

[SAMPLE] Legal update to boards (April/May 2021)

Executive summary

Top Stories: HKEX consultation on corporate governance revisions

- (Apr) HKEX consultation on Corporate Governance Code revisions (to 18 June)
 - **Effective date:** (i) (general) financial years commencing on/after **1 Jan 2022**
(ii) (re: independent directors serving more than 9 years) on/ after **1 Jan 2023**
 - Key proposals
 - **Corporate culture**
 - Election of **director serving more than 9 years:** independent shareholder approval
 - Mandatory **nomination committee**
 - (3-year transition) **single gender boards** to appoint a new member of absent gender
 - **Diversity:** set and disclose targets and timelines
 - HKEX will provide guidance (e.g. culture, shareholder communications)

Other themes

Directors' duties and general enforcement trends

- (May) HKEX's new disciplinary regime effective **3 July 2021**
 - **Key Changes: lowered thresholds + new measures**
 - **Public statement** that retention of office by a director is “**prejudicial to the interests of investors**”: “wilful”/ “persistent” failure no longer needed
 - (New) “director **unsuitability statements**”
 - (New) **secondary liability for breaches** (e.g. “senior management”)
 - **Enhanced follow-up actions** (e.g. denial of market facilities); **disclosure**
- **Notable HKEX cases on directors' duties + failures of internal controls**
 - (May) (**Loans**) Misappropriation of funds by long-serving financial controller; inadequate **internal controls re: specific business** (wealth management)
 - (May) (**Acquisitions**) Failure to establish adequate controls to obtain **completion documentation**
 - (May) (**Joint ventures**) Failure to establish controls to **monitor operations of joint venture** or **safeguard its assets; over-reliance on JV partner**
- (May) **HKEX guidance on lending transactions**
 - Highlights lending transactions that raise concerns (e.g. lack of commercial rationale); guidance on directors' duties; internal controls; disclosure