

Hong Kong Corporate and Regulatory Insights

September 2022



Hogan
Lovells

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Equity Capital Markets

SEHK publishes updates on frequently asked questions (FAQs)

The Stock Exchange of Hong Kong (SEHK) published the following updates on FAQs:

- FAQ No. 102-2022 to 117-2022 on questions relating to Special Purpose Acquisition Companies. See [here](#).

HKEx, 16 September 2022

SEHK takes disciplinary action against four former and current directors of National Investments Fund Limited (delisted) (previous stock code: 1227) (the Company)

Key messages:

- Directors shall ensure they are contactable by the SEHK even after resignation and that their contact details are up-to-date.
- A director's belief that he/she has no relevant information for the SEHK's investigation is not an acceptable excuse for any failure to respond.
- Failure to respond to the SEHK will constitute non-cooperation and expose the director to imposition of severe sanctions.

SEHK censures:

- Mr. Huang Hu, non-executive director (NED) of the Company at the time of delisting.
- Mr. Liao Kai, independent non-executive director (INED) of the Company at the time of delisting.
- Ms. Wu Xiao Xia, former INED of the Company.

- Mr. Liu Jin, former INED of the Company. (collectively, the Relevant Directors)

The Listing Division (the Division) sought to investigate as to whether the Relevant Directors had breached the Listing Rules regarding events happened in 2019 and 2020.

The Division delivered investigation letters and reminder letters to each of the Relevant Directors, and also informed each of them of the investigation over telephone. However, the Relevant Directors did not respond to the Division's enquiries, contrary to the Declaration and Undertaking with regard to Directors (the Undertaking) in the form set out in Appendix 5B to the Listing Rules that they have previously provided to SEHK.

The Undertaking provides, amongst others, that the Relevant Directors shall: (i) cooperate in any investigation conducted by the Division and/or the Listing Committee; (ii) promptly and openly answer any questions addressed to them; and (iii) provide their up-to-date contact details to the SEHK for three years from the date on which they cease to be a director of the Company, failing which any documents/notices sent by the SEHK shall be deemed to have been served on them.

After disciplinary proceedings had commenced, Mr. Liao and Ms. Wu finally contacted the SEHK. They explained their failure to cooperate with reasons that (i) they were not regularly using or checking emails; (ii) they forgot to update the correspondence address notified to the SEHK; (iii) as liquidators had been appointed, they were no longer involved with the Company, and they believed it was not necessary to respond to the SEHK's enquiries; and (iv) as INEDs of the Company, they had no knowledge of the matters under investigation.

SEHK found that (i) the Relevant Directors had breached their Undertakings by failing to cooperate with the Division in the investigation, amounting to a breach of the Listing Rules, (ii) Mr. Liu's obligation to provide information reasonably requested by the SEHK did not lapse after he ceased to be a director of the Company and (iii) the Relevant Directors' breaches of their Undertakings to cooperate with the Exchange represented a serious and/or repeated failure to discharge their responsibilities under the Listing Rules.

SEHK further states that Directors are required to respond to enquiries from the Division even if they believe that they have limited knowledge to support the investigation. A director's obligation to cooperate with the Division's investigation does not lapse after liquidators are appointed. It is directors' responsibility to ensure they are contactable at addresses and/or email addresses provided to the SEHK.

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

HKEx, 26 September 2022

SEHK publishes revised Checklists for Main Board and GEM Issuers

SEHK published the following revised Checklists:

On the Main Board:

- CF014M – Major Acquisition / Very Substantial Acquisition / Extreme Transaction – Circular; Reverse Takeover - Listing Document (effective on 1 January 2023). See [here](#).

- CF019M – Share Scheme – Circular (effective on 1 January 2023). See [here](#).
- DR003M – Adoption of Share Scheme/ Refreshment of Share Scheme Limit (effective on 1 January 2023). See [here](#).

On the GEM Board:

- CF014G – Major Acquisition – Circular (effective on 1 January 2023). See [here](#).
- CF019G – Share Scheme – Circular (effective on 1 January 2023). See [here](#).
- DR003G – Adoption of Share Scheme/ Refreshment of Share Scheme Limit (effective on 1 January 2023). See [here](#).
- DR008G – Placing. See [here](#).
- DR009G – Rights Issue/ Open Offer. See [here](#).

HKEx, 30 September 2022

Financial Services Regulation

Financial Services and the Treasury Bureau and Shenzhen Qianhai Authority jointly promulgate 18 measures for Supporting the Development of Shenzhen and Hong Kong Venture Capital Investments in Qianhai

The Financial Services and the Treasury Bureau (FSTB) and the Authority of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen Municipality (Qianhai Authority) jointly promulgated 18 measures for Supporting the Development of Shenzhen and Hong Kong Venture Capital Investments in Qianhai. The 18 measures aim to support the development of Shenzhen and Hong Kong venture capital (VC) investments, promote Shenzhen-Hong Kong co-operation on innovation and technology (I&T), and to foster the development of an international I&T hub in the Guangdong-Hong Kong-Macao Greater Bay Area. The measures will provide facilitation and preferential policies for the Hong Kong private equity industry and promote the development of a mechanism which links Shenzhen and Hong Kong VC.

The 18 measures complement the three-step strategy for developing the private equity fund market:

- Firstly, introducing the limited partnership fund (LPF) regime.
- Secondly, offering tax concessions for carried interest distributed by eligible private equity funds.
- Thirdly, establishing a mechanism to attract foreign funds to re-domicile in Hong Kong, thereby providing support for

the convergence of rules between Hong Kong LPFs and Qianhai Qualified Foreign Limited" Partnerships (QFLPs).

The Qianhai Authority will support eligible Hong Kong LPFs to set up qualified investment entities in Qianhai to commence onshore investment. In addition, the Qianhai Authority will also enhance the QFLP pilot scheme, including introducing enhancements to the entry threshold and application procedures, expanding the investment scope, and reducing the processing time.

Please click [here](#) to view the full text of the relevant 18 measures.

FSTB, 2 September 2022

Circular to all authorized institutions for enhancing consumer protection in respect of "buy now, pay later" products

The Hong Kong Monetary Authority (HKMA) issued a circular to all authorized institutions, setting straight the regulatory expectations in respect of consumer protection in respect of certain "buy now, pay later" products (BNPL products) and introducing enhancement measures.

The HKMA considers that BNPL products entail lending by authorized institutions (AIs) and are generally credit products. Therefore, AIs should observe the consumer protection measures as stipulated in the Code of Banking Practice and other applicable circulars and regulatory requirements.

The HKMA requires AIs to include the educational message of "To borrow or not to borrow? Borrow only if you can repay!" in advertising and promotional materials for BNPL products. In addition, the promotional materials should (i) not contain misleading information; (ii) disclose that it is a credit product in a clear and prominent manner; and (iii) indicate the relevant fees, charges and interest (if applicable) in a clear and prominent manner.

Furthermore, AIs must add into the Key Facts Statement of the BNPL products that if a borrower does not fulfil the repayment obligations, it may adversely affect the borrower's credit records and consequently further access to credit in the future.

With respect to the chargeback mechanism, AIs should update their disclosure arrangements to facilitate customers to initiate chargeback requests and to strengthen the transparency of the chargeback mechanism.

The measures set out in this HKMA circular will be implemented as soon as practicable and no later than end of 2022.

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

HKMA, 2 September 2022

Revised approach for rectification of information on the Companies Register upon implementation of Phase two of the New Inspection Regime

Phase 2 of the New Inspection Regime of the Companies Register under the Companies

Ordinance (Cap. 622) (CO) will commence on 24 October 2022 (Commencement Date). Starting from the Commencement Date, the Registrar of Companies must not make available for public inspection the usual residential addresses of directors and the full numbers of the identity cards or passports of directors, company secretaries and some other individuals (Protected Information) pursuant to section 54(2) of the CO.

Therefore, the current approach for rectification of information on the Companies Register has been revised to ensure that the Protected information in amended documents will not be made available for public inspection. An application to rectify a typographical or clerical error contained in a document already registered with the Registry can be made by a company by using a new administrative form (i.e. Form AD - Rectification of Typographical or Clerical Error in Registered Document).

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

Companies Registry, 16 September 2022

Circular to banks lowering the interest rate stress testing requirement for property mortgage lending

The HKMA issued a circular to banks, lowering the interest rate stress testing requirement for property management lending from 300 basis points to 200 basis points. The adjustment applied to mortgage loans for all types of properties and took effect immediately.

In determining the stress testing level, the HKMA will generally take into consideration the prevailing interest rate environment, the trend of mortgage rates and their long-term historical average. In response to rising funding costs, banks have earlier raised their interest rate caps for new mortgages referencing the Hong Kong Interbank Offered Rate (HIBOR) and more recently their prime lending rates. In view of these developments, the HKMA considered it appropriate to lower the stress testing requirement to 200 basis points.

Please click [here](#) to view the circular.
HKMA, 23 September 2022

Circular to all authorized institutions on payment card security

The HKMA issued a circular to AIs, which set out its supervisory expectations with respect to payment card security.

AIs which are participants in payment card networks should take active steps to comply with the updated rules and standards of the system operators and settlement institutions of retail payment systems (Cash Scheme Operators). Specifically, AIs should:

- Conduct proper due diligence on service agents before engagement: ensure that service agents have implemented necessary controls to protect payment card and reflect the requirements to be observed by the service agents in the contracts between them.
- Undertake ongoing monitoring and report data breach incidents promptly: validate the ongoing compliance with the relevant data security standards by AIs' service agents, and take proactive steps to protect interests of the affected cardholders in cases where a data breach is identified.

- Support Card Scheme Operators to perform their roles.

The HKMA will consider to undertake thematic examinations to ensure compliance with these supervisory expectations by AIs.

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

HKMA, 23 September 2022

Guide to enhanced competency framework on compliance

The HKMA, alongside with the banking industry, introduced a set of common and transparent competency standards for compliance practitioners in the banking industry in Hong Kong.

The Enhanced Competence Framework on Compliance (ECF-Compliance) is a non-statutory framework, setting out the common and core capabilities required of compliance practitioners in the banking industry. The ECF-Compliance comprises two elements:

- Competency standards, which are derived from the job skills and competencies required for the compliance function and relevant job roles.
- Qualification standards, including requirements for qualifying compliance practitioners, such as certification and CPD requirements, as well as grandfathering arrangements.

Although it is not a mandatory licensing regime, all AIs are encouraged to adopt it for purposes of supporting continuing professional development of relevant employees, serving as a benchmark to assess the ongoing competence of relevant employees, etc.

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

HKMA, 27 September 2022

Government starts legislative process to give effect to Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting

The Inland Revenue (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting) Order has been gazetted on 30 September 2022 and will be tabled at the Legislative Council on 19 October 2022 for negative vetting. The order will enable Hong Kong to implement the Base Erosion and Profit Shifting (BEPS) package promulgated by the Organisation for Economic Co-operation and Development (OECD).

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Multilateral Instrument) developed by the OECD aims to ensure consistent and coordinated implementation of tax treaty-related BEPS measures in a multilateral context, and obviates the need for bilateral tax treaty negotiations among jurisdictions for modifying the relevant provisions in a piecemeal manner.

The provisions of the Multilateral Instrument will take effect in Hong Kong after completion of the relevant legislative procedures.

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

FSTB, 28 September 2022

Data Protection

The Mainland's Security Assessment Measures on Cross-border Transfers of Data

The Security Assessment Measures on Cross-border Transfers of Data (Measures) promulgated by the Cyberspace Administration of China (CAC) came into effect on 1 September 2022. Cross-border data transfers carried out before 1 September 2022 shall conform with the Measures by 28 February 2023.

By way of background, the Mainland China's Personal Information Protection Law (PIPL) provides that data processors which transfer data across the border shall pass security assessments (Security Assessments). The Measures were enacted to set out how the Security Assessments should be carried out. Hong Kong companies which conduct businesses in the Mainland are reminded to comply with the PIPL and the Measures when transferring data across the border.

According to the Measures, data processors which effect cross-border data transfers shall conduct Security Assessments on their own and report their findings to the CAC where any of the following conditions are met:

- Important data (i.e. data that, if tampered with, destroyed, leaked, illegally obtained or illegally used, may endanger national security, economic operation, social stability, public health and safety) is transferred across the border.
- The data processor is an operator of Critical Information Infrastructure.
- The data processor processes personal information of more than 1 million persons.
- The data processor has made outbound transfers of personal information of over 100,000 persons or sensitive personal information of over 10,000 persons since 1 January of the preceding year.
- In other situations where CAC considers that a report on security assessment is necessary.

The Security Assessment shall address the following:

- The legality, propriety and necessity of (a) the cross-border transfer and (b) the purpose, scope and manner of processing of the data by the recipient outside the jurisdiction.
- The scope and sensitivity of the outbound data and the risks that cross-border transfer might pose to national security, public interests and rights of individuals and organizations.
- The capabilities of and measures taken by the recipient outside the jurisdiction in ensuring the security of the outbound data.
- The risks of the outbound data suffering from alteration, destruction, leakage or illegal acquisition during and after the cross-border transfer and whether there are available channels to uphold personal information rights and interests.
- Whether data security protection responsibilities are sufficiently stipulated in the contract between the data processor and the recipient outside the jurisdiction concerning the cross-border transfer.
- Other matters relevant to the security of the cross-border transfer.

Click [here](#) to read the Measures (Chinese only).

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

PCPD, 1 September 2022

PCPD made two arrests for suspected doxing offence

The Office of the Privacy Commissioner for Personal Data (PCPD) arrested two individuals in respect of two doxing cases on 2 September 2022 and 15 September 2022 respectively. In both cases, the arrested person was suspected to have disclosed the personal data of the data subject without consent, in contravention of section 64(3A) of the Personal Data (Privacy) Ordinance (PDPO).

The arrested person in the earlier case was a 31-year-old Chinese male, who was a former co-worker of the victim. The relationship between the arrested person and the victim turned sour, resulting in the dismissal of the arrested person by the company. Subsequently, the arrested person posted personal data of the victim on a social media platform, including the victim's Chinese name, mobile phone number, residential estate and name of employer.

In the latter case, the arrested person was a 46-year-old Chinese male, who was a former employee of the victim's company. The arrested person and the victim were also business partners in a separate company. When their relationships fell apart due to monetary disputes, the arrested person left the victim's company and terminated their partnership. Thereafter, on multiple occasions, the victim has found posters in the

vicinity of his office building which contained his personal data, including his Chinese name, photo, name and contact addresses of his company along with allegations against him.

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

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

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

PCPD, 2 September 2022 & 15 September 2022

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