

## Corporate & Commercial

### Reminder to Listed Issuers: Disclosure in Annual Reports and Corporate Communication

#### Background

On 27 March 2015, The Stock Exchange of Hong Kong Limited (the “**HKEx**”) published the Review of Disclosure in Issuer’s Annual Reports to Monitor Rule Compliance Report 2014 (the “**Report**”), which set out its findings and recommendations in respect of the annual reports of the Hong Kong listed issuers (the “**Issuers**”) for the financial years ended between December 2013 to November 2014 (except the annual reports of collective investment schemes) and gives the Issuers an insight of the extent of disclosure as expected by the HKEx. This article highlights some key areas mentioned therein that the Issuers should pay attention to.

#### Equity fund raising

The Issuers who have plans to raise fund by issuance of securities under general or specific mandate should take note of the following:

1. General Mandate Issue
  - a. Clearly disclose the reasons for the fund raisings and specific details about the proposed use of proceeds in the announcements.
  - b. Provide meaningful updates in the annual reports on the actual use of proceeds, including details of the application and a breakdown of how the funds were allocated among different uses, where applicable.
  
2. Specific Mandate Issue
  - a. Clearly set out the particular terms on and the specific uses for which the securities are issued in the circulars.
  - b. Confirm in the annual reports whether the funds raised were applied in accordance with the specified uses described in the circulars, and how these proceeds were actually applied.

#### Updates on material changes after acquisitions

Issuers are required to publish announcements and/or circulars in respect of their material acquisitions and disclose in their annual reports information about the acquired businesses. Where there is any significant asset impairments resulted from events which happened after such acquisitions, the Issuers may:

1. Timely inform the market of developments by way of business updates and/or profit warning announcements.
2. Where the disclosure about the asset impairment is supported by an independent valuation, the following should be disclosed:
  - a. the value of the inputs used in the valuations together with the basis and assumptions;
  - b. the reasons for any significant changes in the value of the inputs and assumptions from those previously adopted;
  - c. the valuation method and the reasons for using that method; and
  - d. an explanation of any subsequent changes in the valuation method used.

### **Results of performance guarantees on acquisitions**

In the event that a vendor fails to meet its performance guarantee as set out in an acquisition agreement, the Issuer, being a purchaser, may request the vendor to return the shortfall. Alternatively, the parties may adjust the consideration based on an agreed formula. In such situation, the Issuer should publish an announcement and disclose in its annual report. This applies where the vendor is a connected person or an independent party.

It is recommended that the Issuers should inform their shareholders about the performance of the acquired businesses, the outcome of the performance guarantees and how they would enforce the obligations of the vendors under the acquisition agreements in the announcements and annual reports.

### **Significant changes to Issuers' financial performance**

Issuers are required to make disclosures on the discussion and analysis of their performance and the material factors underlying their results and financial positions in the annual reports. Regarding the following situations, the Issuers are recommended to make certain disclosures in their annual reports.

1. Where there is significant growth in revenue and/or profit margin, detailed elaborations of the reasons for the fluctuation and meaningful explanations of the key factors giving rise to such changes should be provided. In addition, the following disclosures should be made:
  - a. a discussion about the trends and the impact on the Issuer's future performance;
  - b. an update on material changes to the Issuer's operation and how these changes have contributed to its performance during the financial year; and
  - c. integrated information about the Issuer's financial results and position and/or key performance indicators.

2. Where the Issuer relies on a small number of key customers, the following disclosures should be made:
  - a. the background of the major customers, the length of relationship with the Issuer and the percentage of revenue from these customers during the financial year and its comparative period;
  - b. a detailed description of the products and/or services sold to the major customers;
  - c. the credit terms granted to major customers and whether they are in line with, or more favourable than, those granted to other customers, and detailed terms and conditions of any long-term agreements;
  - d. the subsequent settlement of trade receivables with major customers after the year end date, and if the balances have not yet been settled, whether any provisions are necessary or the reasons why no provisions have been made; and
  - e. the risks associated with reliance on major customers and measures undertaken by the Issuer to mitigate such risks.
  
3. Where there are material changes in trade receivables, overdue balances or debtors' turnover days, the Issuer should provide analysis and adequate explanation of the reasons for the fluctuations and subsequent settlement in the annual report.

### **Newly listed Issuers**

During the profit forecast period, an event occurs which would have caused any profit forecast assumptions to have been materially different or if an unanticipated event materially affects the profit forecast, the newly listed Issuer should promptly announce such an event and its likely impact on the profit forecast. In a profit warning announcement concerning deterioration in its financial position, the newly listed Issuer is reminded to include the information that represents material developments subsequent to the date of the prospectus that has not been disclosed.

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**Important:** The law and procedure on this subject are very specialised and complicated. This article is just a very general outline for reference and cannot be relied upon as legal advice in any individual case. If any advice or assistance is needed, please contact our solicitors.

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