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Key Regulatory Updates for Hong Kong Listed Companies — November/December 2023

The updates include a Consultation Paper, new and revised guidance materials from the Stock Exchange of Hong Kong Limited, and notices from the Companies Registry.

The key updates in November and December 2023 include the launch of the Fast Interface for New Issuance (FINI) platform, the publication of the Guide for New Listing Applicants, and the Global Exchange Market (GEM) listing reforms which resulted in a number of updates being made to the Listing Rules and related guidance materials. Issuers are advised to familiarise themselves with the updated Listing Rules and guidance materials. Potential new applicants for a listing on the Stock Exchange of Hong Kong Limited (the Stock Exchange) should note that a prospectus and its accompanying documents for the purpose of authorisation and registration may now be submitted electronically. A relevant guidance letter and FAQs have been published to provide guidance on electronic submission.

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Consultation Paper by the Stock Exchange, Amendments to the Listing Rules, and/or Other Reforms

1. Consultation Conclusions on GEM Listing Reforms (December 2023)

The Stock Exchange has published the [Consultation Conclusions on GEM Listing Reforms](#) (the Consultation Conclusions) by which it adopts the proposals as set out in the Consultation Paper with minor modifications and clarifications. The key proposals adopted include:

- introducing a new streamlined transfer mechanism to enable eligible GEM issuers to transfer to the Main Board without the need to appoint a sponsor to carry out due diligence or produce a “prospectus-standard” listing document;
- introducing a new alternative “market capitalisation/revenue/R&D test” for an initial listing on GEM that targets high-growth enterprises heavily engaged in research and development (R&D) activities;
- reducing the post-IPO lock-up period imposed on GEM issuers’ controlling shareholders to 12 months; and
- removing mandatory quarterly reporting requirements and aligning other continuing obligations of GEM with those of the Main Board.

The minor modification and clarifications are as follows:

- To aid issuers and market practitioners’ understanding of the daily turnover/volume weighted average market capitalisation test, the Stock Exchange will provide illustrative examples in its guidance materials showing how to calculate the volume weighted average market capitalisation of an issuer
- In respect of the compliance record requirement for GEM transfers, the Stock Exchange clarified that a GEM issuer may still apply for a transfer in each of the following scenarios:
 - If investigations by the Stock Exchange are not leading or have not led to any disciplinary proceedings
 - Upon the conclusion of disciplinary proceedings if no serious breach of the Listing Rules was found
- A GEM issuer may seek confirmation from the Stock Exchange in advance of its transfer application to inform its decision on whether to apply for the transfer application, in order to minimise any possible disruption caused due to last-minute information regarding the Stock Exchange’s investigations

Implementation of the Listing Rules

- The amendments as set out in Part A on GEM Reform Rule Amendments came into effect on 1 January 2024 (GEM Reform Effective Date).
- The amendments as set out in Part B on housekeeping Rule Amendments (for the purpose of the forthcoming expanded paperless listing regime) came into effect on 31 December 2023.

- The GEM Reform Rule Amendments applied, from the GEM Reform Effective Date, to all GEM issuers, including:
 - all existing issuers listed before the GEM Reform Effective Date; and
 - all GEM listing applicants that are expected to be listed on or after the GEM Reform Effective Date.

For further details, please refer to the [Consultation Conclusions](#).

2. Consultation Paper on Proposal on Severe Weather Trading of Hong Kong Securities and Derivatives Market (November 2023)

Hong Kong Exchanges and Clearing Limited (HKEX) published a [Consultation Paper on Proposals on Severe Weather Trading of Hong Kong Securities and Derivatives Markets](#) (the Consultation Paper), to allow the markets to remain operational during severe weather (SW) conditions. SW refers to the scenario in which if a Typhoon Signal No. 8 or above is hoisted, a Black Rainstorm Warning is issued by the HK Observatory, or Extreme Conditions are announced by the HKSAR government. Should SW fall on any day from Monday to Friday except a Hong Kong public holiday, it would be considered a Severe Weather Trading Day (SWT Day). Please see below a summary of the key proposals:

Proposed Operational Arrangements for Severe Weather Trading

- The Consultation Paper proposes to remove existing SW arrangements so that trading, clearing, and settlement services and operations on a SWT day can continue in both the securities (including southbound trading if a southbound trading day is planned) and derivatives markets on all available products under the respective markets. Northbound trading will also continue should SW occur on a northbound trading day.
- Adjustments will be made, since some services provided via physical outlets would be unavailable under SW conditions, for example:
 - **CCASS depository service:** The physical outlets of Hong Kong Securities Clearing Company Limited (HKSCC) and share registrars are expected to be closed under SW. The deposit and withdrawal of physical securities by Participants will not be available under SW.
 - **Buy-in exemption due to unavailability of physical certificate deposit services:** The physical outlets of HKSCC and share registrars are expected to be closed under SW. As such, CCASS Participants who have sufficient securities outside of CCASS may not be able to physically deposit the securities for settlement purpose to cover their short positions.
- Corporate actions would be postponed if that day falls on a SWT day; this allows physical certificate holders to complete their deposits immediately after SW.
- Please refer to Appendix I for a summary of arrangements after the implementation of SWT.
- Please refer to Appendix II for more details and examples of the relevant arrangements or common examples of corporate actions.
- The listing and first day of trading of new equity securities, debt securities, and interests in authorised collective investment schemes would proceed as usual on a SWT day.

Implications for Listing Applicants and Listed Issuers in the Securities Market

- No amendment is required to the definition of “business day” under the Listing Rules as the Stock Exchange of Hong Kong Limited will operate as normal on SWT day.
- However, some situations may pose practical difficulties in complying with a Listing Rule obligation on a SWT day. The Listing Rules may therefore necessitate amendments regarding, for example, the current requirements on:
 - certification of transfers or temporary documents;
 - split of renounceable documents and the return of these documents;
 - issuance, cancellation, splitting, and consolidation of securities certificates and securities registration arrangements;
 - issuance of letters of regret;
 - prospectus registration; and
 - closing of the application lists in a public offer period for issuers using a mixed media offer (MMO). This action may still require extension of time or other special arrangements during SW.
- Proposed consequential amendments to the Listing Rules will be made to reflect the above.

The consultation ended on 26 January 2024. For further details, please refer to the [Consultation Paper](#).

3. Guide for New Listing Applicants (November 2023 and December 2023)

The Stock Exchange published the [Guide for New Listing Applicants](#) (Guide), which consolidated and enhanced all currently effective guidance letters and listing decisions related to a new listing (a blackline version is also available [here](#)). The Guide came into effect on **1 January 2024**, upon which the corresponding guidance letters and listing decisions were archived. While no major changes were made to the existing guidance materials, there are certain updates which can be found [here](#). The Guide was updated in December 2023 to reflect recent regulatory updates in relation to GEM listing reforms and the electronic submission of prospectus and accompanying documents to the Exchange and the Companies Registry for authorisation and registration.

The Guide is divided into six main sections and an annex:

- Eligibility and suitability for listing
- Special listing regimes
- Disclosure in a listing document generally applicable to all New Listing applicants
- Specific topics relating to a New Listing application
- Other listing structures
- Other matters
- Annex – streamlined listing decisions

Mapping Schedule

To assist the market in adapting to the Guide, the Stock Exchange published a [mapping schedule](#) which sets out the corresponding guidance letters and listing decisions references for each sub-section of the

Guide. The mapping schedule is very useful when looking for new references in the Guide (noting that separate tabs exist for guidance letters and listing decisions).

4. Addition of Indonesia Stock Exchange to List of Recognised Stock Exchanges (November 2023)

The Stock Exchange has added Indonesian Stock Exchange (IDX) to its [List of Recognised Stock Exchanges](#). This will allow companies with a primary listing on IDX's main market to apply for a secondary listing in Hong Kong, subject to the condition that secondary listing applicants with a primary listing on IDX are expected to demonstrate the fulfillment of the following principles:

- A corporation's procedures for shareholder meetings should ensure that votes are properly counted and recorded
- A corporation should disclose payments to external auditors for non-audit services

5. Launch of FINI Platform (November 2023)

The FINI platform has officially launched on 22 November 2023. All new listings with a listing document issuance date on or after 22 November 2023 will be processed on FINI, and the first permissible listing date was 5 December 2023. To reflect the launch of the FINI platform, the following guidance letters have been updated (noting that they have been streamlined and incorporated into the Guide for New Listing Applicants in January 2024):

- [GL55-13 \(Guidance on Documentary Requirements and Administrative Matters for New Listing Applications \(Equity\)\)](#)
- [GL81-15 \(Guidance on Mixed Media Offer\)](#)
 - HKSCC Participants and share registrars are welcome to provide appropriate payment channels for investors using paper application forms in an MMO to fund their subscriptions.
 - The Stock Exchange does not prescribe the method of payment between subscribers on the one hand, and HKSCC Participants and share registrars on the other hand, provided that the parties have given due regards to the settlement timeline and the necessary steps required for the purpose of funding confirmations under FINI.
 - IPO issuers may adopt an MMO and rely on HKSCC Participants and/or share registrars to collect orders from subscribers using paper application forms (for HKSCC Participants) or through their own order-taking systems (for Share Registrars), and separately enter and submit such applications in FINI for further processing.
- [GL90-18 \(Guidance on Pricing Flexibility for IPO\)](#)
 - Deleted template of extracts of White Form
 - Updated template of extracts of prospectus
- [GL86-16 \(Guide on Producing Simplified Listing Documents Relating to Equity Securities for New Applications\)](#)

- Revised section J of Appendix 1 regarding “How to Apply for Hong Kong Offer Shares” section and reference to the new link that sets out the [new template](#)

Please refer to the [FINI webpage](#) for further details of the relevant rule amendments.

Guidance Materials, Listing Decisions, and FAQs by the Stock Exchange

1. Stock Exchange Issued New and Revised Guidance Materials (December 2023)

The Stock has published new and updated guidance materials, checklists, and forms.

Revised Guide for New Listing Applicants

- The [Guide for New Listing Applicants](#) has been updated to reflect recent regulatory updates in relation to GEM listing reforms and the electronic submission of prospectus and accompanying documents to the Exchange and the Companies Registry for authorisation and registration.

New FAQs

- New [FAQs No. 138-2024 to 155-2024](#) on Listing Rule amendments relating to GEM listing reforms
- New [FAQ No. 137-2023](#) on conversion of PRC issuers’ unlisted shares into H shares for listing on the Exchange:
 - If the PRC issuer proposes to convert all or part of its unlisted shares held by domestic/foreign shareholders into H shares, it should ensure that the conversion process is clearly disclosed and explained to the public, which includes, among others, the filing and approval requirements of the relevant PRC regulatory authorities and any requisite internal approval process.
 - The PRC issuer should announce the effective date of the conversion after receiving all necessary approvals and filing notification and disclose the changes in its unlisted shares and H shares in issue as a result of the conversion in its next-day disclosure return and monthly return.

Other Updated and Withdrawn Guidance Materials

- Certain FAQs and Guidance Letters have been updated and some have been withdrawn/superseded as a result of the publication of the Guide for New Listing Applicants and also Listing Rule amendments in relation to paperless listing regime and GEM listing reforms. For the list of updated and withdrawn FAQs and Guidance Letters, please refer to [“What’s New”](#) on the Stock Exchange’s website.

2. Stock Exchange Issued New GL118-23 and Revised FAQ No. 119-2023 to 136-2023 (December 2023)

The Stock Exchange has published a new [guidance letter](#) on the electronic submission of prospectus and accompanying documents to the Exchange and the Companies Registry for authorisation and registration (GL118-23).

- A prospectus, its related application forms, and its accompanying documents (Accompanying Documents) to be submitted for the purpose of seeking authorisation of the registration of a prospectus pursuant to the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (C(WUMP)O) must be submitted to the Stock Exchange in **electronic form**.
- Digital signature must be used for:

- signing the original copies of the prospectus, its related application forms, and any Accompanying Documents; and
- certifying a copy of any Accompanying Document as a true copy.
- Digital signature must be supported by a recognised certificate, generated within the validity of that certificate, and used in accordance with the terms of that certificate (Recognised Digital Signature).
- The following certification authorities in Hong Kong are recognised for issuing digital certificates:
 - The Postmaster General (Hongkong Post Certification Authority) issues recognised digital certificates under the brand name of “e-Cert”
 - Digi-Sign Certification Services Limited issues digital certificates with the brand name of “ID-Cert”
- To apply for authorisation of the registration of a prospectus, the listed issuer (or its adviser) must submit, **by email to the Stock Exchange by 11am** on the intended date of authorisation of prospectus:
 - an original copy of the prospectus, together with originals of its related application forms, signed by the Designated Signatories (i.e., such persons as required under s.38D(3) or section 342C(3) of C(WUMP)O) using their Recognised Digital Signatures;
 - original Accompanying Documents signed by the relevant authorised signatories using their Recognised Digital Signatures, or copies of the Accompanying Documents certified as true copies by Approved Certifiers (i.e., persons as required under s.39C(b) or s.342CC(b) of the C(WUMP)O) with their Recognised Digital Signatures; and
 - if a prospectus or a related application form is signed by an authorised person by virtue of a power of attorney or any other authority:
 - a copy of each power of attorney certified as true copy by an Approved Certifier with his Recognised Digital Signature; or
 - each original authority signed by the relevant signing party with Recognised Digital Signature or a copy thereof certified as a true copy by an Approved Certifier with his Recognised Digital Signature, provided that in case only a certified copy of any document has been submitted as aforesaid, the listed issuer (or its adviser) must, upon potential demand by the Stock Exchange, produce the original to the Stock Exchange for inspection.
- To grant an authorisation for registration of a prospectus, **the Stock Exchange** will send the listed issuer (or its adviser), **by email**, a certificate of authorisation, the prospectus, and its related application forms each signed by the Stock Exchange with its own Recognised Digital Signature together with the Accompanying Documents authorised by the Stock Exchange.
- The listed issuer (or its adviser) should forward the email(s) and the attachments it receives from the Stock Exchange, **by email, to the Companies Registry** for registration together with:
 - evidence of payment of the required registration fee; and

- a statement in each email confirming to the Registrar of Companies that documents attached to the email so forwarded to the Companies Registry are documents issued or authorised by the Stock Exchange for registration of prospectus and that they have not been altered, substituted, or otherwise modified subsequent to the issue of the Stock Exchange's authorisation for registration.
- Appendix I to GL118-23 sets out the documentary requirements for authorisation and registration of prospectus.
- Appendix II to GL118-23 sets out the workflow in a diagram.

Effective Date and Transitional Period

- Listed issuers (or their advisers) may start submitting documents electronically for application or authorisation of registration of a prospectus in accordance with GL118-23 starting from **1 January 2024**.
- From **1 July 2024**, the Stock Exchange will no longer accept documents sent to it for the purpose of the authorisation of registration of a prospectus that do not meet the requirements of GL118-23.
- During the transitional period from 1 January 2024 to 30 June 2024, listed issuers (or their advisers) must submit to the Stock Exchange and the Companies Registry all the relevant documents either wholly in electronic form by email or wholly in hard copy form.

FAQs No. 119-2023 to 136-2023

The FAQs have been updated to reflect GL118-23 and additional questions regarding the electronic dissemination of corporate communications.

For further details, please refer to [GL118-23](#) and [FAQs No. 119-2023 to 136-2023](#).

3. Stock Exchange Revised GL85-16 to Allow for Double-Dipping (November 2023)

The Stock Exchange published a revised [Guidance Letter GL85-16](#) (Guidance Letter on Placing to connected clients, and existing shareholders or their close associates, under the Rules) allowing the existing shareholders (including pre-IPO investors) and cornerstone investors of a new applicant to subscribe for or purchase further securities in an IPO (i.e., to double dip) under certain specified conditions. This new exemption provides more flexibility to independent investors and also encourages greater IPO participation, which should help to ensure the IPO price discovery process remains robust. The guidance letter GL85-16 has been streamlined and incorporated into the Guide for New Listing Applicants in January 2024.

GL85-16

The Stock Exchange will allow existing shareholders and/or their close associates and cornerstone investors to subscribe for or purchase further securities in an IPO if the following conditions (Size Exemption Conditions) are met at the time of the applicant's listing:

- The offer (excluding any over-allocation) has a total value of at least HK\$1 billion
- The allocation to all existing shareholders and their close associates (whether as cornerstone investors and/or as placees) as permitted under this exemption does not exceed 30% of the total number of securities offered

- Each director, chief executive, controlling shareholder, and (in case of a People's Republic of China (PRC) issuer only) supervisor of the listing applicant must have confirmed that the listing applicant's offer securities are not allocated to them or their close associates under this exemption

If allocations are made to existing shareholders or cornerstone investors who are core connected persons of a listing applicant pursuant to the Size Exemption Conditions, the Stock Exchange will grant a related waiver from strict compliance with Main Board Rule 9.09(b) in respect of such allocations.

4. A Snapshot of INEDs' Roles and Responsibilities (November 2023)

The Stock Exchange published "[A Snapshot of INEDs' Roles and Responsibilities](#)" (the Guide) which provides a quick overview of INED's key responsibilities and obligations. Independent non-executive directors (INEDs) thus gain a better understanding of what is expected of them and how they can fulfill their duties. The key points to note from the Guide are as follows:

Actions to Take for New INED:

- Understand the business
- Take a fresh look at internal controls and apply independent judgement to comment objectively on the framework and documents for internal controls
- Review compliance history
- Ensure mechanisms are in place for regular flow of information and timely reporting of material information to INEDs and other directors
- Devote sufficient time and attention to the company's affairs
- Attend training on topics relevant to new appointment

Role in Review and Approval of Business Decisions and Transactions

- Ensure sufficient information is available to make informed decisions on the matters at hand
- Raise concerns with the board and exercise independent judgement
- Independently assess professional advice and the reasonableness of valuations
- Even if an INED is not attending a board meeting, consider the agenda items and obtain minutes of the meeting
- Carefully review corporate communications and any other documents

Role in Internal Controls

- Independently assess and review the internal controls and procedures
- Ensure that annual reviews are carried out and that internal control reviews cover all material controls, and ensure regular training has been provided to management and staff
- Consider establishing and implementing controls and procedures as appropriate for new businesses and transactions

- Ensure internal controls are being implemented
- When deficiencies are identified, take steps to ensure they are properly addressed and rectified

Role in Financial Reporting

- Establish procedures to ensure accurate book- and record-keeping
- Ensure sufficient and clear information is available to enable a regular and informed review of financial data
- Pay attention to possible red flags
- Closely monitor the audit progress and regularly meet with management and auditors
- Understand what the auditors' concerns are and take proactive steps to obtain the company's financial statements

Role in Incident Management

- Upon discovery of non-compliances and/or other issues, promptly review and discuss among the board and take appropriate action
- Where red flags have been highlighted, make tangible efforts to investigate and follow up on whether red flags have been addressed
- Consider Listing Rules implications
- When the Stock Exchange makes enquiries, take steps to follow up and ensure the company responds in a timely manner
- Apply independent judgement to incident assessment

The Guide also sets out a few case studies of issues faced by INEDs and the “do’s and don’ts” as an INED in those situations. For further details on the case studies, please refer to pages 7 to 11 of the Guide.

For further details, please refer to [A Snapshot of INEDs' Roles and Responsibilities](#).

Other Reports/Newsletters by the Stock Exchange

1. Listed Issuer Regulation Newsletter (November 2023)

The Stock Exchange recently published [Listed Issuer Regulation Newsletter \(Issue 9\)](#), which is produced on a semi-annual basis. Please see below the key highlights:

Paperless Listing Regime

- Reminder that the Listing Rules will be amended to reflect [consultation conclusions on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments](#), with the following key amendments:

- Issuers must submit documents to the Stock Exchange by electronic means, unless otherwise stated in the Rules or required by the Stock Exchange
- Certain documents and undertakings are no longer required to be submitted to the Stock Exchange, as the obligations will be codified into the Rules or disclosed in issuers' published documents
- Issuers must distribute their corporate communications to shareholders electronically (except for Actionable Corporate Communications)

Guide on Internal Controls and Planning for Upcoming Audit

- The Stock Exchange conducted a thematic review of issuers that failed to publish financial results on time or received a modified audit opinion on their financial statements.
- Common internal control weaknesses include the following:
 - During periods of economic/industry downturns or material changes in the issuers' financial performance, issuers lacked internal guidelines to assess and document such impacts
 - Some issuers lacked policies and control procedures on origination and execution of corporate transactions
 - Some issuers failed to exercise sufficient control or supervision over acquisition targets, leading to failures such as lack of access to targets' books and records and inadequate approval process over targets' activities, which resulted in a dissipation of assets
 - Some issuers failed to arrange audit work on the subsidiary in the year of its disposal, resulting in audit qualification due to lack of access to its books and records
- Issuers should have sound financial reporting controls and processes, including:
 - a continuous review of the issuers' principal risks and assessment of the adequacy of the internal controls;
 - effective planning of the audit process, taking into account the principal risks identified and material changes during the year;
 - effective monitoring of the audit progress; and
 - reporting.
- The Stock Exchange highly recommends that issuers disclose their principal risks, internal control deficiencies identified, and measures taken to address the deficiencies.
- Issuers are also encouraged to confirm in the reports that they have reviewed the effectiveness of their risk management and internal control systems and highlight any issues identified and how they were addressed.

Review of Issuers' Corporate Governance Practices and New INED Guide

- Published findings from the latest [review of issuers' corporate governance practices](#) and a [new guide for independent non-executive directors](#) that provides an easy-to-follow overview of INED's key responsibilities and obligations

Guidance Letter on Disclosure of Consideration Basis and Business Valuation in Transactions

- Published guidance letter [GL 116-23](#) sets out disclosure gaps on the basis of consideration identified from the Stock Exchange's vetting and guidance, in particular:
 - If the consideration paid in a transaction is primarily based on an independent business valuation, the shareholder circular should disclose details of the valuation (including valuation approaches and methods, key inputs, and assumptions)
 - In other cases, the issuer should make relevant disclosure (both in quantitative and qualitative terms) to explain the consideration basis, regardless of whether an independent business valuation is disclosed

Streamlined Listing Regime for PRC Issuers

- To reflect the PRC regulatory changes, the Listing Rules have been amended with effect from 1 August 2023 (please refer to the [consultation conclusions](#) for further details of the Listing Rules amendment), under which PRC issuers are no longer required to:
 - hold separate class meetings for issuance or repurchase of shares;
 - settle disputes involving H shareholders through arbitration; and
 - include in their articles of association the Mandatory Provisions and other ancillary provisions.

Administrative Reminder on Filing Listing Application for Placing of New Shares

- Listing approvals may be delayed if information submitted by the issuer and its placing agents are incomplete.
- Some common mistakes and omissions in the submissions include the following:
 - If the placing involves multiple placing/sub-placing agents, the placee lists and confirmations of placee independence are often submitted at different times by placing agents and the number of placing shares does not reconcile
 - Missing information on the beneficial owners of corporate placees in the placees list
 - Incomplete information related to the placees' addresses or missing identification numbers
 - Erroneous entry of placees' addresses, for example, copying the address of another placee in the previous row of entry
 - Errors in the number of placing shares
- The placee list template has been updated to streamline data fields and added data validation in order to minimise manual input errors

- The Stock Exchange normally grants listing approval **on or before the next business day** after receipt of all required information. Issuers requiring prompt listing approvals are recommended to contact the responsible officers to coordinate the process

Reminder on the Required Availability of Authorised Representatives

- Issuers are reminded that authorised representatives, as the principal channel of communications with the Stock Exchange, should be contactable at all times, from 8am on any business day.
- Issuers should also make adequate arrangements to proactively monitor media coverage and make timely assessments of their disclosure obligations under the Inside Information Provision.

For further details, please refer to the [Listed Issuer Regulation Newsletter \(Issue 9\)](#).

2. Analysis of the 2022 Corporate Governance Practice Disclosure (November 2023)

The Stock Exchange published the [Analysis of 2022 Corporate Governance Practice Disclosure](#) that sets out its review of corporate governance reports for the 2022 financial year (the 2022 Review). The 2022 Review focused on the following areas:

- Corporate culture
- Long Serving INEDs
- Diversity
- Risk management and internal controls

For the purpose of the 2022 Review, the Stock Exchange analysed corporate governance reports (CG Reports) of a sample of 400 issuers (Sample Issuers). Please see below the key summary of the 2022 Review.

Corporate Culture

- As part of the update to the Corporate Governance Code (CG Code) that became effective on 1 January 2022 (2022 Update), the Stock Exchange introduced a new code provision (CP) and provided guidance highlighting (i) the board's role in establishing the issuer's purpose, values, and strategy, and ensuring that these and the issuer's culture are aligned, and (ii) the directors' duty to act with integrity, lead by example, and promote the desired culture.
- All of the Sample Issuers reported compliance with the CP corporate culture, but did not always include detailed disclosure on their desired corporate culture in their CG Reports.
- Comprehensive disclosure should include (among other things) details on:
 - the link between corporate culture and the issuer's business objectives;
 - the implementation of the desired corporate culture into the issuer's daily operations; and
 - an assessment of the progress and success of such implementation.

- Although no specific requirement applies to the location or the presentation of information on corporate culture, issuers should provide cross references for investors to identify the relevant information if the disclosure is made outside of the CG Report.

Long-Serving INEDs

- The 2022 Update included additional disclosure of requirements on the proposed reelection of long-serving INEDs (i.e., an INED who has served more than nine years) which requires disclosure of: the factors considered, the process, and the board or nomination committee's discussion in concluding that a long-serving INED is still independent.
- All of the relevant Sample Issuers that retained long-serving INEDs disclosed the factors they considered in determining the INED's suitability for reelection.
- Board composition should be regularly assessed in line with changes to an issuer's business environment and other challenges.
- If a long-serving INED is retained, sufficient details should be disclosed regarding the suitability of such individual for reelection, including the process undertaken by the nomination committee and the board to confirm their continued independence.
- When assessing a director's continued suitability for the role, the board (or the nomination committee) should focus on the INED's mindset and whether the INED remains capable of continuing to provide an independent and objective contribution. A consideration of only the director's actual or potential conflict of interests is insufficient.
- Issuers are reminded to provide further details or analysis to support why they have grounds to believe an INED continues to be independent.

Diversity

- The 2022 Update introduced an end to single-gender boards (with a transitional period lasting until 31 December 2024), an annual review of board diversity policies, the setting of gender diversity targets (with timelines) at the board level, and disclosure of gender ratios within the workforce, together with any plans or measurable objectives for achieving workforce gender diversity.
- Any remaining single-gender-board issuers should proactively seek to appoint at least one director of a different gender (for example, upon the retirement of an existing director by rotation) and not wait to take action until closer to the December 2024 deadline.
- The absence of a prescribed percentage in the Listing Rule does not mean one director of a different gender on the board is sufficient. Issuers should assess their own circumstances and needs, and consider whether to commit to a particular (higher) ratio beyond the present board composition.
- If a diversity target or deadline is revised, issuers should provide a reasoned explanation for the change.

Risk Management and Internal Controls

- To maintain the effectiveness of disclosure on internal control systems, the structure of the system should be sufficiently detailed, including details of the key individuals and departments responsible for

such systems, and the processes to regularly review and monitor whether the internal control system is operating properly.

- The use of graphics can help to illustrate the operation of the internal control system.
- For the purpose of demonstrating that the required annual reviews of internal control systems have been conducted, sufficient details should be disclosed to support the issuers' conclusion that the internal control system was found to be effective. This would include:
 - whether the board has confirmed the system's effectiveness;
 - which confirmations the board/issuer received in support of its finding that the system is effective;
 - whether any significant areas of concern were identified as part of the review (and if so, how they were remedied); and
 - any changes to the system that were implemented over the year (with an explanation of what these changes were and the reasons for such changes).

Common Pitfalls

- Certain mandatory disclosure requirements (MDRs) were omitted by a portion of Sample Issuers.
- Issuers are reminded that information called for under the MDRs must be disclosed in the CG Report and should include a negative statement if any of the MDRs are not applicable.

For further details, please refer to the [Analysis of 2022 Corporate Governance Practice Disclosure](#).

Forms by the Stock Exchange

The Stock Exchange has updated a number of checklists and forms, for further details, please refer to ["What's New"](#) on the Stock Exchange's website for the list of updated checklists and forms.

Disciplinary Actions by the Stock Exchange for Failure to Comply With the Disclosure Requirements

1. Disciplinary Action Against Hong Kong Resources Holdings Company Limited and Eight Directors (December 2023)

Key points: The Stock Exchange's enforcement priorities include "Responsibility" and "Controls and Culture". These concepts include the need for independent judgement and to avoid over-reliance on others, and also for an effective internal control and risk management framework. Failures in this regard can lead to misleading disclosures and an increased risk of loss to investors.

The Stock Exchange censured Hong Kong Resources Holdings Company Limited (stock code: 2882) (the Company) and six directors of the Company, and imposed a prejudice to investors' interests statement against two former executive directors of the Company.

Facts

From June 2018 to March 2019, a subsidiary of the Company (the Subsidiary), holding a money lender's license in Hong Kong, granted 12 loans to nine borrowers (the Borrowers) totalling approximately

HK\$74.4 million (the Loans). The Company's auditors (the Auditors) raised concerns over the Company's expected credit loss (the ECL) assessment in relation to the Loans in light of the amount of the Loans granted and delayed interest repayments. Despite the above, the board considered no allowance for ECL on the principal and interest of the Loans was necessary and the FY18/19 Interim Results and interim report for the six months ended 31 December 2018 (the FY18/19 Interim Report) were published without mentioning any of the issues.

All the Borrowers defaulted on the Loans, which led to the Company recording a 100% impairment loss of around HK\$86 million in its financial statements for FY2019 for all the Loans and interest. Subsequently, publishing the Company's annual report and results for FY2019 and interim results and reports was delayed for the six months until 31 December 2019.

The board failed to critically consider the issues raised by the auditors when making the expected credit loss assessment. The audit committee was found to have been notably ineffective, there was a lack of meaningful enquiry regarding the overdue payments, and no evidence of any exercise of independent judgement. There was also a failure by the directors in respect of the internal controls for the money lending business.

For further details, please refer to the [statement of disciplinary action](#).

2. Disciplinary Action Against Sun Cheong Creative Development Holdings Limited and Eight Former Directors (November 2023)

Key points: Directors must ensure that the company keeps proper books and records, and that the corporate governance is sufficiently robust to allow the business to continue following the departure of individual board members. Directors must ensure the provision of accurate and complete information in a timely manner to the investing public and the Stock Exchange. Partially true announcements may still be misleading by virtue of what they omit or downplay. Directors should not rely on others without exercising their own independent judgement.

The Stock Exchange censured Sun Cheong Creative Development Holdings Limited (Delisted) (Previous Stock Code: 1781) (the Company) and three other former executive directors of the Company, and imposed a director unsuitability statement against Mr Tong Ying Chiu, former Chairman and executive director (ED) of the Company (Founder); Ms Ng Siu Kuen Sylvia, former ED of the Company (Wife); Mr Tong Bak Nam Billy, former Chief Executive Officer and ED of the Company (Son); and Mr Un Ge Wei, former ED of the Company (Mr Un), and criticised a former independent non-executive director of the Company.

The Company grew from a family business that the Founder and his wife (the Founders) established. The Founders and their Son were all EDs of the Company at the time of listing. In late 2019, the Founders resigned from the board with immediate effect, followed by the resignation of the Founder and the Son from the board of a joint venture company without informing the board. No arrangements had been made to allow the continuation of the group's business, management, and operation after their departure.

In January 2020, a court sealed off the Company's PRC factories (Factory Seal-off) and the Company failed to publish its financial results for the year ended 31 December 2019 by the end of March 2020. The Company provided misleading information to the Stock Exchange in applying for the delay for publication on the ground that the delay was caused by the impact of COVID-19, and also made several announcements to that effect. The Company failed to disclose the material difficulties that it was facing to

control and operate the group following the departure of the Founders and the Son, or to obtain materials that the auditors required.

In approving these misleading communications, the relevant directors breached their duties.

For further details, please refer to the [statement of disciplinary action](#).

Disciplinary Actions by the Stock Exchange — Others

1. Disciplinary Action Against a Former Director of Brilliance China Automotive Holdings Limited (December 2023)

Key points: Failure to cooperate in the Exchange's investigation is a serious breach of the Listing Rules.

The Stock Exchange imposed a director unsuitability statement against Mr Qian Zuming (Mr Qian), former executive director (ED) of Brilliance China Automotive Holdings Limited (Stock Code: 1114) (the Company). Mr Qian failed to respond to the Division's investigation and reminder letters. Mr Qian breached his Declaration and Undertaking with regard to Directors (Undertaking) in the form set out in Appendix 5B to the Listing Rules by failing to cooperate with the Division in the investigation, which constituted a breach of the Listing Rules.

For further details, please refer to the [statement of disciplinary action](#).

2. Disciplinary Action Against a Former Director of Xinjiang La Chapelle Fashion Co., Ltd. (In Reorganisation) (December 2023)

Key points: A director's appropriation of company assets for their own benefit is a fundamental breach of the director's fiduciary duty and is amongst the most serious forms of director misconduct. Such misconduct gives rise to concerns over the individual's suitability as a director and will attract severe disciplinary sanctions.

The Stock Exchange imposed a director unsuitability statement against Mr Xing Jiaying (Mr Xing), former executive director and chairman of Xinjiang La Chapelle Fashion Co., Ltd. (In Reorganisation) (Stock Code: 6116) (Company). Mr Xing appropriated a total of CNY9.5 million of the Company's funds in 2019.

The other directors on the Board of the Company and its supervisors were not aware of and did not approve the indirect fund transfers to Shanghai Hexia. Mr Xing failed to respond to the Division's enquiries.

For further details, please refer to the [statement of disciplinary action](#).

Takeover Matters

1. Takeovers Bulletin (Issue No. 67) (December 2023)

The Securities and Futures Commission (SFC) published the [Takeovers Bulletin \(Issue No. 67\)](#) to remind market practitioners and issuers that The Codes on Takeovers and Mergers and Share Buy-backs (the Codes) now require parties to submit ruling applications and documents electronically to cfmailbox@sfc.hk. However, payment of fees due under the Codes can continue to be settled by cheques delivered to the Executive in addition to telegraphic transfers.

Companies Registry's Notices

1. Companies Registry — Submission of Prospectus Documents in Electronic Form for Registration (December 2023)

Further to the new [guidance letter on the electronic submission of prospectus and accompanying documents to the Exchange and the Companies Registry for authorisation and registration \(GL118-23\)](#), the Companies Registry has issued the [Companies Registry External Circular No. 7/2023](#) regarding submission of prospectus documents in electronic form for registration.

Prospectus Documents to be delivered in electronic form to the Registrar for registration should be sent by email to crprospectus@cr.gov.hk. Each email should not exceed the size limit of 25MB. Payment of the registration fee for the Prospectus Documents may be made through:

- online transfer to the Companies Registry's designated bank account as set out in Annex 2 (Designated Bank Account) by e-banking; or
- remittance to the Designated Bank Account by telegraphic or SWIFT transfer.

For further details, please refer to the [Companies Registry External Circular No. 7/2023](#).

2. Companies Registry — Commencement of Phase 3 of New Inspection Regime (December 2023)

Phase 3 of the New Inspection Regime (the NIR) of the Companies Register under the Companies Ordinance (Cap. 622) (CO) has commenced with effect from 27 December 2023.

A data subject may apply to the Registrar of Companies (the Registrar) to withhold from public inspection the usual residential address or the full identification number of the applicant (Withheld Information) in a document delivered to the Registrar for registration before, on or after the commencement date of Phase 3 of the NIR under the CO, the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), or the Companies Ordinance (Cap. 32) as in force from time to time before the commencement of the CO. An application to withhold the usual residential address from public inspection may be made by a director, reserve director, or company secretary, or a former director, reserve director, or company secretary of a company. An application to withhold the full identification number from public inspection may be made by the data subject. However, "specified persons" in Section 8 of the Companies (Residential Addresses and Identification Numbers) Regulation (Cap. 622N) may, for the purpose of performing their functions, apply to the Registrar to disclose the Withheld Information.

The Registrar has specified a new Form MPI "Application to Withhold Residential Address or Identification Number from Public Inspection" for use for the purpose of Section 49(1) of the CO with effect from 27 December 2023.

For further details, please refer to the [Companies Registry External Circular No. 8/2023](#).

3. Companies Registry — Requirements for Documents Delivered for Registration Under Various Ordinances (November 2023)

Upon the launch of the revamped Companies Registry Information System (Revamped ICRIS) from 27 December 2023, electronic submission services provided through e-filing under the Companies Registry's [new e-Services Portal](#) (the Portal) will replace the current electronic submission services provided under the e-Registry portal and GovtHK.

Specification of Requirements for Documents in Electronic Form

- Documents to be delivered for registration under the Companies Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (other than (i) the particulars of members / details of allottees in the form of CD-ROM or DVD-ROM as part of an Annual Return or a Return of Allotment in hard copy form, and (ii) a prospectus and its accompanying documents) shall comply with the requirements published in the Gazette (G.N. 6874) in Annex 1.
- Documents to be delivered for registration under Securities and Futures (Open-ended Fund Companies) Rules or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (insofar as an open-ended fund company is concerned) shall comply with the requirements published in the Gazette (G.N. 6930) in Annex 2.
- Documents to be delivered for registration under the Limited Partnership Fund Ordinance shall comply with the requirements published in the Gazette (G.N. 6928) in Annex 3.
- Documents to be delivered under Section 77 of the Trustee Ordinance, Sections 7 and 8 of the Limited Partnerships Ordinance, and Section 3 of the Registered Trustees Incorporation Ordinance will be accepted through the e-Services Portal as specified in the Gazette (G.N. 3076) in Annex 4.

Requirements for Documents in Other Forms

- The particulars of members/details of allottees to be delivered in the form of CD-ROM or DVD-ROM to the Registrar for registration under the Companies Ordinance as part of an Annual Return or a Return of Allotment in hard copy form shall comply with requirements published in the Gazette (G.N. 6875) in Annex 5.
 - CD-ROM or DVD-ROM must be properly labelled, showing the company name, the business registration number, the name of document to which it relates, and the date to which the document is made up.
 - A director or the company secretary must certify the records by signing on the label of the CD-ROM or DVD-ROM.
 - The information must be in excel format.
- Any documents to be delivered in hard copy for registration under the Companies Ordinance or the Companies (Winding Up and Miscellaneous Provisions) Ordinance shall comply with the requirements published in the Gazette (G.N. 6876) in Annex 6.
 - Text must be printed on paper in portrait format and font must be of at least size 10.
 - There must be a blank margin of at least 5mm on all sides of each page (except the top and bottom portions of the first page).
 - Duplex printing is acceptable.

For further details, please refer to the [Companies Registry External Circular No. 5/2023](#).

Other Legislative Changes/Public Consultation

1. Financial Services and Treasury Bureau Published Public Consultation on Promoting Paperless Corporate Communication for Hong Kong Companies (November 2023)

The Financial Services and the Treasury Bureau (FSTB) published a [public consultation paper on promoting paperless corporate communication for Hong Kong Companies](#) (the Consultation Paper). One of the Stock Exchange's initiatives in the [Consultation Conclusions on Proposals to Expand the Paperless Listing Regime and Other Rule Amendments](#) is to mandate listed companies to disseminate corporate communications to shareholders electronically to the extent permitted under their applicable laws and regulations.

To promote paperless corporate communication, mandatory requirements for listed companies to use the existing consent mechanism (i.e., express or deemed consent) for disseminating corporate communications electronically will be removed from the Listing Rules. Hence, listed companies can rely on *implied consent* to disseminate corporate communications through their websites without seeking consent from each shareholder individually and sending separate notifications to shareholders each time when new corporate communication is published on the websites, subject to the applicable laws and regulations as well as the articles of associations of the companies concerned.

To further promote paperless corporate communications for both listed and non-listed companies incorporated in Hong Kong, FSTB recommends amending the Companies Ordinance (Cap. 622) by introducing an implied consent mechanism and streamlining the notification requirement with the following proposals:

- Allow both listed and non-listed companies incorporated in Hong Kong to choose to rely on implied consent (i.e., no need to seek consent from shareholders individually if the articles of the association state so) to disseminate corporate communications through their websites, having regard to their specific needs and circumstances
- Eliminate the need for listed companies to send separate notifications to shareholders when new corporate communication is uploaded to the website if the companies concerned choose to adopt the implied consent mechanism
- If the non-listed companies choose to adopt the implied consent mechanism, require the companies concerned to obtain a one-off prior express consent from shareholders to eliminate the need to send separate notifications to shareholders when new corporate communication is uploaded to the website
- Require both listed and non-listed HK incorporated companies to issue a first-time notification to each shareholder individually in hard copy or electronically to inform them of the new arrangements regarding electronic dissemination before implementation and to solicit their email addresses (if applicable)
- Provide the shareholders with the opportunity to request a hard copy of corporate communications anytime

Please submit responses to the consultation by 26 January 2024 to FSTB. FSTB will review the comments before introducing an amendment bill to the Legislative Council in the second half of 2024. For further details, please refer to the [Consultation Paper](#).

Conclusion

Issuers and listing applicants should monitor the changes that have been made to the Listing Rules and the relevant guidance materials and ensure that they are in compliance with them, by taking actions such as providing training to directors, senior management and relevant staff to ensure that they are aware of the changes to the relevant Listing Rules and guidance materials. They should also ensure the revised forms and checklists are being used when they are submitting the relevant forms to the Stock Exchange.

If you have questions about this Client Alert, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

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