

July 2024 Legal and Regulatory Update

Top stories

“Uncertificated Securities Market” will be implemented in 2025

SFC released consultation conclusions on its proposed subsidiary legislation, code and guidelines for implementing an Uncertificated Securities Market regime (“USM”) in HK. ([Press Release](#); [Full Document](#)).

Subject to the legislative process, the regime will be **implemented towards the end of 2025**.

SFC proposes a **5-year timeline**:

- **Companies whose laws are compatible with the regime** will transition in batches, by **end of 2030**
 - E.g. shares of Hong Kong companies
 - Shares of Mainland China, Bermuda, and the Cayman Islands companies targeted to be included
- **More detailed timeline will be set** to ensure an orderly transition
 - Securities will be queued for participation
 - Companies’ share registrars will work with Hong Kong Securities Clearing Company Limited and HKEX to agree on a specific deadline for each listed company

What you should watch out for

SFC’s next steps:

- Conduct a **separate consultation** on the maximum levels of certain USM-related **fees**
- *(Together with Hong Kong Exchanges and Clearing Limited and the Federation of Share Registrars Limited)* **engage issuers, investors** and other **market participants** to facilitate their understanding and preparation
- **Work on guidelines** for companies: on preparation needed; subsequent ongoing obligations
 - e.g. sample provisions *(as some companies may need to amend articles, bye-laws)*

Also in this issue

Regulators

(i) HKEX criticises Wisdom Wealth Resources Investment Holding Group Limited and named directors (*including executive directors and independent directors*). ([Announcement](#); [Statement of Disciplinary Action](#))

This case concerns **disclosure in the valuation of a land acquired** by the company, which varied significantly within a year of the acquisition.

In Jan 2018, the company published a **circular** in respect of the land acquisition. A professional valuer was engaged to assess its market value (*valuation: RMB 1.15 billion; direct comparison approach used*).

In Jul 2018, the company published its **interim results** which adopted a **new valuation** performed by the same professional valuer (*new valuation: RMB 8 billion; comparison method and investment method used*).

There was a **seven-fold increase in valuation**, which had a dramatic effect on the company's disclosed financial position including its profit and net assets.

In approving the interim results, the directors have relied on a valuation. However, they **did not take sufficient steps to ensure that such reliance was reasonable**, and accordingly they have failed to discharge their duties. They had no expertise in valuation of land, but failed to:

- **Take any steps to enquire with the valuer** on the methodology, assumptions and comparables adopted to justify the substantial increase in valuation
- Seek a **second opinion** or other professional advice
- **Consult the auditors** on the reasonableness of the substantial increase in the value of the land

What you should watch out for

HKEX key messages in announcement

- Directors must exercise **independent judgement in respect of valuations** and ensure any **reliance on valuations is reasonable**. Excessive or unquestioning reliance on a valuation may amount to a failure by directors to **exercise due skill, care and diligence**
- Directors are expected to **cast a critical eye over the valuation**, generally understand how the valuation was derived or calculated, and question matters such as assumptions, methodology and/or comparables adopted by the valuer. They should also consider consulting auditors or obtaining other professional advice

(ii) The Court of First Instance convicted three individuals with conspiracy to carry out false trading in the shares of Ching Lee Holdings Limited. ([Press release](#))

The case involves the **heaviest jail sentence imposed on market manipulation cases** since the Securities and Futures Ordinance came into effect in 2003. Two individuals were sentenced to imprisonment of six years and eight months, and the remaining to four years and four months respectively.

They conspired to maintain an artificial turnover of the shares in the company by conducting manipulative transactions among 156 securities accounts under their control. This resulted in a false or misleading appearance of active trading and an artificial increase in trading volume for the relevant shares. Such activities took place over a period lasting for more than five months in 2016 and netted illicit profits of over \$124 m.

Legislation

(iii) Consultation conclusion and legislative proposals on company re-domiciliation regime ([Full document](#))

The government aims to provide a **simple and straight-forward route** for non-HK companies to transfer their domicile to HK.

(Background: currently, a company intending to transfer its domicile to HK needs to be wound up in its original domicile and re-establish in HK or enter into a court-sanctioned scheme of arrangement to convert into a wholly-owned subsidiary of a HK company).

It is proposed that the **Companies Ordinance** (“CO”) be amended to introduce an **inward company re-domiciliation regime**. The proposed regime will apply to four types of companies *(including public companies limited by shares)*.

Provisions will be put in place to ensure that the company concerned will retain its original identity upon re-domiciliation *(i.e. no new legal entity created)*. The company would have the same rights and obligations as any other incorporated company of its kind in HK and should comply with the relevant CO requirements.

Published by Practising Governance Limited

Sept 2024