

May 2022 Legal and Regulatory Update

Top stories

HKEX newsletter: observations on AGMs

[HKEX's latest Listed Issuer Regulation Newsletter](#) covers various themes relevant to listed issuers, e.g. convening general meetings, new disclosure requirements in AGM circular.

HKEX noted that in Feb 2022, some issuers who had planned and announced **annual general meetings** had to **alter their arrangements** due to the government's covid measures. E.g. by changing to virtual/hybrid formats. There are **useful observations on lessons learnt** (*summarised below*).

As regards the **AGM circular**, HKEX also reminded issuers of **additional disclosure** regarding **re-election of director(s) serving for more than 9 years** under the revised Corporate Governance Code (effective 1 Jan 2022). As regards the re-appointment of auditors, HKEX also makes reference to the **Financial Reporting Council's [Guidelines for Effective Audit Committees Appointment and Reappointment of Auditors](#)**.

In addition, HKEX also reminded issuers of Listing Rule amendments in light of **SFC's new requirements on bookbuilding and placing** activities. While the majority of amendments will affect new listing applicants, listed issuers should note that for a **placing of equity securities involving bookbuilding** activities, they must appoint capital market intermediaries under written engagement agreements before the intermediaries conduct such bookbuilding and placing activities.

What you should know/do:

Observations on AGMs

- Issuers should explain arrangements for general meetings clearly, provide **sufficient notice** of any **subsequent changes**
- Should note **potential technology-related issues** (*e.g. internet bandwidth*), make necessary preparation to ensure the meetings are not interrupted
- Some issuers **had to postpone physical meetings** as their **articles** do not allow **virtual/hybrid meetings**
- Encourage issuers to **review their articles** to ensure the necessary **flexibility**

Also in this issue

Regulators

(i) 2 notable HKEX cases on directors' duties

(A) (New business) HKEX censures Prosper One International Holdings Company Limited, censures or criticises named executive/independent directors, also directs the company to review its internal controls and the directors to attend training on Listing Rules compliance.

([Announcement](#); [Statement of Disciplinary Action](#))

The company underwent a change in control in 2017. The board was replaced, and a **new business segment** was introduced. Despite the changes, the internal controls were not reviewed or updated.

In the following 3 years, it failed to comply with Listing Rule requirements on **notifiable and connected transactions (over \$800 million)**, the majority in the new business segment. In 2019, it **belatedly announced** many of these transactions, and **admitted its failure** to comply. However, further transactions involving **similar breaches occurred thereafter**.

It was also found that the **board**, including both **executive and independent directors**, were responsible for failures to ensure that the company maintained **adequate and effective internal controls appropriate** for the new business. They also failed to take steps to procure the company's **compliance** with the Listing.

One of the directors considered that his role was to act as the company's representative or liaison officer and that, accordingly, he was not involved in its operations or regularly provided with management or financial information. He was found to have **failed to take an active interest** in the company.

HKEX's announcement states useful lessons learnt (summarised below).

What you should know/do:

Internal controls issues

- An **annual review** by directors on its internal controls effectiveness is a **minimum**
- **Significant changes** in the company (*e.g. commencing a new business*) should prompt an **immediate review**
- **Audit committee** has a particular role to play, but **all directors** have a responsibility

"Director appointment as honorary/in name" only?

- Would **NOT limit his duties** at law and under the Listing Rules

(B) (Money lender/grant of loans) HKEX criticises CIL Holdings Limited's 2 named executive directors (including its chairman; "EDs") and directs them to undergo training.

([Announcement](#); [Statement of Disciplinary Action](#))

The company, a **money lender**, recorded substantial **impairments** in its 2019 annual results in relation to outstanding **loans granted**. Due to an **absence of documentation** (*inter alia*), its **auditors** were **unable to obtain sufficient audit evidence** to determine the appropriateness of the impairment losses and issued a **qualified opinion**.

It was found that the EDs failed to (i) take sufficient steps to **safeguard the interests** of the company, and (ii) ensure that it implemented and maintained **adequate and effective internal controls** in respect of the money lending business.

What you should know/do:

HKEX's announcement specifically states that

- **Particular care is required in relation to transactions involving substantial outflows or commitments of money**
- Directors should ensure that **proper records and documentation** are kept

Internal controls deficiencies include

- EDs carried out credit assessments on the borrowers and **relied on their own assessment** of such financial position
- **Did not follow** company's **policy/procedures** to **obtain** relevant **documentation**
- E.g. consumer credit reports from credit reference agencies to **support their assessments**
- Relied only on restrictions on dealing with the pledged assets in the relevant agreements, **without** executing **mortgage deeds**

Legislation

Privacy Commissioner for Personal Data ("PCPD")

(ii) PCPD issued the "Guidance on Recommended Model Contractual Clauses for Cross-border Transfers of Personal Data" ("Guidance") and provided 2 sets of Recommended Model Contractual Clauses ("RMCs"). ([Press release](#), [Guidance](#))

This is against the background of increasing digitalisation in the handling of personal data and globalisation of business operations in recent years. While s. 33 of the Personal Data (Privacy) Ordinance imposing restrictions on cross-border transfers of data is not yet in operation, the **Guidance** recommends the **best practices** to be adopted.

The **RMCs** are applicable to (i) cross-border **transfers** of personal data **from a HK entity** to another entity outside HK; or (ii) between 2 entities both being out of HK when the **transfer is controlled by a HK data user**.

(iii) PCPD laid charges in the first arrest case relating to “doxxing”. ([Press Release](#))

This is the **first arrest case** in relation to the **“doxxing” offence** since the **Personal Data (Privacy) (Amendment) Ordinance 2021** came into operation in Oct 2021, which **introduced criminalisation**.

Under the amendment ordinance, anyone who discloses the personal data without consent, whether recklessly or with intent to cause specified harm to the person or his or her family, such as harassment, molestation, pestering, threat, intimidation, bodily or psychological harm or damage to property, commits **the offence of doxxing**.

In this case, the defendant was suspected to have disclosed the personal data of two persons without their consents on a social media platform in Oct 2021, amid a money dispute. The personal data disclosed included names, mobile phone number, occupation, residential address and names of their employers.

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