Hong Kong Corporate Insights

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Hogan Lovells

Contents

Equity Capital Markets

Hong Kong Exchanges and Clearing Limited (HKEx) signs agreement with MSCI Inc. (MSCI) to license indexes to launch Asia and Emerging Markets futures and options contracts

On 27 May 2020 the HKEx announced that its wholly owned subsidiary, Hong Kong Futures Exchange Limited, has signed a major licensing agreement with MSCI to license a suite of MSCI indexes in Asia and Emerging Markets for the introduction of 37 futures and options contracts in Hong Kong. The introduction of these futures and options contracts remains subject to regulatory approvals and market conditions.

Click here to view the full article.

(HKEx, 27 May 2020)

The Listing Committee censures Kong Sun Holdings Limited (Stock Code: 295) (Kong Sun) and seven of its current and former directors for breaches

The Listing Committee of The Stock Exchange of Hong Kong Limited (SEHK) (Listing Committee) conducted a hearing into Kong Sun and seven of its current and former directors for breaches of the Rules Governing the Listing of Securities on the SEHK (Listing Rules).

This case involved Kong Sun's chief operating officer (COO) and financial controller (FC) (who were not directors of Kong Sun) authorising Kong Sun and its subsidiaries to issue loans and advances (which were interest free, unsecured, and with no fixed term of repayment) (Loans and Advances) to a third party without Kong Sun's knowledge or approval.

The Loans and Advances were discovered by Kong Sun's previous auditors, who informed the board of directors of Kong Sun. These Loans and Advances constituted (a) a discloseable transaction; (b) an advance to an entity; and (c) a major transaction under the Listing Rules, which were subject to disclosure and/or shareholders' approval. Despite the fact that the FC was told to cease all further loans and advances, the COO and the FC continued to issue further loans and advances.

The Listing Committee's decision was upheld by the Review Committee at the Disciplinary (Review) Hearing. The board of directors of a listed company is collectively responsible for the management and operations of the company, and delegation of responsibility does not absolve the directors from their responsibility. This was further upheld by the Listing Appeals Committee.

The Listing Committee’s findings were that Kong Sun had failed to comply with the announcement, circular and shareholders' approval requirements with respect to loans and advances it had made to another entity, in breach of Rules 13.13, 13.15, 14.34, 14.40, and 14.41 of the Listing Rules; and failed to despatch and/or publish its financial reports with the time specified under Rules 13.46(2)(a), 13.49(1), and 13.49(6). The Listing Committee also found that seven of its current and former directors had failed to take reasonable steps to establish and maintain an effective and appropriate internal control procedure and risk management system as well as to apply such degree of skill, care, and diligence required and expected of them, in breach of Rule 3.08(f) of the Listing Rules; and failed to comply with the Director’s Declaration and Undertaking given to the SEHK to use their best endeavours to procure Kong Sun's compliance with the Listing Rules and comply with the Listing Rules to the best of their abilities.

In particular, it was highlighted that the Listing Committee regards the breaches in this matter as serious, as the Loans and Advances were of a substantial amount; Kong Sun did not publish its financial reports for three to eight months after the deadline specified in the Listing Rules; and Kong Sun admitted it did not have internal controls for (a) the approval and disclosure of contracts; (b) the reporting and recording of contracts/loans and advances; (c) management, use, and storage of its chops/seals; and (d) remittance of large amount of funds via internet banking. In addition, the relevant directors had failed to take effective measures to prevent the recurrence of breaches of the Listing Rules by Kong Sun.

Kong Sun and the relevant directors were sanctioned by means of public censure and/or criticism.

Click here to view the full decision.

(HKEx, 13 May 2020)

The Listing Committee censures Mr. Zhang Yun, a former executive of Kiu Hung International Holdings Limited (Stock Code: 381) (Kiu Hung) (Mr Zhang), for failure to comply with a direction on training and the Listing Rules

The Listing Committee of SEHK conducted a hearing into the conduct of Mr. Zhang in relation to his breach of a direction made by the Listing Committee, in a decision published on 12 June 2019, relating to previous disciplinary proceedings against Kiu Hung and nine of its then current and former directors, including Mr. Zhang.

As a result of the previous disciplinary proceedings, Mr. Zhang had been directed by the Listing Committee to complete 18 hours of training on compliance with the Listing Rules and director's duties (the Training) within 90 days from 12 June 2019 (the Direction). Mr Zhang then subsequently retired as executive director of Kiu Hung and despite the prospect of further disciplinary action, he continued to refuse to comply with the Direction without any valid reason.

It was highlighted that Mr. Zhang's refusal to undertake the Training indicated a blatant disregard of the Direction, and that an intention by a former director not to act as a director in future does not absolve him/her from compliance with the Direction. Parties subject to the disciplinary jurisdiction of the Listing Committee must comply with the directions imposed by the Listing Committee.

Mr. Zhang was censured for his failure to comply with the Direction. The Listing Committee also made a statement to the effect that, in its opinion, Mr. Zhang does not satisfy the suitability requirements under Rule 3.09 of the Listing Rules to act as a director of any issuer listed, or to be listed, on SEHK.

Click here to view the full decision.

Click here to view the 12 June 2019 decision.

(HKEx, 12 May 2020)

Financial Services Regulation

SFC Supplemental Circular on Leveraged and Inverse Products

The Securities and Futures Commission (SFC) published a circular which is supplemental to the SFC's Circular on Leveraged and Inverse Products (the L&I Products Circular), setting out the requirements under which the SFC would consider authorizing leveraged and inverse products which are structured as exchange traded funds for public offering in Hong Kong under sections 104 and 105 of the Securities and Futures Ordinance (SFO). The requirements cover areas including product naming, product structure, offering documents disclosure, market making arrangements, distribution, and margin financing.

Click here for the supplemental circular and here for the amended L&I Products Circular.

(SFC, 22 May 2020)

SFC seeks court order to wind up Combest Holdings Limited

The SFC petitioned the Court of First Instance (CFI) to wind up Combest Holdings Limited (Combest) and to disqualify the company's executive directors and a person who is potentially a shadow director pursuant to section 212 of the SFO to protect the interest of Combest's shareholders, creditors and the investing public.

The SFC also applied to the CFI to appoint provisional liquidators upon finding evidence which suggests that the directors caused Combest and one of its subsidiaries to enter into two overpriced acquisitions. The SFC alleged that Combest overstated its revenue by more than 84 percent to 99 percent between 2016 and 2019 by including in its financial statements revenue generated by the artificial and/or fictitious businesses acquired in the aforementioned overpriced acquisitions, which in fact have caused losses of more than HK$293 million.

Click here for the SFC news.

(SFC, 21 May 2020)

SFC reprimands and fines Convoy Asset Management Limited HK$6.4 million for regulatory breaches over bond recommendation

The SFC reprimanded and fined Convoy Asset Management Limited HK$6.4 million for failing to perform the below when referring clients to a third-party platform to execute transactions of bonds listed under Chapter 37 of the Listing Rules:

- Conduct proper and adequate product due diligence before making recommendations and solicitations.
- Have an effective system in place to ensure that the recommendations and solicitations were suitable for its clients and reasonable in all circumstances.
- Maintain proper documentary records of the investment advice or recommendations given to its clients and provide each of them with a copy of the written advice.
- Have adequate and effective internal controls and system in place to diligently supervise and monitor the sale of bonds through the third party platform and to ensure its compliance with applicable regulatory requirements.

Click here for the SFC news.

(SFC, 19 May 2020)

Concurrent SFC-HKMA thematic review of spread charges and other practices

The SFC and the Hong Kong Monetary Authority (HKMA) will commence a concurrent thematic review to ascertain whether intermediaries charge their clients more than the spreads or fees disclosed in standard documents provided to clients, or as agreed with or understood by clients, and whether spreads usually increase after a trade has been executed and the price improvement retained without agreement with, or disclosure to, clients. The review will also look into whether intermediaries understand and properly disclose, in accordance with the Code of Conduct for Persons Licensed by or Registered with the SFC, the capacity in which they are acting when conducting trades for clients.

The findings of the concurrent thematic review will form the basis for the SFC and the HKMA to assess intermediaries' compliance with applicable laws and regulations and, in the event of a breach, to take regulatory action.

Click here for the SFC news.

(SFC, 18 May 2020)

Government announces mechanism for registered practice units of Hong Kong Institute of Certified Public Accountants (HKICPA) to apply for exemption from compulsory quarantine arrangement

Certified public accountants (practising), partners, directors, or employees of practice units registered with the HKICPA under the Professional Accountants Ordinance (Cap. 50), who are required to travel to the Mainland to conduct audit work for companies listed on a recognised stock market and having Mainland operations, and to assist those companies to fulfill their obligations under applicable ordinances and other regulatory instruments, may apply for exemption from the compulsory quarantine arrangement.

An exempted person must only travel to and stay in the Mainland area or city where they conduct the audit, and must take precautionary measures to ensure personal hygiene. After returning to Hong Kong, the exempted person will be subject to medical surveillance (but not quarantine) for 14 days.

The Financial Services and the Treasury Bureau (FSTB) will consider and approve applications with the administrative support of the HKICPA. To apply for an exemption, an application form should be completed by the applicant(s) and the respective practice unit. Each application is for a specific audit task and should cover not more than two persons.

Click here for the FSTB press release.

(FSTB, 18 May 2020)

Stamp Duty Ordinance amended to lower transaction cost for primary market ETF activities

The government published the Stamp Duty Ordinance (Amendment of Schedule 8) Regulation 2020 (Regulation) in the Gazette.

The Regulation seeks to amend Schedule 8 to the Stamp Duty Ordinance (Cap. 117) to waive the stamp duty on stock transfers which involve the activities of exchange traded fund (ETF) market makers in the course of allotting and redeeming ETF units listed in Hong Kong.

The Regulation will be tabled before the Legislative Council (LegCo) for negative vetting on 20 May 2020 and will come into effect on 1 August 2020.

Click here for the FSTB press release.

(FSTB, 15 May 2020)

HKFI issues Best Practice on the Use of Genetic Test Results

The Hong Kong Federation of Insurers (HKFI) issued the Best Practice on the Use of Genetic Test Results (Best Practice).

After consulting member insurers and engaging key stakeholders, including the Food and Health Bureau and the Steering Committee on Genomic Medicine, expert clinical geneticists, Insurance Authority (IA), the Equal Opportunities Commission and the Office of the Privacy Commissioner, HKFI designed the Best Practice with the following key principles:

Member insurers of HKFI:

- Will continue to not require applicants to undertake genetic testing for underwriting purposes.
- Will not ask for results of genetic tests (whether diagnostic or predictive) which were performed in the context of scientific research.
- May ask for certain predictive genetic test results only when the applicant applies for life insurance or critical illness/dread disease policies over the defined protection limits, i.e., HK$5 million and HK$1 million respectively. For medical indemnity insurance, no predictive genetic test results will be requested regardless of the sum insured.

Click here for the HKFI media release.

(HKFI, 14 May 2020)

SFC obtains disqualification orders against former directors of EganaGoldpfeil (Holdings) Ltd

The SFC obtained disqualification orders in the CFI against three former directors of EganaGoldpfeil (Holdings) Ltd (EGL) in respect of their roles in the company's misapplication of funds.

The CFI found that the three former directors had approved transactions giving rise to the company's doubtful payables amounting to about HK$2.55 billion, including payments to at least seven debtors which were in fact under the control of one of the former directors. They failed to carry out proper inquiries and perform appropriate due diligence, and were disqualified from being a director or taking part in the management of any corporation in Hong Kong, without leave of the court, for a period of six to nine years.

The SFC also sought compensation orders against the three former directors for a payment of HK$622 million to EGL, an amount equivalent to EGL's payment of HK$622 million to a company owned by the family of the EGL's then chairman, to fund its purchase of some of EGL's shares. The CFI declined to grant the order and considered it should remain with the liquidators of EGL to assess the efficacy as to whether it would be beneficial to bring proceedings in the name of EGL against any party.

Click here for the SFC news.

(SFC, 11 May 2020)

Companies (Fees) (Amendment) Regulation 2020 gazetted

The government published the Companies (Fees) (Amendment) Regulation 2020 (the Amendment Regulation) in the Gazette.

The Amendment Regulation seeks to amend the Companies (Fees) Regulation (Cap. 622K) to waive the registration fees for annual returns (except for late delivery) charged by the Companies Registry (CR) for two years, and reduce the fees payable in relation to incorporation of companies (including registration of non-Hong Kong companies) through electronic means by 10 percent. The fee waiver will apply to annual returns delivered to the CR between 1 October 2020 and 30 September 2022 (both dates inclusive).

The Amendment Regulation will be tabled at the LegCo for negative vetting on 13 May 2020 and will come into operation on 1 October 2020.

Click here for the FSTB press release.

(FSTB, 8 May 2020)

SFC reprimands and fines Mega International Commercial Bank Co. Ltd. HK$7 million for regulatory breaches over collective investment schemes sale

The SFC reprimanded and fined Mega International Commercial Bank Co. Ltd. (MICBC) HK$7 million following an investigation which revealed that in the course of dealing with collective investment scheme clients between August 2014 and July 2015, MICBC had failed to implement adequate and effective systems and controls to:

- Properly assess its clients' investment objectives, risk tolerance levels, and knowledge of derivatives.
- Ensure the investment recommendations and/or solicitations made to its clients were reasonably suitable in all circumstances.
- Conduct adequate product due diligence on certain funds.
- Ensure all relevant factors were properly taken into account before assigning funds risk ratings.
- Identify funds which constituted derivative products.

Click here for the SFC news.

(SFC, 7 May 2020)

Circular to Licensed Corporations which are Participants of the Stock Exchange Hong Kong Limited or Hong Kong Futures Exchange Limited: Licence Holders Insurance Scheme for Exchange Participants

The SFC published the circular for participants of the SEHK and licensed for Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities.

The circular noted that the Industry Working Group (IWG) has re-appointed Jardine Lloyd Thompson Limited (JLT) as the insurance broker and scheme administrator of the master policy of insurance, which has to be taken out and maintained in the manner prescribed by the Securities and Futures (Insurance) Rules (Cap. 571AI), for the scheme year 2020/2021.

Under each master policy of insurance, an insured participant will be indemnified for financial losses due to fidelity risks relating to its Type 1 or Type 2 activities, or both activities (as the case may be), subject to an indemnity limit of HK$15 million per regulated activity per year and a deductible amount of HK$3 million per claim or loss.

The premium amount which an insured participant is required to pay equals the sum of a minimum basic premium (equally shared by participants in the same category) and a variable premium (allocated based on the annual turnover of individual participants, subject to adjustments for any premium loading and/or discount).

As the scheme administrator, JLT will provide administrative services to the participants. It will allocate the gross premium and participants the debit note and insurance documents.

Click here for the SFC circular.

(SFC, 7 May 2020)

Circular to licensed corporations: Margin requirements for non-centrally cleared OTC derivative transactions

The SFC issued a circular informing licensed corporations (LC) that it will defer the introduction of initial margin (IM) requirements for non-centrally cleared over-the-counter (OTC) derivative transactions by one year to provide operational relief amidst the COVID-19 situation.

From 1 September 2021 to 31 August 2022, the exchange of IM by an LC is required in a one-year period where both the LC and the covered entity have an average aggregate notional amount (AANA) of non-centrally cleared OTC derivatives exceeding HK$375 billion on a group basis.

On a permanent basis starting from 1 September 2022 and for each subsequent 12-month period, the exchange of IM by an LC is required in a one-year period where both the LC and the covered entity have an AANA of non-centrally cleared OTC derivatives exceeding HK$60 billion on a group basis.

Click here for the SFC circular.

(SFC, 7 May 2020)

Joint statement on the establishment of the Green and Sustainable Finance Cross-Agency Steering Group

The HKMA and the SFC initiated the establishment of the Green and Sustainable Finance Cross-Agency Steering Group (Steering Group). Other members include the FSTB, the HKEx, the IA, and the Mandatory Provident Fund Schemes Authority.

The Steering Group aims to provide strategic direction, with a focus on regulatory policy and market development, to bolster Hong Kong's position as a leading green and sustainable finance centre in Asia and globally.

Click here for the HKMA press release.

(SFC, 5 May 2020)

SFC obtains court order against Shandong Molong Petroleum Machinery Company Limited

The SFC obtained a court order in the CFI requiring Shandong Molong Petroleum Machinery Company Limited (Shandong Molong) to reconstitute its audit committee and to appoint an independent external auditor to review its internal control and financial reporting procedures, after the company accepted that it had been window-dressing key financial information, including the company's profit, in its unaudited quarterly and half-yearly results announcements for the first three quarters of 2015 and 2016. The result announcements had therefore falsely and substantially inflated its financial position, portraying a healthy picture when Shandong Molong was suffering loss.

Click here for the SFC news.

(SFC, 5 May 2020)

Data Protection

Doxxing of Legislative Council Security Personnels Privacy Commissioner exhausts his legal powers to enforce the law impartially

The Privacy Commissioner for Personal Data (PCPD) has handled a number of cases with regards to the doxxing of LegCo Security Personnel on various social media platforms. As of 22 May 2020 three websites connected with the doxxing activities have been removed.

The PCPD has stated that whilst it will investigate these doxxing cases, it has reiterated that it only has limited investigative power, and that any criminal investigations will need to be conducted by the Hong Kong Police Force. Accordingly, the PCPD has called for the widening of its investigative and prosecution powers under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO), to combat online doxxing activities.

In its response, the PCPD also explained that, pursuant to section 66 of the PDPO, an individual, who suffers damage by reason of a contravention of a requirement under the PDPO by a data user and which relates, whether in whole or in part, to personal data of which that individual is the data subject, may be entitled to compensation from that data user for that damage.

Click here for the media statement (only Chinese version is available).

(PCPD, 25 May 2020)

Privacy Commissioner warns against phishing email and fraudulent website

The PCPD has warned against a number phishing emails that were sent to members of the public from imposters purporting to be the PCPD.

The fraudulent email invites members of the public to be witnesses of a complaint case being handled by the PCPD. The email is sent from the following email address: noreply@notification-pdpcgov.com and the email provides a link to a fraudulent website: https://www.pdpcgov.com/report/investigation?=Ng676

The PCPD has clarified that the email address and the website link are not affiliated with the PCPD, and has warned members of the public not to open the email and the website link, and not to reply to the email.

Click here to read the media statement.

(PCPD, 13 May 2020)

Privacy Commissioner responds to media inquiry relating to video recording of reporters' identity cards

Following a number of media enquiries relating to an incident involving the video-recording of reporters' personal data, including their HKID cards, the PCPD has, from the perspective of the PDPO and without commenting on individual cases, responded as follows:

- In accordance with Data Protection Principle 1, the collection of personal data by an organisation shall be for a lawful purpose directly related to its functions or activities, shall not be excessive and shall be in a fair manner.
- Privacy is not an absolute right and can be lawfully restricted. However, if there are no reasonable grounds to suspect that there are illegal activities, the collection of the personal data may be unnecessary and unlawful.
- Recording a HKID card with video camera is a relatively more privacy-intrusive means of collecting personal

data. Organisations should therefore consider and assess whether this means is necessary and fair under the practical circumstances, and whether there are other, less intrusive means to collect personal data.

- HKID card numbers are sensitive personal data, and according to the "Code of Practice on the Identity Card Number and Other Personal Identifiers", organisations should treat copies of HKID card (including video records of HKID cards) as confidential documents, collect, and keep them under reasonably secure conditions to avoid unnecessary or intentional public display.

Click here to read the media statement.

(PCPD, 12 May 2020)

Privacy Commissioner condemns doxxing Legislative Council Security Personnel

The PCPD noted that security personnel performing their duties at a recent meeting of the House Committee of the LegCo had been doxxed on social media platforms. The PCPD strongly condemned such "despicable online weaponisation of personal data," which exposes victims, particularly those performing duties, to pressure and fear.

The PCPD discovered such doxxing postings during online patrol and intends to initiate an investigation. The PCPD has urged the doxxers to cease immediately and will write to the social media platforms concerned to urge them to remove the posts without delay.

Click here to read the media statement.

(PCPD, 10 May 2020)

Legal issues relating to personal data involved in government's distribution of reusable masks

The PCPD has received more than thirty enquiries and complaints from members of the public, netizens, professionals, and the media about the online registration system for the government-issued masks, and has issued the following response:

- If data matching procedures (by which two sets of personal data collected for different purposes are compared electronically) are involved, the collection and use of data subjects' phone numbers for issuing SMS notifications of the matching results is common practice and in compliance with the relevant legal requirements.
- The use of the personal data collected should be limited to the purpose stated at the time of collection or other purposes with express consent and the data should not be retained for longer than is necessary for that purpose. If transfer of the personal data is necessary, it should only be transferred to the classes of persons or organisations stated or covered by express consent.
- The public should ascertain the correct registration website and beware of phishing websites. The PCPD has advised that if individuals would like others to register on their behalf, they should take extra precautions to prevent their personal data from being lost or stolen accidentally.

Click here to read the media statement.

(PCPD, 7 May 2020)

Suspected use of a reporter's photo as Facebook profile picture

In relation to a number of media enquiries regarding an individual allegedly using a reporter's photo for Facebook profile picture (without her consent), the PCPD has issued the following response:

- The PCPD notes that the data subject concerned and her employer have expressed an intention to lodge a complaint to the PCPD. Upon receipt of the complaint, the PCPD has stated that it would pursue investigation in accordance with the PDPO and gather the relevant facts to ensure fair enforcement of the law.
- As an investigation will be conducted, the PCPD declined to comment further on this incident.

Click here to read the media statement.

(PCPD, 2 May 2020)

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