

Court dismisses appeal by Liu Su Ke

26 Nov 2009

The High Court has dismissed an appeal by Mr Liu Su Ke against his conviction in June 2009 for failing to disclose his interest in shares in Warderly International Holdings Ltd (Warderly) (Note 1).

Liu had earlier appealed against his conviction on two counts of failing to notify both the Stock Exchange of Hong Kong Ltd and Warderly within three business days of becoming aware that he had acquired an interest in 231.8 million Warderly shares.

The SFC contended that on 28 December 2006 Liu received, from Mr Yeung Kui Wong, the chairman and an executive director of Warderly at the time, a deposit of certificates for 231.8 million Warderly shares together with share transfer documents as security for a loan of \$6 million to a subsidiary of Warderly. As part of the arrangement, Liu obtained an irrevocable right to sell the shares to the extent of any failure by the subsidiary to repay the loan.

On that basis, the SFC contended and the Court found that Liu acquired a notifiable interest in the shares which he failed to disclose within three business days after becoming aware of his interest as required under the Securities and Futures Ordinance. Accordingly, the Honourable Mr Justice Michael Lunn has dismissed the appeal and upheld the convictions.

In delivering the judgement, the Honourable Mr Justice Lunn considers a number of important legal issues concerning the enforcement of the obligation to disclose notifiable interests in listed securities including whether the absence of a reasonable excuse for not disclosing is an element of the offence, whether the offence is one of strict liability and the presumption of innocence (Note 2).

The SFC has successfully prosecuted 70 charges of failing to disclose a notifiable interest or change of interest so far this financial year against 11 individuals.

End

Notes:

1. Liu was convicted on 2 June 2009 by Mr Douglas TH Yau in Eastern Magistracy on two summonses and fined the sum of \$5,000 in respect of each summons.
2. A copy of the judgement is available on the Judiciary website, www.judiciary.gov.hk.

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