

March 2022 Legal and Regulatory Update

Top stories

HKEX case on directors' duties

HKEX imposes a "Prejudice to Investors' Interests" statement ("PII Statement") against the former chairman and an independent director ("INED") of National Investments Fund limited, censures its named executive directors and INEDs, and directs some directors to attend training on Listing Rules compliance. ([Announcement](#); [Statement of Disciplinary Action](#))

PII Statement is a statement that, in HKEX's opinion, had either named director remained on the company's board, the retention of office by him would have been prejudicial to the interests of investor. (*Effective July 2021*) Revised HKEX disciplinary regime had lowered the thresholds for such sanction.

The company is a **listed "investment company"** (*Listing Rules Chapter 21*). Its primary **investment objective** is to achieve short to medium term capital appreciation by investing in **listed/unlisted companies**. It is required to announce its **net asset value** per share ("**NAV**") on a **monthly** basis.

From 2011 to 2015, \$61m was used in an unchecked **spending spree to acquire luxury assets**, e.g. a yacht (\$24.5m), a diamond (\$20m), furniture (\$3.8m). These were **not** in accordance with **investment objectives**, while the company's **financial position** was **significantly deteriorating** (*with losses and net operating and investing cash outflow*). In 2014, the company started recording a book value of \$21.7 m on "**Other Tangible Assets**" (*stated as representing "art work, diamond and diamond ring"*).

Former chairman solely approved at least some of the acquisitions.

The **other directors approved monthly announcements of NAV**. Notwithstanding the **deteriorating financial position** and the **significant expenditure** on above assets, they failed to take an **active interest** in company affairs and **follow up anything untoward** regarding the acquisitions.

What you should know/do:

Illustrate key concepts of HKEX expectations

- (*Context: Chapter 21 companies*) Directors must carefully review the company's **monthly financial information** with an "**enquiring mind**", and take an **active interest** in its performance

- “Follow up any untoward matters” : significant expenses which fall outside the company’s objectives and policies.

Hot Trends

RANE and Nasdaq Cybersecurity Survey (Jan 2022)

-Boards taking steps to improve oversight of cyber risk but gaps remain

Useful tips on what boards should focus on!

- How various cyber risks relate to one another
- Amount and type of training
- Cybersecurity managed by the right person (IT? Risks?)
- Cybersecurity insurance
- Annual assessment + tabletop simulations: best practices

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Also in this issue

Regulators

(i) ESG: towards a global standard

HK’s Green and Sustainable Finance Cross-Agency Steering Group (*members include HKEX and SFC*) welcomes the publication of 2 exposure drafts on sustainability-related financial information and climate disclosure by ISSB (International Sustainability Standards Board).

[\(HK Press release; ISSB Press release with links to drafts\)](#)

The proposed standards are **built on** the recommendations of the TCFD (“Task Force on Climate-related Financial Disclosures”) and are intended to form a comprehensive and effective **global baseline of investor-focused sustainability disclosures**. ISSB is seeking feedback and aims to **finalise the proposals in 2022**.

(ii) Way forward: 2022 HKEX policy agenda

HKEX published its [Listing Committee Report for 2021](#), which includes an overview of its policy agenda for 2022 and beyond.

(For continuing obligations of listed companies) **noteworthy** items for **policy agenda 2022 and beyond (P.32)** include: **consultation conclusions on share schemes, consultation paper on review of the ESG Reporting Guide.**

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