

## FINANCIAL SERVICES SECTOR UPDATES December 2020 Issue



To maintain the financial stability and facilitate the economic growth of Hong Kong, regulators have been reviewing different regulations and guidelines regularly. Regulators and financial institutions around the globe may have new developments. In this month, the following incidents have happened:

### **SFC reprimands and fines Goldman Sachs (Asia) L.L.C. US\$350 million for serious regulatory failures over 1Malaysia Development Berhad's bond offerings**

On 22 October 2020, the Securities and Futures Commission (SFC) reprimanded and fined Goldman Sachs (Asia) L.L.C. (Goldman Sachs Asia) US\$350 million (HK\$2.71 billion) for serious lapses and deficiencies in its management supervisory, risk, compliance and anti-money laundering controls that contributed to the misappropriation of US\$2.6 billion from US\$6.5 billion that 1Malaysia Development Berhad (1MDB) raised in three bond offerings in 2012 and 2013.

The 1MDB bond offerings were arranged and underwritten by Goldman Sachs International, but the actual work was conducted by deal team members in multiple jurisdictions, and revenue generated from the transactions was shared among Goldman Sachs entities in different jurisdictions.

In particular, Goldman Sachs Asia, the compliance and control hub of Goldman Sachs Asia which is based in Hong Kong, had significant involvement in the origination, approval, execution and sales process of the three 1MDB bond offerings. Ultimately, Goldman Sachs Asia received 37% of the total revenue of US\$567 million generated from the bond offerings, in the sum of US\$210 million, the largest share among the various Goldman Sachs entities.

### CONTENTS

- ▶ SFC reprimands and fines Goldman Sachs (Asia) L.L.C. US\$350 million for serious regulatory failures over 1Malaysia Development Berhad's bond offerings
- ▶ New Return of Consolidated Account and revised submission deadline for selected returns
- ▶ Market Misconduct Tribunal sanctions CMBC Capital Holdings Limited and its former directors for late disclosure of inside information
- ▶ SFC reprimands and fines Credit Suisse Securities (Hong Kong) Limited \$2.1 million over breaches of electronic trading requirements
- ▶ How can BDO help?

The SFC considers that Goldman Sachs Asia lacked adequate control measures in place to monitor staff and detect misconduct in its day-to-day operation, and allowed the 1MDB bond offerings to proceed when numerous red flags surrounding the offerings were not properly scrutinised and satisfactory answers to such red flags were not obtained.

The 1MDB bond deals were obtained for Goldman Sachs by Mr Tim Leissner, a responsible officer of Goldman Sachs Asia and a participating managing director of the investment banking division at the material time. In August 2018, Leissner pleaded guilty to criminal charges brought by the United States Department of Justice (US DOJ) against him for conspiring to commit money laundering and to violate the Foreign Corrupt Practices Act. Leissner admitted that he had conspired with a Malaysian financier, Mr Low Taek Jho, also known as Jho Low, and others to pay bribes and kickbacks to Malaysian and Abu Dhabi officials to obtain and retain the business from 1MDB for Goldman Sachs, including the bond offerings.

The SFC's investigation found that Leissner was essentially given a free rein in the execution of the 1MDB bond offerings, enabling him to provide misleading information to – or conceal information from – Goldman Sachs without being adequately challenged.

Goldman Sachs's regional and firm-wide committees that vetted the bond offerings accepted Leissner's false assertions that Low had no roles in the bond offerings without making further inquiries.

There were also numerous red flags which raised questions as to the commercial rationale of the bond offerings and serious money laundering and bribery risks, but they were not critically examined by various regional and firm-wide committees of Goldman Sachs, thus enabling Leissner and his conspirators to escape scrutiny. These included the following:

- Despite being in a weak financial position with questionable ability to service existing debts, 1MDB raised US\$6.5 billion within a short period of 10 months but the amounts raised far exceeded the actual needs of 1MDB. Less than 50% of the funds raised in the first two bond offerings were intended to be used for the acquisition of power assets that were identified. In just four months after the second offering, 1MDB raised another US\$3 billion to finance a joint venture that did not have concrete investment plans at that moment. At that time, over US\$1.6 billion of the proceeds from the first two transactions were still not utilised.
- Goldman Sachs received around US\$581.5 million in fees from 1MDB, about 9% of the funds raised in these offerings. The revenue Goldman Sachs earned from these three offerings alone was more than double the total revenue it generated from acting as an arranger and/or

underwriter in 213 other Asia ex-Japan bond offerings in the five years between 2011 and 2015.

- 1MDB's willingness to pay such high fees to Goldman Sachs as sole arranger and underwriter, and the engagement of Goldman Sachs for all three offerings without going through a competitive process should have raised questions about how the business was obtained from 1MDB, the reasonableness of the mandates, and whether the circumstances leading to such business raised any suspicions of bribery or other illicit conduct.
- In the course of reviewing the bond offerings, Goldman Sachs Asia found plenty of negative media reports which indicated high corruption risks associated with 1MDB and which raised questions about the integrity of 1MDB and the transactions it entered into.

The SFC's investigation also found that although the deal team and control functions took note of many of the red flags and appeared to have taken some steps to discuss and address them, Goldman Sachs adopted a piecemeal approach in resolving the issues and had not properly considered the wider and 'bigger picture' concerns about the commercial rationale of the bond offerings and satisfied itself that such concerns were satisfactorily addressed.

The SFC considers that Goldman Sachs Asia failed to:

- supervise diligently its senior personnel who were involved in the execution of the bond offerings and to ensure that they maintained appropriate standards of conduct;
- identify and adequately address money laundering and bribery concerns when there were numerous red flags;
- exercise due skill, care and diligence, and act in the best interest of its clients and the integrity of the market when vetting and approving the bond offerings; and
- put in place adequate and effective internal control procedures to protect its clients from financial losses arising from frauds and other dishonest acts or professional misconduct.

As an international financial centre, Hong Kong naturally has a tough anti-money laundering regime. As money laundering schemes become more complex and sophisticated and the volume of such schemes continues to amplify, assessment on financial Institutions' money laundering risks has been a supervisory priority. Failure to implement effective Anti-Money Laundering (AML) controls may leave your institution vulnerable to fines, criminal proceedings and crippling reputational damage.

**Read more from the source:**

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR103>

## **New Return of Consolidated Account and revised submission deadlines for selected returns**

On 16 November 2020, the Hong Kong Monetary Authority (HKMA) developed a new Return of Consolidated Accounts (Form MA(BS)1H) and revised the submission deadlines of several existing returns. Consultation on the new Return and the revised submission deadlines with The Hong Kong Association of Banks and The DTC Association was completed.

### **(I) Return of Consolidated Accounts (Return)**

As authorised institutions (AIs) are expanding their overseas presence, it is necessary for the HKMA to introduce the Return so as to 1) monitor the developments of the banking sector in a more comprehensive manner, and 2) strengthen the consolidated supervision of locally incorporated AIs.

The Monetary Authority requires locally incorporated licensed banks with one or more subsidiaries which are banks to provide information in the form of the Return of Consolidated Accounts in accordance with Section 63(2) of the Banking Ordinance starting with the reporting position of December 2021.

In response to the request by the industry, the submission deadline of the Return will be six weeks after the end of each quarter during the first year of submission (ie the reporting positions of December 2021, March 2022, June 2022 and September 2022) to provide reporting institutions with sufficient time to adopt the reporting of the new Return; thereafter, the deadline will be one month after each quarter end.

### **(II) Revised submission deadlines for selected returns**

The increasingly complex economic environment has raised the importance of collecting data on a timely manner. Doing so will enhance the monitoring of the banking sector's performance and help the HKMA set their supervisory priorities. As such, the HKMA reviewed the submission deadlines of all returns and considered that the submission deadlines of several key returns need to be revised. These returns include return of assets and liabilities, return of current year's profit and loss account, quarterly analysis of loans and advances and provisions, return on capital adequacy, return on large exposure and others.

The new submission deadlines will become effective starting from the reporting position of March 2022.

**Read more from the source:**

<https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2020/20201116e1.pdf>

## **Market Misconduct Tribunal sanctions CMBC Capital Holdings Limited and its former directors for late disclosure of inside information**

On 16 November 2020, the Market Misconduct Tribunal (MMT) found that CMBC Capital Holdings Limited (CMBC Capital) and six of its former directors failed to disclose inside information as soon as reasonably practicable under the Securities and Futures Ordinance (SFO) and imposed a 15-month disqualification order against the company's former chief executive officer and company secretary.

The company secretary and CMBC Capital's former chairman were also fined \$1.2 million and \$900,000, respectively, by the MMT in the proceedings brought by the Securities and Futures Commission (SFC).

The remaining four former directors involved in the case at the material time are the former executive director, and three former independent non-executive directors.

CMBC Capital and the above-mentioned six former directors admitted that the information about significant improvement in the company's financial performance for the five months ended 31 August 2014 came to their knowledge on or around 13 October 2014. However, such information was not made public until 7 November 2014 when a positive profit alert was published in relation to the company's financial performance for the six months ended 30 September 2014. The company's former chief executive officer and company secretary also admitted that their negligent conduct had resulted in CMBC Capital's breach of the requirements of the corporate disclosure regime.

The MMT further ordered that:

- CMBC Capital and the six former directors to pay the SFC's investigation and legal costs, as well as the costs of the MMT proceedings; and
- the six former directors to attend an SFC-approved training programme on the corporate disclosure regime, directors' duties and corporate governance.

This sanction sends a clear message to listed companies that delayed disclosure of inside information may result in enforcement actions being taken, not only against the listed companies themselves, but also against their senior management staff if their conducts have led to the listed companies' breach of the disclosure requirements.

**Read more from the source:**

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR102>

## SFC reprimands and fines Credit Suisse Securities (Hong Kong) Limited \$2.1 million over breaches of electronic trading requirements

On 9 November 2020, the Securities and Futures Commission (SFC) reprimanded Credit Suisse Securities (Hong Kong) Limited (CSSHK) and fined it \$2.1 million for regulatory breaches related to failures in its electronic trading systems.

The SFC found that between 09:39 and 09:47 on 28 February 2019, CSSHK submitted 16,935 erroneous market making quotes to the market, resulting in the execution of 8,042 stock options trades at prices that deviated from the then prevailing market prices.

The incident was caused by a logic error in the symbol mapping programme used by CSSHK, in its capacity as a stock options market maker, in generating market making quotes. The SFC is of the view that CSSHK's internal controls and regular tests in place at the time failed to prevent or promptly detect the incident, and these failures constitute breaches of electronic trading requirements under the Code of Conduct.

In deciding the sanction, the SFC took into account all relevant circumstances, including the prompt remedial actions taken by CSSHK following the incident and CSSHK's cooperation with the SFC in resolving the SFC's concerns.

Any organisation which fails to comply with regulatory requirements runs the risks of loss of reputation and loss of customers. The damage caused to an organisation's reputation by a conviction could last longer than the initial financial outlay.

**Read more from the source:**

<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR109>

## How can BDO help?

It is crucial for financial institutions being able to compile and submit the HKMA banking returns accurately. We, BDO, have a dedicated team of experienced compliance consultants who have knowledge on the compilation of banking returns and can give guidance on banking returns with updated instructions.

Moreover, AML regulatory requirements and enforcement action for financial institutions are getting more complex and strict. Financial institutions should realise the importance of implementing and maintaining a robust AML programme and risk management. We, BDO, can offer guidance and suggestions to protect your financial institution against evolving or new regulations. Together, we will prioritise the specific activities that must be carried out in order to remediate any weaknesses identified. Get in touch to see how we can help your company!

---

## BDO'S SUPPORT AND ASSISTANCE

25th Floor, Wing On Centre  
111 Connaught Road Central  
Hong Kong  
Tel: +852 2218 8288  
Fax: +852 2815 2239  
[info@bdo.com.hk](mailto:info@bdo.com.hk)

**RICKY CHENG**  
Director and Head of Risk Advisory  
Tel: +852 2218 8266  
[rickycheng@bdo.com.hk](mailto:rickycheng@bdo.com.hk)

**PETER PANG**  
Director of Risk Advisory  
Tel: +852 2218 3813  
[peterpang@bdo.com.hk](mailto:peterpang@bdo.com.hk)

---

BDO Limited, a Hong Kong limited company, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.

This publication has been carefully prepared, but it has been written in general terms and should be seen as broad guidance only. The publication cannot be relied upon to cover specific situations and you should not act, or refrain from acting, upon the information contained therein without obtaining specific professional advice. Please contact BDO to discuss these matters in the context of your particular circumstances. BDO, its directors, employees and agents do not accept or assume any liability or duty of care for any loss arising from any action taken or not taken by anyone in reliance on the information in this publication or for any decision based on it.