



Enforcement Bulletin

Welcome to the August 2022 edition of HKEX's Enforcement Bulletin, where we give an update on the latest learnings and actions from our enforcement work to keep you abreast of the important developments impacting listed issuers, directors and others involved in Listing Rule compliance.

Our lead article in this edition discusses the importance of good record-keeping by issuers and company directors. Good record-keeping is fundamental for robust corporate governance, and companies and individuals' record-keeping standards will inevitably emerge in, and have an impact on enforcement investigations should the need arise.

Following that article, we introduce a new addition to the materials published on our website: **Summaries of Private Reprimands**. We also give some more detail about our **Request for Assistance**, and how you can help us with our enforcement work.

Importance of good record-keeping

Comprehensive record-keeping is an indispensable part of good corporate governance. In addition to serving a legal need given the statutory provisions that require businesses to keep records, a holistic approach to good record-keeping and documentation also makes commercial sense for listed issuers.

Proper record-keeping is good business practice because it allows company directors to manage their business, keep track of what has worked well, and identify and understand where and how things could be improved. This information can help drive good and considered business decisions and protect the company in the event of a challenge or dispute.

Good record-keeping is especially important when it comes to compiling the necessary documents for audit purposes. In the HKEX [Review of Issuers' Annual Reports 2021](#) published earlier this year, we noted that some issuers encountered difficulties with their auditors, which ultimately resulted in modified opinions due to lack of documentation relating to the valuation of assets, including lack of goodwill, property, plant and equipment-related information. Specifically, problematic areas included insufficient documentation to justify assumptions adopted in forecasts, and a lack of historical financial information on the newly-acquired businesses or assets. Modified opinions also resulted from a lack of evidence or analysis to support impairments and on expected credit losses for loans and receivables.

In some cases, the problems encountered in the audit were attributed to a “lack of internal control and management oversight” over the relevant business. This falls directly within the board’s responsibility, emphasising the need for a holistic and effective approach to record-keeping throughout the group. We reminded issuers that they should “extensively document the key judgments made” and apply this principle to considerations beyond the valuation of assets. It is a sound practice to follow in all the significant decisions made by the company’s directors and staff.

It should therefore go without saying that having an appropriate audit trail is of critical importance, but it is not just the auditor whose assessment may be impacted when there is inadequate documentation.

From an enforcement perspective, we will typically ask issuers and directors for contemporaneous documentary evidence relating to the matters in question in every investigation we conduct. Solid record-keeping practices and systems will make it much easier for those who are the subject of our enquiries to respond efficiently and accurately – this benefits everyone.

On the other hand, the absence of evidence, documents and records can call into question an issuer’s culture. It is an immediate signal that the control framework and approach to compliance with Listing Rules may be lacking. This, in turn, also leads us to look more closely at whether individual directors have discharged their duties.



We have set out below some areas in which we have encountered issues relating to inadequate documentation in our investigations. In some cases, the absence of evidence led to adverse inferences being drawn, and the imposition of disciplinary sanctions against individual directors.

Category	Missing or inadequate documentation
Entry into acquisitions / transactions	Due diligence assessment; basis of arriving at valuation; analysis of advantages/ disadvantages for the company; consideration of whether Listing Rules are applicable
Prepayments / loans	Credit analysis including due diligence on counterparty; assessment of availability of / need for security; documentary proof of security provided; full consideration of risk of default
Professional advice	Recommendation / outcome, but also the instructions to the adviser, any assumptions made, the methodology adopted, the reasoning behind the recommendation
Communications	Both internal and external; evidence of board / committee discussions, comments and decisions; intra-group e.g. between parent and subsidiaries

A reminder to directors

Directors are reminded that if they accept an appointment to the board of a listed issuer, they have individually entered into a regulated area. This means that they will have, among others, obligations to comply with Listing Rules, and can face regulatory action for any breaches. It is therefore strongly in directors’ own interest to ensure that they keep proper evidence to show that they have discharged their duties appropriately.

If a director solely relies on the company to keep all the records without making sure they were properly kept, and does not keep any records personally, then they may be exposed at an individual level if, for any reason, the company is not able to produce the documentation in response to an enquiry by the Exchange.

In our investigations, we sometimes find that directors submit to us that they have taken steps to discharge their duties, but they are unable to produce any evidence to support their submission. For example, a director may tell us that he/she asked relevant questions, chased additional or missing information, challenged a proposed course of action, or recommended that resources be devoted to a particular aspect of good corporate governance, such as an annual internal control review, or in support of audit work.

We would normally expect that there would be a documentary trail if any steps of this nature were in fact taken. If we cannot find any documentary support, then there will be doubt as to whether these steps took place or, even if they did take place, and how seriously they were pursued. Records are even more important if the director has disagreed with an approach, view or decision adopted by the company or the other members of the board.

Particular care should also be taken if a director is communicating with a company or other members of the board by use of a personal email address or messaging app, such as WeChat or WhatsApp. These are all communications that the individual can and should keep for themselves. If the communication is oral, directors are advised to follow it up with some contemporaneous note or written communication, so that it can be produced if necessary to demonstrate the discharge of their duties.

The key point to take away is this: sole reliance on the company’s record-keeping in respect of steps taken by an individual can be at that director’s own peril. Whatever the form of communication, directors should ensure that they find a way to preserve a record both during their term, and after they have left the board.



Enforcement guidance and practice

Private reprimand summaries

In 2022, in line with our aim of educating the market and enhancing corporate governance, we have started publishing the substance of some private reprimands that have been issued by the Exchange. These summaries can be found in the [Disciplinary Sanctions section](#) of our website, or at [this link](#).

As the sanctions themselves were issued privately, the summaries are published on an anonymous basis. Like other disciplinary sanctions, the summaries are not precedents, but we hope that readers will be able to learn some lessons from them. In particular, our aim is to provide further insight to all directors and individuals with responsibilities for Listing Rule compliance – and their advisers – about the potential pitfalls to avoid and good practices to follow.

Enforcement cases

We have published sanctions in 16 cases in the first half of 2022. A majority of these cases involved transactions which require both disclosure and shareholder approval.

The Listing Rules require that certain transactions should be disclosed and, depending on their nature and size, approved by (independent) shareholders. This must happen before a listed issuer enters into the transactions, which include acquisitions, disposals, financial assistance, advances to an entity and non-exempt connected transactions.

The Listing Rule requirements are designed to protect shareholders and the market, by ensuring that timely information is provided and, where applicable, shareholders are given the opportunity to vote. This is particularly important where the counterparty to a connected transaction is controlled by a director or substantial shareholder of the listed issuer (e.g. [Hsin Chong Group Holdings Limited](#), [Mingfa Group \(International\) Company Limited](#)). The shareholders effectively provide an extra layer of scrutiny over the proposed transactions.

In many of the cases covered in this Bulletin, the transactions were only discovered sometime after the event, and ultimately involved significant impairments.

Request for Assistance

You can also find on our website our [Request for Assistance](#). Here, we share information on some people who we would like to contact in connection with an enquiry. If you have useful information to help us in this regard, then please let us know using our contact information on the website. Please note that no adverse inference should be drawn from our requests for assistance.

Given the importance of these Rules to the market, it is critical that listed issuers have adequate and effective systems and internal controls in place to ensure they comply with all the relevant obligations. In several cases, the listed issuers did not have the right systems to identify transactions subject to Rule requirements (e.g. [TANSH Global Food Group Co., Ltd](#), [Beijing Media Corporation Limited](#), [Wuzhou International Holdings Limited](#)), or to make sure that they were appropriately escalated to the board (e.g. [Great Wall Terroir Holdings Limited](#)). It is important to ensure that controls and systems are reviewed and updated regularly, particularly if embarking on a new business segment (e.g. [Prosper One International Holdings Company Limited](#)). Directors must also make sure that all relevant staff have been given proper training, as they can understand and operate effectively within the framework that has been established. Given the importance of the shareholder approval requirement, disciplinary action will likely follow against those responsible for any failure in this regard.

Lastly, we remind issuers and guarantors of listed debt securities that the Listing Rules impose disclosure and other obligations on them, and therefore they are also subject to the disciplinary jurisdiction of the Exchange (see [Yihua Overseas Investment Ltd](#)). The HKEX website contains guidance materials about the regulation of debt securities listed on the Exchange, including the recently published [Guidance on continuing obligations under Chapter 37 of the Main Board Listing Rules and Chapter 30 of the GEM Rules \(Debt Issues to Professional Investors Only\)](#).

Date of news release	Issuer/name – summary of conduct
4 Jan 2022	China Properties Investment Holdings Limited and five directors <ul style="list-style-type: none">- Listed issuer's failure to comply with the announcement requirement applicable to two disposals- Internal control deficiencies- Repeated breach after warning letter issued by the Exchange six months ago- Breach of directors' duties applicable to (a) the listed issuer's Listing Rule breaches; and/or (b) internal control deficiencies
5 Jan 2022	Enviro Energy International Holdings Limited and two directors <ul style="list-style-type: none">- Listed issuer's failure to comply with the announcement requirement in respect of four purported prepayments- Directors' breach of undertakings in relation to their failure to procure the listed issuer's compliance with the Listing Rules
10 Jan 2022	Samson Holding Limited and one director <ul style="list-style-type: none">- Listed issuer's failure to comply with the procedural requirements applicable to an investment (a major transaction)- Internal control deficiencies- Repeated breaches after guidance letter issued by the Exchange 18 months ago- Breach of director's duties in relation to (a) the listed issuer's Listing Rule breaches; (b) failure to circulate the Exchange's guidance letter to the Board; and (c) internal control deficiencies- The Division reached a settlement with both parties in this disciplinary action
12 Jan 2022	TANSH Global Food Group Company Limited and two directors <ul style="list-style-type: none">• Listed issuer's failure to comply with the procedural requirements applicable to certain advances and procurement transactions• Internal control deficiencies• Breach of directors' duties in relation to (a) the listed issuer's Listing Rule breaches; (b) failure to act in the listed issuer's interests, for proper purpose and avoid actual and/or potential conflicts of interest; and (c) internal control deficiencies• Two directors' persistent and/or wilful failure to discharge their responsibilities under the Listing Rules
19 Jan 2022	Yihua Overseas Investment Limited and one authorised representative <ul style="list-style-type: none">• Debt issuer's failure to (a) provide timely information as requested by the Exchange; (b) announce relevant information to avoid a false market; and (c) apply for a trading suspension• Breach of authorised representative's duty to act as the principal channel of communication between the Exchange and the debt issuer
10 Feb 2022	Beijing Media Corporation Limited, 17 directors and five supervisors <ul style="list-style-type: none">• Listed issuer's failure to comply with procedural requirements applicable to loans advanced to its controlling shareholder and associate• Internal control deficiencies• Breach of directors' duties in relation to (a) the listed issuer's Listing Rule breaches; and/or (b) internal control deficiencies• Three directors' breach of undertakings to cooperate with the Division's investigation• Supervisors' breach of duties applicable to internal control deficiencies

Date of news release	Issuer/name – summary of conduct
28 Feb 2022	<p>Fantasia Holdings Group Co., Limited, Colour Life Services Group Co., Limited and four directors</p> <ul style="list-style-type: none">• Fantasia’s and Colour Life’s internal control deficiencies in relation to compliance with a deed and scheme to ensure clear delineation between their respective businesses• Inaccurate, incomplete and/or misleading disclosure in Colour Life’s annual reports• Breach of directors’ duties in relation to (a) Colour Life’s Listing Rule breaches; and/or (b) Fantasia’s and/or Colour Life’s internal control deficiencies• The Division reached a settlement with both listed issuers and two of the four directors in this disciplinary action
17 Mar 2022	<p>Six directors of National Investments Fund Limited</p> <ul style="list-style-type: none">• Breach of directors’ duties in relation to their failure to take an active interest in the listed issuer’s affairs and follow up in respect of the acquired assets address. For one director, failure to address his mind to the suitability, necessity and benefits of the acquired assets for the listed issuer• A director’s breach of undertaking to cooperate with the Division’s investigation
11 Apr 2022	<p>Hsin Chong Group Holdings Limited and seven directors</p> <ul style="list-style-type: none">• Listed issuer’s failure to comply with the procedural requirements applicable to disclosable and connected transactions involving monies paid to companies related to an executive director• Internal control deficiencies• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rules breaches; (b) internal control deficiencies; and/or (c) conflicts of interest• A director’s breach of undertaking to cooperate with the Division’s investigation
5 May 2022	<p>Wuzhou International Holdings Limited and nine directors</p> <ul style="list-style-type: none">• Listed issuer’s failure to comply with the procedural requirements applicable to eight disclosable transactions and one very substantial disposal• Internal control deficiencies• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches and/or (b) internal control deficiencies.• Two directors’ breach of undertakings to cooperate with the Division’s investigation, and persistent and/or wilful failure to discharge their responsibilities under the Listing Rules• The Division reached a settlement with six of the nine directors in this disciplinary action
17 May 2022	<p>Two directors of CIL Holdings Limited</p> <ul style="list-style-type: none">• Breach of directors’ duties in relation to (a) failure to take sufficient steps to safeguard the list issuer’s interests; and (b) internal control deficiencies• The Division reached a settlement with the parties in this disciplinary action
18 May 2022	<p>Prosper One International Holdings Company Limited and nine directors</p> <ul style="list-style-type: none">• Listed issuer’s failure to comply with the procedural requirements applicable to notifiable and connected transactions conducted under new business segment• Internal control deficiencies in relation to the new business segment• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; (b) internal control deficiencies; and/or (c) failure to take an active interest in the listed issuer

Date of news release	Issuer/name – summary of conduct
25 May 2022	CR Construction Group Holdings Limited, six directors and Zhejiang State-owned Capital Operation Company Limited <ul style="list-style-type: none">• Inaccurate, incomplete or misleading disclosure in CR Construction’s prospectus• Controlling shareholder’s breach of shares lock-up undertaking in the first six months of CR Construction’s listing• Breach of directors’ duties in relation to CR Construction’s Listing Rule breaches• The Division reached a settlement with the parties in this disciplinary action
15 Jun 2022	Great Wall Terroir Holdings Limited and 11 directors <ul style="list-style-type: none">• Listed issuer’s failure to comply with the procedural requirements applicable to advances to an entity, and notifiable and connected transactions• Internal control deficiencies• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; (b) internal control deficiencies; and (c) failure to adequately supervise the subsidiaries’ affairs
16 Jun 2022	Five former directors of Amber Hill Financial Holdings Limited <ul style="list-style-type: none">• Directors’ breach of undertakings to cooperate with the Division’s investigation
27 Jun 2022	Mingfa Group (International) Company Limited and four directors <ul style="list-style-type: none">• Listed issuer’s failure to (a) comply with the procedural requirements applicable to certain (intended) disposals of assets; and (b) publish its financial results in a timely manner• Internal control deficiencies• Breach of directors’ duties in relation to (a) the listed issuer’s Listing Rule breaches; (b) internal control deficiencies; (c) failure to act honestly and in good faith in the interests of the listed issuer; (d) actions without proper purpose; and/or (e) conflicts of interest• Two directors’ persistent and/or wilful failure to discharge their responsibilities under the Listing Rules• The Division reached a settlement with the parties in this disciplinary action