

Corporates

We oversee listing and takeovers matters in Hong Kong, including takeovers and merger activities, vetting of listing applications, disclosure requirements, corporate conduct and the listing-related functions of The Stock Exchange of Hong Kong Limited (SEHK). We review listing and takeovers policies to facilitate the development of a fair and orderly securities market in Hong Kong.

Listing regulation

Corporate and market misconduct

We work together with SEHK to monitor the market and intervene using our statutory powers under the Securities and Futures (Stock Market Listing) Rules (SMLR) and the Securities and Futures Ordinance (SFO) where appropriate to tackle corporate and market misconduct.

Following a public consultation and our approval, SEHK introduced amendments to the Listing Rules in July 2019 to tackle problems associated with backdoor listings and shell activities. The changes took effect on 1 October 2019. Concurrently, we issued a statement explaining our general approach to these activities. Before deciding whether to exercise our statutory powers, we consider the facts and circumstances of each case, including any red flags indicating a possible scheme designed to mislead regulators or the investing public or to circumvent applicable rules.

In response to a recommendation in our review of SEHK's performance in listing matters, SEHK introduced a trading suspension requirement for listed companies with a disclaimer or adverse audit opinion on their financial statements. The new rule applies to preliminary annual results announcements for financial years commencing on or after 1 September 2019.

In July 2019, we issued a statement on recurring misconduct in corporate acquisitions and disposals which has prompted intervention by the SFC. Directors and their advisers were reminded to comply with their statutory and other legal duties when evaluating or approving the acquisition or disposal of a company or business.



To address the use of special purpose vehicles and other means (including private funds) to conceal ownership and as part of wider schemes to engage in illicit activities or market misconduct, we issued a statement in November 2019 reminding listed companies that their announcements and other documents must not include false, incomplete or misleading information about their counterparties in a transaction. Our statement was accompanied by guidance to asset managers on the conduct expected of them when considering dubious private fund and discretionary account arrangements or transactions.

Corporate WVR

Following discussions with us, SEHK consulted the public in early 2020 on a proposal to allow corporations to benefit from weighted voting rights (WVR), subject to additional conditions and investor safeguards to address risks which are particular to corporate WVR, such as the potential for WVR structures to subsist indefinitely.

Message from Chairman and CEO

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New listing applications

	2019/20	2018/19	2017/18
Listing applications received ^a	303	394	309
Listing applications lapsed/withdrawn/rejected during the year	172	166	88
Listing applications returned ^b	3	0	3
New listings ^c	182	193	203

a Including applications for transfer from GEM to the Main Board (2019/20: 29; 2018/19: 16; 2017/18: 22).

b Listing applications were returned by SEHK because the application proofs or related documents were not substantially complete. The listing applicants can only submit a new listing application with a new application proof not less than eight weeks after the return.

c Including successful transfers from GEM to the Main Board (2019/20: 16; 2018/19: 11; 2017/18: 17).

Reporting deadlines

On 4 February 2020, we issued a joint statement with SEHK in response to market concerns about possible delays in publishing preliminary or audited financial results due to the COVID-19 outbreak. The statement clarified that a listed company which cannot publish preliminary results with its auditors' agreement before the reporting deadline would be allowed instead to publish them without auditor's agreement, or to publish management accounts or material financial information. In these cases, SEHK would normally allow trading in the companies' shares to continue.

We jointly issued further guidance on 16 March 2020 stating that these listed companies may defer the publication of their annual reports until not later than 15 May 2020. Listed companies which require more time can apply for further relief on a case-by-case basis.

General meetings

Following the Government's regulation restricting the size of group gatherings, we issued a statement jointly with SEHK on 1 April 2020 to provide guidance to listed companies in determining the timing of general meetings for shareholders as well as the manner in which they are held.

Debt market

Together with SEHK, we regularly review the debt capital market regime. In December 2019, SEHK launched a consultation seeking feedback on its proposals to review and enhance the listing regime for debt issues to professional investors.

15

listed pre-profit biotech companies
as of 31 March 2020

IPO

We vet listing applications and raise enquiries to determine whether an application gives rise to any concerns under the SMLR. We may object to a listing of securities based on one or more of the grounds set out in section 6(2)¹ of the SMLR.

During the year, we received 303 listing applications via SEHK, down 23.1% from 394 last year, including applications from two WVR companies and 10 pre-profit biotech companies. We shared our comments or concerns with SEHK where appropriate.

¹ Under section 6(2) of the SMLR, the SFC may object to a listing if it appears to the SFC that: (a) the listing application does not comply with SEHK's requirements or an applicable provision of law, or does not contain sufficient information to enable an investor to make an informed decision; (b) the application is false or misleading; (c) the applicant has failed to furnish information as may be reasonably required by the SFC under section 6(1) of the SMLR; or (d) it would not be in the interest of the investing public or in the public interest for the securities to be listed.



In line with our front-loaded regulatory approach, we directly sought information or expressed our concerns in 35 listing applications where we became aware of potentially serious disclosure or public interest issues. In two of these applications, the applicants satisfactorily addressed our concerns and were subsequently listed. One other applicant addressed our concerns but decided not to proceed with the listing. As at 31 March 2020, 20 of these applications had not proceeded to listing, leaving our concerns unaddressed, while 12 were still ongoing but the applicants had yet to satisfactorily address our concerns.

Takeovers activities

	2019/20	2018/19	2017/18
General and partial offers under Code on Takeovers and Mergers	41	55	59
Privatisations	15	6	11
Whitewash waiver applications	13	21	41
Other applications under Code on Takeovers and Mergers [^]	281	275	289
Off-market and general offer share buy-backs	7	9	1
Other applications under Code on Share Buy-backs [^]	2	7	0
Total	359	373	401

[^] Including stand-alone applications and those made during the course of a Code-related transaction.

Note: Also see Table 3 in Breakdown of SFC activity data on page 161 for more details.

2 Section 179 of the SFO gives the SFC the power to compel the production of records and documents from persons related to a listed company.

Corporate conduct

We conduct daily reviews of corporate announcements under statutory corporate conduct and inside information disclosure provisions to identify potential misconduct and irregularities. We issued section 179² directions to gather additional information in 76 cases and wrote to detail our concerns in 20 transactions this year. These concerns included, for example, overvalued acquisitions and late disclosure of inside information.

In February 2020, we published a special edition of the *SFC Regulatory Bulletin* to provide an update on our front-loaded approach to address market quality and corporate conduct issues. Case studies illustrate our key areas of concern and recent regulatory interventions in IPO applications and corporate transactions.

Takeovers

In Hong Kong, takeovers, mergers, privatisations and share buy-backs affecting public companies are regulated by the Codes on Takeovers and Mergers and Share Buy-backs. Although the number of takeovers cases decreased this year, they involved more complex deal structures and difficult issues. The Takeovers and Mergers Panel met twice during the year to discuss novel, important or difficult points at issue.

Update on front-loaded regulation

We have made significant progress in tackling listed company-related misconduct with a front-loaded regulatory approach which uses earlier, more targeted intervention to deal with market irregularities and protect the investing public. This approach was developed and implemented by a cross-divisional working group, designated ICE^a, established in 2016.

As part of a coordinated, multidisciplinary strategy, we made strides in addressing persistent misconduct. This includes improper market activities involving shell companies, highly dilutive rights issues and GEM stocks or “bubble stocks” which show extreme price volatility. As a result of our efforts, the volatility of newly-listed GEM stocks dropped significantly. The average first-day price increase of these stocks was about 13% in 2019, down from over 500% in 2016.

Over the past three years, we directly intervened in over 120 cases involving IPOs or listed companies through the actual or potential use of our SMLR powers, significantly more than the four direct interventions in the prior three-year period. Since 2017, we have taken disciplinary actions against nine IPO sponsors for deficiencies in their due diligence practices and internal systems and controls.

In some cases, shareholders’ interests were undermined when listed companies acquired assets at unreasonably high prices or sold assets which

were substantially undervalued. We published statements and guidance to remind directors and financial advisors of their duties when valuing target assets and evaluating or approving acquisitions and disposals.

Corporate misconduct often involves concealed share ownership or control. We issued a statement in November 2019 to reiterate our concerns with the use of nominees and warehousing arrangements together with a circular to provide guidance to asset managers handling private fund and discretionary account arrangements or transactions (see page 41). We also investigated cases where nominee arrangements were used to perpetrate vote rigging and market manipulation.

We conducted search operations and targeted inspections against “networks of companies” engaged in illegal activities to profit at the expense of investors. Our investigations continue into a number of these networks, which may include listed companies, licensed corporations, money lenders and other parties.

To explain our approach to the industry and the public, we published four issues of the *SFC Regulatory Bulletin* in the past three years. The newsletter features case studies illustrating our areas of concern and recent regulatory interventions.

Direct intervention cases

	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20
IPO cases	1	0	2	15	19	35
Post-IPO cases	0	0	1	17	27	12
Total	1	0	3	32	46	47

^a ICE pools resources from the SFC’s Intermediaries, Corporate Finance and Enforcement divisions.

In a decision published in July 2019, the panel ruled that a waiver of the general offer obligation under the Takeovers Code should not be granted to China Baowu Steel Group Corporation Limited if it proceeds with the proposed acquisition of a 51% interest in Magang (Group) Holding Company Limited, the controlling shareholder of Maanshan Iron & Steel Company Limited, at nil consideration³.

In October 2019, the panel ruled that Broadford Global Limited was not allowed to deduct the final dividend approved by shareholders of Dalian Port (PDA) Company Limited from its offer price in a possible mandatory general offer. The panel considered that readers of the announcement would have expected Dalian Port's shareholders to receive the full offer price.

Following our investigations and enquiries, we sanctioned a number of parties during the year.

In April 2019, we publicly criticised Kwok Tse Wah, a party acting in concert with the offeror, for breaching the dealing restrictions and dealing disclosure obligations under the Takeovers Code when he sold shares in Hopewell Holdings Limited during an offer period.

CM Asset Management (Hongkong) Company Limited was publicly criticised in July 2019 for failing to disclose dealings in the shares of Mengke Holdings Limited⁴ during an offer period.



In December 2019, we publicly censured CLSA Limited, CITIC Securities Brokerage (HK) Limited, Beijing Enterprises Holdings Limited and their representatives for share buy-backs conducted in 2016 in breach of the Code on Share Buy-backs. CLSA and CITIC Securities executed on-market trades in the shares of Beijing Enterprises. As these trades were pre-arranged and pre-agreed, they were in substance off-market share buy-backs which required the approval of the Takeovers Executive⁵ and Beijing Enterprises' independent shareholders.

³ Upon completion of the proposed transaction, China Baowu would trigger a mandatory general offer for Maanshan Iron & Steel Company Limited under the "chain principle" unless a waiver is obtained.

⁴ Now known as Champion Alliance International Holdings Limited.

⁵ The Executive Director of the SFC's Corporate Finance Division or his delegate.