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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined Capital Global Management Limited (**CGML**)<sup>1</sup> HK\$1,500,000 pursuant to section 194 of the Securities and Futures Ordinance (**SFO**) for failures to ensure its compliance with local laws and regulations in distributing investment funds and offering investment advice in Taiwan, and to adequately supervise the business activities of its representatives to ensure such compliance.

### Summary of facts

2. Licensed persons are required to satisfy the SFC that they are fit and proper to be licensed under the SFO. This is a continuous requirement. Among other things, they need to demonstrate that they are persons of sound reputation, character and reliability.
3. In August 2015, the Prosecution Office of the Taipei District Court fined George T.W. Chen (**George Chen**) and Su Hsieh Chen (**HC Su**), former owners of CGML, NTD2 million and NTD0.5 million respectively for distribution of offshore investment funds and offer of investment advice in Taiwan from 2005 to 2014 without obtaining prior approval, in contravention the Securities Investment Trust and Consulting Act of Taiwan (**the Act**).
4. Article 16 of the Act provides that “*No person may, itself or as an agent, engage within the Republic of China in the public offer, sale, or investment consultancy of offshore funds without first obtaining approval from the Competent Authority or effective registration upon filing with the Competent Authority.*” The Competent Authority is the Financial Supervisory Commission R.O.C. (Taiwan).
5. According to the SFC’s records, HC Su was the owner of the company which wholly owned CGML. CGML’s directors and responsible officers acknowledged that they were recruited by George Chen and HC Su and George Chen was their “boss”.

### *CGML’s distribution of investment products*

6. The SFC’s investigation found that CGML distributed investment products to clients in Taiwan during the period from July 2014 to April 2015. The transactions with clients in Taiwan account for about 96% of CGML’s distribution of investment products during that period.

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<sup>1</sup> CGML is licensed to carry on business in Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management) regulated activities in Hong Kong under the SFO. CGML was acquired by First Financial Holdings Limited in November 2016.

7. At the relevant time, CGML's licensed representatives acted as sales persons and were responsible for the distribution of investment products to the clients in Taiwan. The representatives lived in Taiwan and visited Hong Kong only a couple of days per month.
8. The sales persons claimed that they understood sales of investment products in Taiwan were not allowed, but they were merely providing the clients with product information and responsible for client relationship management.
9. The evidence from the clients in Taiwan indicated that the sales persons solicited investment business from and offered investment recommendations to them.

#### *Supervision of the sales persons*

10. Our investigation shows that not only did CGML's licensed representatives distribute investment products and provide investment advice to clients in Taiwan, they did so with apparently little supervision:
  - (a) a responsible officer of CGML claimed that he relied on other responsible officers to supervise the sales persons. He did not know how the sales persons could recommend investment products to the clients without sales or distribution activities in Taiwan;
  - (b) another responsible officer acknowledged his supervisory responsibilities, but said that his supervision was not effective given that the sales persons were located in different parts of Taiwan;
  - (c) one of the directors who became CGML's responsible officer in 2015 said that he was responsible for products and knew nothing about how the sales persons operated in Taiwan; and
  - (d) another director who later became CGML's responsible officer claimed that she was not responsible for the sales persons and did not know where the sales persons distributed investment products.
11. CGML's operation procedures show that the sales persons were responsible for introducing and promoting investment products to clients. While CGML's licensed representatives had distributed investment products and provided investment advice to clients in Taiwan, CGML did not have procedures to ensure that its business activities were in compliance with the local laws and regulations in Taiwan. CGML's guidelines on cross-border activities were not put in place until May 2015 and the guidelines did not provide for the steps to ensure compliance with the local laws and regulations.

#### **Conclusion**

12. The SFC considers that CGML's failures constitute breaches of General Principle 7, paragraphs 4.2 and 12.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, which require a licensed corporation to comply with, and implement and maintain measures appropriate to ensuring compliance with, the law and applicable regulatory requirements, and to diligently supervise persons employed to conduct business on its behalf.

13. As a licensed corporation, CGML must ensure its compliance with not only the laws and applicable regulations of Hong Kong, but also those of other jurisdictions in which it conducts business activities.
14. Having considered all the circumstances, the SFC is of the view that CGML's fitness and properness to be licensed under the SFO has been called into question and has decided to take disciplinary action against it.
15. In coming to the decision to take disciplinary action against CGML, the SFC has taken into account that CGML has no previous disciplinary record with the SFC.