

Beyond Compliance: Prudence and other Challenges 2nd Annual Compliance Summit Asia

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Thank you for inviting me to address you this morning.

It is a pleasure to be back here amongst you again. I would like to commend the organisers for putting together such a useful and practical programme.

I would like to talk about compliance challenges from a number of different perspectives: firstly, the challenge set by regulators and the need for prudent compliance; secondly, the challenges of an increasingly complex set of laws in multi-jurisdictional businesses; and thirdly, the need for, but also the limits of, governance systems and controls in fostering a compliant environment.

I also want to say something about our litigation practice because the need for precedent and case law is an essential aid to all of these challenges. And our litigation practice is also always topical if not controversial.

Beyond Compliance: Prudence

Hong Kong, as a global financial centre, has a constant and ready supply of capital and capital markets expertise.

But what about confidence and integrity in our market? Where does that come from?

within our market.

The challenge for us as regulators and for financial services participants and compliance professionals in particular is whether that objective is a shared one or not. This is, in essence, the first part of the challenge set by regulators.

The second part relates to the content of that challenge.

For example, the Hong Kong style avoids overly prescriptive rules. Our rule book prescribes broad standards of conduct that assume intelligent, prudent behaviour.

prescriptive rules. Tell us exactly what you want us to do and we will do it. It is too hard for us to work out how and what it is we should be doing. In other words, a map.



necessarily know straight away how to get there. This is where expertise, experience, judgment, the ingredients of fitness and properness, perhaps summed up by that most Roman of virtues, prudence needs to be applied.

It is hard to sympathise with the argument that prescriptive rules are required so that expert professionals will know what to do when the argument is put forward by those same highly trained professionals and experts who are meant to possess the requisite expertise and judgment.

The notion of prudence is a useful one here. It is now commonly used to refer to thoughtful cautiousness before action. But in Roman times, it had a more formal and pointed meaning: the ability to govern and discipline oneself with practical wisdom and good sense. In other words, the ability to act in a situation you may not have faced before.

An expert map, arguably there would be no need for regulated persons at all, certainly no need for them to have qualities of expertise and experience as well as fitness and properness. All that would be needed would be a big book we could consult that would tell us exactly what to do in any situation.

Prudence also imports the action, not just expertise. It is sometimes said the prudent person is someone who not only knows or senses what is right and what should be done but is also compelled to do it. There is no doubt a moral core at the heart of prudent action and, prudent compliance.

Prudence: Recent Examples

We have seen some examples of the right thing being perceived and acted upon recently.

On 1 January 2014, our new standards on electronic trading will come into effect. They introduce profound change in this important and growing field. The new standards deal with:

- measures that make it clearer how existing trading requirements apply to electronic trading;
- introduce new standards for the design, development, testing and use of algorithms;
- indicate what kinds of control over in-use software is required; define what is meant by pre-trade and post-trade controls; and
- define the extent to which Direct Market Access (DMA) devices can be delegated and sub-delegated.

The challenges set by these new standards are real ones.

And the reaction, I am glad to say from most market participants, has been prudent in the true Roman sense.

The Electronic Trading Information Template that was developed by a number of industry

Securities Industry and Financial Markets Association), is an example of proactive prudence and is a notable case in point. The template is a tool that will help firms develop compliant



This is a necessary development in our market that will improve the quality of advice and decision-making by all market participants which in turn helps to foster confidence and integrity in our market.

Current SFC Litigation

As at the end of last month:

we have caused to be issued and served over 70 charges with over two-thirds of the charges dealing with insider dealing or market misconduct. This represents an increase of 17% on the same time last year;

we have initiated civil proceedings seeking remedial orders against 64 people representing an increase of 23% on the same time last year; and

we have issued 32 decision notices in disciplinary proceedings under Part IX of the Securities and Futures Ordinance, representing an increase of 100% on the same time last year.

All of these cases have been commenced on the basis that we believe their prospects are strong based on competent and experienced legal advice.

We will not win all of these cases (although our track record is that we win over 90% of our cases) and this is a profoundly healthy reality.

imsy or suspect grounds or where
there is insufficient legal merit to the case. It simply means that in a two-horse race, it is