The Directors' Bulletin

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SID
SINGAPORE INSTITUTE OF DIRECTORS

Audit Committee Guidance and SID celebrates Ten Years

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From the Editor

As we are still in the first quarter of 2009, it is still apt to wish everyone a very happy and prosperous new year!

The year 2009 has been one filled with circumspect and review regardless of whether you look at business or personal life. The Credit Crunch is perhaps a motivator for this introspection. Whatever is the reason, this is to be welcomed.

And as part of that introspection perhaps, we look at all issues relating to the Audit Committee. This is a topical issue not least because of the release of the Audit Committee Guidelines (ACGC), but also because of the important role that Audit Committee members play; and it very aptly follows from our last theme on Internal Audits. For these reasons, the articles included in this issue seek broadly to provide guidance for Audit Committees. From a summary of the ACGC Guidelines to the important role that the Audit Committee plays in ensuring proper risk management processes and disclosures, to the Audit Committees specific roles during a financial crisis, to suggestions on how to leverage resources to oversee risk to providing guidance on steps that can be taken to ensure a more effective Audit Committee, and more. The aim really was to look at solutions rather than revisiting the problems.

Although the articles included in this issue are aplenty, articles can only educate so much. It is also assumed that Audit Committee members are aware of their duties and responsibilities are; and the consequent liabilities that attach if they fail to meet this obligations they owe. However, it could be that many Audit Committee members still lack the practical nuances of dealing with difficult issues that come forth during and outside of meetings. To be equipped with such skills, apart from the on-the-job training that each Audit Committee member receives, the value of training cannot be undermined.

Whilst training comes in all shapes and sizes, the Institute has been placing a greater emphasis on practical sessions where experiences are shared and practical problems dissected. Specifically for Audit Committee members, the Institute has been running programmes in collaboration with various partners to explain the new ACGC Guidelines. Each of these sessions also see input from practising directors, thus providing direct relevance. The intention is to have session by directors for directors. Hence, you will see more structured CLE programmes being introduced shortly to complement the various programmes the Institute already runs.

The Institute welcomes any ideas that members may have on what else it can do to assist not just the Audit Committee members, but also all directors.

The focus on Audit Committees aside, special mention must also be made of the 10th Anniversary Gala Dinner that the Institute hosted with Minister for Finance, Mr Tharman Shanmugaratnam as the guest of honour, on 17 February 2009. It was a day of good cheer all around; but an occasion on which the Minister advised that various changes to the Companies Act, including specifically in relation to directors, were impending.

It remains for me to thank, on behalf of the Institute, all contributors and others who have enabled this issue of Directors' Bulletin to be produced. The next issue will expand further on Audit Committees, amongst other current issues. The Institute looks forward to suggestions and thoughts from you on how else this Bulletin can serve your needs better.

Kala Anandarajah
Editor

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President's Message

Dear Fellow Members,

Following the last issue of our Bulletin which had "Internal Audit" as its theme, this first issue for 2009 focuses on the "Audit Committee" (AC) and contains a number of very useful articles on this subject, including a Summary of the Audit Committee Guidance Committee Guidelines. The oversight role of the AC, particularly in relation to its role in risk management, its competence and effectiveness, and the challenges facing ACs in today's environment are topics that are being discussed and debated, not only in board rooms but also among investors and regulators across the world. I have read several of these articles and commend them to your reading, especially those who are AC members.

In the past week there have also been a series of articles relating to the qualifications of AC members following the release of a study commissioned by the Institute of Certified Public Accountants of Singapore or ICPAS and conducted by the Corporate Governance and Financial Reporting Centre at the National University of Singapore. This study looked at 675 companies listed on the Singapore Exchange (SGX) and 1,400 AC members and covered annual reports for the financial periods between June 2007 and June 2008.

Although this study indicated that about 90% of ACs in these companies have at least one member who is financially trained, the study also indicated only 14% of AC members had formal educational training in accounting and finance.

These findings have raised concerns among certain sectors of the business community and academia regarding the competence of AC members and resulted in calls for the percentage of AC members with formal qualifications in accounting and finance to be increased up to 100 percent. Additionally calls have been made to regulators to be more prescriptive in defining "accounting or related financial management expertise or experience", a term used in the code of corporate governance guideline on the qualification of AC members.

It has been suggested that this term should be defined as expertise gained through experience as a public accountant or auditor, or as a chief financial officer, controller or principal accounting officer of a public company, a description used by the Hong Kong Exchange (HKSE). However, it should be pointed out that the relevant HKSE rule (Rules 3.10 (2)) only states "at least one of the independent non-executive directors must have appropriate professional qualifications or accounting or related financial management expertise", whereas our code stipulates at least two AC members should have accounting or related financial management expertise or experience.

In the light of these articles which have appeared in our mass media, your Institute feels it is important that the position of the Institute on this issue be made known to its members and to the interested public at large. To this end your Institute has prepared an article outlining its position and

the rationale. This article will be sent to both the Straits Times and Business Times for their publication. I will therefore only summarise the Institute's position in this message.

The Institute considers the AC as one of the most important board committees and recognizes the need for its members to be competent for it to be effective. It therefore encourages continual training for all AC members. Indeed in recent months, the Institute has in collaboration with both KPMG and Ernst & Young organised a significant number of seminars and workshops on AC matters and targeted at AC members and CFOs in particular and other board members in general.

However, it believes formal accounting and financial qualifications is only one of several criteria in the selection of AC members. On this issue, the Institute's views are consistent with those articulated by the Monetary Authority of Singapore, SGX and The Accounting and Corporate Regulatory Authority or ACRA which in a joint statement released early this month said, "in appointing directors as Audit Committee members, companies should review and determine their directors' suitability not just based on qualifications, but also on relevant expertise, experience and character".

While it is recognised that financial literacy among AC members is essential, the broad scope of responsibilities of the AC, in particular oversight for risk management, including operational risk, necessitates that AC members (and indeed all board members) must also possess a good understanding and knowledge of the company's business, the industry in which it operates, and the markets in which it competes and have sound commercial acumen.

In addition, AC members must also be prepared to commit the time and resources required to carry out their responsibilities diligently and the courage to enquire, probe and challenge where necessary.

The Institute is therefore of the view that it is neither appropriate nor beneficial to over-emphasize formal accounting or financial training or specific related financial management expertise, and supports a balanced approach to the selection and appointment of AC members.

Section 1.2.4 on qualification for membership of the "Guidebook for Audit Committees in Singapore" provides a very helpful guide on the interpretation of "accounting or related financial management expertise and experience".

In this issue of our Bulletin we have also included a write-up of the Institute's future strategic directions following a review of our Institute conducted by PricewaterhouseCoopers in the middle of last year.

These directions are intended to expand the scope of our role and activities as part of our mission to help Singapore companies and their boards achieve global standards of excellence in corporate governance and our vision of being a world class Institute.

In this regard we appointed our first full-time chief executive in mid-January 2009 as part of the process of enlarging and strengthening our secretariat. However, neither our secretariat nor our council will be able to achieve our goals without your continued support and active participation in our programmes and activities and without which we will also not be able to evolve into a successful "Institute of Directors by Directors".

I am delighted and encouraged that since our new directions were first announced in mid-November 2008, many members have approached our Institute to offer their expertise and services. Additionally, we also received tremendous response from our many partners, corporations, regulators and individual members to our recent 10th anniversary gala dinner which was graced by our Minister of Finance Mr Tharman Shanmugaratnam as guest-of-honour.

All these augur well for the future of our Institute and I look forward to even stronger and more extensive support from both our members and our corporate community as we seek to build the Institute into a truly world class organisation.

On behalf of the Institute and its council, may I wish all of you and your organizations a resilient year in 2009. ■

Warm Regards,
John KM Lim
President

SID'S 10th Anniversary Gala Dinner

The Singapore Institute of Directors celebrated its 10th Anniversary with a Gala Dinner at the ballroom of the Marina Mandarin Hotel on 17th February 2009. It was attended by about 500 members and guests and the Guest-of-Honour was Mr Tharman Shanmugaratnam, Minister for Finance. The distinguished guests included the Attorney General, Prof Walter Woon, and numerous captains of industry.

In his speech at the Gala Dinner, the Institute's Chairman, Mr Chew Heng Ching, recalled that the Institute was set up in July 1998, during the then Asian financial crisis, to promote corporate governance and effective board practices, provide basic training for existing and aspiring directors, as well as to act as an interface with the regulators on laws affecting directors.

He highlighted the many milestone achievements of the Institute over its first decade of existence and that PricewaterhouseCoopers was commissioned in mid 2008 to do a strategic review of the Institute to recommend improvements to its current structure and activities to position it to play a more comprehensive role in the continued evolvement of good corporate governance and to better meet the changing needs of directors and the corporate community in Singapore. To achieve this, the terms of reference also called for the review to evaluate the structure, practices and activities of similar institutes in other leading jurisdictions in order to establish a bench mark to guide the Institute in its efforts to develop itself into a "World Class Institute".

Mr Chew revealed that the strategic review had made various recommendations on how current training could be further enhanced and how the Institute's standing could be further boosted, both locally and internationally. On this, he announced that in line with one of the recommendations, the Institute will need a larger and more structured secretariat, led by a strong management team. To achieve this, a start has been made with the appointment of a full-time Chief Executive, with effect from the second half of January this year.

Mr Chew also indicated that the other recommendations are being studied and detailed implementation plans will be released over the next 24 months. In the interim, he identified the following as being the broad areas the Institute will focus on going forward:

(a) To review, strengthen and expand existing formal director training and education programmes;

(b) To develop a more active business events programme;

(c) To expand the range of services including revamping the website and relooking into the publicising of the Institute's Directors' Register; and

(d) To expand the membership base by introducing new categories of membership and creating more networking events.

He concluded by saying that the Institute will provide a comprehensive platform for continued director development and adopt a higher public profile on matters affecting directors and corporate governance in Singapore, as well as strengthen linkages and explore collaboration with other similar Director Institutes and international bodies.

In his speech at the Gala Dinner as guest of honour, the Minister for Finance said that a steering committee chaired by the Attorney General had been exploring revisions to the Companies Act, to keep its provisions and regulations relevant during these rapidly changing times. This was particularly important as a robust regulatory framework would help Singapore become the most attractive place in Asia and globally in which to do business.

Mr Tharman highlighted potential changes to three (3) areas of the Act, including the possibility of the creation of a codified list of directors' duties; removing restrictions for companies to provide financial assistance for certain share acquisitions; and replacing the exempt private company concept with a new "small company" definition.

The Minister noted that the proposed review of whether to codify directors' duties would certainly be of interest to the Institute and its members. He highlighted that while section 157 of the Companies Act currently sets out the broad statutory statement of directors' duties, it is not exhaustive. In contrast, the UK has a more comprehensive list of such duties in its legislation, such as, for example, on the need to avoid conflict of interest.

He noted that there are pros and cons to the British approach. Although the British approach may better help directors understand their duties, it may not be flexible enough to accommodate changing practices in the corporate world. As such, "instead of codifying all the directors' duties in the Act, the steering committee is also exploring the option of providing greater clarity to directors via practice directions or guidance notes."

The Minister announced that the steering committee will issue a consultation paper for public comments in the course of the second half of the year.

As the 10th Anniversary celebrations were held amidst the current global economic downturn, one which is expected to be prolonged and of a magnitude unprecedented since the Great Depression of the last century, in order to save costs, no events company was engaged for professional entertainment for the evening or for "master of ceremony" services. Instead, Council member Mrs Yvonne Goh, Council President Mr John Lim, and the Institute's newly appointed Chief Executive Mr Chua Eng Chiang, jointly "emceed" the event, whilst a small band was engaged to provide music for the evening. To further commemorate the evening, a Commemorative Book tracing the history of the Institute was also published.

The Institute acknowledged 16 organizations for their support and contribution to its growth during its first decade. The 16 organizations are: Aon Consulting (Singapore)

Pte Ltd; Corporate Governance & Financial Reporting Centre; Deloitte & Touche LLP; Egon Zehnder International Pte Ltd; Ernst & Young LLP; Keppel Corporation Ltd; KPMG LLP; PricewaterhouseCoopers LLP; Rajah & Tann LLP; Securities Investors Association (Singapore); Singapore Exchange Ltd; Singapore Management University; Singapore Telecommunications Ltd; The Business Times; Wee Swee Teow & Co; and WongPartnership LLP. Tokens of appreciation were presented to the representatives of each of those organizations.

A token of appreciation was also presented to Mr JY Pillay, an Honorary Fellow of the Institute, for his contributions and continuing support of the Institute. The other Honorary Fellows, whose contributions were also acknowledged were not present to accept their awards.

The Institute also honoured five (5) of its serving Governing Council members who have each served on Council for over 10 years. They are: Mr Chew Heng Ching, Chairman; Mr Keith Tay, Vice-Chairman; Mr John Lim, President; Mr Giam Chin Toon, Treasurer; and Mr Boon Yoon Chiang, current Chairman of the Disciplinary subcommittee.

The Institute in a small way shared its celebrations by making a donation of S$25,000 to a charity for the elderly. The selected charity was "Care Corner Family Service Centre (Toa Payoh)" and the cheque for the donation was presented to it that evening. The donation was made from the surplus from the Gala Dinner.

The Institute thanks all distinguished guests, members and well wishers for attending its Gala Dinner. It also wishes to record its appreciation to the many individuals and companies that had booked tables to support the Institute's efforts to make the event a success. ■

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SID'S 10th Anniversary Gala Dinner

Towards A World Class Institute

By John KM Lim
President

A strategic review of the Institute which was supported by the Monetary Authority of Singapore (MAS), the Singapore Exchange (SGX) and the Accounting and Corporate Regulatory Authority (ACRA) was conducted in mid-2008 by PricewaterhouseCoopers.

The objective of the review was to recommend improvements to the current structure and activities of the Institute so as to position it to better meet the changing needs of directors and the corporate community in Singapore.

The review was carried out through a series of interviews and surveys with SID members, company directors, SID Council Members and other relevant stakeholders in Singapore.

The review also evaluated the structure, practices and activities of similar institutes in other leading jurisdictions in order to establish a bench mark of relevant global best practices to guide SID in its efforts to develop itself into a "World Class Institute".

The findings of the study indicated that while Singapore enjoys a good reputation for high corporate governance standards regionally, there is still considerable scope for improvement in the current state of governance practices here.

Based on the findings and the plan to play an increasingly key role in helping to ensure sustainable excellence in corporate governance in Singapore and with the vision of establishing SID as a world class institute serving the professional needs of its members and the corporate community here, the Governing Council has formulated the following key directions for the Institute for the next decade.

While these directions have been established, detailed implementation plans are still being developed and these will be released over the next 24 months.

The key areas of focus are:

a) Strengthen the Secretariat

b) Address training programme and delivery

c) Develop a more active business events programme

d) Expand range of board services offered

e) Provide more focus on advocacy

f) Review existing membership and fee structure

We set out a brief description of each area of focus below.

a) STRENGTHEN THE SECRETARIAT

Finding
The Secretariat has been under-resourced for many years and will need to be strengthened in order to provide the necessary support for the Institute's activities.

Recommendations and planned action

- increase the size and skill sets of the Secretariat
- appoint a full time CEO
- explore collaboration opportunities with professional organizations to supplement Secretariat with specialized skills
- develop annual objectives for the Governing Council, Sub-committees and Secretariat
- expand and strengthen relationship with other regional director institutes and global corporate governance advocates

b) ADDRESS TRAINING PROGRAMME AND DELIVERY

Finding

Singapore directors attend little formal training (on average). A more holistic curriculum/broader delivery methods are adopted by the leading global Institutes.

Recommendations and planned action

- consider adoption of education vision: "For Directors, By Directors"
- address priority topics: Audit Committees; Risk Management and Internal Control; SME/family run/Catalist companies; overseas directors
- supplement current programme with a Continuing Education Programme ("Road Map")
- introduce continuing education courses (specific technical courses, technical updates)
- consider entity specific courses (public sector, not for profits, family run companies) and courses for the experienced director/Chairman
- continue SGX-SID Understanding the Regulatory environment in Singapore and add other "fundamentals" training
- continue SMU collaboration (certificate and diploma courses)
- review alternative accreditation mechanisms, including those used by non-IOD bodies such as the Australasian Compliance Institute (ACI)
- seek collaboration opportunities with other Institutes, both locally and internationally
- initiate discussion groups on focussed governance topics

c) DEVELOP A MORE ACTIVE BUSINESS EVENTS PROGRAMME

Finding

More frequent, quality speakers requested in seminars.

Recommendations and planned action

- establish a rolling 12 month programme of headline speakers
- prominent international and local personalities
- at least one event per month
- more breakfast and evening timeslots
- address niche topics

d) EXPAND RANGE OF BOARD SERVICES OFFERED

Finding

Other Institutes offer a broader range of Board services.

Recommendations and planned action

- continue regular Directors Survey but increase frequency to annually
- supplement Bulletin with more frequent publication providing regulatory and other topical updates (eg. monthly, sponsored)
- publicise SID's Directors Register (short term); establish on-line, searchable register (medium term)
- establish web-site links to providers of Board Services
- consider on-line directors evaluation service
- selectively review other services offered by other Institutes
- in depth study on specific directors topics (compensation etc)
- significantly increase the functionality and content of the web-site
- provide on-line access to past SID publications, such as the Bulletin, good governance statements, speeches and media comments
- research the feasibility of introducing more technologically advanced services to members

e) PROVIDE MORE FOCUS ON ADVOCACY

Finding

SID should continue to make their opinions on Corporate Governance issues even more evident.

Recommendations and planned action

- develop an advocacy agenda
- consider process to involve more members in determining positions
- more position statements and best practice guidance
- better communication of SID's existing engagement on governance topics

- continuing or further involvement (and advertising of this fact) with well regarded international bodies (OECD, International Corporate Governance Network, Global Directors Development Circle)
- continue active involvement in corporate events related to corporate governance
- continue active participation in Committees established to address governance issues (eg ACGC)

f) REVIEW EXISTING MEMBERSHIP AND FEE STRUCTURE

Finding

The cost of individual SID membership is among the lowest of the leading institutes of directors studied.

Recommendations and planned action

- explore new membership and pricing structures
- greater focus on sales and marketing
- explore market for a corporate membership class
- review alternative pricing strategies for individual membership subscriptions and training courses
- request SGX to encourage companies to support SID

Effective 16 January 2009, a new Chief Executive has been put in place and working with the Governing Council he will have prime responsibility for the successful development and implementation of the plans outlined above.

It is expected that it will take up to 24 months for many of these plans to be put in place but 2009 will see the commencement of many new initiatives that will form a strong foundation upon which the vision of the Institute will be built.

The Institute looks forward to the support of all members and the corporate community in its quest to become a truly world class directors' institute. ■

Summary of the Audit Committee Guidance Committee Guidelines

By Irving Low and Claudia Eio

On 30 October 2008, the Audit Committee Guidance Committee[1] (ACGC) released the ACGC guidebook which provided greater direction and offered practical guidance to audit committees in several key areas. These include risk management, internal controls, quality of internal audit, interested persons transactions, risk management, board composition, performance assessment and financial reporting.

The guidebook produced by the ACGC represents a significant milestone in the local corporate governance scene.

Past reflection, future direction

The ACGC Guidelines is timely in addressing the practical challenges faced by independent directors and audit committees. It is commonly said that corporate governance disasters could have been averted if independent directors had been more rigorous in asking their Chief Executive Officers (CEOs) questions, demanding answers and when needed, blowing whistles. In these turbulent times when large companies can collapse overnight, the roles of independent directors and the audit committee seem to offer little security to stakeholders

and the public. A heightened media spotlight on independent directors may be inevitable in the light of recent corporate failures and the economic meltdown.

Even though Singapore has a developed economy with relatively sophisticated business practices, the media occasionally gets a feast of boardroom drama. Some independent directors may then quickly find themselves 'identifiable' to the man on the street. Independent directors could also face the risk of legal liability and reputational repercussions. This could potentially discourage good candidates from taking up the role of independent director. It is thus timely that the Audit Committee Guidance Committee guidebook helps shed light on roles and responsibilities of independent directors.

The practical challenges faced by independent directors and audit committees are numerous, but these can be summarised into *three* major themes:

Perceptions and expectations	Independent directors are also expected to represent the interests of minority shareholders and remain the 'gatekeeper', standing up for the rights of minority shareholders when malpractice and fraud occurs. The necessity of acting as 'gatekeeper' is difficult to reconcile with the practical challenges and difficulties faced by independent directors in the boardroom.
Agency role vs the founders' dominance	Founders are still at the helm at many companies. In reality, founders may find the concept of independent directors hard to digest and may view independent directors as 'intrusions' and a 'necessary evil' mandated by the Singapore Exchange (SGX) listing requirements. The presence of these independent directors may be merely tolerated, at best.
Balancing other challenges to independence:	Many independent directors agree resolutely with this predicament of maintaining a balance between independence and questioning 'too much' and 'too deep'. Independent directors who question 'too much' and 'too deep' could become too operational and prescriptive. This may potentially lead to a loss or erosion of independence. Furthermore, how would an independent director be truly independent when terms of his office depend upon the veto powers of the majority shareholders?

Pushing and testing the limits further, Section 705, introduced by the SGX, requires directors to provide a 'negative assurance' statement.

What's next?

In light of the new ACGC Guidebook, every independent director and audit committee member should ask themselves this question: "How does the organisation measure up with respect to the recommended practices in the guidebook?"

With the new guidelines and the heightened attention on independent directors and audit committees, the immediate priority would be to align their current governance practices and procedures to the framework detailed in the guidebook.

Independent directors should:

1. Perform a "Stock-Take" of the current "As-Is" state of their boards and organisations
2. Determine the gaps where current practices fall short of the guidance from the ACGC Guidebook
3. Assemble a "To-Do" list to address and bridge these gaps.

The standards provided in the guidebook are not mandatory but provide useful guidelines to good practices Stakeholders may sometimes expect almost complete compliance with the guidelines. While this set of guidelines do not have the force of law, it does increase the directors' exposure to liabilities. This blueprint sets the tone and standards of internal controls expected of SGX listed companies and would no doubt serve as a reference point and benchmark for any companies listed on SGX and those looking to be listed on the SGX. Even in the absence of such stakeholder expectations, independent directors themselves should embrace and adopt these guidelines to fulfill their obligations in discharging their responsibilities.

The ACGC Guidebook is not intended to resolve all challenges faced by independent directors nor will it immediately eliminate gaps in the public's perception. As the industry and the public digests the new mandate of the ACGC and assesses the implications, this guidebook provides an important first step towards harmonising the expectations leveled at independent directors and the practical challenges they face.

[1] *The ACGC was established on 15 January 2008 by the Monetary Authority of Singapore (MAS), the Accounting and Corporate Regulatory Authority (ACRA) and the Singapore Exchange Limited (SGX) in an effort to promote and strengthen good corporate governance practice. The first mandate of the ACGC was to develop practical guidance for audit committees of listed companies.*

The ACGC Guidelines – Salient Points

The guidelines are a result of inputs from various stakeholders in the business community and takes on board the Frequently Asked Questions (FAQs) by Audit Committee members. In addition to the FAQs which are featured throughout the various sections in the guidebook, it also incorporates case studies, and appendices of sample templates and other more detailed guidance notes. There are useful real-life case examples compiled to provide guidance.

The guidebook is in two main sections:

1) AC Composition:

"The AC plays a critical role in ensuring the integrity of the financial statements through its oversight of the company's financial reporting process, the internal control system and the audit function. To discharge this role properly, the AC must ensure that it has individuals with the appropriate qualifications to provide independent, objective and effective oversight."

- What are the key factors a company needs to consider when appointing AC members?
- It covers areas in the form of 'Objectivity' and 'Independence', 'Qualification of members', 'Selection of AC Chairman' and 'Tenure of the AC'.

2) Roles and Responsibilities of an AC

Section I: Internal Controls
"The AC should review the adequacy of the company's internal controls, operational and compliance controls, and risk management policies and systems established by the Management"

The AC has a statutory obligation under the Company's Act to review the external auditor's evaluation of ***internal accounting controls***. Consistent with the Code of Corporate Governance, this section takes a broader view of the definition of 'internal controls' to collectively include operational controls, compliance controls and risk management policies and systems established by management. The section defines the scope of AC's responsibilities for internal controls and provides practical guidance on how AC can do so, with the following channels:

a) Obtain management's assurance on the state of internal controls

b) Review of internal auditors' evaluation of internal controls

c) Review of internal control issues raised by external auditors

The section also highlights the importance of the audit committee in reviewing the control environment, the organisation's framework for fraud risk management and its Information Technology (IT) governance framework.

With respect to (a), an appropriate mechanism mentioned in the guidebook is the use of control self assessment (CSA) exercises. CSA drives and reinforces the responsibilities and accountability of internal controls to the process owners and uses an upward self-audit, self-report and self-certification process to facilitate the CEO and Chief Financial Officers (CFO's) written declaration to the AC on the state of internal controls. CSA can eventually become a sustainable platform from which the Board can make the negative assurance statement as required by Section 705 of the SGX Listing Manual.

Review of internal auditors' evaluation of internal controls includes reviewing and approving the scope of work proposed by internal auditors and benchmark for evaluation of internal controls against an internationally recognised internal control framework. This can augment the expertise of the in-house Internal Audit (IA) team with external specialists, requiring update of the status of implementation of action plans from past IA work and having private sessions with internal auditors at each AC meeting or upon request by the IA, without the presence of management.

With respect to (c), the guidelines suggest the audit committee review the internal controls findings by the external auditor especially those which are disputed by management. In addition, similar private sessions with external auditors without the presence of management are also recommended.

Section II: Risk Management
"The Board has the ultimate responsible for ensuring that Management establishes sound risks management policies and systems that safeguard shareholders' investment and the company's assets. Management is responsible for putting in place processes for identification, assessment, management, monitoring and reporting of risk and for providing assurance to the Board that is has done so."

In instances where the Board delegates this role to the AC, the guidebook provides guidance on how the AC can review the effectiveness of the risk management framework of a company. The elements of a good risk management framework are also described in Appendix C3 of the guidebook. With respect to promoting a 'risk aware' culture, this section again specifically mentions CSA as a tool which management can use to assess the control effectiveness as well as business processes within the organisation. Other risk management programmes which the AC can recommend to the management are "near-miss" reporting, crisis and emergency management, business continuity planning and succession planning.

Section III: Internal Audit
"The Code recommends the establishment of an IA function to assist the AC in discharging its responsibilities. The Companies Act envisages that each listed company has in place an IA function and tasks the AC with the review of the scope and results of the IA procedures."

This section of the guidebook provides examples of the various internal audit models a company can adopt: in-house, co-source or out-source. Guidance is also provided with respect to how the AC should assess the effectiveness as well as efficiency of the IA function. The positioning of the IA function within the company determines how effective an IA function is, and hence the mandate in which the IA function operates is a critical success factor. The terms of reference or mandate of an IA function should be an area which the AC would need to clearly define.

Section IV: Financial Reporting
"While Management is primarily responsible for the preparation of complete, accurate and reliable financial statements and also formal announcements relating to the company's financial performance, it is the AC's duty to oversee the integrity of the financial statements and other related disclosures."

Guidance is provided in this section, and spells out the key areas, which the AC should focus on, primarily:

I. Competency of the finance team in supporting good internal controls

II. Effective audits and high quality financial reporting and disclosures

III. Accounting polices and the application as to whether they are reasonable and appropriate

IV. Errors and mis-statements of financial statements

V. How AC should review accounting judgments and estimates

VI. Case studies relating to the identification of related party transactions for disclosure purposes.

Section V: External Audit
"The duties of the AC should include reviewing the scope and results of the audit and cost effectiveness, and the independence and objectivity of the external auditor."

While in reality and in practice, AC members are probably most familiar with this section of the guidelines with respect to their roles and responsibilities with dealings with external auditors, there are nonetheless useful notes and guidelines on the appointment and assessment of external auditors.

Section VI: Other Duties and Responsibilities

- **Interested Person Transactions**
  Clear guidelines, FAQs and case studies provide greater clarity for AC to "make a distinction between" Interested Person Transactions (IPT) and "Related Party Transactions",

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what the AC can do to ensure the transaction pricing is not prejudicial to the interest of the company and its minority shareholders and how the AC can ensure that the procedures in the general IPT mandate are on normal commercial terms. Sample forms for disclosure and declaration purposes are also included in Appendices E2 and E3 respectively.

- Conduct of meetings
  Useful pointers are provide in this section, with a case study also describing what an AC should do if it needs more time to consider a proposal tabled by the Management without prior notice during a routine AC meeting.

- **Performance assessment**
  There is a sample checklist provided for ACs to perform a self assessment. Guidelines are also provided as to how the Nominating Committee should interact accordingly. There are many factors, criteria and issues, which need to be considered. This section helps addresses all these.

- **Whistleblowing**
  Elements of a good whistleblowing policy are set out in Appendix H1, while a sample of the policy is provided in Appendix H2. Useful guidelines covering the whistleblowing framework and policy are also included to provide further insights as to how AC can implement this effectively. Other areas addressed include guidance to AC if the complaint is against the Chairman of the company or if there are allegations of fraud/bribery involving foreign government officials.

- **Training**
  What are the training requirements for AC members or what are the basic topics that all AC members should be familiar with? The guidebook provides answers to these questions. As the business environment grows at a rapid rate, not only it becomes more complex, but it also increases the demands of AC to keep up with these changes. Keeping in line with these changes are the roles and responsibilities of all AC members.

The Audit Committee Mandate - The launch of Audit Committee Institute (ACI)

Recognising the importance of audit committees since 1999, KPMG International has created and sponsored the ACI to serve audit committee members and help them to adapt to their changing role. The Singapore Chapter[2] of the worldwide ACI has now been launched. This is timely, given the issuance of the ACGC guidebook and the need for further guidance for the mandate of the audit committee.

Historically, ACs have largely been left on their own to keep pace with rapidly changing information related to governance, audit issues, accounting and financial reporting. Sponsored by KPMG LLP in Singapore, the ACI provides knowledge to AC members and is a resource to which they can turn for information or to share knowledge. The ACI aims to be the first point of call for any audit committee member wishing to implement and/or improve audit committee processes.

More importantly, we hope that this new avenue would serve as a useful platform for AC members of the wider business community where knowledge can be shared openly. We encourage AC members to log into the website, **(www.kpmg.com.sg/aci)** which contains further guidance on many areas, related to the AC agenda. The site is populated with toolkits and publications from our global KPMG ACI network, as well as AC surveys on topical subject matters, which can be accessed by AC members here in Singapore.

There are now ACI chapters in over 28 countries worldwide assisting audit committee members across the globe in their quest to improve governance in organisations operating in, for example, the USA, Australia, Belgium, Canada, United Kingdom, Columbia, Germany, Switzerland and Malaysia.

This article is written by Irving Low, Executive Director, Internal Audit, Risk and Compliance Services (IARCS), KPMG LLP

The views and opinions expressed herein are those of the author and do not necessarily represent the views and opinions of KPMG LLP. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. ■

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[2]*Visit our website at http://www.kpmg.com.sg/aci or email us at aci@kpmg.com,sg*

FEATURE

AUDIT COMMITTEE INSTITUTE

Audit Committee Alert

KPMG

Considerations Related to the Current Financial Crisis

The current turmoil in the financial markets presents all audit committees (not just audit committees of financial services companies) with the critical challenge of understanding how the financial crisis affects their company's risk profile. From liquidity and access to capital, to fair value and asset impairments, and ultimately, to the adequacy of the company's processes to manage these and other risks effectively, audit committees are focused on the risks their companies are facing in the current environment. Here are some critical risks—and key questions—that audit committees should consider:

Liquidity and access to capital. What are the company's plans to raise debt / equity in the short and medium term? How dependent is the company on short-term financing? Are credit lines secure? Is the company at risk of default on debt covenants?

Ability to hedge against interest rate, currency, and commodity price volatility.
What will be the impact of inflation and recession on commodity costs and procurement strategies? How will changes impact the ability to obtain economic hedges against interest rate, currency, and commodity price volatility?

Exposure to counterparties and other third parties in financial distress. Have we inventoried the company's potential exposure to third parties in the United States and internationally—e.g., customers, suppliers, banks, lenders, underwriters, guarantors— that are experiencing financial difficulty or have filed for bankruptcy? Has the company identified the impact on contracts and other arrangements it has with these entities?

Fair value and asset impairments. Have we reviewed the company's investment portfolio and inventoried its debt and equity securities to identify declines in value or impairments that should be reflected in the financials? Have we identified triggering events that may warrant impairment assessments of goodwill, deferred taxes, patents, and other intangibles? (If so, are the fair values determined by management and valuation experts realistic in light of current market conditions?) How have changes in financial markets impacted the valuation of pension plan assets and funding requirements?

Disclosures. How is the application and impact of fair value accounting described in the MD&A? Is the description of the company's liquidity risks robust and specific to the company?

Threat of a deep recession. What restructuring is the company considering? hat capital expenditures should be deferred, given the prospects of a retracting economy? ■

Reassessing Risk

As a result of the financial crisis, many boards are reassessing the adequacy and effectiveness of the company's governance processes for managing the risks to the business. Most everyone agrees that there's a need to improve the way companies manage risk; but how to accomplish that is a matter of ongoing debate. While no one has all the answers, it is critical to ask the right questions, including:

- Can management provide a holistic view of the company's major risks—both on and off the balance sheet risks? What are the top five risks crossing all parts of the business?
- How tolerant is management of risks? Does management understand that a catastrophic risk that poses even a "less than 1 percent" chance of failure for the enterprise is unacceptable and must be avoided or mitigated to the extent possible?
- How rigorously does management stress-test key risk assumptions?
- How frequently does management review the risks associated with its products, particularly high-growth and high-margin products?
- Are the board's risk-related information sources adequate and varied? Is there sufficient internal transparency?
- How does culture — including the incentive compensation structure — impact the company's risk profile? The business environment has changed dramatically, and we will likely see more changes — perhaps a new wave of legislation and regulation, a less leveraged economy, continued volatility of commodity prices and markets, and greater expectations for effective oversight. For boards and audit committees, understanding the company's risk profile — and improving governance processes for risk management and oversight — should be a top priority.

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Additional Resources

Defining Issues®, October 2008, No. 08-37: Fair Value Measurements in Inactive Markets
www.kpmg.com/aci/DI.asp

FEATURE

Issues & Overview

The Credit Crisis And The Audit Committee

On December 15, 2006, Lehman Brothers and Bear Stearns reported profits of $4.05 billion and $2.08 billion, respectively, for the fiscal year ended November 30, 2006. Other Wall Street firms reported similar financial successes. The tremendous performance of these Wall Street firms was attributed to fixed-income credit products, such as mortgage-backed securities, asset-backed securities, and credit derivatives. Now, less than two years later, Lehman Brothers is in bankruptcy and the federal government bailed out Bear Stearns and it was sold. The collapse of these venerable Wall Street firms was in large part the result of investments in risky securities and trading practices. The collective failure of these and other financial titans begs the question: could more have been done to prevent these failures?

The high-profile corporate scandals of the early 2000s placed more responsibility on the audit committee. These scandals led to legislative and regulatory developments designed to expand the audit committee's role and responsibilities, including passage of the Sarbanes-Oxley Act of 2002, related SEC rulemaking, and the New York Stock Exchange and NASDAQ Stock Market corporate-governance listing standards. The changes strengthened audit committee's composition and authority, increased audit committee responsibilities and enhanced the audit committee's monitoring role. The result was a shift in the audit committee's responsibilities from a largely monitoring role to a more proactive oversight role.

Part of these increased responsibilities for audit committees is to play a critical role in overseeing and assessing the management of risk. Risk includes not only the traditional catastrophic risks, but also financial and reputational risks. Best practices require an audit committee to review and analyze the guidelines and policies that govern the process by which a company's exposure to risk is assessed and managed.

Audit committee standards enacted under Sarbanes-Oxley and related SEC regulations provide the audit committee of a publicly traded company with the mechanisms necessary to conduct a thorough review to ensure the completeness and accuracy of the company's financial statements, including an assessment of the company's risk-exposure. These standards empower an audit committee to investigate risk and to ensure that the company's financial statements accurately reflect that risk. As part of that investigation an audit committee should determine what risks exist, how those risks are being accounted for and reported, and how those risks are being managed.

To fulfill its responsibilities, an audit committee should use all available tools, including its internal audit function, external auditors, and, if necessary, the retention of outside counsel and advisors. Each of these tools serves a key function. Internal audit can provide the audit committee and management with an assessment of the internal controls in place with respect to the mitigation of risk, as well as the efficiency and effectiveness of the operations of the company. External auditors review and report on a number of matters, including the company's financial statements, its reporting processes and the sufficiency of its internal controls. Outside counsel and advisors can be retained to investigate or review areas of particular concern to the audit committee.

Given the current credit crisis, it is clear that the oversight role of the audit committee will continue to expand and to grow in importance. Audit committees need to be independent and must review management decisions with healthy skepticism. This process necessarily includes a close analysis of the way companies assess and manage risk. It is easy to forget the truly stunning returns that financial firms reported less than two years ago. With perfect hindsight, however, we can now see that these companies failed properly to assess and manage their risk.

There are tough lessons to be learned from this crisis. Given the enormity of the global costs being paid for them, we had better learn the lessons well, and quickly. ■

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Disclosures and Audit Committees Are Key in Turbulent Times

Lessons learned from the use of fair values in times of market turmoil underscore the need for careful disclosures and bring new challenges for audit committees.

As companies scrambled to timely adopt FASB Statement No. 157, *Fair Value Measurements*, amidst the turbulent credit market conditions of the first quarter of 2008, three important developments emerged that will help shape the future of financial reporting and governance. First, the debate over the pros and cons of fair value accounting became more heated and more urgent. Second, the SEC responded with a set of suggested disclosures designed to help investors make sense of the First Quarter Form 10-Qs. Third, audit committees in companies of all sizes and industries started to come to grips with a new set of governance issues.

To help companies tackle the new challenges, this Client Advisory highlights the reasons why careful attention to disclosures is important, explains the additional disclosures suggested by the SEC staff, and lists steps that companies can take to strengthen their disclosures and address the emerging governance issues.

Steps to Consider

In formulating their response, audit committees should consider the following steps:

- Assess the impact of the market turmoil.
- Evaluate the use of fair value accounting and "mark-to-market" measures.
- Oversee the adequacy of related disclosures.
- Investigate accountability for credit losses.
- Evaluate the company's controls over risk and liquidity.
- Consider changes in the structure of the board and the roles of the directors.
- Agree with the external auditor on the extent of procedures performed during interim reviews.

Consultations with the external auditor can be helpful in taking the above steps.

Reasons Why Disclosures Are Important

Strong disclosures have emerged as a critical success factor due in part to the level of judgment required to apply Statement 157, especially in times of uncertainty when some securities are not traded on active markets. At uncertain and stressful times like this, careful attention to disclosures can strengthen the financial reporting process by shedding additional light on areas that are more important in tough times. For example, disclosures can help companies, investors, and directors in the following ways.

- *Disclosures can help companies put "paper losses" in perspective.* Some corporate executives have expressed concerns over the "paper losses" that can result from the combination of fair value accounting with the current market conditions. These concerns relate to the use of fair values for assets and liabilities whose fair value must be based on unobservable inputs (known in Statement 157 as Level 3 inputs). A key fear is that the use of fair

value accounting focuses too much attention on losses that are based on shortterm market conditions and do not necessarily reflect ultimate realizable values. These losses can cause investors to over-react and exacerbate the adverse effects of illiquid market conditions. Supplemental disclosures are a way to add a longer-term perspective.

- *Disclosures can help investors avoid surprises*. Investors appear to have become more cautious now. Many are seeking more information, so they can protect their investments from surprises like the one that occurred during the past quarter, when the news broke that the Federal Reserve Bank had rescued a major brokerage firm from impending bankruptcy. This was just one of several companies that seemed healthy as recently as calendar year-end but underwent significant changes in liquidity during the first quarter of 2008. Greater disclosures about liquidity-related risks are a way to help avoid or at least mitigate these types of unpleasant surprises.

Disclosures can add a longer-term perspective and help investors avoid unpleasant surprises.

- Disclosures can help audit committees prevent expectation gaps. Large unexpected losses and seemingly sudden demises of companies can cause declines in shareholder value and focus attention on the role of the board of directors. For example, unforeseen losses and bankruptcies can raise questions about the adequacy of internal control reporting. In some cases, shareholders have blamed audit committees for a lack of oversight. Already, the chair of at least one prominent company's audit committee has stepped down from his position in response to investor reactions. These situations can also lead to sweeping regulatory investigations. Careful attention to disclosures can help avoid these types of problems by setting realistic expectations. Just as important, good disclosures can help avoid costly litigation that might otherwise arise with the benefit of hindsight as investors question whether the company was aware of an impending loss and failed to adequately disclose the risk.

Steps to Strengthen Disclosures

In times of credit market stress, audit committees may find it useful to have a framework for asking management about: (a) the risks inherent in the environment, (b) any issues that arose in connection with Statement 157, and (c) the extent of any voluntary disclosures made in connection with the risks or the adoption of the standard. Below are suggested steps to help audit committees structure their oversight of these areas.

1. *Assess the effects of uncertain markets*. In view of the turmoil of the first quarter, the audit committee should make appropriate inquiries about the impact of the credit crisis on the company and any resulting changes to internal controls. These questions may include the following:

   - Have there been any changes in the process by which the company manages its liquidity needs? (This would include the process by which the company determines and meets its need for additional capital or financing.)

   - Have there been any changes in the availability of credit that might have a significant effect on the company? (Examples: Any credit rating downgrades or changes in the financial health of the company's banks and other creditors.)

   - Are there any potential liquidity-related risks? (Examples: any potential loan covenant violations or any projected difficulty in raising capital in the future.) These questions will help assess and, if necessary, strengthen the company's disclosures about risks and uncertainties.

2. *Evaluate the use of fair value accounting and "mark-to-market" measures*. The audit committee should also make suitable inquiries of management and the external auditors about the company's application of Statement 157. Sample questions:

   - How did the company identify the assets and liabilities to which Statement 157 applies in the current quarter? To what extent did the external auditors review this work?

   - Were there any significant changes since year-end in the market values of the company's investments or any changes in the nature of the investments, such as refinancing of auction-rate securities?

   - Have the auditors reviewed the classification of the auction rate securities? If there was any conversion of these securities to other types of instruments, have the external auditors reviewed the accounting implications?

- What techniques and/or models were used for Level 2 and 3 assets? Were there any significant changes in the assumptions during the period?

- Has management obtained an appropriate understanding of any models or assumptions that underlie values reported by brokers or pricing services?

The responses to these questions will help evaluate the quality of the company's financial reporting and provide a starting point for assessing the adequacy of the company's disclosures about fair value measurements.

3. *Consider the adequacy of related disclosures*. The audit committee should consider the adequacy of the disclosures made in the footnotes, MD&A, and risk factors. Sample considerations include the following:

   - Has the company included all the disclosures required by Statement 157? (Because the standard took effect during the first quarter, all annual disclosures must be made in the first quarter financial statements of SEC registrants.)

   - Has the company made the voluntary disclosures suggested by the SEC?

   - Does the external auditor have any recommendations with regard to the disclosures?

SEC's Suggested Disclosures

Background	Level 3 Assets and Liabilities	All Items Measured at Fair Value
In March 2008, the SEC's Division of Corporation Finance responded to the difficulties in the financial markets by sending letters to the CFOs of major financial institutions. The institutions selected for the letters were those whose most recent annual reports on Form 10-K reported significant amounts of items whose values might be at risk in today's market conditions. These items include assetbacked securities, loans carried at fair value or the lower of cost or market, and derivative assets and liabilities. The letters highlight disclosure matters relating to Statement 157 and suggest the companies consider these matters as they prepare their Forms 10-Q. Consideration of these disclosures may also help companies in other sectors. The letters asked the CFOs to consider two categories of additional disclosures: Level 3 assets and liabilities and all items measured at fair value.	The following disclosures apply to Level 3 assets and liabilities: • The portion of total assets and liabilities measured at fair value that consists of Level 3 asset and liabilities, plus information about material re-classifications between Level 3 and Levels 1 or 2. • A discussion of inputs that are no longer considered to be observable, along with disclosure of any material resulting gains or losses that are excluded from the Level 3 reconciliation required by Statement 157. • A discussion of the reasons for any material gains or losses in Level 3 assets and liabilities, along with an explanation of how the gains or losses on Level 3 assets and liabilities affect the company's profitability, liquidity or capital resources. • Management's assessment of whether the ultimate realizable value of the Level 3 assets and liabilities will differ from the fair values reflected in the 10-Q, and, if so, why. A breakdown of the nature and type of any asset-backed securities, the years of issuance, and the credit ratings, including any changes or potential changes in these ratings.	The following disclosures apply to all assets and liabilities measured at fair value, regardless of where they fall within the Statement 157 hierarchy: • A general description of the valuation techniques or models used for material assets and liabilities, along with any material changes made to these techniques and the resulting impact. • A discussion of any market indices, such as the ABX or CMBX indices, used in connection with the techniques or models, along with any adjustments made during the quarter based on these indices, and the reasons for the adjustment. • A discussion of how the company validates the techniques or models used. • A discussion of how sensitive the fair value estimates for material assets and liabilities are to the significant inputs used in the techniques or models. If material, a discussion of how increases or decreases in the aggregate fair values of the company's assets and liabilities may affect the company's liquidity and capital resources.

Emerging Issues for Audit Committees

Audit committees have become a target for blame for the losses and declines in shareholder value resulting from the subprime fallout. The 2008 proxy season saw a flurry of shareholder resolutions calling for diverse changes in governance and special reports. Although financial services companies may have borne the brunt of the losses, the concerns of investors also raise questions for audit committees of other companies, especially those that are involved in businesses related to residential housing, and those that hold investments in risky assets.

To help audit committees identify potential areas for improvement, below are a few self assessment questions derived mainly from recent regulatory reports and shareholder demands.

1. **If the company has (or could have) significant investment or credit losses, are the disclosures adequate?**

   Over the past few months, as shareholders have read about the credit crisis and the surrounding media coverage of the perceived flaws in fair value or "mark-to-market" accounting, companies have received shareholder resolutions asking for fuller disclosures about subprime loans, potential financial exposures and business implications. In formulating a response to these resolutions, a good starting place is the SEC's suggested list of disclosures as summarized on page 4 and available at http://www.sec.gov/divisions/corpfin/guidance/fairvalueltr0308.htm. Another source is the list of questions for management and directors in our Client Advisory on "Financial Reporting in Turbulent Markets" available at http://www.bdo.com/download.aspx?id=754.

2. **Has the company investigated and assigned accountability for the losses?**

   This question is on shareholders' minds this year; some seek to hold the directors accountable while others want to hold management accountable. Often, there is no easy answer to the accountability question. The first step is to determine whether the losses are confined to a particular operating unit or reflect systemic company-wide problems. The next step may be an evaluation of management's organization and processes. One key consideration is whether the company should have a chief risk officer. Other considerations are whether risk policies are effectively communicated and valuation practices consistently applied throughout the company. If the evaluation indicates a need for improvement, the committee should consider the steps needed to achieve the goals.

3. **Are the company's controls over risk and liquidity adequate to prevent surprises for investors in the future?**

   Regulators have been studying the corporate risk management practices that led to the current credit crisis. A report by the senior financial supervisors from five countries indicates that the companies with the greatest problems tended to have weaker controls over their potential balance sheet growth and liquidity. Audit committees that have not focused on these types of controls may wish to explore the related issues and best practices. The full report, "Observations on Risk Management during the Recent Market Turbulence," is available at http://www.sec.gov/news/press/2008/report030608.pdf.

4. **Do audit committee members have appropriate expertise and time to provide oversight of risk management?**

   Audit committee members are selected for their objectivity, independence, and financial literacy as well as their overall business knowledge. Although they are trained to assess financial reporting risks, some may not be as well-qualified to assess credit, liquidity and operational risk. A key question is whether audit committee members need additional training or resources (such as outside consultants) to meet shareholder expectations about any risk management responsibilities incorporated in the audit committee's charter.

issuing company's relationships with these agencies. In some cases, shareholders are asking about hiring policies that might create potential conflicts of interest. Labor unions have filed shareholder resolutions at some companies asking that the audit committee expand its role to include oversight of relationships with credit rating agencies. The fallout indirectly affects other companies that purchase or hold investments and rely on credit ratings. Audit committees of these other companies may benefit from assessing how these governance issues might affect management's investment policies and reliance on ratings.

Related considerations include the adequacy of the disclosures in audit committee reports about the levels of attention and expertise devoted to oversight of risk management.

5. Should the board consider a change in its structure?

As the responsibilities of audit committees have increased in recent years, some audit committees may have become overburdened and may have delegated their responsibility for oversight of risk management, (e.g., to a finance committee or an asset quality committee). Some boards may find they have ended up with committees that have overlapping duties. There is no one solution to the question of the best structure of the board. But corporate structures for oversight of risk management are in the spotlight today, and audit committees may want to consider this matter and, if necessary, update any statements about the assignment of duties for oversight of risk management on the company's website or in its proxy statement.

6. Does or should the audit committee oversee the company's relationships with credit rating agencies?

A number of financial institutions have incurred losses on investments that had excellent credit ratings, causing investors to be skeptical of the credit rating agencies and the issuing company's relationships with these agencies.

7. Does the board need a separate compliance committee?

After hearing of rising defaults and foreclosures on subprime mortgages, shareholders of companies with non-regulated financial arms, such as homebuilding companies with mortgage lending operations, have grown concerned that consumers (individual home-buyers) are not getting sufficient information to make informed decisions. In some cases, shareholders are asking if the company has formed (or plans to form) a compliance committee composed of outside directors to ensure that loan terms and underwriting standards are consistent with prudent lending practices. These requests are specific to the home-building industry and subprime crisis, but they may contain the seeds of best practices for directors of companies in other industries as well. The overarching lesson is that boards may be called upon to oversee the adequacy of disclosures to customers as well as investors, and they may need to re-assess their roles related to the companies whose risks and financial results they oversee.

The application of Statement 157 in uncertain times adds to the complexity of the audit committee's role.

8. **Does the audit committee have a solid grasp of the requirements of FASB Statement 157?**

   The application of Statement 157 in these uncertain times adds to the complexity of the audit committee's role. If audit committee members do not already have an understanding of the requirements of this standard, they should consider attending a training course or asking their auditors for an overview. BDO Seidman has resources available to conduct briefing sessions, if desired. In addition, we provided a summary of the standard and a list of questions for management and directors to consider in our Financial Reporting letter on the changes and challenges in accounting for 2008. The summary and questions may be especially helpful for first quarter 2008 SEC filings. The letter is available at http://www.bdo.com/download.aspx?id=760.

9. **Does the audit committee have a good understanding of the extent of the procedures performed by the external auditor?**

   The procedures in an interim review differ significantly from those performed in an audit. The distinction between the two is especially important in turbulent times like this when more procedures are likely to be necessary in order to determine the proper valuation and disclosures. In an interim review, an auditor considers whether there is reason to believe the interim financial information may not be in conformity with GAAP. This generally relies on the auditor's understanding of the company's business and controls, as well as inquiries of management and others and certain analytical procedures. A review therefore is not intended to provide the same level of assurance as an audit or to ensure that the auditor will become aware of all significant matters that would be disclosed in an audit.

10. **Does the audit committee understand the relevant metrics and the riskiest parts of the company's balance sheet?**

    A common trait of financial analysis is that it typically uses ratios and metrics that are calculated as averages, rather than presented as ranges. This technique can lead to a condition that might be described as "presumed precision," that is, a false sense of security that can mask the full range of variations and underlying risks. Another problem is that the metrics often used as key performance indicators by companies and analysts can focus too much attention on short-term results, such as earnings per share, at the expense of long-term growth and shareholder value.

    An initiative that audit committees may find interesting is the establishment of the Aspen Principles on *Long-Term Value Creation: Guiding Principles for Corporations and Investors.* These principles are particularly important in an age where shareholders are demanding a "say on pay" and want executive pay to be tied to long-term performance metrics. The principles call for development of effective long-term metrics and reporting to investors. A copy of the principles is at *http://www.aspeninstitute.org/atf/cf/{DEB6F227-659B-4EC8-8F84 8DF23CA704F5}/FinalPrinciples.pdf.* ■

For more information

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Eight Habits of Highly Effective Audit Committees

Tools to take your committee to the next level

By John F. Morrow and Joan Pastor

In the five years that have passed since the Sarbanes-Oxley Act gave audit committees greater responsibility for overseeing public companies' accounting, financial reporting, internal controls and audits, many of these corporate governance watchdogs have become quite adept at performing their expanded duties. Others, though, have not developed this expertise as rapidly as others. This article offers eight time-tested best practices for improving numerous aspects of audit committee performance, as well as insights from three seasoned CPAs who have led or served on the audit committees of many organizations .

EXECUTIVE SUMMARY

- **To ensure that your committee is up to its mission, you must first define the mission** by drafting a strong charter that identifies audit committee functions, authority and responsibilities, along with the skills and experience its members must possess.

- **Success is not automatic.** Specify critical success factors as competencies audit committee members must possess for the committee to discharge its duties and function effectively.

- **Committees need to know what their core values are.** Open communication, equitable dispute resolution and the active participation of all members are critical.

- **The committee needs to be free and willing to interview anyone it chooses.** This can be aided by providing a "safe haven" for interviewees, but the committee should not avoid asking incisive questions and taking action on its findings.

- **All members should be involved in setting the agenda.** Meetings should be carefully planned so that priority business is acted upon in a timely manner.

- **Decision-making processes need to be determined before a crisis** occurs. Each committee needs to evaluate its unique needs when laying out its ground rules.

- **Meetings should start and end with summaries** so that all members have a common understanding of what has transpired and what the priorities are.

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1. Create and adhere to a written charter that identifies audit committee functions, authority and responsibilities and the skills and experience its members must possess for the committee to discharge its duties and function effectively.

Without a strong written charter to guide it, an audit committee is unlikely to know where it's going, much less how to get there. The charter should specify what skills and experience audit committee members need to help the group achieve its goals. At least one member should be a "financial expert," as defined by SOX and the SEC (see Exhibit 1). The charter also should specify frequency of meetings, topics to be covered, and the nature and frequency of the committee's communication with the organization's senior managers, as well as its internal and external auditors.

One of the charter's most important functions is its record of the various powers and authorities the committee must possess, independent of the organization's senior management. The audit committee should be free to obtain the information it needs to assess adherence to rules, regulations and the organization's core values. An audit committee that has adequate authority to ask appropriate questions and get informative answers is in a better position to provide useful commentary and recommend necessary action. This ensures the organization and management are responsive to stakeholders, whether they are shareholders in an SEC-registered corporation or bond-holders with a stake in the fiscal management of a municipal government agency. The SEC requires audit committees of listed companies to prepare an annual audit committee report. When applicable, this requirement should be written into the charter. Although an annual report may not be required for some organizations, it is good practice for a committee to resolve to prepare one. Other audit committee functions and powers laid out in its charter should include:

- Hiring outside counsel and consultants whenever necessary.

- Reviewing and concurring in the appointment, replacement, reassignment or dismissal of the chief audit executive and internal and independent auditors.

- Monitoring and ensuring the external audit partner in charge is rotated as required by regulations.

- Ensuring external auditors do not provide nonaudit services prohibited by independence rules or those that require prior audit committee approval.

The charter also should give the audit committee the right to monitor officers' expense accounts and use of corporate assets and consider the results of audits in these areas, and to ensure the adequacy of the scope of and plan for internal and external audits, internal controls over mandatory financial reporting as well as earnings statements contained in press releases. In addition, the charter should codify the audit committee's authority to periodically review the organization's code of conduct for adequacy and recommend changes as necessary and its right and responsibility to review any complaints the organization receives about its accounting, internal controls or financial reporting and monitor their resolution. This includes confidential, anonymous reports by employees and others regarding questionable accounting, auditing or other matters.

Finally, it is essential for the committee to conduct an annual review of the charter's adequacy in light of new business conditions, laws or regulations and recommend changes to the board of directors as necessary. The charter should clearly state the audit committee's responsibility to periodically review its own effectiveness. The charter should require the committee to plan its agenda a year in advance, leaving room for unanticipated items to be added, and that certain standing topics be included every year. For example, the one standing agenda item could be to review and approve the chief audit executive's annual plan.

Leadership Principles for Audit Committees

- Run the audit committee in a professional manner.

- Members of the audit committee are role models. Shareholders, the board of directors and senior management are watching you.

- The audit committee chairman establishes the "emotional tone" of the group.
- The audit committee chairman is especially responsible for preventing "groupthink" and "collusion."

- Ask the hard questions to connect the dots. Make sure you know how (that is, by what procedures) different areas of the organization reached the end results and summaries before you.

- Regularly assess your performance.

2. Specify critical success factors as competencies audit committee members must possess for the committee to discharge its duties and function effectively.

First learn the business and its risks. Then become familiar with the accounting treatments unique to the business and prepare for all meetings. "It can be very challenging to read a 10-K three or four times, but it's necessary," says Paula Cholmondeley, CPA, who has been an audit committee chairwoman for three public companies—Ultralife Batteries, Albany International and Denstply International—and one investment company, Gartmore Mutual Funds. Cholmondeley strongly recommends that audit committee members spend time building relationships and diligently maintain their skepticism about issues and topics within their purview.

One of her greatest concerns is that audit committee members stay abreast of the latest developments relating to accounting rules, legislation, industry and the company. "We need two levels of knowledge," she says. The general level is addressed by a lot of courses business schools offer audit committee members on how the committee should function.

"But it's more difficult to keep up with specific accounting knowledge," she says. "The key accounting policy reviews by my committees enable the companies and heir management to educate us on a few issues a year." She and her fellow committee members also study literature from auditors and attend presentations on new accounting pronouncements.

3. **Identify committee core values that reflect those of the organization and establish written procedures that foster open communication, equitable dispute resolution and active participation by all committee members.**

Audit committees need to encourage mutual respect and cooperative interaction with auditors and the organization's staff and senior management. According to Dennis H. Chookaszian, CPA, who serves on three audit committees and is chairman of the Financial Accounting Standards Advisory Council, "the chair should provide the appropriate 'tone at the top' to help instill a control orientation within the organization." He says the chairman also should identify priorities for the entity's audit team and oversee the evaluation of the personnel, quality, frequency and scope of the entity's financial and internal audit functions. The chairman also must prepare the committee for significant challenges, whether relatively new, like understanding enterprise risk management and its corporate governance implications, or longstanding and growing, such as the struggle to build and retain a high quality staff of financial professionals.

Similar challenges and responses are in play in the government sector, says Colleen Waring, CPA, who was deputy city auditor in Austin, Texas, prior to her retirement at the end of 2006. In Austin the city auditor is appointed by and reports to the city's audit and finance committee, which the mayor chairs. The city charter and the ordinance governing the city auditor's role and responsibilities guide the committee's actions. Waring says the city auditor meets regularly with individual committee members to hear their questions, comments and concerns.

4. **Reserve the right to invite any group or individual to an audit committee meeting .**

As the audit committee chairman of the Chicago Mercantile Exchange, Chookaszian has helped the committee establish good working relationships with the exchange's CEO, CFO, chief audit executive, external auditors and other members of the board of directors. "These connections are essential to the audit committee's success," he says.

The chairman must establish regular communications with these senior managers to obtain their views on what the audit committee should focus on and keep them apprised of audit committee activities. In his view, the closest relationship the chairman should have is with the head of internal audit. "And," he emphasizes, "that position should be a direct report to the audit committee." Additionally, the head of internal audit should have an administrative reporting relationship to someone not involved in financial reporting, such as the general counsel.

While Austin's audit committee offers a "safe haven" to individuals it interviews in executive session, Waring says, it still asks incisive questions, objectively evaluates answers and takeswhatever action is necessary to resolve issues within its purview.

5. **Ensure all members actively participate in setting the committee agenda, and whenever possible avoid conducting committee business between meetings.**

When it comes to audit committee effectiveness, advance planning, members' technical skills and relations with senior management are of paramount importance. Audit committees should request

that the organization's chief audit executive and senior financial officer attend each meeting and address the committee as a whole. Interactions between the committee and management should not be limited to written correspondence or interaction with only the audit committee chairman between meetings.

"It's essential that the audit committee create a schedule of meetings for the coming year, including an agenda for each meeting," Chookaszian says. The agenda should identify the highest priority items for each meeting, such as reviewing the company's SEC form 10-K. He also strongly recommends holding quarterly meetings with the external auditor, the CEO, the CFO and the head of internal audit. Further, he says, a good way to evaluate the audit committee's performance is to conduct an annual confidential survey that elicits committee members' views on the committee's effectiveness.

As chairman, Chookaszian accepts responsibility for providing information to the committee and, as necessary, getting the CFO and internal audit chief's help to do so. "The chair has to ensure that committee members have all the information they need on new issues and company activities," he says. One way he delivers such information is by preparing for the audit committee and senior management an annual status report on the company's financial and internal audit functions.

When meeting with the audit committees she chairs, Cholmondeley uses a checklist that tracks all the regulatory tasks that must be completed during the current year. "We also have an annual calendar with all the topics for each meeting in the year," she says. The calendar has a section for fixed agenda items (for example, ethics, internal audit, SOX issues, executive sessions and financial reports). It also has a section for meeting specific fixed items—usually items from the checklist, such as a review of the yearend auditor's report. And there are sections on key accounting policy reviews and functional presentations.

Cholmondeley plans her audit committees' agendas at the beginning of the year by identifying the topics to be covered. Just before each meeting she also requests topics from audit committee members and management, and then she adds to the original agenda new topics that require discussion.

AICPA Audit Committee Effectiveness Center

Recognizing the need for increased support for audit committees, the AICPA created the Audit Committee Effectiveness Center, an online center available through the AICPA Web site at *www.aicpa.org/audcommctr* . The center was created in the public interest and includes the following key features:

The AICPA Audit Committee Toolkit was created to help guide audit committees. The Toolkit , which is available in versions for corporate, not-for-profit and government entities, includes a variety of programs, checklists, matrices and questionnaires designed to help the audit committees understand and execute their responsibilities. New tools are continually developed and released when available.

Over 40,000 copies of the print versions of the Toolkit are in circulation. Each tool in the Toolkit is available in the online center in various formats including Word, so users can download and customize it for use in their own organization for free—the AICPA asks only that users include a notation acknowledging the AICPA's copyright on the tools. Print versions of the Toolkit can be purchased. This allows the AICPA to recover its production costs.

The *Audit Committee Matching System* is another key feature of the center. This is a free searchable database of AICPA members who are willing to serve on audit committees and boards of directors. While each party (candidate and searching organization) must perform its own due diligence on each other, the matching system is an ideal way to bring the CPA skill set to audit committees. More than 2,000 AICPA members are registered in the database, and searches are conducted regularly.

A third feature of the center is the E-Alert System created for visitors to the site to register for an e-mail notification of updates to the site, release of new tools, and other matters of interest to audit committee members. The E-Alerts are also a free service and available to AICPA members and non-members alike.

6. Formulate decision-making processes and procedures for resolving stalemates.

Committee members have to agree to some ground rules, which should relate back to the charter. All audit committees are unique, and so is each organization's culture, says Cholmondeley. Procedures should reflect the specific needs of the individual committee and organization.

Objective criteria should be developed in advance for evaluating prospective external auditors or internal audit executives. This helps the committee overcome personal preferences and pressure from management when evaluating a particular audit firm, consultant or job candidate.

Another inhibitor to timely decision making can be a lack of knowledge on particular issues facing the organization. Committees should obtain additional information from the organization whenever necessary to facilitate informed deliberation. "You have to learn the business," Cholmondeley says. "That takes time and a willingness to read product literature, visit company facilities and meet employees. But it'll make you a more effective member of the audit committee."

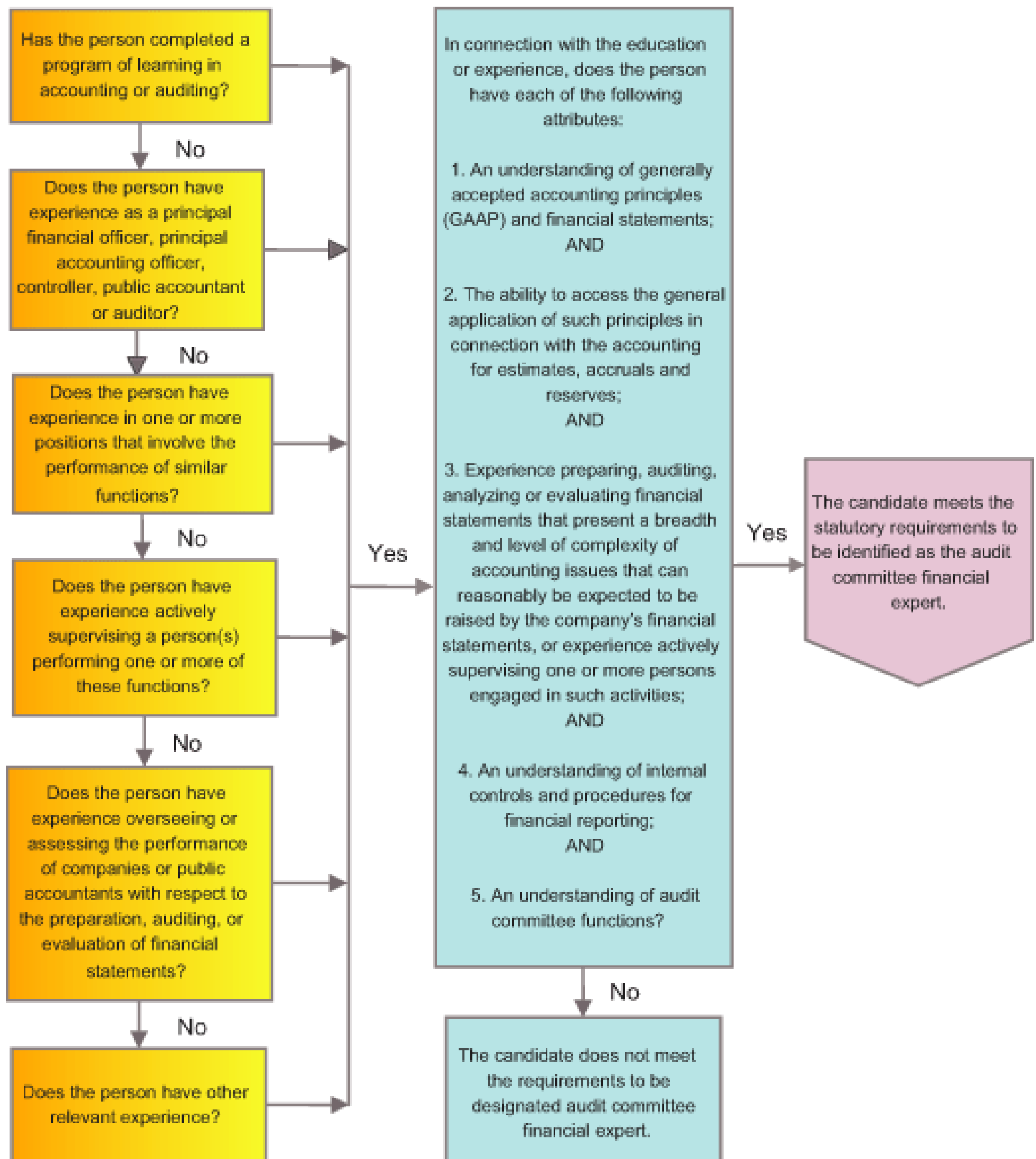
7. At the beginning of each meeting, review the previous meeting's highlights.

Guiding principles and focus easily can be lost in the details of a complicated business. In addition to highlighting results from previous meetings, start by reviewing the company's written organizational vision, core values and critical success factors. Continue referring to them as you review documents.

Working with her colleagues on each audit committee she chairs, Cholmondeley measures the committees' effectiveness in several ways. On a fundamental level, she reviews the checklist to see whether all the tasks were completed. "But more important," she says, "is our collective sense of whether we've improved the organization over the past year. Is the finance team better able to deal with complex issues than it was a year ago? Have we improved our relationship with management? Do they consider our suggestions and act promptly on our requests?"

8. At the end of each meeting, summarize it.

After a meeting is over, each member should have a common understanding of key aspects of the meeting without referring to notes or minutes. For this purpose, summarize key decisions, actions to be taken, who will perform them and when, and the expected results. Require each meeting attendee to specify what aspects of the meeting he or she felt was successful or helpful and what requires improvement. Discuss whether the organization's vision and objectives are being fulfilled. Also committee members should encourage each other to organize and share in writing any thoughts they have following the meeting that would be helpful to the committee. ■



Source: The AICPA Audit Committee Toolkit. Copyright © 2004 by the American Institute of Certified Public Accountants, Inc, New York. For the full text of the SEC rule regarding audit committee financial experts, visit www.sec.gov/rules/final/33-8177.htm .

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FEATURE

AUDIT COMMITTEES RAISE THE BAR

Leveraging Resources to Oversee Risk

The 2008 Audit Committee Study conducted by Corporate Board Member and Crowe

The Big Challenge: ERM

In 2002, Sarbanes-Oxley Section 404 turned up the heat on board responsibility for risk management oversight and internal controls— issues that have grown increasingly complex. While management should have a process in place to identify, evaluate, and mitigate significant risks, good governance demands that boards—often through their audit committees—ensure these processes are working effectively. Today this board responsibility has grown such that 70% of audit committee members surveyed identified enterprise risk management (ERM) as the most challenging issue for their committee in the next 12 months (Figure 1).

Figure 1

Which of the following do you believe will be particularly challenging for your audit committee in the next 12 months?

Enterprise risk management	**70%**
Governance, risk and compliance	38%
International Financial Reporting Standards	30%
Financial reporting	25%
Internal audit	23%
Developing a fraud prevention program	14%
Foreign Corrupt Practices Act	11%
Ethics	5%
Whistleblower process	3%

Audit committee members are chiefly worried about ERM because they recognize the enormity of the task. There is risk potential in every aspect of the corporation—IT risk, legal risk, market risk, environmental risk, reputation risk—those are but a few of the significant business risks faced by every company. Moreover, companies must have the right people, plans, and processes to counter risk, because the alternative to risk management is crisis management—the aftereffects of which could deliver an onerous blow to the company as well as its directors, personally. This is why boards and audit committees of companies large and small are grappling with how best to create a meaningful dialogue with senior management on their approach to risk management throughout the enterprise.

Our survey looked at several aspects of how audit committees are moving forward on this front and what tools they are using to make inroads. First, for instance, the board must determine where the ultimate responsibility lies for ERM and how to organize necessary functions and accountability. Our survey shows that audit committee members overwhelmingly believe the primary responsibility for monitoring risk in the organization falls within the scope of the full board. However, in practice, some boards delegate the function among various committees that take ownership of certain risks, others create a separate risk management committee, and some feel it is a function of internal audit (Figure 2).

Figure 2
The primary and ultimate responsibility for monitoring risk within the organization should lie within the scope of:

"This is ostensibly one of the most complex governance matters for boards and audit committees to deal with—the challenge of assigning accountability for risk management," says Corporate Board Member President and CEO TK Kerstetter. "In some cases, the board will create a risk management committee to oversee specific areas and report back to the audit committee or the full board. Even in those cases, however, the audit committee—and the full board—must remain vigilant and accept responsibility for the oversight of risk in order to maintain the appropriate governance principles and leadership for the company."

Rick Julien, an executive with Crowe's Risk Consulting Practice, emphasizes that the board's process for dealing with ERM is critical. "While best practices suggest that the full board should own oversight of enterprise risk, it is critical that audit committees understand that a process exists in the organization to identify and manage risks. Effective audit committees ensure that a thoughtful process for managing risk exists and that it has the support of top management," Julien says.

No matter how the risk management function is ultimately organized, the company needs two critical assets—skilled human resources and efficient processes in place to monitor and act on risk management issues as they arise. The corporation's internal audit department, led by the chief audit executive (CAE), should be a proactive force in fostering good communications that will accomplish these goals. Therefore, the establishment of a strong, trusting relationship between these internal and external players is crucial.

The CAE/Audit Committee Relationship

Given the shared responsibilities for risk management activities, the chief audit executive is arguably the audit committee's most important resource. Our survey shows that in many cases (72%), the audit committee plays a key role in hiring the CAE, so audit committees must understand the skills and competencies necessary for the CAE role.

Additionally, the person filling that position takes on a leadership role as a champion of ethics and governance issues and acts as a conduit of necessary information back and forth to the audit committee. Thus, understanding the foundational qualities necessary for the relationship is key to building a strong governance culture and having an audit committee that discharges its duties effectively.

Jonathan Marks, an executive with Crowe, agrees that having the right CAE plays a major role in audit committee effectiveness. "It is in the best interests of audit committees to understand the qualities of an outstanding CAE—among them, excellent communication skills and organizational savvy. Just as critical is the notion of developing and maintaining a sound relationship with the CAE, which in turn greatly enhances the value the audit committee can derive from the relationship."

In general, audit committee members surveyed believe the CAE capably assists them in meeting their responsibilities—nearly three-quarters rated their CAE as very effective in this regard—evidence that for most companies, a healthy relationship exists. The majority of audit committee members also say they are comfortable the CAE is proactive and provides complete, accurate, and objective information. In essence, once a good foundation is in place, audit committee members will find they have no greater ally than the CAE in leveraging information and resources from within the organization.

Moving Beyond the Basics

Beyond providing information and support for audit committee meetings, CAEs also have responsibility for specific risk management activities. These duties range from objectively monitoring risk levels globally within the company to identifying specific risks and even supervising and coaching management on responding to actual risks as they surface.

To get a better handle on how audit committee members assess the strength of this relationship in terms of ERM support, the survey measured a number of aspects. We first asked audit committee members how well they work with the CAE to define the scope and design of ERM projects or risk assessments conducted through internal audit and found that 50% believe there is room for improvement in this area. With regard to determining and evaluating risks, 53% of audit committee members told us they believe their CAE's ability to conduct risk assessments was not highly effective. Slightly higher numbers (59%) were satisfied with their CAE's ability to communicate information on relevant risks once those risks

were known, as well as his or her ability to communicate information on risk management strategies.

Functions outside of ERM garnered higher CAE effectiveness ratings, such as Sarbanes-Oxley compliance, audit committee meeting preparation, and championing ethics and whistleblower programs (Figure 3).

Figure 3
Audit committee members rated CAEs as very effective in the following 12 functions:

Function	%
Sarbanes-Oxley compliance	**83.2%**
Audit committee meeting preparation	**72.9%**
Championing ethics and whistleblower programs	**66.7%**
Providing information to the audit committee on risks	**58.8%**
Researching specific topics/questions	**56.3%**
Establishing and antifraud program	**43.8%**
Conducting ERM assessments	**42.9%**
Evaluating governance and ERM processes and internal controls	**41.1%**
Providing information to the audit committee on governance issues	**36.7%**
Championing the governance framework	**32.5%**
Auditing compensation disclosure process	**28.0%**
Conducting orientation for new audit committee members	**21.7%**

Thus, the results reveal that while audit committee members are satisfied with the effectiveness of their CAE and the functioning of the internal audit department in many foundational areas, the findings that relate to ERM functions are hardly glowing in that regard. The bottom line? ERM is intrinsically a complex and troublesome area to manage and many companies' audit committees lack confidence and/or support from internal sources. This in turn has created an ongoing ERM challenge for the board of directors and its constituents.

"It's a vicious cycle," says Crowe's Rick Julien, who says audit committees who lack appropriate internal support will have a which in turn creates an even bigger challenge down the line. "Given that the true risk environment changes frequently, audit committees need to have a comprehensive understanding of what ERM is (and is not) along with appropriate internal support. Even with a thorough understanding, however, there's no guarantee that all problems will be avoided. Still, taking a practical approach to ERM is a critical step in ensuring an adequate, thoughtful ERM process is in place."

Conclusion: Raising the Bar

Audit committees, with their increased responsibilities, require high-level internal support, good working relationships, and quality organization and information in order to operate effectively and within good governance standards. In the past several years, regulatory changes have mandated that audit committees improve controls and take a more active, accountable role in the risk oversight process. The time commitment required for audit committee members has grown in lockstep with these additional responsibilities, requiring directors to take a hard look at how their committee must function to work most efficiently and effectively.

Jonathan Marks from Crowe notes that CAEs have an opportunity to add important value to audit committees by making sure they offer more than just basic assistance. "Those CAEs who proactively take the lead to educate the board and management about governance and risk management have the opportunity to add tremendous value. On the flip side, audit committees who leverage the CAE to assist with more strategic endeavors, particularly around ERM, will likely end up with a more effective audit committee."

Today, audit committee members must continue to build solid relationships with their CAEs in order to leverage the resources they need to fulfill their responsibilities. The 2008 Corporate Board Member/Crowe Audit Committee Study results demonstrate that audit committees are working to reach higher levels of potential—taking many positive steps and helping to identify areas that will need further improvements in the years to come.

A Glance in the Mirror: Evaluating Audit Committee Effectiveness

The survey focused on several key measures of audit committee function and asked respondents to rate their committees' effectiveness in these areas. The following highlights describe audit committees' self perceptions on their strengths and weaknesses:

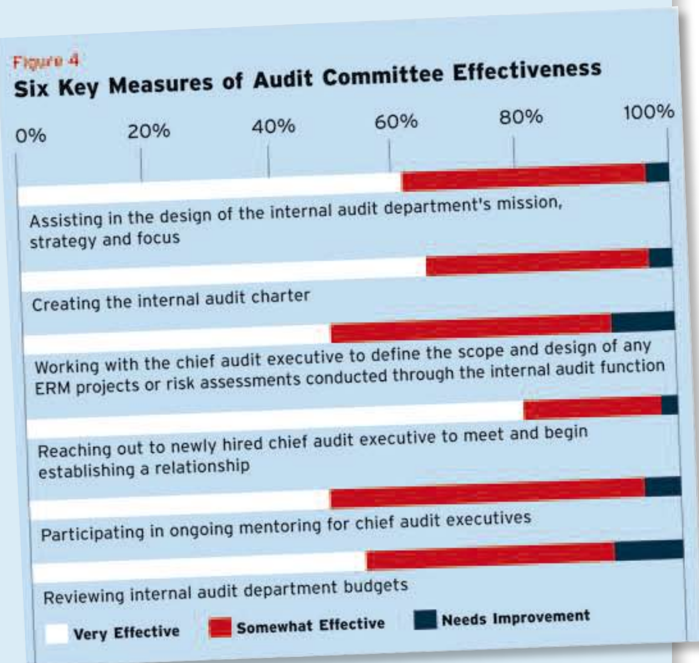
Leadership ability-Forty percent of audit committee members say there is room for growth in how effectively the audit committee assists in the design of the internal audit department's mission, strategy, and focus, as well as how they are able to articulate the parameters for implementing the mission of the internal audit function.

CAE orientation and mentoring-Audit committees' effectiveness is enhanced by reaching out to newly hired chief audit executives to establish a relationship. Of those polled, 76% say they are very effective at initializing this relationship with new CAE hires; only 45% say their committee is very effective at ongoing mentorship.

Budget oversight-Slightly more than half (51%) of the audit committee members surveyed say their committees are very effective at overseeing the internal audit budget.

These results indicate that while there are substantial percentages of high-performing audit committees today, there is leeway to increase both communication efforts and effectiveness. Resolving these issues means working to eliminate inefficiencies and learning to build and maintain strong board/management relationships.

"It is a complex and often sensitive matter for a board committee to put itself under a microscope. But periodically doing so is critical for good governance," says Corporate Board Member President and CEO, TK Kerstetter. "Sometimes, audit committees are reluctant to discuss these chinks in the armor for fear of openly admitting their processes—or people—are not working as efficiently as they should," he continues. "This is often the time when a third-party can ease those concerns by providing an objective assessment of the situation and offering valuable recommendations for improvements."



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DIRECTORS' DUTIES:

FINANCIAL CRISIS AND THE OBLIGATION TO CONSIDER THE INTERESTS OF CREDITORS

INTRODUCTION

We are all familiar with the principle that directors have a general duty to act in the best interests of the company. In most situations where this is an issue, the company is usually treated as being synonymous with its shareholders as a whole because, according to the economic theory of the firm, shareholders are the residual claimants of the assets of the company. However, when the company is in the red and particularly where there is little or no likelihood that the company can trade out of its financial distress, this concept of acting for the benefit of shareholders takes on a different complexion. Under such circumstances, the creditor's interests become paramount as they should be regarded as the 'de facto' residual claimants of the company' s assets where the company is insolvent.

However, when a company is insolvent, shareholders have less of an incentive to exercise control over the directors' decisions that may benefit the company as an entity in itself as any improvement in the company's financial position would generally be for the benefit of creditors. In fact, the shareholders are actually incentivised to encourage the directors to take risks in the hope that the company will be able to trade out of its financial distress. There is also the possibility that directors may see no gain in trying to preserve the company for the creditors and may instead find acting to their detriment in favour of shareholders an irresistibly attractive option. This is particularly so in the case of closely-held companies where the interests of directors and shareholders are closely aligned. This places the interests of the company's creditors at risk as they are neither able to directly control the actions of the company's directors nor are they able to gain access to the necessary information about the financial position of the company for them to recover their debt prior to the assets of the company being dissipated.

Company law recognises this predicament faced by creditors and places on company directors the obligation to consider the interest of the creditors where the company is insolvent or is facing insolvency. In some circumstances, the law goes so far as to ignore the principle that the company is a separate legal entity from its controllers and to hold directors personally liable for debts that the company may owe to creditors. Additionally, action that may prejudice the interests of the company's creditors may also expose directors to criminal prosecution. In this article, we summarise key areas which directors of companies whose solvency is in issue should pay close attention to.

1. Defrauding creditors

The most obvious scenario where directors may be held personally liable to creditors is where they have used the company to perpetrate a fraud against the creditors. Case law has made it clear that where a company is used as a vehicle of fraud, the courts will not hesitate to disregard the separate entity doctrine and hold the corporate controllers liable for the fraud. Similarly, section 340(1) of the Companies Act provides that:

"(i)f, in the course of the winding up of a company or in any proceedings against a company, it appears that any business of the company has been carried on with the intent to defraud creditors of the company or creditors or any other person or for a fraudulent purpose, the Court, on the application of the liquidator or any creditor or contributory of the company, may, if it thinks proper to do so, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs."

Such activity is often referred to as 'fraudulent trading'. While insolvency is not a requisite for establishing fraudulent trading, situations where directors have been found liable for fraudulent trading often relate to insolvent companies. Examples include situations where directors have knowingly manipulated accounts or made misrepresentations as to the financial viability of the company so as to secure contracts or funding with the intent to defraud creditors. In addition to being made personally responsible for the debts of the company, directors found liable for fraudulent trading may be prosecuted for an offence.

2. Breach of directors duties affecting creditors

Generally, where directors, in breach of their duties, cause loss to the company, the company's shareholders may ratify these breaches of duties at general meetings and choose not to hold directors accountable. The premise for allowing this is that shareholders being the owners of the residual assets of the company are at liberty to excuse directors their indiscretions. As alluded to earlier, this premise may not be totally applicable where the company is insolvent or becomes insolvent as a result of the directors' breach of their duties as the focus under these circumstances shifts from the interests of shareholders to those of the creditors. Directors may therefore still be held liable for breach of their duties to the company if they act in a manner which may prejudice the interests of creditors even if the shareholders of the company have no objections to their actions or where they may actually have benefited.

In Chip Thye Enterprises Pte Ltd (in liquidation) v Phay Gi Mo and Others for example, directors of the company (who were also its shareholders) who arranged to, amongst other things, write-off sums owed by one of their number as well as sums owed by parties related to them; make certain payments made to two of their number and invested certain sums into a foreign partnership which came to naught within a month, were held liable to compensate the company for all these sums. The court held that the transactions were clearly not in the interests of the creditors as they all reduced the assets of the company, which should have been preserved and made available for the discharge of the company's liabilities to its creditors at the relevant time since the company was then insolvent. It is perhaps pertinent to point out that there was no allegation in the case that the directors were intentionally acting in the manner so as to defraud the company's creditors.

It is obvious that directors should always do their utmost to ensure that they do not breach the duties which they owe to their companies. The point being made here, however, is that acting in the interests of the company does not necessarily translate into looking after the interests of the company's

shareholders per se. Directors (particularly those of closely held companies and nominee directors of wholly-owned subsidiaries where such situations are more likely to arise) should not be under the misapprehension that so long as they look after the welfare of shareholders and / or act with the shareholders consent and approval that they will not be held liable for breach of their duties. They should pay close attention to how their actions may impact other stakeholders, and where the company is not in a strong financial position, pay particular attention to the interests of creditors. Failing to do so may expose them to a liquidator's claim on behalf of the company should the company go into insolvent liquidation.

3. Liability for wrongful trading

Wrongful trading is the phrase used to describe situations where directors (and other officers) of a company knowingly or recklessly cause the company to incur debts when there is no reasonable or probable ground of expectation, after taking into consideration the other liabilities, if any, of the company being able to pay the debt. It is governed by section 339(3) of the Companies Act read together with section 340(2).

In Singapore, wrongful trading is an offence and it is only upon conviction of the offence that an errant director or officer may be ordered to compensate creditors who have suffered a loss as a result of being unable to recover the debt in question. It may be seen as an extension of the duty to consider the interests of creditors discussed in the earlier section except that creditors here have the right to apply directly for an order for compensation and need not rely solely on the liquidator to sue the directors on their behalf. Moreover, it is not necessary that the company be under insolvent liquidation for action to be proceeded with for wrongful trading. Prosecution for wrongful trading may be initiated where it appears, in any proceedings against the company, that an officer has engaged in such activity.

Directors should note, however, that there are corresponding laws in other jurisdictions where a conviction for wrongful trading is not a prerequisite to a civil claim. For example Australia, New Zealand and the United Kingdom all have legislation that basically allows creditors and other affected stakeholders to take action against directors personally for incurring debts under circumstances where there is no expectation of the debt being repaid or for engaging in conduct that causes substantial risk of serious loss to the company's creditors.

Wrongful trading laws pose a dilemma to directors who are already facing the stress of dealing with cash-flow concerns and the likelihood of insolvency. On the one hand, it is accepted that risk-taking is an essential component of success in business. On the other hand, insolvent trading laws may potentially discourage directors from embarking on risky activity, which may possibly lead to the company's recovery instead of its demise. Be that as it may, directors should strive to achieve a balanced risk-taking approach and consciously make an effort to pay close attention to the survivability of the company, particularly when taking on additional debt or engaging in other conduct that may result in substantial serious risk of loss for the company's creditors. They should steer away from such conduct where they have formed an opinion that insolvent liquidation is imminent or unavoidable.

4. Payment of dividends

Directors should also be very familiar with the rule that dividends may only be paid out of profits. Under section 403 of the Companies Act, every director or manager of a company who wilfully pays or permits to be paid any dividend in contravention of the rule is liable for an offence and may also be made personally liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits.

There is still some uncertainty surrounding the precise legal definition of "profits" for the purpose of this rule. This is notwithstanding that the Company Legislation and Regulatory Framework Committee had recommended that dividend distributions should only be permitted where the company has accumulated realised gains in accordance with prescribed accounting standards. Whatever the case, it is extremely unlikely for a court to be persuaded that an insolvent company would have distributable profits. On the contrary, the court in Chip Thye Enterprises Pte Ltd (in liquidation) v Phay Gi Mo and Others held that directors who allow the payment of dividends where there is no available profits are in breach of both their fiduciary duties to the company and section 403 of the Companies Act, neither of which are dependent on the solvency of the company. It is thus pertinent for directors to obtain proper confirmation from their auditors that the company does have distributable profits prior to paying out any dividends. Clearly, a conservative approach towards the definition of "profits" for this purpose would be prudent.

5. Share buy-backs

Another area where the company's solvency becomes an important issue for consideration is where the board is considering engaging in share buy-backs or repurchases of the company's own shares. A repurchase of a company's ordinary shares may be effected in accordance with the procedures provided for under sections 76B to K of the Companies Act. The repurchase may be funded out of distributable profits or out of the company's capital. The relevant caveat in the context of this article is that payments may only be made under a share buy-back scheme only where the company is solvent. Contravention of this would not only make the repurchase unlawful, but every director or manager who approved or authorised the purchase, knowing that the company was not solvent at the relevant time will be guilty of an offence.

For this purpose, a company is regarded as being solvent only if:

(a) the company is able to pay its debts in full at the time of the payment and will be able to pay its debts as they fall due in the normal course of business during the period of 12 months immediately following the date of the payment; and

(b) the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not after the proposed purchase become less than the value of its liabilities (including contingent liabilities).

Directors should monitor the company's financial status at the time that the payments are made in respect of the share repurchase as this is the relevant time for determining the solvency of the company and not only at the time when approval is sought from the general meeting for the repurchase scheme. Members resolutions and contracts that involve share repurchases should also have language indicating that payments in respect of such transactions are contingent on the company being solvent as defined under section 76F of the Act.

6. Making of solvency statements

Directors of companies that are facing cash flow concerns will also need to pay close attention to their company's solvency status when undertaking exercises which require the making of a solvency statement. Under the Companies Act solvency statements may be required where the company wishes to conduct any of the following:

- redemption of redeemable preference shares out of capital under section 70;
- reduction of share capital under sections 78B or 78C; or
- provision of financial assistance by a company for the acquisition of its own shares under sections 76(9A) or (9B).

A solvency statement for this purpose is a statement by the company's directors –

(a) that they have formed the opinion that, as regards the company's situation at the date of the statement, there is no ground on which the company could then be found to be unable to pay its debts;

(b) that they have formed the opinion –

(i) if it is intended to commence winding up of the company within the period of 12 months immediately following the date of the statement, that the company will be able to pay its debts in full within the period of 12 months beginning with the commencement of the winding up; or

(ii) if it is not intended so to commence winding up, that the company will be able to pay its debts as they fall due during the period of 12 months immediately following the date of the statement; and

Otherwise, the statement may, instead of taking the form of a statutory declaration, be accompanied by a report from the company's auditor that he has inquired into the affairs of the company and is of the opinion that the statement is not unreasonable given all the circumstances.

It is an offence for a director to make a solvency statement without having reasonable grounds for the opinions expressed in it. This may also amount to a breach of directors' duties and expose directors to civil suits should the company go into insolvent liquidation. Directors should therefore obtain the advice from their company's auditors for assurance that it is reasonable to give the solvency statement under the circumstances. This is more so where the company is facing cash flow issues and there is some doubt about the company's solvency.

(c) that they have formed the opinion that the value of the company's assets is not less than the value of its liabilities (including contingent liabilities) and will not, after the proposed redemption, giving of financial assistance or reduction (as the case may be), become less than the value of its liabilities (including contingent liabilities).

Directors of companies that wish to undertake amalgamations pursuant to sections 215A – G are also required to furnish similar solvency statements in respect of the amalgamating or amalgamated companies involved in the amalgamation exercise.

Where the company is exempt from audit requirements or where a "short-form" amalgamation is undertaken under section 251J, the solvency statement is to be in the form of a statutory declaration.

Conclusion

Financial difficulty brings much stress and concern for corporate directors and managers. They have to deal with cash flow issues, survivability concerns and how best to bring the company back to profitability. This article has summarised additional matters that directors may need to pay close attention to where the company's solvency is in doubt. The laws governing these matters are primarily targeted at protecting the interests of creditors. It is important, in a time such as this where many companies may face cash-flow and credit issues as well as other challenges in maintaining their solvency, that directors familiarise themselves with these legal rules as failing to do so may expose directors to civil or criminal proceedings. ■

Top 10 risks for global business in 2009

By Robert Cullen

2008 has been a traumatic year for the global economy where the financial services sector has been radically transformed through multiple collapses, write-downs and government interventions.

Two months into 2009, and the pressures of a downward-spiraling global economy remain. Obviously, business risk has increased with greater volatility in the markets. The fact that risk is never static and constantly evolving means that businesses have to be nimble and vigilant in meeting the challenges of tomorrow. The paradox is that you can never be fully prepared for the unknown; yet you can't afford to be caught unaware. What's clear is that risk awareness and management is critical, and must always be seen against your business objectives.

The growing uncertainty today makes it even more essential for companies to view the risks that they are facing strategically and think about their action plans should any of the risks materialize. What this means is that risk management must be taken from a pure compliance function into the boardroom. Companies need to enhance their abilities to proactively identify the risks that matter to their businesses, and determine mitigating courses of action.

A recent study undertaken by Ernst & Young and Oxford Analytical sought to form a view of the top 10 major risks faced across 11 industry sectors in 2009. Comparing the rankings from the same study conducted in 2008, the findings were a reflection of the current market conditions. Having said that, given the fluidity of current circumstances, this is by no means a prediction for the global economy; and it almost certainly will not be the top 10 risks for any particular company. But this should fuel the much-warranted risk management discussions that need to happen in each company, now more urgently than ever.

The top 10

1. It is no surprise that the **credit crunch** was regarded as the most critical risk by the analysts surveyed, given its direct impact and its unpredictability. Banking and capital market sectors continue to suffer from the aftershocks of the credit crunch, while capital-intensive sectors face increased pressures as credit remains dry. In the near term, it would be prudent for companies to adopt a capital-oriented business plan and focus on obtaining cash. Setting up a program management office that looks into aspects including improving cost-management and enhancing lending relationships as part of a systematic approach to managing risks, can help to position the company better in tackling exposures to the credit crunch.

2. On a related note, the uncertainty surrounding the regulatory response to the global financial crisis has placed greater spotlight on **regulatory and compliance** risk for financial sectors. Other examples of regulatory concerns in other sectors include increasing political restrictions on access to oil and gas reserves, and regulatory interventions into pricing of power, utilities and telecommunications. Regulatory and compliance risk needs to be viewed seriously, as its impact on the operational and competitive environment can be far-reaching.

3. As developed economies show signs of contraction, the concern over **deepening recession** emerges as a new risk this year. This is of greatest concern in cyclical industries, such as automotive and media, and industries with direct exposure to the global financial crisis, including banking, asset management and real estate. Companies should consider diversifying geographically into the emerging markets which are gaining a larger share of global economic activity to cushion the slowdown in developed markets. Also, to ensure business sustainability, companies must strike a balance between reducing short-term expenses and investing in strategic opportunities for long-term health.

4. Another risk – unrelated to finance – that has surged in importance is the rise of **radical greening**. Environmental and sustainability challenges, as well as consumer pressures, are expected to escalate, most dramatically in carbon-intensive sectors such as automotive, real estate, oil and gas, power and utilities. Failure to respond to the "call for green" can affect a company's brand and reputation; the converse can offer strong competitive edge. Companies can respond by innovating and enhancing their corporate reputation, and gain an understanding of their environmental impact along their value chain vis a vis the expectations of stakeholders on green issues.

5. **Non-traditional** entrants – new competitors from adjacent markets and distant geographies – is recognized as one of the top risks as existing players may be weakened or distracted by the global economic downturn. Interestingly, there are others who may view this as a diminishing cause for concern given that companies tend to focus on their core business instead of new ventures during uncertain times. Regardless, companies should review their own sources of strategic advantage and focus on retaining existing businesses, while trying to understand the dynamics of the new market segments or niches that new entrants may be moving in on.

6. In 2009, while cost inflation is likely to abate, **cost cutting** is a challenge for many as they navigate the downturn. Companies can deliberate measures like performing a procurement process analysis to reduce discretionary spending, consider shared services or outsourcing options to streamline costs and operations, while focusing on customer churn and product innovation.

7. Another perennial risk that companies face is in **talent management** – both attracting and retaining them – even in a downturn. Tackling this human capital risk requires companies to be systematic and implement structured hiring and retention policies. Companies operating in emerging economies should also be aware that the talent pools in these markets are relatively small. This means many mid-level to senior people would have spent time with a number of competitors and thus many companies understand each other's so-called "competitive advantage".

8. In 2009, the challenges associated with **executing alliances and transactions** are expected to fall in importance as the credit crunch eases the pace of mergers and acquisitions (M&As). Yet alliances and partnerships remain crucial to business strategies of leading firms in sectors such as telecommunications, life sciences, utilities and media. Furthermore, the financial crisis has led to sudden and dramatic "rescue mergers" for which due diligence must be undertaken. Companies involved in M&As should invest in understanding the target, in terms of its strategy, business model and risk profile. This is to maximize synergy, because many acquisitions fail due to poorly executed integration.

9. The unprecedented market conditions have resulted in growing concerns over the risk of **business model redundancy**. Existing business models for some sectors may have become obsolete, forcing leading firms to reinvent their corporate strategies and structures. This necessitates companies to develop business models that allow business units to be innovative, while a strong central management allocates investments and monitors success and failures closely.

10. Finally, as evidenced by the global financial crisis, a company's financial reputation can be damaged overnight and have enduring impact on the company's survival. As such, reputational risk has been elevated to the global list of top 10 risks from 22nd spot last year. To mitigate this risk, companies need to recognize the impact on their business decisions on public perception. They should also be committed to high standards of corporate governance and transparent communication of financial information in order to win the trust of stakeholders, especially in today's volatile markets.

Your risks are unique

More often than not, the risks described above are inter-related and interacting with one another to form an even more complex web of challenges. One person's business challenge is frequently someone else's market opportunity. It is expected that even with knowing these top 10 business risks, there will be variations in the most important business risks from sector to sector, region to region and firm to firm.

It is imperative that each company assesses its own unique circumstances and challenges, and the mitigating actions that need to be taken. Indeed, there is no one-size-fits-all approach to managing business risks. What really matters is whether you are able to effectively turn your risk awareness into a competitive business advantage. ■

The writer, Robert Cullen, is Ernst & Young's Asean Practice Leader for Business Risk Services.

FEATURE

CG Developments from Around the World

Asia

1. Singapore - Audit Committee Guidebook Released In Singapore

The Guidebook for Audit Committees in Singapore ('Guidebook') was issued by the Audit Committee Guidance Committee ('ACGC') in October 2008 to provide practical guidance and recommendations of best practices for Audit Committees of companies listed on the Singapore Exchange. The Greatest usefulness of the Guidebook lies in the fact that the ACGC has clarified several of the key functions of the Audit Committee, particularly in relation to audit and finance. Whilst there is nothing new as regards the role of the Audit Committee, the Guidebook does in providing elaboration on what the Audit Committee is expected to do does go further than the basic guidance provided in the Singapore Code of Corporate Governance ('CCG'). Additionally, the Guidebook gives practical recommendations which are relevant to Audit Committees. Although the recommendations in the Guidebook are not binding on Audit Committees, they nevertheless serve as a useful and practical guide for Audit Committees alongside the regulations. Audit Committees do not have to scramble to understand what their role entails any longer. This is achieved through the sharing of experiences, knowledge and practices of audit committee members and help other members deal with their own set of circumstances. As a reminder, the Guidebook is not intended to be a new rulebook or to prescribe additional standards. Industry watchers said that the launching of the guidebook was timely given the spate of corporate fraud cases involving inflation of accounts and misappropriation of funds in the recent years.

The guidebook is available online on the websites of the Monetary Authority of Singapore, Accounting and Corporate Regulatory Authority and Singapore Exchange.

2. Singapore - New Index Launched To Encourage Better Governance

On 26 November 2008, the Corporate Governance and Financial Reporting Centre (CGFRC) of the National University of Singapore's Business School and The Business Times jointly announced a new index known as the Governance and Transparency Index ('GTI') to promote corporate governance and transparency among companies here. The GTI replaces an existing index which looked simply at financial transparency. The index will be sponsored by CPA Australia. The new index is intended to be more rigorous and has a broader focus

on investor relations, governance and transparency. To this end, it has been reported that companies will be assessed on areas such as the tenure of independent directors, whether a firm has a separate investor relations link on its website and uploads the latest financial results on its website. The new index will also have in place a bonus and penalty system to reward or punish companies for their practices. These areas include earnings restatements, frequent turnover of senior management and red flags raised by auditors. In some cases, the penalties may continue to last for a number of years, such as the appointment of directors who have undergone regulatory action. The first edition of the new index will be published in The Business Times in the first quarter of next year and it will be done twice a year instead of quarterly.

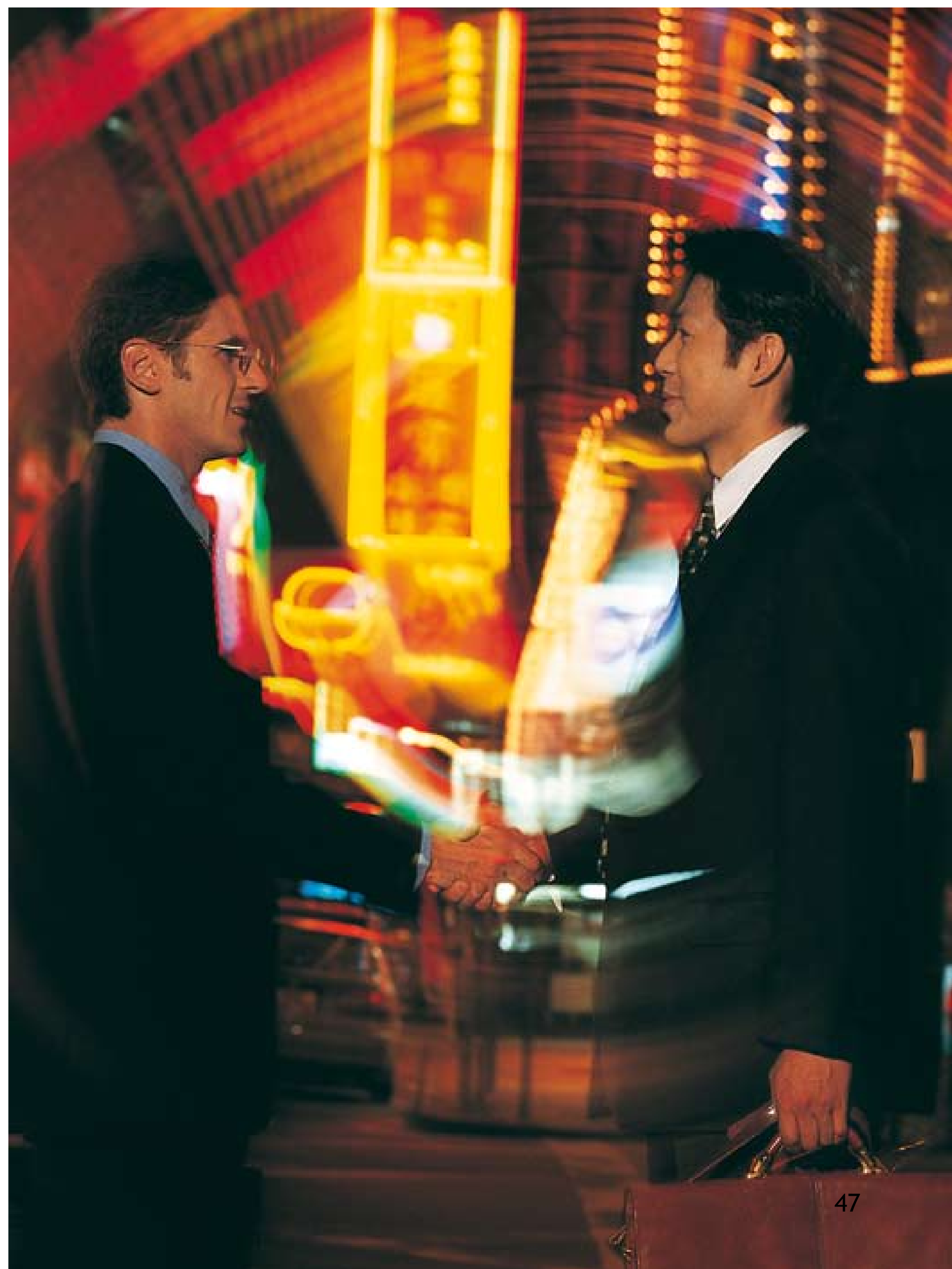
Source - *The Straits Times 27 November 2008 - "Index to encourage better governance"*

Thailand – Overall Corporate Governance Score Of Thai-Listed Companies Improved

(BANGKOK) The 2008 Corporate Governance Report (CGR) of Thai Listed Companies showed that the overall corporate governance score of Thai listed companies has improved from an average of 50% in 2001 to 75% in 2008. Companies were outstanding in disclosure and transparency with an average score of 88%, up from 82% in 2006, and the rights of shareholders category at 86%, up from 71% in 2006. However, board responsibility attained only 57%, a point declined from 2006. The survey was conducted among 448 companies with a total of 132 criteria in five categories based on criteria developed by the Organisation for Economic Co-operation and Development (OECD) and the Stock Exchange of Thailand Principles of Corporate Governance.

An abiding problem is that many Thai boards are dominated by groups of major shareholders and in some cases, both the CEO and the chairman are the same person. Mr Charnchai Charuvastr, president and CEO of the Thai Institute of Directors (IOD), added that despite conflicts of interests, the boards had a better understanding of their roles and responsibilities than before. Around 3,200 directors have attended an intensive course related to their roles and responsiblities. The improvement is shown in the findings that three-quarter of the companies had achieved scores higher than 70% and 22 of the companies had actually achieved scores higher than 90%.

According the survey, 96% of surveyed companies had board remuneration approved by the shareholders annually, 91% had ballot voting at the AGM and had an internal audit function reporting to the audit committee, and 87% separated the function of the chairperson and CEO. The results of the survey also show that Thai companies have adopted international standards in various practices. On the weak side, only 10% of the companies had board that conduct annual performance assessments of management and the



total number of independent directors was still very limited. *~Adapted from "CHARNCHAI CHARUVASTR – Governance matters more than ever", 30 December 2008, Bangkok Post*

Worldwide

1. **Global consultation on corporate governance and the financial crisis**

   The OECD member countries have embarked on an action plan to address weaknesses in corporate governance that are related to the financial crisis. It is reported that an important part of this programme is to engage and seek advice from key stakeholders on improvements they consider necessary. A one day session has been planned for 18 March 2009 at the ***OECD Conference Centre in Paris, France***. This consultation will discuss monitoring, implementation and enforcement of standards and codes, as well as possible reforms and improvements, focusing on:

   - the role of corporate governance in the financial crisis
   - identifying the most urgent areas for reform
   - how OECD can improve and support implementation of agreed standards
   - how OECD can support national, regional and global initiatives

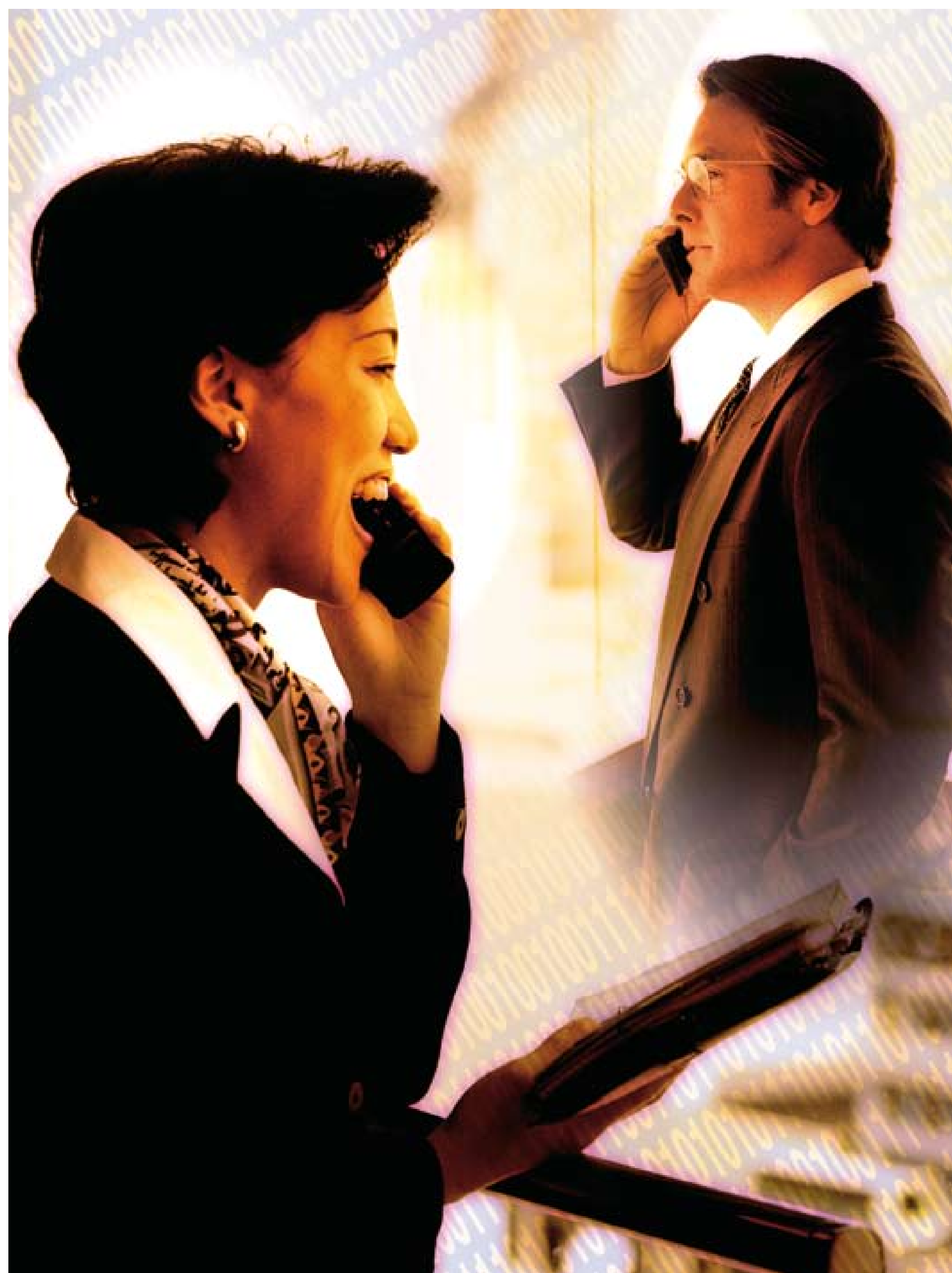
   It is hoped that the consultation will provide input to a set of recommendations to be issued towards the end of 2009. It will also help to guide the medium-term orientation of OECD's corporate governance work and facilitate co-ordination among different organisations and institutions that are active in the area of corporate governance.

   Source – OECD Website at *http://www.oecd.org/document/63/0,3343,en_2649_34813_42181055_1_1_1_37439,00.html*

2. **The Corporate Governance Lessons From The Financial Crisis**

   This is a report published by the OECD Steering Group on Corporate Governance, which agreed to the report on 11 February 2009) and written by Grant Kirkpatrick under the supervision of Mats Isaksson.

   Broadly, the report reviews and analyses the weaknesses in corporate governance on the financial crisis, including risk management systems and executive salaries. It concludes that the financial crisis can be to a large extent attributed to failures and weaknesses in corporate governance arrangements which did not serve their purpose to safeguard against excessive risk taking in a number of financial services company. This is information that many already know; but what is particularly helpful about the article is that reminder that the importance of qualified board oversight and robust risk management is not limited to financial institutions. He report also touches on the highly controversial issue of the remuneration of boards and senior management. ■



The Institute continued to organise and host various events in the last quarter. We highlight key events here. If you would like more information as to our future events, please do not hesitate to contact the secretariat.

SGX-SID-Ernst & Young
Financial Workshops Series

The Financial Workshops series, co-organised by the Institute, Singapore Exchange Limited ("SGX") and Ernst & Young, continued to be well received by members and non-members. The first three were very well attended.

The forth workshop "Navigating Uncertainty: A Practical Guide for Directors during Crisis" was held on 17 Oct 2008. It was attended by 60 members and non-members. The presenters were Messrs Aaron Loh, Patrick Hanna, Lawrance Lai and Ms Angela Ee of Ernst & Young, as well as Mr Manoj Sandrasegara of Drew & Napier. There was a panel discussion at the end of the session involving all presenters.

"A deep dive into the Guidebook for Audit Committees in Singapore: Financial Reporting & External Audit" was the fifth workshop and it was held on 11 December 2008. The presenters for this session were Messrs Nagaraj Sivaram and Harsha Basnayake of Ernst & Young. Ms Annabelle Yip of WongPartnership and Mr Koh Soo Keong of EcoSave joined the presenters as panelists for this session. About 60 members and non-members attended the workshop.

The sixth workshop "A deep dive into Guidebook for Audit Committees in Singapore (II): Internal Audit and Risk Management" was held on 15 January 2009. The presenters for this session from Ernst & Young were Messrs Glenn Daly and Rangarajan Ekambaram. Ms Joy Tan of WongPartnership and Mr Adrian Chan of SID joined the presenters as panelists for this session. About 66 members and non-members attend the workshop.

SID thanks SGX and Ernst & Young for collaborating with SID in the series of workshops.

SGX Listed Companies Development Programme

Understanding the Regulatory Environment in Singapore

The 14th run of the SGX Listed Companies Development Programme on "Understanding the Regulatory Environment in Singapore" was held on 6 February 2009. Responses from listed companies to the programme remained very good.

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

The presenters were Ms Kala Anandarajah, partner at Rajah & Tann LLP, Mr Ng Siew Quan, partner at 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. SID was represented by Mr Basil Chan while SGX was represented by Mr Ashley Seow.

SID thanks all the presenters and panelists for their contribution and thanks SGX for partnering SID to conduct the training programme.

SGX Listed Companies Development Programme

Understanding the Regulatory Environment in Singapore in Mandarin

The Singapore Exchange Limited (SGX) held another of its Mandarin session on "Understanding the Regulatory Environment in Singapore" on 14 October 2008 in Shanghai, China, in response to the strong demand from companies 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 regulations.

The presenters were Mr Hee Theng Fong, partner at the law firm KhattarWong LLP and a practicing director, and Mr Ng Siew Quan, partner at PricewaterhouseCoopers. The keynote address was delivered by Mr Richard Teng, Senior Vice President & Head of Issuer Regulation of SGX.

SID thanks the presenters for their contribution and SGX for partnering SID to conduct the training programme.

SID-IIA Breakfast Talk

The Institute and The Institute of Internal Auditors (IIA) jointly organized a breakfast talk on "Audit Committee Oversight of Internal Audit" at Pan Pacific Hotel on 24 October 2008. It was attended by 35 members and guests.

The speaker for this talk was Mr Donald Espersen, CIA, is an independent internal audit advisor based in St Paul, Minnesota, USA. Mr Espersen's presentation focused on what audit committee members need to know about internal auditing, including independence and objectivity - realities, myths and essential practices, internal audit staffing, internal audit procedures and value-added internal audit roles and services. The welcome address was delivered by Mr Reggie Thein, the Institute's Treasurer.

The Institute thanks IIA for partnering with us for the talk and all members and guests for their presence.

SID-Protiviti Breakfast Talk

A complimentary breakfast talk to the Institute's members on the "Ten Common Risk Management Failures & How to Avoid Them" was held on 4 November 2008 at The Fullerton.

The guest speaker was Mr Jim DeLoach, Managing Director, Global Risk Solutions, Protiviti. He shared common ERM mistakes and pitfalls as well as critical success factors for an effective ERM implementation, drawing lessons from the current financial crisis.

The Institute thanks Protiviti for sponsoring the talk and all members and guests for their presence.

SGX-SID-KPMG ACGC Series Seminars

The Institute together with the Singapore Exchange Limited (SGX) and KPMG jointly organized a half-day seminar on titled "ACGC Series - Understanding the Guidance: Best Practice for Directors".

The first run for the seminar was held on 18 November 2008 and it was attended by 70 members and non-members. The presenters for this session were Messrs Irving Low and David Leaver of KPMG and Adrian Chan of Lee & Lee as well as a Council Member of the Institute.

The keynote address was delivered by Ms Yeo Lian Sim, Senior Executive Vice President of SGX. She together with the two presenters Messrs Irving Low and Adrian Chan and Mr Tham Sai Choy of KMPG, Mrs Yvonne Goh of KCS Services as well as a Council Member of the Institute and Mr Koh Soo Keong of EcoSave joined in the panel discussion at the end of the session.

The re-run for the seminar was held on 3 December 2008 and it was attended by more than 90 members and non-members. Mr Chew Heng Ching, SID Chairman delivered the keynote address for this session.

The presenters for this session were Messrs Irving Low and Tham Sai Choy of KPMG and Adrian Chan of Lee & Lee as well as a Council Member of the Institute. The panelists for this session were Prof Mak Yuen Teen of NUS Business School, Messrs Richard Teng of SGX, Koh Soo Keong of EcoSave, Irving Low and Tham Sai Choy of KPMG and Ms Juthika Ramanathan of ACRA.

The Institute thanks SGX and KPMG for partnering with it for these seminars.

SID-KhattarWong Law Workshop

The Institute together with KhattarWong had jointly organized a half-day seminar on "Director's Changing Role and Duties in Challenging Time" on 9 January 2009 at the Rendezvous Hotel. It was attended by 35 members and non-members.

This half-day seminar covered three main areas of importance, namely (a) takeovers and reverse takeovers, (b) effective corporate governance and (c) reorganisation and restructuring of a company.

The presenters from KhattarWong were Mr Tan Chong Huat, Ms Nicole Tan and Mr Chan Kia Pheng. Mr Basil Chan, a Council Member of the Institute joined the three presenters for a panel discussion at the end of the session.

The Institute thanks Khattar Wong for collaborating with SID for the workshop.

Members' Night

In conjunction with the Lunar New Year, the Institute's Membership & Publicity Sub-committee organised a members' night in the evening of Monday, 19 January 2009 at Union Square (an NTUC Club).

The night presented a good opportunity for the members to meet, network and to renew acquaintances. More than 50 members turned up for the event. Mr Chew Heng Ching, the Institute's Chairman of SID was also present at the event.

Mrs Yvonne Goh, Chairman of the Membership & Publicity Sub-committee in her short welcoming speech thanked members for their presence and continuing support of the Institute's activities. Mrs Goh introduced the speaker Master Fong Chun Cheong, the founding chairman of Singapore Feng Shui Association Pte Ltd (also an SID member) who has been practicing Feng Shui for many years.

This being the Year of Ox, Master Fong spoke on "Don't be sacrificed in the Year of the Ox". Many members found Master Fong's talk enlightening and entertaining.

The Institute thanks NTUC Club for sponsoring the event and also all members for their presence.

SID's 10th Annual General Meeting

The Institute held its 10th Annual General Meeting on Monday 17 November 2008 at Marina Mandarin.

The Annual General Meeting (AGM) was attended by about 40 members. At the AGM, Mr Keith Tay, Mr John Lim, Mr Reggie Thein, Mrs Yvonne Goh and Mr Will Hoon were re-elected to the Governing Council. Mr Yeo Wee Kiong and Mr Daniel Ee who were appointed as new members to the Governing Council during the course of 2008, were elected to the Governing Council.

The Institute thanks all members for attending the AGM.

SID

SID announces the findings of the PwC review of the Strategic Direction of the Institute

The Institute released the findings of a strategic study commissioned with the support of ACRA, MAS and SGX and undertaken by PwC following its 10th AGM. Details of the study are available at page under the article titled "Future Plans".

Mr John Lim, President of the Institute made a presentation to the media on the findings and recommendations by PwC. Top on the to-do list is to strengthen the Secretariat and engage a full-time CEO. At the same time, SID plans to expand its range of service like putting online directors' evaluation service for companies to better assess their directors as well as online searchable register to help companies identify suitable directors from a larger pool.

WELCOME ON BOARD

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Koh Yau Chai
Goh Hin Calm
Leahy Christopher
Teo Teck Chuan
Lee Sek Leong Christopher
Khoo Gee Choo

JANUARY 2009

Koh Kian Lam
Mehta Mahesh Kumar
Foo Shing Mei Deborah
Buerger Peter
Lim Teck King
Tan Puay Kern
Standley Richard Daniel
Chin Hooi Yen
Koh Ngin Joo
Lim Kai Meng Kenny
Lai Mun Onn
Woo Peng Kong
Koh Choon Joo Edbert
Sng Yeow Huat
Chong Kia Khin
Tan Soon Yee Kelvin
Vistisen Jan
Eyring Alison Romney
Tan Chye Guan Andy
Cheng Soon Keong
Ong Chin Wee
Lim Yeow Beng
Lui Yen Li
Tit Wei Lee
Lim Min Wah
Yeo Chor Gek Mary
Tong Wei Min
Yeo Kia Yeow

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Chia Hoong Mun
Ong Suzanne
Pollock James Clelland
Seah Hsiu Min Eugene
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Sharma Umesh Kumar
Yee Jiong Hwa
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