

Hong Kong Corporate Insights

August 2020



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Equity Capital Markets

Publication of updated Guidance Letter (HKEX-GL53-13) on liquidity arrangements for issuers seeking to list by introduction

On 28 Aug 2020, the Stock Exchange of Hong Kong Limited (SEHK) published a revised guidance letter (HKEX-GL53-13) (Updated Guidance Letter) on liquidity arrangements for issuers seeking to list by introduction where the securities to be listed are already listed on another stock exchange.

The Updated Guidance Letter seeks to ensure that the issuer's securities in Hong Kong will not be illiquid after listing on the SEHK. The SEHK emphasizes that if there are no adequate and effective liquidity arrangements, listing applicants would need to reconsider whether listing by way of introduction is appropriate. The SEHK assesses the effectiveness of the liquidity arrangements by assessing the liquidity of that listing applicant's securities in the overseas market, as well as other quantitative and qualitative factors. An issuer whose securities are not actively traded in the overseas market would not usually be regarded as appropriate to list by way of introduction.

Key updates include: (i) longer Designated Period where there are concerns that there might not be sufficient shareholders in the Hong Kong market; (ii) submission of the designated securities dealers' (Designated Dealers) specific obligations to the SEHK for review prior to their appointment; and (iii) more detailed responsibilities of the Designated Dealer.

Click [here](#) to view GL53-13.

(HKEx, 28 August 2020)

Publication of a new Guidance Letter (HKEX-GL-108-20) on experience and

qualification requirements of a company secretary

On 28 August 2020, SEHK published a new Guidance Letter (HKEX-GL108-20) on experience and qualification requirements of a company secretary. The SEHK aims to provide clarifications and guidance on the policy rationale of Main Board Listing Rule 3.28 (GEM Listing Rule 5.14), and factors the SEHK considers when granting a waiver to this rule, and the related conditions.

Click [here](#) to view the full article and [here](#) to view GL108-20.

(HKEx, 28 August 2020)

SEHK publishes consultation conclusions on codification of general waivers and principles relating to IPOs and listed issuers, and minor Listing Rule amendments

On 28 August 2020, SEHK published conclusions to its consultations on the codification of general waivers and principles relating to initial public offerings (IPOs) and listed issuers, and minor rule amendments. The SEHK will modify the consultation proposals to reflect responses received. The changes will be effective on 1 October 2020.

Key changes to the relevant Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules) include:

(a) Codification of a number of waivers that are previously approved by the Securities and Futures Commission (SFC) relating to:

- (i) Publication and distribution of annual results and reports.
- (ii) Shareholder approval requirement for bonus or capitalization issues by

People's Republic of China (PRC) incorporated issuers.

(iii) Calculation of the consideration ratio for PRC incorporated issuers dually listed on the SEHK and a PRC exchange.

(iv) Inclusion of stock code in documents.

(b) Codification of general principles underpinning some waivers which have been granted to new applicants and/or listed issuers relating to financial disclosure matters, acquisition of aircrafts by airline operators, incentive schemes, and working capital statement in listing documents and transaction circulars of Main Board issuers that are banking companies or insurance companies.

(c) Minor amendments to the Listing Rules in order to provide greater clarity to the Listing Rules and to codify some administrative guidance provided in guidance letters or listing decisions.

Click [here](#) to view the full article and [here](#) to view the consultation conclusions.

Click [here](#) to view the amendments to the Main Board Listing Rules.

Click [here](#) to view the amendments to the GEM Board Listing Rules.

(HKEx, 28 August 2020)

SEHK publishes consultation conclusions and guidance on disclosures in listing documents and continuing obligations under Chapter 37 Listing Rules

On 21 August 2020, the SEHK published conclusions to its consultations on the proposal to review and enhance its listing regime for debt issues to professional

investors only (Professional Debt Regime). The enhancements aim to balance the need to safeguard investors while maintaining an effective and appropriate listing platform for the continued development of the bond market in Hong Kong. SEHK received strong support and will implement the proposal with modifications.

Key changes to the relevant Listing Rules include: (i) raising the existing issuer's minimum net assets requirement from HK\$100 million to HK\$1 billion; (ii) introducing a minimum issuance size of HK\$100 million; (iii) requiring issuers to state explicitly in the listing document the intended investor market in Hong Kong are professional investors only; (iv) requiring publication of listing documents on SEHK's website on the listing date; and (v) introducing other Listing Rules amendments to enhance the regulatory oversight over issuers and guarantors in terms of their continuing obligations. The changes will be effective on 1 November 2020.

SEHK also published the "Guidance on Disclosures in Listing Documents and Continuing Obligations under Chapter 37 – Debt issues to Professional Investors Only" ("Guidance"). The Guidance seeks to promote disclosure quality and consistency in the market, and acts as a reminder to issuers of their continuing obligations under the Professional Debt Regime.

The Guidance is nonexhaustive and nonprescriptive as to the level and types of disclosures to be included in a listing document. It consists of (i) general guidance on disclosure that issuers should consider when preparing listing documents; (ii) specific guidance on disclosure in relation to particular types of debt securities with specific features; and (iii) general guidance in relation to the continuing obligations under the Professional Debt Regime.

Click [here](#) to view the full article and [here](#) to view the consultation conclusions.

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

(HKEx, 21 August 2020)

The Listing Committee of SEHK (Listing Committee) censures Zhongtian International Limited (Stock Code: 2379) and a number of its former and current directors for breaches

The Listing Committee conducted a hearing on 17 June 2020 into the conduct of Zhongtian International Limited (Zhongtian), Mr Chen De Zhao (Mr. Chen DZ), its former executive director and chairman, Mr. Chen Jun (Mr. Chen J), its executive director, and three other former and current directors (collectively as Relevant Directors). They were found to have breached the Listing Rules, and failed to implement and maintain effective internal controls.

This case involved Zhongtian's subsidiary (Subsidiary), in June 2017, entering into a framework agreement to supply construction materials and equipment to Qingdao Ruiding Energy Co. Ltd (Ruiding) for an energy project. The Subsidiary subsequently obtained a loan of RMB600 million from a trust scheme and pledged a piece of land as security. In July 2017, the Subsidiary entered into an agreement (Agreement) under which the Subsidiary would provide RMB600 million to a third party supplier (Supplier); and the Supplier would deliver construction materials and equipment directly to Ruiding. Ruiding would repay RMB600 million with interest to the Subsidiary in return. The Agreement was approved by Mr. Chen DZ and executed by his son Mr. Chen J for and on behalf of the Subsidiary, to the exclusion of the entire remaining board of directors (Board) of Zhongtian.

The Agreement was a major transaction under Chapter 14 Listing Rules, which required announcement and shareholder approval. Zhongtian breached the Listing Rules by failing to announce the Agreement as soon as reasonably practicable (it only did so in March 2018), and failed to issue a circular and obtain shareholder approval in respect of the Agreement.

Further, Zhongtian was found to have inadequate internal controls on compliance with Listing Rule 13.13 and Chapter 14, which contributed to Zhongtian's breaches. For example, it had no clear and well established system in place to govern, monitor, and identify the types and sizes of transaction which would require board approval. The Listing Committee concluded that, by failing to ensure effective internal control system on compliance with the Listing Rules, the Relevant Directors have breached their duties under Listing Rule 3.08(f) and their undertakings to comply with the Listing Rules to the best of their ability and use their best endeavors to procure Zhongtian's compliance (Best Ability Undertaking).

In particular, the Listing Committee found that Mr. Chen DZ breached his duties under Listing Rule 3.08 by failing to (i) procure Zhongtian to conduct adequate due diligence on Ruiding and the Supplier; (ii) evaluate the financial and technical capabilities of Ruiding and the Supplier, and assess and address the risks to Zhongtian and its subsidiaries (collectively as Group); (iii) raise conflict issue with other directors and declaring his interest therein; (iv) procure Zhongtian to obtain professional advice on Listing Rules implications as this was the first time it entered into a transaction of such nature; (v) raise Listing Rules implications of the Agreement for other director's consideration and discussion; and (vi) procure the Group to obtain adequate security from Ruiding for repayment. In December 2019, Mr. Chen DZ

resigned as director and all other positions in Zhongtian.

Mr Chen J was found to have also breached Listing Rule 3.08 and the Best Ability Undertaking. He failed to raise the matter with the Board of Zhongtian and procure Zhongtian to seek professional advice on the Listing Rules implications of the Agreement. Additionally, there was a conflict of interest issue due to his capacity as Zhongtian's controlling shareholder and as sole director and legal representative of Ruiding.

The Listing Committee therefore sanctioned Zhongtian and the Relevant Directors by means of censure, and made a statement that had Mr. Chen DZ remained on the Board of Zhongtian, his retention of office would have been prejudicial to the interests of investors. The Listing Committee further directed Zhongtian to (i) retain an independent professional adviser to review its internal controls and implement the adviser's recommendations; and (ii) appoint an independent compliance adviser on an ongoing basis for consultation on Listing Rules compliance for two years. The Listing Committee also directed some of the Relevant Directors to attend training on Listing Rules compliance and director's duties.

Click [here](#) to view the full article.

(HKEx, 11 August 2020)

SEHK publishes consultation paper on review of disciplinary powers and sanctions

On 7 August 2020, SEHK published a consultation paper seeking comments on proposed changes regarding its disciplinary regime. The proposals focus on strengthening SEHK's powers to hold accountable, and impose appropriate sanctions on, individuals responsible for misconduct and breaches of the Listing Rules, including members of senior

management who are not directors, who cause or knowingly participate in contravention of the Listing Rules.

SEHK's proposals include: (i) lowering existing thresholds for public statements regarding individuals; (ii) enhancing follow-on actions in relation to public statements regarding individuals; (iii) removing existing thresholds for denying the facilities of the market to listed issuers; (iv) introducing director unsuitability statements against individuals; (v) enhancing disclosure requirements for directors and senior management members subject to public sanctions; (vi) introducing secondary liability for Listing Rules breaches; and (vii) expanding the disciplinary regime to new parties such as guarantors of structured products and parties who enter into an agreement or undertaking with SEHK.

Such changes are proposed to ensure that the disciplinary regime remains effective, promotes market quality, and aligns with stakeholder expectations and internal best practice. SEHK aims to have a broad spectrum of disciplinary sanctions available to protect the integrity of Hong Kong's markets and the investing public, as well as to promote corporate governance and deter misconduct. The public comment period ends on 9 October 2020.

Click [here](#) to view the full article and [here](#) to view the consultation paper.

(HKEx, 7 August 2020)

Financial Services Regulation

A new regime for Limited Partnership Funds (LPF) commences operation

The Companies Registry (Hong Kong) (CR) announced that the new regime for LPF commenced on 31 August 2020. The new LPF regime enables private funds to be registered in the form of limited partnerships in Hong Kong.

Click [here](#) to view the CR news and [here](#) to view the CR circular regarding the introduction of LPF. Click [here](#) to read the Hogan Lovells client alert on the topic of Limited Partnership Funds.

(CR, 31 August 2020)

Supervisory Policy Manual (SPM): LM-1 "Regulatory Framework for Supervision of Liquidity Risk"

The Hong Kong Monetary Authority (HKMA) issued by notice in the Gazette on 28 August 2020 a revised version of the SPM module LM-1 "Regulatory Framework for Supervision of Liquidity Risk" as a statutory guideline under section 7(3) of the Banking Ordinance (Cap.155).

The revised SPM module has incorporated the HKMA's regulatory requirements consequential to the commencement of the Banking (Liquidity) (Amendment) Rules 2019, and reflected the latest development in the Basel III liquidity standards.

Click [here](#) to view the HKMA circular and [here](#) to view the revised SPM module.

(HKMA, 28 August 2020)

Hong Kong-Mainland ETF cross-listing approved

The SFC authorized two exchange-traded funds (ETFs) to be listed on the SEHK under a scheme which will facilitate cross-listing of

ETFs between markets in Hong Kong and the Mainland.

The two ETFs will each invest in an ETF that is approved by the China Securities Regulatory Commission and currently listed on the Shenzhen Stock Exchange.

Click [here](#) to view the SFC news.

(SFC, 28 August 2020)

Interpretation Notes relating to the Guideline on Financial Needs Analysis (FNA)

The Insurance Authority (IA) issued the Interpretation Notes relating to the Guideline on FNA (GL30).

The IA clarified and explained various issues relating to the FNA, some of which are as follows:

- Only refundable insurance policies not having a substantial savings component are exempted from the FNA requirements.
- Authorized insurers are responsible for ensuring that a proper and complete FNA has been conducted and that they should not solely rely on the declaration of compliance from a licensed insurance broker.
- The mere passing on of fund-related information issued by fund managers does not constitute professional advice.
- The FNA template attached to GL30 on FNA can be modified where appropriate for the purposes of proper assessment of the customer's particular circumstances, provided that such modification complies with the requirements set out in paragraph 6.5 of GL30.

Click [here](#) to view the IA circular and [here](#) to view the Interpretation Notes.

(IA, 28 August 2020)

Interpretation Notes relating to the Guideline on Benefit Illustrations for Long Term Insurance Policies

The IA issued the Interpretation Notes relating to the Guideline on Benefit Illustrations for Long Term Insurance Policies (GL28).

The IA clarified various parts of GL28, including its scope and application, the signature requirements, as well as rules in regards to policy loans, customization, documentation, and transitional arrangement. The IA also clarified relevant requirements and rules for the various benefit illustration documents for Investment-Linked Assurance Scheme Policies, Participating Policies, Universal Life (Non-Linked) Policies and Non-Participating Policies.

Click [here](#) to view the IA circular and [here](#) to view the Interpretation Notes.

(IA, 20 August 2020)

SFC issues quarterly report

The SFC published its latest Quarterly Report which summarizes key developments from April to June 2020.

To ensure that Hong Kong's international financial markets function efficiently during the COVID-19 outbreak, the SFC stepped up its supervisory work and stress tests and allowed a measure of flexibility for some regulatory requirements. It also issued a joint statement with SEHK to provide guidance to listed companies on holding general meetings for shareholders when social distancing requirements are in effect.

During the quarter, the SFC consulted on changes to the Code on Real Estate Investment Trusts (REITs) to give Hong Kong REITs more flexibility in making investments. It concluded consultations on a proposed operational model for a paperless securities market and on enhancements to the over-the-counter derivatives licensing regime. Reports on the SFC's annual review of the performance of SEHK and its expected regulatory standards for brokers offering leveraged foreign exchange trading were also published during the quarter.

Hong Kong's Green and Sustainable Finance Cross-Agency Steering Group, co-chaired by the SFC and HKMA, was established in May to coordinate the management of climate and environmental risks to the financial sector.

Click [here](#) to view the SFC news and [here](#) to view the Quarterly report.

(SFC, 20 August 2020)

Prudential measures for mortgage loans on non-residential properties

As a result of the COVID-19 pandemic, Hong Kong's real gross domestic product (GDP) has declined. Both private consumption expenditure and investment spending have shrunk markedly.

In view of these developments, the HKMA adjusted the countercyclical macroprudential measures for mortgage loans on nonresidential properties. The applicable loan-to-value ratio caps under different scenarios for nonresidential properties are thereby adjusted upward by 10 percentage points.

The above measure has taken effect from 20 August 2020 and applies to transactions where the provisional sale and purchase agreement is signed on or after that date. There are no changes to the other countercyclical macroprudential measures

including those relating to residential properties.

Click [here](#) to view the HKMA circular.

(HKMA, 19 August 2020)

IA consults on the proposed Insurance (Group Capital) Rules (Group Capital Rules)

The IA on 19 August 2020 launched a six-week public consultation on the draft Insurance (Group Capital) Rules (Group Capital Rules) to tie in with the implementation of the new supervisory framework for multinational insurance groups (GWS framework) tentatively in the first quarter of 2021. The public comment period will end on 30 September 2020.

The main objective of the proposed Group Capital Rules is to set out the requirements in relation to capital, regulatory reporting, and public disclosure that apply to an insurance holding company in relation to its insurance group. The Group Capital Rules will apply to insurance holding companies which are designated by the IA as being subject to the GWS framework.

Click [here](#) to view the IA press release and [here](#) to view the consultation paper.

(IA, 19 August 2020)

Proposed technical adjustments to risk-based capital framework for long term business in Hong Kong

In response to the IA's efforts in introducing a risk-based capital regime, the Actuarial Society of Hong Kong (ASHK) and life insurance members of the Hong Kong Federation of Insurers submitted a proposal to the IA outlining proposed technical adjustments, such as improvements to the "Matching Adjustment" for valuation of long term liabilities and proposals for aligning

certain technical definitions with the global insurance capital standards. The ASHK believes that the proposals will make the Hong Kong insurance industry more competitive and will promote adequately, but not overly priced long term insurance for the benefit of the Hong Kong public.

Click [here](#) to view the ASHK letter to IA and [here](#) to view the proposed technical adjustments.

(ASHK, 7 August 2020)

Repayment of trade facilities deferred by the banking sector for another 90-day period

The HKMA and the Banking Sector SME Lending Coordination Mechanism (Mechanism) announced a further 90-day repayment deferment for trade facilities under the Pre-approved Principal Payment Holiday Scheme (Scheme). The HKMA has written to all authorized institutions (AIs) requesting them to implement the new arrangement.

The HKMA and the Mechanism noted that trade facilities which were granted a 90-day extension earlier in May this year will start to fall due beginning in August. Given the still fluctuating pandemic situation around the globe, the Mechanism has agreed to allow corporate customers, who still face cash-flow pressure, to further extend their trade facilities.

In addition, the Mechanism agreed that eligible corporate customers can apply for a 90-day extension of trade facilities drawn down between May and July. For facilities which are self-liquidating in nature, AIs may require the loan to be settled when the underlying payment has been received by the customer.

Click [here](#) to view the HKMA press release.

(HKMA, 5 August 2020)

Data Protection

Privacy Commissioner responds to personal data privacy concerns of the Universal Community Testing Programme

In relation to personal data privacy concerns of the Universal Community Testing Programme (Programme) launched by the Hong Kong government (Government), after reviewing available information relating to the Programme, the Privacy Commissioner for Personal Data (PCPD) responded as follows:

- The collection of personal data in the Programme (including names, Hong Kong Identity Card (HKID) numbers, birth registration numbers, and local mobile phone numbers), for administration and notification purposes, is necessary but not excessive. Such collection is in line with principles of personal data minimization and is proportionate with the purpose.
- The use of the personal data is subject to the consent of the participants and is consistent with the principles of purpose specification and use limitation.
- The Programme aims to conduct COVID-19 test on the participants. There is no information showing the test involves analysis of participants' DNA information. The Government has also stated that test kits cannot be used for DNA identification or sequencing and no DNA information of the participants is collected during the testing process.
- The Government has stated that the personal data collected will be encrypted and stored in the servers of the Government Data Centre. The personal data will be handled on a "need-to-know" basis and is in line

with the principles of protecting data security.

- The Government has also stated that no personal data will be transferred outside of Hong Kong. After examining information relating to the Programme, the PCPD notes that there is no information suggesting otherwise.
- While there is no requirement under the Personal Data (Privacy) Ordinance (PDPO) to specify maximum retention periods, the PCPD is pleased to note the Government has stated that all personal data collected (including specimens and test results) will be erased within one month after completion of the Programme.

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

(PCPD, 28 August 2020)

Privacy Commissioner releases inspection report (Inspection Report) on personal data systems in the food and beverage industry

The office of the PCPD released an inspection report about employment-related personal data systems of sizeable companies in the food and beverage industry (Data Users). The PCPD was overall pleased with the Data Users' compliance with the requirements of the Code of Practice on Human Resources Management (Code), no material deficiencies were found but some areas of improvement were identified by the PCPD.

The report revealed that Data Users demonstrated compliance with the Code. Some notable good practices include notifying job applicants of the data retention periods, providing sample questions to interviewers to avoid collecting excessive personal data, not storing unsuccessful job

applicants' personal data and having sufficient security measures in place to protect employment-related data.

Some recommendations were made by the PCPD, including (i) ceasing the practice of collecting HKID numbers in the job application process; (ii) ensuring HKID copies of employees collected were marked with the word "COPY" across the entire image; (iii) conducting timely erasure of job applicant's personal data collected through instant messaging applications; and (iv) conducting regular data protection trainings for all employees and regularly updating related training materials.

The inspection was carried out pursuant to section 36 of the PDPO on employers in the food and beverage industry in Hong Kong, an industry which accounts for more than 220,000 persons employed in the region. The office of the PCPD conducted various review works, including mystery visits, policy reviews, site inspections, walkthrough demonstrations, interviews, and questionnaires.

Commenting on the Inspection Report, the acting Privacy Commissioner for Personal Data Mr. Tony Lam, stresses that the recommendations made were applicable for the food and beverage industry as well as employers in other industries, in assisting them to better manage personal data privacy of prospective, current, and former employees.

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

(PCPD, 26 August 2020)

The Privacy Commission responds to the U.S. government's disclosure of personal data of Hong Kong SAR officials

In relation to the announcement dated 7 August 2020 by the U.S. Department of the Treasury in the Federal Register, pursuant to U.S. President's Executive Order No. 13936, in which certain personal data of Hong Kong Special Administrative Region (SAR) officials and other individuals were disclosed, the PCPD responded as follows:

- The announcement, made in the Federal Register, is akin to the Gazette of the Hong Kong SAR government. It is different from postings found generally on a social media website. As such, there is no question of a third party requesting removal of its content.
- The PDPO only regulates the control of personal data in or from Hong Kong, and there are no express provisions vesting the PCPD with extra-territorial powers under the PDPO.
- Although the PDPO does not have jurisdiction over the collection or use (including the disclosure and transfer) of personal data outside of Hong Kong, data protection authorities in many jurisdictions have been advocating practicing data ethics to address this inadequacy in order to meet the expectations of stakeholders, particularly the expectations of data subjects.
- The disclosure of data of the persons concerned by the U.S. Department of Treasury is excessive and unnecessary. This amounts to doxxing and could cause serious nuisance to the data subjects. This is diametrically opposite to the expectations on data ethics.

The PCPD states that it will write to the U.S. Consulate General Hong Kong, the U.S. Department of the Treasury and the Federal

Trade Commission to express the PCPD's disappointment over the matter.

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

(PCPD, 8 August 2020)

Hong Kong and United Kingdom regulatory authorities sign a memorandum of understanding in protecting personal data

Hong Kong's PCPD, Mr Stephen Kai-yi Wong and the United Kingdom's Information Commissioner Ms Elizabeth Denham CBE (ICO) signed a memorandum of understanding (MOU), over a virtual signing ceremony, on 29 July 2020.

The MOU forms the legal basis for which the PCPD and the ICO will foster closer collaboration and sets out the commitment from both sides in promoting exchanges in personal data protection. Under the MOU, the PCPD and the ICO will collaborate in a range of projects, including the sharing of experience and exchanges of best practices on data protection, co-operating in providing regulatory guidance, implementing joint research projects, convening bilateral exchanges and trainings, and exchanging insights on regulatory approaches. The MOU also covers collaboration in joint investigations into cross border personal data related incidents involving both jurisdictions, but does not cover the sharing of personal data (unless to the extent compliant with data protection laws).

Commenting on the MOU, the Hong Kong Privacy Commissioner Mr. Stephen Kai-yi Wong said signing the MOU is a "significant milestone" for the concerted commitment for both sides with a view to protect personal data as regulatory authorities in the interest of all stakeholders, and striking the right balance between privacy and free flow of information. The ICO complimented the

PCPD's focus on clear practical guidance and looks forward to better collaboration between the two authorities on investigations, enforcements, research projects, and sharing of intelligence.

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

(PCPD, 2 August 2020)

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