SID
SINGAPORE INSTITUTE OF DIRECTORS

The Directors' Bulletin

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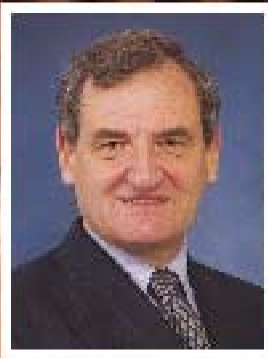
Independent Directors: Neither Tigers nor Pussy Cats



From the Editor

A number of articles have been recently published concerning the role and appointment of independent directors, particularly arising from the events at Robinsons and Isetan. In this issue of the SID Bulletin our focus is on independent directors and we have two contributions concerning independent directors. One of which covers the roles and duties and the other the recruitment. In the last issue of the SID Bulletin we published a letter setting out SID's view on the role of independent directors, this has been reinforced by a SID Statement of Good Practice, which is also included.

The two most widely discussed issues concerning independent directors are their role and their appointment. Whilst some shareholders may expect the independent directors to be on the board to protect the minority shareholders, the SID Statement clearly reflects the reality in that they are expected to promote the interests of the shareholders as a whole, rather than just one sector.

On the appointment of independent directors, the Code on Corporate Governance recommends that there should be a strong and independent element on the Board. However, the Code and the law only briefly touch on what is considered as independent. Many appointments of independent directors to Boards are made based on personal recommendations or "Buddy-buddies" is the term used by SIAS. It is difficult to legislate on a matter such as independence. It must be up to the conscience of an independent director to determine whether he or she has a relationship with management or substantial shareholders that it is too close. If so the individual should cease to act as an independent director.

There are no doubt potential directors willing to act as independent directors but, in the present environment, it is not so easy for them to break into the directors' inner circle. SID had made an attempt to set up a register of persons willing to act as directors, but this initiative has not met with much support. It is also rare that a board will use an executive search firm, even though as Anne Benbow states in her article that "engaging a search firm removes any suggestion of bias in the process, and will likely offer the Nomco and the board a wider choice of candidates".

May be it is now time for Nominating Committees of boards to spread their net wider when looking for independent directors.

In the next issue of the SID Bulletin our focus will be on "Corporate Social Responsibility", an area where there has been some progress in Singapore but where much more can be done.

Mike Gray

Mike Gray
Editor

SID Governing Council 2007

Presidents' Message

Dear Members,

The initial months of 2007 have been busy months for your Institute. Apart from successfully holding two training seminars and two workshops in partnership with the Singapore Exchange and KPMG and PwC for each of the two workshops, we have also organized and completed the selection of the successful companies for the Best Managed Boards Award and for the CEO of the Year Award, both of which were undertaken in conjunction with the Singapore Corporate Award organized by Business Times and SGX.

Our partner in the Best Managed Boards Award is Hewitt Associates and for the CEO of the Year Award Egon Zehnder International.

We are delighted with the strong responses from the corporate community and encouraged by strong evidence of high standards of many organisations.

Shortly, we will commence the start of our annual Board of Directors' Survey among listed companies in Singapore. This will be the sixth year we are conducting this survey and we will be embarking on a new format this year which will provide more detailed information on key areas of Board Practices. Again, this survey will be conducted in conjunction with our partners of many years standing, namely Egon Zehnder International, NUS Business School and PricewaterhouseCoopers and supported by Singapore Exchange. We hope all of you will continue to support this survey with your responses.

Your Institute is also a co-host with Singapore Exchange for the 2007 OECD Asian Roundtable on Corporate Governance which will be held in Singapore at the end of June 2007. The theme for the roundtable is "Ten Years since the Asian Financial Crisis – Where Are We Today in Corporate Governance?" This conference will be supported by the Monetary Authority of Singapore.

In the midst of all these activities, we continue to see strong interest on the subject of "Independent Directors". You will note in this issue of our bulletin that there are several articles on this subject as part of our effort to provide comprehensive views on the Role of the Independent Director. I have therefore decided to also reproduce in this bulletin an article on this subject that I wrote recently in the FOCUS magazine published by ACCA for the information of members. I hope members will find it useful.

Thank you and warm regards. ■

John KM Lim
President

Independent Directors: Neither Tigers nor Pussy Cats

The independent directors of Isetan, PacNet and Robinsons were recently put in the spotlight as a result of certain corporate disputes. The controversy generated much hand-wringing in the press over the role of independent directors. The debate ultimately led to some declaring that independent directors were put on the board to protect minority shareholders, while others pointed out that under the law the duty of directors was to act in the company's best interests and not simply the interests of a select group of shareholders. While much heat was generated by this debate, it was also less than illuminating.

By Annabelle YIP, Partner. For more information on this topic or on any other issues relating to corporate governance, please contact Annabelle (direct: +65 6416 8249) or Joy TAN (direct: +65 6416 8138).

Duty of Directors a Useful Guide?

As a preliminary to the discussion, it is worth noting that the concept of independent directors is one that appears primarily in the Code of Corporate Governance ("Code"). Under the Companies Act, there is no mention of independent directors except in section 201B, which relates to the constitution of audit committees of listed companies. This section provides that the majority of the audit committee shall not be:

- executive directors of the company or any of its related corpra-tions; nor
- immediate relatives of any such person; nor
- any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an audit committee.

The Listing Manual of the Singapore Exchange has a sole reference to independent directors: This is set out in the context of the requirement for the immediate announcement of changes to the constitution of the audit committee (rule 704(8)).

Independence is hence a corporate governance concept, not a legal one. It is unsurprising therefore that the law itself draws no such distinction. As noted above, under the law, a director's general duty is to act in the company's best interests. This duty is one that falls upon all the directors of a company, whether executive, non-executive, or independent non-executive. It underlies the specific common law and statutory duties of directors, such as the duty to avoid conflicts of interest, or the duty under the Companies Act to act honestly and use reasonable diligence. Indeed, not only must a director act in the company's best interests, it may well be a breach of his duty to promote the interests of one group of shareholders over another (the thorny issues surrounding nominee directors warrants a separate discussion of its own). To the extent that this duty is also reiterated in the Code—which states that all directors must objectively take decisions in the interests of the company (guideline 1.2)—the reference is merely a reminder of the basic duty at law.

To focus therefore on the duty of a director under the law is therefore not particularly helpful in understanding the role of an independent director. After all, if the simple application of the law were all that was needed, there would be no need for independent directors, as all directors—executive directors included—are required to act in a company's best interests. However, recent corporate scandals have shown that independent directors do indeed have a role to play in proper corporate governance. It may be useful therefore to take a step back to consider why independent directors were, in the first place, introduced as a cornerstone of the Code.

The Role of Independent Directors

In its report of 21 March 2001, the Corporate Governance Committee stated, "Boards must have some degree of independence from Management in order to effectively fulfil their responsibilities." It further noted that:

"...independent board members play an important role in areas where the interests of Management, the company and shareholders may diverge, such as executive remuneration, succession planning, changes of corporate control and the audit function. Further, they are able to bring an objective view to the evaluation of the performance of the Board and Management."

In the United Kingdom, the Review of the Role and Effectiveness of Non-executive Directors by Derek Higgs ("Higgs Report") made in January 2003 to the Chancellor of the Exchequer and the Secretary of State for Trade and Industry of Great Britain, noted that the functions of non-executive directors included:

- constructively challenging and contributing to the development of strategy;
- scrutinising the performance of management in meeting agre goals and objectives; and
- monitoring the reporting of performance.

The Higgs Report further stated, "Executive and non-executive directors have the same general legal duties to the company. However, as the non-executive directors do not

report to the chief executive and are not involved in the day-to-day running of the business, they can bring fresh perspective and contribute more objectively in supporting, as well as constructively challenging and monitoring, the management team."

In the United States, the Report of the New York Stock Exchange Corporate Accountability and Listing Standards Committee in June 2002 ("NYSE Report") recommended, amongst other things, empowering non-executive directors to serve as a more effective check on management.

While the Higgs Report and the NYSE Report referred to non-executive directors, the same recommendations would apply equally (if not with more force) to independent non-executive directors. It is clear therefore that independent directors are not simply there to act as checks against management wrongdoing, but to provide a measure of internal scrutiny to ensure that the management's decisions are sound and defensible from an objective legal, commercial and business point of view.

Go Beyond "Either-Ors"

Unfortunately for independent directors, management's decisions cannot be simply divided into those that are in the company's interests and those that are against it. Such a dichotomy fails to adequately capture the realities of business. At the very least, any decision can be considered against a backdrop of alternatives, some of which will be against the company's interest, some of which will be either neutral or only somewhat beneficial to the company (but possibly favoured by some of the shareholders), and some of which will be beneficial to the company (but possibly against the interests of some of the shareholders). How should an independent director react? In a scenario akin to that faced by the independent directors of Isetan, might they not argue that to favour the interests of the majority shareholder was also to benefit the company as the company would need the support of its holding company in the long run?

As that situation highlights, there are often no easy answers. However, what is clear is that independent directors must, like Caesar's wife, be above suspicion. This is recognised in the Code's definition of an independent director as excluding someone who had a relationship which might reasonably be perceived as interfering with his independent business judgment, i.e., actual interference is not necessary if the reasonable perception of interference is present. It is therefore necessary that any decisions made by independent directors should themselves be able to bear scrutiny.

In this respect, it is important that independent directors should ensure that they diligently follow a sound decision-making process when bringing to bear their particular expertise and their commercial and business acumen to their roles. In particular, they should ensure the following:

- They should arm themselves with a detailed understanding of their legal duties and responsibilities as directors, and of their role as independent directors.

- They should dedicate sufficient time toward reaching a decision. In particular, they should not allow themselves to be stampeded by management. Where management foists a thick information report on them just minutes before a meeting, it is essential that independent directors insist on being given sufficient time to digest the material. Ideally, they should work to ensure that management understands the need to provide information in good time for them to come to grips with it. On their part, when provided with information, independent directors should take the time to read and thoroughly understand it.

- It follows from the above that independent directors should ensure that they keep themselves fully informed of the company and its business. This does not mean that they should go down to the factory floor to investigate the company's performance. Indeed, they should avoid interfering in day-to-day management. However, as noted in the Higgs Report, they should be prepared to learn about the business, the environment in which it operates, and the issues it faces. This requires a knowledge of the markets in which the company operates as well as a full understanding of the company itself. They should also be prepared to question directors if they are not satisfied with the information that they are receiving.

- Once prepared with an understanding of the company and its business, independent directors should carefully deliberate issues with management and the other directors. They should drill down with management on any loose ends or unreasoned conclusions in the information provided before making a decision on the matter. Here, independent directors should be aware that their strength lies in influencing decisions rather than giving orders. It does not help the company for independent directors and management to be constantly in conflict. Where possible, practical solutions should be found. The objective behind questioning management is not to interrogate them or to deride their plans, but simply to ensure that a particular course of action is a considered one and in line with the broad strategic direction for the group that the board, working with management, has endorsed. For example, if the company wishes to start a new business in, for example, Europe, an independent director with experience of doing business in Europe may query management whether it is fully aware of and has weighed the differences in worker-management relations between Europe and Asia, and how management intends for the company to operate in the new foreign environment. The board may also ask whether and how expansion into the new business and/or into Europe fits in with the group's long-term business strategy.

- If, after having gone through this process, the independent directors are still not convinced of the course of action proposed, they should be prepared to exercise their independent business judgment and to say "no" to management. They should not act as a rubber stamp to management's wishes. On the other hand, neither should they oppose management simply because they may have different views on the details of a particular course of action. Ultimately, there will be risks in every business venture, and they simply need to be sure that the risks have been carefully considered and addressed, and also that the venture fits into the strategic direction of the company set by the board.

- Finally, independent directors should ensure that board minutes adequately reflect that these steps were taken. While it is not necessary for the minutes to record in minutiae the debate between the directors, at least the broad outlines of the debate and the considerations that went into the decision should be recorded. ■

FEATURE

Independent Director Recruitment: The New Challenge

Much has been written in recent months about the pressures on Boards of Directors, and the increasing level of accountability for their actions. Media, institutional investors, and government regulations have all created demands for compliance with corporate governance requirements, many of which are relatively new. These external bodies are demanding ever-increasing levels of transparency into the workings of the company, and failure to provide same can ultimately affect the company's ability to attract investors. As a result, many Boards and Board Chairmen are now grappling with the challenge of attracting a new breed of Independent Directors to help strengthen both performance of the company and that of the Board itself.

Traditionally, non-management directors were often known as Non-Executive Directors, or NEDs. In Singapore, many companies have long been nurtured through the attention of directors whose interests aligned with those of the founders or senior executives. Interlocking directorships have been common, creating an environment of high trust. However, NEDs could be persons who were former officers of the company or who had close business alliances with the company or the Chairman, and thus often did not have the degree of independence which is being demanded of Directors today. This shift toward requiring greater independence from non-executive directors has created challenges for many publicly-listed companies whose leaders have previously relied upon persons close to them to act as directors.

The Impact of Corporate Governance Requirements

It is well-known and substantially documented that corporate governance, delivered primarily through the oversight of the board, has become considerably more stringent in recent years. As a result, boards must now answer to shareholders directly and occasionally in courts of law, when shareholders do not approve of their actions. This has very significant implications for board member selection, and the sitting board should use every vacancy opportunistically. By focusing their member recruitment, the board can strengthen itself by regularly and consistently adding skills and capabilities to its membership.

One precipitating factor driving the move toward Independent Directors was the passage of the Sarbanes-Oxley (SOX) act in the United States. The level of scrutiny and transparency required by SOX has been emulated by companies listed on non- US exchanges as well, as these companies want to ensure that they are able to continue attracting foreign institutional investors – and these investors look closely at board composition and board practices. In addition, the Singapore Code of Corporate Governance requires that the committee chairs of the Nominating, Audit, and Compensation Committees must be independent directors, and that at least one-third of the board be composed of independent directors.

However, the push for greater independence on the part of external directors can and should be used to the company's advantage. By expanding the pool of potential directors to non-traditional sources, the board (and the company) will gain access to individuals who can be recruited to for their ability to support the Company's strategic direction. The first question that the Chairman and the Nominating Committee should therefore ask themselves when a new board member is to be appointed is: "How will this person lend value to and support the company's strategy?" By carefully considering the existing gaps in the board's knowledge and experience (against the stated strategy), the committee can shape the selection criteria each time a new board member is selected.

These new members may bring to the board:

Functional Expertise: Today's independent directors are as likely to be functional experts as they are CEOs. Senior executives from Finance, Human Resources, IT and Marketing are all in demand as directors. Fewer are CEOs: great pressure on CEOs to take fewer directorships, along with factors noted above plus the increasing daily demands made on CEOs make taking directorships less attractive. However, this means that there is a now cadre of "future CEOs" taking directorships, gaining valuable boardroom experience before they cross the threshold to the CEO suite.

Diversity: Many Boards are now striving to ensure that their composition adequately reflects their customer base. For companies that are expanding into overseas markets, it can often be valuable to have a board member who is resident or a native of those markets, who will bring a perspective that could greatly accelerate the company's success.

Customer View: For companies that deal with customers in particular industry segments, it can highly useful to have a board member who has held a senior management position within that industry. However, care should be taken if considering any current customer, in order to avoid the appearance of any conflict of interest. Recently retired executives from current customers, however, may be both acceptable and valuable, provided that their association with their former employer remains at arm's length.

Global Outlook: Companies that are expanding overseas, whether through joint ventures, acquisitions, greenfield sites, or enhanced distribution networks, may benefit greatly from the perspective brought to the board by an executive from an overseas firm with a global footprint. This individual can be particularly valuable if he/she has played an active role in the expansion of his/her firm into markets that are have been targeted by the company.

Emerging Industries/Emerging Market Segments: Companies whose businesses are dependent on industries or market segments that are experiencing rapid change may do well to consider attracting independent directors from these emerging industries or segments. Having the benefit of an expert view may help to shape decisions that could be of great significance in determining the future success of the company. However, it should be understood that such directors should not be major customers of the company, nor should they be expected or allowed to profit from any decisions made by the board.

Institutional Investor View: An institutional investment professional (but one who does not include the company's shares in his or her portfolio) can also lend value to board discussions and decisions. By sharing with the board the interests and concerns of such investors, a director from this sector may provide insights into how certain business decisions may be received by the investment community.

Thought Leadership: Some boards are reaching into the academic community, in order to tap the knowledge and thinking of those who have distinguished themselves through research and scholarly thought. Such individuals can pose a constructive challenge to board thinking by suggesting other points of view on current issues. In addition, other academics may be sought for their research into areas directly associated with the company's strategic intent.

Strengthening Committees of the Board

The Compensation Committee now is increasingly expected to provide guidance to the rest of the board regarding the compensation of the Chief Executive Officer. As the committee must be chaired by an independent director, it may be wise for the board to seek a member who is familiar with compensation practices and understands how to balance the need to pay competitively with the need to ensure that pay is adequately linked to performance. In addition, the Compensation Committee will likely also lead the rest of the board through an evaluation of CEO performance. Therefore, this Chair must be completely comfortable with the challenge of balancing an understanding of the many constituencies served by the CEO.

The Audit Committee is also required to have an independent director as its Chair. Increasingly, companies are seeking independent directors with CFO or Audit experience to chair this committee. Company financials are being scrutinized by shareholders, investors, analysts and government agencies right down to the footnotes. The chair of this committee therefore has a key fiduciary responsibility to ensure that other board members clearly understand the content of the financials and any risks inherent therein.

The Nominating Committee has assumed responsibility for ensuring that executive director positions, including that of the CEO, are filled with qualified candidates. Nominating and selection processes now more rigorous and formal, but should be transparent. In addition, this committee is increasingly being asked to propose and monitor a process for assessing overall board performance, as well as the performance of each individual member. Additional transparency requirements ask that the process of assessing board performance be disclosed in the annual report. As a result, the appointment of an independent director to the leadership of this committee is extremely important. It is highly recommended that the individual appointed as committee chair be an experienced board member.

The Role of Executive Search in Board Selection

Executive search firms, with access to boards, CEOs, and other senior executives, can often be of assistance in the identification and selection process of new board members. Engaging a search firm removes any suggestion of bias in the process, and will likely offer the NomCo and the board a wider choice of candidates for consideration. With the increasing external scrutiny on both process and performance, the benefits of engaging an unbiased third party to assist in identifying candidates may be greater than ever before.

Conclusion

By taking steps toward increasing independence and effectiveness of their boards, companies position themselves for stronger long-term growth and financial performance. Expanding the candidate pool well beyond traditional sources can greatly enhance a company's ability to enrich and expand the capabilities of its board. The benefits for selecting skillfully have never been higher, and will accrue to those companies who invest time and effort in ensuring that their board has the qualities required to meet the challenges ahead. ■

Singapore Institute of Directors
Statement of Good Practice
The Role, Duties and Responsibilities of the Independent Director

1 Introduction

1.1 The Code of Corporate Governance ("Code") AT Principle 2 recommends that there should be a strong and independent element on the Board, which is able to exercise objective judgement on corporate affairs independently, in particular, from Management.

1.2 The Code further provides that the independent directors should make up at least one-third of the Board. An "independent" director is one who has no relationship with the company, its related companies 1 or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director's independent business judgement with a view to the best interests of the company. Examples of such relationships, which would deem a director not to be independent, include:

(a) a director being employed by the company or any of its related companies for the current or any of the past three financial years;

(b) a director who has an immediate family member2 who is, or has been in any of the past three financial years, employed by the company or any of its related companies as a senior executive officer whose remuneration is determined by the remuneration committee;

(c) a director, or an immediate family member, accepting any compensation from the company or any of its subsidiaries other than compensation for board service for the current or immediate past financial year; or

(d) a director, or an immediate family member, being a substantial shareholder of or a partner in (with 5% or more stake), or an executive officer of, or a director of any for-profit business organisation to which the company or any of its subsidiaries made, or from which the company or any of its subsidiaries received, significant payments in the current or immediate past financial year. As a guide, payments3 aggregated over any financial year in excess of S$200,000 should generally be deemed significant.

1.3 The Code makes it clear that the relationships set out above are not intended to be exhaustive, and are examples of situations which would deem a director to be not independent. If the company wishes, in spite of the existence of one or more of these relationships, to consider the director as independent, it should disclose in full the nature of the director's relationship and bear responsibility for explaining why he should be considered independent.

2 Role Of Directors

2.1 The Companies Act and the Listing Manual, the two main legislation/regulation governing directors, do not draw a distinction between independent directors and other directors. In discussing the roles of directors, the Code at Paragraph 1.1 provides that the Board's role is to do the following, without drawing a difference between independent and executive directors:

(a) provide entrepreneurial leadership, set strategic aims, and ensure that the necessary financial and human resources are in place for the company to meet its objectives;

(b) establish a framework of prudent and effective controls which enables risk to be assessed and managed;

(c) review management performance; and

(d) set the company's values and standards, and ensure that obligations to shareholders and others are understood and met.

2.2 In setting out the Board's role as above, the Code further makes it clear at Paragraph 1.2 that 'All directors must objectively take decisions in the interests of the company'.

2.3 Paragraph 2.5 sets out additional but not the only duties of non-executive directors which would include independent directors as well. Essentially the clause provides that non-executive directors should (note that it is not the mandatory must that has been used) constructively challenge and help develop proposals on strategy, and review the performance of management in meeting agreed goals and objectives and monitor the reporting of performance.

3 Role Of Independent Directors

General Role

3.1 The role of the independent director, who is by definition also a non-executive director, is no less than as stated in the preceding section, and to suggest otherwise would be inaccurate. What, however, is clear is that non-executive directors are not engaged in and not expected to be engaged in the day-to-day management of the company. Instead, they are expected to be vigilant guardians of the activities of the board as a whole.

3.2 The primary task of independent directors is to adopt an oversight role and to ensure that the corporate assets are used only for the company. This task includes:

(a) become familiar with the fundamentals of the business in which the company is engaged and continue to be informed about the activities of the company,

(b) reviewing the accounts of the company,

(c) calling for additional information where the accounts show less than the full picture,

(d) acting as a check on proposed corporate strategy bearing in mind the economics of any potential transaction,

(e) regular attendance at board meetings to ensure ability to generally monitor of corporate affairs and policies and

(f) participating in the appointment, assessment and remuneration of directors generally.

3.3 To this end, the independent director must ask for information about the company's operations and finances. If he does not get it, he must take steps to pursue the matter. A drastic form of such a step would involve obtaining an order for specific performance from court. This is not an automatic remedy and granted only in very exceptional circumstances. Independent directors

who do face tremendous adversity in obtaining fair information about the company or in the discharge of their duties can also opt to give up their directorship, by giving the appropriate notice that is required by the particular company.

3.4 Where an error or negligence is discovered, whether on the part of the board or otherwise, the independent director cannot hide behind a cloak of ignorance. Independent directors cannot close his eyes to what is happening in the company and assume that the executive directors are performing their responsibilities to the company.

3.5 The independent director's primary role is not to protect the interest of the minority shareholders, but to act as a check and balance on the acts of the board and management of the company. His duty is to probe and query anything which has the appearance of being amiss in the company. Indirectly, of course, the role the independent director plays has the impression that it is promoting the best interests of minority shareholders; when in fact the reality is that it is promoting the interest of all shareholders as a whole.

Appointment As Lead Independent Director

3.6 The Code allows a company to appoint an independent non-executive director to be the lead independent director in the following circumstances:

(a) where the chairman and the CEO is the same person, or

(b) where the chairman and the CEO are related by close family ties, or

(c) where the CEO and chairman are both part of the executive management team.

3.7 The Lead Independent Director performs a more enhanced function than the independent director as follows:

(a) acts as the leader of the independent directors at board meetings in raising queries and pursuing matters, and

(b) leads meetings of independent directors, without the presence of the executive directors.

Appointment As Members Of Committees

3.8 The Code recommends the appointment of at least three committees to the board. These are the Audit Committee (which is mandatory for all listed companies under the Companies Act), the Remuneration Committee and the Nominating Committee.

3.9 As members of each of these Committees, an independent director must ensure that he acts objectively at all times in the interest of the company.

4 Duties & Responsibilities Of Independent Directors

4.1 Just as there is no difference at law in the roles to be performed by an independent director, there is also no legislative or regulatory rule providing that there is a different degree of duties owed by executive and non-executive or independent directors. In fact, the Companies Act draws no difference on this front. The Singapore High Court in the 2004 Vita Health decision made it clear that all directors owe the same degree of duties and responsibilities.

4.2 An independent director, like any other director, is responsible for the overall oversight of the company. He is not merely the guardian of the minority shareholders, nor is he only to focus on 'how they should act on questionable business practices and "related party" transactions involving a listed company, its management or major shareholder'. To focus only on these functions would render the independent director remiss in his duties and obligations.

4.3 Case law in other jurisdictions has developed in such a way to recognize that there could be a difference in the degree of duties owed by an executive and a non-executive or independent director. The degree or standard of due care and skill to be shown in the exercise of a director's duties depends in part on the role which he is expected to play in the company.

4.4 Generally speaking, where a director is actively involved in its day-to-day management, the standard of care and skill expected from him will be higher. But where he performs the role of a monitor, the standard is slightly lower. This is a balancing game for which no easy answer can be found.

4.5 Although the independent director has a less involved role to play than an executive director, he must nevertheless keep himself informed of what is happening within the company. This is so that he can assure himself that the company's best interests are protected. This is the minimum he must perform.

4.6 Where the independent director has turned a blind eye to the happenings in the company, he will bear the full brunt of liability. Where however, he has been diligent in calling for information, making relevant clarifications, and not acted with negligence, the independent director may not have to account as much depending on the facts of each case. But he nevertheless has a burden to discharge.

5 Conclusion

5.1 This Statement of Good Practice is intended as a broad guide for independent directors as regards their roles, duties and responsibilities.

This Statement of Good Practice is issued by the Singapore Institute of Directors (the "SID") purely as a guide for its members and with a view to raising standards of corporate governance. The SID takes no responsibility for the accuracy or completeness of this Statement and the reader should obtain independent professional advice regarding any specific set of facts or issues. No part of this Statement may be reproduced (with or without any alteration or modifications) without the prior written consent of the SID.

FEATURE

Merger Regime In Singapore:

Fact Sheet For Directors And Senior Executives

By Kala Anandarajah, Partner and Dominique Lombardi, Foreign Lawyer, Rajah & Tann

On 20 October 2006, the Competition Commission of Singapore ('CCS') issued various documents for consultation seeking public feedback on the proposed merger regime to be implemented under the Competition Act ('Act'). The proposed merger regime, which will require amendments to the Act, will come into effect on 1 July 2007. Feedback to the CCS on the consultation documents had to be submitted by 10 November 2006. In mid-December the CCS issued Response to the Feedback that it had received.

This short note aims to provide busy directors and senior executives with a 'snapshot' of the proposed merger regime and how it impacts businesses. Note, however, that the content of this note is subject to the final version of the Merger Regulation to be issued next year.

Key Facts That Every Director And Senior Executive Must Know

From 1 July 2007, Mergers will be subject to the Competition Act. The Merger Regime:

- applies to all Mergers, ie any operation that results in the acquisition of, or change in, the control of an undertaking or part of an undertaking as well as to the creation of full-function joint ventures;
- does not apply to Mergers effected, where control has passed, before 1 July 2007;
- applies to Mergers whether entered into outside Singapore or by companies which are not incorporated in Singapore so long as there is effect in Singapore;
- prohibits Mergers that result in a substantial lessening of competition ('SLC') in a market in Singapore;
- does not require any compulsory notification of a Merger to the CCS and, hence no clearance from the CCS is needed before entering into or implementing a Merger;
- allows voluntary notifications to the CCS and provides for a relatively short timeframe for merger review by the CCS; and
- gives ample powers to the CCS to impose interim measures, directions, financial penalties to parties to a Merger that would be found to infringe the new prohibition.

The paragraphs that follow elaborate briefly on the key facts highlighted.

The Merger Regime Applies Whenever There Is An Acquisition Or Change Of Control

- Control exists where there is an ability to exercise a decisive influence over another undertaking's activities, ie:
  - being able to impose strategic decisions on the business policy of another undertaking, or
  - being able to block such strategic decisions, alone or with another undertaking.

- Control may be established on a legal or on a de facto basis:
  - legal control: eg ownership of more than 50% of the voting rights or veto rights that go beyond the protection of the shareholders' financial interest as an investor, or
  - de facto control: eg the ability to control the decision making function of the Board or economic relationships creating a situation of economic dependence.

- Control may be acquired or changed in the case of:
  - a merger between previously independent undertakings (amalgamation, absorption),
  - the creation by two or more undertakings of a full-function joint venture, ie a joint venture that is intended to be active in a market and which has sufficient dedicated human and financial ressources to do so, or
  - the acquisition by an undertaking of assets of another undertaking so as to effectively replace the second (for illustration, the transfer of the client base of a business from one undertaking to another).

The Merger Regime Applies To Operations Inside Or Outside Singapore

- The Merger Regime applies to all operations that may have an effect in Singapore. Hence:
  - Mergers entered into outside Singapore or by companies which are not incorporated in Singapore may fall into the Merger Regime, and
  - what counts is whether the Merger involves undertakings that supply goods or provide services into Singapore.

Regulated Mergers That May Substantially Lessen Competition In Singapore

- Three basic Merger situations may result in a substantial lessening of competition:
  - horizontal mergers (ie mergers between competitors) as they can reduce competitive pressure on the merged firm and/or increase the ability of remaining firms to coordinate;
  - vertical mergers (ie mergers between undertakings operating at different levels of the supply chain of an industry) as they may lead to foreclosure of a substantial part of the market to competitors; and
  - conglomerate mergers (ie mergers, other than vertical mergers, between undertakings in different markets) as they may afford the merged entity the ability to exercise portfolio power.

- Indicative thresholds are provided: a SLC is likley to happen where:
  - the 'merged entity' will have a market share of at least 40%, or
  - the 'merged entity' will have a market share of between 20% and 40%, and the post-merger combined market share of the three largest firms (CR3) is 70% or more.

Procedure For Merger Review

- No compulsory notification of the Merger to the CCS.
- No prohibition to implement the proposed Merger.
- Pre-notification confidential discussions with the CCS are possible.
- Voluntary notification to the CCS of a completed or an anticipated (if public) Merger is possible.

- Two-phase Merger review:
  - Phase I: up to 30 working days; and
  - Phase II: up to 120 (additional) working days.

Powers Of The CCS In Relation To Notified Mergers

- Accept commitments by the parties to a Merger in order to remedy any competition concerns identified by the CCS.
- Make a favourable decision whether or not subject to legally binding commitments by the parties to the Merger.
- Impose interim measures, including suspending the Merger.
- Make an unfavourable decision and issue all appropriate directions to remedy the competition concerns identified, including unwind the merger or impose divestiture mandates.

Concluding Words

When faced with a possible Merger, directors and senior executives must always conduct a thorough review of the competition implications of that transaction, and, if necessary, obtain professional advice. ■

Thoughts on the Budget

By David Sandison,
Tax Partner, PwC Singapore

The run-up to Singapore's 2007 budget was an interesting one. First of all we were told that the speech would be delivered by Mr Tharman Shanmugaratnam, second Minister for Finance, rather than by the Minister himself; secondly, it was held on Thursday-unprecedented in most people's memory; and thirdly, we had already been given a preview of the key features. These were, that the goods and services tax would increase by 2% from its current 5%, most likely in one go, with compensatory handouts to the needy; the corporate rate would come down-but how much we did not know; and employer Central Provident fund contributions would be increased, although again no details were given about by how much. Conspiracy theorists may have written much into all this. Fortunately, they were to be sadly disappointed, as the Budget ran itself out with no bombshells or hidden surprises.

Reductions in corporate tax.

It was announced that the corporate tax rate would be increased, from the current 20% to a Hong Kong threatening 18%. It was generally perceived, however, that this was more to do with cosmetics, than actually creating any additional incentives, either for entrepreneurs within Singapore or for multinationals without, to be more creative or to relocate here, as the case may be. For the multinational, for whom Singapore tax determined where the overall group liability was incurred, rather than how large it was, the 2% differential was likely to have little effect. For the large multinationals, outside the financial services industry, and who had made a large commitment to Singapore, the change was likely to go unnoticed on the basis they were already enjoying rates below that under incentives legislation. For the financial services sector, which also enjoys a wide array of incentives, the change was likely to be of little importance. Most foreign banks that operate from Singapore do so through branches, whose profits are in any event, and in most cases, taxed directly back in the home location.

Of more importance to the entrepreneur, however were the changes at the lower end of the scale. The current practice of allowing an exemption for the first S$100,000 of taxable income for the first three years of a new company's operations was extended indefinitely. This would have otherwise run out by 2009. In addition to that, the standard partial exemption that is available to all companies every year, was extended from S$100,000 to S$300,000. This means that for the first $300,000 of chargeable income for every company the effective tax rate will be only 8.85%. Using the back of an envelope, we also calculated that a sole trader earning around $700,000 a year could save himself approximately $36,000 by incorporating. Clearly, plenty to think about for smaller businesses and start-ups. This change, according to the Budget speech, will mean that almost 80% of companies in Singapore will pay effective tax rates of less than 10%. Food for thought for Hong Kong undoubtedly.

Borrowing costs.

Although the headline tax rate has been brought down to 18%, there are certain features of the Singapore tax system that mean that the effective rate in certain circumstances can end up being higher. One of the main culprits in this area is the deductibility of interest and other borrowing costs. The general approach taken by the Revenue historically has always been that costs which are not actually interest but which are inherent in the lending arrangements are not deductible for tax purposes as they are capital in nature.

An additional twist to the debate was given as a result of recent tax cases, in particular, the Court of Appeal ruling in the case of the Comptroller of Income Tax, v IA. This case concluded that the capital or revenue nature of costs associated with loans (other than interest) depends upon the use to which the funds are put. If the money borrowed is used to acquire revenue assets clearly used for working capital purposes, then costs associated with the loan should be deductible. It now appears, based on the Budget announcement that borrowing costs, other than interest, which apply to loans that are used for capital purposes, will be deductible to the extent that they can be seen to be in substitution for interest. For example, commitment fees, payments for collars caps and floorse and the like, would all be seen as being costs that have a direct bearing on the amount of interest chargeable on the facility.

Whilst the tax case was disturbing in a number of respects, at least the outcome in relation to non-interest borrowing costs has been good. However, one significant concern remains. It is noted that amongst the list of non-interest borrowing costs, is the word 'discount '. If it is the view now, that discount is not actually interest, but another cost of borrowing, this raises the question as to whether discount on any financing instruments used prior to the changes would rank for deduction. This may be a significant area of concern for companies that have entered into financing arrangements using deep discount securities, for example. We await further developments in this area.

Central Provident fund contributions.

Prior to the Budget, the employer's CPF rate was 13% and the employee's 20%. In the context of a strong economy from the last year or so, and very bright prospects in the immediate future, at least, it was considered timely to increase the employer's rate to 14.5%, with some more moderate uplifts for certain lower paid employees. Although this may have been seen as an additional cost to business, one view is that the impact will be one-off on the basis that the market will naturally adjust for the uplift through overall wage packages going forward.

Goods and Services Tax (GST)

As noted above, the GST hike to 7%, came as no surprise when it was announced. The only question to answer was the effective date. This was confirmed as being 1 July 2007. Clearly, companies will need to pay more serious attention to the costs of getting their GST returns wrong. Not only that, the transitional provisions will, as always, cause a degree of disruption and undoubtedly additional scope for mistakes. As a simple example, I came out of my gym the other day wondering if I had been correctly charged at the 5% rate for my personal training programme, which would span the change in rate. Do you know the answer to this question? What businesses often forget, is that a GST error which is simple and relatively inexpensive when taken in isolation, can snowball into a major disaster, if it is not identified and fixed immediately. For example, a company with a $20 million turnover and a 3% error rate in its GST returns could end up with a tax bill of over half a million dollars, including penalties, if it remains undetected over the five-year statutory limitation period. Try explaining that to the shareholders. People seem to have been able to cope with these oversights at a 3% rate; it is less likely that they will want to try at a rate that has more than doubled.

Out of focus

The Budget could be said to have been one dimensional. The low paid worker received generous handouts that more than compensated him for the estimated impact of the GST rate hike to his household. There were some tweaks for the financial services industry. But apart from the corporate tax rate changes and the gentle upward push on CPF, there was nothing else of note.

In particular, the middle income group was given a cold shoulder, and the ever increasing pension issue in the face of rapidly changing demographics continued to be given the head-in-the-sand treatment. If we are not careful, though, it is this middle income group, with inadequate pension provision, that will become the hand-out set of tomorrow. It is also the group that forms the backbone of the thinking voting public so it cannot be ignored. Finally, foreign talent was left to be foreign, though foreign talent is the only way to a 6.5 million population.

These are critical areas. Let us hope they will be brought into focus next year. ■

FEATURE

Balancing the global equation – the evolving phenomenon of globalisation

By Gautam Banerjee, Executive Chairman, PwC Singapore

Our 10th Annual Global CEO Survey reveals that globalisation is a powerful and unstoppable force. But it is also a force in transition. Once driven primarily by the flow of financial capital, globalisation is evolving. While still a significant driver, the transfer of financial capital is now perceived as but one of the factors underpinning economic value creation in a global environment. Instead, knowledge, people, culture and the degree to which stakeholders collaborate – both to generate returns and to mitigate risks – are cited in this study as critical on the journey towards globalisation. And we stress the word 'journey'. There is clear evidence in this study that most CEOs still exhibit a 'headquarters' rather than a truly global mindset. For them, globalisation remains an aspiration rather than a reality.

What are the opportunities and challenges faced by executives as they move closer to attaining their global ambitions? First, CEOs recognise the substantial potential for growth presented by an ever-increasing base of global consumers. Globalisation offers opportunities for new market penetration, acquisition and innovation. This confidence is tempered, however, by the realities – and risks – of the challenge. These include working within diverse cultures, sharing and building knowledge, nurturing management talent, managing an increasingly dispersed value chain and responding to competition brought on by a new set of global players.

Looking hard at soft assets

CEOs acknowledge that they face real obstacles as they pursue their global strategies. But these are obstacles that have little to do with funding activities or with building adequate plant and equipment. Instead, the challenges of globalisation today are less tangible than they were in the past. Although academics and commentators have long stressed the importance of such issues in the global business environment, this survey reveals the degree to which intangibles have become central to the CEOs' agendas.

Attracting talent

The management of global talent is a key concern among the participants in our study. The global war for talent is fierce and growing fiercer, a trend verified by PwC's day-to-day experience working with global organisations. In our view, global companies are undergoing a transition in how people are valued.

Once thought of primarily in terms of cost, people in successful global companies are valued as rich sources of talent, skill and diversity, which are critical to the success of the enterprise. The CEOs in our study agree. The shortage of key skills is viewed as one of the main threats to prospects for growth. CEOs say they are also devoting a greater share of resources to protecting themselves against this threat. For example, they acknowledge that they are developing programmes to equip leaders to take active roles in creating a sustainable business environment; that they are identifying, retaining and promoting women; and that they are engaging in social issues as a means of employee recruitment and retention.

Bridging the culture gap

Although globalisation can be a force for reducing the differences between business cultures, it is clear that coping with a diversity of customs and habits remains challenging. While nearly half of the CEOs feel that increased globalisation has significantly diminished cultural differences, nearly as many cite cultural issues and conflicts as the main obstacle with regard to cross-border mergers and acquisitions (M&A).

In our own experience, CEOs speak of the increasing need of finding 'global citizens' – people who can view business with a truly global mindset and who are flexible enough to deal with uncertainty.

Leveraging knowledge

In our experience working with clients, we have found that there is broad recognition of the need to grow competitive intellectual capital within a rapidly changing environment and to innovate when applying that knowledge. The CEOs in our study see evidence that the global environment presents challenges to the growth of knowledge. For example, CEOs say they are particularly concerned with the lack of control over intellectual property (IP), a concern shared by many of our global clients.

How are such concerns being addressed? At PwC, we believe the conventional legalistic and procedural approaches to IP protection will be replaced by innovative solutions to IP management. Collaboration within a community of stakeholders is, for example a growing trend.

Winning through collaboration

While the survey identifies challenges, it also offers an insight into solutions – solutions that share a common theme. Successful organisations value collaboration highly as a business strategy.

While the CEOs indicate a high level of collaboration among themselves and their value chain partners, we believe that this is just the start of a trend towards using collaboration in a variety of areas of corporate value creation. We view collaboration, for example as a means of mitigating risk, of developing, exploiting and protecting knowledge, of building networks that harness shared expertise and experience within an organisation's talent pool, and of aligning core values and the needs of local society. In fact, this study of the global CEO community illustrates that large companies in particular are already embracing collaboration in a number of these areas.

In short, we believe that collaboration is becoming the catalyst that transforms capital, knowledge and people, into value.

Expanding the playing field: the new global players

While knowledge, people, culture and collaboration are emerging as powerful forces on the global business scene, they are not the only aspects of the global landscape that are changing. Significant change is also at work in the universe of emerging economies.

While the so-called BRIC economies (Brazil, Russia, India and China) will continue to enjoy explosive growth, additional emerging economies such as Indonesia, Mexico and Turkey are joining their ranks. We refer collectively to these countries as the E7 and project that by 2050, their economies will outstrip those of the current G7 (US, Japan, Germany, UK, France, Italy and Canada). Inflows of foreign direct investment (FDI) into developing economies increased nearly 10% between 2001 and 2005. This trend is expected to continue to rise in 2006 as a result of the recent boom in M&A activity.

Harnessing the power of change

Globalisation is not some esoteric concept that can be safely ignored. It is a force that signals change – not only in the participants and beneficiaries of globalisation, but also in the issues that global CEOs face every day. Whether related to M&A activity, to the structure and integration of the global value chain, or to issues of leadership style and focus, globalisation is impacting key elements of the day-to-day activities of today's corporate leaders.

Flexibility, adaptability and a truly global mindset are all critical attributes of the CEO in today's business environment. Whether through the adoption of new, potentially collaborative approaches to assessing and mitigating risk, or through the integration of new organisational capabilities for managing a geographically and culturally diverse organisation, the impact of globalisation on the demands on business leaders is profound.

In short, what this study tells us is that globalisation is on the march, and that today's business leaders are confident in, and actively seeking, the benefits it can provide. They are also aware that the path to globalisation offers a new set of challenges and opportunities, different from those encountered in the past.

So what companies will be the global winners? Only time and additional research will tell. For now, this much is evident: the roadmap to true globalisation is becoming clearer. We hope the results of our study and our analysis of those results will assist organisations as they strive to attain their global aspirations. ■

ACGA-SAICSA-SID Roundtable On Proxy Voting

A roundtable discussion on proxy voting systems and practices in Singapore was held on 15 January 2007 at the Grand Plaza Park Hotel, Singapore. The roundtable was organised by the Asian Corporate Governance Association (ACGA), the Singapore Association of the Institute of Chartered Secretaries and Administrators (SAICSA) and SID, and supported by the Corporate Governance and Financial Reporting Centre (CGFRC) of the NUS Business School, the Investment Management Association of Singapore (IMAS) and HIM Governance. It was attended by about 50 participants.

The roundtable discussed how the proxy voting systems in Singapore compared with those in other major jurisdictions and how current practices could be further improved to reflect Singapore's high corporate governance standards. The discussions were led by Professor Mak Yuen Teen of CGFRC and Mr Jamie Allen of ACGA.

SID thank ACGA and SAICSA for co-organising the roundtable with SID and all the speakers and participants for their kind contribution. ■

Workshop On Reporting it Straight – Keeping Out of Trouble

A workshop on "Reporting it Straight – Keeping Out of Trouble" was held on 3 April 2007 at Marina Mandarin Singapore. The workshop was co-organised by Singapore Exchange, KPMG and SID and was attended by more than 40 participants.

Participants at the workshop were reminded of the requirement for directors to ensure that statutory financial statements are properly prepared and show a true and fair view of the financial position of a company and that that directors run the risk of running foul of the law when inaccurate financial statements are issued.

The workshop was led by Mr Tham Sai Choy, Head of Audit at KPMG and Mr Ho Wah Lee, Executive Director, Risk Advisory Services, KPMG. SID was represented at the workshop by Mrs Yvonne Goh, Council Member.

SID thank SGX and KPMG for co-organising the workshop with SID. ■

Workshop On Audit Committee Effectiveness

A workshop on "Audit Committee Effectiveness", held on 12 April 2007 at The Fullerton Singapore, was co-organised by Singapore Exchange, PwC and SID. It was attended by about 30 participants.

The workshop provided participants, who were all directors of listed companies, with a better understanding of leading audit committee practices and about how audit committees are effectively discharging their expanded duties in response to demands for better governance from regulators, shareholders and other stakeholders.

The workshop was led by Mr Ng Siew Quan and Mr Keith Stephenson, partners of PricewaterhouseCoopers (PwC). SID was represented at the workshop by Mr Reggie Thein, Treasurer and Council Member.

SID thank SGX and PwC for co-organising the workshop with SID. ■

SGX Listed Companies Development Programme – Understanding The Regulatory Environment In Singapore

Following the successful completion of the 3 training seminars held towards the end of 2006, Singapore Exchange Ltd (SGX) and SID held 2 more sessions of the same programme in the first quarter of 2007. The first session was held on 24 January 2007 and the second on 22 March 2007. Response was again very good, with the first session attended by 68 participants and the second by 73 participants.

This training programme had been designed by SGX and SID and covered topics on directors' duties and responsibilities; governance, risk management and compliance; and SGX's regulations.

The presenters were Ms Kala Anandarajah, partner of Rajah & Tann, Mr Ng Siew Quan, partner of PricewaterhouseCoopers and Mrs Yvonne Goh, managing director of KCS Corporate Services Pte Ltd.

At the end of each session there was a panel discussion involving all 3 presenters and representatives from SID and SGX. For the session held on 24 January, SID was represented by Mr Giam Chin Toon while SGX was represented by Mr Tang Yeng Yuen. For the session held on 24 March, SID was represented by Mr Reggie Thein while Mr Tang Yeng Yuen represented SGX again.

SID thank all the presenters and panellists for their kind contribution and thank SGX for partnering SID to conduct the training programme. ■

SGX Programme In Mandarin – Understanding The Regulatory Environment In Singapore

The Singapore Exchange Ltd (SGX) held another of its Mandarin session on "Understanding the Regulatory Environment in Singapore" in the city of Shenzhen on 27 March 2007 in response to the strong demand from companies based in China.

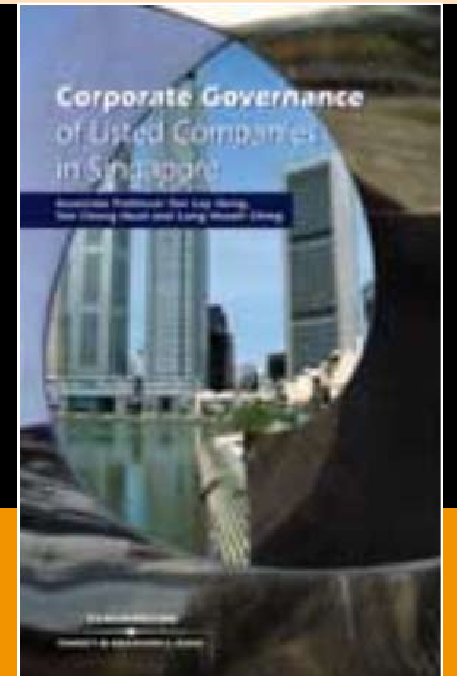
As with a similar training programme conducted in English, the Mandarin version was also designed by SGX and SID and covered topics on directors' duties and responsibilities; governance, risk management and compliance; and SGX's regulations.

The presenters were Mr Hee Theng Fong, partner of the law firm Hee Theng Fong & Co and a practising director, Mr Ng Siew Quan, partner of PricewaterhouseCoopers and Mr Teng Cheong Kwee, a practising director and former regulator. The keynote address was delivered by Mr Ang Swee Tian, Senior Advisor of SGX.

SID thank the presenters for their kind contribution and SGX for partnering SID to conduct the training programme. ■

Corporate Governance

of Listed Companies in Singapore



Sweet & Maxwell Asia
Associate Professor Tan Lay Hong, Tan Chong Huat, Long Hsueh Ching
ISBN / ISSN: 978-981-05486-6-7
Price: S$262.50

Corporate governance has cemented its place in the public mind in Singapore over the past few years, thanks in no small part to events at China Aviation Oil, Citiraya, Accord Customer Care Services, amongst others. Despite this, literature focused on the extent of application of corporate governance in Singapore is scarce. The authors have produced a book that provides a local perspective on the issue, and the publication of any work of a local nature should be given serious attention.

Despite the extensive coverage of legal, regulatory and philosophical corporate governance issues, the authors have succeeded in producing a book that is both accessible and sufficiently detailed. References to various cases/sagas serve to highlight the issues covered, and add to the lucidity of the book.

Topics included in the book range from "Directors Duties in an Initial Public Offering and in a Takeover Situation", "Continuing Listing Obligations" to "Corporate Governance Compliance in Singapore: Evidence from the STI50 Companies and the Government-Linked Companies", with specialist chapters on governance at Chinese companies listed in Singapore.

Where the book offers unique insights is in its survey of code compliance. Chapter 5 provides a very interesting and useful description and indication not only of the adherence, or lack of adherence, to the Code by `blue chip' companies and TLCs, but also a `gestimate' of what second and third liners may be doing. Moreover, and reflecting both the background of the writing team and growing interest in this area, the book also discusses the legal and regulatory framework of China with quite surprising results in spite of the general expectations.

The authors also provide some very interesting and enlightening views, opinions and recommendations on wide-ranging issues identified in their research findings in the final chapter, "Reforms, Recommendations and Conclusion". Whilst the authors also provide a checklist to guide the implementation of the Code, one would perhaps have hoped for some interpretation of the `Comply or Explain' concept as well as guidance/best practices as to how the code should be implemented. I was also hoping to see more comments about the role of the regulators, which was less detailed than one might have expected. These may be addressed in subsequent editions of the book.

Nonetheless, and although the book is a bit pricey at $262.50, it is extensively researched and well written. As this is perhaps the first book to undertake such a research on the extent of the implementation of the Code, any serious-minded director or board or any other stakeholder should consider an investment in the book. Given the above, I strongly recommend it to them and members of the SID who can acquire it at a 15% discount until 31st May 2007. ■

Tan Lye Huat,
CEO, HIM Governance

How to Order

To order "Corporate Governance of Listed Companies in Singapore" and receive a 15% discount, please contact Mr. C.L.Sum on 68794124 (office) or 98233938 (h/p), or at cheeleong.sum@thomson.com. Offer valid until 31st May 2007.

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Governance across the globe

Grant Thornton CG Reviews 2006: UK and HK

Recently released surveys by Grant Thornton have cast doubt on levels of compliance with codes of corporate governance in the UK and Hong Kong. In a review of FTSE 350 companies in the UK, the firm found that only 34%of the FTSE 350 claim full compliance, with only 10%of FTSE 350 companies making disclosures sufficient to support these claims. In Hong Kong, the firm reviewed 187 Hang Seng Composite Index constituents, and found that 59% of HSCI companies chose not to comply fully.

To download the UK survey, please visit http://www.grant-thornton.co.uk/pages/publications_and_events-publications-corporate_governance_review_2006.html

To download the HK survey, please visit http://www.gthk.com.hk/cgi-bin/cms/upload/PageEditor/en/Grant%20Thornton%20Corporate%20Governance%20Review%202006.pdf

Malaysia Best Practise Guides for Retail/Institutional Investors

January saw the launch by Malaysia's Minority Shareholder Watchdog Group (MSWG) of guides of best practices for both retail and institutional shareholders, with the latter aimed at encouraging institutional investors to discharge ownership responsibilities. One notable inclusion in the institutional guide is a section on "Institutional Shareholder Engagement and Activism", stressing the role of institutional investors as not only equity-owners, but stewards. The guide seeks to impress on institutional investors their duties with regards to constant and consistent engagement with companies, including private meetings with directors and management, and attendance and voting at Annual/Extraordinary General Meetings.

For more information, and/or to purchase the best practice guidelines contact: watchdog@mswg.org.my

Proxy Voting Roundtable

Building on an ACGA report that focussed on the inadequacies of the proxy voting mechanisms in Asia, the Asian Corporate Governance Association (ACGA) co-organised an event that brought a number of key stakeholders together to discuss how proxy voting systems in Singapore compare to major markets around the world, including Australia, Hong Kong, the UK and US, and explored ways in which voting systems could be improved further.

To download a summary report of the event, please visit http://www.acga-asia.org/public/files/Roundtable_Proxy_Voting_Systems_Singapore_Jan07.pdf

Scorecard on Corporate Governance in East Asia

Authored by Stephen Y.L Cheung (City University of Hong Kong) and Hasung Jang (Korea University), and funded by The Centre for International Governance Innovation (CIGI), a newly released scorecard focuses on the differences between perceptions of fund managers and analysts of corporate governance in the region, and the formal regulatory environment in those countries.

The survey concluded that analysts and fund managers perceive Singapore and Hong Kong as having the highest quality corporate governance practices, whilst Singapore and Indonesia (or Hong Kong, dependent on score weightings) actually perform worst when it comes to implementing corporate governance reforms.

For more information, and to download the scorecard, please visit http://www.cigionline.org/cigi/Publications/workingp/scorecar

Shareholder EU Rights Directive

On February 15, 2007, the European parliament approved the "Proposal for a Directive on Shareholder Voting Rights." This directive comes after the European Commission's consultation in July 2005, on "Fostering an Appropriate Regime for Shareholders' Rights". Whilst this is not a formal adoption of the proposal (just an approval of the proposal), it moves shareholders in the EU closer to being able to exercise their rights; through having timely access to complete information, and the ability to vote cross-border and in absentia.

For more information, please visit: http://ec.europa.eu/internal_market/company/shareholders/indexa_en.htm

Compiled by Tan Lye Huat, CEO of HIM Governance Pte Ltd and a member of SID's Publication & Website Sub-Committee

Events Calendar

SID-SMU Executive Certificate in Directorship

Executive Skills for Board Members in Challenging Times

SID in partnership with the Singapore Management University (SMU) is offering a certificate-level program for company directors in business and governance. Upon successful completion of the Executive Certificate in Directorship, participants will be eligible to proceed to attend the diploma-level program leading to an Executive Diploma in Directorship.

The certificate-level program comprises three modules, each of three-day duration and conducted in consecutive blocks of 1.5 day sessions spread over 2 weeks. Assessments will be conducted a week after the completion of each certificate module. Upon successful completion of each certificate module, participants will be presented with a certificate of completion. Participants will need to complete all 3 certificate modules to be awarded the Executive Certificate in Directorship.

Module 1
The Role of Directors:
Duties, Responsibilities and Legal Obligations
19-20 July 2007, 26-27 July 2007
3 August 2007 (Exam)

Module 2
Strategic Business Directions
16-17 August 2007, 23-24 August 2007
31 August 2007 (Exam)

Module 3
Finance for Directors
16-17 August 2007, 23-24 August 2007
31 August 2007 (Exam)

Module 2
Strategic Business Directions
6-7 September 2007, 13-14 September 2007
21 September 2007 (Exam)

Module 3
Finance for Directors
11-12 October 2007, 18-19 October 2007
26 October 2007 (Exam)

For more information and registration, please contact Ms Karen Yeo (Tel. 6828 0287 or e-mail: karenyeo@smu.edu.sg) / Ms Esther Tan (6828 086 or e-mail: esthertan@smu.edu.sg) / Ms Rachel Tan (6828 0375 or e-mail: racheltan@smu.edu.sg) at the Office of Executive Education, Singapore Management University (SMU). You may also contact SID Secretariat at Tel. No. 6227 2838 for any enquiries.

SID-Wong Partnership Law Workshop Series

SID in partnership with Wong Partnership, one of the leading law firms in Singapore, will be conducting a series of law workshops in 2007 to provide an update to directors on their legal obligations and responsibilities. These workshops will be conducted by lawyers from Wong Partnership.

23 May 2007, Wednesday
Workshop 1
Managing Your Risks as a Director
Recent high-profile cases involving directors have made directors increasingly aware of the risks associated with the position. This workshop will focus on the risk factors that directors need to be aware of and how such risks could be better handled.

25 July 2007, Wednesday
Workshop 2
Handling Corporate Meltdown
Just as corporations have a disaster recovery plan, it is important that directors be aware of how they should handle a corporate emergency before it hits. This workshop will take a look at recent corporate crisis and equip participants with the necessary toolbox to handle such situations.

Date to be advised
Workshop 3
Managing Your Risks as a Director
(to be conducted in Mandarin)

For more information, please contact SID Secretariat at Tel. No. 6227 2838.

SGX Listed Companies Development Programme: "Understanding the Regulatory Environment in Singapore"

This one-day programme is co-organised by SGX and SID. The programme is specially designed for directors and senior management of SGX-listed companies and companies aspiring to a listing on SGX. The topics covered and the presenters are:

(1) "Directors' Duties and Responsibilities"
by Ms Kala Anandarajah,
Partner of Rajah & Tann and Council Member of SID

(2) "Risk Management and Internal Control"
by Mr Ng Siew Quan,
Partner of PricewaterhouseCoopers

(3) "Corporate Governance and SGX's Regulations"
by Mrs Yvonne Goh,
Managing Director of KCS Corporate Services Pte Ltd and Council Member of SID

The date for the next programme is:
Friday 18 May 2007

For more information, please contact SID Secretariat at Tel. No. 6227 2838

WELCOME ONBOARD

JANUARY 2007

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Ng Cheong Lian Steven
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Bong Laurance
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Lim Vincent
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McFarland John
Tan San-Ju
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Wong Quek Kheong
Woo Siew Wah
Yeo Kan Kiang Roy

MARCH 2007

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Ang King Wee Samuel
Fong Chun Cheong
Ganti Veereswar Rao
Koh Yew Hiap
Lai Meng Seng
Ng James
Omar Ivy
Scherz Gunther
Schutte Hellmut
Tan Kim Seng
Tan Li Tong
Tan Teng Guan
Teh Chong Sian Johnson
Teo Kheng Lin
Teoh Teik Toe
Yee Kee Shian Leon