Beneficial Ownership & Control
Stringent versus Flexible Rules

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Comparative Study
Disclosure is the Linchpin of Corporate Governance

Shareholders

- Passive minority investors
- Controlling owners

Delegate control

- Supervisory Board
- Board of Directors
- Non-executive directors/executive directors

Managers

- Employees
- Society

Creditors
- Customers

(1) Dilutive share issues
(2) Insider trading
(3) Related Party Transactions

Market Efficiency
Questions?

Who should disclose/report a stake in the company?

Who and at which level should disclose/report a stake in the company?

When should the disclosure be made and to whom?

What should be disclosed?

Through which channels?

Who will have access to the disclosed information?
The Rules
Listed Company

Management

Direct and ultimate shareholder

Nominee shareholder

Ultimate beneficial owner

Omnibus Account

Ultimate beneficial owner

5%

2%
Pre 1997

Basic rules
Limited enforcement

1997/98

Extensive regulatory intervention to address abuses

2005

Relaxation and streamlining of rules to address operational inefficiencies

2000

Stock market size: 237.1 RM (bil.)

2010

Stock market size: 1,246.7 RM (bil.)

The Effect of Disclosure & Outside Blockholders

Source: Brav, Jiang, Thomas and Partnoy, Hedge Fund Activism, Corporate Governance, and Firm Performance
Listed Company

Minority shareholder with controlling multiple voting rights

Direct Shareholder

Subsidiary of subsidiary of ultimate beneficial owner

60%

Subsidiary of ultimate beneficial owner

50.1%

Ultimate beneficial owner - control with 21% of cashflow rights in listed company

50.1%

Control Enhancing Mechanisms

Pruchases shares as hedges

Short party (Investment bank)

Long party (Investor)

1. Fees  
2. Interest  
3. Making good for decreasing stock price

1. Stock price increase  
2. Dividends

Voting rights exceeding cash flow rights

Separation between economic risks and control

Cash-settled equity derivatives

“Hidden ownership” and “empty voting” problems

Derivatives
## Costs of stringent disclosure rules!

<table>
<thead>
<tr>
<th>Red-tape/pointless rules</th>
<th>Excessive compliance costs</th>
<th>Information overload / Over-monitoring / Box-ticking</th>
<th>Discouraging (foreign) investments</th>
<th>Lack of enforcement mechanisms</th>
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- Stringent Rules-based Disclosure
- Flexible Principle-based Disclosure

- Italy
- France
- Malaysia
- United States

**Experienced Securities Regulator**
Enforcement
Enforcement

Judicial
AFM detects non-compliance

Formal sanctions

2009

52 fines

1605 written or oral (norm-enhancing) reprimands

Source: www.afm.nl
Enforcement

Judicial

Non-Judicial
Speed, informal sanctions, experience enhancing

Information Requests

Notice letters

Norm-enhancing reprimands
Ecosystem
Information Ecosystem

- Foreign Supervisory Authorities/Securities Commissions/Government Agencies

- Supervisory Agency/Securities Commission

- Government Agencies (tax authorities, chambers of commerce, etc.)

- Central Securities Depository, custodians, intermediaries
Supervisory Agency/Securities Commission

Government Agencies (tax authorities, chambers of commerce, etc.)

Central Securities Depository, custodians, intermediaries

Foreign Supervisory Authorities/Securities Commissions/Government Agencies

Web-based system, information sharing

IOSCO, but information sharing also in national laws/regulations

Information requests (confidential)

Business Environment
Project Wickenby

Government
Treasurer, Attorney-General, Minister of Home Affairs, Assistant Treasurer, Minister for Financial Services and Superannuation

PW CEO meeting (currently every six months)
ATO, ACC, AFP, CDPP, ASIC, Austrac

PW Cross Agency Advisory Committee Meeting (monthly)
ATO, ACC, AFP, CDPP, ASIC, Austrac, AGS

Attorney-General’s Department (AGD)

Australian Transaction Reports and Analysis Centre (Austrac)

Australian Government Solicitor (AGS)

Australian Taxation Office (ATO)
Australian Crime Commission (ACC)
Australian Federal Police (AFP)
Commonwealth Director of Public Prosecutions (CDPP)
Australian Securities and Investments Commission (ASIC)

Source: www.ato.gov.au
Conclusions

- Dialogue between Regulators and Industry
- Information Sharing
- Mix of Enforcement
- Non-Judicial Enforcement

Flexibility

Control
(& Ultimate Ownership)
Thank you!
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