

# Feb 2024 Legal and Regulatory Update

## Top stories

### Directors' duties

*(Loans, subsidiary, conflicts of interest)* **HKEX censures 3 directors (2 executive directors including chairman/CEO and his wife (non-executive director)) of Xinming China Holdings Limited, directs these directors to attend training on Listing Rule compliance.**

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

It concerns an impairment loss in connection with loans obtained by the company's subsidiary ("Sub") from 2016-7.

Sub experienced cashflow difficulties and the chairman offered assistance by **raising funds via a company privately owned** by him and his wife ("Private Co"). The intended structure was for Private Co to be named as the borrower, but in practice Sub would use and repay the loans.

Sub was only able to repay a portion of the loans. **Lenders demanded default interest (24 % per annum)**, to be charged on a retroactive basis. **Chairman agreed** to the payment of the default interest without informing the board of the company. **Private Co settled** the outstanding loans and default interest. Sub repaid such loans to Private Co, but not the default interest.

Such default interest (*paid to the lenders by Private Co*) was recorded as "**other receivables**" in **Sub's financial statements**, on the basis that Private Co would negotiate with the lenders to procure a refund of the default interest paid.

Eventually, the company recorded an **impairment loss (RMB 49.4 m)** on its "**other receivables**".

The company's **board was not informed** on the loans /lenders' demand for default interest. Regular updates circulated to it did not contain any information about the loans. Sub and Private Co did not retain a copy of the agreement for the loans. The loans were **not** reflected in the **company's relevant financial statements**.

The relevant directors were found to have **breached Rule 3.08** and **their directors' undertaking**.

As regards **conflicts of interest**, **HKEX announcement** expressly states that a director of a listed issuer should take **active steps to manage actual or potential conflicts** of interest, such as when acting in another capacity in a transaction involving the listed issuer.

### **What you should know/do:**

#### **Breaches in directors' duties**

- Not bring the loans to the attention of the **board for consideration and approval**
- **Internal control policies** not followed; **proper loan documentation** not retained
- **Chairman's conflict of interest:** as a director of the company and owner of Private Co
  - Not inform the board about lender's demand for default interest
  - Agreed to pay the same without reporting to the board

### **Also in this issue**

#### **Legislation**

**(i) The Privacy Commissioner for Personal Data ("PCPD") carried out compliance checks on 28 local organisations re: practices in the collection, use and processing of personal data in the development/use of AI, as well as AI governance structure. ([Press release](#))**

The exercise covers telecommunications, finance and insurance, beauty services, retail, transportation and education sectors as well as government departments. PCPD found no contravention of the Personal Data (Privacy) Ordinance ("PDPO").

It also made a reference to its [Guidance on the ethical development and use of artificial intelligence](#) (Aug 21), and provide recommended measures to organisations which develop or use AI.

### **What you should watch out for/do:**

#### **Recommended measures**

- If **personal data** is collected/processed
  - Adopt measures to ensure **PDPO compliance; monitor** and review AI systems on a **continuing basis**
  - E.g. **security measures** to protect against unauthorised/accidental **access**
- Establish **strategy for development of AI; AI governance structure; adequate staff training**
  - **AI governance:** noted some organisations set up **AI committees**, and/or appointed **designated officers** to oversee AI development
- Conduct **comprehensive risk assessment** (*including **privacy impact assessment***)
  - Adopt higher level of **human oversight** for an AI system with a higher risk
- Communicate and engage effectively with stakeholders
  - Enhance **transparency; finetune** systems in response to **concerns raised**

**(ii) The Green and Sustainable Finance Cross-Agency Steering Group has revamped its official website with enhanced database and tools to offer a one-stop green and sustainable finance information hub for financial institutions, corporates and the general public. ([Press release, website](#))**

E.g. **Greenhouse gas (GHG) emissions calculation and estimation tools** were developed, to support the calculation and estimation of GHG emissions. The calculation tool enables users, especially small and medium-sized enterprises, to calculate their GHG emissions based on actual activity levels.

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