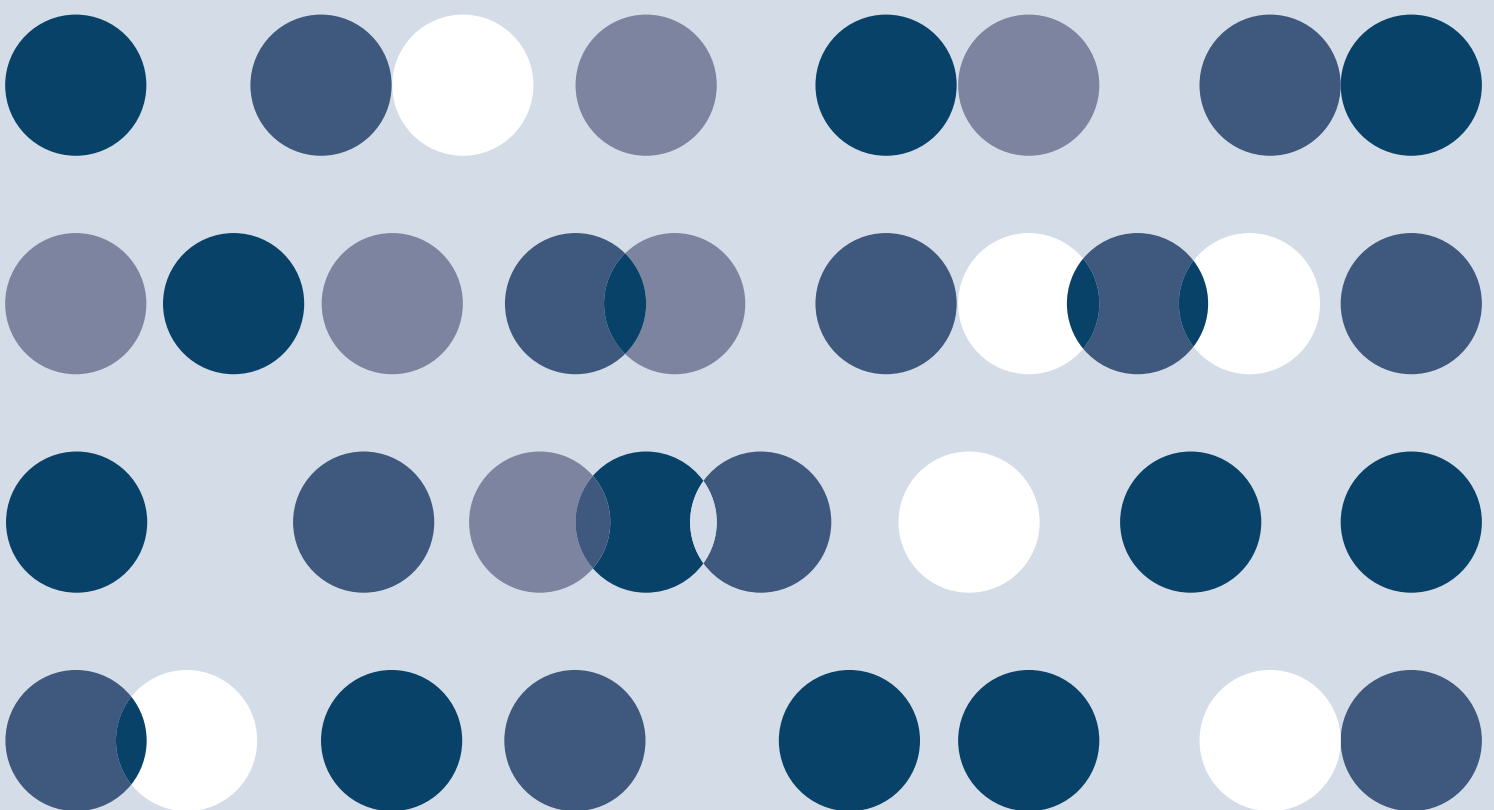


February 2018

ENFORCEMENT NEWSLETTER

FOR THE TWELVE MONTHS ENDED 31 DECEMBER 2017



INTRODUCTION

Welcome to the second issue of our *Enforcement Newsletter*. This issue features an interview with the Chairman of the Listing Committee, Mr Andrew Weir. Mr Weir talks about the importance of corporate governance and the Exchange's focus on enforcement work taken in relation to directors' duties.

This is followed by "Delisting from an Enforcement Perspective", an outline of the more robust approach to delisting recently adopted by the Exchange, as foreshadowed in the 2015 and 2016 Listing Committee Reports.

As usual, the Newsletter includes "Enforcement Statistics", "Disciplinary Actions" and "Compliance Highlights". A new addition to this Newsletter is a section entitled "Other Information on Regulatory Activities", which contains the following information:

- delisting and cancellation
- the number of disciplinary reports issued (pending hearing)
- the number of ongoing reviews
- the number of referrals made to other law enforcement authorities, witness statements and other support given by the Exchange and/or its personnel in relation to their investigations
- warning and caution/guidance letters issued by the Listing Department

AN INTERVIEW WITH MR ANDREW WEIR

Mr Andrew Weir speaks about the importance of corporate governance in the management of listed issuers and his observations arising from the Exchange's enforcement activities.



Mr Andrew Weir was appointed as the Chairman of the Listing Committee in July 2017, and has been a member of the Listing Committee since 2014. He is the Regional Senior Partner of KPMG in Hong Kong, Vice-Chairman of KPMG China and Head of Capital Markets of KPMG China.

“Corporate governance matters”, says Mr Weir. Corporate governance is not a box-ticking exercise. It should be embodied in a company’s management culture, in the way it conducts its business, and in the way that it engages with its shareholders and other stakeholders. Listed issuers, in particular, are held to high standards by its shareholders and the public, and with good reason. In his over 25 years of experience and engagement with listed companies, Mr Weir notes that those with good corporate governance tend to outperform those without.

The maintenance and improvement of corporate governance standards in Hong Kong is a key area of importance to the Listing Committee. The Exchange published the findings of its review of listed issuers’ corporate governance practices in October 2017, which indicates improving compliance with the provisions of the Corporate Governance Code and Corporate Governance Report. Mr Weir reminds listed issuers that “good corporate governance reduces information asymmetry, which in turn engenders investors’ trust and confidence”. Improvement of corporate governance is a continuing effort on the part of both listed issuers and the Exchange. In November 2017, the Exchange issued a consultation paper seeking views on the enhancement of its corporate governance requirements.

Mr Weir observes that disciplinary actions by the Exchange, some of which are referred to in this Newsletter, have shown that breaches of the Listing Rules

demonstrate a lack of good corporate governance and frequently occur where (i) directors and their staff are inadequately trained and/or supervised, and as a consequence, are unfamiliar with the requirements of the Listing Rules, (ii) compliance is delegated to other departments and/or members of staff who are not aware of the requirements of the Listing Rules, or (iii) directors and/or senior management fail to consider Listing Rule requirements prior to making business decisions. These failures often manifest themselves as failures by directors to perform their duties towards the company in which they hold office. In consequence, the pursuit of conduct of this character is a theme for enforcement action approved by the Listing Committee.

Mr Weir reminds directors, whether executive or non-executive, that they have individual and collective responsibility for overseeing the compliance of listed issuers. Mr Weir emphasises that it is therefore vital for directors to ensure that they, senior management, and relevant staff are kept up to date with Listing Rule requirements which evolve and change over time, and act in a proactive manner to apply these requirements when making decisions or in carrying out their duties.

In support of this aim, the Exchange has introduced the Directors Training Programme 2017, being a series of webcasts available on the Exchange's website for the purposes of promoting directors' knowledge and skills. Mr Weir encourages all directors of companies listed in Hong Kong to participate in the training.

DELISTING FROM AN ENFORCEMENT PERSPECTIVE

The principal objective of the Exchange is to provide an orderly, informed and fair market for the trading of securities. Delisting is one of the regulatory tools of the Exchange for achieving this objective. Under Rule 6.01, the Exchange may cancel the listing of any securities of an issuer for protecting investors or maintaining an orderly market, or in different circumstances specified in that Rule.

With the Listing Committee's endorsement, the Exchange has since 2015 adopted a more robust approach to cancelling the listing of long suspended companies. The existence of long suspended issuers in persistent breach of the Listing Rules in a material manner, or suspected of illegal or improper activities, undermines the quality of our market and its reputation. A robust delisting policy with an effective delisting procedure will facilitate an orderly exit of poor quality issuers, incentivize suspended issuers to act promptly towards resumption and provide a deterrent effect against issuers committing material breaches of the Rules. This will also provide more certainty to the market on how the Exchange handles suspended issuers.

Accordingly, the Exchange has commenced the procedures under the Listing Rules to cancel the listing of a number of long suspended issuers, and have published Listing Decisions (LD110-2017, LD114-2017) to provide guidance on the factors that it has considered in specific cases. On 22 September 2017, the Exchange published a [consultation paper on Delisting and other Rule Amendments](#), presenting proposals to improve the effectiveness of the delisting framework under the Listing Rules. The consultation period ended on 24 November 2017. The Exchange will consider all the written responses before deciding the way forward and will publish a consultation conclusion in due course.

Information on the numbers of delisted companies and long-suspended companies as at the end of each month can be found in the "Status Report on Delisting Proceedings and Suspensions" on the HKEX website. Further information on the status of long-suspended issuers is published in the "Monthly Prolonged Suspension Status Report" for the Main Board and GEM Board on the HKEX website.

ENFORCEMENT STATISTICS

The [Enforcement Statistics](#) for 2017 were published on the HKEX website on 31 January 2018.

(1) Investigations Statistics

This table shows the number of parties and rule breaches involved in the investigations carried out by Listing Enforcement of the Stock Exchange during the course of the year as compared to the previous year.

	Twelve months ended 31/12/2017 ⁽¹⁾			Twelve months ended 31/12/2016 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total
Investigations	65	21	86	57	14	71
Cases involving:						
Company	54	18	72	41	9	50
Current directors ⁽²⁾	17	10	27	13	5	18
Former directors ⁽²⁾	27	10	37	22	7	29
3 Listing Rule breaches (or less)	38	13	51	30	7	37
More than 3 Listing Rule breaches	27	8	35	27	7	34
Investigations involving, and referrals to, other regulators ⁽³⁾	24	6	30	22	2	24

⁽¹⁾ Figures cover investigations concluded during the period and investigations which remained active as at the end of the period.

⁽²⁾ Figures may include directors residing overseas.

⁽³⁾ Other regulators include regulators such as the Securities and Futures Commission (SFC), Independent Commission against Corruption, Financial Reporting Council and the Commercial Crime Bureau. Referrals do not include those made to the SFC which do not arise out of an investigation for potential breach of the Listing Rules or those matters specifically under the remit of the SFC's jurisdiction e.g. referrals made under the Inside Information Provisions in Part XIVA of the Securities and Futures Ordinance.

(2) Issues under Investigation

Since 2014 the Exchange has been adopting a themed approach to enforcement activity. Following a review, the Listing Committee has modified the focus for investigation and enforcement action from five to the following seven themes. Notwithstanding this themed approach to investigation, the Exchange will continue to pursue any other breaches of the Listing Rules that may demonstrate sufficiently egregious conduct beyond the scope of the themes.

ISSUES	Twelve months ended 31/12/2017 ⁽¹⁾			Twelve months ended 31/12/2016 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total
CORE THEMES⁽²⁾						
(1) Directors' duties	12	4	16	15	2	17
(2) Failure to cooperate with an Exchange investigation	8	2	10	4	0	4
(3) Inaccurate, incomplete and/or misleading disclosure in corporate communication	4	1	5	1	0	1
(4) Failure to comply with procedural requirements in respect of notifiable/connected transactions	6	1	7	6	1	7
(5) Repeated breaches of the Listing Rules	0	1	1	0	0	0
(6) Delayed trading resumption	0	0	0	1	0	1
(7) Financial reporting - delays, or internal controls and corporate governance issues	0	0	0	1	0	1
MULTIPLE THEMES⁽³⁾	29	10	39	23	10	33
OTHERS:						
Other Listing Rules not falling into any of the above categories	6	2	8	6	1	7

⁽¹⁾ Figures cover investigations concluded during the period and investigations which remained active as at the end of the period.

⁽²⁾ Core themes represent those that are the main focus of an investigation (whether or not it involves other issues). An investigation covering more than one core theme will be disclosed under multiple themes.

⁽³⁾ Number of investigations under Multiple Themes involving Theme (1): (2017: 30; 2016: 26); Theme (2): (2017: 2; 2016: 3); Theme (3): (2017: 18; 2016: 14); Theme 4: (2017: 20; 2016: 15); Theme 5: (2017: 7; 2016: 4); Theme 6: (2017: 2; 2016: 1); Theme 7: (2017: 15; 2016: 9).

(3) Outcome of Enforcement Actions by Listing Committee

	Twelve months ended 31/12/2017			Twelve months ended 31/12/2016		
	MB	GEM	Total	MB	GEM	Total
Sanctions imposed ⁽¹⁾						
Public censures	7	1	8	6	1	7
Public statements involving criticism	1	0	1	1	0	1
Other public statements ⁽²⁾	0	0	0	2	1	3
Private reprimands	0	0	0	0	0	0
Directions involving ⁽³⁾ :						
Internal Control Review	0	0	0	0	0	0
Retention of Compliance Advisor	1	0	1	3	0	3
Training of Directors	4	0	4	4	0	4
Average time for completion of an investigation (from commencement of investigation to the decision as to the regulatory action to be taken) was 8.7 months for cases investigation of which was completed in 2017.						

- (1) These figures represent the primary regulatory sanction imposed in a disciplinary action and save for (2) below, do not include other sanctions that may be imposed in the same action. See "Other Information on Regulatory Activities" below for statistics on the number of warning and caution/guidance letters issued by the Listing Department.
- (2) Include Rule 2A.09(7) statement (GEM: GEM Listing Rule 3.10(7)) where, in the case of wilful or persistent failure by a director to discharge his responsibilities under the Listing Rules, the Exchange states its opinion that the retention of office by that director is prejudicial to the interests of investors; and also where the Listing Committee expresses its views that it would be minded to make such a statement had the resigned director stayed in office. These figures are in addition to and do not form part of the total number of primary regulatory sanctions imposed.
- (3) These figures represent the total number of directions given in addition to the primary regulatory sanction imposed in a disciplinary action.

(4) Number of Directors Subject to Disciplinary Sanctions

	Twelve months ended 31/12/2017			Twelve months ended 31/12/2016		
	MB	GEM	Total	MB	GEM	Total
Executive directors	16	1	17	22	1	23
Non-executive directors	4	0	4	4	0	4
Independent non-executive directors	3	0	3	5	0	5
Total	23	1	24	31	1	32

OTHER INFORMATION ON REGULATORY ACTIVITIES

(A) Disciplinary proceedings

- Number of disciplinary reports issued during the year ended 31 December 2017: 22
- Number of disciplinary actions pending hearings/reviews as at 31 December 2017 (the outcome of the disciplinary action will only be published if public sanctions are made at the conclusion of the hearing/final review): 14
- Number of issuers and directors involved in ongoing and concluded disciplinary actions in 2017 were 16 and 146 respectively.

(B) Information on delisting and cancellation

- [Status Report on Delisting Proceedings and Suspensions](#) for the year ended 31 December 2017
- [Monthly Prolonged Suspension Status Report](#) as at 31 December 2017

(C) Interaction with other law enforcement authorities

- Number of referrals made by the Listing Department to SFC, ICAC or CCB during the year ended 31 December 2017 (arising out of an enquiry/ investigation for potential breach of the Listing Rules but excluding those involving solely possible breach of the Inside Information provisions of the Securities and Futures Ordinance): 24
- Number of witness statements given by the Exchange's personnel in relation to investigations of SFC, ICAC or CCB during the year ended 31 December 2017: 9
- Number of information and document production requests handled by the Exchange in relation to investigations of SFC, ICAC or CCB during the year ended 31 December 2017: 55

(D) Warning and caution/guidance letters issued by the Listing Department during the year ended 31 December 2017: 331

DISCIPLINARY ACTIONS

During the six-month period ended 31 December 2017, the Listing Committee of the Exchange has issued six news releases in respect of the outcome of the following disciplinary proceedings.

The investigations relating to these disciplinary proceedings involved one or multiple themes of enforcement (set out under each case below). Cases on directors' cooperation with the Exchange's investigation feature heavily during the six-month period following our first issue of this Newsletter. These decisions on directors' non-cooperation convey an important regulatory message warranting serious attention on the part of directors and prospective directors of listed issuers.

The other main feature is the use of settlement in the resolution and disposal of disciplinary matters (see the news releases in relation to China Environmental Energy Investment Limited of 29 September 2017 and Sunac China Holdings Limited of 26 October 2017). As stated in the Exchange's [settlement policy](#) published on the HKEX website, settlement is acceptable to the Exchange if it results in an acceptable regulatory outcome taking into account all circumstances of the breach.

Issuers and directors are encouraged to read the news releases of the disciplinary actions and the key messages, as they convey the Exchange's continuing expectations of issuers and directors in relation to compliance with the Listing Rules.

Mr Ang Wing Fung, former executive director of Inno-Tech Holdings Limited (stock code: 8202)

[News release](#) of 27 July 2017

Mr Cong Hui Sheng, former executive director of Chengdu PUTIAN Telecommunications Cable Company Limited (stock code: 1202)

[News release](#) of 21 September 2017

Mr Wang Kai, former executive director of Sound Global Limited (stock code: 967)

[News release](#) of 25 October 2017

These three cases concern the respective failure of former directors of listed issuers to cooperate with the Exchange's investigations.

In both cases concerning Mr Ang Wing Fung and Mr Wang Kai, each of them failed to provide any response to the Exchange's enquiries, despite having spoken to the staff of the Exchange on the telephone.

The case concerning Mr Cong Hui Sheng is another example of the Exchange's continuing efforts in enforcing directors' compliance with their obligations under their Undertakings.

Theme:

(1) Directors' failure to cooperate with the Exchange's investigation

Key messages:

- The Exchange attaches significant importance to directors' compliance with the undertaking to cooperate with its investigation, as it enables the Exchange to discharge its principal function of maintaining and regulating an orderly market. Non-compliance with the Undertaking is viewed seriously by the Exchange.
- The director's relevant conduct will be taken into account in assessing his suitability in the event that he should wish to become a director of any issuer listed/to be listed on the Exchange in the future.

China Environmental Energy Investment Limited (stock code: 986)

News release of 29 September 2017

This case concerns the issuer's failure to comply with the announcement, circular and prior shareholders' approval requirements. The issuer's breach was caused by the conduct of two former executive directors, who were delegated with the power for investment of shares at the time (which was not part of the issuer's ordinary and usual course of business). These directors were involved in entering into, on behalf of the issuer, certain share transactions but failed to prepare/procure a size test for those transactions, which resulted in the issuer's breach of the Listing Rules.

The disciplinary action was settled on the basis of the admission by the issuer and the two former directors of the breaches of the relevant Listing Rules.

Themes:

- (1) Directors' duties
- (2) Failure to comply with procedural requirements in respect of notifiable/connected transactions

Key messages:

- Failure to comply with the announcement, circular and prior shareholders' approval requirements has a negative impact on market integrity and investors' confidence in the securities market.
- It is imperative that issuers and directors give due consideration to Listing Rule compliance before a transaction is entered into.

Sunac China Holdings Limited (stock code: 1918)

News release of 26 October 2017

This issuer entered into an agreement and supplemental agreement to acquire the equity interest of a listed company. Mr Sun Hong Bin and Mr Wang Meng De had knowledge of the supplemental agreement but without informing the other directors of the issuer. Under the supplemental agreement, the issuer would be liable to lose \$1.55 billion paid to the sellers if the acquisition was terminated under certain circumstances. Mr Sun executed the supplemental agreement and used the relevant chop/seal without the Board's knowledge or approval. This led to the issuer's failure to disclose the supplemental agreement in its acquisition announcement, rendering the announcement inaccurate and incomplete.

The acquisition was subsequently terminated (with the money paid refunded to the issuer). The issuer's termination announcement did not disclose the supplemental agreement, rendering the termination announcement inaccurate and incomplete.

By way of settlement, the parties did not contest the breaches asserted by the Listing Department, and accepted the sanctions and directions imposed on them by the Listing Committee as set out in the news release.

Themes:

- (1) Directors' duties
- (2) Inaccurate, incomplete and/or misleading disclosure in corporate communication

Key messages:

- Directors are accountable to the issuer and its shareholders for their conduct. They must disclose and obtain the Board's prior approval before taking actions that affect the interests of the issuer and shareholders.
- Issuers and directors must ensure that corporate communications are accurate and complete, in all material respects, and not misleading or deceptive, so that investors have and can maintain confidence in the market.
- Any inaccurate, incomplete, misleading or deceptive announcements should be rectified immediately to enable the shareholders and the public to appraise the position of the issuer and make informed decisions.

Han Tang International Holdings Limited (stock code: 1187)

News release of 15 November 2017

This issuer entered into a very substantial acquisition which was a connected and disclosable transaction, which the issuer did not disclose or obtained shareholders' approval, in breach of the Listing Rules. Mr Goh Nan Kioh and Mr Goh Nan Yang held an interest in a very substantial disposal of the issuer's assets to a connected party, which they had authorised without the Board's knowledge or approval of (a) the disposal or (b) their interests, in breach of their directors' duties. Mr Yeow executed the very substantial disposal agreement without the Board's knowledge or approval in breach of his director's duties.

Themes:

- (1) Directors' duties
- (2) Inaccurate, incomplete and/or misleading disclosure in corporate communication
- (3) Failure to comply with procedural requirements in respect of notifiable/connected transactions

Key messages:

- The procedural requirements in respect of the notifiable and connected transactions under the Listing Rules are designed to ensure that the investors are kept fully informed and, where applicable, the shareholders have an opportunity to vote on the proposed transactions.
- The disclosure requirements of the Listing Rules aim to ensure that an issuer's announcements provide the necessary information to the shareholders and the market.
- Directors must act with integrity and avoid any actual or potential conflict of interests. Where any such conflicts exist, a declaration must be made at the earliest opportunity and the directors must refrain from voting or being counted as part of the quorum in respect of the conflicted issues.
- Directors having knowledge about the actual or potential conflict of interests of other directors are duty-bound to disclose such conflicts to the Board.

COMPLIANCE HIGHLIGHTS

This section highlights issues and observations we have come across during our investigations of suspected breaches of the Listing Rules. These highlights aim to help issuers and directors understand and comply with the Listing Rules.

Role of Compliance Officer	
Observation	<p>There are cases where the director, who was appointed as the GEM issuer's compliance officer, has either:</p> <ul style="list-style-type: none"> (a) delegated his responsibilities as compliance officer to others (e.g. the company secretary); or (b) failed to establish adequate procedures to ensure that the issuer complies with the GEM Listing Rules
Concern	<ul style="list-style-type: none"> • GEM Rule 5.20 provides that <i>"the compliance officer's responsibilities must include, as a minimum ... advising on and assisting the board of directors of the issuer in implementing procedures to ensure that the issuer complies with the GEM Listing Rules and other relevant laws and regulations applicable to the issuer"</i>
Reminder	<ul style="list-style-type: none"> • The GEM Listing Rules place specific responsibilities on the director who is appointed as the issuer's compliance officer. It is of paramount importance that the individual taking up this position is properly equipped in terms of qualifications and training in order that he can effectively discharge that role • Simply naming a director as compliance officer for fulfilling the GEM Rule 5.19 requirement when that director does not take up the relevant responsibilities is not acceptable • If the individual charged with those responsibilities fails to perform these obligations, he may be subject to disciplinary action and may receive a public sanction

Auditor's prior agreement to publish a preliminary announcement	
Observation	In certain cases involving the issuers publishing clarification announcements after publication of their preliminary announcements of annual results, revisions were made to some of the figures in the financial statements included in the preliminary announcements
Concern	When asked whether they have obtained the auditors' agreement to publish the preliminary announcements under Rule 13.49(2) (or GEM Rule 18.49), the issuers and directors either: <ul style="list-style-type: none"> (a) were ignorant about this requirement; or (b) disregarded this requirement so as to avoid a trading suspension in the event that there was any delay in publishing the preliminary annual results
Reminder	<ul style="list-style-type: none"> • Preliminary announcements of annual results play a key part in the annual financial reporting cycle of listed issuers. They are relied upon to provide timely, sufficient and accurate information and ensure an orderly and informed market • Where a preliminary announcement is based on draft financial statements, both the directors and the auditors will need to be satisfied that any outstanding audit issues will not result in changes to the figures in the financial statements in the annual report to be sent to shareholders • Issuers should not release a preliminary announcement until they have obtained their auditors' agreement

Make good use of Compliance Adviser	
Observation	Certain issuers and directors did not consult the compliance advisers appointed by the issuers during the Fixed Period (as defined in Rule 3A.19 or GEM Rule 6A.19)
Concern	Issuers and directors did not make good use of the compliance adviser who is appointed during the Fixed Period to advise the issuer and its directors on matters relating to compliance with the Listing Rules
Reminder	<ul style="list-style-type: none"> • Issuers should make use of the compliance adviser appointment. The compliance adviser is there to be used and is not an ornament, especially given that the issuer is a newly-listed company. Failure to take advantage of this source of advice and guidance will not attract any sympathy if such a failure causes or contributes to a breach of the Listing Rules

	<ul style="list-style-type: none"> • A prudent director should take advantage by proactively seeking advice from the compliance adviser for ensuring the issuer's compliance with the Listing Rules
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Directors taking an active interest in the issuer	
Observation	There are cases involving certain directors who failed to attend any Board meetings and did not possess any/adequate knowledge about the issuers' affairs. For example, a director revealed that he did not know what was discussed at a Board meeting because he hung up shortly after he joined the meeting by telephone
Concern	Those directors' ability to discharge their duties and obligations under the Listing Rules
Reminder	<ul style="list-style-type: none"> • The Listing Rules requires the directors to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law • The Board is collectively responsible for the issuer's management and operations, and the directors are collectively and individually responsible for the issuer's compliance with the Listing Rules • Each director must always know his responsibilities as a director of an issuer and its conduct, business activities and development • Directors do not satisfy these required levels if they pay attention to the issuer's affairs only at formal meetings. At a minimum, they must take an active interest in the issuer's affairs and obtain a general understanding of its business. They must follow up anything untoward that comes to their attention • It is permissible for directors to delegate their functions but doing so does not absolve them from their responsibilities or from applying the required levels of skill, care and diligence

