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Financial Services Regulatory Update 金融服务监管资讯

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A Comparative Study on Recent Regtech Developments in Hong Kong and Singapore

The good use of Regtech can improve the efficiency, security and transparency of the market, making it more attractive to financial institutions to set their presence and develop business. Regtech would undeniably be one of the major areas that a finance sector regulator would invest to enhance its functions.

New Regtech Platform in Singapore

On March 31, 2022, the Monetary Authority of Singapore (MAS) published a media release, pursuant to which the BIS Innovation Hub Singapore Centre and the MAS have developed a new prototype platform that integrates regulatory data and analytics. Known as Project Ellipse, the platform successfully demonstrates how regulatory and other data, such as articles and news, can be integrated into a single platform to help regulatory authorities identify potential risks to individual banks and the banking system. Project Ellipse enables quick access to early warning indicators, analytics, and prudential metrics for banking supervision. Integrating regulatory and other data, facilitated by advanced technology, could enhance the analytical capabilities of regulators to be more forward-looking and data-driven.

To enable collaboration, the Bank for International Settlements (BIS) will launch an Ellipse collaboration community to share, further test, customize and scale this solution across regulatory authorities around the world. The Ellipse prototype is the first to be published on BIS Open Tech, a new platform for sharing statistical and financial software as public goods, thereby promoting international cooperation and coordination.

“Regulators need accurate and timely information to assess emerging risks and to make informed supervisory decisions. Project Ellipse has now developed a potential tool for the global regulatory community to further explore and collaborate on common solutions that can improve the data and analytical capabilities of regulatory authorities. It has the potential to be a game-changer by giving supervisors

access to more and better data, structured and unstructured, with greater predictive insights than ever before, it can be scaled to provide real time analysis on a national or cross border supervisory basis”, said Ross Leckow, Acting Head of the BIS Innovation Hub.

“Recent technological advancements have opened up possibilities for supervisors to leverage on more granular, timely and varied datasets to significantly improve supervisory effectiveness. Project Ellipse clearly demonstrates that collection and use of such datasets need not be prohibitive, but can be codified, efficient, cost effective and potentially scalable even on a cross border basis. MAS is adapting the prototype for our own supervisory needs. I hope other supervisors will similarly find it useful and look forward to further joint initiatives to develop common SupTech solutions for supervisors”, said Hern Shin Ho, Deputy Managing Director (Financial Supervision), MAS.

With the support of the Bank of England, the International Swaps and Derivatives Association, Accenture and Financial Network Analytics, the project was undertaken in two phases:

- Phase one of the project investigated how machine executable digital reporting could enable data-driven supervision, using a cross-border common data model.
- The second phase examined how advanced analytics such as machine learning and natural language processing could be applied to unstructured and granular reporting data. This allows identification of risk correlations and sentiment analysis, so as to alert supervisors in real time to issues that may need further investigation.

Hong Kong: Providing Guidance and Promoting Regtech Adoption

Regtech promotion roadmap

On November 3, 2020, the Hong Kong Monetary Authority (HKMA) has announced that it has developed

a two-year roadmap to promote Regtech adoption in the Hong Kong banking sector, as laid out in a White Paper entitled “Transforming Risk Management and Compliance: Harnessing the Power of Regtech”.

The HKMA’s Regtech roadmap is developed with reference to the recommendations in the white paper. The 16 recommendations span five core areas:

- boosting awareness by issuing practical guidance and organizing targeted events;
- promoting innovation among the local and global Regtech community and facilitating access to infrastructure;
- enhancing regulatory engagement with the Regtech ecosystem through ongoing dialogue and collaboration;
- developing the talent pool by formalising a Regtech training and skills framework; and
- sustaining adoption via continued industry engagement and effective tracking of progress.

To implement the recommendations, the HKMA planned to roll out a series of events and initiatives in the next two years, including:

- hosting a large-scale event to raise the banking sector’s awareness of the potential of Regtech;
- launching a Regtech Adoption Index;
- organizing a Global Regtech Challenge to stimulate innovation;
- publishing a “Regtech Adoption Practice Guides” series;
- creating a centralized “Regtech Knowledge Hub” to encourage information sharing; and
- establishing a Regtech skills framework to develop talents.

Launch of Regtech Adoption Practice Guide

On June 17, 2021, the HKMA launched a new Regtech Adoption Practice Guide series to provide banks with detailed practical guidance on the implementation of Regtech solutions.

The publication of the Regtech Adoption Practice Guide series forms part of the HKMA’s two-year Regtech promotion roadmap announced in November 2020. It succeeds the Regtech Watch series and builds on it to provide banks with detailed guidance on how to overcome implementation challenges associated with Regtech adoption.

Each Regtech Adoption Practice Guide focuses on a specific technology or application area identified in the HKMA’s White Paper to further Regtech adoption in the Hong Kong banking sector. The inaugural issue provides guidance on “Cloud-based Regtech solutions”.

As noted in the first issue of the Practice Guide, Cloud computing is a key underpinning technology behind Regtech solutions. The use of Cloud technology on Regtech solutions offers several benefits including timely offsite support, fast implementation and highly scalable solutions. Findings from the White Paper suggested that banks that were open to using Cloud-based technology displayed greater operational resilience during the COVID-19 pandemic.

On June 17, 2021, the HKMA also published the seventh and final issue of the Regtech Watch series. This last issue outlines the HKMA’s three-year roadmap to integrate supervisory technology (Suptech) into its processes. Through greater use of Suptech, the HKMA aims to enhance the effectiveness and forward-looking capability of its supervisory processes.

Virtual event to promote Regtech adoption

Apart from the publication of the Regtech Adoption Practice Guide series, the HKMA hosted its flagship Regtech event, “Unlocking the Power of Regtech” on June 30, 2021 to promote Regtech adoption. This virtual event was opened to everyone who is interested in the use of Regtech to transform risk management and regulatory compliance and was attended by over 4,000 participants.

Chief Executive of the HKMA, Mr. Eddie Yue, said in the event, “Regtech constitutes an integral and important driver of the HKMA’s ‘Fintech 2025’ strategy. Our goal is to make Hong Kong a leading hub for developing Regtech solutions and cultivating Regtech talents.”

The event brought together senior representatives from the global Regtech ecosystem including financial institutions, regulators, Regtech providers, and other industry experts. They shared their experience and insights into the enormous potential of Regtech during the conference.

Deputy Chief Executive of the HKMA, Mr. Arthur Yuen, rounded up the conference by highlighting the key takeaways from other speakers, including:

- Deputy Governor of People’s Bank of China, Mr. Yifei Fan, who emphasized Regtech’s key role in promoting deep integration between digital technologies and financial services, thereby strengthening the capability of finance to benefit individual consumers and corporates.
- Head of BIS Innovation Hub, Mr. Benoît Cœuré, who underscored the importance for central banks to move in tandem with banks’ adoption of technologies and suggested ways on how central banks and banks can overcome key

Regtech adoption obstacles (3Ts) – technology, training and transformation.

- Executive Director for International Banks Supervision, Bank of England, Mr David Bailey, who explained the criticality of data for Regtech adoption and shared his experience of how banks could promote data quality and governance, and building customers' trust.
- CEO of Citi, Ms. Jane Fraser, who emphasized proper risk management in the use of new technologies and the essential role played by sandboxes to facilitate the development of Regtech solutions.
- Co-CEO of Ping An Group, Ms. Jessica Tan, who shared that collaboration among different stakeholders in the ecosystem is crucial to bridge any potential gaps facing banks around technical capability, people and skills.

Regtech Adoption Index

On the same day as the Regtech event, the HKMA also published Hong Kong's inaugural Regtech Adoption Index (RAI), compiled based on a comprehensive analysis of the Regtech adoption status in the Hong Kong banking industry. 56 per cent of surveyed banks are using Regtech in at least two of the six identified regulatory themes as defined in the HKMA's White Paper entitled "Transforming Risk Management and Compliance: Harnessing the Power of Regtech". The results of the first RAI indicated that the majority of banks in Hong Kong had embarked on their Regtech journeys, and there were enormous opportunities for growth and collaboration within the Regtech ecosystem.

Riding on the success of the conference, the HKMA will continue to promote Regtech adoption in the Hong Kong banking industry. As laid out in the two-year roadmap published in November 2020, a series of initiatives including the publication of a Regtech Adoption Practice Guide series, the formulation of a Regtech skills framework, and the development of a Regtech knowledge hub will be rolled out in the year ahead.

Remarks

Compared to Singapore in which their financial regulator, MAS, has directly participated in the development of a Regtech platform to take the initiative in adopting Regtech for their supervision over the finance industry, Hong Kong regulators focus on motivating market participants to deploy Regtech. Hong Kong has undeniably been very active and clear in the construction of plans and directions in promoting the adoption of Regtech. Hong Kong has also realized its

two-years' roadmap step by step. Nevertheless, being a key financial hub within the Greater Bay Area where a multitude of financial institutions rallies, Hong Kong will need to cope with an increasing demand for Regtech across myriad dimensions.

The stable and reliable business environment of Hong Kong is attributable to the cautiousness and prudence of Hong Kong regulators. As market participants' business models evolve constantly, more efficient regulatory response would be required, and in view of the rapid development of Regtech in the international arena, Hong Kong regulators should adopt a multi-faceted approach in steering Hong Kong's Regtech development.

香港与新加坡近期监管科技发展的比较

良好的合规科技运用能提高市场的效率、安全及透明度，使其对金融机构的进驻及营商更带来更大的吸引力。无可否认，合规科技是一个司法管辖区的金融监管机构对其发展进行投资的主要领域之一。

新加坡开发新的合规科技平台

2022年3月31日，新加坡金融管理局（新加坡金管局）发布了一份新闻稿，据此，BIS创新中心（BIS Innovation Hub）新加坡中心和新加坡金管局开发了一个集成监管数据和分析的新原型平台。该平台被称为Project Ellipse，成功展示了如何将监管和其他数据（如文章和新闻）集成到一个平台中，以帮助监管机构识别个别银行和银行系统的潜在风险。新原型“Project Ellipse”可以快速访问银行监管的预警指标、分析和审慎指标。在先进技术的推动下，整合监管数据和其他数据，可以增强监管机构的分析能力，使其更具前瞻性和数据驱动。

为了实现协作，BIS将启动Ellipse协作社区，以便在全球监管机构之间共享、进一步测试、定制和扩展该解决方案。Ellipse原型首次在BIS Open Tech上发布，这是一个将统计和财务软件作为公共产品共享的新平台，从而促进国际合作与协调。

“监管机构需要准确及时的信息来评估新出现的风险并做出明智的监管决策。Project Ellipse现在已经为全球监管机构开发了一种潜在的工具，可以进一步探索和合作共同解决方案，从而提高监管机构的数据和分析能力。它有可能成为改变游戏规则的人，让监管者可以访问更多更好的结构化和非结构化数据，比以往任何时候都具有更强大的预测洞察力，它可以扩展以在国家或跨境监管的基础上提供实时分析”，BIS创新中心代理负责人 Ross Leckow 表示。

“最近的技术进步为监管者提供了利用更精细、及时和多样化的数据集来显著提高监管效率的可能性。Project Ellipse 清楚地表明，此类数据集的收集和使用不一定是令人望而却步的，而是可以编纂、高效、具有成本效益并且即使在跨境基础上也可能具有可扩展性。新加坡金管局正在调整原型以满足我们自己的监管需求。我希望其他监管机构同样会发现它有用，并期待进一步联合倡议为监管机构开发通用的 SupTech 解决方案”，新加坡金管局副董事总经理（金融监管）Hern Shin Ho 说。

在英格兰银行（Bank of England）、国际掉期和衍生品协会（International Swaps and Derivatives Association）、埃森哲（Accenture）和金融网络分析公司（Financial Network Analytics）的支持下，该项目分两个阶段进行：

- 该项目的第一阶段调查了机器可执行的数字报告如何使用跨境通用数据模型实现数据驱动的监督。
- 第二阶段研究如何将机器学习和自然语言处理等高级分析应用于非结构化和细粒度的报告数据。这允许识别风险相关性和情绪分析，以便实时提醒主管可能需要进一步调查的问题。

香港：提供指引及推广采用合规科技

促进合规科技的计划

2020 年 11 月 3 日，香港金融管理局（香港金管局）宣布其已制定促进香港银行业采用合规科技两年计划，该计划载于题为《善用合规科技力量：转变风险管理及合规》白皮书内。

香港金管局的合规科技计划是参考白皮书提出的 16 项建议制定，该等建议可分为 5 个核心范畴：

- 制定实务指引及举办特定活动以加强对合规科技的认知；
- 推动本地及环球合规科技界加强创新，并帮助它们接入行业基础设施；
- 保持沟通与合作，加强监管机构与合规科技生态圈的联系；
- 制定合规科技培训及技能架构，加强培育人才；及
- 与业界保持联系，跟进计划落实进度，以推动业界持续采用合规科技。

为落实建议，香港金管局计划在未来两年将推出一连串活动和措施，包括：

- 举办一项大型活动，加强银行业对合规科技潜力的认知；
- 推出「合规科技采用指数」；
- 筹办「环球合规科技挑战赛」，以激励创新；
- 发布「合规科技采用实务指引」系列；
- 成立「合规科技资讯平台」，鼓励资讯共享；及
- 设立合规科技技能架构，以加强培育人才。

推出「合规科技采用实务指引」

2021 年 6 月 17 日，香港金管局推出《合规科技采用实务指引》新系列（英文版），针对如何落实合规科技方案为银行提供详尽的实务指引。

《合规科技采用实务指引》系列是金管局于 2020 年 11 月公布的促进合规科技应用两年计划的一部分。此系列将取代《合规科技通讯》系列，并在其基础上就如何克服在落实采用合规科技时遇到的挑战向银行提供详尽指引。

每期《合规科技采用实务指引》会集中讨论金管局《白皮书》（英文版）所识别的特定科技或应用环节，以进一步推动香港银行业采用合规科技。第一期会就「云端合规科技方案」提供指引。

正如第一期实务指引指出，云端运算是支持合规科技方案的主要科技。把云端技术应用于合规科技方案有多方面的好处，包括及时远程支援、可快速实施，以及高度灵活方案。《白皮书》的研究显示，在新冠病毒疫情期间，对使用云端技术持开放态度的银行在运作上的应变能力较高。

2021 年 6 月 17 日，香港金管局亦发布第七期亦是最后一期的《合规科技通讯》系列（英文版）。这期通讯概述金管局如何将监管科技与其监管程序整合的三年计划。透过更广泛应用监管科技，香港金管局旨在提升监管程序的成效与前瞻能力。

线上合规科技研讨会推广合规科技

除发布《合规科技采用实务指引》系列外，金管局于 2021 年 6 月 30 日举办合规科技旗舰研讨会「Unlocking the Power of Regtech」，以促进合规科技的采用。任何对利用合规科技转变风险管理及合规有兴趣的人士均可参与是次研讨会。是次线上研讨会会有 4,000 多名参与者。

金管局总裁余伟文表示：「合规科技是推进金管局『金融科技 2025』策略的关键元素。我们的目标是推动香港

成为开发合规科技方案与培育合规科技人才的主要枢纽。」

研讨会汇聚全球各地合规科技生态圈，包括金融机构、监管机构与合规科技供应商的高级管理人员，以及其他行业专家，在会上分享有关合规科技庞大潜力的经验与心得。

香港金管局副总裁阮国恒为研讨会作总结时，分享从其他嘉宾演讲中获得的重点，包括：

- 中国人民银行副行长范一飞强调合规科技在促进数字经济技术与金融服务的深度融合方面发挥重要作用，从而提升金融惠民利企的能力。
- 国际结算银行创新枢纽主管 Benoît Cœuré 强调中央银行要紧贴银行采用科技的进度，并就中央银行与银行可如何克服采用合规科技的主要障碍提出建议（3Ts）——科技（technology）、培训（training）与转型（transformation）。
- 英伦银行国际银行监管执行董事 David Bailey 指出，数据对采用合规科技极为重要，并分享他对银行如何促进数据质素及管治，以及建立客户对银行的信赖的经验。
- 花旗集团首席执行官 Jane Fraser 强调运用新科技必须有妥善的风险管理配合，并指出「沙盒」在促进新合规科技方案开发扮演重要角色。
- 中国平安集团联席首席执行官陈心颖认为，生态圈内不同持份者的合作，对拉近银行在科技水平、人才与技能方面可能面对的差距至关重要。

《合规科技采用指数》

合规科技研讨会同日，香港金管局发布首期《合规科技采用指数》（只备英文版本），该指数是根据香港银行业的合规科技采用情况的全面分析编制。56%的受访银行在金管局发表的《善用合规科技力量：转变风险管理及合规》白皮书（只备英文版本）所界定的六个监管主题中至少两项采用合规科技。首期《合规科技采用指数》的结果反映香港大部分银行都已踏上采用合规科技的旅程，同时合规科技生态圈存在庞大的发展及合作机会。

香港金管局会在是次研讨会取得的成功的基础上，继续推动香港银行业采用合规科技。正如在 2020 年 11 月公布的两年计划所载，香港金管局在来年将推出连串活动

及措施，包括发布《合规科技采用实务指引》系列、设立合规科技技能架构，以及成立「合规科技资讯平台」。

评论

与新加坡金融监管机构新加坡金管局直接开发合规科技平台对行业进行监管相比，香港监管机构目前主要鼓励业界采用合规科技提升营运效率。香港在推动采用监管科技的计划和方向上毋庸置疑非常积极和明确；香港也逐步实现两年计划。尽管如此，作为大湾区金融机构云集的主要金融中心，香港对监管科技的需求将不断增加，应加快推动合规科技在多领域的实践。

香港稳定可靠的营商环境在一定程度上得益于香港监管机构的审慎和审慎。然而，随着市场参与者的业务模式的不断演变，需要更有效的监管回应，更有见于监管科技在同伴中的快速发展，香港监管机构可能需要从多方面的角度推进香港未来监管科技领域的发展。

Source 来源：

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Hong Kong Securities and Futures Commission Criticizes Two Directors for Breaches of the Takeovers Code

On April 7, 2022, Hong Kong Securities and Futures Commission (SFC) has publicly criticised Mr Gao Yunhong (Mr Gao) and Ms Feng Xuelian (Ms Feng) in connection with the disposal of material assets of Steering Holdings Limited (Company) during an offer period in breach of Rule 4 of the Code on Takeovers and Mergers and Share Buy-backs (Takeovers Code).

Background

On April 26, 2021, Masterveyor Holdings Limited (Offeror), a company wholly-owned by Mr Ng Kin Siu (Mr Ng), who was an executive director of the Company at that time, completed the acquisition of 652,680,000

shares in the Company (Sale Shares), representing a 49% shareholding interest in the Company, from CMBC Capital Finance Limited (CMBC) upon the enforcement of a security over the Sale Shares by CMBC. The security over the Sale Shares was related to a loan extended by CMBC to Gentle Soar Limited (Gentle Soar). Gentle Soar was the controlling shareholder of the Company prior to the acquisition of the Sale Shares by the Offeror and was wholly-owned by Mr Gao who was then a non-executive director of the Company.

Following the completion of the acquisition, the aggregate shareholding interest of Mr Ng and parties acting in concert with him in the Company increased from 4.62% to 53.62%. As such, an obligation for the Offeror to make an unconditional mandatory offer for the Company was triggered pursuant to Rule 26.1 of the Takeovers Code.

On May 3, 2021, the Company announced that Mr Ng and all the independent non-executive directors had been removed from the board of the Company (Removals). Following the Removals, only Mr Gao and Ms Feng (an executive director of the Company) remained on the board.

On May 4, 2021, the Company announced that Mr Gao had informed its board of directors (consisting of Mr Gao and Ms Feng) that: (i) there was a dispute between Gentle Soar, CMBC and the Offeror in respect of the enforcement of the security over the Sale Shares by CMBC and the transfer of the Sale Shares to the Offeror; and (ii) legal proceedings had been instigated by Gentle Soar against CMBC, the Offeror and Mr Ng in relation to the dispute (Dispute).

On May 6, 2021, the Company announced that a new executive director and three new independent non-executive directors had been appointed to its board of directors (New Appointments). Following the New Appointments, the board of the Company consisted of Mr Gao, Ms Feng and the new directors (New Board).

On May 7, 2021, the New Board held a meeting and approved the proposed disposal (Disposal) of 137,740,000 shares in CMBC Capital Holdings Limited (CMBCCH Shares). The CMBCCH Shares were held by Jet Speed Asia Pacific Limited (Jet Speed), a wholly-owned subsidiary of the Company. Ms Feng was the sole director of Jet Speed.

On May 13, 2021, the Offeror announced its firm intention to make an offer for the shares of the Company (Offer Announcement) in compliance with Rule 3.5 of the Takeovers Code and an offer period in respect of the Company commenced on the same day. On the next day, the Offeror's legal advisers wrote to the legal advisers of Gentle Soar, Mr Gao and Ms Feng to, among other things, remind them that any disposal of the

Company's assets (including the Disposal) may result in a breach of the frustrating action requirements under Rule 4 of the Takeovers Code.

On May 17, 2021, Gentle Soar's legal advisers wrote to consult the Executive Director of the SFC's Corporate Finance Division (Executive) on whether a general offer obligation was in fact triggered by the Offeror in light of the Dispute. On the same day, the Executive informed the legal advisers that **regardless of the Dispute, since the transfer of the Sale Shares to the Offeror had completed, an obligation to make a general offer had been triggered on the part of the Offeror for the purpose of the Takeovers Code.**

On May 21, 2021, the Company published an announcement in response to the Offer Announcement (Response Announcement) in compliance with Rule 3.2 of the Takeovers Code and under the authority of the New Board.

On June 1, 2021, the Company published an announcement, under the authority of the New Board, stating that the Disposal had taken place between May 27, 2021 and June 1, 2021 (Discloseable Transaction Announcement). The Disposal constituted a discloseable transaction under the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (Listing Rules). The Disposal was carried out by Ms Feng who gave instructions to the relevant broker for the on-market sale of the CMBCCH Shares. She informed Mr Gao of the execution of the Disposal.

On June 15, 2021, the Company published an announcement stating that the New Board had resolved on June 1, 2021 that, among other things, the previous resolutions approving the Removals and the New Appointments were suspended as if they had not been effected. As a result, Mr Ng and the three original independent non-executive directors of the Company were reinstated to the board of the Company.

Rule 4 of the Takeovers Code

Rule 4 of the Takeovers Code states that "[o]nce a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona fide offer may be imminent, **no action which could effectively result in an offer being frustrated**, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company **without the approval of the shareholders of the offeree company in general meeting. In particular the offeree company's board must not, without such approval, do or agree to... (c) sell, dispose of or acquire assets of a material amount ...**"

Note 1 to Rule 4 provides that “[t]he requirement of a shareholders’ meeting may be waived by the Executive if the offeror ... agrees”.

Note 6 to Rule 4 further provides that “[f]or the purpose of determining whether a disposal or acquisition is of a **“material amount”** the Executive will, in general, apply the **same tests as those set out in the Listing Rules to determine whether a transaction is a “discloseable transaction”**.”

If several Transaction(s) relevant to this Rule 4, but not individually material, occur or are intended, the Executive will aggregate such Transaction(s) to determine whether the requirements of this Rule 4 are applicable to any of them.

The Executive should be consulted in advance where there may be any doubt as to the application of the above.”

Frustrating Action

Given that the Disposal was a discloseable transaction under the Listing Rules carried out during an offer period, it constituted a frustrating action which was subject to the requirements under Rule 4 of the Takeovers Code. However, the approval of the Company’s shareholders was not obtained nor was a waiver of the requirement to obtain shareholders’ approval sought from the Executive. Therefore, the SFC considered there was a clear breach of the requirements under Rule 4 of the Takeovers Code.

SFC’s Comments

The SFC considers that, under the Hong Kong takeovers regime, Rule 4 of the Takeovers Code is a fundamental rule which prevents an offeree company from taking any action which could result in an offer being frustrated or its shareholders being denied an opportunity to decide on the merits of an offer from the time when a bona fide offer has been communicated to the board of the offeree company or the board of the offeree company has reason to believe that a bona fide offer may be imminent (irrespective of whether that offer is welcomed by the offeree company). Rule 4 also serves to provide a level playing field for parties in an offer.

Given that the Offer Announcement was published and an offer period had commenced in respect of the Company, the Disposal was clearly subject to the requirements of Rule 4. As such, the Executive considers that the non-compliance with Rule 4 in this case to be a disregard of a fundamental principle of the Takeovers Code which merits disciplinary action.

The Executive also noted the changes to the constitution of the board of the Company (i.e., the Removals and the New Appointments) during the period in which the Disposal took place and that both Mr Gao and Ms Feng remained as the directors of the Company throughout the relevant period. Ms Feng was also the sole director of Jet Speed at the relevant time. Given that they owed duties to the Company and they were substantially involved in the Disposal, the Executive has decided to take the disciplinary action against each of Mr Gao and Ms Feng.

Both Mr Gao and Ms Feng accepted that they breached the requirements under Rule 4 of the Takeovers Code and agreed to the current disciplinary action against them under section 12.3 of the Introduction to the Takeovers Code. They admitted that the breaches arose as a result of their oversight and misunderstanding of the Takeovers Code requirements.

The Executive reminds market practitioners and all those involved in takeovers and mergers in Hong Kong the importance of ensuring compliance with all requirements imposed by the Takeovers Code, regardless of the position the parties are finding themselves in. In particular, they should conduct themselves in matters relating to takeovers, mergers and share buy-backs in accordance with the Takeovers Code and seek professional advice as and when needed. If there is any doubt about the application of the Takeovers Code, the Executive should be consulted at the earliest opportunity.

香港证券及期货事务监察委员会批评两名董事违反收购守则

2022年4月7日，香港证券及期货事务监察委员会（证监会）对高云红先生（高先生）及冯雪莲女士（冯女士）作出公开批评，原因是他们在要约期内出售旭通控股有限公司（该公司）的重大资产，违反了《公司收购、合并及股份回购守则》（《收购守则》）规则4。

背景

2021年4月26日，Masterveyor Holdings Limited（要约人）（一家由吴建韶先生（吴先生），当时是该公司的执行董事，全资拥有的公司）向民银资本财务有限公司（民银资本）完成收购相当于该公司49%股权的652,680,000股该公司股份（销售股份）。收购是在民银资本强制执行一项以销售股份作为抵押的保证后进行。以销售股份作为抵押的保证涉及民银资本向Gentle Soar Limited（Gentle Soar）提供的一笔贷款。在要约人收购销售股份之前，Gentle Soar是该公司的控股股东，并由该公司当时的非执行董事高先生全资拥有。

在有关收购完成后，吴先生及与其一致行动的人士在该公司的合共股权由 4.62% 增加至 53.62%，因而触发了要约人依据《收购守则》规则 26.1 须就该公司作出无条件强制要约的责任。

2021 年 5 月 3 日，该公司公布吴先生及所有独立非执行董事均已被罢免在该公司董事会的职务（罢免）。在罢免后，只有高先生和冯女士（该公司的一名执行董事）留任董事会。

2021 年 5 月 4 日，该公司公布，高先生告知董事会（由高先生和冯女士组成）：(i) Gentle Soar、民银资本及要约人之间就民银资本强制执行以销售股份作为抵押的保证，及向要约人转让销售股份的事宜发生纠纷；及(ii) Gentle Soar 已就有关纠纷对民银资本、要约人及吴先生展开法律程序（纠纷）。

2021 年 5 月 6 日，该公司公布已委任一名新的执行董事及三名新的独立非执行董事（新委任）加入董事会。在新委任后，该公司的董事会由高先生、冯女士及新任董事组成（新董事会）。

2021 年 5 月 7 日，新董事会举行会议，并批准了出售 137,740,000 股民银资本控股有限公司股份（民银资本控股股份）的建议（出售事项）。民银资本控股股份由该公司的全资附属公司创捷亚太有限公司（创捷）持有。冯女士是创捷的唯一董事。

2021 年 5 月 13 日，要约人遵照《收购守则》规则 3.5 的规定，公布就该公司的股份作出要约的确实意图（要约公布），而涉及该公司的要约期在同日开始。第二天，要约人的法律顾问致函 Gentle Soar、高先生及冯女士的法律顾问，（除其他事项外）提醒他们任何出售该公司资产（包括出售事项）的行为均可能构成违反《收购守则》规则 4 下的阻挠行动规定。

鉴于出现了该纠纷，Gentle Soar 的法律顾问在 2021 年 5 月 17 日，就要约人事实上有否触发全面要约责任，致函咨询证监会企业融资部执行董事（执行人员）的意见。同日，执行人员告知有关法律顾问，**由于向要约人转让销售股份一事已经完成，因此就《收购守则》而言，不论有否出现该纠纷，要约人须作出全面要约的责任已被触发。**

2021 年 5 月 21 日，该公司根据《收购守则》规则 3.2 的规定及新董事会授权刊发公布（回应公布），对要约公布作出回应。

2021 年 6 月 1 日，该公司在新董事会授权下刊发公布，指出售事项已在 2021 年 5 月 27 日至 2021 年 6 月 1 日

期间进行（须予披露交易公布）。出售事项构成《香港联合交易所有限公司上市规则》（《上市规则》）下的须予披露交易。出售事项是由冯女士进行的，是她指示相关经纪在场内出售民银资本控股股份。她就出售事项的执行告知了高先生。

2021 年 6 月 15 日，该公司刊发公布，指新董事会在 2021 年 6 月 1 日决议（除其他事项外）暂停先前有关批准罢免及新委任的决议案的实施，犹如该决议案不曾生效。因此，吴先生及该公司的三名原有的独立非执行董事恢复该公司董事会的职务。

《收购守则》规则 4

《收购守则》规则 4 订明：“受要约公司的董事局一经接获真正的要约，或当受要约公司的董事局有理由相信可能即将收到真正的要约时，**在未获得受要约公司股东在股东大会批准前，受要约公司的董事局在该公司事务上，不得采取任何行动，其效果足以阻挠该项要约或剥夺受要约公司股东判断该项要约利弊的机会。特别是受要约公司的董事局如果未取得该等批准，不得作出或协议作出……(c) 出售、处置或取得重大价值的资产……”。**

规则 4 注释 1 规定：“如果要约人……同意，执行人员可能豁免召开股东大会的规定”。

规则 4 注释 6 进一步规定：“为了确定某项处置或取得是否涉及‘重大价值’，执行人员一般会采用载于《上市规则》内的相同测试，以**确定某项交易是否‘须予披露的交易’**。假如出现或有关方面有意进行数宗与本规则 4 有关但在个别而言并非涉及重大价值的交易，执行人员会将有关交易汇总计算，以确定本规则 4 的规定是否适用于当中任何交易。

如对上述规定的适用情况有任何疑问，应先咨询执行人员的意见。”

阻挠行动

鉴于出售事项在要约期内进行，并属《上市规则》下的须予披露交易，因而构成阻挠行动，须受《收购守则》规则 4 的规定所约束。然而，出售事项既没有取得该公司股东的批准，有关人士亦没有就须取得股东批准的规定向执行人员寻求豁免，因此证监会认为这是明显地违反了《收购守则》规则 4 的规定。

证监会的意见

证监会认为，在香港的收购制度下，《收购守则》规则 4 是一项基本的规定，借以防止受要约公司在其董事局

接获真正的要约后，或当受要约公司的董事局有理由相信可能即将收到真正的要约时（不论受要约公司是否对有关要约表示欢迎），采取任何足以阻挠该项要约或剥夺股东判断该项要约利弊的机会的行动。规则 4 亦旨在为要约中的当事人提供一个公平的竞争环境。

鉴于要约公布已经发布，而涉及该公司的要约期已经开始，故出售事项明显须受规则 4 的规定所约束。因此，执行人员认为本案中不遵守规则 4 的情况，属于对《收购守则》的一项基本原则的漠视，足以使本会对有关人士采取纪律行动。

执行人员亦注意到，该公司董事会的组成在出售事项进行期间出现了变动（即罢免及新委任），而高先生及冯女士在整段相关期间一直担任该公司的董事。冯女士在相关时间亦是创捷的唯一董事。鉴于他们对该公司负有责任，并相当程度地参与出售事项，执行人员遂决定对高先生及冯女士各自采取纪律行动。

高先生和冯女士均承认违反了《收购守则》规则 4 下的规定，并同意接受现时根据《收购守则》引言第 12.3 条对他们采取的纪律行动。他们承认，违规是由于他们对《收购守则》的规定存在疏忽和误解所致。

执行人员谨此提醒市场从业员及所有在香港参与收购及合并活动的人士，不论处境为何，都必须确保《收购守则》订明的所有规定获得遵守。特别是，在涉及有关收购、合并及股份回购的事宜方面，他们应根据《收购守则》行事，并在有需要时征询专业意见。如对《收购守则》的适用范围有任何疑问，应尽早咨询执行人员的意见。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR24>

Hong Kong Green and Sustainable Finance Cross-Agency Steering Group Releases Assessment of Carbon Market Opportunities for Hong Kong and Next Steps

On March 30, 2022, Hong Kong Green and Sustainable Finance Cross-Agency Steering Group (Steering Group) published its preliminary feasibility assessment of carbon market opportunities for Hong Kong.

Based on the assessment, the Steering Group intends to proceed with the following next steps in parallel to support the development of Hong Kong as a regional carbon trading center:

- Develop Hong Kong into a global, high-quality voluntary carbon market (where buyers purchase

carbon credits to neutralise or compensate for their carbon dioxide emissions), leveraging Hong Kong's status as a champion of international standards, a facilitator to channel global capital into the Mainland, and an international financial centre with a stable and mature regulatory system;

- Collaborate with relevant authorities and stakeholders to work towards establishing the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) Unified Carbon Market in line with Mainland policies to strengthen GBA cooperation;
- Explore opportunities to link up international investors with the GBA Unified Carbon Market and potentially the national emissions trading system; and
- Strengthen cooperation with the Guangzhou Futures Exchange on carbon market development to enable Hong Kong to act as the Mainland's offshore risk management centre.

The Steering Group endorsed the plan set out above which is by no means exhaustive. The Carbon Market Workstream co-chaired by the Securities and Futures Commission and Hong Kong Exchanges and Clearing Limited will consider which market and regulatory model would be the most appropriate, and will prepare a detailed roadmap, implementation plan and indicative timeline after consulting with market experts and relevant authorities.

The assessment is part of the Steering Group's commitment to advance the development of green and sustainable finance in Hong Kong. It is believed that with appropriate regulatory support, Hong Kong's close links with the Mainland and significant role in the GBA would allow it to bridge Mainland carbon products and opportunities with the rest of the world. Hong Kong is well placed to support the growing global demand for capital participation in the Mainland's low-carbon transition.

香港绿色和可持续金融跨机构督导小组公布对香港碳市场机遇的评估及下一步行动

2022年3月30日，香港绿色和可持续金融跨机构督导小组（督导小组）公布对香港碳市场机遇的初步可行性评估。

根据评估结果，督导小组计划同步进行以下后续步骤，以支持香港发展成为区域碳交易中心：

- 发展香港成为国际优质自愿碳市场（买家在当中通过购买自愿减排量（carbon credit）以中和或抵消自身的碳排放），充分利用香港作为国际标准的拥护者、引导环球资金进入内地的促进者，以及拥有稳定和成熟监管制度的国际金融中心的地位；
- 与有关当局和持分者合作，按照内地政策推动建设粤港澳大湾区统一碳市场，以加强大湾区合作；
- 探索联系国际投资者与粤港澳大湾区统一碳市场以及全国碳排放权交易市场的机会；及
- 加强与广州期货交易所在碳市场发展方面的合作，使香港成为内地的离岸风险管理中心。

督导小组认可上述计划，纵然上述计划未完全涵盖香港碳市场的所有潜在机遇。由证券及期货事务监察委员会（证监会）和香港交易及结算所有限公司（香港交易所）担任联席主席的碳市场专责团队将研究最合适的市场及监管模式，并会在咨询市场专家及相关部门后，制定详细路线图、落实计划及指示性时间表。

这项评估是督导小组推动香港绿色和可持续金融发展承诺的一部分。督导小组相信在适当的监管支持下，香港与内地的紧密联系，以及在大湾区的重要角色，将使香港能把内地的碳产品和机遇与全球其他地区联系起来。香港将可助力全球资本持续提高参与中国内地的低碳经济转型。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR19>

China Securities Regulatory Commission Solicits Public Comments on Revision to the Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies

In order to support domestic companies to offer and list securities in overseas markets pursuant to laws and regulations, to strengthen the confidentiality and archives administration concerning such overseas securities offering and listing by domestic companies, and to enhance cross-border regulatory cooperation in this regard, China Securities Regulatory Commission (CSRC), Ministry of Finance of the People's Republic of China (MoF), National Administration of State Secrets Protection, and National Archives Administration of China, have jointly revised the Provisions on Strengthening Confidentiality and Archives Administration for Overseas Securities Offering and

Listing (Announcement No.29 [2009] of the CSRC, hereinafter referred to as the "Provisions"). Now the revised Provisions is open for public consultations.

The revised Provisions made the following adjustments to accommodate the new circumstances and developments concerning overseas securities listing and offering: First, adding the Accounting Law of the People's Republic of China, the Law of the People's Republic of China on Certified Public Accountants and others as its superordinate laws and regulations; Second, expanding the scope to govern both direct and indirect overseas listing, as is consistent with the Draft Provisions of the State Council on the Administration of Overseas Securities Offering and Listing by Domestic Companies; Third, setting clear requirements on companies' duty of information security by introducing clearer guidance to domestic companies, relevant securities companies and securities service providers on confidentiality and archives administration concerning overseas securities offering and listing by domestic companies; Fourth, laying a solid institutional foundation for secure and efficient cross-border regulatory cooperation and improving relevant arrangements.

China stays committed to supporting eligible companies of all types to list or offer securities in overseas markets. The revised Provisions will further strengthen the compliance of such companies and promote healthy and orderly overseas securities offering and listing. The CSRC welcomes public comments on the revised Provisions. The CSRC will make further amendments and improvements, as appropriate, based on the comments received and issue the finalized revised Provisions as early as possible after fulfilling statutory procedures.

中国证券监督管理委员会就修订《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》公开征求意见

为支持企业依法依规赴境外上市，提高境外发行证券与上市过程中相关保密和档案管理工作的规范化水平，推动深化跨境监管合作，中国证券监督管理委员会（证监会）会同财政部、国家保密局、国家档案局对《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》（证监会公告〔2009〕29号）进行修订，形成了《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定（征求意见稿）》，现向社会公开征求意见。

针对近年来境外发行上市相关新情况、新问题，本次修订拟主要对原规定作出以下调整：一是完善法律依据，增加《中华人民共和国会计法》《中华人民共和国注册会计师法》等有关法律法规作为上位法。二是调整适用范

围，与《国务院关于境内企业境外发行证券和上市的管理规定(草案征求意见稿)》相衔接，明确适用于企业境外直接和间接上市。三是明确企业信息安全责任，为境内企业境外发行证券和上市活动中境内企业、有关证券公司、证券服务机构在保密和档案管理方面提供更清晰明确的指引。四是完善跨境监管合作安排，为安全高效开展跨境监管合作提供制度保障。

中国将继续支持各类符合条件的企业赴境外上市，不断深化跨境监管合作，证监会相信规定修订将进一步提升境外上市企业的合规水平，促进境外上市活动健康有序发展。

Source 来源:

http://www.csrc.gov.cn/csrc_en/c102030/c2274356/content.shtml

Officials of China Securities Regulatory Commission Answered Reporter Questions Regarding the Revised Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies (Draft for Comments)

On April 2, 2022, China Securities Regulatory Commission (CSRC) released the revised Provisions on Strengthening Confidentiality and Archives Administration of Overseas Securities Offering and Listing by Domestic Companies (Draft for Comments, hereinafter referred to as the revised "Provisions") for public comments. Officials of the CSRC recently answered questions from reporters regarding the revised Provisions.

1. Reporter: What is the main consideration for revising the Provisions on Strengthening Confidentiality and Archives Administration for Overseas Securities Offering and Listing (Announcement No. 29 [2009]) at the current time?

CSRC Official: The Provisions played a positive role in promoting confidentiality and archives administration related to overseas securities offering and listing since it was first released in 2009. After more than a decade, however, the document has not kept up with the changing legal and institutional landscape, and the evolving market and regulatory practices.

The revised Provisions will provide a clearer guidance on confidentiality and archives administration for the overseas securities listing and offering by relevant market entities, thus promoting the legal compliance and efficiency of such activities. The revised Provisions will safeguard national information security by guiding companies to properly protect state secrets and sensitive information. It will also promote secure and efficient cross-border regulatory cooperation including

joint inspections between relevant authorities and overseas regulators for the protection of global investors.

2. Reporter: What positive role will the revised Provisions play to facilitate overseas listing activities?

CSRC Official: The CSRC fully respects companies' independent choices for listing venues. The revised Provisions aims to further strengthen confidentiality and archives administration concerning overseas securities offering and listing by domestic companies, clearly identify companies' duty on information security and safeguard national information security, reduce unnecessary entrance of state secrets and sensitive information into working papers, which will improve the efficiency in cross-border regulatory cooperation. The revision is consistent with the principle of promoting opening-up while maintaining security, and will promote orderly securities offering and listing activities in overseas markets by domestic companies.

3. Reporter: What benefits will the revised Provisions bring to cross-border regulatory cooperation, in particular to audit oversight cooperation?

CSRC Official: On the basis of requirements laid out in Article 177 of the Securities Law, the revised Provisions specifies that requests made by overseas regulators to conduct investigations, including collecting evidence for investigation purpose, and inspections in the Chinese mainland shall be carried out through cross-border regulatory cooperation mechanisms. The CSRC and competent authorities of the Chinese government will provide necessary assistance pursuant to bilateral and multilateral cooperation mechanisms. In addition, referencing international common practice in cross-border audit oversight cooperation, the revised Provisions deletes the stipulation that "on-site inspections shall be dominated by domestic regulators or depend on the conclusions of inspections by domestic regulators". The modification demonstrates the open attitude that Chinese regulators have consistently held towards audit oversight cooperation and the alignment of the Provisions with international common practice, which will lay an institutional foundation for secure, efficient cross-border regulatory cooperation including joint inspections.

4. Reporter: The revised Provisions requires companies to provide a written statement of compliance with Article 3 and 4 of the revised Provisions to securities companies and securities service providers. Will this requirement raise the compliance burden for relevant companies?

CSRC Official: It is a crucial compliance requirement for companies to fulfill their principal duty on information security and properly protect state secrets and sensitive information in accordance with applicable laws and

regulations. In practice, documents and materials provided by companies to relevant securities companies and securities service providers rarely contain state secrets and sensitive information. In case such information is absolutely necessary for completing the audit work, for example, the revised Provisions reaffirms that companies must fulfill necessary approval or filing procedures in accordance with laws and regulations, keep a record of the information provided and the procedures followed, and provide a written statement for its compliance with the above requirement to relevant securities companies and securities service providers. Generally, it will not bring a hefty cost to companies. The implementation of the revised Provisions will enable companies to better maintain information security and to lower legal risks, so as to support eligible domestic companies to continue to tap into overseas market for offering and listing activities.

中国证券监督管理委员会有关部门负责人就《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定(征求意见稿)》答记者问

2022年4月2日,中国证券监督管理委员会(证监会)公布《关于加强境内企业境外发行证券和上市相关保密和档案管理工作的规定(征求意见稿)》(以下简称《规定》),向社会公开征求意见。证监会有关部门负责人针对本次修订回答了一些记者提出的相关问题。

1. 问:现阶段修订《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》(证监会公告〔2009〕29号)的主要考虑是什么?

答:上述规定出台于2009年,在当时情况下对规范境外上市相关保密和档案管理工作发挥了积极作用。十多年来,相关的法规和制度环境明显变化,市场和监管实践不断深化,前述规定日益不适应新的形势。

本次修订,将为境外上市涉及的相关保密和档案管理工作提供更加清晰的指引,便利有关市场主体依法依规高效开展境外发行上市活动;将指导企业妥善管理涉密和敏感信息,履行好维护国家信息安全的主体责任;也将有助于相关监管部门与境外监管机构安全高效开展包括联合检查在内的跨境监管合作活动,共同维护全球投资者权益。

2. 问:《规定》的发布对促进境外上市活动有何积极意义?

答:中国证监会坚定支持企业根据自身意愿自主选择上市地。《规定》的修订旨在进一步加强境内企业境外发行上市相关保密和档案管理工作,明确上市公司信息安全责任,维护国家信息安全,减少不必要的涉密敏感信息

进入工作底稿,提高跨境监管合作的效率,体现了统筹开放与安全的理念,将促进中国境内企业境外发行证券和上市活动有序开展。

3. 问:《规定》对跨境监管合作,特别是审计监管合作有何积极作用?

答:《规定》根据《证券法》第一百七十七条的规定,明确境外监管机构在中国境内进行调查取证或开展检查的应当通过跨境监管合作机制进行,证监会和有关主管部门依据双多边合作机制提供必要的协助。同时,结合跨境审计监管合作的国际惯例,删除了原《规定》关于“现场检查应以我国监管机构为主进行,或者依赖我国监管机构的检查结果”的表述。这体现了中国监管部门对跨境审计监管合作一贯的开放态度,也符合相关国际惯行做法,将为安全、高效开展包括联合检查在内的跨境监管合作提供制度保障。

4. 问:《规定》要求企业向有关证券公司、证券服务机构提供关于执行《规定》第三条、第四条情况的书面说明,是否将提高企业的合规成本?

答:依法依规做好涉密敏感信息的管理,落实信息安全主体责任,是企业合规经营的重要内容。从实践情况看,企业向有关证券公司、证券服务机构提供包含涉密或敏感信息的文件、资料应属极少数情况。如因审计工作需要确有必要提供的,《规定》重申企业须按照相关法律法规履行必要的审批或备案程序,并要求企业保留履行程序和提供信息的相关记录并向中介机构提供书面说明,不会给企业带来过高的合规成本。《规定》的落实,将提升企业维护信息安全和防范法律风险的能力,促进企业依法合规开展境外发行上市活动。

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