

Hong Kong Corporate and Regulatory Insights

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Contents

Equity Capital Markets 3

- The Stock Exchange of Hong Kong (SEHK) takes disciplinary action against six former directors of National Investments Fund Limited (Stock Code: 1227).
- SEHK publishes the Listing Committee Report 2021.
- SEHK publishes and revises guidance letters and guidelines.
- SEHK updates Frequently Added Questions (FAQs) on joint statement in relation to results announcement and general meetings.

Financial Services Regulation 6

- Cross-agency steering group releases assessment of carbon market opportunities for Hong Kong.
- Circular to licensed corporations on the updated technical specifications for over-the-counter (OTC) derivatives trade reporting.
- Circular on End-To-End (E2E) test for systems relating to the Hong Kong Investor Identification Regime.
- Circular on statements published by the Financial Action Task Force (FATF).
- Circular on further facilitative measures under the COVID-19 pandemic.
- Circular on concurrent SFC-HKMA thematic review of the distribution of non-exchange traded investment products.

Data Protection 8

- Vaccine Pass - Striking a reasonable balance between protecting privacy and public health.
- PCPD issues guidance for employers on collection and use of personal data of employees.

Contacts 9

Equity Capital Markets

The Stock Exchange of Hong Kong (SEHK) takes disciplinary action against six former directors of National Investments Fund Limited (Stock Code: 1227) (the Company)

Key messages:

- To ensure the issuer's funds are used properly, directors of an investment company listed under Chapter 21 of the Listing Rules (Chapter 21 Issuer) should provide a check-and-balance.
- To ensure compliance with the Listing Rules, directors of a Chapter 21 Issuer should carefully review the issuer's monthly financial information with an enquiring mind, and take an active interest in the issuer's performance.
- Directors of a Chapter 21 Issuer should follow up any untoward matters which come to their attention, including significant expenses which fall outside the issuer's objectives and policies.

SEHK censures:

- Dr. Fong Chi Wah, former executive director (ED) of the Company.
- Mr. Wu Tse Wai Frederick, former ED of the Company.
- Mr. Law Tze Lun, former independent non-executive director (INED) of the Company.
- Mr. Char Shik Ngor, Stephen, former INED of the Company.

The Company is an investment company listed under Chapter 21 of the Listing Rules. The board of directors of the Company was responsible for approving its investment decisions and supervising its investment manager.

During 2011 to 2015, over HK\$61 million of the Company was used to acquire various luxury assets, such as a yacht for HK\$24.5 million, which were inconsistent with its investment objectives and policies.

SEHK found that Mr. Wong F. Danny, former chairman and ED of the Company, breached Rule 3.08 by failing to exercise his skill, care, and diligence when approving the purchases concerned. SEHK also found that the other relevant directors breached Rule 3.08 by failing to take an active interest in the Company's affairs and follow up on the purchases concerned. SEHK further found that Mr. Liu Jin, former INED of the Company, breached his director's undertaking by failing to respond to SEHK's enquiry letter and cooperate with SEHK's investigation.

SEHK states that had Mr. Wong and Mr. Liu remained on the board of directors of the Company, their retention of office would have been prejudicial to the interests of the investors.

SEHK directs each of Dr Fong, Mr. Law and Mr. Char to attend 15 hours of training on regulatory and legal topics including Listing Rule compliance. SEHK also directs Mr. Wu to attend the same training, but also as a prerequisite of any future appointment as a director of any company listed or to be listed on SEHK.

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

HKEx, 17 March 2022

SEHK publishes the Listing Committee Report 2021

SEHK published its Listing Committee Report for 2021 (Report). The Listing Committee oversees the Listing Division of SEHK, provides policy advice to SEHK on listing matters, takes decisions of material

significance for listing applicants, listed issuers and the individuals concerned, and acts as a review body.

The Report provides a review of the Listing Committee's consultations and decisions made during 2021, and an overview of its policy agenda for 2022 and near future. The Report also recaps the changes made to the listing process and issuers' ongoing obligations by the Listing Committee during 2021, such the guidance letters published in 2021. We highlight some of the key messages from the Report:

- In 2022, the Listing Committee plans to review listing eligibility requirements for issuers from specialist technology sectors that find it difficult to raise capital on the Main Board due to the eligibility tests.
- The Listing Committee also intends to launch consultations on proposals to optimise the IPO price discovery process, to enhance environmental, social and governance standards and climate disclosures.

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

HKEx, 14 March 2022

SEHK publishes and revises guidance letters and guidelines

SEHK published the following new guidance letter:

- HKEx-GL114-22 on the qualifications and obligations of a trustee/ custodian regarding the operation of the escrow account of a special purpose acquisition companies (SPACs). See [here](#).

SEHK also published a number of revised guidance letters, including:

- HKEx-GL55-13 on documentary requirements and administrative matters

for new listing applications, adding new requirements such as requiring new applicants to deposit a cheque for the initial listing fee directly to the SEHK's designated bank account. See [here](#).

- HKEx-GL79-14 on documentary requirements and administrative matters for collective investment schemes applications, adding new requirements that new applicants should deposit a cheque for the initial listing fee directly to the SEHK's designated bank account and should physically deliver two copies of listing agreement signed by the covenantors to the SEHK's office. See [here](#).

SEHK further published a number of revised guidelines on the following e-Forms for New Applicants:

On the Main Board:

- CIS002-Form 5A2 - Listing application form (for collective investment schemes). See [here](#).
- M501-Form C3Z – IPO formal application form (for open-ended investment companies, unit trusts, mutual funds and other collective investment schemes governed by Chapter 21 of the Listing Rules). See [here](#).
- M112 – IPO application form for waiver from strict compliance with requirement under the Listing Rules. See [here](#).
- M119 - Additional information to be submitted with pre-IPO enquiry / Form A1 / Form 5A for the Main Board. See [here](#).

On the GEM Board:

- G112 – IPO application form for waiver from strict compliance with requirement under the GEM Listing Rules. See [here](#).

- G118 - Additional information to be submitted with pre-IPO enquiry / Form A1 / Form 5A. See [here](#).

HKEx, 4 March, 11 March 2022

SEHK updates Frequently Added Questions (FAQs) on joint statement in relation to results announcement and general meetings

SEHK updated the FAQs to help issuers understand the application of the joint statement issued by the SEHK and the Securities and Futures Commission in relation to results announcements and general meetings in light of travel restrictions related to the COVID-19 pandemic (the Joint Statement). The updated FAQs confirm that the SEHK will continue to adopt a similar approach as described in the Joint Statement in view of the recent COVID-19 situation.

The updated FAQs also clarify the requirements imposed on issuers in relation to holding general meetings:

- Under Rule 13.46(2)(b), issuers are required to lay their financial statements at annual general meeting within six months after financial year end. Where Hong Kong or overseas issuers have difficulties with complying with this requirement, they should approach the SEHK early to discuss. SEHK will consider each situation on a case-by-case basis. SEHK will not grant any waiver that would result in contravention with company laws.
- Also, in view of the current pandemic controls and restrictions, where allowed under company laws of the relevant jurisdictions and the issuer's own articles of association, general meetings may be held virtually. Issuers should use reasonable best efforts to ensure that shareholders attending remotely are able

to speak and vote at the meetings, and explain how they may do so.

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

HKEx, 2 March 2022

Financial Services Regulation

Cross-agency steering group releases assessment of carbon market opportunities for Hong Kong

The Green and Sustainable Finance Cross-Agency Steering Group (Steering Group) published its preliminary feasibility assessment of carbon market opportunities for Hong Kong.

The Steering Group aims to proceed with the following steps in order to support the development of Hong Kong as a regional carbon trading center:

- To develop Hong Kong into a global carbon market.
- To collaborate with relevant authorities and stakeholders to work towards establishing a Guangdong-Hong Kong-Macao Greater Bay Area Unified Carbon Market (GBA Unified Carbon Market).
- To explore opportunities to link up international investors with the GBA Unified Carbon Market.
- To strengthen cooperation with the Guangzhou Futures Exchange on carbon market development.

The Carbon Market Workstream, co-chaired by the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited will prepare a roadmap, implementation plan and proposed timeline for an appropriate market and regulatory model in due course.

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

The Steering Group, 30 March 2022

Circular to licensed corporations on the updated technical specifications for over-the-counter (OTC) derivatives trade reporting

The Hong Kong Monetary Authority (HKMA) issued a circular on the updated technical specifications for OTC derivatives trade reporting under the Hong Kong Trade Repository. The updated reporting requirements will start to apply from 19 December 2022 onwards.

The updated technical specifications, among others, include the following:

- The Global Unique Transaction Identifier data fields will be made available.
- Equity templates will be enhanced.
- Data field descriptions will be amended to accommodate the mandating of reporting specified field values and products types.

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

HKMA, 29 March 2022

Circular on End-To-End (E2E) test for systems relating to the Hong Kong Investor Identification Regime

The SFC had proposed to implement an investor identification regime at trading level for the securities market in Hong Kong and to also introduce an OTC securities transactions reporting regime for shares that are listed on the Stock Exchange of Hong Kong (SEHK). Relevant licensed corporations and registered institutions (Relevant Regulated Intermediaries) will be subject to the above upon the implementation of the regimes.

An E2E test will roll out between mid-May and June of 2022 and it is mandatory that all Relevant Regulated Intermediaries must participate in the test. The exact starting date will be announced later in mid-April 2022.

Furthermore, SEHK had published a series of documents and testing packages for the Relevant Regulated Intermediaries to

download in preparation of the upcoming E2E test.

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

SFC, 18 March 2022

Circular on statements published by the Financial Action Task Force (FATF)

Both the SFC and the HKMA had issued circulars to licensed corporations, authorized institutions and stored value facility licensees (relevant institutions) on the FATF statements made in relation to anti-money laundering or counter-financing of terrorism.

The circulars outlined various outcomes of the FATF recent plenary held between 2 and 4 March 2022, which may be of interest to the relevant institutions. They include i) various amendments made to the FATF money laundering or terrorist financing recommendation notes and ii) a public statement on the situation of Ukraine, including its impact on the risk of money laundering, terrorist financing and proliferation financing.

Please click [here](#), [here](#), and [here](#) to view the press releases.

HKMA/SFC, 11 March 2022

Circular on further facilitative measures under the COVID-19 pandemic

The Insurance Authority (IA) issued a circular to authorized life insurers, providing further facilitative measures for the distribution of all life insurance products via online channels.

The IA will allow the distribution of all life insurance products, including Investment-linked Assurance Scheme (ILAS) products via the Virtual Onboarding (VO) Sandbox

approved by the IA. On the other hand, the IA has set up a fast track to review the applications of insurers without VO Sandbox who intend to sell life insurance products via video conferencing tools.

The IA is also actively considering making use of the shared virtual onboarding platform launched by the Hong Kong Federation of Insurers in September 2020 and will review the arrangements in view of the evolving pandemic developments.

With respect to the above announcement, the HKMA clarified that authorized institutions that intend to distribute any ILAS products, including Protection Linked Plan, must provide notification to the HKMA before launching the product.

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

IA/HKMA, 4 March 2022

Circular on concurrent SFC-HKMA thematic review of the distribution of non-exchange traded investment products

The SFC and the HKMA will commence a concurrent thematic review of the distribution of non-exchange traded investment products by intermediaries. The review will cover areas including selected intermediaries' policies, procedures, systems and controls. Moreover, management oversight of the distribution of products such as equity-linked structured products and corporate bonds will be reviewed.

The review will assess intermediaries' compliance with the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and findings will be subsequently shared with the industry.

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

SFC/HKMA, 1 March 2022

Data Protection

Vaccine Pass - Striking a reasonable balance between protecting privacy and public health

The Office of the Privacy Commissioner (PCPD) contributed to an article at *Hong Kong Lawyer* (March 2022 issue) on the vaccine pass arrangements (Vaccine Pass), which require citizens to have received at least one dose of vaccination (or to otherwise produce medical exemption certificates) before entering scheduled premises such as restaurants, shopping malls, and supermarkets.

In the past year, governments around the world have gradually rolled out health codes, vaccine passes or COVID-19 health passports, whether with or without contact tracing functions, as a step towards the resumption of cross-border travels and domestic activities.

- Mainland: The public is required to show or scan their health codes and/or itinerary codes that capture information in relation to COVID-19 infection risks and movement histories respectively before entering most public premises.
- EU: Digital COVID Certificate was introduced to facilitate cross-border travels in Europe.
- France: A vaccine pass must be presented for people over 16 years old to enter designated public premises and take public transport.
- Singapore: Citizens are required to use their vaccine pass contained in their contact tracing application "TraceTogether" to create check-in records with the Singaporean national digital check-in system (SafeEntry) at high risk public premises, which would then be deployed for contact tracing purposes.

While a vaccine pass serves as an effective tool in verifying vaccination records and assisting contact tracing efforts, there may be concerns over data privacy and security as it often contains personal data such as personal identifiers and COVID-19 vaccination or recovery records.

However, it is important to recognize that the right to privacy is not absolute, particularly at time of emergencies like a life-threatening pandemic. Whilst privacy right is enshrined in the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383) (BORO), it is subject to restrictions "to the extent strictly required by the exigencies of the situation" at times of public emergency under section 5 of BORO. In fact, this limitation is also reflected in section 59 of the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) which exempts the use of personal data relating to the health, identity or location of an individual from the "limitation on use" requirement if such use is necessary for safeguarding the physical or mental health of the data subject concerned or other individuals.

The PCPD has looked into the design and functionality of the Vaccine Pass and found that it complies with the requirements of the PDPO. The PCPD also commented that the Vaccine Pass adopts privacy protection features by design and has notably undergone security and privacy assessments and audits by independent third parties.

First, no personal data would be displayed on screen (except the QR code that represents vaccination record or medical exemption certificate) when a visitor scans the venue's QR code with their LeaveHomeSafe app or when the venue operators verifies the Vaccine Pass when they use the QR Code Verification Scanner app.

Secondly, all visit records, which originate from the visitors' vaccination records and contain personal data, would be masked and

hashed, resulting in the production of unidentifiable data stored in the mobile device of the venue operators. Further, the visit records would be encrypted, making them inaccessible to the venue operators. In essence, no personal data (as defined under the PDPO) are stored in the mobile device of a venue operator. The visit records would only be retrieved via encrypted channels by health authorities for epidemiological investigation purposes (including contact tracing) if a confirmed case has visited the premise.

Thirdly, the visit records would only be temporarily saved in the QR Code Verification Scanner app of a venue operator for 31 days for anti-epidemic purposes and would be deleted automatically afterwards.

In summary, preventing the spread of COVID-19 and enhancing contact tracing efforts to safeguard public health are legitimate and reasonable purposes for implementing more robust anti-pandemic measures. The Vaccine Pass is in line with similar measures taken in the Mainland and other parts of the world and complies with privacy law requirements.

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

PCPD, 9 March 2022

PCPD issues guidance for employers on collection and use of personal data of employees

In light of the pandemic, organizations in Hong Kong have been carrying out various COVID-19 prevention and control measures, including collecting health data of employees with a view to reduce the risk of COVID-19 transmission in the workplace.

On 25 March 2022, the PCPD issued the "Guidance for Employers on Collection and Use of Personal Data of Employees during COVID-19 Pandemic" (Guidance), which sets out employer's obligations under the PDPO on

the collection and use of employee's health data during the pandemic.

Employers' collection of employees' COVID-19 related health data (as data users) for the purpose of ensuring employees' health and safety during the pandemic is generally regarded as collecting data for a lawful purpose in relation to the functions of employers. However, employers are required to comply with the relevant requirements of the PDPO.

In particular, the Guidance recommends the following:

- Personal data irrelevant or not strictly necessary for the prevention or control of COVID-19 in the workplace should not be collected.
- Personal data collected should be adequate but not excessive (i.e. the least privacy intrusive measures should be adopted).
- Employers should clearly convey all the requisite information to employees (e.g. presenting a Personal Information Collection Statement).
- Employers should not retain the health data of employees for a period longer than is necessary.
- Employers should ensure that policies and systems are in place to maintain accurate and up-to-date vaccination information and test results of employees.
- Employers should take all practicable steps to protect the health data collected against unauthorized access, processing or use (e.g. locking paper records, encrypting electronic records, and limiting data access to authorised personnel on a need-to-know basis).

Click [here](#) to read the media statement and [here](#) to read the "Guidance for Employers on Collection and Use of Personal Data of Employees."

PCPD, 25 March 2022

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