

REINFORCING SGX LISTING AND ENFORCEMENT FRAMEWORK

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In September 2014, the Asian Corporate Governance Association (ACGA), in collaboration with CLSA, issued its *Ninth Corporate Governance Watch* report. Out of the 11 markets surveyed for overall corporate governance, Singapore ranked equal first with Hong Kong.

What was interesting was that Singapore's score was slightly lower than in 2012 (the last time the survey was done), partly because of a lower regulatory enforcement score. Notably, Singapore was one of only two markets that showed such a drop.

In the past, the Singapore Exchange (SGX) has been criticised for its sluggish enforcement of its Listing Rules. The criticisms

have been a little unfair. The reality is that the SGX has limited legal options.

Unless an offence has been committed – which, in turn, is referred to the Monetary Authority of Singapore (MAS) or other authority for follow-up – the SGX can only issue private or public censures or warnings; object to the appointment of certain directors of SGX-listed corporations; suspend trading; or, in extreme cases, delist the corporation – which would also be punishing innocent shareholders.

CHANGE IS IN THE AIR

The SGX's February 2014 proposals to strengthen its listings and enforcement powers represent a significant step towards addressing this issue. The proposals were laid out in detail in the September 2014 Consultation Paper, "Reinforcing the SGX Listings and Enforcement Framework". The feedback from the consultation process is now being reviewed.

In essence, the proposed changes create three new committees: the Listings Advisory Committee (LAC), the Disciplinary Committee (DC) and the Appeals Committee.

The LAC, made up of independent market professionals appointed in consultation with the MAS, will advise the SGX on listing policies and applications. Half-yearly reports of its advice will be published.

The DC will hear charges against an issuer, its directors, executive officers and issue managers, for Listing Rules breaches.

The Appeals Committee will hear appeals from the DC and on SGX decisions on specified matters, and its decision will be final. An appeal can only be heard if the chairman is of the opinion that the DC acted in bad faith, there was procedural unfairness or a

gross error of fact or interpretation, there is fresh evidence, or the sanctions were excessive or inadequate.

Both the DC and Appeals Committee will comprise independent persons who are appointed by the SGX.

The proposals also set out detailed regulations on committee composition and proceedings. Parties to DC or Appeals Committee proceedings are generally required to treat matters relating to the proceedings as confidential, though, unless a private warning is issued, a written decision will be published.

Besides private warnings and public reprimands, the DC's proposed powers include the power to fine an issuer up to S\$250,000 per contravention and a maximum of S\$1 million for multiple charges, prohibit an errant issue manager from participating in specified SGX listing applications, require an errant director or officer to resign, or prohibit any issuer from appointing that person.

BROADER POWERS

The proposals also expand the SGX's administrative, enforcement and investigation powers, including the right to demand documents or electronic records.

The SGX will have broad administrative powers to issue public queries to an issuer, require an issuer to make specified disclosures, withhold approvals of circulars, require an issuer to obtain the SGX's prior approval for appointment of directors and executive officers, object to any appointment, and require the appointment of a special auditor, compliance or legal adviser, or other independent professional.

Notably, the SGX's enforcement powers will allow it to initiate and conduct investigations and disciplinary actions against issuers and their directors, executive officers and issue managers, take

enforcement actions including offering a composition sum, require an issuer to implement an education or compliance programme or independent review of internal controls, require the appointment of an independent adviser to minority shareholders, and suspend or restrict the activities of an issue manager.

The right to impose a fine or monetary penalty or composition sum on issuers is a notable new power given to the SGX. On the part of issuers or their directors, the detailed governance procedures for the DC and Appeals Committee should give them some assurance that there will be a proper process by which they will have the opportunity to defend themselves.

In summary, the proposed new Listing Rules enhance transparency and add a measure of independence, and give the SGX the benefit of the perspectives of market professionals.

Not only do the proposals broaden the enforcement options available to the SGX, but they also allow it to refine and calibrate its responses to different non-compliance events. As the listing rules become ever more complex, the SGX will need to choose carefully which weapons in its armoury to use in the face of non-compliance so as to enable market confidence to be preserved and for it to recover faster and more effectively. ■