

Obstruct the SFC at Your Peril: First Conviction and Imprisonment for Obstructing SFC Employees in Performance of Their Functions

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THE OFFENCE OF OBSTRUCTION

Section 382 of the Securities and Futures Ordinance (the “SFO”) makes it an offence for any person to, without reasonable excuse, obstruct any specified person in the performance of a function under the SFO. A “specified person” includes the Securities and Futures Commission (the “SFC”), its employees and any person appointed to investigate any matter under section 182(1) of the SFO. Any person who contravenes section 382 is liable (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for two years; or (b) on summary conviction to a fine of \$100,000 and to imprisonment for six months.

The term “obstruct” has generally been defined to mean the doing of any act which makes it impossible or more difficult for another person to carry out his or her duty (see *Rice v Connolly* [1966] 3 WLR 17; and *Lewis v Cox* [1984] 3 WLR 875). Whether a particular conduct amounts to obstruction is a question of fact (see *O’Reilly v Commissioner of State Bank of Victoria* (No 2) (1983) 46 ALR 225).

FIRST CONVICTION AND IMPRISONMENT FOR OBSTRUCTION OF SFC’S SEARCH OPERATION

In October 2021, the SFC obtained a search warrant to search for, seize and remove from Mr. Wong King Hoi’s residence records and documents relating to the SFC’s investigation into suspected market manipulation of the shares of a Hong Kong-listed company. When the SFC executed the search warrant at Mr. Wong’s residence, Mr. Wong allegedly delayed in giving the SFC search team access to his residence and attempted to dispose of four objects, consisting of two mobile phones and two notebooks.

Mr. Wong was charged with obstructing employees of the SFC in the execution of a search warrant. On 27 October 2022, the Eastern Magistrates' Court convicted Mr. Wong after he pleaded guilty. Subsequently, on 10 November 2022, the Court sentenced Mr. Wong to two weeks of imprisonment. Mr. Wong was also ordered to pay the SFC's investigation costs.

This is the first case where a person has been convicted and sentenced for obstructing SFC employees in the performance of their functions under the SFO. In 2020, the SFC had brought the same charges against another individual, Ms. Zeng Lingxi, but as Ms. Zeng fled Hong Kong shortly after pleading not guilty and posting bail, that case did not ultimately result in a conviction. Ms. Zeng's cash bail of HK\$100,000 was forfeited and an arrest warrant was issued against her.

Following the conviction and sentencing of Mr. Wong, the SFC's Executive Director of Enforcement, Mr. Christopher Wilson, commented that this "sends a strong and clear message that the obstruction is a significant impairment to the SFC's lawful duty." It is therefore clear that the SFC will continue adopting a hardline approach against those who wilfully obstruct SFC officers in the performance of their duties.



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