Hong Kong Corporate and Regulatory Insights

October 2021

Hogan Lovells

Contents

Equity Capital Markets

The Stock Exchange of Hong Kong (SEHK) publishes revised e-Forms

SEHK published the following revised Listing e-Forms:

- DU003G - Director's Declaration, Undertaking and Acknowledgement (GEM)
- DU004G - Director's Declaration, Undertaking and Acknowledgement (PRC Issuer) (GEM)
- DU005G - Supervisor's Declaration, Undertaking and Acknowledgement in respect of an Issuer incorporated in the PRC (GEM)
- DU003M - Declaration and Undertaking with regard to Directors (Main Board)
- DU004M - Declaration and Undertaking with regard to Directors of an Issuer incorporated in the PRC (Main Board)
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- FF301 - Monthly Return e-Form for Equity Issuers and Hong Kong Depositary Receipts listed under Chapter 19B of the Listing Rules (for Main Board issuers) / Monthly Return e-Form for Equity Issuers (for GEM issuers)
- FF302 - Monthly Return e-Form for Collective Investment Schemes listed under Chapter 20 of the Listing Rules (other than listed open-ended Collective Investment Schemes) on Movements in Units
- FF304 - Next Day Disclosure Return e-Form for Equity Issuers and Collective Investment Scheme under Chapter 20 of the Listing Rules (other than listed open-ended Collective Investment Schemes) (for Main Board issuers) / Next Day Disclosure Return e-Form for Equity Issuers (for GEM issuers)

Please click here to view revised e - Forms and guideline.

HKEx, 16 October 2021

SEHK updates Frequently Asked Questions (FAQs) on online display of documents

SEHK updated the FAQs (No. 075-2021) to help PRC issuers to understand and comply with the Listing Rule changes on rule 19A.50(2) to (5) regarding online display of documents, which came into effective on 4 October 2021. The FAQs confirms the respective rules could be satisfied when the relevant information is contained in other documents that are already published on the Hong Kong Exchanges and Clearing Limited (HKEx) website and the issuer's website.

Please click here to updated FAQs.

HKEx, 27 October 2021

SEHK publishes consultation paper on proposed amendments to Listing Rules relating to share schemes of listed issuers

SEHK published a consultation paper on proposed amendments to Listing Rules relating to share schemes of listed issuers. The consultation paper proposes to provide more flexibility for issuers to grant new shares under share award schemes by extending Chapter 17 to share award schemes which are funded by issuance of new shares.

We highlight some of the key proposals, among other things, discussed in the consultation paper:

- Revising the definition of eligible participants to include employee participants, related entity participants and service provider;
- Applying a limit where scheme mandate shall not exceed 10 percent of an issuer's issued shares to all its share schemes;
- Applying limits on share grants to connected persons;
- Applying a limit on large share grants to individual participants; and
- Requiring a vesting period of minimum 12 months, unless approval is obtained from the remuneration committee.

Currently, Chapter 17 of the Listing Rules applies to share option schemes of issuers and their subsidiaries only. The issuance of new shares under a share award scheme is subject to the general requirements where issuers must seek shareholders' approval for grant of new shares under share award schemes at a general meetings or under a general mandate.

The consultation paper includes the draft amendments to the Listing Rules. SEHK is seeking feedback from the market. Any written comments shall be submitted to SEHK by 31 December 2021.

Please click here to view the consultation paper.

HKEx, 29 October 2021

Financial Services Regulation

Consultation conclusions on conduct requirements for bookbuilding and placing activities

The SFC released Consultation Conclusions on (i) the Proposed Code of Conduct on Bookbuilding and Placing Activities in Equity Capital Market and Debt Capital Market Transactions and (ii) the "Sponsor Coupling" Proposal.

The key amendments to the Code of Conduct for Persons Licensed by or Registered with the SFC include setting out standards of conduct expected of capital market intermediaries in bookbuilding, allocation, placing activities, and requiring that at least a sponsor should be independent of the listing applicant and ensure that it or one of its group companies is also appointed at the same time as an overall coordinator in connection with that listing application. The SFC will also make corresponding amendments to the Guideline to sponsors, underwriters and placing agents involved in the listing and placing of GEM stocks.

These amendments will be gazetted on 5 November 2021 and become effective on 5 August 2022.

Please click here to view the press release.

SFC, 29 October 2021

Consultation conclusions on amendments to the Code on Pooled Retirement Funds (PRFs)

The SFC released Consultation Conclusions on Proposed Amendments to the Code on Pooled Retirement Funds (PRF Code). PRFs and investment portfolios are only available to occupational retirement schemes as defined under the Occupational Retirement Schemes Ordinance.

The revised PRF Code will become effective upon gazettal. Key amendments include enhancing requirements for the operation of PRFs and clarifying the obligations of key operators including product providers, trustees, management companies and insurance companies.

A 12-month transitional period from the effective date of the revised PRF Code will generally be provided for existing SFC-authorised PRFs and their underlying investment portfolios.

Please click here to view the press release.

SFC, 28 October 2021

HKMA updated supervisory policy in relation to share margin financing

As stipulated in paragraph 7.1.4 of the Supervisory Policy Manual (SPM) Module CR-S-4, New Share Subscription and Share Margin Financing, Authorised Institutions (AIs) should set maximum loan-to-value (LTV) ratios for share collateral in line with prevailing market norms. The SPM module further prescribes the market norms for different categories of shares with reference to common market practices in Hong Kong.

Considering the global nature of Hong Kong's wealth management and private banking business, and the operational challenges AIs face in integrating prescriptive market norms for LTV ratios into their global risk management framework, the HKMA is of the view that continued enforcement of the requirement to observe market norms in the setting of maximum LTV ratios is no longer appropriate.

Although AIs are no longer expected to fulfil the said requirement, AIs should continue to observe requirements in the SPM module, and undertake share margin financing business in a prudent manner. In setting maximum LTV ratios for share collateral, AIs should give due regard to key factors such as their credit risk appetite, risk characteristics of individual stocks, and their expertise and proficiency in margin call management. The HKMA will also proactively assess whether AIs are prudent in setting maximum LTV ratios by stepping up surveillance and collection of data.

Please click here to view the circular.

HKMA, 22 October 2021

Passage of the Mandatory Provident Fund Schemes (Amendment) Bill 2021

The passage of the new legislation marked another significant milestone in the implementation of the eMPF Platform project, which will standardize, streamline and automate the administration processes of Mandatory Provident Fund (MPF) schemes, thus increase the operational efficiency of the MPF System thereby creating further room for fee reduction for the benefit of MPF scheme members.

The Mandatory Provident Fund Schemes Authority (MPFA) explained that the new legislation provides the legal basis for the designation of the eMPF Platform as the common gateway for scheme administration processes in the MPF System, delineates the respective roles, functions, powers and responsibilities of relevant parties, stipulates the "straight pass-on" requirement in respect of cost savings to benefit MPF scheme members directly and introduces technical amendments to reflect the streamlined MPF scheme administration workflow.

Please click here to view the press release.

MPFA, 22 October 2021

The Memorandum of Understanding (MoU) on Fintech Innovation Supervisory Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA)

The People's Bank of the China (PBoC) and the HKMA jointly announced that the two authorities have signed the MoU, by which the authorities will link up the PBoC's Fintech Innovation Regulatory Facility with the HKMA's Fintech Supervisory Sandbox in the form of a "network".

The "network link-up" aims to provide a one-stop platform to allow eligible financial institutions (FIs) and technology firms to conduct pilot trials of cross-boundary fintech initiatives, concurrently in Hong Kong and Mainland GBA cities. The arrangement will enable FIs and technology firms to obtain early supervisory feedback and user opinions; expedite the launch of Fintech products and reduce development costs, allow the GBA to reinforce its leading Fintech position and facilitate innovation in the region, and strengthen Fintech supervisory exchanges in an environment of rapidly advancing technology.

Please click here to view the press release.

HKMA, 21 October 2021

Introduction of re-domiciliation mechanisms under the Open-ended Fund Company (OFC) and Limited Partnership Fund (LPF) regimes

To enhance the attractiveness of the OFC and LPF regimes and strengthen Hong Kong's position as an international asset and wealth management center, new fund re-domiciliation mechanisms which aim to attract existing non-Hong Kong investment funds to re-locate to Hong Kong will be introduced under the Securities and Futures (Amendment) Ordinance 2021 and the Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021.

Under the new mechanisms, a fund set up in the form of a company or a limited partnership under the law of a jurisdiction outside Hong Kong may apply for registration as an OFC or an LPF in Hong Kong respectively, if it meets the same set of eligibility requirements for a new fund to be registered as an OFC or an LPF.

Upon re-domiciliation, the fund will have the same rights and obligations as any other newly established OFCs or LPFs in Hong Kong. The role of the Companies Registry in respect of re-domiciliation will be similar to that of the Companies Registry in respect of incorporation or registration of new OFCs and LPFs currently.

Please click here to view the circular.

HKCR, 15 October 2021

Explanatory Note on "Regulated Activity" under the Insurance Ordinance

The IA has previously issued an "Explanatory Note on Licensing Requirements for Employees of Authorized Insurers under Regulatory Regime for Insurance Intermediaries" in November 2018 and an "Explanatory Note on Licensing Requirements for Banking Sector under Regulatory Regime for Insurance Intermediaries" in October 2019, setting out its views on whether or not persons are carrying on "regulated activity" in certain sector-specific situations.

The IA has issued an additional Explanatory Note (Note) in response to the enquiries on the issue of "regulated activity" involving different types of distribution models that go beyond the scope of the existing 2018 and 2019 Explanatory Notes. The Note has been finalized following consultation with, among others, the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association.

The Note sets out the general licensing requirements under the Insurance Ordinance, and offers further guidance on terms such as, among others, definition of "regulated activity" and "negotiating or arranging a contract of insurance", and considerations in determining whether a decision constitutes a material decision, and so on. The Note also sets out various hypothetical cases covering business practice where the issue of whether or not a person is required to be licensed under the Insurance Ordinance might arise and the consideration which the IA takes into account when considering these practices.

Please click here to view the circular.

IA, 12 October 2021

Distribution of insurance-linked securities (ILS) and related products

The SFC and the HKMA, in consultation with the IA, reminded intermediaries to observe the requirements governing selling practices under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission when they distribute ILS and related products.

ILS are mechanisms by which insurers or reinsurers can transfer insurance risks to the capital markets by way of securitization. The structure and valuation of ILS can be complicated as they are generally subject to limited market liquidity.

Intermediaries should appropriately identify the target investors, taking into account any selling restrictions on ILS issued in and outside Hong Kong, and the structure and risks of these products. Also, ILS Funds in general are unsuitable for retail investors.

Further, having regard to the Code of Conduct, intermediaries are reminded to comply with the suitability obligations and requirements for complex products where applicable when distributing ILS and related products, which include, amongst others:

- Conduct product due diligence, taking into account, amongst other factors, the products' nature, features, risks, any restrictions on their sale and target investors, and in what aspects they are considered suitable for clients.
- Ensure that the risk return profile of the product matches the financial situation, investment objectives, investment experience, risk tolerance, and other relevant circumstances specific to the client.
- Provide clients with sufficient and accurate information about the product, including its nature, features, and risks.
- Provide clients with warning statements in a clear and prominent manner.
- Provide staff with adequate training on the products they distribute, and how to appropriately disclose the products' nature, features, and risks to clients.

Please click here to view the circular.

SFC, 11 October 2021

Note on the treatment of "closely linked" entities that are members of the supervised groups under the group-wide supervision regime

The IA issued general guidance on the IA's expectations regarding the steps that a designated insurance holding company (DIHC) should take pursuant to particular provisions of the Insurance Ordinance and the Guideline on Group Supervision (GL32), in respect of "closely linked" entities that are members of the supervised group.

In general, a DIHC is required to exercise its control or influence in respect of a closely linked member, but the legal rights of the DIHC in relation to the entity do not give the DIHC power to compel the entity to take such acts as may be necessary to ensure such compliance is achieved, then the DIHC should at a minimum take the following steps:

(a) The DIHC should take reasonable steps which are within its control or influence in relation to the entity to achieve compliance (even if that control or influence is not sufficient to compel the entity to act in such a way as to achieve compliance).

(b) The DIHC should notify the entity in writing of the DIHC's obligation to achieve compliance with the requirement under the Ordinance.

(c) The DIHC should raise the matter with the IA as early as practicable, by informing the IA of the reasons why its control and influence are insufficient to be able to procure compliance with the requirement imposed and what steps it has taken (or proposes to take) within the scope of its control and influence to try to secure compliance.

The manner in which a DIHC would be expected to exercise its control and influence on a closely linked member would depend on the nature, scale and complexity of risks associated with the closely linked member.

Please click here to view the circular.

IA, 6 October 2021

Authentication and fraud prevention controls for simplified Electronic Direct Debit Authorization (eDDA)

The HKMA undertook a review with respect to eDDA and recommend AIs to adopt a set of good practices identified during the review.

eDDA is a value-added service of the Faster Payment System which enables the payer to pre-authorize his or her account to be debited by direct debit payments. An eDDA instruction can be initiated by the payer (Standard eDDA) or by the payee (Simplified eDDA). The convenience and instantaneous nature of the creation of eDDA instructions has facilitated the development of new usage of direct debit payments with enhanced customer experience. Specifically, by setting up a Simplified eDDA instruction, a bank customer can instantly withdraw funds from one deposit account to another with a different institution, without the need to switch between different internet banking applications.

In conducting the review, the HKMA made reference to the relevant requirements in the HKMA's SPM module on Risk Management of E-banking and the operating rules of the Hong Kong Interbank Clearing Limited (HKICL). The review has assessed whether the existing controls of AIs are adequate to guard against different risk scenarios. These include the scenarios where the fraudsters have managed to impersonate the customer to open fraudulent bank accounts in his or her name using stolen personal information, and where the fraudsters have obtained access to the customer's existing accounts using stolen authentication passcodes.

The findings of the review underscore the importance for AIs to observe the control requirements stipulated in HKICL's operating rules for Simplified eDDA. Specifically, the payee bank should authenticate the customer's identity before passing on the eDDA instruction to the payer bank; it should provide the customer's personal and account information to the payer bank for verification, and the payer bank should issue a notification to the customer after the setting up or any amendment of a Simplified eDDA instruction.

Please click here to view the circular.

HKMA, 5 October 2021

Technical whitepaper on retail Central Bank Digital Currency (CBDC)

The HKMA released a technical whitepaper on retail CBDC, titled e-HKD: A technical perspective (Whitepaper).

The HKMA announced the Fintech 2025 strategy in June 2021, one strategic direction under which is to strengthen research work on CBDC with a view to future-proofing Hong Kong in terms of CBDC readiness. Apart from the continued and expanded collaborative effort with peer central banks on cross-border application of wholesale CBDC, the HKMA has started a study on the prospect of issuing retail CBDC in Hong Kong, i.e., e-HKD, covering both technical and policy considerations, and aims to come up with an initial view by the middle of next year.

Building on the model for retail CBDC that the HKMA is jointly investigating with the Hong Kong Centre of the BIS Innovation Hub, the Whitepaper explores potential technical design options for issuing and distributing retail CBDCs. This Whitepaper is the first among similar papers published by central banks to unveil a technical architecture that includes a ground breaking privacy preservation arrangement that allows transaction traceability in a privacy-amicable manner. In the course of this research, the HKMA has also identified a number of issues for further exploration as summarized under the problem statements in the Whitepaper, on which the HKMA would reach out to the academia and industry for further views and comments.

Please click here to view the press release.

HKMA, 4 October 2021

Operational resilience and remote working

Intermediaries' operational resilience, which refers to their ability to prevent, adapt and respond to and recover and learn from operational disruptions, has been stress-tested by the COVID-19 pandemic. While the guidance provided by the SFC on cybersecurity, business continuity plans, internal controls and risk management in its codes, guidelines and circulars has helped LCs maintain resilience amid the COVID-19 outbreak, it is important for them to ensure continued strength by adopting a comprehensive approach to achieve their operational resilience objectives based on common established standards. For example, many intermediaries transitioned to hybrid working arrangements during the pandemic, with employees working partly from the office and partly remotely.

The SFC sets out the operational resilience standards and required implementation measures which supplement the SFC's existing guidance, as well as the expected regulatory standards for managing and mitigating some major possible risks of remote working. The SFC also encourages intermediaries to read the Report on Operational Resilience and Remote Working Arrangements which aims to provide intermediaries with a better understanding of the regulatory standards and required implementation measures for operational resilience.

Please click here to view the circular.

SFC, 4 October 2021

IA welcomes the inaugural issuance of ILS in Hong Kong

The IA welcomed the inaugural issuance of ILS in the form of a catastrophe bond made available by the China Reinsurance (Group) Corporation and the China Property & Casualty Reinsurance Company Ltd through Greater Bay Re Limited, the first authorized special purpose insurer (SPI) in Hong Kong, securing protection against losses inflicted by typhoons in the Mainland.

The increasing frequency and intensity of extreme weather events, coupled with the rapid pace of urbanization in the Asia Pacific region, render ILS an effective tool to mitigate the risks posed by natural catastrophes. A highly volatile market environment also stokes the appetite among institutional investors for products that bear lesser correlation with economic cycles.

In order to make this inaugural issuance possible, a bespoke and streamlined regulatory regime for SPIs was launched by the IA in March 2021. This was complemented by the Pilot ILS Grant Scheme announced in the 2021-22 Budget that subsidizes upfront costs of up to HK$12 million for each eligible transaction.

Please click here to view the press release.

IA, 1 October 2021

Data Protection

The Personal Data (Privacy) (Amendment) Ordinance 2021 Takes Effect Today to Criminalize Doxxing Acts

The Personal Data (Privacy) (Amendment) Ordinance 2021 (Amendment Ordinance) came into effect on the 8 October 2021 to combat doxxing acts that are intrusive to personal data privacy. The Privacy Commissioner for Personal Data (Privacy Commissioner) welcomed the commencement of operation of the Amendment Ordinance.

The objectives of the Amendment Ordinance include the criminalization of doxxing acts, the empowerment of the Privacy Commissioner to carry out criminal investigations and institute prosecutions for doxxing and related offences. Statutory powers are also conferred on the Privacy Commissioner to demand the cessation of disclosure of doxxing messages.

Pursuant to the Amendment Ordinance, anyone who discloses the personal data of another person without consent, whether recklessly or with intent to cause specified harm to the person or to his or her family, such as harassment, molestation, pestering, threat, intimidation, bodily or psychological harm or damage to property, commits the offence of doxxing.

The Implementation Guideline for the Amendment Ordinance was published by the Office of the Privacy Commissioner (PCPD) as well for public information.

Click here to read the media statement.

PCPD, 8 October 2021

Ransomware Attack on Digital Marketing Agency's Computer System, Privacy Commissioner Commenced Investigation

The PCPD has successively received data breach notifications from Fimmick CRM Limited (Fimmick) and its corporate clients since 4 October 2021, which reported that Fimmick's computer system has been attacked by ransomware in September 2021 which caused the leakage of some of the personal data processed by Fimmick.

The PCPD contacted Fimmick on 6 October 2021 to follow up on the matter and officially commenced an investigation in relation to the data breach incident that happened on 12 October 2021.

As of 21 October 2021, the PCPD learnt that customers of L'Oreal Hong Kong Limited were confirmed to be affected. The PCPD also received data breach notifications from nine other companies, which are Fimmick's corporate clients, and they are reportedly investigating the matter.

The Privacy Commissioner reminds organizations to adopt effective security measures in order to protect personal data of customers as required by the Personal Data (Privacy) Ordinance (PDPO). Also, if an external service provider is engaged as a data processor, contractual or other means to safeguard personal data from unauthorized or accidental access, processing, loss or use must be implemented by the organization.

Click here to read the media statement.

PCPD, 21 October 2021

Privacy Commissioner Appealed for Greater International Collaboration at the 43rd Global Privacy Assembly

In light of the increasing number of personal data breach incidents that involved infringements of privacy laws in different jurisdictions, the Privacy Commissioner, together with her counterparts in other jurisdictions, participated in the Global Privacy Assembly (GPA), which was held to facilitate discussion on international enforcement cooperation on privacy and data protection issues.

The Privacy Commissioner appealed for more collaboration, exchange of information and experience, and possibly joint actions on the international front to enhance the protection of personal data privacy in the digital era.

The Deputy Commissioner for Personal Data also presented to the GPA members the Compendium of Best Practices in Response to COVID-19 (Part II) compiled by the PCPD. It contains relevant experience and cases of best practices of privacy protection which are contributed by 32 GPA members and observers through a survey conducted by the PCPD in June and July 2021.

Click here to read the media statement.

PCPD, 22 October 2021

The PCPD, together with Five Data Protection Authorities, Issues a Joint Statement on Global Privacy Expectations of Video Teleconferencing Companies

The PCPD, together with five data protection authorities from Australia, Canada, Gibraltar, Switzerland and the United Kingdom (Joint Signatories) published a joint statement on global privacy expectations of video teleconferencing (VTC) companies.

The Joint Signatories identified several areas where major VTC companies had implemented good practices to address privacy risks, including areas of security, privacy - by - design, transparency, end - user control and know your audience practices.

The Joint Signatories had also identified possible areas of improvement for data protection practices, for example, VTC companies to implement protective measures when sharing information with third parties in foreign jurisdictions.

Click here to read the media statement.

PCPD, 27 October 2021

PCPD Publishes Investigation Report on Security Measures Taken by 14 Restaurants to Protect Customers' Registration Data

The Government had imposed requirements under the Prevention and Control of Disease (Requirement and Directions) (Business and Premises) Regulation (Cap. 599F) on restaurants to ensure that customers either scan the venue QR code with the "LeaveHomeSafe" mobile app or to register their names, contact numbers, dates and times of their visits before entering the premises. Restaurants are also required to keep such written or electronic records for 31 days.

The Privacy Commissioner has found that 11 restaurants had failed to properly handle the registration data of customers, and their registration collection practices had exposed the registered personal data to unauthorized or accidental access or use, and contravened the security obligations as stipulated under the PDPO.

The Privacy Commissioner reminded all restaurants in Hong Kong to comply with the requirements under the PDPO, to provide training and guidance to their staff, to adopt measures and ensure proper conduct of their staff to process customer registration and to raise the awareness of their staff with regard to personal data privacy protection.

Click here to read the media statement.

PCPD, 28 October 2021

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