

## Corporate Finance

### Guidance from SFC and SEHK on publication of results announcement and annual reports and holding of AGMs in light of the COVID-19 pandemic

#### Introduction

The impact of the COVID-19 pandemic on the timely publication of results announcements and annual reports by listed companies in Hong Kong has raised considerable market concern recently. The challenges caused by the COVID-19 pandemic are unprecedented, and the Securities and Future Commission (the “**SFC**”) and The Stock Exchange of Hong Kong Limited (the “**Exchange**”) are cognizant of the difficulties faced by market participants brought by the COVID-19 pandemic.

Further to the Joint Statement in relation to the Results Announcements in light of Travel Restrictions related to the Severe Respiratory Disease associated with a Novel Infectious Agent issued on 4 February 2020 (the “**Joint Statement**”), on 16 March 2020, the SFC and the Exchange jointly issued the Further Guidance on the Joint Statement in relation to Results Announcements in light of the COVID-19 Pandemic (the “**Further Guidance**”), providing listed companies with further guidance and clarity on the publication of preliminary results announcements and annual reports and the holding of AGMs.

#### Guidance on publication of results announcement

As stated in the Joint Statement, the Exchange will normally not suspend an issuer’s securities if the issuer can publish the requisite financial information as stated in the Joint Statement on or before 31 March 2020. Further to guidance in the Joint Statement, if the issuer cannot issue preliminary results announcement which have been agreed with its auditor, the issuer should publish an announcement which includes material financial information of:

1. key financial figures such as assets, liabilities, income and expenses, and changes in shareholders’ equity; and
2. narrative discussions of its financial position and performance during the year to supplement the financial figures provided, including the impact of any material events and any material transactions that have taken place (collectively, the “**Material Financial Information**”).

The SFC and the Exchange reiterate that if the issuer cannot issue preliminary results announcement which have been agreed with its auditor, the announcement should also explain how and why travel and other restrictions have affected the issuer's ability to meet its reporting deadline.

### **Guidance on publication of annual reports**

In the Further Guidance, the SFC and the Exchange allow an issuer to defer publication of its annual report to 60 days starting from the publication date of the Further Guidance (i.e. up to 15 May 2020) if the issuer has published, on or before 31 March 2020, (i) its preliminary results with its auditors' agreement in compliance with Rule 13.49 of the Listing Rules; (ii) its preliminary results without its auditors' agreement pursuant to the Joint Statement; (iii) its management accounts; or (iv) Material Financial Information.

If an issuer delays publication of its annual report as described above, it must (i) publish the estimated date on which it is expected to publish an annual report and explain the factors taken into account in arriving at that estimate; and (ii) keep the market informed of the expected publication date of its annual report and other appropriate updates.

If delay in publication of the annual report is beyond the period of 60 days, such case will be considered by the Exchange on a case-by-case basis, having regard to the issuer's individual circumstances. The issuer must furnish to the Exchange in its application:

1. an explanation of the necessity for the extension (e.g. why the necessary accounting or other financial information remains unavailable or why its auditor continues to be unable to obtain the verification needed to provide assurance to the required standards);
2. the details of its plans to prepare and publish its annual report; and
3. its proposed announcement in relation to such extension with updated financial and operational information that is able to be provided to the market in the interim.

The Exchange will assess each application taking into account, among other things: (i) the need for the market to be adequately informed as to the issuer's financial position and performance; and (ii) the comparability of available information for traded stocks.

### **Guidance on the holding of AGMs**

Under the Listing Rules, issuers must submit financial statements at the annual general meeting ("**AGM**") within six months after the end of the financial year. Due to the deferred publication of audited financial statements, there has been question as to whether the issuers can extend the date of convening their AGMs beyond the six-month period.

In the updated frequent asked questions to the Joint Statement, the Exchange stated that it may waive the requirements of the Listing Rules and allow issuers to postpone the convening of an AGM on a case-by-case basis. However, the Exchange will not grant any waiver in relation to holding AGM that would result in contravention with the laws and regulations in the issuers' jurisdictions of incorporation and the requirements of their articles of association.

## Conclusion

To sum up, the SFC and the Exchange have recognised the prolonged operational difficulties caused by the COVID-19 pandemic amongst issuers and professional services firms and therefore grant exemptions and waivers to the requirements on issuers' obligations of publishing results announcements and annual reports.

For enquiries, please contact our Corporate & Commercial Department:

E: [cc@onc.hk](mailto:cc@onc.hk)  
W: [www.onc.hk](http://www.onc.hk)

T: (852) 2810 1212  
F: (852) 2804 6311

19th Floor, Three Exchange Square, 8 Connaught Place, Central, Hong Kong

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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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