
REGULATORY NEWSLETTER

2023 Vol.12



Welcome to the last edition of our Regulatory Newsletter for this year, in which we look back over the last month at key developments affecting the financial industry and risks professionals face, summarizing regulatory updates that have happened in Hong Kong.

In our monthly newsletter, ComplianceDirect is committed to keeping you up-to-date on the latest compliance news and regulations that are relevant to your business. We hope that the information we provide in this month's newsletter is informative. We wish you continued success in the months ahead and look forward to supporting your business in any way we can.

REGULATORY UPDATES

Circular on intermediaries engaging in tokenised securities-related activities

2 November 2023

The SFC observed financial institutions' growing interest in tokenising traditional financial instruments in the global financial markets, with an increasing number of intermediaries entering the space to explore the tokenisation of securities and the distribution of tokenised securities to their clients.

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Circular on tokenisation of SFC-authorized investment products

2 November 2023

This circular sets out the requirements under which the SFC would consider allowing tokenisation of investment products authorised by the SFC under Part IV of the Securities and Futures Ordinance for offering to the public in Hong Kong.

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Circular to licensed corporations on prudent risk management in providing IPO subscription services

8 November 2023

The SFC reminded licensed corporations (LCs) to prudently manage their risks in providing initial public offering (IPO) subscription services and financing to clients with the launch of the Fast Interface for New Issuance (FINI).

To streamline and digitalise the IPO settlement process in Hong Kong, HKEX will launch FINI on 22 November 2023. The pre-funding mechanism for public offer tranches will be modified² under FINI.

Notwithstanding the modification of the pre-funding mechanism under FINI, LCs should exercise prudent risk management and controls³ when providing IPO subscription and financing services to clients. They should put effective measures in place to guard against any improper risk-taking activities, such as accepting large subscription orders without collecting sufficient subscription deposits⁴ from clients upfront or providing excessive IPO financing to clients.

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Circular to Licensed Corporations, SFC-licensed Virtual Asset Service Providers and Associated Entities - Anti-Money Laundering / Counter-Financing of Terrorism

Updated AML/CFT Self-Assessment Checklist

14 November 2023

The SFC posted an updated AML/CFT Self-Assessment Checklist, which reflects the latest Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Licensed Corporations and SFC-licensed Virtual Asset Service Providers) (AML/CFT Guideline)¹. A copy of the updated checklist can be downloaded from the SFC website at (https://www.sfc.hk/-/media/EN/files/IS/AML/AML - Self-Assessment Checklist_EN_2023).

The AML/CFT Self-Assessment Checklist aims to provide a structured and comprehensive framework for licensed corporations, SFC-licensed virtual asset service providers and associated entities to assess their compliance with the key AML/CFT requirements². Licensed corporations, SFC-licensed virtual asset service providers and associated entities are advised to use the self-assessment checklist as part of their regular review to monitor their AML/CFT compliance.

Senior management of licensed corporations, SFC-licensed virtual asset service providers and associated entities should ensure that any compliance deficiencies identified during the regular reviews are rectified in a timely manner. As part of our supervision, we may request licensed corporations, SFC-licensed virtual asset service providers and associated entities to provide documentary evidence of the performance of such review and its results.

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Circular to Licensed Corporations, SFC-licensed Virtual Asset Service Providers and Associated Entities - Anti-Money Laundering / Counter-Financing of Terrorism

Webinar Materials

30 November 2023

The presentation materials used by the SFC staff and speakers from the Commerce and Economic Development Bureau, the Commercial Crime Bureau and the Financial Intelligence and Investigation Bureau of the Hong Kong Police Force at the recent Anti-Money Laundering and Counter-Financing of Terrorism Webinar¹ have been posted on the SFC website² under the headings of "Training materials - Presented by SFC staff" and "Training materials - Presented by external parties" respectively.

Licensed corporations, SFC-licensed virtual asset service providers and associated entities are encouraged to download the aforesaid presentation materials for reference and internal training as appropriate.

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ENFORCEMENT NEWS

Court sets trial date for employing a fraudulent scheme in securities transactions in illegal short selling case

7 November 2023

The Eastern Magistrates' Court has fixed the trial of Ms Christine Yeung Tak Sum for 27 February 2024 to 5 March 2024 after she pleaded not guilty to employing a fraudulent scheme with intent to defraud in securities transactions and illegal short selling.

This is the first prosecution brought by the SFC in a case where a defendant is accused of employing a fraudulent scheme in securities transactions involving illegal short selling.

The SFC alleges that, between 27 May 2020 and 28 May 2020, Yeung, together with other people unknown, employed a scheme to defraud or to deceive her broker Aristo Securities Limited by, inter alia, submitting a false settlement instructions form to it for her securities transactions.

Yeung was granted bail pending trial.

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SFC seeks court disqualification orders against former directors of Tech Pro Technology Development Limited

14 November 2023

The SFC commenced legal proceedings under section 214 of the Securities and Futures Ordinance (SFO) in the Court of First Instance to seek disqualification orders against former chairman and executive director of Tech Pro Technology Development Limited (Tech Pro), Mr Li Wing Sang, and former executive directors, Mr Chiu Chi Hong and Mr Liu Xinsheng.

The SFC's legal action follows an investigation which revealed that Li, Chiu and Liu had failed to properly manage Tech Pro's investment in a joint venture with a partner in the Mainland and the principal asset of the joint venture was the sub-leasing right of a building in Shanghai.

Specifically, the trio had failed to obtain sufficient control and supervision over the joint venture and left the daily management to the Mainland partner. As a result, the partner was able to misappropriate more than RMB300 million from the joint venture. The partner had also failed to settle the outstanding rent of the building in Shanghai with the result that a Mainland court ordered the termination of the joint venture's sub-leasing right of the building, thus wiping out Tech Pro's investment in the joint venture.

The SFC alleges that Li, Chiu and Liu were, at the material time, in breach of their duties owed to Tech Pro including, inter alia, duties of care, skill and diligence and duties to act in the best interest of Tech Pro.

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SFC obtains court orders against former chairman of Kong Sun Holdings Limited and China Sandi Holdings Limited

15 November 2023

The SFC obtained disqualification and compensation orders in the Court of First Instance against former chairman and executive director of Kong Sun Holdings Limited (Kong Sun) and China Sandi Holdings Limited (China Sandi), Mr Tse On Kin, who admitted that he fraudulently obtained a secret profit out of the Kong Sun share placement and shares of China Sandi at a discounted price in a placement.

Tse was disqualified for 10 years from being, or continuing to be, a director, liquidator, receiver or manager of the property or business of any corporation in Hong Kong including Kong Sun, China Sandi or any of their subsidiaries and affiliates and in any way, directly or indirectly, being concerned, or taking part, in the management of any corporation in Hong Kong, without the leave of the Court.

He was ordered to pay Kong Sun \$2,185,784.1, being the profit that he made in breach of his fiduciary duty owed to Kong Sun, and to pay the SFC's costs in the proceedings.

The SFC's investigation revealed that Tse orchestrated a fraudulent scheme to use a nominee company to apply – purportedly as an independent placee – for 100 million and 19 million shares placed by Kong Sun in or around June 2009 and China Sandi in or around November 2009 respectively, with the

intent of making a secret personal profit out of the share placements.

To this end, he instructed, directed, procured and permitted the nominee company to make false and misleading representations to the placing agent to secure the share allotment. He also brought about false and misleading declarations by Kong Sun and China Sandi to the SEHK to induce the latter to grant approval to their applications for the listing of and permission to deal in the said placing shares. Tse further brought about false announcements by both companies to the public with respect to the compliance of the independent places requirements under the Rules Governing the Listing of Securities on the SEHK.

After being allotted the shares of Kong Sun, the nominee company disposed of all the said shares on the open market between 22 June 2009 and 13 July 2009 and made a profit of around \$2,185,784.1. The nominee company also disposed of all the allotted China Sandi shares on 18 May 2010 at a loss of around \$201,185.29.

The orders of the Court were made after Tse admitted that he had conducted the business or affairs of each of Kong Sun and China Sandi in a manner involving defalcation, fraud, misfeasance towards each of Kong Sun and China Sandi or their members or a part of their members, and resulting in their members or a part of their members not having been given all information with respect to their business and/or affairs that they might reasonably expect.

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Court acquits duo of unlicensed activities

20 November 2023

The Eastern Magistrates' Court has acquitted Mr Tony Choi Yick Man after finding him not guilty of carrying on a business in asset management without a licence from the SFC. The court also acquitted Mr Ma Yau Tim after ruling he was not guilty of aiding and abetting Choi's unlicensed activities.

The SFC alleged that Choi, who had never been licensed by the SFC, operated futures accounts of four individuals or entities on a discretionary basis between 2010 and 2019 in the hope of sharing profits. Ma, a then account executive at Glory Sky Global Markets Limited who handled three of the accounts, rendered active assistance in Choi's unlicensed activities knowing that Choi was not licensed by the SFC.

In deciding to acquit Choi and Ma, Magistrate Miss Minnie Wat Lai Man was of the view that the prosecution had not proved beyond reasonable doubt that Choi was carrying on a business in operating the futures accounts. Considering the evidence given by the account holders, the Magistrate was not able to rule out the possibility that Choi was operating the accounts on a voluntary basis and not for profit.

The SFC is reviewing the decision.

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SFC reprimands and fines Lion Futures Limited \$2.8 million for regulatory breaches

22 November 2023

The SFC reprimanded and fined Lion Futures Limited (LFL) \$2.8 million for failures in complying with anti-money laundering and counter-terrorist financing (AML/CFT) and other regulatory requirements between May 2017 and July 2019.

The SFC's investigation found that LFL did not conduct any due diligence on the customer supplied systems (CSSs) used by five clients for placing orders during the material time. As a result, LFL was not in a position to properly assess and manage the money laundering and terrorist financing and other risks associated with the use of CSSs by its clients.

In addition, the SFC found that LFL's failure to put in place an effective ongoing monitoring system to detect suspicious trading patterns in client accounts resulted in its failure to detect 1,098 self-matched trades in five client accounts .

The SFC is of the view that LFL's systems and controls were inadequate and ineffective, and failed to ensure compliance with the Anti-Money Laundering and Counter-Terrorist Financing Ordinance, the Guideline on Anti-Money Laundering and Counter-Terrorist Financing (AML Guideline) and the Code of Conduct.

In deciding the disciplinary sanctions against LFL, the SFC has taken into account that:

- LFL's failures to diligently monitor its clients' activities and put in place adequate and effective AML/CFT systems and controls are serious as they could undermine public confidence in, and damage the integrity of, the market;
- LFL has taken remedial measures to enhance its internal systems and controls for continuous monitoring and identifying suspicious transactions;
- a strong deterrent message needs to be sent to the market that such failures are not acceptable;
- LFL cooperated with the SFC in resolving the SFC's concerns; and
- LFL has an otherwise clean disciplinary record.

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SFC commences legal proceedings against First Credit Finance Group Limited, its former directors and de facto director

22 November 2023

The SFC commenced legal proceedings under section 214 of the Securities and Futures Ordinance (SFO) in the Court of First Instance to seek disqualification orders against five former directors and a former de facto director of First Credit Finance Group Limited (First Credit) for allegedly breaching their fiduciary duties (Notes 1 & 2).

The former directors and former de facto director are: Mr Sin Kwok Lam, former chairman and

executive director; Mr Cho Kwai Chee, former de facto director; Mr Tsang Yan Kwong, former chief executive officer and executive director; Mr Leung Wai Hung and Ms Ho Siu Man, both former executive directors; Mr Tony Tai Man Hin, former independent non-executive director.

The SFC's investigation found that from December 2015 to June 2017, Cho acted as a de facto director of First Credit by taking part in the management of the company's business or affairs and making decisions of a directorial nature.

In January 2016, Cho was a placee in a share placement conducted by First Credit. Two months later, Cho and his brother (namely, Kevin Cho Kwai Yee) were subscribers of untaken rights shares in the rights shares issued by First Credit. First Credit's respective announcements for the completion of the placing and rights issue (announcements), however, stated that all the placees and subscribers were independent third parties.

The investigation led to the SFC's allegations that Sin, Tsang, Leung, Ho and Cho breached their duties towards First Credit by (i) failing to disclose Cho's de facto directorship; and (ii) causing the company to publish false and/or misleading information in the announcements regarding the independence of Cho and/or his brother.

Sin, Tsang, Ho and Tai also breached their duties by failing to consider the dilution impact of the placing on the company's shareholders when approving the placing proposal.

As part of the legal action, the SFC is also seeking an order for First Credit to publish the court's findings in the proceedings so that shareholders of the company will be informed of Cho's former de facto directorship in the company and the false and/or misleading disclosures made by the company in the announcements.

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SFC commences legal proceedings against AMTD Global Markets Limited and its former executives for non-compliance in IPO-related investigations

23 November 2023

The SFC commenced legal proceedings asking the Court of First Instance to inquire into the circumstances of non-compliance by AMTD Global Markets Limited (AMTD, currently known as orientiert XYZ Securities Limited) and its former executives with the SFC's notices in initial public offerings (IPOs)-related investigations.

The SFC's investigations related to suspected employment of fraudulent or deceptive schemes and/or disclosure of false or misleading information in the IPOs of certain listed companies where AMTD was involved as bookrunner, lead manager and underwriter.

The former executives of AMTD, amongst others, are: Lo Chi Hang, former responsible officer (RO); Philip Yau Wai Man, former director and manager-in-charge (MIC); and See Hiu Lun, former emergency contact person and complaints officer.

The SFC issued notices to AMTD seeking records relating to, amongst other things, its work in those IPOs. However, AMTD did not fully comply with the notices.

The former executives of AMTD did not attend interviews as required after the SFC had issued them with interview notices.

If the Court is satisfied after an inquiry that AMTD and its former executives do not have any reasonable excuse for not complying with the SFC notices, it can order AMTD to produce the specified records and its former executives to attend interviews, and it can punish them as if they had been guilty of contempt of court.

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ComplianceDirect Consulting Limited

Address: Unit 2, 10/F, Cheong K. Building, 84 & 86 Des Voeux Road Central, Central, Hong Kong

Phone: 2606 1800

Website: www.compliancedirecthk.com