

# April 18 Legal and Regulatory Update

## Top stories

### New Case on “disclosure of inside information”

SFC proceedings against Fujikon for “disclosure of inside information” breaches

(Click: [press release](#))

#### *What you should know:*

- Nature: **delay** in disclosure
- Action against **company, chairman/CEO, CFO/company secretary/executive director**
- “**Inside information**”: notified by top customer that a headphone manufactured for it would be discontinued; comprises 10-15% of total revenue for immediate past 2 years (2013-4)
- **Delay**: more than 7 weeks in disclosure
- **Officers** failed to take reasonable measures to ensure proper safeguards for timely disclosure

#### *What you should do/watch out for:*

- “Disclosure of inside information” **remains a key area that listed companies should monitor**

## Hot Trends

### Getting ready for AGM (Part 2)

- *Stay ahead of the proxy curve (NASDAQ)*

- Growing **shareholder “activism”**, even for **traditional “passive investors”**
- Focus on “**governance**” and “**social**” issues

- Must **get ready for AGM and investor engagement in this mode**
- Download: [Useful list of questions you should get prepared](#)
  - **board composition/diversity**
  - **pay issues**
  - **cyber security**

## Also in this issue

### Regulators

HKEX updated Guidance Letter [HKEX - GL77-14](#), for listed companies using “**contractual arrangements**” to “indirectly” own or control businesses. E.g. These arrangements are used in PRC, in light of foreign ownership restrictions.

Also watch out if your company **proposes to acquire or establish businesses** subject to such arrangements.

#### *What you should do/watch out for:*

- Heightened concerns over the legality/validity of such arrangements, following **consultation draft of new PRC Foreign Investment Law** (Jan 15) — issuers should contact HKEX in advance to seek “informal and confidential guidance” (Para 23)
- Where issuer **proposes** to acquire/establish such businesses which constitute “**notifiable transactions**” (Para 24)
  - Seek **PRC legal advice** and decide on **mitigation steps**
  - **Disclosure** in announcement/circular: reasons for such approach, risk factors

### Legislation

**(i) The Companies (Amendment) Bill 2018** introduces amendments to the 2014 new Companies Ordinance: (i) implementation issues (ii) clarification/remove inconsistencies.

Notable amendments include **expanding the scope for “simplified (financial) reporting”** by **corporate groups**, e.g. those **with non-HK incorporated subsidiaries**. (Click: [press release](#); [Legislative Council Brief containing a detailed summary](#))

*What you should know/watch out for:*

- **Expand the scope for “simplified reporting”:**
  - Holding companies with small private companies/eligible private companies on the one hand, and small guarantee companies on the other (“**mixed groups**”). All relevant entities satisfy the “size tests”
  - Holding companies of groups of small private companies, eligible private companies, small guarantee companies, or “mixed groups” above; with non-HK subsidiaries. All relevant entities satisfy the “size tests”
- (Court-free procedures for) **horizontal amalgamation**: also available to **HK-incorporated subsidiaries** of a **holding company**, though the latter is **not incorporated in HK**
- Listing of **names of directors of subsidiary undertakings** in directors’ reports — option to provide information on website, or keep the list at the holding company’s registered office (and open for inspection)

**(ii) The Privacy Commissioner for Personal Data issued the “European Union General Data Protection (GDPR) 2016” booklet** to raise awareness amongst local businesses of the new EU regulatory framework for data protection.

The new law, **effective 25 May 2018**, has “**extra territorial**” application. E.g. **HK businesses that collect/process personal data of EU individuals (e.g. online trading)** will be caught. Some requirements exceed current Hong Kong law. ([press release](#); [booklet](#))

*What you should know/do:*

- Even if a business does not have any “**establishment**” in EU, it will be caught if it “**offers goods or services to or monitor the behavior of individuals in the EU**”
- **Check compliance status** with legal/business teams if your businesses appear to fall within the above

**(iii) The Competition Commission published an advisory bulletin and advises on practices in employment** (Click: [press release](#); [advisory bulletin](#))

“**Wage-fixing agreements**”; “**non-poaching agreements**”; and “**exchange of sensitive information**” among businesses are **potentially anti-competitive**. Examples include certain “**salary surveys**” of industry associations. **Alert your HR/relevant management teams!**

*What you should know/do:*

- **Wage-fixing agreements:** any element of compensation for employees, including **benefits and allowances** (e.g. insurance benefits, housing allowances or severance payments)
- **Non-poaching agreements:** solicitation or hiring of each other's employees. E.g. an agreement to refuse to hire each other's employees
- **Exchange of sensitive information:** about intentions in employee compensation or hiring (whether unilateral/reciprocal); whether done **directly** or through a **third party**. E.g. **Salary surveys of industry association**, if not conducted in the right manner (Q2, "Q+As" section of the bulletin)
- Read "Q+As" section in the bulletin

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