
Enforcement News

To save a copy for future reference, right click [here](#) and select "Save Target As..."

2 November 2007

High Court Affirms the SFC's Power to Audio Record Investigation Interviews

The High Court has made a ruling dismissing a challenge lodged by a person under investigation in respect of the SFC's power to audio record an interview held under section 183(1)(c) of the Securities and Futures Ordinance (SFO).

The SFC was seeking to audio record an interview with a person under an insider dealing investigation. The person objected to this and brought judicial review proceedings. (Note 1)

Mr Justice Reyes concluded that the power to record an interview by audio means is reasonably incidental and necessary to the power under section 183(1)(c) of the SFO to compel a person under investigation to attend an interview and answer questions and that in insisting upon an audio recording of an interview the SFC and its investigators did not act ultra vires. The SFC submitted that audio recording is an important way of ensuring the integrity of the interview process and that this does not interfere illegally with any privacy right. Mr Justice Reyes agreed.

The applicant was ordered to pay the SFC's costs in relation to this ruling. The full judgment has been posted on the Judiciary's website at www.judiciary.gov.hk (Court Reference: HCAL 103/2007).

Mr Mark Steward, the SFC's Executive Director of Enforcement, said: "This is an important decision that will assist the SFC to conduct its investigation more expediently and consistently with our obligations to act fairly."

The SFC cannot comment on the investigation, which is continuing, or identify any of the parties involved.

Ends

Notes:

1. The proceedings were held in chambers (not open to the public) and the name of the applicant is suppressed by order of the court.

Page last updated: 2 November 2007