

Compliance Control Guide For The Board of Directors



BM INTELLIGENCE

BMI Listed Corporate Services Limited
邦盟汇骏上市秘书顾问有限公司

The information contained on, or referred to in, this Guide, including, but not limited to, reports, diagrams and advice, is supplied for the benefit and convenience of those with an interest in the issues of the Board of Directors and not as specific advice to any particular party or person. Accordingly, BMI Listed Corporate Services Limited accepts no responsibility for any loss that occurs to any party who acts on information contained herein without further consultation with us.

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Preface

This Compliance Control Guide For the Board of Directors (the “Guide”) is prepared by BMI Listed Corporate Services Limited (“BMILCS”). BMILCS is a leading professional corporate services provider which offers comprehensive and reliable corporate secretarial services to listed and private companies in Hong Kong, the People’s Republic of China and throughout the Asia region.

With the help from our expertise business support, we can remove obstacles that would hinder your many great plans and let you concentrate on expanding your business without hesitation.

Since we have substantial experience in providing corporate services, especially for services in relation to the annual disclosure requirements as stipulated in the Rules Governing the Listing of Securities on the The Stock Exchange of Hong Kong Limited (the “Stock Exchange”) (the “Listing Rules”), we put together our expertise and insights of our professionals in coming up with advice on compliance control for the requirements on the Board of Directors (the “Board”) in this Guide.

Here with our professional advice, we presented to you this Guide identifying the requirements on the Board of Directors.

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Table Of Contents

	Page
1. Authorised Representatives	1
2. Audit Committee and Remuneration Committee	2
3. Re-election of Independent Non-executive Directors	3
4. Dealing by Directors	4
5. Notice of General Meeting	5
6. Bibliography and Reference	5

1. Authorised Representatives

With reference to rule 3.05 of the Listing Rules of the Stock Exchange, every listed company shall appoint two authorised representatives, who must be either two directors or a director and the company secretary of the listed company unless the Stock Exchange, in exceptional circumstances, agrees otherwise, to act at all times as the listed company's principal channel of communication with the Stock Exchange.

According to rule 3.06(1) of the Listing Rules, the authorised representatives shall provide the Stock Exchange the details of his contact information including home, office, mobile and other telephone numbers, email address and correspondence address, facsimile numbers (if any), and any other contact details requested by the Stock Exchange.

Meanwhile, in accordance with rule 3.06(2) of the Listing Rules, the authorised representative should ensure there is suitable appointed alternate of him, who is known to the Stock Exchange, whenever he is outside Hong Kong, and provide the Stock Exchange the details of the contact information of the alternate including his home and office telephone numbers and facsimile numbers (if any).

In addition, under rule 3.07 of the Listing Rules, a listed company shall inform the Stock Exchange regarding the change of authorised representatives as soon as possible by submitting form FF001M following the change.

2. Audit Committee and Remuneration Committee

For better corporate governance practice, a listed company is required to establish an audit committee and a remuneration committee respectively under the Listing Rules.

With reference to rules 3.21 and 3.25 of the Listing Rules, both audit committee and remuneration committee of a listed company must comprise a majority of independent non-executive directors and must be chaired by an independent non-executive director. Moreover, an audit committee of a listed company must comprise at least 3 members who are non-executive directors and at least one of whom is an independent non-executive director with appropriate professional qualifications.

With reference to rules 3.22 and 3.26 of the Listing Rules, the Board of a listed company must approve and provide written terms of reference which clearly establish its authority and duties for both the audit committee and the remuneration committee.

Meanwhile, with reference to rules 3.23 and 3.27 of the Listing Rules, if a listed company fails to set up an audit committee or a remuneration committee or at any time fails to meet any of the above requirements, an announcement must be published immediately containing the relevant details and reasons. Afterward, the listed company should also fulfill the above requirements within 3 months.

3. Re-election of Independent Non-executive Directors

The Board of a listed company should include a balanced composition of executive and non-executive directors (including independent non-executive directors (the “INED(s)”)) in order to have a strong independent element on the Board, which can effectively exercise independent judgment. INEDs should be sufficient caliber and number for their views to carry weight.

Under rules 3.10 and 3.10A in Chapter 3 of the Listing Rules, the Board of a listed company must include at least three INEDs and the INEDs must represent at least one-third of the Board by 31 December 2012.

According to code provision A.5.5 in Appendix 14 of the Listing Rules, where the Board proposes a resolution to elect an individual as an INED at the general meeting, it should set out in the circular to shareholders and/or explanatory statement accompanying the notice of the relevant general meeting why the Board believes the INED should be elected and the reasons why the Board considers the INED to be independent.

In addition, code provision A.4.3 in Appendix 14 of the Listing Rules sets out that serving more than nine years could be relevant to the determination of an INED’s independence. If an INED serves more than 9 years, the further appointment of such INED should be subject to a separate resolution to be approved by shareholders. The papers to shareholders accompanying that resolution should include the reason why the Board believes the INED is still independent and should be re-elected.

4. Dealing by Directors

In order to maintain an equal trading environment for both substantial shareholders and minority shareholders, there are rules imposed on the dealing by directors of listed issuers to avoid insider dealing and market misconduct.

According to the Model Code for Securities Transactions by Directors of Listed Issuers in Appendix 10 of the Listing Rules, directors who are aware of or privy to any negotiations or agreements related to intended acquisitions or disposals which are notifiable transactions under Chapter 14 of the Listing Rules or connected transactions under Chapter 14A of the Listing Rules or any inside information must refrain from dealing in the listed issuer's securities as soon as they become aware of them or privy to them until the information has been announced.

Furthermore, a director must not deal in any securities of the listed issuer on any day on which its financial results are published, during the period of 60 days immediately before the publication date of annual results and during the period of 30 days before the publication date of interim results in order to protect the interest of shareholders. The listed issuer must notify the Stock Exchange in advance of commencement of each period during which directors are not allowed to deal.

Apart from the above circumstances, before dealing in any securities, the directors must first notify in writing the chairman or a director designated by the Board for the specific purpose and must receive a dated written acknowledgement. A response to a request for clearance to deal must be given to the relevant director within five business days of the request being made and it must be valid for no longer than five business days. After dealing, the director must file a notice to DI Unit of Stock Exchange using Form 3A within three business days from the day of the deal for purpose of disclosing interest in shares.

5. Notice of General Meeting

The Board of a listed issuer should always maintain an on-going dialogue with shareholders, in particular, through annual general meetings or other general meetings to communicate with shareholders and encourage their participation. In this regard, notice must be issued to shareholders who are entitled to attend the meeting.

Section 114 of the Hong Kong Companies Ordinance sets out that a Hong Kong limited company should provide at least a 21-day notice for an annual general meeting or any other meeting at which a special resolution is proposed, while only a 14-day notice is required for other meetings.

According to rule E.1.3 of Appendix 14 of the Listing Rules, the notice of meeting should be given to shareholders at least 20 clear business days before the annual general meeting and on the other hand at least 10 clear business days for other general meetings.

Apart from complying with the Hong Kong Companies Ordinance as a Hong Kong limited company and the Listing Rules, a listed issuer should also refer to the articles of association of the listed issuer for the notice period required. The articles of association differ from company to company, but generally a notice of 21 clear days for holding an annual general meeting is a common practice of listed issuers.

6. Bibliography and Reference

- The Stock Exchange of Hong Kong Limited

有关董事会 之合规监控指引



BM INTELLIGENCE

BMI Listed Corporate Services Limited
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本指引所载或所述资料，包括（但不限于）报告、图表及意见，仅为了对董事会方面感兴趣的人士的利益，及为了方便该等人士而提供，并非对任何个别人士的建议。因此，邦盟汇骏上市秘书顾问有限公司对任何人士在未有进一步咨询吾等的情况下，基于本指引所载资料作出的行动而招致之任何损失，概不负责。

由邦盟汇骏上市秘书顾问有限公司出版

Preface

本有关董事会之合规监控指引（「本指引」）乃由邦盟汇骏上市秘书顾问有限公司（「邦盟上市秘书顾问」）编制。邦盟上市秘书顾问为一间领先的专业企业服务供应商，为香港、中华人民共和国以至亚洲地区的上市及私人公司提供全面及可靠的公司秘书服务。

我们的专业商业支援可替阁下消除障碍，让阁下顺利发展鸿图大计，专心致志扩充业务而无后顾之忧。

我们在提供企业服务（尤其是有关遵守香港联合交易所有限公司（「联交所」）证券上市规则（「《上市规则》」）的服务）方面拥有丰富经验，故特此于本指引中结合我们的专业知识及灼见，从而就董事会之合规监控提供意见。

凭借我们的专业意见，我们在此向阁下呈上本指引，阐述有关遵守董事会的合规要求。

邦盟汇骏上市秘书顾问有限公司

2016 年 9 月

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目录

	页数
1. 授权代表	1
2. 审核委员会及薪酬委员会	2
3. 重新选任独立非执行董事	3
4. 董事交易	4
5. 股东会议通知	5
6. 参考	5

1. 授权代表

根据上市规则第 3.05 条，每间上市公司应委任两名授权代表，作为上市公司与香港联交所的主要沟通渠道。该两名授权代表必须由上市公司的两名董事或一名董事及公司秘书担任，除非香港联交所同意下则另作安排。

根据上市规则第 3.06(1) 条，授权代表应向香港联交所提供其本人的联络方法，包括住宅、办公室、手机及其他电话号码、电邮地址及联络地址、传真号码（如有）及香港联交所指定的其他联络数据。

与此同时，根据上市规则第 3.06(2) 条，授权代表应确保若其本人不在香港时，有经委任并为香港联交所知悉的合适替任人负责与香港联交所联络，并向香港联交所提供该替任人的联络方法，包括住宅及办公室电话号码及传真号码（如有）。

此外，依照上市规则第 3.07 条，上市公司于更换授权代表后，应尽快呈交 FF001M 表格以通知香港联交所有关变更。

2. 审核委员会及薪酬委员会

为建立更好的企业管治，每间上市公司必须根据上市规则的要求，设立审核委员会及薪酬委员会。

根据上市规则第 3.21 及 3.25 条，上市公司之审核委员会及薪酬委员会的大部分成员均须为独立非执行董事，并须由独立非执行董事出任该委员会主席。此外，审核委员会须至少有三名成员，全部须为非执行董事，而当中至少有一名是如上市规则第 3.10 (2) 条所规定具备适当专业资格，或具备适当的会计或相关的财务管理专长的独立非执行董事。

根据上市规则第 3.22 及 3.26 条，上市公司之董事会必须批准及以书面提供有关审核委员会及薪酬委员会的职权范围，清楚界定该委员会的权力及职责。

与此同时，根据上市规则第 3.23 及 3.27 条，如上市公司未能设立审核委员会或薪酬委员会，或于任何时候未能符合上述之任何规定，则须实时刊发公告载明有关未能符合之详情及理由。及后，上市公司亦须于未能符合有关规定起计 3 个月内达成该等规定。

3. 重新选任独立非执行董事

上市公司董事会中执行董事与非执行董事（包括独立非执行董事（「独立非执行董事」））的组合应该保持均衡，以使董事会上有强大的独立元素，能够有效地作出独立判断。独立非执行董事应有足够才干和人数，以使其意见具有影响力。

根据上市规则第三章第 3.10 及第 3.10A 条，每家上市公司的董事会必须至少有三名独立非执行董事，而所委任的独立非执行董事必须占董事会成员人数至少三分之一。

根据上市规则附录十四守则条文第 A.5.5 条，若董事会拟于股东大会上提呈决议案选任某人士为独立非执行董事，有关股东大会通告所随附的致股东通函及/或说明函件中，应该列明董事会认为应选任该名独立非执行董事的理由以及董事会认为该名独立非执行董事属独立人士的原因。

另外，依照上市规则附录十四守则条文第 A.4.3 条，在厘定独立非执行董事的独立性时，「担任董事超过九年」足以作为一个考虑界线。若独立非执行董事在任已过九年，其是否获续任应以独立决议案形式由股东审议通过。随附该决议案一同发给股东的文件中，应载有董事会为何认为该名独立非执行董事仍属独立人士及应获重选的原因。

4. 董事交易

为维持一个公平的交易环境予主要股东及小股东，上市发行人的董事交易受相关规则规管，以防止内幕交易与市场不当行为。

根据上市规则附录十之上市发行人董事进行证券交易的标准守则，凡董事知悉、或参与收购或出售事项（上市规则第十四章界定为须予公布的交易、第十四 A 章界定的关联交易，或涉及任何内幕消息者）的任何洽谈或协议，该董事必须自其开始知悉或参与该等事项起，直至有关资料已公布为止，禁止买卖其所属上市发行人的证券。

此外，在上市发行人刊发财务业绩当天、年度业绩刊发日期之前 60 日内以及半年度业绩刊发日期之前 30 日内，其董事均不得买卖其所属上市发行人的任何证券，以保障股东权益。上市发行人必须在每次其董事因为该项规定而不得买卖其证券的期间开始前，预先通知联交所。

除了以上情况外，在买卖任何证券前，有关董事必须先书面通知主席或董事会为此而指定的另一位董事，并接获注明日期的确认书。有关董事要求批准买卖有关证券必须在五个营业日内得到回复，而该项获准买卖证券的有效期不得超过接获批准后的五个营业日。在买卖证券后，有关董事必需在该项买卖证券后三个营业日内送交一份通知存盘表格 3A 予联交所之披露权益部以披露股份权益。

5. 股东会议通知

发行人的董事会应尽力与股东保持对话，尤其是籍股东周年大会或其他全体会议与股东沟通及鼓励他们参与。就此，发行人需向有权出席会议的股东发出通知。

香港公司条例第 114 条指出香港有限公司需要就股东周年大会或任何旨在通过一项特别决议的会议发出至少为期 21 日通知；而其他会议只需 14 日通知。

根据上市规则附录 14 第 E.1.3 条，如召开股东周年大会，发行人应安排在大会举行前至少足 20 个营业日向股东发送通知，而就所有其他股东大会而言，则须在大会举行前至少足 10 个营业日发送通知。

香港有限公司除了遵守香港公司条例及上市规则，上市发行人应就有关通知期参考发行人的公司章程细则。每间公司的公司章程细则都有所不同。一般而言，21 日通知期是上市发行人举行周年股东大会的惯常做法。

6. 参考

- 香港联合交易所有限公司