ALLEN & OVERY

Regulatory roadmap for a brave and ambitious Year of the Tiger

In Chinese culture, the tiger is perceived as the king of all beasts and as embodying powerful energy. Likewise, the tiger is a symbol of ferocity, braveness and ambition in the Chinese zodiac. In this year's regulatory roadmap, we will examine some powerful and ambitious regulatory developments in 2022 regarding (i) crypto-assets, (ii) climate risk management, (iii) senior management competency, (iv) culture and conduct, (v) asset management, and (vi) personal data.

Crypto-assets – the regulations don't have to be cryptic

2021 was an exceptional year for crypto-assets as both old and new retail and institutional investors piled into the market, fuelling the total cryptocurrency market capitalisation to grow by 185% in the year[1] – notwithstanding periods of volatility. Without surprise, this has attracted the increased attention of the regulators and we expect more consultations and guidance in 2022, for example on stablecoins, non-fungible tokens (NFTs) and virtual-asset related activities.

Payment-related stablecoins – a brave new world?

Recently, the Hong Kong Monetary Authority (**HKMA**) published a discussion paper (**Discussion Paper**) which focusses on the regulator's views and solicits feedback on how to expand Hong Kong's regulatory framework for crypto-assets and stablecoins.[2]

The HKMA's main focus is on payment-related stablecoins (rather than all types of stablecoins) at this stage as it regards payment-related stablecoins as having a higher possibility of becoming a widely accepted means of payment, thus raising broader monetary and financial implications and warranting the need for appropriate regulation before they operate and are marketed in Hong Kong.

Recognising the potential concerns on the wider financial system, the HKMA has proposed to either expand the scope of the Payment Systems and Stored Value Facilities Ordinance[3] or introduce new legislation to regulated payment-related stablecoins. The types of activities which may fall within the HKMA's regulatory ambit by way of licensing include (i) issuing, creating or destroying stablecoins, (ii) managing reserve assets to ensure stabilisation of the stablecoins' value, (iii) validating transactions and records, (iv) storing the private keys providing access to stablecoins, (v) facilitating the redemption of stablecoins, (vi) transmission of funds, and (vii) executing transactions in stablecoins.

The Discussion Paper is an initial step by the HKMA to seek views from the public before building out its regulatory regime in respect of stablecoins. The HKMA will issue further documents on specific aspects of the regulatory framework in 2022/23, with the aim of introducing the new regime no later than 2023/24.

While the Discussion Paper is not expected to have an immediate impact, it will be relevant to those in the crypto arena or have invested in, or considering investing in, crypto-assets.

1 This is reflected in the Global Charts of CoinMarketCap for the period from 1 January 2021 to 31 December 2021, which was also cited by the HKMA in Figure 1 of the Discussion Paper.

2 HKMA – Discussion paper on crypto-assets and stablecoins (12 January 2022): https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2022/20220112e3a1.pdf. The Discussion Paper is in good company, joining a number of papers that regulators across the globe have issued on the topic of crypto-assets and have been conveniently summarised in the Discussion Paper.

3 Cap. 584, Laws of Hong Kong

The HKMA's focus on payment-related stablecoins and relevant regulations should be construed in light of the HKMA's ongoing research effort into Hong Kong's own approach to issuing retail central bank digital currency,[4] as well as their treatment of crypto-assets thus far: the HKMA has publicly stated that *"crypto-assets are not money or currencies"*.[5] Consistent with the HKMA, the Securities and Futures Commission (**SFC**) has stated that crypto-assets "*not being guaranteed by any government… are not currencies*",[6] and at the international level, Financial Action Task Force (**FATF**) noting that "*virtual currency is distinguished from fiat currency (a.k.a. "real currency," "real money," or "national currency"), which is the coin and paper money of a country that is designated as its legal tender; circulates; and is customarily used and accepted as a medium of exchange in the issuing country".*[7]

Virtual asset-related services – intermediaries, authorised institutions (**AIs**) and authorised insurers beware

Swiftly following the Discussion Paper (and as heralded by the HKMA's comment at the time that it was working with the SFC to set out their supervisory expectations on the investor protection aspects of AIs' provision of intermediary services to customers related to crypto-assets), the HKMA and SFC published a joint circular (**Joint Circular**)[8] on 28 January 2021, offering much-anticipated guidance on this point as we entered the roaring Year of the Tiger.

The Joint Circular extends existing regulatory requirements (and supersedes the SFC's 1 November 2018 circular on "distribution of virtual asset funds") to registered institutions and licensed corporations that provide virtual asset distribution, dealing and advisory services. The additional investor protection measures for virtual asset-related products are not surprising. However, relevant intermediaries should carefully consider the implications. See our LinkedIn post **here** for our views on areas that are particularly noteworthy and details regarding the implementation timeline.

"virtual currency is distinguished from fiat currency...which is the coin and paper money of a country that is designated as its legal tender"

4 HKMA's Technical Whitepaper on Retail Central Bank Digital Currency (October 2021): https://www.hkma.gov.hk/eng/news-and-media/press-releases/2021/10/20211004-3/

5 Norman T.L. Chan, Chief Executive, Hong Kong Monetary Authority (September 2018): https://www.hkma.gov.hk/eng/news-and-media/speeches/2018/09/20180921-1/

6 Ashley Alder, Chief Executive Office, SFC (November 2018): https://www.sfc.hk/-/media/TC/files/ER/PDF/Speeches/Ashley-HK-FinTech-Week.pdf

7 *Virtual currency is a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status (ie, when tendered to a creditor, is a valid and legal offer of payment) in any jurisdiction. It is not issued nor guaranteed by any jurisdiction, and fulfils the above functions only by agreement within the community of users of the virtual currency. Virtual currency is distinguished from fiat currency (a.k.a. "real currency," "real money," or "national currency"), which is the coin and paper money of a country that is designated as its legal tender; circulates; and is customarily used and accepted as a medium of exchange in the issuing country. It is distinct from e-money, which is a digital representation of fiat currency used to electronically transfer value denominated in fiat currency. E-money is a digital transfer mechanism for fiat currency—ie, it electronically transfers value that has legal tender status. (FATF (November 2014):* https://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf)

8 SFC and HKMA – Joint circular on intermediaries' virtual asset-related activities (28 January 2022): https://apps.sfc.hk/edistributionWeb/api/circular/openFile?lang=EN&refNo=22EC9

Further to the requirements on investor protection (as set out in the Joint Circular) and consistent with the HKMA's work priority to strengthen the anti-money laundering and counter-financing of terrorism (**AML/CFT**) regime in 2022,[9] the HKMA has simultaneously put forth a number of guiding principles for AIs' interfacing with virtual assets and virtual asset service providers (**VASPs**)[10] from the perspectives of (i) prudential supervision and (ii) AML/CFT and financial crime risk management.[11]

- In terms of prudential supervision, the HKMA does not intend to prohibit AIs from incurring financial exposures to virtual assets but the bottom line for AIs undertaking virtual asset related activities is that adequate risk-management controls must be put in place with sufficient oversight by their senior management over such activities.
- As for risk management, apart from implementing effective AML/CFT policies, procedures and controls based on relevant guidance issued by the HKMA and the FATF as AIs are customarily required to, the HKMA expects AIs to pay extra attention in scenarios where customers are engaging in virtual asset-related activities through their bank accounts and where AIs are looking to establish banking relationships with VASPs.

Almost in an orchestrated fashion, the Insurance Authority (**IA**) has likewise provided guidance on how authorised insurers that are dealing with virtual assets and/or VASPs can fully discharge their regulatory obligations on the same day[12]. In line with the HKMA's approach, the IA's primary focus is on effective management of risks which are pertinent to virtual asset-related activities.

These guidelines from the HKMA and the IA have both taken effect immediately, and as the virtual asset space is evolving rapidly, AIs and authorised insurers are strongly advised to discuss with and obtain advice from the HKMA and the IA (as applicable) as soon as possible and, in any event, before the launch of any virtual asset-related products or services.

Virtual asset trading platforms – the assets may be virtual but the providers need not be

Any 'virtual' (ie not headquartered in a single jurisdiction) providers of virtual assets looking for a location to set up their global headquarters will be awaiting the finalised Hong Kong legislation to see whether it meets their needs.

The amendment bill to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (**AMLO**)[13] is proposed to be introduced into the Legislative Council in the current legislative session, which runs until the summer recess in July 2022. The AMLO will include a mandatory and more encompassing licensing regime for VASPs (as defined above) and will be implemented by designating the business of operating a "virtual asset exchange" as a "regulated virtual-assets activity". VASPs will subsequently be required to obtain a licence from the SFC and be subject to the full range of anti money laundering and counter-terrorist financing obligations currently applicable to other financial institutions. For further details on the VASPs' regime, please refer to our bulletin **here**.

Although a draft of the AMLO amendment bill is not yet available, any legislation put forth will greatly affect crypto exchanges operating in Hong Kong and any crypto exchanges considering a base in the region. Additional guidance will come from the SFC, who will prepare and publish further regulatory guidelines for consultation before the commencement of the VASP regime.

---

9 HKMA – Hong Kong Banking Sector: 2021 Year-end Review and Priorities for 2022 (26 January 2022): https://www.hkma.gov.hk/media/eng/doc/key-information/speeches/s20220126e1.pdf

10 A VASP is a person who, as a business, engages in specified activities involving virtual assets. The specified activities cover (i) exchange between virtual assets and fiat currencies, (ii) exchange between one or more forms of virtual assets, (iii) transfer of virtual assets, (iv) safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets, and (v) participation in and provision of financial services related to an issuer's offer and/or sale of a virtual assets. See https://www.fstb.gov.hk/fsb/en/publication/consult/doc/consult_amlo_e.pdf

11 HKMA – Regulatory approaches to Authorized Institutions' interface with Virtual Assets and Virtual Asset Service Providers (28 January 2022): https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2022/20220128e3.pdf

12 IA – Regulatory Approaches of the Insurance Authority in Relation to Virtual Assets and Virtual Asset Service Providers (28 January 2022): https://www.ia.org.hk/en/legislative_framework/circulars/reg_matters/files/Cir_dd_28.01.2022.pdf

13 Cap. 615, Laws of Hong Kong

Mainland China – promotion of Central Bank Digital Currency (**CBDC**)

Since 2014, the People's Bank of China **(PBoC**) has been focussing on the promotion of its Central Bank Digital Currency (**e-CNY**) and will continue the trial of the Digital Currency Electronic Payment system in 11 major cities including Beijing, Shanghai and Shenzhen. A pilot version of a wallet app, e-CNY app, was launched at the beginning of this year to extend access to e-CNY and expand its usage. Just this month, the PBoC has also leveraged on opportunities presented by the Beijing Winter Olympics to showcase e-CNY in an international setting and to assess its receptiveness. We expect that the PBoC will continue its efforts to promote e-CNY as a means of regular payment.

While the impact of e-CNY on existing payment systems will depend on how the PBoC ultimately deploys its digital currency, it is likely that e-CNY will bring about a new ecosystem that profoundly affects local and international businesses, especially those with a presence in Mainland China and those who commonly transact with persons and entities in Mainland China. It may therefore be high time for businesses such as banks and payment service providers to start considering, among other things, the levels of infrastructure investment required to support cross-border e-CNY payments and how interactions between e-CNY and existing bank accounts or mobile payment services can be managed. It will also be crucial for businesses to keep an eye on how the regulatory scene evolves in order to ensure compliance with any new measures. It will be interesting to see whether and to what extent CBDCs will affect the businesses of payment service providers and banks operating in that space.

A climate of regulation for climate-related risks – things are heating up

Environmental, social, and governance (**ESG**) issues, and in particular environmental issues related to climate change, will continue to be a live and real issue as climate change is increasingly recognised as a source of financial risk for financial institutions and corporates.

In line with the global regulatory landscape, climate risk management regulations and guidelines are starting to come into effect in Hong Kong. The HKMA and the SFC have each published guidelines on climate risk management, both of which require full compliance by the end of 2022.

Time for banks to tackle climate change risks head on

Although climate risk has traditionally been approached from a corporate social responsibility perspective, the climate change that everyone is experiencing, changes in market sentiment and shift in public appetite for more environmentally friendly products and services have called for banks to directly address the financial, reputational and strategic implications of brought about by climate related risks. Against this backdrop, the HKMA issued a new supervisory policy manual (**SPM GS-1**)[14] on 30 December 2021, offering specific guidance to AIs by describing the key elements as well as its expectations regarding climate risk management.

In formulating the module, the HKMA has drawn on the relevant work of the Financial Stability Board, the Basel Committee on Banking Supervision and the Network for Greening the Financial System, and considered the industry practices in managing climate risks.

SPM GS-1 expounds on the HKMA's requirements on four major aspects, namely governance, strategy, risk management and disclosure, and is applicable to all AIs, ie both locally and overseas incorporated AIs. For locally incorporated AIs, SPM GS-1 is relevant on a solo and consolidated basis.

Although there is a built-in 12-month transition period to facilitate its implementation, the HKMA may approach individual AIs to understand how their assessments and integration of climate risk considerations are going, meaning that the application of SPM GS-1 is not something AIs can leave to the last minute. We therefore expect that AIs will be carefully examining SPM GS-1 and how these new requirements on climate risk management can be incorporated into their existing strategic and risk management frameworks and policies in the upcoming months.

Where an AI belongs to an international banking group and would like to adopt the group's existing framework (eg if these processes are centralised at a regional or international level) to address climate-related issues, such AI must ensure that these processes are appropriate for local circumstances. Therefore, it will not be sufficient for AIs to adopt its group's framework without considering whether it is fit for purpose in Hong Kong.

As the year goes on, we foresee that the HKMA will continue to draw on recommendations and publications from international bodies in formulating consultations and guidance on ESG, especially as it relates to climate change. As part of its ongoing efforts to promote green and sustainable banking, we also expect the HKMA to further explore tools and technologies that can help AIs deal with climate risks[15] and to initiate discussions around the issuance of a revamped supervisory framework regarding green and sustainable banking within the year.[16]

14 HKMA – Supervisory Policy Manual (GS-1) Climate Risk Management (30 December 2021): https://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/GS-1.pdf

15 HKMA – Hong Kong Banking Sector: 2021 Year-end Review and Priorities for 2022 (26 January 2022): https://www.hkma.gov.hk/media/eng/doc/key-information/speeches/s20220126e1.pdf

16 HKMA -- Briefing to the Legislative Council Panel on Financial Affairs (7 February 2022): https://www.hkma.gov.hk/media/eng/doc/about-the-hkma/legislative-council-issues/20220128e1.pdf

Climate-related risks for funds

Climate-related risks will also be on the minds of fund managers of collective investment schemes (**CISs**) (**Fund Managers**) following the SFC's consultation conclusions[17] on proposed amendments to the Fund Managers Code of Conduct (**FMCC**). The amendments will require Fund Managers to consider climate-related risks in their governance, investment management, risk management and disclosures. Currently, these requirements are only applicable to Fund Managers managing CISs (as opposed to management of discretionary accounts) as CISs typically account for a significant proportion of the total assets under management of licensed corporations.

To protect the value of investors' investments, Fund Managers should identify climate related risks which are *relevant* to their investment strategies and the funds they manage, assess their impact and prioritise *material* risks in their investment management processes.

- If the climate-related risks which are identified as relevant are also considered to be material for a strategy or a fund as well, Fund Managers will have to comply with the requirements on (i) governance, (ii) investment management, (iii) risk management, and (iv) disclosure, in the amendments to the FMCC.
- If the climate-related risks identified are relevant but not material for any of the funds and strategies, Fund Managers will nevertheless be subject to the provisions on (i) governance and (ii) applicable disclosures and will be required to re-evaluate their assessment of relevance and materiality periodically.

In terms of implementation, the SFC is adopting a two-tiered approach based on the recommendations of the Task Force on Climate-related Financial Disclosures. There are (i) baseline requirements for all those managing CISs (ie Fund Managers) and (ii) enhanced standards for Fund Managers with CIS under management, which equal or exceed HKD8 billion in fund assets for any three months in the previous reporting year (**Large Fund Managers**).

The regulatory requirements for climate-related risks will become effective after the relevant transition periods:

(i) A 12-month transition period for Large Fund Managers to comply with the baseline requirements (ie until 20 August 2022) and a 15-month transition period for them to comply with the enhanced standards (ie until 20 November 2022); and

(ii) A 15-month transition period for other Fund Managers to comply with the baseline requirements (ie until 20 November 2022)

In view of this timeline, it is crucial for Fund Managers to begin their assessments on the relevance and materiality of climate-related risks. It may also be beneficial for Fund Managers to take into account a broader spectrum of sustainability risks in the exercise, as the SFC has acknowledged the importance of various ESG factors in its consultation paper and stated that climate-related risks is only an *initial focus*.

Mainland China's green finance agenda

After the United Nations Climate Change Conference in November 2021 (also known as COP26), Mainland China pledged to be carbon neutral by 2060. The Mainland is expected to continue with its focus on green-related financing and the green bond market in 2022, as green finance is considered a key way to tackle challenges relating to the climate crisis and biodiversity loss.

Of note, we see that financial institutions have stopped financing new coal mining and coal-fired power projects overseas since October 2021. Mainland China's emissions trading scheme is forecast to grow further in 2022 and is expected to be one of the key instruments to enable the Mainland to achieve its target of carbon neutrality by 2060. We expect more international cooperation to address the climate crisis. For example, Mainland China has recently revealed its cooperation with the European Union to converge their green finance and investment taxonomies across the two markets.

It is also expected that the PBoC, National Development and Reform Commission and China Securities Regulatory Commission (**CSRC**) will update the Green Bond Endorsed Projects Catalogue and that the mandatory and voluntary ESG reporting requirements by CSRC for listed companies will be implemented. These key changes will enhance the reporting and transparency requirements applicable to bond issuers in the domestic market.

As a key financial centre, we expect these policies to continue to filter down into Hong Kong. Businesses must consider these issues more seriously, otherwise they risk being misaligned with the regulations and market in general.

17 SFC – Consultation Conclusions on the Management and Disclosure of Climate-related Risks by Fund Managers (August 2021): https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=20CP5

Senior management competency

As Ashley Alder, Chief Executive Officer of the SFC has put it: *"[r]aising professional standards is crucial to maintain quality markets, particularly in view of the rapidly evolving financial landscape"*.[18]

SFC's competency guidelines – a long overdue revamp

The revised Guidelines on Competence,[19] Guidelines on Continuous Professional Training[20] and Fit and Proper Guidelines[21] (collectively, the **Guidelines**) were finally published last year and came into effect on 1 January 2022, replacing their respective previous versions issued in 2003. These updated Guidelines result from the SFC's consultation conclusions on proposals to revamp its entry requirements for licence applications and its ongoing competence standards for corporations and individual practitioners.[22] It represents a long-overdue attempt of the SFC to bring its competency framework up to date.

Since 2003, there have been substantial changes to Hong Kong's regulatory landscape so an update of the Guidelines is certainly much welcomed. These latest updates include (i) raising the minimum academic qualification requirements for individuals, (ii) broadening the scope of recognised academic qualifications, (iii) clarifying the management experience requirements for responsible officers, and (iv) enhancing the competence requirements for individuals advising on matters in relation to the Codes on Takeovers.

The fact that these enhancements have finally made it to the agenda of the SFC in the past year evinces growing concerns of the regulator on the competence of individual practitioners.

Firms should definitely dust off and update their policies in line with the Guidelines and ensure that their staff are aware of the new Guidelines as the SFC has been and will continue to place an emphasis on senior manager accountability (see next section).

Money service operators (MSOs) – a new test of competency

Competency is now expressly important for MSO licence applicants as after 1 June 2021, including existing licensed MSOs whose licence is due to expire on or after 1 July 2022 and who applies to the Customs and Excise Department (**C&ED**) for renewal of its licence, they are now required to attend the Competence Assessment of the C&ED (**Assessment**).[23]

While a pass in the Assessment is regarded as a company-based qualification, the Assessment aims at ensuring that the senior management of a licensed MSO is equipped with the essential knowledge for devising and overseeing its own anti-money laundering (**AML**) and counter-financing of terrorism (**CFT**) systems. As such, at least one member of the senior management of a licence applicant or licensee must pass the Assessment and the results will affect whether such applicant or licensee is considered by the Commissioner of Customs and Excise as a fit and proper person to operate the money service business.

Needless to say, the Assessment is conducive to uplifting the compliance level of the money service sector in respect of the requirements under the AMLO. MSOs should continue to ensure that members of its senior management possess sufficient skill, knowledge and experience to take charge of its operations and to power through the Year of the Tiger and beyond.

18 SFC – SFC to upgrade industry practitioners' competency standard (18 June 2021): https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR62

19 SFC – Guidelines on Competence (January 2022): https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/guidelines-on-competence/Guidelines-on-Competence.pdf

20 SFC – Guidelines on Continuous Professional Training (January 2022): https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/guidelines-on-continuous-professional-training/Guidelines-on-Continuous-Professional-Training.pdf

21 SFC – Fit and Proper Guidelines (January 2022): https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/guidelines/fit-and-proper-guidelines/Fit-and-Proper-Guidelines.pdf

22 SFC – Consultation Conclusions on Proposed Enhancements to the Competency Framework for Intermediaries and Individual Practitioners (18 June 2021): https://apps.sfc.hk/edistributionWeb/api/consultation/conclusion?lang=EN&refNo=20CP8

23 C&ED – Circular to Money Service Operators Competence Assessment for Money Service Operators (4 March 2021): https://eservices.customs.gov.hk/MSOS/downloadFile?id=286091

Culture and conduct

Disciplining managers-in-charge (MICs) – it's now a trend

Consistent with our observations on competency, the SFC has already announced several disciplinary actions against MICs alongside actions against their respective licensed corporations for failures to discharge their duties as responsible officers and as members of the senior management of their respective licensed corporation.[24] The SFC is also currently in the process of commencing at least another set of these disciplinary proceedings.[25] It is notable that in all of these cases, the SFC takes the view that the failure of the licensed corporation is attributable to the failure of its MIC(s).

Whether there will be more standalone enforcement actions against MICs remains to be seen. However, these cases clearly indicate that the regulator is focussing more towards the conduct of the senior management of licensed corporations.

In line with the focus on senior management responsibility noted above, we expect that there will be more enforcement actions against MICs and other senior managers, especially as the SFC noted that it had investigated a number of MICs over the past two years.

Board diversity – all aboard

Apart from conduct and competency, the theme of diversity also shines through on the corporate governance front. Alongside new requirements for issuers in relation to company culture, board independence and refreshment, and communication with shareholders in the revised Corporate Governance Code [26] and Listing Rules, a single-gender board is no longer considered to be a diverse board for listed companies from 1 January 2022 onwards.

In terms of timing, existing listed issuers have a three-year transition period to comply, ie they have to appoint a director of a different gender no later than 31 December 2024. Issuers with relevant commitment in their listing document should appoint a director of a different gender in accordance with such commitment while initial public offering applicants filing its listing application form (Form A1) on or after 1 July 2022 must identify and appoint a director of a different gender with effect from its listing date.

Listed issuers also have to set numerical targets and timelines for achieving gender diversity at board level. Board diversity policies must be reviewed annually, and disclosures have to be made on gender ratios in the workforce (including senior management), plans or measurable objectives companies have set for achieving gender diversity. Going forward, ESG reports must be published together with annual reports as well to allow the board, shareholders and investors to assess financial and non financial matters comprehensively.

In the words of Bonnie Chan, Head of Listing at the Hong Kong Exchanges and Clearing Limited (**HKEx**), *"[t]he addition of women to the boardroom is not a silver bullet, but it can be the beginning of deep rooted and much needed cultural change within an organisation".*[27] With the HKEx taking the lead, we anticipate that other local regulators will follow suit and hammer in further elements of diversity in their regulatory requirements in the near future.

24 SFC – SFC reprimands and fines Fulbright Securities Limited $3.3 million and suspends its responsible officer for internal control failures (1 November 2021): https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=21PR107; SFC bans Chu Chun Wai for seven months for supervisory failures (30 December 2021): https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=21PR129; SFC reprimands and fines Grand International Futures Co., Limited (GIFCL) $8 million and suspends its responsible officer for regulatory breaches (30 December 2021): https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=21PR130

25 SFC – SFC reprimands and fines Citigroup Global Markets Asia Limited $348.25 million for serious regulatory failures over client facilitation activities (28 January 2022): https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=22PR6

26 HKEX – Appendix 14 Corporate Governance Code (1 January 2022): https://en-rules.hkex.com.hk/rulebook/appendix-14-corporate-governance-code

27 HKEX – Taking Steps Toward Greater Board Diversity (3 September 2021): https://www.hkexgroup.com/Media-Centre/Insight/Insight/2021/Bonnie-Y-Chan/Taking-Steps-Toward-Greater-Board-Diversity?sc_lang=en

Asset management

Open-ended fund companies (OFCs) and limited partnership funds (LPFs) – regulation regarding facilitation of re-domiciliation: elevation of Hong Kong's reputation

With a view to advancing Hong Kong's position as an international asset and wealth management hub, the Hong Kong Government enacted the Securities and Futures (Amendment) Ordinance 2021[28] and Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021[29] (collectively, the **Ordinances**) in September. The Ordinances have come into effect on 1 November 2021, thereby enabling the re-domiciliation of foreign investment funds, including hedge funds and private equity funds, back into Hong Kong upon registration as OFCs and LPFs.

Prior to these legislative amendments, foreign investment funds could only re-domicile into Hong Kong via restricted and costly means, essentially by way of an asset transfer or share swap. The new re-domiciliation provisions bring Hong Kong at least on par with overseas jurisdictions, which also have similar statutory mechanisms in place.

It is encouraging to see that the Ordinances also provide for supporting tax benefits and certainty on the continuity of the foreign investment funds after re-domiciliation to enhance the city's attractiveness as a fund domicile.

Notably, the re-domiciliation does not (i) create a new legal entity, (ii) affect the identity or continuity of the foreign fund in its place of incorporation or establishment, (iii) prejudice any existing contract, property, right, privilege, obligation or liability of the re-domiciled fund, or (iv) affect any legal proceedings commenced by or against it.

Only time will tell how appealing OFC and LPF structures will be to investors and market participants. However, additional initiatives have been put in place to favour re-domiciliation. In September 2021, the Cross-boundary Wealth Management Connect Scheme in the Guangdong-Hong Kong-Macao Greater Bay Area was launched consisting of a Southbound Scheme and a Northbound Scheme. Of note, the Southbound Scheme allows eligible residents in Mainland Greater Bay Area cities to invest in wealth management products, including Hong Kong-domiciled funds,[30] distributed by banks in Hong Kong thereby increasing the population of potential investors in Hong Kong domiciled funds.[31]

We also note that the SFC has been working closely with the Government and other authorities regarding initiatives related to OFCs [32] and anticipate that more regulations in the area will further evolve to strike a balance between the efficiency of fund re-domiciliation and sufficient regulatory oversight.

28 Securities and Futures (Amendment) Ordinance 2021: https://www.legco.gov.hk/yr20-21/english/ord/2021ord033-e.pdf

29 Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021: https://www.legco.gov.hk/yr20-21/english/ord/2021ord034-e.pdf

30 To meet the requirements as an eligible wealth management product under the Southbound Scheme, the fund has to be domiciled in Hong Kong, authorised by the SFC, and assessed as "low" risk to "medium" risk and "non-complex" by Hong Kong banks distributing the fund.

31 Cross-boundary Wealth Management Connect Scheme is in addition to the existing Mainland-Hong Kong Mutual Recognition of Funds that has been in place since 2015 for Hong Kong domiciled funds that are authorised by the SFC.

32 SFC – Fostering Hong Kong's development as an asset management hub (7 September 2021): https://www.sfc.hk/-/media/EN/files/COM/Speech/Synopsis-HKSI-Webinar-7-Sept-2021.pdf

Personal data

Personal Information Protection Law (PIPL) of the Mainland – impetus for change?

After two rounds of public consultation, Mainland China's omnibus data privacy law – the PIPL – was officially promulgated by the Standing Committee of the National People's Congress in August 2021 and came into effect on 1 November 2021.[33] The drafting of PIPL was heavily influenced by the General Data Protection Regulation (**GDPR**) of the European Union and PIPL tracks the GDPR closely in many areas.

The PIPL accords a certain level of protection to personal information within the Mainland. For instance, it establishes individuals' consents as the principal legal basis for processing personal information and requires that the processing of personal information shall abide by the principles of legality, fairness, good faith, minimum necessity, openness and transparency. There must also be specific and reasonable purposes of processing.

Further, processors of personal information which need to transfer personal information out of the Mainland have to obtain separate consent from individuals, and meet certain requirements, such as passing the security assessment made by the state cyberspace authorities, obtaining the required certification, or entering into a standard contract as prescribed by the state cyberspace authorities.

The promulgation of the PIPL begs the question of what its implications are for Hong Kong's legal regime on data privacy, and more specifically, whether this creates impetus for any local change of law to match the levels of protection provided to personal information under the PIPL in order to facilitate data transfers between Hong Kong and the Mainland.

Although similar provisions have long been in place under the GDPR, it is relatively less common for personal data to be exported from Europe to Hong Kong and this can be contrasted with the case of the Mainland. As the Privacy Commissioner for Personal Data (**PCPD**), Ada Chung Lai-ling has recently commented, *"[i]n the light of the national development strategy as set out in the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area, I envisage that there will be more social and commercial interactions as well as flows of data between Hong Kong and the Mainland".*[34]

Although there have not been any statements from the PCPD on amending the Personal Data (Privacy) Ordinance (**PDPO**) following the PIPL, given Hong Kong's affinity and proximity with the Mainland, the PIPL may well be a driver for legal amendments to the PDPO [35] so as to achieve consistency in protection levels.

33 NPCSC – Personal Information Protection Law (20 August 2021): http://www.npc.gov.cn/npc/c30834/202108/a8c4e3672c74491a80b53a172bb753fe.shtml

34 PCPD – Privacy Commissioner Publishes Booklet on the Personal Information Protection Law of the Mainland (18 November 2021): https://www.pcpd.org.hk/english/news_events/media_statements/press_20211118.html

35 Cap. 486, Laws of Hong Kong

Key contacts

Charlotte Robins
Partner – Hong Kong
Tel +852 2974 6986
charlotte.robins@allenovery.com

Andre Da Roza
Of Counsel – Hong Kong
Tel +852 2974 6980
andre.daroza@allenovery.com

William Leung
Senior Associate – Hong Kong
Tel + 852 2974 7152
william.leung@allenovery.com

Bernita Lun
Associate – Hong Kong
Tel +852 2974 7280
bernita.lun@allenovery.com

Hysan Chan
Associate – Hong Kong
Tel +852 2974 6910
hysan.chan@allenovery.com

CN
CS2202_CDD-67801_ADD-99848