

# APERCU

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## BDO ANNOUNCES WINNERS OF THE BDO ESG AWARDS 2021



The first virtual BDO ESG Awards ceremony was held to pay tribute to businesses with strong ESG commitment and outstanding ESG efforts

**B**DO ESG Awards 2021 (the Awards) Presentation Ceremony was successfully held online on 23 February 2021 on BDO ESG Awards official website. Launched in 2018, the Awards was the first in the city to recognise listed companies which have implemented outstanding sustainability initiatives with remarkable results and achieved high standards in environmental, social and governance (ESG) reporting.

The competition this year has been widely supported by many listed enterprises and winners of different awards were selected from over 80 nominations that showcased excellence in ESG reporting and disclosure by a panel of reputable and professional judges.

The top three companies from each of the large market capitalisation, middle market capitalisation, small market capitalisation of Main Board companies as well as companies from the GEM were selected as winners of the two award categories respectively - Best in ESG Awards and Best in Reporting Awards. The company with the top scores in these two award categories from each of the company scale were selected as winners of the ESG Report of the Year Awards. In addition to the three existing awards, two new categories were added this year, namely 'Theme Award' in recognition of companies with outstanding performance in ESG under the COVID-19 pandemic and 'ESG Report of the Year (Technology) Award' in recognition specifically of companies that demonstrated technological advancement in their business models and operations, and which performed well in the areas of ESG (see the full list below).

Dr William Yu, Chairman of the Judging Panel of the Best in ESG Awards, said, "The COVID-19 pandemic has been affecting recently everyone's life. Despite challenging times, we are glad to see that HK-listed companies have implemented various ESG measures with heightened consciousness.

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During these unprecedented times, appropriate initiatives should be adopted to help protect against the spread of COVID-19, while at the same time showcasing how to perform well and drive business continuity. We are pleased to see that companies are becoming more aware of the roles of ESG integration and are enhancing their reporting quality, especially with regard to governance, risk management, target-setting and transparency. Thanks to BDO for its continuous efforts in ESG engagement which has attracted more local and international companies to value the sustainability bandwagon."

Dr Carlye Tsui BBS JP, Chairman of the Judging Panel of the Best in Reporting Awards, said, "This year, we see that the quality of reports competing for BDO ESG awards highlights companies moving beyond compliance and meeting rising expectations. Companies that have great regard for ESG values and active board leadership in ESG implementations for reasons more than just compliance are now enjoying competitive advantages. The Panel of Judges highly commends the award-winning companies for their earnest efforts. The awardees have demonstrated immense ideas of originality and thoughtfulness in organising a state-of-the-art ESG presentation."

Professor Yuk-Shan Wong SBS BBS JP, Chairman of the Judging Panel of the ESG Report of the Year (Technology) Award and Theme Award, said, "This year was not normal for everyone, including the investment community. Under the COVID-19 pandemic, all industries have been impacted in varying degrees of severity. Yet, it is heartening to see companies had implemented effective

sustainability initiatives and achieved high standards in ESG engagement. With the new Theme Award, it recognised the hard work that companies have done and their achievement with outstanding ESG performance amid these unprecedented times."

Clement Chan MH JP, Managing Director of Assurance, BDO in Hong Kong, said, "This year marked the third year of the BDO ESG Awards and we are glad to see that more listed companies have raised their awareness of the importance of their contribution in ESG. In particular, the Hong Kong Exchange launched the Revised Guide in late 2020 which is stricter and stipulates more demanding requirements in terms ESG reporting deadline. Echoing the theme of this year BDO ESG awards as 'Revive & Innovate', and in view of the shifted market focus on technology company and COVID-19 measures, we have specially created two new award categories – 'Theme Award' and 'ESG Report of the Year (Technology) Award' in order to expand the scope of the BDO ESG Awards and encourage more listed companies in various industries to enhance their ESG reporting disclosure. And we are happy to see companies had intensified efforts to adopt appropriate measures to help protect against the spread of COVID-19 and at the same time sustain businesses. Going forward, we at BDO will continue to offer them support to help their companies raise ESG standards and performance and in turn contribute to overall ESG development in Hong Kong."

Johnson Kong, Managing Director of Non Assurance, BDO in Hong Kong, said, "On behalf of BDO, I would like to express our sincere gratitude to the judges who have

committed precious time and their expertise in the judging process to ensure the credibility and representativeness of the Awards. Under the pandemic, we view that ESG issues will be increasingly central to investment decision making, and we are excited to acknowledge that not only large-cap companies but small mid-cap listed companies have increased their efforts in ESG and sustainability engagement. BDO, as a comrade of ESG facilitators, will remain committed as a keen advocate for continuous enhancements in the ESG and ESG reporting standards of Hong Kong-listed companies towards international standards, so as to promote Hong Kong as a green financial hub."

Ricky Cheng, Director and Head of Risk Advisory, BDO in Hong Kong, said, "Over the years, we have noted that ESG measure is a rising topic among Hong Kong and global investors to value listed companies and as an indication of a responsible and sustainable investment. Besides, with the Revised Guide that was launched last year, we expect more listed companies to wake up to the importance of ESG reporting in meeting not only stakeholders' expectations but also those of investors and the public in the area of ESG performance. We are happy to see more and more companies appreciate the value of ESG reporting and are willing to put time and resources in various ESG areas. Riding on the trend, BDO will spare no effort to continue pushing ESG engagement and further strengthening the leading position of Hong Kong as an International Financial Centre."

For more details, please visit: <http://www.bdoesgawards.com>

## BDO ESG AWARDS 2021 WINNERS (In alphabetical order)

Best in ESG Awards			
Large Market Capitalisation	CLP Holdings Limited	Lenovo Group Limited	New World Development Company Limited
Middle Market Capitalisation	COSCO SHIPPING Ports Limited	Xinyi Energy Holdings Limited	Yuexiu Property Company Limited
Small Market Capitalisation	China Everbright Greentech Limited	Sa Sa International Holdings Limited	Shun Tak Holdings Limited
GEM	1957 & Co. (Hospitality) Limited	Allied Sustainability and Environmental Consultants Group Limited	Roma Group Limited
Best in Reporting Awards			
Large Market Capitalisation	CLP Holdings Limited	Lenovo Group Limited	Sino Land Company Limited
Middle Market Capitalisation	COSCO SHIPPING Ports Limited	Fortune Real Estate Investment Trust	Yuexiu Property Company Limited
Small Market Capitalisation	China Everbright Greentech Limited	Landsea Green Properties Co., Ltd.	Shun Tak Holdings Limited
GEM	1957 & Co. (Hospitality) Limited	Allied Sustainability and Environmental Consultants Group Limited	Roma Group Limited
ESG Report of the Year Awards			
Large Market Capitalisation	CLP Holdings Limited		
Middle Market Capitalisation	COSCO SHIPPING Ports Limited		
Small Market Capitalisation	Shun Tak Holdings Limited		
GEM	Roma Group Limited		
Theme Award			
Haier Electronics, a subsidiary of Haier Smart Home Co., Ltd.			
ESG Report of the Year (Technology) Award			
Lenovo Group Limited			

# AUDIT DATA ANALYTICS – THE NEW FUEL IN AUDIT INNOVATION

**B**usinesses have been riding the wave of digital transformation and process automation over the last few decades, enhancing the efficiency and accuracy of their operations by replacing manual and repetitive processes with computerised and automated systems. Thanks to the worldwide trend of digitisation, the audit world has benefited from adopting information tools such as accounting systems, point of sale (POS) systems, online sales platforms and enterprise resources planning (ERP) systems to obtain relevant information and reports to support their audits. Now, by bringing in advanced data technology and business intelligence software to use like a magnifying glass, auditors can look into a higher volume of detailed transactions and gain granular insights into what has happened within a company, taking audits to the next level of quality and efficiency.

## The rise of audit data analytics: from past to present

The current risk-based approach to auditing financial statements has been in place for years. With the risk-based approach, auditors need to gain a thorough understanding of an entity's business, environment and internal controls through a combination of enquiry and examining documents. This understanding plays a critical role in the audit, as the auditors need to use it to assess the risks and determine the overall audit strategy. However, obtaining an accurate and thorough understanding is often time-consuming, and the process requires excellent communication skills from both parties. It also depends on the availability and level of complexity of any documents to be provided to the auditors for review during the risk-assessment stage. In some cases, the high volume of documents may actually hinder auditors from gaining a comprehensive and exhaustive view of the organisation.

In the past, when the majority of business transactions were handled on paper rather than by computers, only those larger organisations had the ability to convert paper transactions into a digital format with the help of their electronic data processing departments. Fortunately, as the use of ERP systems became widespread and online trading platforms emerged, more transactions were digitalised and the level of detail included in transactions was greatly enhanced. As a result, transaction data and the details have become more available.

CasewareIDEA and Audit Command Language (ACL) Analytics are tools traditionally used by auditors for data extraction and analysis, but they do not specialise in data visualisation, which is crucial for audit data analytics. Advances in computer processing power and cloud platforms have encouraged the development of data visualisation applications

(eg Microsoft Power BI, Tableau and QlikView), which are more comprehensive tools for analysing large volumes of transaction data – 'big data' via data visualisation.

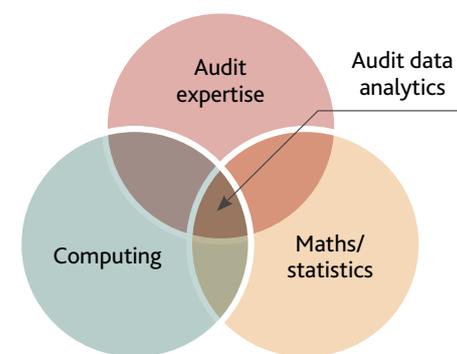
Some accounting regulatory bodies (eg AICPA and CPA Canada), have had discussions and concluded that data analytics is an approach that is applicable to and compliant with the current audit framework. They have also issued reference materials and guidance around implementing data analytics in the audit of financial statements. Leading accounting firms, including BDO, have already incorporated audit data analytics into their audit methodologies.

## The art and science of data analytics

Data analytics is the discovery and interpretation of meaningful patterns from data. In the business world today, data analytics can be used for various purposes, including gaining a better understanding of customers, identifying new market opportunities, identifying bottlenecks in operations, and assessing employee turnover. The objectives of using data analytics are straightforward – to gain insights from the data and to apply them for better decision-making in any business processes. However, to harness accurate and reliable insights from data that exist in various formats for different purposes, it often requires a team of skilled specialists with a mix of skillsets – expertise in the business area, in computing and in mathematics or statistics. On top of technical skills, the development of data analytics also requires creativity and the ability to imagine a range of possibilities.

In the audit world, where auditors have the business expertise, developing data analytics can begin by adding specialists or providing training to auditors in order to bring the other two skillsets into the audit team.

## Team structure of audit data analytics:



## Audit data analytics: enhancing audit quality and efficiency

The key driver of audit data analytics is to improve the quality of the audit by drilling down into large volumes of structured and unstructured data extracted from IT systems. By loading various types of client data into a data analytics tool or platform (either off-the-shelf or customised), auditors can analyse as much data as they want and discover patterns that improve their understanding of the client and their ability to identify risks. The increased width and depth of access to client data allows auditors to ask better questions, focus on areas that require professional judgement and open up opportunities for early discussions on complex audit matters that could have a significant impact on the financial statements.

While traditional audit processes require extensive sampling and vouching from supporting documents, the use of data analytics in audits allows testing of the entire population, which reduces sampling risks. In addition, audit data analytics can automate calculations and audit procedures and maintain consistency across group audits.



TRADITIONAL AUDIT PROCEDURES	AUDIT DATA ANALYTIC PROCEDURES
<ul style="list-style-type: none"> <li>▶ Extensive sampling and manual vouching of supporting documents</li> <li>▶ Inherent elements of randomness</li> <li>▶ Traditional analytics procedures often present low levels of assurance with difficult-to-investigate differences</li> <li>▶ Often time-intensive and require extensive manual data manipulation</li> <li>▶ Less emphasis on data reliability and integrity</li> </ul>	<ul style="list-style-type: none"> <li>▶ Allow for testing of the entire population</li> <li>▶ Bias the approach towards items that matter most</li> <li>▶ Automate calculations and audit procedures</li> <li>▶ Visualise data to simplify the identification of unusual items</li> <li>▶ Allow for a disaggregated and visual review of unusual items, simplifying the investigation process</li> </ul>

Where appropriate, auditors could consider replacing traditional audit procedures with data analytics procedures to deliver the most efficient and effective audit experience to clients.

### BDO Advantage

BDO has developed a suite of data analytics tools named 'BDO Advantage'. BDO Advantage combines the benefits of modern technology with our knowledge and understanding of our clients' businesses. It is transforming our audit approach by functioning as the engine that summarises and presents outliers and anomalies in complete data sets.

BDO Advantage contains a set of analytical tools that create data visualisations which enhance our understanding of our clients' revenue streams, purchase activities, control activities and inventory movements so we can focus auditors' efforts and time on exploring patterns, trends and outliers. These risk-based tools and applications are flexible so customised solutions can easily be developed and applied across any business, component or data set. The advanced data analytics solutions available to auditors include benchmarking (eg against historical data, industry and peer group information) and dashboards that highlight relevant matters for consideration in addressing audit risks and complement conversations with financial executives and the board of directors by providing succinct visualisations of specific business issues and risks.

Graphs, charts, tables and other forms of visualisation more effectively identify potential problem areas. Put simply, a picture paints a thousand words. Through tools like BDO Advantage, entire data populations can be

reduced to quickly identify the things that matter most.

Examples of BDO Advantage include:

- **Inventory NRV testing** – compare the costs of all inventory items with their selling price
- **Revenue analyser** – analyse revenue trends by product, region, channel and other dimensions
- **Payroll analyser** – identify risks in payroll by disaggregating the payroll population
- **Expense analyser** – analyse trends and patterns in expenses to identify anomalies and outliers
- **Journal entry analyser** – robustly test abnormal journal entries to identify potential errors or fraud by management overriding controls
- **Brokerage analytics (tailored for securities brokers)** – analyse brokerage income by client, charge nature, channel and market



### BDO Audit Analytics Team

The Audit Analytics Team at BDO comprises specialists from a range of backgrounds, including experienced auditors, data scientists and IT specialists. Our services cover IT controls reviews, computer-assisted reviews and audit data analytics for our audit clients.

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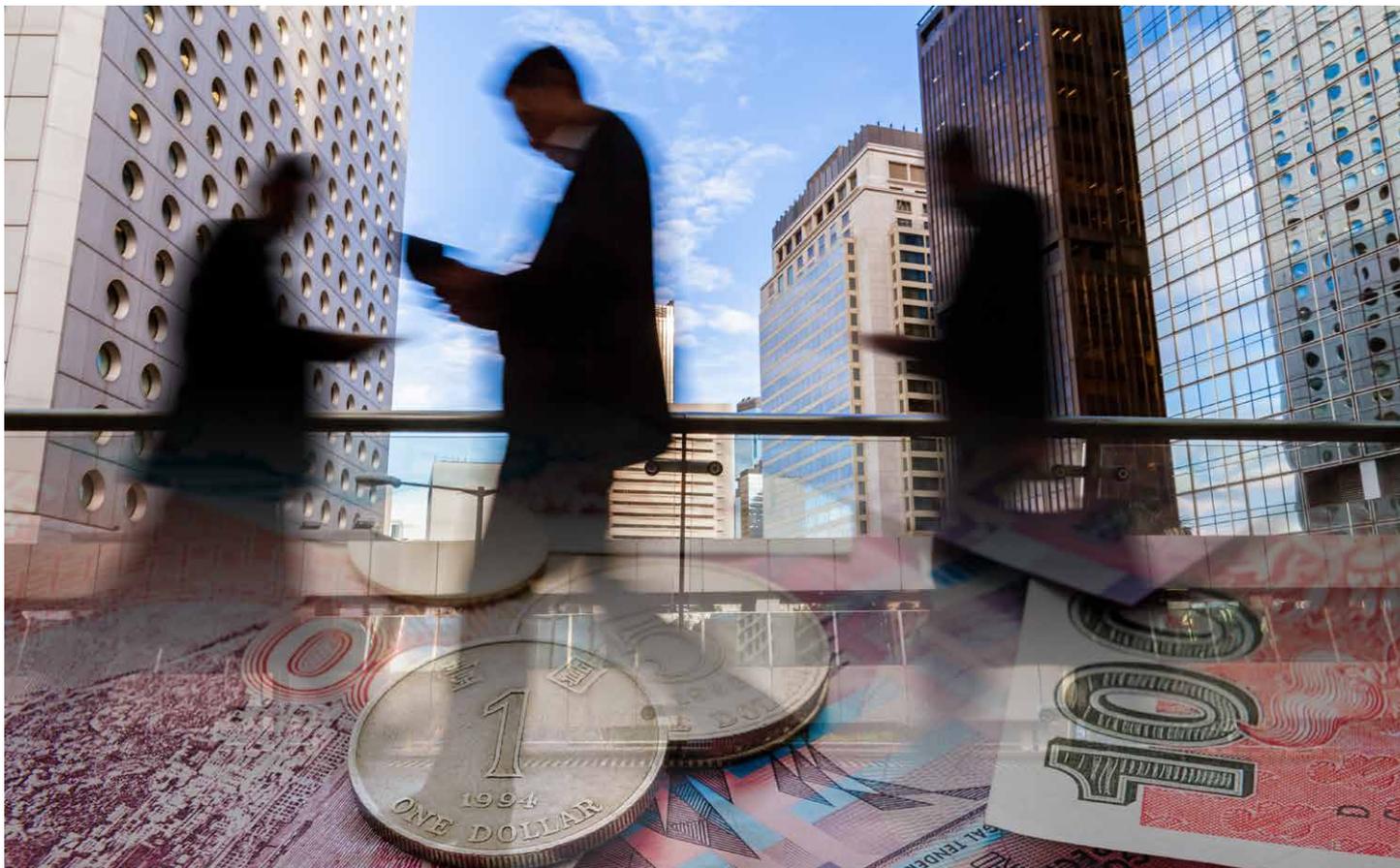


## DATA PROTECTION: A PRACTICAL GUIDE

In view of the growing concern of data privacy issues, BDO has prepared a guide to provide you with practical advice on data protection. Common situations such as collecting, using and retaining personal data, handling data breach/data leak incidents and managing contracts with external data processors are covered in the guide with data security and preventive measures suggestions.

To view the publication, please visit: <https://www.bdo.com.hk/insights/publications/data-protection-a-practical-guide>





## HONG KONG MINIMUM WAGE FROZEN FOR FIRST TIME EVER

The Hong Kong government announced on 2 February 2021 that the statutory minimum wage will be frozen at HK\$37.5 per hour for the next two years to 2023. It is the first time that the government has frozen the minimum wage since it was introduced on 1 May 2011.

Secretary for Labour and Welfare Law Chi Kong said the government's decision was based on the fact that most of the labour and employer representatives on the Minimum Wage Commission (MWC) have already agreed to maintain the current minimum wage, given the deep economic recession brought on by the COVID-19 pandemic and the high unemployment rate (as of February 2021, Hong Kong's unemployment rate had soared to a 17-year high of 7.2% or 261,600 people). The government was also aiming to avoid cuts in low-paid jobs increasing the unemployment rate further (according to data from the MWC, around 22,000 employees were paid the hourly minimum wage as of June 2019, and more than half were security guards and cleaners).

Law stressed that the minimum wage should not be the only solution for low-income families and for reducing poverty, as the government is looking at other measures to help the underprivileged.

However, the government's decision to freeze the statutory minimum wage at the 2019 level is a double-edged sword. It will have a negative impact on low-income families and poverty, as the purchasing power of the current minimum wage will be reduced due to the inflation factor.

Low-income workers have voiced concerns that their standard of living will fall as the prices of consumer products continue to rise in response to the incremental costs created by the COVID-19 pandemic. The pandemic has resulted in costly disruptions in the supply chain and flights and voyages being cancelled or delayed as a result of government interventions such as quarantine, stricter customs checks and entry restrictions.

According to the Census and Statistics Department's latest Consumer Price Index (CPI) figures for January 2021, consumer prices rose by 1.9% overall in January 2021 compared with the same month a year earlier. The rate of inflation is likely to rise in the near future as a consequence of the persistent incremental rises in the prices of various types of consumer products.

Looking ahead, the local and global economic situation will continue to be challenging amid the ongoing threat of COVID-19. The

government should continue to monitor the situation closely, and it may need to adjust the statutory minimum wage as soon as it is appropriate, rather than waiting until 2023.

### Speak to our payroll professionals

Feel free to get in touch to find out how we can help you by providing a tailored solution for payroll outsourcing.

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# HIGHLIGHTS OF SFC ENFORCEMENT CASES IN SECOND HALF OF 2020

In the second half of 2020 (H2 2020), the fines issued by the Securities & Futures Commission of Hong Kong (the SFC) in response to serious cases of non-compliance came to more than HK\$2,700 million, which was even higher than that of the whole year of 2019. In this article, we will summarise these cases and highlight particular areas of concern.

The SFC updated its regulatory strategy in 2020 to adopt a front-loaded and risk-based approach to intermediary supervision using a variety of tools, including on-site thematic

inspections and offsite monitoring, with a focus on firms' financial soundness and how they conduct business. Placing a strong emphasis on the accountability of senior management under the Manager-In-Charge regime, the SFC has adopted the following tactics:

- A front-loaded approach: to direct resources at the more serious risks, which can harm investors and damage market integrity
- A multidisciplinary approach: to combine and deploy the full range of regulatory tools to achieve statutory objectives

- A risk-based and holistic approach: to deal with systemic issues, such as multiple failings within a corporate group
- Fostering cooperation with local and overseas counterparts and law enforcement bodies on supervision, enforcement and market development initiatives

There were 34 enforcement cases in H2 2020 (H1 2020: 30), with fines and penalties totalling more than HK\$2,700 million (H1 2020: >\$79 million). These cases are summarised in the following table:

Non-compliance/breach	Total fine (HK\$)	No of cases	Remarks
<b>Market (or corporate) misconduct/manipulation/insider dealing</b>	2.1 million	14	<ul style="list-style-type: none"> <li>a) Insider dealing (three cases)</li> <li>b) Corporate misconduct – payments made to counterparties who then paid them to the CEO and Executive Director (ED) without declaring a personal interest</li> <li>c) Late disclosure of inside information</li> <li>d) Unauthorised trading on discretionary accounts</li> <li>e) Client accounts linked to suspected market manipulation (four cases)</li> <li>f) Arrest warrants issued for alleged manipulators of shares who did not appear in court</li> <li>g) Criminal prosecution for market manipulation of shares, related to the false or misleading appearance of an active market</li> <li>h) Dismissal of an appeal to the Court of Final Appeal on a Market Misconduct Tribunals order</li> <li>i) Company secretary of a listed company convicted for insider trading (via his wife's account)</li> </ul>
<b>Breaches by registered/licensed individuals:</b> <ul style="list-style-type: none"> <li>a) Personal securities accounts</li> <li>b) Discretionary accounts</li> <li>c) Misleading trustees</li> <li>d) Falsely pocketed fees</li> <li>e) Licence applications</li> <li>f) Unlicensed activities</li> </ul>	86,000	10	<ul style="list-style-type: none"> <li>a) Failed to disclose or obtain approval for personal securities accounts (two cases)</li> <li>b) Operated discretionary accounts without the client's prior written authorisation or consent (three cases)</li> <li>c) Misled a trustee to believe that the settlor had signed an amended request letter, using a scanned copy of the settlor's signature</li> <li>d) Falsely represented to seven customers that they had to pay an additional sum for opening an account, and pocketed the additional sum</li> <li>Cases (a) to (c) were banned from the industry from eight to 24 months; case (d) was banned for life</li> <li>e) Failed to disclose in two licence applications to the SFC that he was being investigated by other regulatory or criminal investigation bodies</li> <li>f) Unlicensed activities: <ul style="list-style-type: none"> <li>i) Advising on listing application without a licence</li> <li>ii) Unlicensed dealing in futures contracts and asset management</li> </ul> </li> </ul>
<b>Electronic trading system</b>	2.1 million	1	The company's system submitted 16,935 erroneous market-making quotes to the market from 9.39 to 9.47 on 28 February 2019, resulting in 8,042 stock options trades being deviated from prevailing market prices
<b>Sponsor/IPO activities</b>	Not yet issued	3	<ul style="list-style-type: none"> <li>a) Securities &amp; Futures Appeals Tribunal supported the SFC's decision to ban a former responsible officer (RO) from the industry for five years from September 2020 for failing to discharge his supervisory duties as a sponsor principal supervising the execution of two listing applications</li> <li>b) A sponsor principal, RO and senior manager of a licensed corporation failed to: i) use due skill, care and diligence in handling the listing application; ii) diligently supervise his subordinates to carry out the sponsor work; and iii) ensure that appropriate standards of conduct were maintained</li> <li>c) Proceedings against a listed company and its ED for defective prospectus, and compensation orders sought for investors (revenue in prospectus overstated by RMB 6.7 billion)</li> </ul>

<b>Breach of Code of Conduct and other regulations:</b> a) Standing authority/instructions b) Segregated securities account c) Short selling	10.3 million	3	a) Relying on expired standing authority of 6,841 clients to pledge their securities as collateral in obtaining credit lines from three banks b) Reprimanded and fined for failure to segregate client securities from proprietary securities in two custodian accounts from 1 April 2003 to 15 December 2016 c) Failed to monitor short selling and report it to the SFC
<b>Other:</b> a) False trading b) Obstructing SFC searches	-	2	a) Retail investor convicted of false trading b) Prosecuted for obstructing the SFC's search operations
<b>1Malaysia Development Berhad (1MDB)</b>	2,712.5 million (US\$350 million)	1	Fined Goldman Sachs (Asia) for management supervisory, risk, compliance and anti-money laundering (AML) control failures related to three bond-offering transactions arranged and underwritten by Goldman Sachs International for 1Malaysia Development Berhad (1MDB) in 2012 and 2013
<b>Total</b>	<b>2727.09 million</b>	<b>34</b>	

The summary above makes clear that the SFC took enforcement action against not only listed issuers and licensed corporations but also individuals responsible for overseeing regulated activities.

#### Highlights of enforcement cases for H2 2020

- Three cases of breaching the SFC's Code of Conduct and other regulations, with fines totalled more than HK\$10 million
- 14 cases of market/corporate misconduct, with fines totalled more than HK\$2 million
- One case related to electronic trading, with fines totalled more than HK\$2 million
- 1MDB case: US\$350 million

#### Highlights for enforcement cases for the whole of 2020

- Total: 64 cases; fined more than HK\$2800 million

- Other highlights by area included:
  - AML: seven cases (fines: HK\$66.9 million)
  - Regulatory breaches: 11 cases (fines: HK\$22.5 million)
  - Market/corporate misconduct: 17 cases (fines: > HK\$2 million);
  - Breaches by individuals: 19 cases

#### Conclusion

Of all the cases mentioned in this article, the 1MDB case is the best known due to the magnitude of the penalty. (Details on the background, facts and red flags that were missed are covered in another article in this issue.) However, it is important that we learn from all these cases in order to understand the preventive measures, good governance structure and oversight of regulated activities that can minimise the risks of non-compliance, damage to corporate reputation and loss of

financial resources, and incurring personal legal liabilities.

If you have any questions on regulatory compliance or governance matters, please contact the author of this article.

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## BDO SUPPORTS THE CHKLC DIRECTOR TRAINING SERIES FOR THE 11TH CONSECUTIVE YEAR

Running from April to November, the programme comprises six sessions dealing with the important aspects to directorships for a listed company, ranging from corporate governance, risk management to the latest updates in various applicable rules and laws. The programme will also address common issues faced by directors. BDO's Director and Head of Risk Advisory **Ricky Cheng**, Director of Risk Advisory **Peter Pang**, Principal of Risk Advisory **Vivian Chow**, Senior Manager of Risk Advisory **Roger Lo** and Assistant Manager of Risk Advisory **Helicon Ho** are invited to speak on some of the important aspects of directorship for a listed company.

The next session will be held on 27 May. If you are interested in attending the programme, please enrol with CHKLC directly. For more information, please visit their website at [www.chkcl.org](http://www.chkcl.org).

The schedule and topics for the forthcoming sessions are:

Date	Topics
27 May (Thu)	Insights on Listed Companies Suspension
24 June (Thu)	Insights on Climate Change Disclosure Analysis and Managing Transition Challenges
9 September (Thu)	SFC and HKEX's Regulatory Oversight, Enforcement Actions and Director's Liabilities
7 October (Thu)	The Latest Challenges of IT Security Risk
4 November (Thu)	Annual Regulatory Update 2021



## LESSONS FROM THE 1MDB CASE: PENALTY OF US\$350 MILLION

In October 2020, the Securities and Futures Commission (the SFC) reprimanded Goldman Sachs (Asia) L.L.C. and fined the company US\$350 million (HK\$2,712.5 million) under section 194 of the Securities and Futures Ordinance (SFO). The disciplinary action was taken due to Goldman Sachs (Asia)'s management supervisory, risk, compliance and anti-money laundering (AML) control failures in connection with three bond-offering transactions arranged and underwritten by Goldman Sachs International (GSI) for 1Malaysia Development Berhad (1MDB) in 2012 and 2013 (the bond transactions).

It is important to understand the background, facts, reasons for enforcement action and red flags missed in the supervisory process in this large and serious case and to avoid these failings in future.

### Background

GSI is an affiliate of Goldman Sachs (Asia) based in the UK and is not licensed by the SFC. GSI arranged and underwrote the bond offerings, but the actual work was conducted by deal team members in multiple jurisdictions, which shared the fees.

1MDB is a strategic investment and development company wholly owned by the Malaysian government. It was formed in 2009 to pursue investment and development projects for the economic benefit of Malaysia and its people.

### Facts

In August 2018, Tim Leissner, a responsible officer (RO) of Goldman Sachs (Asia) and a managing director of the Investment Banking Division of Goldman Sachs Group, pleaded guilty to criminal charges brought by the United States Department of Justice against him for conspiring to commit money laundering and violate the Foreign Corrupt Practices Act. He admitted, among other things, that:

- While acting in the scope of his employment and with the intention of benefiting Goldman Sachs and himself, he conspired with a Malaysian financier, Low Taek Jho, also known as Jho Low (Low), and others to pay bribes and kickbacks to Malaysian and Abu Dhabi government officials to obtain and retain business from 1MDB for Goldman Sachs;
- As a result of these bribes and kickbacks, Goldman Sachs received substantial business from 1MDB, including the bond transactions, which resulted in substantial fees and revenues for Goldman Sachs; and
- Funds raised in the bond transactions were diverted to himself and others and laundered through financial systems.

In January 2020, the United States Federal Reserve permanently banned Andrea Vella, a former RO of Goldman Sachs (Asia), from the banking industry for his role in the bond transactions.

Goldman Sachs (Asia) itself was also charged in Malaysia for abetting GSI in making false and misleading statements in the offering documents for the bond transactions. Goldman Sachs settled the criminal proceedings with the Malaysian government for US\$2.5 billion plus a US\$1.4 billion guarantee in August 2020.

### Reasons for enforcement action

#### 1) Goldman Sachs (Asia)'s involvement in the bond transactions

Although Goldman Sachs (Asia) was not a contractual party to the bond transactions, it was significantly involved in the origination, approval, execution and sales process for all three transactions.

- It was allocated the largest share (37%) of Goldman Sachs's total revenue of US\$567 million that was generated from the bond transactions within the Goldman Sachs group companies.
- Its employees were involved in the following ways:
  - The majority of the bankers in the Investment Banking Division who were key to the bond transactions were licensed persons accredited to Goldman Sachs (Asia).
  - Goldman Sachs (Asia)'s ROs and licensed representatives in the Securities Division were involved in distributing the bonds and managing the holding risks.

- Goldman Sachs (Asia)'s staff members in the legal department of the Business Intelligence Group (BIG) were responsible for conducting business, legal and regulatory due diligence to identify AML and corruption issues associated with the bond transactions.
- Senior members of staff at Goldman Sachs (Asia) were members of Goldman Sachs's Asia Standard Committee (ASC), Asia Pacific Capital Committee (APCC) and Asia Pacific Suitability Committee (APSC), which examined and approved the bond transactions.

## 2) Serious lapses in management oversight

Numerous red flags on the commercial rationale of the bond transactions and serious AML and bribery risks were ignored. While the deal team and control functions took note of these warning signs and appeared to take some steps to discuss and address them, Goldman Sachs Group adopted a piecemeal approach to resolving the issues and did not properly consider the wider and 'bigger picture' concerns about the commercial rationale of the bond transactions. Goldman Sachs (Asia) allowed the bond transactions to go ahead even though the numerous red flags surrounding the transactions had not been properly scrutinised and satisfactory answers had not been obtained.

### a) Misconduct of Leissner and co-conspirators not detected

One of Leissner's co-conspirators was Low, who did not hold a formal position at 1MDB but acted as a finder and intermediary for 1MDB and other government officials on various financial projects, including the bond transactions. Before the bond transactions, Goldman Sachs's control functions had twice rejected Low as a private wealth-management client because his source of wealth could not be verified, resulting in a potential money laundering risk. BIG had also rejected other opportunities to advise Low as a client.

Goldman Sachs was aware that Leissner and Low were acquaintances; and that Low was very close to 1MDB and government officials in Malaysia and Abu Dhabi.

BIG also learned that Low had arranged and possibly attended a meeting between Leissner and the Chair of International Petroleum Investment Company P.J.S.C. (IPIC), which acted as the guarantor in the first two bond transactions. No one in Goldman Sachs had succeeded in doing so, despite four years of trying.

Leissner did not have any reporting lines or managers specifically for the bond transactions. In effect, he was overseen only by the regional and company-wide committees that vetted the bond transactions. The possible involvement of Low was brought to the attention of these committees, but when Leissner asserted that Low had no role in the bond transactions, the

committees accepted this without making further enquiries.

The SFC expressed concern that Goldman Sachs (Asia) did not have adequate controls in place to monitor staff and detect misconduct on a day-to-day level, essentially giving Leissner free rein in the execution of the bond transactions. This enabled him to provide misleading information to (and conceal information from) Goldman Sachs without being adequately challenged.

### b) Inadequate enquiries into numerous red flags

Even though the bond transactions were scrutinised by various regional and company-wide committees, including the ASC, APCC and APSC (collectively the GS Committees), the following issues were not looked at in depth or properly addressed before the deal was approved:

#### i) Fees

- The fees earned (US\$581.5 million) from 1MDB in the bond transactions represented about 9% of the aggregate funds raised, specifically: 1) Project Magnolia: US\$192.5 million (11% of bond principal); 2) Project Maximus, US\$110 million (6.3% of bond principal); and 3) Project Catalyze, US\$279 million (9.3% of bond principal).
- The total fees were more than double the total revenue from arrangers and underwriters in 213 other Asia ex-Japan bond offerings over five years (2011–2015).
- 1MDB awarded the mandates for Project Magnolia and Project Catalyze without following a competitive process; Project Maximus, for which there was a competitive process, was not initiated by 1MDB but at the request of Goldman Sachs.
- Goldman Sachs's control functions, responsible for anti-corruption, did not raise any question or investigation about the fees or the process for awarding mandates; the GS Committees also approved these without discussing why 1MDB, a government entity, was willing to pay such high fees.

#### ii) Use of proceeds and the deal structure

In just 10 months, US\$6.5 billion had been raised, which far exceeded 1MDB's actual needs:

- May 2012: the proceeds from Project Magnolia (US\$1.75 billion) exceeded 1MDB's requirement (US\$810.4 million) to partially fund the acquisition of an independent power producer; the balance of the proceeds was used for general corporate purposes, including future acquisitions.
- December 2012: Project Maximus raised another US\$1.75 billion more than the US\$692.4 million required to partially fund the acquisition of another independent power producer and some related land. Again, the balance of the proceeds was used for general corporate purposes, including future acquisitions. The remaining proceeds from the previous issue would have been sufficient to meet 1MDB's immediate need for the acquisition. It should have been

apparent to Goldman Sachs that the funds were redundant.

- March 2013: 1MDB raised another US\$3 billion through Project Catalyze, when the remaining proceeds from the previous two issues (~ US\$1.6 billion) had still not been used. The proceeds from this issue were to be used for funding a joint venture between 1MDB and a subsidiary of IPIC, but specific projects were not identified.

Goldman Sachs was aware that 1MDB was in a weak financial position, with questionable ability to service its existing debts even before Project Magnolia. What's more, 1MDB chose a private placement instead of a public issue, preserving the confidentiality of the transaction and ensuring a faster execution, even though a public issue would have implied a significant saving in interest payments.

1MDB also asked Goldman Sachs to underwrite the principal funding for each issuance, despite 1MDB having no urgent need and the higher fees that this involved.

These red flags should have raised questions about the commercial rationale for the bond transactions, and they should have been noted by Goldman Sachs. However, the GS Committees only superficially queried 1MDB's rationale and the use of the proceeds.

The SFC found that Goldman Sachs (Asia) had failed to make adequate enquiries and obtain satisfactory responses in relation to abnormalities indicating a risk of money laundering before proceeding with the bond transactions.

#### iii) Bank used for receiving bond proceeds

For Project Magnolia and Project Maximus, 1MDB instructed GSI to pay the net proceeds to a bank account of Falcon Private Bank Ltd (Falcon) in New York (not Malaysia). Although Falcon was owned by a subsidiary of IPIC, Goldman Sachs should have made further enquiries in light of the unusual payment instruction and account structure.

In Project Catalyze, 1MDB instructed GSI to pay the net proceeds via another bank in New York to an account at BSI SA (BSI), a private bank based in Switzerland. Although there was evidence linking BSI to Low, Goldman Sachs's compliance functions considered that there were no AML issues. They did not make any enquiries to verify the purported reasons for depositing nearly US\$3 billion in bond proceeds into BSI despite the substantial credit risk.

#### iv) Negative media

Goldman Sachs's BIG had found plenty of negative media reports that indicated high corruption risks associated with 1MDB and raised questions about the integrity of the organisation and the transactions it had entered into. However, BIG regarded the media's allegations as politically motivated and did not take adequate steps to assess their veracity.

**Lessons learnt**

All commercial organisations aim at maximising profits. However, earning big fees in the short term, that is followed by regulatory enforcement actions, will not result in increased profits in the long term.

High fees are attractive, but we need to be aware of any red flags when they appear.

**1) Too good to be clean**

Deals with high margins and good fees are usually competitive. Unless there are very specific reasons, the fact that there are no other industry leaders competing for the deal immediately flags abnormalities, that cannot be ignored.

**2) Abnormal bidding arrangements**

Inviting at least three competitive bids is normal business practice, nowadays. It is an essential process for a publicly funded organisation. Indeed, abnormal bidding

processes involving public organisations are highly likely to eventually be revealed and scrutinised in public by the media or a regulator. The service providers and the organisation should be prepared to answer internal or external enquiries.

**3) Supervising and reporting process**

Segregation of duties is a basic control measure. Large deals handled by one officer alone are prone to risks of error (intentional or unintentional), fraud or concealing wrongdoing. It is normal business practice to put in place arrangements for another member of staff to provide cover in case of sickness or for other reasons. Giving one officer free rein to conduct a deal is not usually the best option for a sizeable corporation.

In addition, if the supervising officer or those in charge of governance identify any questionable arrangements, it is best practice to report to the appropriate level as soon as possible. There

are cases in which fines have been issued and reprimands made for delays in reporting.

Hopefully, your organisation has properly implemented checks and balances and fraud alert processes to minimise risk of reputational damage and fines and the type of fraud discovered in the 1MDB case will never happen again in public or private organisations.

If you have any questions on regulatory compliance or governance matters, please contact the author of this article.

**PETER PANG**

Risk Advisory Services  
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## JOHNSON KONG HAS BEEN APPOINTED AS A MEMBER OF THE OPERATIONS REVIEW COMMITTEE OF THE ICAC

**M**anaging Director of Non Assurance Johnson Kong has been appointed as a member of the Operations Review Committee (ORC), one of the four Independent Commission Against Corruption (ICAC) advisory committees, for a term of two years with effect from 1 January 2021.

The ORC oversees all ICAC investigations. It reviews corruption complaints received and investigations conducted by the ICAC to ensure that they are handled effectively and efficiently. It also examines circumstances where search warrants are authorised by the Commissioner, where persons have been put on bail for more than six months, and where investigations have been lasting for over a year or require substantial resources.



## BDO SURVEY 2020: THE ESG REPORTING PERFORMANCE OF HONG KONG LISTED COMPANIES

**T**o explore whether ESG reporting performance has improved since last year, BDO conducted the ESG reporting survey for the fourth year by reviewing most-recent ESG reports published by both Main Board and GEM-listed companies on or before 31 July 2020.

The survey finds that improvements have emerged in ESG disclosure in some areas and these are reflected in the fact that the boards of listed companies are increasingly aware of the importance of ESG management. However, the survey results are still far from satisfactory in terms of compliance and quality. In particular, the results of certain areas, such as ESG risk management and materiality assessment, are reduced. In this survey, seven key findings and 12 recommendations are made which can serve as reference for listed companies to intensify efforts in ESG reporting and practices, as well as achieve long-term sustainability.

To view the survey, please visit: [https://www.bdo.com.hk/insights/research/environmental,-social-and-governance-\(esg\)](https://www.bdo.com.hk/insights/research/environmental,-social-and-governance-(esg))



# BDO EVENT HIGHLIGHTS

BDO webinars cover a wide range of business topics and hot issues to provide valuable opportunity for our participants to interact with our experienced professionals and to gain insights into today's market update and challenge.

## GET READY FOR THE NEW PAYROLL YEAR 2021 JAN 15

A variety of new deadlines arise over 2021 monthly MPF compliance, annual employer's tax reporting, reviewing coverage and renewal of employees' compensation insurance, and many more. In addition, COVID-19 restrictions have dramatically changed the working practices, HR and business strategies of the management of many organisations that need to get prepared for further working practice and regulatory changes towards a new normal in 2021 and beyond.

Senior Manager of Payroll & HR Outsourcing Services **Vinci Tam** and Managers of Payroll & HR Outsourcing Services **Susanna Leung** and **Kenneth Chan** shared advice and guidance by reflecting on some challenges of compliance of the various statutory requirements on new payroll year. Director and Head of Payroll & HR Outsourcing Services **Joseph Hong** and Manager of Payroll & HR Outsourcing Services **Josephine Yau** discussed and answered participants' questions with their experience and expertise when dealing with various clients for such matters.



(From left to right) Vinci Tam, Joseph Hong, Susanna Leung, Kenneth Chan and Josephine Yau

## SFC 2020 ENFORCEMENT CASES: TRENDS AND HIGHLIGHTS - LESSONS FROM 1MALAYSIA DEVELOPMENT BERHAD & OTHER CASES JAN 26

In 2020, the Securities & Futures Commission of Hong Kong (SFC) reprimanded and fined different parties, including securities firms, sponsors, corporate finance advisors, listed companies, individual directors and managers, for more than HK\$2,700 million. This is significantly higher than that of 2019 which already fined more than HK\$700 million related to sponsor failures alone. The single most significant case in 2020 is related to 1Malaysia Development Berhad (1MDB), which involved serious corruption and fraud in Malaysia. There were also other companies reprimanded and fined due to failure in their electronic trading system and late disclosure of inside information.

As it is important to learn from the failure of others and avoid repeating them in the future, Director of Risk Advisory **Peter Pang** shared his insights on how to build better practices in organisations by focusing on the trends and highlights of the SFC enforcement cases in 2020, in particular the second half of 2020 and the lessons learnt from the 1MDB and other cases.

## TRADE-BASED AML PROCESSES: RED FLAGS TO BE ALERTED APR 08

The SFC has recently publicly reprimanded and fined many organisations for non-compliance of AML/CTF requirements. Apart from the normal AML/CTF requirements as set out by the HKMA and the SFC, Hong Kong Association of Banks also issued a Guidance Paper on Combating Trade-based Money Laundering (TBML) which highlighted trade pattern and red flags that institutions should be aware of in combating money laundering or terrorists' financing.

In this webinar, attendees were given an overview of trade-based money laundering, including the typical techniques and relevant cases. Peter also shared his recommendations on best practices on combating TBML.



## ESG REPORTING PERFORMANCE SURVEY SHARING FEB 02

Environmental, social and governance (ESG) factors are continuing to gain traction in corporate reporting regimes and the financial institution sector from the standpoints of long-term sustainability and responsible investment. Users and investors are demanding an increasingly high quality of ESG information disclosed by listed companies in order to facilitate decisions about investment, interest and value alignment, business partnerships, and joint efforts to overcome global challenges.

BDO conducted the fourth annual survey on the performance of ESG reporting among Hong Kong listed companies, to explore whether their ESG reporting performance has improved since last year. The seven key findings and 12 recommendations for listed companies to consider when preparing their ESG reports, as well as best practices and examples were shared by Director and Head of Risk Advisory **Ricky Cheng**.



## INTRODUCTION ON PRC'S DATA PRIVACY LAWS AND REGULATIONS

JAN  
28

Organisations may have to collect and use personal data for operating their business activities in Mainland China. Unlike Hong Kong (the PDPO) or other places such as the EU territories (the GDPR), Mainland China does not have a single and consolidated set of data privacy law which is currently in force. Its data privacy related laws and regulations are scattered around different pieces of existing legislations.

However with the issuance of the Draft Personal Information Protection Law in October 2020, there is a possibility that Mainland China may also have its single set of legislation which comprehensively regulates the protection of personal data in the near future. In view of this, Manager of Risk Management **Sacha Chiu** provided a general introduction on some of the existing data privacy related laws and regulations as well as the Draft Personal Information Protection Law in Mainland China.



## DATA PRIVACY ON HUMAN RESOURCES RELATED MATTERS AND COLLECTION OF BIOMETRIC DATA

FEB  
05

Organisations have to handle personal data of their job applicants, existing staff and former staff. With the technology advancement, some employers may also collect and use staff's biometric data (eg facial images or fingerprints). Improper handling of such data may lead to complaints from staff, investigations from Privacy Commissioner's Office and even lawsuits.

As an experienced data privacy specialist, Sacha highlighted the important matters that organisations need to note on handling personal data from HR's perspective, such as collection & use of job applicants' personal data and employees' personal data, data retention and security measures, and handling former employees' personal data.

## HOW TO BETTER MANAGE YOUR COMPANY'S DATA PRIVACY MATTERS BY OUTSOURCING DATA PROTECTION OFFICER SERVICES

MAR  
18

Various issues relating to data privacy may arise when companies handle personal data of customers and staff. Adverse consequences may arise when such issues come out and there is lack of expertise in house to deal with them.

Important matters that one need to note when deciding outsource data protection services were shared in this webinar. Sacha also introduced some common services that an external data protection officer may provide, such as drafting internal guidelines on handling personal data and conducting privacy impact assessments on projects.

## A QUICK UPDATE ON THE DATA PRIVACY REGULATIONS OF HONG KONG AND SOME FOREIGN COUNTRIES WHICH MAY IMPACT YOUR BUSINESS

APR  
13

When running business activities in Hong Kong and foreign countries, organisations may involve in collection and use of personal data. As the data protection laws are all different in different jurisdictions, it is worth to note the recent updates of the laws to ensure your organisations comply with the regulations.

Recent updates relating to the data privacy/data protection laws of Hong Kong, Mainland China and Singapore were introduced in this webinar. With UK leaving the European Union, Sacha also shared his insights on the EU's General Data Protection Regulation and the impact of UK's Brexit on the regulation.

## GOVERNANCE AND IT SECURITY ON ONLINE AND ALGO TRADING – UPDATES FROM THEMATIC REVIEWS BY REGULATORS

MAR  
16

About 40% of the authorised institutions in Hong Kong already undertook algorithmic trading (algo-trading). In March 2020, the Hong Kong Monetary Authority (HKMA) issued a circular on sound risk management practice for algo-trading. In September 2020, the Securities and Future Commission (SFC) also issued a thematic review report on cybersecurity review of selected internet brokers which provide online trading services with a focus on cybersecurity and vulnerabilities issues.

Focusing on the SFC thematic cybersecurity review and HKMA circular, Director of Risk Advisory **Peter Pang** and Senior Manager of Risk Advisory **Roger Lo** discussed the findings and recommendations, while providing practical advice on the review procedures on online trading systems.



Peter Pang (left) and Roger Lo (right)

# NEW APPOINTMENT



**TERRY LAU**  
Director  
Assurance Services

**Terry Lau** has been appointed as Director of Assurance Services with effect from 1 October 2020.

Terry has extensive experience in handling audit assignments of listed companies operating mainly in Hong Kong, Mainland China and Southeast Asia. He has served clients in industries of manufacturing, retailing, financial services, property development, construction, media and exhibition-related business.

Terry also specialises in corporate finance projects including initial public offerings, mergers and acquisitions and other capital market transactions.

Qualifications and professional affiliations

- Fellow of the Hong Kong Institute of Certified Public Accountants
- Fellow of the Institute of Chartered Accountants in England and Wales
- Certified Fraud Examiner
- Fellow of the Hong Kong Institute of Chartered Secretaries
- Fellow of the Chartered Governance Institute
- Fellow of the Hong Kong Securities and Investment Institute



**OLIVIA WONG**  
Director  
Specialist Advisory Services

**Olivia Wong** has been appointed as Director of Specialist Advisory Services with effect from 1 October 2020.

Olivia has been involved in various advisory assignments in Hong Kong and Mainland China serving listed companies, multinational corporations, academic organisations and governments.

Olivia has extensive forensic experience including investigating misappropriation of assets, financial statement manipulations, conflicts of interest, management misconduct, irregular rebates and kickbacks, potential leakage of private and confidential information and other fraud investigations.

Olivia was involved in litigation support engagements in respect of legal disputes for individuals, multinational corporations, the Hong Kong Government and other governments in Southeast Asia. The disputes involved the Courts and Tribunals in Hong Kong and overseas.

Qualifications and professional affiliations

- Member of Hong Kong Institute of Certified Public Accountants
- Member of Association of Certified Fraud Examiners



**ABIGAIL LI**  
Director  
Tax Services

**Abigail Li** has been appointed as Director of Tax Services with effect from 1 October 2020.

Abigail has extensive experience in Hong Kong and international tax and in a wide range of industries including asset management and financial services, corporate treasury, commodities, shipping, industrial and consumer products. Her clients have ranged from well-established large multinational companies (MNCs) to start-ups or new economy companies.

Abigail is experienced in advising on sophisticated technical tax issues in Hong Kong, and also in respect of cross border transactions involving Hong Kong including tax planning, group structuring, M&A and cross border financial products or transactions.

Abigail is also experienced in assisting clients in various applications with the Hong Kong Inland Revenue Department and Stamp Office including application for advance ruling, certificate of tax residency and stamp duty relief.

Abigail has in-house experience as an Asia Pacific tax manager in a US listed Fortune 500 MNC, resolving local and regional tax issues from operations, treasury, etc.

Abigail's recent projects include structuring tax advice in respect of fund formation and asset management group, tax due diligence for M&A, legal entity rationalisation, financial assets sale and purchase, securitisation, aircraft and ship leasing, etc. She is also a contributor of tax articles for tax journals and publications.

Qualifications and professional affiliations

- Fellow of the Association of Chartered Certified Accountants (ACCA)
- Member of ACCA Tax Subcommittee

# RECENT BDO PUBLICATIONS

## TAX PUBLICATIONS



Indirect Tax News  
Issue 1 – March 2021



Corporate Tax News  
Issue 57 – January 2021



Corporate Tax News  
Issue 58 – April 2021

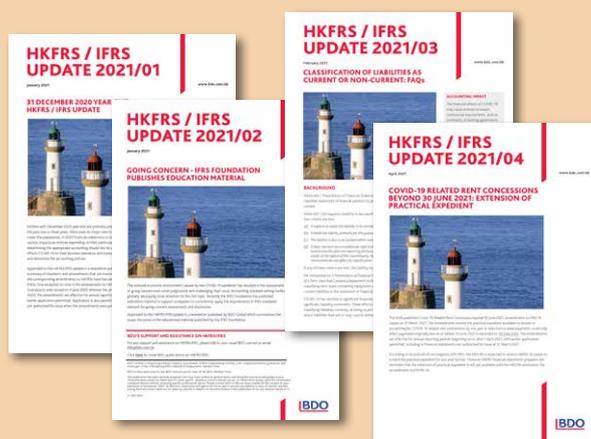
## HORIZONS – BDO'S QUARTERLY GLOBAL MID-MARKET REVIEW



Horizons Q1 – 2021

## HKFRS/IFRS UPDATE

- ▶ **HKFRS/IFRS Update 2021/01**  
31 December 2020 year-end HKFRS/IFRS update
- ▶ **HKFRS/IFRS Update 2021/02**  
Going concern - IFRS Foundation publishes education material
- ▶ **HKFRS/IFRS Update 2021/03**  
Classification of liabilities as current or non-current: FAQs
- ▶ **HKFRS 2021/04**  
COVID-19 related rent concessions beyond 30 June 2021: extension of practical expedient



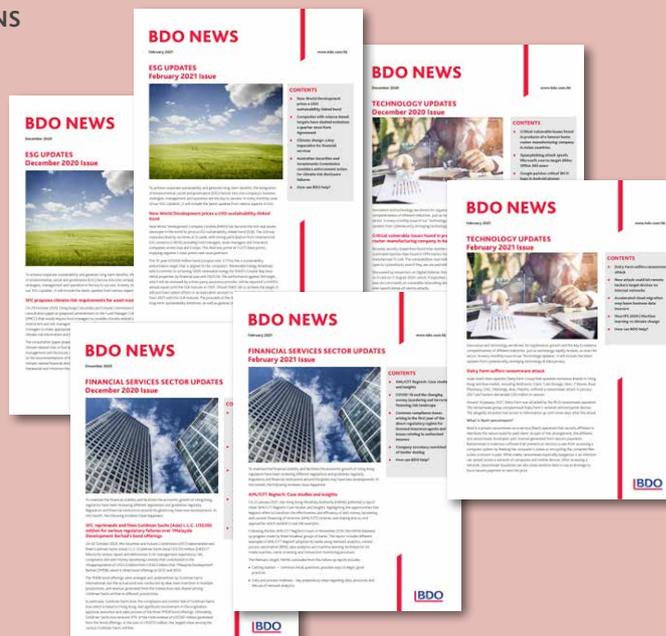
## TRANSPARENCY REPORT 2020



For the financial year ended  
30 September 2020

## RISK ADVISORY PUBLICATIONS

- ▶ **ESG Updates**  
December 2020 Issue  
February 2021 Issue
- ▶ **Financial Services Updates**  
December 2020 Issue  
February 2021 Issue
- ▶ **Technology Updates**  
December 2020 Issue  
February 2021 Issue



## 2021/22 HONG KONG BUDGET HIGHLIGHTS



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