



Jeffrey Mak Law Firm
麦振兴律师事务所
www.jmaklegal.com

Financial Services Regulatory Update 金融服务监管资讯

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Building Hong Kong's Capacity for Future Financial Services

Human capacity is always the most valuable asset to the banking industry because banks' performance and customer services depend heavily on the capabilities and qualities of their people. In order to improve the competitiveness of Hong Kong as a global financial center, regulators and authorities have put together efforts to build Hong Kong's capacity.

Launch of the Sustainable Finance Internship Initiative

On October 12, 2022, the Green and Sustainable Finance Cross-Agency Steering Group (Steering Group) launched the Sustainable Finance Internship Initiative (the Initiative) as part of a collaborative effort to build capability for the industry. The Initiative aims to create more internship opportunities in Hong Kong for students.

The Steering Group has been working closely with the industry and academia to address capacity and data constraints, developing resources for market participants. The Initiative goes one step further by offering students an opportunity to gain practical hands-on experience in sustainable finance, deepen their understanding of this sector and related career prospects, thereby inspiring them to specialize in this field.

To facilitate access to sustainable finance internships, postings under the Initiative will be centralized at the internship repository of the Centre for Green and Sustainable Finance. The Hong Kong Monetary Authority (HKMA), the Securities and Futures Commission, the Insurance Authority and the Mandatory Provident Fund Schemes Authority are encouraging their respective constituents to join the Initiative. Steering Group agencies will also soon commence hiring interns to support their own policy and market development work in sustainable finance.

Joint Paper issued by the HKMA and the banking industry

The HKMA has earlier engaged the Hong Kong Association of Banks and the Hong Kong Institute of Bankers to undertake an industry-wide "Capacity Building for Future Banking" exercise to take stock of potential talent gaps during 2021 to 2025, with the aim of developing a clear directional road map for banks to collaborate with other stakeholders in addressing the industry's talent need for the future. In the exercise, following observations have been made:

- (i) Digital banking is a global trend with emerging business opportunities and for the banks to stay relevant in an increasingly competitive landscape. Technological and data skills will be in high demand as banks transform from traditional to digital.
- (ii) Talents have to equip with knowledge about Guangdong-Hong Kong-Macao Greater Bay Area (GBA) in terms of customer needs, legal and policy requirements and market operations, and be Putonghua-proficient.
- (iii) Over 40% of banking practitioners interviewed believe climate-related risk management is a major skills gap, knowledge on Environmental, Social and Governance (ESG) research and product innovation will be in demand.
- (iv) As financial crimes get increasingly sophisticated and globally connected, the banking industry will need to continue managing cross-border financial crime, money-laundering and bribery risks faced by its associates, such as business partners, third-party service providers and customers.
- (v) Customer service is fast becoming an increasingly important differentiator of competitiveness when banks continue to navigate through digital transformation. Soft skill gaps such as creativity, cross-border networking skills, analytical and interpretive skills, adaptability, communication skills, customer connection skills and multi-tasking

ability are found in the banking sector of Hong Kong.

Simply put, the key skill gaps in the banking workforce that need to be filled to support the planned business expansion of the industry during the coming five years will primarily be in three major areas, namely technological and data skills (e.g. application of artificial intelligence), banking knowledge (e.g. specific knowledge in the GBA) and specific soft skills (e.g. creativity).

Methods to improve human capacity and narrow skill gaps

Sound practices in talent management that could help narrow the skill gaps have been identified in the exercise. These practices involve reskilling and redeploying existing banking practitioners in ways that will help them develop knowledge and expertise in those new skills required. Summary of the methods suggested in the exercise is set out below.

Reskilling

Reskilling is crucial to continue empowering the workforce and promote staff morale and retention, which also helps maintain the stability of the financial system.

Banks can forecast talent requirements based on their business plans and formulate reskilling strategies accordingly. It is also suggested that banks can assess the impact of technology and business changes on the transformation risks in different job roles when it is formulating a talent development and reskilling plan. For instance, existing skills on manual processes will need to be redeveloped into an ability to perform oversight, case management and data analysis when technological tools are in place. Banks should also ensure sufficient opportunities remain available to empower staff, such as job rotation and short-term secondment across various functions with the promotion of a conducive learning environment and culture. Flexible work arrangement, subsidies and examination support for workforce are also encouraged to be given to motivate and build up momentum in staff reskilling, such that the talent gaps could be addressed.

Redeployment

It is identified that banks should formulate a clear staff redeployment policy and to provide sufficient staff support. For instance, regular and structured evaluations of staff capabilities can be conducted and results of the evaluation can be mapped against the workforce requirements of both existing and emerging roles to determine redeployment needs. Banks are also advised to identify redeployment opportunities and communicate such information to their staff, as well as

develop a job conversion programme for different business functions to ensure a smooth redeployment process. Staff communication and support are also important to limit impact of redeployment on staff and bank operation, for example, banks should give timely clarifications to address staff's concerns and may provide in-house sharing workshops and course fee reimbursement.

Recruitment

Banks, industry associations and educational institutions are suggested to explore collaboration opportunities in expanding the talent pool by targeting both current banking practitioners and future talent. More practical experience and stronger practical skills training should be provided to prospective industry practitioners. Skills-based hiring would also likely to enhance banks' recruitment assessment and personality traits assessment in recruitment may address the specific soft skills required. Banks and industry associations may also attract prospective talents from other industries and jurisdiction by refreshing industry image.

Remarks

With the growing adoption of technology and the development of the GBA, new business opportunities and skillsets from the workforce would be in demand. The Initiative and the joint paper are good collaborative efforts of the stakeholders to address the need of capacity building of Hong Kong in the banking sector.

Indeed, efforts to systemically inspire, integrate and empower younger professionals should be recognized as a social priority for Hong Kong. In an increasingly digitalized society, collaborative knowledge and experience sharing in a massive scale can accelerate Hong Kong's capacity building. Established professionals can also plow back by regularizing skill transition via capacity building programs.

提升香港未来金融服务能力

人的能力始终是银行业最宝贵的资产，因为银行的业绩和客户服务在很大程度上取决于员工的能力和素质。为提高香港作为全球金融中心的竞争力，监管机构和当局共同努力建设香港的人才能力。

推出可持续金融实习计划

于2022年10月12日，绿色和可持续金融跨机构督导小组（督导小组）推出“可持续金融实习计划”（计划），为学生创造更多本地的实习机会。计划是督导小组共同致力提升业界技能的其中一环。

督导小组一直与业界及学术机构紧密合作，以解决技能和数据方面的限制，目前已为市场参与者建立了一系列资源库。本计划进一步为学生提供在可持续金融方面获得实践经验的机会，加深他们对这行业和相关就业前景的了解，并激发他们以可持续金融为专业的动力。

计划相关职位的信息将会上载于“绿色和可持续金融中心”的实习机会信息库，以方便学生获取实习机会信息。香港金融管理局（香港金管局）、证券及期货事务监察委员会、保险业监管局及强制性公积金计划管理局现正鼓励其辖下的相关机构参与本计划。督导小组成员机构亦将开始招聘实习生参与可持续金融政策制定和市场发展的工作。

香港金管局与银行业的联合文件

香港金管局早前联同香港银行公会及香港银行学会在全行业范围内出版“人才培訓計劃”文件，以评估 2021 年至 2025 年期间的潜在人才缺口，旨在制定银行与其他利益相关者合作解决行业未来人才需求的明确方向路线图。在文件中，观察到了以下情况：

- (i) 银行为在竞争日益激烈的环境中保持相关性，数字银行是一种伴随着新兴商机的全球趋势。随着银行从传统向数字化转型，对技术和数据技能的需求将很高。
- (ii) 人才须具备粤港澳大湾区（大湾区）客户需求、法律及政策要求及市场运作等方面的知识，并通晓普通话。
- (iii) 超过 40% 的受访银行从业人员认为气候相关风险管理是一个主要的技能差距，环境、社会和治理 (ESG) 研究和产品创新方面的知识将受到需求。
- (iv) 随着金融犯罪变得越来越复杂和全球联系，银行业将需要继续管理其关联方（例如业务合作伙伴、第三方服务提供商和客户）面临的跨境金融犯罪、洗钱和贿赂风险。
- (v) 当银行继续进行数字化转型时，客户服务正迅速成为竞争力日益重要的差异化因素。香港银行业存在软技能差距，例如创造力、跨境网络技能、分析和解释技能、适应能力、沟通技巧、客户联系技能和多任务处理能力。

简而言之，为支持未来五年行业计划的业务扩张，需要填补的银行业劳动力的关键技能差距将主要在三个主要领域，即技术和数据技能（例如人工智能的应用）、银行知识（例如大湾区的特定知识）和特定的软技能（例如创造力）。

提高人才能力和缩小技能差距的方法

文件中确定了有助于缩小技能差距的人才管理方面的良好做法。这些做法涉及重新培训和重新部署现有的银行从业人员，以帮助他们在所需的新技能方面发展知识和专业知识。文件中建议的方法总结如下。

再培训

技能再培训对于继续赋予员工权力并提高员工士气和保留率至关重要，这也有助于维持金融体系的稳定。

银行可以根据业务计划预测人才需求，并制定相应的技能再培训策略。银行亦建议在制定人才发展和再培训计划时，可以评估技术和业务变化对不同岗位转型风险的影响。例如，当技术工具到位时，需要将现有的手动流程技能重新开发为执行监督、案例管理和数据分析的能力。银行还应确保有足够的机会来赋予员工权力，例如轮岗和跨不同职能部门的短期借调，以促进有利的学习环境和文化。文件亦鼓励银行对劳动人员实行弹性工作安排、补贴和考试支持，激发和增强员工技能再造的动力，解决人才缺口。

重新部署

文件确定银行应制定明确的人员调配政策，并提供足够的人员支持。例如，可以对员工能力进行定期和结构化的评估，评估结果可以根据现有和新角色的劳动力需求进行映射，以确定重新部署的需求。还建议银行识别重新部署机会并将此类信息传达给其员工，并针对不同的业务职能制定工作转换计划，以确保顺利重新部署过程。员工的沟通和支持对于限制重新部署对员工和银行运营的影响也很重要，例如，银行应及时澄清以解决员工的担忧，并可提供内部共享研讨会和课程费用报销。

招聘

文件建议银行、行业协会和教育机构通过针对当前银行业从业者和未来人才，探索扩大人才库的合作机会，并应为未来的行业从业者提供更多的实践经验和更强的实践技能培训。基于技能的招聘也可能会加强银行的招聘评估，招聘中的人格特质评估可解决所需的特定软技能。银行和行业协会也可以通过刷新行业形象来吸引其他行业和辖区的潜在人才。

评论

随着科技的日益普及和大湾区的发展，劳动力将需要新的商机和技能组合。计划和联合文件是利益相关者为解决香港银行业能力建设的需要而进行的良好合作。

事实上，系统地激励、整合和赋权年轻专业人士的努力应被视为香港的一项社会优先事项。在日益数字化的社会中，大规模的协作知识和经验共享可以加速香港的能力建设。具经验的专业人士也可以通过能力建设计划常规化技能转换，从而实现回馈社会。

Source 來源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR80>

https://www.hkib.org/pdf/1617006893_Joint%20Report_Capacity%20Building%20for%20Future%20Banking%20-%20infographic.pdf

<https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2020/20200618e1a1.pdf>

Hong Kong Accounting and Financial Reporting Council Publishes 2022 Annual Investigation and Compliance Report

On October 20, 2022, the Hong Kong Accounting and Financial Reporting Council (AFRC) published its 2022 Annual Investigation and Compliance Report (the Report). The Report reviews the work of the investigation and inquiry functions of the AFRC in the year ended March 31, 2022. It highlights the key findings and observations on the professional conduct of CPAs and financial reporting compliance. The Report aims to provide auditors, boards, and audit committees of listed entities with insights on suggestions that would help in better discharging their reporting or governance responsibilities.

For the professional conduct of CPAs, AFRC found the most common areas where auditing irregularities or practice irregularities were identified during the year include:

- 1. Engagement quality control review:** Engagement quality control review is a quality control procedure required for audits of listed entities' financial statements or other audit engagements the audit firm has determined that such control review is required, in accordance with HKSA 220 Quality Control for an Audit of Financial Statements. AFRC found that engagement quality control reviewers did not adequately and critically challenge the nature and extent of audit procedures performed and evidence obtained during the audits and objectively evaluate the conclusion reached by the engagement teams. For example, they did not sufficiently challenge the decision of the engagement team in respect of the impairment assessment of certain listed investments and identify the relevant non-compliance.
- 2. Sufficient appropriate audit evidence:** AFRC found that auditors failed to obtain sufficient

appropriate audit evidence, which may result in the auditor giving an inappropriate audit opinion on the financial statement. This includes the auditor relying on discussion with management and the audit committee in relation to the recognition of an impairment loss of receivables of a former subsidiary and failure to perform audit procedures to identify that the impairment of the relevant receivables had already been fully provided for at the time when the subsidiary was disposed of in the prior year.

- 3. Professional skepticism:** AFRC found that the auditor failed to exercise professional skepticism during the audit, including the auditor's failure to critically evaluate the reliability of the cash flow forecasts used in the impairment assessment of the interest in an associate, despite the fact that the actual result of the associate was less than the prior year forecast.
- 4. Professional judgment:** AFRC also found that the auditors failed to exercise appropriate professional judgment. For example, the auditor failed to have a proper assessment of the modification of terms of the promissory note issued by a listed entity to determine whether it was substantial and to have an understanding of the substance and rationale of the modification.
- 5. Audit of accounting estimates:** AFRC found that there are deficiencies in auditing accounting estimates and thereby increasing the risk of material misstatement. For example, the auditor failed to adequately evaluate the reasonableness of the credit rating and effective interest rate used in the valuation of the convertible bonds issued by a listed entity.
- 6. Using the work of an auditor's expert:** AFRC found that the auditor fails to evaluate the competence, capabilities, objectivity, field of expertise, and adequacy of the work of the auditor's expert and also fails to identify the deficiencies in the expert's work with regards to the review of the valuation of financial liabilities provided by the listed entity.

For financial reporting compliance, AFRC identified that there is non-compliance with financial reporting requirements in the review of financial statements under their Financial Statements Review Programme (FSRP) during the year. Among other things, it includes,

- 1. Impairment assessment of financial assets:** Hong Kong Financial Reporting Standard (HKFRS) 9 Financial Instruments (HKFRS 9) requires an entity to adopt an expected credit loss (ECL) model

in the impairment assessment of financial assets, the model requires the consideration of forward-looking information, which focuses on the risk that the counterparty will default. However, in an inquiry, AFRC identified that no forward-looking information about future economic conditions was considered in estimating the probabilities of default and the recovery rates for the debtors.

2. **Impairment of assets and fair value measurement:** AFRC identified that there are deficiencies in the measurement of the fair value in some cases, including non-compliance to certain accounting rules in the calculation.
3. **Non-compliance with disclosure requirements:** AFRC also identified that some disclosures relating to the timing of satisfaction of performance obligations and the related judgments were inadequate, and certain disclosures in relation to fair value measurements were omitted by listed entities. Furthermore, in one case where the listed entity acquired the entire issued share capital of another entity subsequent to the reporting period, the listed entity did not disclose the information about the acquisition.

The Report also highlights some key aspects of the plans of AFRC to further strengthen their investigation and inquiry functions in the coming year. It includes enhancing processes and procedures, strengthening cooperation with other regulators, and preparation for further reform.

香港会计及财务汇报局刊发 2022 年度调查报告

2022 年 10 月 20 日，香港会计及财务汇报局（会财局）已刊发其 2022 年度调查报告（报告）。报告概述其在二零二二年三月三十一日止年度进行的调查及查讯工作，并重点提出有关会计师专业行为及财务汇报合规两方面的主要发现。报告旨在敦促上市实体的核数师、董事会及审计委员会注意会财局之建议以履行其报告或管治责任。

在会计师专业行为方面，会财局在该年度发现在审计不当行为或执业方面的不当行为的最常见范畴包括：

1. **项目质素监控审视：**根据香港审计准则第220号对财务报表审计实施的质素监控的规定，项目质素监控审视为审计上市实体财务报表或其他需要监控审视的审计项目所需的质素监控程序。会财局发现项目质素监控审视人员在审计过程中并无充分地就审计程序及获得证据的性质及范围提出批判性质疑，以及并无客观地评估审计项目团队得出的结论。例如

没有充分质疑审计项目团队就若干上市投资进行减值评估的决定，及并无发现相关的不遵从事宜。

2. **足够适当的审计证据：**会财局发现核数师未能或可能未能获得足够适当的审计证据，这可能导致核数师就财务报表发表不适当的审计意见。例如核数师依赖与管理层及审计委员会就前附属公司的应收款项减值亏损进行的讨论，并无执行审计程序，以确定相关应收款项的减值已于过往年度出售附属公司时全数拨备。
3. **专业怀疑态度：**会财局发现核数师于审计过程中未能行使专业怀疑态度，例如尽管一家联营公司的实际业绩低于过往年度的预测，核数师未能严格评估就该联营公司的权益进行减值评估时使用的现金流预测的可靠性。
4. **专业判断：**会财局还发现核数师未能作出适当的专业判断的情况，例如核数师未能对某上市实体发行的承兑票据条款的修改进行适当评估，以确定该修改是否重大，了解其实质及理由。
5. **会计估计的审计：**会财局发现会计估计的审计的观察有不足，从而增加重大错报的风险。例如核数师未能充分评估估值师在上市实体所发行的可换股债券的估值中所使用的信用评级及实际利率的合理性。
6. **核数师使用所聘用的专家之工作：**会财局发现核数师未能评估专家的能力、技能、客观性、专业领域及工作是否充分；以及他们未能发现专家在审核上市实体所提供的金融负债估值工作中的不足之处。

而在财务汇报合规方面，会财局于年内根据财务报表审阅计划审阅财务报表时发现有不遵从财务汇报规定的情况，当中包括：

1. **金融资产减值评估：**香港财务报告准则第 9 号规定一家实体在金融资产的减值评估中采用预期信贷亏损模型。该模型需要考虑前瞻性数据，着重交易对手方违约的风险。在一项查讯中，会财局发现在估计违约率及债务人的回收率时，并无考虑有关未来经济状况的前瞻性资料。
2. **资产减值及公允价值计量：**会财局发现在有些个案中，公允价值的计量存在缺陷，例如没有根据有关会计准则计算。
3. **不遵从披露规定：**会财局发现在有些实体在履约义务获履行的时间及相关判断有关的披露不充分，以及遗漏了与公允价值计量有关的若干披露。此外，在一个上市实体于报告期后收购另一家实体的全部

已发行股本的个案中，会财局发现上市实体并无披露有关收购的资料。

报告中还概述了会财局于未来一年进一步加强调查及查讯职能的主要计划。当中包括优化流程及程序，与其他监管机构加强合作，以及准备进一步改革。

Source 来源:

https://www.afrc.org.hk/en-hk/Documents/Publications/periodic-reports/AFRC_Annual&CRreport_2022_EN.pdf

The Stock Exchange of Hong Kong Limited Publishes Consultation Paper on New Listing Rules for Specialist Technology Companies

On October 19, 2022, the Stock Exchange of Hong Kong Limited (the Exchange) published a consultation paper (Consultation Paper) seeking public feedback on proposals to expand Hong Kong's existing listing regime to permit listings of specialist technology companies.

A specialist technology company (Special Technology Company) is defined to be a company primarily engaged in the research and development of, and the commercialization and/or sales of, products and/or services that apply science and/or technology within an acceptable sector of a specialist technology industry. The list of specialist technology industries and the respective acceptable sectors (Special Technology) considered by the Exchange to fall within the scope of the proposed regime will be published in a guidance letter and will be updated from time to time. According to the draft list of specialist technology industries proposed by the Exchange, specialist technology industries include cloud-based services, artificial intelligence, semiconductors, aerospace technology, new energy generation, new food technology, etc.

Under the proposed regime, Specialist Technology Companies will be categorized into Commercial Companies, which are able to meet the proposed commercialization revenue threshold at the time of listing, and Pre-Commercial Companies, which have not yet met the proposed commercialization revenue threshold at the time of listing, with more stringent requirements for Pre-Commercial Companies given their risk profile.

A summary of the key proposals in the Consultation Paper is set out below:

Qualifications for Listing

Commercialization Revenue Threshold: Commercial Companies are defined as those that have at least HK\$250 million revenue arising from their Specialist

Technology business segment for the most recent audited financial year

Minimum expected market capitalization at listing: HK\$8 billion for Commercial Companies and HK\$15 billion for Pre-Commercial Companies

Research and Development: all applicants must have been engaged in research and development (R&D) for at least three financial years prior to listing, with investment amounting to at least 15 per cent of total operating expenditure for Commercial Companies and 50 per cent for Pre-Commercial Companies

Minimum third party investment: the listing applicant must have received meaningful investment from Sophisticated Independent Investors.

- Definition of Sophisticated Independent Investors:
 - must not be a core connected person of the listing applicant (excluding a person being connected only by virtue of being a substantial shareholder); and
 - must be a sophisticated investor who meets any of the indicative size thresholds or qualification requirement
 - the Exchange would generally consider the following as sophisticated investors:
 - an asset management firm with asset under management (AUM) of, or a fund with a fund size of, at least HK\$15 billion;
 - a company having a diverse investment portfolio size of at least HK\$15 billion;
 - an investor of any of the types above with an AUM, fund size or investment portfolio size (as applicable) of at least HK\$5 billion where that value is derived primarily from Specialist Technology investments; and
 - a key participant in the relevant upstream or downstream industry with substantial market share and size, as supported by appropriate independent market or operational data
- As an indicative benchmark, an applicant meeting the following requirements will generally be considered as having received "meaningful investment":
 - third party investment from at least two Sophisticated Independent Investors who have invested at least 12 months before the date of the listing application, each holding such amount of shares or securities convertible into shares equivalent to 5% or more of the issued share capital of the listing applicant as at the date of the listing application and throughout the pre-application 12-month period (Pathfinder Sophisticated Independent Investors); and

- aggregate investment from all Sophisticated Independent Investors meeting the prescribed minimum percentage of issued share capital of the applicant at the time of listing ranging from 10 per cent to 20 per cent (Commercial Company) or 15 per cent to 25 per cent (Pre-Commercial Company), depending on the applicant's expected market capitalization at listing

Path to commercialization: a Pre-Commercial Company must demonstrate a credible path to achieving the Commercialization Revenue Threshold and disclose this in its listing document. It must also:

- explain and disclose, in detail, the timeframe for, and impediments to, achieving the Commercialization Revenue Threshold; and
- to the extent that its working capital (after taking into account the listing proceeds) is insufficient to meet its needs before it achieves the Commercialization Revenue Threshold, describe the potential funding gap and how it plans to further finance its path to achieving the Commercialization Revenue Threshold after listing

A credible path to achieving of the Commercialization Revenue Threshold could be demonstrated by binding contracts or non-binding framework agreements, with reasonably sufficient details on the timeframe and milestones for commercialization, in respect of the Specialist Technology products that the applicant has in place.

IPO requirements

- an optimized price discovery process
- a minimum free float of at least HK\$600 million upon listing
- disclosures including on pre-IPO investment obtained, commercialization status and prospects, and appropriate warning statements

Post-IPO requirements

- Post-IPO lock-ups on controlling shareholders and key persons of 12 months (for a Commercial Company) and 24 months (for a Pre-Commercial Company) and the Pathfinder Sophisticated Independent Investors of 6 months (for a Commercial Company) and 12 months (for a Pre-Commercial Company)
- Additional continuing obligations for Pre-Commercial Companies, including additional disclosures in interim and annual reports on the progress made towards achieving the Commercialization Revenue Threshold, and updates on any business and financial estimates provided in the Listing Document

The Exchange believed that new proposals would expand the range of companies that can access Hong Kong's deep, liquid, international markets and will offer investors even greater choice. The new proposed rules would help to drive growth in talent and investment across five frontier industries, such as in Greentech, in the region and beyond. It is expected that the new proposed rules would further elevate Hong Kong's position as the listing venue of choice for innovative companies from around the world.

香港联合交易所有限公司刊发有关特专科技公司新上市规则的咨询文件

于2022年10月19日，香港联合交易所有限公司（联交所）刊发咨询文件（咨询文件），建议扩大香港现有上市制度，允许特专科技公司来港上市，并就此征询公众意见。

特专科技公司（特专科技公司）指主要从事应用于相关特专科技行业中可接纳领域的科学及/或技术的产品及/或服务的研发，以及其商业化及/或销售的公司。联交所认为属于建议制度涵盖范围的特专科技（特专科技）行业及相关可接纳领域名单会于指引信中载列（咨询文件中附录五载有相关拟稿），并会不时更新。根据联交所提出的特专科技行业名单拟稿，特专科技行业包括云端服务、人工智能、半导体、航天科技、新能源生产、新食品技术等。

在建议制度下，特专科技公司将分为已商业化公司（指于上市时可达到建议商业化收益门槛的特专科技公司）及未商业化公司（指于上市时未达到建议商业化收益门槛的特专科技公司）两大类，其中未商业化公司因为风险较高，规定也较为严格。

咨询文件的主要建议包括：

上市资格

商业化收益门槛：已商业化公司的定义为经审计的最近一个会计年度特专科技业务所产生的收益至少达 2.5 亿港元的公司

上市时的预期最低市值：80 亿港元（已商业化公司）或 150 亿港元（未商业化公司）

研发：所有申请人均须于上市前已从事研发至少三个会计年度，研发投入金额须占总营运开支至少 15%（已商业化公司）或 50%（未商业化公司）

最低第三方投资：上市申请人须获得来自资深独立投资者相当数额的投资。

- 资深独立投资者的定义：

- 不得为上市申请人的核心关连人士（不包括仅因其为主要股东而属关连者）；及
- 须为符合任何指标性规模门槛或资格规定的资深投资者
- 联交所一般会将以下人士视为资深投资者：
 - 管理资产总值至少达 150 亿港元的资产管理公司；基金规模至少达 150 亿港元的基金；
 - 拥有多元化投资组合而其投资组合规模至少达 150 亿港元的公司；
 - 上述任何类型的投资者，其管理资产总值、基金规模或投资组合规模（如适用）至少达 50 亿港元，而该价值主要来自特专科技投资；及
 - 具有重大市场份额及规模的相关上游或下游行业主要参与者，并须由适当的独立市场或营运数据支持
- 作为指标性基准，符合以下规定的申请人通常将被视为获得“相当数额的投资”：
 - 于上市申请日期的至少 12 个月前已获得来自至少两名符合以下条件的资深独立投资者的第三方投资，在上市申请当日及上市申请前 12 个月期间，相关领航资深独立投资者一直各自持有相等于上市申请人于上市申请当日已发行股本 5% 或以上的股份或可换股证券（领航资深独立投资者）；及
 - 来自所有资深独立投资者的合计投资金额达到上市申请人于上市时已发行股本的规定最低百分比，即 10% 至 20%（已商业化公司）或 15% 至 25%（未商业化公司），视乎上市申请人于上市预期市值而定

商业化路径：未商业化公司须展示并在上市文件中披露其可达到商业化收益门槛的可信路径。其还必须：

- 详细说明及披露其达至商业化收益门槛的时间表及障碍；及
- 若其营运资金（已计算上市所得款项）不足以应付其达至商业化收益门槛前的需要，其须描述潜在的资金缺口，以及上市后计划如何为其达至商业化收益门槛的路径进一步融资

可证明达至商业化收益门槛的可信路径的方法包括就申请人已有的特专科技产品订立具约束力的合约或无约束力的框架协议，当中须就商业化的时间表及里程碑载列合理充足的详情。

有关首次公开招股的规定

- 更高效的市场定价流程
- 上市后自由流通量至少达 6 亿港元

- 须披露的资料包括首次公开招股前投资、商业化现状及前景以及适当的示警声明

首次公开招股后的规定

- 控股股东及关键人士的首次公开招股后禁售期为 12 个月（商业化公司）和 24 个月（未商业化公司），领航资深独立投资者的首次公开招股后禁售期为 6 个月（商业化公司）和 12 个月（未商业化公司）
- 对未商业化公司施加额外持续责任，包括于中期报告及年报中额外披露发行人达到商业化收益门槛的进展，以及披露有关上市文件中载列的任何业务及财务估计的更新

联交所相信，新的建议将增加香港上市公司种类，让更多不同类型的公司可进入这个具备深度和流动性的国际市场，同时也为投资者带来更多选择。新的拟议规则将有助于将有助推动区内以至其他地方在五个前沿行业（例如绿色科技）的人才和投资金额增长。预计新的拟议规则将进一步提升香港作为全球创新产业公司首选上市地点的地位。

Source 来源:

https://www.hkex.com.hk/News/Regulatory-Announcements/2022/2210191news?sc_lang=en

https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/October-2022-Specialist-Technology-Co?sc_lang=en

The Stock Exchange of Hong Kong Limited Publishes New Guidance Note on Cooperation and Updated Sanctions Statement

On October 25, 2022, the Stock Exchange of Hong Kong Limited (the Exchange) published (1) a new Guidance Note on Cooperation (Note), and (2) a revised Enforcement Sanctions Statement (Sanctions Statement). The Enforcement Policy Statement has been updated to include links to these documents. The new set of guidance materials will provide greater clarity and transparency for listed issuers.

The Note seeks to provide further clarity on: (a) what constitutes, and what does not constitute, cooperation in the context of the Exchange's work, and (b) the Exchange's approach to cooperation. It sets out examples of what may constitute good cooperation between the Exchange and the relevant stakeholders and the possible benefits. The Note also describes what may be construed as uncooperative conduct and the possible consequences.

The following are non-exhaustive examples which may be recognized as cooperation:

- providing true and complete information and documents regarding the suspected breach or misconduct;

- demonstrating a willingness to prioritize and devote resources to investigate the matter and respond to the Exchange's enquiries. For example, timely response to the Exchange and early and proactive reporting to the Exchange of breaches or misconduct;
- willingness to take responsibility by the Parties for the breaches and/or misconduct, and to admit any breaches at an early stage; and
- seeking early resolution of enforcement action by initiating settlement negotiations with the Exchange and, if the Exchange has indicated the sanctions that it proposes to recommend, providing early acceptance of those sanctions (prior to the commencement of disciplinary action).

Cooperation may be recognized by a reduction in the sanction and/or the inclusion of a statement in respect of the cooperation in a publication by the Exchange in respect of a disciplinary matter (such as a news release or statement of disciplinary action).

Uncooperative conduct includes but is not limited to:

- a failure to respond to the Exchange, including a failure to provide substantive responses to some or all of the Exchange's enquiries;
- provision of inaccurate, incomplete or misleading information;
- unnecessarily prolonging the Exchange's investigation;
- failure to attend an interview or disciplinary hearing at which a Party has been requested to appear; or
- the provision of late submissions, evidence or documents.

Parties should take note that if they fail to provide relevant submissions, information or evidence at the appropriate time, then this may result in one or more of the following consequences:

- the Listing Committee may attach less weight to any late submissions or materials, or draw adverse inferences from the fact that they were raised at a late stage;
- the conduct may be considered an aggravating factor, to be taken into account when determining the appropriate sanction; and/or
- the party may be found to be in breach of its obligation to cooperate, resulting in the imposition of a sanction on grounds of noncooperation, even if a failure to cooperate has not been alleged in the disciplinary report.

The Sanctions Statement has been revised to provide further clarity on the Exchange's expectations in respect of a listed issuer's internal controls, and the extent to which an individual may rely on others in the discharge of duties.

The range of breaches which may warrant the imposition of disciplinary sanctions is broad and includes both "active" and "passive" misconduct. Passive misconduct would include a failure to take sufficient steps to discharge a duty. Accordingly, the Exchange considers that public sanctions may and often will be appropriate for issuers and/or individuals where there are control environment failings (for example, internal control deficiencies, or insufficient oversight) for which they are responsible, even if these failings do not directly lead to any other breaches or loss.

In determining an appropriate sanction, the Listing Committee may consider, among others, the extent a respondent has relied on others (including but not limited to other directors, senior management, staff members and professional advisers) and whether such reliance is in the circumstances reasonable, such as whether the respondent has continued to (i) give adequate oversight, (ii) apply professional skepticism, and (iii) exercise independent judgement.

The primary sanctions available following the revisions of the Exchange's disciplinary powers and sanctions in July 2021 have been incorporated in the updated Sanctions Statement to provide more transparency.

香港联合交易所有限公司刊登新的《合作行为指引说明》及更新《规则执行制裁声明》

于2022年10月25日，香港联合交易所有限公司（联交所）刊发（1）新的《合作行为指引说明》（《指引说明》）；及（2）经修订的《规则执行制裁声明》（制裁声明）。此外，《规则执行政策声明》经已更新，加入了上述文件的连结。这套新的指引为上市发行人就规则执行方面提高清晰度及透明度。

《指引说明》旨在进一步阐明：(a)在联交所的工作范围内，哪些属于及不属于合作行为，以及(b)联交所对合作一事所采取的方针。《指引说明》列举何谓持份者与联交所合作的良好行为例子以及可能带来的好处，同时亦载有可被视为不合作行为的例子及可能造成的后果。

以下是可被视为合作的一些例子：

- 就涉嫌违反或失当行为提供真实及完整的资料；
- 表现出愿意优先处理及投放资源调查相关事项和回应联交所查询。例如，及时回覆联交所、及早并主动向联交所汇报违规或失当行；
- 相关人士愿意就违规及 / 或失当行为承担责任，并于初期便承认违规；及
- 提出与联交所商谈和解，寻求尽早解决有关的规则执行行动，以及在联交所已表示其拟作出的制裁的情况下，（在纪律行动开展之前）及早接受有关制裁。

联交所考虑到合作可能减轻制裁及 / 或在联交所就个别纪律行动刊登的内容（例如新闻稿或纪律行动声明）中加入相关陈述，提及相关人士给予的配合和合作。

不合作行为包括（但不限于）：

- 不回覆联交所，包括未能对联交所的部分或全部查询作出实质回应；
- 提供不准确、不完整或有误导成分的资料；
- 不必要地拖长联交所的调查时间；
- 相关人士在必须出席的会面或纪律聆讯中缺席；或
- 迟交陈述、证据或文件。

相关人士应当注意，若未能在适当的时候提供相关陈述、资料或证据，可能会引致以下一种或以上的后果：

- 上市科对任何迟交的陈述或材料或会较不重视，或因其迟交而作出不利推论；
- 相关人士的行为可能会被视为加重制裁的因素，稍后在厘定适当制裁时或会考虑在内；及 / 或
- 相关人士在适当情况下或会被认定违反其合作责任，以致被以不配合为由实施制裁（即使纪律报告中没有指称相关人士不予配合）。

经修订的制裁声明进一步讲述联交所对上市发行人监控环境的预期以及个别人士依靠他人代为履行职责的限制。

可招致施加纪律制裁的违规行为范围相当广泛，「主动」及「被动」的不当行为均包括在内。被动的不当行为包括未有充分采取行动履行责任。因此，联交所认为在监控环境出现问题的情况下（例如内部监控不足或监管不足）即使有关问题并未直接导致其他违规的情况或损失，相关发行人及/或个别人士须承担责任并很可能及通常都适合被施加公开制裁。

在厘定适当的制裁时，上市科可考虑（其中包括）答辩人依赖其他人（包括但不限于董事、高级管理层、雇员及专业顾问）的程度，其依赖有关人士就其情况而言是否合理，例如答辩人有否继续(i)进行足够的监管；(ii)抱持专业怀疑态度；及(iii)行使独立判断。

制裁声明中亦加入了联交所于2021年7月经修订「纪律处分权力及制裁」中的主要制裁，借此加强透明度。

Source 来源：

https://www.hkex.com.hk/News/Regulatory-Announcements/2022/221025news?sc_lang=en
https://www.hkex.com.hk/Listing/Disciplinary-and-Enforcement/Enforcement-Guidance-Materials?sc_lang=en

The Court of First Instance Orders Sound Global Ltd. Chairman to Purchase Shares from Investors

On October 6, 2022, the Securities and Futures Commission of Hong Kong (SFC) announced that it has obtained an order in the Court of First Instance against the chairman and executive director of Sound Global Ltd. (Sound Global), Mr. Wen Yibo, to purchase shares held by the other shareholders of the company at a price to be determined by the Court after he was found to have orchestrated a scheme to falsify the company's bank balances and fabricated relevant bank statements and balance confirmations.

Sound Global is an investment holding company listed on the Singapore Exchange Securities Trading Limited and on the Main Board of The Stock Exchange of Hong Kong Limited (Exchange) (former stock code: 967) since 6 October 2006 and 30 September 2010 respectively. It was voluntarily delisted from the Singapore Exchange Securities Trading Limited on 27 January 2014 and was delisted by the Exchange with effect from 13 September 2022. Mr. Wen is the founder of Sound Global, and had been a chairman and executive director of the company since 7 November 2005.

On 13 April 2016, trading in Sound Global's shares was suspended pursuant to Rule 8(1) of Securities and Futures (Stock Market Listing) Rules. On 14 June 2019, the SFC commenced proceedings under section 214 of the Securities and Futures Ordinance (SFO) against Sound Global and others.

The Court was satisfied that as a result of Mr. Wen's scheme, which involved five bank accounts maintained by Sound Global's subsidiaries at two Mainland banks for the financial years of 2011, 2012 and 2013, the bank balances of the company's subsidiaries were inflated by RMB 2.18 billion and RMB 2.72 billion as at 31 December 2012 and 2013 respectively, representing 82% and 89% of the net assets of Sound Global as reported in its 2012 and 2013 annual reports.

The order was the first of its kind made under section 214 of the SFO.

The Court also issued a disqualification order for 12 years against Mr. Wen, who was ordered to pay the SFC's costs on an indemnity basis.

香港高等法院原讼法庭命令桑德国际有限公司主席向投资者购买股份

于2022年10月6日，香港证券及期货事务监察委员会（证监会）宣布在原讼法庭取得一项针对桑德国际有限公司（桑德国际）主席及执行董事文一波先生的命令，指令他按法庭将予厘定的价格购入该公司其他股东所持有的股份，原因是他被裁定曾策划一项计划以捏造该公司的银行结余，及伪造相关的银行结单和结余询证函。

桑德国际是一家投资控股公司，分别自 2006 年 10 月 6 日及 2010 年 9 月 30 日起在新加坡证券交易有限公司及香港联合交易所有限公司（联交所）主板上市（前股份代号：967）。该公司于 2014 年 1 月 27 日自愿从新加坡证券交易有限公司除牌，及于 2022 年 9 月 13 日被联交所除牌。文先生是桑德国际的创办人，及自 2005 年 11 月 7 日起担任该公司主席及执行董事。

桑德国际的股份于 2016 年 4 月 13 日依据《证券及期货（在证券市场上市）规则》第 8(1)条被暂停买卖。证监会于 2019 年 6 月 14 日根据《证券及期货条例》第 214 条针对桑德国际及其他人士展开法律程序。

文先生的计划涉及桑德国际的数家附属公司在 2011 年、2012 年及 2013 年财政年度于两家内地银行维持的五个银行帐户。法庭信纳，文先生的计划令该等附属公司截至 2012 年及 2013 年 12 月 31 日的银行帐户结余，被分别推高人民币 21.8 亿元及人民币 27.2 亿元，占桑德国际在其 2012 年及 2013 年年报所汇报的净资产的 82% 及 89%。

有关命令是根据《证券及期货条例》第 214 条而颁布的首项同类命令。

法庭亦发出一项针对文的取消资格令，为期 12 年，并命令他支付证监会按弥偿基准计算的讼费。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR78>

Hong Kong Securities and Futures Commission's Takeovers Bulletin Highlights Two Decisions on Special Waiver from the General Offer Obligation Triggered by Foreclosure Sale and the Determination of the Offer Price in a Mandatory General Offer

In the Takeovers Bulletin (Issue No. 62), the Securities and Futures Commission of Hong Kong (SFC) highlighted two decisions on granting a special waiver from the general offer obligation and the offer price in a mandatory general offer respectively.

Special waiver from the general offer obligation

The Takeovers Panel (Panel) has ruled that a special waiver from the general offer obligation may be granted to Broad Gongga Investment Pte. Ltd. (Broad Gongga) as a result of a possible foreclosure sale by third-party creditors of Jinke Property Group Company Limited (Jinke Property) of its interest in Jinke Smart Services Group Co. Ltd. (Jinke Smart Services) in a seller-forced disposal.

Both Broad Gongga and Jinke Property are shareholders of Jinke Smart Services and are acting in concert. In the event of a seller-forced disposal, Broad Gongga would become the single largest shareholder and the leader of the concert group. Pursuant to Note 1 to Rule 26.1 of the Code on Takeovers and Mergers (Takeovers Code), the seller-forced disposal would trigger a mandatory general offer on the part of Broad Gongga for Jinke Smart Services.

The Panel considered the special circumstances surrounding the seller-forced disposal, including that Broad Gongga would have no control over the process, and decided that a special waiver from the general offer obligation would, in principle, be appropriate. However, as the seller-forced disposal had yet to occur, the Panel did not consider it appropriate to grant a waiver in a hypothetical situation. Broad Gongga should apply for the special waiver as and when a seller-forced disposal occurs or is imminent, and the Executive should consider the application in accordance with the principles decided by the Panel in the decision.

Offer price in a mandatory general offer

The Panel has ruled that in the mandatory general offer for Suncity Group Holdings Limited (Suncity) by Major Success Group Limited (Major Success) the appropriate offer price should be HK\$0.0690 per share. This figure represents the total consideration paid by Major Success to Champion Trade Group Limited (Champion Trade) for the acquisition of Suncity's shares and other security assets, divided by the total number of Suncity shares acquired by Major Success.

On May 16, 2022, Major Success' advisers submitted a draft firm intention announcement to the Executive for vetting. The Executive expressed concerns about how the offer price was determined and referred the matter to the Panel.

Champion Trade took assignment of an overdue loan extended by third parties to Star Soul Investments Limited with full rights and benefits of the securities for the loan which included a controlling stake in Suncity and other Suncity securities. Immediately upon the assignment, Champion Trade sold the Suncity shares and other secured assets to Major Success triggering a mandatory general offer. Star Soul is owned by Chau Cheok Wa, the ex-chairman and ex-executive director of Suncity. Major Success and Champion Trade are owned by Lo Kai Bong, an executive director of Suncity.

The Panel considered that the transaction involved a discharge of Chau's liability under the loan, which was a favorable condition to him as a shareholder, and this constituted a special deal under the Takeovers Code. It did not matter whether Chau made an overall gain or loss in the arrangement, or whether or not he was

involved in the negotiation of the transaction. Given that the benefit received by Chau is quantifiable, it should be extended to all other Suncity shareholders and reflected in the offer price.

Rule 25 of the Takeovers Code aims to prevent a shareholder from receiving more than others in the context of an offer and to ensure that shareholders are equally treated under General Principle 1. However, not all special deals are prohibited and the Executive may grant consent to a special deal subject to the procedural safeguard (for example, majority shareholders' approval) provided under the Notes to Rule 25 and Practice Note 17. By completing the transaction, Major Success had already breached Rule 25, and the procedural safeguard under the Code was no longer available as it could not be used to ratify a special deal that had been completed.

香港证券及期货事务监察委员会收购通讯：有关就由强制出售引发的全面要约责任的特别豁免及强制全面要约的要约价厘定的两宗决定

在收购通讯（第 62 期）中，香港证券及期货事务监察委员会（证监会）提起两项分别就全面要约责任授予特别豁免和强制全面要约的要约价的决定。

全面要约责任的特别豁免

收购委员会裁定（委员会），一旦金科地产集团股份有限公司（金科地产）的第三方债权人在卖方强制售股交易中，就其持有的金科智慧服务集团股份有限公司（金科智慧服务）权益进行止赎出售，届时便可向 Broad Gongga Investment Pte. Ltd. (Broad Gongga) 就全面要约责任授予特别豁免。

Broad Gongga 及金科地产均为金科智慧服务的股东，并且一致行动。一旦发生卖方强制售股交易，Broad Gongga 便会成为单一最大股东及一致行动集团的领导人。依据《公司收购及合并守则》（《收购守则》）规则 26.1 注释 1，卖方强制售股交易会触发 Broad Gongga 就金科智慧服务作出强制全面要约的责任。

委员会考虑到卖方强制售股交易涉及的特殊情况（包括 Broad Gongga 无法控制有关过程），决定就有关全面要约责任授予特别豁免原则上属恰当做法。然而，由于卖方强制售股交易尚未发生，委员会认为不宜就假设的情况授予豁免。Broad Gongga 应在卖方强制售股交易发生或即将发生时就特别豁免提出申请，届时执行人员便应根据委员会在有关决定中议定的原则考虑有关申请。

强制全面要约的要约价

委员会裁定，Major Success Group Limited (Major Success) 就太阳城集团控股有限公司（太阳城）作出强制全面要约的适当要约价应为每股股份 0.0690 港元。该价格相当于 Major Success 向 Champion Trade Group Limited (Champion Trade) 收购太阳城的股份和其他抵押资产所支付的总代价，除以 Major Success 收购的太阳城股份总数所得的数字。

Major Success 的顾问在 2022 年 5 月 16 日向执行人员提交了一份有关要约确实意图的公布草拟本供其审阅。执行人员对如何厘定要约价表示关注，并将个案转介委员会处理。

Champion Trade 获转让由第三方向 Star Soul Investments Limited 提供的逾期贷款，连同该贷款的抵押的全部权利和利益，当中包括太阳城的控股权和太阳城的其他抵押。紧随在转让之后，Champion Trade 将太阳城股份和其他抵押资产出售予 Major Success，因而触发了强制全面要约责任。Star Soul 由太阳城前主席兼前执行董事周焯华拥有。Major Success 和 Champion Trade 由太阳城执行董事卢衍溢拥有。

委员会认为，该交易涉及清偿周在该贷款下的债务，对作为股东的周而言属优惠条件，以致该交易构成了《收购守则》下的特别交易。周在有关安排中是整体上获利还是亏损，或他有否参与该交易的磋商，均无关重要。鉴于周所获得的利益可予量化，故此有关利益应扩展至太阳城所有其他股东，并在要约价中反映出来。

《收购守则》规则 25 旨在防止任何股东在某项要约中的得益多于其他股东，以及确保股东在一般原则 1 下获得公平待遇。然而，并非所有特别交易均一律被禁止，而执行人员可在要约人符合规则 25 注释及《应用指引 17》所订明的程序保障规定（例如取得大多数股东的批准）的情况下，就特别交易给予同意。Major Success 在完成了该交易后，即告违反了规则 25，而由于《收购守则》下的程序保障规定不可用于追认已完成的特别交易，故要约人不可再援引该等程序保障规定。

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<https://www.sfc.hk/-/media/EN/files/CF/pdf/Takeovers-Bulletin/20220930SFC-Takeover-Bulletine.pdf?rev=87eeb8a701c547939129409b1315e2d4&hash=B98C7247B26950A80E862420BEEC7A9F>

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