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Financial Services Regulatory Update
金融服务监管资讯

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Establishing an Effective Regulatory Ecosystem for Fund Management in Hong Kong

As Hong Kong aims to become a regional hub for family offices and international wealth management, ensuring a robust and user-friendly regulatory framework for fund management companies (FMCs) is crucial. By comparing the regulatory approaches of the Monetary Authority of Singapore (MAS) and the Hong Kong regulators, including the Securities and Futures Commission (SFC), the Corporations Registry (CR), and the Hong Kong Monetary Authority (HKMA), we aim to offer insights to enhance the corporate governance and compliance practices of FMCs in Hong Kong.

Compliance Requirements

Both Singapore and Hong Kong have comprehensive compliance regulations for FMCs, though with some differences.

Singapore

MAS oversees licensing and regulations of FMCs in Singapore. FMCs in Singapore are regulated by the Securities and Futures Act (Cap. 289). In order to conduct the regulated activity of fund management, FMCs must obtain either registration or license from MAS as a:

- Registered Fund Management Company (RFMC);
- Capital Markets Services License (CMSL) as a Licensed Fund Management Company;
- Venture Capital Fund Manager (VCFM); or
- be expressly exempted from holding a license.

Prior approval is mandatory for FMCs in relation to significant changes, including the appointment of a Chief Executive Officer (CEO) or directors. MAS requires relevant persons in regulated activities such as directors and CEO to be fit and proper, including qualities like honesty, competence, and financial soundness. The responsibility lies with each relevant person to demonstrate their fitness, rather than placing the burden on MAS to prove otherwise.

This is particularly important for firms where ownership is separate from the CEO and/or the senior management team. Where appropriate, MAS may require the CEO and directors to be sufficiently anchored to the FMC, for example, by holding meaningful shareholding stakes in the FMC, in order to align the interests of the owners and the management team of the FMC in carrying out the fund management activity in a sound manner.

FMCs must also fulfil regular filing requirements, including the submission of audited financial statements and compliance reports. The compliance reports serve as a means to report any misconduct perpetrated by representatives of the FMCs. This includes instances of non-compliance with regulatory requirements pertaining to the provision of regulated activities under the Securities and Futures Act (Cap. 289), or any significant violation of the FMC's code of conduct.

Hong Kong

Hong Kong's regulatory landscape involves multiple bodies. SFC oversees licensing and conduct requirements for FMCs, while the CR handles corporate filings, and the HKMA focuses on banks and deposit-taking institutions that engage in fund management activities. FMCs in Hong Kong must navigate the respective guidelines and approval processes of these different regulators, which can be more complex than the centralized approach in Singapore.

Given the nature of FMCs, it is typical for FMCs that oversee assets such as securities or futures contracts to seek a Type 9 (Asset Management) license. Additionally, depending on the specific activities carried out by FMCs, they may also be required to obtain licenses for other regulated activities, such as engaging in activities related to dealing in securities (Type 1), dealing in futures contracts (Type 2), providing advice on securities (Type 4), and/or advising on futures contracts (Type 5). Unlike MAS, SFC does not differentiate between different classes of FMCs but rather distinguishes them based on various types of regulated activities.

Similar to MAS, SFC sets clear guidelines for the appointment criteria of certain individuals. According to

the Securities and Futures Ordinance (Cap. 571) (SFO), it is a requirement that a licensed corporation engaging in regulated activities must have not less than two responsible officers (RO) to directly supervise the conduct of each regulated activity and for each regulated activity, it must have at least one RO available at all times to supervise its business operations. An RO is obligated to meet both general fit and proper requirements and specific competence criteria, which include academic and professional qualifications, relevant industry experience, recognized industry qualifications, and management expertise.

For authorized financial institutions that engage in fund management activities operating under the jurisdiction of HKMA, it is a legal requirement that every registered institution ensures its relevant individuals engaged in conducting regulated activities on behalf of the institution are fit and proper. This condition of registration is imposed by statute.

Common change events, such as changes in ROs, directors, share capital and business activities, require timely notification to SFC. In the case of registered institutions carrying on regulated activities that require registration with the SFC, the notification should be made to both the SFC and the HKMA. FMCs that engage in regulated activities have the obligation to submit regular financial resources returns to the SFC. Additionally, as the FMCs are registered under the CR, the corporate structure or details of a company, such as alterations in share capital, directors, or registered office address must also be reported to the CR as a requirement.

Apart from that, FMCs in Hong Kong have compliance reporting obligations for their intermediaries and substantial shareholders. These requirements extend beyond regulated activities in Hong Kong and cover information about directors, substantial shareholders, and related corporations or businesses owned or managed by them. The obligations include notifying SFC and, where applicable, HKMA in writing within seven business days of any change in "relevant information," whether in Hong Kong or elsewhere. Relevant information encompasses details such as disciplinary actions, investigations by regulatory or criminal bodies, affecting the intermediary or its group entities. The purpose of these notification requirements is to ensure that SFC and HKMA are continuously informed and satisfied that intermediaries and their representatives remain fit and proper, even in the face of changing circumstances.

Regulatory Guidance

To support FMCs, both Singapore and Hong Kong offer extensive guidance on various regulatory aspects. The MAS has published detailed notices and guidelines covering areas such as anti-money laundering and countering the financing of terrorism (AML/CFT), outsourcing, and technology risk management. Similarly, the SFC has issued comprehensive guidelines on internal control, anti-money laundering and countering the financing of terrorism (AML/CFT) compliance, corporate governance, and ethical practices.

The availability of such regulatory guidance is crucial in helping FMCs understand and implement best practices, ultimately contributing to a more robust and trustworthy industry ecosystem.

The following regulatory guides are provided to support FMCs in Hong Kong:

The Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) for Licensed Corporations and SFC-licensed Virtual Asset Service Providers provides comprehensive guidance on complying with AML and CFT regulations in Hong Kong. The guideline covers various aspects, including risk assessment to assess and mitigate money laundering and terrorist financing risks, customer due diligence especially for higher-risk customers, record-keeping, internal controls, suspicious transaction reporting, and ongoing monitoring. It emphasizes the importance of implementing robust AML/CFT policies, procedures, and systems to prevent money laundering and terrorist financing activities.

The Guideline relating to Technology Risk Management: The SFC has published guidelines requiring senior management and the respective MICs to revisit the “Management, Supervision and Internal Control Guidelines For Persons Licensed by or Registered with the Securities and Futures Commission” to examine whether they have in place adequate and effective internal control. Qualified and experienced staff should be assigned to manage information and it should be managed in a secure and controlled environment. Management should ensure the firm has in place (i) clearly defined information management reporting requirements; (ii) information management system design and implementation programmes; and (iii) appropriate and effective electronic data processing and data securities policies.

Guidelines on risk management of outsourcing arrangements: The SFC and the HKMA issue guidelines on the outsourcing of data used by financial institutions. The HKMA sets out requirements for authorized institutions regarding outsourcing in its Supervisory Policy Manual (Module SA-2) and provides guidance on technology risk management (Module TM-G-1) and operational risk management (Module OR-1 and OR-2). Additionally, the HKMA has issued a circular providing guidance on cloud computing. The SFC, on the other hand, endorses the International Organization of

Securities Commissions Principles on Outsourcing of Financial Services and has specific requirements for the use of external electronic data storage providers, as outlined in its circulars and frequently asked questions on the use of external electronic data storage.

Independence and Operational Separation

Ensuring the independence of audit and other key functions is another important consideration. The MAS emphasizes the need for FMCs to avoid providing both external audit and internal audit services to the same firm, thereby maintaining the necessary checks and balances. This helps to mitigate conflicts of interest and strengthen the reliability of financial reporting and internal controls.

In Hong Kong, the Hong Kong Institute of Certified Public Accountants (HKICPA) provides guidelines and professional standards that emphasize the importance of maintaining the independence and objectivity of both internal and external audit functions. These guidelines discourage the same firm from providing both services simultaneously to the same FMC.

Financial Stability and Resilience

Promoting the financial stability and resilience of FMCs is a shared priority for both Singapore and Hong Kong. The MAS has implemented measures such as requiring FMCs to deduct charged assets that are not available for their use from their financial resources, effectively adjusting their liquidity position. Additionally, the MAS excludes redeemable preference shares with a redemption period of less than two years from the calculation of an FMC's financial resources, mitigating potential short-term funding risks.

Hong Kong's regulators have also introduced similar requirements to ensure the financial soundness of FMCs. For instance, the SFC's liquid capital rules and the HKMA's capital adequacy framework aim to safeguard the stability of FMCs and the broader financial system.

SFC's liquid capital rules

FMCs are required to maintain a minimum level of liquid capital, which serves as a buffer to cover potential losses and liabilities. The specific amount of liquid capital required depends on factors such as the nature and scale of the FMC's activities.

FMCs are required to monitor their liquid capital on an ongoing basis to ensure compliance with the SFC's requirements. They are obliged to report their liquid capital position to the SFC at regular intervals or as requested. SFC also conducts regular inspections and examinations to assess FMCs' compliance with the liquid capital rules. These oversight activities aim to verify that FMCs maintain the required level of liquid capital and have appropriate risk management and internal control systems in place.

HKMA's capital adequacy framework

HKMA is primarily responsible for regulating banks and maintaining the stability of the banking system in Hong Kong. While the HKMA does not specifically regulate FMCs, they have certain requirements related to capital adequacy for banks that provide fund management services.

Regulatory Reporting and Supervision

Both Singapore and Hong Kong have established robust regulatory reporting mechanisms to monitor the health and compliance of FMCs. The MAS requires FMCs to report on issues such as capital shortfalls, the resignation of key personnel, or the establishment of new subsidiaries or branches without prior approval.

Similarly, Hong Kong's regulators expect FMCs to report on various compliance and operational matters, with the SFC taking the lead on most aspects. FMCs are expected to have contingency plans to prepare for and respond to events or shocks that could undermine their financial stability or operational capability. According to the Securities and Futures (Licensing and Registration) (Information) Rules, corporate license applicants must provide information about their business plans, including contingency plans and related matters, to the SFC. The SFC also has the authority to request additional information or documents regarding an applicant's contingency plans.

Capital shortfall alert

Pursuant to sections 6(1) and 55(1)(a) of the Securities and Futures (Financial Resources) Rules (Cap. 571N) (FRR), FMCs must at all times maintain its required liquid capital and notify the SFC in writing within one business day when it becomes aware that its liquid capital falls below 120% of the required amount. Under sections 146(1) and (2) of the SFO, it shall notify the SFC in writing and immediately cease carrying on any regulated activity for which it is licensed if it becomes aware that it is unable to maintain, or to ascertain whether it maintains, the financial resources required of it, unless otherwise permitted by the SFC.

Reporting on unavailability of key personnel

When FMCs become aware that it will have less than two ROs or no Executive Director (ED) in respect of any regulated activity for which it is licensed, it should immediately activate its business continuity plan and notify the SFC of the situation. It should also provide information regarding its remedial actions to appoint

additional ROs or EDs, with a concrete timeframe. Whilst FMCs should submit related RO applications to the SFC as a matter of urgency, the competence of the RO candidates should not be compromised and the quality of the application materials should comply with all the relevant application requirements.

Subsidiary or branch set up

FMCs will need to seek approval for the premises of each branch office in Hong Kong if regulatory records are being kept at, or can be accessed from, such premises according to section 130 of the SFO. FMCs cannot use premises for record-keeping without prior written approval. This is so even for those licensed corporations which transfer all of their records from branches to the head office because it is likely that at some point in time, there may be records kept by the branch but not by the head office.

The availability of these regulatory reporting frameworks allows the authorities to identify potential risks or compliance breaches in a timely manner, enabling proactive intervention and supervision. FMCs in both jurisdictions must ensure they have robust internal controls and reporting mechanisms to fulfil their regulatory obligations.

Conclusion

As Hong Kong continues to position itself as a leading international wealth management center, fostering a robust and transparent regulatory environment for FMCs will be crucial. By comparing the regulatory approaches of Singapore and Hong Kong, we can see the key areas of regulatory attention concerning FMCs in light of compliance practices for developing an effective and user-friendly ecosystem for fund management in Asia. Both jurisdictions have comprehensive regulatory framework and the availability of detailed regulatory guidance, emphasizing on governance measures to enhance financial stability, operational integrity and investment effectiveness of FMCs.

在香港建立有效的基金管理监管生态系统

随着香港旨在成为家族办公室和国际财富管理的区域中心,确保基金管理公司有一个强大和用户友好的监管框架至关重要。通过比较新加坡金融管理局(新加坡金管局)和香港监管机构(包括香港证券及期货事务监察委员会(香港证监会)、香港公司注册处和香港金融管理局(香港金管局))的监管方法,我们旨在为提高香港基金管理公司的企业管治和合规实践提供有价值的见解。

合规要求

新加坡和香港都对基金管理公司有全面的合规法规,但彼此存在一些差异。

新加坡

新加坡金管局负责新加坡基金管理公司的许可和监管。新加坡基金管理公司受《证券和期货法》(第 289 章)的监管。为了从事基金管理的受监管活动,基金管理公司必须从新加坡金管局获得以下许可之一:

- 注册基金管理公司;
- 资本市场服务牌照作为持牌基金管理公司;
- 创业资本基金管理人; 或
- 明确豁免持有牌照

基金管理公司在重大变更(包括任命首席执行官或董事)方面必须获得事先批准。新加坡金管局要求参与受监管活动的相关人员(如董事和 CEO)具备适当的资格,包括诚实、能力和财务稳健等品质。责任在于每个相关人员证明其适当资格,而不是由新加坡金管局来证明相反情况。

这个情况在拥有权与 CEO 和/或高级管理团队分开的公司尤为重要。在适当情况下,新加坡金管局可能要求 CEO 和董事对基金管理公司有足够的归属,例如持有基金管理公司的重大股权,以健全方式使拥有者和管理团队的利益与执行基金管理活动一致。

基金管理公司还必须满足定期申报要求,包括提交经审计的财务报表和合规报告。合规报告是为了报告基金管理公司代表人员的任何不当行为,包括违反《证券和期货法》(第 289 章)有关提供受监管活动的监管要求,或违反基金管理公司行为准则的任何重大情况。

香港

香港的监管环境涉及多个机构。香港证监会负责监督基金管理公司的发牌和操守,公司注册处负责公司文件申报,而香港金管局则专注于从事基金管理活动的银行和接受存款机构。香港的基金管理公司必须遵守这些不同监管机构各自的指引和批准程序,这可能比新加坡金管局的集中式方法更为复杂。

鉴于基金管理公司的性质,典型的是那些管理证券或期货合约等资产的基金管理公司需要申请第 9 类(资产管理)牌照。此外,根据基金管理公司执行的具体活动,他们可能还需要获得其他受监管活动的发牌。这些额外的发牌可能包括从事证券交易(第 1 类)、期货合约交易(第 2 类)、证券咨询(第 4 类)和/或期货合约咨询(第 5 类)等受监管活动。与新加坡金管局不同,香港证监会没有对不同类别的基金管理公司进行区分,而是根据各种类型的受监管活动来区分它们。

与新加坡金管局类似,香港证监会为某些人员的任命标准设立了明确的指引。根据《证券及期货条例》（第 571 章），从事受规管活动的持牌法团必须有不少于两名负责人员直接监督每项受规管活动的进行，并且就每项受规管活动而言，必须有至少一名负责人员随时监督其业务运作。负责人员有义务满足一般适当人选要求和具体胜任能力标准,包括学历和专业资格、相关行业经验、获认可的行业资格和管理专长。

对于在香港金管局管辖范围内从事基金管理活动的认可金融机构,法律要求每家注册机构确保其代表机构从事受监管活动的相关人员适当合适。

负责人员、董事、股本和业务活动等常见变更事项,需要及时通知香港证监会。如果注册机构进行需要向证监会注册的受规管活动，则应同时向证监会和金管局发出通知。从事受规管活动的基金管理公司有责任定期向证监会提交财务资源报表。此外,由于基金管理公司在公司注册处注册,公司结构或细节(如股本、董事或注册办公地址的变更)也必须按要求报告给公司注册处。

除此之外,香港的基金管理公司还有对其中介机构和主要股东的合规报告义务。这些要求不仅涵盖香港的受监管活动,还包括有关董事、主要股东以及他们拥有或管理的相关公司或业务的信息。这包括在"相关信息"(无论在香港还是其他地方)发生任何变化后的 7 个工作日内书面通知香港证监会,如果适用,还需要通知香港金管局。相关信息包括对中介机构或其集团实体产生影响的监管或刑事机构的纪律处分和调查等详细信息。这些通知要求的目的是确保香港证监会和香港金管局持续了解并确信中介机构及其代表在变化的情况下仍然适当合适。

监管指引

为支持基金管理公司,新加坡和香港都提供了广泛的监管指引。新加坡金管局发布了涵盖反洗钱和反恐融资(AML/CFT)、外包和科技风险管理等领域的详细通知和指引。同样地,香港证监会也发布了全面的内部控制、反洗钱和反恐融资(AML/CFT)合规、企业管治和道德行为的指引。

提供此类监管指引对帮助基金管理公司理解和实施最佳实践至关重要,最终有助于建立更加强大和值得信赖的行业生态系统。

以下是支持香港基金管理公司的监管指引:

《打击洗钱及恐怖分子资金筹集指引（适用于持牌法团及获证监会发牌的虚拟资产服务提供商）》：为遵守香港的反洗钱和反恐融资(AML/CFT)法规提供全面指引。该指引涵盖各个方面,包括风险评估以评估和减轻洗钱和恐怖融资风险、尤其是针对高风险客户的客户尽职调查、记录保存、内部控制、可疑交易报告以及持续监测。它强调实施强大的 AML/CFT 政策、程序和系统以防范洗钱和恐怖融资活动的重要性。

有关科技风险管理的指引: 证监会发布了相关指引,要求高级管理层和各核心职能主管重新审视《适用于证券及期货事务监察委员会 持牌人或注册人的 管理、监督及内部监控指引》,检查是否已经建立了充分有效的内部控制措施。公司应配备具备相关资质和经验的员工负责信息管理,并确保在安全受控的环境中进行信息管理。管理层应确保公司具备以下措施：(i)明确界定的信息管理报告要求;(ii)信息管理系统的设计和实施方案;以及(iii)适当有效的电子数据处理和数据安全政策。

有关外包安排风险管理指引: 香港证监会和香港金融管理局(香港金管局)就金融机构外包数据发布了指引。香港金管局在其《监管政策手册》(SA-2 章节)中就授权机构的外包提出了要求,并就科技风险管理(TM-G-1 章节)和操作风险管理(OR-1 和 OR-2 章节)提供了指引。此外,香港金管局还发布了有关云计算的指引通函。另一方面,香港证监会认可国际证券监委会(IOSCO)的《金融服务外包原则》,并就使用外部电子数据存储提供商制定了具体要求,在其通函和常见问题(FAQ)中有所阐述。

独立性和运营分离

保持审计和其他关键职能的独立性是一个非常重要的考量因素。新加坡金管局强调,基金管理公司必须避免同时为同一客户提供外部审计和内部审计服务,以维持必要的制衡机制。这有助于缓解利益冲突,增强财务报告和内部控制的可靠性。

在香港,香港会计师公会(HKICPA)也非常重视这一点。他们制定了相关指引和专业标准,强调内部和外部审计职能必须保持独立性和客观性。这些指引明确不鼓励同一家会计师事务所同时为同一基金管理公司提供这两类服务。

财务稳定性和抗风险能力

保持基金管理公司的财务稳定性和抗风险能力是新加坡和香港监管机构的共同优先事项。新加坡金管局已经采取了一些措施,比如要求基金管理公司从自身的财务资源中扣除抵押资产,从而有效调整了它们的流动性状况。此外,金管局还将赎回期少于两年的可赎回优先股排除在基金管理公司财务资源的计算之外,以降低潜在的短期资金风险。

香港的监管机构也出台了类似的要求,以确保基金管理公司的财务健康。例如,香港证监会的流动资本规则和香港金管局的资本充足框架都旨在维护基金管理公司乃至整个金融体系的稳定性。

香港证监会的流动资本规则

基金管理公司需要维持最低水平的流动资本,作为应对潜在损失和负债的缓冲。所需的具体流动资本金额取决于基金管理公司的业务性质和规模等因素。

基金管理公司必须持续监控自身的流动资本水平,确保符合证监会的要求。他们还有义务定期或按要求向证监会报告流动资本的状况。证监会也会定期进行检查和审查,评估基金管理公司是否遵守流动资本规则。这些监管活动旨在确保基金管理公司维持了所需的流动资本水平,并建立了适当的风险管理和内部控制系统。

香港金管局的资本充足框架

香港金管局主要负责监管银行,维护银行体系的稳定。虽然金管局不直接监管基金管理公司,但他们也对提供基金管理服务的银行提出了资本充足性方面的相关要求。

监管申报和监督

新加坡和香港都建立了严格的监管申报机制,密切关注基金管理公司的财务健康状况和合规情况。新加坡金融管理局要求这些公司报告资本短缺、关键人员离职或未经批准设立新分支机构等问题。

香港监管机构也期望基金管理公司就各种合规和运营事项进行汇报,其中以证监会为主导。这些公司还需拥有应急计划,以应对可能危及其财务稳定性或运营能力的事件或冲击。根据相关规定,公司牌照申请人必须向证监会提供包括应急计划在内的业务计划信息。证监会也有权要求申请人提供更多相关文件。

资本短缺预警

根据《证券及期货(财务资源)规则》,基金管理公司必须时刻保持所需的流动资本,一旦发现流动资本低于所需金额的 120%,必须在 1 个工作日内书面通知证监会。如果公司无法维持或确认维持所需的财务资源,除非获得证监会许可,否则必须立即停止开展受规管业务并书面通知证监会。

申报关键人员不足

如果基金管理公司发现将少于 2 名负责人员或没有执行董事负责受规管业务,应立即启动业务连续性计划并通知证监会。同时,公司还应提供补救措施的具体时间表,尽快向证监会递交相关负责人员申请。申请人的胜任能力不应受到影响,申请材料也应完全符合要求。

设立子公司或分支机构

根据《证券及期货条例》第 130 条,如果监管记录被保存或可从该处获取,基金管理公司需要就每个香港分支机构的场所获得批准。未经事先书面批准,基金管理公司不得使用该场所作记录保存用途,即使是将所有记录从分支机构转移至总部的持牌法团也不例外,因为日后可能会有分支机构保留而总部未保留的记录。

这些监管申报机制的存在,使当局能及时识别潜在风险或合规违规行为,从而采取主动干预和监管。两地的基金管理公司必须确保建立健全的内部控制和申报机制,以履行其监管义务。

结语

随着香港继续被定位为领先的国际财富管理中心，为金融管理公司营造稳健和透明的监管环境至关重要。通过比较新加坡和香港的监管方式，我们可以看到在基金管理公司合规实践方面的前沿重点关注监管领域，以及在亚洲建立有效且用户友好的基金管理生态系统的要点。两个司法管辖区均拥有全面的监管框架和详细的监管指导，强调加强金融管理公司的金融稳定性、运营诚信和投资有效性的治理措施。

Source 来源:
https://www.hkma.gov.hk/eng/regulatory-resources/regulatory-guides/supervisory-policy-manual/
https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/management-supervision-and-internal-control-gu/management-supervision-and-internal-control-guidelines-for-persons-licensed.pdf
https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/guideline-on-anti-money-laundering-and-counter-financing-of-terrorism-for-licensed-corporations/AML-Guideline-for-LCs-and-SFC-licensed-VASPs_Eng_1-Jun-2023.pdf?rev=d250206851484229ab949a4698761cb7
https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2023/20230525e1.pdf
https://www.mas.gov.sg/regulation/guidelines/guidelines-on-outsourcing
https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulatory-and-Supervisory-Framework/Risk-Management/TRM-Guidelines-18-January-2021.pdf
https://www.mas.gov.sg/-/media/mas/regulations-and-financial-stability/regulatory-and-supervisory-framework/risk-management/outsourcing-guidelines_jul-2016-revised-on-5-oct-2018.pdf

https://www.mas.gov.sg/-/media/mas/regulations-and-financial-stability/regulations-guidance-and-licensing/securities-futures-and-fund-management/regulations-guidance-and-licensing/guidelines/guidelines-to-mas-notice-sfa04n02--november-2015.pdf

Recent Trend of Privatization in Hong Kong

Recently, there has been an emerging trend among publicly listed companies in Hong Kong to consider the possibility of privatization. This move is typically prompted by several factors. Firstly, the prevailing share price often falls significantly below the net asset value per share, prompting companies to explore privatization as a means of realizing better value for their shareholders. Secondly, companies may encounter challenges in raising funds from the market due to limited trading activity in their shares. Lastly, the costs associated with maintaining a listing status, such as compliance expenses, can become increasingly burdensome, further incentivizing companies to consider privatization.

According to the information publicly available on the website of Hong Kong Exchanges and Clearing Limited (HKEX), the following summary shows the volume of privatization transactions:

Number of privatization offers from January 1, 2021 to March 26, 2024:

	Scheme of arrangement	Voluntary general offer	Privatizing an H-share company
2021	15	1	4
2022	6	0	3
2023	13	3	2
2024 (1st quarter)	1	0	0
Total*	35	4	9

**We determine the number of privatization offers based on the date when the initial announcement of the privatization offer is made on the HKEXnews website.*

From January 2021 to the first quarter of March 2024, a total of 48 privatization offers have been announced on HKEX. Among these offers, 35 were carried out through schemes of arrangement, 4 were executed through voluntary general offers, and the remaining 9 were implemented in accordance with the regulations governing the privatization of H-share companies.

Number of privatization offers successfully completed from January 1, 2021 to March 26, 2024:

	Scheme of arrangement	Voluntary general offer	Privatizing an H-share company
2021	16	1	3
2022	10	0	4
2023	9	1	1
2024 (1st quarter)	3	0	1
Total*	38	2	9

**We determine the number of successfully closed privatization offers by referring to the date when the announcement of the withdrawal of listing becoming effective is posted on the HKEXnews website. However, due to the time difference between the offer and the completion of privatization, there may be situations where a privatization offer is presented in one year and subsequently concluded in the following year.*

Out of the total number of 49 offers completed between January 2021 and the first quarter of March 2024, 38 were successfully completed through schemes of arrangement, 2 were successfully completed through voluntary general offers, and the remaining 9 were completed in accordance with the regulations governing the privatization of H-share companies. From the statistics shown above, privatization through a scheme of arrangement is the most common.

This article aims to shed light on various approaches to privatization, with a focus on comparing and contrasting distinctive features regarding a scheme of arrangement, a voluntary general offer, and the privatization of an H-share company.

I. Scheme of arrangement

Through a scheme of arrangement, the controlling shareholder requests the company to propose to its shareholders to cancel all the shares held by the minority shareholders in accordance with the company law of the jurisdiction in which the company is incorporated.

Except with the consent of the Executive Director (Executive) of the Corporate Finance Division of the Securities and Futures Commission (SFC) where any person seeks to use a scheme of arrangement to privatize a company, the scheme may only be implemented if, in addition to satisfying any voting requirements imposed by law: (a) the scheme is 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 shareholders; and (b) the number of votes cast against the resolution to

approve the scheme at such meeting is not more than 10% of the votes attaching to all disinterested shares.

After obtaining approval at the shareholders' meeting, the scheme is still subject to approval of the court of the country in which the company is incorporated. An application can be made to The Stock Exchange of Hong Kong (Stock Exchange) for withdrawal of listing once such approval is obtained. During the court hearing of a petition to sanction the scheme, the court considers several factors, which were summarized in the decision of *Re SHK Hong Kong Industries Limited* (2000) 3 HKC 379. These factors include the following:

1. Permissibility: Whether the scheme serves a permissible purpose;
2. Similar Legal Rights: Whether members who were called to vote as a single class possess sufficiently similar legal rights, allowing them to consult together in their common interest at a single meeting;
3. Convening of Meeting: Whether the meeting was properly convened in accordance with the court's directions;
4. Adequate Information: Whether members have been provided with sufficient information about the scheme to make an informed decision regarding their support for or opposition to it;
5. Statutory Majority: Whether the necessary statutory majority has been obtained; and
6. Court's Discretion: Whether the court, in the exercise of its discretion, is satisfied that a reasonable and conscientious individual, acting in alignment with their interests as a member of the relevant class, might approve the scheme.

Practical issues encountered in a scheme of arrangement

In Hong Kong, privatization through a scheme of arrangement is more common. This is because, in order to invoke the Compulsory Acquisition Right in a general offer privatization scenario, the party making the offer must acquire at least 90% of disinterested shares in the listed company (subject to any higher threshold under the law of its place of incorporation). Furthermore, the level of acceptance of the voluntary offer by public shareholders may not be entirely under the control of the offering shareholder. Additionally, in the case of privatization through a scheme of arrangement, no stamp duty is normally payable for the cancellation of shares.

Challenges

a. Opposition from dissenting minority shareholders

There have been instances where privatization offers have failed due to the inability to meet the minimum approval threshold of shareholders other than the controlling shareholders. One notable example is the failed attempt to privatize Chinese Estates Holdings by the family of Hong Kong magnate Joseph Lau Luen-hung. The privatization offer was thwarted as minority shareholders, who accounted for more than 10% of the disinterested voting rights, expressed strong opposition and voted against the proposal. As a result, the privatization plan could not proceed as intended.

b. Court's power to sanction the scheme

Even after obtaining shareholders' approval, the scheme of arrangement still requires the court's approval in the jurisdiction where the company is incorporated. The court's sanction is not merely a formality for the successful progression of the privatization process. A notable case illustrating this is the judgment handed down on October 9, 2020 by the High Court of Hong Kong for the proposed privatization of Allied Properties (H.K.) Ltd [2020] HKCFI 2624. In this case, the court declined to sanction a scheme of arrangement for the proposed privatization of Allied Properties (H.K.) due to insufficient explanation of the scheme. The lack of clarity hindered the scheme shareholders from making an informed decision on how to vote during the court meeting, along with concerns regarding the use of the headcount test. Another case where the court declined to sanction a scheme of arrangement involved allegations of share splitting in the proposed privatization of PCCW.

In the High Court ruling of Chong Hing Bank Limited [2021] HKCFI 309, the court overruled the previous case of Re Cosmos Machinery Enterprises Limited [2021] HKCFI 2088 and adopted the prohibition view. This view asserted that the court meeting should only consist of holders of disinterested shares, excluding the offeror's concert parties. This approach ensured that discussions remain unhindered by the presence of individuals with

conflicting interests. These cases highlighted the significance of the court's scrutiny and the requirement for clear explanations and proper adherence to legal principles during the scheme of arrangement process for privatization.

Nevertheless, it is generally rare for the court to refuse to sanction a scheme of arrangement. While the High Court of Hong Kong declined to sanction the proposed privatization of Allied Properties, the Court of Appeal overturned the High Court's decision. The Court of Appeal held that the judge was wrong to take the view that the scheme document did not provide an adequate explanation of the scheme and its effects to enable the scheme shareholders to make an informed decision as to how to vote at the court meeting. The Court of Appeal emphasized the general principle that "the court should be slow to differ from the majority views, as it normally acts on the principle that businessmen are much better judges of what is to their commercial advantage than the court could be." This vitiated the exercise of the judge's discretion in refusing to sanction the scheme.

II. Voluntary general offer

Alternatively, the controlling shareholder can make a voluntary general offer under and in accordance with the Code on Takeovers and Mergers (Takeovers Code) to all other shareholders to purchase their shares in consideration of cash and/or securities. In the case of a listed company incorporated in Hong Kong, the British Virgin Islands and the Cayman Islands, if the shareholder making the offer has acquired a sufficiently high threshold(generally 90%) of the shareholding in the listed company, it would have a right to buy out the remaining shares after giving notice to the minority shareholders (the Compulsory Acquisition Right).

Practical issues encountered in a voluntary general offer

a. Higher shareholder acceptance threshold

In order to invoke the Compulsory Acquisition Right in a case of privatization by way of voluntary general offer, the offeror must obtain a required threshold (generally at least 90%) of the shareholding of the listed company. This is especially challenging when faced with dissenting shareholders or large institutional investors who may be unwilling to sell their shares, especially in companies with a significant proportion of public shareholding and low trading activity.

b. Timing and certainty

Voluntary general offers typically take longer to complete compared to schemes of arrangement. A scheme of arrangement follows a predetermined timetable set by the court. In contrast, the process of voluntary general offer involves negotiating with individual shareholders, which can be time-consuming and uncertain.

Under a general offer, if the offeror acquires shares leaving an insufficient public float, the offeror is obligated to comply with Rule 8.08(1)(a) of the Listing Rules governing the listing of securities made by the Exchange by restoring the company's public float requirement. This can be achieved through: (i) disposing of the shares on the open market, and/or (ii) disposing of the shares off-market to independent third parties, either through placing agents or directly.

III. Privatizing an H-share company

Since in some jurisdictions such as the People's Republic of China (the PRC), there is no Compulsory Acquisition Right, shareholders who did not accept the general offer will hold securities that are not listed on the Stock Exchange after the withdrawal of listing. Therefore, a privatization in relation to H share listed in Hong Kong would normally make through a merger by absorption (in other words, the offeror and the listed company would be merged into one company).

According to PRC law, where a privatization is carried out through a merger by absorption, the company will be absorbed and merged. It will then be deregistered and will no longer exist as a separate legal entity, and the assets and liabilities of the company (together with the rights and obligations attached to such assets), business and employees will be merged into and succeeded by the surviving entity. Privatization by a merger by absorption does not require court approval.

For a merger by absorption, PRC law does not provide compulsory acquisition rights to an offeror. According to the Takeovers Code, in cases where the offeree company is incorporated in a jurisdiction that does not afford compulsory acquisition rights to an offeror, the resolution to approve the delisting can only be passed after (i) where the offer becomes or is declared unconditional in all respects, the offer will remain open for acceptance for a longer period than 14 days; (ii) shareholders who have not yet accepted the offer will be notified in writing of the extended closing date and the implications if they choose not to accept the offer; and (iii) the offeror has received valid acceptances of the offer together with purchases (in each case of the disinterested shares) made by the offeror and persons acting in concert with it from the date of the announcement of a firm intention to make an offer amounting to 90% of the disinterested shares.

Means of privatization	
Scheme of arrangement	Cancel the shares held by public shareholders in return for cash or non-cash consideration

Voluntary general offer	Acquire shares from all other shareholders in consideration of cash and/or securities
Privatizing an H-share company	An H-share company does not have the option of utilizing Compulsory Acquisition Rights or a scheme of arrangement for privatization. However, a merger by absorption or a general offer can be proceeded with the privatization process of an H-share company.

Minimum requirements	
Scheme of arrangement	a) The scheme is 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 shareholders; and b) the number of votes cast against the resolution to approve the scheme at such meeting is not more than 10% of the votes attaching to all disinterested shares
Voluntary general offer	Through Compulsory Acquisition Right
Privatizing an H-share company	In the case of a merger by absorption involving an H-Share company, Rule 2.10 of the Takeovers Code remains applicable. In accordance with Rule 2.10 of the Takeovers Code, the merger is subject to the following conditions: (i) the approval by at least 75% of the votes attaching to the H shares held by the independent H shareholders that are cast either in person or by proxy; and (ii) the number of votes cast against the resolution(s) is not more than 10% of the votes attaching to all H shares held by the independent H shareholders. In cases of the general offer, the resolution to approve the delisting can only be passed after (i) where the offer becomes or is declared unconditional in all respects, the offer will remain open for acceptance for a longer period than 14 days; (ii) shareholders who have not yet accepted the offer will be notified in writing of the extended closing date and the implications if they choose not to accept the offer; and (iii) the offeror has received valid acceptances of the offer together with purchases (in each case of the disinterested shares) made by the offeror and persons acting in concert with it from the date of the announcement of a firm intention to make an offer amounting to 90% of the disinterested shares.

<u>Implications of Amendments to the Takeovers Code on Privatization</u>

The amended Takeovers Code was gazetted on September 29, 2023, and came into effect on the same day. The following amendments are specifically relevant to the process of privatization.

a. Revised definition of "voting rights"

The definition of "voting rights" is relevant to determining whether there has been an acquisition of "control" of a listed company in Hong Kong. "Control" is defined as holding 30% or more of a company's voting rights which were previously defined as "voting rights currently exercisable at a general meeting of a company whether or not attributable to the share capital of the company". That definition has now been amended to clarify that voting rights are regarded as exercisable at a general meeting irrespective of any restrictions on their exercise (e.g. by agreement between the parties, by operation of law and regulations, or under a court order), except for the voting rights attached to treasury shares. Accordingly, the determination of control during a privatization process takes into account the exercise of voting rights even if such voting rights are subject to any restrictions prohibiting that person from exercising them.

b. Shareholders' approval and acceptance in case there is no Compulsory Acquisition Right: Note to Rule 2.2(c) of the Takeovers Code

Under Rule 2.2(c) of the Takeovers Code, a shareholders' resolution approving a listed company's delisting after a proposed offer must be subject to the offeror being entitled to exercise, and exercising, rights to compulsorily acquire the remaining shares. If an offeree company is incorporated in a jurisdiction without compulsory acquisition rights, the Securities and Futures Commission (SFC) will waive the requirement provided the three conditions set out in the Note to Rule 2.2 of the Takeovers Code are met. In particular, in addition to obtaining the requisite shareholders' approval, the offeror must receive valid acceptances of 90% of the disinterested shares. However, condition (iii) to the Note to Rule 2.2 was previously silent as to whether purchases made by an offeror and its concert

parties could be included when determining whether the 90% of disinterested shares threshold has been met.

The SFC has revised condition (iii) of the Note to Rule 2.2 of the Takeovers Code to expressly include purchases made by the offeror and persons acting in concert with it from the date of the announcement of a firm intention to make an offer, when determining whether the 90% of the disinterested shares threshold has been met. The codification of this existing practice clarifies requirements for offerees' incorporated jurisdictions without compulsory acquisition procedures.

c. Exercise of Compulsory Acquisition Rights: Rule 2.11 of the Takeovers Code

Rule 2.11 of the Takeovers Code requires an offeror and its concert parties to have acquired 90% of the offeree company's disinterested shares before exercising its compulsory acquisition rights. The language of Rule 2.11 of the Takeovers Code previously only allowed purchases made by an offeror and its concert parties during the period of 4 months after the posting of the initial offer document, together with acceptances, to count towards the 90% threshold.

To align with Rule 2.2 of the Takeovers Code, Rule 2.11 of the Takeovers Code has been amended so that purchases made by an offeror and its concert parties from the date of the announcement of a firm intention to make an offer until the end of 4 months after the posting of the initial offer document can count (with acceptances) towards the 90% of the offeree company's disinterested shares threshold for the purpose of the offeror's entitlement to exercise its compulsory acquisition rights.

d. Shareholders' Meeting by Scheme of Arrangement or Delisting Proposal: Rules 2.2 and 2.10 of the Takeovers Code

The amendments remove the ambiguity in the form of shareholders' meeting in the light of recent court decisions and reinforce the non-prohibition view which has always been adopted by the Executive for meetings held under Rules 2.2 and 2.10 of the Takeovers Code.

The amendment will allow an offeror and its concert parties to attend and vote at meetings held to consider a scheme or a delisting proposal as long as their votes are not included in determining whether the requirements under Rules 2.2 and 2.10 of the Takeovers Code are met. This provides greater technical flexibility in structuring shareholders' voting in schemes of arrangement.

Rules 2.2 and 2.10 of the Takeovers Code were previously silent as to what procedures need to be complied with for convening a shareholder meeting. To clarify the uncertainty regarding the form of shareholders' meeting, Note 8 to Rule 2 has been added stating that a "duly convened meeting of shareholders", for the purposes of Takeovers Code Rules 2.10 and 2.2, "refers to a shareholders' meeting duly convened in accordance with the offeree company's constitutional documents and the company law of its place of incorporation". It serves to avoid undesirable situations where shareholders' meetings held for the purpose of the Codes might be held invalid under the laws of incorporation or constitutional documents of an offeree company. Offeree companies and their advisers are encouraged to seek legal advice and, where applicable, guidance and directions from the relevant courts in respect of the meetings held for the purpose of considering a scheme of arrangement.

e. Deduction of dividends from the offer price: Note 11 to Rule 23.1 and Note 3 to Rule 26.3 of the Takeovers Code

Offerors are not permitted to deduct dividends or other distributions from the offer price unless the right is specifically reserved. For situations where the payment of dividends is subject to a withholding tax, the Executive will only permit a reduction to the offer price based on the gross amount of dividends received by shareholders. This is a change to previous practice where the offeror has discretion whether to invoke its reserved position to reduce the offer consideration in such a situation.

Conclusion

It is evident that all privatization methods share one common feature – the chance of success rests with the other shareholders, regardless of the offeror's existing stake in the listed company. The offeror must exercise caution when selecting a method for privatization. If an offer has been announced or posted but has not become unconditional and is subsequently withdrawn or lapses, neither the offeror nor any person acting in concert with them can announce a new offer or acquire any voting rights of the offeree company within 12 months from the withdrawal or lapse of the previous offer. Therefore, careful consideration of the chosen method is necessary to avoid these limitations and ensure a successful privatization process.

The recent amendments to the Takeovers Code serve to codify the existing practices within the takeover process. By providing clearer guidelines and regulations, these amendments help to reduce ambiguity and enhance transparency. As a result, the amendments contribute to a more streamlined and effective privatization process, benefiting both offerors and shareholders alike.

香港近期私有化的趋势

最近，香港私有化已经成为上市公司所采納的新趋势。这股热潮的背后由几个因素驱动。首先，不少港股估值偏低，促使港股上市企業萌生了私有化念頭为股东实现更高的价值。其次，由于港股市場流动性的低迷，受融資受限等因素影響，维持上市地位的成本(如合规开支)可能变得越来越沉重，从而进一步促使公司付諸私有化行動。

根据香港交易及结算所有限公司（港交所）网站上的公开信息，私有化交易量总数如下:

自 2021 年 1 月至 2024 年 3 月 26 日期间的私有化要约数目:

	安排计划	自愿全面要约	H 股公司私有化
2021	15	1	4
2022	6	0	3
2023	13	3	2
2024（第一季度）	1	0	0
总数*	35	4	9

**我们根据在港交所披露易网站上发布最初的私有化要约公告的日期来确定私有化要约的数量。*

自 2021 年 1 月至 2024 年 3 月第一季度，港交所共公布了 48 项私有化要约。其中， 35 项以安排计划方式实施，4 项以自愿全面要约方式实施，其余的 9 项按照 H 股公司私有化的相关规定实施。

自 2021 年 1 月至 2024 年 3 月 26 日期间成功完成的私有化要约数目:

	安排计划	自愿全面要约	H 股公司私有化
2021	16	1	3
2022	10	0	4
2023	9	1	1
2024（第一季度）	3	0	1
总数*	38	2	9

**我们以刊登于港交所披露易网站上的撤回上市生效公告来计算成功完成私有化要约的数目。然而，由于提出私有化要约与成功完成私有化退市存在不同时间点，包括完成私有化退市要在某一年提出私有化要约后的次年才可实现的情况。*

自 2021 年 1 月至 2024 年 3 月第一季度期间成功完成的 49 项要约当中，38 项通过安排计划成功完成，2 项通过自愿全面要约成功完成，其余 9 项根据 H 股公司私有化条例完成。从上述统计数据来看，通过协议安排进行私有化是最常见的。

本文旨在探讨各种私有化方法,重点比较和对比安排计划、自愿性全面要约和 H 股公司私有化的相关规定,深入分析各种方法的特点和条件。

I. 安排计划

通过安排计划，控股股东可要求公司根据公司注册成立地的法律，向其股东提出注销少数股东持有的所有股份。

除非获得证券及期货事务监察委员会 (证监会) 企业融资部执行人员（执行人员）的同意，否则任何人如欲利用协议安排计划将公司私有化，除满足法律规定的任何投票要求外，还必须满足以下条件，才方可实施该计划: (a) 在适当地召开的股东大会上，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；以及 (b) 投票反对决议的票数不得超过附于所有无利害关系股份的投票权的 10%。

在股东大会上获得批准后，该计划仍须获得公司注册地所在的法院批准。一旦获得批准，公司可向香港联合交易所（联交所）申请撤销上市。在法院审理批准计划的呈请时，法院会考虑若干因素，这些因素在 *Re SHK Hong Kong Industries Limited* (2000) 3 HKC 379 一案的裁决中作了总结。这些因素包括:

1. 允许性: 该计划是否符合既定目标的要求;
2. 类似的法律权利: 被要求作为单一类别投票的成员是否拥有足够相似的法律权利，以便他们可以在一次会议上就共同利益进行协商
3. 会议的召开: 会议是否按照法院的指示适当召开;
4. 充足的信息: 成员是否已获得有关该计划的足够信息，以便就支持或反对该计划做出明智的决定;
5. 法定多数: 是否已获得必要的法定多数；以及

6. 法院酌情权：	法庭在行使酌情权时是否满意一个聪明而诚实的人根据自己作为投票类别成员的利益行事可能会合理地批准该计划。

安排计划中遇到的实际问题

在香港，通过安排计划进行私有化更为常见。这是因为，要在全面要约私有化情况中引用强制收购权，提出要约的一方必须收购上市公司至少 90% 的无利害关系股份（根据其注册地法律，或有更高的门槛）。此外，自愿要约须获得公众股东的接纳程度可能并不完全由要约股东控制。此外，如果通过安排计划进行私有化，取消股份一般无需缴纳印花税。

挑战

a. 持反对意见的小股东的反对

在过去，由于未能满足除控股股东以外股东的最低批准门槛，导致私有化要约失败的情况曾经发生过。其中一个著名的例子是香港大亨刘銮雄家族试图将华人置业集团私有化，但该尝试以失败告终。由于占无利害关系投票权超过 10%的少数股东强烈反对并投反对票，私有化提议遭到挫折。因此，私有化计划未能按预期进行。

b. 法院批准该计划的权力

即使获得股东批准，安排计划仍需取得公司注册地司法管辖区法院的批准。法院的批准不仅是私有化进程成功推进的一项形式，这一点可以通过香港高等法院在 2020 年 10 月 9 日就联合地产（香港）有限公司[2020] HKCFI 2624 拟议私有化一案的判决得到阐明。在该案中，由于联合地产(香港)私有化建议的安排计划解释不充分，法院拒绝批准该计划。由于缺乏明确的解释，计划的股东无法在法院会议上对如何投票做出明智决策，同时还存在使用人数表决法的担忧。法院拒绝批准安排计划的另一起案件涉及电讯盈科拟议私有化中的拆股指控。

在高等法院对创兴银行有限公司[2021] HKCFI 309 的裁决中，法院推翻了 Re Cosmos Machinery Enterprises Limited [2021] HKCFI 2088，并采纳了禁止意见。该观点认为，法院会议应仅由无利害关系的股份持有人组成，不包括要约人的一致行动人。这种方法确保讨论不会因存在利益冲突的个人而受到阻碍。这些案例凸显了法院审查的重要性，以及在私有化安排计划过程中明确解释和适当遵守法律原则的要求。

然而，法院拒绝批准安排计划的情况通常很少见。虽然香港高等法院拒绝批准联合地产（香港）有限公司的私有化提议，但上诉法院推翻了高等法院的裁决。上诉法院认为，法官认为计划文件没有对计划及其影响作出充分解释，使计划股东不能就如何在法庭会议上投票做出知情决定，这一观点是错误的。上诉法院强调了一般原则：法院应对提出与多数人的观点不同的意见采纳谨慎的态度，因为它通常按照「商人比法院更能判断什么对他们的商业利益有利」的原则行事。这削弱了法官拒绝批准该计划的自由裁量权。

II. 自愿全面要约

另外，控股股东可以根据《收购及合并守则》（《收购守则》）向所有其他股东提出自愿全面要约，以现金和/或证券作为代价购买其股份。对于在香港、英属维尔京群岛和开曼群岛注册成立的上市公司，如果提出要约的股东已收购该上市公司一定的（一般为至少 90%）股权，则有权强制收购剩余股份，即通知少数股东行使强制收购权。

自愿全面要约中遇到的实际问题

a. 较高的股东接纳门槛

在以自愿全面要约方式进行私有化的情况下，为行使强制收购权，要约人必须获得上市公司的相当高的持股比例（一般为至少 90%的股权）。当面对可能不愿意出售股份的异议股东或大型机构投资者时，尤其是在公众持股比例较高且交易活动较低的公司中，这一点尤其具有挑战性。

b. 时间和确定性

与安排计划相比，自愿全面要约通常需要更长的时间才能完成。安排计划遵循法院设定的预定时间表。相比之下，自愿全面要约的过程涉及与个人股东的谈判，这可能既耗时又不确定。

根据全面要约，如果要约人收购股份而导致公众持股量不足，要约人有义务遵守上市规则第 8.08(1)(a)条的规定由交易所恢复公司的公众持股量要求。这可以通过以下方式实现：(i) 在公开市场出售股份，和/或 (ii) 通过配售代理或直接向独立第三方出售场外股份。

III. H 股公司私有化

由于一些司法权区例如中华人民共和国（中国）并无强制收购权，未接受全面要约的股东在公司撤回上市后将持有未在联交所上市的证券。因此，香港上市 H 股的私

有化通常会通过吸收合并的方式进行（即要约人与上市公司合并为一家公司）。

根据中华人民共和国法律，以吸收合并方式进行私有化的，公司被吸收合并。然后，该公司将被注销，不再作为独立的法人实体存在，公司的资产和负债（以及此类资产附带的权利和义务）、业务和员工将被合并并由存续实体继承。通过吸收合并进行私有化不需要法院批准。

对于吸收合并，中国法律并未赋予收购人强制收购权。根据《收购守则》，如果受要约公司成立于的司法管辖区无强制收购权，则批准除牌的决议只能在 (i) 当该要约在各方面成为或宣布为无条件时，该要约将维持不少于 14 天；(ii) 以书面形式通知仍未接纳要约的股东延期后的截止日期及他们若选择不接纳要约所产生的影响；及(iii) 批准取消上市地位的决议，须在要约人因要约获得接纳而得到的股份连同要约人及与其一致行动的人在公布作出要约的确实意图的日期后所购买的股份（上述的股份均指无利害关系的股份）的总数达到 90%无利害关系的股份后，方能通过。

私有化方式	
安排计划	注销公众股东持有的股份以换取现金或非现金对价
自愿全面要约	以现金和/或证券为代价从所有其他股东手中收购股份
H 股公司私有化	H 股公司不能选择利用强制收购权或安排计划进行私有化。 但H股公司私有化进程中可以同时进行吸收合并或全面收购。

最低要求	
安排计划	a) 该计划由在正式召开的股东大会上亲自或通过代理投票的无利害关系股份中至少 75% 的票数批准；及 b) 在该次会议上，反对批准该计划的决议的票数不超过所有无利害关系股份所持票数的 10%
自愿全面要约	通过强制取得权
H 股公司私有化	就涉及H股公司的吸收合并而言，《收购守则》规则 2.10 仍然适用。根据收购守则规则 2.10，合并须满足以下条件： • 经独立 H 股股东亲自或委派代表所持 H 股表决权的 75%以上通过；和
	• 反对该议案的票数不超过独立 H 股股东所持全部 H 股表决权的 10% 。 在全面要约的情况下，批准退市的决议只能在 (i) 当该要约在各方面成为或宣布为无条件时，该要约将维持不少于 14 天；(ii) 以书面形式通知仍未接纳要约的股东延期后的截止日期及他们若选择不接纳要约所产生的影响；及(iii) 批准取消上市地位的决议，须在要约人因要约获得接纳而得到的股份连同要约人及与其一致行动的人在公布作出要约的确实意图的日期后所购买的股份（上述的股份均指 无利害关系的股份）的总数达到 90%无利害关系的股份后，方能通过。

<u>收购守则修订对私有化的影响</u>

修订后的《收购守则》于 2023 年 9 月 29 日刊宪，并于同日生效。以下修订与私有化进程特别相关。

a. 经修订的 "投票权 "定义

“投票权”的定义与判断是否收购香港上市公司的“控制权”有关。 “控制权”的定义是持有公司 30%或以上的投票权，之前的定义是“当前在公司股东大会上行使的投票权，无论是否归属于公司股本”。该定义现已修订，以澄清投票权被视为可在股东大会上行使，无论其行使有何限制（例如，通过各方之间的协议、法律法规的实施或根据法院命令），但以下情况除外：库存股附带的投票权。因此，私有化过程中控制权的确定会考虑投票权的行使，即使这些投票权受到禁止该人行使的任何限制。

b. 在没有强制收购权的情况下，股东的批准和接受： 收购守则第 2.2(c)条的说明

根据《收购守则》规则 2.2(c)，在提出要约后批准上市公司退市的股东决议必须以要约人有权行使强制收购剩余股份的权利为前提。若受要约公司成立于没有强制收购权的司法管辖区，则只要符合《收购守则》规则 2.2 注释所载的三个条件，证券及期货事务监察委员会（证监会）将豁免该规定。特别是，除了获得必要的股东批准外，要约人还必须获得 90% 的无利害关系股份的有效接受。然而，规则 2.2 注释的条件 (iii) 此前并未提及在确定是否满足 90% 无利害关系股份门槛时是否可以包括要约人及其一致行动方的购买。

证监会已修订《收购守则》第 2.2 条注释的第(iii)项条件，在厘定是否已符合 90%无利害关系股份的门槛时，明确

包括要约人及其一致行动人士自宣布确实有意提出要约当日起所进行的收购。对这一现行做法的编纂澄清了对受要约人在没有强制收购程序的注册辖区的要求。

c. 行使强制收购权：收购守则规则 2.11

《收购守则》第 2.11 条规定，要约人及其一致行动方在行使强制收购权之前，必须已收购被要约人公司 90%的无利害关系股份。此前，《收购守则》第 2.11 条的措辞只允许要约人及其一致行动方在张贴初步要约文件后的 4 个月内进行的购买，连同已获接受的股份，才可计入 90% 的门槛。

为与《收购守则》第 2.2 条一致，《收购守则》第 2.11 条已作出修订，规定要约人及其一致行动人士在公布提出要约的明确意向当日起至刊登初步要约文件后 4 个月内所作出的购买（连同已获接纳的股份），可计入受要约公司无利害关系股份 90%的门槛，以计算要约人行使强制收购权的权利。

d. 股东大会按安排计划或除牌建议： 收购守则规则 2.2 及 2.10

根据最近的法院裁决，这些修订消除了股东大会形式上的模糊之处，并强化了行政部门对根据《收购守则》第 2.2 和 2.10 条举行的会议一直采取的不禁止观点。

该修订将允许要约人及其一致行动人士出席为考虑计划或除牌建议而举行的会议并在会议上投票，只要他们的投票不包括在决定是否符合收购守则规则 2.2 及 2.10 的规定时即可。这为安排计划中股东投票的结构提供了更大的技术灵活性。

《收购守则》收购守则规则 2.2 及 2.10 以前没有规定召开股东大会需要遵守哪些程序。为了澄清有关股东大会形式的不确定性，《收购守则》第 2 条增加了注释 8，指出就《收购守则》第 2.10 条和第 2.2 条而言，"正式召开的股东大会"是指按照受要约方公司的章程文件及其注册地的公司法正式召开的股东大会"。这样做的目的是为了避免出现不理想的情况，即根据受让公司的注册地法律或章程文件，为《守则》目的而召开的股东大会可能被视为无效。鼓励受要约公司及其顾问就为考虑安排计划而举行的会议寻求法律建议，并在适用的情况下寻求相关法院的指导和指示。

e. 从要约价格中扣除股息： 收购守则第 23.1 条附注 11 及第 26.3 条附注 3

要约人不得从要约价格中扣除股息或其他分配，除非特别保留了这一权利。在支付股息需预扣税款的情况下，执行方只允许根据股东收到的股息总额降低要约价格。这改变了以往的做法，即在这种情况下，要约人可酌情决定是否援引其保留地位来降低要约代价。

结论

显然，所有私有化方式都有一个共同点：无论要约人在上市公司的现有股权有多少，成功的机会都取决于其他股东。要约人在选择私有化方法时必须谨慎行事。如果要约已宣布或发布但尚未成为无条件并随后被撤回或失效，则要约人或任何与其一致行动的人均不得在要约发出后 12 个月内宣布新要约或取得受要约公司的投票权。因此，有必要仔细考虑所选择的方法，以避免这些限制并确保私有化进程的成功。

最近对《收购守则》的修订旨在将收购过程中的现有做法编入守则。通过提供更清晰的指导方针和法规，这些修正案有助于减少歧义并提高透明度。因此，这些修正案有助于更加简化和有效的私有化进程，使要约人和股东都受益。

Source 来源:
https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/codes/the-codes-on-takeovers-and-mergers-and-share-buy-backs/the-codes-on-takeovers-and-mergers-and-share-buy-backs.pdf
https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=23CP5

Hong Kong Government Opens the New Capital Investment Entrant Scheme for Application

Hong Kong has revived the Capital Investment Entrant Scheme (“New CIES”) to attract talents (and capital) to stay in Hong Kong and/or obtaining ordinary residence in Hong Kong. On March 1, 2024, the Hong Kong Government issued the 39-page Rules for New CIES, officially opening the application process for the program. Applicants can submit applications for new CIES.

Successful applicants may bring their dependents (including spouse and unmarried dependent children aged under 18 years) to Hong Kong. Permission to stay will normally be granted to applicants and their dependents for not more than 2 years. Upon expiry of the 2-year period, applicants will be allowed to apply for extensions at 3-year periods at each time until they reach the 7th year, at which point they will be eligible for Hong Kong permanent residence.

Further, successful applicants will benefit from the newly introduced arrangement which allows for the suspension of payment of Buyer's Stamp Duty and New Residential Stamp Duty in relation to acquisitions of residential property Hong Kong, with details of the relevant legislative amendments to be followed.

If an applicant is unable to fulfil the continuous residence requirement, but is able to continuously satisfy the financial requirements under the new CIES for not less than 7 years, he/she may apply for an unconditional stay in Hong Kong.

Key Requirements under New CIES

An eligible applicant must meet the following criteria:

- Aged 18 or above (including foreign nationals, Chinese nationals who have obtained permanent resident status in a foreign country, Macao Special Administrative Region residents and Chinese residents of Taiwan)
- Demonstrate net assets of not less than HK$30 million throughout the 2 years preceding the application
- Invest a minimum of HK$30 million, including:
    - A minimum of HK$27 million in permissible financial assets and non-residential real estate
    - HK$3 million into a new CIES Investment Portfolio managed by the Hong Kong Investment Corporation Limited

Permissible Investment Assets

An eligible applicant must invest a minimum of HK$27 million in any of the following :

a) Permissible Financial Assets

Equities	• Shares of companies that are listed on the Stock Exchange of Hong Kong (SEHK) and traded in Hong Kong Dollars (HKD) or Renminbi (RMB)
Debt Securities	• Debt securities listed on the SEHK and traded in HKD or RMB (including debt instruments issued in Hong Kong by the Ministry of Finance of the People's Republic of China and local people's governments in the Mainland) • Debt securities denominated in HKD or RMB, including fixed or floating rate instruments and convertible bonds issued or fully guaranteed by either: o the Government, the Exchange Fund, the Hong Kong Mortgage Corporation, the MTR Corporation Limited, Hong Kong Airport Authority, and other corporations, agencies or bodies wholly or partly owned by the Government as may be specified from time to time by the Government; or o listed companies as referred to under the above '*Equities*' category
Certificates of Deposits	• HKD or RMB certificates of deposit with a remaining term of at least 12 months (capped at 10% of minimum investment, i.e. HK$30 million)
Subordinated Debt	• Subordinated debt denominated in HKD or RMB issued by authorized institutions
Eligible Collective Investment Schemes	• Securities and Futures Commission (**SFC**)-authorized funds managed by Type 9 (asset management) licensed entities • SFC-authorized real estate investment trusts (**REITs**) managed by Type 9 licensed entities • SFC-authorized Investment-Linked Assurance Schemes issued by permitted insurers • Registered open-ended fund companies (**OFCs**) managed by Type 9 licensed entities
Limited Partnership Funds (LPFS)	• Ownership interest in registered LPFs

b) Non-Residential Real Estate

Non-Residential Real Estate	• Commercial and/or industrial real estate in Hong Kong (including pre-completion properties, excluding land), capped at HK$10 million

c) CIES Investment portfolio ("CIES IP")

Each Applicant under New CIES is required to invest HK$3 million into a new CIES IP, a dedicated portfolio that will be set up and managed by the Hong Kong Investment Corporation Limited. The CIES IP will make investment in companies/projects with a Hong Kong nexus, with a view to supporting the development of innovation and technology industries and other strategic industries that are beneficial to the long-term economic development of Hong Kong.

Expanded Scope of Permissible Investments

Compared to the previous CIES implemented from 2003 to 2015, the new CIES has expanded the scope of permissible investments as part of the Government's initiatives to provide a broader range of options for overseas investors and maintain Hong Kong's competitiveness among other international cities. Under the previous CIES, applicants were required to invest a minimum of HK$10 million in permissible assets, including equities, debt securities, certificates of deposits, subordinated debt, and eligible collective investment schemes denominated in Hong Kong dollars.

The new CIES has broadened the category of eligible collective investment schemes to encompass Securities and Futures Commission (SFC)-authorized funds managed by Type 9 licensed entities, real estate investment trusts (REITs), and registered open-ended fund companies (OFCs). Additionally, an investment category for limited partnership funds (LPFs) has been included. This represents a significant expansion from the previously more restrictive scope, which was limited to Hong Kong dollar-denominated unit trusts and mutual funds pre-approved and authorized by the SFC, with a requirement for at least 70% of average net assets to be invested in other permissible asset classes.

The Government has conducted extensive outreach and briefing sessions on the Scheme details, which have garnered considerable interest from high-net-worth individuals worldwide, including those from the Middle East, Southeast Asia, and beyond. The Financial Services and the Treasury Bureau stated that an early launch of the Scheme demonstrates the Government's commitment to strengthening the development of asset and wealth management business, financial services, and related professional services, as well as driving the high-quality development in Hong Kong. The Invest Hong Kong also stated that the Scheme will solidify Hong Kong's position as a hub for talent and capital, and elevate Hong Kong's status as an international financial center.

Implications for Listed Companies

New CIES is designed to attract high-net-worth individuals and families to invest in Hong Kong, with potential implications for listed companies:

1. **Increased investment opportunities:** New CIES encourages eligible applicants to make a minimum investment of HK$30 million in permissible investment assets. This influx of capital could potentially create new investment opportunities for listed companies in Hong Kong. Companies may benefit from increased funding and potential partnerships with investors participating in the scheme.

2. **Enhanced financial services sector:** The development of asset and wealth management businesses under New CIES may contribute to the growth and expansion of the financial services sector in Hong Kong. This could lead to increased demand for financial products and services provided by listed companies operating in the sector. Companies specializing in asset and wealth management may experience growth and expansion as a result of the scheme.

3. **Potential collaboration and partnerships:** New CIES's focus on driving high-quality development in Hong Kong may attract international investors, including family offices, looking to establish a presence in the region. This could create opportunities for collaboration and partnerships between listed companies and these investors, leading to potential business expansion and growth. Listed companies that align with the investment preferences of the scheme participants may have the opportunity to form strategic partnerships and benefit from their expertise and resources.

4. **Talent attraction and retention:** New CIES allows eligible applicants to bring their dependents to Hong Kong and provides provisions for the extension of their stay. This may contribute to the talent pool in Hong Kong and potentially benefit listed companies in terms of attracting and retaining skilled professionals.

Companies that require specialized talent or expertise may find it easier to recruit and retain qualified individuals as a result of the scheme.

It is important to note that the specific implications for listed companies and directors would depend on various factors, including the nature of the company's business, its sector, and the individual circumstances of the applicants under the scheme. Company should carefully assess the potential opportunities and challenges presented by New CIES and determine how to best leverage the program to their advantage.

香港政府开放新资本投资入境计划申请

香港恢复资本投资入境计划（"新 CIES"），旨在吸引人才（和资本）留在香港或获得香港的普通居留权。2024 年 3 月 1 日，香港政府发布了 39 页的新 CIES 规定，,正式启动该计划的申请程序，申请人可以提交新 CIES 的申请。

成功的申请人可以携带家属（包括配偶和未满 18 岁的未婚子女）到香港。申请人及其家属通常会获批不超过 2 年的停留期。在 2 年期满后，申请人可以每次申请 3 年延期，直到达到第 7 年时有资格获得香港永久居留权。

此外，成功的申请人将受益于新推出的安排，可以暂停支付购房印花税和新住宅印花税，涉及香港住宅物业的收购，有关相关立法修订的详细信息将随后公布。

如果申请人无法满足连续居住要求，但能够在新 CIES 下连续满足财务要求不少于 7 年，他/她可以申请在香港无条件居留。

新 CIES 的主要申请条件

合资格申请人须满足以下标准:

- 年满 18 岁或以上（包括外国国民、已取得外国永久性居民身份的中国籍人士、澳门特别行政区居民和中国台湾居民）
- 证明在提出申请前的 2 年绝对实益拥有不少于 3,000 万港元的净资产
- 投资最少 3,000 万港元于获许投资资产，包括:
  - 最少 2,700 万港元于获许金融资产和非住宅房地产
  - 投入 300 万港元于新的 CIES 计划投资组合（将由香港投资管理有限公司成立及管理，用于投资与香港有关联的创科及战略行业的公司或项目）

a) 获许金融资产

股票	• 于香港联合交易所有限公司（联交所）上市并以港元（港元）或人民币（人民币）交易的公司股票
债券	• 以港元或人民币交易的联交所上市债券（由中央人民政府财政部和内地地方政府在香港发行的债务票据） • 以港元或人民币计价的债务证券，包括由以下机构发行或全面担保的固定或浮动利率工具和可转换债券: o 特区政府、外汇基金、香港按揭证券有限公司、香港铁路有限公司、香港机场管理局，以及特区政府不时指明由特区政府全资或部分拥有的其他法团、机构或团体；或 o 上述'股票'类别下所述的上市公司
存款证	• 由认可机构发行并以港元或人民币计价的存款证（在购买时须距离到期日不少于 12 个月），而投资金额以最低投资门槛的 10%（即 300 万港元）为上限
后偿债项	• 由就第 9 类受规管活动（提供资产管理）获发牌的实体管理的证券及期货事务监察委员会（证监会）认可基金 • 由就第 9 类受规管活动获发牌的实体管理的证监会认可房地产投资信托基金(REITs) • 由获许保险人发行的证监会认可投资相连寿险计划 • 由就第 9 类受规管活动获发牌的实体管理并在香港注册的开放式基金型公司(OFC)
有限合伙基金(LPF)	• 在香港注册的 LPF 的所有权权益

b) 非住宅房地产

非住宅房地产	位于香港的商用及/或工业用途房地产（包括楼花但不包括土地），投资金额以 1,000 万港元为上限

c) CIES 投资组合（CIES 投资）：

每位新 CIES 申请人需投入 300 万港元到由香港投资管理有限公司设立和管理的 CIES 投资组合。CIES 投资将投资于与香港有关联的公司/项目,以支持创新科技行业和其他有利于香港长期经济发展的战略性行业。

获许投资范围的扩大

与 2003 年至 2015 年实施的原有 CIES 相比,新 CIES 扩大了获许投资范围,这是政府提供更广泛投资选择给海外投资者,并维持香港在国际城市中竞争力的举措。在原有的 CIES 计划下，申请人需要投资至少 1,000 万港元于获许投资资产（包括以港元计价的股票、债券、存款证、后偿债项和合资格集体投资计划）。

新的 CIES 计划已扩大了合资格集体投资计划的类别,以包括由就第 9 类受规管活动获发牌的实体管理的证监会认可基金、REITs 以及在香港注册的 OFC，还新增了 LPF 的类别。相比之下，原有 CIES 计划的范围仅限于需经证监会预先批准和认可并以港元计价的单位信托基金和互惠基金，且该等基金需将不少于平均净资产的 70%投资于其他类别的获许投资资产。

政府已广泛开展计划详情的推广和简报会,引起来自中东、东南亚等地的高净值人士的广泛兴趣。香港财经事务及库务局表示,及时推出该计划体现了政府加强资产及财富管理业务、金融服务及相关专业服务发展,推动香港高质量发展的决心。香港投资推广署也表示,该计划将巩固香港作为人才和资本枢纽的地位,提升香港作为国际金融中心的优势。

对上市公司的影响

新 CIES 旨在吸引高净值个人和家庭投资，这对香港的上市公司有几个影响：

1. **增加投资机会**：新 CIES 鼓励符合条件的申请人在可投资资产上进行至少 3000 万港元的最低投资。这种资金的涌入可能为香港的上市公司创造新的投资机会。公司可能从增加的资金和与参与该计划的投资者的潜在合作伙伴关系中受益。

2. **增强金融服务行业**：在新 CIES 下，资产管理和财富管理业务的发展可能有助于香港金融服务行业的增长和扩展。这可能导致对该行业上市公司提供的金融产品和服务的需求增加。专门从事资产管理和财富管理的公司可能会因为该计划而经历增长和扩展。

3. **潜在的合作与伙伴关系**：新 CIES 注重推动香港的高质量发展，可能吸引包括家族办公室在内的国际投资者来该地区建立业务。这可能为上市公司与这些投资者之间的合作和伙伴关系创造机会，从而带来潜在的业务扩展和增长。与该计划参与者的投资偏好相一致的上市公司可能有机会建立战略伙伴关系，并从他们的专业知识和资源中受益。

4. **人才吸引和保留**：新 CIES 允许符合条件的申请人将其家属带到香港，并提供延长停留的规定。这可能有助于增加香港的人才储备，并在吸引和留住熟练专业人士方面对上市公司产生潜在好处。需要特定人才或专业知识的公司可能会发现，由于该计划，他们更容易招聘和留住合格人才。

值得注意的是，该计划对于上市公司和董事来说，具体的影响将取决于各种因素，包括公司业务的性质、所属行业以及该计划下申请人的个人情况。公司应仔细评估新 CIES 所呈现的潜在机遇和挑战，并确定如何利用该计划来获得优势。

Source 来源:
https://www.info.gov.hk/gia/general/202403/01/P2024022900797.htm?fontSize=1
https://www.newcies.gov.hk/en/index.html
https://www.newcies.gov.hk/assets/pdf/scheme-rule-en.pdf

Hong Kong Securities and Futures Commission's Quarterly Report Reveals Surge in Net Inflows to Investment Funds in Hong Kong

On March 8, 2024, The Securities and Futures Commission (SFC) of Hong Kong has released its Quarterly Report for the period of October to December 2023, highlighting significant regulatory developments and initiatives undertaken during the quarter. The report provides insights into the SFC's efforts to maintain market integrity, enhance investor protection, and foster innovation in the financial industry.

The asset management space fared strongly during the quarter. Net fund inflows into Hong Kong domiciled funds surged 179% quarter-on-quarter to HK$33.5 billion. For full-year 2023, these inflows jumped 92.9% year-on-year (YoY) to HK$87.1 billion. As at December

31, 2023, the assets under management of the 914 Hong Kong-domiciled funds increased 4.9% YoY. In addition, the SFC authorized Asia's first and the world's largest exchange-traded fund investing in Saudi Arabian listed stocks, which listed in November.

Mainland-Hong Kong Stock Connect kept up its momentum. Average daily northbound trading rose 8% YoY in 2023 whilst average daily southbound trading remained steady. Their shares in both Mainland and Hong Kong stock market turnovers increased. Moreover, both northbound and southbound trading recorded net buys last year, amounting to RMB43.7 billion and RMB292.9 billion.

To facilitate the development of the listing market, the SFC approved rule amendments for GEM listing reforms by the Stock Exchange of Hong Kong Limited, which introduced a new route for GEM listing and a streamlined mechanism for Main Board transfer. During the quarter, the SFC processed 135 listing applications, totaling 270 for full-year 2023, with average processing time reduced by 11% YoY to 108 business days.

The number of SFC licensees and registrants remained stable at 48,091, comprising 3,257 licensed corporations, 112 registered institutions and 44,722 individuals as of December 31, 2023. License applications received rose 16% YoY for the whole year, around 7,200 license applications were received, including around 7,000 individuals and 185 corporations, and picked up 8% YoY for the quarter. Of the 56 licensed corporation applications approved by the SFC in the quarter, each licensed corporation may have multiple SFC regulated activity license., Type 9 (asset management) and Type 4 (advising on securities) regulated activities accounted for 88% and 66%. Six virtual asset trading platforms (VATPs) submitted their corporate license applications during the quarter. A total of 24 applications under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance were received when the deadline for license applications under the transitional arrangements of the VATP licensing regime closed on February 29, 2024.

To raise the public's awareness of investment scams and risks, the SFC warned the public against VA-related frauds and suspicious investment products through press briefings, press releases, social media posts and alert lists, as of 29 February 2024, 14 suspicious VATPs and 38 suspicious investment products were posted on the alert lists. It also launched a comprehensive publicity campaign, including a television drama, debuting a YouTube channel, radio broadcasts, bus advertisements and online banners.

In an effort to combat fraudulent activities, the SFC also established a joint working group with the Hong Kong Police Force to enhance collaboration on monitoring and investigating VA-related illegal activities. The SFC and the Police have been sharing information twice a week since December to promptly address potential fraud.

香港证券及期货事务监察委员会的季度报告显示,香港投资基金的净资金流入激增

2024 年 3 月 8 日,香港证券及期货事务监察委员会(证监会)发布了 2023 年 10 月至 12 月的季度报告,重点介绍了该季度采取的重大监管发展和举措。该报告洞悉了证监会为维护市场廉正、加强投资者保障及促进金融业创新所做的努力。

资产管理领域于季内表现强劲。在香港注册成立的基金的净资金流入按季急升 179%至 335 亿港元。2023 年全年，有关净资金流入按年上升 92.9%至 871 亿港元。截至 2023 年 12 月 31 日，914 只在香港注册成立的基金的管理资产值按年增加 4.9%。此外，证监会认可了亚洲首只投资于沙特阿拉伯上市股票的交易所买卖基金，规模为全球最大，该基金已于 11 月上市。

内地与香港股票市场交易互联互通机制保持动力。2023 年，北向交易的日均成交额按年上升 8%，南向交易的日均成交额则维持平稳，而两者占内地与香港股市成交额的份额均有所增加。此外，去年北向及南向交易均录得净买入，金额分别为人民币 437 亿元及人民币 2,929 亿元。

为促进上市市场的发展，证监会已批准香港联合交易所有限公司有关 GEM 上市改革的规则修订，从而新增在 GEM 上市的途径，及简化了 GEM 发行人转往主板上市的机制。季内，证监会处理了 135 宗上市申请，2023 年全年处理了合共 270 宗，平均处理时间按年减少 11%至 108 个营业日。

截至 2023 年 12 月 31 日，持牌机构及人士和注册机构的数目为 48,091，包括 3,257 家持牌机构、112 家注册机构及 44,722 名人士，数目保持平稳。全年所收到的牌照申请数目按年上升 16%，证监会收到了约 7,200 份牌照申请，其中包括约 7,000 名人士和 185 家机构。季内则按年增加 8%。在证监会于季内发出的 56 个公司牌照中，每家持牌机构可能持有多项证监会受规管活动的牌照。申请第 9 类（提供资产管理）及第 4 类（就证券提供意见）受规管活动的分别占 88%及 66%。季内，有六家虚拟资产交易平台提交了机构牌照申请。截至 2024 年 2 月 29 日，即虚拟资产交易平台发牌制度过渡安排下的截止申请日期为止，证监会合共收到 24 份根据《打击洗钱及恐怖分子资金筹集条例》提出的申请。

为了提高公众对投资骗局和风险的认知，证监会透过新闻简报会、新闻稿、社交媒体帖文及警示名单，告诫公

众提防虚拟资产相关的欺诈行为和可疑投资产品，截至2024年2月29日，14家可疑虚拟资产交易平台及38个可疑投资产品已被列入警示名单。并展开了全面的宣传活动，包括制作电视剧集，首次推出YouTube频道，作出电台广播，以及登载巴士广告及网上横幅。

为了打击欺诈活动，证监会亦与香港警务处成立联合工作小组加强合作，以监察和调查虚拟资产相关的非法活动。证监会与警方自12月开始，每周两次进行资讯交流，以便及时处理潜在的欺诈活动。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=24PR44
https://www.sfc.hk/-/media/EN/files/COM/QR-Reports/202310-12/0-SFC-Quarterly-Report-OctDec-2023EN.pdf?rev=40806423ee184141ae0f28279cddb359

Hong Kong Government Adjusts Business Registration Fees and Waives the Business Registration Levy

On March 6, 2024, the Hong Kong Government served a notice to the Legislative Council to move a resolution under the Business Registration Ordinance (Cap. 310) (BRO) to increase business registration fees with effect from April 1, 2024. The Government also published in the Gazette on March 8,2024 the Business Registration Ordinance (Amendment of Schedule 2) Order 2024 (BRO Order) to increase branch registration fees and to waive the business registration levy of $150 payable to the Protection of Wages on Insolvency Fund for two years.

Business Registration Fee Increase

Under the BRO, all businesses operating in Hong Kong are required to register and pay an annual fee. The current fees, which have remained unchanged for nearly 30 years, are HK$2,000 for a one-year certificate and HK$5,400 for a three-year certificate.

To account for inflation and maintain the operational costs of the business registration system, the 2024-25 Budget has proposed increasing these fees by HK$200, or 10%. The new fees will be HK$2,200 for a one-year certificate and HK$5,600 for a three-year certificate, effective April 1, 2024.

Branch Registration Fee Adjustment

In line with the proposed increase in business registration fees, the fee for registering a branch of a business will also increase by 10%. The current and proposed branch registration fees are outlined below:

- Business Registration Fees:
  - One-year certificate increasing from $2,000 to $2,200.
  - Three-year certificate increasing from $5,200 to $5,720.

- Branch Registration Fees:
  - One-year certificate increasing from $73 to $80.
  - Three-year certificate increasing from $189 to $208.

- Levy:
  - One-year certificates: $150 currently, waived from 4/1/2024 to 3/31/2026, then $150 after 4/1/2026.
  - Three-year certificates: $450 currently, $150 from 4/1/2024 to 3/31/2025, $300 from 4/1/2025 to 3/31/2026, then $450 after 4/1/2026.

Business Registration Levy Waiver

In addition to the registration fees, businesses are currently required to pay an annual levy of HK$150 per registration to finance the Protection of Wages on Insolvency Fund. To alleviate the impact of the fee increases on businesses, and considering the stable financial position of the Fund, the 2024-25 Budget has proposed waiving this levy for two years, starting April 1, 2024.

Legislative Process

To implement the proposed changes to the business registration fees from April 1, 2024, the Secretary for Financial Services and the Treasury moved a resolution pursuant to section 18(1) of the Business Registration Ordinance at the Legislative Council on March 27, 2024. The Chief Executive has made the Public Revenue Protection (Business Registration) Order 2024 to provide legal force to the resolution before it is passed.

Furthermore, the Financial Secretary has made the Business Registration Ordinance (Amendment of Schedule 2) Order 2024 to implement the proposed increase in branch registration fees and the two-year waiver of the levy. This Order was published in the Gazette on March 8, 2024 and tabled at the Legislative Council for negative vetting on March 13, 2024.

Revenue Impact to the Hong Kong Government

The Hong Kong Government estimates that the adjustments to business registration fees and branch registration fees will increase revenue by approximately HK$295 million per annum.

By updating the fee structure and providing temporary relief through the levy waiver, the Hong Kong Government aims to strike a balance between maintaining the operational costs of the business registration system and supporting businesses in the current economic climate.

香港政府调整商业登记费及豁免商业登记征费

2024 年 3 月 6 日，香港政府向立法会作出根据《商业登记条例》（第 310 章）（《条例》）提交决议案的预告，以由 2024 年 4 月 1 日起增加商业登记费。此外，政府亦于 2024 年 3 月 8 日将《2024 年商业登记条例（修订附表 2）令》（《商业登记条例令》）刊登宪报，以增加分行登记费及豁免破产欠薪保障基金收取的 150 元商业登记征费（「征费」）两年。

增加商业登记费

根据《条例》,所有在香港经营业务的机构都须办理商业登记并缴付年费。目前的费用(接近 30 年未作调整)为一年证 2,000 港元,三年证 5,400 港元。

为弥补通胀并维持商业登记系统的运作成本,2024 至 25 年度《财政预算案》建议将这些费用增加 200 港元或 10%。新费用将为一年证 2,200 港元,三年证 5,600 港元,自 2024 年 4 月 1 日起生效。

调整分行登记费

为与建议的商业登记费增加保持一致,办理业务分行登记的费用也将增加 10%。现行及建议的分行登记费概述如下。

- 商业登记费:
  - 一年证由 2,000 元增加至 2,200 元。
  - 三年证由 5,200 元增加至 5,720 元。
- 分行登记费:
  - 一年证由 73 元增加至 80 元。
  - 三年证由 189 元增加至 208 元。
- 征费:
  - 一年证:目前为 150 元,2024 年 4 月 1 日至 2026 年 3 月 31 日获豁免,2026 年 4 月 1 日起为 150 元。
  - 三年证:目前为 450 元,2024 年 4 月 1 日至 2025 年 3 月 31 日为 150 元,2025 年 4 月 1 日至 2026 年 3 月 31 日为 300 元,2026 年 4 月 1 日起为 450 元。

豁免商业登记征费

除登记费外,企业目前还须就每个商业登记或分行登记缴付 150 港元年费,作为破产欠薪保障基金的资金。为减轻费用增加对企业的影响,并考虑到破产欠薪保障基金目前财政状况稳健,2024 至 25 年度《财政预算案》建议从 2024 年 4 月 1 日起豁免缴付该征费两年。

立法过程

为实施建议的商业登记费调整于 2024 年 4 月 1 日生效,财经事务及库务局局长于 2024 年 3 月 27 日根据《条例》第 18(1)条在立法会提出决议案。行政长官已作出《2024 年公共收入保障(商业登记)令》,使该决议案在立法会通过前具有法律效力。

此外,财政司司长根据《条例》第 18(2)条作出《2024 年商业登记条例(修订附表 2)令》,以实施建议的分行登记费增加及两年内豁免征费。该命令于 2024 年 3 月 8 日刊宪,并于 2024 年 3 月 13 日提交立法会进行进行先订立后审议的程序。

香港政府收入影响

香港政府估计上述调整商业登记费及分行登记费的建议将每年增加约 2.95 亿港元收入。

通过更新收费架构并暂时豁免征费，香港政府旨在维持商业登记系统运作成本与支持企业在当前经济环境下的需求之间求取平衡。

Source 来源:
https://www.info.gov.hk/gia/general/202403/06/P2024030600443.htm?fontSize=1
https://gia.info.gov.hk/general/202403/06/P2024030600443_450667_1_1709723737959.pdf

Hong Kong Government Gazettes Inland Revenue (Amendment) Bill (Tax Concessions and Two-tiered Standard Rates) Bill 2024 with Tax Concessions and New Rate Structure

On March 8, 2024, the Hong Kong Government has gazetted the Inland Revenue (Amendment) (Tax Concessions and Two-tiered Standard Rates) Bill 2024 (the "Bill"), introducing significant tax measures proposed in the 2024-25 Budget. The Bill was introduced into the Legislative Council on March 20, 2024.

One-off Tax Concessions for 2023/24

The Bill proposes a 100% reduction in salaries tax, tax under personal assessment, and profits tax for the year of assessment 2023/24, subject to a cap of HK$3,000

per case. This one-off concession, to be reflected in the final tax payable for 2023/24, will benefit approximately 2.06 million individual taxpayers and 160,000 tax-paying businesses. The government estimates a revenue forgone of around HK$5.531 billion in the 2024-25 fiscal year due to this measure.

Two-tiered Standard Tax Rates

A significant structural change introduced in the Bill is the implementation of a two-tiered standard tax rates regime for salaries tax and tax under personal assessment, effective from the year of assessment 2024/25. Currently, a standard rate of 15% applies to net incomes above the relevant income thresholds. Under the new regime, the first HK$5 million of net income will continue to be taxed at 15%, while the portion exceeding HK$5 million will be subject to a higher standard rate of 16%.

This change aims to enhance the progressivity of Hong Kong's tax system and is expected to impact approximately 12,000 taxpayers, representing 0.6% of the total number of taxpayers subject to salaries tax and tax under personal assessment. The government anticipates an annual revenue increase of around HK$905 million from this measure.

Support for Families with Newborns

Addressing a policy initiative announced in the 2023 Policy Address, the Bill proposes to raise the deduction ceiling amounts for home loan interest and domestic rents to support families with newborn children. From the year of assessment 2024/25, eligible taxpayers under salaries tax and tax under personal assessment residing with children born on or after October 25, 2023, will benefit from an increased deduction ceiling of HK$120,000, up from the current HK$100,000.

This additional deduction ceiling of HK$20,000 can be claimed for a maximum of 19 years of assessment. While the measure is expected to reduce government revenue by approximately HK$5.6 million in the first year of implementation, the revenue forgone is projected to gradually increase to around HK$106 million per annum after 19 years.

Implications for Taxpayers and Businesses

The one-off tax concessions for 2023/24 will provide immediate relief to taxpayers and businesses, but this temporary measure requires planning for future tax liabilities. The two-tiered standard tax rates regime will impact high-income earners with net incomes exceeding HK$5 million, who will face a higher 16% marginal rate, aligning Hong Kong's tax system with global trends towards greater progressivity. For families with newborns, increased deduction ceilings for home loan interest and domestic rents offer support, but eligibility criteria must be carefully assessed to maximize benefits.

As the Bill progresses, taxpayers and businesses should monitor developments and seek advice to understand implications for tax planning and compliance, proactively engaging with changes to navigate the evolving landscape while mitigating risks and capitalizing on opportunities.

The government's approach balances maintaining a competitive tax regime, providing stakeholder relief, and aligning with international standards and societal expectations. Continuous dialogue with the business community and taxpayers is crucial for shaping policies supporting Hong Kong's long-term growth as an international financial center.

香港政府刊宪《2024 年税务(修订)(税务宽免及两级制标准税率)条例草案》

于 2024 年 3 月 8 日,香港政府刊宪《2024 年税务(修订)(税务宽免及两级制标准税率)条例草案》,引入 2024 至 25 年度《财政预算案》建议的重大税务措施。条例草案已于 2024 年 3 月 20 日提交立法会审议。

2023/24 课税年度一次性税务宽减

条例草案建议于 2023/24 课税年度,薪俸税、个人入息课税及利得税获 100%减免,每宗个案上限为 3,000 港元。这项一次性宽减将反映在 2023/24 年度的最终应缴税款中,预计将惠及约 206 万名个人纳税人及 16 万家应课税企业。政府估计,此措施将导致 2024 至 25 财政年度收入减少约 55.31 亿港元。

标准税率两级制

条例草案引入的一项重大结构性变革,是由 2024/25 课税年度起,对薪俸税及个人入息课税实施标准税率两级制。目前,凡入息净额超过相关入息门槛水平的纳税人,均须按 15%的标准税率缴税。根据新制度,首 500 万港元的入息净额将继续按 15%征税,而超过 500 万港元的部分则须按较高的 16%标准税率缴纳。

此变革旨在加强香港税制的累进性,预计将影响约 12,000 名纳税人,占须缴纳薪俸税及个人入息课税的纳税人总数的 0.6%。政府预期此措施每年可增加约 9.05 亿港元的收入。

支援有新生子女家庭

为落实 2023 年《施政报告》公布的政策措施,条例草案建议提高居所贷款利息及家居租金的扣税上限,以支援有新生子女的家庭。由 2024/25 课税年度起,与 2023 年 10

月 25 日或之后出生子女同住的合资格薪俸税及个人入息课税纳税人,其扣税上限将由现时的 10 万港元增加至 12 万港元。

额外 2 万港元的扣税上限可申请最多 19 个课税年度。虽然该项措施预计在首年实施时将减少约 560 万港元的政府收入,但减少的收入预计将逐步增加,19 年后每年将达约 1.06 亿港元。

对纳税人及企业的影响

2023/24 年度的一次性税务宽减将为纳税人及企业带来即时纾缓,但这项临时措施亦需要纳税人为未来的税务责任作出规划。标准税率两级制将影响入息净额超过 500 万港元的高收入人士,他们将面临更高的 16%边际税率,使香港的税制与全球迈向更大累进性的趋势保持一致。对于有新生婴儿的家庭,提高居所贷款利息及家居租金扣税上限将提供支援,但必须仔细评估资格标准,以充分享有有关利益。

随着该法案的进展，纳税人和企业应监控事态发展并寻求建议，以了解对税务规划和合规性的影响，积极参与变革以应对不断变化的形势，同时降低风险并利用机遇。

政府在税务政策改革上的做法,旨在维持税制竞争力、为持份者提供纾缓措施,以及与国际标准及社会期望保持一致之间求取平衡。与商界及纳税人保持持续对话对于制定有利香港作为国际金融中心长远发展的政策至关重要。

Source 来源:
https://www.info.gov.hk/gia/general/202403/06/P2024030600432.htm?fontSize=1

Hong Kong Accounting and Financial Reporting Council Reprimands Chan Steven Kwok Keung and Sino Corp CPA Limited and Imposes Pecuniary Penalties Totalling HK$100,000 for CPA Misconduct

On March 12, 2024, the Hong Kong Accounting and Financial Reporting Council (AFRC) has taken disciplinary action against a certified public accountant (CPA) and his firm for professional misconduct.

The AFRC reprimanded Mr. Chan Steven Kwok Keung (Chan) and his firm, Sino Corp CPA Limited (Sino Corp), for failing to act diligently in the preparation and issuance of an accountant's report for a solicitor's firm (Law Firm) for the year ended March 31, 2021.

The AFRC's investigation, triggered by a complaint from the Law Society, found that Chan and Sino Corp failed to conduct proper procedures to determine the Law Firm's compliance with the Solicitors' Accounts Rules (Cap. 159F) (SAR), which are designed to protect clients' money entrusted to solicitor's firms. As a result, Chan and Sino Corp committed a professional irregularity and were found guilty of CPA misconduct under the Accounting and Financial Reporting Council Ordinance (AFRCO).

The Accountant's Report Rules (ARR) require an accountant to undertake a general test examination of a solicitor's firm's books of account to determine compliance with the SAR. However, the AFRC found that Chan and Sino Corp:

- Failed to conduct proper procedures to determine the Law Firm's compliance with the SAR.
- Failed to report the Law Firm's breach of the SAR regarding the omission of the word "client" in the title of a client account.
- Failed to document the procedures taken to determine the Law Firm's compliance with the SAR.
- In deciding the sanctions, the AFRC considered the importance of an accountant's role in examining a solicitor's firm's books to ensure compliance with the SAR, as these rules are designed to prevent the improper handling of clients' money. While there was no evidence of intentional or reckless misconduct, nor any loss to third parties, the AFRC still imposed significant sanctions.

The AFRC reprimanded Chan and Sino Corp and imposed pecuniary penalties of HK$50,000 (US$6,400) each. They were also ordered to pay the costs and expenses of the investigation. The AFRC emphasized that the sanctions were aimed at deterrence, investor protection, and upholding the standards of conduct among regulatees.

This case highlights the critical role that professional accountants play as gatekeepers in the financial ecosystem. Accountants are responsible for examining a solicitor's firm's books to ensure compliance with the rules designed to protect clients' interests. Failing to exercise due care can have serious consequences, as demonstrated by the AFRC's disciplinary action.

The AFRC's decision sends a clear message to the accounting profession in Hong Kong: complacency and lack of rigor will not be tolerated. This case underscores the importance of continuous professional development and the need for accountants to stay up-to-date with relevant rules and regulations.

In conclusion, the AFRC's reprimand of Chan and Sino Corp reinforces the regulator's commitment to ensuring that professional accountants fulfill their gatekeeping responsibilities with the highest standards of diligence

and care, ultimately safeguarding the interests of clients and the public.

香港会计及财务汇报局谴责陈国强及中信会计师事务所有限公司干犯会计师失当行为，并处以罚款合共港币 10 万元

于 2024 年 3 月 12 日,香港会计及财务汇报局 (会财局)采取纪律行动,对一名注册会计师及其会计师事务所为其专业失当行为进行处分。

会财局谴责陈国强先生 (陈先生) 及其公司中信会计师事务所有限公司 (中信) ,指他们在编制并发出一间律师行(该律师行) 截至 2021 年 3 月 31 日止年度的会计师报告时,未能尽职尽责。

会财局的调查源自该律师行的投诉,发现陈先生及中信没有采取适当程序,确定该律师行有遵守《律师账目规则》(第 159F 章) (律师账目规则) ,该规则旨在保护委托予律师行的当事人款项。因此,陈先生及中信涉及专业失当行为,根据《会财局条例》 (AFRCO)被裁定干犯会计师失当行为。

《会计师报告规则》规定会计师须对律师行的账簿进行全面审核,以确定有遵守律师账目规则。但会财局发现,陈先生及中信:

- 没有采取适当程序,确定该律师行有遵守律师账目规则
- 没有报告该律师行在一个当事人帐户的名称中遗漏「当事人 (client)」一词,违反律师账目规则
- 没有记录确定该律师行有遵守律师账目规则所采取的程序
- 在决定处分时,会财局考虑到会计师在审核律师行账簿,确保遵守旨在防止不当处理当事人款项的律师账目规则,所担当的关键角色。虽然没有证据显示有意或鲁莽的失当行为,也未造成任何第三方损失,但会财局仍然施加了重大处分。

会财局谴责陈先生及中信,并各处以港币 50,000 元 (约 6,400 美元)罚款。他们亦被要求支付调查的费用和开支。会财局强调,这些处分旨在以收阻止失当行为发生之效,保护投资者,并维护受规管者的行为标准。

这宗个案突显了专业会计师作为金融生态系统把关人的关键角色。会计师有责任审查律师行的账簿,确保遵守旨在保护当事人利益的规则。疏于尽职可能会造成严重后果,正如会财局的纪律处分所显示。

会财局的裁决向香港会计界发出了明确讯号:不会容忍自满和缺乏严谨。这宗案件凸显了持续专业发展的重要性,以及会计师需要与时俱进,了解相关规则和法规的必要性。

总而言之,会财局对陈先生及中信的谴责,再次彰显了该监管机构致力确保专业会计师以最高标准的勤勉和谨慎履行把关职责,最终维护客户和公众利益的决心。

Source 来源:
https://www.afrc.org.hk/en-hk/news-centre/news/afrc-reprimands-chan-steven-kwok-keung-and-sino-corp-cpa-limited-and-imposes-pecuniary-penalties-totalling-hk-100-000-for-cpa-misconduct/
https://www.afrc.org.hk/media/qmmjffkf/20240312-press-release-cskk-en-final.pdf

Hong Kong Securities and Futures Commission and Hong Kong Exchanges and Clearing Limited Collaborate in Enforcement Action Against Two Former GEM-Listed Company Directors for Misconduct

On March 5, 2024, the Hong Kong Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong Limited (Exchange) have joined hands in an enforcement action that led to a disciplinary action by the Exchange against two former directors of a GEM-listed company for misconduct. The Stock Exchange of Hong Kong Limited is a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEX).

Under the Listing Rules, the Exchange may take various sanctions against the relevant parties involved in the breach of Listing Rules, including reputational, remedial and ancillary or operational sanctions.

This enforcement action highlights the strategic coordination between the SFC and the Exchange for conducting investigations into cases of mutual concern, by leveraging the complementary investigative powers and regulatory tools at their disposal.

Under the Exchange's disciplinary action, Mr Aris Goh Leong Heng and Ms Anita Chia Hee Mei, the Singapore-residing founders, controlling shareholders and former executive directors of Global Uin Intelligence Holdings Limited (Global Uin Intelligence) were publicly censured. The Exchange has stated that, in its opinion, both Goh and Chia are unsuitable to occupy positions as directors or within senior management of Global Uin Intelligence or any of its subsidiaries. The company was listed on GEM on May 18, 2020 as Singapore Food Holdings Limited. It subsequently changed its name to Global Dining Holdings Limited, then to its current name Global Uin Intelligence Holdings Limited.

The Exchange discovered that when Global Uin Intelligence was listed in May 2020, it paid the sum of

SGD 1 million to an IPO consultant in Singapore for purported IPO consultancy services. The payment caused the actual listing expenses to exceed the estimated listing expenses disclosed in the prospectus. The Exchange then referred the matter to the SFC whose investigation found that the payment was subsequently rerouted by the IPO consultant to a joint bank account held by Goh and Chia in Singapore. The SFC shared with the Exchange relevant fund tracing and other evidence it obtained regarding the payment.

Having considered all the evidence, the GEM Listing Committee has made findings that Goh and Chia misappropriated Global Uin Intelligence's assets using the rerouting arrangement. Although Goh and Chia subsequently procured the refund of the payment from the IPO consultant to Global Uin Intelligence, the GEM Listing Committee found them to have committed serious breaches of their fiduciary duties to the company and the Listing Rules.

The SFC stated that under coordinated investigation, the SFC and the Exchange share information and intelligence in a timely manner so as to better allocate investigative resources to achieve their regulatory objectives. This case demonstrated the success of this initiative, and SFC looks forward to achieving quicker and more effective regulatory outcomes through coordinated investigations.

HKEX also stated that the Exchange and the SFC have been working closely together to combat IPO-related misconduct. Their collaboration and sharing of information creates an effective combination of the different powers of the two regulators. They thank the SFC for their assistance, and look forward to further collaboration in HKEX's mission to maintain market quality and investor confidence.

The SFC and the Exchange expressed their appreciation to the Monetary Authority of Singapore for its assistance in this case. The SFC's investigation into the suspected misappropriation by Goh and Chia is still ongoing.

香港证券及期货事务监察委员会与香港联合交易所有限公司就 GEM 上市公司两名前任董事的不当行为联手合作

2024 年 3 月 5 日，证券及期货事务监察委员会（证监会）与香港联合交易所有限公司（联交所）于一项规则执行行动中携手合作，令联交所得以就一家 GEM 上市公司两名前任董事的不当行为采取纪律行动。香港联合交易所有限公司是香港交易及结算所有限公司（香港交易所）的全资附属公司。

根据《上市规则》，联交所可对违反《上市规则》的有关人士施加多项制裁，包括声誉性、补救性及附带或操作性制裁。

此案凸显出证监会与联交所透过运用各自的调查权力和监管工具，就彼此关注的案件作出策略性协调。

在是次纪律行动中，联交所公开谴责环球友饮智能控股有限公司（环球友饮）居于新加坡的创办人、控股股东及前执行董事 Aris Goh Leong Heng（男）和 Anita Chia Hee Mei（女）。联交所表明，其认为 Goh 及 Chia 均不适合担任环球友饮或该公司的任何附属公司的董事或高级管理阶层职务。环球友饮于 2020 年 5 月 18 日以新加坡美食控股有限公司之名在 GEM 上市，其后更名为环球美食控股有限公司，及后再改为现有名称环球友饮智能控股有限公司。

联交所发现，环球友饮于 2020 年 5 月上市时，曾向一家位于新加坡的新股发行顾问公司支付了一笔 100 万新加坡元的款项，并报称这是与新股发行有关的顾问服务费。此顾问服务费导致环球友饮的实际上市费用超出其于上市招股书内列出的预计上市费用，故联交所将此事转介证监会跟进。证监会经调查后发现，该顾问公司其后将该笔款项转入 Goh 及 Chia 于新加坡的联名银行账户。证监会将有关该笔款项的资金追溯资料及其他证据转交予联交所。

经考虑所有证据后，GEM 上市委员会裁定 Goh 及 Chia 透过上述转款安排挪用环球友饮的资金。虽然 Goh 及 Chia 其后已安排该顾问公司向环球友饮退回有关款项，但 GEM 上市委员会仍裁定二人严重违反其对该公司的诚信责任及《上市规则》的有关规定。

证监会表示证监会与联交所联手进行调查，能更及时交换资讯情报，更妥善调配调查资源，成功达到监管目标。今次个案便是联手调查的成功例子。证监会会继续保持合作，以提升监管效能。

香港交易所则表示对于打击与新股发行相关的不当行为，联交所与证监会一直合作无间。透过相互协作和交换资讯情报，两家监管机构能更有效运用本身权力，事半功倍。他们感谢证监会的协助，亦期待日后可再进一步合作，共同实现维持市场质素及投资者信心的使命。

证监会及联交所感谢新加坡金融管理局在此案中的协助。证监会对 Goh 及 Chia 涉嫌挪用资金一事目前仍在调查中。

Source 来源:
https://apps.sfc.hk/edistributionWeb/gateway/TC/news-and-announcements/news/enforcement-

news/doc?refNo=24PR41&fbclid=IwAR3QOWelQ7OZixQt-5rVmY9CzLIx_65CRQ6RJpfmUCIGukv_vYn-BgNxLPw_aem_AVqZLMEUY2A2Xv98EhLbJQCBhXYbbhDd3jZyOJFHQk80ZY7LT5Z_B-8-kSHfXYd25Zk

Hong Kong Securities and Futures Commission Reminds Public Virtual Asset Trading Platforms Application Period Has Ended Under Transitional Arrangements

On March 1, 2024, the Hong Kong Securities and Futures Commission (SFC) reminds industry participants and investors that the deadline of 29 February 2024 has passed for virtual asset trading platforms (VATPs) to submit license applications to the SFC in order to continue operating in Hong Kong on or after June 1, 2024.

As a result, VATPs that are operating in Hong Kong but did not submit license applications to the SFC by the February 29, 2024 deadline must close down their businesses in Hong Kong by May 31, 2024, pursuant to the transitional arrangements. Under Schedule 3G to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO), transitional arrangements up to May 31, 2024 are provided to allow sufficient time for VATPs which have been carrying on the business of operating a virtual asset exchange (virtual asset service) as defined under section 53ZR and Schedule 3B to the AMLO in Hong Kong before June 1, 2023 to apply for a license or to prepare for an orderly close-down of their business operations in Hong Kong. Such VATPs must submit a license application to the SFC by February 29, 2024 in order to continue operating in Hong Kong on or after June 1, 2024.

These VATPs must obtain the requisite SFC license in order to resume their business activities in Hong Kong, or actively market their virtual asset services to Hong Kong investors. It is a criminal offence to carry on any unlicensed activity. At the same time, investors are urged to check the regulatory status of VATPs on the Lists of virtual asset trading platforms on the SFC's website.

Investors dealing with VATPs operating in Hong Kong which are not on the "List of licensed virtual asset trading platforms" or on the "List of virtual asset trading platform applicants" are urged to close their accounts with these VATPs or transfer to SFC-licensed VATPs for trading virtual assets.

The SFC, however, reminds the public that the applications submitted by applicants on the "List of virtual asset trading platform applicants" are still being processed and they may – or may not – be approved. Hence, trading on these platforms carries a risk. The public should be aware that VATPs on the "List of virtual asset trading platform applicants" are not licensed or regulated by the SFC and they may not be in compliance with the SFC's requirements. These VATPs may not eventually be granted licenses as the SFC may refuse their applications. In such cases, these VATPs may be required to close down their businesses in Hong Kong and their names may be placed on the "List of closing-down virtual asset trading platforms". Investors should thus also check the "List of closing-down virtual asset trading platforms" from time to time.

That being the case, the SFC strongly urges investors to trade virtual assets only on SFC-licensed VATPs because they may leave themselves unprotected by trading on unlicensed platforms.

With clearer regulatory and market development standards emerging at the international level, investors trading VA on licensed platforms should enjoy enhanced protection and have elevated confidence in the market. It is believed that SFC will continue to use a multipronged approach comprising comprehensive public education, enhancing enforcement and timely information dissemination, to facilitate the robust and responsible development of the market.

香港证券及期货事务监察委员会提醒公众虚拟资产交易平台在过渡安排下的申请期已结束

2024 年 3 月 1 日，香港证券及期货事务监察委员会（证监会）提醒业界人士及投资者，虚拟资产交易平台向证监会提交牌照申请，以在 2024 年 6 月 1 日或之后继续在香港营运的期限（即 2024 年 2 月 29 日）已结束。

因此，根据过渡安排，任何正在香港营运的虚拟资产交易平台，如没有在 2024 年 2 月 29 日的期限或之前向证监会提交牌照申请，则必须在 2024 年 5 月 31 日或之前结束其在香港的业务。根据《打击洗钱及恐怖分子资金筹集条例》（《打击洗钱条例》）附表 3G，过渡安排有效期至 2024 年 5 月 31 日为止，其目的是让于 2023 年 6 月 1 日之前一直在香港经营《打击洗钱条例》第 53ZR 条及附表 3B 所界定的经营虚拟资产交易所业务（虚拟资产服务）的虚拟资产交易平台，有足够的时间申请牌照，或就有序地结束其在香港的业务运作做准备。这些虚拟资产交易平台必须在 2024 年 2 月 29 日或之前向证监会提交牌照申请，以便在 2024 年 6 月 1 日或之后继续在香港营运。

这些虚拟资产交易平台须取得必要的证监会牌照，方可恢复其在香港的业务活动或向香港投资者积极推广其虚拟资产服务。进行任何无牌活动属刑事罪行。与此同时，投资者应利用证监会网站的虚拟资产交易平台名单，查核虚拟资产交易平台的监管状态。

如投资者用来进行买卖的虚拟资产交易平台在香港营运，但不在“*持牌虚拟资产交易平台名单*”或“*虚拟资产交易平台申请者名单*”上，他们应结束 于这些平台的账户，或转移至获证监会发牌的虚拟资产交易平台上买卖虚拟资产。

然而，证监会提醒公众，在“*虚拟资产交易平台申请者名单*”上的申请人所提交的申请仍在处理中，会否获批准乃属未知之数。因此，在这些平台上进行买卖存在风险。公众应注意，在“虚拟资产交易平台申请者名单”上的虚拟资产交易平台均没有取得证监会牌照或获其规管，且未必遵守证监会的要求。这些虚拟资产交易平台最终可能不获发牌，因为证监会可能拒绝其申请。在此等情况下，这些虚拟资产交易平台或须结束其在香港的业务，且其名称可能被放入“结业的虚拟资产交易平台名单”内。因此，投资者亦应不时查核“结业的虚拟资产交易平台名单”。

正因如此，证监会强烈敦促投资者，只在 获证监会发牌的虚拟资产交易平台上买卖虚拟资产，因为在无牌平台上进行买卖可能会令他们不受保障。

随着国际层面出台更加明确的监管和市场发展标准，通过持有许可的平台进行虚拟资产交易的投资者应该享受到增强的保护，并对市场充满信心。相信证监会将继续采取多管齐下的方式，包括全面的公众教育、加强执法和及时的信息传播，促进市场的健康和负责任的发展。

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Cayman Islands Updates Beneficial Ownership Regime - Balancing Transparency and Privacy

In November 2023, the Cayman Islands, a renowned global financial center, made significant updates to its beneficial ownership regime, seeking to strike a delicate balance between promoting transparency and safeguarding individual privacy rights. As the jurisdiction navigates this evolving landscape, the implications of these changes are of particular interest to Hong Kong-based entities with operations or investments in the Cayman Islands.

The Cayman Islands maintained a centralized beneficial ownership registry, but the beneficial ownership information was only accessible to certain competent authorities and not made publicly available. In 2019, Cayman committed to introducing public registers, but a 2022 European court ruling found unfettered public access disproportionately interfered with data protection and privacy rights also enshrined in Cayman's constitution. Consequently, Cayman determined a fully public register by 2023 was infeasible and unconstitutional. Cayman is progressing with the provision enabling limited public access, subject to a legitimate interest test.

In response, the Cayman Islands government has proactively updated its framework for beneficial ownership disclosure. The Beneficial Ownership Transparency Act (the “Act), passed in November 2023 and expected to be implemented in a phased approach throughout 2024, introduces several key changes.

Major Changes to the Cayman Islands' Beneficial Ownership Regime

Firstly, the Act streamlines the existing beneficial ownership framework into a unified, comprehensive structure, thereby enhancing clarity and facilitating compliance. Secondly, the scope of the regime has been expanded, now encompassing a broader range of "legal persons." This expanded coverage includes various entity types, such as companies, limited liability companies (LLCs), limited liability partnerships (LLPs), limited partnerships, exempted limited partnerships (ELPs), and foundation companies. Additionally, the regime may apply to any other legal person that may be prescribed in future regulations.

One of the most significant changes is the revised definition of "beneficial owner," which aligns with the Cayman Islands' Anti-Money Laundering Regulations. The new definition focuses on individuals who ultimately own or control 25% or more of the entity, or those who exercise ultimate effective control, while specifically excluding individuals acting solely in a professional advisory or managerial capacity.

Another notable change is the introduction of "alternative routes to compliance" for certain entities, such as those listed on recognized stock exchanges or registered as mutual or private funds. These entities will no longer be required to maintain a beneficial ownership register, but will provide limited "required particulars" to the Registrar upon request.

In a proactive move, the Cayman Islands government has announced plans to work with relevant stakeholders in 2024 to introduce an enhanced beneficial ownership framework. This updated approach will allow access to beneficial ownership information only by members of the public who can demonstrate a “legitimate interest” in seeking the information to combat money laundering and terrorist financing. This balanced approach seeks to uphold the Cayman Islands' constitutionally protected data protection and privacy rights while maintaining a robust anti-money laundering and counter-terrorist financing regime.

Implications for Hong Kong Market Participants

The changes in the Cayman Islands' beneficial ownership regime will have implications for Hong Kong-based entities with operations or investments in the Cayman Islands. In particular, Hong Kong-listed companies and their directors should closely monitor these developments.

The introduction of the "alternative routes to compliance" may provide relief for Hong Kong-listed companies with subsidiaries or investments in the Cayman Islands, as they may no longer be required to maintain a full beneficial ownership register. However, these entities will still need to be prepared to provide the limited "required particulars" to the Cayman Islands Registrar upon request.

Additionally, Hong Kong directors serving on the boards of Cayman Islands entities will need to familiarize themselves with the updated definition of "beneficial owner" and ensure that their companies are complying with the new requirements. The exclusion of individuals acting solely in a professional advisory or managerial capacity from being considered beneficial owners may also have implications for the way Hong Kong-based directors and advisors engage with Cayman Islands entities.

Overall, the Cayman Islands' proactive stance on beneficial ownership transparency, coupled with its commitment to upholding privacy rights, presents a nuanced approach that other jurisdictions may look to emulate. Hong Kong market players with interests in the Cayman Islands should closely follow the implementation of the enhanced beneficial ownership framework and work closely with their Cayman Islands counterparts to ensure seamless compliance and continued access to the jurisdiction's robust financial services ecosystem.

开曼群岛更新实益拥有权制度 - 平衡透明度与私隐

2023 年 11 月，著名的全球金融中心开曼群岛对其实益所有权制度进行了重大更新,旨在在促进透明度与保护个人私隐权之间达致微妙平衡。随着这一演变中的环境,这些变化对于在开曼群岛有业务运营或投资的香港实体而言极其重要。

开曼群岛维持了一个中央实益拥有权登记处,但实益拥有信息仅可供某些主管机关访问,并未向公众开放。2019 年,开曼群岛承诺引入公众登记册,但 2022 年一项欧洲法院裁决认定,对实益拥有信息的无限公开访问与开曼宪法中明确规定的数据保护和隐私权不成比例。因此,开曼群岛决定,在 2023 年底前建立完全公众可访问的登记册既不可行,也不符合宪法。开曼群岛正在推进允许仅在满足合理利益测试的前提下,允许有限度的公众访问。

为此,开曼群岛政府主动更新了其与英国在实益拥有权框架方面的承诺。2023 年 11 月通过的《实益拥有权透明度法案》(法案) 预计将于 2024 年分阶段实施,引入了多项重要变化。

开曼群岛实益拥有权制度的主要变化

首先,该法案将现有的实益拥有权制度整合到一个统一、全面的框架中,从而增强了制度的明确性,并促进了合规性。其次,该制度的适用范围已经扩大,现涵盖了更广泛的"法人实体"。这种扩大的覆盖范围包括各类实体类型,如公司、有限责任公司(LLCs)、有限责任合伙企业(LLPs)、有限合伙企业、豁免有限合伙企业(ELPs)以及基金会公司。此外,该制度还可能适用于任何未来法规中可能规定的其他法人实体。

最重大的变化之一是"实益拥有人"的定义有所修订,与开曼群岛的反洗钱法规保持一致。新的定义聚焦于最终拥有或控制实体 25%或以上权益的个人,或行使最终实际控制权的个人,并明确排除了仅以专业顾问或管理人身份行事的个人。

另一项值得注意的变化是为某些实体引入了"替代合规方式",如在认可证券交易所上市或注册为共同基金或私募基金的实体。这些实体将不再需要保存实益拥有权登记册,而是向登记官提供有限的"所需详情"。

作为一项前瞻性举措,开曼群岛政府已宣布计划于 2024 年与相关持份者合作,引入更完善的实益拥有权框架。这一更新方法将仅允许能够证明有合理利益以打击洗钱和恐怖融资的公众成员查阅实益拥有权信息。这种平衡的方针旨在维护开曼群岛受宪法保护的数据保护和隐私权,同时保持强大的反洗钱和反恐融资体系。

对香港市场参与者的影响

开曼群岛实益拥有权制度的变革将对在开曼群岛有业务运营或投资的香港实体产生影响,特别是香港上市公司及其董事,应密切关注这些发展。

“合规替代途径”的引入可能会为在开曼群岛设有子公司或投资的香港上市公司提供缓解，因为它们可能不再需要保留完整的实益所有权登记册。 然而，这些实体仍需准备向开曼群岛登记处提供有限的"所需详情"。

此外,出任开曼群岛实体董事会的香港董事需要熟悉"实益拥有人"的更新定义,并确保其公司遵守新要求。将仅以专业顾问或管理人身份行事的个人排除在"实益拥有人"之外,也可能影响香港基于董事和顾问与开曼群岛实体的互动方式。

总体而言,开曼群岛在实益拥有权透明度方面的积极立场,以及维护隐私权的承诺,体现了一种细致入微的方法,其他司法管辖区可能会效仿。在开曼群岛有利益的香港市场参与者应密切关注经增强的实益拥有权框架的执行情况,并与开曼群岛方面密切合作,以确保无缝合规,继续享有该司法管辖区强大的金融服务生态系统。

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https://www.mfs.ky/news/media-release/cayman-proactively-advances-its-beneficial-ownership-framework/
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