



HONG KONG CORPORATE FINANCE REGULATION – 2014 HIGHLIGHTS AND THE YEAR AHEAD

A year of firsts in many ways, 2014 saw Hong Kong markets continue to reap the benefits of their first-mover advantage created by Mainland China experimenting with policy changes in Hong Kong first before rolling them out in other jurisdictions, and the development of more yuan-denominated investment products. In terms of regulation, 2014 saw continued efforts to ensure Hong Kong's regulatory framework keeps pace with market developments and changes in international regulation.

2014 Top 10 Regulatory Highlights

1. China-Hong Kong Mutual Market Access

- Shanghai-Hong Kong Stock Connect commenced November 2014
- New Developments for Covered Short-selling of A Shares and Dealing with China's Pre-trade checking requirement
- Shenzhen-Hong Kong Stock Connect expected in 2015
- China-Hong Kong Mutual Recognition of Funds (MRF) Scheme in final stages

2. First RMB-denominated Commodities Contracts Commenced Trading on 1 December 2014

3. HKEx's Weighted Voting Rights Concept Paper

4. Improved Regulatory Regime for Funds

- New Open-ended Fund Company Structure proposed for Investment Funds
- Stamp Duty Waiver for all Hong Kong-listed ETFs proposed

5. Full Implementation of New Regulatory Regime for Hong Kong IPOs

6. SFC Drops Proposed Amendments to Sponsors' Statutory Liability for Prospectus Misstatements

7. New Companies Ordinance implemented 3 March 2014

8. New Mandatory Reporting Obligations for OTC Derivatives expected in Q1 2015

9. Significant Disciplinary Decisions

- Court Orders Ernst & Young (EY) to Produce Chinese Accounting Records to the SFC
- IPO Sponsor Fined HK\$12 million and has Licence Suspended
- SFC Disciplines Moody's for Red Flags Report on Chinese Companies
- SFC Starts Market Misconduct Proceedings over Alleged False Research Report

- SFC Disciplines Investment Banks for Regulatory Breaches

10. Other Major Regulatory Developments

- Hong Kong Lays Basis for Uncertificated Securities Market
- FSTB Moves to Increase Independence of Regulatory Regime for Listed Entity Auditors
- SFC Consults on Regulation of Alternative Liquidity Pools
- Hong Kong Government Consults on Resolution Regime for Failing Financial Institutions
- Improvements to Hong Kong's Corporate Insolvency Law and Proposed New Statutory Corporate Rescue Procedure
- Introduction of 3 Days' Statutory Paternity Leave from March 2016

2015 - The Year Ahead - The Top 10

1. New Measures for Shanghai-Hong Kong Stock Connect to allow:

- covered short-selling of A Shares (expected end-January) and
- institutional investors' to sell A Shares without transfer to brokers' accounts one day prior to sale (expected March).

2. Implementation of Shenzhen-Hong Kong Stock Connect.

3. New China-Hong Kong Mutual Recognition of Funds (MRF) scheme to be introduced to allow Hong Kong domiciled funds authorised by the SFC to be sold in China and CSRC-authorized funds to be sold in Hong Kong.

4. Publication of HKEx's conclusions on Weighted Voting Rights and decision on whether companies with dual class share structures and other WVRs should be allowed to list in Hong Kong.

5. Stamp duty on ETFs should be waived once the Stamp Duty (Amendment) Bill 2014 is approved by Legco.

6. The FSTB should publish its consultation conclusions on allowing open-ended investment funds in corporate form under amendments to the Securities and Futures Ordinance.

7. New mandatory reporting obligations for OTC derivatives are expected to come into force in Q1 2015 on implementation of the Securities and Futures (OTC Derivative Transactions - Reporting and Record Keeping Obligations) Rules.

8. New fathers' statutory entitlement to 3 days' paid paternity leave is expected to take effect in March 2015.

9. The Securities and Futures Appeal Tribunal will begin its review of the SFC's disciplinary decision against Moody's Investors Service in September 2015 in relation to publication of its Red Flags Report on 61 Chinese companies.

10. EY's appeal against the court order to produce documents held by its Mainland affiliate should be heard in 2015.

2014: The Top 10 Regulatory Highlights

1. China-Hong Kong Mutual Market Access

- Shanghai-Hong Kong Stock Connect commenced November 2014

Probably the key event of 2014, the much anticipated Shanghai-Hong Kong Stock Connect programme (**Stock Connect**) finally launched on 17 November. Allowing Mainland Chinese investors to trade Hong Kong listed stocks, and Hong Kong and international investors to trade Shanghai-listed stocks through Hong Kong, the programme represents a major step in the opening of Mainland China's capital markets. It also cements Hong Kong's position as the gateway to China with Hong Kong brokers providing the door through which investors worldwide can trade Shanghai-listed stocks.

Certain restrictions currently apply:

- The stocks eligible for trading under the programme are limited to the constituent stocks of the Shanghai Stock Exchange 180 and 380 Indexes and the Hang Seng Composite LargeCap and MidCap Indexes. A and H shares not included in the specified indexes, but which have equivalent H or A shares listed on the other market, are also eligible for trading.
- Aggregate and daily quotas apply on a net-buy basis.
- Only Mainland “professional investors” (i.e. institutional investors and individuals with 500 yuan in cash and securities) can participate in the scheme.

The programme is however intended to be scalable in size, scope and markets and the above restrictions are expected to be relaxed in the future.

For further information on Stock Connect, please see Charltons newsletter “[Shanghai-Hong Kong Stock Connect to Commence Monday, 17 November 2014](#)”.¹

- **New Developments for Covered Short-selling of A Shares and Dealing with China’s Pre-trade checking requirement**

Hong Kong and international investors will soon be allowed to conduct covered short-selling of A shares under Stock Connect’s northbound trading link according to the Hong Kong Stock Exchange’s (HKEx’s) update on the programme of 6 January 2015.² HKEx carried out a system test for the short-selling service over the weekend of 10 and 11 January 2015, and aims to allow short selling by the end of January.

In March, HKEx plans to implement a new system which will mean that institutional investors who hold A shares through custodians will no longer need to transfer their A shares to brokers the day before they want to sell in order to comply with China’s pre-trade checking requirement. The requirement, which is contrary to standard international practice allowing settlement within

two days after sale which is followed in Hong Kong and other leading markets, has been criticised by offshore fund managers.

- Shenzhen-Hong Kong Stock Connect expected in 2015

A stock connect between Shenzhen and Hong Kong may be implemented in the near future, according to comments made by Premier Li Keqiang on 4 January 2015.³

- **China-Hong Kong Mutual Recognition of Funds (MRF) Scheme in final stages**

Approvals for the China-Hong Kong MRF scheme, the “through train” for Chinese and Hong Kong funds and the first such scheme between the Mainland and a foreign market, are in the final stages according to a [speech](#) given by Alexa Lam, SFC Deputy Chief Executive Officer in October 2014.⁴ The scheme will give Hong Kong funds access for the first time to the Mainland’s 1.3 billion potential investors and is expected to promote growth in Hong Kong’s fund management industry, since participation will require funds to have a Hong Kong domicile and be managed by an SFC-licensed asset management company.

When implemented, the scheme will allow:

- Hong Kong domiciled funds which are authorised by Hong Kong’s Securities and Futures Commission (SFC) for retail offering to be sold in Mainland China; and
- Chinese funds authorised by the China Securities Regulatory Commission to be sold in Hong Kong.

For further details, please see Charltons newsletter “[Hong Kong-China Mutual Recognition of Funds \(MRF\) Scheme Nears Implementation](#)”⁵.

1 Charltons. “Shanghai-Hong Kong Stock Connect to Commence Monday, 17 November 2014” at <http://www.charltonslaw.com/shanghai-hong-kong-stock-connect-to-commence-monday/>
 2 HKEx. News Release “Stock Connect Update”. 6 January 2015 at <http://www.hkex.com.hk/eng/newsconsul/hkexnews/2015/150106news.htm>

3 South China Morning Post. “Hong Kong-Shenzhen stock connect next, says Li Keqiang”. 5 January 2015
 4 Alexa Lam, SFC Deputy Chief Executive Officer. “Mutual Recognition Scheme: Regulatory Developments Global Fund Distribution Asia Conference 2014”. 21 October 2014
 5 Charltons. “Hong Kong-China Mutual Recognition of Funds (MRF) Scheme Nears Implementation” at <http://www.charltonslaw.com/hong-kong-china-mutual-recognition-of-funds-mrf-scheme-nears-implementation/>

2. First RMB-denominated Commodities Contracts commenced Trading on 1 December

Trading in yuan-denominated metal contracts in zinc, copper and aluminium started on the Hong Kong Futures Exchange on 1 December 2014, marking the Hong Kong Stock Exchange's first step in increasing commodities trading on the exchange, following its acquisition of the London Metal Exchange in 2012. For further details, please see Charltons newsletter "[HKEx to Launch its First Asia Commodities Contracts](#)".⁶

3. HKEx's Weighted Voting Rights Concept Paper

HKEx retained its second place ranking (after the NYSE) among the world's top IPO fund-raising exchanges in 2014, raising HK\$227.8 billion (US\$29.3 billion) in 115 IPOs⁷, an increase of 33% on the HK\$171.3 billion raised in 2013.⁸ The top IPO exchange was NYSE, for the third year in a row, with IPO funds raised of US\$74.1 billion, up 62% on 2013, boosted by the world's largest IPO ever, of Chinese internet company, Alibaba Group, which raised US\$25 billion in September 2014. Alibaba's first choice listing venue was however HKEx, but its management structure allowing the company's founders and senior management to nominate 50% of the board without holding an equivalent number of the company's shares, would have contravened HKEx's "one-share one-vote" (OSOV) principle.⁹

In the wake of Alibaba choosing to list in the US rather than change its governance structure, HKEx published its [Weighted Voting Rights Concept Paper](#)¹⁰ in August 2014, seeking views on whether Hong Kong's Listing Rules should be amended to allow companies with dual class shares and other weighted voting rights (WVR) structures, like Alibaba, to list. Those in favour are keen for Hong Kong to recover its competitive position as the international fund raising market of choice for Mainland Chinese companies, given the recent popularity of the NYSE and Nasdaq for listing Chinese tech stocks. Companies with WVR structures accounted for 86% by market

capitalisation of the Mainland Chinese companies primary listed in the US at 31 October 2014. Technology was also the leading sector for IPOs worldwide in terms of capital raised in 2014, with the sector raising US\$50.2 billion worldwide, driven by Alibaba's record breaking IPO.¹¹ WVR structures are particularly common among tech companies and so HKEx's OSOV principle effectively prevents the Hong Kong listing of many Chinese tech companies which, like Alibaba, Baidu, JD.com Inc. and Weibo Corp., list in the US where WVR structures are not an obstacle to listing.

Arguments against listing companies with WVR structures focus on investor protection concerns, although these are allayed to a degree by HKEx's already comprehensive regulation of connected and related party transactions and the provisions of the Takeovers Code requiring equal treatment of shareholders in takeover situations. The consultation closed at the end of November 2014 and HKEx's consultation conclusions are expected soon. For further information on the Weighted Voting Rights Concept Paper, please refer to Charltons [presentation](#)¹².

4. Improved Regulatory Regime for Funds

• New Open-ended Fund Company Structure proposed for Investment Funds

As a step towards enhancing Hong Kong's legal and regulatory frameworks to strengthen its position as a major international asset management centre, the Government held a three-month [public consultation](#) on introducing a new open-ended fund company (OFC) structure for investment funds.

Open-ended investment funds require the flexibility to vary their capital to satisfy investor applications and redemptions. Currently, an open-ended investment fund can be established under Hong Kong law in the form of a unit trust, but not in corporate form due to various restrictions on capital reduction under the Companies Ordinance (Cap. 622). Internationally, however, the corporate fund structure is more popular than unit trusts and it is therefore proposed to allow an OFC structure under the Securities and Futures Ordinance (Cap. 571) to attract more mutual funds and private funds to

6 Charltons. "HKEx to Launch its First Asia Commodities Contracts" at <http://www.charltonslaw.com/hkex-to-launch-its-first-asia-commodities-contracts/>.

7 Excluding transfers of listing to the Main Board from GEM.

8 PwC. "Hong Kong expects to see over 100 new listings in 2015". 5 January 2015

9 A listing applicant's share capital must not include shares whose voting power "does not bear a reasonable relationship to the equity interest of those shares". Main Board Listing Rule 8.11 and GEM Listing Rule 11.25

10 HKEx Weighted Voting Rights Concept Paper of August 2014 at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2014082.pdf>

11 Ernst & Young. "Global IPOs Outperform Main Indices in Good, Not Epic, Year". 10 December 2014

12 Charltons. "Hong Kong Stock Exchange's weighted voting rights concept paper" at <http://www.charltonslaw.com/hong-kong-law/hong-kong-stock-exchanges-weighted-voting-rights-concept-paper/>

domicile in Hong Kong. Continued growth in the number of Hong Kong-domiciled funds is also expected to be driven by the China-Hong Kong Mutual Recognition of Funds scheme which, when implemented, will only allow Hong Kong-domiciled funds to be sold in China under the scheme.

The Government has yet to publish its consultation conclusions, but these should be issued fairly soon given that the cut-off date for responding to the consultation was 19 June 2014.

- **Stamp Duty Waiver for all Hong Kong-listed ETFs proposed**

Exchange Traded Funds (**ETFs**), one of the fastest growing products in the asset management industry, had a record year in Hong Kong in 2014 with turnover reaching a record high of HK\$1.2 trillion.¹³ The number of Hong Kong-listed ETFs has risen significantly: there are currently 141 listed ETFs¹⁴ compared with 69 at the end of 2010. Nevertheless, Hong Kong's position as a regional ETF hub is considered to face serious challenges from other exchanges in the Asia-Pacific region.¹⁵

A further measure aimed at fostering Hong Kong's asset management industry is a stamp duty waiver for all exchange traded funds (**ETFs**) listed on HKEX, irrespective of the percentage of Hong Kong stocks in their portfolios. The waiver proposed in the 2014/15 budget will be implemented by the Stamp Duty (Amendment) Bill 2014 which was gazetted on 5 December 2014, but has not yet been approved by the Legislative Council.

5. Full Implementation of New Regulatory Regime for Hong Kong IPOs

1 October 2014 marked the first anniversary of a more stringent regulatory regime for Hong Kong IPOs, setting a higher bar for prospectus disclosure and the due diligence expected of IPO sponsors and other professionals involved in Hong Kong IPOs. The Hong Kong market is unique in that the overwhelming

majority of its listed companies are incorporated offshore, primarily in Mainland China, which means that in the event of wrongdoing, the company and its directors are often beyond the reach of the Hong Kong courts.

Concerns that prospectus disclosure was sometimes falling short of the standard expected, led to a new requirement that issuers must publish the draft prospectus (the Application Proof) on the HKEX website on submitting their listing application, long before there is any certainty that listing approval will follow. An Application Proof which is found not to be "substantially complete", may be rejected by HKEX and the issuer and sponsor "named and shamed" by publication of the fact of the rejection on the HKEX website. Keen to avoid a box-ticking mentality, the SFC also imposed new sponsor due diligence obligations as broadly written duties rather than concrete steps, which has been criticised for effectively precluding any degree of certainty that "all reasonable" due diligence has been conducted.¹⁶ The regime's various transitional arrangements, including HKEX's "Initial 3-Day Check" of Application Proofs, also fell away on 1 October 2014. Yet with HKEX retaining its second place ranking for IPO funds raised in 2014, the new regime does not appear to have damaged the attractiveness of HKEX.

6. SFC Drops Proposed Amendments to Sponsors' Statutory Liability for Prospectus Misstatements

The SFC however decided not to proceed with proposals to make explicit that sponsors may be subject to criminal and civil liability for deficiencies in IPO prospectuses under what is now the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).¹⁷ The SFC's Supplemental Consultation Conclusions on the Regulation of IPO Sponsors - Prospectus Liability" published in August 2014, concluded that the legislative amendments were unnecessary as sponsors are already included in the existing category of "persons who authorise the issue of a prospectus" who are liable for prospectus inaccuracies under the ordinance. For further

¹⁶ Under Paragraph 17 of the SFC's Code of Conduct for Persons Licensed by or Registered with the SFC and HKEX's Listing Rules

¹⁷ Under sections 40A and 342F of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, any person who has authorised the issue of a prospectus containing any untrue statement (being a statement which is misleading in the form and context in which it is included or a material omission) may be liable to imprisonment and a fine, unless he proves either that the statement was immaterial or that he had reasonable grounds to believe that the statement was true. Under section 40, various persons including a person who authorised the issue of a prospectus, may be liable to compensate investors for losses suffered as a result of relying on an untrue prospectus statement.

¹³ HKEx. "HKEx Group Publishes Market Statistics 2014". 8 January 2015 at <http://www.hkex.com.hk/eng/newsconsul/hkexnews/2015/150108news.htm>

¹⁴ HKEx. List of ETFs and Trading Arrangements updated to 8 January 2015.

¹⁵ Legislative Council Brief on the Stamp Duty (Amendment) Bill 2014 (File Ref: SF&C/1/2/57/1C Pt 3) at paragraph 5. The brief is available at http://www.legco.gov.hk/yr14-15/english/bills/brief/b201412051_brf.pdf

information, please see Charltons newsletter “[SFC Drops Proposed Amendments to Sponsors’ Prospectus Liability Provisions](#)”.¹⁸

7. New Companies Ordinance implemented 3 March 2014

Hong Kong’s updated and modernised Companies Ordinance (Cap. 622) (the **CO**) came into effect on 3 March 2014 after a seven-year rewrite aimed at enhancing Hong Kong’s attractiveness as a leading international business and financial centre. Some of the key improvements under the new legislation are:

- Allowing companies to dispense with AGMs by unanimous shareholders’ consent.
- A new court-free procedure for reduction of capital based on a solvency test.
- Facilitating simplified financial reporting by small and medium enterprises.
- Abolition of par value for company shares.
- Abolition of the requirement for Hong Kong companies to have a memorandum of association.
- Requiring all private companies to have at least one director who is an individual.
- A new statutory duty of care, skill and diligence for directors,¹⁹ subject to both a subjective and an objective test.
- A reduction in the shareholding requirement for demanding a poll to 5% (from 10%).
- Requiring public and large private companies and guarantee companies to prepare more comprehensive directors’ reports including an analytical and forward-looking “business review”. Private companies may opt out by special resolution.

- A new requirement for approval by disinterested shareholders where shareholders’ approval is required for connected party transactions of directors of public companies and their subsidiaries.
- For schemes of compromise or arrangement, the court has a new discretion to dispense with the headcount test in appropriate circumstances.

For a detailed summary of the new CO, please see Charltons note “[Key Changes under the Companies Ordinance \(Cap 622\)](#)”.²⁰

8. New Mandatory Reporting Obligations for OTC Derivatives expected in Q1 2015

Draft rules for reporting over-the-counter (**OTC**) derivatives transactions published by the SFC and Hong Kong Monetary Authority are to be submitted to Legco for negative vetting in the first quarter of 2015, according to the SFC/HKMA [Consultation Conclusions and Further Consultation on the Securities and Futures \(OTC Derivative Transactions - Reporting and Record Keeping Obligations\) Rules](#)²¹ (**OTC Derivative Reporting Rules**) published in November 2014.

The OTC Derivative Reporting Rules will implement the first phase of a new regulatory regime for Hong Kong’s OTC derivatives market, the framework for which is set out in the Securities and Futures (Amendment) Ordinance 2014 passed in March 2014. The detailed requirements for the new regime will be set out in subsidiary legislation of which the OTC Derivative Reporting Rules will be the first to be implemented.

The new regime will be introduced in phases; starting with mandatory reporting, followed by mandatory clearing and finally mandatory trading. The record keeping obligation will be implemented in phases at the time the relevant mandatory obligation takes effect (i.e. the record keeping obligation with respect to mandatory reporting will be introduced in the first phase with mandatory reporting).

For further details of the new regime, please see Charltons newsletter “[Reporting and Record-keeping Obligations re. OTC Derivative Transactions](#).”

18 Charltons. “SFC Drops Proposed Amendments to Sponsors’ Prospectus Liability Provisions” at <http://www.charltonslaw.com/sfc-drops-proposed-amendments-to-sponsors-prospectus-liability-provisions/>.

19 Sections 465 to 466 of the Companies Ordinance

20 Charltons. “Key Changes under the Companies Ordinance (Cap 622)” at <http://www.charltonslaw.com/hong-kong-law/key-changes-under-the-companies-ordinance-cap-622/>

21 At <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=14CP8>.

9. Significant Disciplinary Actions

- **Court Orders Ernst & Young to Produce Chinese Accounting Records to the SFC**

In May 2014, the Court of First Instance ordered Ernst & Young (**EY**) to hand over to the SFC accounting records relating to its work as the reporting accountant and auditor on the failed listing application of Standard Water Limited. The Court rejected EY's argument that it was prevented from handing over the accounting records by PRC state secrecy laws. EY is appealing the court order to produce documents held by its Mainland affiliate, EY Hua Ming, having produced a disc of documents held by it in Hong Kong.²² For further information, see Charltons newsletter "[Court Orders EY to Produce Accounting Records to SFC](#)".²³

- **IPO Sponsor fined HK\$12 million and has licence suspended**

In January 2014, the Securities and Futures Appeal Tribunal affirmed the SFC's disciplinary decision against Sun Hung Kai International Limited for deficiencies in its sponsor work on the listing of Sino-Life Group Limited on HKEx's Growth Enterprise Market in 2009.²⁴

- **SFC Disciplines Moody's for Red Flags Report on Chinese Companies**

Moody's Investors Service Hong Kong Limited (**Moody's**) was fined HK\$23 million and publicly reprimanded for breach of provisions of the SFC's code of conduct for SFC-regulated entities involved in its publication of a report which identified red flags in terms of potential governance or accounting risks at 61 Chinese non-financial companies. The nature of the allegations against Moody's is not known as the SFC's decision notice of 3 November 2014 is not yet publicly available. Moody's is

appealing the decision. For further information, please see Charltons newsletter "[Moody's Appeals SFC's Disciplinary Action: Latest Developments](#)".

- **SFC Starts Market Misconduct Proceedings over Alleged False Research Report**

The SFC started proceedings before the Market Misconduct Tribunal against the head of a US-based research company in December 2014, alleging that information contained in a research report on the Chinese property developer, Evergrande Real Estate Group Limited, was false or misleading. The proceedings under section 277 of the SFO relate to the disclosure of false or misleading information likely to induce dealings in securities where the person making the disclosure knows that the information is false or misleading, or is reckless or negligent as to whether that is the case. For further details, please see Charltons newsletter "[SFC Starts Market Misconduct Proceedings over Alleged False Research Report](#)".²⁵

- **SFC Disciplines Investment Banks for Regulatory Breaches**

The SFC reprimanded and fined ICBCI Capital and ICBCI Securities HK\$12.5 million each for failing to ensure the independence of placees for the subscription of shares of Powerlong Real Estate Holdings Limited on its 2009 listing on HKEx. It also reprimanded and fined Deutsche Bank HK\$1.6 million for regulatory breaches and internal control failings in relation to its failure to disclose changes to its percentage holdings of Up Energy Development Group Limited shares.

10. Other Regulatory Developments

A number of other Hong Kong regulatory initiatives in 2014 aim to ensure Hong Kong's continued success as Asia's leading financial centre by ensuring that its regulatory framework is on a par with those in other leading international markets. The following are among the key developments in 2014.

- **Hong Kong Lays Basis for Uncertificated Securities Market**

²⁵ Charltons. "SFC Starts Market Misconduct Proceedings over Alleged False Research Report" at <http://www.charltonslaw.com/sfc-starts-market-misconduct-proceedings-over-alleged-false-research-report/>

²² SFC. "Ernst & Young produces audit working papers in Hong Kong and appeals over Mainland papers". 23 June 2014. <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=14PR78>.

²³ Charltons. "Court Orders EY to Produce Accounting Records to SFC" at <http://www.charltonslaw.com/court-orders-ey-to-produce-accounting-records-to-sfc/>

²⁴ SFC. "SFAT affirms SFC decision and fines Sun Hung Kai International Limited HK\$12 million and suspends its licence for IPO sponsor failures" at <http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=14PR13>.

A bill²⁶ to allow investors to choose to hold and transfer securities without paper documents and register the securities kept in the CCASS in their own names, has been introduced to Legco for consideration. It is proposed that the regime will initially cover shares listed or to be listed on HKEx, while listed debentures and unit trusts will be covered at a later stage. If passed, the bill will amend the SFO and empower the SFC to make the necessary subsidiary legislation to provide for the operation and regulation of the uncertificated securities market.

- **FSTB Moves to Increase Independence of Regulatory Regime for Listed Entity Auditors**

The Financial Services and the Treasury Bureau published a [consultation paper](#)²⁷ in January 2014 on proposals that would make the Financial Reporting Council (FRC) the independent oversight body for auditors of Hong Kong listed entities. The FRC would also be given disciplinary and inspection powers to complement its existing investigatory powers. The proposals seek to ensure that Hong Kong qualifies for membership of the International Forum of Independent Audit Regulators, to which entry is restricted to regulators that are independent of the audit profession and professional bodies. Under the proposals, the Hong Kong Institute of Certified Public Accountants, the professional body, would perform various statutory functions such as registration, setting standards on professional ethics, auditing and assurance and stipulating common professional development requirements. For further details of the proposals, please see Charltons newsletter, “[FSTB Consults on Increasing Independence of Regulatory Regime for Listed Entity Auditors](#)”²⁸.

- **SFC Consults on Regulation of Alternative Liquidity Pools**

The SFC published a [consultation paper](#)²⁹ in February 2014 setting out proposals to regulate operators of alternative liquidity pools (ALPs), also known as “dark pools”, in which

trades are executed anonymously outside of “lit” markets. The SFC has proposed regulating ALPs’ operations by imposing requirements under the SFC’s code of conduct for regulated entities similar to the conditions currently imposed on the licences of ALP operators. For further details, please see Charltons newsletter, “[SFC Consults on the Regulation of Alternative Liquidity Pools](#)”.³⁰

- **Hong Kong Government Consults on Resolution Regime for Failing Financial Institutions**

In response to the G20 consensus that member jurisdictions should establish a “resolution regime” giving authorities powers to deal with failing financial institutions while ensuring that the costs of failure are borne by shareholders and creditors rather than taxpayers, Hong Kong’s regulatory authorities published proposals for the establishment of such a regime in Hong Kong in a [consultation paper](#)³¹ published in March 2014.

- **Improvements to Hong Kong’s Corporate Insolvency Law and Proposed New Statutory Corporate Rescue Procedure**

The FSTB published consultation conclusions on its proposals to modernise and streamline Hong Kong’s corporate insolvency provisions in May 2014 and plans to introduce an amendment bill to Legco in 2015. The aims of the amendments to relevant provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance are to facilitate more efficient administration of the winding-up process and increase protection for creditors. For a detailed summary of the proposed changes, please see Charltons newsletter, “[FSTB Publishes Consultation Conclusions on Improving Corporate Insolvency Law and Proposals for a new Statutory Corporate Rescue Procedure](#)”.³²

26 The Securities and Futures and Companies Legislation (Uncertificated Securities Market Amendment) Bill 2014

27 FSTB. “Proposals to Improve the Regulatory Regime for Listed Entity Auditors - Consultation Paper” at http://www.fstb.gov.hk/fsb/ppr/consult/doc/consult_rpirlea_e.pdf

28 Charltons. “FSTB Consults on Increasing Independence of Regulatory Regime for Listed Entity Auditors”. August 2014 at <http://www.charltonslaw.com/fstb-consults-on-increasing-independence-of-regulatory-regime-for-listed-entity-auditors/>.

29 SFC. “Consultation Paper Concerning the Regulation of

Alternative Liquidity Pools”. 27 February 2014 at <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=14CP3>

30 Charltons. “SFC Consults on the Regulation of Alternative Liquidity Pools”. March 2014 at <http://www.charltonslaw.com/sfc-consults-on-the-regulation-of-alternative-liquidity-pools/>

31 “An Effective Resolution Regime for Financial Institutions in Hong Kong - Consultation Paper” jointly published by the FSTB, HKMA, SFC and the Insurance Authority. January 2014 at http://www.fstb.gov.hk/fsb/ppr/consult/resolution_e.pdf

32 Charltons. “FSTB Publishes Consultation Conclusions on Improving Corporate Insolvency Law and Proposals for a new Statutory Corporate Rescue Procedure”. August 2014 at <http://www.charltonslaw.com/fstb-publishes-consultation-conclusions-on-improving-corporate-insolvency-law-and-proposals-for-a-new-statutory-corporate-rescue-procedure/>.

- **Introduction of 3 Days' Statutory Paternity Leave from March 2016**

From March 2015, male employees will be entitled to 3 days' statutory paternity leave at 80% of their average daily wages under recent amendments to the Employment Ordinance. The entitlement is subject to the condition that the employee must have been employed for at least 40 weeks under a continuous contract. Employers who fail to grant paternity leave or pay eligible employees for paternity leave are liable to prosecution and may be fined HK\$50,000. For further information, please see Charltons newsletter, "[Hong Kong Law Change Introduces Three Days' Paternity Leave](#)".³³

2015 - The Year Ahead - The Top 10

The Top 10 regulatory developments in 2015 should include the following:

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9. The Securities and Futures Appeal Tribunal will begin its review of the SFC's disciplinary decision against **Moody's Investors Service** on 10 September 2015.

10. **EY's appeal** against the court order to produce documents held by its Mainland affiliate should be heard in 2015.

³³ Charltons. "Hong Kong Law Change Introduces Three Days' Paternity Leave". December 2014 at <http://www.charltonslaw.com/hong-kong-law-change-introduces-three-days-paternity-leave/>

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