SID Directors Conference 2013

Corporate Governance:

From Form to Value Creation

SID

Singapore Institute of Directors

168 Robinson Road #09-06/07 Capital Tower Singapore 068912 • Tel: 6227 2838 • Fax:6227 9186 • www.sid.org.sg

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SID Directors Conference 2013
Corporate Governance: From Form to Value Creation

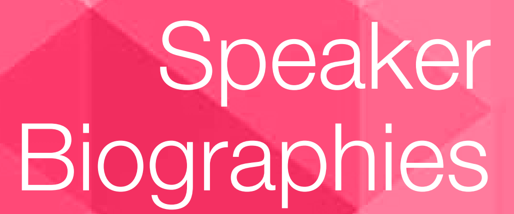
The annual one-day must-attend conference on directorship and corporate governance

9.00 am to 5.30 pm • Wednesday, 11 September 2013 • Marina Bay Sands Singapore

Programme

0800	Registration
0900	**Welcome Address** *Mr Willie Cheng, Chairman, Singapore Institute of Directors*
	Opening Address by Guest-of-Honour *Mrs Josephine Teo, Senior Minister of State, Ministry of Finance and Ministry of Transport*
	Keynote Address: Corporate Governance: Creating Value for the Long Term *Ambassador Linda Tsao Yang, Chair, Asian Corporate Governance Association, Hong Kong*
1000	Networking Coffee Break
1030	**Panel: Value Creation: From Processes To Outcomes** Value creation is often deemed to be the most important outcome of a corporation. Structures and processes are created by boards and management to ensure this. Has this been the case? Have rules, processes and governance structures not been sufficiently implemented or have they overtaken the importance of outcomes? How do we deal with the deficit of trust that seems to be pervading the corporate markets? Or is it just better communication which is needed? This super panel of local and international speakers with their diverse backgrounds in governance will examine the different needs and demands of corporate governance in the light of value creation and how directors should respond to the changing corporate governance landscape.
	Moderator: *Mr Frank Lavin, CEO & Founder, Export Now* **Discussants:** *Mr Piyush Gupta, CEO, DBS Group Holdings* *Mr Dan Konigsburg, Managing Director & Global Leader, Deloitte Centre for Corporate Governance* *Mr Lim How Teck, Chairman, Certis CISCO* *Ambassador Linda Tsao Yang, Chair, Asian Corporate Governance Association, Hong Kong*
1200	Lunch and Networking

1330	**Panel: The CEO: Reconciling Compensation, Values and Value Creation** The CEO can be the best friend or the worst foe of shareholders and other stakeholders. Whilst there are all types of CEOs, it is clear that the CEO is a critical captain in the corporate entity to ensure that the corporation lands at the right ports at the right times as may be required. Given the tough position that the CEO occupies, it is critical and indeed important that the CEO be appropriately compensated. The CEO is also expected to exhibit the right values and integrity in the discharge of his functions. Additionally, the CEO is faced with these issues. Are current compensation packages appropriate? Do they provide the right incentives for performance while balancing fairness and equity relative to other stakeholders including shareholders, employees and the board. This panel comprising those involved on different sides of CEO compensation will candidly discuss the issues.
	Moderator: *Mr Gautam Banerjee, Chairman, Blackstone Singapore; Former Executive Chairman, PricewaterhouseCoopers Singapore* **Provocateur:** *Ms Wong Su-Yen, Managing Director, ASEAN, Mercer; Chairman, Singapore, Marsh & McLennan Companies* **Discussants:** *Mr Venky Krishnakumar, Chairman, Oracle Financial Services Software Pte Ltd (Singapore)* *Mr Liew Mun Leong, Founding President & CEO , CapitaLand Group; Chairman, Changi Airport Group* *Mr Colin Low, President & CEO, Singapore Investment Development Corporation*
1500	Networking Coffee Break
1530	**Panel: The Shareholders: From Asking to Participating in Value Creation** Shareholders are often regarded as the single most important stakeholder in the corporation. Yet, there is no commonality amongst the shareholders; they come in diverse forms with differing needs and demands. How can shareholders be effectively rallied to contribute towards effective value creation? How can we move them from simply asking questions to participating and taking a more active role, yet recognising that they are not there to manage the company? Hear from representatives of institutional as well as retail shareholders on where the balance can be found, with the ultimate aim of growing and preserving corporate value.
	Moderator: *Mrs Elaine Lim, Managing Director, Citigate Dewe Rogerson, i.MAGE* **Provocateur:** *Mr Hugh Young, Managing Director, Aberdeen Asset Management Asia* **Discussants:** *Mr Vincent Chen, Former Chairman, SIAS Corporate Governance Committee* *Mr Richard Eu, Group CEO, Eu Yan Sang* *Mr Ron Sim, Founder & CEO, OSIM International*
1700	Closing Remarks
1730	End


Speaker
Biographies

Speaker Biographies

Mrs Josephine Teo
Senior Minister of State
Ministry of Finance and
Ministry of Transport

Mrs Josephine Teo was appointed Minister of State for Finance and Transport in May 2011 and was promoted to Senior Minister of State in September 2013. She first became a Member of Parliament in May 2006 for the Bishan-Toa Payoh Group Representation Constituency and was Chairman of the Government Parliamentary Committee for Education from June 2009.

In 2007, Mrs Teo was elected to the Central Committee of the National Trades Union Congress (NTUC). As its Assistant Secretary-General, Josephine oversaw the Singapore Industrial and Services Employees' Union (SISEU), Young NTUC and the Staff-Centric function. She also chaired the Industrial Workers Education and Training Fund.

As a labour MP, Mrs Teo represented the labour movement on the government-appointed Economic Strategies Committee and co-chaired the sub-committee on Fostering Inclusive Growth. She also served on the Boards and Governing Councils of Singapore Workforce Development Agency, Singapore University of Technology and Design, Nanyang Polytechnic and Human Capital Leadership Institute.

From July 2009 till her appointment as Minister of State, Mrs Teo was concurrently the Chief Executive Officer of Business China, a not-for profit organisation launched in 2007 by its Patron then-Minister Mentor Lee Kuan Yew and China Premier Wen Jia Bao, whose mission is to nurture an inclusive bilingual and bi-cultural group of Singaporeans. She continues to serve on the Board of Directors of Business China. Prior to this, Mrs Teo had held positions in enterprise development and human resource management in Economic Development Board (EDB) and Agency for Science, Technology & Research (A*STAR).

Mr Willie Cheng
Chairman
Singapore Institute of Directors

Mr Willie Cheng is a former managing partner of Accenture, a global management consulting and technology services firm. Since his retirement in 2003, he has stayed involved with the business and the infocomm community. He currently sits on the boards of SPH, UOB Bank, Far East Hospitality Asset Management and SingHealth.

However, he spends the larger part of his time working with nonprofit organizations on boards and as a volunteer. He is currently a director of CHARIS, apVentures, Council for the Third Age, Catholic Foundation and SymAsia Foundation.

He has written extensively on the nonprofit sector. He is author of Doing Good Well: What does (and does not) make sense in the nonprofit world and co-editor of The World That Changes The World: How philanthropy, innovation, and entrepreneurship are transforming the social ecosystem.

He is a fellow of Singapore Computer Society, Institute of Certified Public Accountants and the Singapore Institute of Directors.

Ambassador Linda Tsao Yang
Chair
Asian Corporate Governance
Association, Hong Kong

Since 2000, Ambassador Linda Tsao Yang has chaired the Asian Corporate Governance Association (ACGA) based in Hong Kong, a non-profit organization dedicated to improving corporate governance practices in eleven Asian markets.

From 1993 to 1999, she was the U.S. Ambassador and Executive Director to the Board of Directors of The Asian Development Bank in Manila. Ambassador Yang was the first woman Executive Director appointed by the United States Government to the board of a multilateral financial institution and the first Executive Director appointed by President Clinton. In the 1980's, she was appointed by Governor Jerry Brown to serve in various government leadership positions in California.

Ambassador Yang retired from the board of the Bank of China (Hong Kong) in 2010 after serving two 3-year terms as an independent, non-executive director where she was the Founding Chair of the Strategy and Budget Committee.

Ambassador Yang is a former director on the board of The Committee of 100, a national Chinese American organisation. She also serves on the Advisory Board of the Center on Asia Pacific Policy, RAND Corporation. A Trustee Emerita of The Asia Foundation, she chairs the Chang-Lin Tien Fellowship Committee of the foundation.

Mr Frank Lavin
CEO & Founder
Export Now

Mr Frank Lavin is CEO and Founder of Export Now, and serves as Chairman of Edelman Asia Pacific. He also serves on the Boards of Globe Specialty Metals, Consistel, UOB Bank, and UTEX.

In Government, Mr Lavin served as Under Secretary for International Trade at the U.S. Department of Commerce 2005-2007. He was the U.S. Ambassador to Singapore from 2001-2005 where his duties included helping negotiate the landmark U.S.-Singapore Free Trade Agreement. Earlier in his career, Mr Lavin served in the George H.W. Bush and Reagan Administrations, working in the Department of Commerce, Department of State, National Security Council, and White House.

In the private sector, Mr Lavin formerly served in senior finance and management positions in Hong Kong, and with Bank of America and Citibank in Singapore. Mr Lavin has been published in The New York Times, The Washington Post, The Wall Street Journal, Foreign Affairs, Foreign Policy, and other periodicals. He is the co-author of Export Now and was Editor of Rising to the Challenge, the official book of the USA Pavilion at the Shanghai 2010 Expo.

Mr Piyush Gupta
CEO
DBS Bank

Mr Piyush Gupta is CEO and Director of DBS Group, as well as Director of DBS' subsidiary companies, The Islamic Bank of Asia Limited and DBS Bank (Hong Kong) Limited.

Prior to joining DBS, he was Citigroup's CEO for South East Asia, Australia and New Zealand.

Mr Gupta began his career with Citibank in India in 1982 and over the years, held various senior management roles across Citi's corporate and consumer banking businesses, including Head of Strategic Planning for Emerging Markets and Regional Director for Global Transaction Services for Asia Pacific. He has also served as Citi's Country Officer for Indonesia, Malaysia and Singapore.

Mr Gupta's external appointments include serving on the Group of Experts to the ASEAN Capital Markets Forum and on the boards of the Institute of International Finance, Washington, Institute of Banking and Finance, Dr Goh Keng Swee Scholarship Fund, MasterCard Asia/Pacific, Middle East and Africa Regional Advisory Board, and Human Capital Leadership Institute. He is an advisory board member of Sim Kee Boon Institute for Financial Economics, and a council member of Singapore Business Federation and The Association of Banks in Singapore. Mr Gupta is also a Managing Council member of Indian Business-leaders' Roundtable (under SINDA).

Mr Dan Konigsburg
Managing Director & Global Leader
Deloitte's Global Centre for
Corporate Governanc

Mr Dan Konigsburg is managing director and global leader for Deloitte's Global Center for Corporate Governance, based in New York. The Global Center promotes dialogue in corporate governance among Deloitte member firms, corporations and their boards of directors, investors, the accounting profession, academia and government. The Global Center leads a network of local governance centers across 28 countries and coordinates thought leadership on governance issues.

Prior to joining Deloitte, Mr Konigsburg served as Director of Corporate Governance at Standard & Poor's in London and then New York. Over eight years at S&P, he was responsible for the development and application of services to evaluate the corporate governance practices of rated companies and integration of governance analytics into credit ratings. Prior to joining S&P, he spent over five years as a senior analyst at a leading corporate governance consultancy in Washington, D.C.

Mr Konigsburg serves as Chairman of the OECD's Business Advisory Task Force on Corporate Governance, is a member of the International Corporate Governance Network's Business Ethics Committee, and is a director on the board of the National Institutes for the Psychotherapies.

Mr Lim How Teck
Chairman
Certis CISCO

Mr Lim How Teck is Chairman of Redwood International Pte Ltd (an investment & consultancy company). He is Chairman of Certis CISCO Security, Cisco Recall Total Information Management, ARA-CWT Trust Management and Heliconia Capital Management, and is Deputy Chairman of Tuas Power. He is a Board Director of PNG Sustainable Development Program, Rickmers Maritime, ARA Asset Management, Foundation for Development Cooperation, FDC Pacific, Accuron Technologies, Swissco Holdings, Mewah International, Public Utilities Board and Mizuho Securities (Singapore).

From 1979 to 2005, Mr Lim was with NOL and held positions from Executive Director, Group CFO, Group COO and Group Deputy CEO, and Directorships in various subsidiaries, associated companies and investment interests of the NOL Group. Prior to NOL, he worked in Coopers & Lybrand and Plessey Singapore.

He is a Fellow of the Chartered Institute of Management Accountants of UK, Certified Public Accountants of Australia, Institute of Certified Public Accountants of Singapore, and the Singapore Institute of Directors. He was awarded The Public Service Medal National Day Award in 1999.

Mr Gautam Banerjee
Chairman, Blackstone Singapore;
Former Executive Chairman,
PricewaterhouseCoopers
Singapore

Mr Gautam Banerjee is a Senior Advisor to Blackstone and a member of the International Advisory Board. He is also Chairman of Blackstone Singapore.

Previously, Mr Banerjee served as Executive Chairman of PricewaterhouseCoopers (PwC) Singapore for nine years until his retirement in December 2012. He spent over 30 years with the firm in various leadership roles in Singapore, India and East Asia. He was a Nominated Member of Parliament in Singapore from 2007 to 2009.

Mr Banerjee is a Vice Chairman of the Singapore Business Federation and is a Board member of the Economic Development Board, the APEC Business Advisory Council, Yale-NUS College, Singapore Airlines Limited and The Straits Trading Company Limited.

Mr Banerjee is a fellow of the Institute of Chartered Accountants in England and Wales and the Institute of Certified Public Accountants in Singapore.

Ms Wong Su-Yen
Managing Director, ASEAN
Mercer; Chairman, Marsh &
McLennan Companies

Ms Wong Su-Yen is Chairman (Singapore) for Marsh & McLennan Companies, a global professional services firm specializing in risk, strategy and human capital. She is also a Senior Partner and ASEAN Managing Director at Mercer. Previously she was a Director and the Asia Managing Partner for the Communications, Information & Entertainment practice at Oliver Wyman, a leading global management consulting firm.

She brings over twenty years' experience in business strategy, market development, operations redesign, risk management, human resource development, and organization transformation. She has been based in various cities across Asia since 1997, and, having worked with organizations across North America and Asia, has developed an extensive network and insights on opportunities in Asia.

Ms Wong is a Director of the National Kidney Foundation, and was the only Asia-based individual named to Agenda's 2012 directory of Top 100 Board Candidates With Pay-Setting Skills. She is a member of Women Corporate Directors and the Young Presidents' Organization.

Mr Venky Krishnakumar
Chairman
Oracle Financial Services Software Pte Ltd (Singapore)

Mr Venky Krishnakumar is Chairman of Oracle Financial Services Software Pte Ltd (Singapore). Prior to this, he has held Senior Advisory roles at McKinsey and Company, Barclays Bank PLC, Global Retail and Commercial Banking and DBS Bank. He was Chief Operating Officer and Chief Financial Officer for Citigroup (Aspac) when he retired on 28 February 2005 (after a 31-year career with the group). During his career with Citigroup, he held several senior appointments in India, Singapore and New York.

He is a Director of ST Engineering (Singapore), Pactera Technology International Ltd(China), MediaCorp Pte. Ltd. (Singapore) and CIMB Bank Berhad (Malaysia). He holds a Bachelor of Engineering and Master of Business Administration from the Indian Institute of Management.

Mr Liew Mun Leong
Founding President & CEO, CapitaLand Group;
Chairman, Changi Airport Group

Mr Liew Mun Leong has spent 22 years in public service developing Singapore's Changi Airport, military establishments, and heading two science and technology statutory boards. He was Registrar of the Professional Engineers Board, granting engineers' licenses and regulating engineering practices in Singapore. He served in international public institutions such as the Executive Board of International Organization for Standardization (ISO), for which he was later elected and served as President for one term.

Mr Liew has 20 years of experience leading 10 public listed companies in four countries. In 2000, he was appointed the founding CEO of CapitaLand Limited, which under his watch, has become the largest real estate group (by market capitalization) in South East Asia, operating in over 20 countries with over 12,000 staff.

He currently chairs the Changi Airport Group, Surbana International Consultants Holdings and Pavilion Gas, and sits on the boards of Singapore Exchange, CapitaLand Hope Foundation, Pavilion Energy, NUS Business School, Human Capital Leadership Institute, Centre for Liveable Cities, Chinese Development Assistance Council and the Singapore China Foundation.

In 2013, Mr Liew was appointed Provost's Chair and Professor (Practice) in the Department of Management & Organisation in NUS Business School and the Department of Engineering & Technology Management, Faculty of Engineering.

Mr Colin Low
President & CEO
Singapore Investment Development Corporation

Mr Colin Low heads SIDC, a private equity firm investing in high growth companies and leveraged buyouts across Asia Pacific. Mr Low was previously the President & the Regional Executive for Growth Initiatives in South East Asia of General Electric (GE) from 2005 to 2010.

As President, GE, Mr Low initiated an investor relations program that enabled Singapore's Government Investment Corporation to be GE's top 10 largest institutional shareholders to date. He also enabled the creation of a US$2B Joint Venture funding between GE Capital and GIC for acquisition of energy and renewable assets. As Regional Executive, he was responsible for developing country strategies in the region and commercial growth initiatives for GE Group. He was involved in Leadership and Talent Development across Asia at GE. He was a Board Director for GE Pacific.

Mr Low is currently the Vice-Chairman for the American Chamber of Commerce, the Council Board Member of INSEAD University, and a Board Director of OSIM International. He is on Spencer Stuart International's advisory board. Mr Low is a Council Member of the National Wages Council since 2008. The Cancer Treatment Center of America headquartered in Chicago IL, USA, appointed Colin in 2011 as their group Board Director.

Mrs Elaine Lim
Managing Director
Citigate Dewe Rogerson I.MAGE Pte Ltd

Mrs Elaine Lim is the Managing Director of Citigate, Dewe Rogerson, I.MAGE Pte Ltd. With over 30 years of experience, she is one of Singapore's pioneering communications professionals. After two years as a journalist, she moved into public and investor relations. She spent four years with an international hotel chain and two years with the Stock Exchange of Singapore before moving into consultancy practice.

She has the distinction of starting two public relations consultancies and building them into the top 5 in Singapore. Upon leaving Ogilvy PR after nine years, Mrs Lim established i.MAGE Public Relations in 1988. In 1999, i.MAGE merged with Citigate Dewe Rogerson to form Citigate Dewe Rogerson, i.MAGE. She led the firm to support the launch of over 250 IPOs. An investor relations specialist, she was invited by the Singapore Management University to initiate and teach a course in investor relations in 2007. An advocate of corporate governance, she is a member of the Organising Committee for the Singapore Corporate Awards.

She serves on the boards of Singapore Land Authority and HSR Global. She was named the PR Professional of the Year in 1995 and awarded the Lifetime PR Achievement Award in 2012 by the Institute of Public Relations Singapore.

Mr Hugh Young
Managing Director, Asian Equities
Aberdeen Asset Management Asia

Mr Hugh Young set up the Singapore office of Aberdeen Asset Management Asia in 1992 as the Group's Asia-Pacific headquarters. He is also head of equities globally and a member of the executive committee responsible for day-to-day running of the parent company, Aberdeen.

Mr Young has over 25 years' experience in investment management and has managed the Group's Asian assets since 1985, including award-winning mutual funds and closed-end funds.

Before joining Aberdeen, Mr Young's career included posts at Fidelity International and MGM Assurance.

Mr Vincent Chen
Former Chairman
SIAS Corporate Governance Committee

Mr Vincent Chen enjoys a unique perspective being both a shareholder activist and a company director. Mr Chen has been an active retail shareholder for the past 20 years attending many AGMs. He was an Exco member of the Securities Investors Association of Singapore (SIAS) for 10 years and was Chairman of its Corporate Governance Committee. He was also a member of the CCDG committees that reviewed the Code of Corporate Governance in 2005 and the issue of Quarterly Reporting in 2006. At the same time, Mr Chen is an independent director of the manager of Suntec REIT and was an independent director of four other SGX listed companies.

Mr Chen had more than 20 years of experience in the banking and finance industry, spending 17 years with the First National Bank of Chicago, Bank of America and Banque Francaise du Commerce Exterieur, and subsequently co-founding a financial consulting firm in 1988. Since 1993, he has been managing his personal and family investments.

Mr Chen holds a Bachelor of Science degree in Industrial Engineering from Cornell University, and a Master of Business Administration degree from the Wharton School, University of Pennsylvania.

Mr Richard Eu
Group CEO
Eu Yan Sang

Mr Richard Eu is the Group CEO of Eu Yan Sang International Ltd (Eu Yan Sang). Eu Yan Sang, founded in 1879 by his great grandfather, is a healthcare and wellness company with a strong foundation in Traditional Chinese Medicine.

Mr Eu started his career as a merchant banker. He joined Eu Yan Sang in 1989, successfully building its business and had it public-listed on the Singapore Stock Exchange (SGX) in 2000.

Today, the Group enjoys an unrivalled reputation as an industry leader in Asia. He was named the Ernst & Young Entrepreneur of The Year, 2011 and in the Singapore Corporate Awards 2010, was recognised as the CEO of the year for SGX listed companies with a market capitalization of under S$300 million.

Apart from his business interests, he is involved in several non-profit and community organizations.

Mr Ron Sim
Founder & CEO
OSIM International

Mr Ron Sim founded OSIM International Ltd and has been instrumental in building OSIM into a global brand.

In 1979, he started a trading company selling general household items and later, home healthcare products. The company was renamed OSIM in 1980, and had expanded to Hong Kong in 1986 and Taiwan in 1987. By the early 1990's he had transformed the company into a household name in Asia. Today, SGX mainboard listed OSIM is a global leader in branded healthy lifestyle products, operating five specialty retail brands - OSIM, Richlife, TWG Tea, GNC and Brookstone, with over 1137 outlets in more than 230 cities across 33 countries in Asia, Oceania, Africa, the Middle East, Europe and North America.

Mr Sim has won several business awards, including The Ernst & Young 'Entrepreneur of The Year 2004', The Business Times 'Businessman of the Year 2004' and Best CEO for the mid-cap category at the Singapore Corporate Awards 2012. Mr Sim sits on the board of several leading companies and participates actively in public service. He continues to lead the OSIM group in setting and realizing its vision, mission, goals and direction.

Ms Kala Anandarajah
Partner, Head, Competition & Antitrust, Trade
Rajah & Tann LLP

Ms Kala Anandarajah, cited as Top 100 Women in Antitrust in the World by Global Competition Review 2013, has over two decades of experience and practices in Competition, Trade, Corporate Governance, Employment, and Environmental Laws. AsiaPacific Legal 500 notes that 'Anandarajah … is a leading authority in corporate governance, compliance and competition issues …' and is 'responsive, helpful and commercial'. Who's Who of Leading Practitioners Singapore describes her as 'very knowledgeable', 'highly active and very good' and an 'acknowledged authority in this field'. She is cited as Best of the Best - Women in Business Law 2010, 2012 and 2014, was nominated in 2011 and 2012 for the Asia Women in Business Law Award by Euromoney Leading Lawyers, and cited as a leading lawyer by International Who's Who of Leading Lawyers and Euromoney Experts Guide to the World's Leading Lawyers. Anandarajah writes prolifically, including the first books on Competition and Corporate Governance & Director Duties.

Ms Anandarajah sits as Board/Council Member of Building & Construction Authority, Workplace Safety & Health Council (Chair, Engagement & Outreach Committee), Singapore Institute of Legal Education (Co-chair, Committee on Compulsory Professional Development), Singapore Institute of Directors, and Member, Transplant Ethics Committee (Lay-Persons) appointed by Ministry of Health.

Corporate Governance General

At The Forefront Of Corporate Governance In Asia – Singapore Strengthens Its Corporate Governance Regime

By Jerry Koh, Partner and Jane Ng, Associate, Allen & Gledhill LLP

Introduction

On 2 May 2012, the Monetary Authority of Singapore ('MAS') issued the revised Code of Corporate Governance (the 'Code'), which supersedes and replaces the previous Code issued in 2005 (the '2005 Code'). The revised Code will take effect largely in respect of annual reports relating to and annual general meetings ('AGMs') held after the end of the financial year commencing from 1 November 2012.

The global financial crisis raised awareness among both regulators as well as listed issuers regarding areas for improvement in Singapore's corporate governance regime, and the amendments to the Code signify a resolve on the part of the regulators to position Singapore at the forefront of corporate governance in Asia, by minimising or mitigating any issues stemming from the problem of systemic risks. The revised Code was the result of a comprehensive review undertaken by the Corporate Governance Council (the 'Council'), a committee specifically set up by MAS to review the Code, and reflects, with some adjustments, all of the recommendations made by the Council.

As with its predecessor, the revised Code is applied by the listing rules of the Singapore Exchange Securities Trading Limited ('SGX-ST') as a 'comply or explain' regime, meaning that while compliance is not mandatory, companies listed on the SGX-ST are expected to adhere to the general principles and guidelines set out in the Code. In the event the company decides not to adhere to certain principles or guidelines, the company is required to explain its reasons for such deviations in its annual report. It should be noted that while this is the general position, the regulators appear to be less permissive of certain deviations than others. This will be discussed further below.

The following paragraphs discuss some of the revisions to the Code, categorised into four topics relating to: (i) the board of directors of a company (the 'Board'); (ii) the rights and role of shareholders of the company; (iii) remuneration practices and disclosure; and (iv) risk management.

The Board

Board Composition

In its Consultation Paper on Proposed Revisions to the Code of Corporate Governance dated 14 June 2011 (the 'Consultation Paper'), the Council noted that independent directors are essential for protecting the overall interests of the company and in providing guidance, supervision as well as checks and balances for effective corporate governance. The issue of directors' independence is therefore of great importance.

The revised Code has focused significantly on tightening the rules relating to Board composition, with the specific goal of strengthening the independent element of the Board. The emphasis on refining when a director is considered independent is evident in the following:

New definition of independence

To qualify as an independent director, the 2005 Code only required that a director be independent from management. The revised Code introduces a new concept of the 'ten per cent shareholder', namely any shareholder having an interest in not less than ten per cent of the total votes attached to all the voting shares (excluding treasury shares) in the company. Under the revised Code, a director is required to be independent from both management and ten per cent shareholders in order to be considered as an independent director.

During the previous review of the 2005 Code, the then Council of Corporate Disclosure and Governance had recommended tightening the definition of independent director to exclude directors who are, or are directly associated with, substantial shareholders. Substantial shareholders are defined in section 81(1) of the Companies Act, Chapter 50 of Singapore as persons who have an interest or interests in one or more voting shares in the company and the total votes attached to those share(s) is not less than five per cent of the total votes attached to all the voting shares in the company. This was eventually rejected by the government after much consideration, as it was felt that substantial shareholders did not pose the kind of principal-agent problems that executive directors could potentially pose. A director's relationship with substantial shareholders was hence not captured under the 2005 Code in the definition of independence for directors.

Since then, however, concerns remained that relationships with substantial shareholders may in certain circumstances influence an independent director's exercise of objective judgment. Revisiting the issue in its review of the 2005 Code and taking into account different perspectives and international developments, the Council reiterated its belief that in order to act effectively, independent directors should not possess any relationship with stakeholders, such as substantial shareholders or organisations providing material services to the company.

This time, the MAS accepted the Council's recommendation in including the concept of independence from shareholders, but raised the shareholding threshold from the proposed five per cent to ten per cent. This was on the grounds that the requirement was being introduced for the first time and therefore should not be too stringent; the MAS noted that the threshold could be adjusted in the future if required. The Board retains its power under the revised Code to justify its decision if it determines that a director is independent notwithstanding certain relationships or circumstances which may prima facie render a director to be non-independent.[1]

Composition of the board in certain circumstances

As with its predecessor, the revised Code provides that independent directors should make up at least one-third of the Board. However, a significant addition to the revised Code is that independent directors should now make up at least half of the Board where:

- the Chairman of the Board (the 'Chairman') and the chief executive officer (or equivalent) (the 'CEO') is the same person;
- the Chairman and the CEO are immediate family members;
- the Chairman is part of the management team; or
- the Chairman is not an independent director.[2]

This new requirement is intended to ensure strong and independent element on the Board which is able to exercise objective judgment on corporate affairs independently. From empirical evidence, this appears to be a core objective which the regulators are particularly keen to safeguard, such that any deviation from these requirements (where applicable) would require very cogent reasons.

On the other hand, it is recognised that Guideline 2.2 will need time to be implemented as a matter of commercial reality, especially as many listed companies in Singapore are likely to have to effect changes to their board composition in order to comply with the new requirements. The Code therefore allows a longer transition period for compliance with Guideline 2.2, specifically, to be made at the AGMs following the end of financial years commencing on or after 1 May 2016.

Reassessment of independence after nine years

Another new provision of the Code requires that the independence of any director who has served on the Board beyond nine years from the date of his/her first appointment be subject to particularly rigorous review. The concern relating to such directors, as set out in the Consultation Paper, is that their independence may be compromised after a long period of service due to their friendship and collegiality with management. The Council in its initial recommendation had provided that such a director would automatically be considered non-independent, but after considering public feedback ultimately decided to allow the Board to retain its discretion in determining whether such a director is independent. The Council arrived at the period of nine years as an appropriate tenure taking into account practices in Singapore and other leading jurisdictions. The Code does require that the Board must, when reviewing the independence of such a director, take into account the need for progressive refreshing of the Board and explain why any such director should be considered independent.[3]

As Singapore moves towards becoming one of the pre-eminent financial centres in Asia and internationally, it becomes increasingly crucial to ensure a culture of accountability and transparency among market participants, in order to shore up and maintain confidence in Singapore's financial markets. These enhancements contained in the revised Code will serve to put in place independent directors who are more able to protect the interests of shareholders at large and, in particular, minority shareholders, and in effect contribute towards raising Singapore's standards of corporate governance.

Multiple Board Representations

Where directors hold multiple board representations, the revised Code now additionally requires that the Board determine the maximum number of listed company board representations which any director may hold.[4] This is a result of the recent focus on the ability of directors holding multiple directorships to carry out their duties effectively.

The United Kingdom has specifically addressed such concerns by specifying the maximum number of directorships a director is allowed to hold. In Singapore, the revised Code does not adopt this approach on the grounds that the different situations facing

each director would make any attempt to dictate a maximum number arbitrary. Instead, listed issuers are given leeway to decide this issue for themselves. Indeed, a number of listed issuers have declined to prescribe a maximum number on the grounds that the number of listed company board representations that a director may hold should be considered on a case-by-case basis, and the Board should primarily be concerned with ensuring that a director has devoted sufficient time and attention to their role as director and to the affairs of the company. Such companies have therefore chosen to deviate from the Code and included their explanations in their annual reports.

Shareholders' Rights And Role

On the international front, there has been a shift by certain jurisdictions globally towards the so-called 'Anglo-American' model of corporate governance, which emphasises the interests of shareholders. This is motivated by the growing recognition that a company's corporate governance framework should involve shareholders in order to establish a strong system of checks and balances.

The revised Code reflects the progressiveness of Singapore's corporate governance practices as it evolves to provide for the recognition and facilitation of shareholder rights by way of the introduction of a new principle enshrining shareholder rights. The new Principle 14 in the revised Code sets out the overarching obligation on companies to treat all shareholders fairly and equitably and to recognise, protect and facilitate the exercise of shareholders' rights, as well as to continually review and update such governance arrangements.[5] To this end, companies should facilitate the exercise of ownership rights by all shareholders[6] and especially ensure that shareholders have the opportunity to participate effectively in and vote at general meetings of shareholders.[7] Companies are therefore strongly encouraged to consider engaging their shareholders, particularly activist shareholders and major shareholders, early in order to garner their support.

One practical measure the Code has endorsed is that companies should put all resolutions to vote by poll, preferably electronic polling.[8] However, electronic polling requires significant expenditure by the company to procure, operate and maintain the requisite electronic polling devices and, as a matter of practicality, certain companies may be reluctant to undertake such expenditure.

As for communication with shareholders, the Code now expressly states that companies should actively engage their shareholders by putting in place an investor relations policy to promote regular, effective and fair communication with shareholders.[9] This may be a point to note for companies which do not yet have such a policy in place. The participation of shareholders, and the resultant communication between shareholders and listed issuers as envisaged by the revised Code, would be integral in fostering good corporate governance practices that are in line with international best practices.

Remuneration Practices And Disclosures

Remuneration Practices

The increased finesse by which the revised Code assesses corporate practices may be seen in its elaboration on the larger goal of remuneration. While the 2005 Code simply required the level of remuneration to be appropriate to attract, retain and motivate directors, the global financial crisis imparted some valuable lessons on structuring remuneration practices. The Consultation Paper noted that it is a widely held view that the lack of correlation between remuneration and risk policies contributed to excessive risk-taking by employees, as employees were motivated to inflate short-term results without regard to the long-term effects and risks such behaviour placed on the company. The lack of transparency of remuneration-related information has also been cited as a contributory factor, as this merely exacerbated the effects of irresponsible remuneration practices. The Council therefore considered that changes were necessary in view of domestic and international developments.

The revised Code therefore provides that the underlying intention of the provisions on remuneration is to align the level and structure of remuneration for directors and key management personnel with the long-term interest and risk policies of the company.[10] It also states that the performance-related element of remuneration should be aligned with the interests of shareholders and should promote the long-term success of the company, as well as take into account the company's risk policies, be symmetric with risk outcomes and sensitive to the time horizon of risks.[11]

In terms of the mix of remuneration, the revised Code encourages long-term incentive schemes for executive directors and key management personnel,[12] though it also

recommends that the remuneration committee of the Board should consider implementing schemes to encourage non-executive directors to hold shares in the company as well, so as to better align their interests with those of shareholders.[13] More interestingly, the revised Code encourages the use of clawback provisions in relation to executive directors and key management personnel, namely contractual provisions which would allow the company to reclaim incentive components of remuneration in exceptional circumstances of misstatement of financial results, or of misconduct resulting in financial loss to the company.[14]

Disclosure Of Remuneration Policies

The revised Code requires significantly more than its predecessor in terms of disclosure of remuneration policies. However, in coming up with the revisions, the Council was conscious of the need to strike a balance between the desire for fuller disclosure on the one hand, and the need of companies to remain competitive and the possibility of 'wage inflation' on the other.

As such, while previously companies were only encouraged as a matter of best practice to fully disclose the remuneration of each individual director, full disclosure of the remuneration of each individual director as well as of the CEO, on a named basis, is now to be included as a matter of course.[15] The remuneration of the company's top five key management personnel is required by the revised Code to be disclosed in bands of S$250,000 on a named basis, as unchanged from the 2005 Code, but the revised Code encourages full disclosure of the actual remuneration of the top five key management personnel as a matter of best practice.[16]

More significantly, in line with the revised Code's encouragement of performance-related remuneration, it is now required that companies should disclose more information on the link between remuneration paid to the executive directors and key management personnel and performance, so as to achieve greater transparency. The annual remuneration report should set out a description of performance conditions to which entitlement to short-term and long-term incentive schemes are subject, an explanation on why such performance conditions were chosen and a statement of whether such performance conditions are met.[17] It is believed that this requirement is an appropriate solution to the problem of lack of transparency of remuneration-related information, though it remains to be seen whether and how listed issuers would choose to comply.

Risk Management

The revised Code introduces a second new principle governing the Board's responsibility for the governance of risk,[18] in light of the fundamental nature and scope of risk governance of a company. This also appears to be a direct response to the global financial crisis, which underscored the importance of companies taking an integrated, firm-wide perspective of their risk exposure.

The 2005 Code provided that the audit committee of the Board (the 'Audit Committee') is responsible for risk governance of the company, along with other matters such as the company's internal controls and audit function. In line with the corporate governance practices of several other jurisdictions, the revised Code shifts this responsibility of risk governance from the Audit Committee to the Board as a whole.

Thus, under the new Principle 11, read with the Risk Governance Guidance for Listed Boards issued by the Council on 10 May 2012, the Board is charged with a duty to ensure that the management of the company maintains a sound system of risk management and internal controls, and is also required to assess appropriate means to assist the Board in carrying out its responsibility of overseeing the company's risk management framework and policies.

More specifically, the Board is required under the revised Code to provide a commentary in the company's annual report on the adequacy and effectiveness of the company's internal control and risk management systems; this commentary should include information needed by stakeholders to make an informed assessment.

Moreover, the Board is to comment on the assurances it has received from the company's CEO and chief financial officer relating to the financial records and statements of the company and the effectiveness of the company's internal control and risk management systems.[19] This is intended to ensure that the management of the company has explored in depth the issue of whether an effective risk management and internal control system has been put in place, and has directed its mind to the balance between producing short-run profits and long-term risks.

Conclusion

The revised Code fortifies the guidelines and principles constituting Singapore's corporate governance regime and contains notable improvements on the 2005 Code. As Singapore demonstrates its resolve to become the choice destination for listings in Asia and internationally, the current round of revisions are expected to further boost the confidence for investors looking to invest in stocks listed on the Singapore bourse, and should stand Singapore's corporate governance regime in good stead to be commensurate with its standing as an international financial centre. ■

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Corporate Governance: The Need For Substance Over Form

By Neo Sing Hwee, Advisory Partner and Lim Sze Chien, Senior Manager, Ernst & Young Advisory Pte. Ltd.

Introduction

Corporate governance has always been a management fundamental. It was not until the recent global financial crisis that it was yet again been thrust into the spotlight. The governance shortcomings in many companies came to the fore as businesses struggled under challenging operating environment. Conversely, companies that withstood the crisis better were seen to have practiced higher standards of corporate governance.

According to research by the Organisation of Economic Co-operation and Development (OECD), corporate governance is a key element in improving economic efficiencies and growth as well as enhancing investor confidence. In fact, there is a positive correlation between good corporate governance practices, operating performance as well as return on investment through share-price return. Also, if countries are to reap the benefits of the global market, and attract long term "patient" capital, it is important for corporate governance arrangements to be credible, well understood across borders and adhered to internationally accepted principles.

Suffice to say that corporate governance is everyone's business for companies and market economies to thrive. However, the business of corporate governance should not be centered on complying with rules or reporting requirements. That would be merely scratching the surface of an ethos that is meant to serve a larger purpose. Rather, it is about internalizing and living up to the fundamental values, spirit and purpose that underpin those rules and requirements.

Put simply, substance must precede form.

Separation Of Board Chair From CEO

The case for separation of the chair of the board from the CEO has always garnered interesting debate. Advocates for role separation believe that this would help to achieve a more appropriate balance of power, increase accountability of the board and improve the board's capacity for independent decision-making. On the other hand, others argue that the chair of the board will need to be someone highly knowledgeable of the business and the company, and hence the two roles should not be separated.

Fundamentally, the roles of the board and management are different. And if shareholders' expectations that the board should direct, monitor and oversee management's conduct, then having different individuals for the roles will better enable independence and objectivity.

Independent Board Members And Their Competencies

In spite of clear distinction between the roles of independent and non-independent directors on the board, there are instances where directors, clearly non-independent, are appointed as independent directors. This undermines the value that independent directors bring to the board, and compromises impartiality especially when these independent directors are also members of audit, remuneration and risk committees. An important responsibility of the independent director is to check any abuses of authority as well as balance differing views for critical business decision-making.

That said, any board role is only as effective as the competency of the individual appointed.

The Singapore Code of Corporate Governance deems board members responsible for the company's risk governance, including determining the nature and extent of risks it should undertake, and ensuring that management maintains a sound system of risk management and internal controls. Therefore, independent directors should have a sound knowledge of the industries and operations of the companies that they serve, in order to generate robust discussions around business decisions and challenge management on strategic and governance issues constructively.

With the right competency in place, companies should not and cannot afford to limit its independent directors to a monitoring role, leaving them as bystanders in the development and communication of corporate policies and strategies. Independent directors are equal to other board members in providing collective leadership and must be duly involved.

Effective Board Operations

While the frequency of board meetings – with once per quarter being a general practice – matters, the quality of such meetings matters even more.

A carefully planned agenda is thus essential. Quality information in management reports, business performance analysis, audit reports, and relevant publications and articles, should be provided – and with sufficient review time ahead of the meeting – so that the board is better able to discharge its duties.

The agenda should also accommodate any unexpected development and crisis. Management should be open to feedback by the board, including requests for more information or to shape future agendas. The board should also have the opportunity to meet without the presence of management, which will encourage more open discussions on issues, particularly those that pertain to management.

Risk Management And Internal Controls

Effective corporate governance must be underpinned by effective risk management and internal controls. Even when enterprise risk management frameworks are in place, a common pitfall is that risk managers are left to their risk-monitoring work without the necessary connection and authority to escalate "red flags" to the attention of management and board. Worse, risk managers are sometimes perceived as a hindrance to the business strategy.

It is imperative that management takes ownership of the risks, with the board playing an oversight role to provide critical assessments of the effectiveness of the risk management system. Management should also be held accountable through embedding measures of risk management into performance management, just as they do with revenue growth, profitability and market share. Key risk indicators should be operationalized to provide management with relevant and timely information for more effective business analysis and decision-making. Ultimately, risk management must be core to the company's culture, and strategic business decision-making process.

Existing internal controls structure should also be strengthened to ensure that risk responses, in the form of control activities and measures, are properly carried out. To encourage ownership and accountability of the managers and working teams on internal controls, companies can implement a control self-assessment program. Such a program helps to identify gaps in controls, emerging process and operation risks, as well as areas for improvements in areas such as policies, trainings, resource deployment and communications.

Clearly, corporate governance must go beyond "ticking the box" for compliance purposes. It is when companies embrace the true spirit of corporate governance in both mindset and action that competitive benefits are realized through performance and returns. Neither should corporate governance be a point-in-time response to immediate scrutiny or events; it must be a standing commitment by any company that is serious about business. ■

The views reflected in this article are the views of the author and do not necessarily reflect the views of the global Ernst & Young organisation or its member firms.

Boards Face Big Challenges On Risk Oversight

By Ng Siew Quan, Internal Audit Leader, PwC Singapore

Introduction

There are few aspects of a board's functioning that are as crucial to long-term corporate success as risk management. Organisations that understand the risks they face and can articulate their risk appetite and define their risk strategy will tend to make better decisions, have greater agility and a sharper competitive edge.

Discharging the board's duties and responsibilities around risk oversight is rarely straightforward. At the heart of the challenge are two apparently conflicting desires. First is the push to improve performance – shareholders demand it and basic competition compels it. But the second sets up a tension – it is the need to understand and manage the risks involved in achieving that performance.

Potential Tension

Non-executive directors often have a less detailed awareness of the key risks within the business compared to management. The nature of the role means they have access to less information than management on which to assess the risks that the organisation takes. Addressing this imbalance of information is often a challenge.

The source of information around risks also varies significantly between organisations. Some rely on risks being identified and reported from lower levels in the organisation and aggregated company wide by someone responsible for risk management. Others rely on senior or executive management preparing a suitable summary of key risks and responses for board consumption. Such approaches are not always founded on underlying risk indicators from within the business and may be unduly influenced by executive perceptions of risks and board expectations.

Gathering Information

The key question is how much of this risk information from the business is provided to the board? Management naturally seeks to review and potentially sanitise information before presentation to the board. As a result, board members normally gain some understanding of the effectiveness of risk management, but may lack focus on key or emerging risk issues which can hamper non-executive directors' (NED) ability to oversee risk well.

It's a struggle for many companies to prepare an appropriate risk summary for board members that succinctly articulates the key risk exposures, threats and emerging issues. Often such analysis is separate from strategy and performance discussions, so there is little chance of understanding risk in the context of achieving strategic objectives and delivering shareholders returns.

Often the risks that are most material to an organisation will be those that most disrupt the business's ability to achieve its objectives. Understanding how much risk has been taken in the pursuit of strategic performance is one of the ways that the board can tell if the current risk profile is appropriate.

Understanding And Challenging

Even if the right information is given to the board, it's not always easy for NEDs to assess and challenge it, especially if they come from unrelated industries.

Directors' responsibilities are ever-increasing and NEDs commonly say that they have limited time and resource to discharge them. How much time does the board (and NEDs in particular) devote to understanding and addressing risk issues? Risk does now play more of a role in board discussions, but the growing complexity of organisations and the risk issues they face now demands more time and resource to be properly understood and addressed.

Risk Contagion

Today risks can manifest themselves suddenly and have an impact on the organisation immediately. In the past, operational failures could often be managed internally with limited impact on an organisation's reputation.

Today, any risk event is potential headline news that can result in reputation damage and have an impact on the business going forward. This 'risk contagion' demands quick and agile responses to minimise the damage to the organisation. It also requires organisations to develop strategies to deal with the growing importance of reputation risk and how it is related to financial and other risks.

Boards and risk management functions need to be prepared to respond quickly and minimise damage if risks events do occur.

Risk Thinking

Organisations operate within a variety of corporate governance structures. But whatever the framework, clear risk oversight from the board (distinct from management) is essential. Good

risk management within organisations is undermined if it lacks the board's breadth of risk thinking. There is a real danger that risk management focuses only on day-to-day business activity, such as health and safety, financial or operational issues – and in doing so, completely misses the bigger picture.

The board's diversity and broad perspective on external hazards and strategic threats helps support a richer and more comprehensive risk management process.

But demonstrating the potential relevance of these external, independent views to the organisation and getting senior management and executive buy-in present another challenge for the board.

The Role Of The Audit

The board will often seek assurance from internal and external audit around the effectiveness of controls intended to manage key risks. However, many risk management frameworks fail to appreciate the true risk exposure that the controls manage. The result? The effectiveness of certain controls in reducing the impact and likelihood of risks is not always appreciated and so their importance is underestimated.

It is often the failure of one or more of these controls that leads to a previously well controlled risk having a material and unexpected impact on an organisation. So boards need to understand the reliance being placed on key controls, as well as keep a grip on the underlying risks for the business.

Consensus around the board table and confidence in management and external stakeholders is a tempting prospect. But NEDs can never lose sight of the good governance essential: challenge. And challenge around risk is no exception.

Appropriate risk information needs to be available to the whole board; the board needs sufficient risk management competency to assess this information effectively; and there needs to be an open and constructive dialogue between executive and non-executive directors around risk issues. ■

Securing The Board: The Risks And Rewards Of Cloud-Based Communication

By Nathan Lynch, Head Regulatory Analyst, Thomson Reuters Governance, Risk and Compliance

Introduction

Compliance practitioners and company secretaries who have an influence over their organisation's board communication practices will inevitably have considered the possibility of moving to a "board portal" platform.

Board portals are a growth area. They allow board members to communicate securely and collaboratively and share documents across a range of devices, including tablets and mobile telephones. While these software tools promise significant benefits for boards, and for governance, risk and compliance teams, they also present a number of possible pitfalls for the unwary.

The main issue is information security. Organisations that move to an electronic communication portal are inevitably seeking a more efficient and more secure way to share documents between board members. While the move to a cloud-based system offers significant benefits in terms of cost and accessibility, it also means that organisations need to conduct their own due diligence and make sure that their provider has appropriate controls in place.

According to Cameron Abbott, a partner specialising in technology and privacy law at K&L Gates, there are myriad reasons why an organisation would want to move to a cloud-based board portal. He said some of the vital challenges for organisations today include board members who travel frequently, sit on numerous boards and need to have access to board documents from various devices and working sites. Old paper-based communication methods do not have the flexibility and sophistication that they require.

On the other hand, Abbott said some organisations, particularly those in the public sector, were reluctant to be seen as "early adopters" in this area. Organisations typically wanted to embrace change without blazing a trail, he said.

"We had one public sector client that didn't give much thought to using a cloud program, until they were congratulating on being so brave to be the first one to do this," Abbott said. "This caused them to worry that maybe board portals weren't an appropriate product for public-sector bodies. They had to have a think about whether they wanted to be so 'brave'. We talked them through all of the issues and helped them negotiate a very favourable agreement with a provider that gave them enough protections that they now felt safe using the product."

A cloud-based storage solution is essentially an internet-based facility operated by a third-party provider who hosts the services on its off-site servers. Depending on the provider these may be located either offshore or within Australia. The "industry standout" applications offer iPad support, offline access to board book materials, handwritten note-taking ability, 24/7 customer support and secure data and encryption.

Main Benefits

Boards that move in this direction are typically trying to take advantage of three main benefits: reduced costs (pay for what you use, and avoid the capital expenditure of building a system), flexibility (use it anytime, anywhere in the world) and ease of deployment (cloud-based solutions can be rolled out immediately). They are also often taking the view that a specialist provider will have better security procedures in place than they can roll out "in house". This is especially true for small-to-medium sized organisations.

Some of the key facilities that board portals allow include access control (who can see what); version control (updates or amendments to papers); and annotation capabilities. They also typically allow the administrators to purge documents, annotations and highlights remotely, which can be extremely important from a risk management and compliance perspective. Any notes can generally be private or shared across the board and electronic signatures are usually supported. The most feature-rich platforms allow online and offline functionality; confidential email functionality with ability to delete emails; ring-fenced security; and permission-based access to materials.

The chief concern is the security risk of sending extremely sensitive information outside the organisation and "into the cloud". Despite these concerns, research by Thomson Reuters last year found that three-quarters of businesses were already emailing sensitive board documents to board members using non-secure email platforms, such as hotmail or gmail accounts. Only 27 percent of respondents said they never sent documents to "private, non-commercial addresses". More than half said they did not encrypt their communications and 8 percent said they were unsure whether encryption was used.

Abbott said that many organisations were bumbling their way through the electronic era without having a comprehensive strategy or sophisticated solution in place to manage their risk.

"People might say that they have reservations about using a cloud-based storage system. The problem is, if they're mailing to

a web-based email account then they are already using a cloud-based solution, it's just a really bad one," he said. "The last thing that you will want is your strategic thinking spread all over the internet, or used for private gain. Even if you're not getting sued."

Security Concerns

Companies need to evaluate the security and privacy of the information that is being stored and transferred via a board portal. In most cases they need to understand how the provider will protect their information from both internal and external threats. Only once they thoroughly understand any potential risks can an organisation can reach an informed decision about the merits of using a particular board portal.

Abbott said most organisations concluded that the benefits were immense and far outweighed the risks, provided those risks were acknowledged and managed properly.

"Managing information in the cloud does have particular risks, and you should be aware of these when negotiating an agreement with a provider. If properly addressed, these risks should not prevent you from empowering your board to remain effective, agile and connected wherever they are in the world," he said.

Organisations also need to treat security risk management as an ongoing issue. It is not simply a task of putting in place a secure system and then leaving it to a third party to operate. Technology experts take the view that companies need to remain vigilant to ensure they are staying ahead of emerging threats.

Some of the issues to consider include:

- Authorisation: how does the application designate and manage different levels of access and permissions?
- Encryption: Does the software ensure that the information stored within the board portal remains confidential, even from those who manage the systems and application?
- Man-in-the-middle attacks: When information is sent over a network there is always a risk that someone will intercept that data and reassemble it. Board portals need to ensure that all information sent to and from the server remains confidential, including credentials, by implementing network level security.
- Offline access: Does the board portal offer the same protection for online and offline access?
- Multiple boards: How does the software prevent "leakage" between different boards that a user may sit on (assuming they access their board papers on the same device).

Abbott said that organisations also need to make sure that their implementation of a board portal does not open up vulnerabilities. He was aware of one organisation that tested and then implemented a board portal but did not turn off the trial accounts that the IT team had used to test the products. As a result, members of the IT team potentially had access to the board documents.

"One risk with board portals is they may allow people other than the board members to access board documents, which would typically not be the case when hardcopy documents are distributed. Organisations may ask their IT department to set up, test or run the program, without thinking they may be giving their IT department access to confidential board documents," he said.

Abbott stressed that discussing these risks was not meant to dissuade people from using technology. Rather, it was important to remember that there are risks associated with storing material on any computer, or emailing it between board members.

"The benefit of a cloud solution is that you can reach an agreement with your provider about the level of security that is required. Security in cloud agreements should be at least as good as in traditional systems. You should be requiring a provider to agree to security policies," he said.

Eternal Vigilance

As part of any security review firms should also ensure:

- that they check the controls around the creation of administration accounts;
- that strategies for dealing with malware, phishing prevention and regular penetration testing are in place;
- that the cloud provider is using the strongest form of encryption;
- that the organisation's data will be physically or virtually segregated from data which belongs to other customers;
- the provider's security measures are audited annually by an independent party and that it can provide bullet-proof data back-up and business continuity solutions.

Firms should also consider whether the provider will only host the company's data on servers in countries agreed by the

organisation. This ensures that, prior to making a decision, the organisation is able to assess what laws may apply to their data. As an example, if the information is hosted in the United States the USA PATRIOT Act could give an overseas government the right to access their data. "The PATRIOT Act only applies to U.S. companies or companies trading in the U.S., but this can extend to U.S. companies trading in Australia and potentially the Australian subsidiaries of U.S. companies. This creates a few issues that need to be worked through," Abbott said.

Approach To Annotations

Another critical issue is how to deal with annotations. This varies between organisations and between entities in the public and private sectors. Some organisations decide to retain all annotations while others take the view that everything should be deleted. Abbott said this had been a hot topic in governance circles ever since the HIH Insurance meltdown, where a board member had sketched a picture of a sinking ship on his board papers. This sketch was ultimately recovered during legal proceedings and used against the board.

The more advanced board portals include features like version control, which ensures papers are up-to-date, and the ability for the organisation to either retain or permanently delete annotations. This decision can be made on a case-by-case basis, depending on whether the organisation believes the individual views of board members should be retained.

For public sector organisations there are also other factors to consider, including whether they could become subject to a freedom of information (FOI) request.

"Before public sector boards start using online board portals, they need to consider if their ability to comply with any laws will be compromised, depending on the configuration of the system. For example, they may be bound by laws requiring them to retain public records, or laws requiring them to disclose documents under FOI requests. If you will be required to provide documents under FOI, it's important that they reflect agreed positions rather than unofficial ones," Abbott said. ■

This article was originally published by Thomson Reuters Governance, Risk and Compliance business. For more information on Board Portal technology please visit accelus.thomsonreuters.com/boardlink

Corporate Governance In Asian Markets

By David Smith, Head of Corporate Governance, Aberdeen Asset Management Asia Limited

Introduction

Progress in corporate governance is often measured in terms of 'years from crisis'. It has now been a full 15 years since Asia's financial crisis, and five since the global financial crisis. In a mirror of its industrial and economic progress, Asia has progressed rapidly both in terms of regulatory frameworks and corporate governance culture during that time. Encouragingly, this evolution continues. Indeed, during the last year or so several markets finalized enhancements to corporate governance regulation that had their origin in the global financial crisis.

Malaysia, for example, released its new Code on Corporate Governance in March, part of a well-planned process that began with a broad-ranging five year Corporate Governance Blueprint in July 2011 – see: bit.ly/R5P8LW. The code identifies areas for improvement including not only corporate governance but listing rules and relevant laws. Other jurisdictions have been similarly active. Both Singapore and Hong Kong have revised their codes of corporate governance in the past year, while also strengthening listing rules. They address issues of tenure and 'over-boarding' in the new codes, but both stop short of prescribing mandatory limits for a serving periods or directorships held.

Following this surge in regulatory activity, a handful of jurisdictions in the region now have corporate governance frameworks that are arguably world class. Many of the changes have reflected the global mood in corporate governance, and have, for example, aimed to include risk management and diversity. However, events around the region during the year – including several corporate governance 'scandals' – have reinforced the need not only for robust rules and regulations, but also for investors to have an appreciation of the corporate governance culture at the companies (and countries) in which they invest. Rules and regulations alone do not ensure the quality of corporate governance.

Independence

Much of what has been put in place in the region over the past few years has focused on the structure of boards, the proportion of independent directors required on boards, and boards' role in risk management. Singapore's new code of corporate governance includes some well-crafted rules on independent directors that aim to limit the concentration of boardroom power.

For example, where the role of chairman/chief executive is combined, or where families dominate these roles, half of the board must be independent (typically, in Singapore, one-third independence is the requirement). Hong Kong amended listing rules to require issuers to appoint independent directors representing at least one-third of the board (previously, listing rules required three independent directors, while the code included as a recommended best practice that one-third of the board be independent – see: bit.ly/SUaMEV.

Yet the concept of the independent director is an import from Western models of corporate governance. Although it has proved (moderately) successful there in overseeing management in the context of an atomised shareholder base, in Asia it is typically either a family or state that owns the controlling stakes in companies. These controlling promoters get to recruit, nominate, and elect independent directors. As such, it would seem unrealistic to expect much independence from any director.

To be sure, there are some hardworking and experienced individuals serving as independent directors in the region, whose boards are tremendously lucky to have them. Yet they remain the exception. All too often it is difficult for shareholders to assess what the individual brings to the board, other than compliance with the respective codes.

This is changing, albeit slowly, as more boards undertake formal assessment of their own performance, forcing them to consider the skills required for board renewal.

State In Play

While rules and regulations are important, regulators are often constrained in their power to act, particularly when listed companies are based offshore. In Singapore, one company's independent directors, as well as its CEO, resigned en masse after failing to appoint a special auditor, as the exchange had instructed. As the company was Singapore-listed, yet based in China, this led to a standoff with the exchange. The episode was just the latest involving so-called S-Chips; mainland Chinese companies, run by entrepreneurs rather than the state, and listed in Singapore.

Indeed, geographic and political influences on corporate governance thinking were apparent elsewhere during the year. For example, in the audit field, investor concerns have historically focused on auditor rotation, non-audit fees and auditor tenure. This year we have come across situations where state secrecy rules (real or perceived) have affected both firms' ability to make material available to auditors, as well as auditors' ability to provide material to regulators. This has been the case with

a handful of Chinese companies. While it would be misleading to suggest such problems are common, the risks are real. It is not just China (where many firms are listed overseas), either. In other markets management teams of questionable quality may cite ‘state secrecy’ in order to hide information.

In the Philippines, changes to the way that courts view preference shares led some companies to issue new shares to meet foreign ownership limit. In Korea, meanwhile, this was the first year investors were affected by revisions to the Commercial Act, which allows company boards to approve financial statements (including income allocation) – something that had previously been the purview of shareholders.

Short Shrift

Away from regulations, this past year has seen a relatively new form of research proliferating, namely the shortseller report. Investors have long been used to short views, and to analysts discussing possible weaknesses in companies. This new breed of research firm is typically unknown, with uncertain motives and business models. What they do have in common is, a) an ability to focus on complex ownership structures, b) an appetite for on-the-ground research and fact corroboration and, c) an ability to effect a sometimes immediate and dramatic response to the company’s stock price. Although the success of these reports has been mixed, they have highlighted the risks in certain company models and the need for investors to read thoroughly company reports and prospectuses (which usually contain a decent overview of the structures employed by these companies).

2012 Scorecard

Towards the end of 2012, the latest edition of ‘CG Watch’ (produced by the Asian Corporate Governance Association in collaboration with CLSA) was released. Widely seen as the most trusted reference point for measuring corporate governance in the region, the report once again put Singapore on top, marginally extending its lead over Hong Kong, whereas Indonesia and the Philippines were bottom and second bottom.

These market rankings would likely find consensus among many investing in the region. Less intuitively, Japan placed equal fourth in the market rankings (slipping one place from 2010), yet its companies were the second highest in terms of improvement (after Singapore). Similarly, Hong Kong placed second on the market rankings, yet its companies saw scores fall by between 1.5 and 2 percentage points, performing worse than, for example, their Malaysian peers in terms of year-on-year change.

There are obviously caveats when drawing conclusions from the change in annual scores. Still, the company rankings are useful for investors to assess what is happening ‘on the ground’. Singapore scored highest for ‘CG Culture’, while Japan came in a surprising equal second with Hong Kong. There is an explanation for this.

Japanese companies have improved significantly over the past few years despite attracting criticism for their governance methods. An increasing number of them are appointing outside directors, and some are even appointing foreign directors. (Hitachi has been commended for reducing the number of inside directors on its board and for its appointment of two non-Japanese as outside directors in 2012).

Final Words

Despite the advances in regulatory frameworks, 2012 has proved to be a year where events have thrown up new corporate governance issues for investors. At the same time, there were variations on the old themes of fraud, corruption and malfeasance.

Developments on the regulatory front have served to move the corporate governance framework forward in many markets, and this is reassuring.

However, as investors, we do not place too much emphasis on regulators or faith in independent directors. The best protection is a good pair of shoes, a passport and a willingness to meet management and their companies face to face. Despite the various corporate governance ‘scandals’ of 2012, there remain many very well run companies in the region that possess a conservatism and respect for balance sheet metrics that is sometimes lacking in Western markets. These companies have a strong focus on corporate governance and minority shareholders. They should be held in high regard. ■

This article was originally published as part of the International Corporate Governance Network Yearbook 2012. The International Corporate Governance Network (ICGN) is a membership organisation of around 600 individuals including institutional investors with global assets under management in excess of US$18 trillion.

Value Creation

Corporate Governance, Value Creation And Growth

By Mr Mats Isaksson, Head of OECD's Corporate Governance Division

Introduction

Today everyone would agree with the importance of good corporate governance. And most of us probably recognise it when we see and live it.

The challenge arise from a number of profound market driven changes in the way corporations operate, investors act and equity markets function. These developments may not be negative in themselves but their combined impact on equity markets may very well alter the way we think about regulation and how we set priorities. Such adaption of rules and regulations is no big drama. When the economic environment changes, existing rules, regulations and practices may become obsolete, inefficient and even counterproductive. And as a consequence, they may need to be adjusted or complemented to fit a new reality.

This is nothing new to you as directors and business people. You are always first in line to feel the winds of change. And your success and survival depends on your ability to adapt. And what is true for you is also true for countries. The quality of the legal and regulatory framework for corporate governance is an important part of a nation's competitive edge. And when confronted with change, we cannot behave like those generals that after being defeated return to the situation room trying to figure out how to win the war they just lost.

What we need to do is to look at reality and, preferably, behind the corner. So let me give you just a few examples of developments that may have consequences for the way we shape rules and regulations in the area of corporate governance. How we set priorities.

Shareholders' Short Term Interests

First of all, we often have an outdated understanding of the shareholder. Most company law today rests on the assumption that shareholders look like they did 150 years ago and that they are driven by the same incentives as they were when modern company law first came into place: In essence, that there is a direct link between company performance and shareholder wealth. But we know better. We know that the relationship is much more complex than that.

Today, shareholders are very often themselves profit-maximising corporations. They are intermediaries who make their living out of managing other people's money. There is obviously nothing wrong in that. But this can have profound consequences on their ability and their incentives to carry out some fundamental shareholder functions that are assumed in legal and economic doctrine.

The fact that fund managers are evaluated not only against each other, but also on a shorter and shorter time span has also lead to weakened incentives to assess and discover long term corporate value. This may lead to increased volatility mispricing and ultimately less efficient allocation of equity capital in our economies.

Decline In Listings

A second important development we want to take a closer look at is the decline in the number of listed companies in key OECD countries and the very limited importance of initial public offerings. Some claim that this is no problem and that large companies today don't need any outside equity. They can generate it themselves. But that observation doesn't address the problem that new mid-size growth companies do not seek funding trough public equity markets. Some claim that private equity has taken over the role. But when we do the numbers we find that private equity still plays a relatively small role in terms of net equity supply.

There is not one single explanation for this downturn in number of listings and IPO's. Part of it may indeed be cyclical. But there may also be more systemic explanations, including the cost of intermediation and the quality of regulation. It is also claimed that a lack of dedicated analysts and mispricing make potential companies reluctant to go public.

Some countries have already started to address this problem. One response is the Jobs Act that the US President signed into law in 2012

The bill covers so called "emerging growth companies" with total revenues of up to USD 1 billion. And among other things it is supposed to streamline the initial public offering process and, once companies are listed, give them a window of up to five years to comply with full Exchange Act reporting, inclusive executive compensation.

We do not know yet what the final results of the US Jobs Act will be. But together with other initiatives around the world it is a sign that policy makers are worried that the obstacles for accessing public equity markets can be too high and costly for medium size companies.

Shift In Equity Markets

Last, I would like to point at a development that we have studied in some detail. And that is the long term global shift in equity markets. We have been looking at all IPO's around the world since 1990. We have classified the origin of the company and we have identified the market where the money was raised. What we find is a long term trend where non-OECD companies and non-OECD stock markets have come to play an increasing global role. In the period 1995 – 2003, a full 80 percent of all equity in the world was raised by OECD companies in OECD markets. In the period 2004-2007, that portion was down to 60 percent. And in the period 2008-2011 it had dropped to less than 40 percent. Or in other words, since the financial crisis, 60 percent of all equity raised in public markets has been by non-OECD companies in non-OECD markets. And a large portion of this is obviously in Asia.

As the global standard setter, this is obviously something we need to take into account. One consequence is that we - globally speaking - will have an increase in listed companies with majority or at least controlling owners. Today, listed companies with controlling owners are the rule rather than the exception: And still, much of the corporate governance debate is focused on the problems with dispersed ownership that was raised by Berle and Means: A tradition where controlling owners for some reason always have been seen as something suspicious.

Of course, the presence of controlling owners may give rise to specific issues, notably in terms of related party transactions. But those who have read Berle and Means carefully, the authors actually looked at controlling owners as the solution to the governance problem rather than the origin.

Their argument is that, correctly regulated, the interests of the controlling owner would almost always coincide with that of the minority shareholders. We need to think more about this and how motivated founders and entrepreneurs best can continue to contribute to the governance of also after they have gone public.

Conclusion

Well, these are only a few examples of trends and developments with a potential impact on the future of corporate governance. And they are all addressed in the OECD initiative: Corporate Governance, Value Creation and Growth.

The reason for choosing this title is that we also wanted to remind policymakers about the very roots and the objectives of corporate governance.

Rulemaking is not an end in itself. It is only a means to an end. And in the case of corporate governance, the purpose is to create an environment of trust and incentives where savers and business ventures can meet. Efficiently and at low cost. So that business can prosper and savers can share in their success: To create an environment where business ideas and industrial skills can join forces with capital from savers, who indeed may have the money, but have no industrial competence or ambition.

Remember, this is why we originally created the joint stock company. This is why we have this unique contract called equity, which only claims the residual. And which is really the only standardised financial instrument that is able to support the kind of uncertainty that is associated with genuine entrepreneurship and true value creation.

And as Professor John Kay said in his recent report to the UK Government it makes “good corporate governance a central rather than incidental, function of capital markets.”

One important conclusion when we apply the perspective of value creation is that corporate governance should not be a zero-sum game where market participants fight over a given amount of assets or a given result.

Instead, our focus should be on an environment that supports the very creation of these assets and these results. And such a framework requires trust as well as hard-wired incentives. It will need to reward participants in accordance with their contributions to corporate success and it must provide incentives to always look to the best long-term outcome for the enterprise: A corporation is not a self-playing piano. It consists of people and it requires engaged talent to succeed. Some of this talent may also be owners. But they are equally often managers and not least --- board members or directors. ■

This is an abridged version of Mats Isaksson's speech at SID's Director's Conference 2012

How A Diversified Board Can Enhance Shareholder Value

By Chia Kim Huat, Partner, Head of Corporate and Transactional Practice and
Teo Yi Jing, Partner, Corporate – Markets/M&A, Rajah & Tann LLP

Introduction

A diversified board of directors ("Board") with members possessing different expertise, experiences and perspectives will allow the company to have a broader outlook and consider issues from multiple angles and viewpoints before arriving at a decision. Such process would inevitably lead to a more balanced and quality decision and further enhance the interest of the company as compared with those made by a homogenous Board whose members' concerns are largely similar. It is with a diversified Board that the interests of all stakeholders (including shareholders, employees, creditors, suppliers, customers, investors, financiers and regulators) are protected.

Board diversity often varies according to where a company is located, the industry that it is in and the markets that the company operates in. Some jurisdictions emphasize on the interests of shareholders (such as United States and United Kingdom) whereas others also recognise the needs of workers (such as Europe and China). The needs of a company will evolve with time and the business environment and Boards will need to adapt to changing circumstances so as to decide what the optimum diversity would be.

What are the common examples of Board diversity? Requirement for different skill sets, such as financial and legal expertise? Diversity in terms of age and geography? Relevant industry experience? While "diversity" in the above aspects are well documented and followed by most Boards, the issue most recently in the limelight is the apparent lack of diversity in terms of female representation on Boards in Singapore. Although women make up approximately half of Singapore's population, they constitute only approximately 7.3 per cent of the Boards of all companies on the stock exchange of Singapore in 2011[1].

Mandatory Diversity

The importance of having diverse Board perspective from executive and independent directors has been established and recognised. Independent directors, free from interest of the controlling shareholder, represent and safeguard the interests of minority shareholders of the company. The requirement for independence has found its place firmly in the code of corporate governance. The adherence to such independence requirement by almost all Boards is testament that management and shareholders have come to accept the value of such diversity.

As mentioned earlier, in some countries (such as Europe and China), it is mandatory to have "workers' representative" on the board of directors or supervisory board, whose views would be sought in matters that affect workers' interest. This is one way of recognising the workers as being a key stakeholder of the Company alongside the shareholders. The question is, if we do not make these requirements mandatory, would these representatives still be able to find their way into the Board?

In this regard, it is worthwhile looking at some other examples whereby it is necessary to legislate representation for certain interest group. In a recent tribute made by Prime Minister Lee Hsien Loong to the retired chairman of Temasek Holdings S. Dhanabalan, PM Lee recalled how Mr Dhanablan resisted the idea of Group Representation Constituencies (GRC) as he felt that people would vote based on a person's character and abilities rather than race. However, Mr Dhanabalan eventually concluded that it would be many years before race "would cease to matter in Singapore", and that it was important to safeguard minority representation in Parliament. [2]

In view of the stark reality, should we then impose a mandatory gender requirement for Board representation? Unlike the case of GRC, we are not suggesting that shareholders who attend annual general meetings are mainly male and would not vote in female directors. However, if one holds the view that there are strong benefits from having female representation on Board (as in the case of having independent directors), should this then be made a mandatory requirement?

Norway was the first country to introduce Board gender quotas in 2003 and lead the world in their percentage of female directors on board of directors. Other countries in Europe such as France and Italy have seen sharp increase in female directors following legislation for female representation.

Slow Progress Without Legislation

In the United Kingdom, there is no mandatory requirement but the proportion of female directors have risen in response to investors' pressure. However, the rate of increase in the United Kingdom lags when compared to its European counterparts.

It does not appear that women in Singapore face systematic obstacles in seeking Board representations, a view shared by the female co-author of this article. However, society's perception that women should first achieve a balance on the family front

before their career is still prevalent and such perception may be holding women back in seeking Board seats in addition to their active careers. Although this may be the reason some qualified female candidates do not seek Board seats, it should not be the case that female representation on Boards is low due to the lack of candidates as it is observed that female directors on current Boards usually hold only one directorship and this is definitely a pool for other Boards seeking female representation to tap on.

The reason why female representation on Board is progressing slowly may be because the value of women on Board is not as apparent. The perspectives which women bring to the Board decision making process include alternative viewpoints being presented as men and women are wired differently. This would prevent monolithic thinking and lead to a better decision making process. However, such enhanced value may not be as apparent and defined as directors who bring with them legal, accounting or banking perspectives. Although the requirement for directors with legal, accounting or banking experience is not mandatory, a large number of Boards have representations from these professions.

On the other hand, the value of female representation on Boards may be more apparent for companies which operate in industries where the target customers are women as they would represent an important stakeholder of the company. As such, only when management and shareholders can see additional value that female representation brings to the Board (as is the case with Board representation by lawyers, accountants and bankers) would such gender representation be occurring naturally.

Way Forward – Avoid Gender Bias

Lew Platt, former CEO of Hewlett Packard (1998) was reported to have made the following points to make the business case for diversity:

- a talent shortage that requires us to seek out and use the full capabilities of all our employees
- the need to be like our customers, including the need to understand and communicate with them in terms that reflects their concerns
- diverse teams produce better results

The above are equally applicable to Singapore Corporate Inc. We should make the most out of our educated workforce and facilitate women participation in Board. Moreover, female viewpoints may also lead to the growth of the company's business. Ker Conway was the sole female director at Nike in the early 90s when she suggested that the Company launch a female sports apparel division. Today, this division accounts for a sizable chunk of Nike's revenue. [3]

The call for female Board representations have been echoed by the government, business organisations and shareholders activist organisations. The value of female representation on Boards has also been gaining recognition. While the findings are that there are no conscious or deliberate attempts to keep women out of the boardroom, the progress is slow.

Perhaps it is time to consider mandatory requirements for female representation on Board and require companies to explain if they fail to do so. However, women may not be as appreciated on boards if having them on board is to fulfil a quota requirement instead of when their appointment is by virtue of their value.

In the event that the relevant organisation or authorities are minded to adopt mandatory requirements for female board representation, we should be mindful that the requirement ought to be for a gender balance board with minimum representation by both genders rather than specifying a minimum women quota. There may be companies where female representation may already be in the majority (especially in industries such as lifestyle and beauty) and in such instances, the availability of male views are equally important! ■

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Total Shareholder Return: Making It Work

By Fermin Diez, Senior Partner, Mercer

Introduction

TSR is the dominant measure used to determine vesting in long-term performance share plans in major listed companies in Singapore. It is also common in the US, the UK, Australia, and Canada. Many organizations have been quick to hail TSR as the ultimate and only measure of a company's performance; however, it may not be the panacea for ensuring pay for results over the long term. Effective long-term incentive plans should reflect a balance of objectives and reward both financial and shareholder results. Relying on a single metric may oversimplify the assessment of performance and potentially encourage inappropriate risk-taking. The hazards become all too apparent in markets, industries, or companies characterized by high volatility, as has been seen since mid-2008 in several markets around the world, including some here in Asia.

With little insight into the future performance of many economies, remuneration committees are looking to select and calibrate long-term internal financial targets. In Singapore, the focus seems to be on viewing TSR as a "true" measure of performance, given its strong alignment with shareholder outcomes. However, TSR incorporates actual financial performance and market expectations that could be influenced by a variety of factors. Due to this and to other disadvantages outlined below, the use of TSR in a volatile market needs to be carefully considered to avoid unintended outcomes. Furthermore, TSR may not be appropriate for all types of long-term incentive vehicles; for example, share options, which already have a built-in TSR hurdle that must be achieved before they are "in the money."

In this article, we consider how to reassess the way in which TSR is used in long-term incentive plans. The current economic environment has made target setting based on absolute measures more difficult than under steady growth environments; however, uncertainty seems to be the order of the day and companies must find ways to prosper even in these challenging times. At the same time, it is not simple for companies in Singapore to choose appropriate peers, or even indices, to compare against. Companies that want to measure management's performance against relative TSR (r-TSR), have to look for ways to address how (or if) its shortcomings can be addressed to ensure that r-TSR remains an effective measure of results and long-term shareholder value creation.

Using r-TSR

TSR is most commonly used as a relative measure, where the number of shares that vest is dependent on the company's TSR over a stated performance period relative to that of its peers. The following "standard" approach is used by most companies that employ r-TSR.

Step 1: Calculate TSR performance for the company and each company in its peer group.

Step 2: Rank each company according to its individual TSR performance.

Step 3: Determine proportion of award vesting based on company's rank relative to its peer group.

The calculations under the standard approach are transparent and fairly straightforward because a simple ranking method is applied to assess the level of outperformance. This approach works very well in organizations that have readily identifiable peer companies and that exhibit similar levels of volatility.

Nevertheless, the simplicity of this approach can be undermined by several shortcomings, as outlined below.

The Good, The Bad, And How To Avoid The Ugly

Selecting A Peer Group

In an ideal world, companies would use a peer group of like organizations that are subject to the same external influences so that share price movements genuinely reflect decisions made by management. However, for Singaporean companies this is not an easy task. Because ours is a relatively small economy, there aren't enough "like organizations" in the market to compare against. As a consequence, some companies have chosen to compare against companies outside of Singapore, which is of course a different market. Some have chosen to compare against indices, which may not only be a different market but also a different industry. In addition, from management's point of view, using an index for r-TSR lessens the line of sight between reward and performance.

Where relevant peers are sparse or there is pressure to use a broad index, one solution is to use a broad index in conjunction

with a more tailored or industry-specific group. In any case, we would advocate the use of a more comprehensive approach to peer-group selection by expanding the selection parameters to consider the following:

- Similar business model: Companies in different industries often manage comparable activities, even though they might not be direct competitors.
- Upstream and downstream businesses: Often industries are so specialized that a company might need to look at other businesses in the value chain.
- Change in the business model: Where companies are undergoing a strategic shift, they might want to include those peers that are likely to be future business competitors.

A range of analytical tools are available — such as performance sensitivity analysis — to assist companies in determining how they can select a more tailored and appropriate peer group.

Dealing With Negative TSR

Even if peer groups were perfect, a drastic fall in share prices across the board would mean that some long-term incentive plans will pay out even if a company has negative TSR, provided it is less negative than its peers. Rewarding outperformance is the main tenet of r-TSR, so surely this should also remain true in down cycles? This argument may not hold water for those who contend that payouts in these circumstances would reward shareholder value destruction. The issue can be compounded in cases where companies set their targets according to the historical performance of their peer group, particularly where the spreads between the 25th and 75th percentiles and the median have been volatile.

There is no easy answer: on one hand, in cases where companies have lost relatively less value as a result of management's efforts, one could argue that it would be unfair to penalize the executives; on the other hand, any payout may generate damaging criticism of the company.

Using a combined approach to performance measurement (for example, a mix of financial and market metrics) may mitigate this issue. It is much easier to defend payouts if management's performance is also measured against other metrics that capture the financial health of the company. Another solution would be to have a threshold share price, which would serve as a trigger point to generate payouts or a modifier if TSR is negative.

The bottom line is that any course of action has to be as transparent as possible to shareholders, and extreme outcomes should be tested to ensure that the impact on the vesting of rewards is consistent with expectations.

Measuring The Absolute Shareholder Value Created

Under the standard approach to measuring r-TSR, the level of absolute shareholder value created is not taken into account. This approach potentially penalizes larger, more mature organizations whose peer group consists of a number of smaller organizations. For example, an established global company generating a TSR of 20% will deliver more value to shareholders in absolute dollar terms than a small startup with a TSR of 200%. In addition, as smaller companies tend to be inherently more volatile, the outcome at the end of the vesting period is more likely to be a function of chance (at least to some degree) rather than a true measure of outperformance.

The global economic downturn has highlighted another instance in which the standard method falls short. Some companies have fared better than others in their peer group and, as the peers start to recover, these better-performing organizations may well find that they are at the bottom of the pack in r-TSR terms because they are starting from a "higher base."

In these cases, a solution is to use a market capitalization-weighted approach, which acknowledges the connection between company size and both absolute and relative value creation. This can be done in two ways: by creating an artificial index of the companies in the peer group, or by weighting the individual peer companies by their respective market capitalizations.

Using an Artificial Index

Creating an artificial index entails building a capitalization-weighted index similar to broad market indices common in various stock markets, meaning that larger companies will automatically have a bigger weighting. The subject company's TSR is then calculated and compared to that of the artificially created index. Any excess TSR above that of the index (or outperformance) then determines the extent of vesting. Under this approach, there is no individual company ranking and quartile comparisons

cannot be made, meaning that forward-looking target setting becomes crucial.

Using a Market Capitalization Approach

The other approach is a bit more complicated: all companies in the peer group, including the subject company, are ranked by their r-TSR performance. Vesting is then based on the combined market capitalization of the companies that the subject company has outperformed (for example, 25% of the award would vest for outperforming 50% of the total market capitalization of the peer group).

Both methods described above allow larger companies to use a more diverse peer group without being "penalized" for including small and possibly more volatile organizations, as outperformance is ultimately determined by the absolute level of shareholder value created. These methods can also work in Singapore, where some industry sectors have few local competitors, and in organizations operating in diversified businesses.

The complexity of the approach is a disadvantage — it is not as transparent to either shareholders or participants as are the other methods of calculating r-TSR. This may mean paying additional attention to disclosure in required regulatory filings. The key message to shareholders is that r-TSR performance remains the "test": under the artificial index method, equaling the index performance is more or less akin to "median"; and under the market capitalization method, individual company ranking is the first input.

Using Local Or Common Currency In International Peer Groups

Using an international peer group to benchmark r-TSR is an approach that is often used by companies that have a high proportion of their operations in other geographies, lack comparable local peers, or prefer a global sector focus. The volatility in foreign exchange markets means that the use of an international peer group brings about its own predicaments — the main one being whether to measure TSR on a local-currency or a common-currency basis. For example, in the UK, the Association of British Insurers has expressed its preference for using a common-currency basis, and companies have generally complied with that guidance.

There is no right or wrong approach. Calculating r-TSR on a local-currency basis may be more appropriate for companies that have a high proportion of local investors in their shareholder base. This ensures that TSR rankings and shareholder returns are measured on a similar basis. Conversely, where investors are spread across geographies, using a common currency may be better, so that both management and shareholders are subject to similar fluctuations (although there is an argument that international institutional shareholders have the ability to diversify or hedge their currency risk, whereas management does not). In any case, the key is to compare TSR on a consistent basis from year to year. In periods of high exchange-rate volatility, using a collar, say, based on historical exchange-rate volatility movements would be a suitable course of action to ensure that extreme foreign-currency movements do not unduly reward or penalize management.

Measuring TSR

To make matters more complicated, TSR performance itself can be measured in a variety of ways. For example, the most prevalent method is "point-to-point" measurement — comparing share prices (and dividends) at the end of the measurement period with those at the beginning. Other methods include "average of years," which considers growth over the whole of the performance period.

Point-to-point may not be appropriate in cyclical companies or industries where TSR can be volatile. It can result in vesting levels diverging greatly from one grant cycle to the next.

The start date of the measurement period also influences TSR in a number of ways. For example, should the measurement period start:

- At the date on which the grant is made? This may not work for companies that make awards regularly during any given year.
- At the beginning of the financial year? This may mean a disconnect between management and shareholders, as management has access to information that is not yet incorporated in the share price.
- After the announcement of results? This may affect the outcome if peers have different year-ends.

Again, in this case, the solution is not obvious. The best approach is to be consistent in whatever methodology chosen, document it properly, and ensure that share prices used at the end points to calculate TSR are averaged over a suitable period of time to mitigate such historical share-price volatility.

A Balanced Approach

TSR is not necessarily a simple solution to the challenges of ensuring that pay is commensurate with results. Shareholders, executives, and nonexecutive directors alike are reassessing their views on what performance measures are the best indicators of long-term value creation and how specific measures should be used in compensation plans. In this period of uncertainty, shareholders are particularly focused on how performance outcomes relate to the level of reward and, in an increasing number of cases, the operational and financial risks taken to generate that level of performance. Despite its flaws, TSR will likely continue to be a prevalent measure of management's performance. However, it is important to bear in mind that, where TSR is used, careful consideration should be given to how it is used in order to mitigate some of the problems it presents. Ensuring that r-TSR is appropriately used will certainly not address all performance-measure selection challenges, but companies need to make sure that this metric is part of a balanced approach to performance measurement, where awards are based on a combination of financial and market results. ■

The CEO

CEO Succession In The Family-Controlled Firm

By Clarke Murphy, Managing Director, Russell Reynolds Associates' New York Office

Introduction

Managing the CEO succession process and ensuring a strong executive team are the ultimate board responsibilities. And while all succession and team-building processes are complex—requiring the board to consider numerous factors that include future strategic threats and opportunities, the expected performance of various candidates, the implications of its choice on its human capital capabilities and many other considerations—certain CEO succession and executive hiring scenarios especially are challenging. One such scenario is that of the family-controlled firm[1] that has decided to conduct an external search for a CEO or other senior executive. This hiring process may represent the first time a non-family CEO or C-suite executive takes the helm of the firm, a division or a function. Or it may be that family members relinquished managerial control decades ago but remain shareholders today. In either case, the presence of family dynamics, history, culture and expectations provides an additional layer of complexity to the senior executive hiring process.

Contrary to common perception, within this complexity, there also is an opportunity to tap into a positive family force at a critical time of transition. To do so, boards, along with family member managers and/or shareholders, must approach the succession task with an analytical mindset and process that balance the strengths and needs of the company, the level of involvement of the family, current business imperatives and the emotional backdrop against which the transition is occurring.

Identifying The Company's "Distinctive Familiness"

The notion that a family-controlled company's family history can be a positive force is rather recent. Traditionally, family firms seeking to bring in an outside CEO or other non-family leaders saw the move as "professionalizing" the enterprise. In this way of thinking, in order for the firm to reach its next level of growth, it must look and act more like non-family firms—be more linear and clinical in the decision making, place greater focus on efficiency and short-run returns, and be less personal or emotional in its human capital strategy. This earlier approach viewed the cultures and priorities of "family" and of "business" as inherently in conflict.

In contrast, the thinking of family business experts has evolved in recent years to recognize the fact that a family business may enjoy unique strengths precisely because of its family roots and historical path. The unique interplay between the business, the family unit and the individuals within the family, in fact, may give rise to values, assets and capabilities that the board and leadership should preserve even as the company transitions to or continues with non-family leadership. For example, there is research to suggest that family firms can make longer-term capital investments, execute more quickly on entrepreneurial decision making, and have greater employee loyalty and a deeper commitment to the research and development needed for new businesses than non-family firms.

The family-based characteristics that give the firm a market advantage have been called the firm's "distinctive familiness."[2] This distinctive familiness and the aspects of the company that support it must be preserved rather than diluted by the external CEO or senior executive team member being recruited.

It is important to note that this distinctive familiness changes over time and is dependent on where the firm is in its life cycle. When the founder is still CEO or there is family in senior management, the firm's family-based advantages are likely to be very concrete in nature, such as hands-on leadership, technical knowledge and business relationships. For a later-stage company run by third- or fourth-generation family members, however, the distinctive familiness is likely to be more abstract, centered on cultural assets and practices like the values employees embrace, the reputation the firm maintains in the marketplace or its business model and organizational structures.

Just as a family firm enjoys certain advantages due to its family history, it can be encumbered by family baggage as well—what can be called "constrictive familiness." It is this constrictive familiness that often leads family members, boards and non-family leaders to conclude that "family" and "business" do not mix. In reality, however, these constrictive familiness factors simply need to be addressed and mitigated, which can be done without losing the positive aspects of family involvement. If a co-CEO leadership structure created to accommodate two siblings has led to conflicted decision making, the company can revert to a traditional single-leader structure. If talent management and incentive strategies are not attracting top talent, the HR mindset and practice can be changed. If family member managers, board members and shareholders are in conflict, the issue should be addressed head-on and used to create more robust governance policies. The next CEO and his or her team must preserve the enterprise's distinctive familiness and confront its constrictive familinesss—and any aspects of the firm culture that enable those impediments.

Identifying those characteristics is not always straightforward; the family-specific aspects of a family business that help or hinder it are not always immediately obvious. This is exacerbated by the fact that family decision makers often think about their company as "just a business" and neglect to probe the role of family in their enterprise. Family businesses also may have a private "family language" that gives them a highly effective way to communicate but that can hinder the organization from looking at the firm's strengths and weaknesses in a more analytical way. For that reason, it is incumbent on the board to include this objective analysis in its succession planning.

Contextual, External And Emotional Factors

Having identified the characteristics of the firm that need to be preserved or mitigated when choosing outside executives, the next step is to probe further and identify the contextual, external and emotional factors that determine the environment in which the succession process takes place. Having done so, the board then can incorporate the implications of that environment into the selection process.

First, the board must assess the involvement and control of the family in the business. This not only dictates in a very material way the environment in which the next CEO or senior executive will be working, but it also helps determine the qualities the company needs in its next leader. Is the family part of the hands-on senior leadership of the firm or is its presence confined to the boardroom? Does the company make decisions "like a family" or has it adopted more formal policies and procedures? Figure 1 gives four spectra that can be used to measure the influence of the family on the firm; taken together, they provide a useful multidimensional profile of family involvement.

Second, the board must incorporate the external market environment in which the firm is operating—factors that are independent of the firm's family ownership but which are nonetheless critical to success. Is the market environment fairly stable and the company strategy strong so that what is needed is a leader who can build on a solid foundation? Or is the market undergoing turmoil and change brought on by globalization, falling barriers to entry or rapid technological innovation, requiring more of a transformational leader?

The above factors then can be combined into a two-dimensional model that plots the organizational and market change the company faces against the level of family involvement and control,

Figure 1: Organizational structure and family involvement over time

Dimension	Spectrum
Governance	**Personal/Informal → Positional/Formal** *Does the firm maintain an informal, unwritten "family" decision-making style or is it governed by the policies and procedures one might find in a non-family firm of its size?*
Family Involvement	**Owner/Manager → Director/Benefactor** *Are family members actively involved in the day to day of the company (as was the case at the company's founding) or does their influence now manifest itself primarily in the boardroom and as shareholders?*
Life Stage	**Early/Founder → Later/Multigenerational** *Is the firm still run by its founder or has leadership passed to a third or fourth generation—significantly increasing the number of constituencies and potentially introducing a more complicated political environment?*
Leadership/ Decision Making	**Hierarchical/Individual → Participatory/Collective** *Is the firm still directed by individuals in a command-and-control style or is authority more broadly distributed?*

resulting in four distinct environments in which succession can occur (see Figure 2).

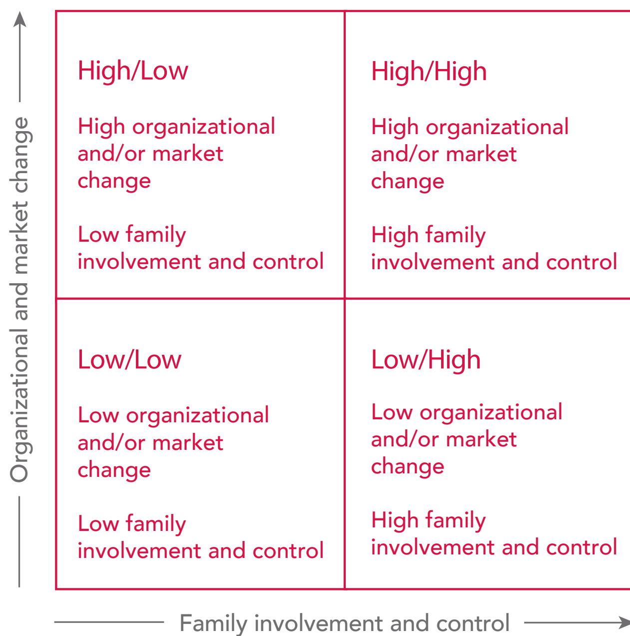
Each of the four environments brings its own set of CEO requirements. But the board then must take into account the "emotional charge" within the family regarding the change. To what extent is there agreement among the family members regarding what their own relationship with the company should be? What is the communication capability of the family as a group? Is the family culture one of openness and exchange or is it secretive and closed? Whether this charge is positive or negative adds another layer of requirements to be considered in the candidate screening process.

High Change, Low Family Control

If the emotional charge is positive: This situation suggests a classic transformational leader—one who can come in and quickly establish a new direction for the company; the replacement senior executive could even be a short-term leader by design. With low family involvement and a lack of family tension, the primary concern will be that the transformation be successful.

If the emotional charge is negative: If the family is fragmented, there is the risk that the transformational leader will exacerbate those divisions, as various groups react differently to the

Figure 2: Four possible family-firm succession environments



change unleashed by the new senior executive. With the family exerting influence in the boardroom but not actively involved in management, it is important that the firm's governance guidelines on voting, control and senior management changes be clear and that there is agreement about them. Establishing explicit boundaries will allow the transformational leader to meet the task at hand while respecting the rights of family members.

High Change, High Family Control

If the emotional charge is positive: In this situation, a transformational leader is called for as well, but he or she also must be able to build a strong partnership with the family, which may be relinquishing day-to-day control for the first time. Even with that partnership, change is likely to happen more slowly than the new leader would like—a situation which he or she must be able to manage.

If the emotional charge is negative: The transformational leader must be able to traverse an emotional minefield and be prepared to spend significant energy building trust and establishing a comfort level. This challenge will be heightened by the task of transitioning out a family member CEO or other senior leader. A third-party family dynamics coach who specializes in family business issues can be helpful in assisting family members through the many issues this transition will raise for them.

Low Change, Low Family Control

If the emotional charge is positive: This quadrant has the fewest external factors weighing upon it. It calls for a "steady at the helm" leader with a proven track record in the core business.

If the emotional charge is negative: This is similar to a non-family company in which the new CEO must contend with dissatisfied shareholders. In this case, the CEO must be able to draw upon strong communication and diplomacy skills.

Low Change, High Family Control

If the emotional charge is positive: This situation calls for a strategic thinker who can use the luxury of time to slowly prepare the company for the future. Then he or she will have to actively partner with the family and help maintain its sense of unity.

If the emotional charge is negative: Without the urgency brought by an imperative for change, a negative environment within the family can lead to a passive-aggressive stalemate between the senior executive and the family. He or she will have to be comfortable confronting hard issues and having difficult conversations to keep such a standoff from solidifying. This also is a situation where an outside family dynamics consultant particularly can be helpful.

In Summary: Identifying The Right Selection Criteria Is Key

Combining an identification of the characteristics of the company that need to be preserved or changed with an analysis of the contextual, external and emotional environment in which the succession is taking place provides a rigorous, multidimensional set of criteria that can be used to inform the succession process. While recruiting an external CEO or other C-suite member to a family-controlled firm always is complex, the appropriate selection criteria generated from the right analytical tools can significantly smooth the process and increase the chance of long-term success. ■

This article and the models shown in Figures 1 and 2 were developed in collaboration with Timothy Habbershon, Adjunct Professor of Entrepreneurship and Family Enterprising, Babson College.

Winds Of Change In Executive Compensation As Propelled By Corporate Governance

By Brian Dunn, CEO of Global Compensation & Talent, and
Na Boon Chong, Managing Director, Talent & Rewards,
Southeast Asia, Aon Hewitt

Overview

"Say on Pay" is a significant new factor affecting executive pay in North America and the UK. Regulators and shareholder-activists have demanded a shareholder vote on the company's executive compensation program. The trend has started gaining momentum more than three years ago in the U.K. and is now law in the US and Canada. Currently, the requirement is a simple one—each shareholder gets to vote on whether or not they approve of the company's executive compensation program. A typical resolution would read as follows:

RESOLVED, that the stockholders approve the compensation of the companies named executive officers as described in the Proxy Statement under "Executive Compensation" including the Compensation Discussion and Analysis and the tabular and narrative disclosure contained in this Proxy Statement.

As you can see, this is a very blunt instrument that simply asks the shareholders to vote on the entire package. They don't get to say whether it is too high or too low; they don't get to say whether they like the incentives but not the salaries; or they don't even get to say whether they approve of everything but the CEO's pay level.

While the impact of say on pay on corporate decision making is still working its way through, we would like to take stock of the issues and challenges that emerged so far, and postulate what implications say on pay may have in Asia as the executive compensation and corporate governance practices evolve.

Say on pay is premised on the basis that the rationale of any management proposals need to be made transparent to the shareholders in order to win their votes, albeit non-binding votes. First of all, let us review the challenges in making executive compensation decisions.

The Dynamics Of Executive Compensation Decisions

There are a number of key challenges as described below, which if communicated well with the shareholders, would go a long way in gaining their approval.

Performance Information

While it is very much a well-accepted principle that incentives need to be correlated with the financial returns to the business, we have learned in the Global Financial Crisis that the returns need to be adjusted for the risk taken to achieve them as well as the time horizon of the risk. On the other hand, no single measure can adequately capture the true performance of a business. Multiple measures from multiple perspectives must be examined and balanced against one another in the incentive design. Incentives should be delivered only if there is certainty that revenue/profits will be realized—in the current financial reporting period as well as ultimately. In the event that compensation was delivered for performance that never materializes, there should be a mechanism to recover it. The recovery mechanism is via a clawback rule.

Furthermore, people are smarter than any pay-for-performance formulas, and pay decisions need to take into account some of the non-financial behavioral or strategic considerations. Along the same line, the conditions requiring clawbacks have expanded in some situations from the original narrow definition of financial restatement and ethical lapses and mismanagement of employees (who take material risk for the business) to future losses and write offs.

Market Data & Trends

It is important to be clear to shareholders that the market benchmarking is done appropriately. For example, the company must demonstrate that it has chosen the correct peer group (e.g., chosen on the basis of industry, size, business mix, or operating model). They should also demonstrate that the peer group selected is consistent with the investment community's view. The company must also illustrate that any proposed incentive payout takes into account performance in relations to the peer group. In other words, it is no longer a simple static comparison of pay position against the peer group. Investors are expected to challenge the bases of the compensation decisions. A well thought-out benchmarking approach would provide a sound basis for the compensation decisions.

Need For Retention

It is another truism that individuals can add great value to a business, and not adequately rewarding them constitutes an institutional risk. Talent retention need is, however, too often used as a general excuse for high compensation. As a Chairman once mused, "In good times, management asks for performance-based payments. In bad times, management says we must keep compensation competitive to prevent talent taking flight."

Retention incentives need to be thought through, just like any

incentive plan. Who is at risk and what is the risk? How do the retentive mechanics work? How is the incentive delivered, over what time frame? Are there mitigating features?

The Role Of A Skeptic

While the corporate governance principle of disclosure and transparency has intended to ensure good practices, the principle on its own clearly has not been effective in preventing malpractices in executive compensation. This is seen time and again in the corporate scandals in the U.S. in the early 2000s and the Global Financial Crisis of 2008. When self governance by the board and management failed, shareholder oversight is seen as a savior. If that does not work, regulatory control is the last resort.

Executive compensation is filled with many interested parties and multi-faceted considerations. Directors have traditionally been nominated by the management and approved by the shareholders. Internal advisors such as CHROs or CFOs report to their CEOs, whose compensation proposals they have to prepare in a delicate fashion. External advisors, although increasingly being hired by the compensation committees, need to tread carefully between the board and the management. Market competition for executive talent, pay for performance, and unique circumstances of the company and executives all warrant due considerations in the compensation design.

The "say-on-pay" trends, and the potential of a "no" vote have surfaced the need to carefully consider these issues in an objective and rational manner. It has been the vehicle where executive compensation proposals have been challenged and has instigated a healthy debate in the board room.

While we are not advocating "say on pay" for Asia because it is an overly blunt tool that was created in an emotional environment, we do however advise companies to begin to review all their programs with an eye on the view of the shareholder. Due to Asia's generally concentrated shareholdings, there is already a powerful shareholder voice. However, as shareholdings become increasingly broadly held, these issues will become more prominent in Asia.

The proposed revised Singapore Code of Corporate Governance includes the following section in Principle 9 Disclosure on Remuneration:

9.6 For greater transparency, companies should disclose more information on the link between remuneration paid to the directors, the CEO and key management personnel, and performance. The annual remuneration report should set out a description of performance conditions to which entitlement to short-term and long-term incentive schemes are subject, an explanation on why such performance conditions were chosen, and a summary of the methods to assess whether such performance conditions are met.

With or without say on pay, compensation committees and boards must demonstrate to investors that they are actively pursuing ways to link executive pay to performance. Investors will be looking for stronger links of short-term and long-term incentive plans and performance that has an impact on share price, and the reduction of unnecessary risk taking.

Call For Action By The Compensation Committee

Compensation committees need to understand that the playing field has fundamentally changed after the Global Financial Crisis, and this is not just a Western phenomenon. Companies should be prepared to discuss all significant compensation decisions and justify anything that could potentially be challenged as poor pay practice. They are expected to discuss actions taken to address any performance shortfall and steps taken to mitigate risks associated with existing compensation programs.

Compensation committees should consider taking the following preparatory steps towards disclosure:

- Understand your shareholder base and if you think shareholders may be critical of certain areas of your program, consider explaining the rationale for these program features and why they continue to make business sense for your company.
- Ensure that compensation committee members and committee advisors are not only independent in thinking but follow a due process to safeguard their independence.
- Assemble a team (internal and external) early, and coordinate efforts among Finance, HR, compensation consultant, management reviewers, and compensation committee reviewers that can challenge many of the assumptions that underlie the current program.
- Ensure that pay levels meet business and talent objectives while considering internal pay relationships (e.g., between the CEO and next-level), and external benchmarks such as those of a peer group.

- Demonstrate how the compensation plans align with financial performance and stock price, and support other business objectives that create shareholder value. This can be done by assessing incentive-pay measures and goals as well as incentive-pay mix (i.e., short-term and long-term incentives, and cash versus equity). Determine whether a quantitative analysis of historical pay-versus-performance makes sense.

- Use shareholder-friendly mechanisms such as stock ownership guidelines, stock holding requirements, and clawback provisions, where applicable.

Most importantly, you must be able to answer affirmatively to the following questions:

- Are your compensation plans performance-based and aligned with shareholders/long-term value creation?

- Are your compensation plans related to the business strategy and tailored based on size, industry, performance and competitive position?

- Does the plan articulate a coherent compensation philosophy appropriate to the company and clearly understood by directors?

Via disclosure, critical information is communicated to the shareholders. Your message should be clear, concise and understood by the shareholders. None of these can be achieved without a rational and well-thought-out compensation design. A good design is a prerequisite to quality disclosure. Both complement each other, but neither can substitute for the other. ■

The article was first published in SID Directors' Bulletin Issue 02/2012.

Top Executive Pay – Is Alignment Reducing?

By Jon Robinson, Managing Director, Freshwater Advisers Pte Ltd

Every year, Freshwater Advisers review the disclosed remuneration of the top ranking executive director in Singapore's larger listed companies. These directors typically have the title CEO, Executive Chairman, Managing Director or a combination of these.

Our analysis of information disclosed for years ending in 2012 covers base salaries, short-term incentives (typically these are annual bonuses) and long-term incentives (equity based pay) in 295 companies with a market capitalisation of over S$100 million. The table below gives the headline numbers:

Percentile	Base Salary	Directors' Fees	Short-Term Incentives	Long-Term Incentives	Other	Total
P10	175,000	0	0	0	0	175,000
P25	287,600	0	38,500	0	0	326,100
P50	423,883	0	297,500	0	15,500	736,883
P75	719,600	0	871,250	0	52,500	1,643,350
P90	1,055,250	42,500	2,479,644	517,500	115,000	4,209,894

Looking deeper into the data, we have found that short-term incentive (STI) payments to the top executive director have tended to be higher in 2012 than 2011. However, comparable financial measures are, broadly, slightly down. Many companies use profits before tax (PBT) as a performance measure for setting bonuses and we have looked at statistics that compare incentive payments to PBT. We have also looked at whether companies have increased or decreased STI when PBT is rising or falling.

STI % of PBT	2011	2012
Median	0.41%	0.61%
Average	0.41%	0.43%

	STI Up	STI Down
PBT Up	29%	14%
PBT Down	26%	31%

The key numbers are that 26% of companies have increased bonuses even though profits are falling and, on the other side of the coin, 14% reduced bonuses when profits were rising.

Although PBT is only one factor that could be considered in setting bonuses, seeing bonuses trending up whilst profits are trending down, does indicate an overall lack of alignment.

But what about long-term incentives?

For a variety of reasons, granting long-term incentive awards has not proved popular with smaller companies with less than 1 in 10 using them last year. Indeed, we find that despite [most] companies having an approved plan in place, over half of these never use their plan. Whilst we do not have data on these reasons, anecdotally these would include a lack of strategic rationale for the plan, not wishing to increase dilution and, most likely, that the senior management are already substantial owners.

For larger companies, the proportion granting some long term incentive was nearly 40% last year; a somewhat consistent percentage. However, the value of grants reduced significantly. This could be indication that this component is losing its impact. ■

Impending Changes To Companies Act

By Annabelle Yip and Joy Tan, Joint Heads, Corporate Governance & Compliance Practice
WongPartnership LLP

The role of the Chief Executive Officer (CEO) in corporate governance has, without a doubt, been the focus of much attention since the spate of corporate governance related insolvencies in the United States in the early 2000s such as Enron and WorldCom. Overly powerful CEOs and compliant boards were said to be at the heart of the problem, and since then corporate governance standards have sought to ensure a measure of checks and balances within the boardroom via methods such as a separation of the role of the chairman and the CEO and having a substantial proportion of the board made up of independent directors.

While these earlier measures focused on CEOs that sit on the board, more recent moves have started to consider the role played by CEOs that are not also directors. In Singapore, the recent reforms proposed to the Companies Act include provisions dealing with CEO as a role separate from directors and have sought in some respects to put them on the same footing as directors in terms of their obligations. This article will look at the provisions dealing with CEO in the draft Companies (Amendment) Bill issued jointly by the Ministry of Finance and the Accounting and Corporate Regulatory Authority (ACRA) on 2 May 2013 for public feedback.

The Bill proposes to define a "CEO" as "any person, by whatever name described, who is in direct employment of, or acting for or by arrangement with, the company; and is principally responsible for the management and conduct of the business of the company". The proposed definition assumes that a company only has one CEO. Indeed, one of the consultation questions posed related to whether there would be any practical difficulties in allowing a company to appoint only one CEO. The particulars of the CEO will be made available in a register of CEOs to be kept by ACRA.

While the Steering Committee for the Review of the Companies Act (Steering Committee) had recommended that section 157(1) of the Companies Act be amended to extend the directors' duty to act honestly and use reasonable diligence to the CEO of a company, this recommendation was not accepted for implementation. However, this does not mean that such duties do not apply to a CEO that is not a director. In the recent case of Quality Assurance Management Asia Pte Ltd v Zhang Qing & Ors [2013] SGHC 96, the Singapore High Court had to consider whether the defendant, who as a branch cum general manager was the second most senior operations personnel in the company, owed the company a fiduciary duty. The Court stated that as a senior employee, he owed a duty of good faith and fidelity, and a duty to act bona fide in the company's interests. This allowed the company to succeed in a claim for secret profits against the defendant.

The draft Companies (Amendment) Bill did, however, incorporate the Steering Committee's recommendation to extend the disclosure requirements under sections 156 and 165 of the Companies Act to CEOs. Under the proposed section 156, a CEO of a company who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the company, must declare the nature of his interest at a directors' meeting. The proposed section 165 provides that the CEO will be required to disclose his interests in shares, debentures, and participatory interests in the company or its related corporations, as well as options and other contracts giving him a right to call for or to make delivery of shares in the company in that company or its related corporations.

The finalised Companies (Amendment) Bill is expected to be tabled before Parliament before the end of 2013. ■

The Shareholders

Engagement With Shareholders By Independent Directors

By Mike Gray, Independent Director

Introduction

Independent directors of listed entities in Singapore sometimes tend to stereotype a shareholder as someone, often elderly, who turns up to the AGM with the main purpose of partaking in the free lunch after the meeting. The independent director will normally mill around with the shareholders after the meeting and share pleasantries over a cup of tea or coffee. At the worst a shareholder may actually ask a question at the AGM. The independent director need not fear as management will have usually guessed the main questions and will have provided a crib sheet with the agreed answers, which management or the chairman will answer.

The situation has to some extent been cosy over the years, with directors not viewing shareholder engagement as part of their job and shareholders not expressing much interest in speaking to directors. However, shareholder activism is on the rise in Singapore. Recent activity includes the removal of a chairman at WBL Group, rejection of the re-appointment of board members at an AGM of Grand Banks Yachts Ltd, the calling of an EGM by hedge funds to put three of their nominees on the board of Macquarie International Infrastructure Fund and the collapse of the share price of Olam International Ltd on a negative report by a shareholder - Muddy Waters. There are a number of other instances. In many of these cases the moves by shareholders came as a surprise as management and the board were not fully aware of the shareholder grouses or how to deal with them. This could be an indication a lack of adequate shareholder engagement.

The writing of this article and a shift in my own position on shareholder engagement from that of limited involvement, results from me being personally caught in some situations similar to those set out in the paragraph above. This article will look at shareholder engagement from the perspective of independent directors rather than that of management or executive directors.

What Is Shareholder Engagement?

Shareholder engagement is the forum or means by which shareholders can give their views to the Board and the Board can communicate directly to the shareholders.

Some guidance as to shareholder engagement can be found in the Singapore Code of Corporate Governance (the "Code") which states that the Board needs to "identify the key stakeholder groups and recognise that their perceptions affect the company's reputation". In addition the Chairman should "ensure effective communication with shareholders".

The Code, in the section on "Communication with Shareholders" sets the principle that "Companies should actively engage their shareholders and put in place an investor relations policy to promote regular, effective and fair communication with shareholders".

This is further expanded in the Code under the Guidelines, which state that:

- "Companies should devise an effective investor relations policy to regularly convey pertinent information to shareholders. In disclosing information companies should be as descriptive, detailed and forthcoming as possible, and avoid boilerplate disclosures.
- The Board should establish and maintain regular dialogue with shareholders, to gather views or inputs, and address shareholders' concerns.
- The Board should state in the company's Annual Report the steps it has taken to solicit and understand the views of the shareholders e.g. through analyst briefings, investor road shows or Investors' Day briefings".

In summary the board has a fiduciary duty to take into account the shareholder interests and concerns. To this end, directors have to understand the shareholders' views on the company, its governance and its operations.

Why Do It?

Whether one likes it or not shareholder engagement has become important as shareholders, particularly if they gang up together, may end up voting down resolutions, calling EGMs, removing directors and putting their nominees on the board etc. In this age of high technology it is much easier for shareholders to disseminate their views publicly and join together with other shareholders into a lobby group. Also dissident shareholders can go viral with their grouses resulting in pressure on both the share price and on management.

What is important to note that such aggressive action may be taken by shareholders due to frustration rather than for any apparent concrete reasons. Shareholders are continuously looking towards better governance, improved transparency

and risk management by the board. In addition shareholders may have views on how the company should be run and want their views heard. The danger from aggressive shareholders becomes more of an issue if the entity is exhibiting poor financial performance and shareholders are unable to get comfort that the board is tackling the issues properly. The formal written disclosures, required by the Companies Act and the Listing Manual, may not be enough to satisfy these shareholders.

Finally the Code of Corporate Governance does require that the boards of listed entities have an adequate shareholder engagement programme as mentioned above.

Why Should It Concern Independent Directors?

In the past it has normally been management that has been the source of communications between the listed entity and the shareholders. However, shareholders are now often expecting direct access to boards, due to an increase in expectations of the board with the enhancement of the corporate governance process. It may be also because shareholders are not sure whether their views are being passed to the Board, or whether management are accurately disseminating board policies.

Traditionally the Chairman of the Board has been the main contact but more frequently the independent directors are being drawn into discussion with shareholders. Typically this may happen if the chairman is executive and not independent or if the number of shareholders to be contacted is so large that the task needs to be shared. In some cases it may be that the chairman is the problem as far as the shareholders are concerned and they do not want to meet with the chairman.

Benefits Of Shareholder Engagement

Boards typically are worried about shareholder engagement as they fear that the shareholders may be stirring up trouble. This may not always be the case. Institutional shareholders could have extensive exposure to business strategies in a sector and may be able to provide useful advice to the board. In addition an external view on the company's performance may help fine tune strategies and provide an early warning signal of any issues. Finally, through better engagement, board members will be able to better understand the views of shareholders with respect to the company.

A further benefit of shareholder engagement is that it can increase shareholder goodwill and trust. Shareholders, who have an interactive relationship with the board, will be more likely to support the board when it comes to the vote and are less likely to call EGMs, which are often initiated to establish dialogue with boards that ignore them. Furthermore dialogue with shareholders may bring up issues that they may have early and before they become a rallying point, particularly if such issues arise out of misunderstandings between them and the board.

Issues With Shareholder Engagement

One of the most difficult issues concerning shareholder engagement by independent directors is making sure that one avoids selective disclosure of sensitive information. The SGX listing rules, Paragraph 7 of Appendix 7.1, provides that information must not be divulged to any person outside the listed entity & its advisers, in such a way as to place such person in a privileged dealing position and Paragraph 23 of Appendix 7.1 provides further that under no circumstances should disclosure of material information be made on an individual or selective basis to analysts, stockholders or other persons unless such information has been previously fully disclosed and disseminated to the public.

Before letting independent directors loose on the shareholders, it is important that the company's disclosure policy should be communicated to them together with guidelines on what constitutes material information. In particular discussions with shareholders should avoid internal financial projections, strategic plans, significant undisclosed developments, specific business opportunities, and potential dividend policies or share buy backs. In fact anything that could be expected to affect the market price of the shares.

The role of management versus the board in shareholder engagement needs to be clearly defined and communicated to shareholders. In general management normally will have driven shareholder communication, through the CEO, with the board overseeing the process. If the board is to be involved, shareholders need to be informed of this fact as they may be confused as to whom to contact. As regards the position of management, they may feel a threat that board members are discussing major issues behind their backs and side lining them. To this end communication with management must be maintained at all stages. Most importantly, the same and not conflicting messages need to be passed to shareholders by both management and the board. Far too often, in practice, either

management or a board member tends to speak out of place in a one to one meeting with shareholders.

Analyse Your Shareholder Base

The extent of shareholder engagement will depend very much on the shareholder base of the entity. Shareholder groups may include:

- **Institutional investors** – tend to rank amongst the larger investors. They may include insurance companies, pension funds, mutual funds etc. They are accountable to the beneficiaries whose funds they manage and can exert influence in the management of companies because of their large voting rights. Sometimes they will be forced to vote one way or another because of a mandate.
- **Activist shareholders** – are often hedge funds. These are the most dangerous of the shareholder groups for boards and need to be watched carefully. The objective of a hedge fund is normally to make a quick profit and they may have a very short term view of the investment. They often look for entities with a week performance and can often put pressure on management to act in accordance with their wishes by threatening proxy contests if they do not get their own way.
- **Retail investors** - tend to be small by levels of investment but may be vociferous at AGMS.
- **Family shareholders** – Some listed entities are still controlled by family shareholders. Boards in this type of entity are always subject to the thread of removal should they fall foul of the family.
- **Hidden shareholders** – some shareholders hide behind various overseas corporate entities and it may be impossible to contact beneficial shareholder. These are the most difficult to deal with as you do not know who they are or why they may be voting a particular way on a resolution.

Shareholders do not consist of a homogeneous group. The investor time frames, size, resources, personal interests may differ. Some may be passive investors and others may be activists. To this end it is important to know who your major shareholders are and what their principal reasons are for in investing in the company.

Once you know your shareholders you can set the priority as to which shareholders you need to engage with and the extent of such engagement.

The Engagement Meeting With Shareholders

There are many different ways, in addition to statutory disclosures and discussions at general meetings, that the board may choose to engage with shareholders. These include passive feedback, shareholder surveys, websites, blogs, conference call dial in etc. For the purpose of this paper I will only consider the one to one meeting between the independent director and shareholder as most of the other methods will be carried out by management or consultants.

Prior to any meeting with a shareholder, the director should develop an agenda and collect the relevant information. Preferably find out in advance what topics the shareholder wants to cover. There is nothing worse than not being able to answer a question and fumble your way through the meeting. However, also be mindful that you must not disclose significant information that is not available to other shareholders.

Preferably directors should aim to meet the shareholder jointly with at least one member of senior management. If a shareholder insists on a one on one session with the director for any particular issue, the member of management can be excused for that item. In any event if management is not attending the meeting the director should aim to be accompanied by another director or legal counsel, as witness to the discussion so as to avoid any potential misunderstandings.

If possible find an environment that is conducive so that the discussion can be as friendly and relaxed as possible. For major shareholders, discussion over a meal can be good way to break the ice. Personal contact rather than written is important. At the very minimum the director should call the shareholder by phone or such other electronic means that may be available such as “Skype”. Once a good relationship has been established it is so much easier to deal with the issues.

During the meeting, try to listen to the shareholder rather than becoming defensive. If there are grievances, tell the shareholder that you will look into them. If the shareholder has ideas tell him that you will consider. Do not give decisions on matters

raised unless they have been cleared prior to the meeting by the board/ management. It is also preferable not volunteer too much information unless questioned, as you may be trapped into mentioning issues that you may prefer not to disclose.

It is possible to turn around an aggressive shareholder group. Listen to their issues. Often they can be overcome one way or another. For instance is the shareholder has names for suggested board members, do not turn them down out right, but put them into the system with any board nominees. Preferably employ an external consultant to carry out the search so as the whole process can be seen to be independent of the board and the shareholders.

After the meeting make sure that you debrief both management and the board of the items discussed with the shareholder. With respect to the shareholder, it is important that contact is maintained on a continuing basis even though the issues may have been defused.

Conclusion

As regards shareholder engagement by directors there is no one size that fits all solution. Every company is different, shareholder bases are different and the issues are different. Some entities may require minimal involvement by independent directors others significant involvement. Directors need to identify clearly situations where shareholder engagement is necessary if they wish to avoid nasty corporate surprises that may hit them unaware. ■

This article was first published in SID Directors' Bulletin Issue 01/2013.

Shareholder Activism – Shareholder Rights And Its Effectiveness

By Kala Anandarajah, Partner, M/s Rajah & Tann LLP[1]

Introduction

Shareholder rights and responsibilities have always occupied a separate section in the Singapore Code of Corporate Governance when it was first issued in 2001. In the most recent revised Code of Corporate Governance 2012 ("Code 2012"), shareholder rights and responsibilities continue to have prominence. The Code 2012 reminds that "companies should treat all shareholders fairly and equitably, and should recognize, protect and facilitate the exercise of shareholder rights…". Amongst the two key rights highlighted are the need to actively engage shareholders and put in place investor relations policy to "promote regular, effective and fair communication with shareholders" and to encourage greater shareholder participation at general meetings and "to allow shareholders the opportunity to communicate their views on various matters affecting the company".

Clearly the emphasis is on giving the shareholders, regardless of how small or how big, a voice. The question always remains as to whether the mere voice is sufficient as this in itself cannot necessarily directly influence the decisions made by the company.

To this end then, is the shareholder now better equipped then he was say 20 years ago or even 10 years ago? Whilst on paper, this writer takes the view that there has been no real change, save for allowing proxy voting, at least in practice there appears to be more listening going on. This is perhaps the more important aspect that has been borne out by the ever increasing shareholder activism.

This article revisits old ground in looking at some of the basic rights of shareholders, reviews the state of shareholder activism, and concludes that perhaps the better approach is to promote shareholder engagement, which has over the years achieved small wns. As mahatma Gandhi allegedly said, "whatever you do will be insignificant, but it is very important that you do it." We all need to start somewhere.

Basic Shareholder Rights

The Companies Act, Cap 50, prescribes certain fundamental rights that a shareholder will have. These include the following:

- Adequate and secure methods for registration of shares to ensure protection of ownership.
- Ability to transfer the shares of the company freely, subject only to such pre-emption rights, or requisite approvals being obtained as the shareholder has agreed to. This is typically more a private company concern rather than a listed company issue.
- Ability to obtain relevant information on the company in a timely manner and on a regular basis.
- Ability to attend and participate in general meetings
- Ability to receive such information as is adequate to enable one to make an informed decision before actually exercising one's right to vote.
- Ability to requisition a resolution to be discussed and if possible to be carried at general meetings, subject only to compliance with the procedural requirements necessary to requisition such a resolution.
- Ability to vote at the meetings.
- Ability to appoint up to two proxies to attend and vote on its behalf.
- Ability to elect the board of directors, the external auditors, and to modify the articles of association as the need arises.
- Ability to demand for a poll on any question or matter other than the election of the Chairman of the meeting or the adjournment of the meeting.
- Ability to inspect the minute books of the company and to make copies thereof without charge, or alternatively, entitlement to be furnished, within 14 days after he has made a request in writing to the company, with a copy of any shareholder meeting minutes of the company at a charge not exceeding S$1 per page.
- Ability to inspect the register of members at no charge and various other registers.
- Ability to participate in dividend distribution and generally to share in the profits of the company.

Amongst the various rights spelt out above, perhaps the strongest right that a shareholder has is the ability to exercise voting rights. The right to vote is a fundamental proprietary right

and has been recognised in many cases, including from as long ago as in 1992 in Lim Hean Pin v Thean Seng Co Sdn Bhd & Ors. A shareholder who is deprived of his right to vote can commence proceedings to declare the resolution passed invalid. It is no defence that the right to vote, if not deprived, would not have made a difference to the outcome of a meeting. In the old English case of Pender v Lushington (1877), the court observed as follows:

But there is another ground on which the action may be maintained. This is an action by Mr Pender for himself. He is a member of the company, and whether he votes with the majority or the minority he is entitled to have his vote recorded an individual right in respect of which he has a right to sue. … He has a right to say, 'Whether I vote in the majority or minority, you shall record my vote, as that is a right of property belonging to my interest in this company, and if you refuse to record my vote I will institute legal proceedings against you to compel you.' What is the answer to such an action? It seems to me it can be maintained as a matter of substance, and that there is no technical difficulty in maintaining it.

The right to vote has been tweaked from time to time, with amendments made to the Companies Act in May 2003 allowing companies some flexibility in the way they structure their share capital. Shareholders could since then be provided with more than one vote per share. Specifically, private companies and private company subsidiaries of public companies could also have non-voting or multiple voting equity shares. However, for public companies, as a matter of good corporate governance and to ensure that all investors are treated equally, the one-share-one vote principle will continue to prevail. More recent tweaks do recognize electronic voting, for example.

It is clear that shareholders' ability to influence management or other decisions taken on behalf of the company varies according to their proportionate shareholdings in the company. To a large degree, such voting power translates into a potential influence over management. Yet, for the average small shareholder, the fact such a shareholder has power under the Companies Act to call for a meeting to have an extraordinary item discussed where the directors fail to requisition the meeting at the request of the shareholders is a reflection of shareholder power to some extent.

Separately, it is essential not to take away the shareholders' right to vote at meetings simply because it is physically difficult to have the shareholders vote. For example, shareholders who do not attend the physical meeting do not have a means of exercising their votes, short of a proxy vote. Allowing for electronic voting and voting in absenteeism can eliminate this. Such voting mechanisms also increase the sense of participation of shareholders in the general corporate strategy of the company. This is something that has gained traction in recent times especially with listed companies. The Code 2012 provides that apart from companies allowing "corporations which provide nominee or custodial services to appoint more than two proxies", there is also express mention that "companies should …allow for absentia voting at general meetings…".

Shareholder Activism Or Engagement

Having discussed the basic shareholder rights, this article quickly discusses the much bandied concept of shareholder activism. The phrase "shareholder activism" is not a term of art and may broadly be said to refer to shareholders taking a more active role in the affairs of a company. Some quarters like to limit this to small shareholders actively pursuing personal goals and pushing their rights without the interest of the company as a whole in mind. However, the preferred approach is to recognize that it is in fact shareholder engagement at the multiples, whether the small or the institutional or the majority shareholder, that become productive.

With shareholder engagement, it is utilising all of the rights discussed in the preceding section but also a variety of other continuing efforts throughout the year. The process is not always formalised, and if formalised has, until the last decade, had very little bite. Examples of formalised shareholder activism include the growth of proxy advisory companies and the formation of shareholder associations, which have in recent times started getting traction in Singapore. With the greater traction, there has also been more bite. Shareholders have been lauded as being the push behind pay policy shifts and "say on pay", for example. On the latter, which forms but a component of the US Dodd-Frank Act 2010, shareholders have managed to get a non-binding vote of executive pay. The verdict is still out as to whether this will indeed improve corporate governance; but the fact remains that the change was brought about through shareholders constructively engaging the corporations and authorities.

Why Increased Shareholder Activism?

The rise in Singapore in shareholder activism is the result of a growing awareness of legal rights, a more financially literate population, and a more demanding financial and political climate.

The bottom up approach of corporate governance is also a major impetus for this.

A possible reason for increased shareholder activism can be attributed to the slow down in the markets. Where revenues and share prices rise in a buoyant economy, the deficiencies of a weak management and inadequate corporate strategic planning are not immediately discernible. However, in times of economic downturn, such as the prolonged one that the global economy has been facing, concerns about the management and/or corporate policies of companies arise more readily. This is particularly pronounced where the shareholder attempts to use the traditional means for recording his dissatisfaction with a company, i.e. by selling his shares. This means that he faces a substantial loss as a consequence of a depressed market. It is therefore often more attractive for shareholders to seek to change the policies or the management of the companies in which they invest in the hope of reviving the value of their shares or forcing a strategy consistent with the purpose of their original investment. The fact of numerous corporate failures in recent times have also fuelled shareholder activism.

Another possible factor is the willingness of the press to report views from not just the company and the majority shareholders, but also the minority shareholders. The press is evidently an effective force in ensuring that the interests of all segments are publicised. All companies want to avoid negative publicity as that has a bearing on shareholder value at the end of the day.

Finally, yet another possible key enhancer of shareholder activism has been the increased call for better corporate governance and transparency in the region, including Singapore. The emergence of corporate governance codes requires more information to be disclosed. This means that shareholders are now appraised of director remuneration and other key facets of corporate decision making, which were closed to them previously. This allows for more intelligent questions to be asked and avoids the concerns of blind voting on corporate decisions which was prevalent previously.

Activism At AGMs

Activism at the annual general meeting ("AGM"') is typically thought of as being perhaps the most common form of engagement. If properly focused, even a single shareholder can arguable put adequate pressure on the board of directors to act properly in the interest of the company. In essence, the AGM is meant to be the forum where directors are held accountable to all shareholders for their stewardship. The AGM should be a debating, information exchanging and decision making body. Yet, there is a real concern about how shareholder activism can disrupt the AGMs of companies. Some shareholders sometimes acquire a few shares for a specific purpose and attempt to use the AGM as a forum for private causes. On occasion, pressure or lobby groups use the meetings to draw media interest to social or environmental issues that have only a tangential bearing on a company's business. The noted objectives of such groups are disruption rather than enlightenment and self-advertising rather than company promotion. There is essentially no real interest in the active monitoring of the company's financial performance and work operations.

This in turn has called into question the very basis for holding AGMs since many of these meetings appear to be positioned in terms of activity at opposite ends of the behavourial spectrum. Indeed in the United Kingdom in 1999, a consultation document circulated by the Company Law Review Steering Group queried whether AGMs should be dispensed with altogether as being anachronistic. Notwithstanding unpleasant or torpid AGMs, the investing public, the professional bodies and the financial community of the United Kingdom were genuinely outraged that such a move was even contemplated. Not surprisingly, the proposal was immediately dropped.

Given the ineffectiveness of a number of AGMs in providing members with the opportunity to debate and to receive answers on the limited number of matters that are mandated to be placed before them, it is not surprising that AGMs have not always been treated with the respect they should be accorded both by management and shareholders. Yet, with the changes over the last few years bringing about greater transparency, more disclosure and increased opportunities for various quarters of shareholders to participate, the AGM can be used as a positive means of exchanging views, receiving feedback and engaging in fruitful discussions on next steps. To this end, even the Singapore Exchanges has been taking positive steps to educate shareholders to better engage the companies at AGMs through collateral made available on their website in easy to understand manner.

As the barriers for participation by ALL shareholders are lowered, be it through electronic voting, proxy voting or any other means, but with reasonably low costs, shareholder engagement can and will become more effective. It goes without saying that entrenched and or majority ownership will remain a hurdle; but at least the communication would have started.

Where Shareholder Activities Should Stop

Whilst shareholder engagement is a positive thing given that shareholders are often the forgotten guardians of corporate governance, any activity by shareholders must nevertheless be tempered. Engagement and discussions on corporate policies and business strategies should be welcomed. Yet, there must be a "no-go" zone when it comes to management of the company and its affairs; and importantly when it comes to setting the corporate strategy. Shareholders must not be allowed to interfere with management and board matters. This is a fundamental separation of powers that even the Companies Act recognises.

The issues associated with the point made in the preceding paragraph are of course plentiful and complex, and are certainly not ones that can be resolved in an article of this length. The assumption if of course that there is no fraud or other misdeeds involved. Whilst there may be instances to vote against the sale of a company or for opposing a major transaction, those are rights that could be exercised as valid shareholder rights when the matter is put to the vote at a general meeting. Short of this, to the extent that the matters do no go to the capitalisation of the company and hence not to the shareholder values as such, this writer maintains the view that corporate strategies and business direction must remain within the purview of the management and the board. If shareholders are not happy with particular board decisions, they have the right to use their vote to replace directors.

The end game must be that shareholders should take advantage of the increasing number of avenues open to them to actively engage the company to positively steer it in the interest of the company as a whole. Despite the fact that shareholders need only act in their own personal interest, doing the right thing calls for a certain degree of social responsibility on the part of shareholders as well. They should use their rights for improving corporate governance within the company which can only translate over time to better shareholder value. ■

This article was first published in SID Directors' Bulletin Issue 01/2013.

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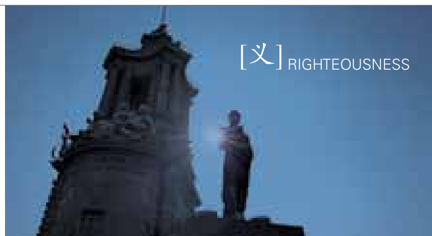

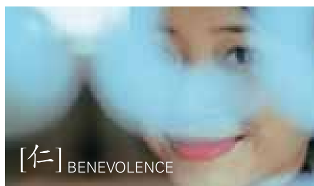

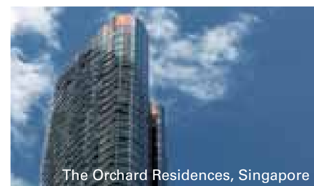

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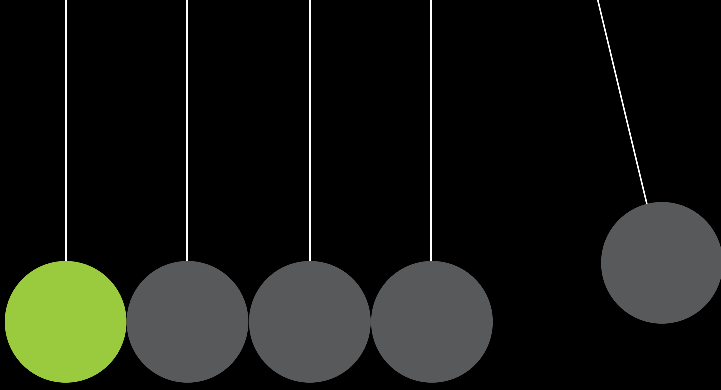

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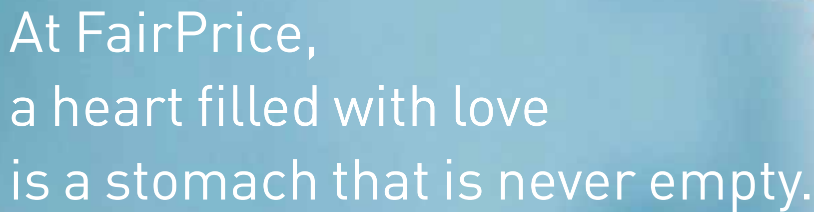

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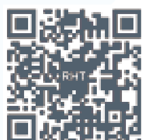

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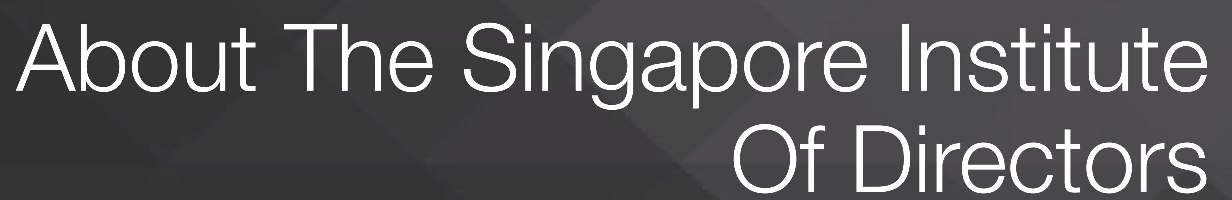

About The Singapore Institute Of Directors

Singapore Institute of Directors

Mission

To foster good governance and ethics in corporate leadership.

Vision

To be the national association advancing the highest level of ethical values, governance, and professional development of directors.

Formation

Since its formation in 1998, SID has continued to play a crucial role in the development of good corporate governance practices and as a hub for the professional training and education of directors.

Membership

With more than 1,800 members today, SID is well regarded as the national professional body for company directors serving the local corporate community. Its membership comprises prominent individuals from listed companies, corporate leaders, lawyers and accountants. Adding to the Institute's influence and strength is the growing number of corporations which have joined the Institute as corporate members.

Governing Council

The affairs of SID are managed by a Governing Council, comprising members elected from the general membership, and supported by a Secretariat. The 20-member Governing Council of reputable business leaders and professionals plays a pro-active role by working closely with regulators (ACRA, MAS, SGX), professional bodies, academia and others to foster forward-looking board practices, directors' competence and independence; and respect for all stakeholders' rights.

Research And Thought Leadership

The Institute has provided thought leadership on corporate governance and directorship issues in Singapore. It played a key role in drafting the Code of Corporate Governance in 2001 and made substantial contributions to the revised code in 2012.

To encourage best board practices, it was also responsible for launching the first Singapore Best Managed Board Award and later the Best CEO Award, which are now presented at the annual Singapore Corporate Awards organized by the Business Times.

Apart from The Bulletin which it publishes regularly to keep directors abreast of current issues, the Institute also researches and issues Statements of Good Practice to guide and inform directors of best practices in areas such as appointing new directors, the role of the audit committee, addressing conflicts of interest and related matters.

The Institute conducts regular surveys on board practices of Singapore-listed companies. The "Singapore Board of Directors" survey will be available in late 2013.

Professional Development

SID conducts a series of training programs for the development of its members and to increase the pool of individuals qualified to serve as directors in listed companies.

SID's foundational courses include the 5-module Effective Board Leadership Programme and the 5-module Listed Company Director Programme, and the 6-module SID-SMU Directorship Certification Programme.

In addition, SID holds seminars and forums on a range of subjects relevant to directors. It will soon be launching a "Chairmen's Conversation" series for board and committee chairmen.

SID's flagship seminar is the annual SID Directors Conference featuring renowned international and local speakers on trends and issues impacting directors and governance.

Other Programmes

SID regularly organizes members' networking events including an annual golf tournament.

SID's Board Appointment Service seeks to help companies search for suitable director candidates from SID's database of members.

A directory on SID website seeks to provide one-stop information for companies looking for professional advice on governance related matters.

For more information, please visit www.sid.org.sg or contact the Secretariat at (65) 6227 2838

SID's Course And Events Calendar 2013/2014

Courses/Events	Course Dates	Time	Venue
SID Directors Conference 2013	11 September 2013	0900 - 1730	Marina Bay Sands
LCD Module 2 – Audit Committee Essentials	17 September 2013	0830 - 1230	Marina Mandarin Singapore
LCD Module 3 – Risk Management Essentials	18 September 2013	0830 - 1230	Marina Mandarin Singapore
SID – Ernst & Young: Case Study	24 September 2013	0830 - 1100	M Hotel
SID – RHTLaw: Managing Shareholder Activism	27 September 2013	0830 - 1230	Marina Mandarin Singapore
SID – PwC: Evidence Act Session for Directors	30 September 2013	1100 - 1300	Marina Mandarin Singapore
SID – KPMG: Breakfast Talk On Accounting Standards	2 October 2013	0830 - 1100	To be advised
LCD Module 1 – Listed Company Directors Essentials In Yangon, Myanmar	4 October 2013	0900 – 1630	Traders Hotel, Yangon
EBL Module 1 – Effective Board	9 October 2013	0830 - 1230	Marina Mandarin Singapore
EBL Module 2 – The Board & Fund Raising	9 October 2013	1230 – 1730	Marina Mandarin Singapore
EBL Module 3 – Enterprise Risk Management	10 October 2013	0830 – 1230	Marina Mandarin Singapore
EBL Module 4 – Financial Literacy & Governance	10 October 2013	1230 - 1730	Marina Mandarin Singapore
EBL Module 5 – Investor & Media Relations	11 October 2013	0830 - 1230	Marina Mandarin Singapore
SID – KPMG: Breakfast Talk On Accounting Standards	16 October 2013	0830 – 1100	To be advised
LCD Module 1 – Listed Company Directors Essentials	17 October 2013	0830 – 1700	Marina Mandarin Singapore
SID – SMU Executive Skills for Board Member Module 2: Assessing Strategic Performance	21 – 23 October 2013	0900 - 1700	SMU Campus
LCD Module 4 – Nominating Committee Essentials	22 October 2013	0830 – 1230	Marina Mandarin Singapore
SID – KPMG: Breakfast Talk On Accounting Standards	23 October 2013	0830 - 1100	To be advised
LCD Module 5 – Remuneration Committee Essentials	24 October 2013	0830 – 1230	Marina Mandarin Singapore
SID – PwC: Highlights In Ant-Bribery And Corruption	29 October 2013	1100 – 1300	To be advised
SID – KPMG: Breakfast Talk On Accounting Standards	30 October 2013	0830 - 1100	To be advised
SID – SMU Executive Skills for Board Member Module 3: Finance for Directors	4 – 6 November 2013	0900 - 1700	SMU Campus
SID – IIAS: 20 Questions Every Audit Committee Should Ask	6 November 2013	0830 – 1230	To be advised
SID – Stamford Law: F&N Case Study	15 November 2013	1100 – 1300	To be advised
SID Annual General Meeting	20 November 2013	1100 – 1230	Capital Tower
2 Day Listed Company Director – Essential Programme (Mandarin) in Beijing, China	21 – 22 November 2013	0830 – 1730	To be advised
Board Chairmen's Conversation	22 November 2013	1215 – 1345	The Lighthouse Restaurant
SID-RHT: Business Fraud	28 November 2013	0830 – 1230	To be advised
SID Board Advance	2 December 2013	0900 – 1730	To be advised
Audit Committee Chairmen's Conversation	10 January 2014	0830 - 1100	To be advised
LCD Module 1 – Listed Company Directors Essentials	16 January 2014	0830 – 1700	To be advised
Members' Networking Event	24 January 2014	1700 - 1930	To be advised
Audit Committee Chairmen's Conversation	5 March 2014	0830 - 1100	To be advised
LCD Module 1 – Listed Company Directors Essentials	6 March 2014	0830 – 1700	To be advised
Lunch Presentation On Social Media	14 March 2014	0830 – 1230	To be advised
LCD Module 2 – Audit Committee Essentials	20 March 2014	0830 – 1230	To be advised
LCD Module 3 – Risk Management Essentials	26 March 2014	1230 - 1730	To be advised
LCD Module 4 – Nominating Committee Essentials	3 April 2014	0830 – 1230	To be advised
LCD Module 5 – Remuneration Committee Essentials	16 April 2014	1230 - 1730	To be advised
EBL Module 1 – Effective Board	17 April 2014	0830 – 1230	To be advised
Members' Networking Event	25 April 2014	1700 - 1930	To be advised
Board Chairmen's Conversation	30 April 2014	1215 – 1345	To be advised

Course schedule is subject to changes. Please refer to SID website at www.sid.org.sg for the latest updates.

SID Governing Council 2013/2014

Chairman	: Mr Willie Cheng	
First Vice-Chairman	: Mr Adrian Chan Pengee	
Second Vice-Chairman	: Mrs Yvonne Goh	
Treasurer	: Mr Soh Gim Teik	
Immediate Past-Chairman	: Mr John Lim Kok Min	
Council Members	: Ms Kala Anandarajah	Mrs Elaine Lim
	Mr Basil Chan	Dr Ahmad Mohd Magad
	Mr Robert Chew	Mr Chaly Mah
	Mr David Conner	Mr Andy Tan Chye Guan
	Mr Daniel Ee	Ms Tan Yen Yen
	Mr Kee Teck Koon	Ms Yeo Lian Sim
	Mr Kevin Kwok	Mr Yeoh Oon Jin
	Mr Lim Chin Hu	

SID Directors Conference 2013 Organising Committee

Chairman	: Ms Kala Anandarajah	
Deputy Chairman	: Mr Robert Chew	
Members	: Mr Willie Cheng	Mr John Lim Kok Min
	Mrs Elaine Lim	Mr Chaly Mah
The Secretariat	: Ms Penelope Phoon	Ms Jane Tan
	Mr Gabriel Teh	Mr Edmond Kwek
	Ms Chew Seok Hwee	Ms Chia Yi Hui
	Ms Florence Lum	

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Singapore Institute of Directors

168 Robinson Road
#09-06/07 Capital Tower
Singapore 068912

Telephone:
(+65) 6227 2838

Fax:
(+65) 6227 9186

Opening Hours:
8.30am - 5.30pm
(Monday - Friday)

Course Enquiries and Registration:
admin@sid.org.sg

Membership Enquiries and Registration:
admin@sid.org.sg

General Enquiries & Sponsorship opportunities:
secretariat@sid.org.sg

Website:
www.sid.org.sg