



Hong Kong Corporate Landscape: Regulatory Issues? Hong Kong Institute of Chartered Secretaries Corporate Governance Conference 2014

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The purpose of my talk today is to describe what amounts to a new regulatory architecture for Hong Kong listed companies, which has nevertheless taken time to evolve. This new architecture involves some, but not many, new rules which are now all in place. It also involves some changes in the way we work at the Securities and Futures Commission (SFC).

Corporate governance is an incredibly vast field and it is clear that directors, company secretaries, advisors and even regulators are often confused by the topic. Governance standards come in many forms. There are multiple codes and rules often saying different things for different purposes. There are international rules issued by organisations such as the OECD, the International Corporate Governance Network, and the International Organization of Securities Commissions.

There are also local rules which are code-based and not legally binding. In Hong Kong they

Ordinance (SFO).

Futures





compliance letters articulating our expectations, or it could lead to referrals to our Enforcement Division. The team has now issued the first bulletin about its work and more bulletins will be published in the future. These bulletins are meant to be informative, to encourage discussion and awareness and to provide some guidance around what we think

Enforcement

The fourth component is a very clear and well-communicated enforcement policy. We have a very firm two-pronged strategy underpinning action to address serious governance failures – punitive and remedial; the SFO allows us to investigate and pursue a range of criminal and civil actions. And our Corporate Regulation Team now enhances our ability to detect misconduct which could lead to enforcement cases.

The venues where we pursue cases include the civil courts, criminal courts, and the Market Misconduct Tribunal (MMT). The specific enforcement tools we have are scattered across the SFO. The important ones are:

Section 179: The threshold to launch an investigation has been set at a practical threshold, and include circumstances ranging from fraud to circumstances where shareholders have not been given all the information they may reasonably expect.

Section 384: This is a criminal provision concerning intentional or reckless provision of false or misleading information to the SFC or the Stock Exchange.

Section 213: In the summer of 2013, the Court of Final Appeal (CFA) in the Tiger Asia case made absolutely clear that this remedy is separate from other proceedings and self-standing. We do not have to go to the criminal courts, MMT or anywhere else to get a ruling on a contravention either of the SFO or the Companies Ordinance before we go to the court to seek Section 213 orders. This means that we are able to seek a range of orders to seek remedies for those harmed by misconduct and freeze assets very quickly when needed.

Section 214: Civil remedies which deal with a host of matters, including unfair prejudice to shareholders, oppression, fraud, and again, failure to give information to shareholders which they may reasonably expect to have.

When we go to civil courts the orders which are available to us are very wide ranging – from asset freezing and derivative actions to winding up and disqualification. Ultimately, given we have open markets and, effectively, open borders, one of our primary goals when there is wrongdoing is to be able to isolate assets in order to remediate the harm done. We also pursue punitive outcomes which have a clear deterrent effect.

Examples of corporate failures

In the last few months themes arising in the misconduct cases we have looked at included





Our focus is primarily on more effective detection and enforcement of the law as it now stands. We will focus on the serious end of misconduct which harms investors and markets; we do not enforce the Listing Rules and associated governance codes. But of course compliance with them (which are enforced by the Stock Exchange) does reduce the risks of companies ending up on the wrong end of regulatory action by us as statutory regulator.