

# March 2023 Legal and Regulatory Update

## Top stories

### HKEX Enforcement Bulletin: disclosure of information

HKEX published its latest [Enforcement Bulletin](#), focusing on “**disclosure of information**”.

A key theme is “**partial truth**” disclosures. HKEX noted instances where an announcement refers only to positive (*or bland and neutral*) matters, but does **not mention other potentially sensitive but material issues**. Such **omission** means that the announcement gives a **misleading picture to investors**.

In particular, **Directors** are reminded that they **should not content** themselves with a “**partial truth**” announcement. If the announcement is **misleading** as a result of **omission of material information, disciplinary action** may follow against those responsible. It will be **no defence** to say that the limited information disclosed was not factually wrong.

For example, “**resignation announcements**” of directors- HKEX further noted the **unhelpful practice** of referring to “**personal reasons**”. When any director resigns, particularly if the resignation comes during **a time of sensitivity, pressure** (*financial or otherwise*), or **disagreement** for the listed issuer, the board, or the director personally, careful attention must be paid to ensuring appropriate disclosures.

*(HKEX reminder on guidance under [2007 joint news release](#): “personal reasons” should only encompass reasons such as illness, bereavement or other genuine personal difficulties that change the director's circumstances. They do **not** appropriately describe reasons such as work-related schedules, disqualification of the director, detainment by the police or other authorities or change in the issuer's circumstances).*

HKEX expressed similar concerns over **auditor resignation announcements**- simply **citing disagreement over audit procedures or audit fees**, is of limited value to investors.

**Other useful examples** were given (*summarised below*).

The bulletin also refers to misconduct by newly listed issuers (*e.g. inadequate disclosure in prospectus*). There are references to **2022 enforcement cases** including those on **financial assistance/loans**, and **breaches of duties by directors to safeguard company assets or interests**. (*Read our previous legal updates*)

### **What you should know:**

#### **Examples of “partial truths” disclosures**

- **Rosy picture of future prospects of newly acquired business**
  - NO disclosure: contingent upon obtaining government approvals (*difficult to obtain*)
- **Attribute delay in audited results publication to COVID**
  - NO disclosure: serious audit issues raised by auditors

### **What you should do:**

- **Note HKEX reminder on “partial truth” disclosures**, in preparing future announcements
- **Update your board**, noting HKEX expectation on directors’ duties

## **Hot Trends**

### **Georgeson**

#### ***Investor survey insights report***

#### ***-Impact of E, S, G trends on voting + investment decisions***

#### **For AGM planning!**

#### **What you should note:**

- **“Rigour” of ESG metrics as key concern**
- **“S”: human capital management is key**
- **How investors assess “shareholder dissent”**
- **AGMs: “No” to “fully virtual” format**

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## Also in this issue

### Regulators

**(i) The Accounting and Financial Reporting Council (“AFRC”) issued two new reports, on audit fee and appointment of auditors in HK. ([Press release](#), [survey report](#))**

AFRC’s studies show that **many listed companies prioritise audit fees** over other factors when **selecting auditors** and this is apparent in the audit fee trend in HK. When adjusted for inflation, it was noted that *(average as well as median)* **audit fee declined** from 2010-2021.

**Only 17% of (a relevant category of) auditors surveyed** think that the **audit committees** they worked with, have **implemented effectively [AFRC’s Guidelines \(“the Guidelines”\) for Effective Audit Committees- selection, appointment, and re-appointment auditors](#)** (Dec 2021).

Its press release sets out **some key messages to audit committees** as well as **board and management, which are summarised below. (For details- see section C of survey report (P. 40))**

#### ***What you should know and watch out for:***

##### **Key messages to audit committees:**

- Develop a **robust** set of processes and procedures in **auditor selection and audit tender** by making **reference to the Guidelines**
- Ensure that **audit fees** are set at a level that allows auditors to devote sufficient time and specialised resources to conduct a **quality audit**

##### **Management and the Board**

- Not pressure auditors to reduce audit fees to a level that may compromise audit quality

**(ii) SFC launched a consultation on various items of proposed subsidiary legislation for implementing an uncertificated securities market (“USM”) in HK**

**([Press release](#), [consultation](#) )**

*(Background: under the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021, the broad framework for implementing an USM in HK was put in place . Since then, focus has turned to the development of technical details and specifications of the operational model for USM).*

Among the proposed subsidiary legislation is the **Securities and Futures (Uncertificated Securities Market) Rules** (“USM Rules”), which aim to provide for various **technical matters and processes** under the **USM environment**, including:

- The processes and requirements for transferring legal title to prescribed securities
- Investors’ ability to request the “dematerialization” of their prescribed securities
- Issuer’s authority to initiate the dematerialization of prescribed securities under certain circumstances
- The imposition of deadlines to facilitate the market’s full dematerialization

The **consultation** will last for 3 months, closing on **30 June 2023**.

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