Enforcement News

To save a copy for future reference, right click here and select "Save Target As…"

5 November 2007

SFC Wins Another Challenge to its Investigation Powers

The SFC today welcomes the High Court decision dismissing the application by Mr Koon Wing Yee concerning the SFC's decision to interview him under section 183 of the Securities and Futures Ordinance as part of a current SFC investigation.

This is the third challenge to the SFC's investigative function to be determined by the High Court in the last fortnight. Each challenge has been decided in the SFC's favour. (Note 1)

Mr Koon had challenged the SFC's interview request on the basis that the SFC's powers contravened the Bill of Rights Ordinance. He argued that the SFC's powers infringed his right to silence and his right to a fair trial because the answers might be used against him in proceedings conducted by the Market Misconduct Tribunal (MMT).

The SFC submitted to the Court that Mr Koon's argument was flawed because the SFC is conducting an investigation and there are no MMT proceedings on foot involving him. In his judgment, Mr Justice Saunders agreed with the SFC in rejecting Mr Koon's challenge and ordered him to pay the SFC's costs. (Note 2)

Mr Mark Steward, the SFC's Executive Director of Enforcement, said: "This decision clarifies the cardinal differences between the investigatory role of the SFC and the decision-making role of the MMT. The SFC will continue to carry out its investigations fairly and in accordance with the law."

The SFC's investigation, which remains confidential, is continuing

Ends

Notes:

1. Please see SFC press releases dated 2 November and 1 November 2007 for details of the other two cases concerning, respectively, affirmation of the SFC's power to audio record investigation interviews and the court's order to imprison a person who avoided SFC interviews.

2. The full judgment has been posted on the Judiciary's website (Court Reference: HCAL 7/2007).

Page last updated: 5 November 2007