

Feb 2025 Legal and Regulatory Update

Top stories

USM: latest developments

SFC launched a consultation on proposed limits for 3 types of fees that an approved securities registrar (ASR) may charge investors under the upcoming USM (Uncertificated Securities Market) regime. ([Press release](#), [Consultation](#))

Some subsidiary legislation for implementing USM were also gazetted ([Press release](#)).

(On fees level consultation) SFC explained that in developing the fee levels, it has sought to strike a balance among the costs shared by different stakeholders and maintain reasonable fees for investors. This will encourage investors' early participation in USM and also ensure ASRs' businesses remain commercially viable. Consultation will end on 23 April 2025.

Subject to the legislative process of USM-related subsidiary legislation and the market readiness, the SFC targets to implement the USM regime in early 2026.

What you should do

As USM is progressing towards implementation, issuers should also plan and get ready. E.g. select and appoint your ASR under the USM regime.

Also in this issue

Regulators

(i) HKEX criticises 2 former executive directors (including Chairman & CEO) of Pa Shun International Limited. ([Announcement](#); [Statement of disciplinary action](#))

This case concerns **acquisitions** by the company.

In 2019, the directors approved the company's acquisitions of 2 target companies (*owners of 49% equity interest in property companies, which in turn agreed to purchase **property units under construction in Malaysia***). The remaining 51% interest was held by a Malaysian investor.

The target companies had not fully paid the developer. The vendors assumed 49% of the outstanding payment obligations.

The company made full payment upfront by issuing new shares to the vendors (*value: \$64m*). The vendors undertook to indemnify the company for demands and losses under the property agreements. There were no other controls/restrictions to ensure the consideration shares allotted would not be sold without the company's prior consent or knowledge.

The vendors and the Malaysian investor failed to discharge outstanding payment obligations to the developer. Construction was delayed. In April 2022, the developer terminated the property agreements due to the non-payment, which was only found out by the company around 1H 2022. None of the property units were delivered.

The directors were found to have breached their **duties to exercise reasonable skill, care and diligence at both the pre- and post- acquisition stages**. They failed to:

- **Conduct due diligence** in respect of the financial capability of the vendors. The due diligence conducted was insufficient
- **Properly monitor** the projects after the acquisitions
 - E.g. payments were being made
 - Construction was progressing
 - Receipt of updates in a timely manner
- **Procure the company to**
 - Exercise its right to appoint any directors to the board of the property companies
 - Take any actions against the vendors and recover the loss

What you should watch out for

HKEX key messages in announcement

- Directors must take **active steps to manage risks** pertaining to investments of the issuer. They should conduct **proper due diligence and risk assessment**, particularly when involving **major risks**
- Directors must **properly monitor investment projects**. They should ensure receipt of timely updates and that mechanisms are in place to keep the issuer informed. They should ensure that the issuer exercises its contractual right

Legislation

(iii) **The Companies (Amendment) Ordinance 2025** will become effective on 17 April 2025, enabling HK-incorporated companies listed on HKEX to take advantage of Listing Rule amendments regarding **(A) Treasury shares (B) Implied consent mechanism** for disseminating paperless corporate communications.

In this light, the **Companies Registry** provided guidance materials:

(A) Treasury shares: [External circular No. 2/2025](#) outlines major elements of the new regime. New forms and revised forms were also listed.

(B) Implied consent

- [External circular No.3/2025](#) outlines major elements of the new Implied consent system
- [Guidance note](#) provides general information and good practices
 - *(As a prerequisite)* the company's articles must contain a provision *(not mere silence)*, that documents or information generally may be sent or supplied by the company to its members by making them available on a website
 - Themes like website accessibility to persons with disabilities, cybersecurity were also addressed
- Updated its [Guide on communications to and by companies](#), which gives an overview of communications to and by companies under the Companies Ordinance
- A [new thematic section](#) has been set up on its **website** , including frequently asked questions

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