

June 2020 Legal and Regulatory Update

Top stories: SFC's "green" focus

SFC's **Annual Report 2019-20** sets out its **priorities** to ensure the integrity and overall soundness of Hong Kong's securities and futures markets. ([Press release](#); [full report](#))

For **listed issuers**, the report recaps SFC's efforts including progress of its **"front-loaded" approach**. This helped in addressing **misconduct and market irregularities** through pre-emptive, timely regulatory intervention. (*Read our previous legal updates on notable cases*).

SFC's initiatives to develop **Hong Kong as a hub for "green and sustainable finance"** are also noteworthy. **Promoting "ESG" criteria in asset management and corporate disclosures is a priority**.

SFC worked with **HKEX on updated rules** which became **effective on 1 July 2020**, which mandate **ESG and climate change-related disclosures**.

For **asset management**, initiatives include a **survey report on integrating ESG factors and climate risks** in asset management. (Read our [Dec 19 legal update](#)). A climate change technical expert group was established to **develop expected standards, practical guidance and best practices** for incorporating **climate-related risks in asset managers' investment and risk management** processes.

The **Green and Sustainable Finance Cross-Agency Steering Group** was formed to promote consistency and collaboration, **co-chaired by the SFC and the HKMA**. Its initial focus will be on **cross-sectoral** regulatory and market development issues.

What you should know/do:

- **HKEX's new ESG rules effective**
 - Focus on the **board's roles**, not only technical reporting
 - While the actual reporting will happen "later", it is important to establish the **board infrastructure**/other systems as soon as possible
 - **HKEX's guidance/training materials** (Read our [Feb 20 legal update](#))
- **Watch out for ESG developments for investors/asset management**
 - E.g. impact on **investment** and **risk management** processes

Hot Trends

ESG Reporting Guide 2.0

-a support reference for companies (Nasdaq)

Useful reference for your ESG journey!

Determine your best way forward!

Overview of key elements (e.g.):

- Various ESG standards
- Adopt GRI, SASB, Sustainable Development Goals?
- How to determine “materiality”?

[\[link\]](#)

Also in this issue

Regulators

(i) **HKEX** published various documents in respect of the **disciplinary procedures and enforcement guidance materials**, which are now in force.

- (Revised) [Disciplinary Procedures - Listing Committee](#)
- (In light of the new review structure) [Disciplinary Procedures - Listing Review Committee](#)
- [Statement on Settlement of Disciplinary Matters involving Listing Rule Breaches](#)

“**Non-cooperative directors**” is addressed in the revised Disciplinary Procedures. Further flexibility is provided to the Listing Committee to determine such cases in an expeditious manner. *E.g. where a party fails to attend disciplinary hearings.*

(ii) **SFC** launched consultation on proposals to amend the **Code on Real Estate Investment Trusts (“REITs”)** to provide more flexibility in making investments. Consultation period opens up to 10 Aug 2020. ([Press release](#))

Proposed changes include:

- Allowing **investments in minority-owned properties and** (*subject to unitholders' approval*) **property development** projects in excess of the current limit of 10% of gross asset value (“GAV”),
- Increasing the **borrowing limit** from 45% to 50% of GAV

Such proposed update of the REITs regime aims to provide more flexibility in REITs’ making investments. These should better position Hong Kong to host more of these listings whilst ensuring investor protection, and facilitate the long-term growth of the Hong Kong REITs markets.

Legislation

The **Competition Commission** published a **policy on recommended pecuniary penalties for anti-competitive conduct**. The policy outlines the **general principles** and **methodology** the Commission adopts when making **recommendations to the Competition Tribunal** on the **level of fines** for businesses in breach (*except the “merger rule”*). It will generally take into account the **severity** of the contravention and the need to achieve effective **deterrence**. Due credit will be given to those who **cooperate**. ([Press release](#); [full policy](#))

The Commission seeks to ensure **consistency** across cases and provide **transparency** on the determination process of its pecuniary penalty recommendations. Together with the Commission’s **leniency and cooperation programmes**, this policy forms a **comprehensive framework** for businesses engaged in cartels to **assess the benefits** of coming forward and **cooperating** with the Commission, thus strengthening enforcement and enhancing deterrence.

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