

July/Aug 2020 Legal and Regulatory Update

Top stories: HKEX consultation on disciplinary regime

HKEX published a consultation paper in relation to proposed changes in its disciplinary regime. ([Press release](#); [full document](#))

HKEX aims to have a **spectrum of graduated sanctions for different situations**. Currently, these range from private reprimand, public censure, other statements of concern in respect of an individual's conduct, denial of facilities of the market, trading suspension to cancellation of listing, amongst others.

It proposes to **lower the thresholds** for some actions, as well as introducing **new measures**. There is an emphasis on **misconduct by individuals**, including **directors and (new) "senior management"** of listed issuers and subsidiaries.

Deadline for consultation is 9 October 2020.

What you should know/do:

Key proposals

- **Lower thresholds**

(No longer requires: "wilful" or "persistent" failure to discharge responsibilities)

- **Public statement:** retention of office by a director is "**prejudicial to the interests of investors**" ("PII statements")
- **Denying an issuer's access to facilities of the market**

- **Expand scope of restrictions under PII statements**

- The individual's occupying the position of **director OR senior management**
- Of a **named listed issuer OR** any of its **subsidiaries**

- **(New) "director unsuitability statements" against individuals**

- That, in HKEX's opinion, the director is "**unsuitable**" to be a director or member of senior management of a listed company
- "**Serious or repeated failures**" requirement

- **Enhance follow-on actions**

- Where **individuals subject to PII Statements continue** as director/senior management of a named issuer/subsidiaries
- E.g. denial of access to market facilities to the named issuer

- **Enhance disclosure**
 - Directors/senior management subject to public sanctions
 - **Disclose** in issuer’s **announcements/communications** and/or **annual reports**
- **(New) secondary liability for Rule breaches**
 - “Caused by **action** or **omission** or **knowingly participated** in a contravention of the Listing Rules”
 - **“Relevant persons”** broadly defined
 - **E.g. “senior management”, substantial shareholders**
 - **E.g.** guarantors of an issuer for its issue of debt securities
- **Definition of “senior management”**
 - Named positions of **CEO, CFO, COO, company secretary, and supervisor** OR
 - **Performs managerial functions** under the directors’ immediate authority OR
 - Referred to as **senior management** in issuer’s **corporate communications**
- **Introduce explicit Rule provisions**
 - When **responding to HKEX enquiries/investigations**
 - **Obligation** to provide accurate, complete and up-to-date information and explanation

Also in this issue

Regulators

(i) **SFC started criminal proceedings** against five individuals for conspiring to carry out **false trading** in the shares of Ching Lee Holdings Limited. Its [press release](#) stated that the regulator will continue to use all available recourse to hold the perpetrators of market misconduct/manipulation accountable.

This case will become **the first** of its kind at the **Court of First Instance** of a **criminal prosecution** for an offence under the **Securities and Futures Ordinance** (“SFO”).

SFC referred the case to the Department of Justice which has the authority to prosecute offences under the SFO in the District Court and the Court of First Instance. The maximum penalty for market manipulation is imprisonment of 10 years and a fine of \$10 million.

The SFC alleges that in 2016, the defendants conspired to create **a false or misleading appearance of active market** in respect of the company’s shares. (*s.295 and 303 of the SFO; s.159A of the Crimes Ordinance*)

(ii) HKEX publishes Consultation Conclusions on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments ([Press release](#); [full document](#))

(Background: our [August 2019 update](#))

Our focus is on listed issuers. Some proposals relate to PRC-incorporated issuers; those with dual listing in HK and a PRC stock exchange.

One proposal relates to the **conditions for a waiver from the experience and qualification requirements for company secretaries** (Rule 3.28). It was proposed to codify the factors considered in granting a waiver, by adding a note to the Rule.

The proposal was **not adopted**. Instead, a [new guidance letter \(GL 108-20\)](#) was published to provide clarifications and guidance in relation to the Rule.

(iii) HKEX introduced an e-learning course on connected transaction rules ([link to course](#))

Legislation

The Companies Registry announced that with effect from 1 October 2020, the registration fees for annual returns (*except for late delivery*) will be waived for two years, from 1 October 2020 to 30 September 2022. The fee payable for electronic incorporation of companies (*including registration of non-Hong Kong companies*) through e-filing will also be reduced by 10%. ([Press release](#))

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