

**International  
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Legal Guides**



Practical cross-border insights into fintech law

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Contributing Editors:

**Rob Sumroy & James Cook  
Slaughter and May**

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Jonathan Cardenas, Esq., Immediate Past Chair, ABA Financial Services Technology Joint Subcommittee

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# Hong Kong

Slaughter and May



Vincent Chan

## 1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic and ESG (Environmental, Social and Governance) objectives. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

As an international financial centre and a gateway to Mainland China, Hong Kong has been continuing to establish itself as a launch pad for fintechs looking for opportunities in Asia and Mainland Chinese fintechs looking to expand internationally. Fintech businesses cover a range of sub-sectors and it is common to see collaborations between established financial institutions and fintech start-ups in this space. The financial regulators in Hong Kong – the Hong Kong Monetary Authority (“**HKMA**”), Insurance Authority (“**IA**”) and Securities and Futures Commission (“**SFC**”) – each operate a regulatory sandbox. As at the end of January 2023, the HKMA’s sandbox had tested 276 new technology products, compared to 236 as at the end of January 2022 – nine in biometric authentication, eight in DLT, 17 in API, 136 in regtech, seven in soft tokens, three in chatbots, 24 in mobile app enhancements and 72 in miscellaneous technologies. Separately, banks had collaborated with tech firms in 197 trial cases.

### Payments

Hong Kong was one of the early adopters of device-based “stored value facilities” (prepaid instruments with monetary value) and there are currently 13 stored value facility (“**SVF**”) licences granted to non-bank payment service providers.

The Hong Kong Government has focused on moving Hong Kong to a new era of “smart banking” with numerous initiatives. In September 2018, the HKMA launched the Faster Payment System (“**FPS**”) – a round-the-clock real-time payment platform, allowing banks and SVF providers to offer their customers almost instant HK\$ and RMB payment and fund transfer services supported by the use of mobile phone numbers, QR codes or email addresses. The FPS recorded an average daily turnover of about 928,000 transactions in August 2022, representing a surge of 17 times as compared to that when the FPS was just launched (October 2018).

In December 2020, the Office of the Government Chief Information Officer launched the iAM Smart initiative. The HKMA regards the introduction of iAM Smart as a key milestone in the development of Hong Kong’s fintech ecosystem,

and has encouraged authorised institutions (“**AIs**”) and SVF licensees to actively consider its adoption. iAM Smart provides Hong Kong residents with a single digital identity and authentication to conduct commercial transactions online. Users can make use of the biometrics in their personal mobile devices to authenticate their identities, thereby enjoying more convenient access to online services. iAM Smart is expected to facilitate remote on-boarding of customers. In Hong Kong’s 2023-24 Budget, the Hong Kong Government allocated HK\$200 million to enhance the operation of the “iAM Smart” platform to improve user experience.

### Virtual insurers/banks/intermediaries

December 2018 saw the grant of Hong Kong’s first virtual life insurer licence, under a dedicated “fast track” for firms seeking to enter the Hong Kong market using solely digital distribution channels. There are currently four licensed virtual insurers in Hong Kong.

In the banking sector, the first batch of virtual banking licences was granted in March 2019 to three virtual banks, with another five licences having been granted since then. These virtual banking licensees include – whether on their own or in conjunction with joint venture partners from other sectors – traditional global banks, insurers, telecommunication operators and “pure” fintech companies.

Hong Kong has several SFC-licensed “robo-advisors” (digital wealth management advisory platforms), with the SFC considering more applications.

### Virtual/cryptoassets

Pursuant to recent amendments to Hong Kong’s anti-money laundering and counter-terrorist financing (“**AML/CFT**”) legislation which will take effect on 1 June 2023, all virtual asset (“**VA**”) (including cryptocurrency) exchanges will be required to be licensed by the SFC. At the time of writing, only trading platforms that offer trading of at least one VA that constitutes a “security” under Hong Kong’s securities legislation may apply to be licensed under the SFC’s “opt-in” licensing regime.

To prepare for the upcoming new regime, the SFC issued its “Consultation Paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the Securities and Futures Commission” on 20 February 2023 on the proposed regulatory requirements for licensed VA trading platforms. This consultation ended on 31 March 2023.

In January 2022, Hong Kong’s financial regulators issued guidance on the regulation of VAs and VA-related products, which have given financial institutions and intermediaries a comprehensive framework to conduct VA-related activities. VA for these purposes extends beyond digital tokens and includes cryptocurrencies such as Bitcoin. VA-related products refer

to investment products that invest in VAs. Under this guidance, SFC-licensed intermediaries are permitted to engage in certain VA-related activities (including distributing and dealing in VAs and VA-related funds) to professional investors subject to a suite of safeguards. The safeguards include partnering only with SFC-licensed VA trading platforms. Retail investors are excluded from the regime except for a limited category of exchange-traded VA derivative products.

Another area of regulatory attention is stablecoins. The HKMA issued a Discussion Paper on Crypto-Assets and Stablecoins in January 2022, in which the HKMA sought feedback on a proposed regime to regulate certain stablecoin-related activities through a licensing regime. The consultation conclusion was issued by the HKMA in January 2023. See question 3.2 for further details.

On 31 October 2022, the Financial Services and the Treasury Bureau (“FSTB”) published a Policy Statement on Development of Virtual Assets in Hong Kong, setting out the Hong Kong Government’s stance and approach towards developing the VA sector and ecosystem in Hong Kong. The FSTB emphasised that it recognises the potential of VAs, and will introduce timely and necessary regulations to facilitate the sustainable development of VA innovations in Hong Kong.

See question 3.2 for further detail on VAs.

In June 2021, the HKMA commenced Project e-HKD, a retail or general-purpose retail central bank digital currency (“rCBDC”) project that aims to study the feasibility of e-HKD. The HKMA has conducted two rounds of market consultation, one on high-level technical design and one on key policy and design issues. On 20 September 2022, the HKMA released a position paper titled “e-HKD: Charting the Next Steps”, setting out its policy stance on rCBDC and outlining its next steps. The HKMA indicated that a three-rail approach will be adopted for the possible implementation of e-HKD in the future. Rail 1 involves laying the technology and legal foundations for supporting the implementation of e-HKD. A plan will be formulated for developing the wholesale layer of the two-tier e-HKD system. The HKMA will also identify areas for legislative amendments in order to enable the issuance of a digital form of fiat currency with legal tender status in Hong Kong. Rail 2, which will run in parallel to Rail 1, involves examining application, implementation and design issues relating to e-HKD. Rail 3 involves launching e-HKD by consolidating the outcomes of Rail 1 and Rail 2 and setting the timeline for launching e-HKD.

#### *Sustainable finance and fintech*

In 2021, the HKMA and the Bank for International Settlements Innovation Hub Hong Kong Centre joined forces with the technology industry, in a project named Project Genesis, to build prototype digital infrastructure that enables green investments and improves transparency on the use of proceeds. The goal is to utilise technologies such as blockchain and smart contracts, combined with the Internet-of-Things, to streamline the bond issuance process, improve efficiency in distribution and facilitate reporting on the use and environmental impact of green bonds proceeds, thus enhancing transparency to green bond investors. Project Genesis was successfully concluded in November 2021.

In 2020, the HKMA and the SFC established the Green and Sustainable Finance Cross-Agency Steering Group (the “Steering Group”) to accelerate the growth of sustainable finance. On 30 March 2022, the Steering Group published its preliminary feasibility assessment of carbon market opportunities for Hong Kong. On 21 June 2022, a data source repository was launched to support the financial sector in locating data sources for climate risk management and other analysis and research related to green and sustainable finance. On 31 October 2022, the Steering Group

announced that the Pilot Green and Sustainable Finance Capacity Building Support Scheme had begun accepting applications for registration as an eligible programme. The Hong Kong Government had earmarked HK\$200 million for launching the three-year pilot scheme to provide subsidies for the training and acquisition of relevant professional qualifications in sustainable finance as part of a collaborative effort to build capability for the industry. On 20 December 2022, the Steering Group announced that it had entered into a collaboration arrangement with CDP, an international non-profit organisation that runs the global environmental disclosure system for companies, to jointly enhance climate data availability and sustainability reporting in Hong Kong.

#### *Trade finance*

In keeping with Hong Kong’s role as a global trading hub, various major banks have worked with the HKMA to launch (in October 2018) a blockchain-based trade finance platform called eTradeConnect. In October 2021, eTradeConnect completed phase 2 cross-border connectivity with The People’s Bank of China Trade Finance Platform to support the use case of “Export to Hong Kong and Import from the Mainland”. Banks in Hong Kong and Mainland China can leverage the connection to execute cross-boundary trade finance transactions.

Finally, it is notable that Hong Kong is one of the key cities in the Guangdong-Hong Kong-Macau “Greater Bay Area” roadmap announced by the Chinese government in February 2019 to develop and integrate an area in southern Mainland China, Hong Kong and Macau into an innovation and technology hub. One example is the launch of the “Wealth Management Connect” scheme in September 2021, which will enable residents within Greater Bay to carry out cross-boundary investment in wealth management products distributed by banks in the Greater Bay Area. As of February 2022, over 24,000 individual investors have participated in the scheme and over 7,000 remittances have been recorded.

### 1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

No particular fintech businesses are prohibited or restricted (except that fintech businesses in the gambling sector are effectively prohibited under Hong Kong’s gambling legislation).

Cryptocurrencies as such are not prohibited, but as mentioned above, restrictions are in place for SFC-licensed intermediaries wishing to provide crypto-related services. The offer of cryptocurrencies to investors in Hong Kong (typically as part of an Initial Coin Offering (“ICO”)) may, depending on the features of the offering, be subject to Hong Kong’s existing securities law regime. Intermediaries providing services to Hong Kong investors in relation to investments in cryptocurrency-related investment products (such as Bitcoin futures) or funds may also be regulated by the existing regulatory regime. Once in force, the new licensing regime for VA services providers will apply to VA (including cryptocurrency) exchanges.

See question 1.1 above and section 3 below for further detail.

## 2 Funding For Fintech

### 2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Generally speaking, equity funding by a small number of investors for a private company in Hong Kong is relatively simple



and straightforward. However, existing regulatory restrictions in Hong Kong will need to be considered in the context of crowdfunding in Hong Kong (including restrictions regarding the public offer of shares and the issue of advertisements/invitations to the public to acquire securities). See section 3 for further detail.

Most new and growing businesses can obtain debt financing from banks and money lenders operating in Hong Kong. Peer-to-peer lending in Hong Kong may be subject to certain restrictions under the current regulatory regime – for example, under the Money Lenders Ordinance (“**MLO**”) and the “regulated activities” regime under Hong Kong’s securities legislation (see section 3 below).

**2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?**

The SME Funding Scheme provides financial assistance to SMEs looking to expand their markets outside of Hong Kong and The Innovation and Technology Fund provides financial support for businesses that contribute to innovation and technology in Hong Kong.

Other facilitation measures include the incubation programmes at Cyberport and the Hong Kong Science & Technology Parks (“**HKSTP**”), both of which provide funding and other support for technology start-ups.

For corporations, a two-tier profits tax regime applies (profits tax rate for the first HK\$2 million of profits is lowered to 8.25%, with the standard tax rate of 16.5% for profits exceeding that amount) and enhanced tax deductions are available for eligible R&D expenditure. These measures were initially introduced with effect from the 2018/2019 tax year and continue to apply.

**2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?**

The listing criteria depends on whether a business intends to list on the Main Board or the GEM Board (designed for growth companies) of The Stock Exchange of Hong Kong Limited (“**SEHK**”), and whether the company intends to list with weighted voting rights (“**WVR**”).

**Main Board**

For a primary listing on the Main Board, an applicant without WVR must meet the following key requirements (amongst others):

Financial Requirements

The applicant should generally have a trading record of at least three financial years and fulfil one of the following three criteria:

1. Profit Test:
  - a. profits attributable to shareholders of at least HK\$80 million in the last three financial years (with profits of at least HK\$35 million recorded in the most recent year and aggregate profits of at least HK\$45 million recorded in the two years before that); and
  - b. market capitalisation of at least HK\$500 million at the time of listing.
2. Market Capitalisation/Revenue/Cashflow Test:
  - a. market capitalisation of at least HK\$2 billion at the time of listing;
  - b. revenue of at least HK\$500 million for the most recent audited financial year; and

- c. positive cashflow from operating activities of at least HK\$100 million in aggregate for the three preceding financial years.
3. Market Capitalisation/Revenue Test:
  - a. market capitalisation of at least HK\$4 billion at the time of listing; and
  - b. revenue of at least HK\$500 million for the most recent audited financial year.

Management and Ownership Requirements

Management continuity for at least the three preceding financial years and ownership continuity and control for at least the most recent audited financial year.

Accounting Standards

Accounts must be prepared according to HKFRS, IFRS or (in the case of applicants from the Mainland of the People’s Republic of China (“**PRC**”)) China Accounting Standards for Business Enterprises.

Suitability for Listing

The business must be considered suitable for listing by the SEHK.

Public Float

Normally, at least 25% of the company’s total number of issued shares must be in public hands, with market capitalisation of at least HK\$125 million in public hands.

GEM Board

The same requirements on accounting standards and suitability for listing apply to the GEM Board, but there are less onerous financial requirements compared with the Main Board (given GEM is designed for growth companies), with the key differences being:

Financial Requirements

The applicant must have a trading record of at least two financial years comprising:

1. positive cashflow generated from the ordinary course of business of at least HK\$30 million in aggregate in the last two financial years; and
2. market capitalisation of at least HK\$150 million at the time of listing.

Management and ownership requirements

Management continuity for at least two completed financial years and ownership continuity for at least one completed financial year immediately before the issue of listing document and until date of listing.

Public Float

The same 25% public holding applies, but with market capitalisation of at least HK\$45 million in public hands.

WVR

Subject to adopting certain investor protection safeguards, a company with a WVR structure is permitted to apply for a primary listing on the Main Board if (amongst other things) it is considered “innovative” by the SEHK, has a minimum expected market capitalisation of HK\$10 billion and at least HK\$1 billion of revenue for the most recent audited financial year. If its revenue is below this, then it must have a minimum expected market capitalisation of HK\$40 billion.

The regime currently limits WVR beneficiaries of primary listing applicants to “founder-type” individuals who are materially responsible for the growth of the issuer’s business. WVR

beneficiaries are not permitted to transfer their WVR interests and must remain directors of the issuer (failing which their WVR interests will convert into ordinary shares).

WVR companies with primary (or dual primary) listings are also eligible for Stock Connect (a collaboration between the Hong Kong, Shanghai and Shenzhen Stock Exchanges, allowing international and Mainland Chinese investors to trade securities in each other's markets through the trading and clearing facilities of their home exchange). The market is waiting to see if this might be extended to secondary listed WVR companies in the future.

Primary-listed WVR issuers include Xiaomi and Meituan Dianping.

### Secondary Listings

Companies without a WVR structure who wish to secondary list in Hong Kong should fulfil one of the following two sets of quantitative eligibility requirements:

- Criteria 1:
  - a. have a track record of good regulatory compliance of at least five full financial years:
    - i. on the New York Stock Exchange LLC, Nasdaq Stock Market or the Premium Listing segment of the Main Market of the London Stock Exchange plc (“**Qualifying Exchange**”); or
    - ii. if it is an overseas issuer without a centre of gravity in Greater China, on the main market of a stock exchange that is included on a list of stock exchanges published on the SEHK's website (these are defined as Recognised Stock Exchanges under the listing rules); and
  - b. a market capitalisation at the time of secondary listing of at least HK\$3 billion; or
- Criteria 2:
  - a. a track record of good regulatory compliance of at least two full financial years on a Qualifying Exchange; and
  - b. a market capitalisation at the time of secondary listing of at least HK\$10 billion.

Those with a WVR structure will need to meet higher financial requirements to conduct a secondary listing: (a) good regulatory compliance on a Qualifying Exchange for two full financial years; and (b) market capitalisation of HK\$40 billion or if revenue is at least HK\$1 billion in the most recent financial year, market capitalisation of HK\$10 billion.

Alibaba became the first secondary listing under the WVR regime (and the third listing under the WVR regime (including primary and secondary listings)) and was followed by the secondary listings of others including JD.Com, ZTO Express, GDS Holdings Limited and Baozun Inc.

### SPAC

Special purpose acquisition companies (“**SPACs**”) have been allowed to list on the Main Board of the SEHK since 1 January 2022. The SPAC may raise funds through an IPO from professional investors only and those funds will be used for the acquisition of or a business combination with (“**De-SPAC**”) a target company (“**De-SPAC Target**”) within a set time limit (the announcement of the De-SPAC to be made within 24 months and the De-SPAC to be completed within 36 months of the date of listing unless extended by the SEHK). Post De-SPAC share trading is not restricted to professional investors.

The De-SPAC must meet the following key requirements (amongst others):

1. the successor company (i.e. the company resulting from the De-SPAC) must meet all the requirements for new listing;
2. the De-SPAC Target must have a fair market value at least 80% of the SPAC's IPO funds raised (prior to any redemptions);

3. the SPAC is required to obtain funding (being a percentage of the negotiated value of the De-SPAC Target) from independent third-party professional investors in order to complete a De-SPAC. The percentage amount required varies from 7.5% to 25% depending on the size of the De-SPAC Target (for a De-SPAC Target valued at over HK\$10 billion, the SEHK may accept a lower percentage than 7.5%). This independent third-party investment must also include significant investment from independent sophisticated investors; and
4. the De-SPAC must be conditional on approval by the SPAC's shareholders (excluding shareholders with a material interest and their close associates) in general meeting.

### Specialist Technology Companies

In October 2022, the SEHK consulted the market on a new regime to allow the listing of certain tech companies (termed “**Specialist Technology Companies**”) that do not meet the Main Board's profit or revenue track record requirements. If implemented, it will open the door for Specialist Technology Companies that do not yet meet the current HK\$500 million revenue threshold to list on the Main Board, subject to additional eligibility requirements and safeguards. Eligible sectors include next-generation IT (cloud-based services and AI) amongst others.

#### 2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

In 2022, 90 listings were completed, raising total funds of HK\$104.6 billion. There were nine homecoming listings in 2022, as compared to eight in 2021. In 2022, 14 SPACs have submitted listing applications, of which four have listed. The financial services and technology, media and telecoms (“**TMT**”) sectors continued to perform strongly in 2022. These included the listing of Sunshine Insurance Group Company Limited and Huitongda Network Co., Ltd., raising HK\$7.1 billion and HK\$2.3 billion, respectively. TMT listings constituted around 20% of the total number of listings in 2022.

## 3 Fintech Regulation

#### 3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Fintech firms that carry out “regulated activities” in Hong Kong must be licensed by the SFC unless they fall within an exemption. Types of regulated activities under the Securities and Futures Ordinance (“**SFO**”) that are more relevant to fintech businesses include: dealing in securities or futures contracts; advising on securities, futures contracts or corporate finance; leveraged foreign exchange trading (which broadly covers forwards); providing automated trading services; securities margin financing; and asset management. For example, Bitcoin may not constitute “securities”, but Bitcoin futures traded on and subject to the rules of conventional exchanges are regarded as “futures contracts”. Parties carrying on a business in dealing in Bitcoin futures are therefore required to be licensed for dealing in futures contracts under the SFO. See question 3.2 for further details on regulations relating to VA.

The new proposed regulated activities relating to OTC derivatives (dealing in or advising on OTC derivative products and providing client clearing services for OTC derivative

transactions) may be relevant to fintech businesses operating in Hong Kong once brought into effect (the timing for this remains unclear).

The SFO regime applies to all types of entities carrying out a regulated activity, whether they provide traditional financial services or activities more typically associated with fintech start-ups. In addition to the “regulated activities” framework under the SFO, there is specific regulation directed at businesses that conduct certain VA-related services – see question 3.2 below.

Other potentially relevant regulatory regimes are summarised below:

- **Banking Ordinance (“BO”)**  
The BO provides:
  - (i) no person shall act as a “money broker” unless approved by the HKMA – broadly this covers entities that negotiate, arrange or facilitate the entry by clients into arrangements with banks (or the entry by banks into arrangements with third parties);
  - (ii) no “banking business” shall be carried on in Hong Kong except by a licensed bank – this covers: (a) receiving from the general public money on current, deposit, savings or other similar account repayable on demand or within less than a specified period; and (b) paying or collecting cheques drawn by or paid in by customers; and
  - (iii) no business of taking deposits can be carried on in Hong Kong except by an AI.
- **MLO**  
A person carrying on business as a “money lender” in Hong Kong requires a money lender’s licence under the MLO. Broadly, a “money lender” is a person whose business is that of making loans or who holds himself out in any way as carrying on that business. Certain types of loans are exempted, including loans made by a company, or an individual whose ordinary business does not primarily involve money lending in the ordinary course of that business.
- **Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”)**  
Under the AMLO, the Hong Kong Customs and Excise Department requires any person who wishes to operate a “money service” in Hong Kong to apply for a Money Service Operator licence.  
“Money service” covers: (i) a money changing service (a service for exchanging currencies that is operated in Hong Kong as a business); and (ii) a remittance service (a service operated in Hong Kong as a business for: sending money (or arranging for such) to a place outside Hong Kong, receiving money (or arranging for such) from outside Hong Kong, or arranging for the receipt of money outside Hong Kong).
- **Payment Systems and Stored Value Facilities Ordinance (“PSSVFO”)**  
The PSSVFO provides a licensing regime for the issue of “stored value facilities”. Broadly, these are facilities that can be used to store the value of an amount of money that is paid into the facility from time to time as a means of making payments for goods or services. The regime covers both device-based and network-based facilities.  
The PSSVFO also regulates retail payment systems, but only where the failure of a particular system may result in systemic issues for the Hong Kong financial system. It is therefore not relevant to the majority of retail payment systems.
- **Insurance Ordinance (“IO”)**  
The IO provides that no person shall carry on any class of insurance business in or from Hong Kong unless authorised to do so. The IO was also amended with effect from

23 September 2019 to cover the regulation of insurance intermediaries – i.e. agents and brokers – which were previously regulated by three self-regulatory organisations.

### 3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

In addition to the “regulated activities” regime under the SFO applicable to all types of businesses carrying out a regulated activity, Hong Kong regulators have issued specific guidance directed at certain VA-related activities. Examples include:

#### *Dealing in/distributing/advising on VAs and VA-related products*

The SFC and HKMA issued a joint circular in January 2022 that implemented a framework for SFC-licensed intermediaries to conduct various VA-related activities subject to complying with a suite of investor protection measures. The definition of VA extends beyond digital tokens and includes cryptocurrencies such as Bitcoin, although CBDCs are excluded. Under the circular, an intermediary is permitted to:

1. provide VA dealing services if (amongst other things) it is licensed for Type 1 regulated activity, partners only with SFC-licensed VA trading platforms, complies with existing “complex products” requirements, such as ensuring suitability where applicable, and only deals with professional investors. This means retail investors wishing to invest in VAs cannot do so via SFC-licensed trading platforms and intermediaries;
2. distribute VA-related investment products with various investor safeguards depending on the nature of the product. Distribution is also limited to professional investors, except for a limited category of exchange-traded derivative VA-related product;
3. provide VA advisory services if it is licensed for Type 4 or Type 1 regulated activity, offer services only to professional investors and comply with certain conduct requirements; and
4. provide VA fund asset management services if it is Type 9 licensed and, if the fund meets the *de minimis* threshold (10% or more of the gross asset value of a portfolio in VAs), complies with existing requirements (including suitability requirements) set out in the *pro forma* terms and conditions for VA fund managers dated 4 October 2019.

In light of feedback received during the legislative process and from the public, the SFC has sought to consult the public on whether the professional investor-only requirement could be relaxed on the governance procedures and listing criteria for the VA service providers (“VASPs”) to admit tokens for secondary market trading by retail investors. The SFC’s Fintech Unit has been conducting soft consulting with the industry and stakeholders on this issue. On 20 February 2023, the SFC issued its “Consultation Paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the Securities and Futures Commission” on the proposed regulatory requirements for licensed VA trading platforms.

#### *VASPs*

Hong Kong has amended the AMLO to introduce a new licensing regime for VASPs, which will apply to VA (including cryptocurrency) exchanges and will take effect on 1 June 2023. This ties in with the Financial Action Task Force (“FATF”)’s recommendation to require jurisdictions to regulate (or prohibit) VASPs for AML/CFT purposes in the same way as financial institutions. For now, the VASP licensing regime in Hong Kong



will only apply to “VA exchanges” (as defined below), and not to other VASP activities (such as VA payment systems or custodian services) as those are not prevalent in Hong Kong. Future consideration will be given to extending the VASP licensing regime if there is a need to do so – and flexibility will be built into the licensing regime from the outset to provide for such expansion.

Under the VASP regime, VAs is defined to mean: a cryptographically secured digital representation of value that (i) is expressed as a unit of account or a store of economic value, (ii) is either used, or is intended to be used, as a medium of exchange accepted by the public as payment for goods or services or for the discharge of a debt, or for investment purposes, or provides rights, eligibility or access to vote on the management, administration or governance of the affairs in connection with, or to vote on any change of the terms of any arrangement applicable to, the cryptographically secured digital representation of value, and (iii) can be transferred, stored or traded electronically, and (iv) satisfies other characteristics prescribed by the SFC. The Secretary for Financial Services and the Treasury may also, by notice published in the Gazette, prescribe any digital representation of value as a VA. The definition does not cover: digital representations of fiat currencies (including CBDCs); financial assets (e.g. securities and authorised structured products) already regulated under the SFO; or closed-loop, limited purpose items that are non-transferable, non-exchangeable and non-fungible (e.g. air miles, credit card rewards, gift cards, customer loyalty programmes, gaming coins, etc.). Stablecoins would, however, be caught.

“VA Service” is defined to mean operating a VA exchange, i.e. providing services through means of electronic facilities (a) whereby offers to sell or purchase VAs are regularly made or accepted in a way that results in a binding transaction, or persons are regularly introduced or identified to other persons so that they may negotiate or conclude sale or purchases of VAs in a way that results in a binding transaction, and (b) where client money or client VAs comes into direct or indirect possession of the service provider.

Any person seeking to carry on a business of providing any VA service must apply for a licence from the SFC under the AMLO. Only locally incorporated companies with a permanent place of business in Hong Kong or companies incorporated overseas but registered in Hong Kong under the Companies Ordinance will be permitted to apply for a VASP licence. Applicants, their responsible officers and ultimate owners must satisfy a “fit and proper” test. A licensed VA exchange will also be required to observe the AML/CFT requirements under Schedule 2 to the AMLO that apply to financial institutions.

Initially, it was proposed that licensed VASPs can only offer services to professional investors, which will be imposed by the SFC as a licensing condition. In light of feedback received during the legislative process and from the public, the SFC has sought to consult the public on whether the professional investor-only requirement could be relaxed on the governance procedures and listing criteria for the VASPs to admit tokens for secondary market trading by retail investors. A licensed VASP should also meet the prescribed regulatory requirements concerning (amongst others) financial resources, knowledge and experience, soundness of the business, risk management, and segregation and management of client assets. After a 12-month transition period, all operators carrying on VA exchange business must possess a valid licence issued by the SFC. The regime will also prohibit a person, whether in Hong Kong or elsewhere, from actively marketing to the Hong Kong public a regulated VA activity or associated services, unless that person is properly licensed and regulated by the SFC to carry out that activity.

#### *SFC-licensed VA trading platform*

In November 2019, the SFC implemented a voluntary opt-in licensing regime for VA trading platforms in its regulatory sandbox. SFC-licensed intermediaries can only partner with such licensed trading platforms when providing dealing services. The SFC will only grant licences to platform operators that: (a) offer trading in at least one VA which constitutes “securities” under the SFO (therefore it is not available to platforms that trade only in non-security VAs such as Bitcoin); and (b) are capable of meeting robust regulatory standards, being standards comparable to those that apply to licensed securities brokers and automated trading venues (with additional requirements to address specific risks associated with VAs). For example, the SFC will impose licensing conditions requiring that platform operators offer their services exclusively to professional investors who have sufficient knowledge of VAs and maintain stringent criteria for the inclusion of VAs on their platforms. In relation to VAs that fall under the definition of “securities” under the SFO, a platform operator should only include those which: (i) are asset-backed; (ii) are approved or qualified by, or registered with, regulators in comparable jurisdictions; and (iii) have a post-issuance track record of 12 months. We expect the 12-month post-issuance track record to present particular challenges for prospective licensees. In addition, licensed platforms will be placed in the SFC’s regulatory sandbox for a period of close and intensive supervision. On 20 February 2023, the SFC issued its “Consultation Paper on the Proposed Regulatory Requirements for Virtual Asset Trading Platform Operators Licensed by the Securities and Futures Commission” where it proposed allow all types of investors, including retail investors, to access trading services provided by licensed VA trading platform provided the platforms comply with a range of robust investor protection measures.

#### *Stablecoins*

The HKMA issued a Discussion Paper on Crypto-Assets and Stablecoins (“**Discussion Paper**”) in January 2022 seeking feedback on its proposal to regulate certain activities related to stablecoins. On 31 January 2023, the HKMA issued the conclusion paper to the Discussion Paper. The HKMA proposed to introduce a regulatory regime for certain activities relating to stablecoins, including the establishment of rules governing a stablecoin arrangement, issuing, creation or destroying stablecoin, stabilisation and reserve management arrangements and provision of stablecoin wallets. The HKMA indicated that it will prioritise regulating stablecoins that purport to reference one or more fiat currencies, due to the higher monetary and financial stability risks that they may pose. The HKMA will build in flexibility into the regulatory regime in order to scope in other stablecoin structures in the future.

Entities that will have to apply for a licence from the HKMA include entities that: (i) conduct a regulated activity in Hong Kong; (ii) actively market a regulated activity to the Hong Kong public; (iii) conduct a regulated activity which concerns a stablecoin that purports to reference to the value of the Hong Kong dollar; or (iv) in the opinion of the HKMA, should be regulated in view of public interest.

The target implementation date of the regulatory regime is by 2023–2024. The HKMA may introduce new legislation or amend existing legislation in order to implement the regulatory regime. The HKMA indicated that it will conduct further consultation on the regulatory regime in due course.

#### *ICOs/STOs*

The SFC issued a statement in September 2017 in relation to ICOs, in which the SFC warned that:

- where the digital tokens involved in an ICO fall within the definition of “securities” in the SFO, dealing in or advising

on the digital tokens, or managing or marketing a fund investing in such digital tokens, may constitute a “regulated activity”;

- where an ICO involves an offer to the Hong Kong public to acquire “securities” or participate in a collective investment scheme, registration or authorisation requirements may be triggered unless an exemption applies;
- parties engaging in the secondary trading of such tokens (e.g. on cryptocurrency exchanges) may also be subject to the SFC’s licensing and conduct requirements; and
- certain requirements relating to automated trading services and recognised exchange companies may be applicable to the business activities of cryptocurrency exchanges.

This was followed by a circular published in December 2017 in relation to Bitcoin futures contracts and other cryptocurrency-related investment products, in which the SFC warned that:

- Bitcoin futures contracts traded on and subject to the rules of a futures exchange are regarded as “futures contracts” for the purposes of the SFO, even though the underlying assets of such contracts may not be regulated under the SFO;
- other cryptocurrency-related investment products may, depending on their terms and features, be regarded as “securities” as defined under the SFO; and
- parties dealing in, advising on, or managing or marketing a fund investing in such contracts or products may therefore be subject to the SFC’s licensing, conduct and authorisation requirements under the SFO.

On 28 March 2019, the SFC published a statement on Securities Token Offerings (“STOs”). The statement explains that security tokens are normally offered to professional investors only and that in Hong Kong, they are likely to be “securities” as defined under the SFO and therefore subject to the securities laws of Hong Kong. In particular, under the SFC’s Guidelines on Online Distribution and Advisory Platforms and paragraph 5.5 of the SFC’s Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“SFC Code of Conduct”), security tokens would be regarded as “complex products” and therefore additional investor protection measures apply. In addition, intermediaries are expected to observe certain requirements; namely, enhanced selling restrictions, due diligence and information to be provided to clients.

On 31 October 2022, the SFC issued a circular on Virtual Asset Futures Exchange Traded Funds to put in place a regime for the authorisation of VA futures exchange-traded funds (“VA Futures ETFs”). As of 20 February 2023, the SFC has authorised three VA Futures ETFs. VA Futures ETFs seeking SFC authorisation for public offering in Hong Kong must meet the usual applicable requirements set out in the Overarching Principles Section and the Code on Unit Trusts and Mutual Funds (“UT Code”) in the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products. VA Futures ETFs must also meet the following additional requirements:

- the management company of a VA Futures ETF is required to have a good track record of regulatory compliance and demonstrate at least three years’ proven track record in managing exchange-traded funds (“ETFs”);
- only VA futures traded on conventional regulated futures exchanges are allowed, subject to the management company demonstrating that (i) the relevant VA futures have adequate liquidity for the operation of the VA Futures ETF, and (ii) the roll costs of the relevant VA futures contracts are manageable and how such roll costs will be managed. Initially, only Bitcoin futures and Ether futures traded on Chicago Mercantile Exchange are allowed. The

SFC will keep this in view and consider expanding the scope of eligible VA futures markets as appropriate;

- the management company of a VA Futures ETF is expected to adopt an active investment strategy to allow flexibility in portfolio composition, rolling strategy, and handling of any market disruption events. The net derivative exposure (as defined under the UT Code) of a VA Futures ETF shall not exceed 100% of the ETF’s total net asset value;
- the product key facts statement of a VA Futures ETF shall contain upfront disclosure of the investment objective and key risks associated with investment in VA futures;
- intermediaries are subject to the applicable requirements under the SFC Code of Conduct and related guidelines when they provide services to clients with respect to VA Futures ETFs; and
- the management company of a VA Futures ETF has to carry out extensive investor education before launching the VA Futures ETF in Hong Kong.

### 3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory ‘sandbox’ options for fintechs in your jurisdiction?

Financial regulators and policy-makers in Hong Kong are receptive to fintech. Banking, securities and insurance regulators have each set up dedicated fintech offices and sandboxes to deal with regulatory enquiries and handle pilot trials, respectively. The sandboxes of the three regulators are linked up so that there is a single point of entry for pilot trials of cross-sector fintech products.

The HKMA’s supervisory approach to fintech is risk-based and technology-neutral. It has established a Fintech Facilitation Office to act as an interface between market participants and the HKMA. The HKMA’s sandbox allows banks (together with their partnering technology firms) to conduct pilot trials of their fintech initiatives involving a limited number of participating customers without the need to achieve full compliance with the HKMA’s supervisory requirements. See question 1.1 above for a summary of the pilot trials so far.

The SFC’s approach to fintech is also technology-neutral. It has established a Fintech Contact Point and a regulatory sandbox. The SFC’s sandbox is open to SFC-licensed corporations and start-ups that intend to carry on an SFO-regulated activity to test the activities in a confined regulatory environment before the fintech is used on a fuller scale.

The IA has also established a sandbox for authorised insurers, as well as an Insurtech Facilitation Team to enhance communication with businesses involved in the development and application of fintech, and a fast track for applications for authorisation of new insurers owning and operating solely digital distribution channels.

The HKMA, the SFC and the IA are members of the Global Financial Innovation Network, to which firms can apply to conduct cross-border tests of innovative financial products or services.

### 3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

The SFO licensing regime applies to all businesses carrying out regulated activities in Hong Kong, whether they are established in Hong Kong or not. A fintech business based overseas that

actively markets, to the Hong Kong public, services that constitute a regulated activity will *prima facie* be regarded as carrying on business in a regulated activity, for which a licence is required. An overseas-based fintech firm would be caught whether it is marketing by itself or through another entity, and whether in Hong Kong or otherwise.

There are various exemptions from the licensing regime, including (for certain regulated activities) dealing only with professional investors, or targeting/carrying on business with a small number of investors in Hong Kong (not constituting the “public”). An overseas fintech firm may also be able to “deal in securities” through another entity licensed to deal in securities or a Hong Kong-licensed bank. There are specific requirements in order to fall within the exemptions and specific legal advice in the context of the particular facts should be sought.

The SFO also prohibits overseas firms issuing to the Hong Kong public any advertisement or invitation to acquire securities and other specified products unless prior SFC authorisation is obtained. The definition of “advertisement” is very broad and includes every form of advertising, whether made orally, electronically or by any other means. There are a number of exemptions, including one relating to professional investors. Again, specific legal advice in the context of the particular facts should be sought.

In addition to the SFO regime, fintech businesses intending to operate in Hong Kong, whether or not they are established here, should comply with (or fall within an exemption to) the regulatory regimes under the BO (which includes restrictions on deposit advertisements), MLO, AMLO, PSSVFO and the IO referred to in question 3.1. The extent to which these regimes apply to a fintech firm will depend on the specific nature of the firm’s operations.

## 4 Other Regulatory Regimes / Non-Financial Regulation

### 4.1 Does your jurisdiction regulate the collection/use/ transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

The Personal Data (Privacy) Ordinance (“**PDPO**”) establishes a principles-based regime that regulates the collection, holding, processing and use of personal data in Hong Kong.

Fintech businesses in Hong Kong that are “data users” (defined as persons who control the collection, holding, processing or use of personal data) are regulated by the PDPO. The principles that data users must observe mainly relate to notification requirements at the time of collection of personal data, accuracy and duration of retention of personal data and security and access to personal data. There are also particular restrictions regarding the use of client lists to market products.

In addition to the PDPO, the Privacy Commissioner for Personal Data (“**Commissioner**”) has published industry guidance on the proper handling of customers’ personal data, including for those in the banking industry. The Commissioner has issued guidance in relation to the collection and use of personal data through the internet, use of portable storage devices, online behavioural tracking and “cloud computing”, and has issued an information leaflet on physical tracking and monitoring through electronic devices.

On 8 October 2021, amendments to the PDPO came into effect to: (a) criminalise doxxing, i.e. unconsented disclosure of personal information of targeted individuals and groups; (b) introduce a cessation notice regime to tackle doxxing with extra-territorial reach; and (c) substantially expand the

investigation and enforcement powers of the Commissioner, in contexts beyond doxxing. The Commissioner has also published the Personal Data (Privacy) (Amendment) Ordinance 2021 Implementation Guideline to provide guidance on the amended provisions and criminal liabilities about doxxing.

Unsolicited direct marketing by electronic means is also covered by the Unsolicited Electronic Messages Ordinance, which applies to electronic commercial messages with a “Hong Kong link”, including those to which the PDPO does not apply. This would cover messages sent by fintech entities to promote their services or investment opportunities over a public telecommunications service to electronic addresses.

### 4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The PDPO applies to foreign organisations to the extent they have offices or an operation in (including agents located in) Hong Kong. The PDPO applies to data users that are able to control the collection, holding, processing or use of personal data in or from Hong Kong.

The PDPO contains a restriction on the transfer of personal data outside Hong Kong and transfers between two other jurisdictions where the transfer is controlled by a Hong Kong data user, although this restriction has not yet been brought into force. The restriction, once in force, will prohibit the transfer of personal data from Hong Kong to a place outside Hong Kong unless one of a number of conditions is met, including: the data user taking all reasonable precautions and due diligence to ensure the data will not be dealt with in a manner that would contravene the PDPO; transferring to a place which has data protection laws similar to the PDPO; or where the data subject has consented in writing to the transfer.

The 8 October 2021 amendments to the PDPO introduces an extra-territorial application in the form of a cessation notice, which may be served by the Commissioner regardless of whether the disclosure is made in Hong Kong or not. A cessation notice may be served on a Hong Kong person (e.g. an individual in Hong Kong and an internet service provider having a place of business in Hong Kong) or, in relation to an electronic message, a non-Hong Kong service provider (e.g. operators of overseas social media platforms).

### 4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Failure to comply with the PDPO could potentially result in the following sanctions:

- Regulatory action: the Commissioner may investigate complaints of breaches of the PDPO, initiate investigations and issue enforcement notices and cessation notices. A data user who contravenes an enforcement notice is liable to a fine and imprisonment. Failure to comply with a cessation notice is also punishable by a fine and imprisonment.
- Criminal liability: the PDPO contains a number of criminal offences; for example, doxxing, failure to comply with requirements of the Commissioner, disclosing personal data without consent for gain or causing loss, and in relation to direct marketing. Maximum penalties for breaches under the PDPO are fines of up to HK\$1 million and five years’ imprisonment.
- Civil claims: individuals who suffer loss as a result of their personal data being used in contravention of the PDPO are entitled to compensation by the data user. The Commissioner



may also institute civil proceedings against any data user that fails to comply with an enforcement notice.

- Reputational risk: the results of any investigation, the name of the organisation involved and details of the breaches may be published by the Commissioner.

Liabilities incurred under the PDPO are likely to be direct marketing breaches. This is because breach of the other provisions of the PDPO tends first to lead to the Commissioner issuing an enforcement notice – and the recipient of the enforcement notice will only be subject to liabilities upon non-compliance with the enforcement notice.

#### 4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

In Hong Kong, cybersecurity is dealt with through a range of laws and regulations, including the PDPO and criminal law. There are various criminal offences relating to cybersecurity, such as: damaging or misusing property (computer program or data); making false entries in banks' books of accounts by electronic means; unauthorised access to a computer with intent to commit an offence or with dishonest intent; and unlawfully altering, adding or erasing the function or records of a computer. Amendments have been made to the PDPO to criminalise doxing, as detailed in question 4.1 above. Although there is currently no mandatory data breach notification requirement in Hong Kong applicable to data users generally, the Commissioner has provided data users with guidance on practical steps in handling data breaches and mitigating the loss and damage caused to the individuals involved. Data users may also be required to notify data breaches under applicable regulatory regimes and their associated codes/guidelines (e.g. the SFC Code of Conduct).

The Cyber Security and Technology Crime Bureau of the Hong Kong Police Force is the department responsible for handling cybersecurity issues and carrying out technology crime investigations and prevention. It has established close links with local and overseas law enforcement agencies to combat cross-border technology crime.

Cybersecurity remains a key priority for the regulators. The HKMA has launched several significant measures to strengthen cyber resilience in the banking sector, including an enhanced competency framework on cybersecurity. Entities that are regulated as licensed corporations by the SFC are equally expected to take appropriate measures to critically review and assess the effectiveness of their cybersecurity controls. The SFC has issued a circular setting out certain key areas that licensed corporations should pay close attention to when reviewing and controlling their cybersecurity risks, as well as certain controls that such corporations should consider implementing where applicable, and has also issued guidelines to mitigate hacking risks associated with internet trading. In October 2019, the SFC issued a circular to licensed corporations on the use of external electronic data storage, which is now supported by a set of frequently asked questions (**FAQs**) issued by the SFC in December 2020. In October 2021, the SFC issued a circular to intermediaries on operational resilience and remote working. In a report on the review of licensed corporations providing online brokerage, distribution and advisory services issued by the SFC in August 2022, the SFC highlighted the deficiencies and non-compliance of certain licensed corporations in relation to cybersecurity and reminded licensed corporations to comply with the SFC requirements regarding cybersecurity set out in the abovementioned circulars and guidelines.

#### 4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

International standards of AML/CTF are set by the FATF. As a member of the FATF, Hong Kong implements recommendations promulgated by this inter-government body to combat money laundering and terrorist financing.

Local legislation dealing with money laundering and terrorist financing includes: AMLO; Drug Trafficking (Recovery of Proceeds) Ordinance (“**DTROPO**”); Organized and Serious Crimes Ordinance (“**OSCO**”); and United Nations (Anti-Terrorism Measures) Ordinance (“**UNATMO**”).

In addition to the requirements discussed under question 3.1 above, the AMLO imposes customer due diligence and record-keeping requirements on financial institutions (including licensed corporations, banks and other AIs, and insurance companies, agents and brokers) and certain professions, while DTROPO, OSCO and UNATMO require the reporting of suspicious transactions regarding money laundering or terrorist financing and prohibit related dealing activities.

The SFC, HKMA and IA have each issued guidance to financial institutions on designing and implementing AML and CTF policies and controls to meet AMLO and other relevant requirements.

The Prevention of Bribery Ordinance is the primary anti-corruption legislation in Hong Kong. It is directed at the corruption of public officers (public sector offences) and corrupt transactions with agents, which includes employees of private companies (private sector offences).

#### 4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction (for example, AI)?

In addition to the legal and regulatory regimes described above, fintech businesses will, depending on the nature and structure of their operations, also be subject to other laws, including: business registration (if carrying on business in Hong Kong); Hong Kong Companies Registry registration (if having a place of business in Hong Kong); and Hong Kong tax laws (noting that corporate income tax applies only to locally sourced profits – not worldwide profits).

## 5 Accessing Talent

#### 5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The requirements for the hiring or dismissal of employees in Hong Kong are not particularly onerous. In relation to hiring employees, a written employment contract is advisable but not strictly required in most cases (although a written notice of certain key terms may be required upon request by an employee). Notification to the Inland Revenue Department is required within three months of commencement of employment. Collective agreements and trade union arrangements are not compulsory and are relatively uncommon in Hong Kong.

Unless there are grounds for summary dismissal (such as habitual neglect of duties), a statutory minimum notice period (or payment *in lieu*) will apply to a notice of termination of

an employment contract, and statutory severance or long service payment (but not both) may be payable up to a statutory maximum amount of HK\$390,000. Statutory severance is payable to an employee (with minimum two years' continuous service) who is made redundant. Long service payment is payable to an employee (with minimum five years' continuous service) who is dismissed for any reason other than summary dismissal unless he or she is already entitled to severance payment.

The employer must notify the Inland Revenue Department (and the Immigration Department if the employee's working visa is sponsored by the employer) of the dismissal. There are no other particular dismissal procedures that must be observed under Hong Kong legislation, but employers must follow any internal company procedures that may form part of the employment terms.

Employers must not dismiss certain protected categories of employees (such as pregnant employees or employees on statutory sick leave) or in contravention of anti-discrimination laws (e.g. on gender, race and disability). Otherwise, provided the employer has either served the requisite notice of termination or made payment *in lieu* of notice, the contract is terminated lawfully, regardless of the reason for dismissal. That being said, an employee with a minimum of two years' continuous service has a right to make a claim in the Labour Tribunal for dismissal, where the employee is dismissed because the employer intends to distinguish or reduce any statutory right or benefit of the employee, unless the dismissal is for a "valid reason", being: the conduct of the employee; his or her capability or qualifications to perform the role; redundancy or other genuine operational requirements; continued employment would be unlawful; or any other reason of substance in the opinion of the Labour Tribunal. In practice, unless the dismissal is of a protected category of employee, the remedy which a tribunal may award is usually limited to any unpaid termination entitlements the employee should have received.

## 5.2 What, if any, mandatory employment benefits must be provided to staff?

The statutory minimum hourly wage (currently HK\$37.50) applies to most workers in Hong Kong. The revised minimum hourly wage of HK\$40 will take effect from 1 May 2023, subject to approval by the Hong Kong Legislative Council.

Key mandatory employment benefits include:

- enrolment in a mandatory provident fund, with a monthly contribution from each of the employer and employee of 5% of the employee's income. The mandatory element of the monthly contribution by each of the employer and employee is currently capped at HK\$1,500. The requirement does not apply to foreign nationals with an employment visa who are either working in Hong Kong for 13 months or less, or belong to an overseas retirement scheme;
- maternity leave (14 weeks) and paternity leave (five days). Employees with more than 40 weeks' continuous service are entitled to 80% pay during such leave, subject to a cap of HK\$80,000 per employee in respect of maternity leave pay for the 11<sup>th</sup> to 14<sup>th</sup> week of maternity leave;
- paid annual leave and sickness allowance for qualifying employees; and
- employers must take out insurance in relation to employees' work-related injuries, but there are no compulsory medical benefits.

Certain statutory rights are applicable only to "continuous" employees (those who have worked for 18 or more hours per week for at least four consecutive weeks).

## 5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

Individuals who are not Hong Kong permanent residents would generally require an employment visa to enter Hong Kong for employment purposes under the General Employment Policy ("GEP") (or the Admission Scheme for Mainland Talents and Professionals for nationals of the PRC). The GEP is quota-free and non-sector-specific. The visa must be sponsored by the employer in Hong Kong, who must demonstrate the application fulfils certain criteria, including that the applicant is employed in a job relevant to his or her academic qualifications or work experience that cannot be readily taken up by the local work force.

More sector-specific is the Technology Talent Admission Scheme ("TechTAS"), which the Hong Kong Government announced in May 2018 to meet demand for talent in the innovation and technology sector. The scheme provides a fast-track arrangement for eligible companies to admit overseas and Mainland talent to undertake R&D work for them. Since January 2020, TechTAS has extended its coverage from the tenants and incubatees of the HKSTP or Cyberport to all companies conducting R&D activities in specified technology areas in Hong Kong. The specified technology areas have also been increased from seven to 13 and cover the areas of AI, biotechnology, cybersecurity, data analytics, financial technologies, material science, robotics, 5G communications, digital entertainment, green technology, integrated circuit design, Internet-of-Things and microelectronics. On 19 October 2022, the Chief Executive announced in the 2022 Policy Address certain enhancements of TechTAS, including expanding the coverage to more emerging technology areas.

Individuals who wish to establish or join fintech businesses or start-ups in Hong Kong may also consider an "investment as entrepreneur" visa. Such applications may be favourably considered if the applicant: (i) is in a position to make a substantial contribution to the Hong Kong economy (by reference to, for example, the business plan, financial resources, investment sum and introduction of new technology or skills); or (ii) wishes to start or join a start-up that is supported by a Hong Kong Government-backed programme and the applicant is the proprietor or partner of the start-up or a key researcher.

Finally, there is also a quota-based Quality Migrant Admission Scheme that seeks to attract highly skilled or talented persons to settle in Hong Kong in order to enhance Hong Kong's economic competitiveness. Applicants are not required to have secured an offer of local employment but are required to fulfil a set of prerequisites under a point-based test.

## 6 Technology

### 6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Fintech products based on computer programs are protected by copyright in Hong Kong. The Copyright Ordinance recognises computer programs, and preparatory design materials for computer programs, as types of literary works that can be protected by copyright. Copyright in the source code arises automatically, and registration is not needed or possible.

A database will be protected as a literary work if it falls under the general copyright law in Hong Kong. There are no separate database protection rights in Hong Kong.



In terms of patents, computer programs and business methods “as such” cannot be patented. However, patent protection may be available for software-related inventions that produce a further technical effect. Given the potential difficulties, the common law of confidence may be useful in preventing the disclosure of technical information that are trade secrets.

It is possible to register a trade mark in Hong Kong, which will protect the branding applied to a fintech product.

## 6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

No registration of copyright is required or possible in Hong Kong. The general rule is the author is the first owner of copyright. In the case of a computer-generated work, the author will be the person who undertakes the arrangements necessary for the creation of the work.

However, first copyright to works: (i) made by an employee in the course of his or her employment will belong to the employer (unless a contrary agreement has been made); and (ii) which have been commissioned will belong to the commissioner provided there is an express agreement with the contractor to this effect. The legislation provides: (i) in the case of work produced in the course of employment, further reward for an employee if the use of the work is beyond the parties’ reasonable contemplation at the time it was created (the parties can contract out of this); and (ii) in the case of commissioned work, that even where the contractor is the party entitled to the copyright under the agreement, the commissioner will still have an exclusive licence to exploit the work for purposes reasonably contemplated at the time of commissioning it, as well as the power to stop it from being used for purposes against which the commissioner could reasonably object.

The general rule is that the right to a patent belongs to the inventor. The exception is where the inventor is an employee – in which case, ownership will belong to the employer if certain conditions are met. However, compensation may be awarded to the employee where the invention is of outstanding benefit to the employer (parties cannot contract out of this).

## 6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

For copyright, Hong Kong has an “open qualification” system whereby works can qualify for protection irrespective of the nationality or residence of the author and where the work was first published. This extends the reciprocal protection under various international copyright conventions applicable to Hong Kong (which include the Berne Convention and WIPO (Copyright) Treaty).

Following the public consultation on updating Hong Kong’s copyright regime carried out by the Hong Kong Government from late 2021 to early 2022, the Copyright (Amendment) Bill 2022 was passed. The amendment ordinance was gazetted on 16 December 2022 and will come into operation on a date to be appointed. The amendment ordinance covered the following five key areas: (1) giving copyright owners a technology-neutral exclusive communication right so as to ensure that the protection afforded to them would cover their works communicated to the public through any mode of electronic transmission; (2) introducing criminal sanctions against infringement relating to the introduction of the above exclusive communication right; (3) introducing two additional statutory factors for the court to

consider when assessing whether to award additional damages to copyright owners in civil cases involving infringement, so as to strengthen protection for them in the digital environment. The two factors are (i) the unreasonable conduct of an infringer after having been informed of the infringement, and (ii) the likelihood of widespread circulation of infringing copies as a result of the infringement; (4) introducing “safe harbour” provisions to limit online service providers’ (“OPs”) liability for their subscribers’ copyright infringement acts on their service platforms, provided that the OPs meet certain prescribed conditions, including taking reasonable steps to limit or stop a copyright infringement when being notified, so as to provide incentives for OPs to cooperate with copyright owners in combatting online piracy and to provide reasonable protection for their acts; and (5) providing new copyright exceptions for the use of copyright works for three categories of purposes, namely parody, satire, caricature and pastiche; commenting on current events; and quotation of copyright works; and to revise and expand exceptions on various modes of using copyright works to facilitate online learning; the operation of libraries, archives and museums; and media shifting of sound recordings; so as to maintain the appropriate balance between copyright protection and reasonable use of copyright works. The consultation document had covered four issues that have generated discussions from different stakeholders; namely: whether the existing exhaustive approach to exceptions should be maintained; whether to continue allowing contracts to override exceptions; and whether there should be specific provisions to deal with illicit streaming devices as well as judicial site blocking. The Hong Kong Government’s position is to maintain the status quo in relation to these issues and these aspects of the Copyright Ordinance were not amended.

An original grant patent (“OGP”) system came into effect on 19 December 2019, which creates a direct route for seeking standard patent protection in Hong Kong with a maximum term of 20 years, as an alternative to the existing “re-registration” route. OGP applications are subject to substantive examination by the Patents Registry of the Intellectual Property Department for determining the patentability of the underlying inventions. Under the existing “re-registration” route, a UK, EU (designating UK) or PRC patent forms the basis of a standard patent application in Hong Kong. There is no substantive examination by the Patents Registry of such “re-registration” applications. Patent protection for Hong Kong via the international patent system under the Patent Cooperation Treaty can be obtained on the basis of an international application designating the PRC, followed by a further application in Hong Kong after the international application has entered its national phase in the PRC. It is also possible to apply for a short-term patent in Hong Kong with a maximum term of eight years. Although there is also no substantive examination of short-term patent applications, another feature of the new patent system is enabling any short-term patent owner or third party having a legitimate interest in the validity of a short-term patent to request the Patents Registry to carry out a post-grant substantive examination of the underlying invention. The use of certain misleading or confusing titles/descriptions relating to the qualification of patent practitioners is also prohibited in Hong Kong under the new patent system. In tandem with the launch of the new patent system, a new electronic processing system started operation on 19 December 2019 to underpin electronic patent searches and filings.

Trade mark protection will require national registration as the international registration of trade marks under the Madrid Protocol does not currently apply to Hong Kong. On 19 June 2020, parts of the new Trade Marks (Amendment) Ordinance 2020 came into effect, which empowers the Registrar of Trade Marks to make rules for implementing the Madrid Protocol in

Hong Kong. In the 2022 Policy Address, the Chief Executive mentioned that subsidiary legislation regarding the application of the Madrid Protocol to Hong Kong will be introduced into the Hong Kong Legislative Council in 2023.

**6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?**

IP is usually exploited by means of assignment, licensing or the granting of security interests.

Depending on the type of IP right, the formalities for assignments and licences are different. Generally, an assignment must be in writing and signed by the assignor. An exclusive copyright licence should be in writing and signed by or on behalf of the copyright owner. There is no formal written requirement for non-exclusive copyright licences. Patent licences do not need to be in writing but it is encouraged for registration (see below). Trade mark licences must be in writing and signed.

It is important to register transactions (assignments, licences and security interests) concerning registered rights (such as patents and trade marks) on the relevant IP register in order to maintain priority as against third-party interests registered in the interim. Failure to register a patent assignment or exclusive licence, or trade mark assignment or licence, within six months, will result in the assignee/licensee being unable to claim damages for any infringement relating to the period before their registration.

In addition to any registration at the relevant IP registry, certain security interests over unregistered or registered rights (copyrights, patents or trade marks) granted by Hong Kong companies should be registered at the Companies Registry within a month in order to protect against creditors.

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Benita is Deputy Chairman of the Takeovers and Mergers Panel and a member of the Takeovers Appeal Committee of the SFC, a member of the Listing Review Committee of HKEX and was formerly a member of the SFC (HKEC Listing) Committee. She is also a fellow, and Chairman of the Company Law Interest Group of the Technical Panel, of the Hong Kong Chartered Governance Institute. She was a member of the Standing Committee on Company Law Reform of the HKSAR Government.

Benita has been consistently recognised as a leading lawyer by various legal directories. Her recent accolades include: *Deal-maker of the Year* awarded by both the *Asian Legal Business Women in Law Award* in 2023 and the *Hong Kong Law Award* in 2022; one of *Asia's top 15 M&A lawyers* in 2022 by *Asian Legal Business*; *Women Leaders in Hong Kong* by *IFLR1000 Asia Pacific* since 2018; a *Leading Professional for M&A and Governance* in *Who's Who Legal 2023*; and inclusion in *The Legal 500 Asia Hall of Fame for ECM in Hong Kong* and as a *Band 1 lawyer in Corporate/M&A* by *Chambers Greater China Region*.

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**Vincent Chan** is a corporate partner in our Hong Kong office with extensive experience in domestic and cross-border M&A transactions, Hong Kong public takeovers, joint ventures, listings and other equity capital markets transactions, financial regulatory and general corporate advisory work. He has advised various Hong Kong listed companies, state-owned enterprises and investment banks.

Vincent is recognised as a "Next Generation Partner" in *The Legal 500 Asia-Pacific 2023 for Corporate (including M&A) in Hong Kong* and as a "Rising Star" in *IFLR1000 Asia-Pacific 2022 for M&A in Hong Kong*.

Vincent read law at the University of Cambridge. He is admitted as a solicitor in Hong Kong and England and Wales.

**Slaughter and May**  
47/F Jardine House  
One Connaught Place, Central  
Hong Kong

Tel: +852 2521 0551  
Email: [vincent.chan@slaughterandmay.com](mailto:vincent.chan@slaughterandmay.com)  
URL: [www.slaughterandmay.com](http://www.slaughterandmay.com)

Slaughter and May has a long-standing presence in Asia. Our office in Hong Kong was opened in 1974 and we have extensive experience of a wide range of work throughout Asia.

In particular, we are familiar with the challenges facing clients in the fintech sector, having been involved in numerous transactions for financial institutions, global technology companies, trading platforms, investors and start-ups. Our experience includes advising: Purity Investment as the offeror on the delisting of Huifu Payment from the SEHK; Standard Chartered on its (i) strategic investment in Atome Financial, Asia's largest buy now pay later platform, (ii) proposed acquisition of the entire issued share capital of RBC Investor Services Trust Hong Kong Limited, (iii) strategic investment in Linklogis, China's leading supply chain financing platform, and (iv) its strategic joint venture to build a new standalone digital retail bank in Hong Kong; PCCW on its strategic partnership with Lenovo Group in relation to its IT solutions business; joint sponsors and underwriters on the Hong Kong IPO of Yidu Tech Inc.; Alibaba Health Information Technology on its HK\$10 billion primary placing; ARM on the acquisition of its share

capital by SoftBank Group; SoftBank Vision Fund's investment in Ping An Healthcare and Technology and Ping An Medical and Healthcare; Zhong An Online P&C Insurance (China's first internet insurance company) in its first round of fundraising – one of the biggest fundraisings by a Chinese fintech company in 2015; Alibaba Group on (amongst others) its cornerstone investment in Fosun Tourism Group, privatisation of Intime Retail and acquisition of SCMP Group Limited; and a number of leading international fintech businesses such as Stripe, Ingenico, Flywire, PayActiv and LiquidX.

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