

# Hong Kong Corporate and Regulatory Insights

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# Equity Capital Markets

## The Stock Exchange of Hong Kong Limited (SEHK) publishes Listed Issuer Regulation Newsletter

The SEHK published the Listed Issuer Regulation Newsletter (December 2022 edition) (Newsletter), to provide latest regulatory updates and inform issuers on compliance matters.

Firstly, Chapter 17 of the Listing Rules was amended to govern both share option schemes and share award schemes of listed issuers and their principal subsidiaries. The amendments became effective on 1 January 2023, and the areas of amendments mainly include:

- Minimum requirements on the eligible scheme participants (which include the directors and employees of the issuer group (Employee Participants), directors and employees of its holding companies or associated companies and service providers).
- Terms of grants: 12 months' minimum vesting period (shorter period possible for Employee Participants); disclosure of the performance targets attached to the grants and the clawback mechanism.
- Requirements for approvals for scheme mandate limit by shareholders and/or the independent non-executive directors (INED) (for grants to connected persons); views of the remuneration committee must be sought in grants to the listed issuer's board and senior management.
- Required disclosures in announcements and financial requirements.

Click [here](#) to read our July 2022 Corporate Newsletter which included highlights of the Chapter 17 rule amendments, and [here](#) to read the key changes to the Listing Rules.

Secondly, the Newsletter also reiterates the regulatory expectations as to the audit committee of a listed issuer, including (i) to maintain a dialogue with the auditors and keep apprised of any contentious audit issues; (ii) to understand clearly the underlying reasons for auditor's resignation; (iii) to critically review the capabilities and resources of the incoming auditors; and (iv) to discuss with the incoming auditors to assess whether they clearly understand the reasons leading to their predecessors' resignation and how their proposed audit procedures can address those said issues.

Thirdly, issuers are required to comply with the uniform set of shareholder protection standards (Core Standards) regardless of their places of incorporation by the second annual general meeting (AGM) following 1 January 2022. This means, for issuers with a December financial year end, the deadline will fall in or around June 2023.

Lastly, the SEHK reminded issuers to take the following necessary steps to comply with the updated Corporate Governance Code as last revised in December 2021 and its relating Listing Rules:

- Issuers with all INEDs having served for more than nine years should appoint a new INED no later than their AGM to be held in 2023.
- Issuers must make the mandatory disclosure on diversity (including targets and timelines for board gender diversity and gender ratio for overall workforce) and shareholder communication policy in the corporate governance reports for the financial years commencing on or after 1 January 2022.
- Single-gender board issuers must appoint a director of a different gender by 31 December 2024.

- Issuers must publish their environmental, social and governance (ESG) reports for the financial years commencing on or after 1 January 2022 at the same time as their annual reports.

Click [here](#) to read the Newsletter.

*HKEX, 9 December 2022*

### **Hong Kong Exchanges and Clearing Limited (HKEX) welcomes Asia's first crypto asset Exchange Traded Funds (ETFs)**

The HKEX became the first exchange in Asia to offer crypto asset exposure through ETFs, further expanding the product ecosystem by offering domestic and international investors greater choices.

Two new ETFs listed on 16 December 2022 – CSOP Bitcoin Futures ETF (stock code: 3066) and CSOP Ether Futures ETF (stock code: 3068) are both managed by CSOP Asset Management Limited. The two ETFs track the standardized, cash-settled Bitcoin futures contracts and Ether futures contracts traded on the Chicago Mercantile Exchange respectively.

The market presents strong interest in these ETFs and Leveraged and Inverse Products (together, Exchange Traded Products). As of November 2022, a total of 168 ETPs were listed on the HKEX, with a market capitalization of HK\$373.5 billion.

Click [here](#) to read the news release.

*HKEX, 16 December 2022*

### **Consultation paper on expanding paperless listing regime**

The SEHK published a consultation paper seeking public feedback on proposals to expand the paperless listing regime and make other rule amendments.

Key proposals in the consultation paper is as follows:

- Streamline the document submission process: (i) remove submission of documents that are unnecessary to SEHK's regulatory objections; (ii) codify obligations into Listing Rules and replace standalone undertakings and confirmations; (iii) remove unnecessary signature and certification requirements; and (iv) mandate electronic submission for a majority of submission documents.
- Disseminate corporate communications electronically: mandate that listed issuers electronically disseminate corporate communications (including but not limited to directors' report and auditors' report, interim report, notice of meeting, listing document, circular, proxy form, Application Proof and Post Hearing Information Pack) to the extent permitted by the laws and regulations applicable to them
- Simplify Listing Rules appendices: Restructure the appendices to the Listing Rules to simplify navigation and enhance the online experience of Listing Rules users.

The consultation period will end on 28 February 2023.

Click [here](#) to read the full report.

*HKEX, 16 December 2022*

### **SEHK takes disciplinary action against Fusen Pharmaceutical Company Limited (stock code: 1652) (Company) and five current directors**

#### Key messages:

- Individual directors must manage any potential conflicts of interest appropriately and with full transparency.
- Directors should carefully monitor the company's financial position and proactively make enquiries if there are any unusual or unexpected changes.
- All members of the board must ensure there is an effective control environment in operation, to allow checks and balances to take place and to assist in the identification and proper handling of transactions which are subject to Listing Rules obligations.

#### The SEHK censures:

- The Company.
- Mr. Cao Chang Cheng, Chairman and executive director (ED) of the Company (Chairman Cao).
- Mr. Cao Zhi Ming, ED and chief executive officer (CEO) of the Company (Mr. Cao).
- Mr. Chi Yong Sheng, ED of the Company (Mr. Chi).
- Mr. Hou Tai Sheng, ED of the Company (Mr. Hou).
- Ms. Meng Qing Fen, ED of the Company.

(Chairman Cao, Mr. Cao, Mr. Chi, Mr. Hou and Ms. Meng are collectively referred to as the Relevant Directors).

The Company was listed in July 2018. Between March 2019 and February 2020, the Company made twenty advances totalling RMB258 million and two payments of RMB50 million (together, Advances) to a connected person, a company in which Chairman Cao

had a 50 percent interest. The Advances were unsecured, not evidenced by any written agreement and without any agreement on a fixed repayment term.

The size and connected nature of these transactions meant that the Company was required under Chapters 13, 14 and 14A of the Listing Rules to, amongst other things, make disclosures (in the form of announcements and circulars) and seek independent shareholders' approval. However, the Company failed to comply with these requirements. Furthermore, as the Company had been listed in July 2018, it was required to consult its compliance adviser when contemplating the transactions under Chapter 3A of the Listing Rules. This did not happen either.

Chairman Cao was the executive director, general manager and legal representative of the company receiving the monies at the material time, but he denied knowing about them. The Relevant Directors claimed that they received monthly financial statements and were fully aware of the Company's financial position, but failed to raise questions about any changes in the Company's receivables or cash balance, as they were more concerned with revenue and profits than liquidity.

The SEHK found the Company and the Relevant Directors in breach of the Listing Rules, in that:

- The Company delayed in announcing the Advances as disclosable and connected transactions, and failed to announce the payment as connected transactions.
- The Company failed to issue a circular to its shareholders and to obtain its independent shareholders' approval for the Advances and the payments as connected transactions.

- The Company failed to consult its Compliance Adviser when the Advances were contemplated.
- There were considerable deficiencies in the Company's internal controls and risk management systems which contributed to the Listing Rules breaches.
- The Relevant Directors failed to use their best ability to comply with the Listing Rules and use their best endeavors to procure the Company to comply with the Listing Rules, thereby in breach of directors' duties under the Listing Rules and directors' undertaking.

In addition to the public censure, the SEHK also directed the Relevant Directors to attend 24 hours of training on regulatory and legal topics including Listing Rule compliance.

Click [here](#) to read the statement of disciplinary action.

*HKEX, 4 January 2023*

### **SEHK publishes results of review of issuers' 2021 annual reports**

The SEHK published the findings and recommendations of its annual review of issuers' annual reports for the 2021 financial year end.

Similar to past practices, the SEHK continued to adopt a thematic approach by selecting specific areas for review based on the results of previous years as well as emerging trends or matters considered to be of higher risks. Below sets out the highlights of this year's thematic review and SEHK's corresponding recommendations:

- Financial reporting and related controls: It was noted that asset valuation remained a major issue in financial reporting.

Valuations without proper assumptions supported by objective evidence and documentation are problematic. Directors should establish and maintain appropriate risk management and internal controls, and deploy adequate resources for the maintenance. In addition, directors should critically assess management's accounting estimates and challenge the reasonableness of their adopted assumptions.

- Material lending transactions: The SEHK continued to identify cases of material impairments on loan receivables despite making recommendations in the review report of issuers' 2020 annual reports. When conducting lending transactions, directors should critically assess the commercial rationale for making the loans, including (i) whether the terms are fair and reasonable, and (ii) whether the use of funds is in the interests of the issuer and its shareholders. For issuers operating money lending business, the directors should maintain effective risk management and internal controls to assess and manage credit risk exposure, and to monitor recoverability of loans and adequacy of collaterals.
- Financial statement disclosure under accounting standards: The SEHK considered that the selected issuers' disclosure generally complied with the accounting requirements, but identified several key areas for improvement in the upcoming financial reporting period, including judgments and estimates, material intangible assets and fair value measurements. Issuers and audit committees should maintain close dialogue with auditors on the audit focus areas and other emerging issues identified during the audit, and take prompt actions to address auditors' concerns.

Click [here](#) to read the full report.

*HKEX, 20 January 2023*

# Financial Services Regulation

## Consultation on enhancing regulation of crowdfunding activities

The Financial Services and the Treasury Bureau (FSTB) has launched a consultation on the proposal to enhance regulation of crowdfunding activities.

The proposed crowdfunding regulatory regime features the following key points:

- **Crowdfunding Affairs Office (CAO):** Establish an one-stop crowdfunding approval, registration and administrative framework to centrally process and coordinate crowdfunding matters.
- **Prior application for all fundraising activities:** All online and offline fundraising activities must apply in advance to the CAO regardless of their purpose or location if it intends to raise funds publicly from individuals or entities of or located in Hong Kong.
- **Disclosure of objectives and arrangements:** In making an application, the purpose, nature and the arrangement of the fundraising activity must be clearly stated.
- **Applicability:** The new regulatory regime will not apply to commercial fundraising activities in the market which are already regulated by financial regulators under existing legislative framework.
- **Prohibition of unlawful crowdfunding activities:** The law enforcement may issue an order to stop the unlawful crowdfunding activities, suspend the processing work of the application made to the CAO, prosecute the person responsible, and direct the financial institution to discontinue or stop the fund movements and conduct investigation.

Click [here](#) to access the consultation paper.

*FSTB, 19 December 2022*

## Consultation on establishing policy holders' protection scheme

The FSTB launched a three-month public consultation on the proposal to establish a policy holders' protection scheme (PPS).

The consultation paper sets out key features of the proposed PPS, including coverage, level of compensation, a funding mechanism and governance arrangements. The proposed PPS regime is characterized by the following features:

- **Statutory body to oversee the operation of the PPS:** PPS should be established by statute and operate under the oversight of a statutory body named the Policy Holders' Protection Board. The Insurance Authority should serve as the administrative arm of the board.
- **Establishment of the Long Term Fund and the General Fund under the PPS:** The Long Term Fund should be set up to cover policies that pay benefits related to life status of a policy holder, whilst the General Fund should be established to cover non-life policies.
- **Mandatory participation for the insurers carrying on business in Hong Kong, except captive insurers, reinsurers, special purpose insurers, and foreign-incorporated insurers exempted on the grounds of equivalent protection in other jurisdictions.**
- **Progressive funding model:** The consultation paper proposes this model, with an initial moderate levy complemented by an additional levy upon the occurrence of insolvency.

- Initial levy required for participating insurers: To accumulate the upfront reserve of the funds, the consultation paper recommends the imposition of an initial levy until the PPS funds have reached a target size.
- Borrowing from third parties to bridge liquidity gaps: The PPS should be allowed to borrow from a third party (for example, a commercial lender for which the Government may act as the guarantor or from the Government), subject to the LegCo's approval.
- Compensation limit: The consultation paper offers three options of compensation limit. The limit should generally apply to long term insurance on a per-policy basis and to general insurance on a per-claim basis.
- Conducting comprehensive "greenness assessment" of clients and transaction due diligence for green lending: For instance, AIs may conduct detailed assessment of prospective or existing clients seeking green and sustainable facilities with respect to eligibility for green products as part of KYC and credit approval processes.
- Performing post-offering monitoring and controls to ensure the proper management of green and sustainable products: AIs may conduct regular reviews on product portfolios, put in place policies and procedures to handle failure to adhere to the terms and conditions of green and sustainable product transactions.
- Enhancing transparency and accountability in respect of green and sustainable products: AIs may publish their climate-related strategies and policies, product-specific portfolio-level impact reports, or regular allocation reports to their green deposits and bonds clients.
- Building appropriate expertise in product development and comprehensive due diligence process: AIs should also provide green and climate-related training and develop internal guidance notes for their staff.

Click [here](#) to read the consultation paper.

*FSTB, 30 December 2022*

### **Due diligence processes for green and sustainable products**

The Hong Kong Monetary Authority (HKMA) published a circular to share the good practices relating to the development and management of green and sustainable products offered by authorized institutions (AIs).

The good practices are grouped under five high-level principles, including:

- Setting up a robust product governance framework for green and sustainable products: For example, AIs may establish dedicated committees for assessing and approving such products and transaction labelling, or embed climate-related risks (including greenwashing risk) in the product due diligence processes.

Click [here](#) and [here](#) to access the circular and the annex respectively.

*HKMA, 9 December 2022*

### **Circular to licensed corporations and associated entities on the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022**

The Securities and Futures Commission (SFC) published a circular to provide guidance for licensed corporations and associated entities

with respect to alignment with the latest Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO), which will come into effect on 1 June 2023.

The securities sector should note the following points:

- Revised definition of "politically exposed person" (PEP): PEP now includes individuals entrusted with a prominent public function outside the PRC and outside Hong Kong.
- Better alignment of the definition of "beneficial owner" of a trust with "controlling person" under the Inland Revenue Ordinance (Cap. 112): Where a trust is concerned, it includes trustees, beneficiaries and class(es) of beneficiaries of the trust entitled to be a vested interest.
- Use of a recognized digital identification system for customer due diligence which also satisfies the special requirements in situations where a customer is not physically present for identification purposes.

Click [here](#) to read the circular.

*SFC, 16 December 2022*

# Data Protection

## First sentencing decision on the new doxxing offence

A 27-year-old male, Mr. Ho Muk-wah, was previously convicted of seven counts of disclosing personal data without consent under section 64(3A) of the Personal Data (Privacy) Ordinance (PDPO). On 15 December 2022, the Shatin Magistrates' Court sentenced the defendant to eight months' imprisonment. This is the first sentencing decision of the court on the new doxxing offence under the PDPO. The maximum penalty for the offence is a fine up to HK\$1,000,000 and imprisonment for five years.

The defendant was found to have disclosed on social media platforms the personal data of his ex-girlfriend without her consent. The personal data disclosed included the victim's name, photos, residential address, private and office telephone numbers, name of her employer and her position. Further, the defendant was found to have opened accounts on social media platforms impersonating the victim and posted messages stating that the victim welcomed others to visit her at her residential address. This has caused strangers to contact the victim.

Click [here](#) to read the media statement.

*PCPD, 15 December 2022*

## PCPD published an inspection report on the personal data system of TransUnion

TransUnion Limited's (TransUnion) wholly owned subsidiary, TransUnion Credit Information Services Limited, is a credit reference agency. The Office of the Privacy Commissioner for Personal Data (PCPD) carried out an inspection to review the personal data system of TransUnion pursuant to section 36 of the PDPO. The inspection report was published on 20 December 2022.

The inspection report showed that TransUnion has adopted good practices and security measures in line with international standards to protect the personal data and consumer credit records of over 5.6 million consumers stored in its database. It also showed that, as advised by the PCPD, TransUnion has established a personal data privacy management programme and appointed a designated officer as the data protection officer. As such, the PCPD was satisfied that TransUnion has complied with the requirements of Data Protection Principle 4 under the PDPO regarding the security of personal data.

Further, during the inspection, TransUnion implemented the following on the advice of the PCPD:

- A free "Credit Alert Service" which alerts individuals who have subscribed to the service when there are important changes to their credit reports so as to allow them the opportunity to take preventive or remedial actions.
- Allowing individuals who have or may have been subject to doxxing to add remarks to their credit reports such that credit providers would be aware of the situation when assessing the individuals' credit application.

Finally, the PCPD made the following recommendations to TransUnion:

- Establish local policies and standards for personal data protection based on its global policy.
- Set out the roles and responsibilities of the Data Protection Officer in a clear manner.
- Standardise the procedures of managing internal activity log records.

- Revise its policies relating to the handling of suspected abnormal access by credit providers.
- Conduct regular and timely reviews on its practices of handling personal data.

Click [here](#) to read the media statement.

*PCPD, 20 December 2022*

### **PCPD published an investigation report on two personal data breach incidents of the Registration and Electoral Office**

The PCPD published an investigation report concerning two personal data breach incidents occurred in the Registration and Electoral Office (REO).

The first personal data breach incident occurred on 23 March 2022 when a staff of the REO mistakenly emailed two Excel files containing the particulars of about 15,000 electors, including their names and residential addresses, to an unknown recipient. The staff concerned intended to send the files to her personal email address to facilitate her work from home. However, she mistakenly inputted an incorrect email address, causing the email to be sent to an unknown recipient.

Upon investigation, the PCPD concluded that the incident occurred due to the following reasons:

- The REO staff concerned failed to comply with the guidelines issued by the REO which prohibited the use of personal email accounts for official duties or for transmitting classified information or personal data;
- Negligence and lack of awareness on data protection of the REO staff concerned.
- The REO failed to put in place appropriate information security measures prior to the incident, which allowed staff to send files containing personal data to personal email

addresses outside the email system of the REO.

The second personal data breach incident occurred prior to the 2022 Chief Executive Election. The Election Committee (EC) members and their assistants provided the REO with their personal data such that they could receive information related to the election. As part of the preparation for the election, test emails were sent from the REO to the EC members and their assistants. On 28 April 2022, when test emails were sent, the personal data of one of the EC members and his assistant was wrongly sent to 38 EC members and 26 assistants. The personal data concerned were the names, email addresses and phone numbers of the EC member and his assistant, as well as the signature of the EC member.

Investigation of the incident showed that the following reasons had led to the occurrence of the incident:

- Negligence and lack of awareness on data protection of the REO staff concerned.
- There were deficiencies in the work process of the REO in cross-checking email addresses in draft test emails against the contact information provided by the EC members and their assistants.
- There was no written procedures for the sending of test emails to the EC members and their assistants, thereby increasing the risks of human errors.

Overall, in the two personal data breach incidents, the PCPD found that the REO had contravened Data Protection Principle four concerning the security of personal data under the PDPO. The PCPD served two enforcement notices on the REO directing it to remedy and prevent recurrence of the contravention. In particular, the REO was requested to implement technological security measures to

monitor the use of its email system, to review and improve the workflow of sending mass emails which contain personal data, and to strengthen staff training in the protection of personal data and information security.

Click [here](#) to read the media statement.

*PCPD, 29 December 2022*

### **PCPD commenced compliance check into a data breach incident on Hong Kong Golden Forum**

On 29 December 2022, the PCPD was notified by the Hong Kong Golden Forum that the personal data of a considerable number of its members had been put on dark web for sale. Following the data breach notification, the PCPD commenced a compliance check into the incident, so as to ascertain how the incident occurred and the personal data involved.

In view of the possible leak of their personal data, the PCPD appealed to members of the Hong Kong Golden Forum to take the following measures:

- Change the passwords of their Hong Kong Golden Forum accounts and if necessary, passwords of their other social media accounts.
- Pay attention to any unauthorized logins to their Hong Kong Golden Forum accounts.
- Stay vigilant against phishing emails, suspicious calls and text messages and other possible scams.

Click [here](#) to read the media statement.

*PCPD, 30 December 2022*

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