Court orders boiler room fraudsters to compensate investors

24 Dec 2018

The Court of First Instance has granted orders sought by the Securities and Futures Commission (SFC) against boiler room fraudsters to compensate 14 investors who fell victim to the scams following legal proceedings under section 213 of the Securities and Futures Ordinance (SFO) (Note 1).

The SFC told the Court that three unlicensed entities, which purported to be based in and operated from Hong Kong, solicited investors through emails and cold calls to open trading accounts and to invest in securities and futures products via their websites at various times in 2014.

The three entities involved in the boiler room scams are:

- Cardell Limited and/or Cardell Company Limited (Cardell) using the website www.cardell-limited.com
- Waldmann Asset Management (Waldmann) using the website www.waldmann-asset-management.com and/or www.waldmann-asset-management.net
- Doyle Hutton Associates (Doyle) using the website www.doyle-hutton-associates.com and/or http://doyle-hutton-associates.net

It emerged that none of the trades in securities and futures agreed with the affected investors were ever executed on any recognised exchange, nor have these investors been able to recover any of their monies.

The affected investors were also asked to deposit funds for their investments into various Hong Kong bank accounts held by the following companies:

- Cedan Limited (Cedan)
- Hamtron Limited (Hamtron)
- Cardan Limited (Cardan)
- Mutual Hope Limited (Mutual Hope)

To protect the monies in bank accounts held by Cedan, Hamtron, Cardan and Mutual Hope which apparently were the proceeds of the unlicensed and boiler room activities carried out by Cardell, Waldmann and Doyle, the SFC had obtained interim injunctions to freeze the monies in these four bank accounts in January 2016 (Note 2).

The Court has found Cardell, Waldmann and Doyle in contravention of sections 109 and 114 of the SFO as they held themselves out as being prepared to carry on regulated activities in securities and futures contracts advisory services and asset management services whilst unlicensed.

The Court also found that Cedan, Hamtron, Cardan and Mutual Hope have aided, abetted or assisted Cardell, Waldmann and Doyle in their contraventions of the SFO.

An administrator has been appointed to administer the process of distributing the proceeds of the boiler rooms frauds remaining in the four frozen Hong Kong bank accounts – approximately a sum of $600,000 – for the benefit of the 14 victims on a pro rata basis.

End

Notes:

1. A "boiler room" is a common securities fraud in which fraudsters purport to operate as a licensed securities or futures broker and offer to trade shares or futures that are fake (in the sense that the securities contracts for which they have paid for have not been executed on any stock exchange) to people whom they cold-call.
2. Please see the SFC's press release dated 15 January 2016.

Page last updated : 24 Dec 2018

HCA 2896/2015

[2018] HKCFI 2814

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

ACTION NO 2896 OF 2015

BETWEEN

	SECURITIES AND FUTURES COMMISSION	Plaintiff
	and	
	An unknown person or persons purporting to carry on a securities and/or futures trading business known as CARDELL LIMITED and/or CARDELL COMPANY LIMITED and using the website www.cardell-limited.com	1st Defendant
	CEDAN LIMITED	2nd Defendant
	HAMTRON LIMITED	3rd Defendant

HCA 2897/2015

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

ACTION NO 2897 OF 2015

BETWEEN

SECURITIES AND FUTURES COMMISSION	Plaintiff
and	
An unknown person or persons purporting to carry on a securities and/or futures trading business known as WALDMANN ASSET MANAGEMENT and using the website www.waldmann-asset-management.com and/or www.waldmann-asset-management.net	1st Defendant
CEDAN LIMITED	2nd Defendant
CARDAN LIMITED	3rd Defendant
MUTUAL HOPE LIMITED	4th Defendant

____

HCA 2898/2015

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

ACTION NO 2898 OF 2015

____

BETWEEN

SECURITIES AND FUTURES COMMISSION	Plaintiff
and	
An unknown person or persons purporting to carry on a securities and/or futures trading	1st Defendant

business
known as DOYLE HUTTON
ASSOCIATES and using
the website
www.doyle-hutton-associates.com

CEDAN LIMITED 2nd Defendant (Discontinued)

MUTUAL HOPE LIMITED 3rd Defendant

Before: Hon Ng J in Court

Dates of Hearing: 17 19, 21 December 2018

Date of Judgment: 21 December 2018

J U D G M E N T

Introduction

1. This is the trial of the 3 actions. In gist, the Plaintiff ("**SFC**") claims for:

(1) Declarations that the 1st Defendant in each action ("**Cardell**", "**Waldmann**", "**Doyle Hutton**" respectively) is a person within s 213(1)(a)(i)(A) of the Securities and Futures Ordinance, Cap 571 ("**SFO**") in that it has contravened the relevant provisions of the SFO *viz* s 109(1) and s 114(1)(b).

(2) Declarations that the remaining Defendants in each action ("**Cedan**", "**Hamtron**", "**Cardan**", "**Mutual Hope**" respectively) are persons within s 213(1)(a)(ii) or s 213(1)(a)(iv) of SFO by having aided, abetted or otherwise assisted the 1st Defendant in each action to commit such contraventions or by directly or indirectly having been knowingly involved in or having been a party to those contraventions.

(3) Declarations that all the Defendants are persons within s 213(2)(b) of SFO in that they have been or it appears that they have been involved in the said

contraventions of the SFO, whether knowingly or otherwise.

(4) Injunctions against the 1st Defendant in each action:

(a) from holding itself out as carrying on a business in regulated activities, whilst unlicensed, unregistered and unauthorised, or advertising itself as being prepared to carry on such activities pursuant to s 213(2)(a) of SFO; and

(b) to suspend all internet websites within its power or control which promote or advertise the carrying out of regulated activities whilst unlicensed and unregistered including, but not limited to, the website/websites identified in the Statement of Claim in each action pursuant to s 213(2)(f) and (g) of SFO.

(5) Injunctions against the remaining Defendants in each action *viz* Cedan, Hamtron, Cardan and Mutual Hope from disposing of or otherwise dealing with any of the funds in their bank accounts identified in the Statement of Claim in each action ("**Cedan Account**", "**Hamtron Account**", "**Cardan Account**", "**Mutual Hope Account**" respectively) pursuant to s 213(2)(c) of SFO.

(6) A restitutionary order requiring the Defendants to restore the complainants/victims who had entered into transactions as a result of the 1st Defendant's conduct in each action to the positions which they were in before the transactions were entered into pursuant to s 213(2)(b) of SFO.

(7) An order for the appointment of an administrator and consequential directions pursuant to s 213(2)(d) of SFO.

SFC's case against the Defendants in summary

2. Upon complaints by the victims identified in each action and upon its subsequent investigations, SFC have reasons to believe that the victims have fallen for what is known as "boiler room" frauds perpetrated by the Defendants in each action. A boiler room fraud is a common securities fraud in which the fraudsters purport to operate as a licensed securities or futures broker and offer to people, via their websites, through emails and/or cold-calls, to trade in securities or futures which are fake in the sense that the securities or futures contracts which the victims have paid for have not been executed on any recognised exchange.

3. None of the 1st Defendant in each action, nor the persons purporting to work for it as

identified in the Statement of Claim, had been licenced, registered or authorized to carry on any of the regulated activities set out under Schedule 5 Part 1 of SFO including, in particular, dealing in and advising on securities or futures contracts as well as asset management ie Types 1, 2, 4, 5 and 9.

4. Nevertheless, each of the 1st Defendant in the action, purporting to be based in and operated from Hong Kong, had at various times, principally in 2014, solicited victims to invest in securities or futures contracts via its website/websites, through emails as well as telephone calls from people purporting to work for it. Having been persuaded to open trading accounts with the 1st Defendant and to invest in securities or futures contracts, the victims, at the direction of the 1st Defendant, then remitted funds into the bank accounts opened in Hong Kong in the names of the remaining Defendants in each action. There is no evidence that any of the trades agreed with the victims were ever executed on any recognised exchange and the victims have not been able to recover any of their monies from the Defendants.

5. Further, the 1st Defendant in each action has no business registration certificate and is not registered with the Companies Registry, albeit they purported to be based in and operated from Hong Kong and SFC could not find any record in the Business Registration Office of the Inland Revenue Department or the Companies Registry relating to any of them. It would appear therefore that "Cardell Limited", "Cardell Company Limited", "Waldmann Asset Management" and "Doyle Hutton Associates" are merely trade names used by a person or a group of persons for the perpetration of the boiler room frauds. Hence, SFC named the 1st Defendant in each action in the way it did in the Writ of Summons as permitted by the Court of Appeal in *Billion Star Development Ltd v Wong Tak Chuen* [2013] 2 HKLRD 714 at [69]-[74].

6. Investigations by SFC reveal that there was no physical trace of any of the 1st Defendant or their purported employees in Hong Kong and that the addresses given in their website/websites were fictitious in that they had no presence at those addresses. Further, phone calls made to the contact numbers provided in their website/websites were not answered.

7. As for Cedan, Hamtron, Cardan and Mutual Hope, they were all incorporated in Hong Kong in 2014, save for Mutual Hope which was incorporated in the Republic of Seychelles in 2013. They have all opened accounts with banks in Hong Kong. SFC managed to obtain the account opening documents from the banks in question and the information in the documents appear to be designed to suggest the bank accounts in question were opened

for a legitimate business purpose.

8. Take for instance, the Cedan Account opened with Hang Seng Bank in February 2014. In the account opening documents, the nature of Cedan's business was stated to be "trading and manufacturing" and the nature of the products was stated to be "from China to India — home appliance eg oven, TV, refrigerator". The location of its business and headquarters was stated to be Hong Kong and the sales location was stated to be India. The source of funds was stated to be India and the origin of funds passing through the account was stated to be "shareholder". The reason for opening the account was stated to be "payment to supplier and operation expenses, receive payment from customers".

9. The victims who had lodged complaints with SFC are all from Europe. The remittances that they claimed to have made into the Cedan Account, Hamtron Account, Cardan Account and Mutual Hope Account were confirmed by the SFC during its subsequent investigations into the transaction and banking records. Yet, these remittances, which were for the purpose of the regulated activities under the SFO eg investing in securities, were inconsistent with the information given by the account holders in the account opening documents or with the alleged purpose of opening the bank accounts in question.

10. SFC's case against each of the 1st Defendant in the action is that it has

(1) contravened s 109(1) by knowingly issuing advertisements in Hong Kong in which it held itself out as being prepared to carry on regulated activities ie advising on securities and/or futures contracts and/or asset management, whilst unlicensed and unregistered.

(2) contravened s 114(1)(b) by holding itself out as carrying on businesses in regulated activities in Hong Kong ie dealing in and advising on securities and/or futures contracts and asset management, whilst unlicensed and unregistered and without reasonable excuse.

11. Further, SFC's case against Cedan, Hamtron, Cardan and Mutual Hope is that by opening the bank accounts in question for the purpose of receiving the monies obtained by the 1st Defendant in each action from the victims and actually receiving those monies, they have aided, abetted or otherwise assisted, alternatively, have been, directly or indirectly, knowingly involved in the 1st Defendant's contraventions.

Deliberation

12. This court shall first set out the relevant statutory regime under the SFO.

13. Section 109(1) of SFO provides:

" (1) Subject to subsections (3) to (6), a person commits an offence if he issues, or has in his possession for the purposes of issue-

(a) an advertisement in which to his knowledge-

(i) a person holds himself out as being prepared to carry on Type 4, Type 5, Type 6, or Type 9 regulated activity; and

(ii) the person is not licensed or registered for such regulated activity as required under this Ordinance; or

(b) any document which to his knowledge contains such advertisement."

14. According to s 102(1) of SFO:

(1) "Advertisement" is defined to include "every form of advertising, whether made orally or produced mechanically, electronically, magnetically, optically, manually or by any other means".

(2) "Document" is defined to mean "any publication (including a newspaper, magazine or journal, a poster or notice, a circular, brochure, pamphlet or handbill, or a prospectus) — (a) directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by the public; and (b) whether produced mechanically, electronically, magnetically, optically, manually or by any other means".

15. According to Schedule 5 Part 1 of SFO, regulated activities include:

(1) Type 1: dealing in securities.

(2) Type 2: dealing in futures contracts.

(3) Type 4: advising on securities.

(4) Type 5: advising on futures contracts.

(5) Type 9: asset management.

16. The relevant parts of s 114(1) and (2) of SFO provide:

" (1) Subject to subsections (2), (5) and (6), no person shall-

…

(b) hold himself out as carrying on a business in a regulated activity.

(2) Subsection (1) shall not apply to -

(a) a corporation licenced under section 116 or 117 for the regulated

activity;

(b) an authorized financial institution registered under section 119 for the regulated activity; or

(c) a person authorized under section 95(2) for the regulated activity."

17. The relevant parts of s 213 of SFO provide:

" (1) Where-

(a) a person has-

(i) contravened-

(A) any of the relevant provisions;

…

(ii) aided, abetted, or otherwise assisted, counselled or procured a person to commit any such contravention;

…

(iv) directly or indirectly been in any way knowingly involved in, or a party to, any such contravention;

…

(b) it appears, whether or not during the course or as a result of the exercise of any power under Part VIII, to the Commission that any of the matters referred to in paragraph (a)(i) to (v) has occurred, is occurring or may occur,

the Court of First Instance, on the application of the Commission, may, subject to subsection (4), make one or more of the orders specified in subsection (2).

(2) The orders specified for the purposes of subsection (1) are-

(a) an order restraining or prohibiting the occurrence or the continued occurrence of any of the matters referred to in subsection (1)(a)(i) to (v);

(b) where a person has been, or it appears that a person has been, is or may become, involved in any of the matters referred to in subsection (1)(a)(i) to (v), whether knowingly or otherwise, an order requiring the person to take such steps as the Court of First Instance may direct, including steps to restore the parties to any transaction to the position in which they were before the transaction was entered into;

(c) an order restraining or prohibiting a person from acquiring, disposing of, or otherwise dealing in, any property specified in the order;

(d) an order appointing a person to administer the property of another person;

…

(f) for the purpose of securing compliance with any other order made under this section an order directing a person to do or refrain from doing any act specified in the order;

(g) any ancillary order which the Court of First Instance considers necessary in consequence of the making of any of the orders referred to in paragraphs (a) to (f).

…

(4) The Court of First Instance shall, before making an order under subsection (1)…, satisfy itself, so far as it can reasonably do so, that it is desirable that the order be made, and that the order will not unfairly prejudice any person.

…

(8) Where the Court of First Instance has power to make an order against a person under subsection (1)…, it may, in addition to or in substitution for such order, make an order requiring the person to pay damages to any other person."

18. Lastly, "relevant provisions" under s 213(1)(a)(i)(A) is defined in Schedule 1 of SFO to mean *inter alia* the provisions of the SFO.

19. In *SFC v Qunxing Paper Holdings Ltd (No 2)* [2018] 1 HKLRD 1060, G Lam J discussed the nature and purpose of s 213 remedy and the need to adopt a broad-brush approach in order to arrive at a just and proper solution to protect the investing public:

" 50. Instead, s 213 creates a substantive statutory cause of action which is vested in the Commission. The purpose is to provide a statutory regime whereby the Commission, as regulator, can take action to obtain civil remedies for the benefit of investors, who may otherwise be deterred by cost and other considerations from instituting legal proceedings individually to obtain redress for their relatively small losses: see the Court of Appeal's decision in *Securities and Futures Commission v Tiger Asia Management LLC* [2012] 2 HKLRD 281 at [24] *per* Tang VP. There is a wider public interest in this because, as Steyn LJ put it in *Pantell* at p 282B-C:

> ' The civil law provides a framework for the redress of individual grievances. But it also fulfils a wider social purpose in setting standards for the markets and in discouraging aberrant behaviour. But if resort to civil remedies is impracticable for most individual investors the sanctions of the civil law cannot play their proper role.'

…

56. Not only is s 213(2) striking in its width, it is also remarkable in that the cause of action it creates appears to be discretionary. S 213(1) confers a discretion on the court by providing that it "may", on the application of the Commission, make one or more of the orders specified in subsection (2). The jurisdiction arises once the court finds that the matters set out in s 213(1)(a) have occurred. The only express fetter on this discretion is subsection (4), which requires the court to satisfy itself on two matters, "so far as it can reasonably do so", before making an order, namely, (i) that it is desirable that the order be made, and (ii) that the order will not unfairly prejudice any person.

57. Desirability and fairness are highly general concepts which do not lend themselves to definition or precise exposition. A fairly broadbrush approach has to adopted where necessary. In the present case an order along the lines proposed by the Commission should in my view be made having regard to the following.

58. In contrast to the previous cases involving s 213, this case is about misstatement. The crux of the complaint is that Qunxing (with the involvement of the 2nd to 4th defendants) had published materially false or misleading information concerning its financial results and condition which was likely to have induced investors to subscribe for or purchase its shares when they would otherwise not have done so, and that they have suffered loss as a result.

59. In an ideal world, where every fact is known or is ascertainable without cost and time, a fair and just scheme for compensating them, having regard to the usual principles of the law on misrepresentation, might be: (i) identify each investor who had acquired securities of Qunxing between the IPO and the suspension of trading; (ii) determine in each case in respect of each acquisition whether the investor relied on and was induced by the false information in making the acquisition; (iii) determine in respect of each investor whether he relied on and was induced by the false information in not disposing of the securities acquired at all or until a particular date; (iv) assess the loss suffered by each investor by reference to the acquisition price and the subsequent lower sale price or, if the securities are not yet sold, their true value or price as at an appropriate date; and (v) make appropriate adjustments for dividends, expenses and interest.

60. But in the real world these facts are either not all ascertainable or are so only at the end of a vastly complex, lengthy and costly process. To insist on investigating the circumstances of every

individual investor and investment might completely destroy the efficacy of the statutory scheme and defeat the legislative purpose. It is not surprising therefore that there has been no attempt in this case to establish reliance and inducement on an individual basis in the case of each investor. Despite that proceedings under s 213 are "the public law analogue of actions for damages by individuals under s 305", it is in my view not necessary to bring into s 213(2)(b) all the requirements of a private law cause of action of deceit in the case of each investor, especially where to do so would render the statutory remedy ineffective.

…

62. The primary purpose of the kind of order sought must be protection of the investing public…

…

66. In reality, the focus of these proceedings is the assets still held by Qunxing and Best Known in the total sum of approximately HK$112.2m. There is no other known asset to pay the investors anything more, and one suspects the Commission is not confident it will be able to recover anything personally from the Zhus. Under the proposed scheme, the shareholders and Victory Asset would have to share pro rata the available assets (ie HK$112.2m less costs of the Commission, the receiver, and the proposed administrator, and miscellaneous expenses) which are sufficient only to meet a fraction of their total losses (an estimated HK$1,419.58m). But the order would at least have the effect of preventing the assets of Qunxing and Best Known from becoming a surplus on a winding up to be distributed (as to 67.78%) to Boom Instant.

67. In the ultimate analysis, where one is concerned, as here, with innumerable sale and purchase transactions in relation to Qunxing shares and finite and limited resources for the payment of compensation, a robust approach has to be adopted…" (emphasis added)

20. Having carefully considered the testimony of Ms Chan Wan Man ("**Ms Chan**"), manager in the Enforcement Division of SFC and its only witness at this trial, as well as the documentary evidence submitted by SFC, this court is in no doubt that SFC has proved its case against all the Defendants in the 3 actions.

21. As far as Cardell, Waldmann and Doyle Hutton are concerned, SFC submits and this court agrees that each of them has contravened s 109(1) of SFO. Upon a detailed examination of the contents of the website/websites used and operated by each of them, it is clear that:

(1) The services offered by them as represented on their website/websites, which were accessible by the Hong Kong public, constituted Type 4, Type 5 and/or Type 9 regulated activities, which they were unlicensed and unregistered to carry on.

(2) The representations contained in their website/websites constituted a means of issuing electronic "advertisements" as they were public media aimed at promoting the securities and futures contracts advisory services and asset management services that they purported to provide.

(3) The webpages constituting the website/websites were electronically produced "documents" containing the aforesaid advertisements.

22. In the premises, Cardell, Waldmann and Doyle Hutton have held themselves out as

being prepared to carry on Type 4, Type 5 and/or Type 9 regulated activities. The inevitable inference being that they were the issuer of the advertisements in question, Cardell, Waldmann and Doyle Hutton must have the necessary knowledge for the purpose of s 109(1).

23. Further, this court finds that Cardell, Waldmann and Doyle Hutton have also contravened s 114(1)(b) of SFO. This is because by operating their website/websites and promoting and offering their services in relation to securities and/or futures contracts to the public through the website/websites as well as by emails and cold-calls as summarized above, they were holding themselves out as carrying on activities of "dealing in securities", "dealing in futures contracts", "advising on securities", "advising on futures contracts" and "asset management", which are Types 1, 2, 4, 5 and/or 9 regulated activities and in respect of which they were not licenced, registered or authorised to do so under the SFO.

24. As for Cedan, Hamtron, Cardan and Mutual Hope, SFC submits and this court agrees that they have aided, abetted or assisted Cardell, Waldmann and Doyle Hutton as well as directly or indirectly have been knowingly involved in the aforesaid contraventions.

25. Aiding and abetting are familiar concepts in the criminal context and it has been held that these words should be given their ordinary meaning: *R v Lau Chi-kin*[1988] 1 HKLR 282, 286F-G. At least in relation to the contravention of s 114(1)(b), it was necessary for Cardell, Waldmann and Doyle Hutton to have access to bank accounts for the purpose of settlement of the regulated activities so that they could hold themselves out as carrying on a business in such activities. By opening the bank accounts in question and allowing them to receive funds from the victims in question, it is clear to this court that Cedan, Hamtron, Cardan and Mutual Hope have aided, abetted or assisted Cardell, Waldmann and Doyle Hutton as well as directly or indirectly have been involved in their contraventions.

26. Further, this court is prepared to take one step further. This court accepts SFC's submissions and is minded to draw the inference that there must have existed some sort of organised scheme or arrangement among all the Defendants whereby victims were induced into remitting monies into the bank accounts in question in order to settle the investments purportedly entered into through Cardell, Waldmann and Doyle Hutton, which monies were then withdrawn or transferred out shortly afterwards. The existence of such a scheme or arrangement is supported *inter alia* by the fact that purpose of the remittances into the said bank accounts were inconsistent with the information given in the account opening documents or with the alleged purpose of opening the bank accounts in question. If so, this court has no difficulty in finding that Cedan, Hamtron, Cardan and Mutual Hope have been

knowingly involved, directly or indirectly, in the contraventions of both s 109(1) and s 114(1)(b) by Cardell, Waldmann and Doyle Hutton.

27. To conclude, by reason of the aforesaid, this court is satisfied that the declarations sought by SFC should be made in order to put matters beyond doubt that it has jurisdiction to make one or more of the orders specified in s 213(2) of SFO, in particular, the order under s 213(2)(b), subject to the requirement of s 213(4) of SFO that it is desirable that the orders be made and the orders will not unfairly prejudice any person.

28. Further, adopting a broad-brush approach in order to arrive at a just and proper solution in the 3 actions, this court is also satisfied that it is desirable to grant the injunctions, the restitution order as well as the order for the appointment of an administrator and consequential directions sought by SFC under s 213(2) and that the orders will not unfairly prejudice any person.

29. As far as the injunctions are concerned, it is clearly desirable that the Defendants are restrained from contravening or continuing to contravene the provisions of the SFO or from disposing of the proceeds of the frauds in the bank accounts in question and that the injunctions will not unfairly prejudice any other person.

30. Regarding the restitution order under s 213(2)(b) of SFO, in *SFC v C*[2009] 4 HKLRD 315 at [36], Le Pichon JA explained its nature and purpose as follows:

> " …Section 213(2)(b) enables an order to be made that would restore all the parties to the transaction to their respective former positions. In other words, it is restitutionary in nature and, in conjunction with an order under s 213(2)(c) would provide compensation to those who have sustained losses through the wrongdoing in question…"

31. Further, an order under s 213(2)(b) is not confined to making full restitution *in specie*: *SFC v Tsoi Bun* [2014] 2 HKLRD 1 at [11]-[13]. Rather, the section permits an order to be made requiring restoration of the parties to their relevant financial position prior to the transactions impugned.

32. In the present case, SFC submits and this court agrees that the most appropriate form of restitution order, and in this court's view, the most cost effective and fairest one to make, would be to distribute the amounts frozen in the bank accounts to the complainants/victims on a *pro rata* basis ie by dividing the amount left in each of the bank accounts among the complainants/victims by reference to the amounts they respectively remitted into each of them. Although the proposed restitution order would not fully restore the complainants/victims to their pre-transaction positions, this court is satisfied that it is nevertheless desirable because it provides compensation to them to the extent that is reasonably practicable. It is also obvious that the order will not unfairly prejudice any

other person since the complainants/victims are simply getting back a proportion of the monies they remitted into the bank accounts in question.

33. Given this court is prepared to make the restitution order under s 213(2)(b), SFC does not press for the alternative order for damages under s 213(8) of SFO, in light of the comment by G Lam J in *SFC v Qunxing Paper Holdings Ltd (No 2)* at [68].

34. Finally, this court is satisfied an order for the appointment of an administrator with consequential directions is desirable and would not unfairly prejudice any person since it merely seeks to facilitate the recovery, receipt and administration of the proceeds of the boiler room frauds remaining in Hong Kong for the benefit of the complainants/victims.

35. SFC has submitted to this court draft Orders it invites the court to make in the 3 actions along the lines discussed above as well as on costs. Having considered the terms of the draft in detail, this court is satisfied that they are in order and will grant them in those terms.

36. Lastly, this court wishes to thank counsel and their team for their helpful assistance.

(Peter Ng)
Judge of the Court of First Instance
High Court

Mr Simon Westbrook SC and Mr Norman Nip, instructed by Securities and Futures Commission, for the Plaintiff in all 3 Actions

The 1st to 3rd Defendants of HCA 2896/2015 were not represented and did not appear

The 1st to 4th Defendants of HCA 2897/2015 were not represented and did not appear

The 1st and 3rd Defendants of HCA 2898/2015 were not represented and did not appear

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