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# Financial Services Regulatory Update 金融服务监管资讯

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## **Comparative Review of Regulators' Approaches towards Financial Institutions' Due Diligence Against Potential Frauds, Bribery and Other Red Flags**

### FCA's enforcement action on Mozambique's loan financing

On October 19, 2021, the Financial Conduct Authority of the United Kingdom (FCA) has fined an international investment bank over £147 million for serious financial crime due diligence failings related to loans worth over US\$1.3 billion, which the bank arranged for the Republic of Mozambique.

Between October 2012 to March 2016, FCA found that the bank failed to properly manage the risk of financial crime within its emerging markets business. It had sufficient information from which it should have appreciated the unacceptable risk of bribery associated with the two Mozambican loans and a bond exchange related to government sponsored projects.

The FCA found that the bank was aware that Mozambique was a jurisdiction where the risk of corruption of government officials was high and that the projects were not subject to public scrutiny or formal procurement processes. The contractor engaged by Mozambique on the projects was described as a "master of kickbacks" who secretly paid significant kickbacks, estimated at over US\$50 million, to members of the bank's deal team, including two Managing Directors, in order to secure the loans at more favorable terms.

The FCA found that while those bank employees took steps to deliberately conceal the kickbacks, warning signs of potential corruption should have been clear to the bank's control functions and senior committees. Time and again there was insufficient challenge within the bank, or scrutiny and inquiry in the face of important risk factors and warnings. The Republic of Mozambique has subsequently claimed that the minimum total of bribes paid in respect of the two loans is around US\$137 million.

The FCA took into account the bank's undertaking to forgive US\$200 million of debt owed by the Republic of Mozambique when determining its financial penalty. The bank also agreed to resolve this case with the FCA, qualifying it for a 30% discount in the overall penalty. Without the debt relief and this discount, the FCA expressed that it would have imposed a significantly larger financial penalty.

### SFC's recent actions on due diligence and internal control failures

In Hong Kong, as seen from recent cases, regulatory authorities take a hardline approach to similar due diligence failures. Sponsors who fail to perform reasonable due diligence in listing applications may be reprimanded and heavily fined by the Securities and Futures Commission of Hong Kong (SFC). The SFC may also suspend the licenses of responsible officers or prohibit responsible officers from re-entering the industry.

### *Recent cases – serious penalties*

On October 19, 2021, the SFC's decision to reprimand and fine a local sponsor firm failing to discharge its duties as the sponsor in the listing application was confirmed by the Securities and Futures Appeals Tribunal (SFAT). The SFC found that the firm simply relied on the listing applicant's representation and failed to make appropriate follow-up enquiries to address a number of red flags appeared in the process of due diligence. The firm did not obtain and review the agreements and the bank transaction records in relation to the finance arrangements of the chairman of the listing applicant. The SFC's investigation also found that there were various suspicious transactions which should have called into question as to whether the listing applicant and/or its chairman had provided financial support to some of the customers' payments. For example, the listing applicant transferred RMB2 million to a third party payer as a personal loan advanced by the company's chairman two days after the same third party payer made a payment of RMB2.3 million to the listing applicant on behalf of a top five customer. However, the firm performed nil or minimal due diligence on these suspicious transactions.

The SFC originally proposed to fine the firm HK\$14 million. Having considered the firm's financial position, the SFC decided to impose a fine of HK\$4.5 million against it. The SFAT further reduced the fine to HK\$3 million taking into account the firm's financial straits. The SFC has also prohibited the firm's former responsible officer and chief executive officer, who was the sponsor principal in charge of supervising the execution of the listing application, from re-entering the industry for 20 months.

The SFC took a similar approach in another case involving another local firm. Among other things, the SFC found that the firm failed to critically assess the reasons behind some suspicious third-party cash settlements of the listing applicant and did not conduct any independent due diligence to ascertain the truth and completeness of the listing applicant's representations. The firm also failed to maintain any records to demonstrate the due diligence it conducted, including its alleged discussions with the listing applicant's directors and reporting accountants. Further, the firm did not critically assess the reliability of the shipping documents of the listing applicant and failed to identify red flags which cast doubt on the reliability of the shipping documents.

Considering the substandard due diligence work, the fact that the listing application has lapsed and no harm has been caused to the investing public, two compliance advice letters the SFC previously issued to the firm in two separate listing applications, the firm's clean record with the SFC, the firm's financial situation and the cooperation with the SFC, the SFC decided to reprimand and fine the firm HK\$5.5 million for failing to discharge its duties as the sponsor in the listing application. The SFC also suspended the license of the responsible officer and the sponsor principal of the firm for 17 months.

#### *Multi-jurisdiction transaction - 1Malaysia Development Berhad*

In terms of cross-border activities, the SFC also takes stringent enforcement actions against any due diligence or internal control failures. On October 22, 2020, the SFC imposed a record-high fine of US\$350 million on an international investment bank for serious lapses and deficiencies in its management supervisory, risk, compliance and anti-money laundering controls that contributed to the misappropriation of US\$2.6 billion from US\$6.5 billion that 1Malaysia Development Berhad (1MDB) raised in three bond offerings in 2012 and 2013.

The actual work of 1MDB bond offerings was conducted by deal team members of the bank in multiple jurisdictions. The SFC found that the compliance and control hub of the branches in Asia and based in Hong Kong, had significant involvement in the origination,

approval, execution and sales process of the three 1MDB bond offerings. The SFC considers that Asia team lacked adequate controls in place to monitor staff and detect misconduct in its day-to-day operation, and allowed the 1MDB bond offerings to proceed when numerous red flags surrounding the offerings had not been properly scrutinized and satisfactory answers to such red flags had not been obtained. For example, despite being in a weak financial position with questionable ability to service existing debts, 1MDB raised US\$6.5 billion within a short period of 10 months but the amounts raised far exceeded the actual needs of 1MDB. 1MDB had repeatedly emphasized on confidentiality and speed of execution. Further, in the course of reviewing the bond offerings, the bank had found plenty of negative media reports which indicated high corruption risks associated with 1MDB and which raised questions about the integrity of 1MDB and the transactions it had entered into.

The SFC found that although the deal team and control functions of the bank took note of many of the red flags and appeared to have taken some steps to discuss and address them, the bank adopted a piecemeal approach in resolving the issues and had not properly considered the wider and "bigger picture" concerns about the commercial rationale of the bond offerings and satisfied itself that such concerns have been satisfactorily addressed. It found that the bank had failed to (i) supervise diligently its senior personnel who were involved in the execution of the bond offerings and to ensure that they maintained appropriate standards of conduct; (ii) identify and adequately address money laundering and bribery concerns when there were numerous red flags; (iii) exercise due skill, care and diligence, and act in the best interest of its clients and the integrity of the market when vetting and approving the bond offerings; and (iv) put in place adequate and effective internal control procedures to protect its clients from financial losses arising from frauds and other dishonest acts or professional misconduct.

The SFC considered that the securities industry is of fundamental importance to Hong Kong's role as an international financial center and it is essential to maintain among members of the investing public a well-founded confidence in the securities industry as well as in the integrity and professional competence of those who are employed in the industry. A strong message needs to be sent to the market to deter other market participants from allowing similar failures to occur. As a result, the SFC imposed a record-breaking fine on the bank.

The SFC has also banned the responsible officer and participating managing director of the investment banking division, who obtained and retained business from 1MDB through the promise and payment of bribes and kickbacks to government officials in Malaysia and

Abu Dhabi and knowingly and willfully circumvented the controls of the bank, from re-entering the industry for life.

#### *Winding-up order against corporate fraudsters*

Other than disciplinary actions against the intermediaries, it is noteworthy that the SFC may also seek a winding-up order against the wrongdoers. For example, the SFC obtained a court order to wind up a Hong Kong-listed company involving a highly complex, sophisticated and dishonest scheme spanning Hong Kong, Macao, the Mainland and the United States under section 212 of the Securities and Futures Ordinance in 2015. The scheme inflated the company's performance, revenue and profit dating back to the time of its initial public offerings prospectus in 2009 through the use of off-shore subsidiaries, fake shipments of scrap metal between the United States and the Mainland, false shipping documents, false accounts, and highly complex round robin transactions spanning continents.

To protect the company's minority shareholders, creditors and the investing public, the SFC obtained a winding-up order from the court. The sponsor for that company was also reprimanded and fined by the SFC.

#### Remarks

The above cases show that regulatory authorities expect intermediaries to adopt a robust risk-based approach to anti-corruption and other illicit activities. Investment banks should identify, assess, understand and properly follow up on red flags. The financial market could be quickly and adversely affected by any erosion of the confidence of investors. Intermediaries, such as sponsors, often take a leading role in coordinating the whole financing transaction or listing process and act as key gatekeepers to ensure market quality. Internal control deficiencies and substandard due diligence work of investment banks not only damage the banks' own reputation but also pose a risk to the integrity and viability of financial systems.

Regulators will closely supervise the markets, especially where cross-border projects are involved. Investment banks should prevent resorting to a box-ticking approach and simply accepting the client's representations at face value. Robust internal controls should be in place and all reasonable steps should be taken to protect the integrity of their operations and prevent themselves from being used to perpetrate frauds or other dishonest or improper acts.

**监管机构对金融机构针对潜在欺诈、贿赂和其他危险信号的尽职调查之监管方法的比较**

#### FCA 对莫桑比克贷款融资的执法行动

2021 年 10 月 19 日，英国金融行为监管局 (FCA) 对一家全球投资银行处以超过 1.47 亿英镑的罚款，原因是由该银行与为莫桑比克共和国安排涉及超过 13 亿美元贷款相关的尽职调查缺失引致的严重金融犯罪。

2012 年 10 月至 2016 年 3 月期间，FCA 发现该银行未能妥善管理其新兴市场业务中的金融犯罪风险。该银行有足够的信息意识到与莫桑比克的两笔贷款和与政府资助项目相关的债券交易相关的不可接受的贿赂风险。

FCA 发现该银行知道莫桑比克是一个政府官员腐败风险很高的司法管辖区，并且项目不受公众审查或正式采购程序的约束。莫桑比克在这些项目上聘请的承包商被描述为“回扣大师”，他秘密向银行交易团队成员（包括两名董事总经理）支付了大量回扣，估计超过 5000 万美元，以确保贷款获更优惠的条件。

FCA 发现，虽然银行员工采取措施故意隐瞒回扣，但银行的控制职能和高级委员会应该已经清楚潜在腐败的警告信号。面对重要的风险因素和预警，银行内部屡屡没有足够的审问、审查或问询。莫桑比克共和国后声称，就这两笔贷款支付的最低贿赂总额约为 1.37 亿美元。

FCA 在确定其经济处罚时考虑了该银行承诺免除莫桑比克共和国 2 亿美元的债务。该银行还同意与 FCA 解决此案，使其有资格获得 30% 的总罚款折扣。如果没有债务减免和这种折扣，FCA 表示将施加更大的经济处罚。

#### 证监会近期就尽职审查及内部监控失灵采取的行动

同样，在香港，监管机构对尽职调查缺失采取强硬态度。保荐人未能在上市申请中进行合理的尽职调查，可能会受到香港证券及期货事务监察委员会（证监会）的谴责和罚款。证监会亦可能暂时吊销保荐人负责人员的牌照或禁止其重投业界。

#### *近期案例 – 严重的处罚*

2021 年 10 月 19 日，证监会谴责及罚款一间未能履行上市申请保荐人职责的本地公司的决定获证券及期货事务上诉审裁处（上诉审裁处）确认。证监会发现，该公司单单依赖上市申请人的陈述，并没有作出适当的跟进查询，以解决尽职审查过程中出现的一些预警迹象。该公司并无取得及审阅与上市申请人主席的融资安排有关的协议及银行交易记录。证监会经调查后亦发现多宗可疑交易，理应令人质疑上市申请人及/或其主席是否曾为部分客户的付款提供资助。例如，上市申请人在一名第三方支付人代表一名五大客户向上市申请人支付一笔为数人民币 230 万元的款项后两日，向同一名第三方支付人转帐人民币 200 万元，作为该公司主席垫付的私人贷款。

但是，该公司对这些可疑交易没有进行或作出极为有限的尽职调查。

证监会原定对该公司罚款 1400 万港元。经考虑该公司的财务状况后，证监会决定对其处以 450 万港元罚款。考虑到该公司的财务困境，上诉审裁处进一步将罚款减少至 300 万港元。证监会亦禁止该公司前负责人员及行政总裁，即负责监督上市申请执行的保荐人主要负责人员重投业界 20 个月。

在另一宗涉及另一家本地公司的案件中，证监会采取了类似的做法。证监会发现该公司（其中包括）未能严格评估上市申请人部分可疑第三方现金交收背后的原因，也没有进行任何独立的尽职审查，以确定上市申请人陈述的真实性和完整性。该公司也未能保存任何记录以证明其进行的尽职调查，包括声称与上市申请人的董事和申报会计师进行的讨论。此外，该公司没有严谨地评估上市申请人付运文件的可靠性，也未能识别出显示该等付运文件未必可靠的预警迹象。

考虑到该公司不达标的尽职审查工作、上市申请已失效且未对投资大众造成损害的事实、证监会此前在另外两宗上市申请向该公司发出的合规意见函、该公司过往无遭受证监会纪律处分的纪录、该公司的财务状况以及与证监会的合作，证监会决定对该公司未履行其在上市申请中作为保荐人的职责予以谴责和罚款 550 万港元。证监会亦已暂时吊销该公司负责人员及保荐人主要人员的牌照 17 个月。

#### *跨司法管辖区交易 - 1Malaysia Development Berhad*

就跨境活动而言，证监会亦会就任何尽职调查或内部监控失误采取严厉执法行动。2020 年 10 月 22 日，证监会对一家国际投资银行处以创纪录的 3.5 亿美元罚款，理由是其在管理监督、风险、合规和反洗黑钱控制方面存在严重失误和缺陷，导致挪用了 1Malaysia Development Berhad (1MDB) 在 2012 年和 2013 年通过三次债券发行筹集的 65 亿美元当中的 20.6 亿美元。

1MDB 债券发行的实际工作是由该银行在多个司法管辖区的交易团队成员进行的。证监会发现，亚洲和香港分行的合规和控制中心在三项 1MDB 债券发行的发起、批准、执行和销售过程中发挥了重要作用。证监会认为，亚洲团队缺乏足够的控制措施来监督员工和发现其日常运营中的不当行为，并在围绕发行的众多危险信号没有得到适当审查和令人满意的答复的情况下允许进行 1MDB 债券发行。例如，尽管财务状况不佳，偿还现有债务的能力有问题，1MDB 在短短 10 个月内筹集了 65 亿美元，但筹集的金额远远超过了 1MDB 的实际需要。1MDB 一再强调保密性和执行速度。此外，在审查债券发行的过程中，银行发现了大量负面媒体报道，这些报

道指出与 1MDB 相关的高腐败风险，并引发对 1MDB 的诚信及其所进行的交易的质疑。

证监会发现，尽管银行的交易团队和控制职能注意到许多危险信号，并似乎已采取一些步骤来讨论和解决这些问题，但银行在解决问题时采取了零敲碎打的方法，并没有适当考虑对债券发行的商业理由的更广泛和“更大的图景”的担忧，并认为这些担忧已得到满意的处理。它发现银行未能 (i) 对参与执行债券发行的高级人员进行勤勉监督，并确保他们保持适当的行为标准；(ii) 在出现大量危险信号时，识别并充分解决洗黑钱和贿赂问题；(iii) 在审查和批准债券发行时，运用应有的技能、谨慎和勤勉，并以客户的最佳利益和市场的诚信为重；(iv) 制定充分有效的内部控制程序，以保护其客户免受欺诈和其他不诚实行为或专业不当行为造成的财务损失。

证监会认为证券业对香港作为国际金融中心的角色至关重要，维持投资大众对证券业充分的信心以及对受雇于证券行业的人员的诚信和专业能力保持有充分的信心亦非常重要。为阻吓其他市场参与者允许类似的失败发生，需要向市场发出强烈的信息。因此，证监会对该银行处以创纪录的罚款。

证监会还禁止通过向马来西亚和阿布扎比的政府官员承诺和支付贿赂和回扣，并故意和故意规避银行对 1MDB 的控制，从而获得并取得了 1MDB 的业务的投资银行部门的负责人员和参与的董事总经理终身重新进入这个行业。

#### *针对公司欺诈者的清盘令*

除了对中介人采取纪律处分外，值得注意的是，证监会也可能针对不法行为者寻求清盘令。例如，证监会于 2015 年根据《证券及期货条例》第 212 条获得法院命令，将一家涉及香港、澳门、内地和美国的高度复杂和不诚实计划的香港上市公司清盘。该计划通过使用离岸子公司、在美国和内地之间虚假运输废金属、虚假运输文件、虚假账户，以及跨越大陆的高度复杂的循环交易以夸大了公司 2009 年首次公开募股招股说明书的业绩、收入和利润。

为保障公司的少数股东、债权人及投资大众，证监会已从法院取得清盘令。该公司的保荐人亦被证监会谴责及罚款。

#### *结语*

以上案例显示监管机构希望中介机构对反腐败和其他非法活动采取严格风险管理。投资银行应识别、评估、理解并适当跟进危险信号。金融市场的健康状况很大程度上受投资者信心的影响。保荐人等中介机构往往在整个

融资或上市过程中起牵头作用，充当关键看门人以确保市场质量。投资银行的内部控制缺陷和不合格的尽职调查工作不仅损害了银行自身的声誉，而且对金融体系的完整性和生存力构成了风险。

监管机构会密切监管市场，尤其是涉及跨境项目时。投资银行应避免采取逐项勾选的方式并简单地全盘接受客户的陈述。其应实施稳健的内部控制，并采取一切合理措施保护其运营的稳健，并防止其被用于欺诈和其他不诚实或不当行为。

Source 来源:

<https://www.fca.org.uk/news/press-releases/credit-suisse-fined-ps147190276-us200664504-and-undertakes-fca-forgive-us200-million-mozambican-debt>

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR104>

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR103>

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=15PR18>

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR103>

### **Hong Kong Monetary Authority Announces a List of Eligible Banks in Hong Kong for Launching the Cross-boundary Wealth Management Connect Pilot Scheme**

On October 18, 2021, the Hong Kong Monetary Authority (HKMA) announced 19 eligible banks in Hong Kong which can launch Cross-boundary Wealth Management Connect (WMC) services (see the list of southbound participating banks at <https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/wealth-management-connect/southbound-scheme/#list-of-banks> and the list of northbound participating banks at <https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/wealth-management-connect/northbound-scheme/#list-of-banks>). These banks, together with their respective Mainland partner banks whose eligibility for providing pilot Cross-boundary WMC services have been confirmed by the relevant Mainland regulatory authorities (to be announced separately by the Mainland authorities on October 18, 2021), can start providing Cross-boundary WMC services together on October 19, 2021 the earliest.

Mr. Eddie Yue, Chief Executive of the HKMA, said, "It gives me great pleasure to see that a number of Hong Kong banks have completed the necessary preparatory work and are ready to start providing Cross-boundary WMC services. Considering that it will be the first time for retail investors to conduct cross-boundary investments, we will closely monitor the operation of the Cross-boundary WMC and step up investor education

and investor protection work together with the industry. We will collaborate with the industry to explore enhancement measures to the scheme as and when appropriate, with a view to providing more growth opportunities for Hong Kong's banking and wealth management industry."

As set out in the "Implementation Arrangements for the Cross-boundary Wealth Management Connect Pilot Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area" (Implementation Arrangements) promulgated by the HKMA on September 10, 2021, banks in Hong Kong which intend to embark on Cross-boundary WMC activities should put in place systems, internal control measures and complete relevant systems testing, and submit a self-assessment to the HKMA prior to the launch of such activities in accordance with the requirements in the Implementation Arrangements.

The HKMA will continue to process the remaining self-assessments and update from time to time the list of eligible Hong Kong banks on the HKMA's dedicated Cross-Boundary WMC webpage at <https://www.hkma.gov.hk/eng/key-functions/international-financial-centre/wealth-management-connect/>

### **香港金融管理局公布可开展跨境理财通业务试点的香港银行名单**

于2021年10月18日，香港金融管理局（金管局）公布19家可开展跨境理财通业务的香港银行名单（参与南向通的银行名单见 [https://www.hkma.gov.hk/gb\\_chi/key-functions/international-financial-centre/wealth-management-connect/southbound-scheme/#list-of-banks](https://www.hkma.gov.hk/gb_chi/key-functions/international-financial-centre/wealth-management-connect/southbound-scheme/#list-of-banks)，参与北向通的银行名单见 [https://www.hkma.gov.hk/gb\\_chi/key-functions/international-financial-centre/wealth-management-connect/northbound-scheme/#list-of-banks](https://www.hkma.gov.hk/gb_chi/key-functions/international-financial-centre/wealth-management-connect/northbound-scheme/#list-of-banks)）。相关银行及其内地伙伴银行经内地相关监管机构纳入跨境理财通业务试点范围后（由内地相关监管机构于2021年10月18日另行公布），最早可以于2021年10月19日一同开始提供跨境理财通服务。

金管局总裁余伟文表示：「我非常高兴见到多间香港银行已完成相关准备工作，可以开始推出跨境理财通服务。考虑到这将是很多零售投资者进行的首次跨境投资，我们会密切留意跨境理财通的运作情况，并与业界共同加强投资者教育及投资者保障工作。我们也会与业界保持联系，适时共同探索跨境理财通的优化措施，以期香港的银行及财富管理行业带来更多增长机遇。」

根据金管局在2021年9月10日发布的「粤港澳大湾区跨境理财通业务试点实施细则」（《实施细则》），有意开展跨境理财通业务的香港银行需在相关业务启动前

按《实施细则》的要求建立系统、内部管控措施以及完成相关系统测试，并向金管局提交自我评估。

金管局会继续处理余下香港银行提交的自我评估，并适时于金管局的跨境理财通网页（[https://www.hkma.gov.hk/gb\\_chi/key-functions/international-financial-centre/wealth-management-connect/](https://www.hkma.gov.hk/gb_chi/key-functions/international-financial-centre/wealth-management-connect/)）更新可开展跨境理财通业务的香港银行名单。

Source 来源:

<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2021/10/20211018-4/>

### **The People's Bank of China and the Hong Kong Monetary Authority Sign the “Memorandum of Understanding on Fintech Innovation Supervisory Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area”**

On October 21, 2021, the Hong Kong Monetary Authority (HKMA) announced that the People's Bank of China (PBoC) and the HKMA have recently signed the “Memorandum of Understanding (MoU) on Fintech Innovation Supervisory Cooperation in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA)”, which aims to fully implement the “Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area” issued by the Central Committee of the Communist Party and the State Council. Under the MoU, the two authorities have agreed to link up the PBoC's Fintech Innovation Regulatory Facility with the HKMA's Fintech Supervisory Sandbox in the form of a “network”. Under the premise of compliance with laws and regulations, the “network link-up” will promote financial technology innovation cooperation, enhance the quality and efficiency of financial services in the GBA, and strengthen financial support for the development of the GBA in an orderly fashion.

As a next step, the two authorities will, following the principles of mutual trust, mutual understanding and mutual respect under the cooperation framework of the MoU, provide efficient Fintech innovation testing services, with a view to injecting new impetus into the quality financial development of the GBA.

### **中国人民银行与香港金融管理局签署《关于在粤港澳大湾区开展金融科技创新监管合作的谅解备忘录》**

于2021年10月21日，香港金融管理局（金管局）公布中国人民银行与金管局近日签署《关于在粤港澳大湾区开展金融科技创新监管合作的谅解备忘录》（《备忘录》），旨在贯彻落实党中央、国务院印发的《粤港澳大湾区发展规划纲要》，将人民银行金融科技创新监管工具与香港金融管理局金融科技监管沙盒进行联网对接，

在依法依规前提下稳妥有序推进金融科技创新合作，提升粤港澳大湾区金融服务质效，加大金融支持粤港澳大湾区建设力度。

下一步，双方将在《备忘录》合作框架下，坚持互信互谅、相互尊重原则，提供高效的金融科技创新测试服务，为粤港澳大湾区金融高质量发展注入新动力。

Source 来源:

<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2021/10/20211021-4/>

### **The Stock Exchange of Hong Kong Limited Launches e-Learning on Continuing Obligations**

Recently, The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX), introduced e-training on continuing obligations of listed issuers on the Exchange.

The e-training is part of the Exchange's ongoing commitment to promote and maintain good corporate governance standards and practices amongst issuers.

The e-training course covers three modules:

- Corporate governance and listed issuers' key obligations;
- Key disclosure requirements; and
- Continuing listing requirements.

Key content of the three modules is listed as follows.

#### *Corporate governance and listed issuers' key obligations*

Corporate governance focuses on an issuer's internal processes and leadership, covering areas such as codes of conduct, audit and internal controls, and shareholder rights. It also encompasses the systems and processes that help manage an issuer's exposure and risks.

The Companies Ordinance (Cap. 622 of the Laws of Hong Kong) sets out the legal framework for corporate governance of a company (private or public), including but not limited to the duties of directors and the rights and responsibilities of shareholders. An overseas incorporated issuer listed on the Exchange is also subject to equivalent corporate governance standards.

The Corporate Governance Code covers areas such as the board (including its responsibilities, mode of operation and composition), directors, chairman and chief executive (including their roles and responsibilities, nomination, appointment and removal and access to information), remuneration of directors and senior

management and board evaluation, accountability and audit, delegation by the board, communication with shareholders and company secretary.

#### *Roles and responsibilities of the board of directors*

The board of an issuer is collectively responsible for its management and operation. The board (or its committee(s)) of an issuer should be responsible for, among others, developing and reviewing policies and practices on corporate and making recommendations to the board, reviewing and monitoring the training and continuous professional development of directors and senior management, reviewing and monitoring compliance of the issuer with the Corporate Governance Code, disclosure in the Corporate Governance Report as well as legal and regulatory requirements, etc. Details of their roles and responsibilities could be found in the Code Provisions of the Corporate Governance Code.

#### *Directors fiduciary duties*

The directors, both collectively and individually, must also fulfil the fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by the Hong Kong law:

- act honestly and in good faith in the interests of the issuer as a whole
- act for proper purpose
- be answerable to the issuer for the application or misapplication of its assets
- avoid actual and potential conflict of interest and duty
- disclose fully and fairly their interests in contracts with the issuer
- apply such degree of skill, care and diligence as many reasonably be expected of a person of his/her knowledge and experience and hold his/her office within the issuer

If a director fails to discharge his/her duties and responsibilities, he/she may be disciplined by the Exchange and may attract civil and/or criminal liabilities under Hong Kong law or the laws of applicable jurisdictions.

#### *Board composition*

The board or the nomination committee shall have a policy concerning diversity of board members. A summary of which must be disclosed annually. The board should have a balance of skills, experience and diversity of perspectives appropriate to the requirements of the issuer's business.

All directors should be subject to re-election at regular intervals (at least once every year), where directors appointed to fill a casual vacancy should be subject to

election by shareholders at the first general meeting after appointment.

Independent non-executive directors (INED) must represent one-third of the board, and there must be at least three INEDs, with at least one INED having appropriate professional qualifications or accounting or related financial management expertise. The independence of an INED is assessed with reference to non-exhaustive factors, including, whether a director holds more than 1% of the number of issued shares of the issuer, is or was a director, partner, principal of a professional adviser currently provides or has within the past two years provided services to issuer or the issuer's group, has or had a material interest in any principal business activity of the issuer currently or within the past years, etc. A confirmation of INED's independence must be submitted to the Exchange upon appointment, and an annual confirmation must be stated in the issuers' annual reports.

If an INED has served more than 9 years with the issuer, his/her re-election should also be subject to a separate shareholders' resolutions. Reasons should be included in the circular to shareholders to explain why the board believes in the INED's independence and the INED should be re-elected. If the board proposes to appoint an INED who will be serving as a director in seven or more listed companies, the issuer must also explain in the circular why the board believes he/she would still be able to devote sufficient time to the board.

#### *Appointment, re-designation, resignation, retirement and removal of directors*

Issuers must announce, among other things, the biography, length or proposed length of service with the issuer, amount of emolument and the basis of determination of the new director or chief executive to be appointed or re-designated. Independent shareholders' approval is required if the director's service contract is for a duration exceeding three years or it requires the issuer to give a notice period of more than one year or pay compensation or make other payments equivalent to more than one year's emoluments, if it terminates the contract.

As regards resignation, retirement or removal of a director (or chief executive), the issuer must announce, among other things, the reason thereof, whether he/she has any disagreement with the board, and whether there are any matters that need to be brought to the attention of the shareholders. For a period of three years from the date on which the departing director ceases his office or tenure, the departing director (or chief executive) must also notify the Exchange of any change in his/her contact information as soon as reasonably practicable within 28 days of such change.

### *Board committees*

The board must establish an audit committee and a remuneration committee under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules). It should also consider establishing a nomination committee under the Corporate Governance Code. The board committees should be formed with specific written terms of reference. Functions of the board committees are listed in the Listing Rules and the Corporate Governance Code in details.

### *Composition of board committees*

Audit committee and remuneration committee must be chaired by an INED whereas the nomination committee can be chaired by either the chairman of the board or an INED. There must be a minimum of three members in the Audit committee and it should comprise non-executive directors only with a majority of INEDs. At least one member is required to be an INED with appropriate professional qualifications or accounting or related financial management expertise. For remuneration committee and nomination committee, they should comprise a majority of INEDs.

### *Company secretary*

The company secretary is to assist the board of directors of the issuer, it mainly supports the board by ensuring good information flow within the board and the compliance with board policy and procedures. Under the Listing Rules, a company secretary must have the academic or professional qualifications or relevant experience.

### Key disclosure requirements

#### *Annual, interim/quarterly results announcement and report*

Issuers are required to publish an annual results announcement (ARA) and an annual report within the specified timeframe. For ARA (and annual report for GEM listed issuers), it must be published within 3 months from the end of financial year. GEM listed issuers should also convene an annual general meeting at least 21 days after the release of the relevant ARA or annual report. For annual report for Main Board listed issuers, it must be published within 4 months from the financial year end, and an annual general meeting must be held at least 21 days after the release of the annual report.

If an issuer is unable to publish its annual result announcement before the prescribed deadline, it must publish an announcement containing (i) a full explanation for its inability to do so; (ii) the expected date

for publishing the ARA; and (iii) where available, the issuer's management accounts.

Issuers are also required to publish an interim results announcement (IRA) and report within the specified timeframe. For a Main Board issuer, an IRA and an interim report must be published within 2 months and 3 months from the end of the relevant financial period, respectively. For a GEM listed issuer, a quarterly and half-year results announcement and report must be published within 45 days from the end of the relevant financial period.

### *Inside information and information to avoid a false market*

The Listing Rules also identify specific circumstances where an issuer must disclose information to the public as soon as reasonable practicable. The specific circumstances include inside information and information to avoid a false market, issuance and repurchase of securities, transactions, loans, advances or guarantees and corporate updates.

Inside information means specific information that is about the issuer, a shareholder or officer of the issuer or the listed securities of the issuer or their derivatives that is not generally known to the persons who are accustomed or would be likely to deal in the listed securities but would, if generally known to them, be likely to materially affect the price of the listed securities.

The Exchange may make enquiry on unusual share price / volume movements in an issuer's listed securities, media reports which affect, or potentially affect the trading activities of the listed securities; or the possible development of a false market in the listed securities. In such circumstances, the issuer must respond promptly as follows: provide information to the Exchange and, if requested by the Exchange, make an announcement to inform the market or to clarify the situation. In any event, the issuer may make a voluntary announcement to clarify the situation.

### *Transactions*

An issuer must announce details of its notifiable and connected transactions under Chapter 14 and 14A of the Listing Rules/ Chapters 19 and 20 of the Rules Governing the Listing of Securities on GEM of the Stock Exchange of Hong Kong Limited (GEM Rules). Relevant e-Learning materials of Connected Transaction Rules and Notifiable Transaction Rules are available at: [https://www.hkex.com.hk/eng/Listing/eCourse/Connected\\_Transactions/en/story.htm](https://www.hkex.com.hk/eng/Listing/eCourse/Connected_Transactions/en/story.htm) and [https://www.hkex.com.hk/eng/Listing/eCourse/Notifiable\\_Transactions/en/story.htm](https://www.hkex.com.hk/eng/Listing/eCourse/Notifiable_Transactions/en/story.htm), respectively.

### *Issuance or repurchase of securities*

Issuers must announce issue of new securities, on-market or off-market repurchase of securities and change in the terms of convertible securities and the rights attaching to listed securities and convertible/exchangeable listed debt securities.

For changes in securities, such as by share repurchase, a next day disclosure return must be published before the commencement of trading session on the next business day. A monthly return in relation to movements in the issuers' securities must also be published within five days after month-end.

#### *Loans, advances or guarantees*

An issuer must announce its loans, advances or guarantees as required under the Main Board Listing Rules 13.13 to 13.19 and GEM Rules 17.15 to 17.21. In particular, advances to an entity which exceed 8% under the assets ratio (and any subsequent increase that exceeds 3% under the assets ratio), financial assistance and guarantees to the issuer's affiliated companies which exceed 8% under the assets ratio, debts, guarantees or other obligations of the issuers that are secured by a pledge of its controlling shareholder's shares, loan agreements with covenants relating to specific performance by its controlling shareholder and breach of loan agreements by the issuer.

#### *Corporate updates*

Under Main Board Listing Rules 13.10B, 13.24B and 13.25 and GEM Rules 17.12, 17.26B and 17.27, an issuer should also promptly announce information published on another stock exchange which its securities are listed (i.e. an overseas regulatory announcement), winding-up and liquidation of the issuer, its holding company or any material subsidiary and material matters on and changes to previously reported profit forecasts.

Main Board Listing Rules 13.51 and GEM Rules 17.50 require issuers to announce promptly the alternation of the issuers' constitutional documents, change in the directorate or material change in their biographies during the terms of office, change in the auditors or financial year-end. Further, changes in secretary, share registrar, registered address, agent for the service of process in Hong Kong, compliance adviser, website address, notices of board meeting approving results announcement and/or dividends and decision of dividend or distribution and changes in capital structure, general character or nature of business shall also be announced promptly.

#### *Environmental, social and governance (ESG)*

An issuer must publish its ESG report annually for their reporting period covered in its annual report. It can be included in the annual report or in a separate report. Relevant requirements are available in the ESG Reporting Guide (Appendix 27 to the Main Board Listing Rules / Appendix 20 to the GEM Rules), FAQ Series 18 ([https://en-rules.hkex.com.hk/sites/default/files/net\\_file\\_store/HKE\\_X\\_FAQ\\_18.pdf](https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKE_X_FAQ_18.pdf)), ESG academy webinar series ([https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Academy-webinar-series/Board-Diversity?sc\\_lang=en](https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Academy-webinar-series/Board-Diversity?sc_lang=en)) and [Resources hyperlinks](https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Resources-Hyperlinks?sc_lang=en) ([https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Resources-Hyperlinks?sc\\_lang=en](https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Resources-Hyperlinks?sc_lang=en)).

#### *Continuing listing requirements*

##### *Public float*

An issuer shall maintain an open market in its listed securities, which means at least 25% (or an agreed lower percentage) of the total number of issued shares must at all times be held by the public. If an issuer has more than one class of securities listed on different exchanges, at least 25% of the issuer's total number of issued shares must be held by the public on all regulatory exchanges.

Members of public do not include core connected person nor other person whose acquisition of securities has been financed by a core connected person or who is accustomed to take instructions from a core connected person as specified under Rule 8.24 of the Main Board Listing Rules and Rule 11.23 of the GEM Rules.

##### *Sufficient operation and assets*

Main Board Listing Rules 13.24 or GEM Rule 17.26 and Guidance letter GL106-19 also specified that an issuer must carry out a business with a sufficient level of operations and assets of sufficient value to support its operations to warrant its continued listing.

##### *Cash companies*

Where for any reason the assets of an issuer (except for an investment company under Chapter 21) consist wholly or substantially of cash and/or short-term investments, the issuer is a cash company and will not be regarded as suitable for listing and trading in its securities will be suspended. An exception would, however, be applied to cash and/or short term investments held through a subsidiary that is a bank, an insurer or a securities house.

##### *Suitability for continued listing*

An issuer may not be suitable for continued listing in the following circumstances:

- Prolonged trading suspension (e.g. where the issuer fails to demonstrate a reasonable prospect of remedying the issues leading to trading suspension);
- Issues with integrity of directors or persons with substantial influence;
- Material breach of the Listing Rules (e.g. failure to publish audited financial statements at regular intervals);
- Material non-compliance with law and regulations;
- Material internal control failure;
- Material reliance on a controlling/substantial shareholder, a single major customer/supplier, or another party; or
- Operation of a business structure that cannot safeguard assets and shareholders' interests.

#### *Communication with the Exchange*

For the purpose of investors' protection, smooth operation of the market and verification of compliance with the Listing Rules from time to time, an issuer shall appoint two authorized representatives (who are directors, or the company secretary) as the principal channel of communication with the Exchange. Where required by the Listing Rules, an issuer shall submit the draft announcements or circulars for the Exchange's clearance before publication. Document required under the Listing Rules should also be published on the HKEXNews website and the Company's website.

#### **香港联合交易所有限公司推出持续责任网上培训**

近日，香港交易及结算所有限公司（香港交易所）全资附属公司香港联合交易所有限公司（联交所）推出持续责任网上培训。

推出网上培训是联交所致力持续提升及维持发行人良好企业管治水平的其中一项工作。

网上培训涵盖三个模块：

- 企业管治和上市发行人的主要责任；
- 关键披露要求；及
- 持续上市要求

以下列出三个模块所述的主要内容。

#### 企业管治及上市发行人的主要责任

公司治理侧重于发行人的内部流程和领导力，涵盖行为准则、审计和内部控制以及股东权利等领域。它还包括有助于管理发行人敞口和风险的系统和流程。

《公司条例》（香港法例第 622 章）规定了公司（私人或公众）公司治理的法律框架，包括但不限于董事的职责以及股东的权利和责任。在联交所上市的海外注册发行人亦须遵守同等的企业管治标准。

《企业管治守则》涵盖董事会（包括其职责、运作方式及组成）、董事、主席及行政总裁（包括其角色及职责、提名、任免及获取资料）、董事薪酬及高级管理层和董事会评估、问责和审计、董事会授权、与股东和公司秘书的沟通。

#### *董事会的角色和职责*

发行人董事会集体负责其管理和运营。发行人的董事会（或其委员会）应负责（其中包括）制定和审查企业政策和惯例并向董事会提出建议，审查和监督董事和高级管理人员的培训和持续专业发展、检讨及监察发行人遵守《企业管治守则》、《企业管治报告》中的披露以及法律及监管规定等。他们的角色和职责的详细信息可以在企业管治守则的守则条款中找到。

#### *董事受信责任*

董事，无论是集体还是个人，还必须按照至少与香港法律规定的标准相称的标准履行受信责任和技能、谨慎和勤勉义务：

- 为发行人的整体利益诚实和善意地行事
- 为正当目的而行动
- 就其资产的应用或误用向发行人负责
- 避免实际和潜在的利益和职责冲突
- 充分公平地披露他们在与发行人签订的合同中的利益
- 运用与其知识和经验相关的人员合理预期的技能、谨慎和勤勉程度，并在发行人中担任职务

如果董事未能履行其职责和责任，他/她可能会受到联交所的纪律处分，并可能根据香港法律或适用司法管辖区的法律承担民事和/或刑事责任

#### *董事会组成*

董事会或提名委员会应制定有关董事会成员多元化的政策。必须每年披露其摘要。董事会应在适合发行人业务需求的技能、经验和多元化观点之间取得平衡。

所有董事均应定期（至少每年一次）重选连任，被任命填补临时空缺的董事应在任命后的第一次股东大会上由股东选举。

独立非执行董事必须代表董事会的三分之一，并且必须至少有两名独立非执行董事，其中至少一名独立非执行董事具有适当的专业资格或会计或相关财务管理专业知识。独立非执行董事的独立性是参考非详尽因素评估的，包括董事是否持有发行人已发行股份数量的 1% 以上，目前是否为董事、合伙人、专业顾问的负责人或在过去两年内曾为发行人或发行人集团提供服务，目前或过去几年内在发行人的任何主要业务活动中拥有或拥有重大利益等。独立非执行董事获委任后必须向联交所提交独立非执行董事独立性的确认，发行人的年报亦必须载列有关年度确认。

如果独立非执行董事已在发行人任职超过 9 年，他/她的重选也应受制于单独的股东决议。应在致股东的通函中加入理由，以解释为何董事会相信独立非执行董事的独立性以及独立非执行董事应获连任。如果董事会拟委任一名独立非执行董事出任七家或更多上市公司的董事，发行人还必须在通函中解释董事会认为他/她仍能够为董事会投入足够时间的原因。

#### *董事的委任、调任、辞职、退任或免职*

发行人必须公布（其中包括）发行人的履历、任期或建议服务年限、薪酬金额以及决定任命或调任新董事或行政总裁的依据。如果董事的服务合同期限超过三年或要求发行人给予一年以上的通知期或支付补偿或支付相当于一年以上酬金的其他款项以终止合同，则需要获得独立股东的批准。

对于董事（或高级人员）的辞职、退任或免职，发行人须公告（其中包括）其原因、是否与董事会存在分歧，以及是否有任何需要解决的事项需提请股东的注意。自离任董事终止其职务或任期之日起三年内，离任董事（或行政总裁）还必须在合理可行的情况下在 28 天内尽快将其联系信息的任何变更通知联交所所有关变更。

#### *董事委员会*

董事会须根据香港联合交易所有限公司证券上市规则（上市规则）成立审核委员会及薪酬委员会。它还应考虑根据企业管治守则成立提名委员会。董事会委员会的组成应有明确的书面职权范围。董事委员会的职能已详细列于上市规则及企业管治守则。

#### *董事会委员会的组成*

审核委员会和薪酬委员会必须由独立非执行董事担任主席，而提名委员会可由董事会主席或独立非执行董事担任主席。审计委员会必须至少有三名成员，并且应由非执行董事组成，其中多数为独立非执行董事，至少一名成员必须是具有适当专业资格或会计或相关财务管理专

业知识的独立非执行董事。另外，独立非执行董事应占薪酬委员会和提名委员会的大多数。

#### *公司秘书*

公司秘书协助发行人的董事会，主要通过确保董事会内部的良好信息流通以及遵守董事会政策和程序来支持董事会。根据上市规则，公司秘书必须具备学术或专业资格或相关经验。

#### 关键披露要求

##### *年度、中期/季度业绩公告和报告*

发行人须在指定时限内刊发年度业绩公告（ARA）及年度报告。对于 ARA（以及 GEM 上市发行人的年报），必须在财政年度结束后的 3 个月内发布，GEM 上市发行人亦应在有关 ARA 或年度报告发布后至少 21 天召开周年股东大会。对于主板上市发行人的年度报告，必须在财政年度结束后的 4 个月内发布，并于发布年度报告后至少 21 天后召开周年股东大会。

如果发行人无法在规定的截止日期前发布其年度业绩公告，则必须发布公告，其中包含 (i) 对其无法发布的完整解释；(ii) 预计发布 ARA 的日期；(iii) 发行人的管理账目（如适用）。

发行人亦须在指定时限内刊发中期业绩公告（IRA）及报告。对于主板发行人，IRA 和中期报告必须分别在相关财政期间结束后的 2 个月和 3 个月内发布。GEM 上市发行人须于有关财政期间结束后 45 日内刊发季度及半年度业绩公告及报告。

##### *内幕信息和避免虚假市场的信息*

上市规则亦指明发行人必须在合理可行的情况下尽快向公众披露资料的特定情况。具体情况包括内幕信息和避免虚假市场的信息、证券的发行和回购、交易、贷款、垫款或担保以及公司更新。

内幕消息是指有关发行人、发行人的股东或高级人员的或发行人的上市证券或其衍生工具的特定信息，但并非普遍为惯常（或相当可能会）进行该法团上市证券交易的人所知，但该等消息或数据如普遍为他们所知，则相当可能会对该等证券的价格造成重大影响。

联交所可能会查询发行人上市证券的异常股价/成交量变动、影响或可能影响上市证券的交易活动的媒体报道或上市证券可能出现虚假市场。在此情况下，发行人必须及时回应如下：向联交所提供信息，并在联交所要求时，

发布公告告知市场或澄清情况。在任何情况下，发行人均可自愿作出公告以澄清情况。

### 交易

发行人必须根据上市规则第 14 及 14A 章或香港联合交易所有限公司 GEM 证券上市规则（《GEM 规则》）第 19 及 20 章公布其须予公布及关连交易的详情。关连交易规则及须予公布交易规则的相关网上培训资料可于：[https://www.hkex.com.hk/eng/Listing/eCourse/Connected\\_Transactions/sc/story.htm](https://www.hkex.com.hk/eng/Listing/eCourse/Connected_Transactions/sc/story.htm) 及 [https://www.hkex.com.hk/eng/Listing/eCourse/Notifiable\\_Transactions/sc/story.htm](https://www.hkex.com.hk/eng/Listing/eCourse/Notifiable_Transactions/sc/story.htm) 取览。

### 证券的发行或回购

发行人必须宣布发行新证券、在场内或场外回购证券以及更改可转换证券的条款以及上市证券和可转换/可交换上市债务证券所附带的权利。

对于证券的变动，例如股份回购，必须在下一个营业日交易时段开始前公布次日披露申报表。与发行人证券变动有关的月度回报也必须在月底后五天内公布。

### 贷款、垫款或担保

发行人必须根据主板上市规则第 13.13 至 13.19 条及《GEM 规则》第 17.15 至 17.21 条的规定公布其贷款、垫款或担保。特别是按资产比率计算超逾 8%（以及资产比率超过 3% 的任何后续增长）给予某实体的有关贷款、按资产比率计算合共超逾 8% 为附属公司提供财务资助及作出担保、以及以控股股东的股份质押作担保的发行人债务、担保或其他责任、载有关于控股股东须履行特定责任的条件的贷款协议以及发行人违反贷款协议。

### 公司动态

根据《主板上市规则》第 13.10B、13.24B 和 13.25 条以及《GEM 规则》第 17.12、17.26B 和 17.27 条，发行人还应及时公布其证券上市的另一家证券交易所发布的信息（即海外监管公告）、清盘发行人、其控股公司或任何重大子公司的清盘以及先前报告的盈利预测的重大事项和变化。

《主板上市规则》第 13.51 条及《GEM 规则》第 17.50 条要求发行人在任期内更改发行人组织章程文件、更改董事会或其履历的重大变动、更改核数师或财政年度结束时，及时公布。此外，秘书、股份过户登记处、注册地址、香港诉讼服务代理人、合规顾问、网站地址、批准业绩公告和/或股息的董事会会议通知以及股息或分配

的决定以及资本结构的变化的变化、业务的一般性质或性质也应及时公布。

### 环境、社会和治理 (ESG)

发行人必须在其年度报告所涵盖的报告期内每年发布其 ESG 报告。它可以包含在年度报告中，也可以包含在单独的报告中。相关规定见《环境、社会及管治报告指引》（《主板上市规则》附录 27 / 《GEM 规则》附录 20）、常见问题系列 18 ([https://en-rules.hkex.com.hk/sites/default/files/net\\_file\\_store/HKEX\\_FAQ\\_18.pdf](https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX_FAQ_18.pdf))，ESG 学院网络研讨会系列 ([https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Academy-webinar-series/Board-Diversity?sc\\_lang=en](https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Academy-webinar-series/Board-Diversity?sc_lang=en)) 和资源超链接 ([https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Resources-Hyperlinks?sc\\_lang=en](https://www.hkex.com.hk/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/ESG-Resources-Hyperlinks?sc_lang=en))。

### 持续上市要求

#### 公众持股量

发行人应维持其上市证券的公开市场，这意味着公众必须始终持有已发行股份总数的至少 25%（或约定的较低百分比）。如果发行人拥有在不同交易所上市的多于一类证券，则在所有监管交易所的公众必须至少持有发行人已发行股份总数的 25%。

公众人士不包括核心关连人士或其他由核心关连人士资助收购证券的人士，或习惯于根据主板上市规则第 8.24 条及第 11.23 条的规定接受核心关连人士指示的人士《GEM 规则》。

#### 充足的运营和资产

《主板上市规则》第 13.24 条或《GEM 规则》第 17.26 条及指引信 GL106-19 亦指明，发行人的业务必须具备足够的营运水平及足够价值的资产以支持其营运，以保证其继续上市。

#### 现金资产公司

若发行人（第 21 章规定的投资公司除外）的资产因任何原因全部或大部分由现金和/或短期投资构成的，发行人为现金资产公司，不适合上市交易其证券将被暂停。但是，例外情况适用于通过子公司（银行、保险公司或证券公司）持有的现金和/或短期投资。

#### 是否适合继续上市

发行人在下列情况下可能不适合继续上市：

- 长期停牌（例如，发行人未能证明补救导致停牌问题的合理前景）；
- 董事或具有重大影响力的人的诚信问题；
- 严重违反上市规则（例如未能定期公布经审计的财务报表）；
- 严重违反法律法规；
- 重大内控失灵；
- 对控股/主要股东、单一主要客户/供应商或另一方的重大依赖；或
- 经营无法保障资产和股东利益的业务结构。

#### 与联交所的沟通

为不时保护投资者、市场的平稳运行和核查是否符合《上市规则》，发行人应委任两名授权代表（为董事或公司秘书）作为与联交所的主要沟通渠道。根据《上市规则》规定，发行人应当在刊发前提交公告或通函草稿供联交所审核。《上市规则》规定的文件亦应在香港交易所网站及公司网站刊载。

Source 来源:

[https://www.hksi.org/ejai/Continuing\\_Obligations\\_en/story.html](https://www.hksi.org/ejai/Continuing_Obligations_en/story.html)

#### Hong Kong Insurance Authority Welcomes the Inaugural Issuance of Insurance-linked Securities in Hong Kong

On October 1, 2021, the Hong Kong Insurance Authority (IA) welcomed the inaugural issuance of insurance-linked securities (ILS) in the form of a catastrophe bond made available by the China Reinsurance (Group) Corporation and the China Property & Casualty Reinsurance Company Ltd through Greater Bay Re Limited, the first authorized special purpose insurer (SPI) in Hong Kong, securing protection against losses inflicted by typhoons in the Mainland.

“This decision of a leading state-owned reinsurer not only exemplifies the potential and attractiveness of Hong Kong as an emerging ILS hub, but also demonstrates our crucial role as a global risk management center,” said Mr. Clement Cheung, Chief Executive Officer of the IA.

The increasing frequency and intensity of extreme weather events, coupled with the rapid pace of urbanization in the Asia Pacific region, render ILS an effective tool to mitigate the risks posed by natural catastrophes. A highly volatile market environment also stokes the appetite among institutional investors for products that bear lesser correlation with economic cycles.

After a meeting of the Leading Group for the Development of the Guangdong-Hong Kong-Macao Greater Bay Area held in November 2019, the Central Government announced a series of policy measures, including supporting Mainland insurers to issue catastrophe bonds in Hong Kong. The China Banking and Insurance Regulatory Commission subsequently published a notice (Chinese only) (see <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1010125&itemId=915&generalType=0>) in September 2021 to elaborate on the relevant details.

“Taking full benefit of the explicit support given by the Central Government, we will ramp up efforts to nurture a vibrant ILS ecosystem, playing our part in increasing underwriting capacities, enhancing financial resilience and narrowing protection gaps,” Mr. Cheung added.

In order to make this inaugural issuance possible, a bespoke and streamlined regulatory regime for SPIs was launched by the IA in March 2021. This was complemented by the Pilot ILS Grant Scheme announced in the 2021-22 Budget that subsidizes upfront costs of up to HK\$12 million for each eligible transaction.

#### 香港保险业监管局欢迎香港首度发行保险相连证券

2021年10月1日，香港保险业监管局（保监局）欢迎中国再保险（集团）股份有限公司及中国财产再保险有限责任公司首度发行保险相连证券，透过第一间在香港获授权的特定目的保险公司 Greater Bay Re Limited 提供巨灾债券，为内地因台风造成的损失提供保障。

保监局行政总监张云正先生表示：「具领导地位的国有再保险公司作出这个决定，不但充份体现香港作为新兴保险相连证券枢纽的潜质和吸引力，也引证我们作为全球风险管理中心的重要角色。」

极端天气事件愈趋频繁及强烈，加上亚太地区急速城市化，促使保险相连证券成为减轻自然巨灾风险的有效工具。市场环境极为多变，亦令机构投资者对与经济周期相关性较小的产品存在更大胃纳。

在2019年11月举行的粤港澳大湾区建设领导小组会议后，中央政府公布一系列政策措施，包括支持内地保险公司在香港发行巨灾债券。中国银行保险监督管理委员会随后于2021年9月发布《关于境内保险公司在香港市场发行巨灾债券有关事项的通知》详述有关详情（见 <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1010125&itemId=915&generalType=0>）。

张先生补充说：「受惠于中央政府给予明确支持，我们将加大力度以培育蓬勃的保险相连证券生态圈，致力提升承保能力、提高金融韧性和收窄保障缺口。」

为实现首度发行，保监局于 2021 年 3 月推出特定并经简化的保险相连证券规管制度，同时《2021-22 年度财政预算案》中亦颁布了「保险相连证券资助先导计划」，为每笔符合资格交易提供最多 1,200 万港元的前期成本补助。

Source 来源:

[https://www.ia.org.hk/en/infocenter/press\\_releases/20211001.html](https://www.ia.org.hk/en/infocenter/press_releases/20211001.html)

### **China Securities Regulatory Commission Announces Financial Derivatives Accessible to Qualified Foreign Investors**

After joint deliberations with the People's Bank of China (PBC), the State Administration of Foreign Exchange (SAFE), the China Securities Regulatory Commission (CSRC) announced that, starting from November 1, 2021, commodity futures, commodity options, and stock index options will be added as eligible financial derivatives accessible to Qualified Foreign Investors, of which trading in stock index options shall be limited for the sole purpose of hedging.

As an important measure to reform and open up domestic securities and futures market, broadening the investment scope for Qualified Foreign Investors will enable more efficient management of asset allocation and risk exposure, elevating the attractiveness and global outreach of China's capital markets to international investors. After years of steady development, the three classes of financial derivatives included in the upcoming addition have served their roles as effective financial instruments and established solid grounds to engage foreign traders.

Guided by the goal of further opening up China's capital markets, the CSRC will work with the PBC and the SAFE to closely monitor market dynamics and continually assess a proper timeline of opening more asset classes to foreign investors.

### **中国证券监督管理委员会公布合格境外投资者可参与金融衍生品交易品种**

经商人民银行、外汇局，近日，证监会公布合格境外投资者可参与金融衍生品交易品种，新增开放商品期货、商品期权、股指期权三类品种，参与股指期权的交易目的限于套期保值交易，自 2021 年 11 月 1 日施行。

扩大合格境外投资者投资范围，是落实在岸市场制度改革、进一步扩大境内证券期货市场开放的重要举措，将

为境外投资者提供更多避险产品和配置工具，有助于吸引更多境外资金，提高境内资本市场国际影响力。相关品种自上市以来总体运行平稳，功能发挥明显，具备开放基础。

后续，证监会将会同人民银行、外汇局持续评估，推动适时开放更多品种，坚定不移深化资本市场对外开放。

Source 来源:

[http://www.csrc.gov.cn/pub/csrc\\_en/newsfacts/release/202110/t20211015\\_407047.html](http://www.csrc.gov.cn/pub/csrc_en/newsfacts/release/202110/t20211015_407047.html)

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