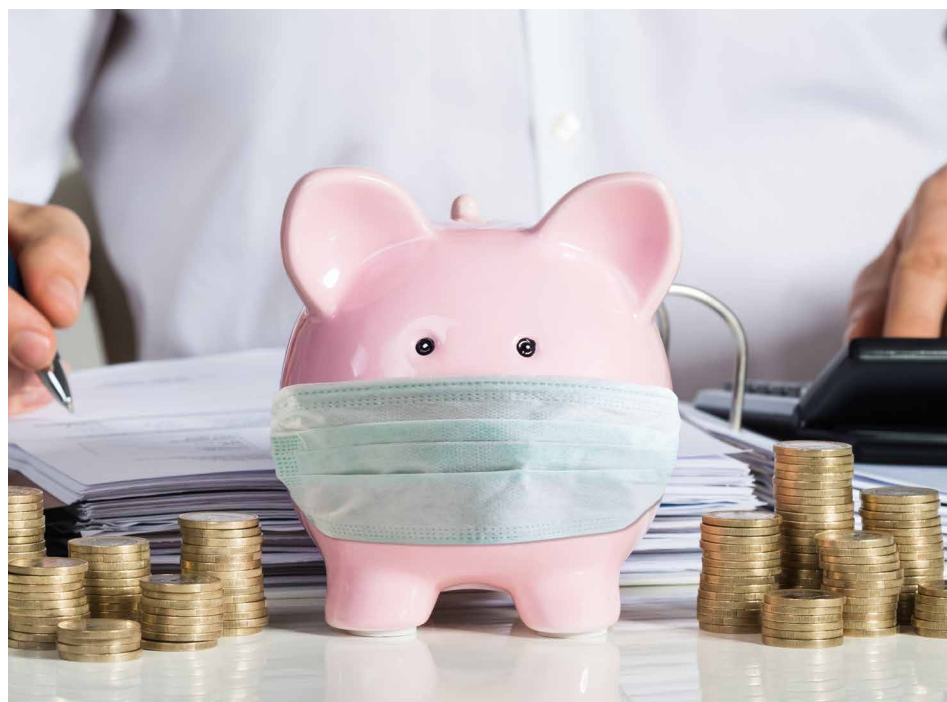


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APRIL 2022

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WILL COVID-19 AFFECT THE ANTICIPATED CHANGES TO THE LEGAL LIMIT FOR CLAIMING UNPAID WAGES WHEN AN EMPLOYER GOES BANKRUPT?



At the time of writing, thousands of local cases of the Omicron coronavirus variant have been identified everyday, prompting that Hong Kong is facing its fifth wave of COVID-19 infections. Given the drastic deterioration of the epidemic situation in Hong Kong, to stem the spread of the Omicron variant, the government further strengthened the social distancing rules from 24 February 2022, with these measures to be in place till at least in Mid-April. The further tightening of social distancing rules is certain to have a detrimental effect on those businesses in the sectors that have been hardest hit by the pandemic, such as restaurants and bars, hotels, travel and entertainment, and health and fitness, especially as this has lasted for months and the fifth wave of COVID-19 is still in uncertainty. The leading companies in these sectors have predicted that the business losses could exceed HK\$11 billion. The worst-case scenario would involve a surge of closures of restaurants, bars, fitness centres, barber shops, hair salons and beauty salons gradually. This would inevitably jack up the unemployment rate and the number of claims for unpaid wages made to the Protection of Wages on Insolvency Fund (PWIF) by workers whose employers have gone bankrupt.

Ever since early 2020, Hong Kong has been dealing with a challenging economic downturn resulting from the heavy blows dealt by the COVID-19 pandemic. With this new round of stringent anti-pandemic measures taking place during what is normally the Lunar New Year 'golden period' for businesses, employers who are already facing a gloomy business outlook and problems with liquidity might consider winding up their businesses, and some may not be able to pay their employees before they become insolvent or go bankrupt.

CONTENTS

▶ Will COVID-19 affect the anticipated changes to the legal limit for claiming unpaid wages when an employer goes bankrupt?	1
▶ Inaugural BDO ESG Report	3
▶ How cryptocurrencies are shaping today's businesses	4
▶ Launch of BDO new services	5
▶ BDO supports the CHKLC Director Training Series for the 12th consecutive year	5
▶ BDO event highlights	6
▶ New appointment	7
▶ Recent BDO publications	8

When an employer has failed to pay employees' entitlements due to insolvency or bankruptcy, the employees may present a winding-up or bankruptcy petition to recover debts owed by an insolvent employer under the provisions of Protection of Wages on Insolvency Ordinance. At the same time, the employees may also apply for an ex-gratia payment (including unpaid wages, pay for outstanding annual leave and statutory

leave, wages in lieu of notice, and severance payments) from the PWIF. The PWIF is financed by an annual charge of HK\$250 on each business registration certificate issued.

Under the provisions of The Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO), when a company is wound up, certain debts relating to employee entitlements must be paid out of the company's

assets before settling any debts owed to other unsecured creditors. The CWUMPO also gives priority to employees over other creditors in respect of payments made from the PWIF.

According to the Protection of Wages on Insolvency Ordinance, the ex-gratia payment that may be made from the PWIF covers the following:

Entitlements included in an ex-gratia payment	Items included in each entitlement	Maximum amount that can be claimed by an employee (in HK\$) (note 1)	Remarks
1. Wages in arrears	<ul style="list-style-type: none"> Unpaid wages for the four months leading up to the final day of service Outstanding payments for paid annual leave, statutory holidays, maternity/paternity leave, and sick days taken Outstanding end-of-year payment 	\$36,000	
2. Wages in lieu of notice	Up to the equivalent of one month's wages	\$22,500	
3. Severance payment		\$50,000 plus 50% of any excess entitlement	See notes 2 & 3
4. Pay for annual leave and statutory holidays not taken		\$10,500	See notes 4 & 5

Notes

- The maximum ex-gratia payment that an employee can claim from the PWIF is HK\$289,000.
- The benefits accrued from the employer's contributions to the Mandatory Provident Fund for the employee have not yet been reduced.
- The Employment Ordinance caps severance payments at HK\$390,000, so the maximum an employee may claim from the PWIF is HK\$220,000.
- Pay for untaken annual leave that is payable to an employee upon termination of their employment contract under the Employment Ordinance includes:
 - pay for any annual leave entitlement in the employee's last full leave year and not yet taken; and
 - pay (pro-rata) for annual leave entitlement in the last leave year in which the employee has at least three but less than twelve months' service upon termination of their employment contract.
- Pay for statutory holidays that an employee is entitled to within four months of their last day of employment but has not taken.

In general, a claim for payment from the PWIF must be made within six months of the last day of employment.

The headline statistics on the PWIF published by the Labour Department revealed the latest position of the fund. The following table outlines the number of claims for ex-gratia

payments processed and approved, and the accumulated surplus of the PWIF from January 2017 to June 2021:

	2017	2018	2019	2020	2021 (January to June)
Charges on business registration certificates (HK\$ millions)	\$381 (12%)	\$387 (12%)	\$393 (12%)	\$393 (0%)	\$208 (15%)
Number of claims received*	2,333 (↓30%)	2,276 (↓2%)	3,171 (↑39%)	3,020 (↓5%)	1,762 (↓22%)
Number of claims approved*	2,640 (↑9%)	1,689 (↓36%)	2,524 (↑49%)	2,428 (↓4%)	1,603 (↑36%)
Ex-gratia payments made (HK\$ millions)	\$79.6 (↓1%)	\$51 (↓36%)	\$83.1 (↑63%)	\$78.5 (↓6%)	\$53.5 (↑36%)
Accumulated surplus (HK\$ millions)	\$5,024.7	\$5,437.9	\$5,852.5	\$6,298	\$6,385.6

(↑↓ % : compared with figures from the same period in the previous year)

* Claims are counted on a per-employee basis, so the number of claims is equivalent to the number of employees involved.

According to the above statistics, there was a significant increase in the number of claims for ex-gratia payments in the first six months of 2021. The number of claims approved and the total amount paid to claimants increased by more than one-third compared with the same period in 2020.

The ongoing COVID-19 pandemic has had a catastrophic effect on businesses throughout the region, but some sectors have been harder hit than others. With the social distancing rules being tightened up again, some business leaders have warned that more companies will face insolvency or bankruptcy and have to close. This would lead to more people losing their jobs, and more claims for ex-gratia payments. However, the current limits that apply to claims are based on average earnings that have not been updated for decades. For example, the current ceiling of HK\$36,000 is equivalent to four months on an average monthly salary of HK\$8,000, which has not been updated since 1996. With the prospect of more companies closing, the government urgently needs to consider amending the Protection of Wages on Insolvency Ordinance by increasing the caps on the four ex-gratia payment items that can be claimed from the PWIF. This would ensure that employees whose earnings exceed the current limit are protected.

On several occasions over the past two decades, representatives from the labour unions, accounting professions, the Legislative Council and various other stakeholders have voiced their concerns to the government about the cap on wages in arrears, arguing that it should be increased to align it with the latest median monthly pay. In July 2021, the labour unions

reiterated that a review of the current ceiling on wages in arrears was imminent in view of the current unemployment situation. The statistics for 2020 show that the average claim for wages in arrears that year was HK\$41,482. Because the cap is set at HK\$36,000, this means that claimants were facing an average loss of HK\$5,482. The labour unions therefore urged the government to increase the upper limit to HK\$76,000 (equivalent to four times the adjusted monthly median pay of HK\$19,000 for the fourth quarter of 2019) as soon as possible so that people are able to receive fair compensation for what they are owed by their former employers.

In December 2021, the Commissioner of Labour responded to questions from the media about the above request by confirming that the Board of the PWIF was investigating increasing the upper limits for ex-gratia payment items and considering appropriate adjustments for each item.

The government's proposal to abolish the offsetting of severance payments and long service payments with employers' mandatory contributions under the Mandatory Provident Fund (MPF) system (the 'abolition arrangements') would have a significant impact on the ex-gratia payments for severance pay that the PWIF would have to make – and, in turn, on the fund's financial position. Therefore, the Board of the PWIF is reviewing the details of the abolition arrangements that have almost been concluded and will present their review and proposals to the Labour Advisory Board in early 2022. The Board is expected to report on its proposed amendments to the Protection of Wages on Insolvency Ordinance to the

Legislative Council Panel on Manpower during the first half of 2022 and will also introduce the proposed amendments to the Legislative Council in 2022.

On a separate note, we are aware that most employers in Hong Kong are small or medium-sized enterprises that would be unable to afford a substantial rise in the annual business registration certificate fee (currently, HK\$250 per certificate) to cover the proposed significant increase to the upper limits attached to the ex-gratia payment items covered by the PWIF, especially during the current economic downturn. In general, therefore, the business sector is unlikely to support the proposals mentioned in this article. In view of the complexity of this topic and the controversy surrounding it, in addition to the potential impacts on Hong Kong's entrepreneurs, labour market, economy and wider community, it will be difficult for the employment and business sectors to reach a consensus on the proposed amendments and pass them to the Legislative Council for approval in 2022. However, we will continue to keep you informed as this matter continues to develop.

Speak to our payroll professionals

Feel free to get in touch to find out how we can help you by providing a tailored solution for payroll & HR outsourcing.

JOSEPH HONG

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Services
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INAUGURAL BDO ESG REPORT

Helping people through our impact

Environmental, Social and Governance (ESG) is crucial to identify risks and opportunities of a company's long-term sustainability. At BDO, we have always been placing emphasis on having a sound corporate governance structure which is the backbone of effective ESG, and we have been at the forefront of driving this.

Amid all unprecedented challenges that we have been facing, such as climate change, rising industrialisation and ongoing COVID-19 pandemic, it is imperative to rethink how businesses should operate and behave if we are to ensure our systems and business model are resilient and fit for a sustainable future.

BDO is pleased to present our first BDO ESG Report, which showcases our commitment to enhancing our ESG practices. We have also formulated an action plan in echoing the net-zero initiative launched by BDO

International. One of our firm's value is *people helping people achieve their dreams*.

By sharing our ESG philosophy, policies and measures in this report, we hope our effort can help our community in realising the importance of ESG and continue to play a leading role in supporting our community to develop a sustainable future.

This report covers:

- Our commitment to net zero
- Our ESG footprint
- Our governance and ESG philosophy
- Our caring for the environment
- Building social capital
- Building human capital
- Business model and innovation
- Awards and certification
- Our publications

To view our first BDO ESG report, please visit: <https://www.bdo.com.hk/en-gb/about/corporate-responsibility>





HOW CRYPTOCURRENCIES ARE SHAPING TODAY'S BUSINESSES

About a decade ago, in 2011, the first cryptocurrency, Bitcoin, reached a value of US\$1 after its initial introduction in 2009. On 22 May 2010, the first-ever commercial Bitcoin transaction was a purchase of two Papa John's pizzas in the USA in exchange for 10,000 Bitcoins. Fast forward to 2022: despite its recent drop in value, Bitcoin's price has surged to over US\$60,000! Had the pizza purchaser kept his Bitcoins, they would be worth millions of dollars today. Nowadays, institutions and retail investors alike have gradually begun investing in various types of cryptocurrency in hopes of high returns. As a result, many businesses are adopting Bitcoins, Ethereum and other cryptocurrencies for investment, operational and/or transactional purposes.

Cryptocurrencies are digital currencies that are secured by cryptography, which prevents any possibility of counterfeiting or double-spending them. They are recorded in and supported by a technology known as the blockchain. The blockchain operates in a decentralised structure through a network that is distributed across computers that process transactions for the blockchain.

Bitcoin and Ethereum are two of the most popular cryptocurrencies in the market. These two cryptocurrencies represent over 60% of the total current market capitalisation. Another kind of cryptocurrency called stablecoin is commonly used among traders to provide stability in cryptocurrency transactions. Stablecoins are Ethereum tokens that are linked with a traditional asset such as a fiat currency. Tether (USDT) is a well-recognised stablecoin that is pegged against the US

dollar and maintains a 1-to-1 ratio with the dollar in terms of value. As suggested, stablecoins like USDT are less volatile and more cost-efficient. However, determining the accounting implication of stablecoins or other cryptocurrencies depends on evaluating relevant facts and circumstances. For instance, what is the purpose of acquisition of the cryptocurrency, and how does it achieve that purpose? What are the rights and obligations of the holder? Is the cryptocurrency collateralised? If so, what are the eligible forms of collateral?

The rise of cryptocurrencies has paved the way for the adoption of digital assets in the business sector, which potentially impacts account recording procedures. The bookkeeping processes of digital assets have become increasingly complex due to their upgraded functionality and price volatility. Typically, for companies utilising and holding such kinds of volatile asset, cryptocurrencies would be classified as intangible assets and measured initially at cost. In other words, they are identifiable, have no physical form and are considered non-monetary assets. Unlike other intangible assets such as patents and trademarks, most cryptocurrencies do not have amortisation expenses as they typically do not have any time expiration.

However, not all cryptocurrencies are considered intangible assets. For commodity broker-traders who look to generate profit from fluctuations through reselling cryptocurrencies in their ordinary course of business, the cryptocurrencies would have a completely different classification. Instead of being recorded as intangible assets, they would be classified as inventories. To accurately assess

the performance of the trades, inventories are measured at fair value less costs to sell in the financial statements. Some businesses have also initiated an option to use cryptocurrencies as collateral. This arrangement allows businesses to borrow money while holding cryptocurrency.

Bookkeeping crypto-assets may not be straightforward as the purpose of cryptocurrencies and their functionality affects their accounting treatment. On the other hand, the way of tracking crypto-assets in the bookkeeping process may not be effective if using the traditional method. A cloud-based accounting platform is definitely a sensible option. Do you want to explore this further?

Here at BDO, not only do we keep up to date with the latest technological developments, but we are also committed to serving clients with our accounting knowledge and experience. Please reach out to us to find out more about how we can best assist your business.

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LAUNCH OF BDO NEW SERVICES

By observing the emerging change in business landscape and new demand from enterprises, we make our business to understand our clients' businesses more. With our teams of professional who are equipped with high level of business acumen and experienced industry expertise, we are pleased to introduce two new services to you.

Digital Transformation Services

Emerging technologies are shaping the business world at an unprecedented pace. Digital transformation is not a buzzword, it ties directly to the survival of any business. To further enhance the wide range of services being provided by our Business Services & Outsourcing (BSO), Digital Transformation Services (DTS) team is aspired to make life better by helping businesses achieve operation excellence through digital transformation.

As a global platinum partner of Xero, a listed cloud accounting software company, BSO is proud to expand its service to technology advisory, serving small and medium businesses, delivering high quality mini-ERP implementation with a fraction of the cost of full ERP deployment.

As one of the largest global professional service firms, the DTS team is built upon our success in compliance services, maximising our value-add to clients through data automation, cloud reporting and business process optimisation consultancy.

Should you wish to know more about how the DTS team may help your business, please contact **Dorothy Pak**, Director and Head of Business Services & Outsourcing at dorothy.pak@bdo.com.hk or **Andrew Yung**, Senior Manager of Digital Transformation Services at andrewyung@bdo.com.hk for more details.

Onsite Consulting Service

Amid the uncertain evolution of the pandemic, business owners of today are trying their best to stay vigilant and adaptive to strive through all types of challenges.

With a challenging future ahead, BDO is well aware of your needs for best-practiced consultation and implementable solutions in your business transformation journey. There is no need to search for multiple vendors for business advisory, process reengineering, risk & compliance and technological advancements. Just reach out to us for a one-stop-shop solution – **BDO Onsite Consulting Service team!**

BDO Onsite Consulting Service team, which is led by our **Professional Resources Solutions division**, consists a pool of seasoned consultants who are subject matter experts with practical industry expertise, with the aim to smooth the path for businesses who believe in the following three statements: **Time is money. Resources are assets. Technology is imperative.**

Want some advice? Please contact us at prs@bdo.com.hk or visit <https://www.bdo.com.hk/en-gb/services/business-services-outsourcing/professional-resources-solutions-recruitment/onsite-consulting-service> for more details.

BDO SUPPORTS THE CHKLC DIRECTOR TRAINING SERIES FOR THE 12TH CONSECUTIVE YEAR

Running from April to November, the programme comprises six sessions dealing with the important aspects to directorships for a listed company, ranging from corporate governance, risk management to the latest updates in various applicable rules and laws. The programme will also address common issues faced by directors. BDO's Director of Assurance **Amy Yau**, Director of Tax **Carol Lam**, Director of Transfer Pricing **Jack Fernandes**, Director and Head of Risk Advisory **Ricky Cheng** and Principals of Risk Advisory **Pokit Lok** and **Vivian Chow** are invited to speak on some of the important aspects of directorship for a listed company.

If you are interested in attending the programme, please enrol with CHKLC directly. For more information, please visit their website at www.chkcl.org.

The schedule and topics for the forthcoming sessions are:

Date	Topics
26 May (Thu)	SFC and HKEX's regulatory oversight, enforcement actions and Director's liabilities
7 July (Thu)	Transfer pricing and other tax challenges
8 September (Thu)	The SPAC regime in Hong Kong and listing considerations
6 October (Thu)	Latest development of cybersecurity law
10 November (Thu)	Annual regulatory update 2022

BDO EVENT HIGHLIGHTS

BDO webinars cover a wide range of business topics and hot issues to provide valuable opportunity for our participants to interact with our experienced professionals and to gain insights into today's market update and challenge.

GET READY FOR THE NEW PAYROLL AND TAX YEAR 2022



New year has begun and it is important to make sure of the upcoming deadlines of all payroll and tax related compliance and you have everything in place. Director & Head of Payroll & HR Outsourcing Services **Joseph Hong** along with his team members – Senior Manager **Susanna Leung** and Manager **Josephine Yau** shared guidance on some challenges of compliance of the various statutory requirements in the new payroll year. Director of Tax **Carol Lam** and Principal of Tax **Celestine Yeung** shared their insights in salaries tax & global employment issues. The webinar received an overwhelming response with positive feedback.



From left to right: Josephine Yau, Susanna Leung, Joseph Hong, Carol Lam and Celestine Yeung

LATEST TREND OF NON-FUNGIBLE TOKEN (NFT)



With non-fungible token becomes a hot topic in the recent months, we caught up with the trend and our first NFT webinar was held and attracted approximately 500 attendees to join us and discussed on the issue. In the webinar, Principal of Risk Advisory **Pokit Lok** provided some tips on how to protect one's NFTs, especially from corporate perspective. We are pleased to have Co-Founder & CTO, Naffiti, NFT Investment And Venture Limited **Anthony Leung** to be our guest speaker to share his thoughts on the latest trend of NFTs.



Anthony Leung (left) and Pokit Lok (right)

GET PREPARED FOR WASTE MANAGEMENT IN ESG



Waste management is an integral part of ESG. Senior Associate of Risk Advisory **Kuen Leung** spoke to discuss the Waste Disposal (Charging for Municipal Solid Waste) (Amendment) Bill 2018 and compare the waste management regulatory requirements between Mainland China and Hong Kong. Manager of Risk Advisory **Joyce Woo** joined Kuen in the Q&A session to answer participants' queries on the challenges and opportunities of waste management. More than 400 attendees joined this webinar and responded actively during Q&A.



Joyce Woo (top) and Kuen Leung (bottom)

DIGITAL ASSET (CRYPTOCURRENCIES, STO AND NFT) LANDSCAPE AND ITS ACCOUNTING IMPLICATIONS TO BUSINESSES

MAR 23

Digital asset keeps gaining spotlight in the market. In this webinar, Accounting Services Director of Business Services & Outsourcing **Heidi Chan** and Senior Manager of Digital Transformation Services **Andrew Yung** shared their insights on the landscape of digital asset and its potential accounting implications to business as well as demonstrating the cloud way of digital asset tracking. Around 500 participants have joined us on that day and some of them looked forward to having another deep discussion with speakers in the future.



Andrew Yung (top) and Heidi Chan (bottom)

CHANGING INTERNATIONAL TAX LANDSCAPE - IMPACT OF BEPS 2.0 IN HONG KONG

APR 06

From practical examples to implementation steps and anticipated timeline, Director of Transfer Pricing **Jack Fernandes** and Director of Tax **Abigail Li** shared their insights on the latest BEPS 2.0 developments impact on Hong Kong, practical examples and walkthrough calculations based on recently released commentary and guidance, and key actions taxpayers taking in preparation of the new rules.



Jack Fernandes (top) and Abigail Li (bottom)

NEW APPOINTMENT



JASON KONG
Director
Specialist Advisory
Services

Jason has extensive experience in providing professional valuation services to privately-held and listed companies in Hong Kong and Mainland China.

He leads a team that specialises in the valuation of businesses, financial instruments, derivatives and intangible assets for the purposes of financial reporting, transaction support and litigation support.

Jason's industry experience includes fintech, mining, oil & gas, renewable energy, pharmaceutical, real estate, telecommunications, banking and finance, and food & beverage.

Qualifications and professional affiliations

- CFA Charterholder
- FRM Charterholder
- Member of Royal Institution of Chartered Surveyors
- Member of the Chartered Financial Analyst Institute

RECENT BDO PUBLICATIONS

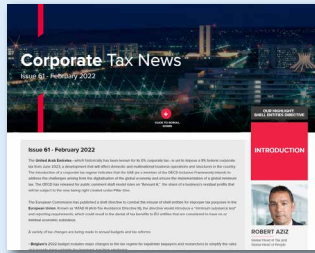
TAX PUBLICATIONS



Indirect Tax News
Issue 1 – January 2022



Indirect Tax News
Issue 2 – April 2022



Corporate Tax News
Issue 61 – February 2022



2022/23 Hong Kong Budget Highlights

BDO GLOBAL NATURAL RESOURCES 2022 SURVEY REPORT



TRANSPARENCY REPORT



FIVE TECHNOLOGY INDUSTRY PREDICTIONS FOR 2022



RISK ADVISORY PUBLICATIONS

Financial Services Sector Updates Issue 1/2022



ESG Updates Issue 1/2022



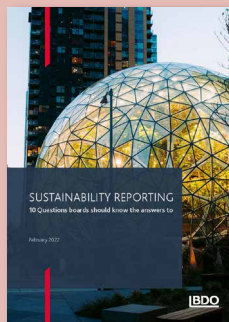
Technology Updates Issue 1/2022



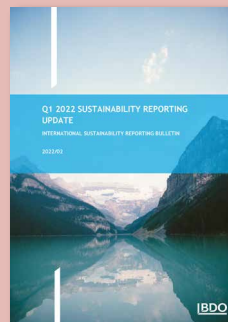
ISRB 2022/02 Q1 2022 Sustainability Reporting Update



Sustainability Reporting - 10 Questions Boards Should Know the Answers To



International Sustainability Reporting Bulletin 2022/01 - 31 December year-end Sustainability Reporting Update



HKFRS/IFRS UPDATE

HKFRS/IFRS Update 2022/01 31 December 2021 year-end HKFRS/IFRS Update



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