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Financial Services Regulatory Update 金融服务监管资讯

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Hong Kong's Role in Environmental, Social, and Governance Digitalization and Inclusion under the Belt and Road Initiative

Hong Kong is a global financial hub that has been at the forefront of many financial innovations. With the proposed mandatory environmental, social, and governance (ESG) reporting (including Scope 3 disclosure) for Hong Kong's listed companies, the financial ecosystem is set to fundamentally change in the future. The market is at a juncture where ESG-driven changes are to quantum leap like how international accounting technologies have drastically changed the financial world. Hong Kong is well-positioned to lead the way in ESG digitalization and inclusion under the Belt and Road Initiative.

ESG Reporting in Hong Kong

Hong Kong has been taking steps to promote ESG reporting in the region. The Stock Exchange of Hong Kong Limited (Exchange) has introduced new requirements for all listed companies and new stock issuers. Starting from January 2022, ESG funds and climate-focused funds products will also be required to disclose how they incorporate ESG factors. The mandatory disclosure rules are expected to come into effect and apply to ESG reports in respect of financial years commencing on or after January 1, 2025.

Hong Kong's Unique Capability

Hong Kong has a unique capability to leverage its close ties with the international financial ecosystem and its strategic participation under China's trend-setting policies and functionalities. Hong Kong is able to and should help establish the world's digitalized ESG data collection, analysis, and reporting system, starting with contributing towards the digitalized ESG infrastructure under the Belt and Road Initiative. Hong Kong should now team up with Shenzhen in fostering the establishment of an effective and efficient ESG data collection, analysis and reporting system that can, initially, serve the needs of the Guangdong-Hong Kong-Macau Greater Bay Area.

Hong Kong's Policy Address 2023

The Chief Executive of the Hong Kong Special Administrative Region delivered the 2023 Policy Address, which focused on technological innovation and development. The government's strategic vision is to harness the power of technology to enhance Hong Kong's long-term competitiveness and improve people's livelihood. The policy address proposed a number of measures on digital economy and cybersecurity for critical infrastructure, including energy, communications, transportation, and financial institutions. The government is pressing ahead with the digitalization of government services, developing the 'Digital Bay Area' through collaborating with the Guangdong Provincial Government, and launching the Digital Transformation Support Pilot Programme.

Singapore Monetary Authority's Greenprint Project

Singapore's Monetary Authority (MAS) has launched Greenprint Project (Gprnt), an integrated digital platform that harnesses technology to simplify how the financial sector and real economy collect, access, and act upon ESG data to support their sustainability initiatives. It functions as an inclusive and interoperable data layer, enabling businesses to automatically convert their economic data into sustainability-related information. Gprnt pursues integrations with various digital systems used by businesses, allowing for the automatic computation of basic sustainability metrics and the translation of source data into ESG-related outputs. Additionally, the platform provides businesses with the discretion to decide whom to share their ESG information with, including financial institutions, industry partners, government or regulatory bodies, and international platforms.

The Gprnt platform will be managed by a newly-created entity, Greenprint Technologies Pte Ltd. Strategic partners HSBC, KPMG in Singapore, MAS, Microsoft, and MUFG Bank will bring capabilities and expertise to support commercialization of the platform and onboarding of further partners in due course. The Gprnt platform will expand its cross-border capabilities to better serve the more sophisticated data needs of larger multi-national entities and other regional economies.

Hong Kong Voluntary Code of Conduct for ESG Ratings and Data Products Providers

Hong Kong's Securities and Futures Commission has announced that it will support and sponsor the development of the Voluntary Code of Conduct (VCoC), a code of conduct for voluntary adoption by ESG ratings and data products providers providing products and services in Hong Kong, via an industry-led working group, namely the Hong Kong ESG Ratings and Data Products Providers VCoC Working Group (VCWG). The VCoC will provide guidance to ESG ratings and data products providers in Hong Kong on the disclosure of their methodologies, data sources, and assumptions, as well as the management of conflicts of interest. The VCoC will also promote transparency and comparability of ESG ratings and data products, and enhance the quality and reliability of ESG information.

Remarks

Hong Kong is well-positioned to lead the way in ESG digitalization and inclusion under the Belt and Road Initiative. The proposed mandatory ESG reporting, including Scope 3 emissions disclosure covering a corporation's upstream and downstream value chain (e.g. suppliers and distributors), for Hong Kong's listed companies will fundamentally change the financial ecosystem, similar to how international accounting technologies have drastically changed the financial world. Hong Kong should seize the opportunity to collaborate with Shenzhen to establish an ESG data collection, analysis and reporting system to, initially, serve the Guangdong-Hong Kong-Macau Greater Bay Area. Singapore MAS's Gprnt is an example of how technology can simplify ESG data collection and management, while the VCoC will guide ESG ratings and data products providers on disclosure, management of conflicts of interest, and enhancement of ESG information quality and reliability. Hong Kong's policy address has proposed measures on digital economy and cybersecurity for critical infrastructure, demonstrating its commitment to technological innovation and development. Hong Kong should proactively promote and implement ESG digitalization.

香港在一带一路倡议下的环境、社会及管治数位化和包容性中的角色

香港是一个全球金融中心，一直处于许多金融创新的前沿。随着香港上市公司提出了强制性的环境、社会及管治 (Environmental, Social and Governance, 简称 ESG) 报告 (包括范围 3 的披露)，未来金融生态系统将发生根本性变化。市场正处于一个 ESG 驱动的变革的十字路口，就像国际会计技术如何彻底改变金融世界一样。有

望在一带一路倡议下的 ESG 数字化和包容性方面引领潮流。

香港的 ESG 报告

香港一直在采取措施推动该地区的 ESG 报告。香港联合交易所有限公司 (联交所) 已经为所有上市公司和新股发行人引入了新的要求。从 2022 年 1 月开始，ESG 基金和以气候为重点的基金产品也将被要求披露它们如何整合 ESG 因素。强制性披露规则将于 2025 年 1 月 1 日或之后的财政年度的 ESG 报告生效并适用。联交所还提议从 2025 年 1 月 1 日起，要求上市公司的 ESG 报告强制披露与气候相关的风险。

香港的独有潜力

香港有独特的潜力利用其与国际金融生态系统的密切联系以及其在中国引领潮流的政策和功能性的战略参与。香港有能力并应该帮助建立世界的数字化 ESG 数据收集、分析和报告系统，首先是为一带一路倡议下的数字化 ESG 基础设施做出贡献。香港现在应与深圳合作，推动建立有效、高效的 ESG 数据收集、分析和报告体系，初步支援服务粤港澳大湾区的需要。

香港施政报告 2023

香港特别行政区行政长官发表 2023 年施政报告，重点关注科技创新和发展。政府的策略愿景是利用科技的力量提升香港的长远竞争力，改善民生。施政报告提出了多项关于数字经济和关键基础设施网络安全的措施，包括能源、通信、交通和金融机构。政府正在推进政府服务数字化，与广东省政府合作建设“数字湾区”，并启动数字化转型支持试点计划。

新加坡金融管理局的 Greenprint 项目

新加坡金融管理局 (MAS) 推出了 Greenprint 项目 (Gprnt)，这是一个集成数字平台，利用技术简化金融部门和实体经济收集、获取和利用 ESG 数据以支持其可持续发展倡议。它作为一个包容和可互操作的数据层，使企业能够自动将其经济数据转换为与可持续发展相关的信息。Gprnt 追求与企业使用的各种数字系统的集成，允许自动计算基本的可持续性指标，并将源数据转化为与 ESG 相关的输出。此外，该平台为企业自行提供自行决定与谁分享其 ESG 信息的自由，包括金融机构、行业合作伙伴、政府或监管机构以及国际平台。

Gprnt 平台将由新成立的实体 Greenprint Technologies Pte Ltd 管理。战略合作伙伴汇丰银行、新加坡毕马威、MAS、微软和三菱日联银行将带来能力和专业知识，以支持该平台的商业化，并在适当时期吸纳更多合作伙伴。

Gprnt 平台将扩展其跨境能力，以更好地满足更大型跨国实体和其他地区经济的更复杂数据需求。

香港 ESG 评级和数据产品提供者的自愿操守准则

香港证券及期货事务监察委员会宣布，将支持和赞助制定自愿行为准则（VCoC），这是一项供在香港提供产品和服务的 ESG 评级和数据产品提供者自愿采用的行为准则，将通过行业主导的工作组，即香港 ESG 评级和数据产品提供者 VCoC 工作组（VCWG）落实。VCoC 将为香港 ESG 评级和数据产品提供者提供关于其方法论、数据来源和假设披露以及利益冲突管理的指导。VCoC 还将促进 ESG 评级和数据产品的透明度和可比性，并增强 ESG 信息的质量和可靠性。

结语

香港有望在一带一路倡议下的 ESG 数字化和包容性方面引领潮流。提出的强制性 ESG 报告，包括拟议的强制性包括涵盖公司上游和下游价值链（例如供应商和分销商）的范围 3 排放披露，将从根本上改变金融生态系统，类似于国际会计技术如何大大改变了金融世界。香港应该与深圳合作建立 ESG 数据收集系统，把握机遇，创建一个首先为粤港澳大湾区服务的系统。新加坡 MAS 的 Gprnt 是技术如何简化 ESG 数据收集和管理的一个例子，而 ESG 评级和数据产品提供者的自愿操守准则将指导 ESG 评级和数据产品提供者披露、利益冲突管理以及增强 ESG 信息的质量和可靠性。香港的政策演讲提出了关于数字经济和关键基础设施网络安全的措施，展示了其对技术创新和发展的承诺。香港应积极推动和实施 ESG 数字化。

Source 来源:

<https://www.mas.gov.sg/news/media-releases/2023/mas-launches-digital-platform-for-seamless-esg-data-collection-and-access>

<https://www.mas.gov.sg/news/speeches/2023/shaping-the-financial-ecosystem-of-the-future>

<https://www.mas.gov.sg/news/media-releases/2023/ifc-mas-and-wef-partner-to-advance-digital-inclusion-in-emerging-and-developing-markets>

https://www.hkex.com.hk/News/Regulatory-Announcements/2023/230414news?sc_lang=en

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR126>

https://www.policyaddress.gov.hk/2023/public/pdf/policy/policy-full_en.pdf

<https://www.mas.gov.sg/development/fintech/green-fintech>

The Stock Exchange of Hong Kong Limited's Update on Consultation on Enhancement of Climate Disclosures under Environmental, Social, and Governance Framework

On November 3, 2023, The Stock Exchange of Hong Kong Limited (Exchange) provided an update on consultation on enhancement of climate disclosures under Environmental, Social, and Governance framework in relation to a consultation paper (Consultation Paper) published by the Exchange in April 2023 with a proposed implementation date of January 1, 2024.

The proposals were informed by the IFRS S2 Climate-related Disclosures (ISSB Climate Standard) exposure draft published by the International Sustainability Standards Board (ISSB) and their subsequent deliberations. The Exchange stated that it would take into account the final ISSB Climate Standard when finalising the Listing Rule amendments.

In June 2023, the ISSB published the final IFRS Sustainability Disclosure Standards, comprising the IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and the ISSB Climate Standard. The ISSB has further indicated that an adoption guide (ISSB Adoption Guide) will be published to support jurisdictional regulators to help them in their implementation considerations and to advise on scalability and phasing-in measures for the application of the ISSB standards. The ISSB Adoption Guide is expected to be available before the end of 2023.

The Exchange intends to take into account the recommended approaches on the scaling and phasing-in of requirements available under the ISSB Adoption Guide when finalising the Listing Rule amendments. The implementation date of the Listing Rule amendments will therefore be postponed to January 1, 2025, to allow issuers more time to familiarise themselves with the new climate-related disclosure requirements.

As seen in the "Policy Measures" of the Hong Kong Chief Executive's 2023 Policy Address, the Hong Kong Government will work with relevant financial regulators and stakeholders to develop a roadmap on the appropriate adoption of the ISSB standards for Hong Kong's financial services to align with international standards. As a member of the Hong Kong Green and Sustainable Finance Cross-Agency Steering Group (CASG), Hong Kong Exchanges and Clearing Limited will continue to work closely with the Government and other members of the CASG on the development of the roadmap. Established in May 2020, the CASG is committed to co-ordinate the management of climate and environmental risks to the financial sector, accelerate the growth of green and sustainable finance in Hong Kong and support the Hong Kong Government's climate strategies. It is co-chaired by the Hong Kong Monetary Authority and the Hong Kong Securities and Futures Commission; members include the Environment and Ecology Bureau, Financial Services and the Treasury Bureau, Hong Kong Exchanges and Clearing

Limited, Insurance Authority and the Mandatory Provident Fund Schemes Authority.

香港联合交易所有限公司有关优化环境、社会及管治 ESG 框架下的气候信息披露市场咨询的最新进展

2023年11月3日，香港联合交易所有限公司(联交所)交待有关优化环境、社会及管治 (Environmental, Social and Governance, 简称 ESG) 框架下的气候信息披露市场咨询的最新进展。联交所于2023年4月刊发咨询文件(《咨询文件》)，就建议优化 ESG 框架下的气候信息披露征询市场意见，相关建议原订于2024年1月1日实施。

各项建议已考虑到国际可持续发展准则理事会 (ISSB) 发布的国际财务报告可持续披露准则第 2 号——气候相关披露 (ISSB 气候准则) 的征求意见稿及其后续审议而制订。当时联交所表示，在落实《上市规则》修订时将会考虑最终的 ISSB 气候准则。

ISSB 于 2023 年 6 月发布最终的可持续发展披露准则，包括国际财务报告可持续披露准则第 1 号——可持续相关财务信息披露一般要求及 ISSB 气候准则。ISSB 进一步表示将会发布实施指引 (实施指引) 协助各司法权区监管机构有关实施 ISSB 准则的考量，并就可调节扩展及分阶段实施 ISSB 准则提供建议。实施指引预期将于 2023 年底前发布。

联交所在落实《上市规则》修订时，将考虑实施指引下的可调节扩展及分阶段实施方针。因此，《上市规则》相关修订的生效日期将押后至 2025 年 1 月 1 日，以给予发行人更多时间熟悉新的气候信息披露规定。

香港特区政府将与相关金融监管机构及持份者合作，为香港金融服务适当采纳 ISSB 准则、衔接国际标准制订路线图。作为绿色和可持续金融跨机构督导小组 (督导小组) 的成员，香港交易及结算有限公司将就制订上述路线图事宜继续与政府及其他督导小组成员紧密合作。督导小组在 2020 年 5 月成立，由香港金融管理局和证券及期货事务监察委员会共同领导，成员包括环境及生态局、财经事务及库务局、香港交易及结算有限公司、保险业监管局及强制性公积金计划管理局。督导小组旨在协调金融业针对气候和环境风险的措施应对，加快香港绿色和可持续金融的发展，并支持政府的气候策略。

Source 来源:

https://www.hkex.com.hk/News/Regulatory-Announcements/2023/231103news?sc_lang=en

Hong Kong Securities and Futures Commission Supports and Sponsors the Development of an Industry-Led Voluntary Code of

Conduct for Environmental, Social, and Governance Ratings and Data Products Providers

On October 31, 2023, the Hong Kong Securities and Futures Commission (SFC) announced that it supports and sponsors the development of a code of conduct for voluntary adoption by ESG ratings and data products providers providing products and services in Hong Kong. The Voluntary Code of Conduct (VCoC) will be developed via an industry-led working group, namely the Hong Kong ESG Ratings and Data Products Providers VCoC Working Group (VCWG).

The SFC also welcomed the International Capital Market Association (ICMA) to act as the Secretariat of the VCWG. The Secretariat will convene and lead the VCWG, which comprises representatives from Hong Kong, Mainland China and other international ESG ratings and data products providers as well as key users from the Hong Kong financial industry.

The proposed VCoC will align with international best practices as recommended by the International Organization of Securities Commissions (IOSCO) and relevant expectations introduced in other major jurisdictions. The SFC, the Hong Kong Monetary Authority and the Insurance Authority will sit as observers to the VCWG. Further details are available in the terms of reference and participation list of the VCWG published by the ICMA.

The initiative is the culmination of the SFC's fact-finding exercise and industry outreach conducted since mid-2022 to understand matters related to the ESG ratings and data products providers, which are not regulated by the SFC. The exercise found that surveyed asset managers highlighted common concerns about data quality, transparency, and conflicts of interest management of the providers, and that the IOSCO recommendations should be encouraged for adoption by ESG ratings and data product providers. The key observations from the exercise and proposed way forward for these providers are summarised in a report published by the SFC on October 31, 2023.

The proposed VCoC, which will be open for ESG ratings and data products providers to sign up voluntarily, is expected to provide a streamlined and consistent basis for asset managers to conduct due diligence or on-going assessment on ESG service providers.

The SFC considered that the VCoC would help strengthen the transparency, quality and reliability of ESG information used by licensed corporations in their investment decisions, and was an important initiative to mitigate the risk of greenwashing in investment products.

香港证券及期货事务监察委员会支持和提倡为环境、社会及管治 ESG 评级和数据产品供应商制订一套由业界领导的自愿操守准则

2023 年 10 月 31 日，香港证券及期货事务监察委员会（证监会）宣布支持和提倡为在香港提供产品及服务的环境、社会及管治（Environmental, Social and Governance, 简称 ESG）评级和数据产品供应商，制订一套操守准则供其自愿遵守。该自愿操守准则将经由一个业界领导的工作小组制订，即香港 ESG 评级和数据产品供应商自愿操守准则工作小组（该工作小组）。

证监会亦欢迎国际资本市场协会担任该工作小组的秘书。国际资本市场协会作为一个资本市场的自我监管组织和行业协会，一直以来参与多项绿色及可持续金融倡议，例如《绿色债券原则》，同时亦是英国 ESG 数据和评级工作小组（ESG Data and Ratings Working Group）的其中一个秘书，负责为 ESG 评级和数据产品供应商制订一套自愿操守准则。秘书将召集和领导该工作小组，其成员包括来自本地、内地及其他国际 ESG 评级和数据产品供应商的代表，以及本地金融业的主要产品使用者。

建议的自愿操守准则将会与国际证券事务监察委员会组织（国际证监会组织）建议的国际最佳作业手法和其他主要司法管辖区所引入的相关期望保持一致。证监会、香港金融管理局及保险业监管局将以观察员身分参与该工作小组。

此倡议是证监会由 2022 年中起，为了解与不受证监会监管的 ESG 评级和数据产品供应商有关的事宜而进行的实况调查及业界外展活动的成果。该调查发现，接受调查的资产管理公司普遍对供应商的数据质素、透明度及利益冲突管理表示关注，以及应鼓励 ESG 评级和数据产品供应商采纳国际证监会组织的建议。证监会发表的报告载有从调查观察到的主要事项摘要及就 ESG 评级和数据产品供应商而提出的建议未来路向。

ESG 评级和数据产品供应商将来可自愿签署遵守建议的自愿操守准则。预期自愿操守准则将提供一个精简而一致的基准，以便资产管理公司对 ESG 评级和数据产品供应商进行尽职审查或持续评估。

证监会表示自愿操守准则将有助加强用于持牌机构投资决策的 ESG 资讯的透明度、质素和可信度。这是减轻投资产品的漂绿行为风险的一项重要倡议。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR126>
<https://www.iosco.org/library/pubdocs/pdf/IOSCOPD690.pdf>

Hong Kong Competition Commission Takes Estate Agencies' Price-Fixing Cartel Case to Hong Kong Competition Tribunal

On November 14, 2023, the Competition Commission of Hong Kong (Competition Commission) commenced legal proceedings in the Hong Kong Competition Tribunal (Tribunal) against Midland Property Agency Limited, Hong Kong Property Services (Agency) Limited, Midland Holdings Limited (collectively, Midland) and five individuals (who are senior officers within Midland) of participating in price-fixing conduct.

It is alleged that during the period from December 2022 to March 2023, Midland (a real estate agency) reached an agreement with its competitors, Centaline Property Agency Limited and Ricacorp Properties Limited (collectively, Centaline), to fix the minimum net commission rate for sales of first-hand residential properties in Hong Kong at 2%, which effectively fixes or restricts the maximum level of rebate that frontline agents can offer to property buyers. As rebates affect the ultimate property price that a purchaser will ultimately pay, the Competition Commission stated that it has reasonable cause to believe that such arrangements constitute serious anti-competitive conduct in the form of price fixing, in contravention of the "First Conduct Rule" under the Competition Ordinance (Cap. 619).

It is set out in section 6(1) of the Competition Ordinance that "An undertaking must not (a) make or give effect to an agreement; (b) engage in a concerted practice; or (c) as a member of an association of undertakings, make or give effect to a decision of the association, if the object or effect of the agreement, concerted practice or decision is to prevent, restrict or distort competition in Hong Kong." The "First Conduct Rule" seeks to prohibit arrangements between market participants (whether they are competitors or not) which prevent, restrict or distort competition in Hong Kong. For example, it prevents competitors colluding on key parameters of competition such as price (i.e. price fixing), output or how they bid to harm competition in Hong Kong.

In early January 2023, the Competition Commission noted media reports stating that four real estate agencies issued internal notices instructing agents to collect a minimum net commission rate of 2% for first-hand residential property transactions starting from January 1, 2023, which had eventually led to a formal investigation by the Competition Commission.

During the investigation, Centaline submitted an application for lenient treatment under the Competition Commission's *Leniency Policy for Undertakings Engaged in Cartel Conduct* (Leniency Policy) to fully cooperate with the Competition Commission in exchange for the Competition Commission not to take

any legal proceedings against Centaline and its officers or employees. A leniency agreement was subsequently entered into between Centaline and the Competition Commission.

The Competition Commission sought remedies before the Tribunal, including:

- A declaration that Midland has contravened the “First Conduct Rule”, and each of five individuals has been involved in the contravention;
- An order for pecuniary penalties to be imposed on them;
- Director disqualification orders against the five individuals;
- Orders for the payment of the Competition Commission's costs of investigation and proceedings; and
- Orders requiring Midland to adopt an effective compliance programme as the Tribunal considers appropriate. .

This case underscores the Competition Commission's determination to crack down on anti-competitive behaviours and price manipulation by industry players. In particular, there will be no mercy for cartels in sectors such as the property market that affect people's livelihood. such as the property market that have an impact on livelihoods. It also highlights the significance and benefits of the Leniency Policy in enhancing enforcement and encouraging report and cessation of anti-competitive conducts by cartel members. The Competition Commission has called on businesses in all sectors to steer clear of anti-competitive practices, while those already involved in cartel conduct should approach the Competition Commission for leniency or cooperation.

香港竞争事务委员会就地产代理商合谋定价案件入禀香港竞争事务审裁处

2023年11月14日，香港竞争事务委员会(竞委会)向香港竞争事务审裁处(审裁处)展开法律程序，指控美联物业代理有限公司、香港置业(地产代理)有限公司、美联集团有限公司(统称“美联”)及五名人士(均为美联高级人员)参与合谋定价行为。

案情指出，2022年12月至2023年3月期间，美联与其竞争对手中原地产代理有限公司和利嘉阁地产有限公司(统称“中原”)达成协议，设定销售香港一手住宅物业时必须收取至少2%的实收佣金。此举相当于固定或限制了前线代理可以提供给物业买家的最高佣金回赠水平。由于回佣影响买家最终支付金额，因此竞委会有理由相信，这种安排构成严重反竞争行为的合谋定价，违反《竞争条例》下的“第一行为守则”。

在2023年1月初，竞委会注意到有媒体报道称，四间地产代理商发出内部通告，指示代理从2023年1月1日起，必须在一手住宅物业交易中收取至少2%的实收佣金。此后，竞委会展开调查。在调查过程中，中原根据《宽待政策》申请宽待，并全面与竞委会合作，因此竞委会未对中原及其高级人员或雇员采取法律行动。

竞委会审裁处申请了多项命令，包括宣布美联及其涉案人员违反第一行为守则，对他们施加罚款，取消涉案人员的董事资格，支付调查费用及讼费，并要求美联实施有效合规计划。

此次事件强调了竞委会对打击反竞争行为的决心，尤其是对于涉及地产市场等行业的影响民生的合谋行为。同时也凸显了《宽待政策》在提升执法能力和阻遏违法行为方面的有效性。竞委会呼吁所有企业不要从事反竞争行为，而已牵涉入合谋行为的人士，应尽快联络竞委会申请宽待或提供合作。

Source 来源:

https://www.compcomm.hk/en/media/press/files/Estate_Agencies_PR_EN.pdf

Concealing Any Conflict of Interest Related to One's Official Duties in Order to Benefit Oneself or His Associates May Constitute a Violation of Hong Kong's Prevention of Bribery Ordinance (Cap. 201) or Other Criminal Offences

In November 2023, the Hong Kong Independent Commission Against Corruption (ICAC) prosecuted two cases involving conflict of interest of civil servants in the execution of their official duties. The first case involved a former manager of the Hong Kong Design Centre (HKDC) concealing a conflict of interest in awarding contracts to vendors operated by her husband to provide marketing services in five projects sponsored by the Hong Kong Government. The second case involved two former staff members of New World Property Management Company Limited (NWP) allegedly concealing a conflict of interest in the award of HK\$2.1 million worth of engineering work orders to a contractor set up by the duo.

Ex-manager of HKDC charged by ICAC guilty of concealing husband's conflict of interest in service contracts

A former manager of HKDC was found guilty of fraud and other offences by the Eastern Magistrates' Courts on November 9, 2023 for defrauding HKDC into engaging two service vendors operated by her husband to conduct market promotion for five government-funded projects, with a total contract value of approximately HK\$400,000 by concealing her conflict of interest. The defendant was found guilty of a total of five charges –

four of fraud, contrary to section 16A(1) of the Theft Ordinance (Cap. 210); and one of attempted fraud, contrary to section 16A(1) of the Theft Ordinance and section 159G of the Crimes Ordinance (Cap. 200).

The Hong Kong Design Centre is a publicly funded agency responsible for promoting Hong Kong's creative and design thinking. The centre requires all staff, if having financial interests in any company or organisation that has business dealings with the centre, to make a declaration.

During 2019-2020, the defendant was responsible for the marketing and promotion of two programmes funded by public money. Four of the projects under the two programmes were awarded to two vendors held by and/or operated by her husband. In two annual conflict of interest declaration forms and five procurement application forms submitted to HKDC, the defendant concealed her husband's direct or indirect financial interests in the two vendors.

The ICAC discovered that the two vendors were either the sole or most price competitive bidders for the relevant contracts in the projects. It was concluded that HKDC would not have engaged the two vendors to provide services had it known that the defendant's husband had direct or indirect financial interests in the two vendors.

Ex-property management duo charged by ICAC for allegedly concealing conflict of interest in work orders worth HK\$2.1m

The second case involved charges made by the ICAC against two former engineering staff of NWP who were uncle and nephew for allegedly deceiving the company into awarding various work orders worth totalling \$2.1 million to a contractor set up by them by concealing their conflict of interest and using false quotations. The duo jointly faced two counts of conspiracy to defraud, contrary to the Common Law.

All employees of NWP had to abide by the Conflict of Interest Policy of New World Development Company Limited and were required to declare conflict of interest in procurement exercises. When outsourcing maintenance works, quotations from NWP's listed contractors were invited and only one non-listed contractor was allowed to be invited. FNC (Creation) Limited (FNC) was not NWP's listed contractor.

Investigations found that the two defendants allegedly conspired together to defraud NWP by concealing their involvement in the establishment and management of FNC and the interest of one of the defendants and his elder brother in FNC, and with intent to defraud, induced NWP to award 72 work orders to FNC.

Key Takeaway

The ICAC has reminded staff of business organizations to avoid conflict of interest situations and make timely relevant declarations to their employers. If employees conceal any conflict of interest relating to their official duties in order to benefit themselves or relatives, it may constitute a contravention of Hong Kong's Prevention of Bribery Ordinance or other criminal offences. The ICAC advised commercial organizations to establish clear guidelines and declaration systems on conflict of interest with which employees should strictly comply.

隐瞒与公务职责相关的任何利益冲突以谋取自己或亲友的利益可能构成违反香港《防止贿赂条例》或其他刑事罪行

于 2023 年 11 月，香港廉政公署(廉署)侦破两宗公职人员执行公职时涉及利益冲突个案。第一宗涉及香港设计中心前经理隐瞒利益冲突判授合约予丈夫营运供应商，第二宗则涉及新世界物业管理两名物管公司前职员涉隐瞒利益冲突授予 210 万港元工程订单。

香港设计中心前经理隐瞒利益冲突判授合约予丈夫营运供应商遭廉署起诉罪成候判

廉政公署早前落案起诉香港设计中心一名前经理隐瞒利益冲突，诈骗该中心委聘其丈夫营运的两间服务供应商，为五个政府资助项目进行市场推广，合约总值约 40 万港元。被告于 2023 年 11 月 9 日在东区裁判法院被裁定欺诈等罪名成立。

据悉，案中女被告于 2019 至 2020 年期间，负责为该中心两项公帑计划进行推广工作。但在甄选供应商程序中，被指未有公开申报两家供应商 PIH 及三头六臂实为其丈夫营运控股的公司。两家公司随后分别夺得四个推广合约，合约总值约 40 万港元。香港设计中心是公帑资助机构，负责推广香港的创意及设计思维。该中心要求所有员工，如在与该中心有业务往来的公司或机构拥有财务利益，则必须作出申报。

廉署接获投诉后对案件进行详细调查，并发现两家供应商为相关合约的唯一或最佳报价者。调查后发现，若利益关系获充分披露，中心或不会委聘该两家供应商提供服务。

廉署起诉两名物管公司前职员涉隐瞒利益冲突授予 210 万港元工程订单

第二宗个案牵涉新世界物业管理两名前工程人员，分别为叔侄关系。调查显示，叔侄二人在为公司安排外判维修合约时，隐瞒侄儿之父亲掌控一家承建商及公司利益关系，并使用虚假报价文件，使该承建商轻易获得超过 210 万港元

工程开标。二人企图藉此在职权下为亲友谋取不当利益。二人于 2023 年 11 月 7 日被廉署落案起诉。

据调查指出,2017 年至 2020 年期间,新世界物管助理工程经理朱剑辉及其侄儿助理工程主任朱鉴贤,私下成立承包商溥森有限公司(溥森)。但在工作上二人均未有向公司申报其中涉及的关系。事件发生时,朱剑辉负责监管新世界旗下住宅及商业物业的维修工程,而朱鉴贤亦受其管理。新世界物管所有雇员均须遵守新世界发展的「利益冲突政策」,并须在采购中申报利益冲突。新世界物管如需外判维修工程,须向公司表列承办商邀请报价,并最多只可邀请一间非表列承办商报价。

调查发现,朱二人涉嫌串谋使用非表列承办商溥森接手 72 份工程,又以四间表列承办商假冒文件取得 56 份工程,欺骗新世界物管授予合约。廉署侦讯后,落案起诉朱剑辉及朱鉴贤两项串谋诈骗罪。两人于 2023 年 11 月 9 日应讯答辩。

廉署提醒私营机构雇员应避免利益冲突,及适时向雇主作出相关申报。雇员在处理职务上隐瞒利益冲突使自己或亲友从中获利,有可能触犯《防止贿赂条例》或其他刑事罪行。廉署建议商业机构为雇员制定清晰的处理利益冲突指引及申报机制,雇员亦应遵从相关指引。

Source 来源:

https://www.icac.org.hk/en/press/index_id_1747.html
https://www.icac.org.hk/en/press/index_id_1749.html

The Stock Exchange of Hong Kong Limited Publishes Consultation Paper on Proposed Amendments to Listing Rules Relating to Treasury Shares and Guidance Letter on Issuers' Automatic Share Buy-back Programs

On October 27, 2023, The Stock Exchange of Hong Kong Limited (Exchange) published a consultation paper seeking market feedback on proposed rule amendments to introduce a new treasury share regime (Consultation Paper). The consultation period will conclude on December 27, 2023.

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

- Requirement to cancel repurchased shares removed, so that issuers may hold repurchased shares in treasury subject to the laws of their places of incorporation and their constitutional documents. It should be noted that while most of the issuers listed on the Exchange are incorporated in jurisdictions which allow holding of treasury shares, listed issuers incorporated in Hong Kong are still prohibited from holding treasury shares under the Companies Ordinance (Cap. 622 of Laws of Hong Kong);

- Resale of treasury shares by an issuer governed in the same manner as the Listing Rules that currently apply to an issue of new shares;
- Fair market maintained, mitigating the risk of stock market manipulation and insider dealing by:
 - imposing a 30-day moratorium period to restrict (i) a resale of treasury shares (whether on or off-market) after a share repurchase; and (ii) an on-Exchange share repurchase after an on-Exchange resale of treasury shares; and
 - prohibiting a resale of treasury shares on the Exchange during the Restricted Period or if it is knowingly made with a core connected person; and
- Consequential rule amendments made as follows:
 - allowing new listing applicants to retain their treasury shares upon listing, with any resale of these shares subject to the same lock-up requirement as an issue of new shares;
 - requiring issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules;
 - excluding treasury shares from an issuer's issued or voting shares under various parts of the Listing Rules (e.g. public float and size test calculations);
 - requiring an issuer to disclose in the explanatory statement its intention as to whether any shares to be repurchased will be cancelled or kept as treasury shares; and
 - clarifying that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees.

The Exchange also published a Guidance Letter HKEX-GL117-23 (Guidance Letter) on a framework for granting waivers to allow issuers' automatic share buy-back programs conducted on the Exchange to continue throughout a period during which an issuer is in possession of undisclosed inside information and of one month prior to the release of financial results (Restricted Period). The new Guidance Letter highlights the criteria that the Exchange will apply when assessing an issuer's share buy-back program and waiver application, including the issuer's size and liquidity of its shares and the mechanisms in place to guard against trading with undisclosed inside information and potential price manipulation.

Hong Kong Exchanges and Clearing Limited stated that they were committed to supporting the continued vibrancy, attractiveness and quality of Hong Kong's listed market. The proposed rule amendments and the Guidance Letter seek to give issuers greater flexibility in managing their capital structure through share buy-backs and resales of treasury shares, enhancing the

market's competitiveness and appeal to both issuers and investors. Proposals will include the introduction of appropriate safeguards to maintain a fair and orderly market in the trading of issuers' shares, ensuring consistent and fair shareholder treatment.

香港联合交易所有限公司刊发有关库存股份的《上市规则》条文修订建议的咨询文件及有关发行人自动股份购回计划的指引信

2023年10月27日，香港联合交易所有限公司（联交所）刊发咨询文件，就建议修订《上市规则》以推出库存股份机制征询市场意见（咨询文件）。咨询为时至2023年12月27日。

联交所亦刊发指引信 HKEX-GL117-23，为发行人在限制期内继续于联交所执行自动股份购回计划授予豁免的框架提供指引（指引信）。这份指引涵盖了上市发行人进行自动股份购回计划的相关事宜，包括监管框架、授予双重上市发行人的豁免、指引、相关《上市规则》等内容。指引旨在防范滥用未披露内幕消息及价格操纵风险，并提供了评估股份购回计划及豁免申请的准则。此外，指引还包括了防范利用未披露内幕消息进行交易的措施、防范潜在价格操纵的措施以及一般条件等内容。

咨询文件的主要建议如下：

- 删除有关注销购回股份的规定，让发行人可根据其注册成立地点的法律及其组织章程文件，以库存方式持有购回股份；
- 采用与《上市规则》现时适用于发行新股相同的方式规管发行人库存股份再出售事宜；
- 为维持市场公正及减轻证券市场操纵和内幕交易的风险：
 - 就下述活动施加为期 30 日的暂止期：(i) 购回股份后再出售库存股份（不论场内或场外）；(ii) 在联交所进行库存股份再出售后再在联交所购回股份；及
 - 禁止在限制期内或明知交易对象为核心关连人士的情况下在联交所进行库存股份再出售；及
- 对《上市规则》作出相应修订：
 - 允许新上市申请人在上市时保留其库存股份，但任何库存股份再出售均须遵守与发行新股相同的禁售期规定；
 - 要求发行人（作为库存股份持有人）就《上市规则》规定须经股东批准的事宜放弃投票；
 - 在《上市规则》各个不同部分（例如计算公众持股量及规模测试时）将库存股份从发行人已发行股份或有投票权股份中剔除；
 - 要求发行人在说明函件中披露其拟购回的股份是否会被注销或被保留作库存股份的意向；及

- 订明发行人或其附属公司再出售库存股份包括由其代理人或名义持有人代为进行的库存股份再出售。

香港交易及结算所有限公司表示他们致力提升香港上市市场的质素、活力和吸引力。建议中的《上市规则》条文修订及指引信为发行人提供更多灵活度，方便发行人透过股份购回及库存股份再出售来管理资本结构，从而提升市场竞争力以及对发行人和投资者的吸引力。他们亦建议同时引入适当的保障措施，以维持相关发行人的股份交易公平有序，并确保股东获一致及公平的待遇。

Source 来源：

https://www.hkex.com.hk/News/Regulatory-Announcements/2023/231027news?sc_lang=en

Hong Kong Securities and Futures Commission Consults Further on Proposed Amendments for Implementing an Uncertificated Securities Market

On October 31, 2023, the Hong Kong Securities and Futures Commission (SFC) launched a further consultation on implementing an uncertificated securities market (USM) in Hong Kong, focusing on the SFC's codes and guidelines.

The SFC invites views on proposed amendments to (i) the Code of Conduct for Share Registrars (to be renamed the Code of Conduct for Approved Securities Registrars), and (ii) the Guidelines for Electronic Public Offerings (to be renamed Guidelines for Electronic Public Offers). The amendments relate to the regulation of approved securities registrars under the USM environment. The consultation also covers further amendments to the Stamp Duty Ordinance to reflect changes to the arrangements for stamping and collecting stamp duty in the USM environment.

The latest consultation follows the SFC's earlier consultation in March 2023 on proposed subsidiary legislation for implementing a USM. In 2019 and 2020, the SFC, Hong Kong Exchanges and Clearing Limited and the Federation of Share Registrars Limited jointly consulted the market on an operational model to implement USM in Hong Kong. In June 2021, the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 was enacted to put in place a broad framework to implement the model. This framework was to be expanded through subsidiary legislation and the SFC's codes and guidelines. In March 2023, the SFC consulted on the proposed subsidiary legislation.

香港证券及期货事务监察委员会为实施无纸证券市场就建议修订展开进一步咨询

2023 年 10 月 31 日，香港证券及期货事务监察委员会（证监会）就在香港实施无纸证券市场展开进一步咨询。

证监会邀请各界就 (i)《股份登记机构操守准则》（将更名为《核准证券登记机构操守准则》）及(ii)《电子公开发售指引》的建议修订，发表意见。这些修订涉及在无纸证券市场环境下对核准证券登记机构的监管。咨询的范围亦涵盖对《印花税法例》的进一步修订。建议修订对在无纸证券市场环境下有关加盖印花及收取印花税的安排，作出进一步修改。

是次咨询乃证监会为实施无纸证券市场，而于 2023 年 3 月进行建议附属法例咨询后展开的相关工作。于 2019 年及 2020 年，证监会、香港交易及结算所有限公司与证券登记公司总会有限公司共同就在香港实施无纸证券市场的运作模式咨询市场意见。2021 年 6 月，立法会制定了《2021 年证券及期货及公司法例（修订）条例》，以设立为落实该模式所需的概括框架。立法会将会引入附属法例，以及证监会的守则和指引以扩充该框架。证监会在 2023 年 3 月就建议附属法例进行咨询，而是次咨询则聚焦于守则及指引。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR127>
<https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=23CP8>

Hong Kong Monetary Authority Publishes the “e-HKD Pilot Programme Phase 1 Report”

On October 30, 2023, the Hong Kong Monetary Authority (HKMA) published the “e-HKD Pilot Programme Phase 1 Report” (Report) to discuss the key findings, learnings, and the HKMA’s assessment of 14 pilots conducted by the 16 participating firms under Phase 1 of the e-HKD Pilot Programme, a programme launched by the HKMA in November 2022 to explore and evaluate the commercial viability of potential use cases for an e-HKD. The Report also sets out the next steps of the e-HKD Pilot Programme.

Set out below is a high-level summary of the Report:

- Phase 1 of the e-HKD Pilot Programme focused on six categories: full payments, programmable payments, offline payments, tokenised deposits, Web3 settlement, tokenized assets settlement. 14 pilots were conducted with 16 firms.
- Key findings were that an e-HKD could add value to the current ecosystem in the areas of programmability, tokenization, and atomic settlement. This includes conditional payments, loyalty programs, fund investments, offline usage. An e-HKD has the potential to facilitate faster, more cost-efficient and more inclusive transactions, as

well as facilitating new types of economic transactions.

- However, market readiness has great bearing on the substantiation of the issuance of an e-HKD and the realisation of its value at scale. Technology alone may not cure all inefficiencies from business norms and processes.
- Careful consideration should be given to the positioning of an e-HKD and the roles taken by the HKMA and the industry in the implementation and operation of an e-HKD. Further investigations on policy and technical design and legal framework are also needed.

The pilots under Phase 1 showed that an e-HKD could add unique value to the current payment ecosystem in Hong Kong in three main areas, including programmability, tokenisation, and atomic settlement. An e-HKD has the potential to facilitate faster, more cost-efficient, and more inclusive transactions. It can also enable new types of economic transactions. However, the HKMA recognises that these pilots are conducted on a small scale under a controlled environment. Further investigation and evaluation are required to determine if these benefits can be realised at a larger scale in real-life applications.

The HKMA has not yet made a decision on whether and when to introduce an e-HKD. The outcomes and insights gained from Phase 1 of the e-HKD Pilot Programme will help enrich the HKMA’s perspective and refine its approach to the possible implementation of e-HKD. The next phase of the programme will seek to explore new use cases for an e-HKD and delve deeper into select pilots from Phase 1 by examining the identified business and implementation issues in greater depth.

香港金融管理局发布《数码港元先导计划第一阶段报告》

2023 年 10 月 30 日，香港金融管理局（金管局）发布《数码港元先导计划第一阶段报告》（报告），讨论数码港元先导计划第一阶段下由 16 间参与机构进行的 14 项试验的结果、经验和金管局的评估。报告亦阐述了先导计划的下一步工作计划。

报告主要指出：

- 第一阶段探索 6 个范畴：全面支付、可程式化支付、离线支付、代币化存款、Web3 结算、代币资产结算。共有 16 间公司参与完成 14 个试验计划。
- 关键发现数码港元有可能启动目前无法实现的程式化、代币化及原子结算功能，如条件支付、客户忠诚计划、基金投资、离线使用。
- 潜在价值视乎生态环境是否具备相关基础，技术本身未必解决业务流程造成的效率不足。

- 下阶段将深入研究程式化、代币化、原子结算等用例；考虑数码港元定位、互操作性、普及面临挑战；研究分布式簿格技术等。

先导计划第一阶段的试验表明，数码港元或可在三方面为香港现有的支付生态系统带来独特价值，包括可编程性、代币化及即时交收。数码港元有潜力促进更快、更具成本效益和更具包容性的交易，同时可促成新型的经济活动。由于先导计划的试验均在受控环境下以小规模形式进行，因此需要进行更多研究及评估工作，以判断这些效益能否在实际场景大规模应用。

金管局目前尚未就会否及何时正式推出数码港元作出决定。金管局会从先导计划第一阶段的结果汲取实际经验，完善可能落实数码港元的方式。先导计划下一阶段将探索数码港元的新用例，并更深入研究第一阶段的部分试验结果。

Source 来源:

<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2023/10/20231030-3/>
<https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2023/20231030e3a2.pdf>
<https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2023/20231030e3a1.pdf>

Gazettal of Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023 (Commencement) Notice 2023

The Hong Kong Government published in the Gazette the Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023 (Commencement) Notice 2023 (Commencement Notice). The Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023 (Amendment Ordinance) was enacted by the Hong Kong Legislative Council on July 12, 2023, to provide a legal basis for the Official Receiver's Office's (ORO) Electronic Submission System (ESS), streamline the publication requirements of insolvency and related notices, and introduce miscellaneous amendments.

Upon enactment of the Amendment Ordinance, the Financial Services and the Treasury Bureau announced that the first phase of the ESS and the streamlined publication requirements would be implemented starting from the end of 2023. The Commencement Notice seeks to appoint December 29, 2023, as the commencement date for the relevant provisions. The Financial Services and the Treasury Bureau stated that the ESS will enable stakeholders to submit documents through a convenient electronic means, thereby enhancing the ORO's services. Streamlining the publication requirements by making publishing the notices in the Government

Gazette the only mandatory requirement will help reduce the publication cost.

The ESS will be implemented in phases starting from the end of this year. The streamlined publication requirements of insolvency and related notices will also be implemented alongside the ESS by the end of 2023, in order to allow sufficient time for the industry to adapt to the new requirements.

《2023 年〈2023 年破产及公司法例（杂项修订）条例〉（生效日期）公告》刊宪

2023 年 10 月 20 日，香港政府在宪报刊登《2023 年〈2023 年破产及公司法例（杂项修订）条例〉（生效日期）公告》（《生效日期公告》）。香港立法会在 2023 年 7 月 12 日通过《2023 年破产及公司法例（杂项修订）条例》（《修订条例》），为破产管理署的电子提交文件系统提供法律基础、精简破产/清盘及相关通知的刊登要求，以及引入杂项修订。

《修订条例》获通过时，财经事务及库务局已宣布首阶段的电子提交文件系统和简化的刊登要求将会在 2023 年年底实施。《生效日期公告》旨在订立《修订条例》中相关条文的生效日期为 2023 年 12 月 29 日。财经事务及库务局表示电子提交文件系统将容许持份者以便捷的电子方式提交文件，优化破产管理署的服务。此外，简化刊登要求，只需于政府宪报刊登破产/清盘及相关通知，将有助减省成本。

电子提交文件系统将自今年年底起分阶段推行。简化的破产/清盘及相关通知的刊登要求，亦将于 2023 年底与电子提交文件系统同步实施，让业界有充分时间适应新规定。

Source 来源:

<https://www.info.gov.hk/gia/general/202310/20/P2023101900530.htm?fontSize=1>
<https://www.info.gov.hk/gia/general/202307/12/P2023071100415.htm?fontSize=1>
https://www.oro.gov.hk/pdf/eng/compliance/bankruptcy_and_companies_legislation_2023_commencement.pdf

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