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HK Profit Announcements: To Warn or Not to Warn?

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Since Hong Kong's statute-backed inside information disclosure regime saw the light of day on January 1 2013, the market has been trying to acclimatize to it. Senior managers of Hong Kong-listed companies are now required, as a matter of law, not only to refrain from dealing while in possession of 'price-sensitive information' (now renamed 'inside information'), but to take positive steps to disclose the information, unless a safe harbor applies.

This is an important development. Now that the disclosure obligation is part of legislation, as opposed to a listing rule of the Hong Kong Stock Exchange (Stock Exchange), non-compliance constitutes a breach of law and attracts civil liability and other forms of penalty. In clear cut cases, the Securities and Futures Commission (SFC) might even consider exercising their newly-clarified powers under section 213 of the Securities and Futures Ordinance (SFO). This allows the SFC to bring civil claims for damages against directors personally, on behalf of investors who bought shares prior to an announcement of inside information being made, where the SFC's view is that the announcement was materially late.

In reality, determining whether something is or is not inside information may be a tall order for company directors, most of whom are not financial market experts.

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