

April 2020 Legal and Regulatory Update

Top stories: Covid-19

(i) [HKEX's latest Listed Issuer Regulation Newsletter](#) provides observations on issuers' recent announcements of **business updates**, and guidance on **disclosure best practices**.

It contains **useful** and **practical** guidance, with examples.

It also addresses the impact of Covid-19 on **accounting standards** (*E.g. impairment, lease contract modifications, subsequent events, critical judgment, etc.*)

What you should know/do:

Business updates

- **“Specific” information; quantitative measures on financial impact**
 - E.g. to provide updated sales estimates for Q1 2020; estimated (*as revised*) operating capacity in light of closures
 - Where **information** on impact **not currently available** (*e.g. government mandated closures and supply chain disruptions*) : to provide **further updates** in due course
- **Assessments on cost measures + liquidity positions**
 - For a full assessment by investors, beyond revenue position
 - **Cost control** measures
 - Effects of the changes to the operations on financial resources, including **cash flow** and **liquidity** positions
- **Continuously review current liquidity position + expected financial resource needs**
 - **Material impact** on an issuer's financial resources?
 - Cast doubt upon its ability to **continue as a “going concern”**?
 - If so, disclose **action plan** to address **funding needs**, including its funding **sources**, and take concrete actions to **implement**
- **Historical information may not reflect current position**
 - As compared with recent results announcement
 - **Material changes to operational performance + financial position**?
 - Should update the market and investors

- **Annual/interim reports: disclose principal risks and uncertainties**
 - Disclose **risks and uncertainties** arising
 - **Assess impact: business + financial performance**
 - Measures to **manage the risks**
- **Continuously assess and update investors of material developments**
 - Beware of **market volatility**
 - E.g. corporate activities in the **normal course of business** could be **perceived by investors as material and affects share price?**
 - **HKEX monitors unusual share price/volume** movements
 - **HKEX** may request an **announcement**
- **Exercise caution in assessing materiality of information given market sentiment/ conditions**
- **Review procedures to monitor news/market commentaries/reports**
 - E.g. **market rumours**
 - **If HKEX** is concerned about the possible development of a **false market**
 - May require an **immediate announcement**
- **Robust disclosures + updates can mitigate speculative market commentaries**
 - E.g. media commentaries based on **inaccurate assumptions**
- **Announcing new business opportunities**
 - **Clear, balanced, factual, and relevant** information
 - **Updates** in future interim/annual reports

(ii) Companies Registry issued a set of [FAQ on the holding of general meetings by companies](#).

These useful FAQ take an approach that is generally **consistent with SFC/HKEX guidance for listed companies**. (Read our [March legal update](#))

The **Companies Ordinance (s.584)** permits “**hybrid meetings**”, **subject to the company’s articles of association**. (Q5)

It also provides guidance on other **practical measures** (e.g. proxy voting, measure to manage physical meetings). (Q5)

Hot Trends

Getting ready for AGM:

How Investor Engagement is Changing (Nasdaq)

US S&P 100 | UK FTSE 100

- Corporate purpose/culture/values
- Board accountability
- Sustainability + climate change

What + why investors want to know

Also in this issue

Regulators

(i) HKEX censures/criticises named former executive directors, non-executive and independent directors of Champion Technology Holdings Limited and Kantone Limited, for breaches of directors' duties in acquisition of assets and monitoring acquired investments. ([Press release](#))

The case relates to **significant impairment losses** (\$8.9 billion) made by the two listed issuers. During 2015/6, the companies acquired over 300 items of **cultural products** (around **92%** of **total group assets**), the majority of which were purportedly Tianhuang stones, with the intention of trading.

Executive directors concealed the acquisition from the board, although the 2016 interim accounts (period ended Dec 2015) already showed a significant amount of inventory. Board approval was only obtained in March 2016.

Earlier (2000-3), Champion Technology also acquired **shares in four private companies** incorporated outside Hong Kong. New management conducted investigations. Two companies had in fact been dissolved without the company's knowledge.

Directors are ultimately responsible for Listing Rule compliance. Directors' duties and "individual accountability" is an enforcement focus.

(Background: HKEX's Enforcement Newsletter, read our [Aug 19 Legal Update](#))

What you should know/watch out for:

Breaches of directors' duties

Acquisition of cultural products

- Executive directors (“EDs”)
 - **Insufficient due diligence on authenticity and value**
 - **No prior board approval given the substantial investment**
 - **CFO: failure to ensure proper accounting and internal control, particularly for acquisition of such magnitude**
- Independent Directors:
 - Accumulation of significant inventory in 2016 interim accounts: should have raised enquiries
 - *(After informed on possibility of the investment)* relied on EDs to deal with the investment, did not ask for further details
 - Should have asked: *e.g. amount of intended investment; inventory level and risks of keeping the same; how to ensure authenticity and safety of the inventory accumulated*
 - Failure to exercise **independent judgement by raising enquiries**
 - Did not take **a diligent and intelligent interest** in information presented

Monitoring of private company investments

- Responsible ED censured

(ii) SFC, HKEX, and the Federation of Share Registrars Limited **jointly issued consultation conclusions** on a proposed operational model for an uncertificated securities market **in Hong Kong**. ([Press release](#); [consultation paper](#))

A key aim is to enable investors to hold securities in their own name and without paper documents. **To issuers**, there is **better transparency** in terms of the real owners of its securities. This also facilitates **more efficient and direct communication** between issuers and investors.

The proposed operating model and related regulatory framework will be further developed with a view to **implementing the uncertificated regime from 2022**.

Fee structures and levels are to be developed. However, the **initial development costs** are expected to be borne largely by **HKEX and share registrars**.

What you should know/watch out for:

Summary of key features

- **Nominee structure retained**
 - Existing nominee structure in CCASS retained
 - Investors can still hold securities through CCASS
- **Options for holding paperless holdings**
 - Held via **share registrars** instead of CCASS
 - Two types of accounts for individual and institutional shareholders
- **The entire register of members** kept and maintained by issuer's **share registrar**
- **Role change for HKSCC and share registrars**
 - New regime for **regulating share registrars** will be introduced
- **Interface between HKSCC's and share registrar** systems needed

(iii) HKEX published/updated FAQs relating to issuers' continuing obligations.

- [\(Updated\) FAQ 045-2018](#)
 - **Termination of leases** by issuer as lessee
- [\(New\) FAQ 071-2020](#)
 - **Desirable for dividends announcements** to specify the **nature of dividends** (“ordinary” vs “special”)

Legislation

The Competition Commission published revised Leniency Policy for undertakings engaged in “cartels” and a new Leniency Policy for individuals involved in “cartels”, to enhance the effectiveness and transparency of its leniency programme. ([Press release](#), [full policy for undertakings](#); [full policy for individuals](#))

Cartels are an enforcement priority of the Commissioner. The revised leniency framework aims to make it easier and more attractive for companies and individuals to come forward and cooperate with the Commission.

Revisions include **differentiating** between **applications received before or after** the Commission has opened an **initial assessment**. An undertaking that is clearly the **single ringleader of a cartel** will be **disqualified** from obtaining leniency.

A **new Leniency Policy for individuals** has been introduced to enhance the comprehensiveness of the Commission's leniency programme.

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