

Explanatory Note of Investor

Identification Regime

Introduction

In September 2021, the Securities and Futures Commission (“SFC”) issued a circular on the implementation of an investor identification regime at the trading level for the securities market in Hong Kong (“HKIDR”) and the introduction of an over-the-counter securities transactions reporting regime (“OTCR”) for shares listed on The Stock Exchange of Hong Kong Limited (“SEHK”). The circular explains the responsibilities of relevant licensed corporations (“LCs”) under these two regimes (the “Regimes”).

This note will summarise the regulatory obligations of LCs under HKIDR and OTCR, as well as the requirements for obtaining the consent of individual clients.

HKIDR

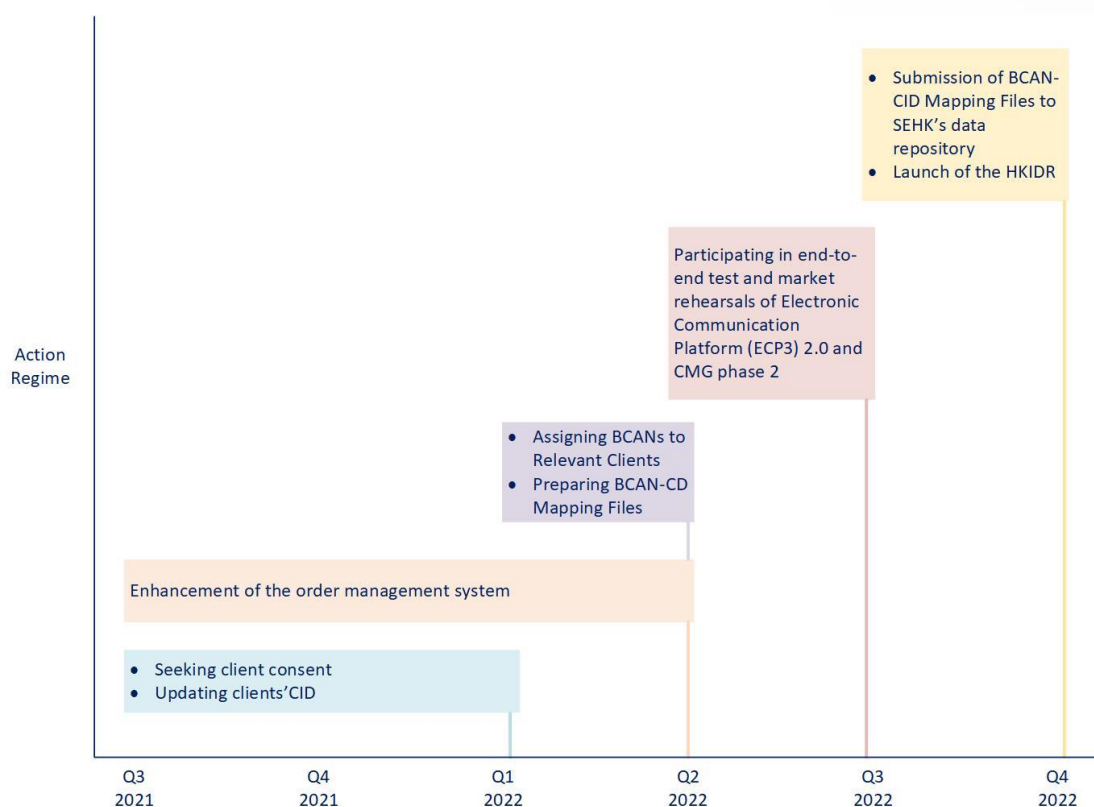
The SFC expects to implement the HKIDR in the fourth quarter of 2022.

Under the regime, LCs have four main responsibilities, including:

- (a) to ensure that a unique identification code, namely the “Broker-to-Client Assigned Number” (“BCAN”), is assigned to “Relevant Clients”¹ who have placed or proposed to place (i) an on-exchange order; or (ii) an off-exchange trade reportable to SEHK under its rules, in securities listed or traded on SEHK;
- (b) to ensure that up-to-date client identification data (“CID”) has been collected from each Relevant Client and is submitted together with the BCAN (by way of putting the BCAN and CID into a “BCAN-CID Mapping File”) to a data repository to be maintained by SEHK within a prescribed time;

- (c) to ensure that the Relevant Client’s BCAN has been included in the order information for (i) each on-exchange order, (ii) each off-exchange order, and (iii) all reporting of off-exchange trades to SEHK²;
- (d) to adopt data privacy and security measures to safeguard the data collected, transmitted and stored and obtain express consent from clients for the collection and handling of their data in compliance with data privacy laws.

The SFC has put forward an indicative timetable as below for the implementation of the HKIDR. LCs are required to complete their work in accordance with the timetable to prepare for the implementation of the regime.



OTCR

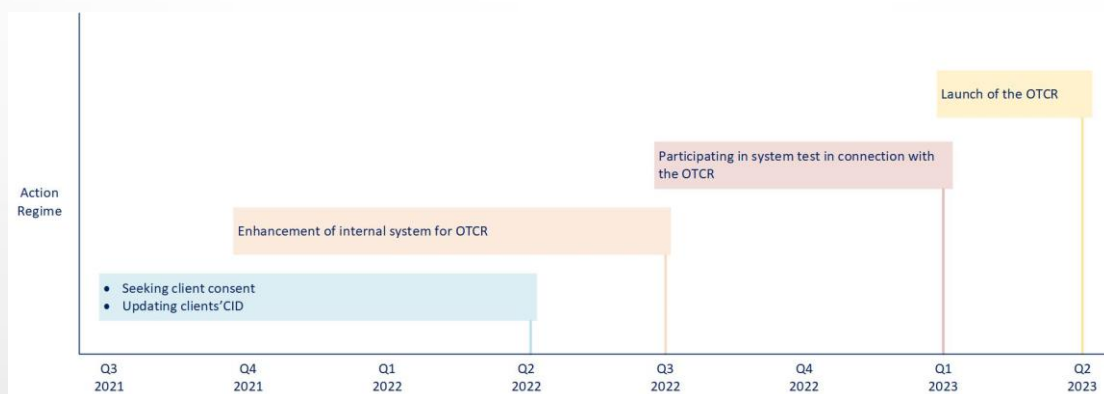
The SFC expects to implement the OTCR in the second quarter of 2023.

For this purpose, “over-the-counter securities transaction” (“**OTC Transaction**”) means a securities transaction which is not conducted by an on-exchange order or is reportable as an off-exchange trade in respect of which stamp duty is chargeable in Hong Kong and the transaction is not granted any stamp duty relief by the Inland Revenue Department (“**IRD**”).

It follows that LCs would be required to report to the SFC the following activities carried out by the Relevant Clients³ relating to shares listed on SEHK:

- (a) when an LC makes a transfer of shares in connection with a transaction not recorded by SEHK as an on-exchange order or required to be reported to SEHK as an off-exchange trade in respect of which stamp duty is chargeable in Hong Kong, except where:
 - (i) the transaction is granted in full or in part stamp duty relief from the IRD, or
 - (ii) the transfer of shares is made (1) in accordance with the terms of a structured product or a derivative, or (2) for the conversion of a depository receipt into shares or vice versa; or
- (b) when there is a deposit to or withdrawal from the LCs of physical share certificates.

Below is the indicative timetable proposed by the SFC for the implementation of the OTCR, which sets out matters that the SFC requires LCs to complete.



Client's express consent

Under the Regimes, an LC would need to obtain written or other express consent from individuals (i.e. natural persons) clients for the transfer of their personal data to the SEHK and / or the SFC (as the case may be). In this regard, the circular issued by the SFC on 13 September 2021 (the "**Consent Circular**") lists out the requirements of client consent.

Under the HKIDR, LCs are required to transfer the personal data of relevant clients to SEHK and the SFC while they are only required to transfer the required data to the SFC under the OTCR.

As suggested earlier, LCs would generally be required to obtain new consent from individual clients except where:

- (a) client consent on the use of personal data has already been obtained from these clients; and
- (b) such consent expressly includes the purposes of use specified by the SFC in the Consent Circular.

The specified purpose of use (the "**Specified Purpose of Use**") is as follows:

- (a) disclosure and transfer of the client's personal data (including CID and BCANs) by the LCs to SEHK and/ or the SFC;
- (b) allowing SEHK to:
 - (i) collect, store, process and use their personal data (including CID and BCANs) for market surveillance and enforcement of the Rules of the Exchange of SEHK;
 - (ii) disclose and transfer such information to the relevant regulators and law enforcement agencies in Hong Kong; and
 - (iii) use such information for analyzing for market oversight; and
- (c) allowing the SFC to:
 - (i) collect, store, process and use their personal data (including CID and BCANs); and
 - (ii) disclose and transfer such information to relevant regulators and law

enforcement agencies in Hong Kong in accordance with applicable laws or regulatory requirements.

The Consent Circular also suggests that LCs may (but not obliged) adopt the template set out in its Annex thereto to obtain consent from individual clients.

Client consent may be obtained by written and signed acknowledgment on paper, or by electronic means (including by email or instant messaging applications). It should be obtained in an explicit form in which the client agrees to the purposes of use and transfer of his/her personal data to the relevant regulatory bodies as set out in the consent.

No consent can be obtained by LCs by way of the implication of the client's conduct, silence or omission. In particular, the requirement to obtain client consent set out in the Consent Circular will not be complied with if the Specified Purposes of Use may only be implied or inferred from the relevant document.

An LC is however not required to obtain new consent from an individual client if it meets the following two requirements:

- (a) express consent has already been obtained from the client for the use of his or her personal data collected by the LC; and
- (b) such consent expressly includes the Specified Purpose of Use.

To compile CID, LCs would have to obtain the following information in relation to a client to whom a BCAN is assigned:

- (a) the full name of the client as shown in the client's identity document;
- (b) the issuing country or jurisdiction of the identity document;
- (c) the identity document type; and
- (d) the identity document number.

In respect of the identity document, where the client does not hold such a document, LCs should obtain the next mentioned document in accordance with the sequence set out below:

- (a) in the case of a natural person, client's (1) HKID card; or (2) national identification document; or (3) passport;
- (b) in the case of a corporation, the client's (1) legal entity identifier (LEI) registration document; or (2) certificate of incorporation; or (3) certificate of business registration; or (4) other equivalent identity documents; and
- (c) in the case of a trust, the trustee's information provided that where it is an investment fund, the asset management company or the individual fund (as the case may be) which has opened a trading account with the LCs should be obtained.

With regard to the OTCR, where an LC conducts an OTC transfer, that LC shall report the following information to the SFC within three Hong Kong trading days after the day of transfer:

- (a) The CE number and role of the LC in making the transfer;
- (b) a description of the transfer (for instance, the stock name stock code of the share(s) transferred);
- (c) if the transferee / transferor is a client of the LC, the CID of the client; and
- (d) (if the counterparty corporation to the relevant LC in the transfer is also a LC), the CE number of the counterparty corporation.

No client express consent

Under the HKIDR, if the client consent cannot be obtained, the LCs should not submit any BCAN or CID of that client to SEHK and should only execute sell orders or trades in respect of listed shares currently held by the client (but not buy orders or trades).

Likewise, under OTCR, if the client's consent cannot be obtained, the LCs should not submit any CID of that client to the SFC. It should only perform transfers of shares out of and withdrawals of physical share certificates from that client's account, but not transfers of shares or deposits of physical share certificates into it.

In other words, clients who have not provided the required consent can maintain their SEHK-listed securities on account with the LCs provided they can only sell those securities or transfer shares out of or withdraw physical share certificates from their

account, but not to purchase SEHK-listed securities, transfer shares to or deposit physical share certificates into their account.

Records of consent and consent withdrawal

LCs should keep and record all client consents and any withdrawals of such consents and maintain a written log with the following particulars:

- (a) the name of the client giving the consent or withdrawal;
- (b) the date on which the consent or withdrawal was given ; and
- (c) how the consent or withdrawal was given.

LCs should keep the log while the client remains a client of the LCs and for no less than two years after that client ceases to be a client of the LCs.

Should you have any questions, please contact our Mr. Lawrence Yeung on (852) 2854 3070 or by email at lawrence.yeung@ycylawyers.com.hk.

This explanatory note is not, and should not be regarded as, legal advice.

Should you have any enquiries, please seek specific advice from legal advisers.

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¹ Under HKIDR, a "client" means the direct client of the LCs, save that:

- (a) in the case of proprietary trading by an LC, a "client" refers to the relevant LCs itself;
- (b) a client shall be a person to whom a BCAN is assigned for the on-exchange order or off-exchange order;
- (c) a "client" refers to each of the holders of the joint securities account; and
- (d) in the case of a collective investment scheme ("CIS") or discretionary account ("DA"), a "client" refers to a CIS, DA holder or asset management company (as the case may be) which has opened a trading account with the relevant LC, through whose account an on-exchange order or off-exchange order is placed or proposed to be placed.

² If there is any BCAN error of a matched and executed trade, LCs shall report to SEHK as soon as possible.

³ Under the OTCR, the definition of "client" is generally the same as that under the HKIDR, except that the definition of "client" does not include a person to whom a BCAN is assigned for the on-exchange order or off-exchange order.