

# **Legal Headwinds Rider**

## Quarterly Report – Q1 2021

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**STRICTLY PRIVATE AND CONFIDENTIAL**

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## PRC Entries

### CSRC QFII Measures in China

On 25 September 2020, Measures for the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors and its implementing rules were released (collectively, the “New QFII Measures”). The New QFII Measures will become effective on the 1 November 2020.

The key changes includes consolidation of QFII and RQFII schemes, further streamlined application procedures, expansion of investment scope, boost to the PFM businesses, streamlined reporting requirements and number of service providers, which are further analysed in our [article](#).

As the New QFII Measures won't become effective until November, the actual enforcement of the provision are yet to be witnessed by the market. However, we are in strong views that they will enhance the attractiveness to QFII schemes and stimulate vitality of the PRC securities and futures market.

### Employment – Supreme People's Court Interpretations on Law Application to Labour Disputes

On 25 December 2020, the PRC Supreme People's Court (SPC) issued [SPC Interpretations \(1\) on Law Application to Labour Disputes \(CN\)](#) (the “SPC Interpretation”). This SPC Interpretation replaced and basically combined four previous SPC interpretations on law application in trying labour disputes cases, and there are not substantial changes. Some slight changes are made due to the update of the referred laws and regulations.

It is worth noting that Article 42 provides one more precondition on lawfully amending an employment contract verbally which is the consent reached after negotiation process. Technically, the amendment of the employment contract is subject to the written consent, but if the amendment is agreed verbally instead of in writing, and has been performed for more than one month, the amendment will be deemed as valid. Under the new SPC Interpretation, this negotiation process is specifically emphasized.

So companies in China need to collect relevant evidence for proving the negotiation process and consent to the amendment made verbally.

### Employment – Local Implementing Opinions in Beijing on Promoting Electronic Employment Contracts Related Work

Following the Ministry of Human Resources and Social Security's [Letter on Issues Relating to the Conclusion of Electronic Labor Contracts \(CN\)](#) issued in March 2020, On 27 October 2020, Beijing Municipal Human Resources and Social Security Bureau issued the [Local Implementing Opinions on Promoting Electronic Employment Contracts Related Work \(CN\)](#). The opinions reiterated the content of the aforementioned letter such as (i) using electronic data messages and reliable electronic signatures that are considered to be in writing under the Electronic Signature Law, and (ii) ensuring that the generation, transmission and storage of the electronic employment contract meet the requirements under the Electronic Signature Law.

Besides, the opinions also added that



- i. An electronic employment contract should contain the essential clauses under the Employment Contract Law,
- ii. An employer's obligations include
  - a. explaining to the employee on the relevant qualification and technical conditions of the signing system, to ensure the completeness, accuracy of the contract which cannot be tampered with,
  - b. improving the internal management of the electronic employment contracts,
  - c. notifying employees on the conclusion process and handling methods,
  - d. providing employees with authority and flexibility of search, download, printing and verification,
- iii. The government will promote the sharing and application of electronic employment contracts in labor dispute arbitration, social insurance auditing, labor security supervision and law enforcement and other human resources and social security fields,

Currently it is still uncommon for concluding and signing an employment contract via digital format, and most companies implement paper contracts and wet signature, but companies in Beijing which intend to use digital format for concluding employment contracts, are recommended to be aware of the above requirements and keep eyes on the development of the local government opinions.

### Employment – Local Opinions in Guangdong Province on Guiding Labour Dispatch Administration

On 28 October 2020, Guangdong Municipal Human Resources and Social Security Department issues the [Guiding Opinions on Further Regulating the Administration of Labour Dispatch \(CN\)](#). The opinions reiterated the legal requirements on labour dispatch under the PRC Employment Contract Law such as the threshold of dispatched staff (10%), three types of dispatch positions (temporary, auxiliary or replaced positions), and also aimed to combat illegal acts such as

- i. not participate in social insurance for dispatched staff according to laws and regulations,
- ii. participate in social insurance based on a false labour relation, and
- iii. using the arrangement of “fake outstanding but genuine dispatch” to avoid the legal requirements on labour dispatch.

In practice, some employees request the contribution where their households (hukou) are registered if they are different from the company's registration city, for facilitating the collection of some entitlements. Some companies engaged the local dispatch or HR service agencies to fabricate the labour relation for the social insurance contribution. Now the opinions specifically forbid such arrangement.

Companies using the labour dispatch, or engaging dispatch or HR service agencies are recommended to conduct a review, to check if the relevant arrangement is compliance with the legal requirements esp. the social insurance contribution.

### Employment – Draft PRC Personal Information Protection Law

On 21 October 2020, the Standing Committee of the National People's Congress issued the draft PRC Personal Information Protection Law. The draft law contains 8 sections and 70 articles which impose restrictions on entities and individuals' processing personal information (PI), including those entities and individuals operating outside of China, that collect and

process personal data and sensitive information on subjects in China. The draft law clarified that

- i. Definitions of (i) personal information (“PI”) – various types of information recorded in electronic or other forms relating to an identified or identifiable natural person, excluding information after anonymization and (ii) processing of PI – including collection, storage, using, processing, transfer, providing and publishing,
- ii. Consent of PI subject and other grounds of processing PI such as the process is necessary to enter into or perform a contract to which the individual is a party, or necessary to perform legal duties or legal obligations, or necessary to respond to a public health emergency or to protect life, health and property safety of a natural person in an emergency etc,
- iii. Requirements of processing sensitive PI, the processing is only allowed if it has specific purposes and such processing is sufficiently necessary, but the draft law does not have further interpretation of what constitutes “specific purposes” and “sufficiently necessary”. Separate consent or written consent from the data subjects must be obtained before processing sensitive personal information.
- iv. Rules on extra territorial application, the law will apply to overseas companies if the process is (i) for the purpose of providing goods or services to natural persons within the PRC, (ii) to analyse or assess behaviours of natural persons within the PRC, or (iii) other circumstances as stipulated by laws and regulations.
- v. Penalties up to RMB 50,000,000 or up to 5% of the entity’s or individual’s preceding year’s revenue if the

After the law is passed, it will complement recently effective PRC Civil Code, the existing Cybersecurity Law and the draft Data Security Law, and it also enhances data protection by introducing new concepts and codifying the accumulated best practices from home (e.g., the national standards on Personal Information Specification) and abroad (e.g., the EU GDPR) into law. It will take personal information protection in China to a whole new level.

# Singapore Entries

## Individual and Accountability (“IAC”) Guidelines

As part of a push to embed a strong culture of responsibility and ethical behaviour in financial institutions, MAS issued its IAC Guidelines on 10 September 2020. This follows two rounds of consultations conducted by MAS, once each in 2018 and 2019, and follows amidst a slew of similar regulatory changes in the UK, Australia and Hong Kong targeting culture reform. The IAC Guidelines set out measures that FIs should implement to promote the individual accountability of senior managers, strengthen oversight over material risk personnel and reinforce standards of proper conduct amongst all employees.

In particular, the IAC Guidelines stipulate five key accountability and conduct Outcomes that FIs must achieve (collectively, the “Five Outcomes”):

Outcome 1: Senior managers responsible for managing and conducting the FI’s core functions are identified.

Outcome 2: Senior managers are fit and proper for their roles, and held responsible for the actions of their employees and the conduct of the business under their purview.

Outcome 3: The FI’s governance framework supports senior managers’ performance of their roles and responsibilities, with a clear and transparent management structure and reporting relationships.

Outcome 4: Material risk personnel are fit and proper for their roles, and subject to effective risk governance, and appropriate incentive structures and standards of conduct.

Outcome 5: The FI has a framework that promotes and sustains among all employees the desired conduct.

Regardless of whether the IAC Guidelines apply to them, all entities should achieve the Five Outcomes.

The Guidelines apply to all FIs regulated by MAS, except the following:

- i. an exempt financial adviser;
- ii. an exempt corporate finance adviser;
- iii. an exempt trust business;
- iv. an exempt over-the-counter derivatives broker;
- v. an exempt futures broker;
- vi. an exempt payment services provider;
- vii. a Recognised Market Operator incorporated outside Singapore;
- viii. a Recognised Clearing House incorporated outside Singapore;
- ix. a Licensed Foreign Trade Repository; and
- x. the Continuous Linked Settlement Bank.

In addition, FIs with less than 50 employees are not ordinarily expected to adopt the specific guidance described in the IAC Guidelines, although they may be required by MAS to adopt specific guidance if there are potential gaps in accountability and oversight, or where their operations are complex. While FIs with 50 or more employees are expected to comply with the IAC Guidelines as a framework and best practice for achieving the Outcomes, they may also choose not to adopt a specific guidance where they have assessed this to be irrelevant to their businesses. That being said, all FIs must be prepared to justify their decision for not

adopting specific guidance and demonstrate how they are still able to achieve the relevant Five Outcomes.

The IAC Guidelines will take effect from 10 September 2021.

### Proposed amendments to the Payment Services Act

The [Payment Services \(Amendment\) Bill](#) ("Bill") was passed in Parliament on 4 January 2021. Broadly, the Bill seeks to amend the [Payment Services Act 2019](#), among other things, for the following main purposes:

- i. broaden the definition of digital payment token ("DPT") service in light of the regulation standards adopted by the Financial Action Task Force in regulating virtual asset service providers on anti-money laundering and countering terrorism financing;
- ii. widen the definition of "cross-border money transfer service" to mitigate money laundering and terrorism financing risks from certain cross-border business models; and
- iii. expand the powers of MAS to impose additional measures on DPT service providers.

MAS intends to grant a six-month exemption to entities that are newly regulated as a result of the Payment Services (Amendment) Bill. MAS also intends to grant an exemption for six months to entities that are currently licensed under the Payment Services Act 2019, who have to vary their licence to include domestic money transfer service, cross-border money transfer service or DPT service, resulting from the proposed amendments to the scope of payment services under the Payment Services (Amendment) Bill.

MAS has indicated that it would separately consult on the exemption as part of the Consultation on Proposed Amendments to the Payment Services Regulations and Notices, which will be issued in Q1 2021.

### Proposed omnibus act for regulation of the financial sector in Singapore

In connection with this announcement, MAS published a consultation paper on 21 July 2020.

The new omnibus act seeks to, inter alia:

- i. Consolidate the existing provisions that grant MAS its regulatory oversight powers (within the different acts) into a single new act
- ii. Expand MAS' power to issue prohibition orders
- iii. Regulate virtual asset service providers ("VASPs") created in Singapore for anti-money-laundering and countering of financing of terrorism purposes, even where these VASPs do not provide payment services within Singapore.

Point iii is of note in particular because it is an expansion of the Payment Services Act regime. Currently, under the PS Act regime, provision of regulated payment services is only licensable where such activities are carried on "in Singapore", which is a multi-factorial enquiry that includes consideration of whether the entity operates its business providing the payment service in Singapore out of a physical location in Singapore or with employees located predominantly in Singapore. With the new omnibus act, an entity which is incorporated in Singapore that does not provide any payment services in Singapore whatsoever will still need to be licensed.

The consultation period closed on 20 August 2020 and MAS is expected to provide a response in due course.



## Scope of E-money and Digital Payment Tokens

On 23 December 2019, the Monetary Authority of Singapore (MAS) published a consultation paper, seeking comments on the scope of money, e-money and digital payment tokens (DPT) and the regulation of payment services based on these emerging forms of payment.

In view of recent innovations that have led to the emergence of new payment instruments that could potentially challenge the prevailing concept of money

Although the Payment Services Act 2019 (the Act) established definitions of e-money and DPT, recent innovations have led to the emergence of new payment instruments that it considers could potentially challenge the prevailing concept of money.

Accordingly, the MAS is reviewing its approach to e-money and DPT in light of the potential for certain stablecoins to become more widely used yet not fall neatly into existing definitions of payment instruments. The consultation paper seeks views from on the understanding of money, e-money and DPTs, including features that distinguish these forms of payments from each other. The MAS also seeks views on the regulatory treatment of e-money based payment services, and DPT services, including on whether the existing definitions of e-money and DPT in the Act remain relevant.

The consultation period closed on 28 January 2020 and a response from MAS is expected in Q1 2021.

MAS noted that If appropriate, it may consider further changes to its regulatory regime in light of responses received to the consultation paper.

## Environmental Risk Management Guidelines

On 8 December 2020, the MAS issued three Guidelines on Environmental Risk Management for banks, insurers and asset managers respectively (“Guidelines”).

The Guidelines aim to enhance financial institutions’ resilience to environmental risk, and strengthen the financial sector’s role in supporting the transition to an environmentally sustainable economy, in Singapore and in the region. This is part of MAS’ Green Finance Action Plan to become a leading global centre for green finance.

The Guidelines, which were co-created with financial institutions and industry associations, set out MAS’ supervisory expectations for banks, insurers and asset managers in their governance, risk management, and disclosure of environmental risk:

- i. Governance – Boards and senior management of financial institutions are expected to incorporate environmental considerations into their strategies, business plans, and product offerings, and maintain effective oversight of the management of environmental risk.
- ii. Risk Management – financial institutions should put in place policies and processes to assess, monitor, and manage environmental risk.
- iii. Disclosure – financial institutions should make regular and meaningful disclosure of their environmental risks, so as to enhance market discipline by investors.

In conjunction with the issue of the Guidelines, MAS also issued three sets of responses to feedback received on the consultation papers issued on 25 June 2020.

In its responses to the consultation papers, MAS stated that it will provide a transition period of 18 months, recognising that financial institutions may face initial challenges in implementing the Guidelines, and financial institutions’ approaches to managing and

disclosing environmental risks are expected to mature as the methodologies for assessing, monitoring and reporting such risks evolve. Notwithstanding, financial institutions should strive to implement the Guidelines as soon as possible, and demonstrate evidence of implementation progress over the transition period. MAS will start engaging key financial institutions on their implementation progress from Q2 2021.

## Hong Kong Entries

### Anti-Money Laundering (“AML”) and Counter-Terrorist Financing (“CTF”)

Amendments to the Hong Kong Anti-Money Laundering (AML) and Counter-Financing of Terrorism (CTF) Guideline, renamed the “Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (for Licensed Corporations)” (the AML Guideline), came into effect on 01 November 2018.

Key amendments included:

- i. expanding the types of politically exposed persons (PEPs) to include customers who have been entrusted with a prominent function by an international organisation and
- ii. flexibility in customer due diligence processes through a risk-based approach (RBA).

On 16 April 2019, Hong Kong’s Securities and Futures Commission (SFC) posted an updated AML / CTF Self-Assessment Checklist for Licenced Corporations (LCs) and Associated Entities (AEs) to assess compliance with key AML / CTF requirements

On 14 June 2019, the Hong Kong Monetary Authority (HKMA) released its key observations on the application of AML and CTF measures by Authorised Institutions (AIs) when on-boarding customers of Small and Medium-sized Enterprises (SMEs).

Key HKMA suggestions for improvement include:

- i. customer risk assessments - being able to distinguish legitimate from fraudulent SMEs through taking steps to understand each customer’s business rather than simply matching customer details against a set of red flag indicators
- ii. customer due diligence - ensuring that measures are proportionate to the risk level of the customer
- iii. implementation and training - providing adequate training to front-line staff to support the exercise of discretion and judgment in the application of the RBA and
- iv. use of technology - utilising appropriate technology solutions to promote efficiency.

On 19 July 2019, the HKMA issued a money laundering and terrorist financing risk assessment report (the Report) for the stored value facility (SVF) sector. The Report notes that the SVF sector carries a medium level of money laundering / terrorist financing risk and identifies a number of areas for further action. The assessment and recommendations in the Report will be incorporated into an enhanced framework for SVF account management, and appropriate amendments will be made to the Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Stored Value Facility Licensees).

On 4 September 2019, the HKMA issued separate circulars to AIs and SVF licensees about the Mutual Evaluation Report of Hong Kong published by the Financial Action Task Force and the Asia Pacific Group on Money Laundering. The Report assessed the compliance and effectiveness of Hong Kong’s AML and CTF regime against international standards. Major themes from the Report, highlighted by the HKMA, include:

- i. continuing efforts to review and update understanding of AML and CTF risks
- ii. improving the quality and timeliness in suspicious transaction reporting and

iii. focussing efforts in areas of greatest potential to address AML and CTF risks, continuing to develop information-sharing approach and using technology to combat AML and CTF risks.

On 18 September 2020, the SFC launched a three-month consultation on proposals to amend the AML Guideline and the Prevention of Money Laundering and Terrorist Financing Guideline issued by the SFC for Associated Entities. The proposed amendments provide further guidance to the securities industry on implementing AML/CTF measures in a risk-sensitive manner with reference to the Guidance for a Risk-based Approach for the Securities Sector published by the Financial Action Task Force (FATF) on 26 October 2018, and address the areas for enhancement identified in the FATF's assessment of Hong Kong in its Mutual Evaluation Report in 2019.

Also on 18 September 2020, the amended Guideline on Anti-Money Laundering and Counter-Financing of Terrorism (For Stored Value Facility Licensees) ("AML Guideline for SVF Licensees") was gazetted by the Hong Kong Monetary Authority ("HKMA"), following consultation with the SVF industry. The amendments to the AML Guideline for SVF Licensees take into account the FATF's assessment of Hong Kong in its Mutual Evaluation Report in 2019, and include (i) replacing the existing "streamlined approach" to conducting customer due diligence with a "tiered approach", and (ii) providing guidance to facilitate adoption by SVF licensees of technology solutions for remote customer on-boarding, articulating the principles of identity authentication and identity matching. The amended AML Guideline for SVF Licensees will take effect on 2 July 2021.

### Banking - Culture Reform

On 19 December 2018, the Hong Kong Monetary Authority (HKMA) issued a circular announcing supervisory measures designed to assess progress made by authorised institutions (AIs) in complying with the HKMA's Bank Culture Reform initiative announced in a circular in March 2017

Specifically, three supervisory measures were announced:

- i. AIs were required to conduct self-assessments on their governance arrangements and policies and procedures covering corporate culture implemented following the March 2017 circular
- ii. the HKMA will conduct focus reviews of chosen AIs' practices in relation to bank culture through site visits or off-site reviews and
- iii. the HKMA will begin to undertake "culture dialogues" with senior management and/or board members of AIs responsible for bank culture to gather insights and lessons learned.

The HKMA has decided to roll out self-assessments in phases. In 2019, 30 systemically important AIs in Hong Kong completed their self-assessments on their culture enhancements efforts and the HKMA published its Report on Review of Self-Assessments on Bank Culture in May 2020 further to these self-assessments. Other institutions not covered in this first phase are expected to "reflect on their insights, lessons learned and issues encountered in their culture enhancement initiatives"

As for focus reviews and culture dialogues, the HKMA will notify AIs of their obligations in relation to these on an ad-hoc basis. In a speech given in January 2020 by Alan Au, HKMA Executive Director of Banking Conduct, the HKMA plans to enhance its supervision of banking culture by:

- i. sharing details of the HKMA's observations from the review of self-assessments;
- ii. commencing focussed reviews into certain key areas of bank culture;
- iii. continuing its dialogues and engagement with AIs on the effectiveness of culture enhancement efforts.

### Cross-border supervision cooperation (Mainland)

The Securities and Futures Commission (SFC) has signed memoranda of understanding (MoU) with:

- i. the China Banking and Insurance Regulatory Commission (08 June 2018) and
- ii. the China Securities Regulatory Commission (CSRC) (03 December 2018).

The memoranda relate to the cooperation and exchange of information in connection with the supervision and oversight of regulated entities that operate on a cross-boundary basis in Hong Kong and the Mainland.

In June 2019, the SFC and CSRC reached an agreement on a co-operative framework to facilitate coordinated investigations into cases of mutual concern and explored ways to further strengthen cross-border enforcement cooperation, including:

- i. a notification mechanism for cases involving companies listed both in Hong Kong and on the Mainland;
- ii. an evidence sharing mechanism under the IOSCO Multilateral Memorandum of Understanding; and
- iii. organising thematic joint training and case study workshops to share investigation technique and experiences.

On 03 July 2019, the SFC entered into a tripartite MoU with (a) the CSRC and (b) the Ministry of Finance of the People's Republic of China (MOF), under which the CSRC and MOF will facilitate the SFC's access to audit working papers created by Hong Kong accounting firms and kept in the Mainland in connection with the SFC's investigations into Hong Kong-listed Mainland companies and their related entities or persons.

### Employment - Anti-Discrimination

The Discrimination Legislation (Miscellaneous Amendments) Ordinance 2020 came into force on 19 June 2020.

The Ordinance introduces changes to anti-discrimination laws in Hong Kong

The key provisions include:

1. protection from discrimination on the grounds of breastfeeding
2. prohibiting discrimination and harassment on the grounds of imputed race
3. expanding protection from discrimination and harassment by association with a race
4. broadening the scope of harassment protection and
5. removing the prerequisite for proof of intention to discriminate before awarding damages for indirect discrimination claims under the Sex Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance.



The provisions relating to discrimination on the ground of breastfeeding will not come into effect until 19 June 2021.

### Employment – Personal Data guidance for employers during COVID-19

On 30 March 2020, the Office of the Privacy Commissioner for Personal Data (PCPD) published guidance on the collection and use of personal data arising from measures taken by employers during the COVID-19 pandemic. A summary of the key points is as follows:

1. Generally, there is a legitimate basis for employers to collect additional data of their employees (e.g. an employee's temperature, information on medical symptoms of COVID-19 and recent travel history) to help control the spread of the disease and to protect the health of employees. Nonetheless, employers must bear in mind that the general rule that measures taken to collect data must be necessary, appropriate, and proportionate continues to apply. Least privacy intrusive measures are preferred. Employers must provide employees with fresh Personal Information Collection Statements, if the collection of data is not covered by their existing privacy notices.
2. Personal data collected by employers for COVID-19-related purposes must not be used or disclosed for other unrelated purposes, unless express and voluntary consent is obtained from the individuals concerned or exemptions apply. It will not be a contravention of the PDPO for employers to disclose the identity, health and location data of individuals to the Government or health authorities solely for the purposes of tracking down and treating the infected, and tracing their close contacts when pressing needs arise. On the other hand, it is generally sufficient for employers to notify relevant parties at the workplace (e.g. other employees, office and building management etc.) without disclosing personally identifiable information of the infected and so under most circumstances, disclosure of the name and other personal particulars of an infected employee in the notice will not be considered as necessary or proportionate.
3. All practicable steps must be taken to protect the personal data collected against unauthorised or accidental access (e.g. storing the data in a locked cabinet and encrypting the data). This is particularly important for medical or health data because it is considered more sensitive and a disclosure of such data may cause significant harm to the individuals concerned.
4. Employers need to permanently destroy the personal data collected when the purpose of collection is fulfilled, such as when there is no evidence suggesting that any employees have contracted COVID-19 or have close contacts with the infected after a reasonable period of time.

These guidelines are available here:

[https://www.pcpd.org.hk/english/media/media\\_statements/press\\_20200330.html](https://www.pcpd.org.hk/english/media/media_statements/press_20200330.html). Specifically in relation to work-from-home arrangements, the PCPD published three further guidance notes on 30 November 2020. The overall theme is that the same standard should apply to the security of personal data and the protection of personal data privacy when working from home, as with working in an office, and the notes offer general guidance and practical advice to organisations and employees in that regard.

These three guidance notes are available here:

- [Protecting Personal Data under Work-from-home Arrangements: Guidance for Organisations](#)
- [Protecting Personal Data under Work-from-home Arrangements: Guidance for Employees](#)
- [Protecting Personal Data under Work-from-home Arrangements: Guidance on the Use of Video Conferencing Software](#)

## Employment – Mandatory Reference Checking Scheme

On 8 May 2020, the HKMA published a consultation paper on a proposed Mandatory Reference Checking Scheme (MRC Scheme) which will require authorised institutions (AIs) in Hong Kong who are recruiting to fill certain specified roles to obtain references from an applicant's current and former employers who are also AIs in Hong Kong using a standard template. It is proposed that the MRC scheme would cover directors and senior management in the first phase, and would extend the coverage in the second phase to employees heading key supporting functions (including human resources, risk management, legal, compliance, internal audit and other equivalent units) and those who have client facing or sales responsibilities (including staff carrying out securities, insurance and MPF-related regulated activities, as well as branch managers, tellers and customer relationship representatives).

Apart from the general employment information such as duration of employment, roles and responsibilities and reason for cessation of employment, some specific information will also be included in the standard reference template. This specific information includes: incidents of breach of legal or regulatory requirements under the Banking Ordinance, the Securities and Futures Ordinance, the Insurance Ordinance and the Mandatory Provident Fund Schemes Ordinance; incidents related to honesty, integrity or matters of a similar nature; misconduct reports filed with the HKMA; internal or external disciplinary action arising from conduct matters; and any other additional information relevant to the fit and proper assessment.

The HKMA published the consultation paper on 8 May 2020. The consultation closed on 7 August 2020. Results of the consultation have yet to be released.

## Employment - Statutory Maternity Leave

The Employment (Amendment) Ordinance 2020 came into operation 11 December 2020 to extend the statutory maternity leave period from 10 to 14 weeks, with calculation of statutory maternity leave pay for additional four weeks remaining unchanged (using four-fifths of the employee's average daily wages).

This is subject to a statutory cap of HK\$80,000 per employee. The Labour Department has released preliminary details of the reimbursement scheme. The documents needed to apply for this include: (1) payment records (e.g. salary slips or bank transaction records) for the full statutory maternity leave period; (2) wage records of the 12 months preceding the commencement of maternity leave of pregnant employees; and (3) the pregnancy proofs provided by the employees (e.g. medical certificates specifying the expected dates of confinement and medical certificate or certificates of attendance for examinations in relation to pregnancy). The Government aims to put in place an electronic portal for applications in the first half of 2021.

Certain other technical amendments were also passed, including:

1. aligning the definition of “miscarriage” in the Employment Ordinance with the prevailing medical definition and practices adopted in other legislation (i.e., from “before 28 weeks” to “before 24 weeks” of pregnancy), to grant (where other required conditions are met) an employee statutory maternity leave where she suffers a miscarriage in or after the 24th week of pregnancy;
2. entitling an employee to sickness allowance where she has attended a medical examination in relation to pregnancy provided she is able to produce a certificate of attendance (rather than requiring a medical certificate); and
3. extending the period within which a male employee may choose to take paternity leave from ten to 14 weeks after the delivery of his child

### Employment – Proposal to Modernise Data Privacy Laws

The Hong Kong Government is formally considering possible amendments to the Personal Data (Privacy) Ordinance (Cap.486). The Hong Kong Legislative Council’s Panel on Constitutional Affairs has published a discussion paper aimed at strengthening the protection of personal data and seeking views on proposed amendments in six selected areas, which include:

1. implementing a mandatory data breach reporting mechanism
2. imposing new data retention governance requirements
3. expanding the Privacy Commissioner’s powers
4. introducing direct regulation of data processors
5. expanding the definition of personal data and
6. implementing regulation on the practice of “doxxing” (i.e. publishing private or identifying information about a person without consent, typically with malicious intent).

The Hong Kong Government will endeavour to complete formulation of concrete legislative amendment proposals within 2021.

### Employment - Mandatory Provident Fund - contributions

Employers and employees are required to each contribute 5% of employees’ relevant income for the Mandatory Provident Fund (MPF).

Currently, an employee who is paid monthly is exempted from making MPF contributions if he/she earns less than HK\$7,100 per month (although the employer is still obliged to contribute).

MPF contribution is capped at HK\$1,500 for each of the employer and employee (i.e., HK\$3,000 in total), if a monthly-paid employee earns more than HK\$30,000 per month.

The Mandatory Provident Fund Scheme Authority has proposed to Government that thresholds should be adjusted so that

1. the exemption income threshold would change from HK\$7,100 to HK\$8,250 per month; and
2. the maximum income level would increase
  - a. from HK\$30,000 to HK\$39,000 as a first stage; and
  - b. to HK\$48,000 two years later.

## Employment - Mandatory Provident Fund – offsetting severance or long service payments

Currently, employers have the option of offsetting a departing employee's severance payment or long service payment against the value of the employer's contribution to the employee's Mandatory Provident Fund scheme

On 29 March 2018, the Hong Kong Government put forward a preliminary proposal setting out the basis of abolishing this offsetting arrangement and suggested providing financial subsidy to employers to assist with the transition.

On 10 October 2018, following a consideration of views expressed by various stakeholders, the Chief Executive announced in her 2018 Policy Address that the Government would provide a total subsidy of HK\$29.3 billion to employers over a 25-year period. This represents a substantial increase from the preliminary proposal of HK\$17.2 billion over 12 years.

The calculation of severance and long-service payments will remain unchanged at two-thirds of an employee's monthly wages (capped at \$15,000) multiplied by number of years of service, capped at HK\$390,000.

Initially, the Hong Kong Government aimed to publish the relevant bill and introduce it into the Legislative Council by the end of 2020, but the Labour Department has indicated in response to an enquiry by the press that it now aims to submit the bill to the Legislative Council in the next term which is not expected to commence until after September 2021. At this stage, it is unclear whether the initial intended enactment by 2022 and implementation of abolition in 2024 will be achieved.

## Online and offline distribution of complex products

On 28 March 2018, following industry consultation, the Securities and Futures Commission of Hong Kong (the SFC) issued Guidelines on Online Distribution and Advisory Platforms (the Guidelines).

The Guidelines require an intermediary to:

- i. ensure that a transaction in a complex product is suitable for the client in all circumstances, irrespective of whether a solicitation or recommendation is made and
- ii. provide the client with information and warning statements about complex products.

On 04 October 2018, the SFC further announced that, under a new paragraph 5.5 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Para 5.5), additional protective measures will also apply to the sale of complex products in an offline environment.

The Guidelines and Para 5.5 became effective on 06 July 2019.

Following this effective date, additional protection must be provided to investors when purchasing complex products without solicitation or recommendation.

Authorised Institutions were required to implement the requirements applicable to online and offline platforms by 23 August 2019.

## OTC derivatives - regulation

In April 2019, the Hong Kong Monetary Authority and the Securities and Futures Commission of Hong Kong (the SFC) issued a joint consultation on further enhancements to the OTC derivatives regulatory regime.

Specifically, three new measures were proposed, namely to:

- i. mandate the use of Unique Transaction Identifiers for the reporting obligation
- ii. revise the list of designated jurisdictions for the masking relief of the reporting obligation and
- iii. update the list of Financial Services Providers under the clearing obligation.

Consultation conclusions were published in respect of (iii) above on 28 June 2019. A revised list of Financial Services Providers was gazetted on 22 November 2019 and became effective on 01 January 2020

On 18 December 2019, the SFC published its consultation conclusions on proposals to impose margin requirements for non-centrally cleared OTC derivatives.

An LC which is a contracting party to a non-centrally cleared OTC derivative transaction entered into with a “covered entity”, as defined in the Code of Conduct, will be required to exchange margin with the counterparty if the notional amount of its outstanding non-centrally cleared OTC derivatives exceeds specified thresholds.

Consequential amendments to the Code of Conduct were gazetted in June 2020.

## Uncertificated securities market – consultation

On 28 January 2019, the Securities and Futures Commission of Hong Kong (the SFC), the Hong Kong Exchanges and the Clearing Limited (HKEX) and Federation of Share Registrars Limited (FSR) issued a joint consultation paper proposing a revised operational model for implementing an uncertificated, digitised securities market in Hong Kong.

The new model will allow listed securities and listed shares to be transferred wholly electronically. Paper certificates will be phased out and market participants will be encouraged to communicate wholly electronically. Changes will also allow investors to hold securities in their own name, rather than through a nominee (as is the usual practice currently) – this will give investors a direct relationship with securities issuers and, in consequence, better legal protection of their rights as holders of securities. For example, voting rights will be easier to exercise. Issuers, in turn, will benefit from greater transparency as to the real owners of their securities.

Consultation conclusions were published in April 2020 and consultation feedback indicated strong industry support for the proposed revised model. The SFC, HKEX and FSR will work on further developing the technical aspects and introducing amendments to both primary and subsidiary legislations, as well as to various rules and procedures.



## Netherlands Entries

### Amendment to the Exemptions Regulation under the Financial Supervision Act

An exemption to the requirement to hold a license for providing consumer credit may be available to a firm that is transferee of claims under a consumer credit agreement where:

- i. the firm has not concluded the relevant consumer credit agreement (but the initial credit provider has); and
- ii. the initial credit provider continues to execute and administer the relevant consumer credit agreement.

### Anti-Money laundering - implementation of MLD IV requirement on beneficial ownership

This act implements the requirement for entities to obtain and hold adequate, accurate and current information on their beneficial ownership

### Anti-Money laundering - amendment to the Financial Supervision Act (implementation of the Banking Data Portal Act)

The Banking Data Portal Act imposes on parties that offer a payment account (with a Dutch IBAN-number) the obligation to connect to a banking data reference portal

### Anti-Money laundering - amendment to the Money Laundering and Terrorist Financing (Prevention) Act.

- i. [The amendment includes:](#) a ban on cash payments above EUR 3,000;
- ii. requirement for institutions to enquire at previous service provider of the relevant client on integrity risks; and
- iii. a measure enabling institutions to outsource monitoring of transactions and to exchange data more easily, to extent required for monitoring of transactions.

### Anti-Money laundering - General Guideline on the Money Laundering and Terrorist Financing (Prevention Act).

On 22 December 2019 the Dutch Ministry of Finance issued a consultation paper, seeking views on its proposals to amend the General Guideline on the Money Laundering and Terrorist Financing (Prevention Act).

In particular, the consultation paper examines:

- i. underlying principles of the Money Laundering and Terrorist Financing (Prevention) Act (Wwft)
- ii. the scope of the Wwft
- iii. risk-management

- iv. customer due diligence (more specifically, the scope of the requirement to perform customer due diligence, the timing, content and outsourcing thereof and the reporting of customer due diligence are discussed;
- v. high-risk third countries
- vi. transaction reporting
- vii. politically exposed persons (PEPs) and
- viii. data protection.

## Financial Supervision Amendment Act 2021

Part of an annual review of the FSA and related legislation for general amendment, updates and clean-up.

The 2021 Amendment Act includes a requirement that the Dutch National Bank, when calibrating the assessment of financial soundness of applicant of a declaration of no objection which applies to all group companies, must also assess the financial soundness of those group companies intending to obtain (or expand) a qualified holding (or exercising any influence) in the relevant target company.

## Remuneration Policy (Financial Enterprises) Act Amendment

The Minister of Finance has proposed amendments to the Remuneration Policy (Financial Enterprises) Act, including the following measures with respect to fixed pay:

- i. a requirement on the retention, for a period of five years, of shares or components of fixed pay whose value depends on the market value of the financial firm
- ii. a requirement that the remuneration policy of a financial firm prescribes the way in which the remuneration of management and employees relates to the social function of firm and
- iii. an exemption to tighten the bonus cap applicable to employees who are not subject to a collective labour agreement.

## Risk weighting of mortgage loans

The amendment includes the requirement that banks are subject to the obligation to use internal models to apply a minimum floor to their risk weighting of domestic loan portfolios.

Furthermore, it elaborates on the requirements to calculate such minimum floor.

The legal basis for this amendment is provided for in article 458(2)(d) CRR, which allows Member State to implement draft national measures with respect to, amongst others, risk weighting for targeting asset bubbles in the residential and commercial property sector.

## Shareholder Reporting Requirement Act

The amendment would include lowering, to 2%, the threshold for triggering reporting requirements with respect to substantial shareholdings and short positions.

The consultation period ended on 4 July 2019.

## Shareholder Rights Directive II

On 1 December 2019, the law implementing Shareholder Rights Directive II into Dutch law entered into force, excluding provisions subject to transitional law.

## Ireland Entries

### AML Directives 4+5

Ireland's European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 implement Article 30 of the AMLD4 into Irish law and require all Irish companies, as well as industrial and provident societies, to maintain a register of their beneficial owners.

Entities have been required to report this information to the central register since 22 June 2019.

The European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020 require applicable financial vehicles to maintain a register of their beneficial owners and to report this information to a central register. Applicable financial vehicles are ICAVs, unit trusts and credit unions. Entities existing on 25 June 2020 must file their information by 25 December 2020, whereas entities established after that date have six months to do so.

### AML Directives 4+5

Ireland's EU (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 implement Article 31 of the AMLD4 into Irish law and require all Irish trustees to maintain a register of trust beneficial ownership.

Further information is available [here](#).

### Credit Servicing

"Credit servicing" includes:

- ownership of loans
- the determination of the overall strategy for the management and administration of a portfolio of credit agreements and
- the maintenance of control over key decisions relating to such portfolio.

### Credit Reporting

The Central Credit Register is a database of personal and credit information on loans of EUR 500 or greater.

Further information is available [here](#).

In scope credit agreements include:

- i. credit cards
- ii. overdrafts
- iii. personal loans
- iv. mortgages
- v. business loans

- vi. moneylender loans
- vii. loans from local authorities
- viii. hire purchase (HP) agreements
- ix. Personal Contract Plans (PCP) and similar types of finance.

Lenders considering application for HP and PCP must also consult the Register.

### **Fitness + Probity - Individual Accountability Framework**

The Central Bank's proposed Individual Accountability Framework is set out in the [report](#) on the behaviour and culture of the Irish retail banks. and contains four elements:

- i. Enforceable Conduct Standards
- ii. Senior Executive Accountability Regime (**SEAR**)
- iii. Enhancements to the current Fitness & Probity Regime; and
- iv. Unified Enforcement Process.

The proposals represent a significant extension of existing fitness and probity regime in Ireland.

The relevant legislation is expected before the end of 2020.