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Financial Services Regulatory Update 金融服务监管资讯

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Hong Kong Securities and Futures Commission Obtains Compensation and Disqualification Orders Against Former Director and Chief Financial Officer of Changgang Dunxin Enterprise Company Limited for Failure to Detect and Prevent Asset Misappropriation by its Chairman

On April 8, 2024, the Hong Kong Securities and Futures Commission (SFC) announced that it had successfully obtained compensation and disqualification orders from the Court of First Instance against Mr. Chen Ruomao, the former executive director and chief financial officer (CFO) of Changgang Dunxin Enterprise Limited (Changgang Dunxin), marking the SFC's resolute commitment to upholding good corporate governance in Hong Kong's capital markets.

Changgang Dunxin was listed on the main board of the Hong Kong Stock Exchange in June 2014 until its listing status was cancelled by the Exchange in October 2019. According to the SFC's investigation, the former chairman and executive director of Changgang Dunxin had misappropriated proceeds of HK\$163 million from the company's share and bond placements in 2015 and 2016. However, CFO Chen Ruomao failed to detect and prevent this in a timely manner. Instead, Chen provided false financial records and concealed the facts, deceiving the company's auditors, audit committee and board of directors.

While the Court acknowledged that Chen did not have personal financial benefit, it ruled that his actions were severely improper. The Court noted that by concealing the misappropriation of funds and failing to alert the auditors and board, the company was unable to recover the misappropriated HK\$163 million from the former chairman, and therefore ordered Chen to compensate the company for that amount plus interest. Additionally, Chen was banned from acting as a director, liquidator, receiver, manager or being involved in the management of any listed or unlisted company for 10 years.

The SFC stated that even though Chen did not actually receive the misappropriated funds, as a senior manager he failed in his duty to safeguard company assets and ensure financial transparency and accountability. This ruling serves as a stern warning to executives of Hong

Kong listed companies, who should learn lessons to eliminate such improper conduct and ensure proper corporate governance to protect investors' confidence and interests.

The SFC is also taking further legal action against the company's three other former directors, underscoring its resolute commitment and continuous efforts to uphold the healthy development of Hong Kong's capital markets.

Remarks

This case demonstrates that even if senior managers of listed companies do not personally benefit from misappropriated funds, they will still be held accountable for compensation if they fail to fulfill their duties, resulting in losses to the company. It highlights that executives cannot prioritize their own personal interests at the expense of their loyalty to the company and shareholders.

Many listed company executives in Hong Kong should review this case to understand their responsibilities and obligations, and ensure similar plight are avoided to protect the healthy development of Hong Kong's capital markets. As senior managers, they must always bear in mind their duty to safeguard company assets, ensure financial transparency and accountability, in order to truly fulfill their roles and create long-term value for companies and shareholders.

香港证券及期货事务监察委员会因长港敦信实业有限公司前董事及财务总监未能发现及防止主席挪用资产而获得赔偿及取消资格令

2024年4月8日，香港证券及期货事务监察委员会（证监会）宣布已成功向原讼法庭取得针对长港敦信实业有限公司（长港敦信）前执行董事兼财务总监陈若茂的赔偿令及取消资格令，这标志着证监会坚决维护香港资本市场良好企业管治的决心。

长港敦信于2014年6月在香港联交所主板挂牌，直至2019年10月其上市地位被联交所取消。根据证监会的调查，长港敦信前主席兼执行董事曾挪用公司在2015年和2016年进行股份配售及债券配售所得的1.63亿港元

资金,而财务总监陈若茂却没有及时发现并制止这一行为。反之,陈竟然提供虚假财务记录,隐瞒事实,欺骗了公司的核数师、审核委员会和董事会。

虽然法院认定陈并未从中获利,但仍裁定其行为严重失当。法院指出,陈隐瞒资金被挪用及未能向审计部门和董事会发出警示,导致公司未能向前主席追讨被挪用的 1.63 亿港元,因此判令陈须向公司支付该笔款项连同利息作为赔偿。此外,法院还禁止陈在未来 10 年内担任任何上市或非上市公司的董事、清盘人、接管人或经理人,或参与其管理。

证监会表示,即使陈没有实际收取被挪用的资金,但作为高级管理人员,他却未能尽到维护公司资产、确保财务透明和问责的责任。这一判决对香港上市公司的高管人员来说是一个严厉的警示,上市公司高管应从中吸取教训,杜绝类似的失当行为,以确保公司治理水平,维护投资者的信心和利益。

另一方面,证监会也在进一步针对该公司其他三名前董事展开法律程序。这凸显了证监会在维护香港资本市场健康发展中的坚定决心和不懈努力。

结语

这个案例显示出即使上市公司高级管理人员未能从挪用资金中获得个人利益,但只要其未能履行职责,导致公司蒙受损失,也将要承担相应的赔偿责任。这凸显了高管人员不能只顾自身利益,而忽视了对公司和股东的忠诚义务。

香港许多上市公司高管都应该审视这案例,了解自身的责任和义务,并确保避免陷入类似困境,以维护香港资本市场的健康发展。作为上市公司的高管人员,必须时刻谨记维护公司资产、确保财务透明和问责的职责,才能真正履行好自己的角色,为公司和股东创造长期价值。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=24PR61>

Hong Kong Securities and Futures Commission Suspend Dealings in Tianyun International Holdings Limited Shares Over Massive Missing Corporate Funds

On April 15, 2024, the Hong Kong Securities and Futures Commission (SFC) has directed the Stock Exchange of Hong Kong Limited (SEHK) to suspend dealings in the shares of Tianyun International Holdings Limited (Tianyun) under the Securities and Futures (Stock Market Listing) Rules (Cap. 571V) (SMLR) with effect from 9:00 am on 15 April 2024.

Under section 8(1) of the SMLR, the SFC has the power to direct the SEHK to suspend dealings in shares of a listed company where:

- a) any materially false, incomplete or misleading information has been included in any document issued in connection with a listing of securities or in announcement, statement, circular or other document made or issued by it or on its behalf;
- b) it is necessary or expedient in the interest of maintaining an orderly and fair market in securities traded on the SEHK;
- c) it is in the interest of the investing public or in the public interest, or it is appropriate for the protection of investors generally or for the protection of investors in the shares of the listed company; or
- d) there has been a failure to comply with any condition imposed by the board of the SFC when permitting resumption of trading under section 9(3)(c) of the SMLR.

The SFC's action stemmed from an investigation into a purported transfer of RMB34 million executed by a Mainland subsidiary of Tianyun in December 2021. The SFC's investigation, however, discovered that the purported transfer of RMB34 million had never taken place. This raised serious concerns about whether Tianyun had fabricated the transfer to conceal irregularities identified by its then auditors and to mislead its shareholders, auditors, forensic accountant, and the regulators.

Further investigation by the SFC revealed other discrepancies between the bank balances provided by Tianyun and the balances independently obtained by the SFC from Tianyun's banks. The amount of missing funds was massive, ranging from RMB433.8 million to RMB563.7 million, representing over 90% of Tianyun's cash and bank balances and over 45% of its net asset value in its published financial results for the past four years.

This raised significant concerns for the SFC regarding the accuracy of Tianyun's financial information, the integrity of its management, the reliability of its internal control and accounting system, and its ability to safeguard its assets and provide transparent information to the market..

In order to safeguard the interests of shareholders, the SFC imposed several immediate measures on Tianyun, including suspending the duties of implicated parties, engaging independent consultants to investigate the matters and conduct an internal control review, and reconstituting its board of directors. However, as Tianyun failed to address the SFC's concerns satisfactorily, the regulator directed the SEHK to suspend dealings of Tianyun's shares.

This case highlights the significance of the SFC's prompt response in upholding a well-functioning market and safeguarding investors' interests. The discovery of significant discrepancies in Tianyun's financial records, coupled with the company's failure to address the SFC's concerns, has cast doubt on the integrity of its management and the reliability of its financial information. The SFC's decisive action to suspend trading in Tianyun's shares is crucial in safeguarding the market and preventing further harm to shareholders. This underscores the critical role of the SFC in ensuring the transparency and accountability of listed companies, which is essential for the healthy development of Hong Kong's capital market.

香港证券及期货事务监察委员会因天韵国际控股有限公司巨额公司资金下落不明而暂停其股份交易

2024 年 4 月 15 日,香港证券及期货事务监察委员会(证监会)已根据《证券及期货(在证券市场上市)规则》(第 571V 章)(《在证券市场上市规则》)指示香港联合交易所有限公司(联交所),自 2024 年 4 月 15 日上午 9 时正起,暂停天韵国际控股有限公司(天韵)的股份交易。

根据《在证券市场上市规则》第 8(1)条,在下列情况下,证监会有权指示联交所暂停某上市公司的股份交易:

- 在与证券上市有关连的情况下发行的任何文件,或由该上市公司或由他人代它作出或发出的公告、陈述、通告或其他文件,载有在要项上属虚假、不完整或具误导性的资料;
- 暂停有关股份的交易,对为在联交所买卖的证券维持一个有秩序和公平的市场是有需要或合宜的;
- 为维护投资大众的利益或公众利益起见应暂停有关股份的交易,或为保障一般投资者或保障该上市公司的股份的投资者而暂停有关股份的交易是适当的;或
- 证监会董事局根据《在证券市场上市规则》第 9(3)(c)条在批准恢复交易时施加的任何条件没有获得遵从。

证监会的行动源于一项针对天韵据称其某家内地附属公司于 2021 年 12 月所执行的宣称人民币 3,400 万元转账而展开的调查。然而,证监会的调查发现,所述的人民币 3,400 万元转账从未发生。这引起了证监会严重关注,即天韵是否捏造了该笔转账,以掩盖其当时核数师所发现的异常情况,并误导其股东、核数师、法证会计师和监管机构。

证监会进一步调查发现,天韵提供的银行结余与证监会独立取得的结余存在其他差异。下落不明的资金涉额庞大,由人民币 4.338 亿元至人民币 5.637 亿元不等,相当于天

韵于过去四年公布的财务业绩中逾 90%的现金及银行结余和逾 45%的资产净值。

上述情况引起了证监会对天韵公布的财务资料的准确性、管理层的诚信、内部监控和会计制度的可靠度,以及其保障资产和向市场提供资讯的能力的严重关切。

为保障股东利益,证监会要求天韵立即采取多项行动,包括暂停涉事人员职务、委聘独立顾问调查和检视内部监控,以及重组董事会。然而,由于天韵未能以令人满意的方式解决证监会的关切,监管机构遂指示联交所暂停天韵股份的交易。

此案反映了证监会迅速应对的重要性,以维持有序市场和保护投资者利益。天韵财务记录中发现的巨大差异,以及该公司未能解决证监会的关切,都引发了对其管理层诚信和财务资讯可靠性的严重质疑。证监会果断暂停天韵股份交易的行动,对于维护市场秩序和防止进一步损害股东利益至关重要。这突显了证监会在确保上市公司透明度和问责制度方面的关键作用,这对香港资本市场的健康发展至关重要。

Source 来源:

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=24PR67>

Hong Kong Insurance Authority and the Hong Kong Independent Commission Against Corruption Conduct First Joint Operation Against Suspected Unlicensed Selling to Mainland Visitors

On April 11, 2024, the Hong Kong Insurance Authority (IA) and the Hong Kong Independent Commission Against Corruption (ICAC) announced that they had conducted their first joint operation targeting corrupt conduct in the unlicensed insurance sales activities to Mainland Chinese customers. This enforcement action was carried out under the Memorandum of Understanding (MoU) signed by the two authorities in October 2023.

As part of the operation, search warrants were executed at four premises, including the offices of a licensed insurance broker and a referral company. The ICAC also arrested an individual insurance broker and a referrer.

The companies and individuals are suspected of engaging in or conspiring to conduct unlicensed regulated insurance activities in violation of the Insurance Ordinance (Cap.41). They are also suspected of offenses related to using false information to deceive their principals under the Prevention of Bribery Ordinance (Cap. 201). Suspected breaches of the Code of Conduct for Licensed Insurance Brokers are also being investigated.

The core of the investigation centers on allegations that the insurance broker company hired and incentivized unlicensed referrers to carry out regulated insurance advisory and sales activities on its behalf. These referrers allegedly induced Mainland Chinese customers to purchase long-term insurance policies from authorized Hong Kong insurers, sometimes receiving over 90% of the broker's commission.

The individual broker and referrer are also suspected of colluding to include false information, such as customers' annual income and asset holdings, in insurance application forms submitted to Hong Kong insurers.

The IA stated that this joint operation demonstrates their shared determination to uphold proper sales practices and integrity in the insurance industry. They stated they will continue to collaborate closely with the ICAC on enforcement, training and public education to combat misconduct and maintain trust in the Hong Kong insurance market. The IA urges all authorized insurers and licensed insurance intermediaries to comply with the Insurance Ordinance, and undertakes to continue to take swift and firm enforcement actions to curb the abovementioned activities and / or any other misconduct.

The ICAC emphasized that their joint operation with the IA showcases their common goal of upholding integrity in the financial sector. They stated they will continue to work closely with the IA and other regulators to combat corruption, illicit activities and misconduct, in order to maintain Hong Kong's status as a clean international financial center.

This enforcement action serves as an important reminder that Section 64G of the Insurance Ordinance stipulates that "A person must not carry on a regulated activity in the course of the person's business or employment; or for reward." It is also stipulated that "A person must not hold out that the person is carrying on a regulated activity in the course of the person's business or employment; or is carrying on a regulated activity for reward." A person who, without reasonable excuse, contravenes the above commits an offence and is liable on conviction on indictment to a maximum fine of HK\$1,000,000 and imprisonment for 2 years.

This joint crackdown underscores the authorities' unwavering commitment to upholding integrity and trust in Hong Kong's insurance market. All participants, including authorized insurers, licensed intermediaries, and consumers, must adhere to the highest standards of compliance and professional conduct to preserve Hong Kong's reputation as a leading international financial center.

Furthermore, as the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) becomes increasingly integrated, regulatory bodies must tighten oversight of cross-border financial activities to swiftly curb any irregularities. The amplified flows of capital, services, and people across the region have heightened the risk of unscrupulous actors exploiting expanded market opportunities to engage in illicit practices, as evidenced by the unlicensed insurance sales exposed in this operation. To safeguard the Greater Bay Area's financial ecosystem, the relevant regulators must collaborate closely to closely monitor transactions, promptly identify and decisively crack down on any misconduct. Proactive and coordinated enforcement is crucial for Hong Kong to maintain its status as a trusted financial hub serving the GBA.

香港保险业监管局和香港廉政公署联合行动打击向内地旅客涉嫌无牌销售保单

2024 年 4 月 11 日,香港保险业监管局(保监局)和香港廉政公署(廉署)宣布,他们首次采取联合行动,针对向内地客户进行非法保险销售活动的贪污及违规行为。这次执法行动是根据双方于 2023 年 10 月签订的合作备忘录而进行的。

在行动中,执法人员先后到四个处所执行搜查令,包括一家持牌保险经纪公司和一家转介公司的办公室。廉署更拘捕了一名保险经纪和一名转介人。

涉案公司和个人涉嫌参与或策划进行无牌受规管保险活动,违反了《保险业条例》(第 41 章)。他们还涉嫌在《防止贿赂条例》(第 201 章)下使用虚假信息欺骗委托人,并怀疑多次违反了《持牌保险经纪操守守则》。

调查的重点集中在,涉案保险经纪公司聘请和激励非持牌转介人代表其进行受规管的保险咨询和销售活动。这些转介人据称诱导内地客户购买来自香港认可保险公司的长期保单,有时能获得经纪公司佣金的 90%以上。

此外,调查还发现涉案经纪和转介人涉嫌串谋在提交给香港保险公司的投保申请表上虚报客户的年收入和资产等信息。

保监局表示,这次联合行动彰显了双方维护保险业正当销售手法和诚信的共同决心。他们表示未来将继续与廉署在执法、培训和公众教育等方面密切合作,以遏制不当行为,维护香港保险市场的信任。保监局提醒所有获授权保险公司及持牌保险中介人须遵守《保险业条例》,保监局定必继续迅速果断执法以遏止上述违法活动及 / 或任何其他不当行为。

廉署强调,联合行动展现了双方在维护金融领域廉洁方面的共同目标。他们表示将继续与保监局和其他监管机构通力合作,打击腐败、非法活动和不当行为,以巩固香港作为清廉国际金融中心的地位。

这次行动提醒所有从业人员,《保险业条例》第 64G 条订明「任何人不得在其业务或受雇工作的过程中,进行受规管活动;或为报酬而进行受规管活动」。该条例又订明「任何人不得显示自己在本身业务或受雇工作的过程中,进行受规管活动;或为报酬而进行受规管活动」。任何人无合理辩解而违反上述条例内容即属违法,一经定罪,最高可判处监禁两年及罚款 100 万港元。

这次联合打击突显了有关当局坚定维护香港保险市场诚信和信任的决心。所有参与者,包括获认可的保险公司、持牌中介机构和消费者,都必须恪守最高标准的合规和专业操守,以维护香港作为领先国际金融中心的声誉。

此外,随着粤港澳大湾区(大湾区)日益融合,监管机构必须加强对跨境金融活动的监管,迅速遏制任何不规范行为。随着地区资金、服务和人员流动的加剧,增加了不法分子利用扩大的市场机会从事违法行为(如本次行动中曝光的无牌保险销售)的风险。为维护大湾区金融生态系统的安全,相关监管机构必须密切协作,严密监控交易活动,及时发现并果断打击任何不当行为。主动和协调的执法对于香港维持作为服务大湾区的可信赖的金融中心地位至关重要。

Source 来源:

https://www.icac.org.hk/en/p/press/index_id_1853.html

The Stock Exchange of Hong Kong Limited Publishes Conclusions on Proposed Amendments to Listing Rules Relating to Treasury Shares

On April 12, 2024, the Stock Exchange of Hong Kong Limited (the "Exchange") published its consultation conclusions on the proposed amendments to the Listing Rules relating to treasury shares, as well as new Guidance Letter HKEX-GL119-24 on the arrangements for listed issuers to hold or deposit treasury shares in the Central Clearing and Settlement System (CCASS). The New treasury share regime **will take effect on June 11, 2024**.

The consultation, launched in October 2023, sought to address the treatment of repurchased shares and the resale of treasury shares by listed issuers in Hong Kong. The conclusions and guidance aim to provide a clear and comprehensive framework, ensuring transparency and mitigating risks of market manipulation and insider dealing.

Key Changes Adopted by the Exchange

1. Removal of the requirement to cancel repurchased shares: Listed issuers can now hold repurchased shares as treasury shares, providing more flexibility in capital management. This change allows issuers to repurchase their own shares and hold them in treasury for future resale, rather than being required to cancel the shares immediately.
2. Regulation of treasury share resales: The resale of treasury shares will now be governed in the same manner as the issuance of new shares, subject to additional disclosure requirements for on-market resales. This ensures that the interests of existing shareholders are protected and that the process is transparent.
3. Measures to mitigate risks: The Exchange has introduced a 30-day moratorium period to restrict the resale of treasury shares and share repurchases immediately preceding results announcements. Additionally, issuers are prohibited from reselling treasury shares when there is undisclosed inside information or during the one-month period before results announcements. These measures aim to prevent potential market manipulation and insider trading.
4. Consequential amendments: Treasury shares will be excluded from the calculation of an issuer's issued or voting shares for various Listing Rule requirements, such as public float and size tests. Issuers holding treasury shares will also be required to abstain from voting on matters that require shareholders' approval, to ensure fairness and prevent the undue influence of treasury shares.

Guidance on Arrangements to Hold or Deposit Treasury Shares in CCASS

HKEX Guidance Letter HKEX-GL119-24 provides further clarity on the arrangements for listed issuers to hold or deposit their treasury shares in CCASS. The guidance outlines specific requirements and disclosures based on an issuer's place of incorporation and the legal status of their treasury shares.

For issuers incorporated in jurisdictions where treasury shares must be held in the issuer's own name, the guidance letter explains the process for withdrawing repurchased shares from CCASS, registering them as treasury shares, and then potentially re-depositing them in CCASS for future resale. For issuers incorporated in jurisdictions that allow treasury shares to be held by nominees, the guidance provides instructions on how to

maintain a proper record of treasury shares held in CCASS.

The guidance letter also addresses the disclosure requirements for issuers, including the need to disclose the number of treasury shares held and the exclusion of such shares from voting and entitlements at general meetings and for dividends or distributions.

Remarks

The new framework for treasury shares is a significant development in Hong Kong's capital markets. It provides listed issuers with greater flexibility in managing their capital structure while introducing safeguards to protect the interests of investors and maintain market integrity.

Hong Kong-listed issuers and market participants should carefully review the Listing Rule amendments and the guidance letter to ensure that they are fully aware of the new requirements and implement appropriate measures to comply with the regulations. The Exchange has emphasized the importance of issuers having proper procedures in place to track and disclose the movement of their issued shares and treasury shares, as well as to ensure the appropriate segregation and treatment of treasury shares held or deposited in CCASS.

As the Hong Kong market continues to evolve, the Exchange's efforts to enhance the Listing Rules and provide clear guidance on treasury share arrangements demonstrate its commitment to maintaining a robust and transparent regulatory environment that fosters the long-term growth and development of the city's capital markets.

香港联合交易所有限公司公布有关库存股份的上市规则修订的咨询总结

于 2024 年 4 月 12 日,香港联合交易所有限公司(联交所)公布了有关库存股份的上市规则修订的咨询总结,以及新指引信 HKEX-GL119-24,内容有关上市发行人于中央结算及交收系统(中央结算系统)持有或存放库存股份的安排。新的库存股份制度将于 **2024 年 6 月 11 日生效**。

该项咨询于 2023 年 10 月启动,旨在解决上市发行人在香港购回股份及出售库存股份的处理方式。咨询总结及指引旨在提供一个清晰和全面的框架,确保透明度,并减轻市场操纵和内幕交易的风险。

联交所采纳的主要变更

1. 撤销要求注销购回股份的规定:上市发行人现可持有购回股份作为库存股份,为资本管理提供更大灵活性。此变更允许发行人购回自己的股份

并作为库存股份持有以供日后再出售,而不必要求立即注销股份。

2. 对库存股份再出售的规管:库存股份的再出售将受与发行新股相同的规管,但需要作出额外披露要求。这可确保现有股东的利益得到保护,并保持整个过程的透明度。
3. 降低风险的措施:联交所引入了 30 日禁售期,限制在业绩公告前紧接的期间内进行股份回购和库存股份再出售。此外,发行人在存在未公开内幕资料或业绩公告前 1 个月内,均不得出售库存股份。这些措施旨在防止潜在的市场操纵和内幕交易。
4. 相应的修订:库存股份将从计算发行人已发行或投票股份的各种上市规则要求(如公众持股量及规模测试)中剔除。持有库存股份的发行人在需要股东批准的事项上亦须放弃投票,以确保公平性并防止库存股份的不当影响。

于中央结算系统持有或存放库存股份的安排指引

新指引信 HKEX-GL119-24 进一步阐明了上市发行人持有或存放库存股份于中央结算系统的安排。该指引根据发行人的注册地及其库存股份的法律地位,概述了具体的要求和披露事项。

对于在须以发行人自身名义持有库存股份的司法管辖区注册的发行人,指引信解释了从中央结算系统提取购回股份、以自身名义登记为库存股份,然后可能再存入中央结算系统以供日后再出售的过程。对于在允许以代名人持有库存股份的司法管辖区注册的发行人,指引提供了如何于中央结算系统妥善保管库存股份记录的指引。

该指引信还发表了发行人的披露要求,包括需要披露所持有的库存股份数量,以及在股东大会上投票和股息或分派中剔除该等股份。

结语

新的库存股份框架是香港资本市场的重大发展。它为上市发行人提供了更大的灵活性来管理资本结构,同时引入了保障投资者利益和维护市场完整性的措施。

香港上市发行人和市场参与者应仔细审阅上市规则修订和指引信,确保完全了解新的要求,并采取适当措施以遵守相关规例。联交所强调发行人有必要设立适当的程序,以跟踪和披露其已发行股份和库存股份的任何变动,并确保妥善区分和处理存放于中央结算系统的库存股份。

随着香港市场的持续发展, 联交所致力于完善上市规则并就库存股份安排提供明确指引, 体现了其维持健全和透明的监管环境, 促进本地资本市场长期增长和发展的承诺。

Source 来源:

<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/October-2023-Treasury-Shares/Conclusions-Apr-2024/cp202310cc.pdf>
https://en-rules.hkex.com.hk/sites/default/files/net_file_store/GL119-24_e.pdf

Hong Kong Exchanges and Clearing Limited Publishes Conclusions on Climate Disclosure Requirements

On April 14, 2024, the Hong Kong Exchanges and Clearing Limited (HKEX) published its conclusions on the enhancement of climate-related disclosures under the Environmental, Social and Governance (ESG) reporting framework. HKEX stated that this strategic decision aims to align Hong Kong's sustainability disclosure requirements with the newly established International Sustainability Standards Board (ISSB) Standards, enhancing Hong Kong's capital markets attractiveness and competitiveness.

New Climate-related Disclosure Requirements

The New Climate Requirements are developed based on IFRS S2. Implementation reliefs including proportionality and scaling-in measures are introduced to address concerns over the reporting challenges that some issuers may face.

The key features of the new climate-related disclosure requirements (the "New Climate Requirements") are as follows:

Alignment with ISSB Standards: The New Climate Requirements are developed based on the ISSB's IFRS S2 Climate-related Disclosures Standard, ensuring consistency with global best practices.

Proportionality and Scaling-in Measures: To address concerns over the reporting challenges that some issuers may face, HKEX has introduced implementation reliefs, including proportionality and scaling-in measures.

Phased Approach to Implementation: The amended Listing Rules containing the New Climate Requirements. The New Climate Requirements will be phased in, with all listed issuers required to disclose Scope 1 and Scope 2 greenhouse gas emissions on a mandatory basis starting from financial years commencing on or after January 1, 2025.

For larger and more advanced issuers, known as LargeCap Issuers, i.e. Hang Seng Composite LargeCap Index constituents, the disclosure other than Scope 1 and Scope 2 greenhouse gas emissions under the New Climate Requirements will be on "Comply or explain" basis in financial years commencing on or after 1 January 2025. It would be mandatory starting from financial years commencing on or after January 1, 2026.

Main Board listed issuers (other than LargeCap Issuers) will be required to report on the disclosure other than Scope 1 and Scope 2 greenhouse gas emissions under the New Climate Requirements on a "comply or explain" basis for financial years commencing on or after January 1, 2025, while GEM listed issuers are encouraged to report on the disclosure other than Scope 1 and Scope 2 greenhouse gas emissions under the New Climate Requirements on a voluntary basis for financial years commencing on or after January 1, 2025. This phased and proportionate approach aims to balance the need for enhanced climate-related disclosures with the reporting challenges faced by some issuers.

Scope of Disclosures: The New Climate Requirements mandate listed companies to provide disclosures on the following areas:

- a. **Governance:** The issuer's governance structure and the role of the board and management in overseeing climate-related risks and opportunities.
- b. **Strategy:** The actual and potential impacts of climate-related risks and opportunities on the issuer's business, strategy, and financial planning, including the resilience of the issuer's strategy to different climate-related scenarios.
- c. **Risk Management:** The processes used by the issuer to identify, assess, and manage climate-related risks, including how these processes are integrated into the issuer's overall risk management framework.
- d. **Metrics and Targets:** The metrics and targets used to assess and manage relevant climate-related risks and opportunities, including Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas emissions, and the progress made against these targets.

Implementation Guidance

The HKEX Implementation Guidance provides practical guidance to assist Hong Kong listed issuers in understanding and preparing climate-related disclosures required under the Hong Kong Exchanges and Clearing (HKEX) Environmental, Social and Governance (ESG) Reporting Code.

The guidance aligns with the IFRS Sustainability Disclosure Standards published by the IFRS

Foundation's International Sustainability Standards Board (ISSB) in 2023, which IOSCO has determined are an appropriate global framework for capital markets.

The guidance covers key concepts from IFRS S1 and S2 that issuers should apply, including principles around the quality, relevance, and comparability of information. It notes that issuers should make disclosures that are material - i.e. could reasonably be expected to affect the company's cash flows, access to finance or cost of capital over the short, medium or long term.

The guidance outlines a recommended workflow to aid issuers in monitoring and managing climate-related risks and opportunities, and fulfilling reporting requirements. This includes determining governance structures, identifying material climate impacts, incorporating climate into strategy, assessing financial effects, setting targets, and developing metrics.

The guidance also highlights implementation reliefs available to issuers, particularly for smaller companies, to address challenges in climate reporting during the transition period. Issuers subject to "comply or explain" requirements are reminded to provide considered reasons for any non-disclosure.

Overall, the HKEX Implementation Guidance provides a robust framework to help Hong Kong-listed companies enhance the quality and consistency of their climate-related reporting.

Remarks

HKEX's conclusions on the enhancement of climate-related disclosures mark a significant milestone in Hong Kong's journey to strengthen its sustainable finance ecosystem and align with global best practices. By adopting the ISSB Standards and implementing a phased and proportionate approach, the city is demonstrating its commitment to being a leading player in the global sustainability reporting landscape.

This move not only aligns Hong Kong's ESG reporting framework with international standards but also enhances the transparency and comparability of climate-related disclosures, positioning the city as an attractive destination for sustainable investment and financing. As listed companies in Hong Kong prepare for the upcoming changes, they should closely collaborate with the HKICPA and familiarize themselves with the New Climate Requirements to ensure a smooth transition and maintain their competitiveness in the global sustainable finance market.

香港交易及结算所有限公司刊发有关气候信息披露规定的咨询总结

2024年4月14日,香港交易及结算所有限公司(港交所)发布了有关加强环境、社会及管治(ESG)报告框架下的气候相关披露的结论。港交所表示,这一战略决定旨在使香港的可持续发展披露规定与新成立的国际可持续发展准则理事会(ISSB)标准保持一致,提高香港资本市场的吸引力和竞争力。

新的气候相关披露规定

新的气候规定是根据 IFRS S2 制定的。为了应对一些发行人可能面临的报告挑战,引入了包括相称性和分阶段措施在内的实施宽免。

新的气候相关披露规定(「新气候规定」)的主要特点如下:

与 ISSB 准则保持一致:新气候规定是根据 ISSB 的 IFRS S2 气候相关披露标准制定的,确保与全球最佳实践保持一致。

相称性和分阶段措施:为了应对一些发行人可能面临的报告挑战,港交所引入了实施宽免,包括相称性和分阶段措施。

分阶段实施方法:载有新气候规定的经修订上市规则。新气候规定将分阶段实施,所有上市发行人将必须从 2025 年 1 月 1 日或之后开始的财政年度起强制披露范畴 1 和范畴 2 温室气体排放。

对于较大和层级较高的发行人(即大型股发行人,恒生综合大型股指数成份股的发行人),除范畴 1 和范畴 2 温室气体排放外的其他披露将从 2025 年 1 月 1 日或之后开始的财政年度起实施「不遵守就解释」的基准,并将于 2026 年 1 月 1 日或之后开始的财政年度起强制实施。

主板上市发行人(除大型股发行人外)将须就 2025 年 1 月 1 日或之后开始的财政年度的除范畴 1 和范畴 2 温室气体排放以外的披露事项按「不遵守就解释」的基准作出报告,而创业板上市发行人则鼓励就 2025 年 1 月 1 日或之后开始的财政年度的除范畴 1 和范畴 2 温室气体排放以外的披露事项自愿作出报告。这种分阶段和相称的方法旨在平衡加强气候相关披露的需求与一些发行人面临的报告挑战。

披露范围:新气候规定规定上市公司提供以下领域的披露:

- a. 管治:发行人的管治架构以及董事会和管理层在监督气候相关风险和机遇方面的角色。
- b. 策略:气候相关风险和机遇对发行人业务、策略和财务规划的实际和潜在影响,包括发行人的策略对不同气候相关情景的韧性。

- c. 风险管理:发行人用于识别、评估和管理气候相关风险的流程,包括这些流程如何融入发行人的整体风险管理框架。
- d. 指标和目标:用于评估和管理相关气候相关风险和机遇的指标和目标,包括范畴 1、范畴 2 和(如适用)范畴 3 温室气体排放,以及对这些目标的进展。

实施指引

港交所的实施指引为香港上市发行人提供实用指引,以帮助他们了解和编制《香港交易所(港交所)环境、社会及管治(ESG)报告守则》规定的气候相关披露。

该指引与国际会计准则理事会(IFRS)于 2023 年发布的 IFRS 可持续发展披露准则保持一致,该准则已获得国际证监会组织(IOSCO)确定为资本市场的适当全球框架。

该指引涵盖了 IFRS S1 和 S2 的关键概念,发行人应该应用这些概念,包括有关信息质量、相关性和可比性的原则。它指出,发行人应该披露重大信息,即可合理预期可能在短期、中期或长期影响到其现金流量、融资渠道或资本成本的气候相关风险和机遇有关的重要资料。

该指引概述了一个建议的工作流程,以帮助发行人监测和管理气候相关风险和机遇,并满足报告规定。这包括确定管治架构、识别重大气候影响、将气候纳入策略、评估财务影响、设定目标和制定指标。

该指引还强调了发行人在过渡期间在气候报告方面面临的挑战所适用的实施宽免。受「不遵守就解释」规定的发行人被提醒要提供经过深思熟虑的理由,解释任何不披露的情况。

总的来说,港交所实施指引为香港上市公司提供了一个健全的框架,以帮助他们提高气候相关报告的质量和一致性。

结语

港交所就加强气候相关披露发布的结论,标志着香港在加强其可持续金融生态系统并与全球最佳实践接轨方面取得的重大里程碑。通过采用 ISSB 标准和实施阶段和相称的方法,香港正展示其成为全球可持续性报告领域的领先参与者的决心。

这一举措不仅使香港的 ESG 报告框架与国际标准保持一致,而且还提高了气候相关披露的透明度和可比性,将香港定位为可持续投资和融资的有吸引力的目的地。随着香港的上市公司为即将到来的变革做准备,他们应该与香港会计师公会密切合作,熟悉新的气候规定,确保顺利过渡并维持在全球可持续金融市场的竞争力。

Source 来源:

https://www.hkex.com.hk/News/Regulatory-Announcements/2024/240419news?sc_lang=en
<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2023-Climate-related-Disclosures/Conclusions-Apr-2024/cp202304cc.pdf>
https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/Exchanges-guidance-materials-on-ESG/guidance_enhanced_climate_dis.pdf

Hong Kong Monetary Authority and the Hong Kong Securities and Futures Commission Initiate Further Consultation on Enhancements to Hong Kong's Over-The-Counter Derivatives Reporting Regime

On March 22, 2024, the Hong Kong Monetary Authority (HKMA) and the Hong Kong Securities and Futures Commission (SFC) issued a joint consultation paper outlining proposed enhancements to the existing over-the-counter (OTC) derivatives reporting regime in Hong Kong. This follows the implementation of the OTC derivatives reporting obligation in two phases since its introduction, in line with the G20 commitment to reform OTC derivatives markets.

The consultation paper aims to align Hong Kong's reporting requirements with global developments and ensure the regime remains relevant and appropriate as markets evolve. The HKMA and SFC have set a deadline of June 30, 2024 for the public to submit comments on the proposed enhancements.

Mandating the Use of Unique Transaction Identifier (UTI)

The consultation paper proposes to mandate the use of UTI for OTC derivatives reporting in Hong Kong. UTI is an internationally recognized identifier that enables the unique identification of OTC derivatives transactions, facilitating data aggregation and harmonization across jurisdictions.

The HKMA and SFC propose to implement the mandatory use of UTI on 29 September 2025, allowing reporting entities to continue using the existing Unique Swap Identifier (USI) and Unique Trade ID (TID) in the interim. The proposal fully adopts the UTI Technical Guidance issued by the Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions (CPMI-IOSCO), including the waterfall approach for generating UTI.

Mandating the Use of Unique Product Identifier (UPI) and Reporting of Critical Data Elements (CDE)

The consultation paper also proposes to mandate the use of UPI and the reporting of CDE, in line with

international standards. UPI is a unique identifier for OTC derivatives products, while CDE refers to the critical data elements (other than UTI and UPI) required for reporting.

The HKMA and SFC intend to implement the mandatory use of UPI and reporting of CDE on the same date as the UTI implementation, September 29, 2025. The proposals aim to fully adopt the UPI Technical Guidance and CDE Technical Guidance issued by CPMI-IOSCO.

Adoption of the ISO 20022 Standard

In addition, the consultation paper outlines the HKMA and SFC's plan to mandate the adoption of the ISO 20022 XML message standard for OTC derivatives reporting to the Hong Kong Trade Repository (HKTR). This alignment with the global standard is expected to facilitate data harmonization and aggregation across jurisdictions.

Revising the List of Designated Jurisdictions for Masking Relief

The consultation paper also provides conclusions on the HKMA and SFC's proposal to revise the list of designated jurisdictions for the masking relief under the OTC derivatives reporting regime. The masking relief allows reporting entities to mask counterparty information when reporting to the HKTR if they encounter reporting barriers in a designated jurisdiction.

After considering the industry's feedback and the latest international developments, the HKMA and SFC have decided to maintain the current list of designated jurisdictions, as there is still uncertainty about whether reporting barriers remain for certain non-Financial Stability Board jurisdictions.

Potential Impact and Benefits

The proposed enhancements to the OTC derivatives reporting regime in Hong Kong are largely aligned with the requirements implemented or being considered in other major jurisdictions, such as the United States and the European Union. This alignment is expected to improve data harmonization and aggregation, thereby enhancing transparency and oversight of the OTC derivatives market globally.

The mandated use of UTI, UPI, and CDE, along with the adoption of the ISO 20022 standard, will enable Hong Kong's OTC derivatives reporting regime to better integrate with international reporting frameworks. This integration is crucial for Hong Kong's position as an international financial center and its role in the global derivatives market.

Furthermore, the proposed reforms are expected to provide several key benefits, including:

1. Improved data quality and consistency: The use of standardized identifiers (UTI and UPI) and harmonized data elements (CDE) will enhance the quality and comparability of reported data, facilitating more effective market monitoring and analysis.
2. Enhanced data aggregation and analysis: The alignment with international standards will enable more seamless data aggregation and cross-border analysis, supporting financial stability monitoring and systemic risk assessment.
3. Reduced reporting burden: By adopting global standards, the proposed reforms are expected to streamline reporting processes and reduce the operational complexity for reporting entities, ultimately lowering the overall compliance costs.
4. Regulatory alignment: The harmonization of Hong Kong's reporting regime with international standards will strengthen the city's regulatory framework and reinforce its position as a leading international financial center.

The HKMA and SFC's proposed enhancements to the OTC derivatives reporting regime in Hong Kong represent a significant step forward in aligning the city's regulatory framework with global developments. By mandating the use of UTI, UPI, and CDE, as well as adopting the ISO 20022 standard, the regulators aim to improve data quality, facilitate cross-border data aggregation, and reduce the reporting burden for market participants.

OTC transactions are increasingly important to global and regional financial markets. UTI and UPI and other regulatory tools are needed to maintain an orderly market environment. Hong Kong should enhance its systems and showcase to the world Hong Kong's capability to adapt to financial ecosystem changes in the OTC realm.

香港金融管理局和香港证券及期货事务监察委员会就优化香港场外衍生工具汇报制度展开进一步咨询

2024年3月22日,香港金融管理局(金管局)和香港证券及期货事务监察委员会(证监会)联合发布了一份咨询文件,概述了对现有香港场外衍生工具汇报制度的拟议优化措施。这是继按照二十国集团(G20)改革场外衍生工具市场的承诺,分两个阶段实施场外衍生工具汇报义务后的又一步措施。

是次咨询文件旨在使香港的汇报要求与全球发展保持一致,并确保该制度随着市场的演化而保持相关性和适当性。金管局和证监会设定了 2024 年 6 月 30 日的最终期限,邀请公众就拟议的优化措施提交意见。

强制使用独特交易识别编码 (unique transaction identifier, UTI)

咨询文件提出于香港强制使用 UTI 进行场外衍生工具汇报。UTI 是一个国际公认的认识码,可以唯一地识别场外衍生工具交易,有助于跨司法管辖区的数据汇总和统一。

金管局和证监会建议于 2025 年 9 月 29 日实施 UTI 的强制使用,在此之前允许汇报实体继续使用现有的独有掉期识别码(USI)和独有交易 ID(TID)。该建议完全采纳了由支付及市场基础设施委员会和国际证券监委会(CPMI-IOSCO)发布的 UTI 技术指引,包括生成 UTI 的循序方法。

强制使用独特产品识别编码 (unique product identifier, UPI) 和汇报关键数据元素 (critical data elements, CDE)

咨询文件同时提议强制使用 UPI,并强制汇报 CDE,以符合国际标准。UPI 是场外衍生工具产品的唯一识别码,而 CDE 指的是汇报所需的关键数据要素(UTI 和 UPI 除外)。

金管局和证监会拟于与 UTI 实施同一日期,即 2025 年 9 月 29 日,实施 UPI 的强制使用和 CDE 的强制汇报。有关建议旨在完全采纳 CPMI-IOSCO 发布的 UPI 技术指引和 CDE 技术指引。

采纳 ISO 20022 标准

此外,咨询文件概述了金管局和证监会计划强制采纳 ISO 20022 XML 讯息标准进行向香港交易储存库(HKTR)汇报场外衍生工具交易的计划。这与全球标准的一致性有望促进跨司法管辖区的数据协调和汇总。

修订享有掩盖资料宽免待遇的指定司法管辖区名单

咨询文件还就金管局和证监会提出修订场外衍生工具汇报制度下享有掩盖资料宽免的指定司法管辖区名单作出结论。掩盖资料宽免允许汇报实体在向 HKTR 汇报时,如遇到某些指定司法管辖区存在汇报障碍,可以掩盖交易对手的资料。

经考虑业界的反馈意见和最新的国际发展,金管局和证监会决定维持现有的指定司法管辖区名单,因为某些非金融稳定理事会司法管辖区是否仍存在汇报障碍尚存在不确定性。

潜在影响和效益

香港场外衍生工具汇报制度的拟议优化措施,与美国和欧盟等其他主要司法管辖区实施或正在考虑的要求相当一致。这种一致性有望改善数据协调和汇总,从而提高全球场外衍生工具市场的透明度和监管。

强制使用 UTI、UPI 和 CDE,以及采纳 ISO 20022 标准,将使香港的场外衍生工具汇报制度能更好地融入国际汇报框架。这种融合对于巩固香港作为国际金融中心的地位以及在全球衍生工具市场中的角色至关重要。

此外,拟议的改革预计将带来以下主要效益:

1. 提高数据质量和一致性:使用标准化识别码(UTI 和 UPI)和协调的数据要素(CDE)将增强已汇报数据的质量和可比性,促进更有效的市场监测和分析。
2. 增强数据汇总和分析:与国际标准的一致性将实现更无缝的数据汇总和跨境分析,有助于金融稳定监测和系统性风险评估。
3. 降低汇报负担:通过采纳全球标准,拟议的改革有望简化汇报流程,减少汇报实体的操作复杂性,最终降低整体合规成本。
4. 监管一致性:与国际标准协调香港的汇报制度将加强该市场的监管框架,并巩固其作为领先国际金融中心的地位。

金管局和证监会就优化香港场外衍生工具汇报制度提出的建议,代表了香港监管框架与全球发展保持一致的重大步骤。通过强制使用 UTI、UPI 和 CDE,以及采纳 ISO 20022 标准,监管机构旨在提高数据质量,促进跨境数据汇总,并降低市场参与者的汇报负担。

场外交易对全球和区域金融市场日益重要。UTI 和 UPI 等监管工具对于维持有序的市场环境至关重要。香港应完善它的监控系统,向世界展示香港在场外交易领域适应金融生态系统变化的能力。

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**Hong Kong Securities and Futures Commission
Consults on Proposals to Enhance REIT Regime and**

Securities and Futures Ordinance Market Conduct Regime for Listed Collective Investment Schemes

On April 23, 2024, the Hong Kong Securities and Futures Commission (SFC) released a consultation paper proposing key amendments to the Securities and Futures Ordinance (Cap. 571) (SFO) to strengthen the regulatory framework for listed collective investment schemes (CIS) in the city. This comprehensive set of proposals aims to introduce a statutory scheme of arrangement and compulsory acquisition mechanism for real estate investment trusts (REITs), as well as to extend the application of critical market conduct regimes to all listed CIS.

The increasing diversity of investment schemes and products in the market has created the need for regulators to catch up with updated regulations and guidelines. For instance, certain loopholes have been allowed to exist regarding CIS and REIT and it is high time to plug them. This showcases a prominent governance statement that Hong Kong is still flourishing and kicking.

The impetus for these proposals stems from the SFC's long-standing policy to regulate REITs in a manner akin to listed companies, given their similarities in terms of economic nature and investor interests. Currently, the market conduct regimes under Parts XIII to XV of the SFO, which cover market misconduct, disclosure of inside information, and disclosure of interests, primarily apply to listed corporations. However, to provide greater certainty and ensure consistent investor protection, the SFC has previously consulted the public on extending these regimes to REITs and other non-corporate listed entities.

The SFO market conduct regimes are namely (a) the market misconduct regime under Parts XIII and XIV; (b) the disclosure of inside information regime under Part XIVA; and (c) the disclosure of interests regime under Part XV. They are proposed to be explicitly extended to cover listed CIS including REITs. The proposals are in line with prior public consultations which received general support, with certain refinements.

While the industry has generally welcomed these proposals in the past, the SFC has now identified certain technical complexities that required further deliberation during the legislative drafting process. To address these challenges, the SFC has refined its approach, focusing the scope of the proposed amendments on listed CIS, which are the only type of non-corporate entities currently listed on the Hong Kong Stock Exchange.

One of the key proposals outlined in the consultation paper is the introduction of a statutory scheme of arrangement and compulsory acquisition mechanism for REITs. This new part in the SFO would provide REIT

unitholders, particularly minority unitholders, with various safeguards and protections akin to those available to shareholders of listed companies under the Companies Ordinance (Cap. 622).

The proposed mechanism would include the following key features:

1. **Approval thresholds:** At least 75% of the voting rights of the affected unitholders would be required to approve the scheme, as well as a mechanism to allow 10% or more of the disinterested unitholders to block the scheme.
2. **Court sanction process:** The scheme would require court sanction to ensure it is fair and reasonable to unitholders.
3. **Disclosure requirements:** Provisions for timely and adequate disclosure of information to unitholders, enabling them to make informed decisions.
4. **Roles and responsibilities:** Clear delineation of the roles and responsibilities of the REIT's management company and trustee in implementing the scheme or compulsory acquisition.

In addition to the REIT-specific proposals, the SFC is also seeking to enhance the SFO market conduct regime for all listed CIS. This move aims to address technical complexities identified in previous consultations and provide greater clarity on the application of these regimes.

The key refinements to the SFC's approach include:

1. **Scope limitation:** Focusing the proposed amendments on listed CIS, as they are the only type of non-corporate entities currently listed on the Hong Kong Stock Exchange.
2. **Streamlined obligations:** Centering the various obligations under the market conduct regimes largely on the management company of the listed CIS (and CIS directors in the case of a corporate CIS).
3. **Selective exclusions:** Excluding certain divisions in Part XV of the SFO where similar regulatory requirements are already in place. For example, in relation to provision of information pursuant to constitutive documents, keeping of register of holders and investigation powers.

These targeted changes are intended to enhance market integrity and maintain sufficient investor

protection, while facilitating the implementation of the proposals.

The SFC's consultation paper highlights that the introduction of a statutory scheme of arrangement and compulsory acquisition mechanism for REITs, coupled with the enhancement of the SFO market conduct regime for all listed CIS, are expected to modernize the regulatory landscape and uphold market integrity in Hong Kong. The SFC is inviting public comments on these proposals by May 27, 2024, as it aims to work with the government to introduce the necessary legislative amendments.

For market participants and interested parties in Hong Kong, these proposals present a significant opportunity to provide feedback and shape the future regulatory framework for listed CIS. The enhanced protections and clarity afforded to investors through these initiatives are poised to strengthen Hong Kong's position as a leading international financial center and a preferred listing destination for real estate and other collective investment vehicles.

香港证券及期货事务监察委员会就优化房地产投资信托基金制度及证券及期货条例下上市集体投资计划的市场行为监管制度提出咨询

2024年4月23日,香港证券及期货事务监察委员会(证监会)发表了一份咨询文件,提出修订《证券及期货条例》(第571章)(《证券及期货条例》)的主要建议,以加强对本港上市集体投资计划的监管框架。这一全面的建议旨在为房地产投资信托基金(房地产基金)引入法定协议安排和强制收购机制,并将关键的市场行为监管制度扩展至所有上市集体投资计划。

市场上投资计划和产品愈加多元化,监管机构有需要跟上更新的法规和指引。例如,目前存在有关集体投资计划和房地产基金的若干漏洞,现在正是堵塞这些漏洞的时候。这突显了香港仍在蓬勃发展和保持活力的重要管治讯号。

这些建议的原动力源自证监会长期以来将房地产基金的规管方式与上市公司相近的政策,因为两者在经济性质和投资者利益方面存在相似之处。目前,《证券及期货条例》第XIII至XV部涵盖的市场行为监管制度(包括市场失当行为、内幕信息披露和权益披露)主要适用于上市公司。然而,为提供更大的确定性并确保投资者得到一致的保障,证监会此前曾就将这些制度扩展至房地产基金和其他非公司上市实体咨询公众意见。

《证券及期货条例》的市场行为监管制度包括:(a)第XIII及XIV部的市场失当行为制度;(b)第XIVA部的内幕信息披露制度;以及(c)第XV部的权益披露制度。现建议明确将这些制度延伸至涵盖包括房地产基金在内的上市集体

投资计划。这些建议与之前获得普遍支持的公众咨询相一致,但进行了若干修订。

尽管业界过去普遍支持这些建议,但证监会在立法起草过程中发现了某些技术复杂性,需要进一步深入研究。为应对这些挑战,证监会修订了方针,将拟议修订的范围聚焦于目前唯一一类在香港联交所上市的非公司实体——上市集体投资计划。

咨询文件提出的一项关键建议是,在《证券及期货条例》中引入适用于房地产基金的法定协议安排和强制收购机制。这项新的条文将为房地产基金的单位持有人(尤其是少数单位持有人)提供各种保障和保护,类似于《公司条例》(第622章)下上市公司股东享有的保障。

拟议的机制将包括以下主要特点:

1. 批准门槛:须有至少 75%受影响单位持有人的投票权批准该计划,并设有让 10%或以上的无利害关系单位持有人阻止该计划的机制。
2. 法院批准程序:该计划须经法院批准,以确保其对单位持有人公平合理。
3. 披露规定:就及时和充分地向单位持有人披露资讯,使他们能作出知情决定。
4. 角色及责任:明确界定房地产基金的管理公司和受托人在实施有关计划或进行强制收购时的角色和责任。

除了针对房地产基金的具体建议外,证监会亦寻求加强适用于所有上市集体投资计划的《证券及期货条例》市场行为监管制度。此举旨在解决先前咨询中识别的技术复杂性,并就这些制度的适用范围提供更大的明确性。

证监会的方针修订包括:

1. 范围限制:将拟议修订聚焦于上市集体投资计划,因为它们是目前唯一一类在香港联交所上市的非公司实体。
2. 简化义务:将市场行为监管制度下的各项义务主要集中于上市集体投资计划的管理公司(如属公司制集体投资计划,则集中于集体投资计划董事)。
3. 选择性豁免:豁免第XV部的某些分部,因为类似的监管要求已经到位,例如关于根据组织文件提供资讯、保存持有人登记册及调查权力等方面。

这些针对性的变更旨在提升市场诚信,维持充足的投资者保障,同时促进这些建议的实施。

证监会的咨询文件强调,为房地产基金引入法定协议安排和强制收购机制,加上优化适用于所有上市集体投资计划的《证券及期货条例》市场行为监管制度,预计将使香港的监管环境现代化,并维护市场诚信。证监会邀请公众于2024年5月27日或之前就这些建议提供意见,并计划与政府合作引入必要的立法修订。

对于香港的市场参与者和相关方而言,这些建议为他们提供了重大机会,提供反馈并塑造上市集体投资计划的未来监管框架。这些举措为投资者提供的加强保障和明确性,有望进一步巩固香港作为领先国际金融中心及房地产和其他集体投资工具首选上市目的地的地位。

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