

# Hong Kong Corporate and Regulatory Insights

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Hogan  
Lovells

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# Equity Capital Markets

## The Stock Exchange of Hong Kong (SEHK) takes disciplinary action against China Bright Culture Group (stock code: 109) and two current and former executive directors

Key message:

- Newly-listed companies must keep the investing public informed about the plans and prospects of the issuer, including transactions involving substantial outflows of money around or shortly after the listing.

The SEHK censures:

- China Bright Culture Group (stock code: 1859) (the Company).
- Mr. Liu Mu, Executive Director (ED) of the Company (Mr. Liu).

The Company was listed on 13 March 2020, raising net proceeds of US\$107 million. On the first day of listing, the Company entered into an asset management agreement (AMA) with AMTD Global Markets Limited (AMTD) and deposited a total of US\$70.8 million into an investment portfolio account for two years with a guaranteed two percent return p.a.. AMTD acted as the joint global coordinator, joint bookrunner and joint lead manager of the Company's IPO.

Under the AMA arrangement:

- The guaranteed return would not apply if all or part of the investment was withdrawn in advance.
- The Company paid an upfront fee of five percent of the investment amount.
- The entire investment amount was used to subscribe for a promissory note

(Promissory Note) issued by a private offshore company affiliated with AMTD.

Mr. Liu signed the AMA and the Promissory Note on behalf of the Company. Mr. Xia Rui (Mr. Xia), former executive director of the Company, was involved in the Company's IPO and was aware of both the AMA and the Promissory Note, despite the fact that he joined the Board only in June 2021.

The Company was found to have breached:

- Rules 3A.23, 14.34, 14.38A and 14.40 by failing to comply with the announcement, circular, shareholders' approval requirements in respect of both the AMA and the Promissory Note and failing to consult its compliance adviser in respect of the same.
- Rule 2.13(2) by failing to disclose its intention to enter into the AMA and/or the acquisition of the Promissory Note in its prospectus, or alternatively, by failing to disclose a change in the use of IPO proceeds.
- Paragraph 11(8) of Appendix 16 to the Listing Rules, by failing to reflect the change in use of IPO proceeds in its 2020 annual results announcement, 2020 annual report and 2021 interim results announcement.

Mr. Liu and Mr. Xia breached Rule 3.08 and their respective Directors' Undertaking. Mr. Liu was directed to attend 20 hours of training on regulatory and legal topics and Listing Rule Compliance, whilst Mr. Xia was directed to attend the training as a pre-requisite of any future appointment as a director of any listed company or applicant.

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

*HKEx, 21 November 2022*

**SEHK takes disciplinary action against Xinyuan Property Management Service (Cayman) Ltd (stock code: 1895) and four directors**

Key messages:

- The directors must ensure that the company's funds are not used as if they were the controlling shareholder's own, such as providing financial assistance to the controlling shareholder or the parent company, without fully complying with the Listing Rules.
- Directors must act honestly and in good faith in the interests of the company when entering into transactions on behalf of the company.
- Directors must ensure the board is provided with appropriate information of the relevant transactions, and that it is in compliance with the disclosure and other requirements of the Listing Rules.

The SEHK censures:

- Xinyuan Property Management Service (Cayman) Ltd (stock code: 1895) (the Company).
- Ms. Wang Yao Bo, ED of the Company (Ms. Wang).
- Mr. Huang Bo, former ED of the Company (Mr. Huang).
- Mr. Zhang Yong, Non-executive Director (NED) of the Company (Mr. Zhang).
- Ms. Yang Yu Yan, NED of the Company (Ms. Yang) (together with Ms. Wang, Mr. Huang and Mr. Zhang, Relevant Directors).

Shortly after the Company was listed in October 2019, it conducted ten notifiable and connected transactions, and one transaction via its joint venture company (together, Relevant Transactions), with its own majority shareholder, Xinyuan Real Estate Co., Ltd. (Parent) and/or its subsidiaries. The Relevant Transactions were mostly loans, deposits and prepayments in nature, and concerned the outflow of significant sums, totalling approximately RMB570 million.

The Company was found to have breached Rules 14.34, 14.38A, 14.40, 14A.34, 14A.35 and 14A.36 by failing to comply with the written agreement, announcement, circular and/or independent shareholders' approval requirements in respect of the Relevant Transactions.

Ms. Wang and Mr. Huang were involved in the internal approval process of the Relevant Transactions, and Mr. Zhang and Ms. Yang occupied significant roles in both the Company and the Parent. Given their roles, the Relevant Directors knew or ought to reasonably have known about the Relevant Transactions at the time. The SEHK found, amongst others, that the Relevant Directors:

- Failed to protect the Company's interests as a whole for the Relevant Transactions.
- Failed to escalate the Relevant Transactions to the board for discussion or failed to procure the Company to consult its professional advisers on the compliance with Listing Rules.
- Failed to take steps to procure the Company to comply with the Listing Rules.
- With respect to Mr. Zhang and Ms. Yang, given their shareholding and directorship in the Parent, failed to avoid and address

properly their conflict of interest in relation to the Relevant Transactions.

In addition to public censure, the SEHK also imposed a prejudice to investors' interest statement against Ms. Wang and Mr. Huang.

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

*HKEx, 25 November 2022*

### **SEHK publishes findings of its latest review of issuers' ESG disclosures**

The SEHK published the findings of its latest review of issuers' ESG disclosures (the Report). The review focused on the requirements which came into effect in July 2020 (2020 Enhancements), as set out in SEHK's ESG Reporting Guide.

The Report found that:

- On ESG governance, over 95 percent of the issuers disclosed their boards' oversight and management approach on ESG matters.
- With respect to climate change, 85 percent of the issuers acknowledged the importance of climate-related risks and disclosed details on all new climate-related requirements.

The Report also included the following key recommendations:

- Board governance of ESG issues: Monitor the progress against ESG targets is key to each board's evaluation of the effectiveness of the measures taken. ESG rules also require disclosure of information on the board's progress review and the results of such review.

- Climate change: Issuers are encouraged to commence the planning and building of the necessary infrastructure and systems for enhanced climate reporting requirements in the future.
- Social issues: Issuers should include in their ESG reports information on supply chain risk management and green procurement practices.
- Reporting practices: ESG reports covering financial years commencing on or after 1 January 2022 should be published at the same time as annual reports. Issuers (especially those who are yet to align the publication of ESG reports with annual reports) should pay particular attention to the new deadlines.

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

*HKEx, 28 November 2022*

# Financial Services Regulation

## The Securities and Futures Commission (SFC) concludes consultation on the position limit regime and proposes further changes

The SFC published consultation conclusions and began a further consultation on proposed changes to the position limit regime.

The SFC have considered market feedback to the consultation, and decided to proceed with some of the proposals. These include:

- Expand the list of specified contracts.
- Clarify the circumstances under which a clearing participant is not regarded as having discretion over its clients' position.
- Introduce an excess position limit regime for clearing participants.

The further consultation includes additional amendments on the application of position limits and reporting requirements to unit trusts and sub-funds of umbrella funds:

- Impose additional obligations on asset managers who manage funds or sub-funds of umbrella funds.
- Provide that if trustees have measures in place to monitor closely their asset managers' compliance with the requirements in the Securities and Futures (Contracts Limits and Reportable Positions) Rules (the Rules), the SFC will consider that the trustees have discharged their obligations under these rules.

As the Hong Kong Exchange and Clearing Limited (HKEx) concluded its consultation on proposed revisions to the single stock options and single stock futures exchange-level position, the SFC also proposed the following amendments to the Rules to facilitate the implementation of HKEX's proposal:

- Revise the position limit model for single stock options and single stock futures.
- Remove the additional position limits for Mini-HIS and Mini-HSCEI futures and options contracts.

Separately, the SFC will adopt a separate regulatory approach for international futures and options contracts by not prescribing the statutory position limits and large open position reporting levels for these contracts (excluding Mainland-related and Renminbi currency contracts).

Click [here](#) to access the consultation conclusions and the further consultation.

*SFC, 22 November 2022*

## Guidance on anti-distributed denial-of-service (DDoS) protection

In light of growing incidences and sophistication of DDoS attacks, the Hong Kong Monetary Authority (HKMA) published additional guidance for authorized institutions (AIs) on protection against DDoS attacks.

The guidance is grouped under four key principles:

- Undertake regular risk assessment and vulnerability management: AIs should have in place a robust mechanism to regularly identify, assess and mitigate vulnerabilities in their networks and systems, and critically assess whether their anti-DDoS defence mechanism remains adequate. The assessment should cover both the AIs' protective measures and those provided by third parties.
- Design the architecture of anti-DDoS controls properly: Customer-facing channels (e.g. online banking) and key components that support AI's operations

# Data Protection

(e.g. remote access servers, email gateways and domain name system servers) should be covered by the protective measures. AIs should deploy multi-layered defence (e.g. a combination of cloud-based DDoS protection services, clean pipe services from internet service providers and on-premises solutions) to achieve the optimal protection.

- Maintain effective governance over service providers and put in place robust contingency arrangements: AIs should identify the key third parties critical to the availability of their internet-facing services and are potential targets of DDoS attacks (e.g. DNS and internet service providers). AIs should also develop appropriate contingency arrangements for potential disruption to the services of these third parties, and arrangements for potential disruption to the services of these third parties. For anti-DDoS controls supported by third parties, a rigorous due diligence process should be in place to assess their capabilities. The key performance indicators to be observed by the service providers should be clearly set out in written agreements.
- Establish proper incident response procedures and conduct regular rehearsal exercises: AIs should establish end-to-end incident response and escalation procedures, covering actions required of anti-DDoS service providers. Apart from table-top DDoS drill exercises, AIs are expected to perform technical drills with appropriate involvement of anti-DDoS service providers, to validate the effectiveness of the protective measures.

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

*HKMA, 25 November 2022*

## SFC consults on risk management guidelines for futures dealing activities

The SFC launched a consultation on proposed risk management guidelines for type two licensed futures brokers.

The proposed guidelines mainly include qualitative requirements for the control and management of key risks arising from futures dealing activities. Key proposals include requiring futures brokers:

- To set prudent client risk limits and comply with additional requirements relating to commodity futures business.
- To conduct due diligence reviews of executing or clearing agents.
- To safeguard client assets more properly and put in place controls relating to trading in futures markets and handling client assets outside Hong Kong.
- To conduct regular stress testing to help identify any excessive exposure to individual clients or groups of connected clients.

In addition, with regard to clients who failed to meet two margin calls by the settlement deadline without reasonable excuse in the preceding 30 calendar days, futures brokers would be required to insist on collecting outstanding margin calls, and follow their in-house policies towards forced liquidation (if applicable). Futures brokers would also be required to set threshold for concessionary margining.

Interested parties are invited to submit their comments to the SFC on or before 31 January 2023.

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

*SFC, 25 November 2022*

## **PCPD investigation report: EC Healthcare's sharing of customers' personal data among its various brands through an integrated system**

The Office of the Privacy Commissioner for Personal Data (PCPD) published an investigation report after investigating into two complaints concerning four brands under EC Healthcare. The first complaint concerned Primecare Paediatric Wellness Centre (Primecare) and Dr Reborn. The complainant's daughter visited a doctor of Primecare and later when the doctor joined Dr Reborn, the personal data of the complainant's daughter was transferred to Dr Reborn. The second complaint concerned New York Medical Group (NYMG) and re:HEALTH. The complainant contacted re:HEALTH to follow up on a complaint lodged by his family member. When re:HEALTH contacted the complainant in response, it accessed and used the personal data provided by the complainant to NYMG when he received treatment there.

The PCPD found that when EC Healthcare acquired Primecare and NYMG, it stored the personal data of the clients of these two brands in the integrated system shared among the 28 brands of EC Healthcare. The personal data was originally provided by the complainants to a single brand but EC Healthcare disclosed and transferred the data to other brands without the complainants' consent. The PCPD found such arrangement to be inconsistent with the original purpose of collection of the complainant's personal data. In the circumstances, the PCPD opined that EC Healthcare has contravened the requirements of Data Protection Principle 3(1) in Schedule one to the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO) concerning the use of personal data.

The investigation report published by the PCPD further provided some recommendations to other organizations operating multiple brands:

- Indicate clearly on the personal information collection statement the purpose of data collection and to whom the data may be transferred.
- Obtain consent from customers before using their personal data for a new purpose or transferring their personal data.
- Appropriately assign staff's right of access to customer's personal data as according to business needs and staff authority.
- Carry out a privacy impact assessment before implementing plans that involve the handling of a considerable amount of personal data.
- Implement a personal data privacy management programme to include the protection of personal data privacy as part of their governance responsibilities.
- Appoint data protection officers to ensure compliance with the PDPO.

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

*PCPD, 14 November 2022*

## **PCPD investigation report: ransomware attack on the database of Fotomax**

The PCPD published an investigation report after investigating into a ransomware attack on the database of Fotomax. Fotomax notified the PCPD on 1 November 2021 that the database of its online store had been attacked by ransomware and maliciously encrypted on 26 October 2021. The incident affected the personal data of a total of 544,862 members and 73,957 customers of Fotomax.

The PCPD found that Fotomax had serious deficiencies in risk awareness and personal



data security measures which led to the ransomware attack, including:

- Misevaluation of security vulnerability risk.
- Deficiencies in information system management.
- Procrastinated implementation of multi-factor authentication.

The PCPD opined that Fotomax had failed to take all practicable steps to protect the affected personal data from unauthorized or accidental access, processing, erasure, loss or use, thereby contravening the requirements of Data Protection Principle 4(1) in Schedule 1 to the PDPO concerning the security of personal data.

The investigation report published by the PCPD further reminded other organizations which handle customers' personal data of the following:

- Conduct regular risk assessments to prevent hacker attacks.
- Implement a personal data privacy management programme to handle personal data in compliance with the PDPO.
- Appoint data protection officers to ensure compliance with the PDPO.
- Enhance information systems management and patch security vulnerabilities as early as possible.
- Maintain proper documentation of internal communications for reference in future reviews.

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

*PCPD, 14 November 2022*

## **PCPD made an arrest for suspected doxxing offence**

On 24 November 2022, the PCPD arrested a 48-year-old Chinese male for suspected disclosure of the personal data of a data subject without her consent, in contravention of section 64(3A) of the PDPO.

The arrested person is a sourcing agent of part-time workers for employers and the victim is a part-time worker. Following a dispute between the arrested person and the victim in relation to job allocation and salary payment, the arrested person disclosed the personal data of the victim using an instant messaging application and made a remark that the victim would never be hired again. The personal data disclosed included the victim's Chinese name, English name, mobile phone number and a partly redacted copy of the victim's Hong Kong Identity Card which showed the victim's name, gender, photo and Hong Kong Identity Card number.

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.

*PCPD, 24 November 2022*

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