

August 2019 Legal and Regulatory Update

Top stories

HKEX published its [Enforcement Newsletter](#), covering 1H 2019.

The regulator's **Head of Enforcement, Listing Department** outlined its **current enforcement focus, and way forward**.

There was an **increase in cases with compliance breaches caused by internal controls deficiencies**. HKEX will also “**sharpen up its focus on individual conduct**” for Listing Rules compliance as well as corporate governance generally.

It is noteworthy that **HKEX is conducting a review of sanctions available for enforcement**. Subject to public consultation, the proposals are expected to contain a **wider range of sanctions** with a stronger focus on **individual conduct and personal accountability**.

Enforcement cases, reported in a separate part, relate to directors' duties involving blatant breaches of Listing Rule procedural requirements for transactions, and financial statements.

What you should know/watch out for:

Current enforcement focus:

- **Recap of 4 enforcement themes:**
 - (i) Breaches of directors' duties
 - (ii) Inaccurate, incomplete and/or misleading disclosure in corporate communications
 - (iii) Breaches of procedural requirements relating to transactions
 - (iv) Financial reporting issues
 - **Plus** “disclaimer/adverse” audit opinions; directors conducting insufficient due diligence in relation to acquisitions
- A greater focus on **individual accountability** in terms of **Listing Rule compliance** and **corporate governance** generally
- A **relevant factor** for considering enforcement
 - Evidence of **advanced planning, strategic thinking or effective consideration re:** Listing Rules compliance
- **Work of enforcement team, 1H 2019:**
 - **Noted increase in cases with compliance breaches caused by internal controls deficiencies**

- **Cases with repeated breaches** noted
- Each director’s **collective** as well as **individual responsibilities** for ensuring **adequate and effective internal controls** stressed
- “Where appropriate”, will take **disciplinary action against the entire board**
- Should be **co-operative** during investigations; relevant for assessment
- **Way forward (2H 2019 and 2020):**
 - Not a change in focus; but plan to **sharpen its focus on individual conduct**
 - HKEX’s power to publicly state that the retention of office by a director is **“prejudicial to the interests of investors”**
 - “A very clear **reputational** sanction”

Also in this issue

Regulators

(i) **HKEX published updated guidance materials**, relating to (i) [\(GL 95-18\) Disclaimer or Adverse Audit Opinion on Financial Statements](#) (ii) [\(GL31-12\) Revised Guidance on Typhoon and Rainstorm Warning Arrangements](#)

The latter relates to a new category of **extreme weather conditions**. Under the revised “Code of Practice in Times of Typhoons and Rainstorms” issued by the Labour Department (June 2019), **the Government may issue an announcement on “extreme conditions”** in the event of, e.g., serious disruption of public transport services, extensive flooding, major landslides or large-scale power outage after super typhoons. When “extreme conditions” are in force (i.e. **the two-hour period after cancellation of typhoon warning signal no. 8**), the Government will review the situation and further advise the public whether “extreme conditions” will be extended or cancelled.

HKEX also updated other guidance materials in light of this new category of extreme weather conditions.

What you should know:

Other updated guidance materials relating to extreme weather conditions are listed below:

[Updated Guide on Trading Arrangements for Selected Types of Corporate Actions](#)

[Updated Guide on Disclosure of Record Date, Book Closure and Latest Time for Lodging Transfer of Shares](#)

[Updated Guide on Distribution of Dividends and Other Entitlements](#)

[Updated Guide on General Meetings](#)

(ii) **HKEX announced a consultation on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments** (Click: [press release](#); [consultation paper](#))

HKEX explained that it had identified a number of waivers which have been granted on more than one occasion to IPOs and listed issuers on the basis of similar general principles. It proposes to codify these general principles into the Rules with a view to improve clarity and reflecting the currently acceptable standards in the market. Other minor Listing Rule changes and housekeeping amendments are also being proposed. The last day of consultation is 27 September.

Our focus is on listed issuers. Some proposals relate to PRC-incorporated issuers; those with dual listing in HK and a PRC stock exchange. (For details: executive summary of consultation paper)

One proposal relates to the **conditions for a waiver from the experience and qualification requirements for company secretaries** (Rule 3.28). It is proposed to add a note to the Rule, setting out the factors it will consider in granting a waiver, including whether the issuer has its principal business activities outside HK, the reason the individual is considered suitable and whether the company secretary will be assisted by a suitably qualified person during the waiver period.

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