

CHARLTONS
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Webinar

**2022 HKEX AND SFC
DISCIPLINARY &
ENFORCEMENT ACTIONS
MAY TO AUGUST 2022**



OVERVIEW OF ENFORCEMENT TRENDS

- MAY TO AUGUST 2022

HKEX

- Continue to enforce the Stock Exchange Listing Rules and the Directors' Form B undertaking by conducting enforcement actions targeting corporate misconduct or misgovernance and internal control failures

SFC

- Focus on larger and more impactful cases involving large scale licensed corporation and imposing sanction with a notable amount of fines



ENFORCEMENT AND DISCIPLINARY ACTION

- May 2022

HKEx's Disciplinary Action Against Wuzhou International Holdings Limited and Nine Former Directors

- Between January 2017 and December 2018, Wuzhou carried out nine transactions, which involved an acquisition and disposals of equity interest in the subsidiaries
- Eight transactions constituted discloseable transactions, while one of them was a very substantial disposal, for a consideration with an aggregate value of over RMB1.1 billion.
- An independent investigation initiated by RSM Corporate Advisory Hong Kong Limited found that, among the transfer of equity interests in some of the subsidiaries of Wuzhou, there were 15 of them which were not approved by Wuzhou's board of directors in 2018 (among which, five of them constituted discloseable transactions while one of them was a very substantial disposal)
- Wuzhou also never announced the Additional Disposals with the details required under Rule 14.58 of the Listing Rules, and only disclosed brief information about them in its 2018 annual report

ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

HKEx's Disciplinary Action Against Wuzhou International Holdings Limited and Nine Former Directors

Directors' Involvement in the Transactions and the Additional Disposals

- Mr. Shu Ce Cheng, former chairman and ED, and Mr. Shu Ce Wan, former chairman, chief executive officer and ED, were both involved in the negotiations of the Transactions and the Additional Disposals, and the handling of the relevant agreements
- Use of subsidiaries' chops - Mr. Shu Ce Wan's approval was required at the material time for the affixation to the agreements for those transactions
- A disposal was referred to in the financial statements in the 2017 annual report, and was presented to the board for review and approval but none of the directors raise any enquiries into the second disposal nor into any related Listing Rule compliance issues



ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

HKEx's Disciplinary Action Against Wuzhou International Holdings Limited and Nine Former Directors

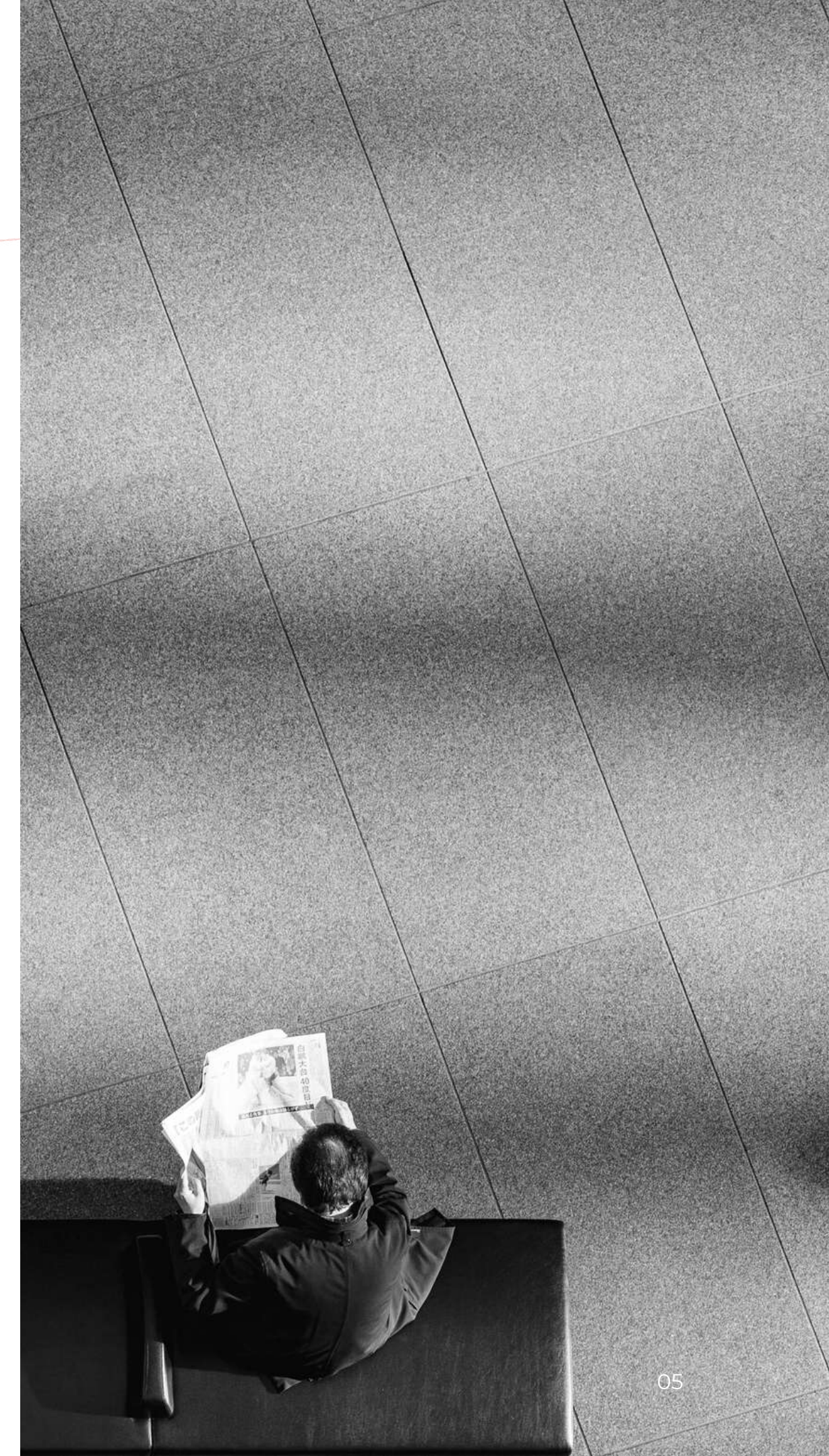
Key findings of the Listing Committee

In respect of Listing Rules breaches

- LR 14.34 - as soon as possible after the terms of a discloseable transaction or very substantial disposal have been finalised, the listed company must inform the Stock Exchange and publish an announcement
 - Wuzhou breached LR 14.34 when it delayed announcing multiple transactions
- Also breached LR 14.38A, 14.48 and 14.49 in failing to issue a circular and obtain shareholders' approval for the additional disposal which constituted a very substantial disposal.

In respect of internal control failures

- no mechanism and/or written procedures for identifying, reporting and executing the notifiable transactions, or for compliance with the requirements in respect of notifiable transactions under the Stock Exchange Listing Rules



ENFORCEMENT AND DISCIPLINARY ACTION

- MAY 2022

HKEx's Disciplinary Action Against Wuzhou International Holdings Limited and Nine Former Directors

Key findings of the Listing Committee

In respect of breach on Directors' duties and undertakings

- **LR 3.08** - provides, among others, that the Stock Exchange expects the directors of an issuer, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law
- **Appendix 5B of the LR** - each director will comply to the best of his/her ability, and to use his/her best endeavours to procure the company's compliance, with the Listing Rules, and cooperate in any investigation conducted by the Stock Exchange
- Found that Mr. Shu Ce Cheng (former chairman and ED) and Mr. Shu Ce Wan (former chairman, chief executive officer and ED) breached LR 3.08 and their directors' undertakings by
 - a. failing to take steps to procure the Company's compliance with the Listing Rules in respect of the transactions;
 - b. allowing the registration of the purchaser in one of the Transactions to proceed even before receiving the consideration for that disposal;
 - c. failing to report the transactions to the Board in a timely manner for its information and approval; and
 - d. failing to ensure that the Company established and maintained an adequate and effective internal control system and risk management system.

ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange's Disciplinary Action against Two Directors of CIL Holdings

- CIL Holdings commenced a money lending business in May 2014 and granted granted certain loans with multiple extension between June 2016 and June 2019. As at 30 June 2019, the Loans remained outstanding and substantial impairments of approximately HK\$1.26 million were recorded.
- Auditors issued a qualified opinion on CIL Holdings' annual results for the year ended 30 June 2019 as they were unable to obtain adequate audit evidence to determine whether the allowance for impairment losses was appropriate
- Mr. Ke Jun Xiang, an executive director and the chairman, and Mr. Fu Dao Ding, an executive director were responsible for the money lending business and implementing internal controls

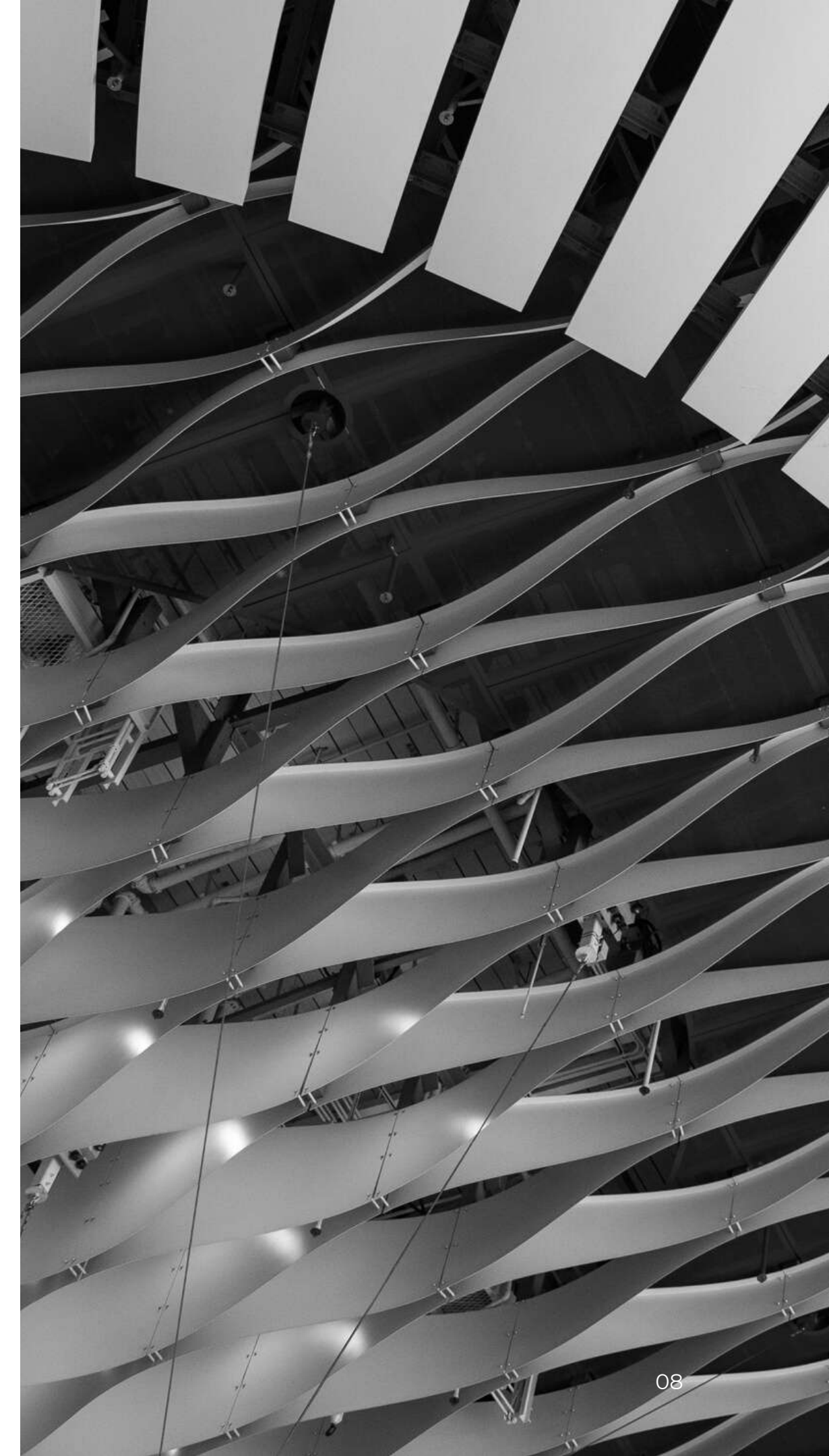


ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange's Disciplinary Action against Two Directors of CIL Holdings

Internal control deficiencies

- insufficient key financial information of some borrowers for the purpose of determining their creditworthiness with corresponding financial proof could not be located;
- some loan agreements required the property of the borrower to be pledged, however the relevant mortgage deeds had not been executed, causing the several properties pledged could not be foreclosed;
- CIL Holdings did not obtain the title deeds of the properties owned by the borrowers for the mortgage; and
- no procedures dealing with loan and interest repayment defaults in the pre-existing credit and internal control policy.



ENFORCEMENT AND DISCIPLINARY ACTION

- MAY 2022

Stock Exchange's Disciplinary Action against Two Directors of CIL Holdings

Key findings of the Listing Committee

Mr. Ke and Mr. Fu breached Listing Rule 3.08 and their Directors' Undertakings as they failed to

1. take sufficient steps to safeguard CIL Holdings' interests; and
 2. ensure that CIL Holdings implemented and maintained adequate and effective internal controls in relation to the money lending business
- Relied on individual credit assessments of the borrowers' financial position, and did not follow the relevant policy and procedures to acquire the relevant documentation
 - Did not verify ownership of the assets pledged and did not execute mortgage deeds over the pledged assets as required by the relevant agreements

ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange's Disciplinary Action against Two Directors of CIL Holdings

Stock Exchange's sanction and directions

- the deficiencies in the internal control were caused by: (a) the absence of procedures in the credit and internal control policy dealing with loan and interest repayment defaults; and (b) the failure by Mr. Ke and Mr. Fu to follow the policy and the procedures thereunder
- criticised Mr. Ke and Mr. Fu
- directed Mr. Ke and Mr. Fu to attend 15 hours of training each on regulatory and legal topics and Listing Rule compliance (including at least three hours on each of directors' duties and the Corporate Governance Code) within 90 days



ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange 's Disciplinary Action Against CR Construction Group Holdings Limited, Six Directors and Zhejiang State-owned Capital Operation Company Limited

- Failure to disclose reorganisation arrangement in the IPO prospectus and breaches of the six-month post-listing disposal restrictions under the Stock Exchange Listing Rules
- Zhejiang SC, Zhejiang Construction Investment and other controlling shareholders, made a lock-up undertaking, i.e. each company undertook to the Stock Exchange that it would not, among other things, dispose of any shares in CR Construction in the first six months post-listing, that was until 16 April 2020

"Reorganisation"

- In April 2019, prior to the issue of the prospectus, Zhejiang SC entered into an agreement with a number of parties, including Dohia Group Company Limited and other shareholders of Zhejiang Construction Investment, which involved the injection of all of Zhejiang Construction Investment's assets and liabilities, including its interest in CR Construction, into Dohia, a Shenzhen-listed company, and the corresponding issuance of shares by Dohia to ZCI's shareholders



ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange 's Disciplinary Action Against CR Construction Group Holdings Limited, Six Directors and Zhejiang State-owned Capital Operation Company Limited

- The Reorganisation was not disclosed to the Stock Exchange during CR Construction's listing application process, and the prospectus did not disclose any information regarding the Reorganisation
- During the first six-month lock-up period, Zhejiang SC carried out the Reorganisation and breached its lock-up undertaking
- On 25 June 2021, Zhejiang Construction Investment was deregistered



ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange 's Disciplinary Action Against CR Construction Group Holdings Limited, Six Directors and Zhejiang State-owned Capital Operation Company Limited

Key findings of the Listing Committee

In respect of prospectus disclosure

- LR 2.13 (2) - requires that information contained in any announcement or corporate communication required under the Stock Exchange Listing Rules, including a prospectus must be accurate and complete in all material respects and not be misleading or deceptive
- **Breached** LR 2.13(2) - as the prospectus the CR Construction was not accurate and complete in all material respects and/or was misleading or deceptive, because the prospectus did not include any information about the Reorganisation

In respect of directors' undertakings

- **Breached** directors' undertakings under Appendix 5B of the LR - all six relevant directors failed to use their best endeavours to procure CR Construction's compliance with the Stock Exchange Listing Rules



ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange 's Disciplinary Action Against CR Construction Group Holdings Limited, Six Directors and Zhejiang State-owned Capital Operation Company Limited

Key findings of the Listing Committee

In respect of lock-up

- LR 10.07(1)(a) - required that a person (or group of persons) shown by the listing document issued at the time of the issuer's listing application to be controlling shareholders of the issuer should not, and should procure that the relevant registered holder(s) should not, amongst others, dispose of any shares in the issuer in respect of which they are shown by that listing document to be the beneficial owners in the first six months after the listing date
- **Breached** LR 10.07(1)(a) and lock-up undertakings - Zhejiang SC carried out the Reorganisation, transferring all of its interest in Zhejiang Construction Investment to Dohia during the first six-month of the lock up period

ENFORCEMENT AND DISCIPLINARY ACTION - MAY 2022

Stock Exchange 's Disciplinary Action Against CR Construction Group Holdings Limited, Six Directors and Zhejiang State-owned Capital Operation Company Limited

Stock Exchange's sanction and directions

Issuance of a public censure against:

1. CR Construction;
 2. Zhejiang SC; and
 3. Six directors – (i) Mr. Guan Manyu, an executive director and chairman; (ii) Mr. Li Kar Yin, an executive director and chief executive officer; (iii) Ms. Chu Ping, an executive director; (iv) Mr. Law Ming Kin, an executive director; (v) Mr. Chan Tak Yiu, an executive director; and (vi) Mr. Yang Haojiang, a non-executive director.
- Directed the above-mentioned directors to attend 20 hours of training on regulatory and legal topics



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

Stock Exchange's Disciplinary Action against Four Former Directors of Mingfa Group (International) Company Limited

From 2013 to 2015, Mingfa entered into the following agreements

- January 2013 - Mingfa entered into two framework agreements with two counterparties that belonged to Mr. Chen, who was the brother-in-law of Mr. Wong Wun Ming (Mr. Wong), the former non-executive director and Chairman of Mingfa, without notifying the board of directors.
- December 2013 - Mingfa entered into eight contracts to sell the use of rights of eight villas to the two former directors, Mr. Wong and Mr. QZ Huang, and their family members as well as the family members of the two executive directors, Mr. LC Huang and Mr. LS Huang for a sum of RMB 189 million.
- December 2014 - Mingfa and a purchaser, who was a cousin of all the above-mentioned directors of Mingfa, entered into an agreement where Mingfa agreed to sell 51% equity interest in a subsidiary to the purchaser for RMB 663 million. (the "Intended Disposal"). Such disposal was subsequently terminated in September 2016.
- March 2015 - Mingfa entered into a strategic cooperation with Wuxi Sanyang and a guarantor in relation to Mingfa's intended investment in a property being built by Wuxi Sanyang. However, no due diligence was conducted on the matter and a deposit of RMB 15 million was made to Wuxi Sanyang.



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

Stock Exchange's Disciplinary Action against Four Former Directors of Mingfa Group (International) Company Limited

Discrepancies in Mingfa's internal control identified by EY and BDO

- no written contract management procedures and did not have reconciliation procedures for large transactions
- did not have a conflict of interest policy requiring employees to declare existing and potential conflicts
- the list of connected persons and notifiable transactions were not distributed to Mingfa's subsidiaries
- no written agreement requirement for loan transactions between Mingfa and its directors, no written financing management policy, nor any retention of assessment and approval records on loan and contract terms
- did not keep its internal audit reports



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

Stock Exchange's Disciplinary Action against Four Former Directors of Mingfa Group (International) Company Limited

Key findings of the Listing Committee

For Mingfa

1. Rules 14.34, 14A.35 and 14A.36 in respect of the intended disposal of the 51% equity interest of RMB 663 million by failing to publish announcement and obtain independent shareholders' approval for such connected transactions; and
2. Rules 13.46(2)(a), 13.48(1), 13.49(1) and 13.49(6) in respect of the results and reports by failing to making timely publication or despatch of preliminary announcement of interim and annual results and interim and annual reports.

For the relevant directors

- **Breached** LR3.08 and directors' undertakings under Appendix 5B of the LR - all six relevant directors failed to use their best endeavours to procure Mingfa's compliance with the Stock Exchange Listing Rules



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

SFC Disciplinary Action To Reprimand and Fine China Everbright Securities (HK) Limited for HK\$3.8 Million

- Failures to implement adequate and effective internal anti-money laundering and counter-financing of terrorism (AML & CFT) systems and controls to guard against and mitigate the risks of money laundering and terrorist financing associated with third party deposits
- Between January 2015 and February 2017, the SFC reviewed 234 samples of client deposits and found that 76% of them were deposited by third parties but only one was identified by China Everbright as being a third party deposit.
- All these deposits amounted to over HK\$250 million



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

SFC Disciplinary Action To Reprimand and Fine China Everbright Securities (HK) Limited for HK\$3.8 Million

- China Everbright's procedures on identifying third party deposits did not apply to client deposits made through the sub-accounts maintained by China Everbright with a local bank
- Only a monthly review is conducted where its compliance team would randomly select up to 25 client deposits in the sub-accounts and request the local bank to provide supporting documents for the selected deposits
- **SFC:** that such monthly review was deficient in that the review was performed after the deposits had already been accepted and that the sampling size was limited



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

SFC Disciplinary Action To Reprimand and Fine China Everbright Securities (HK) Limited for HK\$3.8 Million

Disciplinary Action For Suspicious Client Fund Deposits

The SFC managed to identify suspicious fund deposits during its investigation into the matter. It found that:

- 11 clients received five or more deposits from multiple third parties, whose relationships with the clients were unknown;
- the amount of net deposits received by seven clients were not commensurate with their estimated net assets. In two cases, the net amount of funds deposited into the client accounts exceeded 12 and 14 times their estimated net assets; and
- in one instance, five clients, who did not appear to have any relationship with each other, received a total of approximately HK\$5 million from the same third party within four days, and they used the funds to trade in the same stock.



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

SFC Disciplinary Action To Reprimand and Fine China Everbright Securities (HK) Limited for HK\$3.8 Million

SFC findings

China Everbright Securities thus breached:

- (i) sections 23, 5(1)(b), and 5(1)(c) of Schedule 2 of the AMLO;
 - (ii) paragraphs 2.1, 5.1(b), 5.1(c), 5.10, 5.11, 7.11, 7.14, and 7.39 of the Guideline on Anti-Money Laundering and Counter-Terrorist Financing; and
 - (iii) General Principle 3, General Principle 7, and paragraph 12.1 of the SFC Code of Conduct for Persons Licensed by or Registered with the SFC
- reprimanded and fined it for HK\$3.8 million

ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

SFC Disciplinary Action To Reprimand and Fine CES Capital International (Hong Kong) Co., Limited for HK\$3.2 Million

- Fine of HK\$3.2 million for failure to discharge its duties as an investment manager of two funds between February 2015 and July 2017
- CES Capital was appointed by Worldwide Opportunities Fund SPC to be the investment manager of two funds: (i) Evergreen Growth Saver SP (from February 2015 to January 2018) and (ii) Hong Kong Investment Fund SP (from March 2016 to January 2018)
- Investment purpose of the two funds was to provide shareholders with a structured investment return by investing substantially all its assets in acquiring the participating shares of a Cayman incorporated underlying company, “Real Estate and Finance Fund”



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

SFC Disciplinary Action To Reprimand and Fine CES Capital International (Hong Kong) Co., Limited for HK\$3.2 Million

Failures as Investment Manager

- CES Capital conducted minimal due diligence on the underlying companies, and had limited or no information about the underlying companies' investments and assets and their respective holdings in them
- Did not take any steps to confirm the relationships between the real properties and the underlying companies
- In respect of monitoring the performance of the funds, CES Capital had no knowledge of what the underlying companies' true values were, but merely performed basic recalculation to confirm figures arithmetically
- Unable to produce any record of the alleged regular meetings within its asset management department to review the performance of the funds or any discussions held in the alleged meetings



ENFORCEMENT AND DISCIPLINARY ACTION - JUNE 2022

SFC Disciplinary Action To Reprimand and Fine CES Capital International (Hong Kong) Co., Limited for HK\$3.2 Million

SFC's views

- CES Capital failed to perform its duties sufficiently and breaches:
 - paragraph 1.2(d) of the SFC Fund Manager Code of Conduct
 - section VIII of the SFC Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC
- CES Capital's failures cast doubt on its ability to carry on regulated activities competently and called into question its fitness and properness to remain licensed
- A public reprimand and a fine of HK\$3.2 million were imposed



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

SFC Reprimands and Fines RBC Investment Services (Asia) Limited HK\$7.7 Million for Mishandling Client Assets

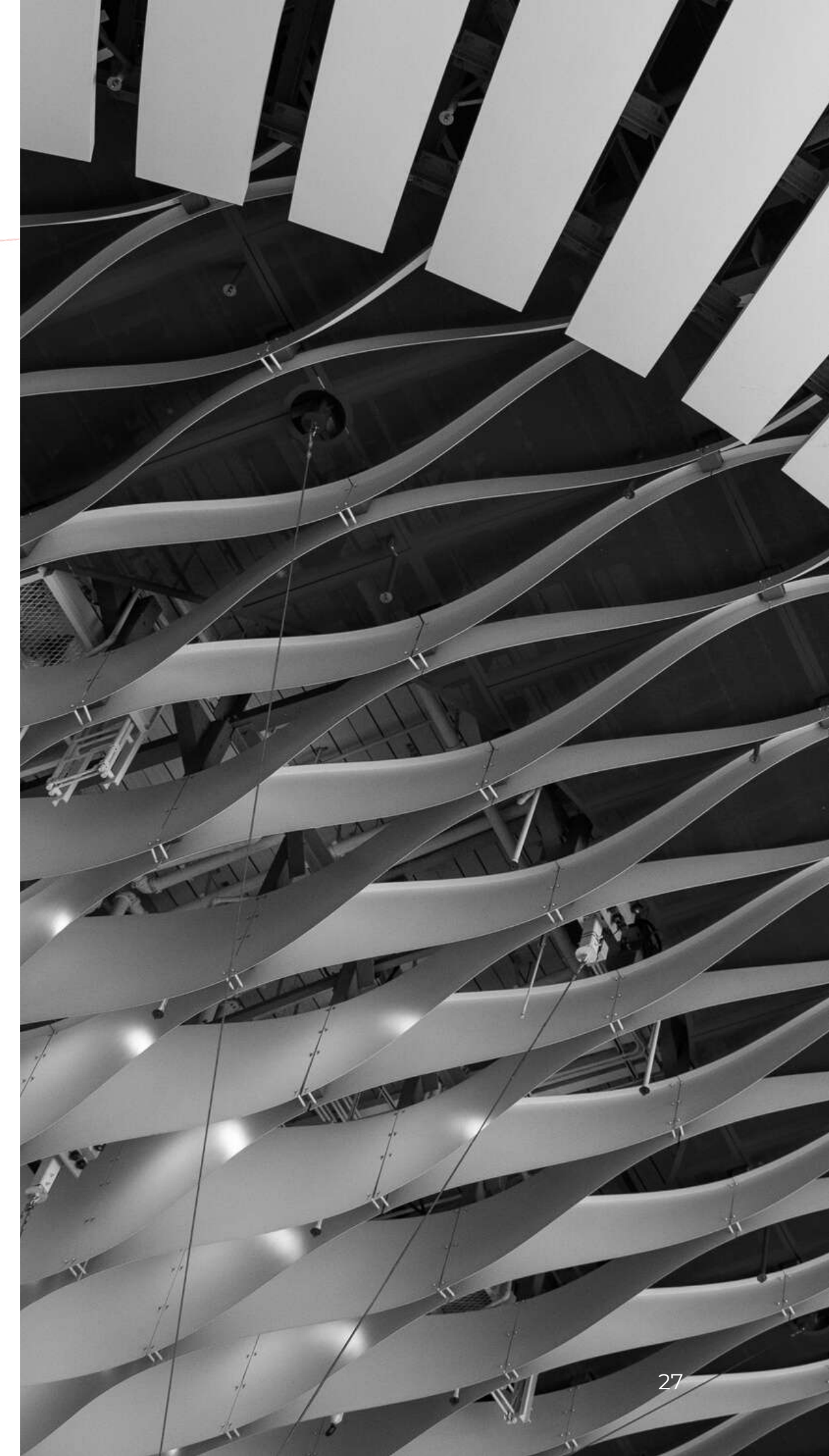
- a HK\$7.7 million fine against RBC for failing to segregate client money and transferring client securities without clients' authority
- SFC investigation found between January 2018 and August 2020, RBC had failed to segregate client money on over eighty different occasions with the individual transaction amounts ranging from HK\$146 to HK\$52 million. In respect of such failures:
 - 68 occasions of intra-day transferring of monies from its client segregated account to its house account for settling loan repayments, making intra-group payments, and payroll funding out of convenience (**breached** section 5(1) of the Client Money Rules)
 - 11 incidents of calculation errors where client monies were under-segregated because of an inadvertent deletion of a summation formula in a spreadsheet template (**breached** section 4(4) of the Client Money Rules)
 - 5 occasions when RBC failed to pay dividends received from RBC's house account to its client segregated account within 1 business day after receipt of the dividends (**breached** section 4(4) of the Client Money Rules)
 - a manual error of RBC staff who omitted a certain amount of client money when calculating the daily client fund segregation amount, resulting in an under-segregation of HK\$48.5 million (**breached** section 4(4) of the Client Money Rules)

ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

SFC Reprimands and Fines RBC Investment Services (Asia) Limited HK\$7.7 Million for Mishandling Client Assets

RBC's failures (con't)

- failures to deposit securities collateral to a recognised clearing house without a valid standing authority
- failed to renew the annual standing letter of authorisation, which was an authorisation for RBC to deposit clients' securities in their margin accounts to Stock Exchange Options Clearing House Limited as collateral to cover the margin requirement for their open short options position
- transfer of securities of non-professional investor clients to Stock Exchange Options Clearing House Limited as collateral without authorisation



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

SFC Reprimands and Fines RBC Investment Services (Asia) Limited HK\$7.7 Million for Mishandling Client Assets

SFC's views

In respect of failure to segregate client money and transferring clients' securities to a clearing house as collateral without a valid authorisation, RBC breached (in particular):

- sections 4(3), 7 and 10 of the Client Securities Rules as it transferred clients' securities to a clearing house as collateral without having obtained valid authorisation from 65 clients between December 2012 and March 2020
- General Principles 2 (Diligence), 8 (Client assets) and paragraph 11.1 (Handling of client assets) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) as it failed to act with due skill, care and diligence, in the best interest of its clients and to ensure that client assets are promptly and properly accounted for and adequately safeguarded



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

SFC Reprimands and Fines Rifa Futures Limited HK\$9 Million

- Fines of HK\$ 9 million against Rifa for its failures in performing adequate due diligence, conduct adequate monitoring of clients' fund movements and failing to implement a more secure login method for their clients' internet trading accounts
- A software called Xinguanjia, which allowed the clients to solicit investors in Mainland China to trade through sub-accounts via Xinguanjia for placing orders
- Rifa, as a Type 2 (dealing in future contracts) licensed corporation under the SFO, was alleged to permit 310 clients to use customer supplied systems (CSSs), including using Xinguanjia, for placing orders

ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

SFC Reprimands and Fines Rifa Futures Limited HK\$9 Million

CSSs

- Customer supplied systems (“CSSs”) are trading software developed and/or designated by the clients that enable them to conduct electronic trading through the Internet, mobile phones and other electronic channels

BSSs

- Broker supplied systems (“BSSs”) are trading facilities developed by exchange participants or vendors that enable the exchange participants to provide electronic trading services to investors through the Internet, mobile phones, and other electronic channels.



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

SFC Reprimands and Fines Rifa Futures Limited HK\$9 Million

Failure to Perform Adequate Due Diligence

Before allowing CSSs to be connected to its broker supplied systems, Rifa only required its clients to:

- (a) apply for a certificate from the vendor of the broker supplied systems; and
 - (b) send a request to Rifa for final approval to use the customer supplied systems.
- Rifa had never instructed it to conducted any due diligence or test on the customer supplied system to examine their design and functions

Failure to Conduct Adequate Monitoring of Fund Movements Of Client Deposits

- 5 clients who had deposited amounts into their accounts that were disproportionate to their declared income and net worth
- Rifa only interviewed 4 of those clients in respect of the disproportionate fund without seeking supporting documents
- Rifa failed to demonstrate adequate know your client checks, proper enquiries into incommensurate deposits, timely and effective telephone calls, and hold clear policies and procedures



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

SFC Reprimands and Fines Rifa Futures Limited HK\$9 Million

SFC's findings

Rifa's conducts breached (in particular):

- **Section 23 of Schedule 2 to the AMLO and paragraph 2.1 of the AML Guideline** - failed to establish and implement adequate and appropriate internal anti-money laundering (AML) and counter-financing of terrorism (CFT) policies, procedures and controls and assess the risks of any new products and services before introducing
- **Section 5(1)(a) of Schedule 2 to the AMLO and paragraphs 4.7.12 and 5.1(a) of the AML Guideline** - failed to review from time to time client information to ensure that they are up-to-date and relevant when a significant transaction is to take place or a material change occurs in the way the client's account is operated
- **Section 5(1)(b) of Schedule 2 to the AMLO and paragraph 5.1(b) of the AML Guideline**, - failed to continuously monitor its business relationship with the clients by monitoring their activities to ensure that they are consistent with its knowledge of the clients and the clients' nature of business, risk profile and source of funds
- **Section 5(1)(c) of Schedule 2 to the AMLO and paragraphs 5.1(c), 5.10 and 5.11 of the AML Guideline** - failed to make relevant enquiries to examine the background and purpose of the transactions, document the enquiries made (and their results), and report the findings to the JFIU where there is any suspicion for transactions that are complex, large or unusual

ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

KTF Capital Management Reprimanded and Fined for Non-Compliance With Financial Resources Requirements

- The SFC reprimanded and fined KTF Capital Management Limited (KTFCM) HK\$400,000 for failing to maintain its required liquid capital and notifying of such failure

Failure to maintain required liquid capital

- On 13 December 2018, KTFCM subscribed for the shares of Fosun Tourism Group upon its initial public offering on the Main Board of the Stock Exchange
- Such subscription was financed by loan causing a liquid capital deficit
- KTFCM entered into an assignment agreement in relation to the shares and the loan and backdated its execution date in an attempt to retrospectively prevent the liquid capital deficit from arising



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

KTF Capital Management Reprimanded and Fined for Non-Compliance With Financial Resources Requirements

Failure to maintain required liquid capital

- Rule 4 of the Securities and Futures (Financial Resources) Rules (FRR) provides that a licensed corporation shall at all times maintain financial resources in the amount required under Rule 4 of the FRR.
 - For KTFCM, a licensed corporation that is licensed for two regulated activities must at all times maintain a paid-up share capital of no less than HK\$5 million
- Rule 6 of the FRR provides that a licensed corporation must maintain at all times liquid capital which is not less than its required liquid capital (approximately HK\$2.8 million in the case of KTFCM).



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

KTF Capital Management Reprimanded and Fined for Non-Compliance With Financial Resources Requirements

Failure to maintain required liquid capital

- Rule 27(1)(a) of the FRR (Proprietary positions of licensed corporations) provides that a licensed corporation must include in its liquid assets listed shares that it beneficially owns at market value, less the haircut amounts in relation to the securities concerned.
 - In KTF's case, the haircut percentage applicable to the shares when calculating KTF's liquid assets was 30% in accordance with item (1)(c) of Table 1 in Schedule 2 to the FRR.
- Rule 44(1)(a) and (g) of the FRR (Concentrated proprietary positions) provides that where a licensed corporation holds for its own account listed shares and the net market value of any such securities which are of the same description equals 25% or more of its required liquid capital, it must include in its ranking liabilities, where the net market value is 51% or more of its required liquid capital, 10% of such net market value.
 - In KTF's case, it was required to include in its ranking liabilities HK\$5.04 million (i.e. 10% of net market value of the shares).



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

KTF Capital Management Reprimanded and Fined for Non-Compliance With Financial Resources Requirements

Failure to Comply with Notification Requirements and Making a Misrepresentation to the SFC

- KTFCM did not notify the SFC as soon as reasonably practicable after becoming aware that its liquid capital fell below the 120% required liquid capital (HK\$3.36 million)
- SFC was only notified 4 months later of such non-compliance by KTFCM's auditors
- Further, KTFCM misrepresented its level of liquid capital when the SFC made its previous inquiry

SFC's views

- KTFCM breached rule 55(1)(a) of the FRR and section 146(1) of the SFO
- KTFCM failed to comply with the relevant FRR requirements means that it also failed to comply with General Principle 7 and paragraph 12.1 of the SFC Code of Conduct



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

Chan Ka Hey Banned from Re-entering the Industry for 6 Months

- The SFC banned Mr. Chan Ka Hey ("Chan"), a former employee at Standard Chartered Bank from re-entering the industry for 6 months from 28 July 2022 to 27 January 2023
- Chan was employed at the time by Standard Chartered Bank as an Insurance Specialist in the Department of Retail Sales Specialists (Wealth Planning Manager)

Misconduct

- Chan's customer was residing and a "Change of Payment Mode and Direct Debit Authorisation Form – Bank Account" form (DDA Form) would have to signed for setting up a direct debit authorisation for her insurance policy
- A signature was missing from the customer on one of the page of the DDA Form
- Chan cut and pasted a signature from such customer onto the page of such DDA form to deceive Standard Chartered Bank and an insurance company that the form was completed and signed by the customer



ENFORCEMENT AND DISCIPLINARY ACTION - JULY 2022

Chan Ka Hey Banned from Re-entering the Industry for 6 Months

SFC's view

- Chan breached section 129 of the SFO and was not a fit and proper person to be a registered person carrying on regulated activities honestly
- SFC banned Chan from re-entering the industry for 6 months



ENFORCEMENT AND DISCIPLINARY ACTION - AUGUST 2022

SFC Reprimands and Fines TC Capital International Limited HK\$3 million and Suspends Its Responsible Officer for Sponsor Failures on an HKEX IPO application

- Reprimanded and fined TC Capital International Limited HK\$3 million for failing to discharge its duties as the sponsor in the HKEX GEM IPO listing application of China Candy Holdings Limited
- SFC's investigation revealed that approximately 45% of the revenue generated by China Candy during the track record period was contributed by its two top customers (the "Customers"), who settled most their payments to China Candy through third party payers

Third party payments

- Third party payments by customers are settlement methods of payment which could be used to disguise the true beneficial owner and/or source of funds.
- Serious consideration should be given by a sponsor regarding customers of an HKEX GEM IPO listing applicant which makes payment via third parties as this could potentially facilitate a fraudulent scheme, particularly if such third parties are connected, for instance, to any suppliers of an HKEX listing applicant.



ENFORCEMENT AND DISCIPLINARY ACTION - AUGUST 2022

SFC Reprimands and Fines TC Capital International Limited HK\$3 million and Suspends Its Responsible Officer for Sponsor Failures on an HKEX IPO application

SFC investigation

- Mr. Edward Wu Wen Guang, who was a responsible officer and sponsor principal of TC Capital in charge of the listing application of China Candy, was aware of the third party payments in the course of preparing the HKEX IPO listing application
- Third party payments was not made a matter falling within the ambit of the due diligence plan
- No enquiries and/or further follow-up due diligence was conducted to ascertain the extent of the third party payments and the rationale for using this payment method
- SFC found that TC Capital failed to (i) conduct all reasonable due diligence; and (ii) exercise professional scepticism in respect of the third party payment arrangements



ENFORCEMENT AND DISCIPLINARY ACTION - AUGUST 2022

SFC Reprimands and Fines TC Capital International Limited HK\$3 million and Suspends Its Responsible Officer for Sponsor Failures on an HKEX IPO application

TC Capital failed to maintain proper records of the due diligence work which it claimed to have performed in relation to the HKEX GEM IPO listing application of China Candy. In particular, it was found that

- (i) there were no records showing how TC Capital enquired about the third party payments and/or came to the conclusion that the third party payments were immaterial so as to not warrant disclosure in China Candy's prospectus; and
- (ii) no audit trail demonstrating TC Capital had turned its mind to certain discrepancies identified in the due diligence documents and the conclusion which it had reached concerning the inconsistent information as to the ownership of the Customers.

ENFORCEMENT AND DISCIPLINARY ACTION - AUGUST 2022

SFC Reprimands and Fines TC Capital International Limited HK\$3 million and Suspends Its Responsible Officer for Sponsor Failures on an HKEX IPO application

SFC findings

In respect of failure to conduct all reasonable due diligence on third party payment

- breached General Principle 2 and paragraphs 17.2(b), 17.4(a), 17.6(a), 17.6(b) and 17.6(c) of the SFC Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commissions
- breached paragraph 5.1 of the SFC Corporate Finance Adviser Code of Conduct
- breached paragraphs 2 and 3 of the Practice Note 2 to the HKEX Rules Governing the Listing of Securities on GEM of the Stock Exchange of Hong Kong Limited

In respect of maintain proper and accurate record of due diligence performed and provide proper audit trail or work

- breached General Principles 2 and 7 of the SFC Code of
- breached paragraphs 12.1, 17.2(e), and 17.10 of the SFC Code of Conduct
- breached paragraph 2.3 of the CFA Code of Conduct

ENFORCEMENT AND DISCIPLINARY ACTION

- AUGUST 2022

SFC Reprimands and Fines TC Capital International Limited HK\$\$3 million and Suspends Its Responsible Officer for Sponsor Failures on an HKEX IPO application

SFC findings

For Mr. Wu (sponsor principal of TC Capital)

- breached General Principles 2 and 9 as well as paragraphs 4.2 and 14.1 of the SFC Code of Conduct
- breached paragraph 1.3.3 of the SFC Additional Fit and Proper Guidelines for Corporations and Authorised Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers, with respect to his failure to:
 - (i) exercise due skill, care and diligence in handling the HKEX IPO listing application;
 - (ii) diligently supervise the Transaction Team to carry out the HKEX IPO sponsor work; and
 - (iii) ensure the maintenance of appropriate standards of conduct by TC Capital

MCQS

QUESTION 1

Which of the following falls within the scope of diligence in General Principle 2 of the SFC Code of Conduct for Persons Licensed by or Registered with the SFC (the “SFC Code of Conduct”)?

- A. Acting with due skill, care and diligence
- B. Acting in the best interests of the client
- C. Acting for the integrity of the market
- ✓ D. All of the above.

QUESTION 2

In May 2022, the Stock Exchange imposed disciplinary sanctions against CR Construction Group Holdings Limited and its controlling shareholder for its breach of the post-listing disposal restrictions under the Listing Rules. How long is the absolute lock-up period referred in the CR Construction Group case for the post-listing disposal restriction?

- ✓ A. Six months
- B. Eight months
- C. Ten months
- D. Twelve months

QUESTION 3

In the disciplinary action against the former directors of Mingfa Group (International) Company Limited, it was found that Mingfa had numerous deficiencies in its internal control measures. Which of the following should be included to have effective internal control measures?

- A. Written contract management procedures.
- B. Reconciliation procedures for large transactions.
- C. Conflict of interest policies.
- ✓ D. All of the above.

QUESTION 4

In July 2022, the SFC reprimanded and fined Rifa Futures Limited for failures in performing adequate due diligence in respect of its customer supplied systems. What type of risks did the SFC note that this may lead to?

- A. Unlicensed activities.
- B. Money laundering.
- C. Unauthorized access to client accounts.
- ✓ D. All of the above.

QUESTION 5

KTF Capital Management was reprimanded and fined by the SFC for its inability to comply with the relevant financial resources requirements. After becoming aware that its liquid capital fell below the required percentage, KTF only notified the SFC after a delayed time. When should they have notified the SFC of this?

- ✓ A. As soon as reasonably practicable.
- B. Within 1 month.
- C. Within 2 months.
- D. Within 4 months.



Q & A



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