

The Court of Final Appeal grants leave to Pacific Sun Advisors Limited and its director to appeal

30 Sep 2014

The Court of Final Appeal has granted leave to Pacific Sun Advisors Limited and its director Mr Andrew Pieter Mantel (the Applicants) to appeal a decision of the Court of First Instance in relation to issuing advertisements to promote a collective investment scheme. The two points of law to be determined by the Court of Final Appeal are:

- whether for section 103(3)(k) of the Securities and Futures Ordinance (SFO) to be applicable, it must be seen from the advertisement, invitation or document itself, that it is, by its terms, confined to professional investors to the exclusion of other members of the investing public; and
- whether the carrying out of a screening process to ensure that all investors investing in the collective investment scheme, are professional investors is irrelevant.

The Applicants were convicted on 10 June 2014 on four charges of issuing advertisements that offered interests in a collective investment scheme without the authorization of the Securities and Futures Commission (SFC). The Applicants have subsequently appealed these convictions. The Court of Final Appeal has stayed these appeals pending its determination of the two points of law (Notes 1 & 2).

The appeal is scheduled to be heard before the Court of Final Appeal on 5 March 2015.

End

Notes:

1. Pacific Sun Advisors Limited (Pacific Sun) is licensed by the SFC to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities. Mantel, who is licensed by the SFC to carry on Type 4 (advising on securities) and Type 9 (asset management) regulated activities accredited to Pacific sun, is a responsible officer of Pacific Sun.
2. Under section 103(3)(k) of the SFO, an advertisement does not need SFC authorization when the advertisement is in respect of securities, structured products or interests in a collective investment scheme that are or are intended to be disposed of only to professional investors. Please see the SFC's press releases dated [21 March 2013](#), [27 January 2014](#) and [10 June 2014](#).
3. Please see the judgment (FAMC39/2014) which is available on the Judiciary's website (www.judiciary.gov.hk).

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