

# CHARLTONS

SOLICITORS



Hong Kong

September 2021

## SFC PUBLISHES Q2 2021 REPORT

On 17 August 2021, Hong Kong's Securities and Futures Commission (the **SFC**) published its quarterly report<sup>1</sup> for the period April to June 2021.

The main highlights include:

- *Listing and Takeovers* – a total of 120 new listing applications (five from companies with weighted voting rights (**WVR**) structures and 14 from pre-revenue biotech companies) were vetted by the SFC; and a total of 110 takeovers and share buy-back transactions took place in Q2 2021;
- *Regulatory Enhancements* – the SFC published its consultation conclusions on updates to the competency requirements for SFC-licensed and HKMA-registered individuals;
- *Licensing* – the SFC received 1,563 licence applications and 5,570 applications to conduct new regulated activities. As at the end of Q2 2021, there were 51 automated trading services (**ATS**) providers authorised under Part III of the Securities and Futures Ordinance (the **SFO**) and 24 corporations, including 13 dark pool operators, licensed under Part V of the SFO to provide ATS;
- *Enforcement* – the SFC disciplined four corporations and three individuals, with fines totalling HK\$5 million;
- *Products* – the SFC authorised 39 unit trusts and mutual funds and 24 unlisted investment products for public offering in

Hong Kong; 48 Mainland funds and 38 Hong Kong funds were authorised under the Mainland-Hong Kong Mutual Recognition of Funds (**MRF**) scheme; and exchange-traded funds (**ETFs**) were cross-listed on the Stock Exchange of Hong Kong Limited (**HKEX**) and the Shanghai Stock Exchange for the first time in June 2021;

- *Green and Sustainable Finance* – the Hong Kong Green and Sustainable Finance Cross-Agency Steering Group, which the SFC co-chairs, announced the next steps to advance its collaborative strategy to help transition the financial ecosystem towards carbon neutrality; and
- *Cross-boundary Investment* – the SFC has been working with various institutions in Mainland China, Macao, and Hong Kong on the implementation of the Cross-boundary Wealth Management Connect Pilot Scheme.

### HKEX Listing

#### HKEX Listing Applications

During the second quarter of 2021, the SFC vetted 120 new listing applications (including five from companies with a WVR structure and 14 from pre-profit biotech companies), amounting to a 46% increase from the same period in 2020. The SFC issued one requisition letter to a listing applicant during the quarter, with concerns relating to the credibility of the sponsor's submission and the sufficiency of the independent due diligence performed by the sponsor.

<sup>1</sup> <https://www.sfc.hk/-/media/EN/files/COM/QR-Reports/202104-06/0SFC-Quarterly-Report-AprJun-2021.pdf>

## HKEX Listing Regulation

### *Main Board profit requirement*

The HKEX published its conclusions<sup>2</sup> to its consultation on increasing the minimum profit requirement for Main Board listing applicants to HK\$200 million. The new profit requirement will come into effect on 1 January 2022. For further details, please see Charltons' newsletter "HKEX to Raise Main Board Profit Requirement from 1 January 2022".<sup>3</sup>

### *Misconduct related to HKEX IPOs*

The SFC and the HKEX published a joint statement<sup>4</sup> on their efforts to combat misconduct and improper behaviour related to new listings through heightened scrutiny of listing applications with "red flags" the regulators believe to be indicative of a lack of genuine investor interest.<sup>5</sup>

### *Changes to HKEX's disciplinary and sanctioning powers*

Changes to the HKEX Listing Rules giving the HKEX greater disciplinary and sanctioning powers came into effect on 3 July 2021 following the publication of the HKEX's Consultation Conclusions<sup>6</sup> in May. For details, please see Charltons' newsletter "HKEX Listing Rule Changes on Disciplinary Powers and Sanctions effective 3 July 2021".<sup>7</sup>

### *Listed Issuers' Corporate Conduct and Takeover Matters*

From April to June 2021, the SFC issued section 179 directions in 28 cases and wrote to the listed issuer in one case to detail its concerns.

Further, the SFC reported that there were 110 takeovers and share buy-back transactions in the quarter ended 30 June 2021. There

was a 1% decrease as compared to the same period last year. Of the 110 transactions, 14 were general and partial offers under the SFC Code on Takeovers and Mergers, five were privatisations, eight were whitewash waiver applications, one was an off-market and general offer share buy-back and the remainder (82) were other applications under the Code on Takeovers and Mergers.

## Hong Kong Regulation of Virtual Assets (Cryptocurrencies)

The Financial Services and Treasury Bureau published its consultation conclusions<sup>8</sup> on a legislative proposal for the SFC to regulate centralised virtual asset exchanges under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance<sup>9</sup> (May 2021). The government aims to introduce the amendment bill into the Legislative Council in the next legislative session. For further details, please see Charltons' newsletter "FSTB Concludes Consultation on Licensing Regime for Hong Kong Virtual Asset Exchanges".<sup>10</sup>

## SFC Licensing Applications and Supervision

### SFC licensing applications

During the second quarter of 2021, the SFC received 2,695 licence applications, including 42 corporate applications. At the end of the quarter, there were 3,174 SFC licensed corporations, 44,239 SFC licensed individuals and 114 SFC registered institutions.

### SFC Consultation Conclusions on Competency Framework

The SFC published its consultation conclusions<sup>11</sup> on the proposed enhancements to the competency framework for intermediaries and individual practitioners<sup>12</sup> (June 2021). The proposals adopted include increasing the minimum academic qualification requirements and expanding the recognised academic qualifications for individual licence applicants; raising the competence requirements for individuals advising on matters covered by the SFC Codes on Takeovers and Mergers; and changes to the ongoing competence requirements for individual

2 [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2020-MB-Profit-Requirement/Conclusions-\(May-2021\)/cp202011cc.pdf](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/November-2020-MB-Profit-Requirement/Conclusions-(May-2021)/cp202011cc.pdf)

3 <https://www.charltonslaw.com/hkex-to-raise-main-board-profit-requirement-from-1-january-2022/>

4 [https://www.sfc.hk/-/media/EN/files/COM/Statements/SFC-HKEX\\_Joint-Statement\\_EN.pdf](https://www.sfc.hk/-/media/EN/files/COM/Statements/SFC-HKEX_Joint-Statement_EN.pdf)

5 [https://www.sfc.hk/-/media/EN/files/COM/Statements/SFC-HKEX\\_Joint-Statement\\_EN.pdf](https://www.sfc.hk/-/media/EN/files/COM/Statements/SFC-HKEX_Joint-Statement_EN.pdf)

6 [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Conclusions-\(May-2021\)/cp202008cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Conclusions-(May-2021)/cp202008cc.pdf?la=en)

7 <https://www.charltonslaw.com/hkex-listing-rule-changes-on-disciplinary-powers-and-sanctions-effective-3-july-2021/>

8 [https://www.fstb.gov.hk/fsb/en/publication/consult/doc/consult\\_conclu\\_amlo\\_e.pdf](https://www.fstb.gov.hk/fsb/en/publication/consult/doc/consult_conclu_amlo_e.pdf)

9 [https://www.fstb.gov.hk/fsb/en/publication/consult/doc/consult\\_conclu\\_amlo\\_e.pdf](https://www.fstb.gov.hk/fsb/en/publication/consult/doc/consult_conclu_amlo_e.pdf)

10 <https://www.charltonslaw.com/fstb-concludes-consultation-on-licensing-regime-for-hong-kong-virtual-asset-exchanges/>

11 <https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=20CP8>

12 <https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=20CP8>

practitioners. The revised Guidelines on Competence, Guidelines on Continuous Professional Training and Fit and Proper Guidelines will become effective on 1 January 2022. For further details, please see Charltons' newsletter "SFC to Upgrade Competency Standards for Licensed Intermediaries and Individuals from 1 January 2022".<sup>13</sup>

### SFC Circulars

Circulars issued by the SFC in the second quarter of 2021 include:

- **Reminder of data standards for order life cycles:** A circular reminding securities brokers whose annual trading turnover in equities listed on the HKEX in 2018 or beyond reaches or exceeds 2% of that year's total market trading volume for the first time should implement system changes and make other arrangements to comply with the data standards for order life cycles within 15 months of that year's calendar end;<sup>14</sup> and
- **Operation of bank accounts:** A reminder that licensed corporations should implement effective policies, procedures and internal controls for the operation of their bank accounts. The SFC also sets out its expectations regarding bank account signatory arrangements.<sup>15</sup>

Three of the circulars related to COVID-19:

- The SFC circular of 28 May 2021 set out the details of the compulsory quarantine exemption arrangements for senior executives of licensed corporations or their overseas affiliates who are fully vaccinated and meet eligibility criteria;<sup>16</sup>
- The SFC circular of 21 June 2021 outlined the updates to the above scheme after revised quarantine measures were announced;<sup>17</sup> and
- The SFC circular of 1 June 2021 encouraged licensed corporations to consider vaccination as an important part

of operational risk management and to review their business continuity plans.<sup>18</sup>

### Investment Products

#### SFC Investment Product Authorisations

During the quarter ended 30 June 2021, the SFC authorised 39 unit trusts and mutual funds (which included 17 Hong Kong-domiciled funds) and 24 unlisted structured investment products for public offerings in Hong Kong. This brings the total number of authorised unit trusts and mutual funds (as at 30 June 2021) to 2,232 (838 Hong Kong-domiciled and 1,394 non-Hong Kong-domiciled) and the total number of authorised unlisted structured investment products to 146.

Of the authorised funds not domiciled in Hong Kong, the majority were Luxembourg funds (75%), followed by Ireland (17%). Mainland funds comprised 4% of all non-Hong Kong domiciled authorised funds. In total, there were 2,826 authorised collective investment schemes as at 30 June 2021.

#### Connectivity Programmes and Mutual Recognition of Funds (MRFs)

As at the end of June 2021, the SFC had authorised 48 Mainland funds under the Mainland-Hong Kong MRF scheme, while the China Securities Regulatory Commission (the **CSRC**) had approved 38 Hong Kong funds. The cumulative net subscriptions for Mainland funds and Hong Kong funds were around RMB773 million and RMB16 billion respectively.

The SFC's MRF arrangement with Thailand became effective in June 2021. Eligible Hong Kong and Thai public funds are allowed to be distributed in each other's market under a streamlined process and the approval process for local feeder funds investing in MRF-eligible master funds in the other market will also be expedited.

The SFC is working on the implementation of the Cross-boundary Wealth Management Connect Pilot Scheme in the Greater Bay Area (**GBA**) with the People's Bank of China, China Banking and Insurance Regulatory Commission, CSRC, State Administration of Foreign Exchange, the Hong Kong Monetary Authority (**HKMA**) and the Monetary Authority of Macao.

<sup>13</sup> <https://www.charltonslaw.com/sfc-to-upgrade-competency-standards-for-licensed-intermediaries-and-individuals-from-1-january-2022/>

<sup>14</sup> <https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=21EC15#:~:text=In%20gist%2C%20the%20Data%20Standards,SEHK%2Dlisted%20equities%20in%20a>

<sup>15</sup> <https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=21EC25>

<sup>16</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/licensing/doc?refNo=21EC18>

<sup>17</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/licensing/doc?refNo=21EC24>

<sup>18</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=21EC21>

### Open-Ended Fund Companies (OFCs), Real Estate Investment Trusts (REITs) and ETFs

As of 30 June, the total number of SFC-authorized REITs was 13. The first logistics-focused REIT in Hong Kong was authorized in May. The total number of registered and approved OFCs and their sub-funds is 15, including 10 ETFs.

In May, the SFC announced the launch of the Government's grant scheme to subsidise the setting up of OFCs and REITs in Hong Kong.<sup>19</sup> The scheme covers 70% of eligible expenses paid to Hong Kong-based service providers, subject to a cap of HK\$1 million per OFC and HK\$8 million per REIT.

With respect to ETFs, the SFC worked with the HKEX to improve their efficiency and liquidity in the secondary market, resulting in waivers and exemptions of trading tariffs and various fees. The SFC and the CSRC also worked together to expand the cross-listing scheme. The first ETFs were cross-listed on the Shanghai Stock Exchange and SEHK in June. The SFC is working with multiple Mainland institutions for the launch of ETF Connect.

### ESG Funds

The SFC published a circular with enhanced requirements for disclosures and annual assessments of environmental, social and governance funds.<sup>20</sup>

## Hong Kong Markets

### Uncertificated Securities Market

The Legislative Council passed the Securities and Futures and Companies Legislation (Amendment) Bill which sets up the legal framework to establish and implement an uncertificated securities market. The SFC is working on subsidiary legislation covering the details of the new regime and the regulation of securities registrar services providers.

### ATS

As at 30 June 2021, there were 51 ATS providers authorized under Part III of the SFO (authorization regime for persons providing mainly ATS services). 24 corporations, including 13 dark pool operators, were licensed under Part V of the SFO (authorization

regime for persons who additionally perform traditional broker/dealer functions).

### SFC Consultation Conclusion

The SFC and the HKMA jointly issued a consultation conclusion on the annual update to the list of financial services providers under the OTC derivatives clearing regime.

### SFC Enforcement

During the second quarter of 2021, the following enforcement actions took place:

<p><b>Market Misconduct Tribunal Decisions</b></p>	<p><b><i>China Medical &amp; HealthCare Group Limited</i></b></p> <p>The MMT fined China Medical &amp; HealthCare Group Limited (formerly COL Capital Limited) and six of its former and current directors a total of HK\$4.2 million for failure to disclose inside information as soon as reasonably practicable. Two directors were disqualified from being a listed company director for up to eight months.</p> <p><b><i>Insider Dealing</i></b></p> <p>Three individuals were found to have engaged in insider dealing.</p>
<p><b>Court Proceedings</b></p>	<p>The SFC has successfully obtained various orders in court, including:</p> <ol style="list-style-type: none"> <li>i. The Court of Appeal granted compensation orders under section 214 of the SFO against three former directors of EganaGoldpfeil (Holdings) Limited, requiring them to pay HK\$622 million to the company for its loss of funds resulting from their misconduct and failure to act in the best interest of the company;</li> <li>ii. A disqualification order under section 214 of the SFO against Lin Supeng, a former director of Anxin-China Holdings Limited, for failures in ascertaining the company's financial position; and</li> <li>iii. Final orders under section 213 of the SFO against three boiler room fraudsters purportedly operating from Hong Kong.</li> </ol> <p>At the Eastern Magistrates Court:</p> <ol style="list-style-type: none"> <li>i. Leung Pak Keung (a solicitor) was acquitted of five charges of insider dealing; and</li> <li>ii. A warrant to arrest Zeng Lingxi was issued for her failure to appear in Court to answer two charges of obstructing an SFC search operation.</li> </ol>

<sup>19</sup> <https://www.sfc.hk/en/Regulatory-functions/Products/Grant-Scheme-for-Open-ended-Fund-Companies-and-Real-Estate-Investment-Trusts>

<sup>20</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/products/product-authorization/doc?refNo=21EC27>

<b>Disciplinary Actions</b>	<p>Three licensed corporations were reprimanded and fined for internal control deficiencies:</p> <ol style="list-style-type: none"> <li>i. Deutsche Securities Asia Limited was fined HK\$2.45 million for issuing incorrect statements to prime brokerage clients and delaying the reporting of their failures to the SFC;</li> <li>ii. Ewarton Securities Limited was fined HK\$1.5 million for failing to diligently supervise an account executive and put in place adequate and effective internal control measures; and</li> <li>iii. Optimas Capital Limited was fined HK\$1.05 million for failing to comply with the requirements under the Securities and Futures (Short Position Reporting) Rules.</li> </ol> <p>One corporation's licence was revoked:</p> <ol style="list-style-type: none"> <li>i. IDS Forex HK Limited's (IDS) licence was revoked after its sole shareholder, Kim Sunghun, was convicted of illegal fundraising and fraud in Korea.</li> </ol> <p>Three individuals were disciplined:</p> <ol style="list-style-type: none"> <li>i. The former co-chief executive officers of IDS, Chung Wooman and Ki Bonggan, were both banned from re-entering the industry for life; and</li> <li>ii. The licence of Lun Sheung Nim, a responsible officer and senior management member of GEO Securities Limited, was suspended for 7.2 months due to his failure to discharge his duties as a responsible officer.</li> </ol>
<b>Securities and Futures Appeals Tribunal (SFAT)</b>	<p>Cai Hongping, former executive officer and managing director of UBS AG, lodged an application for review against the SFC's decision to ban him from re-entering the industry for five years for failing to discharge his supervisory duties as the principal in a listing application. Cai's application was allowed by SFAT.</p>
<b>Joint Operation with the Police</b>	<p>The SFC conducted a joint operation with the Commercial Crime Bureau against a syndicate suspected of operating ramp and dump market manipulation schemes and committing fraud. The SFC searched a Hong Kong-listed company's office and its senior executives' homes. The Police arrested four people for suspected conspiracy to defraud.</p>
<b>Market Surveillance</b>	<p>The SFC issued 2,319 requests for trading and account records from intermediaries triggered by untoward price and turnover movements and published four high shareholding concentration announcements.</p>

Additionally, in June 2021, the SFC held the eleventh high-level meeting on enforcement cooperation with the CSRC.

## Warning Against Social Media Investment Scams

The SFC has sought to raise public awareness about social media investment scams by:

- running an online campaign simulating the experience of being drawn into social media investment scams;
- organising community outreach events with the police; and
- issuing a circular to remind SFC licensees of their obligation to notify the SFC of suspected ramp and dump scams.<sup>21</sup>

## Unregulated Virtual Asset Platforms

The SFC issued a statement to clarify that no entity in the Binance group is licensed or registered to conduct regulated activities in Hong Kong.<sup>22</sup> Investors were urged to be extremely careful if they plan to invest in stock tokens offered on unregulated platforms.

## SFC Regulatory Engagement

### International Policy Making and Regulatory Engagement

The SFC participates in numerous groups and committees, including the International Organisation of Securities Commissions (IOSCO) Financial Stability Engagement Group and all eight IOSCO policy committees. The SFC is also a member of IOSCO's Retail Market Conduct Task Force and is actively involved in the Financial Stability Board (FSB) Standing Committee's work on Standards Implementation.

The SFC's Chief Executive Officer (CEO), Mr. Ashley Alder chairs the Board of IOSCO and attended the FSB meetings in his role as IOSCO Board chair. The IOSCO Board meeting held in June focused on discussing IOSCO's priorities for the year including sustainable finance and operational risks arising from the pandemic. Mr. Alder co-chaired the Committee on Payments and Market Infrastructures (CPMI) - IOSCO Steering Group meetings held in May and June. He also led a leadership sharing session with IOSCO Affiliate Members Consultative Committee.

The SFC's Deputy CEO, Ms. Julia Leung, is a Vice-Chair of the IOSCO Sustainable Finance Task Force and co-leads a workstream on sustainability and asset management.

<sup>21</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=21EC26>

<sup>22</sup> <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR76>

Further, throughout the second quarter of 2021, Mr. Alder engaged with industry associations and other stakeholders to discuss recent regulatory issues. The SFC joined supervisory colleges to discuss the regulation of global financial institutions in the challenging business environment and attended meetings with overseas regulators and bodies to exchange views on emerging regulatory developments.

### Mainland China and the Greater Bay Area (GBA)

In June 2021, the SFC held the ninth high-level meeting with the CSRC to discuss cross-boundary regulatory cooperation and market development initiatives. These included cooperation in supervising financial institutions operating cross-border and enhancing mutual market access schemes.

The SFC also worked closely with Mainland authorities to prepare for a number of initiatives set out in the GBA development plan, such as the Wealth Management Connect. They have also cooperated to prepare for the implementation of southbound trading under Bond Connect.

### Green and Sustainable Finance

The SFC and the HKMA co-chair the Hong Kong Green and Sustainable Finance Cross-Agency Steering Agency Group. In July, the group announced the next steps they will be taking to position Hong Kong as a leader in green and sustainable finance and help transition the financial ecosystem towards carbon neutrality.

The SFC is a member of the European Commission's International Platform on Sustainable Finance. The SFC actively participates in the Network of Central Banks and Supervisors for Greening

the Financial System and the United Nations Sustainable Stock Exchanges Initiative Advisory Group.

### Corporate Developments

The key takeaways from the SFC's corporate developments include:

- *Board* – Mr. Michael Wong Yick-kam was appointed as Non-Executive Director (**NED**) with effect from 1 April 2021, while Mr. Nicky Lo Kar-chun and Mr. Clement Chan Kam-wing were re-appointed as NEDs for two years, effective 24 April and 26 May, respectively;
- *Regulatory Committees* – there were new appointments and reappointments to a range of committees which took effect from 1 April;
- *Finance* – the SFC reported an income of HK\$610 million for the second quarter of 2021 (a 3% decrease from that of Q2 2020) and expenditure of HK\$467 million (a 10% decrease from that of Q2 2020). As at 30 June 2021, SFC reserves stood at HK\$4.6 billion;
- *Staffing* – As at 30 June 2021, the SFC had 923 staff members, down from 925 a year ago; and
- *IT* – During Q2 2021, the SFC created a new webpage for their biennial Hedge Fund Survey. The SFC also deployed new artificial intelligence-assisted Chinese-language data search technology to assess listing applications and review background information.

# CHARLTONS

**Boutique Transactional Law Firm of the Year 2020  
Asian Legal Business Awards**

---

**This newsletter is for information purposes only.**

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at [unsubscribe@charltonslaw.com](mailto:unsubscribe@charltonslaw.com)

---

**Hong Kong Office**  
Dominion Centre  
12th Floor  
43-59 Queen's Road East  
Hong Kong  
**Tel:** + (852) 2905 7888  
**Fax:** + (852) 2854 9596

[www.charltonslaw.com](http://www.charltonslaw.com)