

November 2018 Legal and Regulatory Update

Top stories

HKEX reviewed 2017 annual reports + ESG reporting guidance

(i) HKEX published “Analysis of Corporate Governance Practice Disclosure in June and Dec year-end 2017 and March year-end 2018 Annual Reports”, reviewing issuers’ compliance with the Corporate Governance Code (“CG Code”) and Corporate Governance Report. (Click: [full report](#), [press release](#), [letter to issuers](#)).

It **reminded** issuers on the **new CG Code and related Listing Rules requirements (effective Jan 2019)**, including diversity, independent director nomination process, independence criteria, “no over-boarding” (Click: our [July 18 update](#)).

This annual report review focused on similar areas, including **disclosure on diversity; work done by board committees**. Greater **transparency** is stressed, which should in turn enhance **accountability** and **board effectiveness**.

What you should know:

- The findings are similar to the last reviews; high rate of compliance with the Corporate Governance Code Provisions (“CPs”), which are subject to the “**comply or explain**” regime
- Area with **lowest compliance rate: separation of the roles of chairman and chief executive**
 - Explanation of deviation should address “**governance issue of leadership’s checks and balances**” (para 51)

Corporate Governance Report

(Listing Rules Appendix 14: Corporate Governance Report - “Mandatory Disclosure Practices” (“MDR”))

- **Focus: quality of disclosure**
- **Diversity disclosure** (from para 37) (MDR L. (d) (ii))
 - **Progress in implementing diversity policy**
 - “**Measurable objectives**”
 - **Milestones and progress**

- **Disclosure on work done by board committees** (from para 31) (MDR L. (d))
 - Key committees: **audit, remuneration, nomination and corporate governance function**
 - **“No boilerplates”**
 - **Roles and responsibilities** of each committee
 - **Narrative of work done during the year** (“**informative summary**” encouraged)
- **Training** (para 28) (MDR I(i))
 - Not only make broad statements; should specify **how each director (by name)** has satisfied the training requirements

What you should do/watch out for:

- **Non-compliance of CPs without giving “considered reasons” amounts to a breach of Listing Rules!**
- Identified improvement areas closely relate to revised CG Code, effective Jan 2019
- Holistic approach: as you **start preparing your 2018 annual report**, the **new CG Code requirements** and the **identified improvement** areas should be considered together

(ii) HKEX published [“How to prepare an ESG report?”](#) guide (with [toolkit](#)), and updated [FAQs](#) on ESG-related Listing Rules. (Click here: [press release](#); [letter to issuers](#))

Environmental risks (including **climate change-related risks**) were stressed; also referencing recent **international climate-related disclosure recommendations**. The issuer’s **ESG strategy and governance structure**; as well as some **common pitfalls** in ESG reporting were highlighted.

HKEX plans to review its ESG reporting framework, with a view to **consulting the market around mid-2019**.

Also important for your 2018 annual reporting planning!

What you should know:

- The step-by-step guide include sections on “the board and ESG working group”, “stakeholder engagement”, “materiality assessment”, and (P.12) “writing the ESG report”
- **Climate-change risks**: recommendations of the **Taskforce on Climate-related Financial Disclosures (“TCFD Recommendations”)** referenced (P.3)

- **Some common pitfalls in ESG reporting highlighted**
 - “Compliance with relevant laws and regulations that have a significant impact” (P.14)
 - (i) No broad brush statement
 - (ii) Specify the relevant law; potential impact; compliance steps
 - (iii) Example given
- FAQ updated with technical references, including for climate change risks

What you should do:

- As you **start preparing your 2018 ESG report**, the above Guide should be considered
- Also note improvement areas identified in **HKEX’s report on its review of issuers’ first ESG reporting** (Click: our [May 18 legal update](#))

Also in this issue

Regulators

SFC commenced proceedings in the Market Misconduct Tribunal (“MMT”) against Health and Happiness (H&H) International Holdings Ltd. for failing to disclose inside information as soon as reasonably practicable. (Click here: [press release](#); [MMT notice](#))

Key issue is **material deterioration of financial performance** should have been apparent from **internal management accounts**.

What you should know/watch out for:

- **Nature:** delay in disclosure — material deterioration in performance
- **Monthly management accounts** relevant: deterioration should have been apparent by the fifth month of the interim period
- Being **specific information** regarding the company; **price sensitive** and **not generally known to the public** at the material time
- Chronology:
 - **(23 July 2015): issued profit warning;** revenue and profit for the six months ended 30 June 2015 expected to decrease by approximately 11 % and 36 % respectively

- **Share price dropped** by over 21% after announcement
- **(Mid-June): consolidated management accounts for the first five months** of 2015 available; significant decrease in revenue (13.7%) and the net profit (28.9%)
- **(Around 23 June):** such management information became **known to company and Chairman** (also being CEO, executive director)
- Such **officer** alleged to be **in breach** for reckless or negligent conduct causing alleged breach by company
- (Click: our April 2016 legal update on a similar case, [Yorkey](#))

Published by Practising Governance Limited

December 2018