

LCQ13: A listed company allegedly releasing misleading information

Following is a question by the Hon Chan Chi-chuen and a written reply by the Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (May 16):

Question:

In March 2017, ZTE Corporation (ZTE), a listed company in Hong Kong, entered into a plea agreement with the authorities in the United States (US) in respect of ZTE's violation of the US export control laws. Under the agreement, not only was ZTE required to pay a substantial amount of penalty, but the US authorities would also impose a denial order for seven years that would restrict and prohibit, among other things, ZTE from applying for or using any licenses, or buying or selling any item exported from US that was subject to US export control regulations. However, the aforesaid denial order was suspended subject to ZTE's compliance with the requirements under the agreement, and would be waived after a seven-year suspension period. On April 15 (US time) this year, the US authorities announced the activation of the denial order with immediate effect until March 13, 2025 as ZTE had failed to fully comply with the agreement. The Chairman of ZTE later admitted that the sanction had a great impact on the company and would plunge the company into a state of shock immediately. On the other hand, ZTE stated in the Notes to Financial Statements in its Annual Report 2017 that, for a comprehensive execution of the agreement, the company would take a series of measures to ensure its compliance with the obligations under the agreement, and thus ZTE believed that it was unlikely that the company would violate the agreement. Some investors opined that ZTE's statement in that annual report had misled them, and hoped that the Securities and Futures Commission (SFC) would immediately conduct a proactive investigation into the matter. In this connection, will the Government inform this Council if it knows:

(1) whether SFC has received, since April this year, any complaint about ZTE having allegedly misled its investors; if so, of the number of such complaints;

(2) whether SFC will take the initiative to investigate whether ZTE has made false or misleading statements; if not, of the reasons for that; and

(3) whether, in the light of this case, SFC will examine the introduction of a mechanism for class actions so that minor shareholders who have been misled and thus suffered losses may claim compensations from the companies and persons concerned through such mechanism; if so, of the details; if not, the reasons for that?

Reply:

President,

Our reply to the three parts of the question is as follows:

(1) and (2) The Securities and Futures Commission (SFC) follows its established procedures in handling complaints involving matters under its statutory powers and responsibilities and in carefully assessing the allegations made therein. The SFC will take appropriate actions if irregularities, including those in respect of non-disclosure of inside information by listed companies, are detected. The SFC will not comment on any specific case.

(3) The Law Reform Commission (LRC) published a report in 2012, recommending an incremental approach to implementing a class action regime in Hong Kong. The class action regime proposed by the LRC is to start with consumer cases, covering tortious and contractual claims made by consumers in relation to goods, services and immovable property. The Department of Justice has established a cross-sector working group to study and consider the proposals of the LRC's report on class action. The working group will take into consideration views from different sectors and strike a balance for the overall benefits of our society. It will make recommendations to the Government upon completion of the study. Our understanding is that according to the LRC's recommendation regarding the introduction of a class action regime, disputes among company shareholders or issues of shareholders' rights would not be covered at the initial stage.

At present, the Government has no plan to introduce a class action regime for disputes among company shareholders or issues of shareholders' rights. However, under the existing rules, the Court already has unfettered discretion to handle proceedings involving the same interest of numerous persons through "representative proceedings" should the plaintiffs satisfy the threefold test of establishing "a common interest, a common grievance and a remedy which is beneficial to all the plaintiffs".