June 2022 Legal and Regulatory Update

Top stories

ESG: further developments in HK

(i) **HKEX stated in its latest Listing Newsletter that the forthcoming global sustainability reporting standards on climate disclosures** *(developed by International Sustainability Standards Board, **"ISSB"**)* **will form part of its review of the ESG reporting framework later this year.**

Building on **TCFD** recommendations, the **new ISSB standards** are expected to require **more specific** and **quantitative climate disclosures** *(e.g. impact on an entity's financial position/performance; use of metrics including GHG Scope 3 emissions; scenario analysis)*.

HKEX provides a **useful overview** of the **ISSB draft standards** *(including proposed disclosures on **greenhouse gas emissions, "GHG"**),* and **recommendations** to listed issuers.

As regards **disclosure on GHG**, issuers are currently required *(on a "comply or explain" basis)* to disclose Scope 1 and 2 emissions in their ESG reports. Reporting on **all Scope 1, 2 and 3 emissions** is contemplated under the **ISSB climate standards**. HKEX alerts **issuers yet to report on Scope 1 and 2 to get ready** for enhanced climate disclosures.

What you should know:

HKEX recommendations *(P.4)*

- **Keep abreast of latest developments**
  - Read ISSB's exposure draft; **identify gaps** in internal policies/practices
  - Regular **training/briefings** to **directors** and relevant **employees**
- **Take action at all levels**
  - **The board**: integrate consideration of **climate risks and opportunities** into its **strategy and decision-making** process; monitor progress toward **targets** set
  - **Finance** and **sustainability** teams to **work closely together**
  - **Finance** team: focus on the **data** and **financial impact assessments**
  - **Sustainability** team: key for **infrastructure planning** and **validating** the **evidence**
  - **Communications/public relations** team: align sustainability objectives with **public affairs goals**

- **Net-zero plan**
- **Value chain plays an important part**

A closer look at GHG *(P.5)*

- Useful overview on **Scope 1, 2 and 3 emissions**
  - With cross references to resources for GHG calculations

What you should do:

- **Brief your directors** on these developments
- **Monitor** ISSB developments and HKEX initiatives
- **Perform a broad gap analysis** of your internal readiness
- *(At a minimum)* **Start "foundation-level" training** for **directors** and relevant **teams**

Hot Trends

"Corporate Secretary" Global Research Report
- Succession planning: preparations for the inevitable

Useful findings on trends:

- **Nominating and governance committee/main board primarily responsible**
- **The board reviews succession planning at least annually**
- **Board members covered**
- **Covid: more frequent reviews + emergency successions**
- **Investors' common questions**

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Also in this issue

Legislation

(ii) The Competition Commission takes air-conditioning works "cartel" case to Competition Tribunal against 2 undertakings and 3 individuals. (**Press release**, **Q+A**)

From Dec 2015 to Dec 2019, the Commission alleged that 2 **competing providers of air-conditioning works** engaged in serious anti-competitive conduct in contravention of the **First Conduct Rule** of the Competition Ordinance (the "Ordinance"), whereby they **fixed prices**, **shared markets** and/or **rigged bids** in relation to the supply of air-conditioning works in HK.

According to the Commission's investigation, two senior engineers and a senior manager of the 2 providers respectively engaged in frequent communications including through emails and phone texting when responding to customer requests for tender or quotation. They sought and agreed to provide cover bids, shared information about intention to bid, and/or disclosed commercially sensitive information on intended bidding price or other parameters of the bid.

The Commission brought action against the 2 **providers** as well as their respective **parent companies** *(regarded as part of the relevant "undertaking").*

What you should watch out for/do:

- **"First Conduct Rule"** means — parties acting together with an **agreement**, and/or engaging in a **concerted practice**, whose **object or effect** is **"to prevent, restrict or distort"** competition in HK
- **Parent companies and directors** must ensure **all group companies** abide by the Ordinance, and actively take measures to ensure full compliance

(iii) The Privacy Commissioner for Personal Data ("PCPD") published an investigation report in respect of complaints against 4 property management companies. The updated "Protection of Personal Data Privacy – Guidance for Property Management Sector" is also published at the same time. (**Press release**, **Executive Summary of investigation report**)

It found that the 4 property management companies had contravened the relevant requirements of **Data Protection Principles** of the **Personal Data (Privacy) Ordinance** as regards the **collection, retention period, use and security of personal data**, respectively.

E.g., in a face mask distribution activity, one property company did not cover a common form containing the names and addresses of residents who had collected the masks, so that passers-by could clearly see their personal data. Retention period for such data was not specified.

PCPD made **useful recommendations** to **property management bodies** as summarised below.

What you should watch out for/do:

- Introduce a **personal data privacy management programme**
- Carry out a **privacy impact assessment** before implementing new policies or measures
- Appoint **data protection officer(s)**
- **Training** according to staff needs
- **Regularly review and update policies and guidelines**

Regulators

(iv) *(Loans/advances,subsidiary)* **HKEX censures Great Wall Terroir Holdings Limited, censures/or criticises named former executive directors ("EDs") and independent non-executive directors, also directs relevant directors to attend training**. (**Announcement**, **Statement of Disciplinary Action**)

By way of background, the company acquired a PRC **subsidiary** in 2016. It did not appoint any representative from its Hong Kong office to the board of the subsidiary. Local management of the subsidiary was entrusted with its day-to-day operation, with its affairs monitored at the company level by review of quarterly management accounts and monthly phone calls with the local management.

Between 2016 and 2019, the **subsidiary** entered into some **"notifiable and connected transactions"**. These include the provision of **"financial assistance"** *(loans and advances)* to the subsidiary's own directors. **The board of the company was not informed**. The company did not comply with the relevant **Listing Rules**, and a sum of nearly RMB 50m in respect of the loans and advances had to be **fully impaired**.

It was found that **the board of directors** of the company **failed to adequately supervise the affairs of the subsidiary**. The **directors of the subsidiary** were entrusted with its day-to-day operation, but **no checks and balances** were put in place to guard against possible abuse of powers. The relevant directors of the company also failed to take effective **remedial actions** to improve the supervision of the subsidiary after the Rule breaches were discovered.

What you should watch out for/do:

HKEX's announcement specifically states that

- **The board of an issuer** is responsible for the management and operations of **the group**
- Must ensure that a proper **internal control and risk management framework** extends to and encompasses its **subsidiaries**
- The board must **adequately supervise** the **activities** and **financial affairs of subsidiaries**
- A proper mechanism of **checks and balances** is an essential component of an effective internal control system

Internal controls deficiencies include

- **Responsible EDs failed to act on red flags**
  - Rapid increase in the subsidiary's **"other receivables"** in light of the advances
  - **Substantial cash outflow** recorded in subsidiary's management accounts
  - **Auditors** questioned the size of the receivables
- **Lack of checks and balances**
  - Context: apparent inability to closely monitor and obtain updated information about the subsidiary's affairs
  - But subsidiary's directors given full and unrestricted access to its funds
- **Lack of proper Listing Rule training to subsidiary**
  - Subsidiary's directors expected to inform the company of any notifiable and connected transaction
  - But **never formally trained**
- **Failure to improve on supervision of subsidiary after advances discovered**
  - Should have called into question the suitability of the subsidiary's directors

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