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The Growing Significance of Online Platform to Facilitate Shareholders' Meetings – Observations from the Case *Re Chong Hing Bank Limited (創興銀行有限公司)*

On October 18, 2021, the Court of First Instance of the High Court of Hong Kong (Court) handed down a judgment for *Re Chong Hing Bank Limited (創興銀行有限公司)* [2021] HKCFI 3091 sanctioning its privatization scheme.

Implications of online platform for court meetings

In order to sanction a scheme, a duly convened court meeting is a prerequisite. In the current case, the Court noted the importance of allowing overseas shareholders to attend and vote at a meeting online through electronic means, such that a hybrid (physical and virtual) meeting could be meaningfully held to allow local and overseas shareholders to attend and vote, despite travelling restrictions under the COVID-19 pandemic.

At the directions stage, the company was directed to provide to the overseas scheme shareholders and other shareholders (as the case may be) an option of attending and voting at the meetings online through electronic means.

Service on three overseas shareholders were unsuccessful, as they failed to provide up-to-date addresses to the company. The Court considered that it was reasonable to assume that the scheme shareholders would monitor the development from the further announcements and updates made by the company on its website. Through these channels, the scheme shareholders would be able to have access to the scheme document. They could also attend and vote at the meetings online. Online meeting directions may be the trend for Hong Kong companies' privatization or restructuring through a scheme of arrangement.

The need for amendments to articles or bye-laws of a company to allow hybrid or entirely virtual shareholders' meetings other than court meetings

While the introduction of section 584 of the Companies Ordinance (Cap. 622 of the laws of Hong Kong) (Companies Ordinance) and online platform make hybrid meetings potentially feasible, a company's articles of association that do not permit remote attendance and voting online would pose an obstacle.

As such, to allow hybrid or virtual meetings, relevant companies would need to amend its articles. It would be even clearer if the articles expressly provide for hybrid and virtual meetings and set out provisions to address circumstances such as technological issues and failures.

Meanwhile, referencing relevant practices in other jurisdictions, a more pragmatic approach may be to have new laws and regulatory policies and guidance permitting virtual attendance at general meetings under specified conditions, providing companies with the confidence needed to reorganize their general meetings into a virtual or hybrid format in the new digital normal. A virtual or hybrid meeting would be an effective tool to promote larger shareholders' participation and protect their interests. Jurisdictions around the world have been actively embracing technologies and overcoming legal issues to enable such meeting.

Rule 2.10 of the Takeovers Codes

The Court was invited to sanction a scheme of arrangement in Hong Kong pursuant to section 674(2) of the Companies Ordinance, which requires that the scheme is approved by **75% of the voting rights of the members present and voting** at the Court meeting and that the votes cast against the scheme at the meeting do not exceed 10% of the voting rights attached to all "disinterested shares" in the company.

Rule 2.10 of the Hong Kong Codes on Takeovers and Mergers and Share Buy-backs (Takeovers Codes) further requires that the scheme must be approved by at least **75% of the votes attaching to the disinterested shares** that are cast either in person or by proxy at a duly convened meeting of the holders of the disinterested shares.

"Disinterested shares" is defined in Takeovers Codes as "shares in the company other than those which are owned by the offeror or persons acting in concert with it" such that it basically excludes the offeror's concert parties.

The above raises an issue of whether the offeror's concert parties should be excluded from voting at a court ordered shareholders' meeting and whether a separate meeting for the offeror's concert parties would be required. This hinges on the interpretation of Rule 2.10 of the Takeovers Code. The Court in *Re Cosmos Machinery Enterprises Ltd* [2021] HKCFI 2088 observed that there are two alternative views on the interpretation of Rule 2.10: (1) Rule 2.10 prohibits the offeror's concert parties from voting (Prohibition View); and (2) Rule 2.10 does not prohibit the offeror's concert parties from voting but their votes cannot be counted for the purpose of complying with the Takeovers Codes (Non-Prohibition View). The Non-Prohibition View was preferred because it appears to be more consistent with the natural and ordinary meaning of the relevant provisions.

The current case favors the Prohibition View because Rule 2.10 seems to mandate a meeting (a) constituted only by holders of disinterested shares, and (b) at which only holders of disinterested shares are entitled to attend and vote such that relevant shareholders' discussions are unhampered by the presence of others who may have a different interest. A separate class meeting can be held for the offeror's concert parties, if necessary.

The offeror's concert parties may give an undertaking to the effect that they would not attend or vote at a court meeting irrespective of whether they were eligible to vote at the meeting and they would be bound by the terms of the scheme (Undertaking). If such Undertaking is in place, the outcome would be the same regardless of whether the Prohibition View or Non-Prohibition View is adopted.

In the current case, after taking into account the Undertaking given by the offeror's concert parties and the fact that they did not attend or vote at the Court Meeting, the Court ruled that the requirements under Rule 2.10 are satisfied.

<u>The need for a class meeting for parties acting in concert with the offeror</u>

Whether a scheme can be sanctioned depends on several considerations as set out in *Re China Agri-Industries Holdings Limited* [2020] HKCFI 570, in particular, among others, whether members who were called on to vote as a single class had sufficiently similar legal rights that they could consult together with a view to their common interest at a single meeting. An important consideration would be whether the similarity or dissimilarity of the rights of (a) the disinterested shareholders and (b) the offeror concert parties, and the way those rights are affected by the scheme are such that these two groups can sensibly consult together with a view to their common interest as to constitute the same class, or different classes.

There can be three types of meetings ordered by the court for approval of privatization or takeover schemes involving parties acting in concert with the offeror:

(1) One court meeting for all the shareholders to be bound by the scheme with the concert parties' Undertaking to the Court not to attend and vote at the meeting.

(2) Two court meetings for the disinterested shareholders and the concert parties respectively. The court, however, may dispense with ordering the second meeting if the concert parties have agreed with the company or given an Undertaking to the court at the time when the company sought an order to convene meetings that they will be bound by the terms of the scheme.

(3) If the concert parties have agreed with the company or the offeror to be bound by the terms of the scheme or the offer, then the scheme may simply be entered into between the company and the disinterested shareholders, in which case there is only one court meeting for these shareholders.

线上平台对股东大会的举行显得日益重要——从 *Re Chong Hing Bank Limited（创兴银行有限公司）*一案获得的启示

2021 年 10 月 18 日，香港高等法院原讼法庭（法院）就 *Re Chong Hing Bank Limited*（*创兴银行有限公司*）[2021] HKCFI 3091 作出判决，批准其私有化计划。

<u>线上平台对法院会议的重要性</u>

为批准一项安排计划，适当召开的法庭会议也是一个先决条件。在这案件中，法院强调允许海外股东通过电子方式线上出席会议并在会议上投票的重要性，这种混合会议（即会议包括现场和虚拟出席）可以确保海外股东参加会议的权利受到保护，特别是在新型冠状病毒大流行下人的流动受到限制。

在法院给予程序指导的阶段，公司被指示向海外计划股东和其他股东（视情况而定）提供通过电子方式在线参加会议和投票的选择。

本案中公司对三名海外股东的送达没有成功，因为他们没有向公司提供最新的地址。法院认为，可合理假设股东会根据公司在其网站上发布的公告和更新通讯来跟进事态发展。通过这些渠道，计划股东将能够获得计划文件等资讯。他们还可以在线参加会议并投票。增设网上参与计划会议的方式可会能是香港公司通过安排计划进行私有化或重组的一种趋势。

或需要修改公司的章程或细则以允许混合或虚拟的法院指令的会议外之股东大会

一般而言，虽然《公司条例》（香港法例第 622 章）（《公司条例》）第 584 条和网上平台的引入使混合会议变得更为可行，但公司章程可能不允许远程出席会议和在线投票，因而对线上会议构成障碍。

因此，为了允许混合或虚拟会议，相关公司可能需要修改其公司章程的条款。如果条款明确规定混合和虚拟会议的形式，并加入解决技术问题和技术故障等情况的条款，那将有助于混合会议的举行。

同时，参考其他司法管辖区的相关做法，更务实的做法可能是制定新的法律、法规政策和指南，允许在特定条件下虚拟股东大会，为公司举行虚拟或混合股东大会提供信心。虚拟或混合股东会议将是促进股东参与和有效保护其利益的有效工具。世界各地的司法管辖区一直在积极改善技术并克服有关法律问题，以实现此类会议。

《收购守则》规则 2.10

《收购守则》规则 2.10 就公司条例第 674(2) 条的投票规定提供额外要求。就协议安排计划或相关资本重组，它要求在适当地召开的“无利害关系的股份”的持有人的法院会议上，计划须获得亲身或委派代表出席的股东附于该等无利害关系股份的投票权至少 75%的票数投票批准。

“无利害关系的股份”在《收购守则》中被定义为指有关要约人或与其一致行动的人所持有的股份以外的有关公司的股份，即基本来说排除要约人的一致行动人。

上述提出了一个问题，即是否应将要约人的一致行动人排除在法院命令的股东大会之外，而另外需要一个只包括要约人的一致行动人的单独会议。在解决该问题时，须对《收购守则》规则 2.10 作出解释。法院在 *Re Cosmos Machinery Enterprises Ltd* [2021] HKCFI 2088 一案中观察到，对于规则 2.10 的含义存在两种不同的观点： (1) 规则 2.10 禁止要约人的一致行动人投票（禁止观点）； (2) 规则 2.10 并无禁止要约人的一致行动人士投票，但就遵守《收购守则》而言，他们的投票不可计算在内（非禁止观点）。 该案采纳非禁止观点，因为它似乎更符合相关规定的自然和普通含义。

当前案件倾向支持禁止意见，因为规则 2.10 规定须召开：(a) 仅由无利害关系的股份的持有人组成的会议，及 (b) 该会议只有无利害关系的股份的持有人有权出席并投票，以使相关股东的讨论不受可能有不同利益的其他人的出席参与而产生障碍。如有需要，可以为要约人的一致行动人举行单独的类别会议。

要约人的一致行动人可作出承诺（承诺），无论他们是否有资格在法庭会议上投票，他们都不会出席或在法庭会议上投票，并且他们将受计划条款的约束。如果计划获得了该承诺，无论采用禁止意见还是非禁止意见，结果都会是相类同的。

在本案中，考虑到要约人一致行动人作出的承诺以及他们未出席及未参加法院会议的事实，法院裁定规则 2.10 的要求已被满足。

是否需要一个要约人的一致行动人的类别会议

一项计划能否获得法院批准取决于 *Re China Agri-Industries Holdings Limited* [2020] HKCFI 570 中规定的几个考虑因素，其中包括被要求作为单一类别投票的成员是否具有足够相似的法律权利，以至于他们可以在一次会议上就共同利益进行协商。一个重要的考虑因素是 (a) 无利害关系的股东和 (b) 要约人的一致行动人的权利是否相似，以及这些权利受计划影响的方式是否使得这两个群体可以明智地与考虑到他们的共同利益构成同一个类别或不同的类别。

当一项计划涉及与要约人一致行动的股东，法院可以下令召开三种类型的会议，以批准私有化或重组计划：

(1) 一次法院会议，所有股东受该计划约束，一致行动人向法院作出不出席会议并在会上投票的承诺。

(2) 分别为无利害关系的股东和一致行动人举行两次法庭会议。但是，如果一致行动人在公司寻求召开会议的命令时已与公司达成一致或向法院作出承诺，他们将受计划条款的约束，则法院可以免除命令第二个会议。

(3) 如果一致行动人已与公司或要约人约定受该计划或要约条款的约束，则该计划可以简单地由公司与无利害关系的股东订立；在这种情况下，只需要有一次有关这些无利害关系股东召开的法院会议。

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https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=139465&currpage=T

The Stock Exchange of Hong Kong Limited Publishes Conclusions on Reforms to Enhance Listing Regime for Overseas Issuers

On November 19, 2021, The Stock Exchange of Hong Kong Limited (the Exchange) published the conclusions to its consultation on the Exchange's proposals to enhance and streamline the listing regime for overseas issuers. The proposals received support from a majority of respondents. The Exchange would adopt all the proposals outlined in the consultation paper with minor modifications to reflect comments received.

<u>*Shareholder protection standards*</u>

Core standards

The Exchange proposed to streamline the shareholder protection standards that issuers are required to provide into one set of core standards for all issuers and repeal the requirement that an overseas issuer must be incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Hong Kong (Equivalence Requirement). The concepts of "Recognized Jurisdictions" and "Acceptable Jurisdictions" would be removed as a consequence.

In general, a majority of the respondents considered that replacing the concept of "Recognized Jurisdictions" and "Acceptable Jurisdictions" by one common set of core standards for all issuers would impart clarity to the relevant requirements, facilitate compliance and promote consistency of standards among all issuers. Some respondents expressed concern that a number of core standards would be selectively applied on a case-by-case basis to certain types of issuers (e.g., secondary listed issuers) and that this might create a larger regulatory divide between those and other issuers, facilitated by the broad wording and general flexibility of the proposed standards. The Exchange also received comments on individual core standards from respondents.

The Exchange reiterated that the existing Equivalence Requirement for each Acceptable Jurisdiction has led to unnecessary complexity and inconsistencies as shareholder protection standards in overseas jurisdictions might change over time in ways that diverge differently from Hong Kong requirements. The proposed core standards were therefore intentionally broadly written to provide flexibility. The Exchange pointed out that flexibility is provided by the preamble to the core standards. This states that an issuer must demonstrate how the domestic laws, rules and regulations to which it is subject and its constitutional documents, in combination, provide the core standards. So, an issuer would not be required to amend its constitutional documents if it could demonstrate it was already subject to domestic laws, rules and regulations that provide the core standards. The Exchange further pointed out that normally a variation of the requirements based on case-specific circumstances would not be granted if the Exchange considers that such variation may be detrimental to shareholder protection. To provide transparency to investors, the Exchange would also require issuers to disclose any waivers or modifications granted to them in their listing documents and, potentially, their Company Information Sheets.

Other amendments

The Exchange also considered it reasonable to proceed with its proposals to repeal various shareholder protection standards in Appendices 3 and 13 to the Rules Governing the Listing of Securities on the Exchange (Listing Rules), codify the current practice that all issuers must conform their constitutional documents to the core standards or else demonstrate how the domestic laws, rules and regulations to which the issuer is subject and its constitutional documents, in combination, provide the relevant shareholder protection under the core standards and that the sore standards apply to existing listed issuers and that the existing listed issuers would have until their second annual general meeting to make any necessary amendments to their constitutional documents to conform to the core standards.

<u>*Dual primary listing*</u>

Codification of common waivers and the underlying principle

The Exchange proposed to codify certain common waivers and the prescribed conditions as well as the underlying principle of granting such waivers to dual primary listed issuers.

A majority of the respondents agreed that the proposals would help improve the transparency of the listing regime for dual primary listings and allow overseas issuers to better assess the regulatory compliance requirements for listing in Hong Kong. Some respondents suggested the Exchange to provide more guidance as to what constitutes "unduly burdensome" or "unnecessary", evaluate how the relevant requirements in the overseas regulations would be applied to issuers when assessing the waiver applications, and impose additional conditions on the waiver granted, where appropriate, require an issuer to demonstrate that the granting of any common waivers would not materially affect the interest and protection of shareholders in Hong Kong and require waivers granted to be fully disclosed to allow shareholders to have a clear understanding of the relevant risks. Some also suggested the Exchange to give further clarification.

The Exchange responded that the current practice has sufficient safeguards to ensure the common waivers, if granted, would not undermine the shareholder protection for investors of dual primary listed issuers, with adequate disclosure in place to inform investors of the relevant risks. For the comments on "unduly burdensome" or "unnecessary", while it would not be possible to include an exhaustive list of situations, the Exchange would provide an example in the Listing Rule, such as where the requirements under the Listing Rules contradict applicable overseas laws and regulations, and strict compliance with the Listing Rules would result in a breach of the applicable overseas laws or regulations. The Exchange have also adopted the respondents' suggestion to add to the Listing Rules the requirement that an issuer must demonstrate that the granting of any common waivers would not prejudice the interest of the investing public.

Direct dual primary listing with non-compliant WVR and/ or VIE structures

The Exchange proposed to allow Grandfathered Greater China Issuers and Non-Greater China Issuers to dual primary list directly on the Exchange while retaining their weighted voting rights (WVR) structure that does not comply with the relevant requirements under Chapter 8A of the Listing Rules (Non-compliant WVR structure) and/ or variable interest entity (VIE) Structures, if such issuers meet the current suitability and eligibility requirements of Chapter 19C of the Listing Rules for Qualifying Issuers seeking a secondary listing with a WVR structure.

Respondents in general supported the proposal. Some respondents disagreed and were mainly of the view that it may reduce the level of shareholder protection for investors, all issuers with WVR structures that primary list in Hong Kong should be subject to the same requirements under the Listing Rules and should not be granted waivers, otherwise it would widen the regulatory gap between different categories of issuers with a primary listing in Hong Kong, resulting in parallel and distinct regulatory regimes, and the "one share one vote" principle is the foundation for protecting the rights of all shareholders on an equitable basis. The WVR structure violates such fundamental corporate governance principle. The "twostep" route should not have been allowed in the first place, and Non-compliant WVR Structures should not be allowed for primary or dual primary listed issuers.

The Exchange reiterated that the rationale for grandfathering the WVR /VIE structures of Grandfathered Greater China Issuers and Non-Greater China Issuers (including those listed on a qualifying exchange on or before the Exchange's announcement of proposed reforms relating to WVR structures) was that these issuers were seen as not having listed overseas for the purpose of regulatory arbitrage. It was against this background that Grandfathered Greater China Issuers and Non-Greater China Issuers were allowed to retain their Non-compliant WVR and/ or VIE Structures even when they become primary-listed in Hong Kong via a "two-step" route. The arrangements have taken into account the need to strike a balance between preserving the most important shareholder protection standards and maintaining its competitiveness in the global market. As issuers with Non-compliant WVR and/or VIE Structures are subject to relevant disclosure requirements under Chapter 8A of the Listing Rules and LD43-3, investors would be given sufficient information to assess the risks involved when making investment decisions, despite the concessions.

The Exchange also stated that the "one-share, one vote" principle continues to be the optimum method of empowering shareholders and aligning their interests in a company, the Exchange would consider all circumstances in exercising its discretion to find an applicant suitable to list with a WVR structure and would do so only in appropriate cases where the applicant fits the profile of companies targeted by the proposed regime.

The Exchange also proposed to allow a Grandfathered Greater China Issuer or a Non-Greater China Issuer that applied for dual primary listing to continue to retain its Non-compliant WVR and/ or VIE Structures (in effect at the time of its dual primary listing in Hong Kong) in the event it is subsequently delisted from the qualifying exchange on which it is listed. Respondents in general agree with the Exchange's proposal. The Exchange was of the view that shareholder protection would not be compromised even if the Grandfathered Greater China Issuers or Non-Greater China Issuers that subsequently de-list from the qualifying exchange. Under the proposal, only the Non-compliant WVR and/ or VIE Structures in effect at the time of the issuers' dual primary listing could be retained, which means that the Exchange would have had evaluated such structures when the issuers first applied for either secondary listings or direct dual-primary listings in Hong Kong.

Secondary listing

Quantitative eligibility requirements

The Exchange proposed to relax the secondary listing requirements for overseas issuers (including those with a center of gravity in Greater China) without WVR structures. These issuers would be required to meet either of the following two sets of quantitative eligibility requirements: Criteria A: (a) a track record of good regulatory compliance of at least five full financial years on a qualifying exchange (for any overseas issuer without a WVR structure) or on any recognized stock exchange (only for overseas issuers without a WVR

structure and without a center of gravity in Greater China); and (b) an expected market capitalization at the time of secondary listing of at least HK$3 billion; or Criteria B: (a) A track record of good regulatory compliance of at least two full financial years on a qualifying exchange; and (b) an expected market capitalization at the time of secondary listing of at least HK$10 billion.

Respondents generally welcomed the proposal to streamline the quantitative eligibility criteria for secondary listing. Some respondents suggested that the Exchange should consider imposing a higher market capitalization requirement of HK$5 billion or more in order to ensure the quality of secondary listed issuers on the Exchange.

The Exchange responded that a secondary listed issuer is still required to be suitable for listing and comply with the financial tests under Chapter 8, Chapter 18 or Chapter 18A (where applicable) in order to qualify for listing in Hong Kong, in addition to the quantitative requirements in Chapter 19C. The minimum expected market capitalization of HK$3 billion proposed for companies without a WVR structure under Criteria A is six times the minimum expected market capitalization of HK$500 million required if an issuer applies for primary listing. The Exchange believed such higher market capitalization requirement, combined with the proposal that an issuer must not have achieved its primary listing through being the target of an acquisition, would (among other safeguards) sufficiently ensure the quality of secondary listed issuers.

Secondary listing without a listing compliance record

The Exchange proposed to introduce an exemption such that it would not apply the listing compliance record requirement of either Criteria A or Criteria B to a secondary listing applicant without a WVR structure, on a case-by-case basis, if the applicant is well-established and has a market capitalization at listing that is significantly larger than HK$10 billion.

Respondents generally agreed with the proposal and noted that it was formulated based on the existing requirements under the “Joint policy statement regarding the listing of overseas companies” (JPS). Some respondents considered the term “significantly larger” to be ambiguous and suggested setting out a clear quantitative threshold or a list of non-exhaustive factors that the Exchange would take into consideration. Some respondents were of the view that using market capitalization to determine eligibility for listing might not be sufficient.

The Exchange highlighted that the proposed exemption aligns with the existing exemption provided under the JPS and has only been used once. The exemption provides the Exchange with a degree of flexibility to consider applications from very large and reputable issuers for secondary listing without a track record of regulatory compliance on an overseas market. As the Exchange has used the exemption only once, the Exchange has limited reference data on which to base a quantitative minimum market capitalization threshold for future cases. The Exchange would continue to apply the exemption in very limited situations with reference to the facts and circumstances of individual issuers.

Proposal to address regulatory arbitrage risk

The Exchange proposed to introduce a rule to make it clear that the Exchange retains the discretion to reject an application for secondary listing if it believes the listing constitutes an attempt to avoid the Listing Rules that apply to primary listing. The Exchange further proposed to apply the test for a reverse takeover if the Exchange suspects that an issuer’s secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing,

Respondents generally agreed that the Exchange should ensure listing applicants do not circumvent the Listing Rules as they seek access to investors of the Hong Kong market so as to safeguard the quality of secondary listings.

The Exchange believed that the proposals would help prevent issuers from benefiting from regulatory arbitrage and safeguard the quality and integrity of the market. The Exchange does not consider the proposed discretionary powers in this respect to be overly broad. The Exchange stated that it would apply them in the same manner and to the same extent as it does when considering whether transactions constitute reverse takeovers in the market, in accordance with Chapter 14 of the Listing Rules.

Codification of the principles for granting exemptions / waivers, automatic waivers and conditional common waivers

The Exchange proposed to codify the principles on which the Exchange would waive, modify or not require compliance with the Listing Rules, the automatic waivers and conditional common waivers for issuers with, or seeking, a secondary listing.

Respondents generally considered that the consolidation of the principles and codification of automatic waivers and conditional common waivers would provide better clarity and certainty to market participants. A few respondents commented that waivers and exemptions should be granted on a discretionary basis and it may not be appropriate to codify them into the Listing Rules if the intention is not to fetter the Exchange’s discretion.

The Exchange emphasized that its purpose of codifying the principles for granting waivers or exemptions is to clarify the Exchange's approach in assessing regulatory compliance and to increase transparency of the listing regime. The Exchange would still retain the discretionary powers to waive, modify or not require compliance with a particular rule in individual cases to suit the circumstances of a particular case pursuant to Rule 2.04.

Migration from secondary to primary listing

The Exchange proposed to extend the trading migration requirement under Rule 19C.13 to all issuers with a secondary listing to reduce the complexity of the requirements and ensure consistency of the principles on which automatic waivers are granted. The Exchange proposed to issue a guidance letter on the migration of majority of trading to the Exchange's markets of secondary listed overseas issuers' shares and the de-listing of their shares from overseas exchanges of primary listing.

Majority of the respondents agree with or did not object to the proposals. Respondents generally considered that extending the trading migration requirement to all issuers with a secondary listing would reduce complexity and ensure consistent application of the applicable Listing Rules, clarify confusions and promote good governance and the principle of equality. A few respondents suggested the Exchange to consider providing a well-defined framework for "voluntary conversion" to dual-primary listing. Some commented that the Exchange should consider introducing a stronger sunset mechanism for secondary listings.

The Exchange clarified that they welcome applications from secondary listed issuers to voluntarily convert to dual-primary listings provided that, upon conversion, they should be subject to all the relevant Listing Rules as applicable to other primary listed issuers (except where otherwise specifically waived). In these circumstances, all automatic waivers and other concessions granted to them on the basis of a secondary listing status would fall away and any specific waivers previously granted would need to be revisited at the time of such a voluntary conversion. The Exchange has expanded its guidance letter on change of listing status to provide further guidance on this matter.

For a sunset mechanism, the Exchange believed that it is appropriate for a secondary listed issuer to continue to enjoy the concessions granted to it as long as the basis for such concessions remains unchanged (e.g. in respect of automatic waivers, the basis is that the trading migration requirement has not been triggered). Where the majority of trading in an overseas issuer's securities remains primarily in an overseas market, the Exchange would continue to place reliance on the regulations and enforcement of the overseas market to regulate such issuer.

Other amendments

The Exchange has previously in a consultation concluded that it would treat Greater China Issuers that were (a) controlled by corporate WVR beneficiaries (as at October 30, 2020) and (b) primary listed on a qualifying exchange (on or before October 30, 2020) in the same manner as Grandfathered Greater China Issuers for the purpose of Chapter 19C of the Listing Rules. The Exchange would codify these conclusions by expanding the current definition of Grandfathered Greater China Issuers in Chapter 19C of the Listing Rules accordingly.

Codification of other requirements

Regulatory co-operation requirement

The Exchange proposed to the regulatory co-operation requirement in Chapter 8 of the Listing Rules: (a) the statutory securities regulator of an overseas issuer's jurisdiction of incorporation and place of central management and control (if different) must be a full signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU); and (b) a waiver of sub-paragraph (a) above may be granted by the Exchange on an individual basis with the SFC's explicit consent having regard to, among other things, whether there are adequate arrangements to enable the SFC to access financial and operational information (such as books and records) on an issuer's business in the relevant place of incorporation and place of central management and control for its investigation and enforcement purposes.

The respondents generally considered that the codification of the regulatory co-operation requirement would align with the overall objective of streamlining the listing regime for overseas issuers and provide better clarity and certainty to market practitioners. One respondent requested the Exchange to provide more reasoning on the removal of bi-lateral agreement reference. Some respondents sought further guidance.

The Exchange clarified that the bi-lateral agreement between the Securities and Futures Commission of Hong Kong (SFC) and the relevant overseas securities regulator is not a standalone condition but one of the factors to be considered in assessing compliance with the regulatory co-operation requirement if the statutory securities regulator in an issuer's place of incorporation or place of central management and control is not a full signatory to the IOSCO MMOU. In practice, in such circumstances, the Exchange will consider the features

of the relevant legal system and regulatory provisions that might affect cross-border regulatory co-operation, such as whether adequate arrangements exist for the SFC to access financial and operational information (e.g. books and records) of the issuers. The Exchange expected that the removal of a reference to a bi-lateral agreement would not have a significant impact to the market.

Audit-related and other amendments

The Exchange proposed several audit-related amendments, including retaining the list of auditing standards as guidance for overseas issuers, amending the Listing Rules to codify the JPS requirement on the suitability of a body of alternative financial reporting standards, requiring an issuer to demonstrate a reason for adopting US GAAP for the preparation of its financial statements and adopt IFRS or HKFRS if the circumstances underpinning those reasons change (e.g. it de-lists from that US exchange), reflecting in the Listing Rules the amendments to the Financial Reporting Council Ordinance, amending the Listing Rules that the Exchange is responsible for collecting the levies on behalf of the Financial Reporting Council, etc.

The Exchange also proposed to require Company Information Sheets to be prepared by (a) all secondary listed issuers; and (b) any other primary listed or dual-primary listed overseas issuer, at the Exchange's discretion, where the Exchange believes the publication of a Company Information Sheet would be informative to Hong Kong investors (for example, to provide them with information on overseas laws and regulations to which the issuer is subject and which may be unfamiliar to investors). Further, the Exchange proposed to amalgamate the certain guidance into one guidance letter for overseas issuers.

These proposals received majority support from the respondents and the Exchange would adopt the proposals with minor modifications.

Implementation date

The amended Listing Rules and the new guidance materials would take effect from January 1, 2022. Companies which submit applications before January 1, 2022 but expect to be listed on or after January 1, 2022 would be assessed under the new regime and are expected to demonstrate how they are able to comply with the requirements under the new regime. In the event that an overseas issuer secondary listed in Hong Kong would like to proceed with a change of listing status prior to January 1, 2022, the Exchange will consider the matter on a case-by-case basis by reference to the approach set out in the guidance letter for change of listing status.

香港联合交易所有限公司就优化海外发行人上市制度的改革刊发谘询总结

于 2021 年 11 月 19 日，香港联合交易所有限公司（联交所）就优化及简化海外发行人上市制度的建议刊发谘询总结。建议得到大多数回应人士的支持。联交所会采纳谘询文件的所有建议，但会根据回应人士的意见稍作修改。

股东保障水平

核心水平

联交所建议将发行人须提供的股东保障标准简化成一套适用于所有发行人的核心水平，并废除关于海外发行人的注册或成立司法权区为股东提供的保障必须至少相当于香港所提供保障水平的规定（相当的股东保障的要求）。「认可司法权区」及「获接纳司法权区」的概念亦会因此废除。

整体而言，大部分回应人士均认为以一套适用于所有发行人的核心水平取代「认可司法权区」及「获接纳司法权区」的概念，令相关规定更清晰易明，有利合规，并促使对所有发行人的标准一致。部分回应人士担心，建议中的核心水平其措辞笼统，在其诠释应用方面具有相当弹性，联交所可按个别情况选择性地将某些水平应用于某些类型的发行人（例如第二上市发行人），可能会对此类发行人的监管与其他发行人之间分野更大。联交所对回应人士个别核心标准的意见。

联交所重申每个获接纳司法权区各有其相当的股东保障的要求，假以时日，海外司法管辖区的股东保障要求或会逐渐改变，对照香港的规定时有关分别亦不尽相同，情况会变得繁复和矛盾。因此，建议中的核心水平是为了灵活应对变化才刻意采用更广义的措辞。联交所指出，核心水平的序言已提供了弹性处理，其订明发行人须证明其须遵守的当地法律、规则及规例与其组织章程文件结合起来可提供同等的核心水平。因此，如果发行人能够证明其已经受提供同等核心水平的当地法律、规则和法规所规管，便可不用修改其组织章程文件。联交所进一步指出若联交所认为更改规定可能损害股东保障，一般情况下不会因应个别情况而予以更改。若发行人获豁免或修改有关规定，联交所也会要求在其上市文件披露（可能亦要在公司资料报表中披露），提高对投资者的透明度。

其他修订

联交所亦认为废除《香港聯合交易所有限公司證券上市規則》（《上市规则》）附录三及十三中若干股东保障标准、将所有发行人的组织章程文件均须符合核心水平，

否则便须证明发行人须遵守的当地法律、规则及规例与其组织章程文件结合起来已提供核心水平项下的相关股东保障的现行惯例编纳成规，现有上市发行人的组织章程文件若必须作出任何修订以符合核心水平，须于建议实施后其第二次股东周年大会前完成等建议内容合理，可予实行

双重主要上市

将常见豁免及相关原则编纳成规

联交所建议将若干常见豁免以及向双重主要上市发行人授予此等豁免时规定的条件及所依据原则全部编纳成规。

大部分回应人士都同意这些建议有助提高双重主要上市制度的透明度，令海外发行人更好地评估在香港上市的监管合规要求。部分回应人士提议就何谓「造成过分负担」又或「毫无必要」提供更多指引、审理豁免申请时，评估海外规则的相关规定如何应用于发行人，及在适当时候对授出的豁免施加额外条件、规定发行人须证明获授常见豁免不会对香港股东的权益和保障有重大影响及规定全面披露获授的豁免，好让股东清楚明白箇中风险。部分回应人士亦建议联交所作出进一步澄清。

联交所回应称，目前的做法已有足够保障措施确保只要能向投资者作足够披露，让他们知悉相关风险，就算授予常见豁免也不会损害双重主要上市发行人的投资者可享的股东保障。对于「造成过分负担」又或「毫无必要」的建议，联交所指要列出一张清单涵盖所有情况并不可能，不过，联交所会在《上市规则》中列举例子，例如如果《上市规则》规定与适用海外的法律及法规相抵触，而严格遵守《上市规则》会导致违反适用的海外法律及法规。联交所亦采纳了回应人士的建议，在《上市规则》新增条文，规定发行人须证明授予任何常见豁免不会损害投资大众的利益。

具有不合规的不同投票权及/或可变利益实体结构的直接双重主要上市

联交所建议，若获豁免的大中华发行人及非大中华发行人符合《上市规则》第十九 C 章现行适用于具有不同投票权架构并寻求第二上市的合资格发行人的合适性及资格规定，应获准直接在联交所双重主要上市，并保留其不符合《上市规则》第八 A 章相关规定的不同投票权架构（不合规的不同投票权）及/或可变利益实体结构。

回应人士普遍支持建议。部分反对建议者主要认为具有不合规的不同投票权及/或可变利益实体结构的发行人可在港作主要上市，会削弱对投资者的股东保障、所有具不同投票权架构的发行人在港作主要上市，都须遵守同一套《上市规则》规定，并不得获豁免，否则便会令同样在港作主要上市的各类发行人之间的监管差距扩大，出现不同的监管制度并行的现象及「一股一票」原则是公平保障所有股东权利的基础。不同投票权架构违反了这个基本企业管治原则。追根究底，本来就不该接受发行人循「两步式」途径上市。无论是主要上市还是双重主要上市的发行人，都应该不能有不合规的不同投票权架构。

联交所重申获豁免的大中华发行人及非大中华发行人（包括在联交所公布与不同投票权架构相 关的建议改革时或之前已在合资格交易所上市的发行人）的不同投票权／可变利益实体结构可获豁免，其背后的理据在于这些发行人不会被视为是为了监管套利才在 海外上市。正是在这背景下，联交所才决定即使获豁免的大中华发行人及非大中华发行人循「两步 式」路径来港主要上市，仍可获保留其不合规的不同投票权及／或可变利益实体结构。有此安排，当中已考虑到联交所需要兼顾保留最重要的股东保障标准与维持香港在全 球市场的竞争力，要在两者之间取得平衡。由于具不合规的不同投票权及／或可变利益实体结构的发行人须遵守《上市规则》第八 A 章及 LD43-3 的相关披露规定，即使他们有获豁免，投资者作投资决定时亦可掌握充足资料评估所涉风险。

联交所指，要赋予股东权力、令他们在公司的权益一致，最佳方式仍是「一股一票」，故此，在行使酌情权确定个别申请人适合以不同投票权架构上市时，必会考虑所有情况，并且只会在适合的情况下（申请人符合建议制度锁定的公司类型）才行使判断。

联交所亦建议，申请双重主要上市的获豁免的大中华发行人或非大中华发行人若其后从上市的合资格交易所除牌，其（在香港双重主要上市时）的不合规的不同投票权及／或可变利益实体结构可继续保留。回应人士普遍认同联交所建议。联交所认为即使获豁免的大中华发行人或非大中华发行人之后在主要上市的合资格交易所除牌后可以保留不合规的不同投票权及／或可变利益实体结构，亦不会犠牲股东保障。建议列明只有是发行人双重主要上市时生效的不合规的不同投票权及／或可变利益实体结构可保留，意味着发行人不论是先申请来港第二上市还是直接双重主要上市，联交所都应已评估过有关架构。况且，这些发行人还须遵守《上市规则》第八 A 章及 LD43-3 的相关披露规定。同一原则适用于第二上市发行人。

第二上市

量化资格规定

联交所建议放宽没有不同投票权架构的海外发行人（包括业务以大中华为重心的公司）的第二上市规定。有关发行人将须符合以下两套量化资格规定之一：准则 A: (a)

在合资格交易所（适用于任何没有不同投票权架构的海外发行人）或任何认可证券交易所（仅适用于没有不同投票权架构且业务重心亦不在大中华地区的海外发行人）上市并且于至少五个完整会计年度期间保持良好合规纪录；及 (b) 第二上市时预期市值至少 30 亿港元；或准则 B: (a) 在合资格交易所上市并且于至少两个完整会计年度期间保持良好合规纪录；及 (b) 第二上市时预期市值至少 100 亿港元。

回应人士普遍支持简化第二上市量化资格准则的建议。若干回应人士建议指联交所应考虑施加 50 亿港元或以上的较高市值规定，以确保于联交所作第二上市发行人的质素。

联交所回应指，除《上市规 则》第十九 C 章的量化规定外，第二上市发行人本身仍须适合上市且通过《上市规则》第八章、第十八章或第十八 A 章（如适用）项下的财务测试，才符合于香港上市的资格。联交所在准则 A 项下建议没有不同投票权架构的公司的最低预期市值门槛（30 亿港元），是申请主要上市的发行人须遵守的最低预期市值门槛（5 亿港元）的六倍。联交所认为，这较高的市值规定结合发行人不得透过作为收购目标的方式进行主要上市的建议（以及其他保障措施），足以确保第二上市发行人的质素。

无上市合规纪录的第二上市

联交所建议引入豁免，若没有不同投票权架构的第二上市申请人信誉良好历史悠久，且其上市时的市值远高于 100 亿港元，则就个别情况而言，准则 A 或准则 B 项下的上市合规纪录规定并不适用于有关申请人。

回应人士普遍同意有关建议，并注意到这是根据《有关海外公司上市的联合政策声明》(《联合政策声明》)项下的现有规定而制定的。部分回应人士认为「远高于」一词略为含糊，并建议列出清晰的量化门槛或联交所会予以考虑的部分因素清单。部分回应人士认为以市值来厘定上市资格可能并不足够。

联交所强调，建议的豁免与《联合政策声明》项下现有的豁免一致，且仅曾使用过一次。该厘定豁免让联交所在考虑来自规模庞大、信誉良好但并无海外市场监管合规纪录的发行人的第二上市申请时，可有一定的灵活性。由于联交所仅曾使用过有关豁免一次，可作厘定日后个案须符合的量化最低市值门槛的参考数据有限。联交所将继续只在极少数的情况下才会因应个别发行人的具体事实及情况（可能包括就此建议提出意见的回应人士所述及的因素）而应用豁免。

处理规避监管风险的建议

联交所建议在《上市规则》新增条文，以澄清联交所会在其认为第二上市会构成试图规避适用于主要上市的《上市规则》规定时，保留拒绝该上市申请的酌情权。联交所进一步建议，若联交所怀疑发行人申请第二上市是试图规避主要上市的《上市规则》规定，便该应用反收购测试。

回应人士普遍同意联交所应确保上市申请人在寻求进入香港市场的过程中不会规避《上市规则》，以保障第二上市的质素。

联交所认为建议将有助预防发行人规避监管，保障市场质素及持正操作。联交所并不认为就此建议赋予联交所的酌情权过大。联交所指其会根据《上市规则》第十四章，在考虑市场上的交易是否构成反收购时，按同样的方式及范围来应用有关酌情权。

将给予宽免／豁免的原则编纳成规以及将自动豁免及有条件常见豁免编纳成规

联交所建议将联交所容许已或拟作第二上市的发行人豁免、修改或毋须遵守《上市规 则》的原则、自动豁免及有条件常见豁免编纳成规。

回应人士普遍认为整合自动豁免及有条件常见豁免的原则并将其编纳成规，可为市场参与者提供较高清晰度及明确性。数名回应人士表示宽免及豁免均应按酌情的方式授出，若非为了制约联交所的酌情权，将有关宽免及豁免编入《上市规则》可能并不恰当。

联交所强调将给予宽免或豁免的原则编纳成规，目的旨在阐明联交所评估监管合规情况的做法，并提升联交所的上市制度的透明度。联交所继续保留酌情权，根据《上市规则》第 2.04 条而个别豁免、修改或不要求遵守特定《上市规则》规定以切合个别具体情况。

由第二上市转移至主要上市

联交所建议扩展《上市规则》第 19C.13 条的交易转移规定至所有第二上市发行人，简化规定，同时确保给予自动豁免的原则贯彻一致。联交所建议发出有关第二上市海外发行人股份交易大部分转移至联交所市场及有关发行人股份从主要上市的海外交易所除牌的指引信。

回应人士多数同意或并未反对有关建议。回应人士普遍认为扩展交易转移规定至所有第二上市发行人可减低复杂性，并确保适用的《上市规则》会一致应用、厘清混淆之处及推广良好管治及平等原则。数名回应人士认为联交所应考虑就「自愿转换」至双重主要上市提供定义明确的框架。部分回应人士表示联交所应考虑就第二上市推出更有效的日落机制。

联交所澄清其欢迎第二上市发行人申请自愿转换至双重主要上市，前提是他们在转换后应遵守所有适用于其他主要上市发行人的相关《上市规则》规定（特获豁免者除外）。在此情况下，所有自动豁免及其他按其第二上市地位而向其授出的宽免均会失效，而任何之前授出的特定豁免亦须于进行有关的自愿转换时重新考虑。联交所会扩大上市地位变更指引信的范围，以就此事提供进一步指引。

就日落机制，联交所认为第二上市发行人应继续享有联交所给予的宽免，前提是有关宽免的基准维持不变（以自动豁免为例，有关基准是交易转移规定尚未被触发）。若海外发行人大部分证券交易均依然是主要集中在海外市场，联交所会继续依赖海外市场的法规和执法去监管有关发行人。

其他修订

联交所此前在一次咨询中总结它将会将符合以下两项条件的大中华发行人，视为目前就《上市规则》第十九 C 章而言获豁免的大中华发行人: (a)（截至 2020 年 10 月 30 日为止） 由法团身份不同投票权受益人控制及 (b) 于 2020 年 10 月 30 日或之前于合资格交易所作主要上市的大中华发行人。我联交所将把上述总结一并编纳成规，扩大现时《上市规则》第十九 C 章项下获豁免的大中华发行人的定义。

将其他规定编纳成规

监管方面的合作规定

联交所建议将监管方面的合作规定编入《上市规则》第八章： (a) 海外发行人注册成立的司法权区及海外发行人中央管理及管控的所在地（如不相同）的法定证券监管机关必须是《国际证券事务监察委员会组织组织多边谅解备忘录》(《国际证监会组织多边谅解备忘录》) 的正式签署方；及 (b) 在考虑到有充分安排，使香港证券及期货事务监察委员会 (证监会) 能在相关公司注册地及中央管理和控制地查阅发行人业务的财务和经营资料（例如账簿和纪录），以作调查取证和执法的情况下，联交所会在证监会明确同意下按个别情况豁免上文(a)分段的规定。

回应人士普遍认为，将监管方面的合作规定编纳成规，符合有关简化海外发行人上市制度并为市场从业人士提供更清晰明确指引的整体目标。一名回应人士要求联交所就删除有关与证监会之双边协议的提述提供更多理据。部分回应人士寻求进一步指引。

联交所澄清证监会与相关海外证券监管机构之间的双边协议并非独立条件，而是在发行人注册地或中央管理和控制地的法定证券监管机构并非《国际证监会组织多边谅解备忘录》正式签署方的情况下评估监管方面的合作规定有否被遵守时考虑的因素之一。实际上，在上述情况下，联交所会考虑可能影响跨境监管合作的相关法律制度及监管规定的特点，例如是否有充分安排使证监会能获取财务和经营资料（例如账簿和纪录）。联交所预期移除有关双边协议的提述不会对市场造成重大影响。

与审计相关的修订和其他修订

联交所提出多项与审计相关的修订，包括保留审计准则清单作为对海外发行人的指引、修订《上市规则》将《联合政策声明》就其他财务报告准则的内容的合适性的规定编纳成规、规定发行人须说明采用《美国公认会计原则》编备其财务报表的理由，并必须在支持这些理由的情况有所变动时采用《国际财务报告准则》或《香港财务报告准则》（例如从美国交易所除牌）、议于《上市规则》中反映有关确立公众利益实体项目制度的《财务汇报局条例》的修订、修订《上市规则》规定联交所负责代财务汇报局收取徵费等等。

联交所亦建议规定以下发行人编备公司资料报表：(a)所有第二上市发行人；及(b)任何其他主要上市或双重主要上市海外发行人，此由联交所酌情决定，若联交所认为刊发公司资料报表将为香港投资者提供有用的资料（例如提供发行人须遵守的海外法律及法规的资料，而香港投资者不熟识这些海外法律及法规）。另外，联交所建议将若干指引合并为一份给海外发行人的指引信。

这些建议得到多数回应人士的支持，联交所会在稍作修改的情况下采纳及实行这些建议。

实施日期

《上市规则》修订及新指引材料将于 2022 年 1 月 1 日生效。于 2022 年 1 月 1 日前递交申请但预期于 2022 年 1 月 1 日或之后上市 的公司，将按新制度接受评估，并须证明其如何符合新制度实行后的规定。若在香港第二上市的海外发行人有意于 2022 年 1 月 1 日前更改上市地位，联交所将参考上市地位变更指引信所载的方法按个别情况处理有关事宜。

Source 来源:
https://www.hkex.com.hk/News/Regulatory-Announcements/2021/211119news?sc_lang=en

Hong Kong Monetary Authority Takes Disciplinary Actions Against Four Banks for Contraventions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance

On November 19, 2021, the Hong Kong Monetary Authority (HKMA) announced that it had completed investigations and disciplinary proceedings for four banks under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the Laws of Hong Kong) (AMLO). HKMA has imposed pecuniary penalties of a total of HK$44,200,000 against China Construction Bank (Asia) Corporation Limited (CCBA), CTBC Bank Co., Ltd., Hong Kong Branch (CTBCHK), Industrial and Commercial Bank of China (Asia) Limited (ICBCA) and UBS AG, Hong Kong Branch (UBSHK), as well as issued orders for remedying the contraventions where warranted.

The investigations followed a series of on-site examinations conducted by the HKMA on banks' systems and controls for compliance with the AMLO after its enactment on April 1, 2012, when industry understanding and experience were less mature. The common control lapses identified in the relevant periods relate to ongoing monitoring of customer relationships and deficiencies in conducting enhanced customer due diligence in high risk situations.

Specifically, the four banks concerned have failed to carry out their duties to continuously monitor business relationships through ongoing customer due diligence (CDD), in which CTBCHK failed to take appropriate review steps to ensure documents, data and information relating to customers obtained by it were up-to-date and relevant, while CCBA, ICBCA and UBSHK did not conduct timely periodic reviews for certain customers. Regarding situations that by nature might present a high risk of money laundering (ML)/terrorist financing (TF), CTBCHK and ICBCA did not comply with the requirement to take either (i) reasonable measures to establish the relevant customers' or beneficial owners' sources of wealth and sources of funds involved in the business relationships or (ii) additional measures to mitigate the risk of ML/TF involved in respect of certain customers. In addition, all four banks contravened the requirement of establishing and maintaining effective procedures for carrying out their duties in relation to ongoing CDD under the AMLO, among which CCBA has adopted restrictive criteria in flagging up alerts for examination while UBSHK's deficiencies included a system error in extracting customer risk profiles due for periodic review.

In deciding the disciplinary actions, the HKMA took into account the relevant circumstances and factors, including the following:

(a) The seriousness of the investigation findings;

(b) The need to send a clear deterrent message to the banks and the industry about the importance of effective controls and procedures to address ML and TF risks;

(c) The banks' remedial and enhancement measures to address the deficiencies identified by the HKMA; and

(d) There were no previous disciplinary records in relation to the AMLO for the banks concerned and their co-operation with the HKMA during the respective investigations and enforcement proceedings.

Ms. Carmen Chu, Executive Director (Enforcement and AML) of the HKMA, said, "Banks have an important 'gatekeeper' role in the ecosystem for anti-money laundering and counter-financing of terrorism (AML/CFT), with legal and regulatory obligations as set out in the AMLO and the Guideline on AML/CFT, and also in line with international standards. The identified deficiencies in the four cases occurred in a period following the commencement of the AMLO when industry understanding and experience were less mature, and since then, significant progress has been made by the industry, including the banks concerned, in enhancing financial crime compliance capabilities, with attention being given to improving processes, controls, and staffing. Banks should make reference to these case examples to review data quality and respective transaction monitoring system effectiveness, and take appropriate risk mitigating measures on an ongoing basis. Looking forward, the HKMA expects this improving trend to continue, and that the risk-based approach in banks' AML/CFT efforts should remain to be premised on up-to-date understanding of evolving risks, use of better quality data, responsible innovation including Regtech adoption, and close collaboration in the ecosystem."

香港金融管理局对四间银行违反《打击洗钱及恐怖分子资金筹集条例》采取纪律处分行动

于 2021 年 11 月 19 日，香港金融管理局（金管局）宣布已根据《打击洗钱及恐怖分子资金筹集条例》（香港法例第 615 章）（《打击洗钱条例》）完成对四间银行的调查及纪律处分程序。金管局对中国建设银行（亚洲）股份有限公司（建行亚洲）、中国信托商业银行股份有限公司香港分行（中国信托香港）、中国工商银行（亚洲）有限公司（工银亚洲）及 UBS AG 香港分行（UBSHK）处以合共 44,200,000 港元的罚款，并按需要发出纠正相关违规情况的命令。

金管局是在《打击洗钱条例》于 2012 年 4 月 1 日生效后就银行的制度及管控措施的合规情况进行一系列现场审查后再作出跟进调查，而当时银行业界对有关条例的了解及掌握较为有限。金管局调查发现在有关期间的管控

问题，主要涉及持续监察客户关系，以及就高风险情况进行严格客户尽职审查方面存在缺失。

具体而言，上述四间银行没有透过恒常客户尽职审查以履行持续监察业务关系的责任；其中中国信托香港没有采取适当复核措施，以确保其所取得有关客户的文件、数据及资料反映现况及仍属相关，而建行亚洲、工银亚洲及 UBSHK 没有及时就某些客户进行定期复核。至于在某些洗钱/恐怖分子资金筹集可能出现高度风险的情况，中国信托香港及工银亚洲没有就部分客户遵守以下规定：（i）采取合理措施以确立有关客户或实益拥有人的财富来源，及该业务关系所涉及的资金来源；或（ii）采取额外措施以减低所涉及的洗钱/恐怖分子资金筹集的风险。此外，上述四间银行均没有遵守要求，设立及维持有效措施以履行《打击洗钱条例》有关持续客户尽职审查的责任；其中建行亚洲就须作出审查的交易警示采用的甄选准则过于局限，而 UBSHK 的缺失则包括在抽取到期进行定期复核的客户风险状况方面存在系统错误。

在决定上述的纪律处分行动时，金管局已考虑所有有关情况及因素，包括以下各项：

(a) 调查结果的严重性；

(b) 需要向有关银行及业界传递明确的阻吓讯息，以表明有效管控措施及程序在应对洗钱及恐怖分子资金筹集风险方面的重要性；

(c) 有关银行就金管局所发现的缺失而采取的补救及优化措施；以及

(d) 有关银行过往并无与《打击洗钱条例》相关的纪律处分纪录，并在金管局调查及执法程序中表现合作。

金管局助理总裁（法规及打击清洗黑钱）朱立翘女士表示：「银行在打击洗钱及恐怖分子资金筹集生态系统中担任『龙门』的重要岗位，就《打击洗钱条例》及《打击洗钱及恐怖分子资金筹集指引》订明的法律及监管要求负有责任，有关做法安排亦符合国际标准。上述四宗个案是在《打击洗钱条例》生效后发现有关缺失，而当时银行业界对该条例的了解及掌握较为有限。至今香港银行业界，包括有关银行，已显着加强金融罪行相关法例合规能力，特别是在程序、管控措施及人员配置方面的改进。银行应参考这些个案例子，检视数据质素及相关交易监察系统的成效，并持续采取适当措施以减低风险。展望未来，金管局预期业界会持续进步，同时银行就打击洗钱及恐怖分子资金筹集工作所采取的『风险为本』方法应继续建基于其对风险变化的最新了解、运用更佳质素的数据、采用合规科技和负责任地进行创新，以及与生态系统内各持份者保持紧密合作。」

Source 来源:
https://www.hkma.gov.hk/eng/news-and-media/press-releases/2021/11/20211119-5/

The China Securities Regulatory Commission Vice Chairman Fang Xinghai Commenting on China-ASEAN Capital Market Cooperation at the 2021 China-Singapore (Chongqing) Strategic Connectivity Demonstration Project Financial Summit

The summit themed "Deepening China-ASEAN Financial Cooperation - Creating a New Pattern of Connectivity" was of great significance to deepen Chongqing's reform and opening-up, promote China-Singapore financial cooperation and facilitate cooperation between western China and ASEAN.

I. China's capital market has achieved remarkable results in opening up to the outside world

In recent years, the China Securities Regulatory Commission (CSRC) has conscientiously implemented the decision and deployment of the Party Central Committee and the State Council on the orderly expansion of financial openness and launched a series of new two-way opening initiatives in accordance with the requirement of "building a regulated, transparent, open, dynamic and resilient capital market", achieving remarkable results.

The opening up of the market has continued to deepen. The CSRC continued to expand and deepen the interoperability mechanism between domestic and overseas markets, and enrich the investment channels for foreign investors to participate in the A-share market: eligible stocks of the Science and Technology Innovation Board were officially included in the Shanghai-Shenzhen-Hong Kong Stock Connect, and the Shanghai-London Connect mechanism enjoyed stable operation; new QFII regulations were implemented, and the investment scope was expanded to include commodity futures, commodity options and stock index options. Foreign investors increasingly placed attention on and recognized the ever-opening Chinese capital markets, maintaining a general trend of steady investment inflow into the A-share market. From January to October 2021, the cumulative net inflow of foreign investment through QFII, Shanghai and Shenzhen Stock Connect and other channels was approximately RMB240.976 billion. As at the end of October 2021, foreign investors held RMB3.67 trillion in A-share holding in circulation, accounting for approximately 4.97% of the market capitalization.

Full liberalization of industry access has been achieved. The CSRC fully liberalized the foreign shareholding ratio of securities, futures and fund management companies in 2020, and foreign institutions were given national treatment in terms of business scope and regulatory

requirements, and many internationally renowned institutions accelerated their investment and business development in China. Two fully foreign owned securities companies and two fully foreign owned fund management companies have been approved this year. So far, eight foreign-controlled securities companies, three fully foreign-owned fund management companies and one fully foreign-owned futures company have been approved for establishment, and some have already formally commenced business.

Product liberalization has been steadily promoted. The range of internationalized commodity futures and options has been expanding, with nine varieties open to foreign investors, including two new internationalized varieties of crude oil and palm oil options in 2021. The Shanghai-Shenzhen-Hong Kong ETF interoperability and the China-Japan ETF interoperability were launched one after another and progressed smoothly.

II. China-ASEAN Capital Market Cooperation Reaps Fruitful Results

Over the past three decades, China and ASEAN cooperation has achieved leapfrog development and become the most successful and dynamic model of regional cooperation in the Asia-Pacific region. ASEAN is also a witness, peer and co-operator of China's capital market reform and opening up, and cooperation between the two sides in the capital market field has borne fruit.

At present, the CSRC has signed bilateral memoranda of understanding on regulatory cooperation with the securities and futures regulators of eight ASEAN countries, including Singapore, and has achieved a number of high-level meetings and continued to carry out staff exchanges, technical assistance and exchange cooperation projects, establishing good communication channels and a framework for cooperation.

The close regulatory cooperation relationship has created favorable conditions for financial institutions of both sides to develop in each other's markets. Currently, Singapore financial institutions have set up four joint venture fund management companies in China, and DBS Bank has been approved to set up a foreign-owned securities company in China, which will officially open in June 2021. 72 ASEAN financial institutions have been granted Qualified Foreign Investor (QFII) status. Meanwhile, ASEAN has also become one of the important destinations for Chinese securities and futures operators to "go global", with four Chinese securities, funds and futures operators setting up subsidiaries in Singapore, Laos and other places. The CSRC sincerely welcomes financial institutions and investors from ASEAN countries to share the dividends of China's healthy and stable economic growth.

III. Deepening capital market opening and cooperation to help create a new pattern of interconnection

The year 2022 will be the first year when the Regional Comprehensive Economic Partnership Agreement (RCEP) enters into force, and both the China-Singapore (Chongqing) Connectivity Project and China-ASEAN financial cooperation will usher in a brand-new scene. CSRC will fully support the construction of the China-Singapore (Chongqing) Connectivity Project and the New Land and Sea Corridor and will continue to deepen pragmatic cooperation between China-Singapore and China-ASEAN capital markets to help create a new pattern of connectivity.

First, CSRC will promote a high level of institutional opening of the capital market. The CSRC will continue to strengthen the capital market system and enhance the depth and liquidity of the market, with the registration system reform as the key driver. It will continue to optimize and expand cross-border investment channels such as interconnection, enrich the supply of products and supporting systems for cross-border investment, and facilitate cross-border investment and risk management. It will strengthen regulatory collaboration and information sharing among regulators and improve mechanisms for monitoring capital flows and mitigating cross-border risks, enhance the completeness, transparency, and predictability of institutional rules, and consolidate and improve a market-oriented, rule-of-law and internationalized business and investment environment.

Secondly, deepen cooperation between China, Singapore, and China-ASEAN capital markets. At present, the Shenzhen Stock Exchange and Singapore Exchange ETF cooperation project has made positive progress, and both China and Singapore will actively promote the early implementation of ETF interoperability. China supports eligible financial institutions to invest and develop their businesses in ASEAN in line with their development needs, encourages pragmatic cooperation between exchanges of both sides, and will continue to strengthen regulatory and law enforcement cooperation with ASEAN countries to jointly combat cross-border securities offences and crimes and protect the legitimate rights and interests of investors. Many ASEAN countries have shown strong enthusiasm for strengthening cooperation with China's capital markets, and the CSRC will promote pragmatic cooperation on products and technologies in accordance with the actual situation of each country's capital markets.

Thirdly, CSRC will support the implementation of capital market liberalization policies in Chongqing. So far, 12 foreign-owned or wholly owned securities, funds and futures companies have been approved in China one after another. CSRC looks forward to Chongqing continuing to build a market-oriented, rule of law and international business environment, and welcomes

financial institutions from various countries to invest and develop their businesses in Chongqing, and whilst based in Chongqing, radiating to the whole country, especially the vast western region, and providing quality financial services to investors from China, Singapore and ASEAN. The CSRC understands that Chongqing has opened the China-Singapore International Data Gateway and expects this efficient communication path to make positive contributions to China-Singapore and China-ASEAN financial cooperation and exchanges.

Fourthly, CSRC will strive to implement the Regional Comprehensive Economic Partnership Agreement (RCEP). The RCEP, which will come into effect on 1 January next year, represents the first time that a free trade agreement with a high level of openness will be implemented in the financial sector in the region. The CSRC will continue to do a good job in implementing the RCEP with quality and continuously improve the level of trade and investment facilitation in the capital market sector. CSRC welcomes eligible financial institutions and investors from RCEP signatories to seize the opportunity to expand their investment and development business in Chongqing or other cities in China and looks forward to the China-Singapore (Chongqing) Strategic Connectivity Demonstration Project playing a greater role in the implementation of the RCEP.

Fifthly, strengthening cooperation in green finance. The CSRC is studying and formulating policies and measures for the capital market to support the goal of carbon neutrality, increasing support for the financing of green and low-carbon enterprises, studying, and improving the environmental information disclosure system for listed companies, guiding market players to establish green investment concepts, and actively participating in the work of the International Organization of Securities Commissions (IOSCO) related to sustainable finance. The CSRC is willing to continue to strengthen exchanges and cooperation with Singapore and ASEAN countries on sustainable finance and jointly promote the development and improvement of relevant international standards.

中国证券监督管理委员会方星海副主席在2021中新（重庆）战略性互联互通示范项目金融峰会上发表讲话谈及中国与东盟的资本市场合作

在重庆举行的以“深化中国－东盟金融合作·共创互联互通新格局”为主题的峰会，对于深化重庆改革开放、促进中新金融合作、推动中国西部地区与东盟合作具有重要意义。

一、中国资本市场对外开放取得显著成效

近年来，中国证券监督管理委员会（证监会）认真贯彻落实党中央、国务院关于有序扩大金融开放的决策部署，按照“打造一个规范、透明、开放、有活力、有韧性的资本市场”的要求，推出了一系列双向开放新举措，取得显著成效。

市场开放不断深化。证监会持续拓展和深化境内外市场互联互通机制，丰富外资参与 A 股市场的投资渠道：符合条件的科创板股票正式纳入沪深港通标的，沪伦通机制稳定运行；QFII 新规落地实施，投资范围扩大至商品期货、商品期权、股指期权等。外资高度关注和认可不断开放的中国资本市场，保持稳步流入 A 股市场的总态势。2021 年 1 至 10 月，境外投资者通过 QFII、沪深股通等渠道累计净流入约人民币2,409.76亿元。截至2021年10月末，外资持有A股流通市值人民币3.67万亿元，占比约4.97%。

行业准入全面放开。证监会于2020年全面放开证券、期货和基金管理公司外资股比限制，外资机构在经营范围和监管要求上均实现国民待遇，很多国际知名机构加快了在华投资展业步伐。2021 年以来，新增设立摩根大通、高盛（中国）两家外资全资证券公司，富达、路博迈两家全资基金管理公司。目前已有 8 家外商控股证券公司和3家外商独资基金管理公司、1家外商独资期货公司获准设立，有的已经正式开展业务。

产品开放稳步推进。商品期货、期权国际化品种范围不断拓展，已有9个品种向境外投资者开放，其中2021年新增原油、棕榈油期权两个国际化品种。沪深港 ETF 互通、中日 ETF 互通相继推出，顺利推进。

二、中国－东盟资本市场合作收获丰硕成果

三十年来，中国和东盟合作实现跨越式发展，成为亚太区域合作中最成功、最具活力的典范。东盟也是中国资本市场改革开放的见证者、同行者和合作者，双方在资本市场领域的合作已经结出硕果。

目前，中国证监会已经与新加坡等八个东盟国家的证券期货监管机构签署双边监管合作谅解备忘录，多次实现高层会晤，持续开展人员交流、技术援助、交易所合作等项目，建立了良好的沟通渠道和合作框架。

密切的监管合作关系为双方金融机构到对方市场发展创造了良好条件。目前，新加坡金融机构已在华设立了 4 家合资基金管理公司，星展银行获准在华设立外资控股证券公司，并已于 2021 年 6 月正式开业。72 家东盟金融机构获得合格境外投资者（QFII）资格。同时，东盟也成为中国证券期货经营机构“走出去”的重要目的地之一，有 4 家中国证券基金期货经营机构分别在新加坡、老挝等地设立子公司。中国证监会真诚欢迎东盟国家金融机构和投资者共同分享中国经济健康稳定增长的红利。

三、深化资本市场开放合作，助力开创互联互通新格局

2022 年是《区域全面经济伙伴关系协定》（RCEP）生效的元年，中新（重庆）互联互通项目和中国东盟金融合作都将迎来全新局面。中国证监会将全力支持中新（重庆）互联互通项目和陆海新通道建设，不断深化中新、中国－东盟资本市场务实合作，助力开创互联互通新格局。

一是推进资本市场高水平制度型开放。中国证监会将以注册制改革为抓手，持续加强资本市场制度建设，提升市场深度和流动性。继续优化和拓展互联互通等跨境投资渠道，丰富跨境投资的产品供给和配套制度，便利跨境投资和风险管理。加强监管机构之间的监管协作和信息共享，健全跨境资本流动和风险监测防范机制。提升制度规则完备性、透明度和可预期性，巩固和完善市场化法治化国际化的营商投资环境。

二是深化中新、中国－东盟资本市场合作。目前，深圳证券交易所和新加坡交易所 ETF 合作项目已经取得积极进展，中新双方将积极推动早日实现 ETF 互通。中国支持符合条件的金融机构结合自身发展需要到东盟投资展业，鼓励双方交易所开展务实合作，将继续加强与东盟国家的监管和执法合作，共同打击跨境证券违法犯罪行为，保护投资者合法权益。东盟许多国家对加强与中国资本市场的合作，都表现出了很强的积极性，证监会将根据各国资本市场的实际情况，推进在产品和技术上的务实合作。

三是支持资本市场开放政策在重庆落地。截至目前，中国已有 12 家外资控股或全资证券基金期货公司相继获批。期待重庆继续打造市场化、法治化、国际化的营商环境，也欢迎各国金融机构到重庆投资展业，立足重庆，辐射全国特别是广大的西部地区，为中国、新加坡及东盟的投资者提供优质金融服务。证监会了解到，重庆已经开通中新国际数据通道，期待这一高效的沟通路径能够为中新、中国－东盟金融合作交流作出积极贡献。

四是做好高质量实施 RCEP 工作。将于 2022 年 1 月 1 日生效的区域全面经济伙伴关系协定（RCEP）是目前金融业具有最高开放水平的自贸协定首次落地。中国证监会将持续深入做好高质量实施 RCEP 工作，不断提高资本市场领域贸易投资便利化水平，欢迎 RCEP 签约国符合条件的金融机构和投资者，抓住机遇，在重庆或在中国其他城市扩大投资发展业务，期待中新（重庆）战略性互联互通示范项目在 RCEP 实施中发挥更大作用。

五是加强绿色金融合作。中国证监会正在研究制定资本市场支持碳达峰碳中和目标的政策措施，加大对绿色低碳企业的融资支持力度，研究完善上市公司环境信息披露制度，引导市场主体树立绿色投资理念，积极参与国际证监会组织（IOSCO）可持续金融相关工作。证监会愿与新方和东盟国家继续加强在可持续金融方面的交流与合作，共同推动相关国际标准的制定与完善。

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