

April 2022 Legal and Regulatory Update

Top stories

Directors' duties

HKEX censures Hsin Chong Group Holdings Limited (*now delisted*) and named former executive director (“ED”), criticises other named former EDs and non-executive directors, also directs directors to attend training on Listing Rules compliance. ([Announcement; Statement of Disciplinary Action](#))

In light of former ED’s **wilful failure** to discharge his responsibilities, HKEX also imposes a “**Prejudice to Investors’ Interest Statement**” on him.

Between Aug and Dec 2016, the company entered into “sale and leaseback” (*and renovation services*) agreements to **acquire properties** from **companies related to former ED** and paid RMB376.5 m. It was found that there was **no apparent commercial rationale**. E.g. company contractually bound to transfer the properties back to sellers for RMB100, upon expiry of an 8-year lease term.

The agreements were subsequently **terminated**, with the **sum paid** thereafter treated as **loans** (*still outstanding as at the company’s latest published annual report*).

The transactions were **discloseable and connected transactions** under the Listing Rules, and **approved by former ED**. The company failed to comply with requirements including timely announcement.

The other directors were not aware of the transactions until they were discovered by the external auditors (*which subsequently issued a disclaimer audit opinion*).

The company admitted that it had **no internal controls** regarding (*inter alia*) Rule compliance in respect of notifiable/connected transactions, approval/reporting of transactions, and avoidance of conflict of interest.

What you should know/do:

HKEX announcement specifically states **EACH director’s responsibility:**

- Implement appropriate **control and risk management framework**
- Take an **active interest** in company operations and use of financial assets

Internal controls deficiencies include:

- Safeguard assets
- Identify/report material transactions
- Process significant payments
- Listing Rule compliance

Also in this issue

Regulators

(ii) **The Hong Kong Chartered Governance Institute** (formerly HK Institute of Chartered Secretaries) issued an [updated guidance](#) on conducting AGM in light of covid conditions.

Since the publication of its guidance in March, the **government** has **relaxed some social distancing** measures. The updated guidance sets out a **useful list of questions** for listed companies to consider, in assessing **if changes in AGM format** would be needed.

(Background: **HKEX's Guide on General Meetings**, section 2.3: *"Meetings should be held at a place and a time convenient to the largest possible number of shareholders to attend. Issuers should consider the use of technology (e.g. webcast, video conference) to maximise shareholder participation..."*), **FAQ** (see our [Feb 22 update](#)).

(iii) **ESG: new HKEX resources for diversity and ESG disclosure**

HKEX launched a new diversity repository, and introduced an "ESG in Practice" section to its ESG Academy (website). ([Press Release](#))

The new ["Board Diversity & Inclusion in Focus" repository](#) contains **useful** information on the **board of directors** (e.g. *by age, gender and years of tenure*) of **all issuers** (also listed by industry sector), **Hang Seng Index constituents**, as well as **individual issuers**.

The new ["ESG in Practice" section](#) provides **examples** of exemplary **ESG practices** amongst listed issuers.

Legislation

(iv) Privacy Commissioner issued a report on “Comparison of Privacy Settings of Social Media”. ([Press Release](#), [Report](#) (Chinese only))

It reviewed the **top ten most commonly used social media platforms** in Hong Kong, including **Facebook, Facebook Messenger, Instagram, LINE, LinkedIn, Skype, Twitter, WeChat, WhatsApp and YouTube.**

The review results reflect that **all platforms** reviewed **collect a wide variety of personal data** (*12-19 types*). Their performance in terms of **privacy function** was **compared** (*e.g. provision of end-to-end encryption, retention of users’ credit card data*).

These findings are useful for companies’ review of their use of corporate social media platforms, and corporate social media policy.

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