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Key Regulatory Updates for Hong Kong Listed Companies — March/April 2024

The updates include two consultation conclusions from the Stock Exchange of Hong Kong Limited and notice from the Companies Registry.

The key updates in March and April 2024 include the publication of the consultation conclusions on enhancement of climate-related disclosures and also the consultation conclusions on treasury shares, which resulted in amendment to the Listing Rules and publication of other guidance materials such as new FAQs and implementation guidance. Issuers are advised to familiarise themselves with the updated Listing Rules and relevant guidance materials.

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Consultation Conclusions by the Stock Exchange and Amendments to the Listing Rules

Stock Exchange's Consultation Conclusions on Enhancement of Climate-related Disclosures under the Environmental, Social and Governance Framework (April 2024)

The Stock Exchange of Hong Kong Limited (the Stock Exchange) published [consultation conclusions on enhancement of climate-related disclosures under the Environmental, Social and Governance Framework](#) (the Consultation Conclusions). Additionally, the Stock Exchange adopted its consultation proposals with modification to reflect IFRS S2 climate-related disclosures (IFRS S2) more closely and to incorporate and encourage compliance with relevant reporting principles under the ISSB General Standard and further elaborate on the requirements of the ISSB Climate Standard in the implementation guidance.

The amended Listing Rules will come into effect on 1 January 2025 with a phased approach for the implementation of the new climate-related disclosure requirements, as set out in Part D of Appendix C2 (the New Climate Requirements):

- All listed issuers (i.e., Main Board listed issuers and GEM listed issuers) will be required to disclose **scope 1 and scope 2 GHG emissions** on a mandatory basis for financial years commencing on or after **1 January 2025**;
- All Main Board listed issuers will be required to report on the New Climate Requirements (other than scope 1 and scope 2 GHG emissions, which all issuers are required to disclose) on a “comply or explain” basis for financial years commencing on or after 1 January 2025;
- **LargeCap Issuers** (i.e., Hang Seng Composite LargeCap Index constituents) will be required to report on the New Climate Requirements on a mandatory basis for financial years commencing on or after **1 January 2026**; and
- **GEM listed issuers** are encouraged to report on the New Climate Requirements (in addition to scope 1 and scope 2 GHG emissions, which all issuers are required to disclose) for financial years commencing on or after 1 January 2025, on a **voluntary basis**.

The Stock Exchange also published an [Implementation Guidance for Climate Disclosures under HKES ESG Reporting Framework](#) (the Implementation Guidance) to assist issuers' compliance with the New Climate Requirements. The Implementation Guidance: (a) sets out principles, guidance, and illustrative examples for the implementation of the new Rules; and (b) refers issuers to step-by-step workflows, external frameworks, and tools to help the preparation of disclosures. The Implementation Guidance also references the ISSB Standards (for example the relevant reporting principles under the ISSB General Standard and the ISSB Climate Standard application guidance) insofar as they are relevant or applicable. Going forward, the Stock Exchange will provide further guidance and training as appropriate.

IPO applicants should also be mindful of the New Climate Requirements and commence necessary preparatory work to ensure that they have the relevant systems, policies, and processes in place to achieve compliance after listing once the new Listing Rules take effect.

For further details, please see [Client Alert on Listing Rules Amendments to Enhance Climate-related Disclosures for HK Listed Companies](#).

Stock Exchange's Consultation Conclusions on the Proposed Amendments to Listing Rules Relating to Treasury Shares (April 2024)

The Stock Exchange published [consultation conclusions on the proposed amendments to Listing Rules relating to Treasury Shares](#) (the Consultation Conclusions) in April 2024. The Listing Rule amendments came into effect on 11 June 2024. For overseas issuers that were granted waivers from the Listing Rule requirement to cancel repurchased shares, transitional arrangements will be provided to aid compliance with the amended Listing Rules by their second annual general meeting after the effective date.

Furthermore, the Stock Exchange issued a new [guidance letter on arrangements for listed issuers to hold or deposit treasury shares in Central Clearing and Settlement System \(CCASS\) \(HKEX-GL119-24\)](#) (GL119-24) that provides details on the procedures for issuers to hold or deposit treasury shares in CCASS. Moreover, it provides guidance to assist listed issuers in meeting their obligations to appropriately identify and segregate their treasury shares in CCASS. The Stock Exchange also published a series of [frequently asked questions \(FAQs 156-2024 to 164-2024\)](#) to address common queries regarding treasury shares.

For further details, see [Client Alert on treasury shares \(in Chinese\)](#).

Other Reports/Newsletters by the Stock Exchange

Enforcement Bulletin (April 2024)

The Stock Exchange published its latest edition [enforcement bulletin](#), discussing cases involving listed issuers granting loans, advances, or similar arrangements without proper due consideration and risk assessment, without subsequent monitoring and, in some cases, without clear commercial rationale. The bulletin examines issues relating to ill-considered loans, advances, and similar arrangements made by listed issuers, and provides practical tips to help directors and issuers better understand what is expected of them and how they can fulfil their duties.

Rising misconduct related to loans and lending activity

Lending arrangements often contain one or more of the following red flags at different stages of the loan arrangement:

- Pre-loan stage
 - Questionable commercial merits of loan terms
 - Unreasonably large lending granted to individuals or borrowers that are connected to the issuer
 - Lending to parties connected to directors/senior management
 - Lack of evidence of considered business and risk management plan
 - Lack of measures to safeguard assets e.g., insufficient security/collateral
 - Lack of records of due diligence and credit assessments by management
- Post-loan stage
 - Repeated renewal despite minimal or no repayment
 - Unauthorised loans, advances, or prepayments or of which the board was not aware
 - Lack of evidence of the loan portfolio being monitored
- Recovery stage
 - Minimal efforts to recover overdue payments
 - Impairment of all or most of the loans, sometimes shortly after granting

The Stock Exchange will take enforcement action and impose sanctions on responsible parties in appropriate cases, even when there is no breach of the disclosure or shareholders' approval requirements in Ch. 13 or 14 of the Listing Rules.

Loan investigations focus

The Stock Exchange focuses on three key areas in its investigation of loans, advances, or similar arrangements: directors' duties, internal controls, and disclosure obligations.

Directors' Duties

Directors are expected to critically assess the commercial rationale for entering into money lending and take proper steps to assess and manage exposure of the issuer, including:

- Conducting proper due diligence, background checks, and credit assessment on borrower and any assets purportedly owned by the borrower that are used as security for the loan

- Assessing enforceability of pledges offered by borrowers
- Regularly reviewing and monitoring the loan portfolio after loans are granted, including status of repayment
- Implementing a procedure for escalation should any issues arise (including further consideration and management)
- Considering proactive and appropriate measures in the event of default to minimise risks (e.g., sending demand letters, requesting additional security, having recourse to guarantors)
- Renewing risk assessment against an individual borrower and the company's overall exposure before granting renewal or extension
- Developing appropriate and supporting estimates to assess the recoverability of loans

Effective lending-related internal controls

- Adequate checks and balances, such as an approval system for payments made by the company
- Segregation of duties and a monitoring system, so that no one individual has unfettered decision-making power over the grant of loans
- Sufficient reporting to the board if lending business is operated by a subsidiary
- Issuers are expected to keep records of commercial assessment and approval process
- The Hong Kong Companies Registry has published in June 2023 [a guideline for licensed money lenders on compliance of anti-money laundering and counterterrorist financing requirements](#). The guideline notes that money lenders should keep the original and a copy of the documents, a record of the data and information obtained in the course of identifying and verifying the customers' identities — including information obtained for the purposes of enhanced due diligence or ongoing monitoring — for at least five years after the end of the licensed money lenders' business relationship with the borrowers/after the completion date of the relevant transactions.

Disclosure obligations

- Care must be taken to ensure compliance with Listing Rule obligations when renewing or extending loans.
- Each renewal/extension is regarded as a new transaction and must comply with all applicable requirements, such as performing fresh size test.
- Care must be taken when assessing recoverability and impairment of loan receivables to ensure that any disclosures in financial statements and corporate announcements are accurate and complete in all material respects and are not misleading or deceptive.

For further details, please refer to the [enforcement bulletin](#).

Disciplinary Actions by the Stock Exchange

1. Stock Exchange's Disciplinary Action Against China Ecotourism Group Limited and Its Directors (April 2024)

The Stock Exchange and the Securities and Futures Commission (the SFC) have joined hands in an enforcement action to secure a disciplinary outcome by the Stock Exchange against China Ecotourism Group Limited (stock code: 1371) (the Company) and its seven current and former directors. The Stock Exchange:

- criticised the Company;
- imposed a prejudice to investors' interests statement against Mr Wu Jing Wei, Executive Director (ED) of the Company (Mr Wu); Ms Chan Tan Na Donna, former ED, Chairman and CEO of the Company (Ms Chan) and Ms Lau Ting, former ED of the Company (Ms Lau); and
- censured four other former and current directors of the Company.

The Company was further directed to conduct an independent review of the Company's internal controls for procuring compliance with Chapters 14 and 14A of the Listing Rules, and three of the censured directors were required to attend training.

Facts

- Between 2014 and 2018, the Company's group granted 13 loans purportedly to develop its lottery business in China and in the Philippines (the Loans).
- All borrowers defaulted on the repayments and the Company lost contact with the borrowers.
- The Loans were entered into without sufficient due diligence, risk analysis, or credit assessment.
- The Company provided no evidence to show that the Loan proceeds were used for the purported business development.
- The Company found out in 2022 that two of the Loans, through loan extensions, had become connected transactions of the Company as Ms Chan's husband became the ultimate beneficial owner of both of the Loans. The Company admitted its failure to comply with the procedural requirements under Chapters 14 and 14A of the Listing Rules.
- Notwithstanding the borrowers' default on the Loan repayments, for each of the financial years between 2014 and 2017, the board represented to its auditors via management representation letters that the Loan receivables were fully recoverable and no impairment provision was required.
- With the assistance of SFC, evidence was obtained showing that part of the proceeds of the Loans were transferred to individuals and/or entities related to Ms Chan and Ms Lau.
- In 2018, Sinmax Limited, a wholly-owned subsidiary of the Company, entered into a subscription agreement for shares in Pan Asia Blockchain Lottery Limited (PABL) to facilitate the Company's plan to adopt blockchain technology in its lottery business which was owned by a Ms Kang.

- The subscription monies were not paid to the vendor, but to a third party at Ms Kang's instruction. No shares were delivered, and Ms Kang then became uncontactable.
- Evidence shows that part of the subscription money was transferred to a personal account of Ms Chan's husband.
- For the financial years ended 2018 and 2019, the Company respectively recognised HK\$66.1 million and HK\$407 million impairment loss on the loan receivables, and fully impaired the HK\$35 million investment.
- In the Company's financial statements for 2019, the Company made a full impairment provision in respect of its investment in PABL. The Company did not announce details about its investment in PABL until 31 August 2020.

Findings of Breach

- The Company breached the procedural requirements under Rules 14.34, 14A.35, 14A.36, 14A.46, and 14A.49 in respect of the Loans, which constituted notifiable and connected transactions.
- The relevant directors breached their directors' duties under Rule 3.08 and their Directors' Undertakings by failing to comply to the best of their abilities with the Listing Rules and/or use their best endeavours to procure the Company to comply with the Listing Rules:
 - Ms Lau, Mr Wu, and/or Ms Chan were involved in the approval of all the Loans.
 - The loans and the investment in PABL were prejudicial to the Company's interest and they put the Company's assets into jeopardy.
 - Ms Lau, Mr Wu, and/or Ms Chan failed to take adequate steps to monitor the repayment of the Loans and Ms Chan failed to protect the Company's interest in the investment in PABL.
 - Their conduct demonstrated a willful or persistent failure to discharge their responsibilities under the Listing Rules and was prejudicial to the interests of investors.
 - Despite knowledge of outstanding loan repayment and loss of contact with borrowers, Ms Lau, Mr Wu, and Ms Chan proceeded to represent to the Company's auditors in management representation letters that the relevant Loan receivables were fully recoverable and no provision for impairment was required.
 - The fund flows from the proceeds of some of the Loans raised concerns as to whether there were some other arrangements involving Ms Lau and Ms Chan.
 - These fund flows also raised serious concerns as to the discharge of fiduciary duties by Ms Lau and Ms Chan as directors of the Company.
 - Members of the Company's audit committee failed to question the board's representation in the management representation letters despite the length of time the relevant Loans had remained outstanding.

- All relevant directors were individually and collectively responsible to ensure that the Company established and maintained an adequate and effective internal controls and risk management system, and they failed to discharge their duties in this regard.

Conclusion

- The Listing Committee decided to impose the sanctions and directions as set out in the above.

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

2. Stock Exchange's Disciplinary Action Against Former Directors of Global Uin Intelligence Holdings Limited (March 2024)

The Stock Exchange imposed a director unsuitability statement against Mr Goh Leong Heng Aris (Mr Goh), former executive director and Chairman of Global Uin Intelligence Holdings Limited (formerly known as Global Dining Holdings Limited and Singapore Food Holdings Limited) (the Company) and Ms Anita Chia Hee Mei (Ms Chia), former executive director and CEO of the Company.

Notably, this was a joint action by the Stock Exchange and the SFC that led to a disciplinary action by the Stock Exchange.

Facts

- Mr Goh and Ms Chia created and used a sham arrangement, involving an undisclosed payment by the Company, to misappropriate part of the Company's listing proceeds for their own use.
- When the payment was discovered and queried, they repeatedly provided false and misleading information.
- Shortly after the Company's listing in May 2020 on GEM, the Company's listing expenses were discovered to be materially higher than those which had been expected and disclosed in the Company's listing documents.
- It emerged that the increase in listing expenses was largely attributable to the payment of a SGD 1 million fee and discretionary bonus to an IPO consultant in Singapore, Veritas Venture Partners Pte Ltd (Veritas), purportedly for IPO consultancy services provided under a service agreement.
- They had not informed either the Company's professional advisors or the rest of the Board about the payment.
- The service agreement and the payment had not been disclosed in the Company's listing document.
- The Company's sponsor (Anglo Chinese), the Company's independent adviser (Lego), the independent non-executive directors (INEDs), the Stock Exchange, and the SFC then made enquiries about the payment and the consultancy arrangement.
- A party related to Veritas informed Anglo Chinese that the SGD 1 million funds had been: (a) rerouted from Veritas to Mr Goh and Ms Chia, and then (b) used by Mr Goh and Ms Chia to repay certain amounts they owed to the Company prior to listing.
- During the investigation, Mr Goh and Ms Chia omitted the bank account into which the misappropriated funds had been paid to.

- It was eventually discovered with the assistance of the SFC that the SGD1 million had been transferred to a previously undisclosed joint account of Mr Goh and Ms Chia. They then used SGD 807,115 of that money to repay debts that they owed to the Company.

Findings of Breach

The GEM Listing Committee found that Mr Goh and Ms Chai committed serious breaches of their fiduciary duties to the Company, GEM Listing Rules 5.01 and 17.55B, and their director's undertakings:

- They misappropriated the Company's assets and acted dishonestly against the interests of the Company.
- The misappropriation of corporate assets by directors is a flagrant breach of their fiduciary duties. They were in a position of conflict and abused their position as directors.
- They failed to co-operate with the enquiries made and refused to provide evidence such as details of bank accounts and bank statements.

Conclusion

- The GEM Listing Committee decided to impose the sanctions set out in the above.

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

Takeover Matters

The SFC published the latest edition of the [Takeovers Bulletin \(Issue No. 68\)](#). Below are the points raised regarding availability of financial resources until the completion of an offer as a reminder of established practice that should be followed:

- The financial adviser must submit a signed financial resources confirmation to the Executive before the Rule 3.5 announcement is made as explained in Practice Note 15.
- The submission should set out the bases for the financial adviser's confirmation and the due diligence steps it has taken in satisfying that sufficient financial resources are and will be available to satisfy full acceptance of the offer.
- An updated confirmation must also be submitted before the Executive can clear the offer document for the offer to open for acceptance.
- If there are any changes in circumstances that might affect the financial adviser's bases for its confirmation, the offeror and its financial adviser should work together to ensure that the offeror continues to have sufficient financial resources to satisfy full acceptance of the offer.

For further details, please refer to the [Takeovers Bulletin \(Issue No. 68\)](#).

Companies Registry's Notices

After the introduction of the revised forms (effective from 27 December 2023) for three months, the Companies Registry completed a review of the revised specified forms received during the period. It issued an [External Circular](#) to set out the common reasons for the Companies Registry to return the latest version of Form NAR1 to presentors for correction before registration. The circular also provides a

general guide on how presentors can avoid common errors found in specified forms delivered to the Companies Registry for registration. Please see below the key highlights of the common errors:

- Incorrect business registration number
 - The business registration number is the first eight digits of the Business Registration Certificate Number issued by the Business Registration Office of the Inland Revenue Department.
 - The [-] and the numbers that follow are not required.
- Layout and format
 - Please do not alter the layout of the form and do not merge the address boxes into one large box (see example on page 2 of the External Circular).
- QR Code affixed on the form
 - Please do not remove or alter the QR code on any page of the form as the QR code affixed on each page of the form is unique to that particular page.
 - QR code should be printed legibly and clearly in black ink.
- Form containing pages of mixed version
 - Please do not mix different versions of pages in one form (see example on page 4 of the External Circular).
- Information on share capital and shareholder
 - Please only state the total number, total amount, and total amount paid up or regarded as paid up of issued shares in **numeric figures**.
 - Do not add any symbols to the figures. (e.g., -100- / \$100)
- Missing number of shares held by a shareholder
- Inconsistency between the total number of issued shares in a class and the sum of the number of shares held by all shareholders in that class
- Inconsistency in the total number of shares reported in different sections and schedules
- Name in English of natural person shareholder is incorrectly stated in the box for name in English of non-natural person shareholder
- Inconsistency in Business Nature reported
 - Please provide the code and the description of the business nature which is available on the Companies Registry's website.

For further details, please refer to the [Companies Registry External Circular No. 1 / 2024](#).

Conclusion

Issuers and listing applicants should monitor the changes to the Listing Rules and the relevant guidance materials and ensure compliance. They should consider taking actions such as consulting with local counsel about the legal requirements on treasury shares under the law of the listed issuer's place of incorporation and its constitutional documents, in order to ensure that it can take advantage of holding treasury shares to increase liquidity.

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