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# REGULATORY NEWSLETTER

2019 Vol.11



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## REGULATORY UPDATES

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### **Terms and Conditions for Licensed Corporations which Manage Portfolios that Invest in Virtual Assets**

**4 Oct 2019**

The SFC has issued a Statement on regulatory framework for virtual asset portfolio managers, fund distributors and trading platform operators. Among other things, the SFC announced that terms and conditions will be imposed on licensed corporations which manage or plan to manage portfolios with (i) a stated investment objective to invest in virtual assets; or (ii) an intention to invest 10% or more of the gross asset value of the portfolio in virtual assets (collectively referred to as “Virtual Asset Fund Managers”).

The proforma set of terms and conditions is now available on the SFC’s website. Going forward, these terms and conditions will be imposed on all Virtual Asset Fund Managers, subject to minor variations and elaborations depending on individual Virtual Asset Fund Manager’s business model and circumstances.

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### **Licensed Corporations – Use of external electronic data storage (EDSP)**

**31 October 2019**

The SFC released this circular to provide greater flexibility in keeping records, as well as to clarify the obligations of LCs.

LCs that wish to keep Regulatory Records exclusively with an EDSP should ensure compliance with certain requirements including but not limited to the following:

- The EDSP provider is either (i) a company incorporated in Hong Kong or a non-Hong Kong company registered under the Companies Ordinance, operated by personnel in Hong Kong with their data storage centre also located in Hong Kong, in which case, a notice from the LC to the EDSP authorising and requesting the EDSP to provide the LC's records to the SFC should be supplied and countersigned; or (ii) a company which does not comply with (i), in which case, the LC must obtain an undertaking by the EDSP that they will provide regulatory records and assistance upon request by the SFC;
- The LC should, ensure that its Regulatory Records are only kept at an EDSP which is suitable, capable and reliable, and ensure the Regulatory Records kept at the EDSP are fully accessible upon the request by the SFC without any unnecessary delay regardless of where the hardware of the EDSP is stored;
- The LC should ensure that the EDSP can provide a detailed audit trail information in regard to any access to the Regulatory Records. Furthermore, the audit trail information should be kept for the period for which the LC is required to keep the Regulatory; Records;
- At least two MICs in Hong Kong must have full access to Regulatory Records kept with the EDSP at any time, where they will also be responsible for ensuring the information are secure; and
- The licensed corporation should seek approval for the premises used for keeping Regulatory Records under section 130 of the SFO.

LCs are required to apply for approval for data centre(s) used by the EDSP as premises for keeping regulatory records, and provide details of the premises of the LC being the principal place of business and each branch office(s) in Hong Kong where the Regulatory Records kept with the EDSP can be accessed. All LCs must satisfy the SFC that the premises are suitable for the purpose of keeping Regulatory Records.

The above requirements do not apply to:

- (i) LCs which keep Regulatory Records with an EDSP and at the same time keep a full set of identical regulatory records at premises approved by the SFC for record keeping; or
- (ii) LCs which use computing services without keeping Regulatory Records with an EDSP.

All LCs which engage the services of EDSP, regardless of whether Regulatory Records are kept exclusively with the EDSP or not, are required to conduct proper initial due diligence on the EDSP, and are reminded of their obligation to have effective policies and implement procedures for the proper management of risks of which client information and LCs' business operations information (Relevant Information) might be expose to. Furthermore, all LCs must take any reasonable steps to prevent unauthorized access, insertion, or amendments of the Relevant Information.

Undertaking:

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openAppendix?refNo=19EC59&appendix=0>

Notice:

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/openAppendix?refNo=19EC59&appendix=2>

Please contact our consultants if you have any questions.

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## ENFORCEMENT NEWS

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### **SFC reprimands and fines SEAVI Advent Ocean Private Equity Limited \$1 million**

The SFC has reprimanded and fined SEAVI Advent Ocean Private Equity Limited (SAOPEL) \$1 million for breach of the Code of Conduct for Persons Licensed by or Registered with the SFC. SAOPEL has been licensed under the Securities and Futures Ordinance (SFO) to carry on Type 9 (asset management) regulated activity since 9 July 2008, with the conditions that it can only provide services to professional investors and cannot hold client assets.

The disciplinary action follows an SFC investigation which found that SAOPEL had allowed its director and an investment manager, both of whom were not licensed by the SFC, to perform regulated functions for its business in regulated activities between March 2013 and April 2014. They introduced clients to invest in the fund managed by SAOPEL, answered clients' queries and arranged for the execution of the subscription agreements for the fund.

In determining the sanction, the SFC took into account all relevant circumstances, including that SAOPEL:

- Had failed to ensure that the persons it employed/appointed to conduct its licensed business were fit and proper;
- cooperated with the SFC in resolving its concerns; and
- has an otherwise clean disciplinary record.

### **SFC bans Vincent Ng Lok Kan for 30 months**

The SFC has banned Mr Vincent Ng Lok Kan, a former licensed representative of Sun Hung Kai Investment Services Limited (SHKIS), from re-entering the industry for 30 months from 27 September 2019 to 26 March 2022.

In 2015, SHIS reported to the SFC that it had identified two matched trades in the Warrant on February 2015 between Ng's personal account and a client account where Ng was the account executive.

The SFC investigation showed that the matched trade Ng had placed a number of buy orders for a warrant through a client's account which caused the price of the warrant increased. Ng then sold all personal holdings of the same warrant. As a result, Ng was able a profit while his client suffered a nominal loss.

Furthermore the SFC also found that Ng effected the transactions in the clients account on a discretionary basis, without obtaining a prior written authorization consent from the client or the knowledge and approval of SHKIS.

In deciding the sanction, the SFC took into account all relevant factors, including that Ng:

- has caused financial loss to the Client
- was inexperienced
- strong message needs to be sent to the market
- has an otherwise clean disciplinary record.

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