

# Aug 2021 Legal and Regulatory Update

## Top stories

### HKEX Listing Newsletter: role of Directors

In its [latest Listing Newsletter](#), HKEX addresses “**the role of directors**”. It highlights **5 areas directors should keep in mind**, in light of their **responsibilities**:

(i) **significant transactions**, (ii) monitoring **financial information**, (iii) **subsidiaries**, (iv) understand the **roles played by each director** (v) good **documentation and record keeping**. These are further explained below.

As regards **corporate governance**, HKEX stresses that it is “**more than compliance**”, focusing on directors’ independence, board refreshment, succession planning, as well as diversity. It also shared data on the current status of HK listed companies. E.g. 1/3 of our listed companies do not have a female director.

#### *What you should do/watch out for:*

- **Significant transactions**
  - Take care to **reduce exposure to undue risk**
  - Particularly for transactions involving **substantial financial obligations/ outflows of money**
  - Including: robust **controls**; limiting **any individual’s power** over assets; **rule compliant disclosure**, commensurate **due diligence**
- **Monitoring financial information**
  - Ensure **sufficient information** received
  - **Review** information **critically**, with an **enquiring mind**
  - With **particular care**, around **monies being paid out** of the issuer, and **assets/line items** which **appear/or change unexpectedly** over time
- **Don’t overlook the subsidiaries**
- **Understanding the roles played by each director**
  - Some directors (*e.g. independent directors, audit committee members*) may have particular responsibilities

- But **ALL directors** must pay attention to the board’s work, and ensure that **delegated tasks are properly performed**
- **Good documentation and record keeping**
  - If directors have **no evidence** to support assertions they have **performed certain steps**, there is a “significant risk” that HKEX will view these with doubt

## Also in this issue

### Legislation

**(i) Privacy Commissioner (“PCPD”): “Guidance on Ethical Development and Use of AI”; Inspection Report on customers’ personal data systems of 2 public utilities ([Press Release](#))**

#### **(a) Artificial Intelligence**

From the **ethical perspective**, [the Guidance](#) recommends **3 fundamental “data stewardship values”** when AI is developed and used, namely, (i) **respectful**; (ii) **beneficial**; (iii) **fair to stakeholders**. In turn, there are **7 ethical principles** which are in line with international standards. These principles are summarised below.

For implementation, it has a useful **“practice guide” section** (*section 4, P.11*), outlining **4 key business processes**. **Practical steps** and **examples** are given:

- (i) **AI strategy and governance**
- (ii) **Risk assessment and human oversight**
- (iii) Execute development of **AI models** and management of **overall AI systems**
- (iv) **Communication and engagement with stakeholders**

For instance, underlying **“AI strategy”** is **“accountability”**. AI strategy may include elements like determining acceptable uses of AI, and what uses are disallowed.

As regards **“governance”**, a designated **C-suite executive** (*“senior management participation”*) should lead a **cross-functional team**.

*What you should know/do:*

**7 ethical principles for AI**

- **Respectful**
  - Accountability
  - Human oversight
  - Transparency and interpretability
  - Data privacy
- **Beneficial**
  - Beneficial AI
  - Reliability, robustness and security
- **Fair**
  - Fairness

**(b) Inspection report of 2 public utilities: personal data privacy management system**

[The report](#) revealed that both CLP and HK Electric had implemented a “**personal data privacy management programme**” and had adopted good practices.

Through the findings, PCPD makes **recommendations** (*para 45, P.24*) for public utilities and other organisations that handle vast amount of customers’ persona data. These are summarized below.

*What you should know/watch out for:*

- **Prepare for the unexpected**
- **Develop “personal data privacy management programme”**
- **Appoint “data protection officers”**
  - Designated staff members tasked with monitoring compliance with the Privacy Ordinance; clear reporting lines to senior management
- **Establish personal data inventory**
  - “Corporate-wide” personal data inventory
- **System security policies and procedures**
  - **Regular security risk assessments; monitor the effectiveness** of the security measures in place

- **“Role-based access” to customer data**
  - Access to staff members who have a **genuine need** of the data to **perform their duties**
- **Implement monitoring on top of preventive measures**
  - Comprehensive **audit logs** to capture users’ digital footprints
  - Track staff members’ access to the data, including search and modification records
- **Protect both electronic and paper records**
- **Measures to raise staff awareness**
  - Comprehensive data protection training programme

(ii) The **Companies Registry** issued an [External Circular](#) on the commencement of **phase 1 of the new inspection regime**. Its website also has a [thematic section](#) on the new regime, including [frequently asked Q+As](#) on detailed logistics.

**For Phase 1 (from 23 Aug, 2021 to 23 Oct, 2022), companies may replace, for public inspection on their own registers (i) usual residential address of directors with their correspondence addresses; (ii) full identification numbers of directors and company secretaries with partial information.**

(Read summary in our [June 2021 legal update](#)).

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