

## Legal Services

# Highlights

**Produced the Securities and Futures Bill for a three-month public consultation**

**Controlling shareholder of Mandarin Resources ordered to compensate minority shareholders**

**Court of Final Appeal clarified the issue of time limitation for commencement of criminal proceedings under the relevant Ordinances**

**Securities (Margin Financing) (Amendment) Bill passed by LegCo**

### What We Do

The Legal Services Division plays a key role in the SFC's crucial assignment of streamlining 10 existing ordinances into a unified Securities and Futures Bill which contains proposals for the legal and market reforms critical to Hong Kong's status as a modern international financial centre. While this has been an endeavour of some years, good progress has been made towards tabling the Bill before the Legislative Council (LegCo).

The Division is also actively involved in advising and assisting all Divisions in all aspects of the Commission's work, as well as monitoring relevant development of securities legislation on the Mainland.

### What We Did

#### **Securities and Futures Bill**

The Securities and Futures Bill was substantially refined after a great deal of examination and serious reconsideration of policy, which has taken into account the impact of the Basic Law and the Bill of Rights Ordinance. Developments in legislation in developed markets elsewhere have also been considered.

There has been wide consultation. Guides to the Bill were released for general consultation on 5 July 1999. These included an overview explaining the objectives of the Bill and discussions of the different major proposals. The SFC organized and participated in over 20 industry seminars and meetings attended by over 1,000 market participants to discuss these proposals. The SFC and the Financial Services Bureau (FSB) received 55 submissions from 40 parties. These resulted in changes to and refinements of some of the proposals in the draft Bill.

As well as presenting an overview to the LegCo Panel on Financial Affairs in July 1999, the Commission and the FSB made a series of detailed presentations to the LegCo Subcommittee on the Bill in September 1999.

Complex issues are involved, and the industry is concerned that there should be consultation on the draft provisions. Therefore it was decided that a White Bill should be published in the Gazette in April 2000, to allow the industry and the public to examine the details of the present draft and make any representations they believe necessary. This exercise will last for three months, and the results will be carefully considered when finalizing the Bill. It is expected that the Bill will be introduced in LegCo at the start of its next session for speedy enactment.

The preparation work for the Bill was carried out under the direction of the Cross-Division Working Group chaired by the SFC Chairman. All Executive Directors, the Chief Counsel and teams in each Division, together with the SFC's Legislative Drafting Team, worked closely with the FSB and the Department of Justice, in developing and refining concepts contained in successive drafts of the 17 Parts and 10 Schedules of the Bill. The White Bill was announced in the Financial Secretary's Budget Speech on 8 March 2000 for publication in April. It was tabled in the Executive Council on 28 March. The three-month consultation of the Bill started on 2 April.



White Bill Consultation

### **Margin Finance Legislation**

The Division worked closely with the Intermediaries and Investment Products Division, the FSB and the Department of Justice in finalizing the Securities (Margin Financing) (Amendment) Bill 1999 and preparing the necessary subsidiary legislation. The Bill was passed on 15 March 2000. It is expected to come into operation in June 2000.

### **Short Selling Legislation**

The Securities (Amendment) Bill 1999 was proposed to regulate the activities of persons who carry on short selling activities, by introducing new criminal offences for unreported short selling and increasing the penalty for short selling. The Bill had its first reading in LegCo on 5 January 2000.

### **Securities and Futures Legislation (Provision of False Information) Bill 2000**

This Bill sets out amendments to several ordinances relating to the regulation of securities and futures markets to make it an offence to provide false information to the relevant regulatory body. The Bill had its first reading in LegCo on 15 March 2000.



## Civil Actions

### **Mandarin Resources Corporation Limited**

During May to July 1999 the Court of First Instance heard the Commission's petition against the company and its controlling shareholder seeking redress for minority shareholders for the way in which the company's affairs were alleged to have been conducted. Following final oral submissions in October 1999 the Court found, in November 1999, that all the heads of claim in the petition had been substantiated and ordered that the controlling shareholder compensate minority shareholders at a "value" to be determined at a subsequent hearing and that he be disqualified from being a director and taking part in the management of the company for a period to be later assessed. The Court also adjourned the winding up of the company pending payment of compensation and ordered that provisional liquidators remain in place to protect the company's assets.

On 19 November 1999 the Commission obtained a Mareva Order against the controlling shareholder prohibiting him from disposing of his assets world-wide together with an Order to disclose his assets. On 10 December 1999 the controlling shareholder lodged an appeal against the petition judgment. The hearing of the appeal has been fixed to commence on 10 October 2000. In February 2000 proceedings took place to quantify the amount of compensation to be paid by the controlling shareholder. Judgment has been reserved.

## Securities and Futures Appeals Panel

During the year, four appeals were lodged, of which one was withdrawn and three others awaiting to be heard. Three appeals lodged in prior years were concluded, two were dismissed (with costs in one case awarded to the SFC) and the third settled, while hearings were pending in respect of four appeals lodged in prior years.

## Criminal Prosecutions and Appeals

### **Jialing Finance Company Limited (Jialing)(now called New Chuan Kong Investment Limited) and Fok Hiu Tong (Fok)**

Jialing was summonsed for conducting unlicensed business of leveraged foreign exchange trading, and Fok for aiding and abetting Jialing. The Magistrate hearing the case ruled that the summonses were time barred under s.67 of the Leveraged Foreign Exchange Trading Ordinance. The ruling was overturned on appeal by way of case stated by the SFC. Jialing and Fok appealed to the Court of Final Appeal. The Court of Final Appeal decided the time-bar issue in favour of the SFC but allowed the appeal of Jialing and Fok on the grounds that the mandatory recognizance for the case stated had not been entered into.

### **Wallace Yuen Moon Chung (Yuen)**

Yuen was an employee of Capital Asia Limited and had a role in supervising unregistered account executives for CA Pacific Securities Limited ("CAPS"). In June 1999, Yuen was convicted on one summons for aiding and abetting certain persons at CAPS to act as dealer's representatives of CAPS while unregistered. Yuen appealed the decision and his appeal was heard on 23 February 2000. Judgement has been reserved.