

SFC Chairman's Remarks at LegCo Bills Committee
5 July 2005

As this may be my last meeting with the LegCo Bills Committee, and I am not quite sure of my own program, as I will definitely step down on September 30, I just want to thank the Permanent Secretary and the Legislative members for expressing the high regard for the SFC. I have tried to serve the SFC as loyally and as dedicatedly as possible. I want to clarify a couple of things. Since the Government felt initially that as incumbent Chairman, I have a vested interest in this issue, I want to say that since I have served more than 6 years in the job and that those people who are in the job know the complexity and the practical issues, if I do not give you the benefit of my practical experience and views, I would not be loyal to the organization.

So, therefore, I have to speak my mind. To quote Mr Michel Prada, who is the Deputy Chair of the IOSCO Technical Committee and who will chair the Technical Committee after I step down, he said the "draft reform raises two main issues: the share of responsibilities between the non-executive Chairman and the Chief Executive Officer, and whether the part-time position of the Chairman may impede on the independence of the regulator". I therefore ask myself: how do I split this job? Would it be possible for me as a non-executive Chair to do this on a part-time basis? My personal conclusion was it will be very, very difficult, because in practice I know how difficult it is to split the regulatory role, especially the case-by-case side from the policy side.

The second issue is that I feel that the independence of the Commission is very, very important, and that it has reached its present international status because of all the recognition due to Hong Kong. Because Hong Kong is an international financial centre, any changes to a system that works (and I hope that the Government and the legislators recognize that it is a system that works) should be thought through extremely carefully.

I wish to correct a point about the model. The model about having a non-executive Chairman with a Chief Executive Officer is a model that exists in some emerging markets. And there are some good reasons, some recent experiences also, why this model has some problems. I wish to remind everyone that the [1988] Hay Davidson Report recommended against having part-time Chairs and part-time directors driving a system [of regulation prior to the 1987 crisis] and that's why it recommended a full time Chair with full time executives. I totally understand also the Government's intention that they would like to improve the checks and balances against the executives. I want to stress again that the difference is that Hong Kong is not an emerging market. As a member of the 15-member Technical Committee, Hong Kong is an international financial centre of the first water. As the Technical Committee is a standard setter, we have to comply with international standards. So what is being proposed here runs the risks of having the lack of clarity of the sharing of responsibility between the non-executive Chair and the CEO, and also runs the risks of appearing to impede the independence of the regulator.

These are the two issues that I personally care about. I hope that the Government and the legislature will consider this very carefully before changing a formula that works.

It is extremely important for Hong Kong's standing as an international capital market. I just want to thank all for giving me personally great support in this area.

We would of course like to have an agreement with the Government on this important issue. But if the policy intent of the Government is to follow the FSA model, then follow it as what the FSA has done - have a full time Chairman that is clearly the accountable focus of the FSA. Secondly, if the policy intent is to have non-executives having a check and balance against the executives, then have the NEDCO [Non-executive Directors' Committee] that operates currently in the United Kingdom FSA. This is a very workable model which has the deputy Chairman or the lead non-executive director chairing a non-executive directors' committee without executives, to regularly review the work of the executives to see that they follow the policies set out by the Board. This is a model that has proven to work.

That is why we wanted the Government to state very clearly what the policy intent is. The fact that it has been intensely debated by very respected professionals and legislators over a considerable period of time, including members of the Board (all of whom are very strong people with business and professional background), suggests that even they have difficulty understanding the policy intent. If the policy intent is not clear, I personally am afraid that if the responsibility and accountability is not clear, that if the ship has two captains, then it may be an accident waiting to happen.

Let me stop here and thank you all for your attention.

Andrew Sheng
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