Yan Kwok Ting from re-entering the industry, for six years from 7 October 2011 to 6 October 2017 and four years from 7 October 2011 to 6 October 2015 respectively, following the determination of the Securities and Futures Appeals Tribunal (SFAT) (Notes 1 & 2).

Wan, as principal supervisor, and Yan, as his assistant, were accredited to Core Pacific-Yamaichi Capital Limited (CPYC) which was the sponsor for the listing of Tungda Innovative Lighting Holdings Limited (Tungda) on the Growth Enterprise Market (GEM) board in July 2002. Afterwards, CPYC continued to act as Tungda's continuing sponsor until October 2003 (Note 3).

Shortly after Tungda's listing, the Hong Kong Stock Exchange (the Exchange) issued inquiry letters to CPYC in 2003 seeking a response to a complaint that Tungda had falsified invoices and overstated sales figures in its IPO prospectus. CPYC, as continuing sponsor of Tungda, was required to examine its due diligence work, in particular, the basis for the sales claimed by Tungda in the prospectus so as to give the Exchange a proper response.

The SFC alleged that CPYC's response, contained in three submissions, was prepared under the supervision of Wan and was both misleading and inaccurate giving the unjustified impression that CPYC had conducted sufficient due diligence when in fact the verification conducted by CPYC was severely limited and deficient.

Wan on the other hand claimed that he had not been responsible for the due diligence work conducted by CPYC into Tungda and that he had signed the submissions given to the Exchange in a purely administrative capacity. He argued that he was entitled to rely upon the work of others within CPYC; that CPYC had no ongoing obligation to make any inquiry in responding to the Exchange and that CPYC could not have been expected to have detected fraud within Tungda given the auditors had not done so and responsible executives of Tungda were only charged with related criminal offences by the Police's Commercial Crime Bureau (CCB) in 2010.

During the SFC's investigation Wan, with the assistance of Yan, also produced to the SFC a substantial volume of documents which purported to be CPYC records and, if genuine, would tend to demonstrate that Wan was neither involved nor responsible for CPYC's due diligence work on Tungda.

The SFC alleged these documents were not genuine CPYC records and had been fabricated to throw the SFC off the track.

The Chairman of the SFAT, Hon Mr Justice Saunders, agreed with the SFC's findings and found specifically that:

- It is untenable for Wan to claim that his signature on the submissions to the Exchange was merely administrative and he was not involved in the due diligence of Tungda;
- CPYC and Wan was under a continuing obligation to make inquiries in response to the Exchange's inquiry;
- The fact that Tungda's auditor had not uncovered any fraud at Tungda and no criminal charges against Tungda executives were laid until 2010 is irrelevant and does not mean Wan is not responsible for CPYC's failure to conduct proper inquiries especially in the face of allegations that there had been falsification of sales;
- To distance himself from CPYC's due diligence of Tungda, Wan was responsible for undertaking an extensive fabrication exercise with the assistance of Yan (Note 4).

The Hon Mr Justice Saunders stated in his decision that "...had Mr Wan carried out a proper inquiry and properly responded to the Exchange, the Exchange would have been informed in July 2003 that Tungda were unable to substantiate the overseas sales they had claimed in their prospectus. From that the Exchange would have been able to take such steps as they considered appropriate in pursuit of the complaint of forgery. Instead Mr Wan muddied the waters and concealed the truth" (Note 5).

Mr Mark Steward, the SFC's Executive Director of Enforcement, said: "During the investigation, the

SFC cast a cold eye on Wan's claims and they turned out to be fabricated. Sponsors have an obligation to cast the same cold eye on claims that do not make sense when conducting due diligence inquiries."

"This decision makes it clear that sponsors have an important role to play in helping to protect the investing public and their obligations must be performed to a very high standard. Sponsors and their senior staff will be held accountable for negligent, cavalier or dishonest conduct," he added.

The SFAT directed the SFC to refer the case to the Director of Public Prosecutions for him to consider whether any further action may need to be taken.

End

Notes:

1. Wan was licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance) and Type 9 (Asset Management) regulated activities and was accredited to CPYC as a responsible officer from March 2000 to 30 August 2004. Wan currently does not hold a licence with the SFC.
2. Yan was licensed under the SFO to carry on business in Type 6 (advising on corporate finance) regulated activity and was accredited to Core Pacific-Yamaichi Capital Limited from October 2000 to October 2004. Yan currently does not hold a licence with the SFC.
3. Tungda was listed on the GEM board on 26 July 2002. The trading in the shares of Tungda has been suspended since 29 July 2004. The SFC previously took enforcement action against CPYC and related companies in relation to the same matter (see SFC press release dated 17 April 2008). On 2 September 2011, the chairman and a director of Tungda received jail sentences in relation to charges laid by the CCB following convictions of conspiracy to defraud in relation to false sales figures which falsely inflated the company's sales results and turnover by \$23 million and \$300 million respectively.
4. See SFAT's Decision (*Wan Ten Lok and Yan Kwok Ting Sunny v SFC*, Application No 8 and 9 of 2009) published on the SFAT's website at [http://www.sfat.gov.hk/english/determination/AN-8\\_9-2009-Determination.pdf](http://www.sfat.gov.hk/english/determination/AN-8_9-2009-Determination.pdf), para 163, para 172-182, para 192-193, para 194 -204 respectively.
5. See SFAT's Decision (*Wan Ten Lok and Yan Kwok Ting Sunny v SFC*, Application No 8 and 9 of 2009, para 197).