

Appendix 2

HKEX Listed Regulation and Enforcement Newsletter

-some key findings [Note: page reference to HKEX report]

COMMON MISUNDERSTANDINGS ON DIRECTORS' DUTIES

Delegation of duties (P.8)

- **Misunderstanding:** “delegated personnel did not alert the directors to any issues, there was nothing the directors could have done”
- **HKEX:** directors **retain a core non-delegable duty to exercise reasonable skill, care and diligence** in the performance of their director duties
 - Ensure the **delegation to be reasonable**, particularly in light of delegated personnel’s knowledge and capacity
 - Continue to **“actively supervise”**; to acquire and maintain sufficient knowledge of the delegated matter; following up on anything untoward that comes to their attention
- **Useful examples** include securities trading, money lending business, joint ventures
 - E.g. **joint ventures**: if the operation is delegated to a JV partner, directors remain obliged to take an **active interest** and give **adequate oversight** over JV’s business and affairs
 - E.g. **red flag handling**: directors should take prompt and adequate action
 - **Promptly escalate the matter to the board, which in turn should take actions**
 - **Make adequate enquiries**
 - **Take action** to prevent occurrence/recurrence of irregularities (*e.g. call board meetings to devise course of action/take professional advice, proactive steps like revoking suspected culprits' authority to do the same*)

Reliance on professional advice (P.9)

- **Misunderstanding:** “directors had acted on a professional adviser’s advice and therefore cannot be blamed”
- **HKEX:** directors must make their **own judgment** on reliability and sufficiency; exercise appropriate **scepticism** and common sense and make appropriate enquiries

Commercial interests via a vis Rule compliance (P.10)

- **Misunderstanding:** directors have sought to justify a deviation from Rule compliance based on “commercial rationale”

- **HKEX:** commercial reasons do not override the obligation to comply with the Rules

Role of INEDs on internal control (P.10)

- **Misunderstanding:** some directors' arguments include, that they are "entitled to rely on management to operate/monitor the operation of existing internal control"
- **HKEX:**
 - **Directors (executive and non-executive) have the same duties** of skill, care and diligence and fiduciary duties, and must take an **active interest** in issuer's business operations/affairs
 - **INEDs are often members of the audit committee** (*primary responsibility for monitoring and ensuring management establishes and maintains adequate and effective internal control systems*)
- **Useful examples**
 - E.g. COO and financial controller given immense power over operations and funds (*including provision of loans and advances without directors' approval or knowledge*)

NAVIGATING DIGITAL ASSETS OPPORTUNITIES (P.13)

- **Disclosure:** how the activities are **in the interest of the issuer and shareholders**
 - **Structure;** how integrated into business operations (*milestones, expected completion date*)
 - **Material risks**
 - **Management expertise** required; **internal controls**
 - **"Concise disclosure"** (*avoid overuse of buzz words*)
 - **Avoid voluntary announcements on potential plan**
 - Especially when it is at a **preliminary**/conceptual stage without details
- **Other continuing obligations**
 - **E.g. investment:** requirements on material acquisitions/disposals