



# Enforcement Bulletin

## A time of enhancement for enforcement

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Every successful organisation will invest in change, both by spending time critically reflecting on its own strengths and areas for improvement, and recognising that the world around it is not standing still, and so adaptation and anticipation are essential for future success. This is equally true for regulators, which is why we have invested considerable effort over the last couple of years in reviewing our approach to enforcement. In this edition of our Enforcement Bulletin, we will explain more about this initiative, and what it means for the future.

### **Review of listing rules**

The most visible example of the changes we have made has been our review of the Listing Rules relating to disciplinary powers and sanctions. We are pleased that the Conclusions of our consultation have now been published, and the Rule amendments came into effect on 3 July 2021. The last major reforms of these Rules were in 1992, so we are marking the start of a new chapter in the Exchange's disciplinary and enforcement efforts.

Amongst other things, the new Rules provide a more comprehensive spectrum of graduated disciplinary sanctions, and will better equip us to take meaningful action against the individuals responsible for Rule breaches and misconduct. I would like to thank everyone who has helped us reach this juncture, including all those who participated in the consultation and provided us with insightful and valuable feedback.

## Procedures and guidance materials

The Rules fundamentally underpin the Exchange’s ability to take enforcement action, but there are other important changes and developments worthy of attention. Many of these are covered in the two feature articles in this edition.

Firstly, we have just issued a revised [Policy Statement](#) and [Sanctions Statement](#), to sit alongside the updated Listing Rules and to reflect both recent developments and our view of current enforcement priorities. The first article in this Bulletin contains a focus on these priorities.

Secondly, and as noted in our last Bulletin, both the Disciplinary Procedures and the Settlement Statement were updated last year. The second article in this edition gives some further information about those changes, and how they are now working in practice.

## Public sanctions

Readers of this Bulletin are also encouraged to subscribe to HKEX’s Regulatory Announcements and to read the sanctions that we publish. Those that do will have seen that public sanctions have been issued in over 20 cases in 2021 – which is already more than the number published in the entirety of 2020. The final section of this edition contains a summary of our recently-published sanctions.

**There are two points I would like to highlight in respect of our sanctions.**

**(1) Efficiencies for an increased caseload.**

Part of our review has involved looking at ways in which we can optimise our enforcement processes and make them more efficient, without compromising

quality or effectiveness, so that we are best placed to achieve swift and fair regulatory outcomes. There has been a notable rise in the number of cases under investigation by the Enforcement Department over the last year. The rise is in part attributable to the Listing Division’s increasing use of technology to identify possible misconduct. It is also partly a product of continued close cooperation with the Securities and Futures Commission and other regulatory bodies and law enforcement agencies. The message to take away from this is that those failing to reach the requisite standards are more likely to be detected and become the subject of our investigations.

**(2) Clarity and communication in relation to public sanctions.**

Public sanctions are set out in a Statement of Disciplinary Action, as directed by the Listing Committee. These statements set out in some detail the nature and facts of the case, the relevant Listing Rule requirements, and the findings of breach. To highlight the main points of each case, and the key regulatory messages, we are also issuing a news release at the same time as the statement is published. We believe that this will help to advance several of our objectives, including educating the market, and providing assistance and clarity to those responsible for Rule compliance, so they can focus on avoiding breaches and enhancing corporate governance.

I hope you find all of the information in this Bulletin helpful.

**Jon Witts**  
Head of Enforcement



## Enforcement priorities

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The updated Policy Statement will set out the three priorities on which the Exchange will have particular focus going forward: (1) responsibility; (2) controls and culture; and (3) cooperation. We encourage those dealing with the Exchange and in particular those responsible for Rule compliance to take heed of these priorities, as they will underlie many of the Exchange's enforcement decisions.

### (1) Responsibility

Individuals who use the market, and the people who advise or support them, have responsibilities that are central to the integrity of the market and ensuring that the market can be operated in an orderly, informed and fair manner. This includes responsibilities regarding Rule compliance and corporate governance.

We live, however, in an imperfect world. Failures will happen and, regrettably, there are bad actors who will seek to take advantage of opportunities for wrongdoing. But prevention is better than cure. Vigilance, anticipation and action by those who work at or with listed issuers are critical to reducing risk – this cannot be achieved by enforcement alone.

Directors have particular responsibilities, and they need to be acutely aware of the principle of individual and collective responsibility, and the limits to which they can either delegate or rely on others. It would be a mistake,

however, for other individuals to think that responsibilities only lie with the directors. Senior managers and advisers, for example, also have an important role to play.

From an enforcement perspective, we expect to see individuals taking ownership of their responsibilities. We will look for evidence of proactivity: whether individuals have taken appropriate steps to minimise the risk of breaches and wrongdoing. This includes applying an enquiring mind, and speaking up when potential areas of concern are detected. The flipside of proactivity is complacency. Assuming that “someone else will deal with it” has led many individuals into enforcement investigation and disciplinary action. If we perceive that individuals are passive to risk, or are indifferent to issues which warrant inquiry or action, then that suggests those people have not understood or discharged their responsibilities.

### (2) Controls and culture

It goes without saying that every issuer should have a robust risk management and internal control framework in place and properly implemented. Our enforcement investigations will invariably include searching questions, typically of all the directors, whether executive or non-executive, about the measures that have been established, and the effort they have each put in to ensure that the systems are adequate and effective. As the Corporate Governance Code makes clear, this effort should be ongoing.

Deficiencies in control systems will often lead to disciplinary action, even if the deficiencies themselves were not causative of any loss. This is because it is not acceptable for a listed issuer to be operated with an inadequate risk mitigation framework in the hope that nothing goes wrong. This ties very closely with the point made above about the need for proactivity, and ensuring that steps are taken to prevent Rule breaches, rather than relying on remedial steps being taken only after breaches have occurred.

However, this priority covers more than just control systems. When considering enforcement action, we are interested in an issuer's culture. We look at the attitude towards risk, compliance and corporate governance. There is no “checklist” for this – indeed a box-ticking approach is likely suggestive of a poor culture. But amongst other things we will want to see that individuals in the company are encouraged to raise areas of potential risk or concern, and these issues are then properly addressed. We will consider whether the directors and staff are informed, competent, and have kept up-to-date through ongoing training and professional development.

And importantly we will expect there to be documentary evidence available. An absence of records, or evidence of communication on key issues, will invariably cast doubt on whether the alleged communication did take place, and give an impression of unsatisfactory controls and culture, making fuller investigation or disciplinary action more likely.

### (3) Cooperation

This enforcement priority is very simple: a failure to respond to or cooperate with the Exchange when there is a duty to do so will be viewed as serious misconduct. This will typically warrant the imposition of the most severe sanctions available. As explained in more detail in the following article, we will not hesitate to take enforcement action against those who fail to cooperate. Anyone who fails to cooperate hinders the Exchange in its discharge of its regulatory duties. There is simply no tolerance for such people.

In closing, most of those who use Hong Kong's capital markets do so fairly and with integrity. They are conscious of their responsibilities and strive towards compliance. There are multiple lines of defence from the listed issuer's frontline staff, through back office employees, to those in the audit function, all under the oversight of the board. This is welcome, and yet we see that non-compliance and misconduct still occurs. So please never let down your guard, speak up if you see something troubling, and always aspire to better corporate governance.

## Updated disciplinary procedures and settlement statement

On 26 June 2020, to provide enhanced clarity and efficiency in the disciplinary process, we published:

- updated [Disciplinary Procedures](#), which are applicable to disciplinary hearings before the Listing Committee and Listing Review Committee; and
- a revised [Settlement Statement](#), in which we set out guidance on the Exchange's approach to settlement of enforcement action.

In this article, we give an update on some of the ways in which the changes implemented last year have resulted in a real difference to enforcement in practice.

### Disciplinary procedures

Amongst other things, the Disciplinary Procedures now include a “fast-track” approach for dealing with cases involving individuals who fail to cooperate in an investigation conducted by the Exchange. The Listing Committee has flexibility to determine such cases without convening a hearing attended by the parties. This allows the cases to be concluded, and public sanctions imposed on non-cooperative individuals, more speedily and efficiently.

Since the adoption of the updated Procedures, a number of non-cooperation proceedings have adopted this “fast-track” approach (see, for example, the sanctions published on [8 February 2021](#)).

As reflected in our current enforcement priorities, cooperation with the Exchange is of the utmost importance. Any failure to cooperate by an individual will be kept in our records, and referred to in any future dealings that individual has with the Exchange.

Serious public sanctions have already been imposed in 2021 on over 30 individuals in connection with their failure to cooperate. As can be seen from those sanctions, it does not matter if the individual has resigned from their position prior to the investigation, or if the issuer in question has been delisted. Similarly, an individual must respond even if he/she does not have the requested information. Sanctions can be imposed for non-cooperation even if our investigation suggests that there are no other breaches of the Rules.

As sanctions for non-cooperation will typically be amongst the most severe available, which could include a public statement about the individual's suitability,

it is accordingly critical to keep the Exchange informed of your latest contact details to ensure timely receipt of investigation and enforcement-related correspondence, and to cooperate with the Exchange throughout any investigation or enforcement process.

### Settlement statement

We encourage parties to seek to settle enforcement action. There can be many benefits to settlement, particularly at an early stage, and these are clearly set out in the revised Settlement Statement.

Parties are now approaching us for settlement more often, and typically at an earlier stage. As a result, it has been possible to settle several cases in which parties have made meaningful settlement proposals soon after being notified of our intention to take disciplinary action. Some parties have informed us at an early stage that they accept the case against them and the proposed sanction – this has also facilitated swift resolution of the enforcement action and saved cost as well as time.

We recommend to all parties involved in enforcement action that they read the Settlement Statement and consider contacting the Enforcement Department at an early stage if they wish to take advantage of an agreed resolution. In doing so, parties should remember that the settlement terms must result in a fair overall regulatory outcome, and any proposal should be formulated with this in mind.



## Enforcement cases

Over 20 disciplinary sanctions have been published since our last Enforcement Bulletin in November 2020 – these are set out in the index below. Two particular issues of concern emerging from these cases are worth highlighting: (1) disclosure; and (2) safeguarding of assets.

Appropriate disclosure by listed issuers is essential for the maintenance of an orderly, informed and fair market, and ensuring that the investing public is not deprived of information or, if appropriate, their rights to vote on certain matters. The Listing Rules contain detailed provisions relating to disclosure in different situations, such as:

- acquisition of wealth management products, which constituted a “transaction” under Chapter 14 of the Listing Rules – this is so even if the acquisition was made at the request of banks to facilitate the provision of loans to the issuer;<sup>1</sup>
- provision of guarantees, loans or financial assistance.<sup>2</sup>

Everyone at a listed issuer has a role to play in relation to safeguarding the issuer’s assets, but there is a particular responsibility for this on the directors: both executive and non-executive. This responsibility is closely aligned with the need to establish and maintain an effective internal control and risk management framework, and to apply sufficient oversight in respect of the listed issuer’s affairs.

The Exchange views any failure in this regard in a serious light, even if the inadequacies do not result in any loss. Some more striking examples, which ultimately did involve substantial losses, include the following:

- Impairments totalling approximately RMB533 million were recorded in 2016 and 2017 in respect of a new business segment which had only started in January 2016, and prepayments made by the issuer to its suppliers. The directors’ conduct exposed the issuer to significant financial risk.<sup>3</sup>
- The directors failed to take adequate steps or implement effective risk management and internal control procedures to monitor the operations of the issuer’s \$450 million investment in a joint venture. Their inaction created an environment for irregularities, which went undetected and resulted in the joint venture’s loss of a substantial asset.<sup>4</sup>
- The issuer ended up with unrepaid or forfeited loans and deposits of approximately RMB1.5 billion by reason of the directors’ failure to implement effective risk management and internal control procedures.<sup>5</sup>

We encourage you to read these cases to gain a better understanding and awareness of compliance and corporate governance best practices.



<sup>1</sup> See news release dated 21 December 2020.

<sup>2</sup> See news releases dated 8 January 2021, 30 March 2021, 7 and 14 April 2021.

<sup>3</sup> See news release dated 17 February 2021.

<sup>4</sup> See news release dated 26 May 2021.

<sup>5</sup> See news release dated 27 May 2021.

## Enforcement cases

Date of news release	Issuer/name – summary of conduct
<a href="#">21 Dec 2020</a>	<p><b>Wai Chi Holdings Company Limited and a current director</b></p> <ul style="list-style-type: none"> <li>Listed issuer's failure to (a) consult the Exchange for aggregation of transactions; and (b) comply with the procedural requirements in relation to discloseable transactions and a major transaction</li> <li>Breach of directors' duties in relation to the listed issuer's Listing Rule breaches</li> </ul>
<a href="#">8 Jan 2021</a>	<p><b>Xinming China Holdings Limited and a current director</b></p> <ul style="list-style-type: none"> <li>Listed issuer's failure to comply with the procedural requirements applicable to a major transaction</li> <li>Breach of directors' duties in relation to the listed issuer's Listing Rule breaches</li> </ul>
<a href="#">22 Jan 2021</a>	<p><b>Sandmartin International Holdings Limited and eight current and 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 announce a discloseable transaction and connected transactions in a timely manner</li> <li>Internal control deficiencies</li> <li>Breach of directors' duties in relation to (a) the listed issuer's Listing Rule breaches; and (b) internal control deficiencies</li> <li>A director's breach of undertaking to cooperate with the Exchange's investigation</li> </ul>
<a href="#">1 Feb 2021</a>	<p><b>Hosa International Limited (delisted) and five directors</b></p> <ul style="list-style-type: none"> <li>Listed issuer's failure to provide any timely and/or substantive responses to the Listing Division's enquiries</li> <li>Breach of directors' duties in relation to the listed issuer's Listing Rule breach</li> <li>Three directors' breach of undertakings to cooperate with the Exchange's investigation</li> </ul>
<a href="#">3 Feb 2021</a>	<p><b>Brightoil Petroleum (Holdings) Limited (delisted) and four directors</b></p> <ul style="list-style-type: none"> <li>Listed issuer's refusal to publish an announcement of a delisting decision and a review application as required by the Exchange in a timely manner</li> <li>Listed issuer's failure to disclose the delisting decision and the review application in its quarterly update announcement and business update announcement</li> <li>Breach of directors' duties in relation to the listed issuer's Listing Rule breaches</li> </ul>
<a href="#">8 Feb 2021</a>	<p><b>Mr Ha Chuen Yeung, former director of Inno-Tech Holdings Limited</b></p> <ul style="list-style-type: none"> <li>Failure to cooperate in an investigation conducted by the Listing Division</li> </ul>
<a href="#">8 Feb 2021</a>	<p><b>Mr He Xiao Ming, former director of Teamway International Group Holdings Limited</b></p> <ul style="list-style-type: none"> <li>Failure to cooperate in an investigation conducted by the Listing Division</li> </ul>
<a href="#">8 Feb 2021</a>	<p><b>Ms Xie Yan, former director of Teamway International Group Holdings Limited</b></p> <ul style="list-style-type: none"> <li>Failure to cooperate in an investigation conducted by the Listing Division</li> </ul>
<a href="#">17 Feb 2021</a>	<p><b>Six former directors of Moody Technology Holdings Limited</b></p> <ul style="list-style-type: none"> <li>Failure to (a) discharge their duties as directors in respect of certain receivables and prepayments of the Company; (b) procure the Company's financial statements to provide a true and fair view; and (c) ensure the implementation of an effective internal control system by the Company</li> <li>A director's breach of undertaking to cooperate with the Exchange's investigation</li> </ul>

Date of news release	Issuer/name – summary of conduct
<a href="#">29 Mar 2021</a>	<p><b>Coslight Technology International Group Limited and ten current and former directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s failure to comply with the procedural requirements for notifiable and connected transactions</li> <li>• Internal control deficiencies</li> <li>• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; and (b) internal control deficiencies</li> </ul>
<a href="#">30 Mar 2021</a>	<p><b>China Yu Tian Holdings Limited (delisted) and seven directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s failure to (a) comply with the procedural requirements for connected transactions; (b) appoint a compliance adviser for the full Fixed Period and consult with its compliance adviser; and (c) respond to the Listing Division’s enquiries</li> <li>• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; and (b) conflict of interest</li> <li>• Remuneration Committee’s failure to (a) establish a formal and transparent procedure for developing a remuneration policy; and (b) take steps to ensure that directors were not involved in deciding their own remuneration</li> <li>• Six directors’ breach of undertakings to cooperate with the Exchange’s investigation</li> </ul>
<a href="#">7 Apr 2021</a>	<p><b>My Heart Bodibra Group Limited and two former directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s failure to (a) comply with the procedural requirements for discloseable transactions and connected transactions; and (b) consult its compliance adviser during the Fixed Period</li> <li>• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; (b) actions without proper purposes; and (c) conflicts of interest</li> </ul>
<a href="#">14 Apr 2021</a>	<p><b>China Tangshang Holdings Limited and two current directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s failure to comply with the procedural requirements for a major transaction and an advance to an entity</li> <li>• Internal control deficiencies</li> <li>• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; and (b) internal control deficiencies</li> </ul>
<a href="#">13 May 2021</a>	<p><b>Six directors of Youyuan International Holdings Limited (delisted)</b></p> <ul style="list-style-type: none"> <li>• Six directors’ breach of undertakings to cooperate with the Exchange’s investigation</li> </ul>
<a href="#">17 May 2021</a>	<p><b>Seven former directors of Huiyin Holdings Group Limited</b></p> <ul style="list-style-type: none"> <li>• Failure to establish adequate internal controls and/or take adequate steps to ensure that relevant documentation in respect of an acquisition was obtained or retained</li> <li>• Two directors’ breach of undertakings to cooperate with the Exchange’s investigation</li> </ul>
<a href="#">26 May 2021</a>	<p><b>Tech Pro Technology Development Limited (delisted) and seven directors</b></p> <ul style="list-style-type: none"> <li>• Listed issuer’s late publication of financial results and reports</li> <li>• Listed issuer’s late disclosure of an advance and provision of financial assistance to a joint venture invested by the listed issuer</li> <li>• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; and (b) their failure to take adequate steps or implement effective risk management and internal control procedures to monitor the operations of the joint venture or safeguard its assets</li> </ul>

Date of news release	Issuer/name – summary of conduct
<a href="#">27 May 2021</a>	<p><b>Dongyue Group Limited and ten current and former directors</b></p> <ul style="list-style-type: none"> <li>Listed issuer’s late publication of financial results and reports</li> <li>Internal control deficiencies</li> <li>Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; (b) internal control deficiencies; and (c) their failure to properly perform their monitoring duties in respect of the Wealth Management Business of the listed issuer</li> <li>A director’s breach of undertaking to cooperate with the Exchange’s investigation</li> </ul>
<a href="#">8 Jun 2021</a>	<p><b>Baytacare Pharmaceutical Co., Ltd. (delisted), twelve directors and four supervisors</b></p> <ul style="list-style-type: none"> <li>Listed issuer’s failure to (a) comply with the procedural requirements for notifiable transactions; and (b) give detailed reasons for its deviation from the Corporate Governance Code</li> <li>Internal control deficiencies</li> <li>Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; and (b) internal control deficiencies</li> <li>Three directors’ breach of undertakings to cooperate with the Exchange’s investigation</li> <li>Breach of supervisors’ duties in relation to the listed issuer’s and the directors’ breaches of the Listing Rules and Articles</li> </ul>
<a href="#">10 Jun 2021</a>	<p><b>Mr Yu Jian Qiu, Chairman and director of China Metal Resources Utilization Limited</b></p> <ul style="list-style-type: none"> <li>Disposal of shares during the black-out period without requisite notification and approval</li> </ul>
<a href="#">15 Jun 2021</a>	<p><b>Tenwow International Holdings Limited (delisted) and nine directors</b></p> <ul style="list-style-type: none"> <li>Listed issuer’s failure to (a) comply with the procedural requirements for a notifiable and connected transaction; and (b) timely publish its financial results and reports</li> <li>Internal control deficiencies</li> <li>Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; (b) internal control deficiencies; and (c) conflict of interest</li> </ul>
<a href="#">24 Jun 2021</a>	<p><b>Five former directors of Summi (Group) Holdings Limited</b></p> <ul style="list-style-type: none"> <li>Five directors’ breach of undertakings to cooperate with the Exchange’s investigation</li> </ul>
<a href="#">28 Jun 2021</a>	<p><b>Alltronics Holdings Limited and ten current and former directors</b></p> <ul style="list-style-type: none"> <li>Listed issuer’s failure to obtain independent shareholders’ approval required for material variation of transaction terms previously announced</li> <li>Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; and (b) their failure to perform sufficient due diligence on the financial capability of the payment obligors</li> </ul>
<a href="#">29 Jun 2021</a>	<p><b>IntelliCentrics Global Holdings Ltd and two current directors</b></p> <ul style="list-style-type: none"> <li>Listed issuer’s failure to (a) comply with the procedural requirements for the promissory notes acquired using IPO proceeds (a notifiable transaction); and (b) consult its compliance adviser prior to the transaction</li> <li>Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; and (b) their failure to conduct sufficient due diligence on the promissory notes</li> </ul>