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Hong Kong SFC licensing and compliance hints - year-end review

Isabella Wong

2021 has been a challenging year: The Covid-19 pandemic has continued to change the way we work and operate businesses, as well as the regulatory approach of the Securities and Futures Commission (**SFC**). Whilst maintaining Hong Kong's regulatory standards, the SFC has shown some flexibility towards supervision in 2021. As a year-end review, we have highlighted below the key licensing and compliance initiatives in the past 11 months.

Licensing

- Quarantine exemption scheme: Eligible senior executives of licensed corporations were allowed to apply to the SFC for waiving the compulsory quarantine requirement when returning to Hong Kong. See SFC's circulars of [28 May 2021](#), [21 June 2021](#), [19 July 2021](#) and [1 November 2021](#).
- New competency framework: To enhance the competence of industry practitioners, the SFC is changing the entrance and post-licensing training requirements for licensed representatives and responsible officers. Amendments to the Guidelines on Competence and Guidelines on Continuous Professional Training will take effect on 1 January 2022. See SFC's circular of [9 November 2021](#) and consultation conclusions of [18 June 2021](#), and our article of [24 June 2021](#).

Compliance

- Suggested controls to promote resilient operations: After discussions with the industry, the SFC issued a [Report on Operational Resilience and Remote Working Arrangements](#), in which it suggested some controls measures to help licensed corporations manage the operational risks arising from remote working arrangements.
- Revised AML guidelines: To align with the Financial Action Task Force's standard, the SFC implemented a revised [Guideline on Anti-Money Laundering and Counter-Financing of Terrorism](#) on 30 September 2021, after around one year's consultation with the public. See our legal update of [28 September 2021](#).
- Changes to the Fund Manager Code of Conduct (**FMCC**): The SFC decided to include new requirements (covering governance, investment management, risk management and disclosure) in the revised FMCC to be effective in 2022. It also held various webinars to prepare licensed fund managers for the changes. See the SFC's [Consultation Conclusions on the Management and Disclosure of Climate-related Risks by Fund Managers](#) and circular of [29 October 2021](#).

2022 outlook

Looking at the outstanding regulatory proposals, we predict 2022 will see developments in the following areas:

- Licensing regime for depositaries of public funds: It has been over two years since the SFC issued a Consultation Paper on the Proposed Regulatory Regime for Depositaries of SFC-authorized Collective Investment Schemes in September 2019. We expect the conclusions of the consultation will soon be issued.
- New digital licensing framework: The Financial Services and Treasury Bureau's consultation conclusions of 21 May 2021 confirm the intention for the SFC to license virtual asset services providers under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance. The government has reported that the proposals received "general support". We expect the SFC will now consult the market on its licensing proposals. The government targets to introduce an amendment bill in the 2021 – 2022 legislative session.
- Over-the-counter (OTC) derivatives regulations: The OTC derivatives clearing, reporting and record-keeping requirements have been implemented in phases. Although the OTC derivatives licensing requirements are ready to take effect, the post-licensing financial resources and conduct requirements have not yet been finalised. We expect additional consultations will follow to finalise the OTC derivatives compliance requirements.

Reporting of pricing errors of UCITS schemes

Eve Leung and Maggie Choi

On 30 November 2021 the Hong Kong Securities and Futures Commission (**SFC**) issued a new Ongoing Compliance Form for Reporting Pricing Errors of UCITS schemes (**Form**) with a view to streamlining and standardising the processing of reporting pricing errors of UCITS schemes to the SFC. The SFC has updated Q4 and issued new Q4A of the FAQs on Post Authorisation Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds to explain its requirements. The Form is also applicable for reporting pricing errors of any overseas-domiciled scheme which is authorised under any mutual recognition of funds arrangements between Hong Kong and an overseas jurisdiction.

The Form is split into two parts:-

Part A (to be submitted by the manager upon the discovery of the pricing error)

This part requires general information on the nature and discovery of the error, the affected scheme(s) and the impact on Hong Kong investors.

Part B (to be submitted by the manager to report the final compensation arrangements and/or remedial measures)

This part requires further details of the error, including the reasons and parties responsible for the error, compensation to Hong Kong investors and the scheme(s), and the remedial measures. The manager is also required to provide prescribed confirmations including ones in respect of compliance with 10.2, 10.2A and 10.2B of the Code on Unit Trust and Mutual Funds and that the depositary and the home regulator (if the error is required to be notified to the home regulator) do not have any further comment on the error and the remedial measures.

The Form has to be signed by a senior-ranking executive of the management company (or an appropriate person designated by the senior-ranking executive) with overall responsibility for the reporting of the error to the SFC.

The SFC may require the submission of further information on a case-by-case basis.

Jeremy Lam appointed to the HKSI Institute Board

Jeremy Lam, Partner and Head of the Financial Services Practice at Deacons, is honoured to have been appointed to the Board of Directors of the Hong Kong Securities and Investment Institute. The HKSI Institute is a professional membership organisation established in 1997 by leaders in the securities and investment industry with the support of

the Securities and Futures Commission. The HKSI Institute champions professional standards of excellence in Hong Kong's financial services industry and contributes to Hong Kong's role as a leading international finance centre.

Recent publications

[A new arbitration centre for Hong Kong](#)

[Court denies party leave to adduce expert evidence](#)

["On demand" or "see to it" guarantee?](#)

[Privy Council rules on serious irregularity challenges to arbitral awards](#)

[The period of childbirth-related leave has been extended in Beijing, Shanghai and various cities in Mainland China: Employers in Mainland China should update the relevant policies and be alerted to compliance management](#)

[SFC disciplined sponsors for inadequate due diligence and disclosure](#)

[Serving writs in Mainland China by public announcement](#)

[New investigatory powers of the Privacy Commissioner for Personal Data under the new anti-doxxing law](#)

[Hong Kong's enhanced listing regime for overseas issuers will take effect in 2022](#)

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