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Key Regulatory Updates for Hong Kong Listed Companies — September/October 2024

The updates include an information paper on implementing an uncertificated securities market, and a joint announcement on an enhanced timeframe for a new listing application process.

The key updates in September and October 2024 include the publication of an information paper on implementing an uncertificated securities market in Hong Kong, which is currently targeted for the end of 2025. The Stock Exchange of Hong Kong Limited (the Stock Exchange) and the Securities and Futures Commission (SFC) have jointly issued an announcement on an enhanced timeframe for a new listing application process. The timeframe provided more clarity and certainty regarding the timing and rounds of comments from both regulators, as well as enhanced transparency in the application process.

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Consultation Conclusions and Information Papers by the Stock Exchange

1. Information Paper on Implementation of USM (September 2024)

The Stock Exchange has published an [information paper on the implementation of an Uncertificated Securities Market \(USM\) in Hong Kong](#) to provide an overview of USM and explain the process for securities to participate in the USM regime. Please see below the key highlights:

Central Nominee Structure Retained

- The central nominee structure of Central Clearing and Settlement System (CCASS) will be retained. Investors who hold their securities through CCASS will therefore continue to hold a beneficial interest, and legal title will remain with a central nominee, i.e., HKSCC-NOMS.

Introduction of Uncertificated Securities Registration and Transfer (UNSRT) System

- Possible for legal title of participating securities to be evidenced and transferred without title instruments, but only through the UNSRT system operated by each approved securities registrar (ASR)

Prescribed Securities Become Participating Securities

- To enable prescribed securities to become participating securities (i.e., issued, transferred, and held without title instrument), issuers of prescribed securities should at least take the following steps:
 - Appoint an ASR to provide and operate a UNSRT system and maintain the register of members or holders for those securities
 - As appropriate, amend the terms governing the holding and transfer of the relevant securities (e.g., the Articles of Association or by-laws)
 - Publish a participation date (i.e., the date from which the prescribed securities become participating securities) and the relevant disclosure
- Issuers of prescribed securities must from the participation date issue new units of such securities only in uncertificated form and cease to issue new certificates in respect of any existing units of such securities, such as upon transfer of such securities.
- Within six months after the applicable participation date, all units of those securities held in HKSCC vault must be converted into uncertificated form.

Investors Holding Participating Securities

- Investors can hold their participating securities through CCASS.
- Investors can also set up a USI profile at the relevant ASR's USI facility (which is a facility for managing prescribed securities that are in uncertificated form).
- If an investor holds multiple participating securities, and the issuers of such securities have appointed different ASRs, the investor will need to set up multiple USI profiles.

Implementation Timetable

- Each issuer will be given a deadline, which is specified by the issuer's Federation of Share Registrars Limited (FSR), the Hong Kong Securities Clearing Company Limited (HKSCC), and the Stock Exchange. Issuers must complete their transition to USM before that deadline by ensuring that their shares become participating securities (i.e., the participation date).
- USM will begin with the securities whose home laws are compatible with the USM regime, which will cover all prescribed securities constituted under Hong Kong law. The SFC also aims to cover (as far

as possible) all prescribed securities constituted under the laws of Bermuda, the Cayman Islands, or the PRC.

- Implementation of USM is currently targeted for the end of 2025. The goal is for securities from the abovementioned jurisdictions to become participating securities within five years from the implementation date of USM.

Next Step

- Further information will be provided at later stages via updates to the information paper and frequently asked questions (FAQs).
- Following that, rule changes including HKSCC Rules, the Stock Exchange's Trading Rules, and the Listing Rules (subject to regulatory approval), as well as a market readiness programme including briefings and market rehearsal will be arranged.
- The Stock Exchange will also work together with the SFC and the FSR on a market education programme to prepare the market for USM implementation in Hong Kong.
- The SFC plans to issue further documents to provide guidance to the market, including guidelines for issuers regarding participation of their securities in USM.

For further information, please refer to the [Information Paper](#).

Guidance Materials, Listing Decisions, and FAQs by the Stock Exchange

1. Updates to Guidance Materials (September 2024)

With the launch of severe weather trading arrangements on 23 September 2024, the Stock Exchange has updated the following guidance materials to reflect the changes made pursuant to the Consultation Conclusions:

- [Guide on trading arrangements for selected types of corporate actions](#)
- [Guide on disclosure of record date, book closure, and latest time for lodging transfers of shares](#)
- [Guide on distribution of dividends and other entitlements](#)
- [Guide on general meetings](#)
- [Consolidated version of Guides on the Exchange's Practices and Procedures for Handling Listing-related Matters](#)
- [FAQ11.2 \(Definition of transactions and calculation of percentage ratios for notification transactions\) – No.29](#)

The following guidance materials have also been updated:

- [FAQ11.2 \(Definition of transactions and calculation of percentage ratios for notifiable transactions\) – No.27](#) (update of rule reference)

- [GL104-19 – Guidance on application of the reverse takeover Rules](#) (addition of new case in relation to principle-based test under the RTO Rules)
 - Company A was principally engaged in the provision of drug discovery services since listing and it proposed to acquire a majority interest in a target company that developed and manufactured drugs.
 - The revenue ratio of the proposed acquisition was about 380% while the asset, profit, and consideration ratios were between 20% and 80%
 - The Stock Exchange agreed that the proposed acquisition would be treated as a very substantial acquisition (VSA) and not a reverse takeover (RTO) or an extreme transaction, because:
 - the proposed acquisition would not lead to a fundamental change in Company A's business as it represented a vertical expansion of Company A's existing business, which was in line with Company A's business strategies; and
 - the size of the proposed acquisition was not extreme compared to Company A's existing business which had been sizable in scale since listing and would continue to be Company A's principal business after the proposed acquisition.
- [LD62-1 – Whether the Exchange would disregard the consideration ratio and accept the alternative ratio proposed by a listed issuer for its capital contribution to a non wholly-owned subsidiary](#) (republication)

For further information, please refer to the guidance materials.

Other Announcements by the Stock Exchange

1. Joint Statement on Enhanced Timeframe for New Listing Application Process (October 2024)

The SFC and the Stock Exchange jointly announced an enhanced timeframe for a new listing application process (Enhanced Application Timeframe).

Applications Fully Meeting Requirements

- If an applicant and its sponsor submit a new listing application and related materials that meet all requirements and guidance under the Securities and Futures Ordinance (SFO), the Securities and Futures (Stock Market Listing) Rules (SMLR), and/or the Listing Rules (Applications Fully Meeting Requirements), the SFC and the Stock Exchange will, after close communication to avoid duplication of comments, individually assess and indicate any material regulatory concerns (Regulators' Assessment) after a **maximum of two rounds** of regulatory comments.
- Each regulator must confirm whether there are any material regulatory concerns within **40 business days** (this refers to the number of business days once the application is in the hands of the regulators, and excludes the response time of the applicant and sponsor).
- The applicant and sponsor are expected to satisfactorily address regulators' comments within **60 business days**.

- The application process would be completed within the six-month application validity window.

Accelerated Timeframe for Eligible A-share Listed Companies

- An accelerated timeframe will be available to an existing A-share listed company that meets the following criteria when submitting a new listing application (Accelerated Timeframe):
 - The company must have a minimum market capitalisation of HK\$10 billion.
 - It can confirm, with the support of legal advisers' opinion, that it has complied with all laws and regulations, in all material respects, applicable to its A-share listing throughout the two full financial years immediately preceding the new listing application and up to the date of submitting the application.
- Under the Accelerated Timeframe, if an eligible A-share listed company submits an Application Fully Meeting Requirements, the Regulators' Assessment will be completed after **one round** of regulatory comments.
- Each regulator must complete the Regulator's Assessment within **30 business days**.
- However, if the SFC and/or the Stock Exchange indicate they have material regulatory concerns regarding the listing application, the Accelerated Timeframe will no longer apply.

Applications Requiring Longer Process

- The SFC and the Stock Exchange will proactively engage with the applicant and its sponsor if they have material concerns regarding an applicant's compliance with the SFO, the SMLR, and/or the Listing Rules, and/or the quality of listing document preparation, or if there are new material developments or incomplete responses to regulators' comments. In particular:
 - After the issue of the first comment letter (1CL), the SFC and/or the Stock Exchange will, if necessary, engage with the key representatives of the applicant and its sponsor and other advisers to facilitate their understanding of the material regulatory concerns and outline the regulators' expectations on their subsequent response.
 - If subsequent responses to regulatory comments are materially incomplete, the SFC and/or the Stock Exchange will inform the applicant and its sponsor of the deficiency and suspend the vetting process until a complete and satisfactory reply is received.
 - If the applicant and its sponsor do not adequately address the material regulatory concerns after two rounds of regulatory comments (or one round under the "Accelerated Timeframe for Eligible A-share Listed Companies" above), the SFC and/or the Stock Exchange will issue a direct requisition letter under the SMLR (SMLR Letter) and/or a major concerns letter (MCL) as appropriate. The progress of the application will then be subject to the applicant and its sponsor satisfactorily addressing the material regulatory concerns set out in the SMLR Letter and/or the MCL.
- Under such scenario, the timeline of the application process may be prolonged.
- For further details, please refer to the [joint statement](#) and its appendix for an illustration of the Enhanced Application Timeframe for each scenario.

Disciplinary Actions by the Stock Exchange for Failure to Comply With Disclosure Requirements

1. Stock Exchange's Disciplinary Action Against China ZhengTong Auto Services Holdings Limited and Former Directors (September 2024)

Key Points to Note: Directors must take steps to avoid any conflicts of interest. They must always put the interest of the company above their own. Directors must exercise independent judgement to evaluate whether a transaction is in the interest of the company before approving any transaction. Directors have the primary responsibility to ensure the company's compliance with the Listing Rules. Excessive or unquestioning reliance on company staff may amount to directors' failure to exercise due skill, care, and diligence.

The Stock Exchange criticised China ZhengTong Auto Services Holdings Limited (the Company), and imposed a director unsuitability statement against Mr Wang Mu Qing, former chairman and executive director (ED) of the Company (Mr Wang) and Mr Shao Yong Jun, former ED of the Company (Mr Shao). It censured Mr Koh Tee Choong, former ED and chief executive officer of the Company (Mr Koh), Mr Li Zhubo, former ED and chief financial officer of the Company (Mr Li), and Mr Wang Kunpeng, former ED and vice chairman of the Company (Mr Wang KP).

Facts

- In March 2016, an indirect wholly-owned subsidiary of the Company (Subsidiary) entered into an undertaking (Subco Undertaking) to pay any shortfalls in the event Beijing Guangze Real Estate Development Co., Ltd (Guangze) failed to meet its obligations to (i) repay a loan of RMB1.38 billion (the Loan) and (ii) redeem two investments in the amounts of RMB200 million and RMB220 million (the Investments) respectively
- In March 2020, the Subsidiary entered into three new agreements (the Shortfall Agreements) to replace the Subco Undertaking.
- Mr Wang's son and his spouse had a 90% and 10% shareholding respectively in Guangze. Guangze was therefore a connected person of the Company.
- The Subco Undertaking and the Shortfall Agreements in aggregate (collectively, the Transactions) constituted major and connected transactions and were therefore subject to the announcement, circular, and independent shareholders' approval requirements under Chapters 14 and 14A of the Listing Rules. The Company did not comply with these requirements.
- Mr Wang signed a board resolution of the Subsidiary to approve the entry into the Shortfall Agreements.
- Mr Koh, Mr Li, and Mr Wang KP approved the Shortfall Agreements.
- Mr Wang did not respond to the investigation by the Listing Division (the Division).
- Mr Shao disregarded the Division's investigation correspondence and failed to engage with the Division until he received the Division's Notice of Disciplinary Action against him.

Findings of Breach

The Company

- The Company failed to comply with the requirements under (and therefore breached) Rules 14.34, 14.38A, 14.40, 14A.35, 14A.36, and 14A.46 in respect of the Subco Undertaking and the Shortfall Agreements which constituted major and connected transactions.

Mr Wang

- Mr Wang breached Rule 3.08 and his obligations set out in Rule 3.09B. His breaches were willful and persistent.
- Mr Wang failed to declare and avoid his conflict of interest in the Transactions, such as disclosing that Guangze was a connected person of the Company and abstaining from approving the Transactions.
- In approving the Subsidiary's entry into the Transactions, Mr Wang did not act in the interests of the Company and for proper purpose. The sole purpose of the Transactions was to confer a benefit upon Guangze which was beneficially owned by Mr Wang's son and his spouse.
- Mr Wang concealed the Transactions from the Company's full board. He did not bring the Subco Undertaking to the attention of all the other directors, and the Shortfall Agreements to the attention of those other directors who were not involved in their approval.
- Mr Wang also failed to take steps to procure the Company's Listing Rule compliance in relation to the Transactions. He did not raise for the board's consideration and discussion the Listing Rule implications of the Transactions before or after he approved the Transactions.

Mr Koh, Mr Li, and Mr Wang KP

- Mr Koh, Mr Li, and Mr Wang KP breached Rule 3.08 and their obligations under Rule 3.09B.
- They failed to exercise independent judgement to assess whether the Shortfall Agreements were in the interest of the Company and failed to take steps to protect the Company's interest in approving the Shortfall Agreements.
- These three Directors did not inform the board of the Shortfall Agreements, or seek to discuss the agreements with the board, in particular the independent non-executive directors.
- They also failed to take steps to procure the Company's Listing Rule compliance in relation to the Shortfall Agreements.
- They over-relied on the Company's compliance department to handle the Listing Rule compliance, without taking steps to check whether the obligations had been properly handled.

Mr Shao

- Mr Shao breached his obligation to cooperate in the Division's investigation now set out in Rule 3.09C.

Conclusion

- The Listing Committee decided to impose the above sanctions.

- Mr Koh, Mr Li, and Mr Wang KP were further directed to attend 21 hours of training on regulatory and legal topics and Listing Rule compliance, as a prerequisite of any future appointment as a director of any company listed or to be listed on the Stock Exchange.

For further details, please refer to the [statement of disciplinary action](#).

Disciplinary Actions by the Stock Exchange — Others

1. Stock Exchange's Disciplinary Action Against Two Former Directors of Suchuang Gas Corporation Limited (October 2024)

Key Points to Note: Failure to cooperate in the Stock Exchange's investigation is a serious breach of the Listing Rules. A director's obligation to cooperate does not lapse after their resignation or after an issuer ceases to be listed on the Stock Exchange.

The Stock Exchange imposed a director unsuitability statement and censure against the former directors of Suchuang Gas Corporation Limited (the Company), namely Mr Su A Ping, former chairman and executive director and Mr Du Shao Zhou, former executive director (each a Director). The director unsuitability statement is a statement that, in the Stock Exchange's opinion, the director is unsuitable to occupy a position as director or within senior management of the Company or any of its subsidiaries.

Facts

- As part of an investigation into, amongst other things, whether the Director had discharged the duties and obligations under the Listing Rules, the Listing Division (the Division) sent investigation and reminder letters to the Director.
- The Stock Exchange did not receive any substantive response from the Director in time or at all.

Findings of Breach

The Listing Committee found as follows:

- The Director breached the Listing Rules by failing to cooperate with the Division in the investigation.
- The Director's obligation to provide information reasonably requested by the Stock Exchange did not lapse after the director ceased to be a director of the Company.
- The Director's failure to discharge the responsibilities under the Listing Rules demonstrated a serious breach of the Listing Rules.

Conclusion

- The Listing Committee decided to impose the sanctions set out above.

For further details, please refer to the [statement of disciplinary action](#).

2. Stock Exchange's Disciplinary Action Against Three Former Directors of YNBY International Limited, Formerly Known as Ban Loong Holdings Limited (October 2024)

Key Points to Note: Failure to cooperate in the Stock Exchange's investigation is a serious breach of the Listing Rules. A director's obligation to cooperate does not lapse after their resignation.

The Stock Exchange imposed a director unsuitability statement and censure against the former directors of YNBY International Limited, formerly known as Ban Loong Holdings Limited (the Company), namely Mr Wang Minghui, former executive director and chairman; Mr Wang Zhaoqing, former executive director; and Mr Fong For, former non-executive director (each referred to below as a Director).

Facts

- As part of an investigation into, amongst other things, whether the Director had discharged the duties and obligations under the Listing Rules, the Listing Division (the Division) sent investigation and reminder letters to the Director.
- The Stock Exchange did not receive any substantive response from the Director.

Findings of Breach

The Listing Committee found as follows:

- The Director breached the Listing Rules by failing to cooperate with the Division in the investigation.
- The Director's obligation to provide information reasonably requested by the Stock Exchange did not lapse after the Director ceased to be a director of the Company.
- The Director's failure to discharge the responsibilities under the Listing Rules demonstrated a serious breach of the Listing Rules.

Conclusion

- The Listing Committee decided to impose the abovementioned sanctions.

For further details, please refer to the [statement of disciplinary action](#).

3. Stock Exchange's Disciplinary Action Against Former Directors of National Arts Group Holdings Limited (Delisted) (September 2024)

Key Points to Note: Directors must take active steps to manage risks pertaining to investments of the issuer. They should conduct proper due diligence and risk assessment, particularly when the risks are evidently high. Directors must properly monitor investment projects. They should ensure receipt of timely updates and that mechanisms are in place to keep the issuer informed.

The Stock Exchange criticised Mr Chow Kai Weng, former chairman, CEO, and executive director (ED) (Mr Chow) of National Arts Group Holdings Limited (delisted) (the Company), Mr Cheng Wang Chun, former ED of the Company (Mr Cheng) and Mr Ho Leung Ting, former ED of the Company (Mr Ho, together with Mr Chow and Mr Cheng, the Relevant Directors).

Facts

- The Relevant Directors approved the Company's acquisitions of two target companies which held certain property units under construction in two projects in Malaysia (the Acquisitions).
- At the time of the Acquisitions, the target companies had not yet fully paid the developers for the property units, but the Company made full payment upfront for the Acquisitions by issuing new shares in the Company to the vendors with a total value of \$108.8 million.

- A lock-up arrangement was in place in respect of the consideration shares allotted to one vendor, but the Company later agreed to partially release it.
- The vendors and/or their related parties failed to discharge their outstanding payment obligations.
- Construction was delayed. None of the property units had been delivered to the Company. The vendors had sold most of the consideration shares.
- The Hong Kong Court ordered the Company to be wound up on 28 June 2023, and its shares were delisted from the Stock Exchange on 28 August 2023.

Findings of Breach

- The GEM Listing Committee found that the Relevant Directors breached their directors' duties under GEM Listing Rules 5.01 to exercise reasonable skill, care, and diligence to safeguard the Company's interest in the Acquisitions.
- The Relevant Directors should have been aware that the Acquisitions involved at least two major risks: (a) the vendors and their related parties might not fulfil the outstanding payment obligations to the developers for the property units under construction, and (b) the property construction might not be completed.
- The Relevant Directors failed in their duty to manage these risks in respect of the Acquisitions, even after learning that another listed issuer had encountered problems in a very similar transaction.
- The Relevant Directors should have at least taken steps to conduct due diligence in respect of the financial capability of the vendors and their related parties to assess the potential credit risk both prior to completing the Acquisitions and consenting to the partial release of the lock-up.
- The Relevant Directors did not procure the Company to evaluate whether the vendors and/or their related parties were financially capable of meeting their ongoing obligations, particularly regarding the outstanding payments to the developers, or compensating the Company in the event that the property units were not delivered.
- The Relevant Directors should have taken steps to properly monitor the projects, including that payments were being made and the construction was progressing.

Conclusion

- The GEM Listing Committee decided to impose the above sanctions.
- The Relevant Directors were directed to each take 15 hours of training on regulatory and legal topics and Listing Rule compliance.

For further details, please refer to the [statement of disciplinary action](#).

Takeover Matters

1. Takeovers Bulletin (Issue No. 70) (September 2024)

In the latest [Takeovers Bulletin \(Issue No. 70\)](#), the SFC reminded offerors or potential vendors that at times, they may need to make the requisite disclosures on their own as soon as practicable to keep the

market informed (e.g., responsibility for making an announcement normally rests with an offeror before the board of the offeree company is approached). If an offeror or potential vendor is not listed on the Stock Exchange and intends to issue Codes documents without involving the offeree company, it must factor in the time required to complete prior registration for accessing the e-Submission System (ESS) of Hong Kong Exchanges and Clearing Limited in planning the transaction timetable. The relevant parties are responsible for familiarising themselves with the relevant procedures (including the requirements to submit supporting materials for ESS registration) and allow sufficient time to complete the registration process to avoid any delay in publication.

For further details, please refer to [Takeovers Bulletin \(Issue No. 70\)](#).

Companies Registry Notices

1. Submission of Prospectus Documents in Electronic Form to Companies Registry During Severe Weather Conditions (September 2024)

Under a new arrangement, the Stock Exchange will remain open for trading during severe weather conditions (SWT days) effective 23 September 2024. Listing applicants/listed issuers will therefore be able to apply to the Stock Exchange for authorisation of registration of a prospectus and its accompanying documents (collectively Prospectus Documents) electronically on SWT days.

As of 23 September 2024, the Prospectus Documents that the Stock Exchange authorised for registration and electronic delivery to the Registrar of Companies for registration under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Chapter 32) may be delivered to the Companies Registry for registration on SWT days. All requirements under the [Companies Registry External Circular No. 7/2023 on "Submission of Prospectus Documents in Electronic Form for Registration"](#) apply to the Prospectus Documents delivered to the Companies Registry for registration on SWT days.

For further details, please refer to the [Companies Registry External Circular No. 2 / 2024](#).

Conclusion

The information paper on implementation of USM in Hong Kong sets out useful information and the preparatory steps needed ahead of implementation. Stakeholders are encouraged to familiarise themselves with the process and the steps they will be required to take to prepare for USM implementation. Listing applicants who are planning to file an application to be listed on the Stock Exchange should be familiar with the Enhanced Application Timeframe. Existing A-share listed companies considering filing a new listing application with the Stock Exchange should check with their legal counsel and/or advisers to see if they can benefit from the Accelerated Timeframe.

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