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Building Blocks for Reforms on Key Issues in Corporate Governance: The Case of Hong Kong

Submitted by: University of Hong Kong



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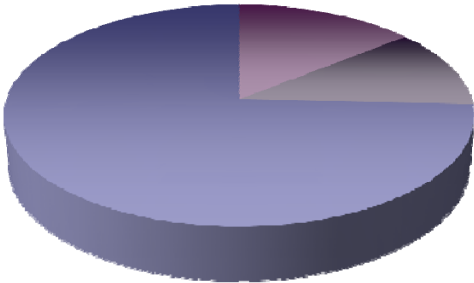


Building Blocks for Reforms on Key Issues in Corporate Governance: the Case of Hong Kong

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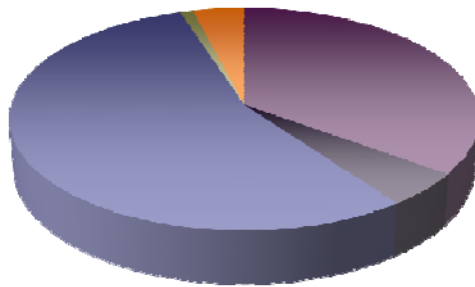
+ Listed companies in Hong Kong

By Country of Incorporation



- incorporate in HK
- incorporated in PRC
- incorporate elsewhere

+ Different types of listed companies



- PRC SOEs
- PRC family controlled companies
- HK family controlled companies
- HK Govt owned companies
- widely held companies

+ Major concerns in family-controlled companies:

- Appropriation of assets (2008(7); 2009(3): see 2010 APEC Economic Policy Report)
- Privatization
- Lack of internal control

Solutions:

- Regulation on connected transactions
- Headcount test
- Internal control report

+ Major concerns in PRC SOEs

- Independence of enterprises from state
- Monitoring performance
- Managerial abuses
- Conflicting objectives of enterprises

Solutions:

- Use of supervisory board
- Use of Independent directors
- Derivative suits

+ Independent directors in HK

- Requirement of ID raised from 2 to 3 in 2004
- Current proposal to increase to 1/3

Board size and number of ID: <http://webb-site.com/dbpub/boardcomp.asp>

Distribution of ID per company:

<http://webb-site.com/dbpub/INEDHKDistnCos.asp>

+ Problems:

- Number of Independent directorship held per person:
<http://webb-site.com/dbpub/INEDHKDistnPeople.asp>
- Low pay
- Not giving enough time

+ Proper Role of ID?

- Should ID act as consultant to board/company?
- Watchdog for all shareholders against managerial abuses?
- Watchdog for minority shareholders?

+ Shareholder participation in board nomination

- Can give notice of intention to nominate
- Normally board nominates
- Rare example: David Webb nominated by shareholders to be ID of HKEx
- Nomination and voting by CCASS not conducive to shareholder participation

+ Code of Corporate Governance

- Rules (Compulsory)
- Code Provision (comply or explain)
- Recommended Best Practice (voluntary)

- 99% (2009) and 98% (2007) of listed companies complied with 41 or more of the 45 CPs.
- Only 39% of issuers complied with all CPs (2001, 2007).

+ Consultation Paper (Dec 2010)

- Moving some RBP to CP (eg director training requirement, nomination committee)
- Moving some CP to Rules (eg ID should constitute 1/3 of board).
- Also proposed new rules or CP, eg maximum number of ID a person can hold, terms of reference for CG committee, disclosing attendance record of directors by name,
- New RBP, eg establishment of CG Committee, whistle blowing policy.

+ Main problems with Code

- Lack of enforcement
- Weak punishment (private censure, public criticism)
- Current proposals: extending Market Misconduct Law (under Securities and Futures Ordinance) to breach of listing rules and Code.
- Phase 1: only some areas will be extended, eg disclosure requirements and connected transactions in Listing Rules, but not the Code.