

## Court rules on appeals over unlicensed activities

6 Jun 2016

The Court of First Instance has dismissed an appeal of C.L. Management Services Limited (C.L. Management) and its sole owner and director Ms Clarea Au Suet Ming against their convictions for holding out as providing advisory services on corporate finance without a licence.

The Court also has dismissed an appeal of the Securities and Futures Commission (SFC) on a point of law against the decision of the Eastern Magistracy to acquit C.L. Management and Au of the offence of carrying on a business in advising on corporate finance (Notes 1 & 2).

On 29 April 2014, C.L. Management and Au were convicted on three counts of holding out charges and acquitted of one count of carrying on a business in advising on corporate finance without a licence at the Eastern Magistracy after trial. They were fined a total of \$1.5 million. Au was also sentenced to a total of six months' imprisonment suspended for 18 months. They appealed against the convictions. The SFC also lodged an appeal against the decision of the Eastern Magistracy in acquitting them. Both cases were heard before the Hon Madam Justice M. Poon of the Court of First Instance on 28 April 2016 (Note 3).

Madam Justice M. Poon dismissed both appeals. In dismissing the appeal of C.L. Management and Au, the Court found that there are no merits in any of the grounds advanced on behalf of them. In particular, the Court rejected their argument the offence of carrying on a business of regulated activity without a licence requires proof of a mental element.

In relation to the appeal of the SFC, the Court found that the Magistrate did not make any error in law. On the basis of the evidence, the Magistrate was entitled to make the factual finding to acquit C.L. Management and Au of the offence of carrying on a business of advising on corporate finance without a licence.

End

Notes:

1. Under the Securities and Futures Ordinance (SFO), advising on corporate finance is a regulated activity which requires a Type 6 (Advising on Corporate Finance) licence from the SFC.
2. Under section 114(1)(a) and 114(8) of the SFO, a person commits an offence when the person, without reasonable excuse, carries/carried on a business in a regulated activity without a licence.
3. Please see SFC's press release dated [19 May 2014](#).
4. Please see the judgments (HCMA 288/2015 and HCMA 382/2014) which are available on the Judiciary's website ([www.judiciary.gov.hk](http://www.judiciary.gov.hk)).

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## 法庭就有關無牌活動的上訴作出裁決

2016年6月6日

原訟法庭已駁回C.L. Management Services Limited (C.L. Management) 及其唯一股東兼董事歐雪明 (女) 早前就其未領有牌照而顯示其就機構融資提供顧問服務的定罪所提出的上訴。

法庭亦駁回證券及期貨事務監察委員會 (證監會) 早前就東區裁判法院裁定C.L. Management及歐經營就機構融資提供意見的業務的控罪不成立所依據的法律觀點而提出的上訴 (註1及2)。

於2014年4月29日, 東區裁判法院經審訊後裁定, C.L. Management及歐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, 以及未領有牌照而經營就機構融資提供意見的業務的一項控罪不成立。他們被判罰款共150萬元。歐亦被判處監禁六個月, 緩刑18個月。他們其後就定罪裁決提出上訴。證監會亦就東區裁判法院裁定他們的控罪不成立提出上訴。兩宗案件均於2016年4月28日在原訟法庭潘敏琦法官 (the Hon Madam Justice M. Poon) 席前進行聆訊 (註3)。

潘敏琦法官駁回兩宗上訴。法庭駁回C.L. Management及歐提出的上訴時, 裁定他們所提出的理由均缺乏充分理據。法庭尤其駁回他們指未領有牌照而經營受規管活動的業務的控罪需證明犯罪意圖的論點。

至於證監會提出的上訴, 法庭裁定裁判官並無犯任何法律觀點上的錯誤, 裁判官有權基於證據作出事實裁斷, 裁定C.L. Management及歐未領有牌照而經營就機構融資提供意見的業務的控罪不成立。

完

備註:

1. 根據《證券及期貨條例》, 就機構融資提供意見是一項需領有證監會第6類 (就機構融資提供意見) 牌照的受規管活動。
2. 根據《證券及期貨條例》第114(1)(a)及114(8)條, 任何人無合理辯解而在未領有牌照的情況下經營一項受規管活動的業務, 即屬犯罪。
3. 請參閱證監會2014年5月19日的新聞稿。
4. 請參閱司法機構網站 ([www.judiciary.gov.hk](http://www.judiciary.gov.hk)) 所載的判案書 (HCMA 288/2015及HCMA 382/2014)。

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