

Hong Kong Capital Market Developments

November 7, 2012

New Companies Ordinance Passed

The new Companies Ordinance was passed by the Hong Kong Legislative Council in July 2012. With the exception of sections on corporate insolvency and public offerings, which are currently undergoing separate rewrites, the entire legislative framework for companies incorporated or registered in Hong Kong (whether or not also listed in Hong Kong) has been revamped.

Among the key initiatives embodied in the new Ordinance are:

- abolition of par value for shares;
- restricting corporate directorships in private companies (at least one natural person director is required);
- replacing the “headcount” test by a “not more than 10% voting against” test for members’ schemes of arrangement;
- partial codification of directors’ fiduciary duties;
- strengthening enforcement against offences;
- facilitating simplified financial reporting; and
- strengthening auditors’ rights.

The [new law](#) is expected to commence in installments from 2014. In the meantime, the Government has started [another consultation process](#) canvassing opinion on related subsidiary legislation.

Statutory Backing for New Inside Information Disclosure Regime and Hkex Consultation on Consequential Listing Rule Amendments

The Securities and Futures (Amendment) Ordinance containing proposals to replace the current Main Board Listing Rule 13.09 with a statutory regime for disclosure of price-sensitive information (to be redefined as “relevant information” in alignment with the existing insider dealing regime) was passed by the Legislative Council in April 2012 and will be effective on 1 January, 2013.

In aid of interpretation and compliance, [detailed guidelines](#) have been issued by the Securities and Futures Commission, setting out the commission’s own policies on various aspects of the interpretation and enforcement of the new law. Closely following these developments, [HKEx consulted the market](#) on consequential Listing Rule amendments.

Starting from 1 January 2013, the previous HKEx guidelines on the subject of price sensitive information (including among other things the 2002 Guide on Disclosure of PSI) will be repealed and Hong Kong-listed companies will face a new regime with stepped-up disclosure requirements, more clearly defined safe harbours, and increased sanctions for breach of the disclosure obligation.

Various Consultations and Administrative Decisions Taken by Hkex

In the past quarter, HKEx has issued a number of Listing Decisions and Guidance Letters on various aspects of listing practice. It also consulted the market on various regulatory initiatives. A summary of key items follows:

- consolidation and restatement of HKEx policies on pre-IPO investments in 2 new Guidance Letters, [GL43-12](#) (key terms and investors' rights in pre-IPO investment) and [GL44-12](#) (restrictions on convertible and exchangeable instruments in pre-IPO investment) – please see a [Davis Polk & Wardwell briefing](#) on these Guidance Letters
- amendment of an existing Listing Decision ([LD43-3](#)) on the treatment of variable interest entities (“VIE” or “structured contract”) listings, setting out certain prospectus disclosure as well as substantive structuring requirements
- new Guidance Letter ([GL34-12](#)) on the disclosure of “hard underwriting” in a prospectus – hard underwriting refers to a case where the underwriters, in exchange for an additional fee, commit to purchasing a fixed value of shares in the event of under-subscription, on condition that the offer is priced at the lower end of the indicative price range
- [public consultation](#) on introducing trading halts that would enable price-sensitive information to be disclosed during trading hours with a 30-minute trading halt, to replace the current practice of trading-session-based suspensions for release of information
- [public consultation](#) on listed company board diversity (focusing in particular on gender and age) with proposals to insert a Principle in the Corporate Governance Code of "diversity of perspectives" as a key consideration for board structures, and a Code Provision that the nomination committee should have a policy on this subject and that relevant disclosure should be made in the Corporate Governance Report issued by the listed company
- [consultation conclusions](#) on the proposed Environmental, Social and Governance (“ESG”) Reporting Guide, comprising recommended practices for Main Board and GEM listed companies with their upcoming financial year-end after 31 December 2012, which will upgrade the ESG obligations of a listed company to the "comply or explain" status (similar to the current corporate governance core principles) by 2015

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