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Financial Services Regulatory Update
金融服务监管资讯

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New Era of Paperless Rights Issues and Open Offers in Hong Kong

With the transitional period for the electronic submission of prospectuses for authorization and registration coming to an end on June 30, 2024, a new era will dawn for paperless rights issues and open offers by listed issuers in Hong Kong.

Regulatory Framework and Key Requirements

The Stock Exchange of Hong Kong Limited (SEHK) has issued Guidance Letter HKEX-GL118-23 to provide detailed guidance on the electronic submission of prospectuses and accompanying documents for the authorization and registration process. Effective from July 1, 2024, all relevant documents, including the prospectus, application forms, and supporting materials, must be submitted electronically.

Pursuant to the Main Board Listing Rules 9.22(2) and 2.07(3A), or the GEM Listing Rules 12.26E(2) and 2.21, listed issuers are required to submit various documents, including the prospectus, application forms, and accompanying documents, for the purpose of authorization of the registration of a prospectus. Under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), these documents must be submitted in the manner and via the means prescribed by the ordinance and any related guidance materials published from time to time.

Recognized Digital Signatures

A key requirement under the new regime is the use of recognized digital signatures for the signing of prospectuses, application forms, and accompanying documents. These digital signatures must be supported by recognized certificates issued by approved certification authorities, such as Hongkong Post Certification Authority and Digi-Sign Certification Services Limited. This measure ensures the authenticity and integrity of the submitted documents, further strengthening the regulatory framework.

Pursuant to the Electronic Transactions Ordinance (Cap. 553) (ETO), where a rule of law requires the signature of a person on a document, an electronic signature or, in the case where a government entity is involved, a digital signature of that person satisfies such requirement. This legal framework provides the necessary foundation for the use of digital signatures in the prospectus authorization and registration process.

Transitional Period and Compliance

The new paperless listing regime has been implemented since December 31, 2023. The transitional period for the electronic submission of prospectuses will end on June 30, 2024. After this date, all applications for the authorization and registration of prospectuses must be made electronically. Listed issuers are advised to familiarize themselves with the workflow and to prepare accordingly, including applying for digital signatures recognized under the ETO through the Hongkong Post Certification Authority or Digi-Sign Certification Services Limited. Listed issuers may refer to Guidance Letter HKEX-GL118-23 for the relevant guidance.

Implications for Paperless Rights Issues and Open Offers

The transition to electronic prospectus submission has significant implications for paperless rights issues and open offers. Under the new regime, listed issuers will no longer be required to distribute physical copies of prospectuses to shareholders. Instead, they can rely on electronic distribution, making the process more environmentally friendly and cost-effective.

However, in the case of a rights issue, the provisional allotment letter is both an actionable corporate communication and a temporary document of title under the Listing Rules. As such, it must be dispatched individually and in printed form to shareholders, ensuring shareholders can easily exercise their rights and maintain the integrity of the temporary document of title.

Remarks

The impending transition towards paperless rights issues and open offers in Hong Kong's capital markets presents both challenges and opportunities for listed issuers. As the transitional period for electronic

prospectus submission concludes on June 30, 2024, listed issuers should adopt a proactive approach to adapt to the new regulatory landscape.

To ensure a seamless transition, listed issuers should prioritize several key initiatives. Firstly, they must thoroughly familiarize themselves with the updated requirements for electronic submission of prospectuses, application forms, and accompanying documents, as comprehensively outlined in Guidance Letter HKEX-GL118-23. Secondly, listed issuers should promptly obtain recognized digital signatures, supported by certificates issued by approved certification authorities, to maintain compliance with the ETO.

Robust preparatory measures are critical, as listed issuers must develop the necessary digital infrastructure and capabilities to facilitate paperless rights issues and open offers. This includes guaranteeing the ability to dispatch provisional allotment letters individually and in printed form to shareholders for rights issues, while also optimizing internal processes to enhance efficiency and cost-effectiveness. Maintaining vigilance to regulatory changes is a paramount consideration, as listed issuers must closely monitor evolving guidelines and requirements related to the paperless listing regime, ensuring continuous compliance with the latest directives from SEHK and other relevant authorities. By proactively addressing these key strategic imperatives, listed issuers in Hong Kong can successfully navigate the transition to the new era of paperless rights issues and open offers, adapting and enhancing their processes to thrive in the evolving capital market landscape.

香港无纸化供股及公开招股新时代

随着 2024 年 6 月 30 日目前供股及公开招股招股章程电子呈交作认可及注册的过渡期即将结束,香港上市发行人进行无纸化供股及公开招股的新时代即将到来。

监管机制及主要要求

香港交易及结算所有限公司(香港交易所)已发布指引信 HKEX-GL118-23,就供股及公开招股招股章程及随附文件的电子呈交作认可及注册过程提供详尽指引。由 2024 年 7 月 1 日起,所有相关文件(包括招股章程、申请表格及支持材料)必须以电子方式呈交。

根据《香港联交所证券上市规则》(上市规则),上市发行人须呈交各项文件(包括招股章程、申请表格及随附文件)以取得招股章程的认可及注册。根据《公司(清盘及杂项条文)条例》(第 32 章),这些文件必须以条例及任何不时发布的相关指引所规定的方式及途径呈交。

认可数码签署

新机制的一项关键條件,是要求以认可数码签署招股章程、申请表格及随附文件。这些数码签署必须由认可核证机关(例如香港邮政核证机关及电子核证服务有限公司发出的认可证书支持,以确保所呈交文件的真确性及完整性,从而进一步巩固监管机制。

根据《电子交易条例》(第 553 章), 凡任何法律规则规定须由任何人在某文件签署, 该人士的电子签署或（若涉及政府单位）数码签署（定义见《电子交易条例》）即属符合该规定。此法律机制为在招股章程认可及注册过程中使用数码签署提供必要的基础。

过渡期及合规安排

无纸化上市新制度自 2023 年 12 月 31 日起生效。供股及公开招股招股章程电子呈交的过渡期将于 2024 年 6 月 30 日结束。过渡期后,所有招股章程认可及注册申请必须以电子方式提交。上市发行人应熟悉有关工作流程,并做好准备,包括通过香港邮政核证机关或电子核证服务有限公司申请获认可的电子签署。上市发行人可参考指引信 HKEX-GL118-23 以了解相关指引。

对无纸化供股及公开招股的影响

过渡至电子招股章程呈交对无纸化供股及公开招股有重大影响。在新机制下,上市发行人将无需再向股东分派招股章程的副本,可改以电子方式分发,这不但更环保,也更具成本效益。

然而,就供股而言,暂定配额通知书根据《上市规则》既是可供采取行动的企业通讯,也是临时所有权文件。因此,必须以印刷形式个别派发予股东,确保股东可轻易行使权利,并维护临时所有权文件的完整性。

结语

无纸化供股及公开招股的新纪元即将到来,给香港资本市场上市发行人带来了挑战与机遇。随着 2024 年 6 月 30 日电子招股章程提交过渡期的结束, 上市发行人应采取积极主动的方式来适应新的监管环境。

为确保顺利过渡,上市发行人应优先采取几项关键举措。首先,他们必须彻底熟悉香港交易所发布的指引信 HKEX-GL118-23 中详细概述的电子提交招股章程、申请表格和随附文件的最新要求。其次, 上市发行人应及时取得由认可证书机构颁发的认可数字签名,以符合《电子交易条例》的要求。

全面的准备措施至关重要,因为上市发行人必须建立必要的数字基础设施和能力,以推动无纸化供股和公开招股。这包括确保能够个别以印刷形式向股东派发暂定配额通知书以供权益行使,同时优化内部流程以提高效率和降低成本。密切关注监管变化是首要考虑因素,上市发行人必须密切监控与无纸化上市制度相关的不断变化的指引和要求,确保持续遵守香港交易所及其他相关机构的最新指引。通过主动应对这些关键战略举措,香港上市发行人可成功应对过渡到无纸化供股和公开招股新時代。这一转变带来挑战和机遇并存,要求上市发行人调整和优化自身的流程,才能在不断变化的资本市场环境中蓬勃发展。

Source 来源:
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/LIR-Newsletter/newsletter_202405.pdf
https://en-rules.hkex.com.hk/sites/default/files/net_file_store/GL118-23.pdf
https://en-rules.hkex.com.hk/sites/default/files/net_file_store/faq-10.pdf

Hong Kong Privacy Commissioner for Personal Data Publishes "Artificial Intelligence: Model Personal Data Protection Framework"

As AI technology rapidly advances, its applications have become increasingly prevalent across various sectors. However, the innovative nature of AI poses challenges to personal data privacy, necessitating a comprehensive framework to guide organizations in harnessing the benefits of AI while mitigating potential risks and ensuring compliance with data protection regulations.

On June 11 2024, the Privacy Commissioner for Personal Data (PCPD) in Hong Kong unveiled a groundbreaking publication titled "Artificial Intelligence: Model Personal Data Protection Framework" (Model Framework). This comprehensive document aims to provide organizations with internationally recognized, practical recommendations and best practices for the ethical procurement, implementation, and utilization of artificial intelligence (AI) systems, including generative AI, while safeguarding personal data privacy and adhering to the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

Aligning with the PDPO

The Framework emphasizes the importance of complying with the requirements of the PDPO, including the six Data Protection Principles. By incorporating the principles of "privacy-by-design" and AI governance into their existing Personal Data Privacy Management Programmes, enterprises can reinforce their commitment to personal data protection and demonstrate their accountability.

Aligning with the China's Global AI Governance Initiative

The Model Framework's publication aligns with the China's Global AI Governance Initiative, which aims to promote the safe, secure, and trustworthy development and use of AI globally. By providing practical recommendations tailored to Hong Kong's business environment, the Model Framework supports the China's efforts to foster a responsible and ethical AI ecosystem.

Structured Approach to AI Governance

(i) Data Stewardship and Ethical Principles

The Model Framework is built upon the three Data Stewardship Values (being respectful, beneficial, and fair) and the seven Ethical Principles for AI (accountability, human oversight, transparency and interpretability, data privacy, fairness, beneficial AI, and reliability, robustness, and security) advocated in the PCPD's 2021 "Guidance on the Ethical Development and Use of Artificial Intelligence." Such guidance aims to help organizations develop trustworthy AI that complies with data protection laws while upholding ethical responsibilities towards impacted individuals and society.

(ii) Risk Assessment and Human Oversight

The Framework emphasizes the importance of conducting comprehensive risk assessments to identify and analyze potential risks, including privacy risks, associated with AI systems. It recommends adopting risk management measures proportionate to the identified risks, such as determining appropriate levels of human oversight (human-out-of-the-loop, human-in-command, or human-in-the-loop).

(iii) AI Customization, Implementation, and Management

The Framework provides guidance on data preparation, AI model customization, system implementation, and continuous monitoring. It highlights the need for rigorous testing, validation, and user acceptance to ensure system reliability, robustness, and fairness. Additionally, it emphasizes the importance of ensuring system and data security, establishing incident response plans, and conducting regular audits.

(iv) Stakeholder Communication and Engagement

Effective communication and engagement with stakeholders, including internal staff, AI suppliers, individual customers, and regulators, are crucial for enhancing transparency and building trust. The Framework recommends handling data access and

correction requests, providing feedback channels, offering explanations for AI-generated decisions and outputs, and using clear, understandable language when communicating with stakeholders.

The "Artificial Intelligence: Model Personal Data Protection Framework" represents a significant milestone in Hong Kong's efforts to promote the responsible and ethical development and use of AI technologies. By providing a comprehensive set of practical recommendations and best practices, the Framework empowers organizations to navigate the complexities of AI governance while ensuring compliance with personal data protection regulations.

Market participants, listed companies, company directors, and other relevant parties is encouraged to carefully review and implement the measures outlined in the Framework. Doing so will not only mitigate potential risks associated with AI systems but also foster trust among stakeholders and position organizations as responsible corporate citizens embracing technological innovation while prioritizing data privacy and ethical considerations.

As AI continues to reshape various industries, proactive measures to govern its development and use are imperative. The Model Framework serves as an important resource, guiding organizations in Hong Kong and the Greater Bay Area toward a future where AI and personal data privacy coexist harmoniously, fostering sustainable growth and contributing to the region's position as a global technology and innovation hub.

香港个人资料私隐专员公布《人工智能(AI):个人资料保障模范框架》

随着人工智能(AI)技术的迅速进展,其应用已广泛渗透到各个领域。然而,AI 的创新属性给个人资料私隐带来挑战,因此需要一个全面框架为机构利用 AI 的优势同时降低风险并确保符合数据保护法规提供指引。

于 2024 年 6 月 11 日,香港个人资料私隐专员公署(私隐专员公署)公布了一份具有开创性的出版物,题为《人工智能(AI):个人资料保障模范框架》(模范框架)。这份全面的文件旨在为机构提供国际认可的实用建议和最佳实践,在采购、实施和使用人工智能(AI)系统(包括生成式 AI)时,确保个人资料私隐得到保障,并遵守《个人资料(私隐)条例》(第 486 章)。

与《个人资料(私隐)条例》保持一致

该框架强调遵守《个人资料(私隐)条例》的要求非常重要,包括六项保障资料原则。通过将「贯彻私隐设计」及 AI 管治原则纳入现有的个人资料私隐管理计划,企业可以加强其对个人资料保护的承诺并展现其问责性。

与中国《全球人工智能治理倡议》保持一致

《模范框架》的出版与中国《全球人工智能治理倡议》保持一致,该倡议旨在在全球范围内推动人工智能安全、可靠及值得信赖的发展与应用。《模范框架》为香港的商业环境提供了切实可行的建议,支持中国推动负责任和道德的人工智能生态系统发展的努力。

结构化治理人工智能的方法

(i) 数据管理与道德原则

《模范框架》建基于私隐专员公署 2021 年《开发及使用人工智能道德标准指引》中所倡导的三项数据管理价值观(尊重、互惠及公平)和七项人工智能道德原则(问责、人为监督、透明度与可解释性、数据私隐、公平、有益的人工智能、以及可靠性、稳健性和安全性)。该指引旨在帮助机构开发符合数据保护法律并履行道德责任(对受影响个人和社会)的可信赖人工智能。

(ii) 风险评估与人为监督

该框架强调进行全面风险评估以识别和分析与人工智能系统相关的潜在风险(包括私隐风险)的重要性。它建议采取与已识别风险相称的风险管理措施,例如确定适当的人为监督水平(人在环外、人为管控或人在环中)。

(iii) 人工智能定制、实施与管理

该框架为数据准备、人工智能模型定制、系统实施和持续监控提供了指导。它强调了全面测试、验证和用户验收测试以确保系统可靠性、稳健性和公平性的必要性。此外,它还强调确保系统和数据安全、建立事故应变计划以及进行定期审计的重要性。

(iv) 持份者沟通与交流

与内部员工、人工智能供应商、个人客户和监管机构等持份者沟通与交流,对于增强透明度和建立信任至关重要。该框架建议机构处理数据访问和更正请求、提供反馈渠道、对人工智能生成的决策和输出提供解释,并在与利益相关方沟通时使用清晰易懂的语言。

《人工智能:个人资料保障模范框架》标志着香港在推动负责任和道德开发及使用人工智能技术方面迈出了重要一步。通过提供一系列全面、实用的建议和最佳实践,该框架使机构能够驾驭人工智能治理的复杂性,同时确保遵守个人资料保护法规。

市场参与者、上市公司、公司董事和其他相关方可仔细审阅并执行该框架中概述的措施。这不仅将减轻与人工智能系统相关的潜在风险,还将增强利益相关方的信任,使机构成为负责任的企业公民,在拥抱技术创新的同时,亦优先考虑数据隐私和道德因素。

随着人工智能不断重塑各个行业,主动采取措施来管理其发展和应用至关重要。《模范框架》是一个重要资源,指导香港及大湾区的机构朝着人工智能与个人资料私隐和谐共存的未来迈进,促进可持续发展,并有助于该地区成为全球科技和创新中心。

Source 来源:
https://www.pcpd.org.hk/english/news_events/media_statements/press_20240611.html
https://www.pcpd.org.hk/english/resources_centre/publications/files/ai_protection_framework.pdf
https://www.pcpd.org.hk/english/resources_centre/publications/files/guidance_ethical_e.pdf
https://www.pcpd.org.hk/english/resources_centre/publications/files/leaflets_protection_framework.pdf

Updated Guide by The Stock Exchange of Hong Kong Limited on Listed Issuers' Spin-off Proposals

Over the past few years, The Stock Exchange of Hong Kong Limited (the "Exchange") has observed a sustained and growing interest among listed issuers in pursuing separate listings of parts of their businesses on the Exchange or elsewhere.

Drawing upon its recent vetting experience, the Exchange has outlined the key areas that listed issuers should focus on when preparing spin-off proposals to streamline the regulatory process:

Preparation of Pro Forma Financial Information of the Remaining Group:

To demonstrate that the remaining group could independently satisfy the financial track record requirements under rule 8.05 of the Rules Governing the Listing of Securities on the Exchange (the "Listing Rules") for an initial listing, the pro forma financial information must be presented in reasonable detail and clearly elucidate the derivation of the figures. Listed Issuers should provide a line-by-line reconciliation, highlighting adjustments for any intra-group transactions and cost allocations, to illustrate the financial standing of the remaining group. Furthermore, listed issuers should adequately describe and explain the nature of major financial statement line items in the pro forma financial statements to demonstrate that they are generated by activities within the ordinary and usual course of business of the remaining group.

Estimation of Market Capitalization of the Remaining Group:

Market capitalization of the remaining group is a reasonableness test based on the listed issuer's circumstances. For listed issuers with a market capitalization substantially above the minimum requirement and spinning off a small portion of their business, a simple test by subtracting the valuation of the spinco from the issuer's market capitalization will normally suffice. Conversely, listed issuers with a market capitalization only marginally above the minimum requirement and/or spinning off a substantial part of their business must provide a more robust analysis, incorporating all necessary supporting information in the first draft of the proposals.

Business Description:

To facilitate the Exchange's assessment of the listed issuers' compliance with Practice Note 15, the proposals should present sufficient and well-organized information on the businesses of the relevant entities and the relationship among them. Listed issuers should clearly describe the business models of both the remaining group and the spinco group, explaining how their businesses are clearly delineated, particularly where the two businesses have a high degree of resemblance. Listed issuers should also highlight any material business dealings between the remaining group and the spinco group after the spin-off to address the spinco group's ability to operate independently.

Remarks

Listed issuers who require further assistance on specific areas or the preparation of spin-off proposals in general are advised to contact the Exchange 's responsible officers.

香港联合交易所有限公司就上市发行人分拆方案发布的更新指引

过去几年里,香港联合交易所有限公司(交易所)观察到上市发行人纷纷寻求将其部分业务在联交所或其他交易所独立上市的趋势持续增长。

交易所根据最近的审查经验, 列出了上市发行人在准备分拆申请时应多加注意的事项, 希望可以协助他们加快相关监管流程。

准备余下集团的备考财务资料:

为证明余下集团能够独立满足《香港联交所证券上市规则》(上市规则)第 8.05 条的财务往績记录要求,备考财务资料必须合理详尽, 并能说明是如何得出有关数据。上

市发行人应提供逐项对账调整, 同时提供分拆出来的公司的数据；任何集团内部交易和成本分配的调整；以及余下集团整体的数据。此外,上市发行人应充分描述和解释备考财务报表中主要财务报表项目的性质,以证明它们产生于余下集团的日常正常业务活动。

余下集团的市值预估:

余下集团的市值估算是基于上市发行人具体情况的合理性测试。对于市值大幅超出最低要求且仅分拆小部分业务的上市发行人,通常可以简单地从发行人总市值中扣除分拆实体的估值已经足够。相反,市值仅略高于最低要求和/或分拆大部分业务的上市发行人,必须提供更全面的分析,在其申请初稿中提供所需的支持数据。

业务描述:

为便于交易所评估上市发行人是否符合第 15 项应用指引的要求, 分拆申请应提供足够详实和有条理的资料,介绍相关实体的业务情况及彼此之间的关系。上市发行人应清楚描述余下集团和分拆集团的业务模式,解释其业务如何明确区分,尤其是当两者业务高度相似的情况下。上市发行人还应重点说明分拆后余下集团和分拆集团之间的任何重大业务往来,以说明分拆集团的独立经营能力。

结语

如果上市发行人在某些方面或准备分拆申请整体方面需要进一步指引，可以联络交易所的负责同事。

Source 来源:
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/LIR-Newsletter/newsletter_202405.pdf

Hong Kong Securities and Futures Commission Welcomes Progress on Implementation of Mainland-Hong Kong Mutual Recognition of Funds Enhancements

On June 14, 2024, the Hong Kong Securities and Futures Commission (SFC) welcomed the public consultation paper published by the China Securities Regulatory Commission (CSRC) on proposed rule amendments for implementing the enhancements of the Mainland-Hong Kong mutual recognition of funds (MRF) scheme.

The draft proposals in the CSRC's consultation paper include relaxing the sales restrictions for recognised Hong Kong funds in the Mainland and allowing the delegation of investment management functions of recognised Hong Kong funds to overseas asset management companies within the same group. Based on the principle of reciprocity, the SFC will also relax the relevant restrictions on recognised Mainland funds accordingly.

Specifically, the key contents from the proposed enhancements are:

1. Moderately relaxing sales restrictions: The current cap of 50% on the value of units of a recognised fund sold to investors in the host market will be relaxed to 80%; and

2. Appropriately easing the restrictions on delegating investment management functions for recognised funds: Recognised Hong Kong funds will be able to delegate such functions to an overseas entity within the same group located in a jurisdiction that has entered into a memorandum of understanding on regulatory cooperation with the CSRC. Similarly, recognised Mainland funds will be able to delegate such functions to an overseas entity within the same group located in a jurisdiction under the SFC's acceptable inspection regime.

The SFC stated that it will continue to work closely with the CSRC to formulate and implement measures to enhance the MRF scheme. Details and the launch date of these enhancements will be announced in due course. The SFC further stated that these proposed changes would address the longstanding wish of Hong Kong's asset managers for the MRF scheme to become more flexible and provide more diversified product choices to Mainland investors, as well as inject new impetus into the continuous development of the program.

These enhancements to the MRF scheme are part of the five measures announced earlier by the CSRC on the Mainland's capital market cooperation with Hong Kong. The relaxation of the sales restrictions and delegation of investment management functions are expected to provide more flexibility and diversified product choices for both Mainland and Hong Kong investors, further strengthening the mutual access between the two markets and contributing to the continuous development of the MRF scheme.

香港证券及期货事务监察委员会欢迎推进落实内地与香港互认基金计划优化措施

于 2024 年 6 月 14 日,香港证券及期货事务监察委员会(证监会)欢迎中国证券监督管理委员会(中国证监会)发布有关推进落实优化内地与香港基金互认 (优化基金互认安排)计划规则的公众咨询文件。

中国证监会咨询文件草案的建议包括放宽在内地销售香港互认基金的限制,以及允许香港认可基金将投资管理职能委托给同一集团的海外资产管理公司。基于互利原则,证监会也将相应放宽对认可内地互认基金的相关限制。

具体来说,拟优化措施的主要内容包括:

1. 适度放宽销售限制:目前认可基金在对方市场销售的规模不得超过基金总资产的 50%,该比例上限将放宽至 80%;

2. 适当放松互认基金投资管理职能的转授权限制:认可香港基金可将投资管理职能委托给位于与中国证监会签订监管合作谅解备忘录司法管辖区内的同一集团海外实体;同样地,认可内地基金可将投资管理职能委托给位于证监会可接受监管体系司法管辖区内的同一集团海外实体。

证监会表示,将继续与中国证监会密切合作,制定和实施优化基金互认安排的措施,并将适时公布具体细节和实施时间。证监会进一步表示,这些拟议变更将满足香港资产管理人对优化基金互认安排计划更大灵活性和为内地投资者提供更多样化产品的愿望,并为该计划的持续发展注入新动力。

这些优化基金互认安排的措施,是中国证监会早前公布的五项内地与香港资本市场合作措施之一。放宽销售限制和允许投资管理职能委托,有助为内地和香港投资者提供更多灵活性和产品选择,进一步加强两地市场互联互通,推动优化基金互认安排的持续发展。

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https://apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/doc?refNo=24PR104
http://www.csrc.gov.cn/csrc/c101981/c7487015/7487015/files/%E9%99%84%E4%BB%B62%EF%BC%9A%E3%80%8A%E9%A6%99%E6%B8%AF%E4%BA%92%E8%AE%A4%E5%9F%BA%E9%87%91%E7%AE%A1%E7%90%86%E8%A7%84%E5%AE%9A%EF%BC%88%E4%BF%AE%E8%AE%A2%E8%8D%89%E6%A1%88%E5%BE%81%E6%B1%82%E6%84%8F%E8%A7%81%E7%A8%BF%EF%BC%89%E3%80%8B%E4%BF%AE%E8%AE%A2%E8%AF%B4%E6%98%8E.pdf
http://www.csrc.gov.cn/csrc/c101981/c7487015/7487015/files/%E9%99%84%E4%BB%B61%EF%BC%9A%E3%80%8A%E9%A6%99%E6%B8%AF%E4%BA%92%E8%AE%A4%E5%9F%BA%E9%87%91%E7%AE%A1%E7%90%86%E8%A7%84%E5%AE%9A%EF%BC%88%E4%BF%AE%E8%AE%A2%E8%8D%89%E6%A1%88%E5%BE%81%E6%B1%82%E6%84%8F%E8%A7%81%E7%A8%BF%EF%BC%89%E3%80%8B.pdf

"Deemed-to-be-Licensed" Virtual Asset Trading Platform Applicants are Not Yet Licensed by Hong Kong Securities and Futures Commission

The Hong Kong Securities and Futures Commission (SFC) announced that the non-contravention period for virtual asset trading platforms (VATPs) operating in Hong Kong under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO) has come to an end on June 1, 2024. All VATPs operating in Hong Kong must be either licensed by the SFC, or "deemed-to-be-licensed" VATP applicants under the AMLO. It is a criminal offence to operate a VATP in Hong Kong in breach of the AMLO, and the SFC will take all appropriate actions against any breaches of the law.

Reminder for investors

Investors are urged to trade virtual assets ONLY on SFC-licensed VATPs. They should check the "List of licensed virtual asset trading platforms" on the SFC's website to ascertain whether the VATP they are dealing with is formally licensed by the SFC.

In addition, investors are reminded that deemed-to-be-licensed VATP applicants are NOT formally licensed by the SFC. These applicants have been operating in Hong Kong since before the new VATP licensing regime under the AMLO. While they have undertaken to enhance their policies, procedures, systems and controls to comply with the SFC's regulatory requirements, they still need to demonstrate the actual implementation and effectiveness of these measures to the SFC's satisfaction.

Reminder for deemed-to-be-licensed VATP applicants

Deemed-to-be-licensed VATP applicants (and their ultimate owners) must fully comply with all of the SFC's regulatory requirements and licensing conditions. The SFC does not expect these applicants to actively market their services or onboard new retail clients prior to demonstrating the actual implementation and effectiveness of their policies, procedures, systems and controls to the satisfaction of the SFC and being formally licensed.

The SFC also reminds all VATPs and their ultimate owners to comply with all applicable laws and regulations, including but without limitation, preventing Mainland Chinese residents from accessing any of their virtual asset-related services, and to take all necessary measures to procure the VATPs' controlling entities and related parties to do the same.

The deeming arrangement serves to strike a balance between protecting investors and facilitating market development. As such, it is only a temporary arrangement whereby any non-compliance with key regulatory requirements for investor protection will result in the SFC's swift refusal of the licence application of a deemed-to-be-licensed applicant.

In the coming months, whilst the deemed-to-be-licensed VATP applicants pursue their applications, the SFC will conduct on-site inspections to ascertain their compliance with the SFC's regulatory requirements, with a particular focus on their safeguarding of client assets and know-your-client processes. By so doing, the SFC aims to safeguard investor interests whilst the inspection findings will feed into the licence application process. Again, in case of any non-compliance with key regulatory requirements for investor protection noted from the inspections, the SFC will swiftly refuse these licence applications and take other regulatory actions as appropriate.

被当作获发牌的虚拟资产交易平台申请者并未获证券及期货事务监察委员会正式发牌

香港证券及期货事务监察委员会（证监会）宣布，适用于根据《打击洗钱及恐怖分子资金筹集条例》（第 615 章）（《打击洗钱条例》）在香港营运的虚拟资产交易平台的不违反期间，于 2024 年 6 月 1 日已经结束。所有在香港营运的虚拟资产交易平台，均须根据《打击洗钱条例》获证监会发牌，或属"被当作获发牌"的虚拟资产交易平台申请者。在违反《打击洗钱条例》的情况下在香港营运虚拟资产交易平台属刑事罪行，证监会将对任何违法行为采取一切适当行动。

对投资者的提示

证监会敦促投资者，只在获证监会发牌的虚拟资产交易平台上买卖虚拟资产，并应查核证监会网站上的"持牌虚拟资产交易平台名单"，以确定他们使用的虚拟资产交易平台是否已获证监会正式发牌。

此外，投资者应注意，被当作获发牌的虚拟资产交易平台申请者并未获证监会正式发牌。这些申请者在《打击洗钱条例》下的新虚拟资产交易平台发牌制度实施前，已在香港营运。虽然它们已承诺加强其政策、程序、系统及监控措施，以符合证监会的监管规定，但它们仍需显示这些措施的实际实施和成效能获证监会信纳。

对被当作获发牌的虚拟资产交易平台申请者的提示

被当作获发牌的虚拟资产交易平台申请者（及其最终拥有人）须全面遵守证监会的所有监管规定和发牌条件。在这些申请者在其政策、程序、系统及监控措施的实际实施和成效获证监会信纳及获正式发牌前，证监会并不预期它们积极推广其服务或与新零售客户建立业务关系。

证监会亦提醒所有虚拟资产交易平台和其最终拥有人遵守所有适用的法律及规例，包括但不限于防止中国内地居民使用它们的任何虚拟资产相关服务，并采取一切必要措施促致这些虚拟资产交易平台的控权实体及关连方遵守所有适用的法律及规例。

当作为获发牌的安排旨在于保障投资者与促进市场发展之间达致平衡。因此，该安排只属暂时性，如发现有任何违反有关投资者保障的主要监管规定的情况，证监会将迅速拒绝被当作获发牌的申请者的牌照申请。

未来数月，在被当作获发牌的虚拟资产交易平台申请者继续其申请的同时，证监会将进行现场视察，以确定它们有否遵守证监会的监管规定，并会特别关注它们的客户资产保障及认识你的客户程序。证监会此举旨在保障投资者的利益，而视察结果将会影响牌照申请程序。同样，如在视察期间发现任何违反有关投资者保障的主要监管规定的情况，证监会将迅速拒绝相关牌照申请，并因应情况采取其他监管行动。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=24PR95
https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=23EC27

Hong Kong Securities and Futures Commission Adopts Treasury Units Regime for Authorized Real Estate Investment Trusts

The Stock Exchange of Hong Kong Limited (the Exchange) has recently announced various amendments to the Rules Governing the Listing of Securities on the Exchange (the Listing Rules) relating to treasury shares following a public consultation. Details of the amendments are set out in the consultation conclusions paper issued by the Exchange in April 2024 (Listing Rule Amendments) and the Listing Rule Amendments came into effect on June 11, 2024.

In response to this, the Hong Kong Securities and Futures Commission (SFC) issued a circular regarding the treatment of treasury units for SFC-authorized Real Estate Investment Trusts (REITs). This update aligns the REIT regulations with recent amendments made to the Listing Rules by the Exchange.

Under the new framework, SFC-authorized REITs are now permitted to hold repurchased units in treasury and subsequently resell them, subject to requirements similar to those applicable to listed companies under the Listing Rules Amendments. This includes conducting resales on a pre-emptive basis or with a shareholders' mandate, as well as adhering to disclosure, reporting, moratorium, voting and dealing restrictions as well as lock-up requirements.

A key change is that the number of repurchased units held in treasury (referred to as "Relevant Treasury Units")

can now be added to the REIT's existing 20% annual unit issuance mandate. As the issuance mandate does not require separate unitholders' approval, REIT managers will not need additional approval to resell the Relevant Treasury Units within the same financial year.

Furthermore, the circular clarifies that treasury units shall be excluded from the REIT's issued or voting units for the purposes of 9.9(c) and (h) of the Code on REITs as well as for various purposes in line with Listing Rule Amendments, such as public float, market capitalization, and transaction size tests. Treasury units will also not be entitled to unitholders' rights, including distribution and voting rights.

REIT managers should review and update their constitutive documents, compliance manuals, and other relevant documents to ensure compliance with the new treasury unit requirements. Where amendments to the constitutive documents are necessary, REIT managers must ascertain whether unitholders' approval is required in accordance with the REIT Code.

To provide more practical guidance, the SFC has updated its Frequently Asked Questions relating to Real Estate Investment Trusts and made available a revised Compliance Checklist for Unit Buy-back Circular on its website. REIT managers are encouraged to contact the SFC should they require any clarification on the new framework.

香港证券及期货事务监察委员会采用获认可房地产投资信托基金的库藏单位制度

香港联合交易所有限公司（联交所）最近公布了对《香港联合交易所有限公司证券上市规则》（《上市规则》）中有关庫存股份的多项修订，此前进行了公开咨询。修订的详情载于联交所于 2024 年 4 月发布的咨询总结文件（《上市规则修订》），《上市规则修订》于 2024 年 6 月 11 日生效。

为此，香港证券及期货事务监察委员会（证监会）发布了一份关于证监会认可房地产投资信托基金（REIT）库存单位处理的通函。此更新使房地产投资信托基金法规与联交所最近对《上市规则》所做的修订保持一致。

根据新制度，证监会认可的房地产信托基金现获准持有回购的库存单位，随后转售，但须遵守与《上市规则修订》适用于上市公司的类似规定。这包括以优先购买权方式或根据股东授权进行转售，以及遵守披露、申報、暂止期、投票和交易限制以及禁售期要求。

一项关键变更是，现可将库存持有的回购单位数量（称为“相关库存单位”）添加到房地产信托基金现有的 20% 年度单位发行授权中。由于发行授权不需要单独的单位持有人批准，因此房地产信托基金经理在同一财政年度内转售相关库存单位时无需额外批准。

此外，该通函还澄清，根据《房地产投资信托基金守则》第 9.9(c) 和 (h) 条以及《上市规则》修正案中的各种目的，库存单位应被排除在房地产投资信托基金的已发行或投票单位之外，如公众持股量、市值和交易规模测试。库存单位也将不享有单位持有人的权利，包括分配权和投票权。

房地产投资信托基金管理人应审查和更新其组织章程文件、合规手册和其他相关文件，以确保符合新的资金单位要求。如果需要修订组织章程文件，房地产投资信托基金管理人必须确定是否需要根据《房地产投资信托基金守则》获得单位持有人的批准。

为了提供更实用的指导，证监会更新了其与房地产投资信托基金相关的常见问题，并在其网站上提供了修订后的单位回购通函合规清单。如果房地产投资信托基金管理人需要对新制度进行任何澄清，可以与证监会联系。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=24EC26

Update on Streamlined Requirements for Eligible ETFs Adopting a Master-Feeder Structure in Hong Kong

On May 16, 2024, the Hong Kong Securities and Futures Commission (SFC) updated its circular on the streamlined requirements for Exchange Traded Funds (ETF) adopting a master-feeder structure. According to the circular, the master ETF:

1. must be a scheme with satisfactory safeguards and measures in place to provide substantially comparable investor protection as an SFC-authorized ETF, considering its underlying assets, investment strategy, and applicable rules and regulations in the home jurisdiction;

2. must have sizeable assets under management with a good track record.

The new conditions expand the scope of eligible ETFs to cover both passive and active ETFs, no longer restricting them to specific jurisdictions or mutual recognition arrangements. Additionally, the circular has removed the previous requirements on minimum fund size, track record of the eligible ETFs, and restrictions related to securities financing transactions.

Notwithstanding the relaxations, the circular continues to require that the master ETF, its management company, and trustee/custodian have a good

compliance record with the rules and regulations of the home jurisdiction and the listing venue (in the case of the master ETF).

The SFC's aim with these updates is to facilitate the development of ETF products in Hong Kong by welcoming more applications for the authorization of feeder ETFs that invest in overseas-listed ETFs through the streamlined master-feeder structure. The SFC will adopt a case-by-case approach, and ETF issuers are advised to consult the Investment Products Division to assess the eligibility of specific overseas-listed ETFs under the updated circular.

香港采用联接基金结构的合资格交易所买卖基金所适用的简化规定更新

香港证券及期货事务监察委员会（证监会）在 2024 年 5 月 16 日更新发表关于采用联接基金结构的合资格交易所买卖基金(ETF)所适用的简化规定的通函。根据通函，主 ETF：

1. 必须设有适当的保障措施和方案的计划，确保其提供的投资者保障与证监会认可的 ETF 有高度的可比性； 及

2. 将不限于特定的基金类别，前提是它们具有相当规模的管理资产及良好的往绩纪录 。

简化规定将涵盖被动型及主动型 ETF，而不再限制 ETF 需符合特定司法管辖区或互认安排，同时取消了此前关于最低基金规模、合格 ETF 的业绩记录要求以及与证券融资交易相关的限制。

尽管有这些放宽规定，但该通函仍要求主 ETF、其管理公司和受托人/托管人必须有良好的合规记录，遵守其所属司法管辖区和上市地（就主 ETF 而言）的规则和法规。

证监会发布这些更新的目的是通过进一步简化适用于联接 ETF 的规定，从而促进香港 ETF 产品的发展。证监会将采取逐案处理的方式，建议 ETF 发行人咨询证监会的投资产品部，以评估特定海外上市 ETF 在更新通函下的资格。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=24PR88
https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=24EC24

China's People's Bank of China and State Administration for Market Regulation Introduce New Beneficiary Ownership Information Filing System

On April 29, 2024, the People's Bank of China and the State Administration for Market Regulation of China jointly issued the "Administrative Measures on Beneficial Owner Information" (《受益所有人信息管理办法》) ("Measures"), which will be implemented nationwide starting from November 1, 2024. This is a significant measure taken by China to enhance the disclosure and transparency of beneficial owner information, aiming to maintain market order, financial security, and provide strong support for anti-money laundering and counter-terrorism financing efforts.

Definition of Beneficial Owner

The Measures clearly define the concept of "beneficial owner" as "the natural person who ultimately owns or actually controls the filing entity, or enjoys the ultimate benefits of the filing entity." This definition covers the three aspects of ownership, control, and income rights, and is more comprehensive and stricter compared to the traditional concept of "actual controller."

In terms of specific identification criteria, the Measures list three situations:

1. Directly or indirectly holding 25% or more equity, shares, or partnership interests;

2. Directly or indirectly enjoying 25% or more income rights or voting rights; or

3. Exercising actual control over the filing entity individually or jointly through personnel appointments and dismissals, major decision-making, financial management, and other means.

If any of these situations is met, the relevant natural person shall be identified as a beneficial owner.

It is worth noting that the Measures provide a detailed explanation of the scope of "actual control," covering not only explicit control through agreements and other arrangements but also implicit control methods such as deciding important personnel appointments and dismissals, major operational decisions, and financial control. This provision helps to unveil complex implicit control relationships and plug potential loopholes.

If none of the aforementioned three situations exist, the natural person responsible for the daily operation and management of the enterprise will be considered the beneficial owner. Overall, the Measures set strict and transparent criteria for identifying beneficial owners, which is conducive to comprehensively revealing the actual ultimate ownership and control relationships of enterprises.

Scope of Entities Required to File

The Measures require all companies, partnerships, and branches of foreign companies in China, except for individually-owned businesses, to file beneficial owner information in accordance with the law. It is noteworthy that for registered entities with a registered capital not exceeding RMB 10 million (or its equivalent in foreign currency) and where all shareholders or partners are natural persons, if there are no other natural persons who actually control or benefit from the entity through means other than equity or partnership interests, they can make a corresponding commitment in the registration system and be exempted from filing beneficial ownership information. This exemption provision, to a certain extent, alleviates the compliance burden for small and micro enterprises.

Timely Filing and Updates by Enterprises

Newly established enterprises need to file beneficial owner information simultaneously during registration. For existing enterprises, the Measures provide a one-year transition period, meaning that the initial filing must be completed before November 1, 2025.

Furthermore, the Measures require enterprises to proactively update the filed information within 30 days if they discover changes in beneficial owner information or no longer meet the exemption conditions. It is evident that timely and accurate filing is an ongoing compliance obligation for enterprises.

Strict Filing Supervision and Penalties for Violations

The Measures clearly define the supervisory responsibilities of various parties: The State Administration for Market Regulation will coordinate and guide the development of the registration system, and local regulatory authorities will be responsible for supervising enterprises' filing; the People's Bank of China and its branches will be responsible for establishing an information management system and supervising the accuracy of enterprises' information. Enterprises that fail to file or provide inaccurate information in accordance with the regulations will be subject to administrative penalties, with a maximum fine of RMB 50,000.

The filed data will not be publicly disclosed but will be accessible only to government departments and anti-money laundering obligated institutions for fulfilling their legal duties. The Measures stipulate that relevant institutions that obtain beneficial owner information should maintain confidentiality to prevent leakage and abuse. If enterprises are found to have violated the regulations, they will be punished according to the law, ensuring the seriousness of the system. It is worth noting that for foreign enterprises, the exemption from filing obtained in their home country does not apply in China, and they still need to comply with China's regulations.

Comparison with Other Jurisdictions

Globally, many countries and regions have implemented similar beneficial owner information disclosure systems to enhance corporate governance transparency and combat money laundering and terrorist financing activities. China's Measures are similar to other major economies in terms of the definition of beneficial owners, information disclosure requirements, and supervisory mechanisms, reflecting the global trend towards transparency.

The United States' Corporate Transparency Act (CTA) requires most companies to report beneficial owner information, which is only available to law enforcement agencies and not open to the public. The European Union requires member states to establish beneficial owner registries and introduced a "legitimate interest" test, allowing public access in certain circumstances.

In 2018, Hong Kong amended its Companies Ordinance, requiring companies to maintain a Significant Controllers Register for individuals or entities that directly or indirectly hold 25% or more of the company's shares or have significant control over the company. The information is only available to law enforcement and regulatory authorities, not to the public. Similarly, the Cayman Islands and Bermuda have respectively passed the Beneficial Ownership Transparency Law and amendments to the Companies Act respectively, requiring companies to maintain beneficial owner registers and provide information to regulatory authorities.

The Measures serve as an important step for China to further enhance corporate governance transparency and strengthen anti-money laundering and counter-terrorism financing efforts. The comprehensive disclosure of beneficial owner information will help maintain a fair market environment, regulate corporate operations, and provide an important basis for financial institutions to fully identify customers and assess risks.

Enterprises should pay close attention to this filing process, timely evaluate their own situations, and prepare the necessary materials to ensure accurate information. Given the risk of penalties for non-compliance, the fulfillment of the filing obligation should be prioritized. With the coordinated efforts of regulatory authorities, it is believed that the Measures will be implemented smoothly and contribute significantly to creating a healthy and orderly market environment.

中国人民银行和国家市场监督管理总局推出新的受益所有人信息备案制度

于 2024 年 4 月 29 日,中国人民银行和国家市场监督管理总局联合发布了《受益所有人信息管理办法》(以下简称《办法》),自 2024 年 11 月 1 日起在全国范围内实施。这是中国加强受益所有人信息披露和透明度的一项重大举措,旨在维护市场秩序、金融安全,并为反洗钱和反恐怖主义融资工作提供有力支撑。

受益所有人的界定标准

《办法》明确界定了"受益所有人"的概念,是指"最终拥有或者实际控制备案主体,或者享有备案主体最终收益的自然人"。这一定义涵盖了所有权、控制权和收益权三个层面,与传统的"实际控制人"概念相比范围更加广泛、标准也更为严格。

在具体认定标准上,《办法》列举了三种情形:

1. 直接或间接拥有 25%以上股权、股份或者合伙权益;
2. 直接或间接享有 25%以上收益权或表决权; 或
3. 通过人事任免、重大决策、财务管理等方式单独或者联合对备案主体进行实际控制。

只要符合任何一种情况,相关自然人即被认定为受益所有人。

值得注意的是,《办法》对"实际控制"的范围做出了详尽说明,不仅涵盖通过协议等明确约定控制的情形,还包括决定重要人事任免、重大经营决策、财务支配等隐性控制方式。这一规定有助于揭示复杂的隐性控制关系,堵塞可能的漏洞。

如果前述三种情形均不存在,那么负责企业日常经营管理的自然人将被视为受益所有人。整体来说,《办法》对受益所有人的认定标准严格透明,有利于全面揭示企业实际的最终所有权和控制权关系。

需要备案的主体范围

《办法》要求除个体工商户外,所有公司、合伙企业和外国公司在华分支机构都需要依法备案受益所有人信息。值得关注的是,对于注册资本不超过 1000 万元人民币（或者等值外币）且股东或合伙人全部为自然人的企业主体,如果不存在其他自然人实际控制或从中获利的情形,可在登记系统中作出相应承诺后免于备案。这一豁免规定一定程度上减轻了微小企业在合规上的负担。

企业须及时备案并保持更新

新设立的企业需在登记注册时一并备案受益所有人信息。而对于已存续的企业,《办法》给予了一年的过渡期,即需在 2025 年 11 月 1 日之前完成首次备案。

此外,《办法》还要求企业如发现受益所有人信息发生变化或者不再符合豁免条件的,应当在 30 日内主动更新备案信息。可见及时准确备案对企业而言是一项持续的合规义务。

严格的备案监管与违规处罚

《办法》明确了各方监管职责:国家市场监督管理总局统筹登记注册系统建设,地方监管部门负责监督企业备案情况;中国人民银行及分支机构则负责建立信息管理系统,监督企业信息准确性。对于未按规定办理备案或提供不准确信息的企业,将依法处以行政处罚,最高可达 5 万元人民币罚款。

备案数据不会公开披露，仅供政府部门和反洗钱义务机构履行法定职责时查阅。《办法》规定获取受益所有人信息的相关机构应对信息保密,防止泄露和滥用。一旦发现企业违规,将依法受到处罚,确保制度的严肃性。值得注意的是,对于外国企业而言,在其本国获得备案豁免的情形在中国不适用,仍需遵守中国的规定。

与其他法域的比较

全球范围内，许多国家和地区已实施类似的受益所有人信息披露制度，以提高公司治理透明度，打击洗钱和恐怖主义融资活动。中国的《办法》在受益所有人定义、信息披露要求和监管机制上与其他主要经济体相似，体现了全球透明化趋势。

美国的《企业透明法》（Corporate Transparency Act, CTA）要求大多数公司报告受益所有人信息，信息仅供执法机构使用，不对公众开放。欧盟要求成员国建立受益所有人登记册，并规定了“合法利益”测试，允许特定情况下的公众访问。

香港在 2018 年修订《公司条例》，要求公司维护“重要控制人登记册”，定义为直接或间接拥有 25%以上股权或对公司有重大控制权的个人或实体。信息仅供执法和监管机构使用，不对公众开放。相似地，开曼群岛和百慕大分别通过《受益所有人透明法》和《公司法》修订案，要求公司保存受益所有人登记册，并向监管机构提供信息。。

《办法》是中国进一步加强公司治理透明度和反洗钱反恐怖融资工作的重要一步。受益所有人信息的全面揭示将有助于维护公平的市场环境,规范企业运营,同时也为金融机构充分识别客户身份和风险提供了重要基础。

企业应高度重视此次备案工作,及时评估自身情况并准备必要的材料,确保信息准确无误。由于存在违规处罚风险,备案义务的履行需要重视。相信在监管部门的统筹推动下,《办法》将顺利实施,为营造健康有序的市场环境贡献重要力量。

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