

Key Regulatory Updates for Hong Kong Listed Companies

The Stock Exchange of Hong Kong, the SFC, and the Companies Registry have published key regulatory updates during September and October 2023.

Contents

- Consultation Paper by the Stock Exchange, Amendments to the Listing Rules, and/or Other Reforms
- Guidance Materials, Listing Decisions, and FAQs by the Stock Exchange
- Other Reports/Newsletter by the Stock Exchange
- Forms by the Stock Exchange
- Disciplinary Actions by the Stock Exchange for Failure to Comply With the Disclosure Requirements
- Disciplinary Actions by the Stock Exchange — Others
- Takeover Matters
- SFC Newsletter and Others
- Companies Registry's Notices

Consultation Paper by the Stock Exchange, Amendments to the Listing Rules, and/or Other Reforms

1. Consultation Paper on Proposed Amendments to Listing Rules Relating to Treasury Shares (October 2023)

The Stock Exchange of Hong Kong Limited (the Stock Exchange) published a [consultation paper](#) on proposed amendments to Listing Rules relating to treasury shares (the Consultation Paper). The consultation seeks market views on the Stock Exchange's proposal to remove the requirement to cancel repurchased shares and to adopt a framework to govern the resale of these treasury shares. With the removal of the requirement to cancel repurchased shares under "The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited" (the Listing Rules), listed companies may repurchase shares and hold them in treasury for future resale if permitted under the laws of their places of incorporation and their constitutional documents. The Consultation Paper includes the following proposals:

Proposals to Remove the Requirement to Cancel Repurchased Shares

- Proposed to amend the Listing Rules to remove the requirement to cancel repurchased shares so that issuers may hold these shares in treasury and enjoy the flexibility of having treasury shares, subject to the laws of their places of incorporation and their constitutional documents.
- Necessary amendments to the Companies Ordinance (Cap. 622) will be made so that Hong Kong incorporated issuers can also benefit from the treasury share regime.

Proposals relating to the regulation of treasury shares and other consequential rules

- Proposed to amend the Listing Rules to apply the current requirements for an issuance of new shares to a resale of treasury shares by a listed issuer
 - Resale of treasury shares to be conducted on a preemptive basis or with a shareholders' mandate:
 - Resale of treasury shares shall be subject to preemption (similar to issuance of new shares under Rule 13.36) and be offered to shareholders on a pro-rata basis, or alternatively, approved by shareholders under a specific mandate or a general mandate approved in advance by shareholders.
 - Both the general mandate limit and the repurchase mandate limit would be calculated based on the number of issued shares (excluding treasury shares) held by the listed issuer at the given time.
 - An on-market resale of treasury shares under the general mandate shall be subject to a maximum price discount of 20% of the higher of (i) the closing price on the trading day immediately prior to the resale; and (ii) the average closing price in the five trading days immediately prior to the resale.
 - Share scheme:
 - A share scheme using treasury shares to satisfy share grants would be treated as a share scheme funded by new shares under Chapter 17 of the Listing Rules.
 - The grant of shares under the scheme would be subject to the scheme mandate limit approved by shareholders under Chapter 17 of the Listing Rules.
 - Other requirements relating to resale of treasury shares:
 - Any resale of treasury shares to a connected person would be subject to the same connected transaction requirements as an issuance of new shares under Chapter 14A
 - Disclosure of the issuer's resale of treasury shares and any movement in the number of treasury shares under Rule 13.28 (announcement), Rule 11.04 (listing document), Rule 13.25A (next day disclosure return), Rule 13.25B (monthly return), and Paragraphs 11 and 11A of Appendix 16 (annual report); and
 - Compliance with the documentary requirements under Rules 9.18 to 9.23 for the issuer's resale of treasury shares, similar to an application for the listing of the newly issued shares

- Proposals relating to the mitigation of risks of market manipulation and insider dealing
 - Proposed moratorium periods for share repurchases and resales of treasury shares:
 - Impose a moratorium period of 30 days on (i) a resale of treasury shares (whether on- or off-market) after a share repurchase; and (ii) an on-Exchange share repurchase after an on-Exchange resale of treasury shares
 - Extend the application of the following dealing restrictions to an on-Exchange resale of treasury shares:
 - Prohibit to resell treasury shares on the Stock Exchange during the one-month period preceding results announcement or when there is undisclosed inside information
 - Prohibit an issuer from knowingly reselling the treasury shares to a core connected person on the market. However, on-market resale of treasury shares to a connected person without knowledge will be fully exempt from connected transaction rules
 - An issuer shall procure its broker to disclose to the Stock Exchange information concerning its resale of treasury shares on the Stock Exchange
- New listing applicants:
 - New listing applicants may retain their treasury shares after listing and it must disclose details of its treasury shares in its prospectus.
 - Resale of treasury shares will be subject to the lock-up requirement under Rule 10.08 such that a new listing applicant shall not issue any new shares or resell any treasury shares or enter into any agreement for such new issue or resale within six months after listing.
- Consequential amendments:
 - Voting rights attached to treasury shares: Issuers (being holders of treasury shares) should abstain from voting on matters that require shareholders' approval under the Listing Rules.
 - Excluding treasury shares in the calculation of issued shares: Treasury shares would be disregarded when calculating an issuer's issued shares/voting shares under various parts of the Listing Rules (e.g., public float and size test calculations).
 - Disclosure of issuer's intention to hold treasury shares: An issuer must disclose in the explanatory statement for share repurchase mandate its intention as to whether the repurchased shares will be cancelled or kept as treasury shares.
 - Resale of treasury shares through agents/nominees: Clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through agents/nominees.

Transitional Arrangement

- The Stock Exchange had granted waivers from share cancellation requirement to permit overseas issuers to hold treasury shares which were granted on the condition that issuers are obligated to comply with the relevant requirements in the event of changes to the Listing Rules in relation to treasury shares. Accordingly, these issuers must comply with the new Listing Rule requirements following the Listing Rule amendments.

- The Stock Exchange may consider granting waivers from the new Listing Rule requirements on a case-by-case basis, taking into account the specific circumstances of the case.

The deadline for responding to the Consultation Paper is 27 December 2023. For further details, please refer to the [Consultation Paper](#).

2. Consultation Paper on GEM Listing Reforms (September 2023)

The Stock Exchange has published a [Consultation Paper](#) on GEM Listing Reforms (the Consultation Paper) seeking market feedback on GEM listing reforms. The consultation window is open for a six-week period and concluded on 6 November 2023. The proposals presented include a new streamlined transfer mechanism for eligible GEM companies to transfer to the Main Board, a new alternative eligibility test for companies in the high-growth segment, and the removal of quarterly reporting requirements.

New Alternative Eligibility Test

The Stock Exchange proposed a path to listing for companies with high growth potential that do not have a sufficient track record of positive cash flow because they are heavily engaged in research and development (R&D). The alternative path to listing will introduce a new financial eligibility test (referred to as the “market capitalization/revenue/R&D test”) targeting high-growth enterprises that are heavily engaged in R&D activities. GEM listing applicants using this new test must have:

- an adequate trading record of at least two financial years;
- an expected market capitalisation of at least HK\$250 million at the time of listing;
- revenue of at least HK\$100 million in aggregate for the two most recent audited financial years, with year-on-year growth over the two financial years; and
- incurred R&D expenditure of at least HK\$30 million in aggregate for the two financial years prior to listing, where the R&D expenditure incurred for each financial year must be at least 15% of its total operating expenditure for the same period.

New Streamlined Transfer Mechanism

The Stock Exchange proposed a new streamlined transfer mechanism to enable qualified GEM issuers to transfer to the Main Board without the need to: (a) appoint a sponsor to carry out due diligence, or (b) produce a “prospectus-standard” listing document

A transfer applicant must:

- meet all the qualifications for listing on the Main Board;
- have published financial results for three full financial years as a GEM issuer with ownership continuity and control and no fundamental change in its principal business;
- meet:
 - a daily turnover test — a streamlined transfer applicant must have reached a prescribed minimum daily turnover threshold on at least 50% of the trading days over a prescribed reference period of 250 trading days before the transfer application and until the commencement of dealings on the Main Board (the Reference Period);

- a volume weighted average market capitalisation test — a streamlined transfer applicant must have a volume weighted average market capitalisation over the Reference Period that could meet the minimum market capitalisation requirement for Main Board listing; and
- a clean compliance record requirement over the 12 months preceding the transfer application and until the commencement of dealings on the Main Board.

Removal of mandatory quarterly reporting requirement

To help address stakeholders' concerns regarding the ongoing compliance costs of a GEM listing, the Stock Exchange proposed to align GEM's periodic reporting requirements with those for Main Board issuers by removing the mandatory quarterly reporting requirement for GEM issuers.

For further details, please refer to the [Consultation Paper](#).

3. Launch of FINI Platform (September 2023)

FINI has launched on 22 November 2023, while the existing IPO settlement platform using CCASS will no longer be used to initiate IPOs following market close on 21 November 2023. All new listings whose prospectus is published on or after 22 November 2023 will be processed on the FINI platform and the first permissible listing date will be 5 December 2023. FINI is a major new initiative that will significantly shorten the time between the pricing of an IPO and the trading of shares from five business days (T+5) to two business days (T+2)

Relevant FINI related Listing Rules, Hong Kong Securities Clearing Company Limited (HKSCC) Rules and HKSCC Operational Procedures will also take effect from the FINI launch date.

For further details, please refer to the [designated FINI webpage](#).

4. Stock Exchange Added Saudi Exchange as Recognised Stock Exchange (September 2023)

The Stock Exchange announced that it has added the Saudi Exchange (Tadawul) as a Recognised Stock Exchange. The addition will allow companies with a primary listing on the Saudi Exchange's Main Market to apply for a secondary listing in Hong Kong.

The [list of Recognised Stock Exchanges](#) has been updated to reflect this.

Guidance Materials, Listing Decisions, and FAQs by the Stock Exchange

1. New FAQs and Guidance Letters by the Stock Exchange (October 2023)

The Stock Exchange has published:

- new [FAQ No. 119-2023 to 134-2023](#) relating to the expansion of the Paperless Listing Regime, Mandatory Electronic Dissemination of Corporate Communications, and Simplification of Appendices to the Listing Rules; and
- a new guidance letter on [Guidance on automatic share buy-back programs conducted on behalf of listed issues \(GL117-23\)](#).

FAQ No. 119-2023 to 134-2023

Sponsors are expected to continue to obtain Form M116 (Reporting accountant's confirmation — no significant adjustment) and Form M117 (Expert's confirmation — no material change) and the confirmations from their legal adviser on compliance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (C(WUMP)O), even though they are no longer required to be submitted to the Stock Exchange.

Before an issuer adopts any new arrangements on dissemination of corporate communications, it should send a one-time notification to its securities holders individually, in hard copy or electronically, to:

- inform them of the new arrangements (including how securities holders may make requests for hard-copy corporate communications under the new arrangements); and
- solicit their electronic contact details.

Issuers are expected to clearly inform securities holders of the purpose of obtaining their electronic contact details and should also draw their securities holders' attention to the consequence of providing non-functional electronic contact details. The Stock Exchange will not hold issuers responsible for failed electronic communications that are due to non-functional electronic contact details provided to them.

In general, an issuer is considered to have complied with the requirements if it sends corporate communications to the electronic contact details provided by the securities holders without receiving any "non-delivery message". If an issuer receives a non-delivery message, it should resend the corporate communication using other contact details provided by the securities holder (if any) in the manner the issuer considers appropriate (e.g. in hard copy).

The items that the Stock Exchange considers to fall within "actionable corporate communications" are:

- election forms in connection with a dividend payment (e.g. choice of scrip or cash dividend, currency);
- excess application forms in connection with a rights issue or open offer;
- application forms for assured entitlement under an open offer;
- blue application forms for a preferential offering;
- pink application forms for employee reserved shares;
- acceptance forms in connection with takeovers, mergers, and share buy-backs (including acceptance forms in general offers and acceptance and approval form in partial offers); and
- provisional allotment letters in connection with a rights issue.

The Stock Exchange does not consider notices of general meetings and proxy forms to be actionable corporate communications.

The requirements on the electronic dissemination of corporate communications do not apply to beneficial holders of securities held in CCASS. The mode of delivery of corporate communications between these intermediaries and these beneficial holders is governed by the terms agreed between them.

GL117-23

The Stock Exchange will consider granting a waiver to allow an automatic share buy-back programme to continue throughout the Restricted Period (pursuant to Rule 10.06(2)(e)) if the risk of abuse of undisclosed inside information and price manipulation is low. For further details on [Guidance on automatic share buy-back programs conducted on behalf of listed issues \(GL117-23\)](#), please refer to our [client alert on Hong Kong Issues Guidance on Automatic Share Buyback Programs](#).

2. New and Revised Guidance Letters by the Stock Exchange (October 2023)

The Stock Exchange has published a new guidance letter on disclosure of the basis of consideration and business valuations in notifiable transactions ([GL116-23](#)) and a revised guidance letter on guidance on long suspension and delisting ([GL95-18](#)).

The new GL116-23 should be read in conjunction with the Guidance Note on Directors' Duties in the Context of Valuations in Corporate Transactions (the Guidance Note) and the Statement on the Conduct and Duties of Directors when Considering Corporate Acquisitions or Disposals (the Statement) issued by the Securities and Futures Commission (the SFC). For details on the Guidance Note, please refer to our [Client Alert](#) on the SFC's Guidance on Corporate Transactions and the Use of Valuations. In essence, the Guidance Note sets out the responsibilities of directors and the SFC's expectations of the conduct of directors when considering or approving a corporate transaction that involves the valuation of an asset or target company, whereas the Statement outlines recurring types of misconduct in relation to corporate acquisitions and disposals that have given rise to concerns and, in some cases, led to intervention by the SFC.

GL116-23 provides further guidance on recommended disclosure of the basis of consideration and business valuations for notifiable transactions. In particular it highlights the following:

- The valuation report should generally cover information in line with generally accepted valuation standards.
- The valuation approaches and methods selected by the valuer and the reasons for selection should be clearly disclosed and discussed in the valuation report, and that key assumptions and valuation inputs should be explained in details and in specific terms.
- If no independent valuation is disclosed, the issuer should provide an adequate explanation of the basis for determining the consideration. The explanation should disclose in the transaction announcement sufficient and objective information with quantitative inputs and analysis to substantiate how the consideration was arrived at.

Guidance Letter on Disclosure of the Basis of Consideration and Business Valuations in Notifiable Transactions (GL116-23)

GL116-23 sets out the guidance on disclosure of business valuation which forms a primary factor in the determination of the consideration, and also disclosure of the basis of consideration for notifiable transactions for which no independent valuation is disclosed.

- ***Disclosure of business valuation which forms a primary factor in the determination of the consideration***

If the consideration (or other material terms) of the transaction is primarily based on an independent business valuation of the target (the Transaction Target), the circular should include the valuation

report or a summary that fairly presents the views and analysis of the valuer and all material factors contained in the report.

In general, the valuation report should contain information in line with generally accepted valuation standards (e.g., the International Valuation Standards) and include, among others:

- the valuation approach(es) and method(s) used by the valuer and the reasons for their selection;
- the scope of work performed by the valuer, any limitation thereon, and the reasons for such limitation;
- the nature and source of information relied upon;
- the key inputs and assumptions, and how they were determined and translated into the appraised value;
- the appraised value ascribed to the Transaction Target and the principal reasons for the conclusions reached;
- the effective date of the valuation; and
- the identity, qualification, and independence of the valuer.

Issuers may use different valuation approaches to assess the valuations of Transaction Targets. The valuation approaches and methods selected by the valuer and the reasons for their selection should be clearly disclosed in the valuation report. If the appraised value is different from the base value computed from the valuation method selected by the valuer, the report should include a reconciliation of such difference. If the valuer uses more than one valuation approach and method, the report should also include the valuer's process in analysing the values derived from different valuation approaches and methods and how they contribute to the final appraised value.

Key input and assumption:

- The issuer should explain, with detail and in specific terms, the key assumptions and valuation inputs.
- Where the market approach is used, the valuation report should contain sufficient information on the criteria used to select market comparables. For further details, please refer to paragraph 15 of GL116-23.
- Where income approach is used, the assumptions must be specific rather than general, and they should draw the shareholders' attention to, and where possible quantify, those uncertain factors which could materially disturb the ultimate achievement of the forecast. For further details, please refer to paragraphs 17 to 19 of GL116-23.
- Where cost approach is used, the report should contain:
 - o the quantitative inputs used to determine the gross current replacement or reproduction cost (i.e., costs that would be required to replace or reproduce the assets of equivalent utility, e.g.,

- material and labour costs, and other associated costs such as transportation and installation costs);
- the amount of depreciation adjustment made to the gross current replacement or reproduction cost to account for the physical and economic obsolescence and any technical deficiency; and
- the computation process for the final depreciated replacement or reproduction cost.
- Where asset-based approach is used, the valuation report sets out the appraised value for each asset and liability of the Transaction Target, their book values, and the differences between the two. It should also disclose the key quantitative inputs and assumptions used in the calculations of these appraised values and the computation process and, where applicable, it should provide separate valuation reports for these assets.
- ***Transactions in which no independent valuation is disclosed***

The issuer should provide an adequate explanation of the basis for determining the consideration by disclosing in the transaction announcement sufficient and objective information with quantitative inputs and analysis to substantiate how the consideration was arrived at.

For example, if the consideration is primarily based on historical performance and future prospects of the Transaction Target, it should provide adequate and relevant disclosure (both quantitative and qualitative) of the underlying performance that are key to the determination of the consideration (e.g., its revenue growth rate, gross profit/ EBITDA margin, sale volume, market share, and production capacity and efficiency).

Revised Guidance Letter on Long Suspension and Delisting (GL95-18)

- The revised guidance letter includes a new paragraph regarding extension of remedial period.
- The situations in which the Listing Committee may consider it appropriate to extend the remedial period are rare.
- Even if an issuer can demonstrate that its ability to remedy the issues causing the suspension and re-comply with the Listing Rules within the remedial period has been inhibited by factors outside its control, the Listing Committee is not obliged to consider such situation exceptional.
- The factors that the Listing Committee will consider include, among others:
 - whether the issuer has taken adequate action and acted promptly throughout the remedial period to take steps for achieving compliance with all the resumption conditions/guidance and the Listing Rules; and
 - whether there is sufficient certainty that the issuer will be able to comply with all the resumption conditions/guidance and the Listing Rules within the requested time extension.

For further details, please refer to [GL116-23](#) and revised [GL95-18](#).

3. Revised Guides by the Stock Exchange (September 2023)

- The Stock Exchange of Hong Kong Limited has updated the following guides:
 - [Guides on Practices and Procedures for Post-vetting Announcements of Listed Issuers](#)
 - [Guide on Interpretation of Listing Rules and Requests for Individual Guidance](#)
 - [Guide on Selection of Headlines and Title of Documents under Electronic Disclosure](#)
- [Guides on Practices and Procedures for Post-vetting Announcements of Listed Issuers](#)
 - Removed the Appendix on “Handling Matters involving Trading Arrangements for Listed Securities”
- [Guide on Interpretation of Listing Rules and Requests for Individual Guidance](#)
 - Removed the paragraph on “Disputes as to Interpretation”
- [Guide on Selection of Headlines and Title of Documents under Electronic Disclosure](#)
 - Announcements with headlines “Trading Halt” or “Suspension” submitted to the HKEX-EPS will not be published on the HKEXnews website under the straight-through mode. These announcements will be withheld and released manually after the trading halt or suspension is confirmed with the Listing Division.
 - The “Profit Warning” headline should be selected for announcements relating to profit warning as well as positive profit alerts.
 - For notices and results of general meetings, issuers are not required to select the headlines for the underlying matters or transactions subject to shareholders’ approval. For example, an issuer is not required to select the headline “Major Transaction” for its notice of general meeting to approve a major transaction.
 - The headlines under the “Other” category should be selected only if no alternative headlines are applicable to an issuer’s announcement.
 - Headlines can be amended via the “Correct Headline Categories of Published Document” function on the HKEX-EPS within five calendar days of publication of the relevant announcement.

For further details, please refer to the revised guides.

Other Reports/Newsletter by the Stock Exchange

Enforcement Bulletin (September 2023 Edition)

The Stock Exchange has published the [Enforcement Bulletin \(September 2023 Edition\)](#). This edition focuses on directors’ duties towards conflicts and it also offers practical steps and best practices on how conflicts can be managed. Please see below the key highlights:

Conflicts of Interest and Duty

- Directors must always put the interests of the company before their own. They cannot take advantage of their position.
- This duty is encompassed in the Listing Rules and applies to both executive and non-executive directors.
- Duty to avoid conflict has been given a very wide scope. The threshold is very low — action may be required even if there is only the potential for conflict, and even if the risk might seem indirect, low, or remote.
- Other directors who take a back seat or turn a blind eye to any potential conflict may find themselves in breach of their duties, even if the conflict does not directly relate to them.

Conflict scenarios

- Director making secret profit: Please refer to the case of [Agritrade Resources Limited](#).
- Competing business: Please refer to the case of [Agile Group Holdings Limited](#).
- Controlling shareholder's interest: Directors may have personal investment in the controlling shareholder. They always need to consider the interests of the company as a whole — this may not be the same as the interests of a substantial or controlling shareholder.
- Director serving two companies: If a director is faced with a situation involving a proposed transaction or business opportunity between the two companies, then care must be taken to manage the conflict of interest.

Conflict Management

The below sets out a few examples of good corporate governance practices in relation to conflicts. There is no “one size fits all” solution; directors should also keep in mind how they conduct themselves in discussions, meetings, and voting.

- **Declaration of interest**
 - Upon joining the board, each director should declare all interests, directorships, and offices held in other corporations, and family relationships relevant to the company or its business.
 - Update the declarations of any changes in a timely manner.
 - Keep written and up-to-date records of the declarations.
- **Policy and practices**
 - Set out the procedures and practices clearly in writing, including conflict management, anti-bribery and anti-corruption, and whistle-blowing.
 - Follow up on the implementation of the policies.
 - Facilitate easy access to the written policies.

- Regularly review the policies to ensure they are up-to-date and fit for purpose.
- Provide regular training.
- **Board meetings**
 - Declare conflict of interest or duty at the outset of the board meeting.
 - Determine, in the absence of the conflicted director, if a conflict exists and why.
 - Conflicted director must abstain from voting in the transaction for which the conflict is declared.
 - Record accurately in the meeting minutes the nature and extent of conflict and the decision made on the proposed transaction with sufficient details.
 - Put in place measures to manage the conflict and record them in writing.
- **Segregation of power**
 - Have different people carry out different roles to mitigate over-concentration of power and to provide checks and balances.
- **Professional advice**
 - Seek professional advice if necessary.

For further details, please refer to the [Enforcement Bulletin](#).

Forms by the Stock Exchange

Revised Forms (October 2023)

The Stock Exchange has revised Form [CI205M](#) (Placement Summary – Main Board) and [CI205G](#) (Placement Summary – GEM Board).

Disciplinary Actions by the Stock Exchange for Failure to Comply With the Disclosure Requirements

1. Stock Exchange's Disciplinary Action Against China Fortune Holdings Limited and Directors (October 2023)

Key points to note: The board of directors must ensure that effective reporting procedures and mechanisms are in place to enable them to properly oversee the activities of a listed issuer's subsidiaries. A robust internal control framework is also essential to ensure Listing Rule compliance. Following any breach of the Listing Rules, the directors must proactively take steps to investigate, remediate, and prevent further non-compliance.

The Stock Exchange:

- censured China Fortune Holdings Limited (stock code: 110) (the Company, together with its subsidiaries, the Group); Mr Lau Siu Ying, ED, Chairman and CEO of the Company (Mr Lau) and Mr Wang Yu, ED of the Company (Mr Wang);
- criticised Mr Bao Kang Rong, former non-executive director of the Company (Mr Bao); Dr Law Chun Kwan, independent non-executive director (INED) of the Company (Dr Law); Dr Lo Wai Shun, INED of the Company (Dr Lo); Mr Lam Man Kit, former INED of the Company (Mr Lam); and Mr Chang Wing Seng Victor, former INED of the Company; and
- imposed a director unsuitability statement against Mr Gao Fei, former executive director of the Company (Mr Gao).

Facts

Capital Subscription

Shanghai Yuanjia International Trade Co., Ltd. (Shanghai Yuanjia) was an indirect wholly-owned subsidiary of the Company. Between 2014 and 2016, Shanghai Yuanjia subscribed for capital in Beijing Feiying Changyou Technology Co., Ltd. (Beijing Feiying) which resulted in a holding of 20% of its registered capital. At the time, Mr Gao was not a director of the Company. However, given that he was a substantial shareholder of one of the Company's subsidiaries (thereby a connected person at the subsidiary level) and held 33.5% of Beijing Feiying's registered capital, Beijing Feiying was a connected person of the Company.

In 2018, Shanghai Yuanjia acquired additional capital in Beijing Feiying via a number of transactions (the Acquisitions) which resulted in Shanghai Yuanjia holding 33.5% of the registered capital of Beijing Feiying. The Acquisitions, on an aggregated basis, constituted a connected transaction and a very substantial acquisition, and the Company was required to comply with announcement, circular, and shareholders' approval requirements under the Listing Rules. The Company did not comply with the relevant requirements.

Mobile Phone Trading

Chongqing Yuanjia Communication Equipment Company Limited (CYC), an indirect non-wholly owned subsidiary of the Company which was established to engage in mobile phone trading business, entered into agreements for purchase of mobile phones from a connected person of the Company in May and June 2018. However, the Company did not announce the transactions in a timely manner (the announcement took place in July 2018) and a written warning was issued by the Division to the Company.

It was later revealed that between June and August 2018, CYC entered into three agreements for the sale of mobile phones to two companies which were wholly-owned by Mr Dai's mother and brother. These transactions also constituted connected transactions of the Company, but the Company did not comply with the applicable Listing Rule requirements.

Advance

Between 2018 and 2019, CYC advanced a total of around RMB5.4 million to a company wholly-owned by Mr Dai, and to Mr Dai's mother. The assets ratio of the Advance exceeded 8% and constituted an advance to an entity under Rule 13.13. The Advance also constituted a disclosable and connected transaction of the Company. However, the Company did not comply with announcement, reporting,

circular, and independent shareholders' approval requirements under the Listing Rules. The Advance was not announced by the Company until 11 December 2020.

Findings of Breach

The Listing Committee found as follows:

- The Company breached:
 - Rules 14.34, 14.38A, 14.48, 14.49, and 14A.35 in respect of the Acquisitions
 - Rules 14A.35, 14A.36, 14A.46, and 14A.49 in respect of the three agreements for the sale of mobile phones by CYC to connected persons
 - Rules 13.13, 14.34, 14A.35, 14A.36, and 14A.46 in respect of the Advance
- The relevant directors breached Rule 3.08 and their director's undertaking:
 - The directors did not take any meaningful steps to ensure there were procedures or mechanism for the reporting of material information about Shanghai Yuanjia and/or CYC to the Board.
 - They failed to ensure there was an appropriate system for checks and balances for the exercise of powers by the management of Shanghai Yuanjia and/or CYC.
 - The Company's procedures for procuring Listing Rule compliance in respect of notifiable and connected transactions were manifestly inadequate.
 - The written warning issued by the Division to the Company in October 2018 should have prompted a reasonable director to identify the inadequacies in the Company's relevant internal controls and take active remedial actions. However, Mr Lau, Mr Wang, Mr Bao, Dr Law, Dr Lo, and Mr Lam, being the directors at the time, failed to do so.
 - Mr Gao breached his Director's Undertaking to cooperate in the Stock Exchange's investigation.

Conclusion

The Listing Committee decided to impose the above sanctions.

It was further directed that:

- a compliance adviser should be appointed for a period of two years.
- the Company should review its internal controls for procuring compliance with the requirements for notifiable and connected transactions requirements under the Listing Rules.
- Mr Lau, Mr Wang, Dr Law, and Dr Lo must attend 24 hours of training on regulatory and legal topics and Listing Rule compliance.
- Mr Bao and Mr Lam must attend 24 hours, and Mr Chang must attend 18 hours, of training on regulatory and legal topics and Listing Rule compliance as a pre-requisite of any future appointment as director.

For further details, please refer to the [statement of disciplinary action](#).

2. Stock Exchange's Disciplinary Action Against C-Link Squared Limited and Two Former Directors (October 2023)

Key points to note: Proper disclosure is important to protect shareholders and the investing public, including from the types of IPO-related misconduct described in the joint statement published by the Stock Exchange and the SFC in May 2021.

The Stock Exchange censured C-Link Squared Limited (Stock Code: 01463) (the Company), Mr Ling Sheng Hwang, former Executive Director (ED) of the Company (Mr F Ling), and Mr Ling Sheng Chung, former ED of the Company (Mr W Ling).

Facts

The Company entered into service agreements on the day of, or very shortly after, listing.

Pursuant to these agreements, non-refundable payments of HK\$38.5 million were made to two service providers: (a) LV Capital Limited who would assist the Company as a consultant on matters relating to capital markets, accounting and finance, and post-listing obligations and requirements; and (b) IBC BECL International Capital Limited who would provide the Company with investor relations consultancy services, special road show investor relations consultancy services, market research consultancy services, and data centre consultancy services within a week of listing, which was equivalent to more than half of the Company's IPO proceeds from listing, but these transactions and payments were not disclosed at the time.

The payment of the fees to the service providers heavily contributed to a material shortfall in the Company's net profit and loss, when referenced to the Company's profit and cash flow forecast memorandum submitted at the time of listing.

Acceptance of Sanctions

The Company and the relevant directors have admitted their respective breaches and agreed with the Stock Exchange to accept the sanctions to be imposed on them by the Listing Committee.

Mr F Ling and Mr W Ling have undertaken:

- to resign from, and cease to hold, all directorships and senior management positions in the Company and its subsidiaries by no later than 28 days from the date of publication of the statement of disciplinary action; and
- not to take up any directorship or senior management positions in any listed issuer in Hong Kong in the future.

They had ceased directorship and senior management positions of the Company with effect from 1 May 2023 and they also resigned as directors from all of the Company's subsidiaries on 30 April 2023.

Findings of Breach

The Company breached:

- Rules 2.13(2) and 11.07 in respect of its failure to disclose the potential engagements of the service providers in the Company's profit memorandum and the Prospectus;
- Rule 3A.05 in respect of its failure to fully assist the sponsor to perform its due diligence work; and

- Rule 3A.23 in respect of its failure to consult its compliance adviser before making the advance payments to the service providers.

The relevant directors:

- Mr F Ling and Mr W Ling neither sought professional advice nor consulted the Company's compliance adviser about the Listing Rule implications of the service agreement.
- Mr F Ling and Mr W Ling failed to (a) apply sufficient care, skill, and diligence, and (b) use their best endeavours, to procure the Company's Listing Rule compliance and protect the Company's assets, in breach of Rule 3.08 and their Director's Undertakings.

Conclusion

The Listing Committee decided to impose the sanctions set out in the above.

For further details, please refer to the [statement of disciplinary action](#).

Disciplinary Actions by the Stock Exchange — Others

1. Stock Exchange's Disciplinary Action Against a Former Director of China Tian Yuan Healthcare Group Limited (October 2023)

Key points to note: Failure to cooperate in the Stock Exchange's investigation is a serious breach of the Listing Rules. A director's obligation to cooperate does not lapse after his or her resignation.

The Stock Exchange imposed a director unsuitability statement against Ms Zhang Xian (Ms Zhang), former chief executive officer and executive director of China Tian Yuan Healthcare Group Limited (Stock Code: 557) (the Company).

Facts

Ms Zhang was an executive director of the Company from 19 August 2016 to 19 January 2022. She provided to the Stock Exchange a Declaration and Undertaking with regard to the Directors (the Undertaking) in the form set out in Appendix 5B to the Listing Rules. The Division has conducted an investigation into, among other things, whether Ms Zhang had discharged her duties and obligations under the Listing Rules. An investigation letter and a reminder letter was sent to Ms Zhang, but the Division received no response from her.

Findings of Breach

Ms Zhang breached her Undertaking by failing to cooperate with the Division in the investigation, which constituted a breach of the Listing Rules. Her obligation to provide information reasonably requested by the Stock Exchange did not lapse after she ceased to be a director of the Company. Ms Zhang's breach of her Undertaking was serious and her conduct represented a serious and/or repeated failure to discharge her responsibilities under the Listing Rules.

Conclusion

The Listing Committee decided to impose the sanctions set out in the above.

For further details, please refer to the [statement of disciplinary action](#).

2. Stock Exchange's Disciplinary Action Against Two Former Directors of Hope Life International Holdings Limited (September 2023)

Key points to note: Directors must act with appropriate diligence and safeguard the assets of issuers. Particular care must be taken when entering into a new business. As a minimum, there must be sufficient due diligence, and the board should conduct a commercial and risk assessment. The board must also be kept appropriately informed and involved in the decision-making process.

The Stock Exchange imposed a director unsuitability statement against Ms Shen Jie, former Chairman and executive director (ED) of Hope Life International Holdings Limited (the Company) (Ms Shen) and a prejudice to investors' interests statement against Mr Ren Hui Yong, former Chairman and ED of the Company (Mr Ren).

The Director Unsuitability Statement is a statement that, in the Stock Exchange's opinion, Ms Shen is unsuitable to occupy a position as director or within senior management of the Company or any of its subsidiaries. The Prejudice to Investors' Interests Statements is a statement that, in the Stock Exchange's opinion, had Mr Ren remained on the board of directors of the Company (the Board), his retention of office would have been prejudicial to the interests of investors.

Facts

This case concerned a loss of over US\$1 million for the Company as a result of a series of sale and purchase transactions pursuant to a joint venture arrangement.

In January 2020, a new acquaintance of Ms Shen (Xu) proposed a business opportunity in respect of electronic products trading. The business contemplated under the joint venture was for the Subsidiary to buy electronic parts from certain suppliers, and then sell them with a small margin to certain buyers.

Although the counterparties were previously unknown to Ms Shen or the Company, and electronic products trading would be a new business for the Company, Ms Shen:

- undertook no or very limited due diligence in respect of the proposed joint venture business;
- did not conduct any commercial or risk assessment; and
- did not inform or consult any other members of the Board.

Ms Shen nevertheless agreed on behalf of the Company to enter into the joint venture with Xu and Xu's company.

It was later discovered that Xu had misappropriated these payments. It appeared that no electronic products were ever delivered. Despite the Division's investigation letters and reminders, Ms Shen did not respond to the Stock Exchange's investigation. Mr Ren responded only after disciplinary action had been commenced against him.

Findings of Breach

The Listing Committee found as follows:

- Ms Shen breached Rule 3.08:

- Ms Shen was the director in charge of and responsible for all transactions relating to the joint venture. She was expected to have conducted proper due diligence and assessments before causing the Group to enter into the joint venture and the relevant transactions.
- Ms Shen was expected to have properly assessed the risk and benefits of the transactions, and considered how to mitigate the risks involved in the transactions.
- The transactions were not approved by the Board, and Ms Shen did not discuss any of the transactions with the other directors at the material time.
- Ms Shen and Mr Ren breached the Declaration and Undertaking with regard to Directors in the form of Appendix 5B to the Listing Rules to cooperate with the Division’s investigation.
- Ms Shen failed to respond to the Division’s enquiries at all. Mr Ren responded only after disciplinary action had been commenced against him.

Conclusion

The Listing Committee decided to impose the sanctions set out in the above.

For further details, please refer to the [statement of disciplinary action](#).

Takeover Matters

1. Consultation Conclusions on Proposed Amendments to the Codes on Takeovers and Mergers and Share Buy-Backs (September 2023)

The SFC has published the [consultation conclusions](#) on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs (the Consultation Conclusions). The SFC has adopted all of the proposed amendments discussed in the [consultation paper](#), some with slight modifications. All the amendments became effective on **29 September 2023**. If this timeline may lead to difficulties (e.g., in the case of transactions in progress that have already been announced), the Executive should be consulted.

Please see below the slight modification to the original proposals as set out in the Consultation Paper:

- Clarified that the four-month period under Rule 15.5 (Final day rule) should start from the date of the initial offer document, which is consistent with the spirit of Rule 2.11.
- Regarding no deduction of dividends from offer price, Note 11 to Rule 23.1 has been further amended to clarify the situation in which a dividend may be distributed during the course of an offer. Where an offeror has made a no increase statement to which Rule 18.3 applies and a dividend is subsequently paid or becomes payable by the offeree company to offeree company shareholders, the offeror must reduce the offer consideration by an amount equal to that dividend so that the overall value receivable by the offeree company shareholders remains the same, unless the offeror has stated that offeree company shareholders will be entitled to receive all or part of a specified dividend (or other distribution) in addition to the offer consideration.
- Proposed wording of the new Rule 28.10 has been modified and refers to “comparable” offers rather than “appropriate” offers to clarify that an offer for convertibles only have to be made for the same percentage as the partial offer for shares.

- Clarification in the Notes to definition of on-market share buy-back that the appointment of a broker to effect a share buy-back is not by itself considered as direct or indirect involvement by the company or its directors in soliciting, selecting, or identifying sellers.
- Explicitly stating in Rule 4 (No frustrating action) the procedures to follow if offeror's consent has been obtained, such consent should be disclosed in an announcement. If no announcement is or will be made, the consent should be lodged with the Executive.

For further details, please refer to the [Consultation Conclusions](#).

SFC Newsletter and Others

1. SFC Consultation Paper on Proposed Code and Guidelines for Implementing an Uncertificated Securities Market in Hong Kong (October 2023)

The SFC has published a [consultation paper](#) on proposed code and guidelines for implementing an uncertificated securities market in Hong Kong (the Consultation Paper) to seek market's views on the following related proposals:

- proposed amendments to the SFC's existing *Code of Conduct for Share Registrars*, which is also proposed to be renamed the *Code of Conduct for Approved Securities Registrars*;
- proposed amendments to the SFC's existing *Guidelines for Electronic Public Offerings*, which are also proposed to be renamed *Guidelines for Electronic Public Offers*; and
- further amendments to the Stamp Duty Ordinance (Cap 117) (SDO).

Please see below the summary of the key proposals.

Proposed Code of Conduct for Approved Securities Registrars

- Currently, share registrars are not required to be approved or licensed by the SFC.
- Under the uncertificated securities market (USM) environment, share registrars' systems and facilities will take on a more significant role. Accordingly, they will be regulated directly and more robustly than today, and as "approved securities registrars" (ASRs).
- The regulations of share registrars will be largely set out in:
 - a new Part IIIAA of the SFO, which will (among other things) require share registrars to be approved by the SFC as ASRs;
 - the Securities and Futures (Approved Securities Registrars) Rules (the ASR Rules), which will set out various regulatory requirements and obligations applicable to ASRs; and
 - the Code of Conduct for Approved Securities Registrars (marked up to show changes from the existing Code of conduct for Share Registrars, as set out in Annex 1 to the Consultation Paper).
- Three new general principles would be added to the Code of Conduct for Share Registrars:
 - Outsourcing of ASR functions to a service provider

- Standards expected of ASRs' computer systems and facilities
- Information to be disclosed to issuer-clients and registered holders
- Other amendments are proposed to be made to GP1 (honesty and fairness), GP2 (diligence), GP3 (capabilities), GP7 (conflicts of interest), GP9 (compliance), and GP10 (responsibilities of senior management).

Proposed Guidelines for Electronic Public Offerings

The amendments to Guidelines for Electronic Public Offerings are proposed to cater for the following:

- Change in market price: Update provisions that describe current ePO process
- Regulation of ASRs:
 - Currently, share registrars who wish to provide services in relation to ePO services must work with a Type 1 intermediary due to the existing scope of “dealing in securities” in Schedule 5 to the SFO.
 - Under the proposed ASR Rules, the provision of ePO services by ASRs will come within the scope of “securities registrar services” and be regulated as such. The definition of “dealing in securities” in Schedule 5 to the SFO is also proposed to be amended to exclude ePO services provided by ASRs. As a result, ASRs will no longer have to work with a Type 1 intermediary when providing ePO services.
- Revised scope: The existing Guidelines cover ePO services in respect of all securities. However, the regulation of ASRs under the proposed ASR Rules will be in respect of prescribed securities only. To align with the rules, the SFC proposed to amend the Guidelines for Electronic Public Offers so that they deal essentially with ePOs of prescribed securities only.

Proposed Amendment to Stamp Duty Ordinance

- Under the USM environment, it will be necessary to enable an alternative, wholly electronic process for stamping and collecting stamp duty payable on contract notes.
- ASRs will leverage on the existing e-stamping arrangements under Part IIA of the SDO, which entails ASRs facilitating the stamping and stamp duty collection process by simply acting as applicants under Part IIA.
- SFC will work with Department of Justice as to the amendments to the SDO.

Deadline for submitting responses to the Consultation Paper is 15 December 2023. For further details, please refer to the [Consultation Paper](#).

2. Takeovers Bulletin – Issue No. 66 (September 2023)

The SFC published the latest edition of the [Takeovers Bulletin – Issue No. 66](#). Please see below a summary of the key points highlighted:

- Consultation conclusions on proposed amendments to the Codes on Takeovers and Mergers and Share Buy-backs

- Calculation of acceptances under Rules 2.2 and 2.11:
 - Under Rules 2.2 and 2.11, an offeror must receive 90% acceptances of the disinterested shares before it can exercise compulsory acquisition rights or delist a company (where compulsory acquisition is not available).
 - The consultation conclusions clarify that both shares acquired by an offeror and its concert parties from the date of the Rule 3.5 announcement as well as acceptances under an offer would count towards the 90% threshold.
 - In a mandatory general offer triggered by a share acquisition, shares that are acquired by an offeror under a share purchase agreement **would not be** treated as disinterested shares for the purpose of calculating 90% acceptances under Rules 2.2 and 2.11. This is because shares acquired under the share purchase agreement would not form part of the shares subject to the general offer.

For further details, please refer to the [Takeovers Bulletin – Issue No. 66](#).

Companies Registry’s Notices

1. Phase 2 of Unique Business Identifier and Revised Forms (September and October 2023)

Phase 2 of Unique Business Identifier (i.e., a number to uniquely identify legal entities, which is the first eight digits of the Business Registration Certificate number) will be implemented simultaneously with the launch of the Companies Registry’s revamped Integrated Companies Registry Information System (Revamped ICRIS) on **27 December 2023** (the Implementation Date) to cover:

- companies incorporated or registered under the Companies Ordinance (Chapter 622);
- open-ended fund companies incorporated or registered under Part IVA of the Securities and Futures Ordinance (Chapter 571);
- limited partnerships registered under the Limited Partnerships Ordinance (Chapter 37);
- registered trustees corporations incorporated under the Registered Trustees Incorporation Ordinance (Chapter 306); and
- other entities formed or registered under various Ordinances administered by the Registrar.

Key features of Phase 2 include:

- **Business Registration Number** (the BRN) will be **adopted as the “No.”** on the “Certificate of Incorporation”, “Certificate of Registration”, or “Certificate of Change of Name” issued by the Companies Registry.
- **BRN**, instead of the existing company registration number (CR No.), will have to be quoted on specified forms and documents delivered to the Companies Registry.

- **BRN** will be the **key number for searching** and identifying a company or entity under different services of the Companies Registry.

In light of this, the Companies Registry has revised 117 specified forms for use starting from the Implementation Date (please refer to the Annex of the [Companies Registry External Circular No. 2/2023](#) for the list of revised specified forms). The major changes made to these forms are the replacement of “Company Number” as it will cease to be used.

All the revised forms should be used with effect from the Implementation Date. However, as a transitional arrangement, the Companies Registry will continue to accept existing forms specified under the Companies Ordinance (Cap. 622) and the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) for a period of **six months from the Implementation Date**, subject to the following exception:

- Existing forms which will **not** be accepted after four weeks from the Implementation Date (i.e., **from 25 January 2024** onwards):
 - Form NNC1 — Incorporation Form (Company Limited by Shares)
 - Form NNC1G — Incorporation Form (Company Not Limited by Shares)
 - Form NNC5 — Application for Registration of Eligible Company
 - Form NN1 — Application for Registration as Registered Non-Hong Kong Company

Please note that no transitional arrangement will be provided for revised forms under the Securities and Futures Ordinance (Cap. 571) and the Securities and Futures (Open-ended Fund Companies) Rules (Cap 571AQ).

For further details, please refer to the [Companies Registry External Circular No. 2/2023](#) and [Companies Registry External Circular No. 3/2023](#).

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