



ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

**OFFICIAL PRESENTATION of the WHITE PAPER on
CORPORATE GOVERNANCE IN ASIA**

QUESTIONNAIRE

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Questions for Asian Roundtable Workshop – HONG KONG CHINA

1. Please describe how the following factors affect the decision to pursue criminal, civil or administrative sanctions:

a. Efficacy of sanction/enforcement powers and procedures under applicable law

HKEx is only in a position to comment on administrative sanctions as criminal and civil sanctions are administered by the statutory regulator, the Securities and Futures Commission (“SFC”), or other law enforcement bodies. HKEx has a range of administrative sanctions available to it ranging from denying the facilities of the exchange to issuers and declaring that a director’s retention of office is prejudicial to the interests of the investing public; to public censures and public statements of criticism.

The Exchange’s ability to investigate breaches of the Listing Rules is focussed on listed companies and directors, who have given undertakings to assist the Exchange in its investigations. The Exchange can also obtain documents and transcripts of oral examinations of persons from the SFC, when such evidence is relevant to the Exchange’s investigation. The combination of the Exchange’s investigation powers and assistance from the SFC means that in most cases, the Exchange can gather the information it needs to proceed.

The administrative procedures for the imposition of sanctions includes the exchange of written submissions and an oral hearing before the Listing Committee, which is comprised of market practitioners. The procedures are appropriate and efficacious for the sanctions imposed.

b. Value of successful enforcement action in deterring other potential wrongdoers

The sanctions available to the Exchange are generally adequate to deter other potential wrongdoers in relation to the types of breaches sanctioned, such as late reporting of financial information, failure to make timely disclosing of price sensitive information and failure to disclose or seek prior shareholder approval for connected party transactions. Public censures are generally an effective deterrent for disclosure related matters as this has the effect of making investors more cautious about acquiring the issuers’ securities, which increases the cost of capital for that issuer.

More serious forms of wrongdoing, including fraud, false accounting and misappropriation are subject to investigation and enforcement action by the SFC and other law enforcement bodies including the Commercial Crime Bureau of the police and the Independent Commission Against Corruption. With the introduction of the Securities and Futures Ordinance on 1 April 2003, the SFC, by virtue of the “dual filing” regime introduced, assumed jurisdiction to investigate and take enforcement action in relation to false and misleading disclosures in prospectus, financial reports and other announcements made under the Listing Rules. This has enhanced deterrence of wrongdoing by listed companies and their directors, officers and advisers.

- c. Your own resource constraints in investigating and pursuing an enforcement action

The Exchange has recently increased its human resources for investigating and taking disciplinary action in relation to breaches of the listing rules, has streamlined its internal practices, developed criteria for prioritising cases and is reviewing the disciplinary process with a view to enhancing the process. While still being subject to resource constraints, the Exchange believes that in future it will be able to take appropriate and effective enforcement action in a timely fashion.

- d. Capacity constraints (expertise, even-handedness, timelines) of courts

This is only a relevant consideration when the Exchange's administrative proceedings are judicially reviewed. Our recent experience is that lack of timeliness by courts in hearing such judicial reviews adversely impacts timely enforcement action by the Exchange.

2. Please fill in the following tables for the latest year in which data are available:

Breakdown of investigations and enforcement actions by approximate numbers:

Type of Action	Number of investigations underway [as of 1/1/02]	Number of investigation begun [during 2002]	Number of enforcement actions underway [as of 1/1/02]	Number of enforcement actions begun [during 2002]	Number of enforcement actions concluded with sanction	Number of enforcement actions concluded without sanction
Criminal						
Civil						
Administrative	160	186	42	160	149	13

Approximate breakdown of source of information:

Type of Action	% of investigations triggered by news reports	% of investigations triggered by review of regulatory filing	% of investigations triggered by tip from another governmental agency	% of investigations triggered by tip from insider	% of investigations triggered by tip from investor	% of investigations triggered by tip from supplier or customer	% of investigations triggered by tip from competitor	% of investigations triggered by tip from another source
Criminal								
Civil								
Administrative	10	60	20	5	5	-	-	-

For each 100 public companies, what is the approximate number of personnel employed by the securities regulator:

Managers	1
Investigators	5
Policy experts	2
Technical reviewers	10
Prosecutors	1
Support staff	3