

Hong Kong Corporate and Regulatory Insights

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Contents

Equity Capital Markets	4
<ul style="list-style-type: none">• The Stock Exchange of Hong Kong Limited (SEHK) announced new chapter on Listing Rules• SEHK published Listing Committee Report 2022• The Stock Exchange of Hong Kong Limited (SEHK) published consultation paper following PRC rule updates• SEHK took disciplinary action against China Gem Holdings Limited (stock code: 1191) (Company) and seven directors	
Financial Services Regulation	9
<ul style="list-style-type: none">• Research on cross-boundary payment and settlement systems in the Greater Bay Area• The Securities and Futures Commission issued a circular to licensed corporations on anti-money laundering and counter-financing of terrorism• Circular to intermediaries on arrangements for launch of the Hong Kong Investor Identification Regime• The Mandatory Provident Fund Schemes Authority releases the quarterly report covering key statistical data of the MPF System up to the end of December 2022• Consultation on regulation of virtual asset trading platforms	
Data Protection	13
<ul style="list-style-type: none">• PCPD published the report on its work in 2022 for the Legislative Council member briefing• Conviction against a Chinese medical practitioner in a direct marketing case• PCPD published an investigation report on a data breach incident of the Hong Kong Institute of Bankers• The third conviction under the doxxing regime	
Antitrust	14
<ul style="list-style-type: none">• Overview of the antitrust regime in Hong Kong• Recent updates on investigation and enforcement trends from the HKCC• The HKCC released statement on real estate agencies' internal memos on commission for first-hand property transactions	

- The HKCC published revised model Non-collusion Clauses to enhance protection for procurers

Contacts

22

Equity Capital Markets

The Stock Exchange of Hong Kong Limited (SEHK) announced new chapter on Listing Rules

The SEHK announced on 24 March 2023 the expansion of Hong Kong's listing framework for the listings of Specialist Technology Companies where a new chapter will be added to the Main Board Listing Rules (Listing Rules) starting from 31 March 2023.

Following a two-month consultation period, the SEHK received 90 responses on its proposal to amend the Listing Rules to enable the listing of Specialist Technology Companies, the key updates on rules to be implemented on 31 March 2023 are as follows:

- The market capitalisation requirement for commercial companies is HK\$6 billion and HK\$10 billion for pre-commercial companies.
- The minimum research and development expenditure ratio threshold lowered to 30 percent for pre-commercial companies with revenue more than HK\$150 million but less than HK\$250 million.
- The minimum research and development expenditure ratio has to be met on a yearly basis for at least two of the three financial years prior to listing and on an aggregate 18 April 2023e basis over all three financial years prior to listing.
- There has to be two to five Pathfinder SIIs (defined as Sophisticated Independent Investors that have invested at least 12 months before the date of the listing application of a Specialist Technology

Company) that in aggregate hold more than 10 percent of the listing applicant's issued share capital as at the date of listing application and throughout the pre-application 12-month period or have invested an aggregate sum of more than HK\$1.5 billion in the listing applicant at least 12 months prior to the date of listing application.

- The requirement for Pathfinder SIIs require at least two Pathfinder SIIs who each hold more than three percent of the listing applicant's issued share capital as at the date of listing application and throughout the pre-application 12-month period or otherwise each have invested more than HK\$450 million in the listing applicant at least 12 months prior to the date of listing application.
- More than 50 percent of the offered shares required to be taken up by Independent Price Setting Investors, which comprises of Institutional Professional Investors and other types of investors with AUM, fund size or investment portfolio size of at least HK\$1 billion that satisfy the same independence requirement.

Further to the above updated rules, an applicant should also note the following:

- An applicant must fall within an acceptable sector of a Specialist Technology Industry.
- Applicants are divided into Commercial Companies and Pre-Commercial Companies.

- The revenue for the most recent year of Commercial Companies applicants must be at least HK\$250 million.
- Pre-Commercial Companies must be able to demonstrate a credible path to achieving the threshold of having a revenue of at least HK\$250 million.
- The minimum free float upon listing must be at least HK\$600 million.
- The post-IPO lock up periods for controlling shareholders are 12 months for Commercial Companies and 24 months for Pre-Commercial Companies.

Click [here](#) to read the Listing Regime for Specialist Technology Companies Consultation Conclusions.

For a full summary of the listing requirements under Chapter 18C, please see [Appendix 1](#).

HKEX, 24 March 2023

SEHK published Listing Committee Report 2022

The SEHK published its Listing Committee Report for 2022 including a review of the committee's work during the year 2022 and an overview of its policy agenda for 2023 and beyond.

The Listing Committee considered a total of 126 listing applications in 2022, as well as six reviews and 29 disciplinary cases. There were also 10 listings by Greater China issuers in Hong Kong and five SPAC listings in 2022.

As ESG has been more and more important in recent years, SEHK provided a summary and recap of its continued commitment and support on ESG matters in 2022, including:

- Introducing "ESG in Practice" section to the ESG Academy, highlighting SEHK's

latest ESG regulatory developments, and provides examples of exemplary ESG practices.

- Hosting a series of training sessions throughout August and September 2022, helping companies to better understand how they can incorporate Task Force on Climate-Related Financial Disclosures (TCFD) recommendations into their business strategy and disclosures and share practical tips on how companies can adopt TCFD-aligned climate reporting.
- Publishing a review report on issuers' ESG disclosure in November 2022, noting that the enhancements to ESG reporting requirements introduced in 2020 had helped drive positive change in the market.

SEHK also highlighted in its report the matters to be considered during 2023 and beyond:

- Prospectus and listing process: Including consultation conclusions on the Listing Regime for Specialist Technology Companies; reviewing GEM listing; optimizing IPO Price Discovery Process and Market Infrastructure; amending rules to implement changes to Hong Kong's IPO settlement process; reviewing public float requirements.
- Structured products: The SEHK will continue to review the current Listing Rules for structured products (Chapter 15A) and the whole structured products regime.
- Other obligations: Consultation including publishing a consultation paper to review the ESG Reporting Guide; consultation conclusions on the proposals to expand the Paperless Listing Regime and other rule amendments; continuing consultation

on proposed rule amendments relating to issuers in the People's Republic of China.

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

HKEX, 13 March 2023

The Stock Exchange of Hong Kong Limited (SEHK) published consultation paper following PRC rule updates

The SEHK published a consultation paper on rule amendments following recent updates and changes to Mainland China regulations and other proposed rule amendments relating to PRC issuers.

The State Council and the China Securities Regulatory Commission (CSRC) announced implementation of the "Decision of the State Council to Repeal Certain Administrative Regulations and Documents" and the "Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies", and five supporting guidelines (together, the New Regulations) on 17 February 2023. In light of the New Regulations, the SEHK will make consequential amendments to the Listing Rules:

- Class meeting and related requirements for issuance and repurchase of shares by PRC issuers will be removed.
- Requirements for disputes involving H shareholders to be resolved through arbitration will be removed.
- Requirements for PRC issuers' articles of association to include the Mandatory Provisions and other ancillary provisions will be removed.
- Documentary requirements for new listing applications to reflect Mainland China's new filing requirements for overseas

listings of Mainland companies will be amended.

Secondly, as the PRC issuers are no longer required to deem holders of H shares and their domestic shares to be different classes of shareholders, the SEHK also made proposals to amend the Listing Rules that relate to issues arising from domestic shares and H shares being treated as different classes. The SEHK also proposed to remove or modify certain shareholder protection requirements specific to PRC issuers which are no longer necessary since the updates in PRC law:

- Modifying the Listing Rules to allow the limits on general mandate for issuing new shares and scheme mandate for share schemes to be calculated with reference to a PRC issuer's total issued shares (instead of referencing to each of domestic shares and H shares).
- Removing the requirements for directors, officers and supervisors of PRC issuers to provide undertakings to the issuers and their shareholders to comply with the PRC Company Law and the articles of association.
- Moving certain requirements on compliance advisers from Chapter 19A (for PRC issuers) to Chapter 3A (for all issuers), being the requirements for issuers to provide access to their compliance advisers at all times and the compliance advisers to inform the issuers on a timely basis of any amendment to the Listing Rules and applicable laws and regulations in Hong Kong. Other requirements in Chapter 19A relating to the role of sponsors and compliance advisers and their termination and replacement will be removed as Chapter 3A contains similar requirements.

- Removing the requirements in Chapter 19A relating to (i) online display or physical inspection of documents and (ii) disclosure of material differences in laws and regulations between the PRC and Hong Kong in the listing documents of PRC new applicants.

The consultation period lasts for a month and has just ended on 24 March 2023.

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

HKEX, 24 February 2023

SEHK took disciplinary action against China Gem Holdings Limited (stock code: 1191) (Company) and seven directors

Key messages:

- When SEHK requests information from a listed issuer, the listed issuer is obliged to provide it. The directors have a responsibility to ensure the issuer complies with this obligation.
- Failures in this regard may lead to the directors being declared unsuitable for office, and to the cancellation of listing of the issuer's shares.

The SEHK censures:

- The Company.

The SEHK imposes a director unsuitability statement against:

- Mr. Zhong Ling, chairman and executive director (ED) of the Company (Mr. Zhong).
- Mr. Wu Yijie, ED of the Company (Mr. Wu).
- Mr. Cui Lei, former chief executive officer and ED of the Company (Mr. Cui).

- Mr. Kan Chi Ming, non-executive director (NED) of the Company (Mr. Kan).
- Mr. Warren Lee Primhak, independent non-executive director (INED) of the Company (Mr. Primhak).
- Mr. Li Haibo, INED of the Company (Mr. Li).
- Mr. He Yaode, former INED of the Company (Mr. He).

(Mr. Zhong, Mr. Wu, Mr. Cui, Mr. Kan, Mr. Primhak, Mr. Li and Mr. He are collectively referred to as the Relevant Directors).

The Company was listed in February 2009. Between July and August 2020, the Listing Division made multiple enquiries with the Company regarding the Company's annual results for the year 2019.

The investigation and enquiries from the Listing Division relates to possible breaches of the Listing Rules regarding transactions entered into by the Company and its subsidiaries which would cause substantial impairment to the Company's annual results of 2019. As part of the investigation, letters were sent to the Company and also specifically to Mr. Cui and Mr. He, the two former directors of the Company.

Since the end of 2021, the Company repeatedly sought time extensions to reply to the Listing Division's enquiries but disregarded the Listing Division's repeated warnings and reminders. The Company never provided any substantive response to the Listing Division's enquiries.

The former directors never provided substantive response to the Listing Division albeit confirming their contact details, and receiving reminder letters. The current directors, Mr. Zhong, Mr. Wu, Mr. Kan, Mr. Primhak, and Mr. Li did not procure the

Company to respond to or cooperate with the Listing Division's investigation.

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

- The Company failed to timely respond to the Division's enquiries and/or provide information or explanation required by the Listing Division for investigating a suspected breach of, and/or for verifying compliance with the Listing Rules.
- Mr. Zhong, Mr. Wu, Mr. Kan, Mr. Primhak and Mr. Li breached their obligations under the Director's Undertaking to use their best endeavours to procure the Company's compliance and to cooperate in the Listing Division's investigation, which also constituted a breach of the Listing Rules.
- Mr. Cui and Mr. He breached their Director's Undertakings by failing to cooperate with the Listing Division's investigation, which also constituted a breach of the Listing Rules. Mr. Cui and Mr. He's obligations to provide information reasonably required by the Exchange did not lapse after they ceased to be a director of the Company.
- The Relevant Directors breach of their respective Director's Undertakings and the Listing Rules was serious.

In addition to the public censure and unsuitability statements against the Relevant Directors, the SEHK also directed that the listing of the Company's shares be cancelled if any of Mr. Zhong, Mr. Wu, Mr. Kan, Mr. Primhak and Mr. Li continues to occupy a position as a director or within senior management of the Company and/or its subsidiaries upon the expiry of 14 days from

the date of the statement of disciplinary action.

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

HKEX, 1 February 2023

Financial Services Regulation

Research on cross-boundary payment and settlement systems in the Greater Bay Area

The Hong Kong Monetary Institute for Monetary and Financial Research (HKIMR), a research arm of the Hong Kong Academy of Finance (AoF) published a research report which studies the current status of cross-boundary payments and settlements within the Greater Bay Area (GBA).

Providing an overview of Hong Kong's financial market infrastructure and business opportunities in the GBA, the research report also investigated market participants' current practices and challenges associated with cross-boundary payment and settlement systems in the GBA:

- Out of all the major bay areas in the world such as San Francisco Bay Area, New York Metropolitan Bay Area and Tokyo Bay Area, the GBA has the most population and is the largest in land area, meaning that the GBA has a distinct advantage in the production factors that are essential for supporting economic growth.
- There is an upward trend in cash payment systems in recent years, especially fast payment systems that features instant fund transfers on a 24/7 basis. However, the four main challenges to cross-border payments and settlements internationally are represented by high cost, low speed, limited access, and insufficient transparency. Some of the root causes of these challenges include fragmented data and technology standards, legacy infrastructures, and long transaction chains.

- Hong Kong has established multi-currency and multi-dimensional payment and settlement systems that handle real-time transactions in the Hong Kong dollar and major foreign currencies and also cover diverse financial intermediation channels including banking, equity and debt securities. Emerging technologies such as blockchain, artificial intelligence, big data technologies data-sharing techniques and electronic wallets are increasingly used to support the modernisation of Hong Kong's financial market infrastructure and strengthen its financial integration within the GBA.
- Financial institutions are expected to expand their participation in cross-boundary investment schemes in the next two to three years, with the number of participants in HKMA's Wealth Management Connect Scheme expected to grow by more than 70 percent. This is an indication that there is a rising interest in engaging in cross-boundary activities in the GBA.
- More than 90 percent of the financial market participants surveyed in the research report agreed that cross-boundary payment and settlement channels are essential for their GBA outreach activities, highlighting the crucial role of these channels in facilitating cross-boundary financial services.

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

HKMA, 14 March 2022

The Securities and Futures Commission issued a circular to licensed corporations

on anti-money laundering and counter-financing of terrorism

Following the publication of a circular in November 2022, the Securities and Futures Commission (SFC) issued a further circular addressing The Financial Action Task Force's (FATF) statements on high risk jurisdictions subject to a call for action. FATF urged its members and all jurisdictions to apply enhanced due diligence, or if applicable, countermeasures to protect the international financial system from money laundering, terrorist financing, and proliferation financing risks from the countries which were identified by the FATF as high risk:

- The FATF remains concerned by Republic of Korea's failure to address the significant deficiencies in its anti-money laundering and combating the financing of terrorism, and urges its members and all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with the Republic of Korea, and to apply effective counter-measures and targeted financial sanctions to protect their financial sectors from money laundering as well as financing of terrorism.
- Iran remains as a high risk jurisdiction and the FATF calls on its members and urges all jurisdictions to apply effective counter-measures on Iran, which has previously been suspended.
- In light of the lack of progress and the majority of the action items in relation to Myanmar's strategic deficiencies are still not addressed after a year beyond the action plan's deadline, the FATF has called on its members and other jurisdictions to apply enhanced due diligence measures proportionate to the risk arising from Myanmar. Myanmar will remain on the

list of countries subject to a call for action until its full action plan is completed.

The FATF has issued an updated statement on jurisdictions under increased monitoring, adding Nigeria and South Africa, and on the other hand removing Cambodia and Morocco from the list.

Click [here](#) to access the latest circular and [here](#) to access SFC's previous circular on 2 November 2022.

SFC, 10 March 2023

Circular to intermediaries on arrangements for launch of the Hong Kong Investor Identification Regime

The SFC published a circular to remind relevant regulated intermediaries which are SFC licensed corporations or SFC registered institutions that the Hong Kong Investor Identification Regime (HKIDR) will be launched on 20 March 2023 .

The relevant regulated intermediaries should note the following points:

- The relevant regulated intermediaries should comply with all applicable requirements under the SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) and the Rules of the Exchange of The Stock Exchange of Hong Kong Limited (SEHK).
- Relevant regulated intermediaries are reminded to obtain express consent from each individual client, collecting/ updating their respective client identification data (CID), assigning each of the clients a Broker-to-Client Assigned Number (BCAN), submitting the BCAN-CID Mapping Files to SEHK, and tagging the BCANs to on-exchange orders as well as

off-exchange trades reportable to the SEHK.

- Relevant regulated intermediaries are suggested to submit the BCAN-CID Mapping Files to the SEHK as soon as possible, if it has not been done so when the HKIDR is launched, the clients may not be allowed to place buy orders on the day they wish to trade.
- There will be a stabilisation period from 20 March 2023 to 31 March 2023 (both dates inclusive), during which the relevant regulated intermediaries should closely monitor whether there is any failure in tagging BCAN to an order or any rejection of orders due to wrong BCAN format.

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

SFC, 2 March 2023

The Mandatory Provident Fund Schemes Authority releases the quarterly report covering key statistical data of the MPF System up to the end of December 2022

The Mandatory Provident Fund Schemes Authority (MPFA) released the December 2022 issue of the Mandatory Provident Fund Schemes Statistical Digest (Statistical Digest), a quarterly report which covers key statistical data of the MPF System up to the end of December 2022, including scheme member enrolment, number of accounts, total MPF assets and investment performance.

The key findings of the Statistical Digest include:

- Total MPF assets amounted to over US\$1,050 billion as at end of December 2022. About US\$220 billion of the total MPF assets was investment returns, net of fees and charges. Total MPF assets have increased by 139 percent over the past 10 years.

- Total MPF contributions are US\$83.99 billion in 2022, out of which US\$64.65 billion (77 percent) was mandatory contributions and US\$19.34 billion (23 percent) was voluntary contributions. Over the past 10 years, the amount of mandatory contributions and voluntary contributions grew by 68 percent and 112 percent respectively.
- About 2.87 million MPF accounts had invested all or part of their assets according to the default investment strategy or in the two constituent funds under the default investment strategy, accounting for around 26 percent of the total number of 10.84 million MPF accounts at the time. The total assets invested amounted to about US\$82.4 billion, accounting for around eight percent of total MPF assets.
- In the fourth quarter of 2022, the total number of claims for MPF on various grounds (such as retirement) was about 53 000, a decrease of eight percent from the previous quarter.
- The number of claims for MPF on the grounds of permanent departure from Hong Kong in the fourth quarter of 2022 was 7 000, representing a quarter-on-quarter decrease of 19 percent and a year-on-year decrease of 20 percent.

Click [here](#) to read the Statistical Digest.

MPFA, 28 February 2023

Consultation on regulation of virtual asset trading platforms

The SFC launched a one-month public consultation on the proposal to regulate virtual asset trading platforms in light of the new licensing regime that will take effect on 1 June 2023 under which all centralized virtual

asset trading platforms carrying on business in Hong Kong or actively marketing to Hong Kong investors, will need to be licensed by the SFC.

The consultation paper sets out key proposed regulatory requirements for licensed virtual asset trading platform operators, including complying with the Guidelines for Virtual Asset Trading Platform Operators (VATP Guidelines). The proposed VATP Guidelines include, amongst others, the following items:

- An applicant applying to become a licensed person (a platform operator or a licensed representative) must satisfy the SFC that they are fit and proper to be licensed, taking into account financial status, educational qualifications, experience, reputation, integrity etc.
- The SFC will consider a corporation's business, corporate governance, internal controls, operational review, risk management and compliance when it determines whether such corporation is competent to sell or purchase virtual assets through electronic facilities.
- For applicants that are individuals, he/she will need to demonstrate to the SFC that he/she satisfies certain competence requirements such as academic, professional or industry qualifications, ethical standards, and has to pass certain exams.
- The SFC is also considering whether retail access should be allowed to licensed VATPs to provide services to retail investors and there are diverse views on this issue. On one hand, virtual assets are prone to high volatility and market manipulation while on the other hand denying retail investors might push them to trade on unregulated platforms. Thus,

the SFC proposed certain safeguards intended to protect the retail investors, including: suitability assessments on risk tolerance and risk profile, token due diligence and specific token admission criteria in addition to general token admission criteria, disclosure obligations of VATP operators to retail investors, token admission and review committee to oversee implementation of token admission criteria.

- A platform operator has to maintain in Hong Kong at all times assets which it beneficially owns and are sufficiently liquid equivalent to at least 12 months of its actual operating expenses calculated on a rolling basis.
- A platform operator must maintain a paid-up share capital of not less than HK\$ 5,000,000 at all times.

The consultation period ended on 31 March 2023.

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

SFC, 20 February 2023

Data Protection

PCPD published the report on its work in 2022 for the Legislative Council member briefing

The PCPD published its report on its work in 2022 for the Legislative Council member briefing on 20 February 2023.

In the report, the PCPD reviewed its enforcement of the PDPO and announced its strategic focus in 2023, which include:

- Legislative amendments to the PDPO: (i) establish a mandatory breach notification mechanism; (ii) regulate the data processors directly under the PDPO in relation to personal data retention and security obligations; (iii) data users to formulate a clear personal data retention policy; (iv) empower the PCPD to impose administrative fines.
- Enhanced enforcement: closely monitor doxxing activities, take timely and effective enforcement actions and pursue criminal prosecution.

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

PCPD, 20 February 2022

Conviction against a Chinese medical practitioner in a direct marketing case

The Eastern Magistrates' Court convicted a Chinese medicine practitioner (the Defendant) of two counts of direct marketing offences under the PDPO. The Defendant was found to have failed to (i) take necessary actions and obtain the data subject's consent before using it for direct marketing; and (ii) inform the data subject of her right to request not to use her personal data in direct marketing without charge. The

Defendant pleaded guilty to the offences, and was fined HK\$4,000 in respect of the two charges.

The case originated from a complaint received by the PCPD in December 2020. The complainant was a patient of a Chinese medicine clinic, and the Defendant also worked at the clinic. The complainant never consulted the Defendant.

The complainant received a WhatsApp message from the Defendant, which contained a photo of the Defendant's business card and promoted the services of the Defendant's new clinic. The complainant subsequently lodged a complaint with the PCPD, in the belief that the Defendant had used her personal data for direct marketing without consent.

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

PCPD, 10 February 2023

PCPD published an investigation report on a data breach incident of the Hong Kong Institute of Bankers

The PCPD published an investigation report concerning a data breach incident in December 2021 relating to the Hong Kong Institute of Bankers (HKIB).

The investigation arose from a data breach notification lodged by HKIB, reporting (i) ransomware attacks of six servers which contained personal data and malicious encryption of the files in the servers and (ii) a hacker's threat to upload the files to the internet and demand a ransom for unlocking the encrypted files. In this incident, over 13,000 members' personal data and 100,000 non-members' personal data had been leaked.

Upon investigation, the PCPD concluded that there were apparent deficiencies in the data security risk management and the personal data security measures, including:

- Inadequacies in management of data security risk: in particular, HKIB did not stipulate any risk management mechanism for data security.
- Deficiencies in information system management: including the failure to install data loss prevention system, insufficient password strength in the system, the limited scope of its regular penetration test, and the limited protection capabilities of its antivirus software.
- Prolonged implementation of multi-factor authentication: HKIB had not implemented multi-factor authentication to prevent hacking when its firewall manufacturer urged the users to do so in 2019.

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 an enforcement notice on HKIB, directing it to remedy and prevent recurrence of the contravention. In particular, HKIB was requested to

- Review thoroughly the security of its systems containing personal data, to ensure that they are free from unknown malware and security vulnerabilities.
- Engage an independent data security expert to conduct reviews and audits of its system security on a regular basis.
- Revise the system security policy which shall specify patch management requirements and the requirements to

conduct regular vulnerability scans on its network infrastructure.

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

PCPD, 9 February 2023

The third conviction under the doxxing regime

A 36-year-old female, Ms. Sham Chun-kin, was convicted of 14 charges of doxxing offence. The 14 charges laid by the Office of the Privacy Commissioner for Personal Data (PCPD) all relate to disclosure of personal data without consent under section 64(3A) of the Personal Data (Privacy) Ordinance (PDPO). This is the third conviction of the court on the new doxxing offence under the PDPO. The maximum penalty for the offence is a fine up to HK\$100,000 and imprisonment for two years.

Ms. Sham, an online trader, was found to have disclosed the personal data of her supplier and her husband in 14 groups on a social media. The personal data disclosed included the Chinese names and photos of the victim and her husband, and the victim's phone number. The Court, upon Ms. Sham's guilty plea, found that she made the disclosure without consents of the victim and her husband.

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

PCPD, 1 February 2023

Antitrust

Overview of the antitrust regime in Hong Kong

Hogan Lovells' Hong Kong Corporate & Regulatory Insights now includes a new section to cover the latest antitrust developments in Hong Kong.

The Competition Ordinance (Cap. 619) (the Ordinance) which came into full force in December 2015 governs Hong Kong's antitrust regulatory regime. The regime applies regardless of where a business is based, or where the conduct was undertaken, as long as the conduct has the object or effect of preventing, restricting or distorting competition in Hong Kong. The Ordinance has three key pillars:

- **The First Conduct Rule:** this rule prohibits anti-competitive agreements, concerted practices and decisions. For example, fixing prices, agreeing output restrictions, rigging bids would generally be prohibited under this rule.
- **The Second Conduct Rule:** this rule prohibits business with a substantial degree of market power from abusing that power by engaging in anti-competitive conduct. For example, conduct by a business with a substantial degree of market power involving predatory pricing, tying and bundling, margin squeezing, refusing to deal or exclusive dealing would be caught under this rule.
- **The Merger Rule:** A business is prohibited from carrying out a merger that, directly or indirectly, has or is likely to have the effect of substantially

lessening competition in Hong Kong. At present, this rule applies to the telecommunications sector only where a party holds a telecommunications carrier license (or, directly or indirectly, controls an undertaking that holds a carrier licence).

The Ordinance also establishes the Competition Commission (the HKCC) and the Competition Tribunal. The HKCC is the authority responsible for enforcing the Ordinance. It is given a wide range of investigation powers and brings cases before the Competition Tribunal. The Competition Tribunal is the primary venue for competition cases at first instance. It has the power to impose a wide range of sanctions and orders.

Where an undertaking is ruled by the Competition Tribunal to have contravened or been involved in the contravention of the Ordinance, the undertaking may be subject to a pecuniary penalty of up to 10 per cent of its Hong Kong turnover for each year that the contravention occurred, up to a maximum of three years. Individuals also risk being disqualified from management for up to five years.

Recent updates on investigation and enforcement trends from the HKCC

At an annual seminar with The British Chamber of Commerce in Hong Kong, the HKCC recently shared updates on their enforcement priorities and investigation operations, as well as their approach to resolving cases without litigation.

The HKCC expressed that in 2023, its enforcement priorities will continue to be on anti-competitive conduct that exploits public funding (as seen from the recent case [filed by the](#)

[HKCC](#) involving government subsidies) and conduct that negatively impacts people's livelihoods. They will also continue to focus on anti-competitive behavior in the digital economy. While in the HKCC's earlier years, it focused its enforcement priorities on hardcore cartels, it has clearly indicated that it is now also shifting its focus towards abuse of dominance conduct and vertical agreements. Last year, the HKCC initiated proceedings for resale price maintenance, which was also the first time the HKCC pursued any vertical arrangement in court. For more information on what this case means for businesses, please see our article [here](#).

A recent trend in antitrust enforcement is the increased partnership between the HKCC and the Hong Kong Police Force. In the past year, the two enforcement agencies conducted a number of joint operations that allowed the HKCC to benefit from the Hong Kong Police Force's resources, including manpower and intelligence. Joint collaboration with other law enforcement agencies will likely continue in 2023, especially if the other law enforcement agencies share concurrent jurisdiction over the same subject matter. The HKCC has recently also been publicising more investigations, and is increasingly relying on the public to provide information for its investigations, using online questionnaires as a means of gathering evidence.

In deciding whether to resort to non-litigation mechanisms to address anti-competitive behavior, the HKCC will consider whether it is in the public interest to do so. If complex behavioural remedies (such as substantive compliance programs) are required, then the HKCC may consider resolving the matter by accepting commitments. Commitments will not be offered if they are too onerous for the HKCC to monitor. The HKCC has noticed that businesses and practitioners are becoming more familiar with its competition regime, thus making it easier to resolve issues and achieve out-of-court settlements.

We summarise the key developments in the first two months of 2023 so far below.

The HKCC released statement on real estate agencies' internal memos on commission for first-hand property transactions

The HKCC is investigating whether there are any concerns under the First Conduct Rule following media reports that four real estate agencies issued internal memos directing their respective agencies to observe a minimum net commission of 2 per cent in first-hand property transactions starting from 1 January 2023. The memos were reportedly issued in close timing from one another.

The HKCC expressed its concern about conduct from businesses which targets to undermine the level of competition, "particularly in sectors such as the property market which affects many people in Hong Kong". The HKCC stressed the importance of compliance with the Ordinance and that all companies should refrain from anti-competitive practices.

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

HKCC, 6 January 2023

The HKCC published revised model Non-collusion Clauses to enhance protection for procurers

On 17 January 2023, the HKCC published a revised set of "Non-collusion Clauses" (the Revised Clauses) after they were first introduced in 2017. The HKCC hopes that the Revised Clauses will provide procurers with greater clarity with respect to competitiveness during the procurement process. The HKCC encourages all public or private sector procurers in Hong Kong to adapt and incorporate the Revised Clauses in their invitations to bid and formal contracts.

The model Non-collusion Clauses were first published by the HKCC for procurers to include in their tender documents and contracts in order

to minimise procurers' risk of being exposed to tenderers colluding with one another and resulting in procurers agreeing to pay a premium price for goods and services which is above competitive rate. They also alert tenderers from entering into anti-competitive collusive arrangements and remind tenderers about the consequences of such conduct.

The Revised Clauses require each bidder to disclose its beneficial ownership to the procurer by selecting to:

- (For a company other than a listed company or exempted company) disclose its significant controllers register as defined in the Companies Ordinance.
- (For a sole proprietorship or partnership) disclose the name and the nature of the beneficial owner's control over the tenderer.
- (For a listed company) state its status as a listed company in Hong Kong where its corporate ownership has been disclosed in the public domain.

This allows procurers to assess bids that appear to be independent but are in fact submitted by tenderers ultimately owned by the same beneficial owner.

Click [here](#) to read the press release and [here](#) to read the Revised Clauses.

HKCC, 17 January 2023

APPENDIX 1 – SUMMARY OF HONG KONG LISTING REQUIREMENTS (INCLUDING SPECIALIST TECHNOLOGY COMPANIES)

Requirement	Specialist Tech Companies (Chapter 18C)	
	Commercial Companies ²	Pre-Commercial Companies ³
Principal business	Primarily engaged in R&D and commercialisation of products/services that apply science or technology within an acceptable sector of a Specialist Technology Industry	
Track record	Three years	
Profit attributable to shareholders	-	
Market capitalization (upon listing)	HK\$6 billion (US\$0.8 billion)	HK\$10 billion (US\$1.3 billion)
Revenue for the most recent year	HK\$250 million (US\$31.9 million) arising from their Specialist Technology business (the Commercialisation Revenue Threshold)	Must demonstrate a credible path to achieving the Commercialisation Revenue Threshold (guidance to be published by HKEX)
Positive cash flow from operating activities	-	
Management continuity	Since beginning of Year one	
Ownership continuity and control	In the 12 months prior to the date of the listing application	
Research and development expenditure amount of its Specialist Technology Product(s) for at least three financial years prior to listing	At least 15 percent of total operating expenditure for each of Years one to three	At least 30 percent of total operating expenditure for each of Years one to three (revenue between HK\$150 million and HK\$250 million for most recent audited financial year) At least 50 percent of total operating expenditure for each of Years one to three (revenue less than HK\$150 million for most recent audited financial year)
Minimum third party investment (nature and	<ul style="list-style-type: none"> Two to five "Pathfinder" Sophisticated Independent Investors⁴ that in aggregate hold at least 10 percent issued share capital of the 	

<p>extent of investment as amended by the Exchange from time to time)</p>	<p>applicant at least 12 months before listing application or otherwise invested an aggregate of HK\$1.5 billion at least 12 months before listing application</p> <ul style="list-style-type: none"> • At least two Pathfinder Sophisticated Independent Investors each hold three percent of the issued share capital as at the date of application and 12 months before listing application, or each have invested at least HK\$450 million at least 12 months before listing application • Aggregate investment from all Sophisticated Independent Investors meeting the prescribed minimum percentage of issued share capital of the applicant at the time of listing ranging from 10 percent to 20 percent (Commercial Company) or 15 percent to 25 percent (Pre-Commercial Company), depending on the applicant's expected market capitalisation at listing 	
<p>Available sufficient working capital</p>	<p>For the group's present requirements, that is for at least the next 12 months from the date of publication of the listing document</p>	<p>To cover at least 125 percent of its group's costs (substantially consisting of general, administrative and operating costs (including any production costs) and research and development costs) for at least 12 months from the date of publication of its listing document (after taking into account the proceeds of the new applicant's initial listing)</p>
<p>Minimum free float⁶ upon listing</p>	<p>At least HK\$600 million (US\$76.4 million)</p>	
<p>Post-listing lock-up</p>	<ul style="list-style-type: none"> • Controlling shareholders: 12 months • Key Persons⁷: 12 months • Pathfinder Sophisticated Independent Investors: six months 	<ul style="list-style-type: none"> • Controlling shareholders: 24 months • Key Persons⁷: 24 months • Pathfinder Sophisticated Independent Investors: 12 months

Remarks:

1. A Specialist Technology Company is a company primarily engaged in the research and development of, and the commercialisation and/or sales of, products and/or services that apply science and/or technology within an acceptable sector of a Specialist Technology Industry. The list of Specialist Technology Industries and the respective acceptable sectors considered by the Exchange to fall within the scope of the proposed regime will be published in a guidance letter, and will be updated from time to time. They currently include:

Next-generation information technology:

- Cloud-based services
- Artificial intelligence

Advanced hardware:

- Robotics and automation
- Semiconductors
- Advanced communication technology
- Electric and autonomous vehicles
- Advanced transportation technology
- Aerospace technology
- Advanced manufacturing
- Quantum computing
- Metaverse technology

Advanced materials:

- Synthetic biological materials
- Smart glass
- Nanomaterials

New energy and environmental protection:

- New energy generation
- New energy storage and transmission technology
- New green technology

New food and agriculture technologies:

- New food technology
- New agriculture technology

2. A Commercial Company means a Specialist Technology Company that is able to meet the proposed Commercialisation Revenue Threshold at the time of listing.
3. A Pre-Commercial Company means a Specialist Technology Company which has not yet met the Commercialisation Revenue Threshold at the time of listing.
4. The Exchange will assess whether an investor is a "sophisticated investor" for the purpose of Rule 18C.04 on a case-by-case basis by reference to its relevant investment experience, and knowledge and expertise in the relevant field, which could be demonstrated by its net assets, assets under management (AUM), size of its investment portfolio or track record of investments, where applicable. To be considered a Sophisticated Independent Investor, the investor must not be a core connected person of the listing applicant (excluding a person being connected only by virtue

of being a substantial shareholder). The Exchange would generally consider the following as examples, for illustrative purpose only, of the types of "sophisticated investors":

- (a) An asset management firm with AUM of, or a fund with a fund size of, at least HK\$15 billion (US\$1.9 billion).
 - (b) A company having a diverse investment portfolio size of at least HK\$15 billion (US\$1.9 billion).
 - (c) An investor of any of the types above with an AUM, fund size or investment portfolio size (as applicable) of at least HK\$5 billion (US\$0.6 billion) where that value is derived primarily from Specialist Technology investments.
 - (d) A key participant in the relevant upstream or downstream industry with substantial market share and size, as supported by appropriate independent market or operational data.
5. These Pathfinder Sophisticated Independent Investors must each hold such amount of shares or securities convertible into shares equivalent to at least five percent the issued share capital of the applicant as at the date of the listing application and throughout the 12-month period before the date of its listing application.
 6. Free float means shares that are not subject to disposal restrictions.
 7. Key persons comprise founders, the beneficiaries of weighted voting rights, executive directors and senior management, and key personnel responsible for the technical operations and/or R&D of the Specialist Technology Company.

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