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Newsletter

Financial Services

28 September 2022

What's inside?

November deadline for compliance with the SFC's climate-related risks requirements

Joyce Li

Type 9 licensed corporations (**LCs**) with investment management discretion in respect of collective investment schemes (**funds**) will soon be required to comply with the Securities and Futures Commission's (**SFC's**) new climate-related risks requirements. The SFC has adopted a two-tier approach, whereby all in-scope LCs must comply with the baseline requirements. In-scope LCs that qualify as large fund managers (i.e. LCs with funds under discretionary management equal to or in excess of HK$8 billion) are required to comply with enhanced standards in addition to the baseline requirements.

Large fund managers have until 20 November 2022 to comply with the enhanced standards. The deadline for large fund managers to comply with the baseline requirements was 20 August 2022. Other in-scope LCs must comply with the baseline requirements by 20 November 2022.

We have linked below the key SFC materials plus two bulletins by Deacons which describe the regime and the steps that LCs should be taking towards compliance.

Key materials:

- Consultation Conclusions on the Management and Disclosure of Climate-related Risks by Fund Managers (SFC, 20 August 2021)
- Amendments to the Fund Manager Code of Conduct – set out in Appendices B and C of the above
- Circular (SFC, 20 August 2021) with Appendix 1 and Appendix 2
- FAQs (SFC, 20 August 2021)
- Climate-related risk requirements for fund managers (Deacons, 30 August 2021)
- Unpacking the SFC's requirements on the management and disclosure of climate-related risks for fund managers (Deacons, 26 October 2021)

Mainland China briefing – September 2022

Enhancements to Stock Connect trading calendar

Taylor Hui and Faye Meng

On 12 August 2022, the China Securities Regulatory Commission and the Hong Kong Securities and Futures Commission jointly issued an announcement to enhance the trading calendar for Stock Connect (the **Announcement**, available here).

The Stock Connect programme comprises the Shanghai-Hong Kong Stock Connect launched in 2014 and the Shenzhen-Hong Kong Stock Connect launched in 2016. It allows Mainland Chinese and Hong Kong investors to trade eligible securities in each other's markets through the trading and clearing facilities of their home exchanges. On 4 July 2022, eligible exchange-traded funds were included into eligible securities under Stock Connect (for more details, please refer to our article *ETF Connect: Implementation details announced*).

Under the current arrangement for Stock Connect, investors will only be allowed to trade on the other market on days where Hong Kong and Mainland China markets are both open for trading, and banking services are available in both Hong Kong and Mainland China markets on the corresponding settlement days. After the enhancements, the Shanghai Stock Exchange, Shenzhen Stock Exchange and Stock Exchange of Hong Kong will concurrently allow Stock Connect trading on all the days which are trading days in both Hong Kong and Mainland China markets, even when the corresponding settlement days would be public holidays (which would be closed for trading under the current arrangement because clearing services are unavailable).

The proposed enhancements to the trading calendar aim to enhance mutual access between the Mainland China and Hong Kong stock markets, and will apply to both northbound trading and southbound trading under Stock Connect. It is estimated that the enhancements will reduce the number of days currently unavailable for trading by approximately half.

According to the Announcement, it will take six months to prepare for the implementation of the enhancements. A separate announcement will be made with respect to the formal commencement date.

We will monitor progress and share updates in the future.

Hong Kong and Shenzhen announce measures to support linked development of venture capital investments in Qianhai

Fiona Fong and Faye Meng

On 2 September 2022, Hong Kong's Financial Services and the Treasury Bureau (**FSTB**) and the Authority of Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone of Shenzhen Municipality (**Qianhai Authority**) jointly promulgated 18 Measures for Supporting the Linked Development of Shenzhen and Hong Kong Venture Capital Investments in Qianhai (**Measures**, available here). The Measures took effect on the same day of issuance and will remain in operation for three years.

Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone, also known as Qianhai New District, was established in 2010 to enhance the cooperation in the Guangdong-Hong Kong-Macau Greater Bay Area.

The Measures aim to facilitate two-way cooperation on cross-border venture capital (**VC**) investments between Shenzhen and Hong Kong. The Measures will provide facilitation and preferential policies for the Hong Kong private equity industry. In particular, the Qianhai Authority will promote the convergence of rules between limited partnership funds (**LPFs**) in Hong Kong and qualified foreign limited partners (**QFLP**) in Qianhai, by implementing the following:

(i) support eligible Hong Kong LPFs to set up qualified investment entities in Qianhai to commence onshore investment;

(ii) allow Hong Kong-funded QFLP fund managers to flexibly adjust the scale of offshore fund-raising of their various QFLP funds in Qianhai and to allocate funds in Mainland investments at their discretion;

(iii) enhance the QFLP scheme, including introducing enhancements to the entry threshold and application procedures, expanding the investment scope, and reducing the processing time;

(iv) support VC institutions in Qianhai to cooperate with Hong Kong LPFs to develop overseas business; and

(v) authorities in Qianhai and Hong Kong will explore making use of a cross-boundary supervisory sandbox mechanism to promote the linked development of Shenzhen and Hong Kong private equity markets.

Hong Kong introduced the LPF regime in August 2020, which provides for registration of eligible funds as LPFs in Hong Kong, and from 1 November 2021, overseas limited partnerships may re-domicile and register as LPFs in Hong Kong. The Measures also complement the three-step strategy implemented by Hong Kong for developing the private equity fund market, i.e. 1) introducing the LPF regime; 2) offering tax concessions for carried interest distributed by eligible private equity funds; and 3) launching the re-domiciliation mechanism to attract foreign funds to re-domicile in Hong Kong.

QFIs are allowed to trade Mainland China onshore futures and options

Fiona Fong and Faye Meng

On 2 September 2022, five major Mainland Chinese futures exchanges announced that Qualified Foreign Investors (**QFIs**, including Qualified Foreign Institutional Investors and Renminbi Qualified Foreign Institutional Investors) are allowed to trade in 23 designated commodity futures, 16 option contracts, and stock option contracts listed on the China Financial Futures Exchange (**Announcements**). The five major futures exchanges are the Shanghai Futures Exchange, the Zhengzhou Commodity Exchange, the Dalian Commodity Exchange, China Financial Futures Exchange and Shanghai International Energy Exchange.

Back in October 2021, Mainland Chinese authorities issued new rules on QFIs allowing QFIs to trade futures and options, which took effect from 1 November 2021 (for more details, please refer to our article *China regulators issue new QFII/RQFII rules enhancing the regime*). However, it was not until the Announcements that it became clear which types of products are available to QFIs.

The Announcements followed the China Securities Regulatory Commission vice-chairman, Fang Xinghai's comments at the 19th Shanghai Derivatives Market Forum that preparations should be accelerated on further opening up the commodity futures, commodity options and stock index options markets to QFIs.

The Announcements are part of Mainland China's continued efforts to speed up the opening up of its derivatives market. It is anticipated that allowing QFIs to trade futures and options will provide more hedging products and allocation tools for foreign investors to invest in Mainland China, and will bring incremental capital to the Mainland Chinese derivatives market.

Hong Kong SFC licensing and compliance hints – September 2022

Jennifer Baccanello

What are the conduct and CDD requirements for marketing public OFCs?

Following the increasing interest of fund managers in registering their funds as public open-ended fund companies (**OFCs**) under the Securities and Futures Ordinance, quite a number of these managers are also interested in marketing such OFCs to the retail investors in Hong Kong.

If these managers have not marketed public funds directly to Hong Kong retail investors in the past, they will need to establish and maintain new investment take-on procedures and forms (**Procedures**) to ensure that they comply with a wide range of investor protections and in particular the suitability obligations under paragraph 5.2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**). Most of these investor protection requirements are referred to in paragraphs 15.4 and 15.5 of the Code of Conduct.

Fund managers also need to be familiar with the specific requirements as set out in the SFC's dedicated webpage entitled "Suitability requirement" (link).

Separately, the Procedures also need to cover the onboarding customer due diligence requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance and Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations).

As we near the final quarter of 2022, be reminded that the SFC's grant scheme funded by the Hong Kong government will continue to provide subsidies to cover up to 70% of the eligible expenses (subject to a cap of HK$1 million per OFC) in connection with the formation or re-domiciliation of OFCs until May 2024.

SFC's review of online brokerage, distribution and advisory services

Licensed corporations that undertake online brokerage, distribution and advisory services will want to pay careful attention to the SFC's Circular to licensed corporations - Review of online brokerage, distribution and advisory services issued on 31 August 2022 (link). The circular highlights various deficiencies that have come to the SFC's attention, some examples of which include the following:

- Non-face to face client onboarding
  - inadequacies in client verification procedures
- Online trading, distribution and marketing
  - restrictive disclaimers relating to suitability obligations
  - insufficient product due diligence
  - inadequate client risk profiling
- Cybersecurity
  - failure to implement adequate mechanisms to mitigate cybersecurity risks
- Resources planning and complaint handling

The circular includes a useful appendix which is a report of the review (link).

The report sets out the SFC's expected regulatory standards. In light of this circular and the increasing interest of retail investors to use online platforms for investing, it is a timely reminder for platform providers to review and assess the suitability of their current systems, controls and procedures to ensure that they are compliant with all applicable rules and regulations.

Webinar invitation

Unlock new opportunities with open-ended fund companies (OFC) and limited partnership funds (LPF)

Date: Wednesday 19 October 2022
Language: Cantonese
Time: 12:30 – 14:00 HKT
Venue: Online

Agenda
- overview and advantages of the OFC and LPF regimes
- tax implications for typical fund structures and tax exemptions for OFCs and LPFs set up in Hong Kong

Speakers:
Fiona Fong, Partner, Deacons
Evy Wong, Principal Partner, CWK Global

This event is hosted by the Association of Chinese Internal Auditors (ACIA). For registration, please visit ACIA's event web page at https://us02web.zoom.us/meeting/register/tZ0kf-irrTwsGNNZjZufGlXwoSdsIlsryC8x. For any enquiries, please contact ACIA at +852 27701188 or email aciawongyc@gmail.com

Recent publications

Labour Law video series (Episode 15: The PDPC's new guidance on cross-border data transfer)

Construction video series (Episode 2: Practical Tips for Preparing Adjudication Documents under SOPP framework)

Hong Kong Competition Commission publishes Advisory Bulletin on employers' joint negotiations with employee bodies

Office of the Privacy Commissioner for Personal Data released guidance note on data security measures for information and communications technology

HKMA issues sound practices for payment operations

Frequently Asked Questions in relation to Anti-Money Laundering and Counter-Financing of Terrorism

Updates to the HKMA's Guideline on Minimum Criteria for Authorisation

HKMA's seventh issue of the Regtech Adoption Practice Guide

Supervisory Policy Manual (SPM) Module on "The Sharing and Use of Consumer Credit Data through Credit Reference Agencies"

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