

Highlights

❖ A Cross-Division Working Group chaired by the Chairman formed to direct progress of Securities and Futures Bill

❖ Court of Final Appeal affirmed integrity of disciplinary functions notwithstanding

parallel proceedings in other jurisdictions on same matter

❖ Proceedings brought under S.32 Securities and Futures Commission Ordinance

established jurisdiction under S.30 over related finance company to require production of records and documents

❖ Court Judgment in criminal prosecution clarified issue of time limitation in commencement of proceedings

Securities and Futures Bill

The objective of the exercise is to consolidate nine of the existing ordinances currently under the purview of the Commission into a single piece of legislation. The exercise commenced some years ago. In that period, and more notably during the past year, significant changes in the market environment in terms of product range, trading strategies and industry practices have taken place. At the same time, other major financial centres in Europe and North America are re-thinking their regulatory structure and legislative framework. Globalisation of financial markets and technological advancements also raise fresh issues and present new challenges to the regulators.

The Commission took the opportunity to re-visit the draft Bill which was the subject of public consultation in April 1996. Discussions were held with industry groups and briefings presented to market leaders. Officials from the FSB gave input.

Work commenced to revise the draft Bill taking into account new regulatory concepts. A Working Group was formed chaired by the Chairman to monitor and direct the progress of the Bill and a special legal drafting unit was put together to draft the new provisions.

The SFC will issue guides on the more important changes and new approaches to regulation for public consultation. It is intended that the Bill will be introduced in LegCo by the end of 1999.

Securities (Disclosure of Interests) Ordinance

The Commission undertook a review of the Ordinance to update its provisions. The Division has worked closely with the Corporate Finance Division in the preparation of the consultation paper and the draft bill.

Other Legislative Amendments

Amendments to Part X of the Securities Ordinance relating to the UECF (occasioned by certain brokerage defaults which occurred in early 1998) were passed by LegCo and enacted on 18 November 1998. The amendments give greater flexibility to the handling of compensation claims.

The Securities (Insider Dealing) Ordinance was amended by enlarging the definition of “judge”, thereby increasing substantially the number of judicial candidates available to preside over the IDT. The amendment came into effect on 15 January 1999.

Legislative amendments to regulate margin finance providers and resultant review of FRR were tabled before Executive Council and are expected to be introduced into LegCo during the current term.

As part of the Measures to Strengthen the Order and Transparency of Securities and Futures Markets announced by the Government in September 1998, draft amendments to increase penalties for illegal short selling, criminalising unreported short selling activities and false reporting to regulators were prepared and are now being considered by the Department of Justice.

Civil Litigation

Mandarin Resources Corporation Limited

In June 1996, the Commission presented a petition to the then High Court against the company and its controlling shareholder seeking redress for minority shareholders arising from the manner in which the affairs of the company were alleged to have been conducted. Provisional Liquidators were appointed by the Court. Attempts by the respondents to remove the provisional liquidators and strike out the petition were unsuccessful. The hearing of the petition was scheduled to commence on 10 May 1999.

Nomura International (Hong Kong) Limited (Nomura)

In November 1997, Nomura commenced judicial review proceedings against the Commission in the Court of First Instance and obtained a stay of the disciplinary proceedings being conducted by the Commission against the company and certain of its employees. The complaint of the company was against the multiplicity of parallel proceedings concerning the same subject matter being conducted in several jurisdictions. The Commission successfully appealed to the Court of Appeal against that decision. Nomura further appealed to the Court of Final Appeal against the decision of the Court of Appeal and the appeal was dismissed.

Mansion House Capital Limited (Mansion)

The Commission brought proceedings in the Court of First Instance under S.32 of the Securities and Futures Commission Ordinance seeking an order to compel Mansion, a finance company which provided margin finance to clients of Mansion House Securities (FE) Limited, a registered dealer, to produce certain documents to the Commission pursuant to S.30 of the Ordinance. Both companies are wholly-owned subsidiaries of Mansion House Group Limited, a listed company. The documents were required to enable the Commission to verify

that the registered dealer was in compliance with its licensing obligations. The application was successful and it was the first time that the Commission had tested its statutory powers to obtain information concerning a registrant from a related finance company.

Securities and Futures Appeals Panel

During the year under review, five appeals were lodged, of which one was withdrawn and the others awaiting to be heard. Five prior years' appeals were also concluded, of which one was allowed and the others settled and withdrawn.

Criminal Prosecution

Jialing Finance Company Limited (Jialing)

Jialing was summoned for conducting unlicensed business of leveraged foreign exchange trading. At the hearing, the Magistrate ruled that he had no jurisdiction to hear the summons on the ground that the information was time barred by virtue of S.67 of the Leveraged Foreign Exchange Trading Ordinance. The Commission appealed this decision by way of Case Stated. The Court of First Instance, allowing the appeal, held that the Magistrate erred in law and the offences brought against Jialing were indictable offences triable summarily and the time bar provision only applied to pure summary offences.

Post Report: Jialing was granted leave to appeal to the Court of Final Appeal and hearing expected to take place towards the end of the current year.

Other Advisory Services and China Related Work

The Division continued with its traditional role in advising and assisting the operating Divisions in all aspects of the Commission's regulatory functions. The Division also monitors development of securities law in the Mainland.