Hong Kong Corporate and Regulatory Insights

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Hogan Lovells

Contents

Equity Capital Markets

The Stock Exchange of Hong Kong (SEHK) takes disciplinary action against a former director of Grand Peace Group Holdings Limited (the Company) (Delisted, previous Stock Code : 8108)

The GEM Listing Committee of SEHK (the GEM Listing Committee) censures:

- Mr. Miguel Sun, former executive director.

SEHK found that Mr. Sun breached his undertaking to cooperate in an investigation conducted by the Listing Division, to promptly respond to queries addressed to him and to provide his latest contact details to SEHK for three years after he ceased to be a director of the Company.

Mr. Sun was also the authorized representative of the Company at the material time. He failed to provide adequate response when the Listing Division sent enquiry letters and subsequent reminders to the Company.

The GEM Listing Committee further states that in SEHK's opinion, by reason of his failure to discharge his responsibilities under the GEM Listing Rules, had Mr. Sun remained on the board of directors of the Company, his retention of office would have been prejudicial to the interests of investors.

Please click here to view the statement of disciplinary action.

HKEx, 2 September 2021

Hong Kong Exchanges and Clearing Limited (HKEx) publishes consultation paper on special purpose acquisition companies (SPAC) and seeks market feedback during consultation period

HKEx published a consultation paper on its proposal to establish a framework for listing via a SPAC. The consultation paper covers (i) the SPAC arrangements in the current markets such as the U.S., the UK and other European exchanges, (ii) a comparison between the performance of SPACs and traditional IPOs, (iii) the potential benefits of a listing regime for SPACs in Hong Kong, (iv) the major issues of the proposed regime, and (v) HKEx's proposed safeguards covering the pre de-SPAC stage, the de-SPAC transaction and the liquidation and de-listing stage.

A SPAC is a type of shell company where it has no commercial operations at the time of listing. It raises funds via an IPO for its target operating company whereby the successor company gains a listing status after a de-SPAC transaction.

We highlight some of HKEx's proposed safeguards, among others, below:

- Only professional investors are permitted to subscribe and trade SPAC’s securities.
- SPAC promoters shall meet the relevant suitability and eligibility requirements.
- A SPAC shall raise at least HK$1 billion from its initial offering.
- The successor company shall meet all new listing requirements.
- The successor company shall ensure an adequate spread of 100 shareholders.

HKEx is seeking feedback from the market. Any written comments shall be submitted to HKEx by 31 October 2021.

Please click here to view the consultation paper.

HKEx, 17 September 2021

HKEx publishes e-Learning materials on continuing obligations of a listed issuer

HKEx published three modules of e-Learning materials covering listed issuers' continuing obligations and corporate governance, disclosure requirements, and continuing listing requirements.

Please click here to view the e-Learning materials.

HKEx, 24 September 2021

Financial Services Regulation

Government welcomes passage of Securities and Futures (Amendment) Bill 2021 and Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021

The Secretary for Financial Services and the Treasury Bureau welcomed the passage of the amended Ordinances by the Legislative Council on 30 September 2021, which would spur the rapid development of the asset and wealth management business of Hong Kong.

The amended Ordinances establish new fund re-domiciliation mechanisms for existing funds set up in corporate or limited partnership form outside Hong Kong to relocate their registration and operation to Hong Kong and to be registered as open-ended fund companies (OFCs) or limited partnership funds (LPFs) respectively. The re-domiciliation mechanisms will come into operation on 1 November 2021.

Under the re-domiciliation mechanisms, existing investment funds set up in corporate or limited partnership form outside Hong Kong may apply to the Securities and Futures Commission (SFC) or the Companies Registry for registration of the fund as an OFC or LPF in Hong Kong respectively. Upon re-domiciliation, the continuity of the fund, including contracts made and property acquired, will be preserved and the mechanisms do not operate to create a new legal entity. The fund would have the same rights and obligations as any other newly established OFCs or LPFs in Hong Kong. The fund will be required to deregister in its original place of establishment upon re-domiciliation.

Please click here to view the news.

FSTB, 30 September 2021

Joint inspection on the use of premium financing to take out long term insurance policies in Hong Kong

The Insurance Authority (IA) and the Hong Kong Monetary Authority (HKMA) carried out a joint inspection exercise on premium financing activities in late 2020. Premium finance is an insurance financing arrangement whereby the prospective policy holder borrows money from a financial institution (usually a bank) to settle part of the insurance premiums and, in doing so, assigns all or part of his/her rights under the policy to the financial institution as collateral.

The joint inspection covered authorized insurers carrying on long term insurance and licensed insurance intermediaries (including banks) carrying on regulated activities in long term insurance in Hong Kong, and covered areas including suitability and affordability assessment, distribution and selling process, disclosure of risks and other important matters, and processing of policy services such as assignment and maturity.

Based on findings of the joint inspection, the IA and the HKMA will engage the industry and relevant stakeholders to clarify the standards expected on long term insurers and licensed insurance intermediaries carrying out premium financing activities.

Please click here to view the circular and here to view the news.

HKIA, 30 September 2021

International Swaps and Derivatives Association, Inc. (ISDA) publishes a Hong Kong Jurisdictional Module to the ISDA Resolution Stay Jurisdictional Modular Protocol

ISDA published a Hong Kong Jurisdictional Module to the ISDA Resolution Stay Jurisdictional Modular Protocol on 24 September 2021.

The HKMA welcomes the addition of the Hong Kong Jurisdictional Module, which is intended to facilitate compliance with the Financial Institutions (Resolution) (Contractual Recognition of Suspension of Termination Rights—Banking Sector) Rules (Cap. 628C).

Please click here to view the circular.

HKMA, 30 September 2021

The Regtech Adoption Practice Guide

The HKMA published the third issue of the Regtech Adoption Practice Guide, which focuses on Regtech solutions in the space of Governance, Risk and Compliance (GRC).

GRC is a framework of people, processes, and technologies to gather and aggregate risk information across an organization to enable timely management, attention, and action.

This practice guide introduces a modular approach to building a GRC Regtech platform and outlines some key implementation components based on observations of what others have successfully done. These include maturity analysis, GRC vision, project governance and information and technology change control, and process change management. Successful implementation of GRC Regtech solutions require firm-wide support for digital transformation.

An evolving risk and regulatory landscape, coupled with a growing need to balance costs and effectiveness, is driving banks to adopt GRC Regtech solutions.

Please click here to view the circular.

HKMA, 27 September 2021

Expansion of eligible collateral for the Renminbi (RMB) Liquidity Facility

The HKMA announced that with effect from 27 September 2021, the list of eligible collateral for the RMB Liquidity Facility will also include the RMB, USD, and Euro denominated debt securities issued in offshore markets by the Local People's Governments at various levels of the People’s Republic of China.

Please click here to view the circular.

HKMA, 27 September 2021

Official launch of the Southbound Trading under Bond Connect

Southbound Trading under Bond Connect (Southbound Bond Connect) was officially launched on 24 September 2021. The Southbound Bond Connect aims to provide a convenient, efficient and secure channel for Mainland institutional investors to invest in offshore bonds through the Hong Kong bond market.

The Southbound Bond Connect will follow the current policy framework of the Hong Kong bond market and at the same time will not alter the "going out" policy arrangements for Mainland institutional investors to invest in Hong Kong as well as global bond markets. It is conducive to the diversification of investment channels for Mainland institutional investors, to the steady and progressive two-way opening up of the Mainland financial markets, to the enhancement of Hong Kong's competitive advantages and consolidation of Hong Kong's status as an international financial center, and to the upholding of long-term prosperity and stability of Hong Kong.

The operation of the Southbound Bond Connect on the first trading day was smooth, with more than 150 transactions amounting to a total of around RMB4 billion.

The HKMA will continue working with the People's Bank of China (PBoC) and other relevant institutions to promote Southbound Trading and ensure the smooth and orderly operation of the Southbound Bond Connect.

Please click here and here to view the news.

HKMA, 24 and 15 September 2021

Government welcomes issuance of bonds in Hong Kong by Shenzhen Municipal People's Government

The Shenzhen Municipal People's Government announced on 24 September 2021 that it will issue offshore RMB municipal government bonds not exceeding RMB5 billion in Hong Kong in October, which will be listed on the SEHK. The bonds will be issued in two-year tenor, three-year tenor, and five-year tenor. The three-year and five-year bonds are green bonds.

This enriches further the range of RMB financial products available in Hong Kong market, promotes the internationalization of RMB and strengthens Hong Kong's status as the global offshore RMB business hub, as supported by the National 14th Five-Year Plan. The issuance showcases Hong Kong as the premier platform facilitating the Mainland to "go global", and marks another milestone in the development of financial services in Hong Kong through increasing the breadth and depth of our RMB debt market and enhancing financial cooperation between the Mainland and Hong Kong.

Please click here to view the news.

FSTB, 24 September 2021

SFC concludes consultation on anti-money laundering guidelines

The SFC released consultation conclusions on proposed amendments to its anti-money laundering and counter-financing of terrorism (AML/CFT) guidelines.

The amendments aim to align the guidelines with the Financial Action Task Force's (FATF) AML/CFT standards, which include additional guidance to facilitate the implementation of risk-based AML/CFT measures by securities industry participants.

In response to comments on the requirements for cross-border correspondent relationships, the revised guidelines provide greater clarity and additional flexibility in meeting the requirements. For example, the SFC has provided a streamlined approach for cross-border correspondent relationships with affiliated companies. Firms may apply additional due diligence and risk mitigating measures by assessing whether the group policy and AML/CFT program which apply to an affiliated company are in line with the FATF standards.

The revised AML/CFT guidelines has become effective upon gazettal on 30 September 2021, with the exception of the new cross-border correspondent relationships requirements, which will take effect on 30 March 2022.

Please click here to view the news.

SFC, 15 September 2021

Observations from reviews on sale of Qualifying Deferred Annuity Policy and Voluntary Health Insurance Scheme products, and Referral Arrangement of Tax Deductible Voluntary Contributions

Alongside the introduction of tax deductions by the Government in 2019 for premiums for Qualifying Deferred Annuity Policy (QDAP) and Voluntary Health Insurance Scheme (VHIS) products and for Referral Arrangement of Tax Deductible Voluntary Contributions (TVC) to Mandatory Provident Fund (MPF) schemes, there were increased popularity of these tax deductible products among the general public.

The HKMA conducted desktop reviews on the practices of authorized institutions (AIs) in selling QDAP and VHIS products and their referral arrangement of TVC with a view to identifying any areas for improvement. The desktop reviews revealed that the AIs concerned generally have in place policies and procedures to comply with the relevant regulatory requirements on suitability assessment and product disclosure in their sale of QDAP and VHIS products. The desktop reviews also revealed that the referral arrangement of TVC were generally simple and straightforward, albeit some variations among the selected AIs in their practices and extents of involvement.

AIs should review their own policies and procedures, and implement enhancement measures as necessary. The HKMA will continue to monitor the compliance of AIs with the relevant regulatory requirements in respect of insurance and MPF products in the course of its supervision.

Please click here to view the circular.

HKMA, 14 September 2021

Obtaining client consent under the Hong Kong Investor Identification Regime (HKIDR) and Over-the-counter Securities Transactions Reporting Regime (OTCR)

The circular sets out the requirements to be observed for obtaining express consent from individual clients as required under paragraphs 5.6(p) and 5.7(h) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission for the transfer of their personal data to the SEHK and/or the SFC under the HKIDR and OTCR.

This includes the following requirements in respect of client consents:

- On or before obtaining a client consent, a relevant licensed or registered person should explain to the client the purpose of obtaining consent and the consequences of failure to provide consent.
- The identities of clients from whom the consents are obtained should be properly authenticated and validated.
- A client consent must expressly cover the purposes of use of personal data, including but not limited to disclosure and transfer of the client's personal data by the relevant licensed or registered person to SEHK and/or the SFC in accordance with the rules and requirements of SEHK and SFC in effect from time to time.
- A relevant licensed or registered person should keep and record all client consents and any withdrawals of such consents.
- A client consent (and withdrawal) and the log of such consent (and withdrawal), should be kept as long as the client concerned remains a client of the relevant licensed or registered person and for no less than two years after the person ceases to be a client of a relevant licensed or registered person.

Please click here to view the circular.

SFC, 13 September 2021

Roadmap for implementing the HKIDR and OTCR

The circular aims to provide guidelines to licensed corporations (LCs) and registered institutions (RIs) that are subject to the HKIDR and OTCR (Relevant Regulated Intermediaries) on their main obligations under the HKIDR and OTCR, and a roadmap and timeline for the implementation of the HKIDR and OTCR.

Under the HKIDR, Relevant Regulated Intermediaries would have to:

- Ensure that the "Broker-to-Client Assigned Number" (BCAN) be assigned to Relevant Clients, who have placed or propose to place (i) an on-exchange order or (ii) an off-exchange trade reportable to the SEHK under its rules, in securities listed or traded on SEHK's trading system (except for odd lots traded on SEHK's odd lot/special lot market).
- Ensure that up-to-date client identification data (CID) has been collected from each Relevant Client and submitted along with client's BCAN to a data repository to be maintained by SEHK by a prescribed time.
- Ensure that the Relevant Client's BCAN has been included in the order information for each on-exchange order as well as off-exchange order and included in all reporting of off-exchanges trades to SEHK, and any BCAN error be reported; and
- Adopt relevant data privacy and security measures to safeguard the data collected, transmitted and stored.

Under the OTCR, the Relevant Regulated Intermediaries' main obligations include reporting to the SFC the following activities relating to ordinary shares and real estate investment trusts (collectively, shares) listed on SEHK:

- When a Relevant Regulated Intermediary, whether as principal or agent, makes a transfer of shares in connection with a transaction not recorded by SEHK as an on-exchange order or required to be reported to SEHK as an off-exchange trade in respect of which stamp duty is chargeable in Hong Kong, except where (i) the transaction is granted stamp duty relief (whether in full or in part) from the Inland Revenue Department, or (ii) the transfer of shares is made in accordance with the terms of a structured product or a derivative, or for the conversion of a depository receipt into shares or vice versa.
- When there is a deposit to or withdrawal from the Relevant Regulated Intermediary, whether as principal or agent, of physical share certificates.

Subject to market readiness, the HKIDR will be implemented tentatively during the second half of 2022 at the earliest, while the OTCR will be implemented tentatively during the first half of 2023.

Please click here to view the circular.

SFC, 13 September 2021

Implementation arrangements for the Cross-boundary Wealth Management Connect Pilot Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area

On 29 June 2020, the PBoC, the HKMA and the Monetary Authority of Macao (AMCM) jointly announced the framework for the pilot Cross-boundary wealth management connect scheme (Cross-boundary WMC) in the Greater Bay Area (GBA).

The pilot Cross-boundary WMC refers to a scheme where eligible residents in the Mainland cities in the GBA and Hong Kong, through a closed-loop funds flow channel established between the banking systems of the two jurisdictions, invest in wealth management products distributed by banks in each other's market. The Cross-boundary WMC consists of a Southbound Scheme (with eligible residents in Mainland cities in the GBA investing in wealth management products distributed by Hong Kong banks) and a Northbound Scheme (with eligible residents in Hong Kong investing in wealth management products distributed by banks in Mainland cities in the GBA (Mainland Banks) via designated channels).

Hong Kong banks participating in business activities under the Cross-boundary WMC should comply with all the relevant requirements set out in the Implementation Arrangements for the Cross-boundary WMC Pilot Scheme in the GBA issued by the Mainland regulatory authorities on 10 September 2021, and all relevant prevailing regulatory requirements (including those issued by the HKMA and the SFC).

Eligible banks in Hong Kong which intend to embark on Cross-boundary WMC activities should put in place systems, internal control measures and operating procedures in accordance with the requirements in the circular, notify, and submit a self-assessment to the HKMA at least one month prior to the launch of such activities. Upon receiving "no objection" notification from the HKMA, the bank may embark on Northbound Scheme and/or Southbound Scheme activities.

Please click here to view the circular.

HKMA, 10 September 2021

IA signs Memorandums of Understanding on Fintech Co-operation with the China Banking and Insurance Regulatory Commission (CBIRC) and the AMCM

The IA entered into Memorandums of Understanding (MoUs) on Fintech Co-operation with the CBIRC and the AMCM respectively, under which the three regulators will step up their collaboration on innovation in financial services and consider organizing joint innovation projects on the application of novel financial technologies.

Spokespersons of these authorities are of the view that these MoUs will improve the mobility of people and capital that will confer benefit on a wide range of trades and professionals, will help prevent cross-border insurance risks contagion between the Mainland and Hong Kong, and jointly create an open, inclusive and safe Fintech ecosystem.

Please click here to view the press release.

IA, 1 September 2021

Data Protection

Estate Agent convicted for violating Direct Marketing Restriction, The Privacy Commissioner for Personal Data (Privacy Commissioner) welcomes the Court's ruling

An estate agent was charged at the Kowloon City Magistrates' Court of the offence under section 35G(3) of the Personal Data (Privacy) Ordinance (PDPO) for failing to comply with the requirement from a data subject to cease to use his personal data in direct marketing. The court noted that the PDPO does not only apply to organizations, but also individuals.

The Privacy Commissioner welcomes the court's ruling. She emphasized that a staff member of a company should check the opt-out list maintained by the company before calling a customer for direct marketing purpose.

The Privacy Commissioner also reminded consumers that if they receive direct marketing messages notwithstanding their opt-out requests, they should record and keep the details of the direct marketing messages for them to lodge a complaint with the Office of the Privacy Commissioner for Personal Data.

Click here to read the media statement.

PCPD, 7 September 2021

A former clerical assistant of the Immigration Department was sentenced to imprisonment for 45 months for Doxxing, Privacy Commissioner welcomes the Court's ruling

A former clerical assistant of the Immigration Department obtained the personal data of 215 public officers, including government officials, judges, police officers, and their family members, from the Immigration Department's computer system without any authorization. The defendant then provided the data to the administrator of a social media platform Telegram for publication.

The defendant pleaded guilty to one count of "misconduct in public office" and was sentenced to imprisonment for 45 months.

The Privacy Commissioner welcomes the court's ruling. She noted that the sentence imposed on the defendant is the heaviest one imposed by a court in a doxxing case so far. The Privacy Commissioner also urged members of the public not to break the law as the cyber world is not beyond the law and doxxing acts can bring very serious legal consequences.

Click here to read the media statement.

PCPD, 27 September 2021

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