



# Enforcement Bulletin

## Welcome to the first edition of the Enforcement Bulletin

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This regular publication by the Listing Enforcement Department, replacing our previous Enforcement Newsletter, will continue to feature articles relevant to Listing Rule compliance and updates on our enforcement work. We hope this resource will provide helpful guidance to issuers, directors, and any parties responsible or involved in Listing Rule compliance and corporate governance.

Our focus in this edition is on better corporate governance. In particular, our feature article shines a spotlight on the onboarding of directors of listed issuers. This is followed by an article highlighting some of the key regulatory messages arising from the disciplinary cases concluded between 1 January 2020 and 31 October 2020.

In addition to reading our regular Enforcement Bulletins, we encourage you to visit our website for the latest announcements and materials. Recent additions include an updated version of the [Disciplinary Procedures](#) for disciplinary actions, and an updated version of the [Statement on Settlement of Disciplinary Matters](#) – we will be writing more about these in a future Bulletin. Our website also contains our latest enforcement statistics.

Thank you to all those who provided responses to our [consultation paper](#), published in August, on the Review of Disciplinary Powers and Sanctions. The consultation period has now closed. The Exchange is considering all the responses and we will communicate with you further in relation to the consultation as soon as we can.

We hope you will find the contents of this edition informative and helpful. Anyone involved in Listing Rule compliance and corporate governance in Hong Kong is encouraged to read our Bulletin and the Exchange's guidance materials to ensure they stay on top of current and future trends in enforcement at the Exchange.

## Director onboarding

Having an effective onboarding process is a critical step towards ensuring that new directors fulfil their role and integrate into the board. This article describes the respective obligations of the issuer and the new director in respect of the onboarding process and the importance of having a comprehensive and tailored induction as part of that process.

The appointment of a new director is an important matter, and both the newly-appointed individual and the company/existing board have critical roles to play to ensure that the onboarding is completed smoothly and effectively.

There is no grace period for new directors in regard to their duties. There is effectively no distinction between directors who are newly-appointed and those who have served for some time. It is therefore vital that newly-appointed directors are fully aware from the outset of the responsibilities and duties to which they are subject under both the law and the Listing Rules.

In particular, Rule 3.08 of the Listing Rules (Rule 5.01 of the GEM Listing Rules) sets out the Exchange's expectations of directors, including the expectation of directors to fulfil fiduciary duties and to apply, in the performance of their duties, such degree of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. Directors, whether executive or non-executive, are collectively and individually responsible for the management and operations of an issuer. They are expected to be proactive in the discharge of their duties. Engagement in the issuer's affairs takes place both inside and outside the boardroom, and mere attendance at meetings is usually not a sufficient level of participation.

### Onboarding approach

It is up to the director and issuer in each case to devise and implement an appropriate approach to onboarding. Both issuer and director should make efforts to ensure the process is as thorough and useful as possible.

At the very least, newly-appointed directors should ensure they devote sufficient time and take particular care to understand the issuer's and director's responsibilities and duties, including those under the Listing Rules, and the issuer's operations and businesses. The new directors may need to go through a steep learning curve in order to participate fully and make meaningful contributions from the outset of their tenure. The effectiveness of the onboarding process affects how new directors fulfil their role and integrate into the board.

New directors should familiarise themselves with the issuer's risk management and internal control systems. However, as a new joiner, they have a unique perspective on the issuer and its controls, and should take the opportunity to critically consider existing controls and processes, ask questions, and generally "kick the tyres". The newly-appointed director must keep in mind that the board is collectively and individually responsible for ensuring that the issuer establishes and maintains appropriate and effective risk management and internal control systems.

In the case of listing applicants, the company should not leave the appointment of its directors (in particular independent non-executive directors) to a late stage in the process, as that may not give appointees sufficient time to gain a proper understanding of both their responsibilities as directors of a listed company and the applicant's affairs. This may also limit their opportunity to be involved in the formulation of the applicant's risk management and internal control systems. Applicants are therefore recommended to appoint directors (including independent non-executive directors) as early as possible.



Both the issuer and the director should ensure that the director is provided with a comprehensive and tailored induction. This may include key guidelines and documents relevant to the director's role, responsibilities and obligations; a briefing on the group's structure, businesses, systems, and governance practices; and introductions to other members of senior management and those supporting the board.

Newly-appointed directors should understand that, to the extent that directors have engaged in permitted delegation of specific functions, they remain primarily responsible to supervise and manage the issuer's affairs, as well as to properly monitor and control the discharge of the delegated functions.

A high performance board is one that is composed of directors with a combination of competencies and diversity of perspectives aligned with the issuer's strategy and objectives. The induction process should therefore be regularly reviewed and updated to ensure that it remains relevant, up-to-date and effective, particularly if the issuer has not appointed a new director for several years. It must also be individually tailored to take into account the different backgrounds and experience of each director. If the new director is to join any committee of the issuer or perform a specific role, the responsibilities expected of that committee/role should also form part of the induction. It is important to seek feedback from the new directors to understand what works well and what does not. The newly-appointed director should be inquisitive and actively seek out further information as necessary.



## Continuing education and duties

It is the responsibility of all directors, not just new joiners, to keep abreast with applicable laws and regulations, the Listing Rules, and industry-specific changes. Issuers should ensure that directors are given continuing support and training. Directors should proactively ensure that they, and as necessary the staff supporting them (particularly those whose responsibilities may relate to Listing Rule compliance matters), are provided with the training they need.

In this regard, directors are encouraged to review, amongst other things, the Exchange's director training programme<sup>(1)</sup> (which includes webcasts and e-trainings) and guidance materials<sup>(2)</sup>, accessible on the Exchange's website, which aim to improve the quality of directors' performance of their duties, and promote good corporate governance standards and practices amongst issuers.

Primary responsibility for ensuring compliance with the Listing Rules rests with the directors of the listed issuer. It is therefore critical that directors fully understand their obligations under the Listing Rules, and are equipped with the information they need about the issuer in order to discharge those obligations. Any failure in this regard may result in disciplinary action and receipt of a public sanction.

- (1) Accessible at:  
[https://www.hkex.com.hk/Listing/Listed-Issuers/e-Learning/Director-Training-Webcast?sc\\_lang=en](https://www.hkex.com.hk/Listing/Listed-Issuers/e-Learning/Director-Training-Webcast?sc_lang=en)

Also see e-learning on Connected Transaction Rules (<https://www.hksi.org/ejai/Connected%20transactions%20eCourse%20Eng/story.html>) and Notifiable Transaction Rules ([https://www.hksi.org/ejai/Notifiable%20Transactions%20eCourse%20\(EN\)/story.html](https://www.hksi.org/ejai/Notifiable%20Transactions%20eCourse%20(EN)/story.html))

- (2) Guidance for Boards and Directors:  
[https://www.hkex.com.hk/-/media/hkex-market/listing/rules-and-guidance/corporate-governance-practices/guide\\_board\\_dir](https://www.hkex.com.hk/-/media/hkex-market/listing/rules-and-guidance/corporate-governance-practices/guide_board_dir)

Leadership role and accountability in ESG:  
[https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/Exchanges-guidance-materials-on-ESG/directors\\_guide.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/Exchanges-guidance-materials-on-ESG/directors_guide.pdf?la=en)

## Enforcement cases

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As illustrated by the ten cases involving public disciplinary sanctions announced between 1 January and 31 October 2020, investigations into breaches of the Listing Rules will generally involve considering the conduct of the directors who were on the board when the breaches took place, and whether the directors have applied the skill, care and diligence required and expected under the Listing Rules (in particular, Rule 3.08(f)).

In two of these cases, directors failed to discharge their duties in relation to acquisitions and investments made by listed issuers, and were publicly sanctioned by the Listing Committee as a result.

In the case of [Asia Resources Holdings Limited](#), the Listing Division took action against seven current and former directors for failing to conduct proper and adequate due diligence prior to the acquisition of a target with no track record, which had not commenced business, and which was a new business to the company. The Listing Committee found that the directors involved had placed excessive reliance on a valuation report, without taking steps to assess the reasonableness of the valuation report or of the assumptions adopted by the valuer.

In the [case](#) of Champion Technology Holdings Limited and Kantone Holdings Limited, the companies in question recorded an impairment loss of \$8.5 billion on the value of cultural products acquired by the group for trading purposes. The Listing Committee concluded that the directors in charge of the acquisition failed to ensure that the cultural products were properly authenticated and valued prior to acquisition.

Further, the other directors on the boards of Champion and Kantone at the time failed to make enquiries when they should have noticed a substantial increase in the amount of inventory kept by the group in the relevant financial statements.

These two cases demonstrate that the Listing Committee is willing to take robust action against directors of listed issuers who fail to discharge their duties to the requisite standard when making investment decisions or acquisitions on behalf of a listed issuer. Action may be taken by the Exchange even where the listed issuer has not suffered a loss on the investment. The Exchange will also refer conduct which may amount to breaches of the law to the appropriate law enforcement authority, as we did in [one of the cases](#), which resulted in arrests being made by the Commercial Crime Bureau of the Police.

The remaining cases all involved breaches of important duties by directors, and resulted in public sanctions against them. These included cases in which the directors failed to ensure that the issuer had adequate and effective internal controls, or complied with the Listing Rules. Directors should note that such breaches may result in a statement by the Listing Committee that, in the Exchange's opinion, the retention of office by the relevant director is or would have been prejudicial to the interests of investors.

On the next page we set out a summary of the news releases published between 1 January 2020 and 31 October 2020.



## Enforcement cases

Date of news release	Issuer/name – summary of conduct
<a href="#">20 Jan 2020</a>	<p><b>Seven current and former directors of Asia Resources Holdings Limited</b></p> <ul style="list-style-type: none"> <li>• Breach of directors’ duties for failing to conduct proper and adequate due diligence in relation to a proposed acquisition</li> </ul>
<a href="#">27 Feb 2020</a>	<p><b>Yorkshire Holdings Limited and five former directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s failure to seek its auditor’s agreement prior to the publication of its annual results</li> <li>• Listed issuer’s failure to comply with the procedural requirements for connected and continuing connected transactions</li> <li>• Internal control deficiencies and failure to implement internal control procedures</li> <li>• Breach of directors’ duties in relation to the listed issuer’s Listing Rule breaches</li> </ul>
<a href="#">13 Mar 2020</a>	<p><b>Great Wall Belt &amp; Road Holdings Limited and five former directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s inaccurate, incomplete and misleading disclosure</li> <li>• Listed issuer’s failure to comply with the procedural requirements for connected transactions</li> <li>• Internal control deficiencies</li> <li>• Breach of directors’ duties in relation to the listed issuer’s Listing Rule breaches</li> </ul>
<a href="#">22 Apr 2020</a>	<p><b>China Ding Yi Feng Holdings Limited and five current and former directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s late publication of annual results and report</li> <li>• Director appointment process not duly considered or transparent</li> <li>• Directors’ failure to provide information prescribed by the Listing Rules to the listed issuer upon their appointment</li> <li>• Breach of directors’ duties in relation to the listed issuer’s investment in bills of exchange</li> <li>• Three directors’ breach of undertakings to cooperate with the Exchange’s investigation</li> </ul>
<a href="#">27 Apr 2020</a>	<p><b>Eight former directors of Champion Technology Holdings Limited and/or Kantone Holdings Limited</b></p> <ul style="list-style-type: none"> <li>• Breach of directors’ duties for failing to (a) conduct sufficient due diligence and to obtain independent authentication and/or valuation in relation to the listed issuer’s acquisition of cultural products; and/or (b) monitor the listed issuer’s investment in certain private companies</li> </ul>

**Date of news release****Issuer/name – summary of conduct**[12 May 2020](#)**Mr Zhang Yun, former director of Kiu Hung International Holdings Limited**

- Failure to comply with the training direction imposed by the Listing Committee

[13 May 2020](#)**Kong Sun Holdings Limited and seven current and former directors**

- Listed issuer's failure to comply with the procedural requirements for loans and advances, which constituted a major transaction
- Listed issuer's late publication of annual and interim results and reports
- Internal control and risk management deficiencies
- Breach of directors' duties in relation to the listed issuer's Listing Rule breaches and internal control and risk management deficiencies

[8 Jul 2020](#)**State Energy Group International Assets Holdings Limited and a former director**

- Listed issuer's failure to provide the Exchange with information relevant and required by the Exchange to verify the listed issuer's compliance with the Listing Rules
- Breach of director's duties in relation to the listed issuer's Listing Rule breach

[11 Aug 2020](#)**Zhongtian International Limited and five current and former directors**

- Listed issuer's failure to comply with the procedural requirements for financial assistance provided to its supplier, which constituted a major transaction
- Internal control deficiencies
- Breach of directors' duties in relation to the listed issuer's Listing Rule breaches and internal control deficiencies

[3 Sep 2020](#)**Sanai Health Industry Group Company Limited and five current and former directors**

- Repeated breach by the listed issuer of its financial reporting obligations under the Listing Rules
- Internal control deficiencies
- Breach of directors' undertakings for failing to use their best endeavours to procure (a) the listed issuer's compliance with the Listing Rules; and (b) the listed issuer to address the internal control deficiencies which contributed to its previous late publication of financial results