The Hong Kong Institute of Company Secretaries

Who is responsible for improving corporate governance practices?

On the home front, I have noticed that the most common reason cited for a director's resignation is "personal reasons". For instance, in two recent cases, two directors resigned citing "personal reasons" and failed to mention that one was jailed for a criminal offence[1] and the Insider Dealing Tribunal banned the other director from holding any directorships[2].

I have also noticed there appears to be a tendency for non-executive directors to resign just before the company announces that it may be facing financial difficulties or things generally turned south for the company. In times of crises independent directors should play a crucial role. We would expect independent directors to continue to act as directors at the time of crisis, however there maybe times when independent directors are prevented from fulfilling their duties and will have no choice but to resign. In such circumstances, directors should ensure that the reasons for their resignation fully explained to shareholders and the market. In a recent case, all the independent non-executive directors, and a number of executive directors, of a company resigned following or shortly before joint provisional liquidators were appointed. These directors cited "personal reasons" for their resignations but failed to explain the reasons for their resignations. The resignation of the independent non-executive directors left these companies without any non-executive directors.

Given the important role and function directors play, it begs the question whether directors should be allowed to resign when a company is liquidation or receivership. For instance, Rule 7 of the Codes on Takeovers and Mergers and Share Repurchases forbids directors of a company that is subject to a takeover offer to resign from the date an offer is made to the close of the offer. The main purpose behind preventing directors of the offeree company from resigning is to provide stability and to ensure that the directors remain in place to advise shareholders and to respond to the offer.

The intermediaries

The role market intermediaries played in some of the recent financial scandals underscore the important role they play. Sponsors play a pivotal role in the listing process because they are the main facilitator in bringing new listings to the market. Auditors audit financial statements of listed companies and ensure the integrity of the information presented. The recent corporate governance reforms have also targeted corporate reporting, especially the roles of the auditors and the audit committees, including oversight of the audit firms and auditing and accounting standards.

In January last year, ICEA Capital Ltd agreed to pay $30 million, without admission of guilt, to settle the SFC's disciplinary case against the sponsor. The SFC instituted disciplinary proceedings against ICEA for failure to exercise due skill, care and diligence in the course of performing its duties as sponsor for the listing of Euro-Asia Agricultural (Holdings) Co Ltd. Trading in Euro-Asia's shares was suspended a little more than a year after its listing in July 2001 amidst reports that it exaggerated its

[1] Ngai Lik Industrial Holdings Limited's announcement dated 20 June 2006 regarding Mr Lam Ping Cheung, Andrew's resignation. Mr Lam was convicted and jailed for conspiracy to pervert the course of justice.

[2] Chinese Estates Holdings Limited announcement dated 27 January 2006 regarding Mr Wing Yee Koon's resignation. Mr Koon was disqualified from acting as a director or to take part in the management of a listed company for a period of 5 years.

earnings to qualify for listing and the arrest of its chairman by the Mainland authorities.

More recently, Ocean Grand Holdings Ltd’

strengthen regulation over listed companies, the Government, the SFC and the Exchange are working together to amend the SFO to give statutory backing to major listing requirements.

Co-operation with other regulators

There is a well-developed model under the International Organization of Securities Commissions, or more commonly known as IOSCO, where signatories to a Multilateral Memorandum of Understanding (MMOU) agree to share information and co-operate in cross border enforcement actions. Signatories to the MMOU can both seek and offer assistance to one another in investigating market misconduct and corporate failures. IOSCO's members comprise more than 100 regulatory agencies from around the world covering 90% of the world's capital markets, of which 30 are full signatories of the MMOU, including Hong Kong.

The Mainland securities regulator, the CSRC, is not yet a signatory to the MMOU. We have urged the CSRC to take the necessa

Final words

To sum up, corporate governance reforms in Asia remain work in progress, although there seems to be improved disclosure. Responsibility for good corporate governance practice does not belong just to the regulators, but rather collectively to the directors, intermediaries and investors too. Having instituted regulatory reforms to promote good corporate governance, regulators must guard against complacency and strengthen enforcement efforts to improve standards. Directors are the vanguard of a corporate governance renaissance and need to wholeheartedly embrace the principles of good corporate governance practices. Intermediaries play a pivotal role in supporting companies' efforts to improve their corporate governance practices and ensuring the integrity of information. Investors must pro-actively demand for better corporate governance practices by exercising their rights at general meetings and not just vote with their feet or food. Thank you.