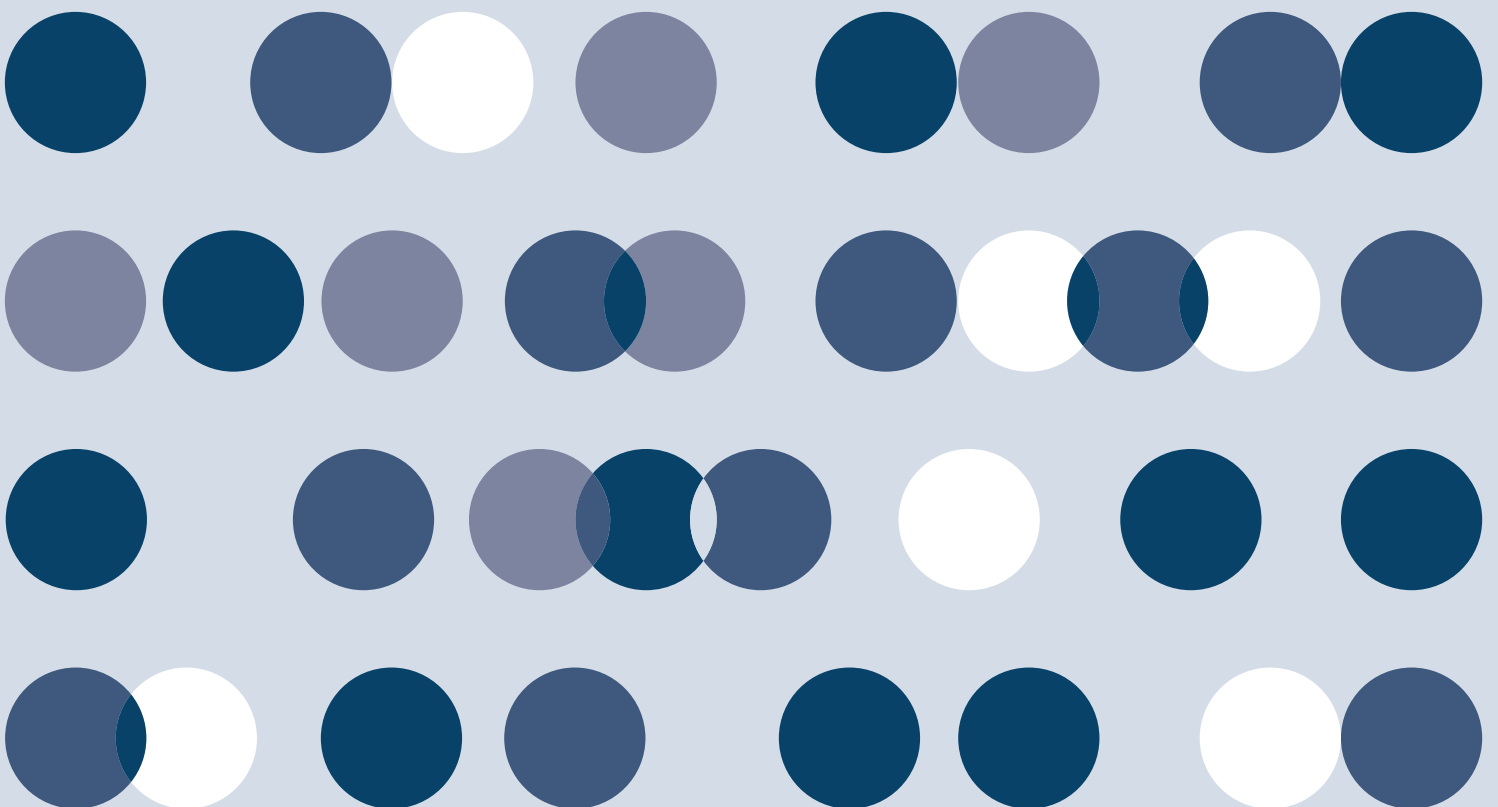


February 2019

ENFORCEMENT NEWSLETTER

FOR THE TWELVE MONTHS ENDED 31 DECEMBER 2018



INTRODUCTION

Welcome to our latest edition of the *Enforcement Newsletter*.

In this edition we focus on the obligations of listed issuers and directors when communicating and interacting with the Exchange. The feature article highlights the Exchange's expectations and the potential implications for not adhering to these requirements.

It has been a busy year for the Enforcement Team as shown by the Enforcement Statistics section. The statistics reveal that the number of directors subject to disciplinary sanctions increased significantly from 24 in 2017 to 120 in 2018. This is consistent with the increase in the number of investigations carried out by the Enforcement Team, which has resulted in a considerable rise in the number of concluded disciplinary actions against listed issuers and directors during 2018.

As well as an increase in the number of cases being investigated, such cases are becoming more and more complex. The second table in the Enforcement Statistics section shows that the majority of investigations during 2018 involved one or more enforcement themes. This is also reflected in the summaries of the concluded disciplinary cases in this Newsletter. Each case, together with the Compliance Highlights section, should serve as a reminder of the role and responsibilities of directors of a listed issuer, as well as the importance of maintaining effective and adequate internal controls.

Issuers and directors are encouraged to read this Newsletter, together with the materials and training put together by the Exchange (for example, [e-training for directors](#), [corporate governance review findings](#), [Corporate Governance Code consultation conclusions](#) and [Guidance for boards and directors](#)). These are useful materials for issuers and directors to promote Listing Rule compliance and enhanced corporate governance.

Communication is Key

All listed issuers will communicate with the Listing Department at some stage. This may be for the purpose of post-vetting announcements, seeking waivers from compliance with the Listing Rules, or in respect of potential breaches of the Listing Rules. This feature article aims to provide an overview of the general obligations of listed issuers and directors, along with the expectations of the Exchange, during such communications.

Overview

Under section 21 of the Securities and Futures Ordinance, the Exchange has a duty to ensure an orderly, informed and fair market. In carrying out this statutory duty, the Listing Department (“**Department**”) is responsible for a number of matters, including, supervising the listing process and the ongoing compliance by listed issuers with their obligations under the Listing Rules.

Under the Listing Rules, an issuer is obliged to provide the Exchange with (1) any information that the Exchange reasonably considers appropriate to protect investors or ensure the smooth operation of the market, and (2) any other information or explanation that the Exchange may reasonably require for the purpose of investigating a suspected breach of or verifying compliance with the Listing Rules.¹

Directors of a listed issuer are under a similar obligation.² A director is also required to comply with Rule 3.08, which includes an obligation to apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer. Directors are expected to employ their own wisdom and experience, and not rely solely on professional advisers.

From time to time, the Exchange issues guidance letters, listing decisions and FAQs to provide guidance to the market with a view to enhancing transparency and market understanding of its interpretation of the Listing Rules. The Department expects listed issuers to be familiar with the contents of such guidance materials.

¹ Rule 2.12A.

² By way of the undertaking that they are required to give to the Exchange upon their appointment, see for example, Appendix 5, Form B, Part 2(c).

Enquiry by Listed Issuer

When a listed issuer communicates or makes an enquiry with the Department (whether through professional advisers or otherwise) to (1) verify its compliance with the Listing Rules, (2) ascertain whether or to what extent any provisions in the Listing Rules apply, or (3) seek a waiver from compliance with the Listing Rules, the Department expects the listed issuer (and its directors) to provide complete, accurate and up-to-date information to enable the Department to consider the matter or process its enquiry.

If subsequent events render previous information provided to the Department to be inaccurate or outdated, the Department expects the listed issuer to promptly provide it with the relevant and current information, particularly in circumstances where a decision by the Department is pending, or if there are material changes to the basis for a decision which has been made by the Department. The Department has the right to revoke or modify its decisions if there are any material changes in the information provided or circumstances under which the decision was made.

Responding to Enquiries

Similarly, when responding to enquiries from the Department, listed issuers and directors should answer questions directly. For example, if a director is asked whether he reviewed a certain document, and the director replies that the document was sent to him for his review, the Department does not consider that to be a direct answer to the question.

Listed issuers and directors should be forthcoming and specific when dealing with the Department. If asked whether the listed issuer and/or directors considered Listing Rule compliance in respect of a certain transaction, the Department expects the parties to elaborate on how Listing Rule compliance was considered, when and by whom, together with supporting evidence (e.g. minutes of a board meeting). Further, when providing documents in support of an explanation to the Department, the parties are expected to provide references to the specific part of the document being relied upon.

Some issuers adopt an approach of picking and choosing what information to provide to the Department, or providing the Department with limited information, which then requires the Department to raise extensive enquiries. This approach is discouraged and will be taken into account in any subsequent enforcement action involving the listed issuer and/or its directors.

Positive Obligation

Listed issuers and directors should be reminded about their obligation to provide the Exchange with complete, accurate and up-to-date information when communicating with or dealing with enquiries from the Exchange. In particular, the undertaking given by directors to the Exchange upon their appointment contains a positive obligation to interact promptly and openly when communicating with the Department. This obligation also applies to former directors of listed issuers, together with their obligation to keep the Exchange informed of any changes to their contact details for a further period of three years from the date of their resignation as a director.

Any failure to discharge this obligation, or any other uncooperative behaviour, will be investigated by the Department, and will, very likely, lead to enforcement action. As shown in the Enforcement Statistics section of this Newsletter and the concluded disciplinary actions in 2018, the Department has pursued cases involving directors' failure to cooperate in the Exchange's investigations.

ENFORCEMENT STATISTICS

(1) Investigations

This table shows the number of investigations carried out by the Enforcement Team during 2018 (as compared with 2017).

	Twelve months ended 31/12/2018 ⁽¹⁾			Twelve months ended 31/12/2017 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total
Investigations	87	24	111	65	21	86
Cases involving:						
Company	81	21	102	54	18	72
Current directors	17	8	25	17	10	27
Former directors	33	13	46	27	10	37
Three Listing Rule breaches (or less)	54	14	68	38	13	51
More than three Listing Rule breaches	33	10	43	27	8	35
Investigations involving, and referrals to, other regulators ⁽²⁾	41	6	47	24	6	30

⁽¹⁾ Figures cover all cases investigated during the period (both concluded cases and cases that remain ongoing).

⁽²⁾ Referrals do not include those which solely involve a possible breach of the Inside Information provisions of the Securities and Futures Ordinance.

(2) Issues under Investigation

The Enforcement Team has adopted a thematic approach to enforcement activity since 2014. Whilst the Enforcement Team will continue to pursue any breach of the Listing Rules (as per the Enforcement Policy Statement), during the 2018 year, 91% of all investigations related to one or more of the enforcement themes identified below.

ISSUES	Twelve months ended 31/12/2018 ⁽¹⁾			Twelve months ended 31/12/2017 ⁽¹⁾		
	MB	GEM	Total	MB	GEM	Total
<i>ENFORCEMENT THEMES⁽²⁾</i>						
(1) Directors' duties	28	7	35	12	4	16
(2) Failure to cooperate with an Exchange investigation	4	1	5	8	2	10
(3) Inaccurate, incomplete and/or misleading disclosure in corporate communication	2	0	2	4	1	5
(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	1	1
(6) Delayed trading resumption	0	0	0	0	0	0
(7) Financial reporting - delays, or internal controls and corporate governance issues	1	0	1	0	0	0
<i>MULTIPLE THEMES⁽³⁾</i>	38	12	50	29	10	39
<i>OTHERS:</i>						
Other Listing Rules not falling into any of the above categories	8	2	10	6	2	8

⁽¹⁾ Figures cover all cases investigated during the period (both concluded cases and cases that remain ongoing).

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

⁽³⁾ Number of investigations during the period under Multiple Themes involving Theme (1): (2018: 41; 2017: 30); Theme (2): (2018: 3; 2017: 2); Theme (3): (2018: 17; 2017: 18); Theme 4: (2018: 23; 2017: 20); Theme 5: (2018: 7; 2017: 7); Theme 6: (2018: 4; 2017: 2); Theme 7: (2018: 24; 2017: 15).

(3) Outcome of Enforcement Actions by Listing Committee

	Twelve months ended 31/12/2018			Twelve months ended 31/12/2017		
	MB	GEM	Total	MB	GEM	Total
Sanctions imposed ⁽¹⁾						
Public censures	14	7	21	7	1	8
Public statements involving criticism	0	0	0	1	0	1
Other public statements ⁽²⁾	1	2	3	0	0	0
Private reprimands	0	0	0	0	0	0
Directions involving ⁽³⁾ :						
Internal Control Review	1	1	2	0	0	0
Retention of Compliance Adviser	2	6	8	1	0	1
Training of Directors	6	6	12	4	0	4
Average time for completion of an investigation in 2018 (from commencement of investigation to the decision as to the regulatory action to be taken) was 9 months.⁽⁴⁾						

⁽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⁾ The average time for completion of an investigation in 2017 was 9.4 months and not 8.7 months as previously disclosed.

(4) Number of Directors Subject to Disciplinary Sanctions

	Twelve months ended 31/12/2018			Twelve months ended 31/12/2017		
	MB	GEM	Total	MB	GEM	Total
Executive directors	41	30	71	16	1	17
Non-executive directors	5	5	10	4	0	4
Independent non-executive directors	17	22	39	3	0	3
Total	63	57	120	23	1	24

OTHER INFORMATION ON REGULATORY ACTIVITIES

(1) Disciplinary proceedings	
During the year ended 31 December 2018	Total
Disciplinary reports issued	13
Issuers and directors involved in ongoing and concluded disciplinary actions	109
As at 31 December 2018	Total
Disciplinary actions pending hearings/reviews ⁽¹⁾	9
(2) Interaction with other law enforcement authorities	
During the year ended 31 December 2018	Total
Referrals made by the Listing Department to SFC, ICAC or CCB ⁽²⁾	32
Witness statements given by the Exchange's personnel in relation to investigations of SFC, ICAC or CCB	7
Information and document production requests handled by the Exchange in relation to investigations of SFC, ICAC or CCB	72
(3) Warning and caution/guidance letters	
During the year ended 31 December 2018	Total
Issued by the Listing Department	401
(4) Information on delisting and cancellation	
Status Report on Delisting Proceedings and Suspensions for the year ended 31 December 2018	
Monthly Prolonged Suspension Status Report as at 31 December 2018	
Main Board GEM	

⁽¹⁾ The outcome of the disciplinary action will only be published if public sanctions are made at the conclusion of the hearing/final review.

⁽²⁾ Referrals which arose out of an enquiry/ investigation for potential breach of the Listing Rules but exclude those which solely involve a possible breach of the Inside Information provisions of the Securities and Futures Ordinance.

ENFORCEMENT CASES

During the six-month period ended 31 December 2018, the Listing Committee of the Exchange issued 10 news releases in respect of the enforcement cases in which public sanctions were imposed.

Consistent with previous periods, all of these cases involved one or multiple themes and included breaches of directors' duties. The breaches in these cases arose from one or more of the following reasons: (1) the directors' failure to understand their and the issuer's obligations in relation to Listing Rule compliance; (2) the issuer's lack of adequate and effective internal controls; and (3) delegation of responsibilities without proper reporting/supervision by the directors.

There were also cases involving the issuers' failure to take prompt and adequate steps to address the issuer's breach of the Listing Rules, leading to the occurrence of further breaches. The Exchange views such conduct as a serious disregard for compliance, and has and will continue to take action where necessary.

Directors need to understand that they have collective and individual responsibility for the issuer's compliance with the Listing Rules. This applies to all directors – whether they are executive or non-executive. The Exchange expects directors to take an active interest in the issuer's affairs and ensure that they undergo regular training to ensure complete compliance with Listing Rule requirements.

Issuers and directors are encouraged to read the news releases of enforcement cases as they convey the Exchange's continuing expectations of issuers and directors in relation to compliance with the Listing Rules.

**Chengdu PUTIAN Telecommunications Cable Company
Limited (stock code: 1202)**
[News release](#) of 5 July 2018

The issuer's subsidiaries had carried out three series of continuing connected transactions ("**Past CCTs**") for many years without the issuer's compliance with the announcement, reporting, annual review and independent shareholders' approval requirements under Chapter 14A of the Listing Rules.

The issuer renewed the Past CCTs since 1 January 2015 without complying with the announcement and shareholders' approval requirements until September and November 2015, even though the Past CCTs were discovered in October 2014.

The Listing Committee found that there were material deficiencies in the issuer's internal controls, which partly caused the Listing Rule breaches by the issuer. The issuer and 14 current and former directors were publicly censured or criticised for their respective breaches of Chapter 14A and directors' undertakings to use their best endeavours to procure the issuer's compliance with the Listing Rules.

Themes:

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

Key messages:

- It is imperative that the issuer and its directors understand their obligations under the Listing Rules.
- Directors are expected under the Corporate Governance Code to review the issuer's internal controls at least annually to ensure that the issuer maintains adequate and effective internal controls, including appropriate measures to manage and monitor the reporting of relevant transactions at the subsidiary level, and clear guidance/training to staff members who are charged with the reporting responsibility.
- Directors must take prompt steps to procure the issuer's Listing Rule compliance following discovery of the issuer's non-compliance.

Zall Smart Commerce Group Limited (stock code: 2098) **[News release](#) of 6 July 2018**

In this case, the issuer failed to disclose a share charge as soon as reasonably practicable after it was executed or in its interim report for the six months ended 30 June 2016. The directors knew about the share charge but had delegated to the issuer's chief financial officer ("CFO") the responsibility of the issuer's compliance with the Listing Rules and finalising the 2016 interim report. The issuer's professional advisers advised the CFO that it was mandatory to disclose the share charge in the interim report but he did not share that information with the directors.

This disciplinary action was concluded by way of a settlement, with the Listing Committee making public censures or public criticisms against the issuer and eight current and former directors. The directors were found to have breached their undertakings to: (1) procure the issuer's compliance with the Listing Rules; (2) ensure that there were internal controls for the disclosure of the share charge; and (3) ensure that the risk management system included additional training on disclosures under the Listing Rules.

Themes:

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

Key messages:

- Failure to disclose the share charge deprived shareholders of important information which enables them to make informed decisions and maintain continued confidence in the market.
- The board is responsible and accountable for the contents of the issuer's disclosure to the market. Directors must ensure that the published information is accurate and complete.
- Directors are collectively and individually responsible for fulfilling their director's duties. Delegation of functions does not absolve them from their responsibilities to ensure the issuer's compliance with the Listing Rules. Any failure to closely supervise and monitor the delegated personnel exposes the issuer to risks of non-compliance with the Listing Rules.

SRE Group Limited (stock code: 1207)

News release of 20 July 2018

The issuer failed to comply with the announcement, circular and shareholders' approval requirements under Chapters 14 and 14A of the Listing Rules in relation to certain financing transactions which had been entered into by Mr Shi Jian, purportedly on behalf of certain members of the issuer's group, with third party financial institutions without the knowledge of the other directors of the issuer at the relevant time. The issuer admitted its breaches of the Listing Rules.

Mr Shi also admitted that he had breached: (1) Rules 3.08(c), (e) and (f); (2) his undertaking for complying with the Listing Rules to the best of his ability; and (3) his undertaking for failing to use his best endeavours to procure the issuer's compliance with the Listing Rules.

The Listing Committee criticised the issuer for its breaches of the Listing Rules, and imposed a censure against Mr Shi. The Listing Committee also stated that in its opinion, had Mr Shi remained in office, his retention of office would have been prejudicial to the interests of investors.

Themes:

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

Key messages:

- A director has responsibility to be answerable to the issuer for the application of its assets and to put connected transactions forward for board approval.
- Repeated non-compliance with an issuer's internal control policies by a director indicates a serious concern as to the director's ability to discharge his responsibilities under the Listing Rules, such that the retention of office by that director would have been prejudicial to the interests of investors.

Inno-Tech Holdings Limited (stock code: 8202)

News release of 12 September 2018

This case concerns: (1) various payments made by the issuer to its former executive director Mr Ang Wing Fung or parties related to him; and (2) the issuer's delay in publication of its financial results and reports. Those payments amounted to \$33 million, including \$440,000 which represented Mr Ang's salary increase for 20 months approved by the issuer's Remuneration Committee (of which Mr Ang was the chairman and he did not abstain from voting). There was insufficient evidence to show that such payments were made in the ordinary course of the issuer's business.

The GEM Listing Committee took a very serious view of the conduct of Mr Ang and considered that he may not be considered suitable to be a director of a listed issuer should he make such an application in the future. The GEM Listing Committee also found that Mr Ang and other five directors of the issuer had breached GEM Listing Rule 5.01 and their respective undertakings for failing to ensure the issuer had adequate internal controls. Among the six directors, a former executive director was also found to have breached his duties as the issuer's compliance officer. The GEM Listing Committee imposed public censures against the issuer and the six former executive and independent non-executive directors in this disciplinary action.

Themes:

- (1) Directors' duties
- (2) Financial reporting – delays, or internal controls and corporate governance issues

Key messages:

- It is imperative that robust internal controls are established, maintained and effectively observed and enforced by management without exception. A failure to do so exposes the issuer and its shareholders to risks stemming from possible misapplication of corporate assets.
- Directors who are on the Remuneration Committee must exercise reasonable care, skill and diligence in their consideration and approval of the emoluments of directors and others which fall within the ambit of the Remuneration Committee. Failure to do so renders the delinquent directors liable to disciplinary sanctions.

NNK Group Limited (stock code: 3773)

News release of 15 October 2018

The issuer was listed on 7 January 2016. On 29 February 2016, the issuer published a profit warning announcement in relation to its annual results for the year ended 31 December 2015. The issuer's prospectus, which was issued on 24 December 2015, contained various statements to the effect that there had been no material adverse changes to the issuer's financial or trading position or prospects since 30 September 2015, and that the directors expected to maintain a stable growth of gross transaction values and therefore revenue and profit in the future.

The Listing Committee found that the issuer's prospectus was not accurate and complete in all material respects and was misleading, and as a result, did not enable investors to make an informed assessment of, among other things, the issuer's financial and trading position, in breach of Rules 2.13(2) and 11.07. The Listing Committee also found that the three executive directors at the time of listing had breached Rule 3.08(f) and their undertakings by failing to take steps to make enquiries about the issuer's latest business performance, in order to be in a position to make accurate and complete disclosure in the prospectus.

The Listing Committee censured the issuer and the three executive directors for their breaches, which was upheld on appeal by the Listing (Review) Committee.

Themes:

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

Key messages:

- A listing applicant is under a duty to make accurate and complete disclosure in its prospectus. Primary responsibility for ensuring compliance with this obligation rests with the directors.
- An applicant and its directors must take steps to ensure that there is reasonable basis for making a statement of "no material adverse change" in a prospectus.

Sino Splendid Holdings Limited (stock code: 8006)

News release of 30 October 2018

This case involves the issuer's inaccurate disclosure in its 2016 interim results. The figure for the issuer's investments shown in its 2016 interim results was simply brought forward from the annual results for 2015 without further assessment. Mr Chow, the executive director responsible for monitoring the investments, was on sick leave shortly before finalising the 2016 interim results. None of the directors noted the error when they received the draft 2016 interim results. After the error was discovered, the profit reinstatement was subsequently made (a \$26 million net profit instead of a \$7.4 million net loss).

The case demonstrates there was over-reliance on Mr Chow who assumed multiple key management positions to deal with day-to-day management and financial reporting function. The GEM Listing Committee found that: (1) the issuer's 2016 interim results announcement inaccurate and misleading; (2) the issuer had inadequate internal control system to prevent its breach of the Listing Rules; and (3) six executive and independent non-executive directors, including Mr Chow, were in breach of their directors duties under Rule 5.01(6) and their respective undertakings to comply with the GEM Listing Rules and to procure the issuer's compliance.

Themes:

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

Key messages:

- A specific function may be delegated to appropriately qualified staff but not the ultimate responsibility for performance of that function by directors. Adequate procedures must be put in place to ensure accurate and regular reporting of the delegated function to the board in order to keep all directors fully informed and updated in respect of its performance.
- Directors must take an active interest in the listed issuer's operations and affairs. In this case, the listed issuer devoted significant resources into a new investment activity, it is imperative that its directors: (a) establish appropriate policies and guidelines governing the investment; and (b) ensure supply of regular update of the status and performance of the investment to all directors.

L & A International Holdings Limited (stock code: 8195) **News release of 11 December 2018**

The issuer in this case breached the GEM Listing Rules for granting share options during a black-out period and for failing to: (1) timely announce the options granted; (2) timely disclose the shares issued upon the exercise of the share options; (3) ensure that the information relating to the share options contained in its corporate communication was accurate and complete in all material respects and not misleading or deceptive; and (4) timely consult and, if necessary, seek advice from its compliance adviser.

The directors were found to have breached director's duties and their undertakings for failing to: (1) use their best endeavours to procure the issuer's compliance with the GEM Listing Rules; (2) act in good faith in the interests of the Company as a whole, and for proper purpose; (3) apply a reasonable degree of skill, care and diligence; and (4) comply with the GEM Listing Rules to their best ability in and after approving the grant of the share option. The compliance officer (executive director and chairman) has also failed to discharge his duties as compliance officer of the issuer.

The GEM Listing Committee imposed public censures against the issuer and the relevant directors.

Themes:

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

Key messages:

- The purpose of the Rule provision restricting an issuer from granting share options during black-out periods is to maintain the fair treatment of the existing shareholders of the issuer and an orderly market for securities trading.
- The Listing Rules prescribe certain circumstances in which an issuer is obliged to consult its compliance adviser. Consultation with legal or financial advisers does not exonerate the issuer from such obligation.
- Directors must act in good faith in the interests of the issuer as a whole, act for proper purpose and apply a reasonable degree of skill, care and diligence in discharging their duties as directors.

Chen Xing Development Holdings Limited (stock code: 2286) **[News release](#) of 12 December 2018**

This case concerns the issuer's failure to comply with the Listing Rules in respect of its subscription of wealth management products, and to consult its compliance adviser where such notifiable transactions were contemplated.

Four executive directors of the issuer were aware of the issuer's breaches of the Listing Rules in respect of the issuer's subscription of wealth management products, but took no action to ensure that future subscriptions would comply with the Listing Rules. As a result, the issuer persisted in breaching the Listing Rules by making additional subscriptions of wealth management products without complying with the announcement and/or circular and prior shareholders' approval requirements under the Listing Rules.

The Listing Committee found that the issuer demonstrated an unacceptable level of corporate governance and decided to criticise the issuer for its breaches of the Listing Rules. The Listing Committee further imposed public censures against the four executive directors of the issuer for breaching their undertakings to use their best endeavours to procure the issuer's compliance with the Listing Rules. The Listing Committee was of the view that the directors' conduct demonstrated a disregard for compliance with the Listing Rules.

Themes:

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

Key messages:

- Directors are responsible for procuring an issuer's compliance with the Listing Rules. When faced with knowledge of potential breaches by an issuer, directors are expected to take timely remedial action. Failure to do so amounts to a serious disregard for compliance.
- Directors should proactively seek advice and assistance from professional parties, such as compliance advisers, prior to entering into transactions which may be subject to the Listing Rules.

Shenji Group Kunming Machine Tool Company Limited (stock code: 300)

[News release](#) of 13 December 2018

The issuer in this case failed to ensure that its announcement concerning a share transfer between its substantial shareholder and a third party was accurate and complete in all material respects by omitting to disclose certain material terms of the share transfer.

The Listing Committee also found that the then chairman and director of the issuer who approved the publication of the announcement breached his (1) director's duties; (2) undertaking for failing to comply with the Listing Rules to his best ability and to use his best endeavours to procure the issuer's compliance with the Listing Rules; and (3) undertaking for failing to cooperate in the Listing Department's investigation.

Both the issuer and the director were publicly censured.

Themes:

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

Key messages:

- Issuers must ensure that information contained in their announcements and corporate communication is accurate and complete in all material respects and not misleading or deceptive.
- Issuer not privy to the transaction in question or the publication under a tight time frame may not be accepted as reasonable excuse if the responsible director has been provided with relevant material information but failed to take reasonable steps to procure its disclosure.
- Directors must exercise reasonable skill, care and diligence under Rule 3.08(f) of the Listing Rules in approving the publication of the issuer's announcements.

Golden Meditech Holdings Limited (stock code: 801)

News release of 18 December 2018

This case concerns the issuer's failure to comply with the Listing Rules in relation to a series of transactions/events involving the issuer's interest in an associated company.

The Listing Committee found that the issuer: (1) failed to comply with the announcement, circular and shareholders' approval requirements in respect of the privatisation of the associate and the grant of a put option; (2) breached Rule 2.13 in respect of certain disclosures made in a circular and an interim report; and (3) failed to announce the termination of a disposal which had previously been announced.

The Listing Committee also found that six directors of the issuer had breached: (1) their directors' duties; (2) their undertakings for failing to comply with the Listing Rules to the best of their ability; and (3) their undertakings for failing to use their best endeavours to procure the issuer's compliance with the Listing Rules. The Listing Committee's findings of breach were upheld on appeal by certain directors to the Listing (Review) Committee and the Listing Appeals Committee.

Public censures were imposed against the issuer and two executive directors, whilst the four remaining directors were criticised.

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 transactions

Key messages:

- A director has responsibility to inform the board of important information concerning the affairs of an issuer and the protection of the issuer's investments, particularly where such information triggers Listing Rule compliance issues.
- The board of directors of a listed issuer is collectively responsible for the management and operations of the issuer. Directors, including non-executive directors, have oversight responsibilities which cannot be discharged by delegating to other members of the board or staff of the issuer.

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.

Director's contribution	
Observation	There are cases where the director alleged that he ceased to perform any director's responsibilities for a period of time (e.g. he had already retired) even though he was still held out to be a director of an issuer
Concern	<ul style="list-style-type: none"> Director's ability to perform his role and responsibilities as director of an issuer
Reminder	<ul style="list-style-type: none"> Rule 3.08/GEM Rule 5.01 provide that the directors, both collectively and individually, must fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. These Rules highlight the importance of directors taking an active interest in the issuer's affairs and having a general understanding of its business. The Corporate Governance Code provides that: (a) every director must always know his responsibilities as a director of an issuer and its conduct, business activities and development; (b) as part of the directors' assessment of the adequacy and effectiveness of the issuer's risk management system, the directors should regularly review the contribution required from a director to perform his responsibilities to the issuer and whether he is spending sufficient time performing them; and (c) a director must ensure that he will be able to devote sufficient time and attention to the issuer's affairs, and should not accept the appointment if he cannot do so (Principles A.1 and A.6, and Code Provision A.6.3).

Director's attendance at disciplinary hearing	
Observation	In certain enforcement cases, directors who were respondents in the proceedings instructed representatives from their professional advisers to attend the hearings before the Listing Committee on their behalf
Concern	The legal representatives were not able to respond to the Listing Committee's questions at the hearing without the directors' instructions on the relevant issues
Reminder	<ul style="list-style-type: none"> • Directors have given undertakings to the Exchange that they will cooperate in any investigation conducted by the Listing Department and/or the Listing Committee, including attending any hearings at which they are requested to appear. • As stated in the Disciplinary Procedures, it is expected that respondents will attend the disciplinary hearing (and they have a right to be accompanied by a professional adviser), so that they can make supplementary oral submissions if necessary and to answer any questions which the Listing Committee may have • Respondents answering questions are expected to do so directly and not through their professional advisers. • Respondents can only participate at disciplinary hearings if they attend in person or, if an issuer, by the personal attendance of an appropriate and authorised representative.

