
REGULATORY NEWSLETTER

2023 Vol.6



As we embrace the warmth and sunshine of June, we are also reminded that we have reached the midpoint of the year. This turning point offers an opportunity to reflect on the progress we have made and to ensure that we remain mindful of the compliance regulations and requirements that govern our company's operations.

As always, in this month's newsletter, we will provide you with the latest updates on relevant compliance news and regulations, as well as valuable guidance to help your company stay on track. We hope you find this information valuable and wish you successful months ahead.

REGULATORY UPDATES

Circular to Licensed Corporations and Associated Entities

- Anti-Money Laundering / Counter-Financing of Terrorism Amendments to Anti-Money Laundering and Counter-Financing of Terrorism Guidelines

24 May 2023

The Securities and Futures Commission (SFC) has revised its anti-money laundering and counter-financing of terrorism (AML/CFT) guidelines for licensed corporations¹ and associated entities, to incorporate provisions and guidance related to the Anti-Money Laundering and Counter-Terrorist Financing (Amendment) Ordinance 2022 (the Amendment Ordinance) which was enacted on 16 December 2022 and will take effect on 1 June 2023.

Corresponding amendments have been made in the following areas:

- (a) to reflect the revised statutory definition of "politically exposed person" (PEP) (ie, from one in a place outside the People's Republic of China to one in a place outside Hong Kong), and rename "foreign PEP" as "non-Hong Kong PEP" and "domestic PEP" as "Hong Kong PEP";
- (b) to incorporate the definition of "former non-Hong Kong PEP" and permit the disapplication of the special requirements and additional measures for non-Hong Kong PEPs if, following an

appropriate risk assessment, a former non-Hong Kong PEP no longer presents a high risk of money laundering and terrorist financing (ML/TF);

- (c) to reflect the revised statutory definition of beneficial owner of a customer that is a trust (ie, removing the 25% threshold and adding the trustee, a beneficiary and a class of beneficiaries), and provide facilitative risk-based guidance on determining the extent of reasonable measures for verifying the identities of beneficiaries and classes of beneficiaries of a customer that is a trust; and
- (d) to incorporate guidance to reflect that data or information provided by a recognised digital identification system is a reliable and independent source for identifying and verifying a customer's identity; and permit the disapplication of additional measures to a customer (or a natural person acting on behalf of a customer) who is not physically present for identification purposes if that person's identity has been verified by using a recognised digital identification system.

The SFC has also made other non-substantive amendments to enhance clarity and provided additional facilitative or elaborative guidance without altering the substance of the requirements. Other textual amendments have been made to better align with the language in the existing statutory provisions. For details, please refer to a summary of key amendments set out in [Appendix](#).

In addition to the above amendments, a new stand-alone Chapter 12 of the AML/CFT Guideline provides guidance on the ML/TF risks in relation to virtual assets and the AML/CFT regulatory requirements and standards for addressing such risks. It also explains how some existing requirements apply to virtual asset transactions and activities, and sets out non-exhaustive illustrative risk indicators for assessing ML/TF risks and indicators of suspicious transactions and activities related to virtual assets. The guidance in Chapter 12 is applicable to licensed corporations when they carry out businesses associated with virtual assets or businesses which give rise to ML/TF risks in relation to virtual assets.

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Circular to Licensed Corporations and Associated Entities

- Revised financial return form, analysis of client assets for associated entity and audit questionnaire

25 May 2023

The SFC published revised versions of: (i) the financial return form which is required to be submitted by licensed corporations under section 56 of the Securities and Futures (Financial Resources) Rules; (ii) analysis of client assets for associated entity which is required to be submitted by associated entities of an intermediary under section 3(3) of the Securities and Futures (Accounts and Audit) Rules; and (iii) audit questionnaire completed by auditors of licensed corporations for submission to the SFC.

Financial return form

A Gazette notice (see [Annex 1](#)) was published to specify that, with effect from 1 December 2023, the electronic version of the revised financial return form shall be used for submitting a return in respect of any period ending on or after 1 December 2023 and it supersedes the electronic form in the notice

gazetted on 13 December 2021 (G.N. 7820).

The electronic version of the revised form is available on the SFC website:

<https://www.sfc.hk/en/Forms/Intermediaries/Financial-returns>

Analysis of client assets for associated entity

A Gazette notice (see [Annex 2](#)) was published to specify that, the revised version of analysis of client assets for associated entity shall be used for submitting an analysis of client assets as at the end of the financial year for an associated entity of an intermediary in respect of any period ending on or after 1 December 2023 and it supersedes the form in the notices gazetted on 26 February 2003 (G.N. (S.) 25 of 2003 and G.N. 1416) for the same purpose.

The revised form is available on the SFC website:

<https://www.sfc.hk/en/Forms/Intermediaries/Analysis-of-client-assets-for-associated-entity>

Audit questionnaire

The revised version of audit questionnaire shall be completed by auditors of licensed corporations and submitted to the SFC as at the end of the financial year in respect of any period ending on or after 1 December 2023 and it supersedes the form updated on 6 July 2020.

The revised version of the audit questionnaire is available on the SFC website:

<https://www.sfc.hk/en/Forms/Intermediaries/Audit-questionnaire>

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Circular on implementation of new licensing regime for virtual asset trading platforms

31 May 2023

The new licensing regime for centralised virtual asset trading platforms under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (AMLO) has come into effect on 1 June 2023. Under the new regime, centralised virtual asset trading platforms operating in Hong Kong will need to apply to the SFC for a licence under the Securities and Futures Ordinance (Cap 571) (SFO) and/or the AMLO (Dual Licence Arrangement).

Regulatory requirements

The SFC has published the following guidelines which set out the regulatory requirements applicable to licensed virtual asset trading platforms under the new regime:

- (1) [Guidelines for Virtual Asset Trading Platform Operators](#)
- (2) [Guideline on Anti-Money Laundering and Counter-Financing of Terrorism \(For Licensed Corporations and SFC-licensed Virtual Asset Service Providers\)](#)
- (3) [Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities of Licensed Corporations and SFC-licensed Virtual Asset Service Providers](#)

Frequently asked questions (FAQs)

The SFC has also issued FAQs on [licensing matters](#) and [conduct-related matters](#), which may be updated from time to time.

Licensing Handbook for Virtual Asset Trading Platform Operators (VATP Licensing Handbook)

[The VATP Licensing Handbook](#) provides a handy licensing guide for virtual asset trading platform operators (Platform Operators). It sets out detailed procedures to guide them on how to apply for a licence as well as the relevant ongoing notifications and other applications required of them after obtaining a licence.

Designated e-mail for licensing enquiries

The SFC will receive licensing enquiries on virtual asset trading platforms via: vatp-licensing@sfc.hk.

Forms and ongoing notifications

(4) Licensing forms

Starting from 1 June 2023, corporate and individual applicants applying for licences under the new regime can submit application forms, supplements and questionnaires to the SFC through WINGS (WINGS-LIC).

Notifications, regulatory filings and annual returns should also be submitted through WINGS-LIC.

(5) Financial returns and relevant documents

Platform Operators should use the following electronic forms on the SFC's website to submit their financial returns and other documents:

- a. [Financial Returns](#)
- b. [Audit Questionnaire](#)
- c. [Business and Risk Management Questionnaire for Licensed Corporation](#)
- d. [Business and Risk Management Questionnaire for Associated Entity](#)
- e. [Analysis of Client Assets for Associated Entity](#)

(6) Reporting of material breach and non-compliance incidents

The Guidelines for Virtual Asset Trading Platform Operators require Platform Operators and their associated entities to notify the SFC immediately after any material breach or non-compliance incidents. The SFC has upgraded its existing [paragraph 12.5 notifications online portal](#) to enable Platform Operators to report incidents of material breach and non-compliance to the SFC electronically.

All forms, returns and other documents have been designed to streamline and consolidate the process into a single application, notification or filing under the Dual Licence Arrangement.

Dedicated SFC webpage for virtual asset activities

The SFC has launched a [dedicated webpage](#) which provides access to the above information and documents, and all relevant regulatory requirements and guidance materials in relation to virtual asset activities regulated by the SFC.

Licensed Platform Operators should contact their respective case officers for enquiries. For licence applicants, please send your enquiries to vatp-licensing@sfc.hk.

[View Circular](#)

Circular on transitional arrangements of the new licensing regime for virtual asset trading platforms

31 May 2023

The new licensing regime for centralised virtual asset trading platforms (VATPs) under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) (AMLO) has come into effect on 1 June 2023. Under the new regime, all VATPs carrying on a business of operating a virtual asset exchange (VA service) in Hong Kong or actively marketing their services to Hong Kong investors will need to be licensed by the SFC.

The SFC issues this circular to set out the transitional arrangements of the new licensing regime under the AMLO.

The transitional arrangements discussed in this circular apply only to VATPs providing trading services in non-security tokens. There is no transitional arrangement for compliance with the Securities and Futures Ordinance (SFO). VATPs which intend to provide trading services in security tokens will be subject to the securities laws of Hong Kong and should commence their businesses in providing trading in security tokens only upon obtaining the relevant licence under the SFO.

For details, please refer to the Circular and [Appendix](#).

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ENFORCEMENT NEWS

SFC obtains court order to freeze assets of suspected insider dealers of I.T Limited shares

2 May 2023

The Court of First Instance has granted an interim injunction order against Ms Tsang Ching Yi and Mr Barry Kwok Sze Lok in legal proceedings commenced by the SFC, prohibiting them from removing assets, including selling of their real properties, up to the value of \$8,246,496 from Hong Kong in relation to an ongoing investigation into suspected insider dealing in the shares of I.T Limited (I.T).

The SFC alleged that Tsang shared with her friend Kwok inside information relating to the privatisation of I.T that she acquired through her employment as a manager at an investment bank. Both of them then went on to deal in I.T shares using such inside information; they bought 2.844 million I.T shares through Kwok's securities accounts in October and November 2020. After the proposed privatisation was announced by I.T in December 2020, they immediately sold the shares, yielding profits of \$4,123,248.

Tsang and Kwok have both left Hong Kong and have taken steps to remove their assets from Hong Kong. In the light of the clear risk of dissipation, the SFC considers that it is necessary to obtain a freezing order to prevent Tsang and/or Kwok from further transferring their assets, including the suspected illicit gains of their trading, out of Hong Kong and to ensure any future orders made by the Court and/or the Market Misconduct Tribunal can be fulfilled if they are found liable for insider dealing.

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SFC commences MMT proceedings against former bank employee over alleged insider dealing

3 May 2023

The SFC has commenced proceedings in the Market Misconduct Tribunal (MMT) against Mr Wu Kam Shing, a former executive deputy general manager of China CITIC Bank International Limited (CITIC Bank), for alleged insider dealing in the shares of Bloomage BioTechnology Corporation Limited (Bloomage).

At the material time, Wu worked with a team of staff in respect of a loan transaction to finance Grand Full Development Limited's offer to privatise Bloomage.

The SFC alleged that while Wu was in possession of inside information about the privatisation, he purchased a total of 10,000 and 1,265,000 Bloomage shares via the securities accounts of himself and his spouse respectively between 22 May and 15 June 2017. After Bloomage's announcement of the privatisation on 19 June 2017, Wu sold 10,000 and 1,007,500 shares of Bloomage in the accounts of himself and his spouse respectively and earned a profit of about \$3 million.

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SFC reprimands and fines China On Securities Limited \$6 million for failures as share placement agent

18 May 2023

The SFC has reprimanded and fined China On Securities Limited (China On) \$6 million over its failures as the placing agent in a share placement between 25 November and 6 December 2019.

On 25 November 2019, China On was appointed as the placing agent by the then majority shareholder (Vendor) of Hon Corporation Limited (Hon Corp) to procure placees to subscribe for shares representing up to 45% of Hon Corp's total issued share capital.

The SFC's investigation found that upon identifying six placees for the placement, China On failed to ensure that it acted within the scope of the Vendor's authority and adequately safeguard the Vendor's assets by:

- entering into bought and sold notes relating to the shares on the Vendor's behalf with the placees, but the transaction prices therein were inconsistent with the placing price agreed with the Vendor;
- transferring the shares to the placees without first requiring payment of the purchase price or the certainty that they would be able to make payment of the placing price to the Vendor ; and
- executing a purported instruction by a third party for part of the shares to be transferred to one of the placees for free without verifying the instruction with the Vendor.

The SFC is of the view that China On's disregard of the Vendor's interests constituted gross negligence, if not recklessness, in breach of the Code of Conduct.

In deciding the sanction, the SFC has taken into account all relevant circumstances, including, there is insufficient evidence to support any finding of dishonesty against China On or the misconduct in question had been recurrent, the importance of sending a deterrent message to the industry that the SFC will not tolerate any grossly negligent or reckless conduct, and the otherwise clean disciplinary record of China On.

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SFC obtains disqualification orders against former directors of Luxey International (Holdings) Limited

24 May 2023

The SFC has obtained disqualification orders in the Court of First Instance against two former directors of Luxey International (Holdings) Limited (Luxey) for their misconduct involving a corporate acquisition.

The two former directors, Mr Joseph Lau Chi Yuen and Mr Chung Man Wai, were disqualified for eight years and five years respectively, without leave of the Court, from (i) being, or continuing to be, a director, liquidator, or receiver or manager of the property or business of any listed or unlisted company in Hong Kong; or (ii) in any event, whether directly or indirectly, be concerned, or taking part, in the management of any listed or unlisted company in Hong Kong.

They were also ordered to pay the SFC's costs in the proceedings.

The Court found that Lau and Chung were responsible for Luxey's business or affairs having been conducted in a manner involving defalcation, fraud, misfeasance or other misconduct that was unfairly prejudicial to Luxey's members, resulting in them not having been given all the information with respect to Luxey's business or affairs that they might reasonably expect.

The SFC's action follows an investigation into Luxey's very substantial acquisition of Easy Time Trading Limited (Easy Time) which held a 99% stake in Ratio Knitting Factory Limited (Ratio) at the time of the acquisition on 31 March 2011.

The SFC's investigation found that Lau had utilised nominees to acquire Ratio for \$50.1 million before it was effectively resold to Luxey for \$390 million and concealed his secret profit and/or material interest in these transactions. As a result, Luxey was deprived of the opportunity to acquire Easy Time or Ratio at a price substantially lower than the consideration of \$390 million.

As for Chung, he had failed to make sufficient enquiries about the relationships among Lau and his nominees and to take steps to prevent Luxey from acquiring Easy Time at a substantially higher price.

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Licence applicant convicted of providing false information to the SFC

25 May 2023

The Eastern Magistrates' Courts convicted Mr Sze Chun Wai after he pleaded guilty to making false and misleading representations in support of his licence application to the SFC in January 2021.

In particular, Sze failed to disclose that he was prohibited by a regulatory body from employment in an industry following a disciplinary action in April 2016.

He was ordered to pay a fine of \$8,000 and the SFC's investigation costs.

The SFC expects applicants to disclose complete, true and accurate information in licence applications. Failure to do so not only calls into question their fitness and properness to be licensed but may also be an offence.

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SFC and Police joint operation against a suspect of illegal short selling and fraudulent activities

31 May 2023

The SFC and the Commercial Crime Bureau of the Police conducted a joint search operation against an individual who is based in Hong Kong and suspected of engaging in illegal short selling and fraudulent activities.

The individual was arrested by the Police in the joint operation on suspicion of "dealing with property known or believed to represent proceeds of indictable offence".

The SFC's investigation revealed that the individual might have been involved in using fabricated trading statements to mislead two brokerage firms into executing various illegal short sell orders relating to shares of four Hong Kong-listed companies. The fabricated trading statements showed that the individual held shares in the four listed companies, when in fact he did not.

The suspected short selling took place on six trading days and the total proceeds from selling the shares of the four listed companies reached \$17.7 million. On the same trading days, the individual bought the shares back in the same quantity but at lower prices and obtained illicit profits of approximately \$10.5 million.

The SFC's investigation is ongoing.

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