



**IFC**

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# Corporate Governance Department World Bank Group

## Enforcement: Perception and Reality

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# The World Bank Group's Work on Corporate Governance Reform

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1. Corporate governance country assessments through the ROSC (Report on the Observance of Standards and Codes) Program
2. Doing Business Report
3. Increased attention to corporate governance of IFC portfolio companies
4. Technical assistance to client countries and companies

# Three Myths of Corporate Governance Enforcement

The FIRST MYTH:

## The Laws are Good, but Enforcement is Poor

- Laws have gaps
- Laws don't have “teeth”
- Laws are not understood

*Reality behind the myth: Enforcement is often weak, and legislative change may not make things better*

# Three Myths of Enforcement

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The SECOND MYTH

**The Courts Are Worse Here Than Anywhere Else**

# What Does Doing Business Say?

<b>Contract Enforcement Indicator</b>	<b>SEE Average<sup>[1]</sup></b>	<b>OECD Average</b>	<b>“Lower Middle Income”</b>
Number of procedures	33.4	19.5	31.0
Time (days)	436.3	225.7	418.1
Cost (% of debt)	19.4	10.6	26.7

<sup>[1]</sup> Average for Albania, BiH, Bulgaria, Croatia, FYROM, Romania, Serbia and Montenegro.

[www.doingbusiness.org](http://www.doingbusiness.org) go to “enforcing contracts”

# What Does Doing Business Say?

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## Doing Business: Enforcing Contracts

		<i>South East Europe</i>	<i>Eurasia</i>
Greece	8	Croatia 43	Ukraine 39
United States	10	Romania 65	Azerbaijan 44
France	13	Moldova 66	Georgia 63
Germany	25	Bosnia&Herzegovina 72	Kazakhstan 68
United Kingdom	30	Bulgaria 79	Uzbekistan 80
Austria	35	Serbia&Montenegro 110	Kyrgyz Republic 147
Turkey	37	Macedonia, FYR 111	Armenia ..
China	47	Albania 113	Mongolia ..
Russian Fed.	62		
Italy	76		
Slovenia	85		
India	138		

The THIRD MYTH:

## Alternatives are the Solution

- Market forces
- Shareholder activism
- Alternative dispute resolution

*All are good, but none make up for poor laws or weak enforcement*

# The Three Types of Corporate Governance Enforcement

The FIRST TYPE:

## Private Enforcement

- Suits against board members
- Other actions taken by shareholders through courts

*If suits are rare and courts weak, can these work?*

The SECOND TYPE:

## Self Enforcement

*Shareholders may be able to*

- Call exceptional meetings
- Approve major and related party transactions
- Sell shares back to the company
- Inspect company records
- Choose and remove board members

*But who enforces these?*

The THIRD TYPE:

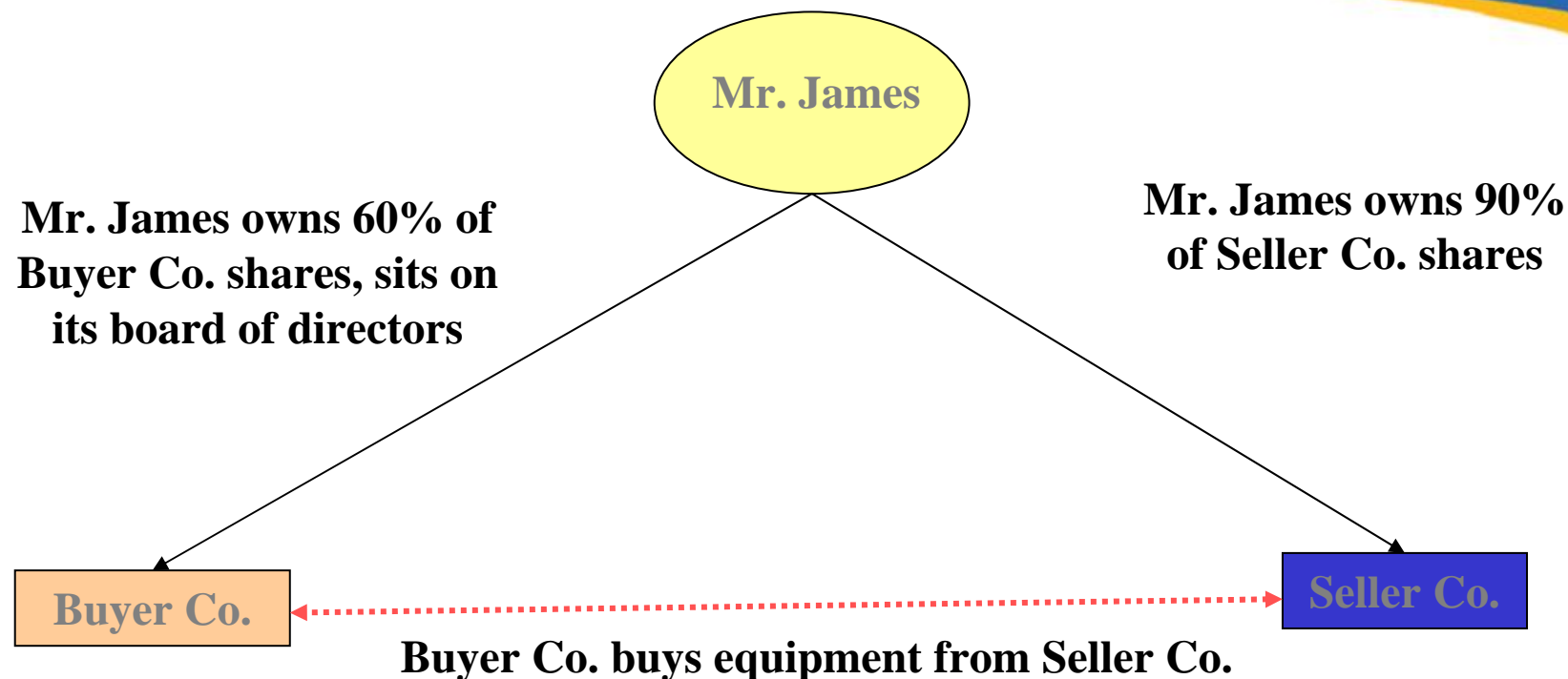
## Regulatory Enforcement

*Authorities can*

- Investigate
- (De)License
- (De)List
- Sanction
- File suits directly or for investors
- Stop or reverse transactions
- Issue regulations and guidance

# What Does Doing Business Say?

## The case study



### Legal issues:

- Clear conflict of interest, but possible business purpose
- Legal requirements met, but not exceeded
- NOT fraud

# What Does Doing Business Say? The Methodology

- We designed and distributed a questionnaire covering:
  - who approves the transaction;
  - what needs to be disclosed, when and to whom;
  - what are the duties of officers, directors, and controlling shareholders;
  - how the transaction could be rescinded, and by whom;
  - what causes of action are available to recover damages;
  - what needs to be proven under each cause of action;
  - who has standing to sue under each available cause of action;
  - availability of direct and derivative suits;
  - access to information and discovery rights; and
  - fines and criminal sanctions.
- Gathered data for 145 countries through local law firms.

At [www.doingbusiness.org](http://www.doingbusiness.org) go to “Protecting Investors”

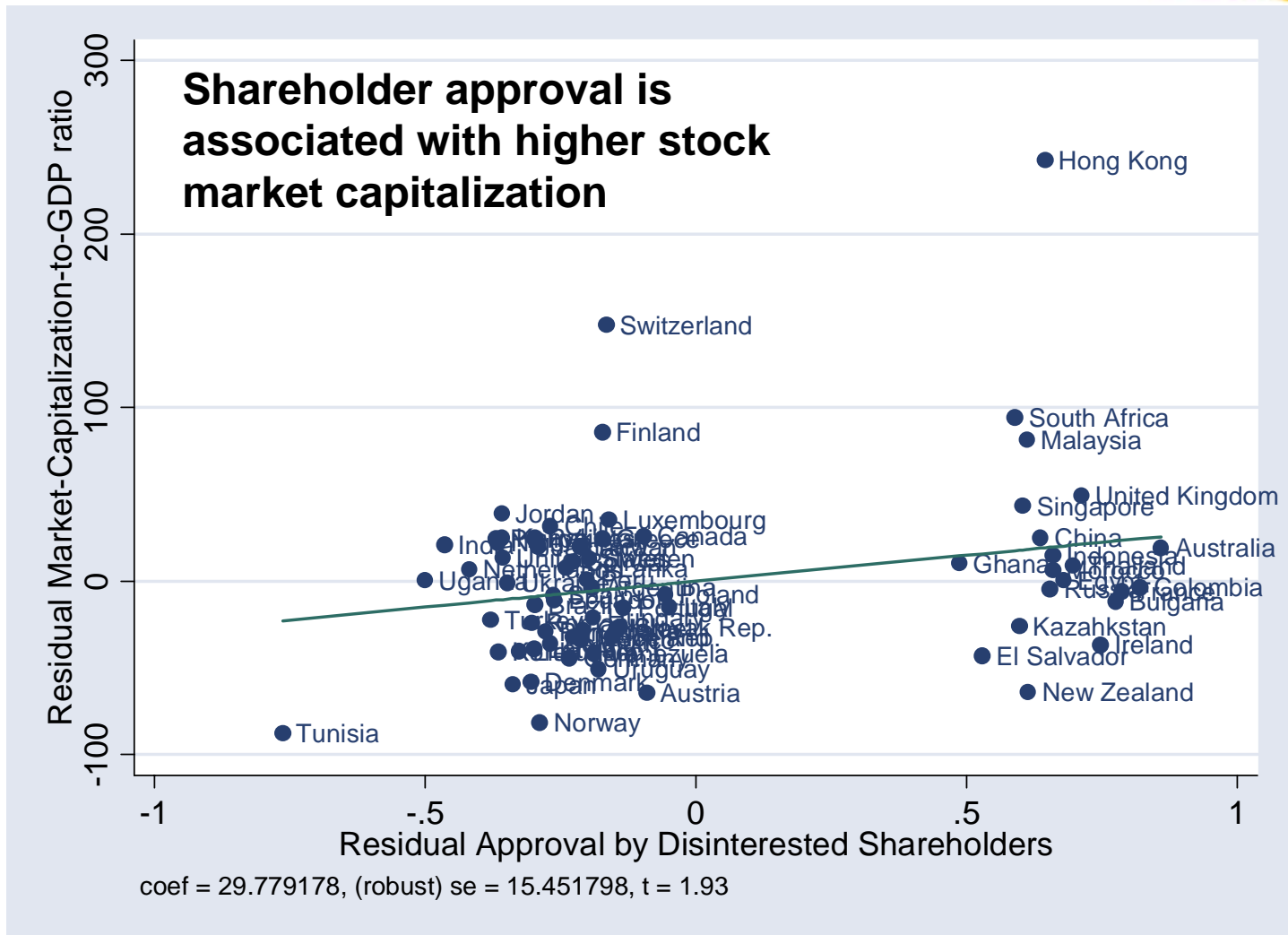
# What Does Doing Business Say? Obstacles to protecting investors

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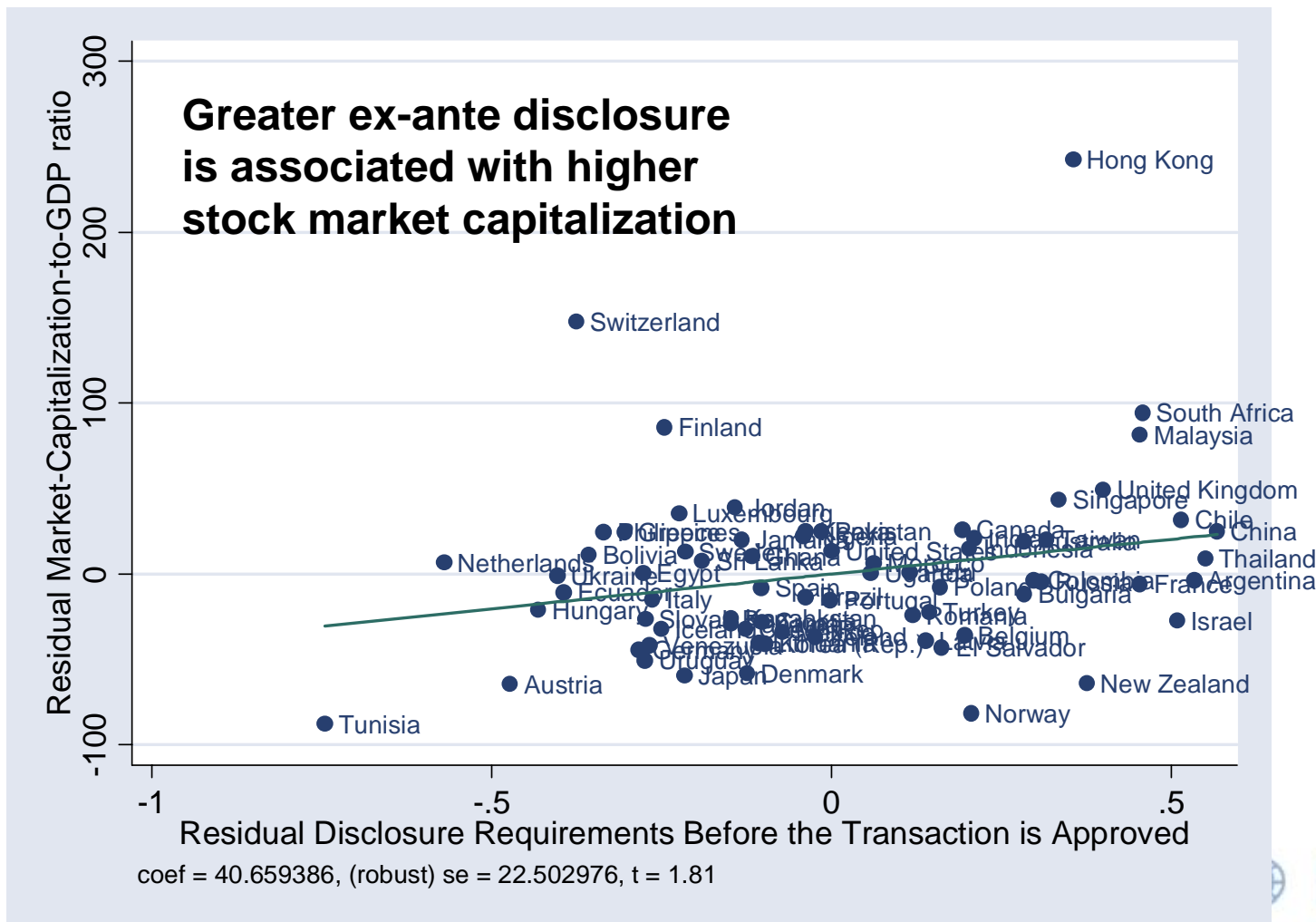
	% of countries
• Lack of information on related-party transactions	<b>53</b>
• Investors must prove their case to the level of certainty in criminal cases	<b>39</b>
• Directors keep profits from self-dealing even after being held liable for breach of duty	<b>37</b>
• Liability for directors only if they act fraudulently or in bad faith	<b>13</b>
• No access to company or defendant documents	<b>8</b>

*Source:* Doing Business database.

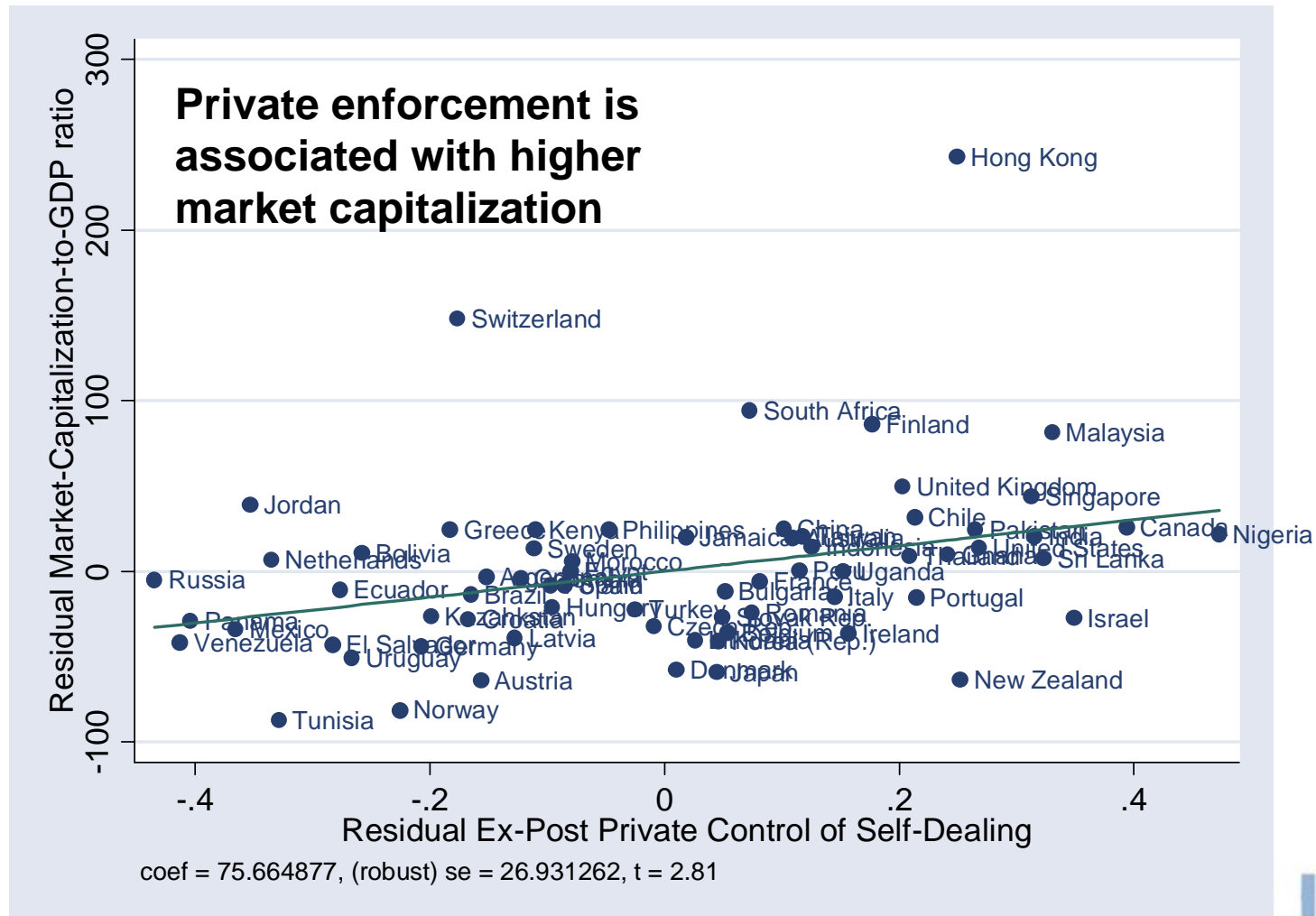
# What Does Doing Business Say?



# What Does Doing Business Say?



# What Does Doing Business Say?



# What Does Doing Business Say?

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## Doing Business: Protecting Investors

		<i>South East Europe</i>		<i>Eurasia</i>	
United States	7	Macedonia, FYR	30	Kyrgyz Republic	49
United Kingdom	9	Romania	44	Kazakhstan	70
India	29	Serbia&Montenegro	45	Uzbekistan	106
Slovenia	46	Bulgaria	54	Azerbaijan	109
France	56	Bosnia&Herzegovina	77	Georgia	115
Germany	57	Moldova	89	Ukraine	141
Russian Fed.	73	Croatia	135	Armenia	..
Turkey	75	Albania	136	Mongolia	..
Italy	86				
China	100				
Austria	121				
Greece	128				

# What Does Doing Business Say?

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*The case study is ground breaking.  
But it doesn't give the whole picture.  
And your feedback is welcome!*

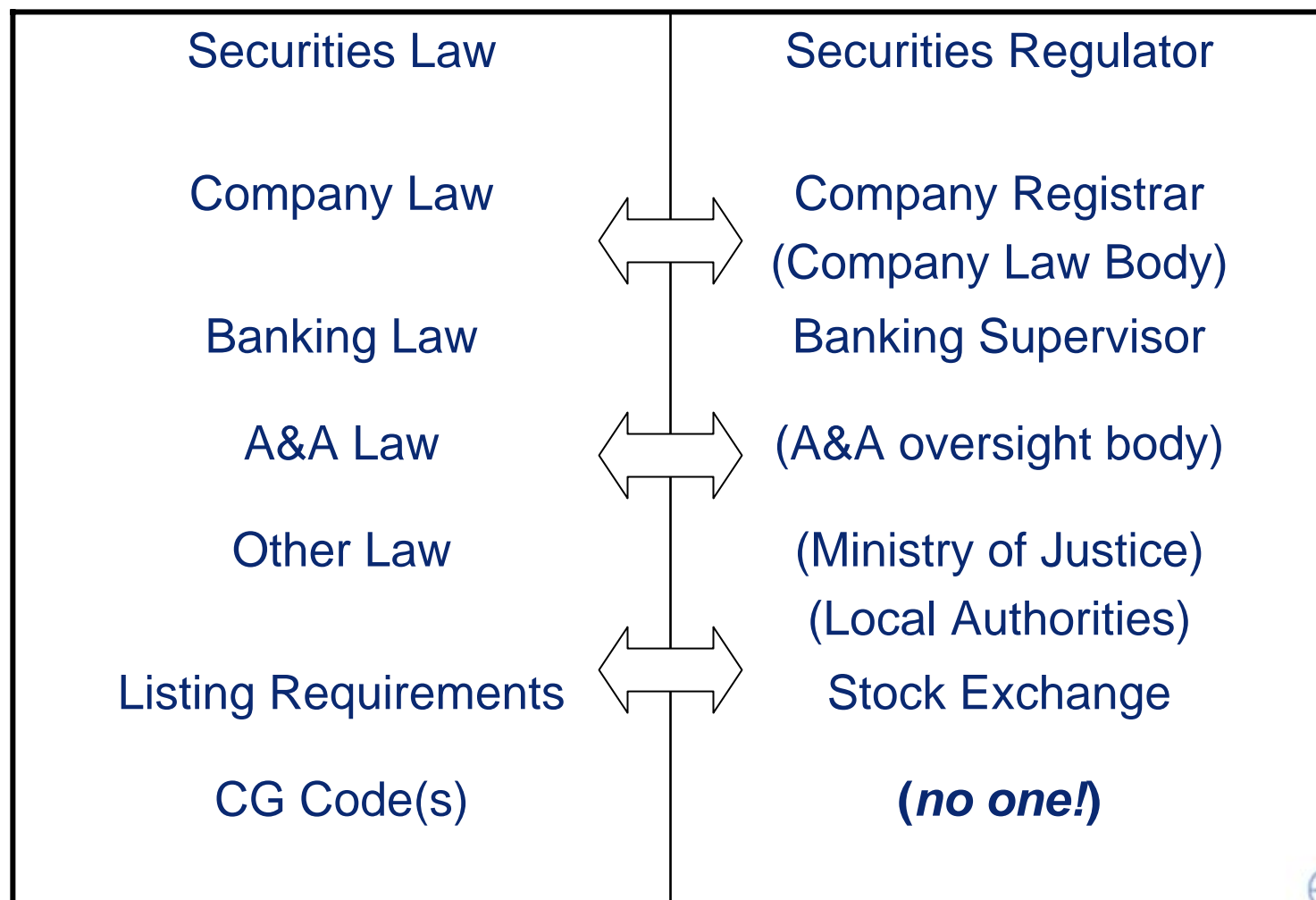
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# The Securities Regulator

## Who is the Regulator or Enforcer? (I)

- National Securities Commission
- Banking Supervisor
- Single Financial Regulator
- Accounting and Auditing Oversight Body
- Ministry of Justice
- Stock Exchange
- Company Registrar
- Company Law Regulator
- Local Authorities
  - Local Securities Regulator

## Who is the Regulator or Enforcer ? (II)



## How do they regulate ? (I)

<b>Pakistan Securities Commission</b>	<b>BiH (either entity) Securities Commission</b>
Company Law	(Company Law)
Securities Law	Securities Law
A&A Law	Law on Investment Funds
Law on Investment Funds	(CG Code(s))
(Listing Requirements)	
CG Code(s)	

## How do they regulate ? (II)

### *Authorities probably can*

- Investigate
- (De)License
- (De)List

### *Authorities may or may not be able to*

- Sanction
- File suits directly or for investors
- Stop or reverse transactions
- Issue regulations and guidance (that have legal force)

## Who do they regulate ?

### *Authorities probably oversee*

- Brokers and dealers
- Investment banks
- Investment funds

### *Authorities may or may not oversee*

- **Issuers**
- Board members
- Accountants and Auditors
- Owners

### *Who and how are closely linked!*

Enforcement may be WEAK because of

**The laws being enforced**

**Limited private and self enforcement**

**Limited authority of the regulator(s)**

**Key regulation left to local authorities (at best)**

# Thank you!

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