

4th Edition

GUIDELINES FOR **DIRECTORS**

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ABOUT THE PUBLISHER

The Hong Kong Institute of Directors (“HKIoD”) is Hong Kong’s premier body representing professional directors to foster the long-term success of companies through advocacy and standards-setting in corporate governance and professional development for directors. A non-profit-distributing organisation with membership consisting of directors from listed and non-listed companies, HKIoD is committed to providing directors with educational programmes and information service and establishing an influential voice in representing directors. With international perspectives and a multi-cultural environment, HKIoD conducts business in biliteracy and trilingualism. Website: www.hkiod.com.

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Tel: (852) 2889 9986
Fax: (852) 2889 9982
E-mail: executive@hkiod.com
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FOREWORD: KEY MESSAGES

The corporate governance system is the cornerstone of the modern joint-stock companies and today's free capital markets. Good corporate governance enhances investors' confidence and the appeal of our markets, which underpin the stability of our financial system. Now in its 4th edition, the Guidelines for Directors published by The Hong Kong Institute of Directors are valuable references and I encourage directors to make good use of them.

Professor K C Chan

Secretary for Financial Services and the Treasury
Financial Services and the Treasury Bureau

It is important for Hong Kong to continuously enhance its corporate governance standards if it is to maintain its position as a leading international financial and business centre. The new Companies Ordinance provides for a mixed objective and subjective test for the standard of directors' duty of care, skill and diligence, to take into account the general knowledge, skill and experience that the director has and may reasonably be expected of the director. The Guidelines for Directors published by The Hong Kong Institute of Directors provides a very valuable tool to directors on the law and best practices relating to their daily work and can be read together with the Guide on Directors' Duties published by the Companies Registry.

Ada Chung

Registrar of Companies
Companies Registry

Good corporate governance is an important aspect of a healthy and quality market. A market with a robust framework of corporate governance rules and regulations provides investors with confidence in the market and companies with the incentives to develop their businesses. Directors have a vital role to play in ensuring observance of good corporate governance standards and compliance with increasing rules and regulations, balanced against their responsibilities to their companies and stakeholders. This updated 4th edition of the Guidelines for Directors from The Hong Kong Institute of Directors provides very helpful guidance for directors and will be an invaluable reference to all directors.

Carlson Tong

Chairman
Securities and Futures Commission

Becoming a director of a listed company brings us responsibilities. Directors are in place to make sure the interests of shareholders are served and that companies adhere to good corporate governance practices. One of the challenges of the role is ensuring they are completely up-to-date with the latest information to fulfill their obligations and carry out their duties properly. This latest edition of the Guidelines for Directors is an indispensable tool that helps directors understand their responsibilities to both their companies and stakeholders.

C K Chow

Chairman
Hong Kong Exchanges and Clearing Ltd.

FOREWORD: FROM THE PUBLISHER

The Hong Kong Institute of Directors is Hong Kong's premier body representing professional directors to foster the long-term success of companies through advocacy and standards-setting in corporate governance and professional development for directors. With support from our expanding membership, we continually develop multi-pronged strategies to nurture excellence in corporate governance. A wide variety of director professionalism programmes is organised by the Institute on a regular basis to assist directors in fulfilling their duties. One of our major programmes is the publication of guidelines to enable directors to do a better job.

Guidelines for Directors is a "best-seller" of the Institute and a desk-top easy-to-carry reference book for both practising and newly appointed directors. This 4th edition of the book includes the latest legal and regulatory updates, particularly the Companies Ordinance (Cap 622) effective commencing 3 March 2014. The guidelines summarise the law and regulation and recommend good practices.

We are pleased that this book is cited by the Listing Rules of the Hong Kong Exchanges and Clearing Limited as one of the guiding publications for directors, in a Note to Rule 3.08 of the Listing Rules effective 1 January 2012. We are obliged to review the book from time to time and keep its contents up to date. It is the Institute's objective to serve directors and stakeholders so as to contribute towards enhancing Hong Kong's competitiveness and promoting Hong Kong as a leading business and financial centre.

We would like to extend our gratitude to:-

- the authorities who have provided key messages to the Foreword;
- the Companies Registry for permission to include its publication summarising the major initiatives of the New Companies Ordinance (Cap 622) in the Appendix of this 4th edition;
- Ms Julianne Doe and Dr Alex Lau for their service as revision editors of this 4th edition;
- all those who have helped to publish this 4th edition; and
- all those who take part in promoting and supporting this book.

Dr Kelvin Wong
Chairman
The Hong Kong Institute of Directors

The Hong Kong Institute of Directors has organised numerous programmes in the promotion of continuing professional development for directors, including seminars, forums, publications and workshops. We are pleased to present this 4th edition of Guidelines for Directors, which complements our many other initiatives. These guidelines aim to remind and inspire directors to address various significant issues with state-of-the-art practices.

In publishing the guidelines, the Institute has had the following readers in mind:–

- (1) newly appointed directors who need to be inducted with an appropriate outline of their new duties.
- (2) currently practising directors who need a refresher as to the breadth and scope of their responsibilities.
- (3) currently practising directors who need a brief initial guide to possible courses of action in a new situation.

In revising the guidelines, we are mindful of the major legal and regulatory changes that are relevant to directors. In particular, the clarification of directors' duty of care, skill and diligence by the Companies Ordinance (Cap 622) bears profound significance on how directors fulfil their roles. With up-to-date knowledge, this 4th edition is an essential aid for directors.

We are grateful to all those who have helped in the publication of this book. We welcome feedback of comments from readers and users, in order to enable us to enhance our service for directors, stakeholders and the economy of Hong Kong.

Dr Carlye W L Tsui
Chief Executive Officer
The Hong Kong Institute of Directors

PREFACE

This publication attempts to summarise the law and, where possible, to recommend good practice in those areas into which the law has not yet reached, but it is difficult to make firm practice recommendations on many aspects of a company's work, given the complexity of the law, the wide diversity of activities that companies pursue, and the infinite variety of the combinations of human personalities that are responsible for directing them. These guidelines reflect the law of Hong Kong with the New Companies Ordinance Cap 622 (which replaces the Old Companies Ordinance Cap 32), effective commencing 3 March 2014. Provisions relating to corporate insolvency, winding up, disqualification of directors, receivers, managers and prospectuses have now been retained in the renamed Companies (Winding Up and Miscellaneous Provisions) Ordinance (WUMPO) Cap 32. Highlights of the changes introduced by the New Companies Ordinance are summarised in an article from the Companies Registry attached in the Appendix of this book.

The guidelines in this publication also make reference to the Listing Rules (for Main Board and for Growth Enterprise Market) of the Hong Kong Exchanges and Clearing Limited, including the Corporate Governance Code (the CG Code). Readers who are dealing with any listed-company matters should however always be mindful of the importance of referring to the actual provisions of the Listing Rules themselves for a complete picture of the regulatory requirements. This publication is cited by the Listing Rules in a Note to Rule 3.08 as reference guidelines for directors in fulfilling their duties.

Every effort has been made to ensure this work is as comprehensive as possible but it is not designed to be a substitute for professional advice tailored to meet the particular problems which may arise in a dynamic and complex business community such as Hong Kong. No responsibility for any loss arising as a consequence of any person relying upon the information or views contained in this publication is accepted by The Hong Kong Institute of Directors.

CONTENTS

	<i>Page</i>
FOREWORD: KEY MESSAGES	i
FOREWORD: FROM THE PUBLISHER	ii
PREFACE	iv
PART I – THE COMPANY AND ITS BOARD	
<i>INTRODUCTION</i>	5
<i>THE COMPANY</i>	
INCORPORATION AND LIMITED LIABILITY	5
DIRECTORS' LIABILITY IS UNLIMITED	5
PUBLIC AND PRIVATE COMPANIES	6
PROFIT, SURVIVAL AND GROWTH	6
<i>THE PARTIES ASSOCIATED WITH A COMPANY</i>	
CUSTOMERS	7
EMPLOYEES	8
CREDITORS	8
GOVERNMENT AND THE COMMUNITY	9
SHAREHOLDERS	10
<i>GENERAL MEETING, BOARD AND MANAGEMENT</i>	
GENERAL MEETINGS AND RESOLUTIONS	11
WRITTEN RESOLUTION PROCEDURE	12
RELATIONSHIP BETWEEN GENERAL MEETING, BOARD AND MANAGEMENT	12
<i>THE FUNCTIONS OF DIRECTORS – DEFINITION</i>	13
<i>THE FUNCTIONS OF DIRECTORS – APPLICATION TO DIFFERENT TYPES OF COMPANIES</i>	
PUBLIC COMPANIES	15
PRIVATE COMPANIES	15
SUBSIDIARIES	16
<i>HOW THE BOARD OPERATES</i>	
COLLECTIVE RESPONSIBILITY	17
NOTICE OF MEETINGS AND QUORUM	18
AGENDA	18
MINUTES	18

	<i>Page</i>
INFORMATION AND DOCUMENTATION	19
REQUIREMENTS FOR INFORMATION	19
WHO INITIATES POLICY – MANAGEMENT OR BOARD?	19
DISAGREEMENTS ON THE BOARD AND RESIGNATION	20
DELEGATION AND COMMITTEES	21
DISCLOSURE AND ACCOUNTABILITY	23
BOARD EVALUATION	24
<i>THE BOARD’S MEMBERS</i>	
CHAIRMAN	25
MANAGING DIRECTOR	25
CHAIRMAN AND MANAGING DIRECTOR?	26
NON-EXECUTIVE DIRECTORS	27
EXECUTIVE DIRECTORS	29
“QUASI DIRECTORS”	30
ALTERNATE DIRECTORS	30
THE COMPANY SECRETARY	31
<i>THE BOARD’S RELATIONS WITH ASSOCIATED PARTIES</i>	
SHAREHOLDERS	32
EMPLOYEES	33
CREDITORS AND SUPPLIERS	34
THE PUBLIC	34
PART II – DIRECTORS’ LEGAL STATUS, POWERS AND DUTIES	
<i>INTRODUCTION</i>	36
<i>DIRECTORS’ LEGAL STATUS</i>	
THE NATURE OF THE OFFICE	36
“DE FACTO” AND “SHADOW” DIRECTORS	36
PERSONS ASSOCIATED WITH A DIRECTOR	37
<i>POWERS</i>	
DIRECTORS’ AUTHORITY TO ACT	38
CORPORATE CAPACITY – OBJECTS CLAUSE	38
WHO CAN COMMIT THE COMPANY?	38
CONTROL OF ABUSE OF POWERS	39
ACCESS TO INFORMATION	41

DUTIES – GENERAL

INTRODUCTION	41
THE DIRECTORS' FIDUCIARY DUTY TO THE COMPANY HONESTLY, "FOR THE BENEFIT OF THE COMPANY"	42
"PROPER PURPOSE"	43
"CONFLICT OF INTEREST"	44

DUTIES – CONFLICTS AND DECLARATION OF INTEREST

SECRET PROFITS	44
CONFLICTS AND DECLARATIONS OF INTEREST	45
TRANSACTIONS BETWEEN DIRECTOR AND COMPANY	45
INSIDER DEALING	50

**DUTIES ARISING FROM THE COMPANIES ORDINANCE
AND ASSOCIATED LEGISLATION**

51

DUTIES – DISCLOSURE, REPORTING AND ACCOUNTING

DISCLOSURE	52
LETTERHEAD AND PUBLICATION OF COMPANY NAME	52
RETURNS TO THE REGISTRAR	53
DOCUMENTS WHICH THE COMPANY MUST MAKE AVAILABLE FOR INSPECTION	54
THE COMPANY'S ACCOUNTS	54
AUDITORS	58
HONG KONG EXCHANGES AND CLEARING LIMITED DISCLOSURE REQUIREMENTS	60

DUTIES IN RESPECT OF SHARES AND SHAREHOLDERS

DISTRIBUTIONS AND DIVIDENDS	61
DUTIES TO SHAREHOLDERS	61
DIRECTORS' POWERS TO ISSUE SHARES	62
SHAREHOLDERS' PRE-EMPTION RIGHTS	63
TAKEOVERS AND MERGERS	63

DUTIES – CAPITAL AND THE MAINTENANCE OF CAPITAL

PAYMENT FOR SHARES IN LISTED COMPANIES	64
PURCHASE AND REDEMPTION OF A COMPANY'S OWN SHARES	64
FINANCIAL ASSISTANCE FOR THE ACQUISITION OF A COMPANY'S SHARES	65
OTHER WAYS TO REDUCE CAPITAL	66

<i>DUTIES IN RESPECT OF CREDITORS AND INSOLVENCY</i>	
DIRECTORS' LIABILITY TO CREDITORS	67
DUTIES IN THE COURSE OF WINDING UP	67
DEFRAUDING CREDITORS AND PREFERENCES	68
<i>DUTIES – HOW SHOULD THEY BE PERFORMED?</i>	
STANDARD OF SKILL AND CARE	69
"KNOWINGLY A PARTY" TO FRAUDULENT TRADING	71
UNDER A SERVICE CONTRACT	71
<i>INDEMNITY AND RELIEF FROM LIABILITY</i>	
INDEMNITY	72
RELIEF	72
<i>THE COMPANY'S GENERAL LEGAL OBLIGATIONS</i>	
GENERAL	73
IN TORT	73
CRIMINAL OFFENCES	74
STATUTORY OFFENCE WITH CIVIL LIABILITY	75
PART III – THE DIRECTORS AS AN INDIVIDUAL	
<i>ELIGIBILITY</i>	77
<i>APPOINTMENT, REMOVAL, DISQUALIFICATION</i>	
APPOINTMENT	77
EMPLOYMENT	78
REMOVAL FROM OFFICE	79
RETIREMENT	79
DISQUALIFICATION	79
<i>REMUNERATION AND COMPENSATION</i>	
ENTITLEMENT TO REMUNERATION AND EXPENSES	82
COMPENSATION FOR LOSS OF OFFICE AND EX GRATIA PAYMENTS	83
PROFIT SHARING AND OTHER INCENTIVE ARRANGEMENTS	83
APPENDIX: "THE NEW COMPANIES ORDINANCE (CAP 622): MAJOR INITIATIVES" BY THE COMPANIES REGISTRY	84