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Court of Final Appeal dismissed leave application of C.L. Management Services Limited and its sole owner

15 Nov 2016

The Court of Final Appeal (CFA) has dismissed C.L. Management Services Limited (C.L. Management) and its sole owner and director Ms Clarea Au Suet Ming's application for leave to appeal against their convictions for holding out to provide advisory services on corporate finance without a licence from the Securities and Futures Commission (SFC).

On 29 April 2014, C.L. Management and Au were convicted on three holding out charges and fined \$1.5 million. Au was also sentenced to a six months' imprisonment suspended for 18 months. The Court of First Instance subsequently dismissed their appeals against the convictions (Notes 1 & 2).

C.L. Management and Au argued in their CFA leave application that there was an important question of law regarding whether the offence of holding out as carrying on a business of regulated activity without a licence under the Securities and Futures Ordinance requires proof of mental element.

The CFA held that there was no arguable basis for granting leave to appeal. It found that the question of whether a conviction could be sustained without proof of mental element did not arise on the facts of this case (Notes 3 & 4).

End

Notes:

1. Under section 114(1)(b) and 114(8) of the Securities and Futures Ordinance, a person commits an offence when the person, without reasonable excuse, holds/held out as carrying on a business in a regulated activity without a licence.
2. Please see SFC's press releases dated [19 May 2014](#) and [6 June 2016](#).
3. The panel of judges presiding over the CFA hearing comprised The Hon Chief Justice Geoffrey Ma, The Hon Mr Justice Ribeiro, PJ, and The Hon Mr Justice Tang, PJ.
4. Please see the judgments (FAMC 34/2016, HCMA 288/2015 and HCMA 382/2014) which are available on the Judiciary's website (www.judiciary.gov.hk).

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終審法院駁回C.L. Management Services Limited及其唯一股東提出的上訴許可申請

2016年11月15日

終審法院駁回C.L. Management Services Limited (C.L. Management) 及其唯一股東兼董事歐雪明 (女) 就被裁定未領有證券及期貨事務監察委員會 (證監會) 的牌照而顯示其就機構融資提供顧問服務的判罪所提出的上訴許可申請。

C.L. Management 及歐於2014年4月29日被裁定因未領有牌照而顯示其就機構融資提供顧問服務的三項罪名成立，並遭罰款150萬元。歐亦被判處監禁六個月，緩刑18個月。原訟法庭其後駁回他們就定罪裁決所提出的上訴 (註1及2)。

C.L. Management 及歐在其終審法院上訴許可申請中辯稱，案中存在一個重要的法律問題 —— 就《證券及期貨條例》所指的未領有牌照而顯示自己經營某類受規管活動的業務的罪行而言，控方是否需要證明被告有犯罪意圖。

終審法院裁定並沒有批准上訴申請的可爭論理據，並認為根據本案的案情，在沒有證明被告有犯罪意圖的情況下可否裁定被告有罪的問題並不存在 (註3及4)。

完

備註:

1. 根據《證券及期貨條例》第114(1)(b)及114(8)條，任何人無合理辯解而在未領有牌照的情況下顯示自己經營某類受規管活動的業務，即屬犯罪。
2. 請參閱證監會2014年5月19日及2016年6月6日的新聞稿。
3. 終審法院聆訊本案的法官包括馬道立首席法官、李義常任法官 (The Hon Mr Justice Ribeiro, PJ) 及鄧國楨常任法官。
4. 請參閱司法機構網站 (www.judiciary.gov.hk) 所載的判案書 (FAMC 34/2016、HCMA 288/2015及HCMA 382/2014)。

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