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Legal Updates

1. Venturing Out: Web 3.0 (I) — Hong Kong Virtual Asset Regime Overview

Authors: Felix MIAO | Sheng LI | Clarence CHUNG | Carmen LIU | Matthew WONG

Introduction

Web 3.0 is the latest evolution of the World Wide Web that envisages a more decentralized version of the web, underpinned by a constellation of advanced technologies and applications such as virtual assets ("**VA(s)**") of cryptocurrencies and non-fungible tokens ("**NFT(s)**"), and blockchain technology.

Hong Kong has taken significant steps to establish an appropriate regulatory framework for the VA sector. Cybersecurity alongside investor protection are matters of utmost importance in Web 3.0 development. The regulation of VA trading platforms ("**VATP(s)**") took effect in June 2023, after an amendment to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Chapter 615 of the laws of Hong Kong) ("**AMLO**"). The Financial Services and the Treasury Bureau ("**FSTB**") consulted the public in February 2024 on legislative proposals to regulate over-the-counter ("**OTC**") trading of VAs. The Hong Kong Monetary Authority ("**HKMA**") and the FSTB also proposed a licensing and regulatory regime for fiat-referenced stablecoins ("**FRS**") in December 2023. This article aims to highlight the key points to note for commencing Web 3.0 VA-related businesses in Hong Kong.

An overview of Hong Kong's VA regulatory landscape

Understanding the regulatory regime in relation to VAs is vital for those intending to commence a Web 3.0 business in Hong Kong.

In many facets of the regulatory regime surrounding VAs, it is essential, yet sometimes challenging, to ascertain whether the specific VA constitutes a security. For example, where an NFT is a genuine digital representation of a collectible, the activities related to it fall outside the regulatory remit of the Hong Kong Securities and Futures Commission ("**SFC**"). However, where an NFT constitutes an interest in a collective investment scheme, it may fall within the definition of "securities" under the Securities and Futures Ordinance (Chapter 571 of the laws of Hong Kong) ("**SFO**"). Considering the intricacies involved, it is advisable to seek legal advice on determining whether a VA constitutes securities if needed.

The table below is an overview of the existing regulatory regime for VA and the proposed regulatory regime for VA OTC trading and FRS.

	Categories of VAs	
	VAs which are securities	**VAs which are NOT securities**
Issuance	■ Subject to certain exemptions, must comply with the **prospectus regime** under the Companies (Winding Up and Miscellaneous	■ No direct regulation. ■ Stablecoins falling within the definition of "securities" are already regulated (see column to the left).

	Categories of VAs	
	VAs which are securities	**VAs which are NOT securities**
	Provisions) Ordinance (Chapter 32 of the laws of Hong Kong) and the **offers of investments regime** under Part IV of the SFO. ■ Must also comply with related guidelines. <u>Tokenised securities</u> ■ According to the SFC Circular on intermediaries engaging in tokenised securities-related activities, tokenization generally involves the process of recording claims on assets that exist on a traditional ledger onto a programmable platform, which includes the use of distributed ledger technology in the security lifecycle. ■ Tokenised securities are fundamentally **traditional securities with a tokenization wrapper**. As such, the existing legal and regulatory requirements governing the traditional securities markets shall continue to apply to tokenised securities. ■ Where intermediaries issue or are substantially involved in the issuance of the tokenised securities which they intend to deal in or advise on, they **are responsible for the overall operation of the tokenization arrangement** notwithstanding any outsourcing to third-party vendors/service providers. Intermediaries should take into account the features and risks of the tokenised securities in order to assess **the most appropriate custodial arrangement for the tokenised securities** to manage ownership and technology risks.	<u>The proposed regulatory regime for FRS (pending consultation conclusions)</u> ■ Issuers of FRS in Hong Kong must obtain a licence from the HKMA. They must also observe a range of licensing conditions and requirements. *Definition of FRS* ■ A "stablecoin" is defined as a cryptographically secured digital representation of value that, among other things, (a) is expressed as a unit of account or a store of economic value; (b) is used, or is intended to be used, as a medium of exchange accepted by the public, for the purpose of payment for goods or services; discharge of a debt; and/or investment; (c) can be transferred, stored or traded electronically; (d) uses a distributed ledger or similar technology that is not controlled solely by the issuer; and (e) **purports to maintain a stable value with reference to a specified asset, or a pool or basket of assets**. ■ "FRS" is defined as a stablecoin where **the specified asset is one or more fiat currencies**. *Regulatory Framework for FRS Issuers* ■ No person shall: (a) issue, or hold oneself out as **issuing, FRS in Hong Kong**; (b) issue, or hold oneself out as, **issuing a stablecoin** that purports to maintain a stable value **with reference to the value of the Hong Kong dollar**; or (c) **actively market** its issuance of FRS to the public of Hong Kong; unless it is a company that holds a FRS issuer licence granted by the HKMA.

	Categories of VAs	
	VAs which are securities	**VAs which are NOT securities**
		Key licensing conditions and requirements for FRS issuers (non-exhaustive) ■ FRS holders must be able to redeem their FRS on a **timely basis**, at **par value** and **in the referenced currency**, without the need to meet unreasonable conditions on redemption. ■ The FRS issuer must meet **minimum financial resources requirements** (i.e. paid-up share capital must be HKD25,000,000 or 2% of the par value of the FRS in circulation, whichever is higher). ■ The FRS issuer must be a **Hong Kong company** with a registered office in Hong Kong. Its chief executive, senior management and key personnel must be **based in Hong Kong**. ■ The FRS issuer must have an **effective stabilisation mechanism** for its FRS by maintaining a pool of segregated, high-quality, and highly liquid reserve assets in an amount at least equal to the par value of the FRS in circulation at all times. ■ FRS issuer must comply with licensing conditions and requirements relating to restrictions on business activities, fitness and propriety, auditing, anti-money laundering/counter-financing of terrorism, risk management etc.
Exchange	■ Must comply with the SFO regime (i.e. for security tokens). ■ Given that the terms and features of a VA may evolve over time, **a VA's classification may change from a non-security token to a security token (or vice versa)**. To avoid contravention of the licensing regimes and to ensure business continuity, VATPs are advised to apply for licences under both the SFO and AMLO regimes (see column to the right).	■ Must comply with the VA service provider ("**VASP**") regime under the AMLO (i.e. for non-security tokens). ■ VATPs are advised to apply for licences under both the SFO (see column to the left) and AMLO regimes. ■ Must also comply with the VATP Guide. *Applicability of the AMLO regime* ■ Applicable to persons operating a **VA exchange**, meaning the provision of services via an **electronic facility**: (a) where:

	Categories of VAs	
	VAs which are securities	**VAs which are NOT securities**
	■ Must also comply with the SFC Guidelines for Virtual Asset Trading Platform Operators ("**VATP Guide**"). *Key requirements (non-exhaustive)* ■ **Paid-up share capital** of at least HKD5,000,000 and **liquid capital** of at least HKD3,000,000. ■ Holding liquid assets equivalent to at least 12 months of actual operating expenses. ■ **Fitness, propriety and competence** requirements for personnel. ■ Must have at least 2 Responsible Officers. ■ **At least 98% of client VA in cold storage** except in limited circumstances approved by the SFC. ■ Must have in place a **compensation arrangement** approved by the SFC that provides an appropriate level of coverage to deal with risk associated with the custody of VAs. ■ Only "**large-cap VAs**" (i.e. those which have been included in a minimum of two acceptable indices issued by at least two different index providers) can be offered to retail.	(i) offers to sell or purchase VAs are regularly made or accepted in a way that forms or results in a binding transaction; or (ii) persons are regularly introduced, or identified to other persons in order that they may negotiate or conclude, or with the reasonable expectation that they will negotiate or conclude sales or purchases of VAs in a way that forms or results in a binding transaction; and (b) where client money or client VAs come into the direct or indirect possession of the person providing such service *Key requirements (non-exhaustive)* ■ See column to the left.
Brokerage	■ Must comply with the existing SFC licensing regime. Must also comply with the joint circular on intermediaries' virtual asset-related activities issued by the HKMA and the SFC ("**Joint Circular**"), which is applicable to intermediaries that are licensed corporations with the SFC or registered institutions with the	■ For SFC- or HKMA- regulated intermediaries, must comply with the Joint Circular. ■ Stablecoins falling within the definition of "securities" are already regulated (see column to the left). <u>The proposed regulatory regime for FRS (pending consultation conclusions)</u> ■ Only HKMA-licensed FRS issuers (i.e. a

	Categories of VAs	
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	HKMA. Provision of VA dealing services According to the Joint Circular: ■ The SFC and the HKMA only allow intermediaries **licensed or registered for Type 1 (dealing in securities) regulated activity** to provide VA dealing services. Furthermore, intermediaries should provide such services only to their Type 1 regulated activity clients. ■ Intermediaries shall notify the SFC (and the HKMA, where applicable) in advance if they intend to provide VA dealing services, or make any changes to these activities conducted (including changes in the type of clientele served). ■ Intermediaries **must partner only with SFC-licensed VATPs for the provision of VA dealing services**, by either introducing clients to the platforms for direct trading or establishing an omnibus account with the platforms. ■ The expected conduct requirements for intermediaries' provision of VA dealing services under an omnibus account arrangement will be imposed by the SFC (and in consultation with the HKMA, where applicable) as licensing or registration conditions.	licensed FRS issuer could only offer FRS that it issues), SFC-regulated licensed corporations, authorized institutions or licensed VATPs can offer FRS in Hong Kong or actively market such offering to the public of Hong Kong. ■ Authorized institutions, licensed corporations and licensed VATPs can offer FRS issued by entities not licensed by the HKMA only to professional investors. Customs & Excise Licensing (pending consultation conclusions) ■ Any person operating VA OTC Business in Hong Kong, or actively marketing the provision of VA OTC services to the Hong Kong public, will be required to obtain a licence issued by the Commission of Customs and Excise. *Definition of VA OTC Business* ■ "**VA OTC Business**" is defined as providing spot trade services for any VA, regardless of whether the service is offered through physical outlets (such as ATMs) or digitally. *Permitted and restricted activities* ■ Licensees are only allowed to offer services in respect of tokens that may be accessed by retail investors on at least one VATP licensed by the SFC. ■ Licensees can perform spot trade of any VA for any money (or vice versa) in their course of businesses. However, they would not be permitted to covert a VA to another VA. *Key requirements (not exhaustive)* ■ Must appoint a competent Compliance Officer and a Money Laundering Reporting Officer. ■ Must have a proper corporate governance structure staffed by experienced personnel. ■ Must operate its business in a prudent and sound manner and ensure that clients' and

<table>
<tr><th></th><th colspan="2">Categories of VAs</th></tr>
<tr><th></th><th>VAs which are securities</th><th>VAs which are NOT securities</th></tr>
<tr><td></td><td></td><td>public interests will not be adversely affected.</td></tr>
<tr><td>Custody</td><td colspan="2">■ Regulated by the exiting regime for “trust or company service providers” (“TCSP”) under the AMLO.
■ Custody standards are also applicable to SFC-regulated VATPs and other entities.
<u>SFC-regulated VATPs</u>
■ A VATP should only hold client assets on trust for its clients through its associated entity. An associated entity means a company which:
(a) has notified the SFC that it has become an “associated entity” of a VATP;
(b) is incorporated in Hong Kong;
(c) holds a “TCSP licence” (unless exempted); and
(d) is a wholly owned subsidiary of the VATP.
■ The associated entity should not conduct any business other than that of receiving or holding client assets on behalf of the VATP.
■ In the handling of client transactions and client assets, a VATP should act to ensure that client assets are accounted for properly and promptly. Where the VATP or its associated entity is in possession or control of client assets, the VATP should ensure that client assets are adequately safeguarded.
<u>TCSP licensing regime</u>
■ A person who carries on or wishes to carry on a trust service business in Hong Kong is required to apply for a TCSP license, such as holding client VAs on trust for its clients. The said trust service business involves acting, or arranging for another person to act:
(a) as a trustee of an express trust or a similar legal arrangement; or
(b) as a nominee shareholder for a person other than a corporation whose securities are listed on a recognized stock market.
■ Licensing exemptions are available to, among others, authorised institutions and licensed corporations that operates a trust or company service business in Hong Kong that is ancillary to the corporation’s principal business.
Key requirements (non-exhaustive)
■ Fit and proper test: A statutory requirement for determining whether a TCSP and every relevant person of the TCSP are fit and proper to carry on or be associated with a trust or company service business. Unless exempted, for corporate applicants, each director and ultimate owner is subject to the fit and proper test.
■ A TCSP licensee has an ongoing obligation to comply with the requirements of the AMLO and the guidelines issued by the Company Registry, including the customer due diligence and record-keeping requirements.</td></tr>
<tr><td></td><td></td><td><u>Customs & Excise Licensing (pending consultation conclusions)</u></td></tr>
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	Categories of VAs	
	VAs which are securities	**VAs which are NOT securities**
		■ Under the current proposal, licensed VA OTC service providers are not allowed to provide custody/escrow services of client's VA, unless such service is temporary in nature and is an indispensable part of the transaction process.
Advice	■ Regulated via the existing SFC licensing regime. ■ According to the Joint Circular, provision of advisory services forms part of an intermediary's advisory business and may affect its fitness and properness to conduct regulated activities. The SFC and the HKMA are only prepared to allow **intermediaries licensed or registered for Type 1 (dealing in securities) or Type 4 (advising on securities) regulated activity** to provide VA-advisory services. ■ Accordingly, the regulated entities are expected to comply with all the regulatory requirements imposed by the SFC and the HKMA when providing advisory services, irrespective of the nature of the VAs. Furthermore, regulated entities should provide such services only to their Type 1 or Type 4 regulated activity clients. ■ When recommending any VA to retail clients, regulated entities should take all reasonable steps to ensure that the VA is: (i) of high liquidity; in assessing the liquidity of a specific VA for trading by **retail clients**, regulated entities should ensure that the VA is an eligible **large-cap VA**; and (ii) **made available by SFC-licensed platforms** for trading by retail investors.	■ No direct regulation. <u>Customs & Excise Licensing (pending consultation conclusions)</u> ■ Under the current proposal, **provision of other services, including any form of VA advisory or referral services, offering of VA derivatives or other financial products** (including but not limited to staking, lending and margin trading), **will not be permitted** for VA OTC licensees.

Conclusion

To promote the development of the Web 3.0 ecosystem in Hong Kong, the Hong Kong government has developed a robust and wide-ranging regulatory framework governing relevant VA activities. Beyond regulating just VATPs, Hong Kong has proposed rules for other VA business lines such as VA OTC trading and FRS. This demonstrates Hong Kong's determination to strengthen investor protection and promote the development of Web 3.0 in Hong Kong in a stable and responsible manner through a multi-pronged approach. Web 3.0 industry participants in Hong Kong are recommended to seek legal advice to proactively address compliance requirements and mitigate potential risk exposure.

2. New Amendments to HKEX Listing Rules Allow Treasury Shares

Authors: Han Kun Law Offices LLP Tao LI | Felix MIAO | Ethle TANG | Bonnie YUNG | Patrick AU | Zhuxi ZHANG

On April 12, 2024, The Stock Exchange of Hong Kong Limited ("**HKEX**") published its consultation conclusions ("**Consultation Conclusions**") regarding the introduction of a new treasury share regime under The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited ("**Listing Rules**") ("**Amendments**"). The Amendments will be incorporated into the Listing Rules with effect from June 11, 2024[1]. After the Amendments become effective, a listed company may repurchase its shares and hold them in treasury for future resale if permitted under the laws of their places of incorporation and their constitutional documents. This article outlines the key Amendments and important explanations covered by HKEX in the Consultation Conclusions.

Key Amendments relating to the regulation of treasury shares

I. Under the current Listing Rules:

The listing of all shares repurchased by listed companies is automatically cancelled and listed companies must cancel and destroy the documents of title of repurchased shares as soon as reasonably practicable after settlement of the purchase[2].

II. After the Amendments come into effect:

Listed companies may hold repurchased shares in treasury, subject to the laws of their places of incorporation and their constitutional documents. Additionally, treasury shares will retain their listing status[3].

The table below summarizes key Amendments governing the holding and resale of treasury shares:

Key Amendments	Current Listing Rules' requirements	New Listing Rules' requirements
Status of treasury shares	Unless a waiver[4] from share cancellation	Listed companies can hold repurchased shares in treasury for future resales if permitted under the laws of their place of incorporation (e.g., Bermuda, the Cayman Islands, the British

[1] A listed company may seek shareholders' approval for the amendments to its constitutional documents before June 11, 2024 to allow the listed company to hold and use treasury shares to the extent permitted under all applicable laws, rules and regulations. In addition, a listed company may seek a general mandate to issue new shares or resell treasury shares from its shareholders before June 11, 2024 provided that the listed company shall specify that it may use such general mandate for its resale of treasury shares only after the Amendments have come into effect.

[2] This cancellation requirement does not apply to listed companies with secondary listing on HKEX under Chapter 19C of the Listing Rules.

[3] For the avoidance of doubt, listed companies would still need to obtain HKEX's prior approval for any issue of warrants or convertible securities. This is despite the fact that a listed company might choose to use treasury shares to cover the exercise of subscription or conversion rights under the warrants or convertible securities.

[4] Listed companies with waivers from the share cancellation requirement granted by HKEX will be required to comply with the new Listing Rule requirements. Transitional arrangements will be provided to these listed companies to comply with the new Listing Rule requirements by their second annual general meeting after June 11, 2024.

Key Amendments	Current Listing Rules' requirements	New Listing Rules' requirements
	requirement is granted by HKEX, a listed company cannot retain treasury shares.	Virgin Islands, the People's Republic of China and others) [5]. Listed companies shall ensure that treasury shares are appropriately identified and segregated. The listing of all shares which are purchased by a listed company (whether on HKEX or otherwise) but not held as treasury shares shall be automatically cancelled upon purchase. There is no limit or restriction on the actual number of treasury shares that may be held by a listed company[6].
Resale of treasury shares	Not applicable as repurchased shares cannot be held as treasury shares.	As a resale of treasury shares impacts existing shareholders in a similar manner as an issuance of new shares, the framework for an issuance of new shares is applied to govern the resale of treasury shares. The new Listing Rules do not require listed companies to resell all of their treasury shares before issuing new shares. Some key features of the resale framework are summarized below (non-exhaustive)[7]: ■ **Pre-emptive basis**: A resale of treasury shares is subject to pre-emption right of the shareholders (i.e., must be first offered to all shareholders on a pro-rata basis) or alternatively, approved by shareholders under a specific mandate or a general mandate (see below for details). ■ **Shareholders' mandate**: A resale of treasury shares can be approved by shareholders under a specific mandate. Treasury shares can also be resold under the general mandate, approved in advance by shareholders, that allows listed companies to allot or issue shares (up to 20% of the listed company's issued shares on the date of the approval, "**General Mandate Limit**"). The general mandate must specifically authorize the resale of treasury shares in order for a listed company to resell its treasury shares under the general mandate. Additionally, the number of shares

5 The Companies Ordinance (Chapter 622 of Laws of Hong Kong) (the "**Companies Ordinance**") currently requires a Hong Kong incorporated company to cancel repurchased shares, thereby effectively preventing repurchased shares from being held "in treasury" for "resale" at a later date. According to the Consultation Conclusions, the Hong Kong government is proposing amendments to the Companies Ordinance to enable listed companies incorporated in Hong Kong to also benefit from the treasury share regime as other overseas issuers.

6 However, the maximum number of shares that a listed company can repurchase on HKEX is still subject to Rule 10.06(1) of the Listing Rules which requires a listed company to obtain shareholders' approval for a specific repurchase or a repurchase mandate to repurchase shares on HKEX. The repurchase mandate is limited to a maximum of 10% of the issued share capital of the listed company on the date of the resolution granting the repurchase mandate. The 10% of the issued share capital excludes any treasury shares held by the listed company at the given time. A listed company may hold shares repurchased in other circumstances (e.g. off-market share buybacks from specific shareholders or employee share buybacks permitted under the Code on Share Buy-backs) in treasury where authorized by the laws of its place of incorporation and its constitutional documents.

7 Also applies to a resale of treasury shares by a listed company or its subsidiary through an agent or nominee. HKEX clarifies in the Consultation Conclusions that the requirements would not apply to a sale of shares by the trustee of a listed company's share scheme if those shares are not regarded as treasury shares under the laws of the listed company's place of incorporation and its constitutional documents.

Key Amendments	Current Listing Rules' requirements	New Listing Rules' requirements
		repurchased during the year under a repurchase mandate approved in advance by shareholders (up to 10% of the listed company's issued shares on the date of the approval, "**repurchase mandate limit**") can be added to the general mandate limit. ■ **Calculating mandate limits**: Both the general mandate limit and the repurchase mandate limit are calculated based on the number of issued shares of the listed company **excluding** the treasury shares held by it at that given time. ■ **On-market price discount**: An on-market resale of treasury shares under the general mandate is subject to a maximum price discount of 20% of the higher of: - the closing price on the trading day immediately prior to the resale; and - the average closing price in the 5 trading days immediately prior to the resale. ■ **Off-market price discount**: An off-market resale of treasury shares under the general mandate is subject to the same price discount limit as the on-market price discount.
Disclosure requirement	The details of share repurchases and the cancellation of repurchased shares must be disclosed in next day disclosure returns, monthly returns and annual reports as and when required under the Listing Rules.	**Disclosure of repurchases and resales:** A listed company should disclose its repurchase of shares, resale of treasury shares and any movement in the number of treasury shares by announcement, listing document[8], next day disclosure return, monthly return and annual report as and when required under the new Listing Rules. **Disclosure of the intention to hold treasury shares**: when seeking shareholders' approval for a repurchase mandate, a listed company is required to disclose in the explanatory statement to shareholders its intention as to whether the repurchased shares will be cancelled or kept as treasury shares. In addition, a listed company is required to disclose in the next day disclosure return after each share repurchase (a) whether repurchased shares are to be cancelled or held in treasury; and (b) where applicable, the reasons for any deviation from the intention statement previously disclosed by the listed company in the explanatory statement. Notwithstanding the above, the disclosure of the intention statement would not preclude a listed company from subsequently cancelling any treasury shares. A listed company is required to report cancellation of treasury shares through next day disclosure returns and when such disclosure obligation arises.

[8] For example, when there is a rights issue or open offer.

Key Amendments	Current Listing Rules' requirements	New Listing Rules' requirements
Restrictions on the dealing in treasury shares	Not applicable as repurchased shares cannot be held as treasury shares or be resold.	To mitigate the risks of market manipulation or insider dealing resulting from the repeated repurchases and resales of their own shares, listed companies are subject to the following restrictions: ■ Any resale of any treasury shares is not permitted **on or off-market** within **30 days** after any share repurchase. The 30-day moratorium period will not apply to (i) a new issue of shares, or a sale or transfer of treasury shares under a capitalization issue; (ii) a grant of share awards or options under a share scheme that complies with Chapter 17 of the Listing Rules or a new issue of shares or a transfer of treasury shares upon vesting or exercise of share awards or options under the share scheme that complies with Chapter 17 of the Listing Rules; and (iii) a new issue of shares or a transfer of treasury shares pursuant to the exercise of warrants, share options or similar instruments requiring the listed company to issue shares or transfer treasury shares, which were outstanding prior to the share repurchase[9]. ■ Any resale of any treasury shares is not permitted **on-market:** - when there is undisclosed inside information; and - during the period of 30 days preceding any results announcement. ■ Any **on-market** share repurchase is not permitted within **30 days** after any **on-market** resale of treasury shares.
Voting rights attached to treasury shares	Not applicable as repurchased shares cannot be held as treasury shares.	Listed companies holding treasury shares must abstain from voting on matters that require shareholders' approval under the Listing Rules, which prevents controlling/substantial shareholders from using treasury shares to consolidate their control of the listed company.
Use of treasury shares for share schemes	Shares repurchased by a listed company itself cannot be used to satisfy share grants in a share scheme as the repurchased shares must be cancelled.	A share scheme using treasury shares to satisfy share grants would be treated as a share scheme funded by new shares under Chapter 17 of the Listing Rules, in which case such share grants would be subject to the scheme mandate limit approved by shareholders under Chapter 17 of the Listing Rules. The rules of a listed company's share scheme should specifically allow the use of treasury shares to satisfy share grants. The rules of any existing share scheme should be amended to allow the use of treasury shares to satisfy share grants. However, HKEX would normally not regard the amendments simply to allow the use of treasury shares to fund the share scheme as a material

9 HKEX clarifies in the Consultation Conclusions that the carve-out applies to issuance of new shares and transfer of treasury shares by a listed company upon conversion of convertible securities, which were issued with subscription monies fully settled prior to the share repurchase.

Key Amendments	Current Listing Rules' requirements	New Listing Rules' requirements
		alteration to the scheme rules which would require shareholders' approval under Chapter 17 of the Listing Rules. For the avoidance of doubt, if a listed company establishes a share scheme funded by existing shares (for example, by appointing a trustee to administer the scheme and purchase shares on-market to satisfy share grants), such share scheme would only be subject to annual reporting requirements under Rule 17.12 of the Listing Rules. This is because the scheme is satisfied by issued shares of the listed company rather than shares held in treasury (the rights of which are suspended by laws)[10].
Resale of treasury shares to connected persons of the listed company	Not applicable as repurchased shares cannot be held as treasury shares or be resold.	Any resale of treasury shares to a connected person would be subject to the same connected transaction requirements as an issue of new shares under Chapter 14A of the Listing Rules. For example, a resale of treasury shares to a connected person would be subject to independent shareholders' approval and relevant disclosure requirements, unless fully exempted under the new Listing Rules (e.g., a pro rata issue to existing shareholders or a share scheme that complies with Chapter 17 of the Listing Rules). Listed companies are prohibited from **knowingly** reselling treasury shares to a core connected person (i.e., a director, supervisor (if applicable), chief executive or substantial shareholder of the listed company or any of its subsidiaries or a close associate of any of them) on the market.
Excluding treasury shares in the calculation of issued shares	Repurchased shares must be cancelled as soon as reasonably practicable.	Treasury shares are disregarded when calculating a listed company's issued shares or voting shares for the purpose of determining the following under the Listing Rules: ■ public float; ■ market capitalization; ■ equity capital ratio for size test calculation; ■ size limit for issuing or purchasing securities as a percentage of the issued shares; ■ a shareholder's percentage of rights to vote at a general meeting of the listed company; and ■ a shareholder's percentage interest in the listed company*. **Please see "Implications under the Codes and the SFO" for further explanation on how treasury shares are counted towards calculating a shareholder's interest in a listed company under the Codes (defined below) and the SFO (defined below).*

[10] For a listed company incorporated in the People's Republic of China, a share scheme funded by its treasury H shares is subject to the same requirements as a share scheme funded by new shares under Chapter 17 of the Listing Rules, and a share scheme funded by its treasury shares not listed on HKEX is subject to Rule 17.12 of the Listing Rules.

Key Amendments	Current Listing Rules' requirements	New Listing Rules' requirements
Implications for new listing applicants	New listing applicants must cancel all their treasury shares prior to their listing on HKEX.	New listing applicants are permitted to retain their treasury shares upon listing, but they must disclose details of their treasury shares in their prospectus. A newly listed company cannot resell any treasury shares or enter into any agreement for such resale within six months after listing.

Implications under the Codes and the SFO

I. Under the Codes on Takeovers and Mergers and Share Buy-backs (the "Codes")

Treasury shares are **excluded from** the calculation of voting rights percentages under the Codes. If a listed company has treasury shares, such shares will not be treated as disinterested shares or counted towards the various thresholds under the Codes. This will apply when determining whether a shareholder's voting right percentages crosses the 30% mandatory offer threshold, the 2% creeper threshold or an acceptance threshold. In addition, an offer is not required to be made for treasury shares during a general offer or partial offer.

Accordingly, a listed company repurchasing and holding its shares in treasury will trigger an increase in the voting rights percentage of its shareholders under the Code on Takeovers and Mergers. Listed companies should therefore exercise caution to avoid inadvertently triggering a mandatory general offer obligation of its shareholders under the Code on Takeovers and Mergers due to the Listed Companies' dealings in treasury shares.

According to the Consultation Conclusions, the Takeovers Executive of the Securities and Futures Commission of Hong Kong（"**SFC**"）will issue a practice note clarifying the treatment and implications of treasury shares in the context of a Codes-related transaction.

II. Under the Securities and Futures Ordinance (chapter 571 of Laws of Hong Kong) ("SFO")

In the context of the disclosure of interest requirements under Part XV of the SFO, treasury shares are considered as **included in** a listed company's issued shares, and the calculation of shareholding interest percentages must take the presence of treasury shares into account. Any repurchase of shares and the holding or reselling of treasury shares by a listed company will not affect the total number of issued voting shares for the calculation of percentage figures of interests of shareholders. Notably, if a listed company holds 5% or more of its own shares as treasury shares, it is also obligated to disclose such information under this regime. Further, any shareholder that controls one-third or more of the voting power at general meetings of the listed company concerned would also be taken to have an interest in those treasury shares which must be added to his other interests in shares of the listed company to determine his reporting obligations under Part XV of the SFO.

According to the Consultation Conclusions, the SFC will update the Outline of

Part XV of the SFO – Disclosure of Interests to provide further guidance on the treatment of treasury shares, including the calculation of percentage interests if treasury shares are involved.

Conclusion

The Amendments permitting the holding and resale of treasury shares offer greater flexibility to listed companies towards managing their capital structure and fund raising strategies. For example, listed companies can now react promptly to market conditions and resell treasury shares in small lots on the market at market prices, which offers an alternative means to raise funds compared to a placing of new shares which typically involves a discount to market prices. Alternatively, treasury shares can also be transferred as consideration for an acquisition, for satisfying employees' share incentive schemes or upon conversion of convertible securities, subject to the company laws of the places of incorporation of the listed companies. As over 90% of the companies listed on HKEX are incorporated in jurisdictions that allow companies to hold treasury shares, the Amendments will further enhance the competitiveness and appeal of the Hong Kong market for these companies and their investors. We look forward to navigating our clients through these new developments to maximize the benefits they may bring.

3. Key Distinctions in U.S. and Chinese Employment Laws & Practices

Authors: Mike Chiang of Han Kun LLP
Xiu Pei of Han Kun Law Offices

The employment laws and practices in the U.S. and China exhibit significant differences across various aspects. Chinese investors, when conducting business in the U.S., frequently encounter challenges stemming from the application of Chinese employment ideas and experience to their labor and employment practices in the U.S. This newsletter aims to assist Chinese investors in understanding the below key differences in employment laws and practices between the two countries, thereby enabling them to avoid potential problems and issues.

Basis of employment law

I. U.S.

The U.S. employment law framework is predominantly state-based, allowing for diverse labor standards across different regions. This decentralized approach results from the federal system of government, where states have significant autonomy in legislating employment matters. Consequently, laws concerning wages, hours of work, leave policies, and termination vary widely from one state to another. For instance, California has some of the most stringent labor laws in the country, offering extensive protections to employees, while other states might offer less protections to the employees. This diversity necessitates businesses to have a nuanced understanding of each state's legal environment in which they operate, ensuring compliance across multiple jurisdictions. For Chinese-invested corporations or businesses operating nationally, this can mean juggling a myriad of regulations, requiring diligent legal and HR efforts to maintain compliance.

II. China

China, with its centralized legal system, provides a more uniform framework for employment law. Governed by national legislation, such as the Labor Law and Labor Contract Law, these regulations are applied consistently across all regions and provinces. The national laws cover a wide array of employment aspects, including contracts, wages, working hours, and termination, ensuring a consistent approach to employment practices throughout the country. However, as regulations and guidelines at the central level are relatively brief, many difficult issues are left to be resolved. A considerable number of these issues are regulated at the local level by local laws and regulations and other local policies or normative documents instead; and at the same time, a significant portion of those issues are resolved by local adjudicative bodies in a public or internal manner, resulting in the obvious territorial differences of the practices. There are some labor disputes that brings different viewpoints at the regional level, or even within the same court district, but depend more on the case-by-case discretion of the adjudicators.

Written employment contract requirement

I. U.S.

In the United States, there is no universal mandate for written employment contracts across all jobs. This results in a flexible approach where employment terms are often agreed upon verbally or through offer letters and company policies. Written contracts are typically reserved for executive roles, specialized positions, or instances where unique job duties or compensation arrangement need to be explicitly outlined. However, in the absence of formal contracts, ambiguities can arise about employment terms, potentially leading to disputes. The varied approach to document employment terms in the U.S. provides flexibility but also demands that employers and employees clearly understand their rights and obligations, potentially through supplemental documentation like employee handbooks or policy manuals.

II. China

The requirement for written employment contracts in China is a fundamental aspect of its labor law, emphasizing formalized and documented labor relations. Failure to provide a written contract within the specified timeframe can result in penalties for the employer, including the requirement to pay double the employee's salary. Moreover, if a written contract is not provided within a year, the employment relationship is deemed to be a non-fixed term contract, providing greater job security for the employee. This approach underscores the importance of diligent HR practices and thorough contract management from the onset of employment.

At-will employment vs. non-fixed term employment

I. U.S.

The concept of at-will employment in the United States underpins the country's labor market, emphasizing flexibility and adaptability. This doctrine allows either the employer or the employee to terminate the employment relationship at any time, for any lawful reason, or for no reason at all, without incurring legal liability. This system affords employers the flexibility to make personnel decisions swiftly, in response to market dynamics, operational needs, or individual employee performance. However, it also places a degree of uncertainty on employees, who can be terminated without notice or cause. The at-will doctrine is subject to several important exceptions, including prohibitions against wrongful dismissal and discriminatory practices as outlined in various federal and state laws. For instance, anti-discrimination laws at the federal level, such as Title VII of the Civil Rights Act, protect employees from being terminated on the basis of race, color, religion, sex, or national origin.

II. China

In China, the concept of non-fixed term employment offers a stark contrast to the U.S. system. After completing two consecutive fixed-term contracts, or under certain conditions specified by labor laws, employees typically gain the right to a non-fixed term contract (which is also often perceived as a permanent contract). This type of contract significantly enhances job security for employees, as unilateral termination by the employer is rigorously regulated in China. Employers must have a justifiable reason, often related to performance or operational needs, and follow a stringent process for unilaterally terminating an employee. Therefore, a non-fixed term contract poses challenges to the employer to end employment relationships.

Non-compete issues

I. U.S.

The approach to non-compete agreements in the U.S. varies significantly across states, reflecting the decentralized nature of its legal system. Generally, non-compete agreements are enforceable if they are considered reasonable in scope, duration, and geographic area, and if they protect legitimate business interests such as trade secrets or customer relationships. However, the definition of what is 'reasonable' can differ greatly. For instance, California is known for its strong stance against non-compete agreements, deeming them unenforceable in most cases. Conversely, states like Texas and Florida are more amenable to enforcing such agreements, provided they meet certain criteria. Employers using non-compete agreements must carefully draft these clauses to ensure they are compliant with the specific laws of each state where they operate. Moreover, there is an increasing trend towards legislative action limiting the use of non-competes, particularly for lower-wage employees. Employers must stay informed about evolving laws in this area and consider alternative strategies, such as non-solicitation or confidentiality agreements, to protect their business interests.

II. China

In China, non-compete agreements are recognized and enforceable but are subject to specific statutory limitations under the Labor Contract Law. These agreements can only be applied to senior management, senior technicians, and other personnel with access to trade secrets. The law caps the post-termination non-compete period to a maximum of two years and requires employers to pay economic compensation to the employee during the non-compete period. This compensation must be sufficient to support the livelihood of the employee and must not be lower than the local minimum wage standards, often subject to negotiation during the drafting of the agreement. Failure to provide this compensation can render the non-compete clause unenforceable.

Wages and payment of wages

I. U.S.

The wage structure in the U.S. encompasses a wide range of factors including federal and state laws, industry standards, and individual employer policies. The Fair Labor Standards Act (FLSA) sets the baseline for minimum wage and overtime pay but allows states to establish higher minimum wage rates. This leads to significant variation across the country; for example, states like Washington and Massachusetts have higher minimum wages compared to states like Georgia. Overtime payment rules, particularly for exempt and non-exempt employees, add complexity to wage management. Exempt employees, generally salaried individuals in executive, administrative, or professional roles, are not eligible for overtime pay under the FLSA, whereas non-exempt employees must be paid overtime for hours worked beyond the standard 40-hour workweek. The classification of employees as exempt or non-exempt is a critical aspect of wage management, requiring employers to carefully assess job duties and compensation levels. In addition to these federal standards, employers must also navigate state-specific wage and hour laws, which can include regulations on meal and rest breaks, minimum wage rates, and pay frequency. For instance, California has stringent requirements for meal and rest breaks and imposes additional penalties for non-compliance. These variances necessitate a comprehensive approach to payroll management, ensuring adherence to both federal and state wage laws.

II. China

Wage regulations in China are primarily aimed at ensuring fair compensation and protecting workers from exploitation. Each region within China sets its own minimum wage standards, which are periodically reviewed and adjusted according to local economic conditions. This regional variation allows for a degree of flexibility, acknowledging the diverse cost of living across different parts of the country. In addition to meeting these minimum wage standards, employers in China are also obligated to comply with laws governing the payment of overtime. These regulations ensure that employees are adequately compensated for extra work hours. Employers are subject to penalties for late or non-payment of wages.

Leave and holidays

I. U.S.

The approach to employee leave in the U.S. is characterized by a lack of federal mandates for paid vacation or sick leave, leading to a high degree of variability in leave policies among employers. The Family and Medical Leave Act (FMLA) provides for unpaid leave for certain family and medical reasons, but eligibility is limited to employees of larger employers and those who have met specific service requirements. Outside of FMLA, many employers offer paid leave benefits as a competitive advantage to attract and retain talent. The nature and extent of these benefits can vary widely, often depending on the industry, the size of the employer, and the level of the position. Some states and cities have enacted their own laws requiring employers to provide certain types of paid leave. For instance, California requires employers to provide paid sick leave, and New York has a paid family leave program. These state and local mandates create a patchwork of leave regulations across the country, with some employees receiving generous paid leave benefits and others having minimal or no paid leave. Additionally, the U.S. observes several federal public holidays, but there is no legal requirement for employers to offer these days as paid time off. As a result, public holiday observance can vary between employers, with some offering paid holidays as part of their benefits package and others not. In industries where talent competition is particularly high, employers often use generous leave policies as a key component of their compensation packages. This varied landscape of leave entitlements in the U.S. highlights the need for employers to carefully consider their leave policies in the context of legal requirements, industry norms, and recruitment and retention strategies. Employers must balance compliance with state and local laws with the competitiveness of their overall benefits package, particularly in a market where employee expectations for work-life balance and flexible working arrangements are evolving.

II. China

In contrast to the U.S., China offers a more standardized leave system, mandated by national legislation. Employees in China are entitled to paid annual leave, which increases with their years of service, encouraging long-term employment relationships. This leave entitlement starts from 5 days for employees who have worked for 1 to 10 years, increasing to 10 days for 10 to 20 years of service, and up to 15 days for more than 20 years of service. Besides annual leave, Chinese employees also benefit from a range of public holidays. These holidays are uniformly observed across the country, contributing to the overall leave entitlement of employees. Additionally, China's labor laws provide for various other types of leave, including marriage leave, maternity leave, paternity leave, and bereavement time-offs, which are up to local regulations and standards.

Hiring practices

I. U.S.

The hiring process in the U.S. is influenced by a broad spectrum of federal and state laws designed to promote fairness, equity, and non-discrimination. Employers are bound by laws such as the Civil Rights Act, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), and the Equal Pay Act, which collectively prohibit discrimination based on factors including race, color, religion, sex, national origin, age, disability, and gender identity. The enforcement of these laws, overseen by agencies like the Equal Employment Opportunity Commission (EEOC), requires employers to adopt fair hiring practices, including job postings, interview processes, and candidate evaluations. Employers must also navigate state-specific regulations, which can include laws on background checks, drug testing, credit checks, and salary history inquiries. For instance, some states have "ban-the-box" laws that restrict inquiries about a candidate's criminal history during the early stages of the hiring process. Additionally, various states have enacted legislation to address pay equity, such as prohibiting employers from asking about a candidate's previous salary. This complex legal landscape demands that employers maintain up-to-date knowledge of applicable laws and ensure their hiring processes are compliant, fair, and inclusive. Employers also face challenges in aligning their recruitment strategies with business objectives while navigating these legal requirements. In practice, this often means developing standardized hiring procedures, training hiring managers on non-discriminatory practices, and implementing systems to ensure compliance throughout the recruitment process.

II. China

In China, hiring practices are governed by principles of fairness and non-discrimination as outlined in the Labor Law and other relevant regulations. However, the approach is more regulated in terms of adherence to legal and contractual obligations. Employers are required to ensure compliance with laws regarding employment contracts, social insurance enrollment, and other statutory requirements from the outset of the employment relationship. The hiring process often places emphasis on candidates' qualifications, credentials, and suitability for the role within the framework of Chinese labor laws.

Discrimination and harassment laws

I. U.S.

The framework in the U.S. for preventing and addressing workplace discrimination and harassment is comprehensive and multifaceted. Federal laws, such as the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Genetic Information Nondiscrimination Act, provide broad protections against discrimination in various aspects of employment. Additionally, the U.S. Equal Employment Opportunity Commission (EEOC) actively enforces these laws, offering guidance to employers and recourse to employees who face discrimination or harassment. Employers are required to establish clear policies, provide training, and promptly investigate complaints to foster a workplace free of discrimination and harassment. Many states and local jurisdictions have enacted laws that expand these protections, covering additional categories such as sexual orientation, gender identity, and marital status. For example, states like California and New York have comprehensive anti-discrimination laws and mandatory training requirements on sexual harassment. This layered legal environment necessitates that employers not only comply with federal standards but also stay informed of state-specific requirements. Implementing best practices, such as regular training, clear reporting mechanisms, and effective complaint resolution processes, is essential for employers to maintain a compliant and inclusive workplace. Moreover, the focus on diversity, equity, and inclusion (DEI) in corporate culture further drives employers to go beyond mere legal compliance, adopting proactive strategies to create a diverse and supportive work environment.

II. China

In China, there are anti-discrimination employment laws in place that aim to prevent bias based on factors such as ethnicity, race, and gender, etc. Also, there are some provisions introduced by the Civil Code requiring all employers to proactively prevent sexual harassment in the workplace. These protections may not be as aggressively pursued by the employees as those in the United States, and workplace issues are more often resolved internally rather than through formal legal channels. In recent times, there has been a growing awareness and public dialogue surrounding workplace discrimination and harassment in China, particularly in relation to gender-based ones.

Social security and benefits

I. U.S.

The U.S. social security system provides a basic level of protection for employees, covering retirement, disability, and survivors' benefits. Employers and employees contribute to this system through payroll taxes. Beyond social security, other benefits like health insurance, retirement savings plans, and paid leave are not federally mandated and vary widely among employers. Some states have enacted laws requiring employers to provide additional benefits. For instance, several states mandate employers to offer retirement savings plans if they do not provide a pension or 401(k) plan. Similarly, states like California have their own health insurance mandates, and a growing number of states require paid sick leave. These variances create a complex landscape for employers, who often use additional benefits as a means to attract and retain talent. In competitive job markets, comprehensive benefits packages that include health insurance, retirement savings options, and generous leave policies can be crucial in securing top talent. Employers need to balance the cost of these benefits with their value in recruitment and retention, all while ensuring compliance with state-specific regulations.

II. China

The social security system in China is comprehensive and mandatory, covering pension, medical insurance, unemployment insurance, work injury insurance, and maternity insurance. Both employers and employees contribute to these funds, with rates varying by region. This system ensures a broad safety net for employees across different life stages and circumstances. Additionally, as required by national regulations, both employers and employees pay contributions to a housing fund, further supporting employees' welfare. For employers, managing social security and housing fund contributions is an integral part of payroll administration, requiring careful attention to regional differences in contribution rates and compliance requirements.

Health and safety

I. U.S.

Ensuring workplace health and safety is a critical responsibility for employers in the U.S. The Occupational Safety and Health Administration (OSHA) sets and enforces standards to provide safe and healthy working conditions. These standards cover a wide range of safety issues, from hazardous material handling and machine guarding to ergonomic practices and air quality. Employers are required to comply with OSHA regulations, which includes providing appropriate training, maintaining safe working environments, and reporting certain types of injuries and illnesses. Many industries have specific OSHA standards that must be followed, adding layers of complexity for businesses operating in sectors like construction, manufacturing, or healthcare. Additionally, workplace health and safety have been evolving to include considerations of mental health and wellness, especially in response to changing work environments and increased awareness of these issues. This evolution has led to a broader interpretation of what constitutes a safe and healthful workplace, with employers increasingly adopting holistic approaches to employee well-being. Non-compliance with OSHA regulations can result in significant penalties, including fines and, in severe cases, criminal charges. In addition to federal OSHA regulations, states may operate their own OSHA-approved workplace safety and health programs with standards that are at least as effective as federal OSHA. These state plans can impose additional requirements on employers. Thus, maintaining compliance with health and safety regulations is a critical aspect of risk management for employers, necessitating ongoing vigilance, training, and investment in safety initiatives.

II. China

Workplace health and safety in China are governed by a framework of national laws and regulations, with increasing attention being given to this area in recent years. Employers are required to provide a safe working environment, conduct regular safety training, and supply necessary protective equipment. The government has been strengthening these regulations and enforcement in response to several high-profile industrial accidents, signaling a growing commitment to worker safety. For businesses operating in China, understanding and adhering to health and safety regulations is crucial, not only for legal compliance but also for ensuring the well-being of their workforce.

Data and privacy protection issues

I. U.S.

In the United States, data privacy and protection in the employment context are governed by a combination of federal and state laws. The lack of a unified federal data privacy law means that employers must navigate a complex array of regulations. For instance, the Health Insurance Portability and Accountability Act (HIPAA) governs the confidentiality of medical information, and the Fair Credit Reporting Act (FCRA) regulates the use of consumer reports and credit checks for employment purposes. Additionally, some states have implemented comprehensive data protection laws, such as the California Consumer Privacy Act (CCPA), which grants specific rights to California residents regarding their personal information. The CCPA has implications for employers who collect and process personal data of their employees. Furthermore, the increasing prevalence of remote work and digital communication platforms has raised new challenges in maintaining data security and protecting employee privacy. Employers must ensure robust data security measures to protect sensitive employee information from cyber threats. This environment requires employers to be vigilant in their data management practices, ensuring compliance with applicable laws and maintaining the trust of their employees. Best practices include regular data security training, implementing strong cyber security measures, and maintaining transparency with employees about data collection and usage.

II. China

In China, data privacy and protection are increasingly important issues, with the introduction of comprehensive laws such as the Cybersecurity Law and the Personal Information Protection Law. These laws establish strict guidelines for the collection, storage, processing, and transfer of personal data. Employers in China are required to implement robust data protection measures, obtain consent for data collection, and ensure the security of personal data. This is particularly relevant for multinational companies that may transfer employee data across borders, as cross-border data transfers are subject to stringent regulations. The evolving nature of these laws and the increasing emphasis on data security in China require employers to stay abreast of legal developments and adapt their data management practices accordingly.

Termination process and severance issues

I. U.S.

The termination process in the United States varies depending on the state laws, the specifics of the employment contract, and the circumstances of the termination. Under the at-will employment doctrine, employers have considerable flexibility in making termination decisions, but they must ensure that these decisions do not violate federal or state anti-discrimination laws, breach contract terms, or contravene any specific statutory protections. For example, terminating an employee for whistleblowing activities or in retaliation for taking FMLA-protected leave is prohibited. Employers are advised to document performance issues and disciplinary actions to support termination decisions, reducing the risk of wrongful termination lawsuits. In cases of mass layoffs or plant closures, employers may be subject to additional regulations, such as the federal Worker Adjustment and Retraining Notification (WARN) Act, which requires advance notice to employees. Severance pay in the U.S. is not mandated by federal law but may be offered as part of a termination agreement or as a policy by the employer. Many companies use severance packages as a way to mitigate potential disputes and assist employees in their transition. These packages often include a combination of continued salary payments, benefits coverage, and sometimes outplacement services. The terms of severance are frequently negotiated and may be subject to conditions such as non-disparagement or non-compete clauses. Overall, the termination process in the U.S. demands careful consideration of legal requirements, fairness, and potential reputational impacts, requiring employers to balance their operational needs with the rights and well-being of employees.

II. China

The termination process in China is regulated, requiring employers to have valid grounds and follow specified procedures. Chinese labor laws categorize terminations into several types, including those based on employee misconduct, mutual agreement, redundancy, major change of objective circumstances and failure of the employee to perform job duties, etc. Employers must adhere to these legal grounds and often need to provide evidence or follow specific steps, such as attempting to reassign employees or offer trainings to employees before termination. Severance pay is generally required unless the termination is due to employee misconduct or the employee's fault. The amount of severance is based on the number of years of service, with the calculation typically being one month's salary for each year of service. In cases of redundancy, employers are also required to follow certain procedures, such as prioritizing retention of employees with longer service or family responsibilities, soliciting opinions from trade union or all employees, and reporting to local labor administration authorities.

Handling of employment disputes

I. U.S.

In the United States, parties involved in employment disputes often take a proactive and assertive approach, driven by a legal system that emphasizes individual rights and adversarial resolution. Employees, supported by labor laws and a robust legal infrastructure, are empowered to assert their rights and pursue legal action when they believe their rights have been violated. This may involve seeking legal counsel to navigate the complexities of the legal process, filing complaints with government agencies such as the Equal Employment Opportunity Commission (EEOC), or pursuing litigation in state or federal courts. Employers, on the other hand, typically approach employment disputes with a focus on risk management, compliance, and protecting their interests. They may implement policies and procedures to prevent disputes, provide training on employment laws and regulations, and maintain detailed documentation to defend against potential claims. When disputes arise, employers may engage legal counsel to represent their interests, negotiate settlements, or defend against claims in litigation or arbitration proceedings.

II. China

In recent years, employees' awareness of their legal rights and protections when it comes to their employment has been growing. As a result, more and more individuals are choosing to pursue legal action in cases of labor disputes. Procedurally, employees or employers should submit arbitration applications to the local labor arbitration commission where the employment contract is performed, as a prerequisite step before filing to the court. If a party is not satisfied with the arbitration award, it may bring a lawsuit to the court within 15 days after receiving the written arbitration award. If it fails to bring a lawsuit within the time limit, the written arbitration award takes effect.

Important Announcement

If you have any questions regarding this publication, please contact:

Beijing	**David LI**	**Attorney-at-law**
	Tel:	+86 10 8525 4668
	Email:	david.li@hankunlaw.com
Shanghai	**Kelvin GAO**	**Attorney-at-law**
	Tel:	+86 21 6080 0920
	Email:	kelvin.gao@hankunlaw.com
Shenzhen	**Jason WANG**	**Attorney-at-law**
	Tel:	+86 755 3680 6518
	Email:	jason.wang@hankunlaw.com
Hong Kong	**Dafei CHEN**	**Attorney-at-law**
	Tel:	+852 2820 5616
	Email:	dafei.chen@hankunlaw.com
Haikou	**Jun ZHU**	**Attorney-at-law**
	Tel:	+86 898 3665 5000
	Email:	jun.zhu@hankunlaw.com
Wuhan	**Jiao MA**	**Attorney-at-law**
	Tel:	+86 27 5937 6200
	Email:	jiao.ma@hankunlaw.com
Singapore	**Lan YU**	**Attorney-at-law**
	Tel:	+65 6013 2966
	Email:	lan.yu@hankunlaw.com
New York	**Mike CHIANG**	**Attorney-at-law**
	Tel:	+1 646 849 2888
	Email:	mike.chiang@us.hankunlaw.com