# Hong Kong Corporate Insights

April 2020

Hogan Lovells

# Contents

# Equity Capital Markets

## HKEx published Guidance Materials for Biotech Companies

The Hong Kong Exchanges and Clearing Limited (HKEx) published and updated Guidance Materials providing prospective issuers and the market with more clarity on the requirements for listing and required disclosure for Biotech Companies on 29 April 2020 as set out below:

- New Guidance Letter HKEX-GL107-20: Guidance on disclosure in listing documents for Biotech Companies;
- Updated Guidance Letter HKEX-GL92-18: Guidance on suitability for listing of Biotech Companies;
- Updated Guidance Letter HKEX-GL85-16: Guidance on placing to connected clients, and existing shareholders or their close associates, under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules);
- Updated FAQ on Listing Regime for Companies from Emerging and Innovative Sectors.

*(HKEx, 29 April 2020)*

## HKEx extends consultation period for consultation paper on corporate WVR beneficiaries

On 28 April 2020 the Stock Exchange of Hong Kong Limited (SEHK) extended the consultation period on its proposal to allow corporate entities to benefit from weighted voting rights to end on 31 May 2020.

The consultation period was originally scheduled to end on 1 May 2020 but due to requests from stakeholders, the SEHK decided to extend the period and to give more time for stakeholders to respond.

Click here to view the full article.

*(HKEx, 28 April 2020)*

## The Listing Committee censures or criticises former directors of Champion Technology Holdings Limited (Stock Code: 92) (Champion) and/or Kantone Holdings Limited (Stock Code: 1059) (Kantone) for breaches

The Listing Committee of SEHK conducted a hearing into a number of former directors of Champion and Kantone for breaches of Rule 3.08(f) of the Listing Rules.

In particular, the Listing Committee found that the relevant former directors failed to conduct sufficient due diligence of the acquisition of substantive assets. The acquired assets subsequently were found to have suffered impairment losses of 99 percent of their value.

Rule 3.08 of the Listing Rules provides that the SEHK expects the directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care, and diligence to a standard at least commensurate with the standard established by Hong Kong law. Eight former directors of Champion and Kantone were found to have breached these duties and hence were sanctioned by means of public censure and/or criticism.

Click here to view the full decision.

*(HKEx, 27 April 2020)*

## HKEx published Listed Issuer Regulation Newsletter (Issue 2)

The latest newsletter largely concerned the impact of COVID-19 on the market environment and reminded issuers to keep investors updated on the pandemic's impact on their operations and financial results.

HKEx may require issuers to make announcements to keep the market informed.

HKEx also stated that it will closely monitor the development of the COVID-19 pandemic. If necessary, it will provide timing relief to issuers whose financial year-ends fall on or before 31 March 2020 and grant extensions based on the particular circumstances of these issuers.

Click here to view the full newsletter.

*(HKEx, 24 April 2020)*

## HKEx to implement Volatility Control Mechanism (VCM) first phase enhancement

On 11 May 2020 HKEx announced the implementation of the first phase enhancement of the VCM. The VCM is designed to prevent extreme price volatility among individual stocks and was first introduced to the securities market in August 2016.

HKEx believes the enhancement will further strengthen its stock-level safeguards during extreme price volatility, and reflect changes in international practice and regulatory guidance, such as those issued by the International Organization of Securities Commissions asking regulated markets to review and adjust their volatility controls to ensure that they stay relevant with respect to the latest market developments.

Click here to read the full news release.

*(HKEx, 23 April 2020)*

## The Listing Committee censures or criticizes China Ding Yi Feng Holdings Limited (Stock Code: 612) (CDYF) and its directors for breach

The Listing Committee conducted a hearing into the conduct of CDYF and found that there have been breaches of Rules 13.51C, 3.08(a) and (f) of the Listing Rules, and the Declaration and Undertaking with regard to Directors given to the SEHK.

This case involved the appointment of two new directors on CDYF's board of directors, directors' misappropriation and non-compliance of CDYF's corporate reporting obligations. Five issues were identified namely:

1. *Approval of directors' appointment*: the approval was made on the basis of limited qualification and experience details of the nominated directors, falling short of Principle A4 of the Corporate Governance Code, Appendix 14 of the Listing Rules, which states "there should be a formal, considered, and transparent procedure for the appointment of new directors";

2. *Insufficient provision of information as directors*: CDYF obtained written confirmations from the new directors which were then found to be inaccurate, breaching Rule 13.51(2) of the Listing Rules, which requires an issuer to announce information pertaining to its directors upon appointment of new directors;

3. *Suspected misappropriation*: directors obtained a RMB ¥10 million bills of exchange, without conducting proper due diligence. It was later found to be forged bills of exchange. Their actions fell short of Rule 3.08 of the Listing Rules, which provides that the directors, both collectively and individually, should fulfil fiduciary duties and duties of skill, care, and diligence to a standard at least commensurate with the standard established by Hong Kong law.

4. *Delay in publication of FY2015 Results and FY2015 Report*: CDYF and its auditors delayed in publishing FY2015 Results and FY2015 Report, breaching Rules 13.49(1) and 13.46(2) of the Listing Rules, which require a listed issuer to publish and despatch its respective annual results and annual report for a financial year not later than three and four months respectively after the end of the financial year.
5. *Breach of Undertakings*: three directors were removed from CDYF's board of directors and the Listing Division sent letters to each of these directors. The letters were served but no reply was given by these directors. The Listing Committee considered their inaction as a breach of their Undertakings, which obliged them to cooperate in any investigation by the Listing Division.

The SEHK sanctioned the directors of CDYF by censuring three of CDYF's directors for non-compliance.

Click here for the full decision.

*(HKEx, 22 April 2020)*

## Publication of Listing Decisions concerning minimum market capitalization requirement for ListCo

The Listing Committee issued two decisions in relation to proposed spin-offs of Main Board issuers and whether the remaining corporate groups excluding the spin-offs could meet the minimum market capitalization requirement under Rule 8.09(2) and Paragraph 3(c) of Practice Note 15 to the Listing Rules.

In particular, Practice Note 15 sets out the test where the remaining corporate group would satisfy the Listing Rules' requirement on retaining sufficient level of operations and sufficient assets to support its separate listing status. Such sufficiency shall only be determined by the independent assets and operations of the remaining corporate group excluding its interest in the spin-off.

In both decisions, the Listing Committee emphasized Practice Note 15 is to ensure that one business will not support two listing statuses, and that the remaining corporate groups after the spin-offs do not retain substantive business to support a market capitalization of at least HK$500 million as required. As such, the proposed spin-offs are rejected.

Full decisions can be viewed here LD124-2020 and LD125-2020.

*(HKEx, 17 April 2020)*

## Joint Statement in relation to General Meetings in light of the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation (Cap. 599G) (the Regulation)

Following the introduction of the Regulation, which became effective on 29 March 2020 the SFC and the SEHK have consulted the Government, and confirmed that:

- Paragraph 11 of Schedule 1 of the Regulation (Paragraph 11) exempts "any group gathering at a meeting of a body that must be held within a specified period in order to comply with any Ordinance or other regulatory instrument that governs the operation of the body or its business".
- Annual general meetings as required under the Companies Ordinance (Cap. 622) and/or the Listing Rules or the GEM Listing Rules are in general exempted under Paragraph 11.
- Extraordinary general meetings and special general meetings of Hong Kong-

listed issuers are exempted under Paragraph 11 if the meeting must be held within the specified period in order to comply with: (i) any law or regulation in Hong Kong or overseas that is applicable to the listed issuer or a subsidiary of the listed issuer (as part of the listed issuer's business); (ii) any Listing Rules or GEM Listing Rules or The Codes on Takeovers and Mergers and Share Buy-backs; (iii) the issuer's own memorandum or articles of association; or (iv) other regulatory instrument.

Click here for the news.

*(HKEx, 1 April 2020)*

# Financial Services Regulation

## Gazettal of revised capital rules under Banking Ordinance (Cap. 155)

The Banking (Capital) (Amendment) Rules 2020 (BCAR 2020) were gazetted to implement the latest international standards on banking regulation promulgated by the Basel Committee on Banking Supervision.

The BCAR 2020 seek mainly to implement two sets of capital standards for the treatment of banks' counterparty credit risk exposures to derivatives trades, as set out in the two documents entitled "The standardized approach for measuring counterparty credit risk exposures" and "Capital requirements for bank exposures to central counterparties" published by the Basel Committee. They form part of the Basel III reform package introduced in the aftermath of the global financial crisis to enhance the resilience of banks against future shocks.

Click here for the BCAR 2020.

*(HKMA, 24 April 2020)*

## Circular to management companies of SFC-authorized exchange traded funds and to intermediaries – Futures-based ETFs

The Securities and Futures Commission (SFC) reminded managers of SFC-authorized futures-based exchange-traded funds (ETFs) to remain vigilant under extreme market conditions such that ETFs can be managed in the best interests of investors. In particular, managers are reminded to:

- Ensure that margin obligations will be fulfilled in a timely manner for ETFs that invest in futures;
- Closely monitor market movements of the underlying investments of the ETFs and ensure that there are proper contingency plans in place;
- Ensure that any actions taken or to be taken by the managers are permitted under the ETF's constitutive documents, and comply with the applicable laws and regulatory requirements;
- Promptly and efficiently communicate these actions to investors of the ETF; and
- Give the SFC early alerts of any untoward circumstances relating to the ETFs under their management, including without limitation, any issues which may adversely affect the operations, investments, and secondary market trading and liquidity of their ETFs.

In addition, firms were reminded to ensure compliance with paragraphs 5.1A (derivative knowledge) and 5.3 (understands the risk and has sufficient net worth) of the Code of Conduct when providing trading services for futures-based ETFs.

Click here for the Circular.

*(SFC, 24 April 2020)*

## Circular to commodity futures brokers managing financial and operational risks under extreme market conditions

The SFC required commodity futures brokers to take precautionary measures to manage the risks of trading crude oil futures contracts. Brokers were reminded not to open new positions for clients who do not fully understand these contracts or do not have the financial capability to bear the potential losses.

Brokers should closely monitor changes in market conditions and margin requirements set by clearing houses or clearing agents and rigorously assess their impact on the firm's risk exposures, cash flow, and liquid capital. Stress tests and liquid capital computations should be carried out regularly as failure to maintain sufficient liquidity to meet operating needs may result in serious regulatory consequences.

Click here for the Circular.

*(SFC, 24 April 2020)*

## Circular to issuers of SFC-authorized paper gold schemes

The Hong Kong Monetary Authority (HKMA) reminded authorized institutions (AIs) to comply with a circular issued to issuers of SFC-authorized paper gold schemes, the Code of Banking Practice and the Treat Customers Fairly Charter in their provision of paper gold scheme (PGS) services to customers.

In particular, AIs are reminded to treat customers honestly and fairly, take into account customers' interest and be responsible for upholding financial consumer protection, provide appropriate information at all stages of the relationship with the customers and to rectify any operational incident having significant impact on continued provision of PGS services.

Click here for the Circular.

*(HKMA, 20 April 2020)*

## Explanatory Note for Appointed Actuaries: Chapter 41E Supplemental Information on the Reinvestment Yield for Reserving

The Actuarial Society of Hong Kong (ASHK) published an explanatory note for its earlier proposal to the Insurance Authority (IA) with regards to the "approach to be used by long term authorized insurers to value the yield assumed by long term insurers on investments to be made more than three years after the valuation date when determining their liabilities for solvency purposes".

The ASHK explained that the lower weight applied to current yield in the proposal was justified in light of the COVID-19 circumstances and the resulting dislocation in the market.

Appointed Actuaries are also reminded of the key points set out in the "Notice for Appointed Actuaries: Chapter 41E – Reinvestment Yield for Reserving" published by the Council of ASHK in 2008, including:

- Insurance (Determination of Long Term Liabilities) Rules (Cap 41E) sets down the conditions for a minimum valuation basis and that Appointed Actuaries still need to consider whether or not the valuation basis is adequate and suitable; and
- Appointed Actuaries shall include adequate disclosure in the abstract of the actuary's report prescribed in section 18 of the Insurance Ordinance regarding the appropriateness of the approach and the parameters chosen for the valuation.

Click here for the Explanatory Note.

*(ASHK, 17 April 2020)*

## Third virtual insurer granted new authorization under Fast Track

The IA granted authorization under Fast Track to the third virtual insurer, a technology start-up with proprietary systems that automate the entire production cycle from customer on-boarding to claims settlement. The insurer will start off with pet insurance, followed by health insurance, and then cyber insurance for small and medium firms.

Fast Track was launched by the IA in 2017 to provide a dedicated queue for firms seeking to enter the insurance market using solely digital distribution channels. Applicants must possess an innovative and robust business model, while satisfying all the prevailing regulatory requirements on solvency, capital, and local asset requirements.

Click here for the press release.

*(IA, 15 April 2020)*

## Gazettal of amendment notices made under Inland Revenue Ordinance (Cap. 112)

Two amendment notices made under the Inland Revenue Ordinance (Cap. 112) was gazetted on 17 April 2020. The two amendment notices seek to expand the definition of controlling persons of partnerships, and providing for a specific requirement in relation to the determination of controlling persons by financial institutions respectively. These amendments will bring Hong Kong's legislative framework on automatic exchange of financial account information into line with the prevailing international standard.

Click here for the press release.

*(The Treasury Branch of the Financial Services and Treasury Bureau, 15 April 2020)*

## SFC scrutinizes leveraged foreign exchange trading

The SFC released a report on its survey of the leveraged foreign exchange trading (LFET) activities of licensed corporations between 1 January 2018 and 31 December 2018.

As part of the survey, some brokers reported that more than 60 percent of their LFET clients made net trading losses in LFET, and some investors suffered losses over HK$1 million. SFC stressed that brokers should ensure that their clients fully understand the nature and risks of these products and have sufficient financial resources to assume the risks and bear the potential losses.

For firms involved in LFET, the report highlights some expected regulatory standards and good industry practices observed by the SFC during the course of its regulatory supervision. The expected regulatory standards cover customer due diligence, handling of client orders, conflicts of interest, and information for clients.

Click here for the report.

*(SFC, 9 April 2020)*

## Authorized Insurers to submit statutory, actuarial, and financial returns

The IA reminded authorized insurers to submit various statutory, actuarial, and financial returns to the IA annually. To facilitate submissions, the IA has developed a set of spread sheet-based templates for reference.

If any authorized insurer anticipates difficulties in meeting the submission deadlines given the current COVID-19 situation, it should inform its case officer as soon as possible and obtain the extension required.

Click here for the update.

*(IA, 9 April 2020)*

## SFC lowers regulatory reserve

Since adopting the Hong Kong Financial Reporting Standard 9, the HKMA has been requiring locally incorporated AIs to maintain a regulatory reserve (RR) on top of accounting provisions.

In view of good progress from locally incorporated AIs in enhancing expected loss provisioning models, systems and controls, as well as the current COVID-19 crisis, the HKMA lowered the RR requirement by 50 percent with immediate effect.

The additional lending capacity should be used to support customers to overcome the shockwave of the epidemic and should not be used for dividend distribution, share buyback or payment of bonus to senior management.

Click here for the Circular.

*(HKMA, 8 April 2020)*

## Joint consultation conclusions on the model for an uncertificated securities market

The SFC, HKEx, and the Federation of Share Registrars Limited (FSR) jointly released consultation conclusions on a proposed operational model for implementing an uncertificated securities market (USM) in Hong Kong. The model put forward in the consultation aims to address concerns over settlement efficiencies while still offering investors an option to hold securities in their own names and without paper.

The SFC, HKEx, and FSR will further develop the model and the regulatory framework to support it with a view to implementing the USM regime from 2022.

Click here for the consultation conclusion.

*(SFC, 8 April 2020)*

## COVID-19 and Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) measures

The HKMA published a circular acknowledging that COVID-19 has posed unprecedented challenged on AML and CFT processes for stored value facility (SVF) licensees. SVF licensees should continue to adopt a risk-based approach and conduct client due diligence based on their stored values, transaction limit, and functions. In case there is any short-term impact on an SVF licensee's ability to meet a particular obligation, the SVF licensee concerned should maintain a record of the circumstances, the risk assessment that has been performed.

In a separate circular, the HKMA also addressed AIs in general. AIs are reminded of the simplified due diligence measures which can be taken for account opening where lower risks are identified, which will help AIs adapt to the current situation. At the same time, AIs should remain vigilant to emerging ML/TF risks and ensure that they continue to focus on priority areas and effectively mitigate risks through information sharing and reporting suspicious transactions to the Joint Financial Intelligence Unit.

Click here for Circular to SVF licensee and here for Circular to AIs

*(HKMA, 7 April 2020)*

## Checklist for IA's Applications

The Professional Insurance Brokers Association (PIBA) published a checklist to assist members in handling application forms by the IA. The checklist contains the deadline as well as forms required to be filed to the IA under different circumstances, including license application, appointment of responsible officer, change in directors, etc.

Click here for the Circular.

*(PIBA, 6 April 2020)*

## SFC issues restriction notice to Agg. Asset Management Limited

The SFC issued a restriction notice to Agg. Asset Management Limited (Agg) because of doubts over Agg's reliability, integrity, and ability to carry on regulated activities competently, honestly and fairly, and hence, its fitness and properness to remain licensed.

The restriction notice prohibits Agg, without prior written consent from the SFC, from carrying on any business, whether directly or through agents, which constitutes regulated activities for which it is licensed under the Securities and Futures Ordinance (Cap. 571) until further notice. The SFC considers that the issue of the restriction notice is desirable in the interest of the investing public or in the public interest.

Click here to see the news.

*(SFC, 3 April 2020)*

# Data Protection

## Privacy Commissioner responds to media inquiry on the collection of personal data by Hong Kong Police Force

In response to the enquiry concerning police officers collecting excessive personal data in the course of carrying out their duties, Privacy Commissioner for Personal Data (the "PCPD") reiterates that data subjects enjoy the right to request access to personal data and are entitled to ascertain whether a data user holds personal data of which he/she is the data subject.

Further, the PCPD commented that the Police Force is permitted to refuse data request if they held the personal data for the purpose of the prevention or detection of crime, or the prosecution of offenders, etc. Nevertheless, the Police Force should also consider if any exemption is applicable, and should provide sufficient evidence in support of such refusal.

Click here for the response (only Chinese version available).

*(PCPD, 7 April 2020)*

## Privacy Commissioner provides children's privacy guidelines during COVID-19

Due to the ongoing global pandemic, many schools are practicing online learning experiences for their students. The PCPD reminds that utilizing video conferencing software and online learning platforms inevitably collects a vast amount of personal data from students.

Schools should perform due diligence before using these software or platforms to ensure children's privacy is protected and children's personal data will not be leaked to the hands of third parties.

Please refer to the full article here.

*(PCPD, 2 April 2020)*

## Privacy Commissioner addresses Zoom data security issues

In view of the warnings issued by several overseas governments and statutory bodies concerning the risks of the use of the video-conferencing app Zoom, the PCPD recommends that when using Zoom:

- The mobile app must be updated to the latest version;
- Sign in with an account specifically created for Zoom and avoid logging in with other existing accounts whenever possible to reduce the risk of personal data being transferred or leaked;
- Set a password for the meeting which (as well as its link) should be given to participants of the meeting only;
- Keep a close watch of any unusual activity on the account; and
- Document any damage incurred to facilitate any necessary follow-up action.

Click here for the full article.

*(PCPD, 1 April 2020)*

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