

SFC reprimands and fines ICBC International Capital Limited and ICBC International Securities Limited \$12.5 million each for failures related to IPO shares subscription

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The Securities and Futures Commission (SFC) has reprimanded ICBC International Capital Limited (ICBCI Capital) and ICBC International Securities Limited (ICBCI Securities) (collectively ICBCI) and fined them \$12.5 million respectively in relation to their role in the initial public offering of Powerlong Real Estate Holdings Limited (Powerlong) in 2009 (Notes 1, 2, 3 & 4).

An SFC investigation into the practice and procedure adopted by ICBCI found that it had:

- failed to conduct customer due diligence and perform ongoing scrutiny of accounts of certain placees referred by Powerlong (Placees) to ensure that the transactions being conducted were consistent with its knowledge of the Placees, taking into account their source of funds (Note 5);
- turned a blind eye to the lack of independence of Placees for the subscription of Powerlong's shares allotted through its listing (the Offer Shares) on The Stock Exchange of Hong Kong Limited (SEHK);
- facilitated the listing of Powerlong by ensuring that margin financing would be extended to the Placees despite its suspicion of their non-independence; and
- failed to use reasonable efforts to ensure that submissions to the SEHK were true, accurate and not misleading.

An SFC investigation revealed that the Placees were referred by Powerlong to ICBCI Capital, which in turn referred them to its affiliate ICBCI Securities to open accounts for the subscription of the Offer Shares. ICBCI Securities accepted the subscriptions of the Placees without conducting know-your-client due diligence as required under the Code of Conduct to either ascertain their financial situation or confirm their independence from Powerlong (Note 6).

The Offer Shares were subsequently re-priced due to insufficient demand. Upon the request of Powerlong, ICBCI Capital informed ICBCI Securities that extensive margin financing would have to be extended to particular Placees so that subscriptions under their accounts could be increased to prevent the listing from falling through.

Thereafter, subscriptions of these Placees suddenly increased by as much as tenfold. ICBCI Securities failed to perform ongoing scrutiny to ensure that the Placees' subscriptions were consistent with its knowledge of their financial situation.

In light of the unusual and substantial increase in subscription sizes of these Placees, a certain staff member of ICBCI Capital voiced out his suspicion that the orders of these Placees belonged to Powerlong. However, no inquiry was made by ICBCI Capital to ascertain whether this was the case or the relationship between the Placees and Powerlong. Although the subscriptions of some of these Placees far exceeded their declared net worth, ICBCI Capital nevertheless allocated the Offer Shares to them. As a result, massive debit balances were triggered after the Offer Shares were booked into their accounts. Margin financing of as much as 50%, which was not generally granted in international primary placings, was then extended by ICBCI Securities to certain Placees.

When some Placees raised questions regarding third-party settlement of their subscriptions, instead of questioning the reasons behind them, personnel of ICBCI Securities advised them to settle their allotment by various methods which ensured that the identity of the third-party depositors could not be traced.

ICBCI Securities filed the Marketing Statement (known as Form D) and a letter vouching placee independence with the SEHK even though it had not received all independence confirmations from the Placees at the time of making the filing with the SEHK in October 2009. ICBCI Capital filed a Sponsor's Declaration (known as Form E) to the SEHK without making any reasonable enquiries that the number of Offer Shares in public hands would satisfy the minimum percentage prescribed by Rule 8.08 of the Listing Rules (Note 7).

The SFC took into account that ICBCI has an otherwise clean record and acknowledges ICBCI's cooperation to address the SFC's concerns. ICBCI has agreed to accept the disciplinary action and has committed to engage a firm of independent reviewers to undertake a comprehensive review of its systems and controls and to implement the recommendations made by the reviewer to the satisfaction of the SFC.

Mr Mark Steward, the SFC's Executive Director of Enforcement, said, "These failings go to the heart of the sponsor's obligation to help ensure the integrity of the initial public offering market. The sponsor is the principal responsible for the management of the listing process and these failings cannot be placed at the foot of any other person."

End

Notes:

1. ICBCI Capital is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities) and Type 6 (advising on corporate finance) regulated activities.
2. ICBCI Securities is licensed under the SFO to carry on Type 1 (dealing in securities) regulated activity.

3. ICBCI Capital was one of the joint sponsors and bookrunners; and ICBCI Securities was one of the joint lead managers.
4. Powerlong was listed on the Main Board of The Stock Exchange of Hong Kong Limited in 2009.
5. "Placees" refers to investors who subscribed for the offer shares via the international tranche.
6. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission
7. Rule 8.08(1)(a) of Main Board Listing Rules of the SEHK prescribes that an open market in the securities for which listing is sought means that at least 25% of the issuer's total issued share capital must at all times be held by the public.
8. A copy of the [Statement of Disciplinary Action](#) in relation to the matter is available on the SFC website.