



Regulatory enforcement in the digital age



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| Introduction

The digital age has radically reshaped many aspects of life. It has made many things in life easier, faster and more efficient. For example, digital payments are increasingly the norm, and digital assets¹ are taking a foothold, as more aspects of human life move online. And we are at the cusp of another potentially radical reshaping of human life because of “generative artificial intelligence”². But digital speed, efficiency and convenience has come with a variety of costs. One of those costs is the ease with which deception can be perpetrated³.

For bad actors, financial crime increasingly appears to pay. Some of the headlines about the amounts lost by victims to financial crime are breath-taking. With that incentive mechanism, it is unsurprising that financial crime is on an upwards trajectory. And as financial crime seemingly grows in prevalence and complexity, and increasingly takes place online and across borders, regulators and law enforcers must work harder to keep up, and it is critical for governments to ensure that: (a) law enforcers, regulators and prosecutors are properly resourced so that they can remain effective; and (b) anti-money laundering efforts remain robust.

In Hong Kong, the number of crimes reported in 2022⁴ increased by 8.7%. Many “traditional” crimes⁵, saw substantial decreases⁶. But the number of deception cases increased significantly, by about 45.1%, over 70% of which were Internet-related. That increase was driven in large part by online shopping scams, employment fraud, investment fraud, and telephone deception. Investment fraud victims lost over HKD1.8 billion, and telephone fraud victims over HKD1 billion.

The prevalence of deception can also be seen in the financial services space. Over the last several years, for example, many of the Hong Kong Monetary Authority’s (HKMA) press releases have been warnings about unauthorised / fraudulent websites and Apps which purport to be official bank sites, and about phishing instant messages purporting to be from banks. The Hong Kong Securities and Futures Commission (SFC) has been focusing much of its enforcement efforts on tackling investment fraud and scams on online platforms, market manipulation, misappropriation of listed companies’ assets and unlicensed activities⁷. Outside of trying to ensure that its regulatees comply with their regulatory obligations⁸, tackling deception is at the heart of the SFC’s enforcement efforts.

1. Perhaps the two best-known digital assets are Bitcoin and Ether, but there are now thousands of digital assets, with market capitalisation in the trillions of US dollars.
2. Generative artificial intelligence is a form of artificial intelligence that can create a wide variety of data, like images, videos, audio and text, by learning patterns from existing data, and then using that data to generate new and unique creations. One such system, ChatGPT, has made (and continues to make) global headlines in recent months.
3. One of the key emerging risks is digital image, video, audio and text “spoofing” / impersonation through generative AI.
4. https://www.police.gov.hk/ppp_en/03_police_message/pr/press-release-detail.html?refno=P202302140002
5. Like robbery, burglary, sexual offences, criminal intimidation, criminal damage, serious drug offences, theft from vehicles, wounding, serious assault, arson, snatching and pickpocketing.
6. Last year, reported robbery and burglary cases were at their lowest since records began in 1969.
7. With respect to unlicensed activities, the SFC publishes an “Alert List” of entities that have come to the SFC’s attention because there are unlicensed in Hong Kong but are believed to be, or have been, targeting Hong Kong investors or claim to have an association with Hong Kong (<https://www.sfc.hk/en/alert-list>).
8. The majority of SFC investigations involve suspected intermediary misconduct.

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What can we see from the SFC’s enforcement efforts last year, and what can we expect from them in the year ahead?

Last year, we predicted⁹ that this year, we may see enforcement focus on individuals, pandemic-related matters, internal controls and risk management, fund-raising, online frauds, anti-money laundering, investment product selling processes, digital assets, competency and conduct and ESG. Many (but not all) of those areas were focuses for the SFC over the past year and are likely to remain so in the medium term.



⁹ <https://www.freshfields.com/en-gb/our-thinking/knowledge/briefing/2022/03/hong-kong-regulatory-enforcement-trends/>

02 The statistics

Table 1: Statistical summary of SFC enforcement activities

	2022/2023 (Annualised)	Total (2017/18 – 2021/22)	2021/22	2020/21	2019/20	2018/19	2017/18
S179 inquiries commenced	35	180	57	42	31	26	24
S181 inquiries commenced (number of letters sent)	177 (8,856)	1,235 (42,358)	203 (7,308)	246 (8,748)	231 (8,767)	294 (9,074)	261 (8,461)
Investigations started	134	1,139	220	204	197	238	280
Investigations completed	193	1,006	131	196	182	243	254
Notices of Proposed Disciplinary Action issued	25	150	37	27	35	22	29
Notices of Decision issued	29	190	43	35	46	34	32
Individuals/corporations charged in criminal proceedings	10	40	4	10	7	5	14
Criminal charges laid	127	163	28	29	10	42	54
Individuals/corporations subject to ongoing civil proceedings	167	140 (average per year)	168	179	158	101	97
Compliance advice letters issued	113	224	162	231	218	234	277
Cases with search warrants executed	35	26	37	28	17	30	22

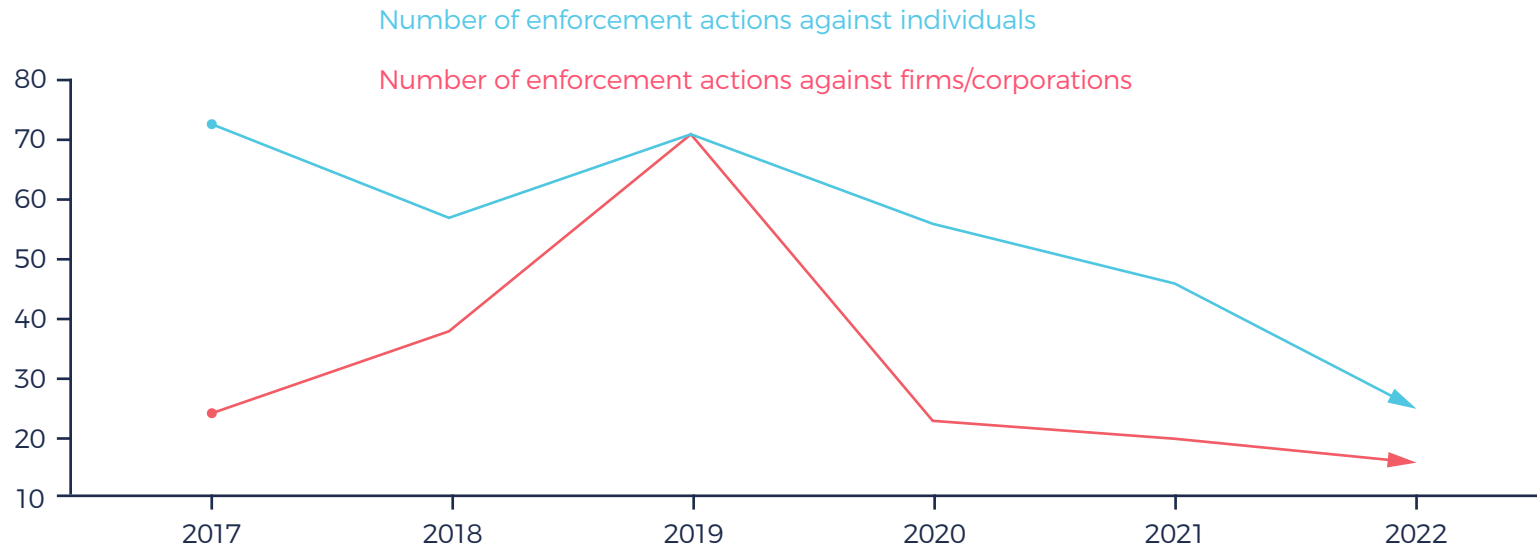
It is noteworthy that the SFC started significantly fewer investigations in 2022 (134¹⁰) than in each of the five years previously¹¹, and approximately 67% fewer than the 414 investigations that it started in 2016/17. What are the reasons for that? The first likely reason is because of the SFC’s enforcement focus, since 2016, on “high impact” cases. Additionally, the other statistics in the table suggest that the SFC’s Enforcement Division remains busy, so the significantly lower number of investigations started is likely to suggest that some of those investigations might be particularly large and/or complex. The high number of criminal charges laid and individuals/entities subject to ongoing civil proceedings support that suggestion.

¹⁰ This figure is annualised, from figures available up to and including the SFC’s Quarterly Report for the period October to December 2022, which was published on 7 March 2023.

¹¹ The SFC started: (i) 39% fewer investigations in 2022 than the 220 that it started in 2021/22; (ii) 34% fewer than the 204 in 2020/21; (iii) 32% fewer than the 197 in 2019/20; (iv) 43.7% fewer than the 238 in 2018/19; and (v) 52% fewer than the 280 in 2017/18.

02 The statistics

Table 2: Yearly aggregate SFC enforcement fines



Total fines increased significantly since last year (from HKD72,165,000 to HKD369,750,000) but are: (i) below the fines in 2020, 2019 and 2017; and (ii) largely accounted for by one large matter against a global financial institution in January 2022.

Total fines	HKD 497,081,071	HKD 194,201,000	HKD 1,287,272,800	HKD 2,803,724,000**	HKD 72,165,000	HKD 369,750,000*
Average fines across individuals, firms and corporations	HKD 10,144,512	HKD 6,696,586	HKD 13,992,096	HKD 116,821,833	HKD 1,093,410	HKD 9,018,293

03 Enforcement hotspots

Corporate misgovernance, fraud and market misconduct

Fraud, by corporates (this can also be categorised as corporate misgovernance) and by individuals¹² continues to be high on the SFC’s agenda. Such matters can come in a broad variety of forms. In the case of corporates, it can include IPO-related fraud¹³ and post-IPO fraud¹⁴.

“Ramp and dump”, often involving market manipulation through the dissemination of false or misleading information inducing transactions (in the digital age, this often occurs through social media / online chatrooms), remains a key focus for the SFC¹⁵. Over the past few years, the SFC has collaborated closely with the Hong Kong Police and the Hong Kong Independent Commission Against Corruption to investigate and pursue these types of cases. Through our work over the past year, we have seen indications that the opposite of “ramp and dump” (sometimes termed “poop and scoop”¹⁶) may also exist in Hong Kong. Other types of market manipulation¹⁷, and insider dealing¹⁸, also remain in focus.

Internal controls

Internal controls¹⁹ remain front of mind for regulators, because of their importance in managing risks and in preventing, deterring and detecting misconduct. This applies to HKMA- and SFC-regulated entities as well as to Hong Kong listed companies.

Individual responsibility

The SFC has continued to focus on pursuing individuals for misconduct. These cases tend to fall into one of two categories: those where the individual is him/herself responsible for misconduct²⁰, and those where the individual has not fulfilled his/her obligations as a senior representative of the organisation, for example, as a responsible officer²¹ or as a director²². With respect to listed company directors, the Stock Exchange of Hong Kong and the SFC continue to pursue cases²³ where they suspect directors, including non-executive and independent non-executive directors (and not just executive directors), have not complied with their common law and regulatory directors’ obligations.

12. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR8>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR81>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR87>.
13. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR4>.
14. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR47>.
15. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR76>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR94>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR98>.
16. Where the perpetrators use the dissemination of false or misleading information to drive down the target company’s share price for nefarious purposes, for example to profit from short positions.
17. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR62>.
18. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR63>.
19. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR53>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR56>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR79>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR93>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR111>.

03 Enforcement hotspots

Anti-money laundering

For the reasons explained above, regulators regard compliance with anti-money laundering rules as a core part of a regulated entity’s overall compliance framework.²⁴ Over the last several years, the SFC and the HKMA have focused enforcement efforts in this area. Overall, Hong Kong’s efforts to improve anti-money laundering compliance have received recognition from the Financial Action Taskforce²⁵.

Financial remediation for those harmed

Over the last decade or so, in addition to its enforcement efforts, the SFC has sought to achieve financial remediation for those harmed by misconduct. Those efforts continue²⁶.

IPO-related misconduct

Sponsor-related matters remain on the SFC’s radar, although many of the recent sponsor-related enforcement matters pertain to smaller IPO sponsors²⁷.

20. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR11>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR18>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR25>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR29>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR51>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR57>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR85>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR90>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR95>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR105>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR104>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR109>.
21. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR79>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR2>.
22. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR13>.
23. In the Stock Exchange’s case, through disciplinary action before the Listing (Disciplinary) Committee, and in the SFC’s case, through action before the High Court or Market Misconduct Tribunal.
24. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR2>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR7>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR14>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR37>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR37>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR55>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR69>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=23PR3>.
25. <https://www.fatf-gafi.org/en/publications/Mutualevaluations/FUR-Hong-Kong-China-2023.html>.
26. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR8>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR28>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR35>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR78>;
<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR97>.
27. <https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR58>.

04 What lies ahead?

This year sees a new SFC Executive Director of Enforcement²⁸, so we are likely to see in the months ahead an indication of his priorities for his three-year term, once he has settled into the job. In the meantime, we set out below a summary of the key areas where we believe there is likely to be enforcement attention.

| Digital assets

As digital assets establish a greater foothold in the market (one of the Hong Kong government's objectives is to establish Hong Kong as a regional and global centre for digital assets), and as digital assets services providers fall within the SFC's direct regulatory remit, we are likely to see more enforcement focus in this area in the years ahead. Historically, regulatory attention has focused on whether the digital asset(s) in question constitute a "security". But in future, that attention will be expanded to include whether digital assets services providers comply with their regulatory obligations. It is interesting to note that in the SFC's 2023/24 budget²⁹, the SFC did not ask the Legislative Council for any more Enforcement headcount but asked for four more posts in Intermediaries to help supervise digital assets services providers and their activities. It may be that the SFC is expecting a time-lag before it needs to resort to material enforcement steps to address misconduct in this space.

| IPO-related misconduct

We believe the SFC is likely to continue focusing on IPO-related misconduct, involving listed issuers and regulated intermediaries. It has now been some years since the significant settlements in 2019 that the SFC reached with several international investment banks with respect to past due diligence practices. In the coming years, the SFC might well focus on examining how market due diligence practices have evolved over the Covid-19 pandemic, and as we emerge from it. In light of the new listing regimes introduced by the Stock Exchange of Hong Kong over the past few years to allow biotech and specialist technology companies to list, another area of focus for the SFC might be on false or misleading claims made by IPO applicants regarding their technical capabilities and the commercial viability of their technologies and the sponsors' due diligence conducted on these novel and innovative technologies.

²⁸ The SFC's current Executive Director of Enforcement started his three year term on 1 November 2022 (<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=22PR71>), taking over from his predecessor, who completed his term on 2 May 2022 (<https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=21PR117>).

²⁹ <https://www.legco.gov.hk/yr2023/english/panels/fa/papers/fa20230206cb1-68-3-e.pdf>.

04 What lies ahead?

| The selling of investment products

Since the global financial crisis of 2008, the HKMA and the SFC have continued to place emphasis on the selling of investment products, from how investment products are marketed, through to the product due diligence and how the selling process is conducted.

| ESG

Climate change, social responsibility and governance have been high on the agendas of the HKMA, SFC and regulators around the world, but in Hong Kong, we have yet to see enforcement focus in this area. But we have seen regulators in Europe and the US take action with respect to suspected “greenwashing”, so it may just be a matter of time before Hong Kong regulators follow suit.

| Anti-money laundering

Finally, for the reasons explained above, we believe that anti-money laundering compliance will remain an area of focus for both the HKMA and the SFC.



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