



Enforcement Bulletin

Welcome to the September 2023 edition of HKEX's Enforcement Bulletin.

At HKEX, we seek to promote a high standard of corporate governance among our listed issuers to continuously improve the overall quality of our markets. The Enforcement Bulletin provides listed issuers, directors and other stakeholders in our markets with an update on our enforcement work regarding the Listing Rules, including breaches of duties by directors. We encourage everyone involved in listing compliance to read this bulletin to stay up-to-date with important compliance matters and gain practical tips on how to avoid potential issues.

In this edition, we focus on directors' duties towards conflicts. The obligation to avoid conflicts of interest and duty is fundamental to the role of directors, and goes hand in hand with the director's responsibility to act in the best interests of the company. Given its importance, such responsibility is also wide ranging, and needs ongoing and careful attention.

First, we look at the wide scope of requirements of a director with regard to conflicts. We then have a deep dive into some of the recent cases which illustrate pitfalls on the topic. We also offer practical steps and best practices on how conflicts can be managed. And in the final section, we round up our enforcement cases from the first half of 2023.

While there is no one-size-fits-all approach to address conflicts of interest and duty, we believe disclosure and transparency are key to all good corporate governance practices. We hope you find this edition insightful and helpful to your understanding of conflicts. Please don't hesitate to reach us at enforcement@hkex.com.hk if you have any questions or would like to know more.

Conflicts of interest and duty: a very wide obligation

The duty to avoid conflict of interest is sometimes described as part of a director's fiduciary duty of loyalty owed to the company. This means that a director must always put the interests of the company before their own. They cannot take advantage of their position. This duty is encompassed in the Listing Rules¹ and applies to both executive and non-executive directors.

A key point to remember is that the duty is not limited to cases where there is an actual or obvious conflict. The obligation is of such fundamental importance that it has been given a very wide scope. A director will normally need to take steps to address and manage a possible conflict situation. The threshold is very low – action may be required even if there is only the potential for conflict, and even if the risk might seem indirect, low or remote. Other directors who take a back seat or turn a blind eye to any potential conflict may find themselves in breach of their duties, even if the conflict does not directly relate to them.

If there is any doubt about a possible conflict, the director should not decide the outcome alone – the matter should be declared and discussed amongst board members.

Some conflict scenarios

- **Director making secret profit:** in the case of [Agritrade Resources Limited](#), the conflicted director who was the ED and CFO secretly caused Agritrade's subsidiary to sell a number of debentures to a company beneficially owned by him and his wife. He converted the debentures for approximately US\$100,000 for a 15 per cent stake (worth US\$75 million) in Agritrade's power plant. He also took other actions to increase his control and stake in the power plant, prejudicial to Agritrade's interest. This was misconduct, and the Exchange imposed a prejudice statement against that director.
- **Competing business:** it is common in the business world for a director to encounter potential or actual conflicts when performing their role. For example, there are many companies which are founded and managed by family members. Those family members may represent a weighted voice and power on the board, which can pose a challenge to the issuer's

corporate governance. The case of [Agile Group Holdings Limited](#) concerned a family-run property development company before its listing on the Exchange. After listing, an executive director from the family personally provided financial assistance for his son's property development business without informing the board. There was at least the potential for the son's business to compete with Agile's business, so the duty to avoid conflicts was engaged. The director failed to take steps so that the potential conflict could be properly managed.

- **Controlling shareholder's interest:** many listed issuers in Hong Kong are run by their controlling shareholder or their nominated directors. Some of the directors may have a personal investment in the company. A shareholding by members of the board may help to align interests, but it must be handled sensitively. These directors always need to remember and consider the interests of the company as a whole – this may not be the same as the interests of a substantial or controlling shareholder. A shareholder-director cannot simply think that if something seems good to them then it must also be good for the company.
- **Director serving two companies:** where a director serves on two or more boards (for example, the case in [Fusen Pharmaceutical Company Limited](#)). The companies may be unrelated, or may be part of the same group. Where a director is faced with a situation involving a proposed transaction or business opportunity between the two companies, then care must be taken to manage the conflict of interest.

Many business opportunities and relationships will arise from contacts known personally to directors or shareholders. This is where the Listing Rules relating to connected transactions, and an issuer's compliance with them, are very important.² These rules are designed to safeguard and protect the minority shareholders by requiring listed issuers to disclose transactions over a certain size with connected parties particularly where they concern directors who have an actual or potential conflict of interest. Guidance materials on connected transactions can be found on HKEX website.³

There is a duty to manage a possible conflict situation even if ultimately there is no actual conflict, or a transaction is in all parties' interests.

¹ Main Board Rule 3.08 / GEM Rule 5.01.

² Main Board Chapter 14A / GEM Chapter 20.

³ [E-learning \(Connected Transaction Rules\)](#), [FAQ \(Chapter 14A\)](#) and [Listing Decisions](#).

Conflict management

A business which triggers conflict obligations is not banned altogether. Most scenarios can be navigated by following all necessary steps of disclosure, transparency and approval.

The company must have an adequate and effective internal control and risk management system in place.⁴ Having such a system goes a long way towards promoting good corporate governance and culture within the company.

We have set out below a few examples of good corporate governance practices in relation to conflicts. As with any aspect of corporate governance, there is no “one size fits all” solution to the management of conflicts. Directors should also keep in mind how they conduct themselves in discussions, meetings, and voting – if they are in a position of conflict, they should not allow their influence to lead to a result, even if they have made formal declarations and abstained.

Declaration of interest	<ul style="list-style-type: none">• Upon joining the board, each director should declare all interests, directorships and offices held in other corporations, and family relationships relevant to the company or its business• Update the declarations of any changes in a timely manner• Keep written and up-to-date records of the declarations for inspection by directors and personnel involved in conflict management
Policy and practices	<ul style="list-style-type: none">• Set out the procedures and practices clearly in writing, including conflict management, anti-bribery and anti-corruption, and whistle-blowing• Follow up on the implementation of the policies• Provide directors and employees easy access to the written policies• Regularly review the policies to ensure they are up-to-date and fit for purpose• Provide regular training
Board meeting	<ul style="list-style-type: none">• Declare conflict of interest or duty at the outset of the board meeting• Determine, in the absence of the conflicted director, if a conflict exists and why• Have the conflicted director abstain from voting in the transaction for which the conflict is declared• Record accurately in the meeting minutes the nature and extent of conflict in relation to the company’s affairs/interests and the decision made on the proposed transaction with sufficient details• Put in place measures to manage the conflict (e.g. withholding information from the conflicted director) and record them in writing
Segregation of power	<ul style="list-style-type: none">• Have different people carry out different roles to mitigate over-concentration of power and to provide checks and balances
Professional advice	<ul style="list-style-type: none">• Seek professional advice if necessary

Conclusion

Effective conflict management helps companies to greatly mitigate the risks arising from conflict of interest and non-compliance with the Listing Rules. Poor conflict management practices are unacceptable and can have adverse consequences. The Exchange will continue to discipline issuers and directors who fail to set up, implement and/or follow internal controls which deal appropriately with potential conflicts of interest and duty.

⁴ Principle D.2, Corporate Governance Code, Appendix 14.

Recent enforcement cases

We have published sanctions in 18 cases in the first six months of 2023, set out in the index below.

Several cases involve imposition of the “director unsuitability” statement. This sanction is engaged where there are material concerns over the suitability of an individual to act as a director. Amongst other things, this concern will arise if there is failure to cooperate in the Exchange’s investigation.

In [China Gem Holdings Limited](#), the issuer repeatedly failed to provide information requested by the Exchange. The directors were found to be in breach of their obligation to procure the issuer’s compliance with its obligation to provide the requested information or to cooperate in the investigation. Given our concerns as to the suitability of the individuals to remain on the board, a direction for follow-on action was imposed, namely that the listing of the shares would be cancelled if certain directors remained on the board. This is the first case featuring follow-on actions since the Exchange enhanced its disciplinary powers and sanctions in July 2021.

There are also a number of cases involving insufficient due diligence. In [Hygieia Group Limited](#), a case involving use of IPO proceeds to engage service providers, there was inadequate due diligence on the service providers, and the commercial rationale for some of the services was questionable. In [Blockchain Group Company Limited](#), questions regarding a substantial impairment led to the discovery of an undisclosed acquisition for which the issuer had not conducted sufficient due diligence or procured a proper valuation. The cases of [Forgame Holdings Limited](#) and [Arta TechFin Corporation Limited](#) involved failed processes for the approval of loans.

Directors are reminded that they must act in the best interests of the issuer and exercise due and reasonable care, skill and diligence when evaluating proposed transactions. In addition to these cases, readers can refer to the article on “Directors’ responsibilities when assessing transactions” in [Listed Issuer Regulation Newsletter \(Issue 5\)](#).



Date of News Release	Issuer/name – summary of conduct
<u>4 January 2023</u>	Fusen Pharmaceutical Company Limited and five directors <ul style="list-style-type: none">• Listed issuer’s (a) failure to comply with the notifiable and/or connected transaction requirements for certain advances and payments; (b) failure to consult its compliance adviser when the advances were contemplated; and (c) internal control deficiencies• Breach of directors’ duties in relation to their failure to (a) monitor the issuer’s financial position; (b) procure the issuer’s Listing Rule compliance; (c) protect the issuer’s interests in respect of the advances; and (d) procure the issuer to establish and maintain adequate and effective internal controls
<u>12 January 2023</u>	Two directors of Inno-Tech Holdings Limited <ul style="list-style-type: none">• Directors’ failure to (a) procure the Company’s provision of information and documents for the Exchange’s investigations; and (b) cooperate in the Exchange’s investigations
<u>16 January 2023</u>	Agritrade Resources Limited and five directors <ul style="list-style-type: none">• Listed issuer’s failure to (a) comply with connected and/or discloseable requirements in respect of certain securities purchase agreement and share issue; and (b) timely publish and despatch its annual results and report• Breach of director’s duties by the executive director and CFO for (a) knowingly putting himself in a position of conflict; (b) failing to disclose the conflicted transactions to the board; (c) failing to procure the issuer’s Listing Rule compliance• Breach of director’s duties by another director in relation to his failure to (a) provide a check and balance for the exercise of power by the executive director and CFO by wholly relying on that director; and (b) take an active interest in the issuer’s affairs• The other directors’ failure to cooperate in the Exchange’s investigation
<u>1 February 2023</u>	China Gem Holdings Limited and seven directors <ul style="list-style-type: none">• Listed issuer’s failure to timely respond to the Exchange’s enquiries• Directors failure to (a) procure the issuer’s Listing Rule compliance; and (b) cooperate in the Exchange’s investigations
<u>28 February 2023</u>	Hygieia Group Limited and three directors <ul style="list-style-type: none">• Listed issuer’s failure to (a) disclose the intended investment management agreement in its prospectus; (b) announce and consult its compliance adviser in relation to the agreement; and (c) timely publish and/or despatch its annual and interim results / reports• Breach of directors’ duties by failing to (a) ensure adequate due diligence and supervision on the investment management agreement; (b) exercise independent judgment in respect of the engagement of the service providers; and (c) procure the issuer’s Listing Rule compliance
<u>6 March 2023</u>	Two directors of China Bozza Development Holdings Limited <ul style="list-style-type: none">• Directors’ failure to cooperate in the Exchange’s investigation
<u>16 March 2023</u>	Two directors of Forgame Holdings Limited <ul style="list-style-type: none">• Breach of directors’ duties by failing to (a) safeguard the issuer’s interests and supervise its business; (b) ensure adequate and effective internal controls; (c) disclose connected relationships; and/or (d) procure the issuer’s Listing Rule compliance
<u>21 March 2023</u>	A director of Carnival Group International Holdings Limited (In Liquidation) <ul style="list-style-type: none">• Director’s failure to cooperate in the Exchange’s investigation
<u>28 March 2023</u>	Blockchain Group Company Limited and ten directors <ul style="list-style-type: none">• Listed issuer’s failure to (a) comply with the Rule requirements for a very substantial acquisition; (b) timely publish its annual results and reports; and (c) respond to the Exchange’s enquiries• Directors’ failure to (a) ensure the acquisition is in the interests of the issuer; (b) procure the issuer’s Listing Rule compliance; and/or (c) cooperate in the Exchange’s investigation

Date of News Release	Issuer/name – summary of conduct
20 April 2023	<p>Tianjin Real Estate Group Co., Ltd.</p> <ul style="list-style-type: none"> Listed issuer’s failure to (a) timely provide information requested by the Exchange; (b) announce information necessary to avoid a false market; (c) apply for trading suspension when the relevant information cannot be announced promptly; and (d) appoint new authorised representatives
25 April 2023	<p>S&S Intervalue China Limited and five directors</p> <ul style="list-style-type: none"> Listed issuer’s failure to (a) comply with the discloseable and/or major transaction requirements; (b) maintain adequate and effective internal controls Directors’ failure to (a) procure the issuer’s Listing Rule compliance; (b) conduct sufficient due diligence and ensure the transactions were in the issuer’s interests; (c) ensure adequate and effective internal controls; and/or (d) cooperate in the Exchange’s investigation
4 May 2023	<p>Four directors of Arta Techfin Corporation Limited</p> <ul style="list-style-type: none"> Directors’ failure to (a) supervise the money lending business and there was inadequate due diligence conducted on the borrowers and/or nominees; and (b) properly apply and safeguard the issuer’s assets One director failed to cooperate in the Exchange’s investigation
9 May 2023	<p>Keyne Ltd and six directors</p> <ul style="list-style-type: none"> Listed issuer’s failure to (a) comply with the major and/or connected transaction requirements for a lending arrangement with its controlling shareholder; (b) disclose complete and material information regarding the arrangements in its announcement and annual report; and (c) maintain adequate and effective internal controls Directors failure to (a) procure the issuer’s Listing Rule compliance; and (b) ensure adequate and effective internal controls
23 May 2023	<p>CT Vision S.L. (International) Holdings Limited</p> <ul style="list-style-type: none"> Listed issuer’s failure to (a) disclose accurate and complete information in its interim results; (b) timely publish its annual results; and (c) comply with the discloseable and connected transaction requirements for financial assistance
13 June 2023	<p>Jilin Province Huinan Changlong Biopharmacy Company Limited and nine directors</p> <ul style="list-style-type: none"> Listed issuer’s repeated failure to comply with the discloseable and/or major transaction requirements in respect of subscriptions of wealth management products Directors’ failure to (a) procure the issuer’s Listing Rule compliance; and (b) ensure adequate and effective internal controls One director’s failure to cooperate in the Exchange’s investigation
15 June 2023	<p>Five directors of China Clean Energy Technology Group Limited</p> <ul style="list-style-type: none"> Directors’ failure to (a) avoid putting own interests before the issuer’s; (b) proactively follow up on the handling of the requisition for their removal from the board; (c) procure the issuer’s Listing Rule compliance; and/or (d) cooperate in the Exchange’s investigation
20 June 2023	<p>A director of Agile Group Holdings Limited</p> <ul style="list-style-type: none"> Director’s failure to (a) duly and adequately disclose to the board his potential conflicting interests in a deed which released him from his non-competition undertaking in favour of the issuer; and (b) procure the issuer’s compliance with the connected transaction requirements for the deed
27 June 2023	<p>Optima Automobile Group Holdings Limited and three directors</p> <ul style="list-style-type: none"> Listed issuer’s failure to disclose material changes in its financial position in the IPO prospectus Directors’ failure to (a) ensure the accuracy of the prospectus; (b) procure the issuer’s Listing Rule compliance; and/or (c) safeguard the issuer’s assets by ensuring that the use of IPO proceeds was justified