CORPORATE GOVERNANCE Roundup 2022

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SINGAPORE INSTITUTE OF DIRECTORS

Directors in the hot seat

Adrian Chan

Directors in the hot seat

- Directors are today assailed on all fronts: by sanctions, hyperinflation, sky-rocketing interest rates, supply chain log-jams, high energy prices, cybersecurity attacks, etc.
- On top of that, boards are increasingly caught in the middle and squeezed between the forces of
  - regulatory action and enforcement
  - investor and shareholder activism
  - media scrutiny and pressure
- Some real-life examples just over the last 12 months…

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Regulatory enforcement

THE BUSINESS TIMES / WEEKEND / DECEMBER 4-5, 2021

SGX committee raps Tee International, former C-suite execs for rule breaches

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Singapore

TEE International and 2 of its former C-suite executives have been reprimanded by the Listings Disciplinary Committee (LDC) of the Singapore Exchange (SGX) for breaching mainboard listing rules.

Public reprimands were issued to Tee International, its former executive director and group chief executive Phua Chian Kin, and former group chief financial officer and company secretary Yeo Ai Mei, the LDC said on Dec 3.

The company had failed to control unauthorised remittances and to disclose requisite information on interested-person transactions in its annual report for the financial year ended May 31, 2019.

Phua had used the remittances to settle his personal debts, although he had on multiple occasions said the remittances were for business purposes; Yeo had not fulfilled her duty to ensure compliance with mainboard rules.

On Sep 4, 2019, the company said it found unauthorised remittances of money between Phua, Oscar Investment, PBT Engineering and Trans Equatorial Engineering. Oscar is an investment holding company wholly and beneficially owned by Phua; PBT and Trans Equatorial are wholly-owned subsidiaries of the company. The transactions, which took place in FY2019, were not recorded in the company's register of transactions carried out with interested persons and hence, were not disclosed in the company's annual report.

Phua initially told external investigator PricewaterhouseCoopers (PwC) Risk Services that a S$500,000 transfer from Trans Equatorial to his personal account was a loan to seek business opportunities for the group.

But he later told internal auditors that he had used the funds to repay his outstanding personal loan from licensed moneylender MWA Capital and for his margin calls from stock brokers.

As for 2 payments totalling S$3 million from PBT and Trans Equatorial, Phua had told external auditors the funds were used as a facilitation fee for a project, but subsequently said during an audit committee meeting it was used to get the group shortlisted for a building and construction project.

> **The Listings Disciplinary Committee of the Singapore Exchange noted that Phua Chian Kin and Yeo Ai Mei had overridden internal controls related to the payment process and failed to discharge their duties as the company's authorised signatories.**

Later, Phua told internal auditors that the funds were used for a partial repayment of a personal loan from MWA Capital, a partial repayment of a loan to Oscar and to meet obligations such as margin top-up requests from stock brokers.

Another payment of S$250,000 to MWA Capital from Trans Equatorial was also initially described as a cash transfer to Oscar for business-development purposes, but Phua later told PwC that the money was used as a partial payment of his personal loan.

Yeo had jointly approved the 3 transfers with Phua, but had not seen supporting documents prior to approvals for all 3 remittances.

The full amount of the S$3 million remittance was repaid to the group in August 2019; the S$250,000 remittance was repaid to Trans from a sub-contractor in May 2019, although it was recorded as a repayment from Oscar.

The LDC noted that Phua and Yeo had overridden internal controls related to the payment process and failed to discharge their duties as the company's authorised signatories, since the remittances were carried out under the instructions of Phua, who approved them for his own purposes.

Yeo's approval of the payment to MWA Capital was also not in compliance with payment policies and procedures, since the recipient of the remittance was recorded as Oscar.

Furthermore, PwC had noted that there was no clear distinction made between the personal affairs of Phua and that of the company, as he had, in the past, provided temporary loans to the group when it was facing financial difficulties, and employees would recognise the former CEO as the de facto owner of the group.

In deciding to only impose a public reprimand on Phua and Yeo, the LDC said it took into consideration the fact that both parties were not contesting their liabilities under the charges.

Phua had also committed to not seek future appointments in issuers listed on SGX, and there did not appear to be any dishonest intention on Yeo's part.

Shares of Tee International last closed flat at S$0.032 on Jun 15, 2021. The company had requested for a voluntary trading suspension, as it was reviewing its existing business amid a significant loss reported for its fourth quarter ended May 31, 2021.

As at Nov 29, the company had 3 claims amounting to about S$13.7 million against it. As for claims against its subsidiaries, Trans Equatorial had 136 claims amounting to about S$128 million, PBT Engineering had 55 amounting to S$9 million, and Tee E&C Malaysia had 13 claims amounting to RM5.9 million (S$1.9 million).

CORPORATE GOVERNANCE Roundup 2022

Regulatory enforcement

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The Business Times | Friday, February 11, 2022

Midas Holdings' former CEO charged under Companies Act

Patrick Chew stands accused of failing to use reasonable diligence in his duties as company director

Singapore

MAINBOARD-LISTED Midas Holdings' former chief executive has been charged with allegedly failing to use reasonable diligence in the discharge of his duties as a director of Midas, an offence under the Companies Act (CA).

The charge relates to Patrick Chew Hwa Kwang's "failure to exercise reasonable supervision over the financial affairs of Midas' subsidiaries", Jilin Midas Aluminium Industries Co (JMA) and Luoyang Midas Aluminium Industries Co (LYMA), the police said in a release on Thursday (Feb 10).

"Chew had allegedly ceded control of his legal representative stamps for JMA and LYMA, which were then used to enter into loans or stand as loan guarantors in the name of the two subsidiaries," said the statement.

The value of these loans and guarantees, entered into between 2015 and 2017, amounted to RMB 159.5 million (about S$32.7 million) and RMB 264.5 million respectively.

Railway-parts maker Midas flagged the discovery of the loans and guarantees in February 2018.

Patrick Chew is alleged to have failed to exercise reasonable supervision over the financial affairs of two Midas subsidiaries.

If convicted for an offence under Section 157(1) of the CA, per Section 157(3) of the CA, Chew faces imprisonment for a term which may extend to a maximum of 12 months, or a fine of up to S$5,000.

The stock has been suspended from trading since February 2018.

Regulatory enforcement

| THE STRAITS TIMES | THURSDAY, FEBRUARY 17, 2022 |

AT THE COURTS

Two ex-directors fined for not disclosing conflict of interest

Case involves Kimly's acquisition of drinks company ASC in 2018

Wong Shiying

Two former directors of coffee shop operator Kimly were yesterday fined for their role in failing to notify the Singapore Exchange (SGX) that Kimly's acquisition of drinks company Asian Story Corporation (ASC) involved a conflict of interest.

Former executive chairman Lim Hee Liat was fined $150,000 and disqualified from acting as a director of any company for five years.

Former executive director Chia Cher Khiang was fined $100,000 and got the same disqualification.

Lim and Chia were each charged under the Securities and Futures Act with one count of failing to notify the SGX that Kimly's acquisition of ASC was an interested person transaction.

Lim was also charged under the Companies Act for failing to disclose that ASC was a company that was partially beneficially owned by him. The court heard that Lim oversaw Kimly's overall development, which included sourcing for investment opportunities.

Chia's responsibilities involved assisting Lim in the company management and ensuring it complied with rules after listing on the SGX.

Sometime in 2010, Lim invested around $300,000 in ASC and thus owned a 30 per cent stake in the company. Chia was aware of this.

Lim Hee Liat (left) was fined $150,000 while Chia Cher Khiang was fined $100,000.

However, during board meetings in May and June 2018 to discuss Kimly's acquisition of ASC, the duo did not disclose that Lim owned a 30 per cent stake in ASC.

Kimly proceeded to acquire ASC in July 2018 and did not notify the SGX that the transaction involved a conflict of interest.

SGX listing regulations required Kimly to have made an immediate announcement of such a transaction and disclose its details. This is because Kimly is using money raised from its public shareholders to buy another company in which its director has an interest.

The deal was rescinded in November 2018 and Kimly recovered the $16 million it had paid for ASC.

Deputy Public Prosecutor David Koh said Lim had suggested to investigators that he might have chosen not to disclose his interest because it might lead to questions about who owned the remaining 70 per cent of ASC shares.

Chia was aware that Alain Ong Eng Sing, former chief executive of beverage company Pokka International, owned ASC shares then and was worried that if Lim's link to ASC was disclosed, so would Ong's.

"Chia was also concerned that this would affect plans at the time for Ong to succeed Lim and become chief executive of Kimly," said DPP Koh.

Ong, whose wife is actress Vivian Lai, faces three charges under the Companies Act for allegedly not disclosing his dealings with ASC to his employer. His case is pending.

DPP Suhas Malhotra said Lim's failure to disclose his interest meant that Kimly's shareholders were deprived of their legal right to veto the acquisition of ASC.

"If a public company can fail to disclose such a clear conflict of interest, the investing public is entitled to question what else is being concealed from the market," said DPP Malhotra.

Lim's lawyer, Senior Counsel Davinder Singh of Davinder Singh Chambers, said in mitigation that Kimly did not suffer financial harm and his client had pleaded guilty at the first available opportunity.

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Regulatory enforcement

The Straits Times, Wednesday, 23 February 2022

5 Raffles Education directors notified of their arrest after investigations into loan

Kang Wan Chern
Assistant Business Editor

Five directors of private education provider Raffles Education, including its chairman and chief executive Chew Hua Seng, were notified of their formal arrest and bail conditions on Monday, following investigations by the Monetary Authority of Singapore and Commercial Affairs Department (CAD).

Mr Chew and four other directors of Raffles Education and its subsidiaries – Mr Lim How Teck, Mr Joseph He Jun, Mr Ng Kwan Meng and Ms Doris Chung Gim Lian – were asked to attend the CAD's offices to effect their formal arrests, the company announced in an exchange filing yesterday.

Each director was subsequently released on $30,000 bail. Under the bail conditions, they have to routinely assist with ongoing investigations. They may travel out of Singapore if they have obtained clearance before doing so.

The investigations are related to a RM410 million (S$133 million) loan extended by Affin Bank to the company's subsidiaries – Raffles K12 and Raffles Iskandar – which manage schools in Malaysia.

Raffles Education and its subsidiaries had been served a lawsuit by Affin Bank for immediate repayment of the loan on May 27 last year but disclosed this publicly to shareholders only two months later, on July 29, at the request of the Singapore Exchange (SGX).

This could amount to a potential offence under section 203 of the Securities and Futures Act.

In its filing yesterday, Raffles Education said the lawsuit is "unmeritorious" and noted that Affin Bank had filed notices to discontinue the actions under the writs on Aug 23 last year.

So far, none of the directors has been charged with any offence and the arrests do not imply that there will be any further action taken against them in the future, it added.

The five will continue to serve their roles within the company as investigations are ongoing, while operations and day-to-day management of the business are not expected to be impacted, it said.

Responding to SGX queries in relation to its latest financial results, Raffles Education disclosed last Friday that it still owes Affin Bank RM287.6 million as at Dec 31 last year, and that it is in discussions with the bank to restructure and repay the outstanding loans.

The company is also in talks to refinance the loan with other banks.

It also noted that the Covid-19 pandemic has restricted its ability to recruit and retain students at its Raffles American Schools located in Iskandar, Malaysia, and Bangkok, Thailand, but that it was hopeful of a recovery in demand from students in kindergarten to 12th grade.

For the six months to Dec 31, 2021, Raffles Education reported revenues amounting to $53.2 million, which is up 10 per cent year on year. However, net profit after tax fell by 80 per cent to $7.7 million.

Still, revenues have been on the decline even before the pandemic, and it has in recent years relied on its investment properties to drive earnings.

Last year, the company made headlines when a public feud erupted between Mr Chew and billionaire Oei Hong Leong.

Then a substantial shareholder of Raffles Education, Mr Oei had called into question emoluments paid to its directors, claiming higher salaries were paid to Mr Chew and his family members who worked at the firm.

In its response, Raffles Education said there was no basis to the billionaire's allegations.

Nevertheless, in a series of transactions in October last year, Mr Oei cut his stake in Raffles Education to 0.78 per cent from over 10 per cent, sending the firm's shares to a record low of 5.9 cents on Oct 26.

Its shares closed at 6.9 cents yesterday, down 6.7 per cent.

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• Additional reporting by The Business Times

WHO IS INVOLVED?

Raffles Education chairman and chief executive Chew Hua Seng

Four other directors of Raffles Education and its subsidiaries

- Mr Lim How Teck
- Mr Joseph He Jun
- Mr Ng Kwan Meng
- Ms Doris Chung Gim Lian

Regulatory enforcement

| SATURDAY, JUNE 4, 2022 | THE STRAITS TIMES |

AT THE COURTS

Jail for director of firm that laundered $46m in fraud proceeds

He was not involved in its affairs but failed to exercise due diligence in discharging his duties

Wallace Woon

He was appointed a director of a company but was not involved in any aspect of its management and affairs.

Yesterday, 38-year-old Eng Cheng Song was sentenced to four weeks in jail and disqualified from being a company director for five years, after the company was used to launder about US$33.5 million (S$46 million) of fraud proceeds.

In a statement yesterday, the police said Eng was found guilty of failing to exercise reasonable diligence in the discharge of his duties as a director of a company.

Individuals should not be directors of companies when they have limited or no oversight or control over them, as the companies may be used for illegal purposes such as the laundering of criminal proceeds.

Investigations by the Commercial Affairs Department revealed that he was one of the directors of Enston Corporate Services, a Singapore-based accounting company that provides corporate secretarial services.

Eng had a standing arrangement with his business partner in Enston, for him to be appointed as the resident director for companies that foreign clients wanted to incorporate in Singapore.

In April 2019, one such company, Phima, appointed Eng as its resident director to help incorporate the company on behalf of a foreign client with Enston's assistance.

Control of Phima and its bank accounts was relinquished to the foreign director by Eng, who also did not monitor the transactions in the bank accounts.

As a result of this failure to exercise reasonable diligence in the discharge of his duties as Phima's director, Phima received about US$33.5 million of fraud proceeds from a foreign company between November and December 2019.

Any person who commits a breach of Section 157(1) of the Companies Act can be jailed for up to 12 months or fined $5,000.

The statement said company directors who fail to exercise reasonable diligence in the discharge of their directors' duties run the risk of allowing their companies to facilitate the retention or control of benefits derived from criminal conduct.

The police take a serious view of the offence and will not relent in taking offenders to task.

Individuals should not be directors of companies if they have limited or no oversight or control over them, as the companies may be used for illegal purposes such as the laundering of criminal proceeds.

A search on the Accounting and Corporate Regulatory Authority's business registry showed that Phima, which was registered in April 2019, has been struck off.

Enston is shown to still be in operation.

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Regulatory enforcement

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THE BUSINESS TIMES / WEEKEND / AUGUST 27-28, 2022

COMPANIES

SGX disciplinary committee raps Aspen, directors over Honeywell announcements

It reprimands property developer for false, misleading statements the firm made about deal to supply Honeywell with gloves

By Yong Jun Yuan
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THE Singapore Exchange's (SGX) listings disciplinary committee has reprimanded property developer Aspen (Group) Holdings for false and misleading statements it made about a purported deal to supply Honeywell International with gloves.

In a regulatory statement on Friday (Aug 26), the committee also reprimanded Aspen's chief executive and executive director Murly Manokharan, and 2 other executive directors: executive deputy chairman Nazir Ariff and group managing director Ir Anilarasu Amaranazan.

Murly has to agree not to take any position in any other SGX-listed company for 6 months beginning Jul 20, 2022.

He also has to undergo a training programme on listing rule obligations.

The 2 other executive directors will also have to undergo such a programme.

Aspen had on Apr 13, 2021, announced a US$210 million 2-year master supply agreement (MSA) with multinational conglomerate Honeywell.

But this statement turned out to be false.

At the time it was made, the company did not have any executed copy of the agreement or confirmation that it had been officially executed.

News of the agreement was picked up by the media, including *The Business Times*.

Honeywell subsequently contacted Aspen to stop circulating the announcement and asked that the company retract press statements it had issued.

Instead of issuing a retraction on the SGXNet immediately, Aspen instead made attempts to ask media outlets to take down their articles about the announcement.

According to a statement by the committee, Aspen believed "once it removed the press releases in the media, it would then have clarity as to whether an agreement between Aspen and Honeywell would eventually be signed, and thus be able to make an appropriate announcement at that stage".

It was not till Apr 24 that the announcement was retracted.

Aspen's chief executive Murly Manokharan has to agree not to take any position in any other SGX-listed company for 6 months beginning Jul 20, 2022.

Honeywell indicated on May 8 that it would not proceed with the MSA with Aspen.

While Aspen indicated that it accepted the decision to terminate negotiations on May 11, 2021, it did not inform investors of the development in its business update on May 17, 2021.

Instead, Aspen only said that it would update shareholders via SGXNet when there were any material developments.

It was only on Jun 4, 2021, after further queries from SGX, that the company announced to investors that the deal was called off and the MSA was not consummated by Honeywell.

Aspen's shares later declined 8.3 per cent between Jun 4 and 7 to S$0.19. This was also 23.3 per cent lower than its share price of S$0.245 on Apr 13, when the initial MSA announcement was made.

In the committee's grounds for its decision, it laid out 2 charges against Aspen, Murly, its executive directors and other relevant non-executive directors for not promptly disclosing that MSA negotiations had been officially terminated, and for failing to have in place adequate and effective systems of internal controls and risk management systems.

An additional charge of failing to promptly disclose the non-consummation of the MSA was laid on Aspen, Murly and the executive directors.

Furthermore, the company and Murly received a further charge for releasing the MSA announcement, which was non-factual, false and misleading.

Shares of Aspen closed down 9.8 per cent or S$0.005 to S$0.046 on Friday, after the regulatory statement was released.

Regulatory enforcement

The Business Times | Friday, September 2, 2022

Former Noble directors who were issued 'stern warnings' named by Acra

By Michelle Zhu
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THE 2 former directors of Noble Group Ltd's (NGL) subsidiary, Noble Resources International (NRI), who were issued "stern warnings" by the Accounting and Corporate Regulatory Authority (Acra) have been identified as Neil Timothy Dhar and Timothy Martin Eyre.

An Acra spokesperson confirmed this late on Wednesday (Aug 31) when contacted by *The Business Times*.

Dhar and Eyre, who were previously not named, received the warnings from Acra for failing to prepare and table annual financial statements that complied with prescribed accounting standards in Singapore.

This came as part of Acra's conclusion of joint investigations with the Monetary Authority of Singapore into NGL, which resulted in a S$12.6 million civil penalty imposed on the commodities company for publishing misleading information in its financial statements.

The outcome was deemed a "slap on the wrist" and "unsurprising" by Iceberg Research's Arnaud Vagner in a note published online on Aug 29, where Acra was also called out for not naming the 2 NRI directors.

Wrote Vagner: "Acra issued 'stern warnings' to 2 former directors. That sounds scary. However, they refused to reveal their names because... it could hurt their feelings?"

Dhar and Eyre were among the 6 NRI directors (as at 2016) listed in the blog post alongside Jeffrey Alam, Will Randall, Jeff Frase and Paul Jackaman.

Dhar was said to be a co-manager of NGL's coal business together with Randall, while Eyre was described by Vagner as "a lawyer".

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Regulatory enforcement

The Straits Times, Tuesday, 20 September 2022

Workplace safety code for bosses to be gazetted

It outlines company management's duties on safety, health amid spate of workplace deaths

Kok Yufeng

Companies should make workplace safety a regular item on the agenda of board meetings and demand effective safety standards from suppliers, under a code of practice that will be gazetted in October to give it teeth.

The code, which is meant to improve workplace safety culture in Singapore, also includes measures such as setting up internal reporting systems that assure workers of fair treatment. It comes after a spate of workplace fatalities this year, with 37 deaths to date.

Launching the Approved Code of Practice on Chief Executives' and Board of Directors' Workplace Safety and Health (WSH) Duties on Monday, Manpower Minister Tan See Leng reiterated that it is critical for companies to prioritise safety in spite of the challenges brought on by Covid-19.

"For a strong WSH culture to germinate, grow and flourish, it must start from the top," he said at the Singapore WSH Conference held at the Singapore Expo.

The code of practice aims to distil good safety management principles and practices into actionable steps for others to adopt.

Dr Tan said gazetting the code means that if a company commits an offence under the WSH Act, the courts can consider whether these measures were complied with when they pass judgment.

Conversely, adhering to the main principles outlined in the code can be considered a mitigating factor, he said.

He added that the code of practice will apply to companies in all industries, even those that have no manual work and little risk of physical injury.

This is because safety and health also includes the mental well-being of workers.

Dr Tan said the code was launched after extensive consultation with the Singapore Institute of Directors, Singapore Institution of Safety Officers, Association of Small and Medium Enterprises, tripartite partners and various industry associations.

A draft was put up for public consultation from Aug 24 to Sept 8.

The code was originally slated for publication in 2023, but was fast-tracked after the spike in workplace fatalities in 2022. The 37 deaths in 2022 is the same number for the whole of 2021.

Earlier in September, the Ministry of Manpower put in place a series of unprecedented measures, including requiring companies in high-risk sectors to conduct a mandatory safety timeout between Sept 1 and Sept 15.

It also instituted a six-month heightened safety period, during which companies can be barred from hiring foreign workers if serious safety lapses are found following an accident.

Dr Tan said: "We recognise that it has been a turbulent period... But we cannot, and we must never, let it be an excuse to put WSH on the back burner."

Singapore Management University law don Eugene Tan said gazetting the new code of practice is an important step in getting it recognised as a legitimate source of guidance for companies.

Calling it "soft law", Associate Professor Tan said that following such a code of practice is not mandatory, but a company that fails to do so can be seen as falling short of the legal standards.

Bachy Soletanche Singapore's health, safety, environment and quality manager Amriq Ali and Nan Guan Construction's managing director Akbar Kader said the code may not impact their firms as they already implement most of the measures listed.

For instance, both firms provide workers a direct line to senior staff to flag safety or welfare concerns.

Mr Amriq said the new code of practice should push bosses to go down to the ground more.

Mr Akbar said smaller firms will face challenges such as having the necessary documents to show compliance with the code.

However, bosses still need to be held responsible for the safety of their workers, he said.

"If you are morally responsible, it means you know you have done the right thing. Even if something happens, you can sleep at night."

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Investor activism & litigation

| THE STRAITS TIMES | SATURDAY, MARCH 19, 2022 |

General Electric nearly halves CEO's total pay after 'no' vote by shareholders

NEW YORK • General Electric (GE) has slashed chief executive officer Larry Culp's controversial compensation package by US$10 million (S$13.6 million) a year, a surprise move by the industrial titan in response to last year's rebuke by shareholders.

Mr Culp and GE's board of directors agreed to cut his annual equity award to US$5 million from US$15 million previously, according to a proxy filing on Thursday.

The change takes effect this year and will bring Mr Culp's total target compensation down to about US$11 million from an original projection of about US$21 million.

He earned US$22.7 million last year, according to the filing.

Shareholders rarely reject executive compensation packages, and it is even less common to see companies dialling back those plans in response.

Some 97 per cent of say-on-pay resolutions among Russell 3000 companies were approved by stockholders last year, according to Bloomberg calculations.

Mr Larry Culp's pay package will be cut by US$10 million (S$13.6 million) a year. He earned US$22.7 million last year.

As in GE's case, those votes are typically non-binding, meaning that companies do not necessarily make cuts even if there is opposition.

The action to nearly halve Mr Culp's total pay "reflects our desire to recognise and meaningfully respond to our shareholders" while continuing to provide a performance incentive to the CEO, members of GE's compensation committee wrote in the filing.

Shares of the company are up 1.1 per cent this year, but they are little changed from when he took over in October 2018.

As GE's stock was reeling in the depths of the coronavirus pandemic, the company's board in August 2020 revised Mr Culp's employment contract, extending it to keep him on as chief executive into 2024 and effectively cutting in half the share price targets needed for him to collect as much as US$232 million.

Almost 58 per cent of shareholders voting in a non-binding resolution went against the pay deal at GE's annual meeting last year, following criticism by shareholder advisory firms.

Mr Culp's pay cut comes as he prepares a plan to split the nearly 130-year-old manufacturing icon into three companies focused on aviation, healthcare and energy equipment by early 2024.

GE's board arrived at the break-up decision following a "rigorous portfolio and business strategy review" held over several months.

BLOOMBERG

Investor activism & litigation

The Business Times | Monday, March 28, 2022

Temasek said to push for removal of Bayer CEO Baumann

It has longstanding concerns about Bayer's operating performance under Baumann and the company's lack of succession planning, sources say

Baumann is one of the primary architects of Bayer's controversial mega-takeover of Monsanto. He survived the past 3 annual meetings, including in 2019 when he actually lost a shareholder confidence vote. PHOTO: BAYER

Singapore

BAYER'S long-time investor Temasek Holdings is pushing for the removal of chief executive officer Werner Baumann, according to people familiar with the matter, ratcheting up pressure just as the German crops and drugs giant started reversing a years-long stock slump.

The Singapore state investor has communicated its displeasure about current leadership to the company and supervisory board chairman Norbert Winkeljohann, the people said, asking not to be identified discussing non-public information.

Temasek has longstanding concerns about Bayer's operating performance under Baumann and the company's lack of succession planning, they said.

The big-name investor is considering options ahead of the shareholder meeting next month including requesting a no-confidence vote in Baumann or voting against ratifying the performance of the management.

Either step would significantly raise pressure on Bayer's supervisory board to reshuffle leadership.

No final decisions have been made on the course of action and it may not lead to Baumann's ouster, the people said.

Temasek declined to comment. Bayer referred to a response it gave to Swiss investor Alatus Capital and declined to comment further.

Temasek is the second shareholder to challenge management ahead of the annual general meeting.

Alatus has already objected to ratifying the performance of Baumann and his management team at Bayer's April 29 meeting, pointing to a significant loss in market value during his tenure.

But Temasek's move carries much more weight and this activist-type approach is rare for the company.

> Investor frustration with leadership could also trigger Bayer, once the darling of Germany's blue-chip DAX Index, to revisit calls to break itself up between agriculture, pharmaceuticals and consumer healthcare units.

Temasek has been a major shareholder since it built a roughly 4 per cent stake in the German company in 2018, helping Bayer complete the controversial US$63 billion takeover of Monsanto.

Investor frustration with leadership could also trigger Bayer, once the darling of Germany's blue-chip DAX Index, to revisit calls to break itself up between agriculture, pharmaceuticals and consumer healthcare units.

The 59-year-old Baumann is one of the primary architects of Bayer's controversial mega-takeover of Monsanto.

He spearheaded the deal only weeks after becoming CEO in spring 2016 and has consistently maintained that the transaction made strategic sense.

Yet weeks after the deal closed in mid-2018, Bayer lost the first of several US trials over whether Monsanto's product Roundup causes cancer, which Bayer denies.

That brought on a tidal wave of litigation, which Bayer has struggled to resolve. The company has pledged to spend as much as US$16 billion to finally put the matter behind it.

Bayer's shares are down 39 per cent since the Monsanto deal closed. The stock performed well in recent months, however, buoyed by surging prices for agriculture commodities.

The shares are up 29 per cent so far this year, making the timing of Temasek's move surprising for some.

The Singapore investment firm, which has not made its views public yet, hopes the share rebound is sustainable but continues to be concerned about the long-term performance, the people said.

Alatus, whose letter has been posted on Bayer's website, said the company has failed to lay out and implement a strategy that produces long-term growth for the crop science and pharmaceutical divisions.

It also called for allowing shareholders to vote on members of Bayer's management team individually at the meeting, rather than as a whole.

Bayer rejected the latter request, saying it's not legally permissible under the pandemic-era virtual shareholders meeting setup.

Temasek is concerned by the German company's rejection of and reasoning for dismissing the Alatus request, the people said.

In responding to Alatus, Bayer argued that Baumann's team has succeeded in the past year, citing earnings growth and progress in resolving litigation.

The shareholder vote in question is whether to absolve Baumann and other managers of responsibility for their actions last year – effectively a vote of confidence on their performance during the 2021 fiscal year.

All 3 of its divisions grew last year, led by the crops unit. In the letter responding to Alatus, posted on Bayer's website, the company pointed to the looming global food crisis resulting from Russia's invasion of Ukraine.

Bayer's supervisory board has "unreserved confidence" in Baumann, his team and their strategy, the company wrote.

Baumann survived the past 3 annual meetings, including in 2019 when he actually lost a shareholder confidence vote. That vote, however, was largely symbolic and Bayer's supervisory board has continued to back him.

In September 2020, Bayer extended Baumann's contract through April 2024, a year shorter than a normal term. Baumann has said he will step down after that. BLOOMBERG

Investor activism & litigation

The Business Times | Friday, June 24, 2022

Park Hotel Management director sued over fund transfers at subsidiary

By Nisha Ramchandani
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PARK Hotel CQ (PHCQ), along with its liquidators, have filed a lawsuit against Park Hotel Management (PHMPL) director, Allen Law Ching Hung, over some S$6.5 million in funds that were transferred out of PHCQ.

Law was the sole director of PHCQ - which is fully owned by PHMPL - from Apr 3, 2013 until Mar 16, 2021 when he stepped down as director. Lim Kang-Ling, previously general manager of the Park Hotel Clarke Quay property, was appointed the sole director on the same day. The sole shareholder and director of PHMPL, Law is the son of Hong Kong billionaire Law Kar Po, who is worth some US$6.6 billion, according to Forbes.

On Nov 19, 2021, the High Court ruled that PHCQ be wound up after it was unable to pay its debts amounting to some S$6.3 million. The bulk of that debt stemmed from monies owed to Ascendas Hospitality Reit, the landlord of the former Park Hotel Clarke Quay property at Unity Street.

According to the statement of claim dated Mar 31 and filed in the High Court by the plaintiffs, the liquidators found that PHCQ had transferred S$4 million to its PHMPL in 2 tranches - S$2 million each on Dec 9, 2020 and on Jan 4, 2021. Aw Eng Hai and Kon Yin Tong of accountancy firm Foo Kon Tan are the joint liquidators.

Prior to that, on Nov 30, 2020, recorded loans of S$6.1 million owed by PHCQ to Law were transferred via journal entries over to PHMPL; as a result, it was recorded that PHCQ owed PHMPL instead of Law. The S$4 million was then transferred by PHCQ to PHMPL in December 2020 and January 2021 respectively. On Jan 8, 2021, PHMPL allegedly paid Law about S$4.41 million.

The statement of claim also stated that the liquidators found withdrawals of S$2.5 million from PHCQ's bank accounts. Citing approval from PHCQ's landlord, Law had on Mar 30, 2021 instructed PHCQ's company secretary and the Park Hotel Group's group finance director, Tang Buck Kiau, to transfer S$2 million from PHCQ's furniture, fixtures and equipment (FF&E) account to its operating account; this was said to be used to pay rent and FF&E under a master lease agreement.

Law "represented to Tang... that PHCQ as tenant would put back the S$2 million into the FF&E account at the end of the lease", the plaintiffs alleged.

However, no payment was made by PHCQ to the landlord. On Apr 12, 2021, S$2.5 million was transferred from PHCQ's operating account to PHMPL. The S$2.5 million was then used to partially repay a loan of S$7.7 million - of which Law was the guarantor - that PHMPL owed to United Overseas Bank (UOB).

"At all times, the landlord did not approve of the transfer of S$2 million from PHCQ's FF&E account, whether verbally or via email," the plaintiffs alleged.

The plaintiffs went on to allege that at the time when the S$4 million in funds was transferred out of PHCQ, "PHCQ was unable to pay its debts and/or was financially in a perilous state". They also highlighted that at the time the S$2.5 million was transferred out of PHCQ in April 2021, PHCQ owed its landlord an outstanding sum of about S$5.38 million, citing a letter of demand from the landlord's lawyers dated Mar 29, 2021.

As at Jun 17, 2021, PHCQ owed its landlord about S$12.78 million, although this was reduced to about S$5.92 million after offsetting the security deposit.

The plaintiffs alleged that Law acted in "breach of (his) duties and/or (in) breach of trust" and is liable to account for at least S$6.5 million after PHCQ suffered loss and damages.

In his defence filed on May 6, Law denied the allegations in the statement of claim. He clarified that the S$6.1 million loan was initially a S$4.8 million loan from him to PHCQ and a S$1.3 million loan from PHMPL to PHCQ. Law also alleged that around November 2020, "as part of (an) internal reorganisation...inter-company loans to subsidiaries were consolidated through PHMPL instead of through the directors. At the time, PHMPL and PHCQ were not in a financially parlous position or insolvent".

Denying the plaintiffs' allegations that he had made "fraudulent misrepresentations" to PHCQ's company secretary, Law alleged that the landlord's approval for the transfer of funds from the FF&E account was granted by the landlord's representative Beh Siew Kim via an email dated Oct 30, 2020, as well as verbally in a meeting.

In his defence, Law also asserted that the funds transferred were not for his personal benefit, and denied the plaintiffs' claims that he was liable to account to PHCQ for the S$6.5 million sum on the grounds of breach of duties and/or breach of trust.

In a reply to Law's defence dated May 23, the plaintiffs again alleged there was "no approval given by the landlord to PHCQ in the Oct 30 2020 email, or verbally at any meeting prior to Mar 30, 2021, which allowed PHCQ to withdraw S$2 million from PHCQ's FF&E account". They also alleged that no approval was given to Law or to PHCQ to withdraw that sum for the purpose of transferring S$2.5 million to PHMPL to pare PHMPL's outstanding loan with UOB.

Law is represented by TSMP Law's senior counsel Thio Shen Yi, while the plaintiffs are represented by Allen & Gledhill partners William Ong and Lee Bik Wei.

PHMPL was placed under winding up by the Court in July last year after its subsidiary Grand Park OR - the former operator of the Grand Park Orchard hotel - was unable to pay debts of over S$5.2 million. PHMPL and its liquidators have also filed a suit against Law, along with 3 other firms, over assets disposed by PHMPL to entities linked to Law.

On Nov 19, 2021, the High Court ruled that PHCQ could be wound up after it was unable to pay its debts amounting to some S$6.3 million. PHOTO: BT FILE

Investor activism & litigation

News Analysis

BlackRock is against directors who sit on too many boards

by Dan Byrne on Sep 8, 2022

BlackRock Inc, the world's largest investment firm, is toughening its stance against "overboarding" or the practice of directors sitting on too many boards at once.

In the last week, the New York-based firm has revealed it voted against the reappointment of another board member in a high-profile company in the name of "independence in governance".

It is a part of the company's ESG-oriented policy of trying to improve corporate governance in the businesses it invests in. The company believes that directors who "overboard" are a hindrance to this effort. This policy has been around for years, under the watchful eye of CEO Larry Fink, and it has had mixed results.

What's happened?

BlackRock has revealed it voted against the reappointment of Salesforce board member Sandford Robinson in an August regulatory filing, according to a report from the Financial Times.

Mr Robinson is currently chair of Salesforce's governance committee. He also sits on the board of pharma company Cassava Sciences and expertise consultancy firm JustAnswer. Additionally, he is the founding partner of private equity company Fransisco Partners. In the filing, BlackRock claimed that Robertson was "responsible for a lack of independence on Salesforce's board, " which was why the firm voted against him. Nevertheless, Robertson remains on the board of Salesforce despite BlackRock's opposition.

What is the broader context?

This is the second time in a few months that BlackRock has targeted individuals it believes are stretching themselves across too much corporate responsibility.

Silver Lake

In May, BlackRock voted to oust Egon Durban, co-CEO of private equity firm Silver Lake, from the board of Twitter. Durban was voted off the board and offered his resignation, but Twitter

Investor activism & litigation

The Business Times | Wednesday, September 21, 2022

Environmental groups ask P&G investors to vote against CEO as board chair

ENVIRONMENTAL groups are asking Procter & Gamble (P&G) investors to vote against re-electing its chief executive as board chair, and also to oppose 2 other directors at the annual meeting next month, according to a filing that claims the company uses too much virgin wood pulp in its paper products.

Environmental non-profits including the Natural Resources Defense Council (NRDC) have targeted the maker of Bounty paper towels and Charmin toilet paper over the last few years, and are also calling on the consumer products company to clean up how it sources palm oil from tropical rainforests.

NRDC, Friends of the Earth and the Rainforest Action Network now want investors to vote against CEO Jon Moeller as chairman of the board, according to the US Securities and Exchange Commission (SEC) filing. They also oppose corporate directors Angela Braly, chair of the governance and public responsibility committee; and Patricia Woertz, a member of that committee.

Investors are set to vote on the re-election of P&G's corporate directors at its annual meeting on Oct 11. In the filing, the environmental groups request replacing Moeller with an independent chair, a structure some investors prefer.

"P&G's actions have been insufficient to mitigate deforestation," the filing said, adding that the company's "leadership team lacks the skills, perspectives and experiences" to deal with the environmental risks it faces.

A P&G spokeswoman said that the company's directors all received more than 90 per cent support from investors last year. She added that P&G has issued reports summarising its efforts, which include disclosing more data and eliminating sourcing from certain forests.

The environmentalists have been prodding P&G to make changes on forestry for several years.

"These proposals are more powerful because they get more support," said Nell Minow, vice-chair of corporate governance consultancy ValueEdge Advisors, adding that recent regulatory changes make it easier for activist investors to nominate their own directors.

"There's a significant next step and that is going to turn the heat up on these conversations," Minow said.

The Cincinnati-based company said in an update in July that it has created and is testing 2 new Charmin products, 1 made with plant-based fibre and another with bamboo, efforts supported by environmentalists.

The consumer products conglomerate has also vowed that by 2030 it will exclusively purchase wood pulp that meets certain criteria.

A majority of investors 2 years ago backed a resolution by Green Century Capital Management calling on P&G to issue a report on how it could beef up efforts to eliminate deforestation and degradation in its supply chain.

"Two years later, they've done basically nothing," said Jennifer Skene, a policy manager at NRDC.

Last year, NRDC also urged investors to vote against Braly, and she received significantly fewer votes than other directors did for her renomination to the board, according to a securities filing.

NRDC has the support of 2 shareholders who are descendants of the founders of P&G, Christopher Matthews of New York and Justine Epstein of the San Francisco Bay Area in California. Matthews and Epstein told Reuters they had asked Moeller for a meeting this month, but as of Monday they had yet to hear back.

P&G is "laser-focused on shareholder values and the value of the company from an asset perspective", Matthews said.

"The investment community sees it lagging behind on sustainability," he said.

Braly's role as chair of the governance and public responsibility committee, which oversees environmental concerns including forestry, "have not succeeded in mitigating" risks in P&G's forest sourcing, the environmental groups said.

Woertz's role on the same committee is "questionable", the groups said, because she worked at oil and gas explorer Chevron Corp for nearly 30 years, the non-profits said.

Braly did not immediately return a request for comment. Woertz could not immediately be reached.

The environmental groups said Moeller's work with Monsanto, owned by Bayer, "does not align with prioritising corporate responsibility or scientific integrity". Bayer agreed in 2020 to pay billions of dollars to settle lawsuits by people who claimed they were harmed by its weed killer Roundup, and is defending itself against thousands of lawsuits by Roundup users. REUTERS

Investor activism & litigation

LGIM calls on investee companies to link bonuses to net zero

BY SOPHIE ROBINSON-TILLETT 4 NOVEMBER 2022

Legal & General Investment Management has told its investee companies that it will vote against their pay packages if they fail to link a fifth of long-term incentives to reaching net zero.

The UK's biggest investment manager has updated its approach to pay to align with its broader climate ambitions, warning firms in the most polluting sectors that: "To gain LGIM's support for a new remuneration policy being put to shareholders from January 2025, we will expect to see climate targets within the long-term plan."

CORPORATE GOVERNANCE Roundup 2022

Media pressure & scrutiny

SID SINGAPORE INSTITUTE OF DIRECTORS

The Business Times | Tuesday, March 15, 2022

More enforcement action needed against negligent IDs, not less

I REFER to the letter "Companies should do more to protect IDs' independence" (BT, March 9).

The writer was concerned that the recent arrest of the directors at Raffles Education Corporation may affect the availability of independent directors (IDs) to protect the interests of minority shareholders. He felt it may make retirees less willing to be IDs, resulting in a dearth, and minority shareholders will be losers as a consequence.

He also proposed that the Companies Act be amended to "ensure real independence of directors", by imposing more stringent requirements on the executive chairman and/or chief executive officer to keep the board informed of material information.

IDs first and foremost owe duties to the company, although they also have an important role in protecting minority shareholders.

Unfortunately, judging by what has happened in many companies here, minority shareholders may actually need protection from IDs.

We have seen IDs approving questionable acquisitions with little due diligence, endorsing the withholding of material information that should be disclosed, allowing funds to be dissipated without security or safeguards, and so on. This has resulted in a big loss of confidence in our market.

The reason for this dire state of affairs is the lack of enforcement against directors, especially IDs. From April 2010 to February 2022, SGX has publicly reprimanded 71 directors and officers in 32 issuers, including just 9 independent directors in 3 issuers. That's an average of less than 1 ID being reprimanded a year.

Based on the 2021 Singapore Directorship Report, which shows that there are 2,322 board seats held by independent directors across 695 companies, the odds of an ID being publicly reprimanded by SGX are extremely low.

The last time any ID has been publicly reprimanded by SGX was in June 2018. Enforcement actions by statutory regulators are even rarer, although the arrest of directors, including IDs, in several companies in the past 2 years may be a sign that regulators are stepping up enforcement.

Contrary to the writer's concern, there is no dearth of IDs in Singapore. IDs are not necessarily retirees, but include many working professionals such as accountants, lawyers, executives and academics, and even current members of parliament.

Other than being at least 18 years old and not disqualified as a director, anyone can be a director of a listed company.

While SGX rules state that directors should have appropriate experience, expertise, character and integrity, it is not uncommon for individuals without these attributes to be appointed. Often, it is who you know rather than what you know.

With such loose requirements to be a director coupled with little accountability, there cannot be a dearth of IDs.

What is needed is more enforcement action against IDs who do not adequately discharge their duties, not less. Only then will more IDs take their responsibilities seriously, and we will see better quality IDs and an improvement in the corporate governance of companies.

Mak Yuen Teen
Professor (practice) of accounting,
NUS Business School

Media pressure & scrutiny

The Business Times, Thursday, 17 March 2022

HOCK LOCK SIEW

Enabling class action lawsuits could create alternative recourse for Singapore investors

RAPHAEL LIM
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GRAB'S share price slide since it went public on the Nasdaq has put it at risk of class action lawsuits in the United States, with a number of law firms inviting shareholders to join up and initiate investigations.

Such actions are relatively common in the US, but are not seen in Singapore for various reasons. Local investors have typically had to rely on regulators or market intermediaries – such as the Securities Investors Association (Singapore) – when in disputes with the board or management of listed companies.

Critics argue that class action lawsuits create an overly litigious environment. But retail investors in Singapore would probably appreciate having such lawsuits as an additional channel of recourse.

Grab's challenges

Grab went public via a merger with special purpose acquisition company Altimeter Growth Corp last December, and its share price has fallen steadily since.

The counter traded at US$11.01 a day before Grab made its debut. It closed Tuesday (Mar 15) at US$3.03, down over 72 per cent. It is also far below the US$10 IPO price of Altimeter.

The sell-off was particularly violent on Mar 3 – with the shares crashing 37 per cent in a single day – after Grab announced its first set of earnings since going public.

The ride hailing and deliveries company reported a 44 per cent on-year decline in fourth-quarter revenue, while its net loss increased over 80 per cent to US$1.1 billion.

Grab's large share price decline is no indication of wrongdoing, but it is enough of a trigger to motivate law firms to do something.

Litigations in the US can be done on contingency fee arrangements – meaning law firms get a percentage of the amount recovered on behalf of clients – making it potentially worthwhile for lawyers to proactively seek out such cases.

Indeed, a number of the law firms seeking to initiate litigations against Grab also have cases against other listed companies in relation to similar matters.

Some observers argue that class action suits are an unnecessary distraction for boards and management, and also hurt shareholders by increasing insurance costs.

Suits benefit the law firms disproportionately, these critics say, and deter boards from taking risks or being more aggressive in their disclosures.

It isn't clear, however, that shareholders are much better off without such legal avenues.

In Singapore, there are many stories of investors who have suffered hefty losses or who are stuck with shares in companies that are suspended for years and eventually delisted.

Again, investor losses are not necessarily an indication of wrongdoing. Stock prices decline for many reasons, and not every company is fortunate enough to recover.

At the same time, individual investors would probably welcome having class action lawsuits similar to the US being proactively undertaken by seasoned professionals against listed companies where there are meritorious grounds.

Less litigious

Singapore shareholders currently appear to be far less litigious than those in the US. One reason could be due to contingency fees being prohibited here. High legal costs remain a barrier to most retail investors, and contingency fees remove that barrier.

One objection to contingency fees is that it compromises on the basic premise of litigation, which is to achieve justice.

A contingency structure resembles a business venture, leading to potential for unethical conduct and conflicts of interest.

There have, however, been some developments in recent months relating to the fee arrangements that lawyers can have with clients.

In November, the Ministry of Law announced a framework for conditional fee agreements (CFAs) between lawyers and clients in selected proceedings. A lawyer would receive payment of all or part of the legal fees only in specified circumstances, such as when a claim is successful.

Such fee arrangements could help to enhance access to justice by providing businesses or individuals with additional funding options to pursue meritorious claims that they may otherwise not pursue, the ministry said.

As fees are contingent on the outcome, CFAs should also discourage lawyers from pursuing weak or frivolous cases.

But legal fees payable under CFAs cannot be calculated as a percentage of the damages awarded. They differ from contingency fees, which are charged on an agreed upon percentage of the sum recovered, with no direct correlation to the work done.

The fees charged under a CFA will continue to be subject to professional conduct rules against overcharging.

The bill allowing CFAs was passed in January, but it remains to be seen if such developments would eventually help in securities-related litigation by retail investors in future.

Having an overly litigious market is not something to aspire towards. And regulators do still need to take action against errant managers and directors, with warnings, fines and prohibitions from taking on future positions in other listed companies.

But this is cold comfort for those who have already lost their money.

Legal recourse that enables local retail investors to recover some funds could keep listed companies on their toes and boost confidence and vibrancy in the market.

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Media pressure & scrutiny

BRUNCH

INDEPENDENT DIRECTORS UNDER PRESSURE TO PROTECT MINORITIES

Independent directors form the last line of defence for minority shareholders, and their role now comes with more pressure and greater responsibilities. How are these directors dealing with the job, and what has changed in their duties?

BY UMA DEVI

WHEN company management brings a deal to their board, they sometimes expect the deal to be waved through by directors. Asking questions about it can be controversial, much less putting a stop to it.

Robson Lee, a senior corporate lawyer who has served as an independent director on several boards, can recall more than 1 such incident.

One Singapore-listed company had wanted to undertake a transaction that would eventually result in a reverse takeover (RTO) by a company listed in another jurisdiction.

"As an experienced corporate lawyer, some things just didn't look right," said Lee, referring to some terms and conditions of the deal. When Lee requested to visit the company in that jurisdiction, the controlling persons there "sidestepped many questions". >>>

Tips to bear in mind

- Check the terms of your D&O liability insurance
- Be aware of investors' concerns and increase the breath and depth of your stakeholder engagement
- Keep up-to-date and be trained on regulatory changes, market practices and trends (attend SID's Audit and Risk Committee Seminar in January 2023)
- Ask questions of management and enhance supervisory oversight
- But whatever you do, avoid doing this …

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Directors in the hot seat

The Business Times | Tuesday, November 23, 2021

A 2.5b yuan fine spooks Chinese companies' board members into quitting en masse

Beijing

CHINA'S independent directors are quitting once coveted seats on the boards of listed companies, spooked by fines levied on 5 directors of Kangmei Pharmaceutical that totalled hundreds of millions of dollars.

Independent directors of at least 20 companies listed on the Shanghai and Shenzhen stock exchanges have resigned after a Guangzhou court ruled on Nov 12 that some Kangmei executives and their external accountants were responsible for fabricating its financial statements.

They were required to jointly compensate investors for a combined 2.5 billion yuan (S$533 million) of losses. Kangmei's 5 independent directors are each liable for between 5 per cent and 10 per cent of the amount, equivalent to 123 million yuan to 246 million yuan, according to an exchange filing.

They collected less than 200,000 yuan in annual director fees from the firm. It is rare for independent directors to be ordered to compensate investors in a civil litigation in China.

The mass departures highlight a growing wariness among corporate executives as Chinese regulators crack down on the country's private sector, targeting industries from technology to education and more.

The securities regulator said it supported the court's decision in one of China's biggest fraud cases, which also saw Kangmei's former chairman sentenced to 12 years of imprisonment. The watchdog had earlier vowed "zero tolerance" for market misconduct at its mid-year meeting.

Kangmei in 2019 disclosed that it had overstated its cash positions by US$4.3 billion using false documents and transaction records – an amount one lawyer said was unprecedented in China. The firm admitted to "serious" deficiencies in its corporate governance and internal controls.

Kangmei in 2019 disclosed that it had overstated its cash positions by US$4.3b using false documents and transaction records. PHOTO: REUTERS

Most firms cited personal reasons in recent filings for the resignation of their independent directors. In some cases, that left companies short of the mandatory requirement of having at least a third of board members as independent directors.

In a previous clampdown in 2016, China targeted academics sitting on the boards of listed firms. That followed a 2013 ban on top government officials holding paid corporate positions as part of the country's anti-corruption drive. Four of the 5 independent directors from Kangmei teach at domestic universities, local media reported. BLOOMBERG

thank you

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