

# Hong Kong Corporate and Regulatory Insights

August 2022



Hogan  
Lovells

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# Equity Capital Markets

## **The Stock Exchange of Hong Kong (SEHK) publishes new enforcement bulletin (August 2022 edition) (the Enforcement Bulletin)**

SEHK published the Enforcement Bulletin regarding the latest learnings and actions of its enforcement work. The Enforcement Bulletin discusses the importance of good record-keeping by issuers and company directors for building strong corporate governance. It further covers summaries on private reprimands and enforcement cases in the first half of 2022.

Please click [here](#) to view the Enforcement Bulletin.

*HKEx, 17 August 2022*

## **SEHK takes disciplinary action against three directors of Inno-Tech Holdings Limited (delisted) (the Company) (previous stock code: 8202)**

Key messages:

- Directors are responsible for ensuring the listed issuer's compliance with the GEM Listing Committee's directions and the GEM Listing Rules (GLR).
- Failure to answer or provide timely and substantive responses to the Listing Division's (the Division) enquiries equals to non-cooperation with the Division's investigation.

SEHK censures:

- Mr. Wong Kam Fai, Samuel, former executive director (ED) and Chief Executive Officer of the Company (CEO) (Mr. Wong).

- Mr. Zheng Pin, executive director (ED) and Chairman at the time of delisting (Mr. Zheng).
- Mr. Cao Xinhua, non-executive director (NED) at the time of delisting (Mr. Cao).

In September 2018, the GEM Listing Committee directed the Company to appoint an independent compliance adviser for two years following a previous disciplinary action (the CA Direction). The Company had appointed three compliance advisers for a total of approximately one year and nine months only. Mr. Wong persistently withheld the Company's payments to the compliance advisers during his tenure as ED and CEO of the Company since May 2019. As a result, the Company failed to settle fees for all three compliance advisers and their engagements were terminated.

In 2020, the Company published an inaccurate and misleading announcement (the Announcement) that its former auditor, Elite, had confirmed that no matters in respect of the change of auditors needed to be brought to the attention of the Company's shareholders while Elite had not made such confirmation. The Company's former compliance adviser was not consulted before the Announcement was published. The Announcement is in breach of Rule 17.56(2) GLR and the CA Direction.

Between May and November 2020, Mr. Wong failed to provide timely and substantive responses to the Division's direct enquiries on the discharge of directors' duties. Mr. Zheng and Mr. Co, as ED and NED of the Company respectively, failed to procure the Company to respond to the Divisions last' enquiry letter.

SEHK found that Mr. Wong had breached Rule 5.01 GLR and his undertaking to comply

with the GLR to the best of his ability and/or to use his best endeavors to procure the Company's compliance with Rule 17.56(2) of GLR regarding the Announcement and the CA Direction. Mr. Wong had further breached his undertaking by failing to cooperate with the Division's investigations.

SEHK found that Mr. Zheng and Mr. Cao had breached their undertakings to use their best endeavors to procure the Company's compliance with Rule 17.55A GLR and to cooperate in the Divisions investigation.

SEHK further states that the retention of office by Mr. Wong, Mr. Zheng and Mr. Cao on the board of the Company would have been prejudicial to the interests of investors.

Please click [here](#) to view the statement of disciplinary action.

*HKEx, 5 August 2022*

### **SEHK publishes revised guidance letters**

SEHK published the following revised guidance letters:

- GL 18-10 on setting out SEHK's principles for approving publicity materials relating to an issue of securities that require SEHK's consent before they can be released, as well as publicity materials that contain relevant guidance on offer awareness materials and electronic initial public offering (e-IPO) advertisements. See [here](#).
- GL53-13 on providing guidance to issuers seeking to list by introduction on arrangements to facilitate liquidity of their securities which are listed on another stock exchange already. See [here](#).

- GL55-13 on the documentary requirements and administrative matters for new listing applications. See [here](#).
- GL56-13 on disclosure requirements for substantially complete application proofs and publication of application proofs and post hearing information packs (PHIPs) on SEHK's website. See [here](#).
- GL57-13 on logistical arrangements for the submission and publication of application proofs, OC announcements, PHIPs and related materials on SEHK's website. See [here](#).
- GL79-14 on additional documentary requirements and administrative matters for collective investment schemes applications. See [here](#).
- GL85-16 on placing securities of a listed applicant to their connected clients, existing shareholders or their close associates under the Rules. See [here](#).
- GL91-18 on protecting investors by limiting the extent of shares allocated to the public subscription tranche from the placing tranche. See [here](#).
- GL98-18 on disclosure of (i) listing applicants' names, (ii) statistics and data quoted, (iii) listing document covers, (iv) non-disclosure of confidential information and (v) material changes after trading record period in listing documents. See [here](#).
- GL110-21 on guiding distributors to submit pre-vetting applications for placing to connected clients for SEHK's review. See [here](#).
- GL111-22 on guiding overseas issuers contemplating a listing on SEHK. See [here](#).

*HKEx, 4 August 2022*

# Financial Services Regulation

## SEHK publishes updates on frequently asked questions (FAQs)

SEHK published the following updates on FAQs:

- FAQ No. 077-2022 on consequential changes to the Rules to complement the new Code of Conduct provisions on book building and placing activities in equity capital market and debt capital market transactions and the sponsor coupling proposal. See [here](#).
- FAQ Series two on minor housekeeping rule amendments, especially on circumstances not explicitly addressed by the Rules or where additional clarifications may be desirable. See [here](#).

*HKEx, 4 August 2022*

## SEHK publishes revised e-forms for new applicants

SEHK published the following revised e-forms and their corresponding revised form filling guidelines for new applicants:

On the Main Board:

- SE001 – Sponsor and sponsor-overall coordinator engagement notification. See [here](#) for the revised e-form and [here](#) for the revised form filling guideline.
- M103 – Listing application form (for equity securities and debt securities). See [here](#) for the revised e-form and [here](#) for the revised form filling guideline.

On the GEM Board:

- G103 – listing application form (for equity securities of an issuer no part of whose share capital is already listed). See [here](#) for the revised e-form and [here](#) for the revised form filling guideline.

- CIS002 – Form A2 – listing application form (for collective investment scheme). See [here](#) for the revised e-form and [here](#) for the revised form filling guideline.

*HKEx, 4 August 2022*

## SEHK publishes revised checklists and forms for new applicants

SEHK published the following revised checklists and forms for new applicants:

On the Main Board:

- FFD003M – Form D – Marketing statement. See [here](#) for the revised form.
- M401 – Form E – Sponsor's declaration. See [here](#) for the revised form.
- FFD004M – Form F – Declaration. See [here](#) for the revised form.

On the GEM Board:

- FF017G – Form 5D - Marketing statement. See [here](#) for the revised form.
- FF018G – Form 5E - Declaration of compliance. See [here](#) for the revised form.
- G401 – Form 7I - Sponsor's declaration of compliance concerning a new applicant. See [here](#) for the revised form.

*HKEx, 4 August 2022*

## Circular to licensed corporations on review of online brokerage, distribution and advisory services

The Securities and Futures Commission (SFC) conducted a review of the business models of licensed corporations (LCs) which provided online brokerage, distribution and advisory services, and scrutinized their compliance with regulatory requirements when onboarding clients and distributing or advising on investment products through their online platforms.

The SFC noted certain common compliance issues and deficiencies associated with LCs' investment services offered via online platforms, including:

- Non-face-to-face client onboarding: failure to conduct client identity verification procedures when onboarding clients online.
- Online trading, distribution and marketing:
  - Incorporation of clauses and statements which might have restricted clients' rights, excluded LCs' obligations, or misdescribed LCs' services.
  - Failure to conduct sufficient product due diligence and failure to observe selling restrictions applicable to specific products;
  - Failure to have in place adequate client risk profiling measures.
  - Lack of monitoring information and commentaries posted on platforms.
- Cybersecurity: failure to implement adequate mechanisms to mitigate cybersecurity risks.

LCs are urged to undertake remedial actions to rectify these issues identified by the SFC.

Please click [here](#) to view the circular.

*SFC, 31 August 2022*

## Guideline on the auditor's report for application for certification of funds for funds and investment managers

The Hong Kong Monetary Authority (HKMA) published the *Guideline on the Auditor's Report for Application for Certification of Fund for Funds and their Investment Managers* (Auditor's Report Guideline).

Under the Auditor's Report Guideline, a fund is required to submit an auditor's report to the HKMA for applying for certification, which will assist the HKMA to assess if a fund has invested in any private company. Moreover, it sets out the responsibilities of a fund or its investment manager (engaging party) when applying for HKMA's certification of funds in relation to tax concessions for carried interest, including:

- Engaging a practising certified public account (practitioner) to prepare the auditor's report.
- Providing true and accurate information and documents as listed in Annex one, or other information as alternative (if appropriate) for the purpose of preparing the auditor's report.

Please click [here](#) to view Auditors' Report Guideline.

*HKMA, 31 August 2022*



## Circular on reporting for certification of funds for practising certified public accounts

The HKMA issued a guideline which provides further guidance to practitioners in preparation of an auditor's report for the purpose of applying for certification of funds.

As mandated by the guideline, practitioners are obliged to (i) comply with the relevant standards specified by the Hong Kong Institute of Certified Public Accountants (HKICPA), (ii) carry out the procedures agreed upon with the engaging party and base the auditor's report on the information obtained from a responsible party of the engaging party in accordance with the relevant HKICPA standards, and (iii) report the findings based on the procedures performed.

In addition, practitioners shall also comply with the relevant requirements under HKICPA's code of ethics and independence requirement applicable to audits of financial statements.

Please click [here](#) to view the guideline.

*HKMA, 31 August 2022*

## Changes to the Companies Register under phase two of the new inspection regime

The Companies Registry announced the commencement of phase two of the new inspection regime under the Companies Ordinance (Cap. 622), which will take effect from 24 October 2022 (Commencement Date).

From the Commencement Date, sensitive personal information on the Index of Directors on the Companies Register and newly delivered documents will be

protected. The Companies Registry also revised 26 specified forms accordingly pertaining to the reporting of the sensitive personal information.

The Companies Registry has published three circulars in relation to the new inspection regime, which introduce the abovementioned changes in filing requirements, along with some changes in public search service.

Please click [here](#) to view the circular introducing phase two of the new inspection regime.

*Companies Registry, 19 August 2022*

## Guidance on cloud computing

The HKMA provided authorized institutions (AIs) with guidance on its supervisory expectations regarding the adoption of cloud computing.

The HKMA outlined four key principles that AIs should pay attention to.

- Firstly, with respect to governance framework, AIs should implement effective governance framework for cloud computing and establish a proper due diligence process to assess a cloud service provider's (CSP) capabilities and suitability before and during engagement.
- Secondly, AIs should develop comprehensive risk management procedures, effective controls and contingency plan.
- Thirdly, in relation to protection of access and other legal rights, suitable arrangements should be in place to guarantee AIs' audit rights and HKMA's supervisory access to information stored in the cloud and risk management controls for undertaking onsite examinations. AIs should also consider adopting a clear and



enforceable CSP engagement agreement, to protect their interests, and ability to comply with supervisory expectations.

- Lastly, staff who oversee cloud operations should be equipped with requisite knowledge and skills to securely use and manage the related risks.

Please click [here](#) to view the guidance.

*HKMA, 31 August 2022*

### **Joint announcement of the Chinese Securities Regulatory Commission (CSRC) and the SFC on trading calendar changes**

The SFC and the CSRC jointly announced their approval for changes to the trading calendar for Stock Connect, which will be applicable to both northbound and southbound trading.

The proposed changes enable Stock Connect trading when both the Hong Kong and Mainland markets are open, even if the corresponding settlement day falls on a public holiday. The launch date will be announced in due course, since the implementation of these enhancement measures will take six months and are subject to further regulatory approvals and market readiness.

Please click [here](#) to view the press release.

*SFC / CSRC, 12 August 2022*

### **SFC paved way forward for green and sustainable finance**

The SFC published its *Agenda for Green and Sustainable Finance*, outlining steps to support Hong Kong's role as a regional green finance centre.

The SFC vows to continue its support of developing green and sustainable finance and the transition to a greener economy by

improving the quality of available information, increasing transparency and establishing trust for investors. It recognizes the following major steps:

- Enhancing corporate disclosure.
- Monitoring the implementation of and enhancing existing measures regarding environmental, social and governance funds and expectations for fund managers.
- Identifying appropriate regulatory framework for any proposed carbon markets.

Please click [here](#) and [here](#) to view the press release and the agenda respectively.

*SFC, 2 August 2022*

### **HKICPA and Financial Reporting Council (FRC) signed the revised statement of protocol on oversight arrangements**

The HKICPA and the FRC together signed a *Revised Statement of Protocol on Oversight Arrangement* (Revised Statement of Protocol). It empowers the Accounting and Financial Reporting Council (AFRC) with broader responsibilities to oversee the HKICPA's performance of its statutory functions under the further reform of the regulatory regime for accounting profession (which will commence on 1 October 2022).

The AFRC will oversee the following statutory functions of the HKICPA:

- Ascertaining the qualification for registrations as certified public accountants (CPAs) by conducting examinations.
- Registering CPAs.
- Arranging for mutual or reciprocal recognition of accountants

# Data Protection

- Setting continuing professional development (CPD) requirements for CPAs.
- Issuing or specifying standards on professional ethics, and accounting, auditing, and assurance practices for CPAs.
- Providing training for qualifying as and the CPD of CPAs.

Please click [here](#) the Revised Statement of Protocol.

*FRC / HKICPA, 16 August 2022*

## PCPD laid charges in a doxxing case

On 17 August 2022, the Office of the Privacy Commissioner for Personal Data (PCPD) laid seven charges against a Chinese male for disclosing personal data of a data subject without her consent, in contravention of section 64(3A) of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

The defendant was alleged to have disclosed the personal data of the data subject on four social media platforms after their relationship ended. The personal data disclosed included the data subject's name, photos, residential address, private and office telephone numbers, name of her employer and position. The defendant was further alleged to have impersonated the data subject on three social media platforms and posted messages saying that the data subject welcomed others to visit her at her address. This resulted in many strangers contacting the data subject trying to get acquainted with her.

This is the second time PCPD laid charges pursuant to the new anti-doxxing provision in the PDPO which came into force in October 2011.

Pursuant to section 64(3A) of the PDPO, a person commits an offence if the person discloses any personal data of a data subject without the relevant consent of the data subject with an intent to cause any specified harm or being reckless as to whether any specified harm would be caused to the data subject or any family member of the data subject. Upon conviction, the person would be liable to a fine of US\$100,000 and imprisonment for two years.

First mention of the case will take place at the Shatin Magistrates' Court on 25 August 2022.

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

*PCPD, 17 August 2022*

## PCPD issues guidance note on data security measures for information and communications technology

The digitization of data and interconnection of information and communications technology (ICT) has posed a threat on personal data security. Data security is closely related to personal data privacy as data breaches usually result in leakage of personal data. In light of the rising number of data security incidents reported in Hong Kong and worldwide, the PCPD issued the "Guidance Note on Data Security Measures for Information and Communications Technology" (Guidance). The Guidance provides recommendations on how data users can strengthen their data security measures for the ICT industry in order to facilitate their compliance with the PDPO.

Under the PDPO, Data Protection Principle 4(1) requires data users to take all practicable steps to ensure that any personal data held by it is protected against unauthorized or accidental access, processing, erasure, loss or use. The steps required to be taken by a data

user depends on the facts of each case and they depend on, for example, the nature of personal data involved, the potential harm caused by a data security incident and the robustness of the security measures in place.

The Guidance provides, among others, the following recommended data security measures for ICT:

- To establish clear internal policies and procedures on data governance and data security which cover, for example, the roles and responsibilities of staff in maintaining the information and communication systems, data security risk assessments, the handling of data security incidents and destruction of data.
- To review and revise the internal policies and procedures on data governance and data security in a timely manner.
- To appoint suitable personnel to bear responsibilities for personal data security.
- To provide sufficient trainings to staff members concerning requirements of PDPO and the data users' data security policies and procedures.
- To conduct risk assessments on data security for new systems and applications before launch, as well as periodically thereafter.
- To put in place technical and operational security measures in terms of, for example, securing computer networks, database management, access control, firewalls and anti-malware, protecting online applications, encryption, emails and file transfers and backup and destruction of data.
- To adopt contractual or other means to prevent unauthorized or accidental access, processing, erasure, loss or use of the data

transferred to a data processor for processing.

- To take remedial actions in the event of data security incidents, for example, immediately disconnecting affected information and communications systems from the internet, notifying the PCPD and affected individuals without delay and fixing security weakness in a timely manner.
- To engage an independent task force to monitor the compliance with the data security policy and evaluate the effectiveness of the data security measures periodically.
- To take special security measures when using cloud services, allowing employees to use their own devices to access the data user's systems and using portable storage devices.

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

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

*PCPD, 30 August 2022*

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