Application No. 2 of 2007

IN THE SECURITIES AND FUTURES APPEALS TRIBUNAL

IN THE MATTER OF a Decision made by the Securities and Futures Commission under section 116 (6) of the Securities and Futures Ordinance, Cap. 571

AND IN THE MATTER OF section 217 of the Securities and Futures Ordinance, Cap. 571

BETWEEN

YU MING INVESTMENT MANAGEMENT LIMITED — Applicant

and

SECURITIES AND FUTURES COMMISSION — Respondent

Tribunal: Hon Mr Justice Stone, Chairman

Date of Hearing: 3 April 2007

Date of Determination: 14 August 2007

DETERMINATION

The application

1. This is an application for review of a Decision of the SFC dated 29 December 2006 whereby a condition was placed upon the licence of the applicant herein, Yu Ming Investment Management Limited ('Yu Ming'), to conduct Type 6 regulated activity.

2. This condition, imposed under the purview of section 116(6) of the Securities and Futures Ordinance, Cap 571 ('SFO'), reads as follows:

> "For Type 6 regulated activity, with effect from 1 January 2007, the licensee shall not act as a sponsor in respect of an application for the listing on a recognized stock market of any securities."

3. In its Notice of Decision, the SFC observed that it had decided to impose this condition upon Yu Ming's licence for the reason "that you have not demonstrated to our satisfaction that you meet the eligibility criteria to act as sponsor and/or a compliance adviser as stipulated in the Sponsor Guidelines."

4. Yu Ming, the applicant herein, is aggrieved at this decision – hence this application for review thereof, which application was lodged with this Tribunal by letter dated 19 January 2007.

5. With the express consent of the parties, this review has been conducted by a Tribunal consisting of the Chairman sitting alone, pursuant to the provisions of section 31, Schedule 8 of the SFO.

6. In its letter of application, the SFC decision of which complaint now is made was castigated as "unfair", and the grounds underpinning the application are summarized in somewhat trenchant terms (I quote *verbatim* therefrom):

> "1. SFC unfairly deprives the livelihood of the affected licensees and their employees by taking away the licences and by equating practice to expertise.
>
> 2. SFC forces the affected licensees to notify their potential clients of the termination of sponsor eligibility on 15th December 2006 even when the licence is still in possession and fully valid.
>
> 3. General practice of de-licensing for lack of participation is unheard of in any professional body."

7. Clearly this is an issue which has provoked a real sense of injustice on the part of the applicant; equally clearly, it cannot be understood without at least brief reference to the matters leading up to this SFC action.

The factual background

(i) The new 'Sponsor Regime': Additional 'Fit and Proper' Guidelines

8. This subject has some history, and it may assist to refer to the provenance of the new 'Sponsor Guidelines', the promulgation of which

now has led to the imposition of this licence condition upon Yu Ming's professional activities.

9. As I understand the position – and I am grateful to Ms Lisa Chen, appearing for the SFC, who has educated me as to the relevant background – in past years market concerns had been expressed about the standard of sponsors of IPO's, in particular the apparent failure to carry out due diligence on listing applicants, and calls had been made for reform of the existing system.

10. Under the 'old regime', corporate finance advisers acted as sponsors for new listings, and *all* corporate finance advisers were licensed to conduct Type 6 regulated activity. However, the relevant codes and guidelines for such corporate finance advisers did *not* address specific issues such as eligibility, resources and management supervision, all factors which impacted upon the role of those firms which acted as sponsors for public offerings.

11. Against this background, on 29 June 2005 the SFC issued a Consultation Paper on the Regulation of Sponsors and Compliance Advisers.

12. Building on the existing licensing regime for Type 6 intermediaries, the SFC proposed a set of additional requirements imposing specific entry criteria and ongoing compliance obligations upon sponsors.

13. This consultation was the second part of a two-stage initiative adopted by the SFC and Hong Kong Exchanges and Clearing Ltd ('HKEx')

for the overall enhancement of the regulatory sponsor regime in Hong Kong; in fact, HKEx had conducted the initial stage of such initiative by way of amendments to the Listing Rules and the introduction of Practice Notes on Due Diligence by sponsors in respect of initial listing applications, both of which became effective on 1 January 2005.

14. Consequent upon its Consultation Paper, on 10 April 2006 the SFC released its 'Consultation Conclusions'.

15. This document introduced the new 'Sponsor Guidelines', the key requirements of which were summarized in a Press Release issued by the SFC on the same day entitled "Strengthening the Regulation of Sponsors and Compliance Advisers".

16. These Guidelines – the full title of which is "Additional Fit and Proper Guidelines for Corporations and Authorised Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers" - form an Appendix to the Code of Conduct for Persons Licensed by or Registered with the SFC.

17. The Explanatory Notes to the Appendix setting out the Guidelines state that these Guidelines "apply to all corporations and authorized financial institutions applying or continuing to act as sponsors and compliance advisers; as well as licensed individuals accredited to such corporations and relevant individuals engaged by authorized financial institutions (where applicable) for the performance of such activities."

18. The Sponsor Guidelines – to the details of which I refer later in this Determination – were gazetted on 1 September 2006, and on 5 September 2006 the SFC issued two circulars and a press release to Type 6 intermediaries.

19. The first circular requested Type 6 intermediaries to indicate whether they intended to act as sponsors on or after 1 January 2007, and the second circular related to the new minimum paid-up share capital requirement for intermediaries acting as sponsors under the Securities and Futures (Financial Resources)(Amendment) Rules 2006. The press release warned intermediaries that they should not assume that automatically they would meet the new eligibility criteria, and additional information, including sponsor submission forms, was published on the SFC website on 5 September 2006.

20. On 5 October 2006 the SFC issued yet another press release to remind Type 6 intermediaries of the forthcoming implementation of the Sponsor Guidelines on 1 January 2007, and two months later, on 5 December 2006, the SFC issued a further press release to update the industry upon the implementation process of the new sponsor regulatory regime.

21. This circular stipulated that the SFC would issue Letters of Mindedness to those intermediaries who had failed to demonstrate that they were able to meet the new criteria as sponsors, informing them of the SFC's intention to impose a licensing condition restricting them from undertaking sponsor work. Intermediaries were informed that they could make

representations to the SFC by 29 December 2006, failing which Notices of Decision would be issued, and the proposed licensing condition would become effective from 1 January 2007.

22. It is precisely the imposition by the SFC of such a licensing condition upon Yu Ming, the applicant herein, which lies at the heart of the current application.

(ii) Content of the new Sponsor Guidelines: the main requirements

23. These Guidelines are divided into two sections, referring first to 'Sponsors' and second, to 'Compliance Advisers'.

24. For the purpose of the present application, it is the first section only which requires attention.

25. The provisions as to Sponsors are divided into three broad heads, namely: 1. Competence; 2. Minimum Capital Requirements; and 3. Continuing Professional Education.

26. The first head thereunder, 'Competence', has five subheads as follows:

1.1 Sufficient Expertise and resources

1.2 Management's responsibility

1.3 Principals

1.4 Eligibility Criteria for Principals

1.5 Systems and Controls and Internal Assessment

27. This document, which is drawn in detailed terms, speaks for itself, and for immediate purposes certain aspects only, within subheads 1.3 and 1.4, require highlighting.

28. *Paragraph 1.3.1* recites that:

> "It is the responsibility of the Management to ensure that Principals appointed by the firm meet the criteria required in the Sponsor Guidelines. The Management should ensure that there are sufficient Principals engaged in a full time capacity to discharge its role in supervising the Transactions Team(s)…A sponsor should have at least two Principals at all times."

whilst *paragraph 1.4.1* states:

> "In order to qualify as a Principal, an individual should:
>
> (1) be a responsible officer of the licensed corporation that his licence is accredited to or an executive officer of the registered institution that has appointed him;
>
> (2) have acquired a minimum of 5 years of relevant corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the SEHK preceding the appointment as a Principal; and
>
> (3) in the five years immediately preceding his appointment, have played a substantial role in advising a listing applicant as a sponsor in at least two completed IPO's on the Main Board and/or GEM Board of the SEHK."

An italicized note to paragraph 1.4.1 indicates that *"The SFC may exercise its discretion, on a case by case basis, to grant a dispensation from strict compliance with the requirements on eligibility of Principals under paragraph 1.4.1 if the firm could demonstrate that there are valid and justifiable grounds for such dispensation, which will not prejudice the overall protection of investors' interest…"*, and proceeds to list various

matters with the SFC may take into account in terms of granting such dispensation, with specific reference to the nature and structure of the sponsor, and its available resources to carry out sponsor work.

(iii) Application by the SFC of the new rules to Yu Ming

29. On the papers before the Tribunal it is clear that Yu Ming was well aware of that which was occurring in terms of the introduction of the new regulatory regime for sponsors.

30. On 5 October 2006 Yu Ming wrote to the SFC referring to the circular dated 5 September 2006 regarding the implementation of the new Sponsor Guidelines, and advised the regulator that it intended to continue to act as sponsor after 1 January 2007 and that "we…agree to comply with the new eligibility criteria pursuant to the Sponsor Guidelines." Relevant documents were enclosed for the attention and approval of the SFC.

31. After studying this documentation submitted by Yu Ming, the SFC was *not* satisfied with the ability of Yu Ming to meet the eligibility requirements. The reasons were first, that Yu Ming did not have at least two Principals with the requisite experience, as set out within paragraphs 1.3.1 and 1.5.1 of the Sponsor Guidelines; and second, that it had not confirmed that it had put in place effective systems and controls as required under paragraph 1.5.1 of the Guidelines – albeit this aspect of the matter apparently has been resolved to the satisfaction of the SFC, and has not been broached in this application.

32. However, in terms of the requirement as to Principals' experience, the SFC took the view that the information attached to Yu Ming's sponsor submission form revealed that none of the three nominees therein proposed had played a substantial role in advising a listing applicant as a sponsor in at least 2 completed IPO's on the Main Board and/or the GEM Board in the prescribed 5 year period laid down in paragraph 1.4.1 of the Guidelines; each of the nominees had completed only one IPO on the Main Board in January 1992, and the other IPO's quoted by the nominees as constituting relevant experience had been completed outwith the prescribed 5 year period.

33. Accordingly, on 15 December 2006 the SFC sent a Letter of Mindedness to Yu Ming indicating that it intended to impose a licensing condition restricting Yu Ming from acting as a sponsor with effect from 1 January 2007. In that letter the SFC raised three issues: those of 'Expertise and Resources', 'Eligibility of Principals' and 'Internal Systems and Controls', and pointed out that if Yu Ming wished to make representations against this preliminary view, it could make such representations by 29 December 2006. This letter concluded with the statement that "For fairness to your clients, you are expected to disclose to your clients the fact that you have received this letter, and you will or have made representations in response if you intend to do so, and explain to them the implications of this letter."

34. This Letter of Mindedness received brief acknowledgment from Yu Ming on 27 December 2006, such acknowledgment adding that Yu Ming would have difficulty in responding in the tight time schedule of 8 business

days, and further indicated that "in the meantime we are taking legal advice as to the action we should take."

35. In the event, no such representations were received by the regulator, and thus, on 29 December 2006, the SFC sent to Yu Ming the Notice of Decision imposing the licence condition of which Yu Ming now complains.

The argument

36. Two aspects of this application for review strike me as unusual:

first, that this application is launched against a backdrop in which the applicant house apparently chose *not* to make any representations to the regulator in response to the Letter of Mindedness, and whilst no point regarding such omission was taken against the applicant, in principle it seems to me that it is correspondingly the more difficult to seek to review a considered decision arrived by the regulator in the absence of any such representations against the proposed imposition of such decision; *second*, and perhaps of more significance in the context of the present case and in light of the particular circumstances/history of Yu Ming, it is not in dispute that there has been no application by Yu Ming for a dispensation from the new Guidelines (see the *Note* to subparagraph 1.4.1 (3), wherein the SFC may exercise its discretion, on a case by case basis, to grant a dispensation from strict compliance with the eligibility requirements of Principals under paragraph 1.4.1 of the Guidelines).

37. In fact, the argument of Mr Peter Fung, Managing Director of Yu Ming, whose address was both engaging and forceful, embraced a fundamentally different and more robust tack.

38. Mr Fung was highly critical of the SFC approach to this issue, noting that "the SFC needs better to understand how the trade works", and maintained that the regulator's ruling as to the licence modification had adversely affected his company, and had resulted, he said, in a complete loss of Yu Ming's sponsorship business: Yu Ming had no more clients, who had "all run away" as a result, he said, of the SFC's action in requiring, in its Letter of Mindedness, Yu Ming to disclose to its clients that this Letter had been received, whether representations in response had been or were to be made, and to provide to those clients with an explanation of the implications of such Letter.

39. Mr Fung made it clear that in principle he did *not* disagree with the spirit or principle of the new Guidelines, and stated that it was solely in terms of their implementation that the current problem had arisen.

40. His central thesis appeared to be that these new Guidelines should *not* affect incumbent practitioners in the sponsorship field, and that such should only apply to "future practitioners" in this area. He complained that the Guidelines demanded a 5 year history in terms of relevant corporate finance experience of a Principal, and that "no other professional body backdates requirements" in such a manner.

41. In terms of his company's situation, he said, "by the time the Guidelines were implemented, we are convicted and executed", and that this approach neither was neither reasonable, just nor correct.

42. Incumbent practitioners – "old dogs like us" was how Mr Fung put it – should be, or have been, allowed to continue to practice on the pre-existing basis, he maintained, and it should solely be newcomers to the practice of sponsorship which should be subjected to the imposition of such new, and considerably more stringent, requirements.

43. Mr Fung stressed that at the time of the consultation process Yu Ming had been qualified to act as sponsor, and that it was wrong in principle now to apply these new requirements to established practitioners; in short, said Mr Fung, it had not been thought that implementation of these Guidelines, "if done correctly, would affect us", and this, he inferred, was the reason for Yu Ming not having applied for a dispensation from the new Guidelines.

44. Looked at overall, Mr Fung castigated the new requirements as "inequitable in law, unreasonable in practice, and illogical in reasoning", and went so far as to question their intrinsic legality, albeit he accepted that whilst this argument ultimately might necessitate an application by Yu Ming for judicial review, nevertheless he took the view (correctly in my judgment) that prior to any such application in the High Court the relevant statutory appeal process from decisions of the SFC should be exhausted.

45. As to being "inequitable in law", Mr Fung's argument, (I think), was that whilst the new Guidelines were to be implemented on 1 January 2007 – wherein, among other requirements, for sponsors to maintain a sponsorship licence the relevant Principal had to have completed 2 IPO's within the past 5 years – "common law interpretation" of this requirement must therefore dictate that the effective date for the fulfillment of this requirement must *commence* on 1 January 2007, which thus would mean that there could be no question of any revocation of licences until expiry of the relevant 5 year period on 1 January 2012, and that as a consequence the SFC had acted unlawfully by "delicensing" Yu Ming on 15 December 2006.

46. As to being "unreasonable in practice", Mr Fung noted that competence does not appear to have been given any weighting in such "de-licensing" as now had been suffered by Yu Ming, and that the applicant was among "the most experienced, most competent and best capitalized local firms in the trade", with high calibre officers and staff, whilst the "illogical in thinking" argument purported to be made good, in part, by the fact that this procedure conflicted with CPT requirements, that it was but months earlier that Yu Ming had been approved to act as sponsor on the GEM Board, and that the eviction of Yu Ming at this stage "smells of bureaucracy running amok", whereby acknowledged competence was removed at a stroke: "this de-licensing procedure completely ignores competence, stifles competition, and is oppressive to smaller players" was how Mr Fung summarized the situation in his written submission to the Tribunal.

47. For the SFC Ms Lisa Chen was unmoved by this spirited argument on behalf of the applicant.

48. She reviewed the chronology of events in this case, and pointed out that having considered the information attached to Yu Ming's sponsor submission, the conclusion reached by the regulator was that none of the nominees therein proposed by Yu Ming had played a substantial role in advising a listing applicant as a sponsor in the prescribed 5 year period laid down in paragraph 1.4.1 of the Sponsor Guidelines; in fact each of the three nominees specified by Yu Ming had completed only one IPO, on the Main Board in January 2002, whilst the other IPO's quoted in support had been outside the relevant 5 year period and thus did not fall within the Guidelines requirement.

49. She made the point that although Mr Fung, in his submissions on behalf of Yu Ming, had characterized the SFC action as 'de-licensing', in fact conceptually this was incorrect; the regulator simply had imposed a specific licensing condition, and that condition related solely to sponsor work, leaving Yu Ming to continue to carry out general corporate advisory work under its existing Type 6 licence.

50. Ms Chen said that the benchmark adopted in terms of Principals having played a substantial role in at least two completed IPO's over the preceding five years was a benchmark which had been adopted only after extensive consultation in the marketplace, and that it was clear from such consultation that market practitioners supported the introduction of a clear and transparent regime, with the SFC being responsible for the assessment

of the ability and the ongoing supervision of corporate finance advisory firms which undertook sponsor work.

51. In short, said Ms Chen, the whole point of this exercise, which had been detailed in both exposition and execution, is that adoption of such an objective benchmark was in line with that prevailing in other major markets wherein sponsors have a similar role to that in Hong Kong; IPO transactions represented a specialized type of corporate finance work, which had been subject to recent market changes within the legal and regulatory framework – thus, these new Guidelines, said Ms Chen represented a considered attempt to "raise the bar" in terms of such sponsorship work.

52. Ms Chen did not dispute the contention on the part of Yu Ming that indeed it is an experienced, competent and well-capitalised firm within the local industry, with responsible officers who have served on the Council and the Listing Committee of the Stock Exchange, and who regularly lectured to market practitioners on takeovers and mergers. In this regard, however, she made the point that Yu Ming had chosen neither to produce this information to the regulator at the time, nor to make any application for a discretionary dispensation to the effect that the SFC should overlook or waive Yu Ming's clear failure to satisfy the new eligibility criteria. She added that whilst Yu Ming's responsible officers clearly were senior and respected figures within the business community, this did not assist in showing that Yu Ming's proposed Principals in terms of future sponsor work possessed the relevant experience in terms of the new Sponsor Guidelines; in fact, plainly this was not the case, given that whilst the three gentlemen nominated all had played a substantial role in the one IPO which, it was

accepted, fell within the relevant preceding five year period, it was also clear that one of those three had been working under the supervision of the other two at the time.

53. Ms Chen also observed that, from the chronology of the introduction of the new Guidelines, it was clear that there had been ample time for Yu Ming to make provision in order to comply with the new sponsor requirements in terms in particular of 'Principal experience', and that Yu Ming's claim that it "was effectively required to give up its practice instantly" upon receipt of the Letter of Mindedness of 15 December 2006 was incorrect; that Letter clearly had stated that Yu Ming may continue to carry out sponsor work it had accepted prior to that date, and that the new licensing condition served only to preclude Yu Ming from undertaking new sponsor work thereafter with, as earlier she had emphasized, no restriction on its conduct of all other corporate finance work under its existing Type 6 licence.

54. Ms Chen also contended that any hardship which may have been suffered by Yu Ming consequent upon implementation of the new sponsor regime and the SFC's licensing decision of 29 December 2006, whilst unfortunate, was in principle not a relevant factor to be taken into consideration upon this review, which she requested be dismissed.

Decision

55. I confess that I have found this a curious case; at the time of hearing this application the Tribunal struggled to identify any appropriate analytical basis which might properly justify any interference with the SFC

decision the subject of this review, and further reflection on the point has not assisted.

56. It is difficult to resist the conclusion that this review has been mounted upon the tacit underlying premise that notwithstanding evident (and undisputed) lack of compliance with the new Guidelines in terms of 'Eligibility Criteria for Principals' within paragraph 1.4 thereof, nevertheless such criteria should not have been applied to Yu Ming, in part, I suspect, by reason of its established reputation in the market; in short, that in substance this was no more than a case of special pleading.

57. I hope that this is not unfair. True it is that Mr Fung's enthusiastic submissions – Yu Ming evidently had decided to dispense with legal representation, if not legal advice (which it may well have received) for the purpose of the hearing of this review – posited a legal argument, under the rubric 'Inequitable in law', wherein he prayed in aid 'common law interpretation' in support of his contention that the 'effective date' for sponsors to have completed two IPO's within 5 years should commence on 1 January 2007, not 1 January 2002, which, he contended "would mean no revocation of licences until 1 January 2012". In other words, as I apprehend this rather startling submission, notwithstanding that the new Guidelines had come into force on 1 January 2007, in practice their requirements would not 'bite' until 5 years later.

58. Whilst I am able to comprehend this argument as thus framed, I do not accept it. With respect, it strikes me as nonsense.

59. It would be extraordinary if, after a period of market consultation, culminating in a consultation paper which elicited a significant number of responses, with thereafter extensive promulgation and gazetting of these new Sponsor Guidelines recognizing and purporting to remedy perceived deficiencies within the existing sponsorship system, that it seriously could be thought that the practical impact of such new Guidelines should, in effect, be delayed for a further period of 5 years.

60. Mr Fung maintains that these new Guidelines should be prospective only, and indeed they are; in no sense do they seek to apply to, nor purport to invalidate sponsorship work done *prior to* 1 January 2007, and the SFC Letter of Mindedness of 15 December 2006 makes it crystal clear (at page 3 thereof) that "You may continue to carry out sponsor work or compliance adviser work which has been accepted before you receive this letter".

61. At the same time, as I understood it (and this was repeated in terms on several occasions) Mr Fung also maintained that such new Guidelines should apply only to prospective entrants to sponsor work and not to incumbent operators which already undertook this type of work.

62. I can see no rational basis for this suggestion, unless of course (and I cannot believe that this seriously was being mooted) it is envisaged that a regulatory dual standard would operate, which in my view (and self-evidently) would serve only to produce unfairness, inequity and resentment among market participants.

63. At the end of the day, therefore, it is difficult to avoid the impression this application represented no more than an opportunity publicly to cavil about the imposition of new regulatory standards within the ambit of sponsor work, standards which, as it happened, did not fit the existing professional circumstances of Yu Ming, the applicant herein, in the sense that no prospective Principal within that house in fact met the new benchmark for perceived expertise and experience.

64. Faced with this situation, it seems to me that Yu Ming could have taken the commercial route and simply have gone into the market and hired relevant personnel, thereby expressly electing to meet the new prescribed standards as had come into force; alternatively it could have sought from the SFC a dispensation from the imposition of these new Guidelines, and had such application been made, there is no reason to believe that the SFC would not carefully have considered the merits thereof.

65. Nevertheless, not only did neither of these events occur, but in addition Yu Ming, when invited, made no representations in response to the regulator's Letter of Mindedness of 15 December 2006, save to note, in its brief letter of 27 December 2006, the short time available to it to respond, and, moreover, made no attempt to secure any time extension in which to do so.

66. To the contrary, by means of this review Yu Ming instead has chosen a frontal attack upon the primary SFC licensing decision of 28 December 2006, which decision seems to me to represent an entirely unexceptional and rational consideration by the SFC of Yu Ming's

sponsorship submission pursuant to the new Guidelines, and in my view Yu Ming manifestly has failed to establish any basis for interference therewith by this Tribunal; on the basis of the available material, in no sense can it be said that the SFC has exercised its discretion under the new Sponsor Guidelines in other than a reasonable manner.

67. As a matter of law the SFC, as market regulator, statutorily is tasked with overseeing and regulating market conduct in a multitude of areas. One of these areas is the relevant level of expertise which it has been decided must be demonstrated before permission is granted – or in this case continues to be granted – to embark upon sponsor work, and it is clear that the SFC has unrestricted statutory power at any time to alter the terms of such licence, s*ection 119(6)* of the SFO providing:

> *"A licence granted under subsection (1)* [which provides for the grant of a licence to an applicant to carry on "one or more than one regulated activity as the Commission may specify in the licence"] *shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice served on the licensed corporation concerned, amend or revoke any such condition or impose new conditions as may be reasonable in the circumstances."*

68. It strikes me that the specific terms of this provision provide the simple and complete answer to Yu Ming's case, and it is no part of this Tribunal's function to do other than to ensure that the legal basis of such regulation is jurisdictionally well-founded, and that the exercise of such statutory regulatory powers is, to put it in general terms, fairly and reasonably exercised and achieved.

69. As frequently has been stated in previous Determinations, this Tribunal is, in effect, no more than a statutory watchdog, established by section 216 of the SFC "to review specified decisions" of the SFC, and *absent* demonstration by applicants for review of lack of jurisdiction and/or lack of regulatory fairness and/or reasonableness and/or clear error in the making of such decisions, the SFAT is *not* to be regarded as an 'alternative regulator' to whom market participants dissatisfied with any particular SFC decision may have recourse in order to invite this Tribunal to substitute its own discretion/judgment for those of the professional regulatory body.

70. In the present case I am able to discern no legitimate ground whatever for the strident criticism which has been aimed at the SFC by Yu Ming during the hearing of this review. In this instance, after market consultation the regulator has done precisely what it is statutorily mandated to do in terms of a licence modification via the "imposition of new conditions as may be reasonable in the circumstances", and Yu Ming has demonstrated no valid reason for complaint.

71. In my judgment this application for review by Yu Ming, which I am informed is the first review case involving the new Sponsorship Guidelines, manifestly was without merit or analytical basis, and accordingly must fail.

Order

72. Upon the application by Yu Ming, by letter dated 19 January 2007, the Order of this Tribunal is as follows:

(1) *This application be dismissed;*

(2) As to costs, clearly these must follow the event, but in the exercise of the Tribunal's discretion in the particular circumstances of this application, I can see no valid reason why such costs should not be subject to taxation on a scale higher than the usual party and party basis. Accordingly, I make an order *nisi* as to costs in these terms:

The costs of and occasioned by this application for review be to the Respondent herein, such costs, if not agreed, to be taxed and paid by the Applicant to the Respondent on a common fund basis.

If and in so far as the parties wish to make representations as to costs, no further attendance will be necessary, and the Tribunal will receive and consider any such representations, in writing, within 21 days from the date of this Determination. Should any representations not be received by the expiry of that period, the costs order herein will be made absolute.

Hon Mr Justice Stone
(Chairman)

Mr Peter Fung, Managing Director of the Applicant, for the Applicant

Ms Lisa Chen, Counsel, Legal Services Division of the SFC,
for the Respondent