

January 2023 Legal and Regulatory Update

Top stories

HKEX review: annual reports disclosure

HKEX published a **report** on its review of issuers' **annual reports for 2021 year-end**.

([Announcement](#); [full report](#))

HKEX followed a “thematic approach” in its review, selecting a number of specific areas for review. The review also assessed issuers' compliance with annual report disclosure requirements and specific accounting standards in financial statements. A high level of compliance was generally noted.

Detailed coverage of findings relating to technical accounting standards (*Section V of report*) is outside our scope. We summarised below those areas which might affect more issuers generally. **HKEX recommendations to directors** are also highlighted.

What you should know:

Financial reporting and related controls

- **Asset valuation** remained a major issue
- **Directors** should establish and maintain proper **risk management and internal controls**, and deploy adequate **resources** to maintain them
- Should **critically assess management's accounting estimates** and **challenge** the **reasonableness** of **assumptions**

Material lending transactions

- (**Lending transactions**) directors should critically assess the commercial rationale, whether terms are fair and reasonable, use of funds is in the interests of the issuer and its shareholders
- (**Issuers in money lending business**) maintain effective risk management and internal control systems to assess/manage credit risk exposure; monitor recoverability of loans/adequacy of collaterals
- **Disclosure:** follow HKEX recommendations in last year's report; some common omissions (*P.11, para 43*)

Financial statement disclosure under accounting standards

- Key areas: e.g. **judgment and estimates, material intangible assets and fair value** measurements
- In light of the **current economic uncertainty and market volatility, issuers and audit committees** should maintain a **close dialogue with auditors** and **take prompt actions** to address their concerns

Annual report disclosure

- HKEX reminds issuers that **acquisitions of wealth management products** are subject to “**notifiable transactions**” rules (See [FAQ 057-2019](#))

What you should do:

- **Update the Board and Audit Committee**, including HKEX’s **recommended actions to be taken by them**
- Your **forthcoming annual reports/financial statement disclosure** — consider HKEX recommendations

Also in this issue

Legislation

(i) Companies (Amendment) Ordinance 2023 (“Amendment Ordinance”) will come into operation on **28 April 2023**. ([Companies Registry External Circular](#), [Guidance Note](#), [dedicated webpage](#)).

As noted in our [Nov/Dec 22 legal update](#), the Amendment Ordinance aims to provide sufficient flexibility for companies to hold general meetings in various manners. It **expressly enables** companies holding **general meetings virtually** or in **hybrid** mode, rather than holding meetings only at **physical locations**.

(a) The Companies Registry External Circular summarises the **technical changes** (*the Annex*). These include **new requirements** in the **notice of meetings** specifying (*where applicable*) the virtual meeting technology to be used.

(b) The Guidance Note sets out general information (*including extracts of the provisions*) and **good practices** on the holding of virtual or hybrid general meetings. E.g. detailed information for shareholders like pre-registration and verification.

Companies are also advised to **review their articles** to see if a virtual or hybrid general meeting is permissible.

A list of factors that companies might considering in choosing the mode of meetings is set out. (P.14, para 5.7)

What you should do:

- (For HK-incorporated companies) **Review your articles** to see if virtual/hybrid meetings is allowed; consider **amending the articles** for more flexibility
- **Update the board**; take the Amendment Ordinance into consideration in **planning your 2023 AGM**

(ii) The Competition Commission published a revised set of model “Non-collusion Clauses” for procurers to incorporate in their invitation to bid documents and contracts.

([Press release](#); [model clauses](#))

The revised clauses require bidders to **disclose** information on their **beneficial ownership**.

Bid-rigging, market sharing and price fixing are **serious anti-competitive conduct** under the Competition Ordinance. These may occur in any procurement process.

While not necessarily a contravention of the Competition Ordinance, **concealed common ownership links** among bidders gives a **misleading impression** of the level of competition in a bidding process.

Where companies disclose **common ownership links**, procurers will need to decide how to **respond** based on **their procurement policy**.

Published by Practising Governance Limited

February 2023