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Unlicensed dealing prosecution transferred to District Court

13 Jan 2015

The Eastern Magistrates' Court today granted an application by the Department of Justice to transfer to the District Court the first prosecution of a case for unlicensed dealings involving collective investment schemes (CIS).

The plea hearing at the District Court will take place on 3 February 2015.

On 31 May 2014, the Securities and Futures Commission (SFC) commenced the criminal proceedings at the Eastern Magistrates' Court against IPFUND Asset Management Limited (IPFUND) and its sole director and shareholder Mr Ronald Sin Chung Yin. Both pleaded not guilty to four summonses on 3 July 2014 (Notes 1 & 2).

The SFC alleged that between February 2011 and December 2011, IPFUND and Sin, both of whom have never been licensed by the SFC, offered and disposed of interests in 16 CIS to investors. IPFUND and Sin managed and controlled those CIS which were not authorized by the SFC.

The funds contributed by the investors were allegedly pooled for use in purchasing commercial properties in Hong Kong; upon the sale of those properties, part of the profit earned would be distributed among the investors in proportion to their contribution towards the purchase price, and IPFUND received consultancy fees based on profits earned from the trading of these commercial properties.

On 4 September 2014, the Eastern Magistrates' Court gave directions to the SFC to consider whether it would be appropriate for the summonses to be tried in the District Court given the complexity of the subject matter, the number of witnesses and the estimated length of the trial (Note 3).

End

Notes:

1. IPFUND and Sin were accused by the SFC of carrying on a business, or holding out as carrying on a business, in a regulated activity in dealing in securities without a licence in contravention of section 114 of the Securities and Futures Ordinance (SFO). The securities in question are CIS.
2. Under section 390 of the SFO, where the commission of an offence under the SFO by a corporation is proved to have been aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to any recklessness on the part of, any officer of the corporation, or any person who was purporting to act in any such capacity, that person, as well as the corporation, is guilty of the offence and is liable to be proceeded against.
3. On 24 October 2014, the case was adjourned for four weeks to enable an application to be made by the Department of Justice to transfer the case to the District Court. On 20 November 2014, the case was further adjourned to 13 January 2015.

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無牌交易檢控案件移交區域法院審理

2015年1月13日

東區裁判法院今天批准律政司的申請，將首宗涉及集體投資計劃的無牌交易檢控案件移交區域法院審理。

區域法院將於2015年2月3日進行答辯聆訊。

2014年5月31日，證券及期貨事務監察委員會（證監會）在東區裁判法院對IPFUND Asset Management Limited (IPFUND) 及其唯一的董事兼股東冼仲彥（男）展開刑事法律程序。IPFUND及冼於2014年7月3日否認四項控罪（註1及2）。

證監會指，在2011年2月至2011年12月期間，從未獲證監會發牌的IPFUND及冼向投資者要約售賣及出售在16項集體投資計劃中的權益。由IPFUND及冼管理及控制的該等集體投資計劃未經證監會認可。

投資者的供款被指經匯集後會用作購買香港的商用物業；該等物業一經出售，所賺取的利潤有部分會按投資者支付購買價的比例分派予他們，而IPFUND則根據買賣該等商用物業所賺取的利潤收取顧問費。

2014年9月4日，東區裁判法院向證監會發出指示，要求證監會視乎案情的複雜程度、證人數目及預期審訊日數，考慮在區域法院審理有關控罪是否合適（註3）。

完

備註：

1. 證監會指控IPFUND及冼未領有牌照而經營或顯示自己經營一項受規管活動的業務，即證券交易，違反《證券及期貨條例》第114條。所指的證券即集體投資計劃。
2. 根據《證券及期貨條例》第390條，凡任何法團所犯的《證券及期貨條例》所訂罪行，經證明是在該法團的任何高級人員或看來是以該身分行事的人協助、教唆、慫恿、促致或誘使下犯的，或是在該人的同意或縱容下犯的，或是可歸因於該人罔顧實情或罔顧後果的，則該人與該法團均屬犯該罪行，並可據此予以起訴。
3. 2014年10月24日，這宗案件被押後四個星期，以便律政司申請將案件移交區域法院審理。2014年11月20日，案件被進一步押後至2015年1月13日。

最後更新日期：2015年1月13日