

# May 19 Legal and Regulatory Update

## Top stories

**HKEX published consultation on [“Review of ESG Reporting Guide and related Listing Rules”](#).**

It also updated ESG guidance materials, clarifying how different aspects of ESG relate to the Corporate Governance Code (“CG Code”). (Click: [press release](#); updated [FAQ Series 17](#) and [18](#); [e-training](#))

For IPOs, enhanced disclosure on **gender diversity** is now required, reflecting HKEX’s increasing emphasis on this area generally. (Click: updated [Guidance Letter HKEX-GL86-16](#))

It is important to appreciate not only HKEX’s **ESG** consultation for **future direction**, but also its **current expected disclosure** on ESG matters.

### *What you should know/do:*

**HKEX expectations on current ESG practices:**

- Principle C.2, CG Code (*FAQ 17, no.24K*)
  - **Board consideration of “risks”** to include ESG-related ones
- Code Provision C.2.2, CG Code (*FAQ 17, no. 24L*)
  - **Board annual review of adequacy of resources** for accounting functions etc.
  - To include **ESG performance and reporting**
- **“Governance” structure disclosure in ESG reports** (*FAQ 18, no. 2A*)
  - i.e. board’s roles in ESG

**ESG Consultation — for future direction or early adoption:**

- **Mandatory disclosure of board statement on ESG** (*para 10, P.2 of paper*)
  - **Board oversight** of ESG issues
  - Process used to **identify, evaluate, manage ESG issues** (including risks)
  - **Board review of progress** made against **ESG targets**

- **New mandatory disclosure, to explain** (*paras 11-2, P.3 of paper*)
  - **“Reporting principles”**: e.g. **“materiality”**; how is material ESG factors selected?
  - **“Reporting boundary”** : process used to identify entities
- (New **“Aspect”** added) **“climate change” disclosure** (*para 13, P.3 of paper*)
  - **Significant climate-related issues that have impacted/may impact issuer**
  - **Mitigation actions**
- **“Social” KPIs upgraded to “comply or explain”** (*para 15, P.3 of paper*)
  - (New) **supply chain KPIs**
  - (New) **anti-corruption KPI** (training to directors and staff)
- **“Environmental” KPIs revised** (*paras 14- 15, P 3 of paper*)
  - E.g. disclosure on **targets**, and **action steps**
- **Shortened timeframe for ESG reporting** (*para 8, P.2 of paper*)
  - Within 4 months of year-end
- **No printed form of ESG reports** (*para 9, P.2 of paper*)
  - Where separate ESG report
  - Save per shareholder special request
- **Encourage independence assurance** (*para 16, P.3 of paper*)
- Consultation will end on 19 July

## Also in this issue

### Legislation

**(i) Competition Tribunal delivered decisions on the first two Hong Kong competition law cases.** (Click: [press release](#))

As noted in our previous updates, both cases relate to **“cartels”**, and breaching the **“First Conduct Rule”**.

**The first case** is on **“bid rigging”**, relating to a YWCA tender regarding the supply and installation of a new IT server system. Certain **IT suppliers** were found to have submitted **“dummy bids”**. (Click: our [March 17 legal update](#))

The second is on “**market sharing**” and “**price fixing**” by some **construction and engineering** companies, regarding **renovation services** at a public rental housing estate. (Click: our [Aug 17 legal update](#)).

*What you should watch out for:*

- “**First Conduct Rule**” means — parties acting together with an **agreement**, and/or engaged in a **concerted practice**, whose **object or effect** is “to prevent, restrict or distort” competition in Hong Kong
- “**Cartel actions**” i.e. **price fixing, market sharing, and bid-rigging**, is a priority enforcement area for the First Conduct Rule
- **Both cases** were triggered by **public complaints**, which channel is encouraged by the Competition Commission
- “**Bid rigging**” case — one defendant company found not liable, as the employee involved had no authority to bind his company

(ii) **The Financial Reporting Council (Amendment) Ordinance 2019** will become **effective on 1 October, 19**, **except** for provisions relating to the **payment of levies** under the new regime which will commence on **1 January, 2022**.

As noted in previous updates, the Financial Reporting Council (“FRC”), a statutory body, will become HK’s independent regulator with powers of investigation and discipline concerning auditors of listed companies. This will replace the current system of self-regulation by the Hong Kong Institute of Certified Public Accountants.

We shall monitor further developments, including potential impact on listed companies. (Click: [press release](#), our [Feb 19 legal update](#))

## **Regulators**

**HKEX published Consultation Conclusions on proposed suspension** for issuers with “**disclaimer**” or “**adverse audit opinion**” on their financial statements.

For background, read our [Sept 18 legal update](#). (Click: [press release](#), [full report](#), updated [Guidance Letter HKEX-GL-95-18](#))

The new Listing Rules will apply to issuers’ preliminary annual results announcements for **financial years commencing on or after 1 September 2019**.

The revisions have significant impact on de-listing. Under current Listing Rules, issuers will be **delisted, after suspension** for a continuous period of **18 months**.

There are some **modifications** to the original suspension proposals.

*What you should know/watch out for:*

**Modifications:**

- **Suspension not to apply**
  - disclaimer/ adverse opinion due solely to “going concern”
  - or underlying issue resolved before the publication of preliminary results announcement
- **Remedial period extended**
  - if the underlying issue is “**outside the issuer’s control**”
  - determined on a case- by- case basis
- **Transitional arrangement**
  - **remedial period** extended to **24 months** where suspension caused solely by audit opinion for financial years commencing between 1 Sept 19 and 31 Aug 21

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