Different regime for overseas firms?

Foreign listings pose challenges in regulatory enforcement and differences in applicability of Singapore company law

By MAK YEN TERN

N 2005, Daka Designs (since renamed Carato) was caught in a scandal. A special auditor’s report on the company published in June 2005 alleged widespread fraud, and in October 2007, four former directors of the company were charged with corruption under the Independent Commission Against Corruption (ICAC) in Hong Kong.

Daka Designs was a Hong Kong company, incorporated in Bermuda, and listed in Singapore. The Singapore Exchange (SGX) defines foreign listings as those which have their principal place of business outside Singapore.

The Daka Designs scandal was interesting for two major reasons. First, unlike five other scandals which occurred around that time involving companies listed on SGX – ACCS, Aston, China Aviation Oil, Citigives and Infometrics – the enforcement action against the Daka Designs’ directors was taken by an overseas regulator.

Second, the time taken for enforcement action was unusually long – 28 months in the case of the five other companies mentioned, the time between when the scandal was first disclosed and the filing of charges was between five months and 19 months. In fact, in the case of ACCS, CAI and Citigives, most of the charges were filed within 11 months. Singapore has often been held up as a model for other countries in developing robust and effective enforcement action by organizations such as the Organization for Economic Cooperation & Development (OECD).

As of September 2008, 312 of the 775 companies listed on the SGX (40 per cent) are foreign listings. Foreign listings may bring about more challenges in regulatory enforcement in the case of foreign listings, as the Daka Designs case illustrates.

Aside from possible differences in the applicability of Singapore company law between foreign and local listings on the SGX, there are also greater challenges in regulatory enforcement in the case of foreign listings, as the Daka Designs case illustrates. Laws are only useful if they can be effectively enforced.

Further issues raised

The recent ruling by High Court Judge Retnada Ang in the Bio-Treat case, as reported in “Ex-chairman of Bio-Treatfails in court appeal” (BT, Oct 6), appears to raise further issues regarding the ability to effectively enforce laws for foreign listings.

In the Bio-Treat case, the former executive chairman had filed a lawsuit alleging that several of the Bio-Treat’s directors had conspired to defraud him and his wife of their stake in the company and the proceeds from the share disposal.

Bio-Treat was incorporated in Bermuda. The judge was of the view that Hong Kong was the more appropriate forum to hear the lawsuit for the following reasons:

- The alleged wrongful acts could only have been committed in substance in Hong Kong, the alleged conduct involved largely the same circumstances as the Bio-Treat case and foreign listings, by definition, have their principal place of business outside of Singapore.

- The Bio-Treat case would appear to further confirm the enforcement challenges regarding foreign companies listed in Hong Kong. It would appear to suggest in the five other cases involving such companies will generally have to be dealt overseas.

The cases of Daka Designs and Bio-Treat have potentially significant implications for investors in foreign companies listed in Singapore. The barriers against effective enforcement action for foreign companies create moral hazard. If enforcement actions are difficult, it could encourage foreigners with less than honourable intentions to seek to list companies here, knowing that if they commit any wrongdoing, they will not be charged in Singapore. Although legal actions can still be pursued overseas, especially with the cooperation of foreign regulatory authorities, the difficulty of such actions would likely be much higher.

Caveat emptor: Even if enforcement actions against foreign listings can be taken here, there is still the issue of whether Singapore regulators would be able to extradite the wrongdoers to face such actions. Investors would need to take this into account when deciding whether to buy shares in foreign listings.

Further, few countries have legal systems that are as effective as Singapore. Even if enforcement actions can be taken here, there is still the issue of whether Singapore regulators would be able to extradite the wrongdoers to face such actions. Investors would need to take this into account when deciding whether to buy shares in foreign listings.

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