

February 2020 Legal and Regulatory Update

Top stories

(i) SFC and HKEX issued a [joint statement](#), and a set of [frequently asked questions](#) (“FAQs”) to provide guidance to listed companies and their auditors on **disclosure of financial information** in view of travel and other restrictions given the **COVID-19 virus**. [Further announcement](#) (“Further Guidance”) was issued on 16 March.

Where issuers expect a real possibility, that it will be unable to publish **preliminary results announcement** (or, issue **audited financial statements**) in accordance with the Listing Rules, it should contact HKEX as early as possible to discuss. The aim is to **minimise disruptions to trading** while ensuring that the investing public continues to receive **sufficient information for informed investment decisions**. The announcement addresses the type of information to be provided to HKEX on the impact of the virus.

It also reminds issuers of their obligations under the “**disclosure of inside information**” regime.

The **FAQs** address **various scenarios**, as to the type of financial information that the issuer is able to publish, and impact on **continued trading**. It also covers **whether AGMs** can be held in a **virtual mode**.

In addition to clarifying certain aspects of previous publications, the **Further Guidance** (subject to conditions) **extends the deadline** for **annual report** publication (i.e. 30 April) by **60 days from the date of such Guidance** (i.e. mid-May). However, issuers need to **check separately, the requirements for holding AGMs**.

For this legal update, we focus on the impact of the outbreak on issuers’ **disclosure obligations generally**, beyond those whose publication of financial results may be disrupted.

What you should do:

- Assess if any “**inside information**” **disclosure** needs to be made **NOW**
 - Whether **business operations, reporting controls, systems, processes or procedures** materially disrupted
 - Such disclosure is **independent of Listing Rule requirements**
- Appropriate disclosure on impact of COVID-19 in **results announcement and annual report**
- (FAQs Q11) “**virtual**” **AGMs**: no restrictions under Listing Rules; but issuers need to check their **articles of association**, and **company law** of its place of incorporation

- **Extended annual reports deadline:** if issuers can make a preliminary announcement of results (with agreement with auditor) under Listing Rules; or (under other situations) **complying with conditions in FAQs**
- (FAQs Q10) impact of “delayed” audited financial statements on **AGMs**: typically, such statements should be considered at AGMs. Issuers need to check their **articles of association**, and applicable **company law** re: AGM deadlines

(ii) **HKEX published guidance materials on revised ESG reporting requirements.** (Click: [Press release](#); background on revisions: [our Nov/Dec 19 legal update](#))

These materials comprise:

- [\(New\) E-training](#) on “New ESG requirements”
 - provides an **overview** of various themes
- [\(New\) Guide for board and directors](#)
 - A practical guide, listing **action steps for board and management**, illustrated by **examples** from award-winning reports
- [\(Updated\) Step-by-step guide in preparing ESG reports](#)
 - An updated guide for the **working team**, on **how to prepare ESG reports**
- [\(Updated\) Frequently Asked Questions Series 18](#)
 - Useful update in light of new requirements
 - E.g. (Q8 on “**reporting boundary**”) various bases of determining the same, including the same scope as annual accounts; financial thresholds; risk level

The revised ESG requirements will be effective for **financial years commencing on or after 1 July**. Its focus is on **the board’s roles**, not only technical reporting. While the actual reporting will happen “later”, it is important to **establish the board infrastructure** and other systems **as soon as possible**.

What you should do:

Your first action steps include

- **Board training**, starting with providing your board with the directors’ guide, and access to e-learning programme
- Review **governance structure**: whether help of board committee needed (e.g. for review of ESG targets). The directors’ guide contains information and examples
- Review **investor feedback** on ESG

Also in this issue

Regulators

(i) **HKEX censures/criticises Yorkshire Holdings Limited, named former executive directors, former independent directors (audit committee members), for breaches of the Listing Rules, and raised concerns on internal controls.** (Click: [Press release](#)).

The case relates to breaches in various areas. Our focus is on “**connected transactions**” breaches involving the Company’s subsidiary.

There are useful observations on “**internal controls**”; and “**excessive reliance**” on the Company’s CFO/Company Secretary to ensure Listing Rule compliance.

Directors are ultimately responsible for Listing Rule compliance. Delegation without proper supervision and regular reporting is not sufficient to discharge directors’ duties.

These echo messages communicated in **HKEX’s latest enforcement newsletter, stressing “individual accountability”** and directors’ duties generally. (Click: our [Aug 19 Legal Update](#))

What you should know/watch out for:

- **Internal controls:** in addition to having **written procedures**, these must be **implemented, followed, updated, and communicated** to staff
- “**Excessive reliance**” on CFO/Company Secretary
 - No evidence of **supervision** or **regular reporting** to the board
 - **Delegation** does not absolve **directors** from the **duty to supervise** the discharge of the delegated functions

(ii) **Latest SFC Regulatory Bulletin: update on “front-loaded” approach** (Click: [Press release](#); [full report](#))

SFC stated that for post-IPO **corporate transactions, market misconduct** remains its top priority. Themes include “**concealed share ownership and control**”, “**suspect valuations**”, “**warehousing of shares and nominee arrangements**”. These have been addressed in our previous legal updates. (Click: our [Feb 19](#) (previous bulletin), [Oct 18](#), [July 19](#), [Nov/Dec 19](#) updates)

This bulletin also provides examples illustrating failures on the part of **directors**, in dubious corporate transactions involving **overvalued acquisitions** and **suspect valuations**.

SFC would examine not only the transactions, but **why the directors would regard** such **valuations** and underlying **assumptions** as **reasonable**. This focus on “**individual accountability**” is also reflected in the **HKEX** case above.

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