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Key Regulatory Updates for Hong Kong Listed Companies — May/June 2024

The updates in May and June include a consultation conclusion and a consultation paper from the Stock Exchange.

The key updates in May and June 2024 include the publication of the consultation conclusions on the [Severe Weather Trading of Hong Kong Securities and Derivatives Markets](#) and also a consultation paper on the [Review of Corporate Governance Code and Related Listing Rules](#). The proposals as set forth in the consultation paper, if adopted, will affect the corporate governance structure of listed issuers. IPO applicants should be mindful of the considerations and potential impact, and implement appropriate mechanism and measures at an early stage to prepare for post-listing compliance with the proposed amendment to the Listing Rules and the CG Code.

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Consultation Conclusions and Consultation Papers by the Stock Exchange

1. Consultation Conclusions on Severe Weather Trading of Hong Kong Securities and Derivatives Markets

Hong Kong Exchanges and Clearing Limited (HKEX) published its [Consultation Conclusions](#) on Severe Weather Trading of Hong Kong Securities and Derivatives Markets (Consultation Conclusions). Taking into account relevant considerations and market feedback, HKEX will enable its trading and clearing services (i.e., SWT) for the Hong Kong securities and derivatives markets during severe weather conditions. The SWT arrangements would be applicable to Typhoon Signal No. 8 or above, a Black Rainstorm Warning signal, and “Extreme Conditions” issued by the government. A summary of the SWT operational arrangements is set out in Appendix II to the Consultation Conclusions.

In view of market feedback on personnel safety and other operational difficulties, HKEX, in consultation with the government and relevant parties, has recommended:

- Adopting fully remote digital operations during SWT Days to the furthest extent possible
- Suggesting participants and relevant parties contemplate and adopt alternative approaches in accordance with the “Code of Practice in Times of Adverse Weather and Extreme Conditions” promulgated by the government if there is still a need to require personnel to report duty to their workplaces during SWT
- Providing assistance to qualified participants for around three months after implementation (until **31 December 2024**)
 - Participants who require assistance shall apply and be approved by HKEX in order to become “Qualified Participants”. Such participants shall not be a General Clearing Participant and the size of business shall not exceed a specified scale. More details will be provided in due course
 - During the period, Qualified Participants who fail to fulfil the delivery obligations on a SWT Day will not be subject to additional financial cost or disciplinary action, provided that the participants will have settled the delivery/payment obligations after the SWT Day
 - However, trading restrictions will be imposed on the Qualified Participants (e.g., trading will be restricted to risk-reducing trades only) on each SWT Day
 - After **31 December 2024**, trading and clearing operations on a SWT Day should proceed business-as-usual and all participants are expected to be operationally ready for, among others, fulfilling the payment and/or delivery obligations

HKEX will launch SWT on **23 September 2024**. HKEX will arrange testing sessions before the launch of SWT to ensure readiness of market participants and other relevant industry stakeholders.

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

2. Stock Exchange's Consultation Paper on Review of Corporate Governance Code and Related Listing Rules (June 2024)

The Stock Exchange of Hong Kong Limited (the Stock Exchange) published a [consultation paper](#) on corporate governance code enhancements (the Consultation Paper) outlining proposed enhancements to the Corporate Governance Code and related Listing Rules.

For further details, please refer to our [Client Alert](#) on the Consultation Paper (in Chinese).

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

1. Stock Exchange updated guidance materials and forms to reflect amendment to the Listing Rules relating to treasury shares (June 2024)

In view of the Listing Rules amendment that came into effect on 11 June 2024 relating to treasury shares, the Stock Exchange has updated a number of guidance materials and forms to reflect the framework that governs treasury shares. Please refer to [website of the Stock Exchange](#) for the list of updated guidance letters, listing decisions, FAQs, guides, checklists, and forms.

2. Stock Exchange streamlined and updated various guidance materials (May 2024)

The Stock Exchange has streamlined and updated various guidance materials. Please see below a summary of the key updates.

Consolidated version of Guidance Materials for Listed Issuers

The Stock Exchange has published a [consolidated version](#) of guidance materials for listed issuers that are categorised as follows (with the relevant guidance letters, FAQs, and listing decisions):

- Directors and senior management
- Compliance advisers and other professional advisers
- Accounting and auditing matters
- Trading halt, suspension, cancellation, and withdrawal of listing
- Continuing listing criteria
- Issue of securities and related matters
- Public float
- Transfer of listing from GEM to Main Board
- Repurchase of securities and treasury shares
- Continuing obligations
- Notifiable transactions
- Connected transactions
- Share schemes
- Issuers listed under special listing regimes or other listing structures
- Spinoffs
- Core shareholder protection standards
- Corporate governance/ESG/securities transactions by directors
- Other topics

Please note that the Stock Exchange revamped the frequently asked questions relating to listed issuers by streamlining, regrouping, and withdrawing outdated questions. For details, please refer to the [mapping schedule](#).

Updated Guidance Letters

The following guidance letters have been updated:

- [Guidance on Trading Halts \(GL83-15\)](#): updated to provide that when trading halt/suspension is required in one market for the A+H share issuer, and not the other, under the respective home market rules, the A and H share issuer should announce the reason for the trading halt or suspension as soon as practicable to ensure that shares in the other market can continue to trade in an orderly manner.
- [Guidance for Overseas Issuer \(GL111-22\)](#): updated to include a section on recognition of overseas audit firms under AFRCO.
- [Change of Listing Status from Secondary Listing to Dual-Primary or Primary Listing on the Main Board \(GL112-22\)](#): added a new appendix II on the flowchart of change of listing status from secondary listing to primary listing.
- [Guidance on Special Purpose Acquisition Companies \(GL113-22\)](#): added a new footnote to provide that the trustee/custodian is expected to inform the Stock Exchange promptly of any material breach of the Listing Rules and GL113-22 in relation to the operation of the escrow account that has come to its knowledge.

New FAQs

The Stock Exchange has published the following new FAQs:

- [FAQ4.1 – No. 2](#): Regarding trading halt, suspension, and resumption: An issuer dually listed on the Stock Exchange and an overseas stock exchange has announced the launch of an offering of securities before the market opens in Hong Kong. In that case, the listed issuer cannot apply for a trading halt on the Stock Exchange to facilitate the bookbuilding and finalise the pricing and allocation of the securities, as a trading halt is not justified where inside information (such as an agreement on pricing after the bookbuilding) has not yet crystallised.
- [FAQ6.1 – No. 4](#): Clarifies that an extension of long stop date of the original agreement for placing of new shares would constitute a material change to the original agreement and the listed issuer must ensure that the placing price could meet the pricing requirement under LR13.36(5).
- [FAQ11.2 – No. 6](#): Clarifies that subscriptions of wealth management products classified as financial assets on the listed issuer's financial statements constitute acquisitions of assets under LR 14.04(1)(a). For the avoidance of doubt, a transaction under Chapter 14 normally does not include acquisition of investments classified as cash equivalents on the listed issuer's financial statements or placement of time deposits with a bank regardless of how it is accounted for.
- [FAQ17.3 – No. 11](#): If a director of a listed issuer has pledged part of their shares in the issuer for a margin loan, and if the director tops up the number of shares pledged to meet the margin requirement during the blackout period, the dealing restriction will apply unless the director can demonstrate that the circumstances are exceptional and the proposed top-up of share pledge is the only reasonable course of action available to the director to avoid forced sale of the pledged shares, and that it will be conducted in accordance with Rule C.14 of the Model Code. If the director repays the loan which will result in a release of the share pledge, it will not constitute a dealing in the listed issuer's shares by the director under the Model Code.

Updated Guide for New Listing Applicants

The [Guide for New Listing Applicants](#) has been updated to include (1) an annex of FAQs relating to new listing; (2) further guidance on placing related matters; and (3) a new listing decision with regards to change of company's name. In that listing decision, Company A's Chinese and English names in the application proof contained a term (the Term) unrelated to its business. Company A included a statement on the "important page" of the application proof specifying that it was not engaged in the business related to the Term. The Stock Exchange decided that Company A should change both its Chinese and English names to exclude the Term and to ensure that Company A's name accurately described its business.

For further details, please refer to the amendments made to the [Guide](#) for New Listing Applicants.

Other Updated Guidance Materials

- [Guide on Post-vetting Announcements of Listed Issuers](#)
- [Guide on Selection of Headline and Title of Documents under Electronic Disclosure](#)
- [Guide on Trading Arrangements for Selected Types of Corporate Actions](#)
- [Guide on Distribution of Dividends and Other Entitlements](#)
- [Guide on General Meetings](#)

FAQs for Debt Securities Issuers

The Stock Exchange has regrouped the FAQs for debt securities issuers into two sets:

- [For debt issues to professional investors only](#): They are grouped by topics as follows:
 - Listing procedures and documents
 - Online publication, display, and submission of documents
 - Continuing obligations
- [For debt securities offered to public investors](#): They are grouped by topics as follows:
 - Listing procedures and documents
 - Online publication, display, and submission of documents
 - Continuing obligations

For further details, please refer to the [mapping schedule](#) which sets out the corresponding Listing Rules-related frequently asked questions applicable to debt securities issuers.

FAQs for Structured Products Issuers

The Stock Exchange has published new FAQs and also regrouped the FAQs for structured products issuers. They are grouped by topics as follows:

- Issuer eligibility
- Disclosure obligations
- Products
- Liquidity provision
- Pricing
- Trading arrangements

For further details, please refer to the [mapping schedule](#), which sets out the corresponding frequently asked questions applicable to structured products issuers.

E-Learning

1. Stock Exchange's ESG Academy on New Climate Requirements (June 2024)

The Stock Exchange has launched a new [e-learning module on Exchange's New Climate Requirements](#) (around 30 minutes), covering the following key topics:

- Implementation reliefs
- Four core pillars of the new climate requirements: governance, strategy, risk management, metrics, and targets
- Addressing frequently asked questions, e.g., HKEX's approach towards adoption of IFRS S1; definition of "materiality"

2. Stock Exchange Published e-Learning Course on Share Repurchase and Treasury Shares (May 2024)

The Stock Exchange has published a new module of [e-learning course on share repurchase and treasury shares](#). The e-learning course covers the following topics:

- On-market share repurchase and treasury shares
 - On-market share repurchase
 - Approval requirements
 - Restrictions
 - Handlings of repurchased shares
 - Resale of treasury shares on the Stock Exchange
- Moratorium period with illustrative example
- Reporting requirements
 - Next-day disclosure return
 - Announcement
 - Monthly return
 - Annual report

Other Stock Exchange Reports/Newsletters

1. Listed Issuer Regulation Newsletter (Issue 10) (May 2024)

The Stock Exchange published the [listed issuer regulation newsletter \(issue 10\)](#). Please see below the key highlights of the newsletter.

Further guidance on preparing spinoff proposals

- Issuers preparing spinoff proposals to expediate the process should focus on the following:
 - Preparation of pro forma financial information of the remaining group

- Provide a line-by-line reconciliation showing its own financial information under a similar presentation to its published financial statements, together with figures of the spinoff entity (spinco); adjustments (with explanations) for an intra-group transactions and costs allocation; and the remaining group
- Adequately describe and explain the nature of major financial statement line items in the pro forma financial statements to demonstrate that they are generated by activities within the ordinary and usual course of business of the remaining group and thus eligible for inclusion in their financial track record for Rule 8.05 compliance purposes
- Issuers who have identified items that are material and potentially contentious as to whether they meet the test are advised to highlight the items in the spinoff proposals together with analysis to make their cases
- Estimation of market capitalisation of the remaining group
 - Issuers with market capitalisation only marginally above the minimum requirement and/or spinning off a substantial part of its business must provide more robust analysis
 - For marginal cases, issuers should anticipate a heightened regulatory scrutiny on the appropriateness of the methodologies and inputs and must incorporate all necessary supporting information in the first draft of proposals
- Business description: The proposal should present sufficient and well-organised information on the businesses of the relevant entities and relationships among them
 - Business delineation: If the two businesses have a high degree of resemblance in terms of products, technologies, brands, customers, and suppliers, issuers should provide sufficient details supported by appropriate industry-specific parameters or metrics, such as the applications of the products, market segments, and geographical locations
 - Spinco group's independence: Highlight any dealings between remaining group and spinco group historically and going forward and should also explain the nature of such transactions and analyse whether and how they would affect the spinco group's independence

Reminder on the paperless listing regime

- Reminder that the transitional period for the electronic submission of prospectuses for authorisation and registration has ended **on 30 June 2024**
- Afterwards, all applications must be made electronically, and issuers are advised to familiarise themselves with the workflow and to prepare accordingly, including applying for digital signatures recognised under the Electronic Transactions Ordinance through the Hongkong Post Certification Authority or Digi-Sign Certification Services Limited

Board diversity

- Issuers are reminded to appoint at least one director of a different gender on the board **no later than 31 December 2024**

- If an issuer already has directors of both genders on board on or after 1 January 2022 but subsequently at any time has failed to meet the requirement (e.g., a particular director resigns), the issuer must publish an announcement containing the relevant details and reasons and appoint appropriate member(s) to the board to meet the requirement **within three months** after failing to meet such requirement

Timely financial reporting and reminder

- Some issuers provided very limited information in their announcement regarding reasons for delay in results publication
- Such disclosure often lacked details about the financial statement line items involved and their materiality, specific documents/information outstanding and/or areas in disagreement with the auditors, and the underlying reason
- Issuers are encouraged to enhance their disclosure, bearing in mind the principle that investors should be provided with sufficient information (to the extent available and practicable) to understand and evaluate the situation, and to make an informed trading decision

Handling of presentation materials for external meetings

- Issuers should carefully review the materials to be presented or distributed in the meetings to ensure these materials do not contain any inside information not being disclosed in regulatory documents posted on the HKEXnews website
- Issuers' officers should also be cautious in responding to questions raised during the meetings
- To minimise the risks of inadvertently divulging inside information in these meetings, issuers may consider publishing the presentation materials on the HKEXnews website in both Chinese and English along with the corresponding regulatory announcement before the meetings

For further details, please refer to the [Listed Issuer Regulation Newsletter \(Issue 10\)](#).

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

1. Stock Exchange's disciplinary action against Orient Victory Smart Urban Services Holding Limited (Stock Code: 265) and a current director (June 2024)

Key Points to Note: Directors of listed issuers should ensure the timely disclosure of relevant information to the investing public.

The Stock Exchange criticised Orient Victory Smart Urban Services Holding Limited (Stock Code: 265) (the Company) and Mr Shi Baodong, executive director, chairman, and chief executive officer of the Company (Mr Shi).

Facts

- The Company conducted two top-up placings in 2019.

- Prior to each placing, Mr Shi presented to selected participants in online meetings that the Company's controlling shareholder, OVRE, would give those participants one free additional share for every placing share they took up (the Offer).
- Information about the Offer was not disclosed in the placing announcements.
- Following the Stock Exchange's investigation into the matter, the Company published a supplemental announcement disclosing the Offer and admitting its breach of Rule 2.13(2) by failing to disclose the Offer in the placing announcements.

Findings of Breach

- The Company breached Rule 2.13(2) by failing to disclose the Offer in the placing announcements.
- Mr Shi breached his obligation now set out in Rule 3.09B by failing to procure the Company's compliance with Rule 2.13(2) despite his knowledge of and involvement in the Offer.

Conclusion

- The Listing Committee decided to impose the sanctions set out above.
- It was further directed that Mr Shi should attend 17 hours of training on regulatory and legal topics and Listing Rule compliance.

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

2. Stock Exchange's disciplinary action against four former directors of Enviro Energy International Holdings Ltd (June 2024)

Key Points to Note: Directors must be alert to situations involving conflicts of interest, including when the conflict applies to other members of the board. All directors should take active steps to manage conflict situations. Directors must keep the company informed of material information for the purpose of good corporate governance and to ensure that the issuer can make timely and accurate disclosures as required under the Listing Rules.

The Stock Exchange imposed a director unsuitability statement and censure against Mr Li Sen (Mr Li), former chairman and executive director (ED) of the Enviro Energy International Holdings Ltd (the Company); Mr Zhong Jin Hua, former ED of the Company (Mr Zhong JH); Mr Li Jin Yuan, former independent non-executive director of the Company (Mr Li JY), and a prejudice to investors' interests statement and censure against Mr Zhou Xue Sheng, former ED and chief executive officer of the Company (Mr Zhou).

Facts

- Mr Li and Mr. Zhou entered into a loan agreement and supplemental loan agreement that constituted major and/or connected transactions of the Company, without complying with the applicable Listing Rules requirements.
- In December 2018, two of the Company's subsidiaries entered into a guarantee, under which the subsidiaries guaranteed a debt originally provided by Mr Zhou to an entity owned by Mr Li. This arrangement gave a personal benefit to Mr Li and Mr Zhou and was not in any way in the Company's interest.

- Following a default, the guarantee resulted in arbitration against the subsidiaries and the freezing of the subsidiaries' bank accounts.
- The Company's internal control report in 2019 identified certain internal control deficiencies.
- In October 2019, Mr Li did not inform the Company that he had been prosecuted in the PRC for suspected misappropriation of public funds.
- In June 2020, Mr Li's shareholding in the Company was transferred to a creditor by way of enforcement of a share charge. The board convened to discuss whether this should be disclosed to the public. He had a clear conflict of interest on this matter, however, he did not abstain from voting and instead used his casting vote as chairman to resolve that the Company should not publish any announcement in order to prevent disclosure of the enforcement of the charge.
- On 24 June 2020 at around 4:30 p.m., the board resolved to suspend Mr Li's duties as a director of the company. On that same day at around 6:30-7 p.m., Mr. Li caused the Company to publish unauthorised and misleading announcements. The Company had to take immediate remedial action to correct the misinformation in the market, including applying for a trading halt.

Findings of Breach

Mr Li

- Mr Li breached his director's duties. He failed to avoid and/or manage conflicts of interest and exercise due skill, care, and diligence in relation to the matters of the guarantee and in the conduct of a meeting concerning the disclosure of the enforcement of the charge.
- Mr Li had a clear conflict of interest but he placed his own interest before that of the group, exposing the group to significant financial risk.
- Despite his conflict of interest in the disclosure of the enforcement of the charge, he did not abstain from voting.
- Mr Li failed to act for proper purpose and in the interests of the Company as a whole, and abused his power as a director to deliberately cause the Company to issue the unauthorised announcements.
- Mr Li failed to act for proper purpose as he did not notify the Company about his prosecution. Information about his prosecution was highly relevant to the interest of the public and investors in order to enable them to be properly and timely informed of material matters pertaining to the Company.

Mr Zhou

- Mr Zhou failed to avoid and/or manage conflicts of interest.
- Mr Zhou also failed to disclose fully and fairly his interests in the unauthorised transactions, and apply such degree of skill, care, and diligence as may reasonably be expected as a director. Therefore, he breached Rule 3.08.

Mr Zhong JH and Mr Li JY

- Mr Zhong JH and Mr Li JY were aware of Mr Li Sen's conflict of interest in relation to the enforcement of the share charge, but did nothing to manage the situation. Instead, they followed Mr Li Sen's lead to vote for non-disclosure of the matter.

Conclusion

- The Listing Committee decided to impose the above sanctions.

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

3. Stock Exchange's disciplinary action against China Haisheng Juice Holdings Co., Ltd. (delisted) and five directors (June 2024)

Key Points to Note: The requirements of the Listing Rules in relation to major transactions must be met: attributing non-compliance to the company's financial position is no excuse. Directors must ensure that listed issuers provide accurate and complete information in a timely manner. Material facts of an unfavourable nature, such as financial difficulty or an incident of Listing Rule non-compliance, must not be omitted.

The Stock Exchange censured China Haisheng Juice Holdings Co., Ltd. (Delisted, Previous Stock Code: 359) (the Company), Mr Gao Liang, executive director (ED) and Chairman of the Company (Mr Gao), Mr Wang Yasen, former ED of the Company (Mr Wang), Mr Qu Binglian, former ED of the Company (Mr Qu), Mr Zhao Boxiang, independent non-executive director (INED) of the Company (Mr Zhao), and Mr Liu Zhongli, INED of the Company (Mr Liu).

Summary of Facts

- On 13 October 2021, the Company published an announcement (the October Announcement) disclosing that its non-wholly owned subsidiary had entered into an agreement to dispose of its entire equity interest in a target company (Disposal), which constituted a major transaction that requires issuing a circular and holding an EGM to seek shareholders' approval.
- However, the Company went ahead with the Disposal without complying with the applicable Listing Rule requirements, which was completed on 20 October 2021 (one week after the October Announcement).
- On 3 November 2021, the Company made a further announcement regarding the steps to be taken to obtain the requisite shareholders' approval (the November Announcement). This announcement was misleading and did not tell investors that the disposal had already been completed.
- On 6 December 2021, the Company published a further announcement (the December Announcement) revealing that completion of the Disposal had already taken place on 20 October 2021 and acknowledging its breach of the Listing Rule requirements.
- The Company did not issue a circular or seek approval from shareholders at an EGM.
- The Company was delisted on 31 October 2023.

Findings of Breach

- The Company breached Rules 14.38A, 14.40, and 14.41 in relation to the Disposal as the Company did not comply with the requirements to issue a circular and obtain approval from its shareholders.
- The Company breached Rule 2.13(2) in relation to both the November and the December Announcements. The November and the December Announcements did not reflect the true position of the Company and gave investors a misleading picture of the Company's affairs and circumstances.
- The relevant directors breached their Director's Undertakings to use their best endeavours to procure the Company's compliance with the Listing Rules:
 - All of the relevant directors were involved in the Disposal, but failed to take action to ensure that the Company complied with the Chapter 14 requirements.
 - The relevant directors failed to use their best endeavours to ensure the accuracy and completeness of the information in the announcements.

Conclusions

- The Listing Committee decided to impose the above sanctions.
- It was further directed that Mr Gao, Mr Wang, Mr Qu, Mr Zhao, and Mr Liu should attend 20 hours of training as a pre-requisite of any future appointment as a director of any company listed or to be listed on the Stock Exchange.

4. Stock Exchange's disciplinary action against Link Holdings Limited and two former directors (May 2024)

Key Points to Note: Directors must ensure that appropriate disclosures are made so that investors have the information to which they are entitled. If funds are raised for a stated purpose, and circumstances change, then this should be properly considered by the board and investors informed of any proposed change in use. Directors must also take care in managing any conflicts of interests, particularly when company's funds are to be paid to a director personally, even if the director is entitled to the funds under a contract. At the very least, the other directors should be informed and involved in the process.

The Stock Exchange censured Link Holdings Limited (Stock Code: 8237) (the Company) and imposed a prejudice to investors' interests statement against Mr Ngan Iek, former Chairman and executive director (ED) of the Company (Mr Ngan) and Datuk Siew Pek Tho, former ED of the Company (Datuk Siew).

Facts

- In June 2020, the Company announced that it had raised funds of approximately HK\$25 million (Funds) by issuing a series of new convertible bonds (the New Bonds). This fundraising was stated to be for the purpose of repaying certain bonds (the Old Bonds), which were going to mature on 30 November 2020.
- However, most of the funds were instead used to repay a shareholder loan made by Mr Ngan to the Company group (the Group). As a result, the Company did not have sufficient funds to redeem the Olds Bonds on their maturity and the Company defaulted (the Default).
- Mr Ngan and Datuk Siew are brothers-in-law.

- The relevant directors kept both the repayments and the Default to themselves and did not inform the other directors about them, and did not procure the Company to announce them.
- The other directors became aware of the Default and the change in the use of the Funds about one to four days before the Company published the 2020 annual report.

Findings of Breach

The Company

- The Company breached GEM Listing Rule 17.21 as it failed to announce the Default by 1 December 2020.
- The Company further breached GEM Listing Rules 18.07 and 18.32(8)(c) as it failed to disclose the change in the use of the Funds in its 2020 annual report published on 31 March 2021.

Relevant Directors

- The relevant directors breached their duties under GEM Listing Rule 5.01 and the Undertakings, and their failure to discharge their responsibilities under the GEM Listing Rules was willful and/or persistent.
- Failure to avoid conflicts of interests
 - The relevant directors failed to declare to the board their interests in the shareholder loan repayments, and consequently there was a serious failure to avoid their conflict of interests.
 - Mr Ngan placed his personal interests before those of the Company and its shareholders.
 - The relevant directors should take steps to avoid or address their conflict.
- Failure to disclose information
 - By keeping all of these matters to themselves, the relevant directors breached their duties and caused the Company to breach the GEM Listing Rules.
 - There should have been disclosure about each of (1) the shareholder loan repayments, (2) the change in the use of the Funds, and (3) the Default. Each of these matters was connected in this case, but a separate disclosure obligation arose independently for each matter.
 - Datuk Siew also breached GEM Listing Rule 5.20 as the compliance officer of the Company.

Conclusion

- The GEM Listing Committee decided to impose the above sanction.
- It was further directed that the Company should conduct an independent internal control review.

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

Disciplinary Actions by the Stock Exchange — Others

1. Stock Exchange's disciplinary action against a former director of Suchuang Gas Corporation Limited (May 2024)

Key Points to Note: Directors should ensure that material transactions involving significant financial exposure and risk are brought to the attention of the board. Internal controls should not be bypassed or forgotten. Adhering to an effective internal control framework is an important step towards Listing Rule compliance.

The Stock Exchange censured Ms Zhu Ya Ying (Ms Zhu), former executive director (ED) of Suchuang Gas Corporation Limited (the Company, together with its subsidiaries, the Group).

Facts

- Ms Zhu caused a subsidiary of the Company to enter into a guarantee involving an exposure to the group of RMB137.5 million (the Guarantee), which was a disclosable transaction.
- However, she did not bring it to the attention of the Company's board of directors (the Board) and the Listing Rule requirement to announce the Guarantee was not complied with.
- The Company had in place internal controls under which all guarantees executed for the benefit of non-Group companies should have been approved by the directors of the relevant Group subsidiary.
- After the cessation of her directorship, Ms Zhu continued working as a consultant of the Company, and caused the Group to enter into a series of transactions between March 2020 and August 2021. Ms Zhu did not inform the board about these transactions, they were only discovered by the Company's auditors in September 2021.
- The late discovery of these transactions led to a substantial delay in the dispatch of the Company's 2021 interim report, as the report had to be revised to reflect the financial impact of the transactions.

Findings of Breach

- Ms Zhu failed to exercise reasonable skill, care, and diligence in respect of the Guarantee, and therefore breached Rule 3.08 and her obligation to comply with the Listing Rules to the best of her ability and use her best endeavours to procure the Company's compliance with the Listing Rules when she was a director of the Company.
 - Ms Zhu caused the Company to enter into the Guarantee, but she did not inform the board of the Guarantee before or after it was entered into, in contravention of the Company's internal controls.
 - Ms Zhu did not take any steps to procure the Company's compliance with the Listing Rules in respect of the Guarantee, and hence caused the Company to breach Rule 14.34.
 - As a result of her misconduct, the Company was unable to dispatch the 2021 Interim Report by the deadline under the Listing Rules, causing the Company to breach Rule 13.48(1).

Conclusion

- The Listing Committee decided to impose the sanction above.

- It was further directed that Ms Zhu should attend 18 hours of training on regulatory and legal topics and compliance with the Listing Rules as a prerequisite of any future appointment as a director of any company listed or to be listed on the Stock Exchange.

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

Takeover Matters

1. New Practice Note 27 (June 2024)

The Securities and Futures Commission (the SFC) published a new [Practice Note 27](#) on severe weather arrangements for Codes-regulated transactions (PN27) to provide guidance on matters regulated under the Codes in the event of severe weather. “Severe weather” refers to situations with Typhoon Signal No. 8 or above, a Black Rainstorm Warning, or when the “Extreme Conditions” warning is in force. As announced by the Stock Exchange, with effect from 23 September 2024, trading, clearing, and settlement services and operations in the Hong Kong securities and derivatives market will remain operational in the event of severe weather.

Effect of severe weather on timing requirements under the Codes

- As most of the processes involved in an offer may be completed electronically, the Executive observes that market participants are generally able to follow the timetable prescribed by the Codes regardless of the weather conditions.
- If relevant parties encounter genuine practical difficulties in complying with any Code requirements because of severe weather, the Executive should be consulted at the earliest opportunity.
- However, the Executive recognises that certain processes still customarily involve hard copy and are likely to be disrupted in the event of severe weather, hence the Executive adopts a pragmatic approach in applying the Takeovers Code requirements under severe weather conditions. The timetable of an offer should normally continue to run as usual under severe weather unless a severe weather condition is in effect at **12 noon and/or thereafter** on any of the following deadlines (Key Deadlines).
 - The closing date for an offer and the latest time for acceptance under Rules 15.1, 15.8, and 28.4, and the submission and publication deadline for a closing announcement under Rule 19.1;
 - The final day for an offer under Rule 15.5;
 - The final time for an acceptor to exercise withdrawal rights under Rule 17 and the last day for withdrawal under Note 2 to Rule 18;
 - The last day for an offeror to dispatch or post relevant share certificates, or make the share certificates available for collection under Rules 17 and 20; and
 - The last day for an offeror to settle consideration under Rule 20.

In such circumstances, the Executive would expect the deadline to be postponed to the **next business day** and the timing requirements defined with reference to the relevant Key Deadline would be adjusted accordingly.

- There is no need to apply to the Executive for a specific consent or ruling when the offer timetable is adjusted as a result of severe weather provided that such general mechanism for adjusting the Key Deadlines under severe weather conditions is set out in an offer document.
- Please note that deadline for dealing disclosures under Rule 22 or the dispatch of a shareholders' document will not be adjusted as these processes can normally be done electronically.

Announcement and disclosure about arrangements under severe weather

- Offer documents should explain in the "Timetable" section the general arrangements under severe weather conditions, which should include how the Key Deadlines and other related dates (where applicable) are to be adjusted in the event of severe weather.
- The relevant notices and circulars in relation to meetings convened for obtaining shareholders' approval of transaction regulated under the Codes should also set out the meeting arrangements in the event of severe weather.
- An announcement should be made to update the market as soon as practicable if the transaction timetable is to be postponed as a result of severe weather and should set out clearly the revised timetable.
- A draft of the relevant update announcement should be submitted to the Executive for vetting at the earliest opportunity and in any event no later than **4:00 p.m.** on the affected date (or such later time as the Executive may in exceptional circumstances permit).

For further details, please refer to [PN27](#) and also [takeovers bulletin issue no. 69](#).

2. New Practice Note 26 (May 2024)

The SFC published a new [Practice Note 26](#) – Guidance Note on the application of the Codes on Takeovers and Mergers and Share Buy-backs relating to treasury shares (PN26). Further to the publication of the [consultation conclusions](#) on proposed amendments to Listing Rules relating to Treasury Shares by the Stock Exchange, with effect from 11 June 2024 onwards, listed issuers may keep repurchased shares in treasury if permitted under applicable laws and regulations and their constitutional documents. The purpose of PN26 is to provide guidance to offerors, offeree companies, their shareholders, and market practitioners on the treatment of treasury shares under the Takeovers Code and the Share Buy-back Code (collectively, the Codes).

Treatment of Treasury Shares under the Codes

- The treatment of treasury shares under the Codes is not affected by the introduction of the treasury shares regime under the Listing Rules.
- Treasury shares are disregarded for the purpose of determining whether a mandatory general offer (MGO) is required or whether a voting, approval, or acceptance threshold is met.
- An issuer should specify the number of issued shares that are held in treasury when disclosing its issued share capital.

- A company proposing to buy back shares under the Share Buy-backs Code should specify in the relevant announcement and shareholders' document whether it intends to hold the repurchased shares in treasury and whether voting rights attached to the treasury shares will be suspended.

Requirements on Voting, Offer, and Acceptance

- The note to the definition of "voting rights" expressly stipulates that voting rights attached to treasury shares **will not be** treated as voting rights under the Codes.
- Therefore, treasury shares are excluded from the voting rights or approval percentage calculation for the purpose of the MGO provisions (including the 30% trigger and 2% creeper) and other relevant Code requirements (e.g., whitewash waivers, special deals and frustrating actions, and related disclosures).
- Treasury shares held by, or on behalf of, an issuer or its subsidiary are not considered part of an issuer's outstanding equity or non-equity share capital.
- Treasury shares are **not considered "disinterested shares"** under Rules 2.2, 2.10, or 2.11 of the Takeovers Codes.
- If a transaction is subject to shareholders' approval under the Codes, issuers should confirm in the voting results announcement that no votes cast in favour of or against the transaction includes any votes relating to treasury shares.

Disclosures on Dealings in "Relevant Securities"

- In determining whether a person owns or controls 5% or above of any class of "relevant securities" of an issuer, and is therefore required to disclose its dealings under Rule 22 of the Takeovers Code as a class (6) associate, it shall refer to the number of the issuer's outstanding issued shares (excluding treasury shares) in the calculation of its shareholding percentage.
- Where an issuer has treasury shares, the Executive expects the Rule 3.8 announcement to specify:
 - The issuer's total number of issued shares excluding treasury shares; and
 - The number of treasury shares held by the issuer.

Requirements on Distribution and Issuance of Shares

- Resale of treasury shares or transfer of such shares out of treasury will result in an increase in an issuer's outstanding share capital and are treated in the same manner as the issue or distribution of shares for the purposes of the Codes.
- Any transfer of the repurchased shares out of treasury is subject to the requirements concerning issue or distribution of shares under Rule 4 of the Takeovers Code and Rule 7 of the Share Buy-back Code.
- Once a bona fide offer has been communicated to the board of an offeree company, the board must not, without approval of the offeree company's shareholder or the offeror's consent, issue any shares or resell any treasury shares or transfer any shares out of treasury unless these actions are carried out pursuant to prior contractual obligations.

For further details, please refer to [PN26](#), and also our [client alert on treasury shares \(in Chinese\)](#).

Conclusion

Issuers and listing applicants should monitor changes to the Listing Rules and the relevant guidance materials and ensure compliance. The recent updates from the Stock Exchange, including the consultation conclusions on Severe Weather Trading and the consultation paper on the Review of Corporate Governance Code and Related Listing Rules, present significant changes that will impact the trading and clearing services for the Hong Kong securities and derivatives markets during severe weather conditions and also the corporate governance structure of listed issuers, respectively. IPO applicants and listed companies should proactively consider these updates and implement necessary mechanisms to ensure compliance with the proposed amendments. Staying informed and prepared will be crucial for maintaining regulatory adherence and fostering robust corporate governance practices.

For detailed information, stakeholders are encouraged to review the respective consultation documents, consultation papers, and guidance materials.

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