

# Hong Kong Corporate and Regulatory Insights

December 2020



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## Equity Capital Markets

### The Listing Committee of the Stock Exchange of Hong Kong Limited (SEHK) criticizes Wai Chi Holdings Company Limited (Stock Code: 1305) and its executive director Mr. Chen Wei Wu for breaches

The Listing Committee of the SEHK criticizes:

- Wai Chi Holdings Company Limited (Company) for failing to consult the SEHK for aggregation of transactions, and for failing to comply with the announcement and/or circular and prior shareholders' approval requirements in relation to disclosable transactions and a major transaction pursuant to Rules 14.23B(1), 14.34, 14.38A, and 14.40 of the Rules governing the listing of securities on the Stock Exchange of Hong Kong Limited (Listing Rules).
- Mr. Chen Wei Wu (Mr. Chen), executive director of the Company, for failing to fulfil his fiduciary duties expected of him of his knowledge and experience and holding his office within the issuer under Rule 3.08(f) of the Listing Rules, and failing to comply to the best of his ability with the Listing Rules and to use his best endeavors to procure the Company's compliance with the Listing Rules pursuant to his Declaration and Undertaking with regard to directors.

This case involves the Company's five subscriptions of wealth management products (Investments), which amounted to approximately HK\$153 million, recorded as "financial assets at fair value through profit or loss" in the Company's annual results for the year ended 31 December 2018 (2018 Financial Assets).

Four of the Investments individually constituted a disclosable transaction.

Additionally, the three subscriptions made in December 2018 in aggregate constituted a major transaction, and the other two subscriptions made in September 2018 in aggregate constituted a disclosable transaction. The Company did not comply with the announcement and/or circular and prior shareholders' approval requirements pursuant to Chapter 14 of the Listing Rules in relation to the Investments.

Mr. Chen was solely responsible for the Investments. He did not notify the board or consult professional advisers in relation to the Investments, as he considered them in essence to be time cash deposits and did not constitute "transactions" under Rule 14.04(1)(a) of the Listing Rules.

The SEHK commenced enquiries in March 2019 about the Company's 2018 Financial Assets. Despite having the SEHK's guidance materials on the acquisition of wealth management products (e.g., Enforcement Newsletter, July 2018) and having been informed on two occasions that each of the Investments constituted a "transaction" under the Listing Rules, the Company took no remedial action in relation to the announcement and/or circular and shareholders' approval requirements.

Key findings of the breaches include:

#### Company's breaches

- The Investments were not pure time deposits and were not classified as such by either the relevant banks or the Company's auditor. Each of the Investments constituted a "transaction" under Chapter 14 of the Listing Rules as it involved an acquisition of assets. This is consistent with the Company's classification of the Investments as "financial assets at fair value through profit or loss" as opposed to "bank balances and cash" in both its annual

results announcement and annual report for the year ended 31 December 2018.

- Based on the size tests, four of the Investments constituted a disclosable transaction.
- The Investments should be aggregated under Rule 14.22 of the Listing Rules by virtue of the fact that the three subscriptions made in December 2018 were acquired from the same party within a 12-month period and the other two subscriptions made in September 2018 were acquired from the same party on the same day, which constituted a major transaction and disclosable transaction, respectively.
- While the Listing Committee noted the Company's submission that the Investments were made at the request of the relevant banks to facilitate the provision of loan facilities even though these requirements were not included in the underlying loan facility agreements, such request did not excuse the Company from complying with the relevant Listing Rules.

#### Mr. Chen's breaches

- Despite the significant amounts of the Investments and the Company's regulations that any material resolutions relating to the overall interests of the group and resource allocation must be raised for the board's discussion and decision making, Mr. Chen failed to notify the board or seek professional advice when contemplating the Investments.
- The Company's breaches arose from Mr. Chen's misinterpretation of the definition of "transaction" under Rule 14.04(1) of the Listing Rules. Despite the SEHK's guidance materials available to the market, Mr. Chen failed to procure

the Company's compliance with the applicable Listing Rules in relation to the Investments.

The Listing Committee expressed concerns over Mr. Chen's ability to procure the Company's compliance with the Listing Rules:

- Chapter 14 of the Listing Rules imposes clearly defined and unambiguous obligations on issuers, which are designed to safeguard and protect investors, as they rely on information in the public domain to make their investment decisions.
- The Company's failure to comply with the announcement and/or circular and shareholders' approval requirements of the Listing Rules has deprived the Company's investors of their right to the timely receipt of information in relation to the Investments, and for the Company's shareholders, their right to vote on those transactions (where required).
- The Company's repeated breaches demonstrate that Mr. Chen was unfamiliar with the relevant requirements under Chapter 14 of the Listing Rules for notifiable transactions.

The Listing Committee further directed:

- (i) Mr. Chen to attend 18 hours of training on regulatory and legal topics including Listing Rule compliance and directors' duties.
- (ii) The Company to publish an announcement to confirm that the above direction has been fully complied with within two weeks after completion of the training.
- (iii) The Company to submit a draft announcement referred to above for SEHK's Listing Division's comment and may only publish the announcement after the Listing

Division has confirmed it has no further comment on it.

- (iv) Following the publication of the news release, any changes necessary and any administrative matters which may emerge in the management and operation of any of the directions set out in paragraphs (i) to (iii) above are to be directed to the Listing Division for consideration and approval. The Listing Division should refer any matters of concern to the Listing Committee for determination.

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

*HKEx, 21 December 2020*

### **SEHK publishes conclusions on Paperless Listing and Subscription Regime, Online Display of Documents and Reduction of the Types of Documents on Display (Consultation Conclusions)**

SEHK believes that the relevant Listing Rule amendments as set out in the Consultation Conclusions will enhance the efficiency of the listing process, save issuers' time and cost, and minimize paper consumption. The amendments will also improve the accessibility of documents to investors, particularly those located on the Mainland or internationally.

Under the amended Listing Rules:

- Paperless Listing and Subscription Regime – all listing documents in a new listing must be published solely in an electronic format and new listing subscriptions must only be made through online electronic channels only (effective on 5 July 2021).
- Online Display of Documents – the current requirement for certain documents to be put on physical display will be replaced with a requirement for those documents to be published online (effective on 4 October 2021).
- Reduction of Documents on Display – the types of documents that are mandatory for an issuer to put on display for notifiable transactions and connected transactions will be reduced (effective on 4 October 2021).

Click [here](#) to view the Consultation Conclusions.

*HKEx, 18 December 2020*

### **SEHK publishes Listed Issuer Regulation Newsletter**

SEHK published the third issue of the Listed Issuer Regulation Newsletter (Newsletter). The Newsletter provides guidance on companies' disclosure of counterparties in transactions as well as an update on SEHK's administration of the amended Listing Rules on reverse takeovers (RTOs) and continuing listing criteria since they took effect in October 2019, including how SEHK considers the impact of COVID-19 in applying these requirements.

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

*HKEx, 15 December 2020*

### **SEHK publishes its latest review of issuers' corporate governance practices**

SEHK published its findings and recommendations of its latest review of issuers' corporate governance practices (Review).

The Review provides guidance to issuers on possible improvements to their corporate governance practices by referencing 400 randomly selected corporate governance reports from sample issuers (Sample



Issuers) for the financial year ended on 31 December 2019. The SEHK reiterates the importance of a strong independent element in the board of directors, and that independent non-executive director's (INED) availability, time commitment, and board diversity are all crucial to an effective board.

The Review focuses on disclosures relating to re-election of long-serving INEDs (i.e., who have served more than nine years), election of overboarding INEDs (i.e., who are holding their seventh or more directorship), and board diversity.

Key findings and recommendations of the Review include:

- There was an improvement in issuers' compliance with Appendix 14 of the Listing Rules - Corporate Governance Code and Corporate Governance Report (Code). All Sample Issuers have complied with at least 73 out of 78 Code Provisions (CP). Explanations were given in substantially all occasions where there was deviation from a CP.
- Separating the roles of chairman and chief executive remains a challenge for issuers: issuer's attention is drawn to the CP requiring disclosure of dividend policy recently introduced in January 2019, which was overlooked by individual issuers.
- Re-election of a long-serving INED: issuers are reminded that satisfaction of the independence criteria set out in the Listing Rules by itself does not address whether the long-serving INED remains capable of bringing fresh perspectives and independent judgment to the board.
- Election of an overboarding INED: most issuers justified the election of an overboarding INED by listing factors considered by the board, some of which

are not necessarily relevant to a director's time availability. Issuers should disclose how the board could be satisfied that the director can devote sufficient time to the issuer's affairs.

- Board diversity, nomination of and selection criteria for directors: issuers are encouraged to set and disclose measurable objectives on board diversity as they demonstrate the board's commitment and enable tracking of the company's progress in this area.

Click [here](#) to view the report entitled "Analysis of 2019 Corporate Governance Practice Disclosure."

*HKEx, 11 December 2020*

### **SEHK publishes practitioners' insights on corporate governance and environmental, social, and governance (ESG) management**

In partnership with the Hong Kong Securities and Investment Institute, SEHK published market practitioners' insights entitled, "Making inroads into good Corporate Governance and ESG management" (Practitioners' Insights).

Corporate governance and ESG are key pillars in upholding the quality and reputation of Hong Kong's markets, which in turn contributes to the competitiveness and attractiveness of Hong Kong's markets. The SEHK is seeking to reinforce the importance of implementing good corporate governance and ESG practices within an organization, as early as possible. The overriding message is that change needs to come from the top-down.

The Practitioner's Insights present a collection of experiences shared by market practitioners, which aim to help directors of listing applicants and newly listed

companies think holistically about building and integrating corporate governance and ESG considerations into their business strategy to achieve long-term value for their organizations.

Click [here](#) to view the market practitioners' insights entitled, "Making inroads into good Corporate Governance and ESG management."

*HKEx, 11 December 2020*



# Financial Services Regulation

## Consultation conclusions on the Insurance (Group Capital) Rules

The Insurance Authority (IA) published the consultation conclusions on the draft Insurance (Group Capital) Rules (Group Capital Rules) in respect of the new supervisory framework for multinational insurance groups (GWS Framework), tentatively to be implemented in the first quarter of 2021.

The main objective of the proposed Group Capital Rules is to set out the requirements in relation to capital, regulatory reporting, and public disclosure that apply to an insurance holding company in relation to its insurance group. The Group Capital Rules will apply to insurance holding companies which are designated by the IA as being subject to the GWS framework.

The Group Capital Rules will be submitted to the Legislative Council for scrutiny. Subject to the legislative progress, the Group Capital Rules are expected to come into operation together with the Insurance (Amendment) (No. 2) Ordinance 2020 in the first quarter of 2021.

Click [here](#) to view the IA press release. Click [here](#) to view the consultation paper, and [here](#) to view the consultation conclusions.

*IA, 28 December 2020*

## The Securities and Futures Commission (SFC) concludes consultation on customer due diligence requirements for open-ended fund companies (OFCs)

The SFC released consultation conclusions on proposed customer due diligence requirements for OFCs. The SFC will implement the proposal to require OFCs to appoint a responsible person to carry out anti-

money laundering and counter financing of terrorism (AML/CFT) functions, in line with the Financial Action Task Force's principles and requirements as well as to better align the AML/CFT requirements for different investment vehicles for funds in Hong Kong.

Upon the completion of the legislative process, the new requirements will come into effect after a six-month transition period.

Click [here](#) to view the SFC news. Click [here](#) to view the consultation paper (refer to Part II of the consultation paper) and [here](#) to view the consultation conclusions.

*SFC, 23 December 2020*

## Deferral of margin requirements for non-centrally cleared over-the-counter (OTC) derivative transactions

SFC announced that it will defer the effective date of its margin requirements as set out in Part III of Schedule 10 to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) for non-centrally cleared single-stock options, equity basket options, and equity index options to 4 January 2024. This deferral is due to the amendments published by the European Supervisory Authorities to the European Union (EU) margin regime for non-centrally cleared OTC derivatives, one of which defers the application of margin requirements for single-stock equity options and index options transactions by three years to 4 January 2024. The SFC decided to align the effective date of its margin requirements with the EU's timeline.

Click [here](#) to view the SFC circular.

*SFC, 23 December 2020*

## Frequently asked questions (FAQ) on compliance with suitability obligations

## and requirements for complex products

The SFC updated its FAQ in response to questions raised by the industry in relation to compliance with suitability obligations when providing services to high net worth investors who also exhibit financial expertise (i.e., high levels of knowledge or experience). The updated FAQ:

- Clarified how suitability assessments should be conducted (refer to question 5B to the FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons).
- Clarified the obligations of licensed or registered persons to explain product risks to clients with different degrees of financial sophistication (refer to question 6B to the FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons).
- Provided guidance in complying with paragraph 5.5 of the Code of Conduct, particularly on how to perform product due diligence, disclose product information, and provide warning statements for the sale of complex products on an unsolicited basis (refer to question 39 to the FAQ on the Guidelines on Online Distribution and Advisory Platforms and Paragraph 5.5 of the Code of Conduct (Complex Products FAQs)).

Click [here](#) to view the SFC circular and [here](#) to view the appendix to the circular.

Click [here](#) to view the FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons and [here](#) to view the Complex Products FAQs.

*SFC, 23 December 2020*

## FAQ on Investor Protection Measures

The Hong Kong Monetary Authority (HKMA) issued a circular and clarified, in the form of FAQ, investor protection measures in respect of investment, insurance, and Mandatory Provident Fund products. Important points of the FAQ include:

- Only certain banking activities, such as sale and distribution of investment products as well as general banking or customer services (other than deposit-taking activities) can be conducted in areas that are proper facilities and not used for deposit-taking (referred to as "Non-deposit-taking Area"), but if authorized institutions (AIs) have obtained consent from the customer to access and utilize the customer's deposit information for investment and wealth management purposes, deposit-taking activities can then be carried out in the Non-deposit-taking Area.
- There is no specific restriction on the location for provision of pure trading services on precious metals within a bank branch.
- There are different audio-recording requirements for face-to-face sale process of different transactions – for instance, audio-recording is required for transactions of complex products that are for hedging purpose.

Click [here](#) to view the HKMA circular and [here](#) to view the appendix to the circular.

*HKMA, 23 December 2020*

## The SFC proposes amendments to the Code on Pooled Retirement Funds (PRF Code)

The SFC launched a three-month consultation on proposed amendments to the PRF Code. Pooled Retirement Funds (PRFs) are

collective investment schemes authorized by the SFC under section 104 of the Securities and Futures Ordinance (Cap. 571) (SFO) and the PRF Code, which are offered by banks, trustees, asset managers, and insurance companies. They enable multiple occupational retirement schemes to gain exposure to underlying investment portfolios. The main areas for consultation include:

- Introduction of obligations for product providers, trustees, management companies, and insurance companies in view of their respective responsibilities.
- Introduction of requirements in relation to fund operations and transactions with connected persons.
- Proposals to strengthen requirements for trustees' internal control review.
- Proposals to limit PRF investment portfolio to only one of the following: (i) a fund investing in SFC-authorized funds, (ii) a cash management portfolio, (iii) a guaranteed fund, or (iv) a direct investment fund, and to enhance requirements for each type of investment portfolio.

The public consultation period closes on 19 March 2021.

Click [here](#) to view the SFC news and [here](#) to view the consultation paper.

*SFC, 18 December 2020*

### **Joint product survey by the SFC and HKMA – submission of survey questionnaire**

The SFC and HKMA launched a joint annual survey on the sale of non-exchange traded investment products by licensed corporations (LCs) and registered institutions (RIs). Intermediaries are reminded to submit the survey questionnaire for the first reporting

period, which covers 1 January 2020 to 31 December 2020. All LCs and RIs licensed or registered for Type one or four regulated activity should submit the completed questionnaires to the SFC electronically through WINGS by the respective due dates as follows:

- Firms that did not sell any non-exchange traded investment products are to submit only Part A of the questionnaire by 5 February 2021.
- Firms that sold non-exchange traded investment products with total transaction amounts below HK\$1 billion (for LCs) or HK\$30 billion (for RIs) are to submit only Parts A and B of the questionnaire by 26 February 2021.
- Firms that sold non-exchange traded investment products with total transaction amounts at or above HK\$1 billion (for LCs) or HK\$30 billion (for RIs) are to submit all Parts A, B, and C of the questionnaire by 12 March 2021.

Click [here](#) to view the SFC circular.

*SFC, 18 December 2020*

### **SFC circular on anti-bribery guidance**

The SFC issued a circular to remind intermediaries of their existing obligations to put in place robust internal control systems to prevent contravention of the Prevention of Bribery Ordinance (Cap. 201) (POBO) when conducting regulated activities. Intermediaries are reminded to observe and comply with relevant provisions of the POBO, particularly section 8 on bribery of public servants by persons having dealings with public bodies and section 9 on corrupt transactions with agents, and to follow related guidance issued by the Independent Commission Against Corruption (ICAC).

Intermediaries are also required to establish and maintain policies and procedures to ensure compliance with all applicable legal and regulatory requirements as well as with their own internal policies and procedures. Appropriate training should be provided to directors, staff members, and agents to ensure compliance with the aforementioned requirements and regulations.

Click [here](#) to view the SFC circular and [here](#) to view the appendix to the circular.

*SFC, 18 December 2020*

### **Common compliance issues arising in the first year of the direct regulatory regime for licensed insurance intermediaries**

The new licensing regime for insurance intermediaries as set out in the Insurance Ordinance (Cap. 41) (IO) has been in effect for just over one year since it commenced on 23 September 2019. The IA issued circulars to draw the attention of licensed insurance agencies, licensed insurance broker companies, and authorized insurers to certain requirements that may require improved awareness and observance, including three administrative reporting requirements as follows:

- Licensed insurance agents must notify the IA of any change in name, business, or other contact details within 14 days of the change.
- At least 14 days before an authorized insurer appoints an agent to carry on regulated activities in one or more lines of business, the insurer must notify the IA in writing of the intended appointment.
- Within 14 days after the date on which an authorized insurer terminates the

appointment of an agent, the insurer must notify the IA in writing of the termination.

- The IA also reminds authorized insurers of other requirements imposed by the IA under the IO, including:
  - Notification requirements in relation to change of controllers, directors, or key persons in control functions of an authorized insurer.
  - Intervention requirements – e.g., restrictions on new business where authorized insurers may be required to not effect any new contracts of insurance, restrictions on investments where insurers may be required not to make investments of a specified class or description, and actuarial investigations on authorized insurer's financial condition.

Details of the aforementioned requirements and relevant compliance advice from the IA are included in the Appendices to the circulars.

Click [here](#) to view the IA circular to licensed insurance agencies, [here](#) to view the IA circular to licensed insurance broker companies, and [here](#) to view the IA circular to all authorized insurers.

*SFC, 18 December 2020*

### **Guideline on Banking Services for Persons with Intellectual Disabilities (the Guideline)**

The HKMA reminds banks that in providing banking services to members of the public, they should also pay special attention to customers in need. The HKMA also expects all banks providing retail banking services to

observe the recommended practices in the Guideline issued by the Hong Kong Association of Banks. Other AIs are encouraged to observe the same to enhance their services to customers in need as appropriate.

In implementing the recommendations in the Guideline, banks should provide proper guidance and training to frontline staff, who are the main point of contact of customers, to ensure that they can understand and communicate with customers properly and provide appropriate services to address the needs of customers.

Click [here](#) to view the HKMA circular and [here](#) to view the Guideline.

*HKMA, 15 December 2020*

### **Reminder of implementation of regulatory standards for leveraged foreign exchange trading activities**

The SFC reminds LCs that the expected regulatory standards covering customer due diligence, handling of client orders, conflicts of interest, and information for clients in respect of LFET activities have come into effect on 1 January 2021. Details of the regulatory standards can be found in the SFC circular dated 9 April 2020 and the annex to the circular.

LCs are reminded to ensure that they have internal controls, systems, and procedures in place to comply with the expected regulatory standards.

Click [here](#) to view the SFC circular dated 14 December 2020.

Click [here](#) to view the SFC circular dated 9 April 2020 and [here](#) to view the annex to the circular on LFET activities.

*SFC, 14 December 2020*

### **SFC proposes to upgrade the industry's competency standards**

The SFC launched a consultation on proposals to update its entry requirements for licensed applicants and its ongoing competency standards for individual practitioners, where minimum academic qualification requirements would be raised and a broader range of qualifications would be recognized. Applicants would also have more flexibility for meeting the industry qualification and regulatory examination requirements. Continuous professional training requirements for individual practitioners would also be enhanced. In relation to the quality of work performed by financial advisers on matters regulated by the Codes on Takeovers and Mergers and Share Buy-backs issued by the SFC, competence requirements would be raised for the individuals who are to advise on these matters.

The public consultation period closes on 10 February 2021.

Click [here](#) to view the SFC news dated 11 December 2020 and [here](#) to view the consultation paper.

*SFC, 11 December 2020*

### **The Financial Reporting Council (FRC) issues its first regulatory reports**

The FRC issued its first regulatory reports, namely the Interim Inspection Report and the Report on the FRC's Assessment of the Hong Kong Institute of Certified Public Accountants' (HKICPA) Performance of the Specified Functions (Oversight Report) since it became the full-fledged independent auditor regulator in Hong Kong on 1 October 2019.

The Interim Inspection Report provides information to auditors, investors, and audit committees about common audit quality



findings in the middle of the FRC's first inspection cycle, which aims to enable all auditors to take early action to address the findings in the next cycle of audits.

The Oversight Report was issued in relation to its assessment of the statutory functions of HKICPA, with the aim to ensure effective performance of the specified functions related to the registrations of local auditors of listed entities, the setting of standards on professional ethics, auditing and assurance practices, and the setting of continuing professional development requirements for public interest entity auditors.

Click [here](#) to view the FRC press release, [here](#) to view the Interim Inspection Report, and [here](#) to view the Oversight Report.

*FRC, 11 December 2020*

### **SFC provides additional guidance on external electronic data storage**

The SFC released additional guidance to market participants on external electronic data storage in the form of FAQ, following the SFC's circular dated 31 October 2019, which set out requirements for using external electronic data storage providers (EDSPs) to exclusively keep records or documents required under the SFO or the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615). Key points from the FAQ include:

- If the EDSP does not have a Hong Kong presence, LCs must obtain an undertaking from the EDSP in the form as set out in appendix one of the circular that it would provide regulatory records and assistance to the SFC as may be requested by the SFC, but this requirement to obtain an undertaking does not apply to EDSPs that have a Hong Kong presence.

- As an alternative to the undertaking from the EDSP, the SFC will accept an undertaking from each of the licensed corporation's two Managers-In-Charge (MIC) of Core Function, or, with the SFC's consent, one MIC or one Responsible Officer.
- Where a LC keeps electronic regulatory records exclusively with its affiliates, whether in or outside Hong Kong, the same requirements under paragraphs 7(d) to (h) and 8 of the circular will equally apply, regardless of where the affiliates are incorporated and whether the record keeping is further outsourced to EDSPs. The aforementioned requirements mainly relate to ensuring electronic regulatory records being accessible upon demand by the SFC without undue delay and can be reproduced in a legible form, provision of audit trail information, appointment of two MICs and seeking approval under section 130 of the SFO.

Click [here](#) to view the SFC news.

Click [here](#) to view the FAQ and [here](#) to view the SFC circular.

*SFC, 10 December 2020*

### **OTC derivatives trade reporting**

The SFC issued a circular to LCs about the reporting proprietary rates under floating rate index related data fields for OTC derivatives trade reporting, where a new value, "proprietary rates" is enhanced to the coding scheme "FloatingRateIndex" to support reporting of proprietary rates under the floating rate index related data fields. The testing environment is now available and reporting entities are advised to start working on the technical requirements including system testing for reporting this value, if applicable. The SFC and HKMA will consider mandating the requirement for reporting the



value in 2021. The SFC also advises LCs that may be subject to mandatory reporting obligation to refer to the Hong Kong Trade Repository's (HKTR) announcement.

Click [here](#) to view the SFC circular and [here](#) to view the HKTR announcement.

*SFC, 8 December 2020*

### **Clearing and record keeping rules for the OTC derivatives regime**

The revised list of persons designated as financial services providers (FSPs) for the purposes of the Securities and Futures (OTC Derivatives Transactions – Clearing and Record keeping Obligations and Designation of Central Counterparties) Rules (Cap. 571AN) (Clearing Rules) was gazetted on 4 December 2020 and has come into effect on 1 January 2021.

The SFC also reminds Licensed Persons that if their average total position in OTC derivatives during a Calculation Period reaches the corresponding Clearing Threshold, relevant OTC derivatives transactions they enter into on and after the corresponding Prescribed Day, including those with FSPs must be centrally cleared in accordance with the Clearing Rules. Please refer to the Clearing Rules and the FAQ on the Implementation and Operation of the Mandatory Clearing Regime for more details.

Click [here](#) to view the SFC circular and [here](#) to view the FAQ.

*SFC, 4 December 2020*

### **Amendments to the Code on Real Estate Investment Trusts (REIT Code) take effect**

After considering comments received for the Consultation Paper on Proposed Amendments to the REIT Code that the SFC issued on 9

June 2020, the SFC published consultation conclusions on 27 November 2020. The amended REIT Code has been gazetted and taken effect on 4 December 2020. For connected party transactions, which were entered into before 4 December 2020, a transitional period of six months will be allowed for REITs to comply with the revised requirements.

Main amendments to the REIT Code include allowing REITs to invest in minority-owned properties subject to certain conditions; allowing REITs more flexibility in making investments in property development projects; increasing the borrowing limit for REITs from 45 percent to 50 percent of gross asset value; and broadly aligning requirements for REITs' connected party transactions and notifiable transactions with the requirements for listed companies, in line with existing policy and practices. Please refer to the consultation conclusions and the FAQ relating to REITs for more details.

The SFC also issued a circular to management companies of SFC-authorized REITs to inform them of the streamlined approach for vetting and approval of announcements and circulars under 10.2 of the REIT Code. Key points include:

- Announcements and circulars to be issued by REITs under the REIT Code need not be submitted to the SFC for pre-vetting before publication unless (i) such announcements or circulars are required to be submitted to the SEHK for pre-vetting under the Listing Rules, or (ii) if pre-vetting is required under the REIT Code or other guidance published by the SFC.
- Where any matter covered by an announcement or circular is subject to SFC's prior approval under the REIT Code, such approval must be obtained before the

publication of the relevant announcement or circular.

- REIT managers are required to file with the SFC announcements or circulars that are not subject to pre-vetting by the SFC immediately following their submission to the SEHK for publication, and the SFC will conduct post-vetting of those announcements or circulars.
- The SFC may make follow-up enquiries or take other regulatory action where appropriate, and REIT managers are expected to respond to any enquiries made by the SFC promptly and in an open and cooperative manner.

Click [here](#) to view the SFC news, [here](#) to view the consultation conclusions, and [here](#) to view the FAQ relating to REITs.

Click [here](#) to view the SFC circular relating to vetting and approval of announcements and circulars.

*SFC, 4 December 2020*

### **FRC publishes guideline on notification of changes in auditor appointments**

The FRC published its guideline on the notification of changes in auditor appointments (Guideline), which will come into effect on 1 February 2021. The Guideline requires auditors of listed entities to provide the FRC with up-to-date information on their appointments as auditors to Public Interest Entities (PIEs) and of any changes in those appointments, which will enhance the effectiveness of the FRC by enabling the frequency of inspections to be more responsive to changes in appointments.

Click [here](#) to view the FRC press release and [here](#) to view the Guideline.

*FRC, 4 December 2020*

### **Extension of Phase two of the temporary facilitative measures (TFM) to tackle the outbreak of COVID-19**

Further to the IA's circulars on 27 March, 15 June, and 4 September 2020 regarding Phase two of the TFM to obviate the need to conduct face-to-face meetings in order to minimize the risk of infection during the sale process of insurance policies, the IA decided to extend it in view of the pandemic situation.

In this regard, Phase two of the TFM has been extended by another three months to 31 March 2021 (based on policy application date) unless otherwise varied by the IA. The scope of products covered and the implementation details remain unchanged. Please refer to the IA Press Release on 27 March 2020 for more details.

Click [here](#) to view the IA circular and [here](#) to view the IA press release dated 27 March 2020.

*IA, 2 December 2020*

## Data Protection

### Privacy Commissioner reiterates the serious consequences of doxxing

On 28 December 2020 a defendant was convicted of civil contempt of court and sentenced to 21 days' immediate imprisonment. The judge pointed out that doxxing acts have a long-lasting impact on the victims and should not be tolerated. With regards to the sentence, the judge stressed that a custodial sentence is appropriate as a suspended sentence could not properly reflect the gravity of the criminal liability.

The Privacy Commissioner of Personal Data, Hong Kong, Ms. Ada Chung Lai Ling (PCPD) welcomed the judgment. The PCPD stressed that, "doxxing is a misdeed that should not be tolerated in a civilized society... the three interim injunction orders relating to doxxing granted by the High Court are still in force at present. Contempt of court is a serious matter. Anyone who breaches the relevant injunction orders, once convicted, may be subject to an immediate custodial sentence."

As of mid-December 2020, the office of the PCPD had referred 57 doxxing cases to the Department of Justice for follow-up. This is the third conviction for breaching the relevant injunction order since the court issued the injunction orders, and the first case in which the defendant was sentenced to immediate imprisonment for breaching injunction order.

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

*PCPD, 28 December 2020*

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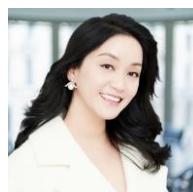
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