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Financial Services Regulatory Update
金融服务监管资讯

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Hong Kong Insurance Authority and China Banking and Insurance Regulatory Commission Implement Preferential Treatment to Promote the Development of Hong Kong Reinsurance Industry

The Hong Kong Insurance Authority (IA) reached a consensus with the China Banking and Insurance Regulatory Commission (CBIRC) that under the "China Risk Oriented Solvency System" (C-ROSS), when a Mainland insurer cedes business to a qualified Hong Kong professional reinsurer, the capital requirement of the Mainland insurer will be reduced (preferential treatment).

The preferential treatment is based on the Equivalence Assessment Framework Agreement on Solvency Regulatory Regime signed between the former China Insurance Regulatory Commission and the former Office of the Commissioner of Insurance on May 16, 2017 for the insurance regulators in two places to carry out equivalence assessment on the solvency regulatory regimes. Both sides agreed to recognize temporarily the insurance solvency regulatory regime of each other as the same or similar to that of another during the four-year transitional period before the completion of the equivalence assessment. Based on the "mutual equivalence recognition", both sides will consider giving each other's industry preferential treatment to strengthen co-operation between the insurance sectors in two places.

Mr. Chen Wenhui, Vice-Chairman of the CBIRC, said, "The CBIRC supports Hong Kong being Mainland's overseas risk management platform to assist Mainland enterprises in 'going global'. On the basis of the 'mutual equivalence recognition', the preferential factor under C-ROSS will be applicable to high-quality Hong Kong reinsurers, which will foster the development of the reinsurance business in Hong Kong."

Mr. John Leung, Chief Executive Officer of the IA, said, "The preferential treatment will facilitate the co-operation between the Mainland and Hong Kong in cross-border reinsurance business, enabling the Hong Kong insurance industry to assist Mainland enterprises more effectively in diversifying and managing risks, including supporting Mainland enterprises' participation in the infrastructure and investment projects under the Belt and Road Initiative. The preferential treatment will also help sharpen the competitive edge of the Hong Kong insurance industry and strengthen Hong Kong's position as a reinsurance hub in Asia."

香港保险业监管局与中国银行保险监督管理委员会落实优惠措施推动香港再保险业发展

香港保险业监管局（保监局）与中国银行保险监督管理委员会（银保监会）达成共识，在"中国风险导向的偿付能力体系"（C-ROSS，偿二代）下，当内地保险公司分出业务予香港符合要求的专业再保险公司时，该内地保险公司的资本额要求将可获降低（优惠措施）。

优惠措施是建基于 2017 年 5 月 16 日，前中国保险监督管理委员会与前保险业监理处签署的《关于开展偿付能力监管制度等效评估工作的框架协议》，让两地保险监管机构开展偿付能力监管制度等效评估工作。双方同意在评估工作完成前的四年过渡期内，暂时承认对方的保险公司偿付能力监管效能与己方的等同或相近。在"等效互认"的基础上，双方会考虑给予对方业界优惠，以加强两地保险业合作。

银保监会副主席陈文辉先生说："银保监会支持香港作为内地的境外风险管理平台，协助内地企业'走出去'。在'等效互认'基础上，让优秀的香港再保险公司在偿二代下适用优惠因子，以助香港再保险业务的发展。"

保监局行政总监梁志仁先生说："优惠措施将可促进内地与香港跨境再保险业务的合作，让香港保险业界更有效地协助内地企业分散和管理风险，包括支持内地企业参与'一带一路'的基建和投资项目。优惠措施亦将有助提升香港保险业的竞争力，巩固香港作为亚洲区再保险中心的地位。"

Source 来源：

https://www.ia.org.hk/en/infocenter/press_releases/Insurance_Authority_and_China_Banking_and_Insurance_Regulatory_Commission_implement_preferential_treatment_to_promote_the_development_of_Hong_Kong_reinsurance_industry.html

Circular on Hong Kong Securities and Futures Commission Disciplinary Fining Guidelines

The Hong Kong's Securities and Futures Commission (SFC) published in the Gazette of August 10, 2018 (G.N. 5968 of 2018) updated SFC Disciplinary Fining Guidelines (Fining Guidelines).

The original Fining Guidelines issued in February 2003 set out a number of considerations relevant to the SFC's determination of whether to impose a fine and the amount of fine on regulated persons under sections 194 (under section 194(7) of the SFO, "regulated person" means a person who is or at the relevant time was any of the following types of person: (a) a licensed person; (b) a responsible officer of a licensed corporation; or (c) a person involved in the management of the business of a licensed corporation) and 196 (under section 196(8) of the SFO, "regulated person" means a person who is or at the relevant time was any of the following types of person: (a) a registered institution; (b) an executive officer of a registered institution; (c) a person involved in the management of the business constituting any regulated activity for which a registered institution is or was (as the case may be) registered; or (d) an individual whose name is or was (as the case may be) entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as that of a person engaged by a registered institution in respect of a regulated activity) of the Securities and Futures Ordinance (SFO).

The statutory limit of a fine under sections 194 and 196 of the SFO is HK$10 million or three times the profit gained/loss avoided by the regulated person as a result of the misconduct or other conduct which leads the SFC to form the opinion that the regulated person is not a fit and proper person, whichever is the greater.

The Securities and Futures Appeals Tribunal (SFAT) has accepted that the statutory limit is a limit on the amount of fine that can be imposed for each breach committed by the regulated person. In HSBC Private Bank (Suisse) SA v SFC (SFAT Application No. 3 of 2015), the SFAT confirmed that a number of culpable acts or omissions, even if they are of the same generic nature, may attract multiple penalties. The SFAT also accepted the SFC's approach in using the number of complaints as the "multiplier" in assessing the appropriate level of fine.

For example, where a regulated person has contravened the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission resulting in a financial product being mis-sold to three persons, the SFC may impose a fine not exceeding HK$10 million for each affected person (i.e. HK$10 million x 3).

The updated Fining Guidelines codified the principles accepted by the SFAT and make it clear that:

(a) multiple culpable acts or omissions constituting misconduct may attract multiple penalties even if they are of the same generic nature;

(b) the SFC may use the number of persons affected by the misconduct as the multiplier in assessing the appropriate level of pecuniary penalty;

(c) using the number of affected persons as the multiplier may not be appropriate in every case. The appropriate approach in each case will depend on its own facts; and

(d) in cases where the misconduct attracts multiple penalties, the SFC will look at the totality of the penalties to ensure it is not disproportionate to the gravity of the conduct in question.

The updated Fining Guidelines has come into effect on August 13, 2018.

有关香港《证券及期货事务监察委员会纪律处分罚款指引》的通函

2018 年 8 月 10 日，香港证券及期货事务监察委员会（证监会）在宪报（2018 年第 5968 号政府公告）刊登了经更新的《证监会纪律处分罚款指引》（《罚款指引》）。

原有的《罚款指引》于 2003 年 2 月发出，列明了证监会在依据《证券及期货条例》（该条例）第 194 条（根据该条例第 194(7)条，"受规管人士"指属或曾在有关时间属以下任何类别人士的人：(a)持牌人；(b)持牌法团的负责人员；或(c)参与持牌法团的业务的管理的人）及 196 条（根据该条例第 196(8)条，"受规管人士"指属或曾在有关时间属以下任何类别人士的人：(a)注册机构；(b)注册机构的主管人员；(c)参与构成注册机构现时或曾经（视属何情况而定）获注册进行的受规管活动的业务的管理的人；或(d)现时或曾经（视属何情况而定）名列于金融管理专员根据《银行业条例》（第 155 章）第 20 条备存的纪录册并显示为受注册机构就某类受规管活动聘用的个人）决定会否向受规管人士施加罚款及有关的罚款额时，所考虑的相关因素。

根据该条例第 194 及 196 条，罚款额的法定上限为港币 1,000 万元，或受规管人士因失当行为或因其他导致证监会得出该受规管人士并非适当人选的意见的行为而获取的利润／避免的损失金额的三倍，以金额较大者为准。

证券及期货事务上诉审裁处（上诉审裁处）已接纳，该法定上限为可就受规管人士所犯的每一项违规行为所施加的罚款额上限。上诉审裁处在"汇丰私人银行（瑞士）有限公司诉证监会（申请编号 2015 年第 3 号）一案"中确认，多个构成罪责的作为或构成罪责的不作为即使属相同性质，仍可能招致多项不同的罚款额。上诉审裁处亦接纳，证监会在评估罚款的适当水平时以投诉宗数作为"倍数 " 的方针。

举例来说，如某受规管人士违反《证券及期货事务监察委员会持牌人或注册人操守准则》，致使某金融产品不当销售予三名人士，则证监会可就每名受影响人士施加不超过港币 1,000 万元（即港币 1,000 万元 x 3）的罚款。

经更新的《罚款指引》将上诉审裁处所接纳的多项原则编纂为守则条文，并明确说明：

(a) 多个属失当行为并构成罪责的作为或构成罪责的不作为即使属相同性质，仍可能招致多项不同的罚款额；

(b) 证监会可能会在评估罚款的适当水平时，以受到失当行为影响的人数作为乘数；

(c) 将受影响人数作为乘数的做法未必适合所有个案。对每宗个案所采取的适当方针取决于相关事实；及

(d) 在失当行为招致多项不同罚款额的情况下，证监会将查看罚款额的整体量刑，以确保其不会与有关行为的严重程度不相称。

经更新的《罚款指引》于 2018 年 8 月 13 日生效。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC60

The Stock Exchange of Hong Kong Limited Publishes Consultation Paper on Review Structure in Relation to Listing Committee Decisions

The Stock Exchange of Hong Kong Limited (Exchange) published a consultation paper on August 10, 2018 on review structure in relation to listing committee decisions (Consultation Paper), which seeks views and comments on the proposed changes to the review structure in relation to Listing Committee decisions, which aim to enhance governance within the Exchange's structure for reviewing Listing Committee decisions and promote transparency, accountability and consistency in decision-making. The consultation period will close on October 12, 2018.

The proposals of the Exchange in the Consultation Paper are set out below:

1. The Exchange proposes to revise the current review structure so that decisions of material significance made by the Listing Committee will be subject to only one level of review, that the further and review by the Listing Appeals Committee (LAC) under current system would be discontinued without being placed.

2. The Exchange proposes to establish an independent review committee consisting entirely of outside market participants with no current Listing Committee members or representatives of the Securities and Futures Commission of Hong Kong (SFC) or Hong Kong Exchanges and Clearing Limited (HKEX) (to be named the Listing Review Committee) to replace the LRC and the Listing (Disciplinary Review) Committee (L(DR)C) and to hear reviews currently conducted by them.

3. The Exchange proposes that the decisions of the new Listing Review Committee for non-disciplinary matters will be routinely published, for the purpose of enhancing the transparency and accountability of the Exchange's decision-making process. To ensure that published decisions of the new Listing Review Committee are not misinterpreted by the market, the Exchange will emphasise that they do not represent binding precedents which must be followed by other committees and do not constrain the discretion of the Exchange in the future.

4. The Exchange will make provisions in the Listing Rules for the SFC to request a consideration or review of any matter, including a decision of the Listing Committee and the new Listing Review Committee.

香港联合交易所有限公司刊发有关上市委员会决定的复核架构的咨询文件

香港联合交易所有限公司（联交所）于2018年8月10日刊发有关上市委员会决定的复核架构的咨询文件，就建议更改上市委员会决定的复核架构寻求各方意见及建议(咨询文件)。该咨询文件旨在加强联交所对上市委员会决定复核架构的内部管治，及提升决策透明度、 问责性及一致性。咨询期将于2018年10月12日结束。

咨询文件所含的联交所建议如下：

1. 联交所建议修改现行复核架构，使上市委员会的重大决定只有一次复核。如实行此建议，上市上诉委员会将被取消，不会另设委员会取而代之。

2. 我们建议设立一个完全由外间市场参与者组成且并无现任上市委员会成员或香港证券及期货事务监察委员会（证监会）或香港交易及结算所有限公（香港交易所）代表参与的独立委员会（将名为"上市复核委员会"），以取代上市（复核）委员会及上市（纪律复核）委员会，并接手该等委员会现时进行的复核聆讯。

3. 为提高联交所决策程序的透明度和问责性，联交所建议定期刊发新上市复核委员会就非纪律事宜作出的决策。联交所强调有关决策并非有约束力、其他委员会须依循的判例，对联交所日后的酌情权亦无掣肘。

4. 联交所将在《上市规则》增订条文，订明证监会可要求考虑或复核任何事宜（包括上市委员会及上市复核委员会的决定）。

Source 来源：

http://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Letters-to-Issuers/2018/20180810.pdf?la=en;

http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Consultation-Paper/cp201808.pdf

Hong Kong Monetary Authority Reprimands and Fines Shanghai Commercial Bank Limited for Contraventions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance

Hong Kong Monetary Authority (HKMA) has reprimanded Shanghai Commercial Bank Limited (SCOM) for contravening section 19(3) of Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the Laws of Hong Kong) (AMLO) by failing to establish and maintain effective procedures for the purpose of carrying out its duty to continuously monitor business relationships. The HKMA has further ordered SCOM to submit to the HKMA, by a date and in a manner to be specified by the HKMA, a report prepared by an independent external advisor assessing whether the remedial measures implemented by SCOM are sufficient to address the contraventions and the effectiveness of the implementation; and has ordered SCOM to pay a pecuniary penalty of HK$5,000,000.

The disciplinary action follows an investigation by the HKMA which found that SCOM contravened three specified provisions of the AMLO. In summary, SCOM did not:

(a) continuously monitor its business relationship with 33 customers by examining the background and purposes of their transactions that were identified as (i) complex, unusually large in amount or of an unusual pattern and (ii) having no apparent economic or lawful purpose, and setting out its findings in writing;

(b) establish and maintain effective procedures for the purpose of carrying out its duty under section 5 of Schedule 2 to the AMLO to continuously monitor business relationships; and

(c) carry out customer due diligence (CDD) measures in respect of certain pre-existing customers when a transaction took place with regard to each of the customers that (i) was, by virtue of the amount or nature of the transaction, unusual or suspicious, or (ii) was not consistent with SCOM's knowledge of the customer or the customer's business or risk profile, or with its knowledge of the source of the customer's funds.

As regards the deficiencies in monitoring business relationships, although the relevant transactions were identified through SCOM's Management Information System (MIS) reports, which took into account different customer risk levels and transaction types, and were selected by SCOM's Compliance Department at the material time for further enquiry or investigation, SCOM had not adequately examined the background and purposes of those transactions and set out the findings in writing. SCOM also lacked effective policies and procedures for monitoring the handling of MIS alerts including properly recording the follow-up actions taken and monitoring the review time, resulting in significant delay in alert clearance. As for carrying out CDD measures in respect of pre-existing customers, while one of the customers conducted the relevant transactions as early as in May 2012, SCOM failed to identify those transactions at the material time as unusual or suspicious or not consistent with its knowledge of the customer and had not conducted CDD measures accordingly.

In deciding the disciplinary action, the HKMA took into account all of the relevant circumstances and factors, including the following:-

(a) the need to send a clear deterrent message to the industry about the importance of effective internal anti-money laundering/counter-terrorist financing (AML/CFT) controls and procedures;

(b) SCOM has taken and will take extensive remedial measures to enhance its AML/CFT systems and controls; and

(c) SCOM has no previous disciplinary record and was co-operative throughout the investigation.

香港金融管理局谴责上海商业银行有限公司违反《打击洗钱及恐怖分子资金筹集条例》并处以罚款

香港金融管理局 (金管局) 谴责上海商业银行有限公司(上商银行)违反《打击洗钱及恐怖分子资金筹集条例》(香港法例第 615 章)(《打击洗钱条例》) 附表 2 第 19(3)条，未有设立及维持有效措施以履行持续监察业务关系的责任。金管局命令上商银行在金管局将指明的日期或之前，向金管局呈交一份由独立外聘顾问撰写的报告，评估上商银行实施的补救措施是否足以解决有关违反，以及落实措施的成效；及命令上商银行缴付 500 万港元罚款。

是次纪律处分行动是根据金管局的调查结果而作出的。调查发现上商银行违反《打击洗钱条例》三项指明的条文(注 3)。概括而言，上商银行并无：-

(a) 持续监察其与 33 名客户的业务关系，即对于被识辨为(i)复杂、款额大得异乎寻常或进行模式异乎寻常及(ii)并无明显经济或合法目的之交易，审查该等交易的背景及目的，并藉书面列明其审查所得；

(b) 设立及维持有效措施以履行《打击洗钱条例》附表 2 第 5 条所指的持续监察业务关系的责任；及

(c) 就若干「先前客户」而言，当每名相关客户有符合以下说明的交易发生时，执行相关客户尽职审查措施：(i)该交易按照其款额或性质属异乎寻常或可疑的，或(ii)该交易不符合上商银行对该客户、客户的业务或风险状况或客户的资金来源的认知。

上商银行在监察客户业务关系方面的缺失，源于其管理资讯系统报告在顾及了不同客户风险水平及交易类别后，虽然已能识辨出有关交易，并由合规部选出作进一步查询或调查，但上商银行并无充分审查该等交易的背景及目的和藉书面列明审查所得。上商银行亦缺乏有效政策及措施，以监察处理管理资讯系统发出的警示，包括妥善记录所采取的跟进行动及监察复核时间，因此导致警示的处理严重滞后。至于向「先前客户」执行客户尽职审查措施方面，调查发现其中一名客户早于 2012 年 5 月已进行有关交易，但当时上商银行未有识辨该等交易为异乎寻常、可疑或不符合其对该客户的认知，并且未因而执行相关客户尽职审查措施。

在决定上述的纪律处分行动时，金融管理专员已考虑所有有关情况及因素，包括以下各项：-

(a) 需要向业界传递明确的阻吓讯息，表明有效的打击洗钱及恐怖分子资金筹集的内部管控及措施的重要性；

(b) 上商银行已采取，以及将会采取，广泛的补救措施，以加强其打击洗钱及恐怖分子资金筹集制度及管控措施；及

(c) 上商银行过往无遭受纪律处分的纪录，并在调查期间表现合作。

Source 来源：

https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20180817-5.shtml

Hong Kong Market Misconduct Tribunal Finds China AU Group Holdings Limited's Former CEO and Related Persons Culpable of Market Manipulation

The Market Misconduct Tribunal (MMT) of Hong Kong has, on August 7, 2018, found that Ms. Samantha Keung Wai Fun (Keung), former CEO of China AU Group Holdings Limited (China AU), her friend Ms. Wu Hsiu Jung (Wu) and a business partner Mr. Chen Kuo Chen (Chen), engaged in market misconduct by false trading in the shares of China AU following proceedings brought by the Securities and Futures Commission (SFC).

In August 2009, China AU launched a share placement to raise approximately HK$135,500,000 to finance a potential Mainland property acquisition needed for the setting up of a beauty professional training institute, but only managed to raise HK$38,300,000. The company subsequently issued convertible bonds to raise up to HK$114,000,000 additional funding for the same property acquisition.

The SFC alleged that when China AU carried out its fundraising between August 2009 and April 2010, Wu and Chen used a total of 14 securities trading accounts, opened in their respective names and other related persons' names, to buy and sell a substantial amount of shares in China AU in order to make the fundraising exercise more attractive to investors.

The SFC also alleged that Keung funded the trading in China AU shares by Wu and Chen.

The MMT was satisfied that Wu and Chen must have known that it was a virtual certainty that the manner in which they traded would have the effect of creating a false and misleading active trading in the shares of China AU, and thereby creating a false or misleading appearance of the market for the shares and their price.

The MMT further determined that Keung was the person who had overall direction of the scheme giving rise to the

market misconduct and that Wu and Chan actively and knowingly assisted her in the scheme.

香港市场失当行为审裁处裁定中国金丰集团控股有限公司前行政总裁及相关人士犯操纵市场罪

市场失当行为审裁处（审裁处）于 2018 年 8 月 7 日在进行由证券及期货事务监察委员会（证监会）提起的研讯程序，裁定中国金丰集团控股有限公司（中国金丰）前行政总裁姜惠芬（姜，女）、其友人吴秀容（吴，女）及业务伙伴陈国桢（陈，男）曾从事就中国金丰股份进行虚假交易的市场失当行为。

中国金丰在 2009 年 8 月为了一项收购内地物业以开办美容师培训学校的潜在交易筹集资金，展开一项股份配售以募集大约港币 13550 万元，但结果只筹得港币 3830 万元。该公司随后发行可换股债券为同一物业收购事项募集达港币 11,400 万元的额外资金。

证监会指，中国金丰在 2009 年 8 月至 2010 年 4 月进行集资活动期间，吴及陈利用合共 14 个以其各自的名义及其他相关人士名义开设的证券交易帐户，买卖大量中国金丰股份，以令该集资活动吸引更多投资者。

证监会亦指，姜曾为吴及陈所进行的中国金丰股份交易提供资金。

审裁处信纳，吴及陈必然知道他们交易的方式，实际上肯定具有营造虚假或具误导性的中国金丰股份交投活跃的效果，及因而造成在股份行情及价格方面的虚假或具误导性的表象。

审裁处亦裁定，该项引致上述市场失当行为的计划由姜全面主导，而吴及陈则在知情的情况下积极协助姜执行该计划。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=18PR93

Hong Kong Securities and Futures Commission Bans Cham Nga Yin for Life

The Securities and Futures Commission (SFC) has banned Ms. Cham Nga Yin (Cham) from re-entering the industry for life for misappropriation of clients' money. Cham was a former licensed representative of Tanrich Futures Limited (Tanrich Futures), now known as Southwest Securities (HK) Futures Limited (Note 1).

The SFC found that Cham succeeded in persuading two clients to open accounts at Tanrich Futures in mid-2014. The clients went on to deposit HK$40,000 and HK$200,000, respectively, into Tanrich Futures. Instead of completing the account opening process for the clients, Cham misrepresented to Tanrich Futures that the deposits were made by her cousin, whose account at Tanrich Futures was under her control.

Subsequently, a sum of HK$137,500 out of the HK$240,000 deposits from the two clients was transferred to Cham's personal bank account via her cousin's Tanrich Futures account and personal bank account between June and August 2014.

Cham's misappropriation of the deposit of one client was uncovered in August 2014 when the client's husband called Tanrich Futures to enquire about his wife's account. Cham eventually returned HK$40,000 to the client upon Tanrich Futures' request.

In September 2014, Cham resigned from Tanrich Futures, but she continued to keep the deposit of the other client and provided that client with two forged account statements in November 2014 and April 2015 in order to conceal her misconduct. Tanrich Futures did not find out Cham's misappropriation of that client's deposit until 28 April 2015, when it received the client's enquiry about her account. Cham eventually returned HK$200,000 to the client.

The SFC decided to ban Cham for life as her dishonesty was in breach of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code of Conduct), which called into question her fitness and properness to be a licensed person (Notes 2 & 3).

Notes:

1. Cham was licensed under the Securities and Futures Ordinance to carry on Type 1 (dealing in securities) and Type 2 (dealing in futures contracts) regulated activities. She was accredited to Tanrich Securities Company Limited, now known as Southwest Securities (HK) Brokerage Limited, to carry on Type 1 (dealing in securities) regulated activity from 25 May 2006 to 30 September 2014 and Tanrich Futures to carry on Type 2 (dealing in futures contracts) regulated activity from 30 September 2005 to 30 September 2014. Cham is currently not licensed by the SFC.

2. General Principle 1 (honesty and fairness) of the Code of Conduct provides that a licensed person should act honestly, fairly, and in the best interests of its clients and the integrity of the market.

3. General Principle 8 (client assets) of the Code of Conduct provides that a licensed person should

ensure that client assets are promptly and properly accounted for and adequately safeguarded.

香港证券及期货事务监察委员会终身禁止湛雅妍重投业界

敦沛期货有限公司（敦沛期货，现称为西证（香港）期货有限公司）的前持牌代表湛雅妍（湛，女）因挪用客户资金而被证券及期货事务监察委员会（证监会）终身禁止重投业界。（注 1）。

证监会发现，湛于 2014 年中成功说服两名客户在敦沛期货开立帐户。该两名客户其后分别向敦沛期货存入港币 40,000 元及港币 200,000 元款项。但湛并没有替客户完成开户程序，而是向敦沛期货假称这两笔款项是她表姐存入的，而她表姐的敦沛期货帐户乃由她所控制。

湛其后于 2014 年 6 月至 8 月期间，透过其表姐的敦沛期货帐户及个人银行帐户把两名客户港币 240,000 元的存款当中的港币 137,500 元转至自己的个人银行帐户。

2014 年 8 月，当其中一名客户的丈夫致电敦沛期货查询他妻子的帐户时，湛挪用该名客户的存款一事被揭发。湛最终应敦沛期货的要求向该客户退还港币 40,000 元。

2014 年 9 月，湛从敦沛期货辞职，但她继续保留另一名客户的存款，并在 2014 年 11 月及 2015 年 4 月向这名客户提供两份伪造的帐户结单，以掩饰其失当行为。直至 2015 年 4 月 28 日，敦沛期货在接到这名客户关于她帐户的查询时，才发现湛挪用了她的存款。湛最终向这名客户退还港币 200,000 元。

湛的不诚实行为违反了《证券及期货事务监察委员会持牌人或注册人操守准则》（《操守准则》），令人质疑其作为持牌人的适当人选资格，证监会决定终身禁止她重投业界（注 2 及 3）。

备注：

1. 湛曾根据《证券及期货条例》获发牌进行第 1 类（证券交易）及第 2 类（期货合约交易）受规管活动。她在 2006 年 5 月 25 日至 2014 年 9 月 30 日期间隶属敦沛证券有限公司（现称为西证（香港）证券经纪有限公司）以进行第 1 类（证券交易）受规管活动，并且在 2005 年 9 月 30 日至 2014 年 9 月 30 日期间隶属敦沛期货以进行第 2 类（期货合约交易）受规管活动。湛现时并非证监会持牌人。
2. 《操守准则》第 1 项一般原则（诚实及公平）规定，持牌人应以诚实、公平和维护客户最佳利益的态度行事及确保市场廉洁稳健。
3. 《操守准则》第 8 项一般原则（客户资产）规定，持牌人应确保将客户的资产尽快及妥善地加以记帐，及令该等资产获得充分的保障。

Source 来源：

https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR94

Singapore Exchange Welcomes the Listing of Asia's First Infrastructure Project Finance Securitization Notes

Bayfront Infrastructure Capital Pte. Ltd. (BIC), which is sponsored by Clifford Capital Pte. Ltd. (Clifford Capital), issued four classes of Notes – Class A Notes (US$320.6 million), Class B Notes (US$72.6 million), Class C Notes (US$19.0 million) and Subordinated Notes (US$45.80 million) on the Singapore Exchange (SGX). The Notes are backed by a US$458-million portfolio of bank-syndicated project finance and infrastructure loans spread across 16 countries and 8 industry sub-sectors.

BIC's investment grade-rated Class A, B and C Notes, which listed on SGX on August 1, 2018, were offered to institutional investors and received strong demand. As a sponsor of the transaction, Clifford Capital will acquire and intends to retain the Subordinated Notes.

新加坡交易所欢迎亚洲首个基础设施项目融资证券化票据上市

Bayfront Infrastructure Capital Pte Ltd.（BIC）发行了四类于新加坡交易所 (新交所)上市的票据——A 类票据（3.260 亿美元）、B 类票据（7260 万美元）、C 类票据（1,900 万美元）和附属票据（4580 万美元）。BIC 是由 Clifford Capital Pte Ltd.（Clifford Capital）赞助的公司。该票据由一个价值 4.58 亿美元的银行银团项目融资和基础设施贷款组合支持，这些贷款分布在 16 个国家和 8 个子行业。

BIC 的投资级别评级为 A 级、B 级和 C 级债券，于 2018 年 8 月 1 日在新交所上市并向机构投资者销售，并获得强劲需求。作为交易的保荐人，Clifford Capital 将收购并打算保留附属票据。

Source 来源：

http://www.sgx.com/wps/wcm/connect/sgx_en/home/higlights/news_releases/sgx_welcomes_the_listing_of_asias_first_infrastructure_project_finance_securitisation_notes

Monetary Authority of Singapore Accepts Recommendations from Corporate Governance Council and Issues Revised Code of Corporate Governance

Monetary Authority of Singapore (MAS) accepts Recommendations from Corporate Governance Council (the Council) and Issues Revised Code of Corporate Governance (the Code).

The revised Code makes clear how companies should adopt the comply-or-explain regime. The Singapore Exchange Listing Rules (Listing Rules) have been amended to clarify the expectations under the comply-or-explain regime, to ensure that companies provide meaningful disclosures to their stakeholders. Key changes to the Code to encourage board renewal, strengthen director independence and enhance board diversity will reinforce board competencies. Other Code revisions on disclosures of the relationship between remuneration and value creation, and consideration of the interests of groups other than shareholders will encourage better engagement between companies and all stakeholders.

In particular, majority of the board of directors should comprise independent directors, where the chairman is not an independent director.

The revised Code will take effect for Annual Reports covering financial years commencing from January 1, 2019. A longer transition period of three years will be provided for changes in the Listing Rules relating to board composition, to provide companies with more time to make board composition changes. The Council will be dissolved with the issuance of the revised Code.

In line with the Council's recommendations, MAS will establish an independent Corporate Governance Advisory Committee (CGAC) to advocate good corporate governance practices. The CGAC will monitor companies' implementation of the Code and provide support to companies by promulgating good practices and areas for improvement. The CGAC will also advise regulators on corporate governance issues. The CGAC will comprise senior practitioners with experience as board Chairmen or directors, corporate governance experts and representatives from diverse stakeholder groups. MAS expects to establish the CGAC by the end of this year.

新加坡金融管理局接受公司治理委员会的建议并发布经修订的公司治理守则

新加坡金融管理局（金管局）已接受公司治理委员会（委员会）的所有建议，并发布经修订的《公司治理守则》（《守则》）。

修订后的《守则》厘清了公司应如何采用遵守或解释制度。《新加坡证券交易所上市规则》（《上市规则》）在修订后澄清了遵守或解释制度下的期望，以确保公司向其利益相关者提供有意义的披露。《守则》的主要变化是鼓励董事会更新、加强董事独立性和加强董事会多元化，这将加强董事会的能力。其他关于披露薪酬与价值创造之间关系以及考虑股东以外群体利益的法规修订将鼓励公司与所有利益相关方之间更好地参与。

其中一项修订要求董事会的大多数成员需要是独立董事，若董事会的主席并非独立董事。

修订后的《守则》将于 2019 年 1 月 1 日开始的财务年度的年度报告中生效。《上市规则》有关董事会组成的变更将提供三年过渡期，以便公司有更多时间进行董事会组成的变化。委员会将在发布经修订的守则后解散。

根据委员会的建议，金管局将建立一个独立的公司治理咨询委员会（CGAC），以倡导良好的公司治理习惯。CGAC 将监督公司实施《守则》，并通过倡导良好实践和提供改方向来为公司提供支持。CGAC 还将就监管机构的公司治理问题提供建议。CGAC 将包括具有董事会主席或董事经验的高级从业人员、公司治理专家和来自不同利益相关方团体的代表。金管局预计将在今年年底前建立 CGAC。

Source 来源：

http://www.mas.gov.sg/News-and-Publications/Media-Releases/2018/MAS-accepts-recommendations-from-Corporate-Governance-Council.aspx

http://www.mas.gov.sg/~/media/resource/news_room/press_releases/2018/Infographic%20%20Corporate%20Governance%20Councils%20recommendations%20to%20enhance%20corporate%20governance%20in%20Singapore.pdf

U.S. Securities and Exchange Commission Charges Mizuho Securities USA LLC for Failure to Safeguard Customer Information

The Securities and Exchange Commission (SEC) charged Mizuho Securities USA LLC (Mizuho) for its failure to safeguard information pertaining to stock buybacks by its issuer customers on July 23, 2018. Mizuho failed to maintain and enforce policies and procedures aimed at preventing the misuse of material non-public information, including maintaining effective information barriers between different trading desks and requiring employees to keep client information confidential. Mizuho agreed to settle the charges and will pay a US$1.25 million penalty.

According to the SEC's order, during a two-year period, Mizuho traders regularly disclosed material non-public

customer buyback information to other traders and Mizuho's hedge fund clients. That information included the identity of the party placing the order, the order size, limit price, and indications that the orders were buyback orders. Such information was routinely communicated across trading desks, notwithstanding that during the relevant period Mizuho executed over 99.8 percent of all buyback orders by using algorithms, rather than through trader-negotiated open market trades.

The SEC's order finds that Mizuho wilfully violated Section 15(g) of the U.S. Securities Exchange Act of 1934. Without admitting or denying the SEC's findings, Mizuho consented to the order imposing a US$1.25 million penalty, a censure, and ordering it to cease and desist from committing or causing any future violations.

美国证券交易委员会指控瑞穗证券未能保护客户信息

美国证券交易委员会（证交会）于 2018 年 7 月 23 日指控瑞穗证券美国有限责任公司（瑞穗）未能保护其发行人客户的股票回购信息。瑞穗未能维护和执行针对防止滥用重要非公开信息的政策和程序，包括维护不同交易部门之间的有效信息障碍，并要求员工保密客户信息。瑞穗同意解决这些指控并将支付 125 万美元的罚款。

根据证交会的命令，在两年期间，瑞穗贸易商定期向其他交易商和瑞穗的对冲基金客户披露重要的非公开客户回购信息，该信息包括下订单的一方的身份、订单大小、限价以及订单是回购订单的指示。这些信息经常在交易柜台上传达，尽管在相关时期内，瑞穗通过算法执行超过 99.8%的回购订单，而不是通过交易商协商的公开市场交易。

证交会的命令发现瑞穗故意违反了 1934 年《证券交易法》第 15（g）条。在不承认或否认证交会的调查结果的情况下，瑞穗同意该征收 125 万美元罚款的命令、接受谴责并按照命令停止并且未来不再进行任何违规行为。

Source 来源：

https://www.sec.gov/news/press-release/2018-140

Highlights of Speech by the Secretary for Financial Services and the Treasury Bureau of Hong Kong at Asia Pacific Loan Market Association Annual Syndicated Loan Market Conference

The following are highlights of the speech by the Secretary for Financial Services and the Treasury, Mr. James Lau, at the Asia Pacific Loan Market Association (APLMA) Annual Syndicated Loan Market Conference in Macao on June 5, 2018:

Hong Kong has been seeing some exciting developments for its financial services sector. The greater Bay Area is already a substantial economic powerhouse.

Traditionally, entrepreneurs from Hong Kong have played an important role in Guangdong's economic development. The rapid development of the new economy in the greater Bay Area presents an immediate opportunity for Hong Kong to join hands with other cities and with Shenzhen in particular, to create a super eco-system for innovation and technology.

Indeed, Shenzhen has played a significant role in China's emergence as a major player in Internet finance. While the developments in Shenzhen and on the Mainland have been astounding, Hong Kong is also making good progress in embracing innovation and technology. The Government's strong fiscal position also enables Hong Kong to allocate considerable resources to the development of innovation and technology. The Central People's Government of China is strongly supportive of Hong Kong's mission to become a global innovation hub.

All of the above developments would help build Hong Kong's start-up ecosystem and R&D capabilities, and there is much potential for collaboration between Hong Kong and other cities within the greater Bay Area in terms of innovation and technology.

Hong Kong Stock Exchange has just put in place for companies from emerging and innovative sectors. The changes took effect on April 30, 2018. With appropriate safeguards in place, the listing reforms will deepen and broaden the fundraising platform and increase the overall competitiveness in attracting companies from emerging and innovative sectors to list in Hong Kong.

The Silk Road Economic Belt and the 21st Century Maritime Silk Road aim at increasing trade in goods, movement of capital and interaction among peoples along the Belt and Road, with the goal of building an inclusive and balanced co-operation framework that delivers benefits for all.

Importers and exporters in Belt and Road countries can settle their trade in Renminbi in Hong Kong payment system through more than 200 participating banks from all over the world. Investors in Belt and Road projects can tap Hong Kong's Renminbi liquidity through bank loans or "dim sum" bond issuance. They can also invest their surplus Renminbi liquidity in a wide range of Renminbi products available here in Hong Kong.

The Renminbi Qualified Foreign Institutional Investors Scheme provides a channel for foreign portfolio investments in the equity and bond markets in Mainland China. More recently, the Shanghai-Hong Kong Stock

Connect and Shenzhen-Hong Kong Stock Connect began in November 2014 and December 2016 respectively, opening up new channels for two-way investments in Hong Kong's respective stock markets.

Indeed, Hong Kong will play a central role in enhancing connectivity among the economies along the Belt and Road.

香港财经事务及库务局局长出席亚太区贷款市场公会银团贷款市场年度会议致辞要点

以下为香港财经事务及库务局局长刘怡翔先生于 2018 年 6 月 5 日在澳门亚太贷款市场协会（APLMA）年度银团贷款市场会议上的致辞的一些重点：

香港的金融服务业一直有一些令人兴奋的发展。众所周知，粤港澳大湾区（大湾区）已经是一个重要的经济驱动所。

传统意义上，香港企业家在广东经济发展中发挥了重要作用。大湾区新经济的快速发展，为香港与其他城市，尤其是深圳携手合作、为创新科技创造超级生态系统提供了机会。

事实上，深圳在中国崛起成为互联网金融的主要参与者方面发挥了重要作用。虽然深圳和内地的发展令人震惊，但香港在创新科技方面也取得良好进展。政府强大的财政状况亦使香港可以拨出大量资源，用于发展创新科技。中央人民政府强烈支持香港完成成为全球创新中心的使命。

上述所有发展将有助建立香港的初创生态系统和研发能力，而香港与大湾区内其他城市在创新和科技方面的合作潜力也很大。

香港证券交易所刚刚开始为新兴和创新领域的公司提供服务。该服务于 2018 年 4 月 30 日生效。在适当的保障措施下，上市改革将深化和拓宽筹款平台、提高整体竞争力、吸引新兴及创新行业的公司在香港上市。

丝绸之路经济带和 21 世纪海上丝绸之路旨在增加货物贸易，资本流动和"一带一路"沿线人民之间的互动，目标是建立一个包容和平衡的合作框架，为所有人带来利益。

"一带一路"国家的进口商和出口商可以通过来自世界各地的 200 多家参与银行在香港支付系统中结算人民币贸易。 "一带一路"项目的投资者可以通过银行贷款或"点心"债券发行来挖掘香港的人民币流动性。他们还可以将多余的人民币流动资金投资于香港的各种人民币产品。

合格境外机构投资者人民币计划为外国证券投资在中国内地股票和债券市场的投资提供了渠道。最近，沪港通和深港通分别于 2014 年 11 月和 2016 年 12 月开始，为香港各自的股票市场开辟了双向投资的新渠道。

事实上，香港将在加强"一带一路"沿线经济体之间的互联互通方面发挥了核心作用。
Source 来源：

http://www.info.gov.hk/gia/general/201806/05/P2018060500692.htm

Highlights of the Speech by the Secretary for Financial Services and the Treasury Bureau of Hong Kong at 2018 Annual Conference of In-House Lawyers

In the 2018 Annual Conference of In-House Lawyers on June 6, 2018, Mr. James Lau, the Secretary for Financial Services and the Treasury (SFST), illustrated two aspects of the new technology, Artificial Intelligence (AI) and Blockchain or Distributed Ledger Technology and their opportunities and challenges for the legal field.

First, on AI. While McKinsey estimates that 22 percent of a lawyer's job and 35 percent of a law clerk's job can be automated, the picture is not all that bleak for those who can adapt and use AI as a helpful tool. In future, there might well be more cross-over between law nerds and tech geeks.

In litigation, for now, it would be difficult to imagine a robot lawyer replacing a barrister at court. But who knows maybe in future the junior counsel seated next to a barrister at courts could be a robot that did all the basic research and can do a speedy retrieval of information, analysis and argumentation as and when required. Actually, AI can be a truly helpful tool that would help barristers or trial lawyers prepare for cases. For example, a startup that has designed a software riding on AI to apply natural language processing to millions of court decisions to find trends that would be helpful for the trial case in question. For instance, the software can determine which judges tend to favor plaintiffs, summarize the legal strategies of opposing lawyers, and determine the arguments most likely to convince specific judges. The SFST's guess is that in future the legal consultant does not need to take pains to find shadow jurors that resemble the real jurors in terms of education and professional background, political or moral inclination, like or dislike etc. This is because AI can rely on big data to find all one can possibly find about the nature or habits of the real jurors, and AI can simulate a panel of jurors to predict their inclination and reaction in the course of a trial.

And AI is also assisting judges, and not just lawyers, in certain court systems. In the United States, there are

instances of AI assisting judges in deciding whether to detain or release a defendant before trial. A company has developed three different risk assessment algorithms to assess the risks that a released defendant will fail to appear for trial, commit a crime while on release, or commit a violent crime while on release. This methodology is currently in use in about 40 cities, counties and states across the United States.

In April 2018, the designer of these algorithms announced that it would seek to develop a deeper understanding of the effectiveness and impact of risk assessment. Over the next five years, a group of national pretrial researchers will work with 10 selected, diverse jurisdictions to understand the impact on a jurisdiction after it is fully implemented. They will also broaden the study of the accuracy of the prediction, develop and test new potential algorithms, establish offense-specific risk assessment models, particularly for drunk driving, domestic violence, and sex crimes, and deepen the field's understanding about the impact pretrial detention has on defendants' lives. This would appear to be a step forward in improving the process of utilizing AI in the court system.

In corporate law, a number of successful applications in AI suggest that technology can relieve transaction lawyers of hours and hours of data-intensive, time-consuming and repetitive work.

One example is an AI tool developed by a law firm. This solution was developed in response to the need to classify different entities into ones that fall within the definition of a "financial institution" under the new bank ringfencing reforms, and ones that fall outside the definitions of the relevant legislation. The tool can sift through 14 UK and European regulatory registers to determine whether client names fall under the definition of a "financial institution", quickly processing thousands of names in a fraction of the time a junior lawyer would need to spend on the same task.

Another leading law firm has partnered with a Big Four accounting firm to create a tool that codifies the law in various jurisdictions and automates drafting of certain documents to help banks cope with post-financial crisis regulations for the over-the-counter (OTC) derivatives market. With uncleared OTC derivatives being subject to margin rules under the European Market Infrastructure Regulation (EMIR), all counterparties to derivatives contracts which are not cleared through an authorized clearing system will have to provide additional margin for their net exposures. This tool handles the drafting of tailored documents based on an automated legal analysis, reducing the time for each document from three hours to just three minutes.

Yet another international law firm developed its own AI platform to read and analyze clauses in loan agreements. The system emulates the decision-making process of a human being, extracting, reviewing and analyzing key contract risks, and connecting lawyers to relevant templates, documents, and precedents at the right moment.

In addition to law firms, a large tech company has also moved into Lawtech by developing a robot lawyer that performs legal research. The application allows one to ask questions in plain English, as one would to a colleague. The robot then reads through the entire body of law and provides specific, analytical answers that include topical readings from legislation, case law, and secondary sources. All of the above examples reflect the potential of AI to be a helpful tool for corporate lawyers.

In fact, some have predicted that robots and algorithms could help make legal aid more accessible and widespread, especially to the less privileged. Some proponents argue that cases can get navigated through an AI computer system first, and legal aid lawyers would only get involved at the very late stage when it was really necessary.

So, it seems that AI applications can generally help to process and analyze data, structured or unstructured, in a much faster and efficient manner, and probably be more accurate and comprehensive than an average human being.

Another potential area for Lawtech applications that target the end consumer is the provision of legal advice on divorce. Divorce disputes typically require navigating lengthy and confusing cases that have been interpreted in thousands of previous decisions. Some believe that robot lawyers could analyze possible exceptions, loopholes and historical cases to determine the best path forward. Already, a website is providing such services. After getting clients to fill in a form and provide information, it uses algorithms to try to predict how the divorce will progress and provides services to their clients based on that prediction.

So far, it sounds like AI is really a fantastic, impartial tool that can cut down the mundane work and improve the quality of life for lawyers and barristers. But there are problems with AI applications too. One concern is that the use of robots and algorithms may result in discrimination and bias. Each predictive algorithm is inevitably based on a series of subjective decisions on the part of system designer on what data to use, include or exclude, and how to apply the weighting to the data on the degree of their importance. In addition, a programmer's personal history, incentives, and motivations would potentially affect the design of the algorithm. The transparency of the process of algorithmic design and assessment of its effectiveness after its implementation is thus crucial.

In other words, at least for the present, there is apparently a challenge to come up with a true bias absent or neutral AI technology solution. Incidentally, globally there is now a movement toward exploring the role of ethics in AI. The European Group on Ethics in Science and New Technologies, an advisory group to the President of the European Commission, released a statement on AI, Robotics and Autonomous Systems in March this year, highlighting the need for a collective, wide-ranging and inclusive process of reflection and dialogue on the role of technology in human values. So the ethical development of AI is a huge subject that requires the debate and participation of professionals from all industries and all walks of life, including those in the legal field.

The second topic is the blockchain, a type of distributed ledger technology. The blockchain is a digital ledger of transactions, contracts, and agreements that are distributed across hundreds or even thousands of computers around the world. The benefits of blockchain technology include mainly security and transparency. Some say speed is also a blockchain advantage but that really depends on the design of the blockchain. In many public chain applications, where a large number of participating nodes need to validate a transaction entry before it can be added to the blockchain, the processing speed can hardly be claimed to be an advantage as it could take several minutes to validate the transaction in question.

Security is generally accepted as an advantage because the information contained within the distributed ledger is tamper proof. If the ledger is shared across 1 000 nodes and a hacker wanted to change information in one of the blocks, the hacker would have to hack all 1 000 nodes simultaneously. And transparency because all nodes in the chain can see changes to a block and decide whether it is an authorized change. But this authentication takes time to process and this is often cited as the scalability or speed problem associated with public chains like that for Bitcoin.

There are a number of potential applications of blockchain technology in law. One area is land registration, where blockchain promises to be an effective and secure method to store the data essential for property rights, such as land ownership and the details of when it changed hands. Indeed, there is potential for a distributed ledger to replace a paper-based land registration system.

A number of jurisdictions around the world are already exploring the use of blockchain technology to modernize, add security to and speed up the land registration process. In the United Kingdom, their Land Registry recently announced its intention to embrace new technology, including blockchain technology.

In Sweden, the land registry authority has been testing a way to eliminate paperwork, reduce fraud and speed up transactions through recording property transactions on a blockchain. It is estimated that this could potentially save Swedish taxpayers more than €100m a year.

In the Middle East, Dubai is developing a system that would record all local real estate contracts on a blockchain as part of an overall plan to secure all government documents on a blockchain by 2020.

In India, legal experts have also spoken about the potential benefits of a public distributed ledger to digitize land records and set the precedent for future transactions, ensuring a legitimate, government-approved record of transactions.

Apart from land registration, another potential application of blockchain in the legal field is in alternative dispute resolution, including arbitration. While arbitration is often used for resolving disputes in international business, the process is lengthy and costly. A blockchain platform could provide a secure and transparent platform for capturing negotiations, agreements, and the terms of a resolution, where every fact and detail would be available and traceable to relevant parties.

In March 2018, a US legal technology startup unveiled a blockchain application specifically for the international dispute resolution community. The application intends to utilize blockchain technology to eliminate the need for couriers, hard copies and mailing in the arbitration process. This blockchain portal is held by an arbitral institution and claimants can file requests for arbitration through the portal. Documents can be drafted, finalized and submitted directly, and all of the involved parties will be able to access the data associated with the proceedings. Claimants will also be able to view their final award on the portal.

Yet another way blockchain technology could potentially transform legal processes is in relation to notaries public. Currently, notaries public confirm and verify signatures on legal documents, such as deeds and contracts. This is an important process in the court system. For example, in the United States, courts require a specific set of rules to be followed when submitting and verifying evidence such as emails, documents, and records in legal proceedings. This is where blockchain comes in since the technology can record and authenticate evidence securely by preserving them as part of a digital ledger. In the United States, Vermont is the first state to legislate the use of blockchain technology to verify records and information. Already, a company has developed several products that apply blockchain technology to legal documents, thereby eliminating the need for the rubber stamp of a notary public.

While blockchain technology is promising, it is not without its perils. One general concern is the lack of identity verification through "Know Your Client" or KYC processes. In conventional transactions, intermediaries such as banks conduct identity verification and are responsible for building trust between two parties. Some blockchain applications skip this process altogether through anonymous transactions, although some applications do claim that they enforce rigorous KYC.

Another challenge is the cross-jurisdictional nature of blockchain because the nodes on a blockchain can be located anywhere in the world. In a conventional banking transaction, if the bank is at fault for a transaction, the bank can be sued and the applicable jurisdiction will most likely be contractually governed. However, in a decentralized environment, it may be difficult to identify the appropriate set of applicable governing rules and laws.

Yet another challenge is the legal status of Decentralized Autonomous Organizations (DAO), which are essentially digital entities that record activity on the blockchain and require minimal to zero human input into their operations. Questions would naturally arise on the legal power of such organizations. For example, would they be regarded as a corporation or a legal entity? Should they have the power to enter into legal contracts, to sue and to be sued? And who would be responsible if laws are broken? And the triggering of smart contracts in the blocks of Ethereum also raises the question of responsibility for the actions by such smart contracts and who should be responsible for picking up the pieces in such a distributed environment when a smart contract malfunction or the block is hacked. The above are examples of concerns that need to be addressed by governments and regulators in consultation with industry players and the public at large. For those of you familiar with the cryptocurrency Ether that is associated with the Ethereum platform, Ethereum is based on this DAO construct. So, DAO problems as mentioned above are real issues to be addressed when there are more and more users of Ethereum or similar platforms.

In conclusion, the intersection of technology and law is a fascinating topic that has economic, social, legal as well as ethical implications.

One challenge is cybersecurity, which is going to gain headline attention and probably provides fertile ground for court cases involving such perpetration of cybercrime. Another challenge is data privacy, which is of course not a new subject, but it is going to gain more prominence in the new tech world, especially when so many social media platforms and apps of all sorts collect so much personal data, with or without the data subjects realizing it.

香港财经事务及库务局局长在 2018 年企业律师年会上的讲话要点

2018 年 6 月 6 日，在 2018 年内部律师年会上，香港财经事务及库务局局长刘怡翔先生 (SFST) 阐述了新技术的两个方面，即人工智能（AI）和区块链或分布式分类帐技术及其在法律领域面临的机遇和挑战。

首先，关于 AI。虽然麦肯锡咨询公司估计仅 22％的律师工作和 35％的律师工作可以实现自动化，但对于那些能够适应并使用人工智能作为有用工具的人来说，情况并非如此黯淡。将来，法律和技术之间可能会有更多的融合。

在目前的诉讼中，很难想象机器人律师会在法庭上取代大律师。但是在将来，谁知道在法院大律师旁边坐着的初级律师是否可能是一个可以完成所有的基础研究，并且可以在需要时快速检索信息、分析和论证的机器人。实际上，AI 可以成为一个非常有用的工具，帮助大律师或审判律师准备案件。例如，一家创业公司设计了一个 AI 软件，该软件可以确定哪些法官倾向于支持原告，并总结辩护律师的法律策略、确定最有可能说服特定法官的论据。SFST 的猜测是，未来法律顾问不需要费力去寻找与教育和职业背景、政治或道德倾向、喜欢或不喜欢等真正的陪审员相似的影子陪审员。这是因为 AI 可以依靠大数据找到所有可能找到的关于真正陪审员的性质或习惯的人，并且可以模拟一组陪审员来预测他们在审判过程中的倾向和反应。

除了协助律师，AI 也在某些法院系统中协助法官。在美国，有一些 AI 协助法官决定在审判前是否拘留或释放被告。一家公司开发了三种不同的风险评估算法来评估被释放的被告未能在审判中出庭、在释放时犯罪或在释放时犯下暴力犯罪的风险。目前，该方法已在美国约 40 个城市、县和州使用。

2018 年 4 月，这些算法的设计者宣布，将更深入地寻求、了解风险评估的有效性和影响。在接下来的五年中，一组国家预审研究人员将与 10 个选定的不同司法管辖区合作，以了解这些算法在完全实施后对司法管辖区的影响。他们还将深化对预测准确性的研究，开发和测试新的潜在算法，建立具体犯罪的风险评估模型，尤其是对于酒后驾车、家庭暴力和性犯罪，并加深该领域对审前拘留对被告的生活产生的影响的研究。这似乎是在改进法院系统使用 AI 的过程中向前迈出的一步。

在公司法领域，AI 中的一些成功应用表明，技术可以减轻交易律师在数据密集、耗时和重复性工作上的工作时间。

举一个由律师事务所开发的 AI 工具的例子。该解决方案的开发是为了应对将不同的实体划分为在新的银行圈护改革下属于“金融机构”定义的实体和不属于相关立法定义的实体的需求。该工具可以筛选 14 个英国和欧洲的监管登记册，以确定客户名称是否属于“金融机构”，在初级律师需要花费在同一任务上的一小部分时间内快速处理数以千计的名字。

另一家领先的律师事务所与四大会计师事务所合作，创建了一个工具，在不同司法管辖区编纂法律，并自动起草某些文件，以帮助银行应对场外交易（OTC）衍生品的后金融危机监管市场。由于未清算场外交易衍生品受欧洲市场基础设施监管（EMIR）规定的保证金规则约束，所有未通过授权清算系统清算的衍生品合约交易对手将不得不为其净敞口提供额外保证金。该工具基于自动化法律分析处理定制文档的起草，将每个文档的时间从三小时缩短到三分钟。

另一家国际律师事务所开发了自己的 AI 平台，以阅读和分析贷款协议中的条款。该系统模拟人的决策过程，提取、审查和分析关键合同风险，并在适当的时候将相关的模板、文档和先例提供给律师。

除了律师事务所之外，一家大型科技公司还通过开发一名从事法律研究的机器人律师来参与法律科技。该应用程序允许用普通英语提问（就像对同事提问一样），然后，机器人会阅读完整的法律体系，并提供具体的分析答案，其中包括来自立法、判例法和二级文献。所有上述例子都反映了 AI 成为公司律师有用工具的潜力。
事实上，有些人预测机器人和算法可以帮助提高法律援助的可及性和普及性，特别是对于特权较少的人。一些支持者认为，案件可以首先通过 AI 计算机系统进行处级审阅，而法律援助律师只会在真正必要的最后阶段参与其中。

因此，通常来说 AI 应用程序似乎可以以更快、更有效的方式帮助处理和分析结构化或非结构化数据，并且可能比普通人更准确和全面。

针对消费者终端的法律科技应用程序的另一个潜在领域，是提供有关离婚的法律建议。离婚纠纷通常需要审阅冗长且令人困惑的案情，这些案情已在数千个先前的决定中得到解释。有些人认为，机器人律师可以分析出潜在的例外、漏洞和历史案例，以确定最佳进展方向。有些网站已经提供此类服务。在让客户填写表格并提供信息后，使用算法来尝试预测离婚将如何进展并根据该预测结果为其客户提供服务。

至此，AI 是一个很棒也很公正的工具，可以减少平凡的工作，提高律师和大律师的生活质量。但是 AI 应用程序也存在问题。其中一个问题是机器人和算法的使用可能导致歧视和偏见。每个预测算法不可避免地基于系统设计者关于使用（包括或排除哪些数据以及如何将权重应用于其重要程度的数据）的一系列主观决策。此外，程序员的个人背景和动机也可能会影响算法的设计。因此，算法设计过程的透明度及其实施后的有效性评估至关重要。

换句话说，至少就目前而言，提出真正的不带偏见或中立的 AI 技术解决方案显然是一个挑战。顺便提一下，在全球范围内，现在正在探索道德在 AI 中的作用。欧洲委员会主席咨询小组欧洲科学和新技术伦理小组于今年 3 月发布了关于 AI、机器人和自动化系统的声明，强调了关于技术对人类价值观集体、广泛和包容性地吸收的重要需求。因此，AI 的道德发展是一个重要的任务，需要各行各业的专业人士，包括法律领域的专业人士的辩论和参与。

第二个主题是区块链——一种分布式分类帐技术。区块链是一种数字账本，包括交易、合同和协议，分布在世界各地数百台甚至数千台计算机上。区块链技术的好处主要包括安全性和透明度。有人说速度也是区块链的优势，但这实际上取决于区块链的设计。在许多公共链应用程序中，处理速度很难成为一个优势，因为验证所涉及的事务可能需要长达几分钟。

安全性通常被认为是分布式分类帐的一种优势，因为分布式分类帐中包含的信息是防篡改的。如果在 1000 个节点上共享分类账，当黑客想要更改其中一个块中的信息时，需要同时攻击所有这 1000 个节点。透明度也是分布式分类帐的一种优势，因为区块链中的所有节点都可以看到区块的更改并确定它是否是授权更改。但是这种认证需要时间来处理，这也通常被称为比特币公共链的可伸缩性或速度问题。

区块链技术在法律上可以有许多潜在的应用。其中一方面就是土地登记，区块链有望成为存储财产必需数据的有效而安全的方法，例如土地所有权和转手时的详细信息。实际上，分布式分类账有可能取代纸质土地登记系统。

世界上已经有一些司法管辖区在探索使用区块链技术来实现土地注册过程的现代化、增加安全性和加快速度。英国土地注册处最近就宣布他们打算采用包括区块链技术在内的新技术。

在瑞典，土地登记机构一直在测试通过在区块链上的财产交易记录来消除文书工作、减少欺诈和加速交易的方法。据估计，这可能为瑞典纳税人每年节省超过 1 亿欧元。

在中东，迪拜正在开发一个系统，该系统将区块链上的所有当地房地产合同记录为整体计划的一部分，以便在 2020 年之前获得区块链上的所有政府文件。

在印度，法律专家还谈到了公共分布式分类账将土地记录数字化的潜在好处，并为未来的交易树立先例，确保合法的、政府批准的交易记录。

除土地登记外，区块链在法律领域的另一个潜在应用是替代性争议解决（包括仲裁）。虽然仲裁通常用于解决国际业务中的争议，但这个过程既费时又费钱。区块链平台可以提供一个安全透明的平台，用于捕获谈判、协议和解决方案的条款，其中每个事实和细节都可用并可追溯到相关方。

2018 年 3 月，一家美国法律技术创业公司推出了专门针对国际争议解决机构的区块链申请。该应用程序旨在利用区块链技术消除仲裁过程中对快递员、硬拷贝和邮寄的需求。该区块链门户由仲裁机构持有，索赔人可以通过门户网站提交仲裁请求。可以起草、定稿和直接提交文件，所有相关方都可以访问与程序相关的数据。申请人还可以在门户网站上查看他们的最终判决。

区块链技术可能潜在地改变法律程序的另一种方式在公证领域。目前，公证人公开确认和核实法律文件的签名（例如契约和合同），这是法院系统中的一个重要过程。例如，在美国，法院在提交和验证法律诉讼中的电子邮件、文件和记录等证据时，需要遵循一套特定的规则。这就是区块链可以发挥作用的地方，因为该技术可以通过将证据保存为数字分类帐的一部分来安全地记录和验证证据。在美国，佛蒙特州是第一个立法使用区块链技术来验证记录和信息的州。一家公司已经开发了几种将区块链技术应用于法律文件产品，消除了对公证人盖章的需求。

不过，虽然区块链技术很有发展前景，但它并非完全安全。一个普遍关注的问题是在“了解您的客户”（KYC）流程中缺乏身份验证。在传统交易中，银行等中介机构进行身份验证，并负责在双方之间建立信任。尽管一些应用程序确实声称它们强制执行严格的 KYC，一些区块链应用程序通过匿名事务完全跳过这个过程。

另一个疑虑区块链的跨辖区性质，因为区块链上的节点可以位于世界的任何地方。在传统的银行交易中，如果银行对交易有过错，则可以起诉银行，并且适用的管辖区很可能由合同规定的管辖区管辖。但是，在分散的环境中，可能难以确定适当的适用管理规则和法律。

另一个挑战是分散自治组织（DAO）的法律地位，这些组织本质上是数字实体，它们在区块链上记录活动，并且在其操作中不需要人为输入。这些组织的法律权力当然会产生问题。例如，他们应被视为公司还是法人？他们是否有权签订法律合同、起诉和被起诉？一旦违法，由谁负责？在以太坊区块触发智能合约也引发了对这些智能合约的行为负责的问题，当智能合约出现故障或块被破解时，谁应该负责还原碎片。以上是政府和监管机构在与业内人士和广大公众协商后所得出的需要解决的问题。对于那些熟悉与以太坊平台相关的加密以太货币的人而言，以太坊基于这样的 DAO 结构。因此，当以太网或类似平台的用户越来越多时，上面提到的 DAO 问题需要实际解决。

总之，技术与法律的融合是一个具有经济、社会、法律和道德含义的迷人话题。

挑战之一是网络安全，它将成为焦点关注，并可能为涉及此类网络犯罪的法庭案件提供充足的案源。另一个挑战是数据隐私（无论是否有数据主体意识到这个问题），这当然不是一个新主题，但它将在新技术世界中显得更为突出，特别是当各种社交媒体平台和各种应用程序收集如此多的个人数据时。

Source 来源：

http://www.info.gov.hk/gia/general/201806/06/P2018060600366.htm

Highlights of the Speech by the Secretary for Financial Services and the Treasury Bureau of Hong Kong at 17th Hong Kong Venture Capital and Private Equity Association China Private Equity Summit

In the 17th Hong Kong Venture Capital and Private Equity Association (HKVCA) China Private Equity Summit on June 5, 2018, the Secretary for Financial Services and the Treasury Bureau of Hong Kong (SFST) shared his thoughts on the opportunities for private equity in China's new era of economic development:
According to the IMF, China's GDP in 1980 was US$305 billion, amounting to 2.7 percent of the world's GDP. Last year, China's GDP was over US$12 trillion, amounting to 15 percent of the world's GDP, but it contributes some 30 percent of global economic growth.

In terms of trade, China's total trade amounted to US$21 billion in 1978, accounting for 0.8 percent of the world total. Last year, the amount was over US$4 trillion, accounting for 11.5 percent of the world total, making China the largest trading entity out of 204 economies.

China's latest development strategies continue to provide plentiful investment opportunities for private equity.

First, there will continue to be the strong appetite for retail products, increased expenditure on leisure

pursuits and robust demand for education and healthcare.

In particular, Beijing's policy reforms aimed at building a competitive healthcare industry have drawn in private investment in what McKinsey estimates could be a US$1 trillion industry by 2020.

Secondly, China is seeking to transform itself from the "factory of the world" to an entrepreneurial and innovation base driven by more high value-added industries.

China has embraced a development strategy with innovation at its heart. Last year, more than half of the 406 blockchain-related patent applications in the World Intellectual Property Organization's database were from China. Various studies have highlighted China's numerous investments in artificial intelligence, in applications ranging from drones to autonomous vehicles.

According to a report released by the Hurun Research Institute in April this year, China had more than 150 unicorns at the end of March, with a combined value of over RMB4 trillion, around US$630 billion. In comparison, data from CB Insights suggests that the US is home to around 235 unicorns worth US$812 billion.

What is interesting is that the start-ups in China appear to be scaling up faster than those in the United States. A report by the Boston Consulting Group suggests that Chinese tech start-ups are reaching the US$1 billion mark for unicorns three years faster than their U.S. counterparts, taking an average of four years, compared to seven for American companies.

Thirdly, China is keen to develop environmentally friendly cities and industries and has emerged as a leader in the global green economy. According to the Institute for Energy Economics and Financial Analysis, China was the biggest investor globally in renewable energy last year, with a total investment of US$44 billion in clean energy projects, a 40 percent increase over US$32 billion in 2016.

Indeed, China currently accounts for around 60 percent of global solar cell production, while the country's global presence in wind power is also rising. In addition, China is a bright spot for electric vehicle sales and plays a crucial role in the industry. Electric vehicles are expected to account for 34 percent of global sales by 2035.

In fact, green funds are thriving in China. Aside from the Clean Development Mechanism Fund of the Ministry of Finance, many provinces and cities have established regional green development funds. Private green investment funds have also been set up, and there are over 260 green funds registered with the Asset Management Association of China.

Fourthly, China is also the proponent of the Belt and Road Initiative, which aims to strengthen trade and promote investment along the Silk Road Economic Belt and the Maritime Silk Road. There is huge potential for private equity investments in infrastructure along the Belt and Road economies.

According to the Asian Development Bank, as much as US$1.7 trillion a year will need to be invested in infrastructure in Asia until 2030. The Asian Infrastructure Investment Bank puts the estimate at an even higher figure of US$2.7 trillion per year.

The Hong Kong Monetary Authority has set up an Infrastructure Financing Facilitation Office, which provides a platform for collaboration in infrastructure projects. To date, around 80 key stakeholders have joined as partners, including multilateral development banks, financiers, pension funds, insurance companies, commercial banks, professional services firms, and of course private equity funds.

Having looked at the four clusters of opportunities for private equity in China, the SFST briefed the types of investments for both private enterprises and state-owned enterprises.

One trend among private enterprises is the increase in buyouts by private equity firms. In China, the growing number of buyout opportunities is attributed to the void in business succession that Mainland entrepreneurs face when their next generation does not want to take over their family businesses. Growing competition has also prompted first-generation entrepreneurs to seek operational transformation and resource injection for their companies.

Another trend is increased opportunities to invest in state-owned enterprises in collaboration with state-owned restructuring funds, under ongoing mixed ownership reform. Private equity investors may be in a position to help state-owned enterprises improve their governance structure and implement more market-driven decision-making processes.

Hong Kong is the second largest private equity hub in Asia, just behind Mainland China. According to the Asian Venture Capital Journal, as at end-2016, the capital under management of private equity funds in Hong Kong amounted to US$120 billion. Hong Kong has an excellent financial infrastructure, a huge talent pool of investment and fundraising professionals, and strength in professional services such as law and accounting, all of which are essential to private equity businesses. The equity market of Hong Kong provides an exit option for private equity investments. Hong Kong Stock Exchange has just put in place a new listing regime for companies

from emerging and innovative sectors, it is already seeing sizeable applications under the new rules.

One major change to the listing requirements is tailor-made for biotech companies: there is specific guidance for biotech sectors such as pharmaceuticals, biologics and medical devices.

The second listing change is to permit high growth and innovative companies with weighted voting rights (WVR) structures to list on the Main Board of Hong Kong Stock Exchange, subject to requirements in market capitalization, business model, role of research and development and track record in business operations, with safeguards like requirements for WVR beneficiaries, limits on WVR powers and enhanced corporate governance and disclosure.

In conclusion, with appropriate safeguards in place, Hong Kong listing reforms will deepen and broaden its fundraising platform and increase Hong Kong's overall competitiveness, thereby providing an attractive exit option for private equity investments.

China is a massive consumer market, home to a dynamic start-up scene, a leader in the global green economy, and the proponent of the Belt and Road Initiative. Hong Kong's experience, expertise and international connections allow it to be a private equity hub, and the recent listing reforms in particular present an attractive exit option for private equity investments.

香港财经事务及库务局局长在第十七届香港创业投资及私募投资协会中国私募投资峰会的致辞要点

在 2018 年 6 月 5 日举行的第 17 届香港创业投资及私募投资协会（HKVCA）中国私募投资峰会上，香港财经事务及库务局局长刘怡翔先生（SFST）分享了他对私募股权在中国经济发展新时代的机遇的看法：

根据国际货币基金组织的统计，1980年中国的国内生产总值为3050亿美元，占世界国内生产总值的2.7%。去年，中国的国内生产总值超过12万亿美元，占世界国内生产总值的15%，但它占全球经济增长的30%左右。

在贸易方面，1978年中国的贸易总额达210亿美元，占世界总贸易额的0.8%。去年，这一数额超过4万亿美元，占世界总量的11.5%，这使得中国成为204个经济体中最大的贸易实体。

中国的最新发展战略将继续为私募股权投资提供充足的投资机会。

首先，零售产品的需求将继续增加，休闲活动的支出增加以及教育和医疗保健需求强劲。

特别值得一提的是，根据麦肯锡咨询公司的估计，北京旨在建立有竞争力的医疗保健产业的政策改革将吸引大批私人投资，到2020年可能会产生1万亿美元的产业值。

其次，中国正在寻求从“世界工厂”转变为由更多高附加值产业驱动的企业和创新基地。

中国已经采取了以创新为核心的发展战略。去年，世界知识产权组织数据库中406个与区块链相关的专利申请中有一半以上来自中国。各种研究都在强调了中国在从无人机到自动驾驶汽车等应用的人造智能方面的众多投资。

根据胡润研究所今年4月发布的一份报告，截至3月底，中国共有超过150家独角兽，总价值超过4万亿元人民币，约为6,300亿美元。相比之下，来自 CB Insights 的数据表明，美国拥有大约235家独角兽，价值8120亿美元。

有趣的是，中国的初创企业似乎比美国的企业扩大地更快。波士顿咨询集团的一份报告显示，中国科技初创企业平均使用4年的时间成为市值10亿美元的独角兽，而美国同类企业则需要7年。

第三，中国热衷于发展环保型城市和产业，并已成为全球绿色经济的领导者。根据能源经济与金融分析研究所的数据，去年中国是全球可再生能源投资最大的投资国，清洁能源项目总投资440亿美元，比2016年的320亿美元增长40%。

确实，中国目前占全球太阳能电池产量的60%左右，其在风力发电方面的全球影响力也在不断增加。此外，中国是电动汽车销售大国，在行业中发挥着至关重要的作用。预计到2035年，电动汽车将占全球销售额的34%。

事实上，绿色基金正在中国蓬勃发展。除中国财政部的中国清洁发展机制基金外，还有许多省市建立了区域绿色发展基金。以及建立了私人绿色投资基金，中国资产管理协会现有已注册的绿色基金260多个。

第四，中国也是“一带一路”政策的提出者。该政策旨在加强贸易、促进沿丝绸之路经济带和海上丝绸之路的投资。私募股权投资对“一带一路”经济体的基础设施投资潜力巨大。

根据亚洲开发银行的数据，到2030年，亚洲的基础设施建设需要每年1.7万亿美元的投资。亚洲基础设施投资银行估计每年的估值甚至高达2.7万亿美元。

香港金融管理局已成立基建融资便利化办事处，为基建

项目提供合作平台。迄今为止，约有80个主要利益相关者已成为了合作伙伴，包括多边开发银行、金融家、养老基金、保险公司、商业银行、专业服务公司，当然还有私募股权基金。

在研究了中国私募股权的四大机会后，SFST 简要介绍了私营企业和国有企业的投资类型。

私营企业的一个发展趋势是私募股权公司的收购增加。在中国，内地企业家在其下一代不想接管家族企业时所面临的商业继承空白产生了越来越多的收购机会。不断增长的竞争也促使第一代企业家为其公司寻求运营转型和资源注入。

另一个趋势是，在持续的混合所有制改革下，与国有重组基金合作，增加了投资国有企业的机会。私募股权投资者可以帮助国有企业改善治理结构、实施更多以市场为导向的决策流程。

香港是亚洲第二大私募股权投资中心，仅次于中国大陆。据亚洲风险投资杂志报道，截至2016年底，香港私募股权基金管理的资本总额达1,200亿美元。香港拥有优秀的金融基础设施、庞大的投资和筹款专业人才库以及法律和会计等专业服务的优势，所有这些都对私募股权业务至关重要。香港股票市场为私募股权投资提供退出选择权。香港证券交易所刚刚为新兴和创新领域的公司制定了新的上市制度，其未来申请量将非常可观。

上市要求为生物技术公司量身定制了一个重大变化：对生物技术领域，如药品、生物制剂和医疗器械，出具了具体的指导。

第二次上市要求变化是允许高增长和具有加权投票权（WVR）结构的创新型公司在香港联合交易所主板上市，具体取决于其市值、业务模式、研发和在商业运营中跟踪记录，且提供例如对限制 WVR 受益人、对 WVR 权力的限制以及加强公司治理和披露等的一系列保障措施。

总括而言，在适当的保障措施下，香港上市改革将深化和拓宽其筹款平台、提升香港的整体竞争力，从而为私募股权投资提供有吸引力的退出选择。

中国是一个巨大的消费市场，拥有充满活力的初创企业，是全球绿色经济的领导者，也是“一带一路”政策的提出者。香港的经验、专业知识和国际关系使其成为私募股权投资中心，特别是近期的上市改革，为私募股权投资提供了一个有吸引力的退出选择。

Source 来源：

http://www.info.gov.hk/gia/general/201806/05/P2018060500323.htm