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Singapore Institute of Directors

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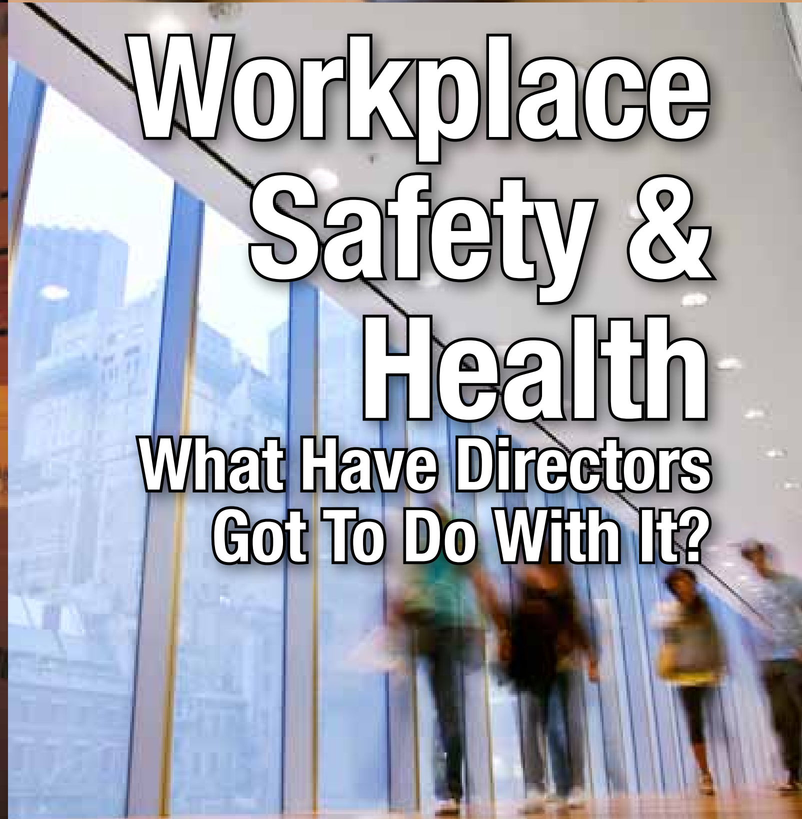

Workplace Safety & Health

What Have Directors Got To Do With It?

Singapore Institute of Directors

MISSION STATEMENT

To promote the professional development of directors and corporate leaders and encourage the highest standards of corporate governance and ethical conduct

THE INSTITUTE'S OBJECTIVES ARE:

- To be the national association of company directors for the local business community. The SID works closely with its network of members, professionals such as accountants and lawyers, and the authorities to identify ways to uphold and enhance standards of corporate governance.
- To act as a forum for exchange of information on issues relating to corporate governance and directorship in Singapore. The SID plays a leading role in holding discussions and providing feedback to the authorities on matters of concern.
- To organise and conduct professional training courses and seminars to meet the needs of its members and company directors generally. Such courses aim to continually raise the professional standards of directors in Singapore by helping them raise their effectiveness through acquisition of knowledge and skills.
- To regularly publish newsletters, magazines and other publications to update members on relevant issues, keeping them informed of latest developments. These publications also serve as reference materials for company directors.
- To be responsible for the discipline of members. The SID has drawn up a code of conduct for directors in Singapore setting out the standards to ensure they discharge their responsibilities dutifully and diligently.

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FROM THE EDITOR

Welcome to another issue of the Directors' Bulletin, issued after an exciting time of the Singapore elections. The words unprecedented and watershed, amongst others, have been used on numerous occasions.

In the director scene, nothing exciting, so to say, has occurred except perhaps recent court decisions imposing even a custodial sentence. This is an evergreen reminder for directors, and independent directors at that, that the courts in various jurisdictions scrutinise the performance by all types of directors of their duties and responsibilities to the company seriously. The Companies Act makes no difference as to the type of director appointed and hence, is a clear indication that all directors owe the same statutory duty of acting honestly and diligently (interpreted as with due skill and care) at all times. What is comforting is that at common law, the courts have been more willing to recognise that there could be a different level of duty owed by different directors, depending on their specific designation and roles in the Company.

What remains clear, however, is that no director can ever abdicate his duties, regardless of how limited those are. In this light, would a director be viewed as potentially abdicating his duty if he simply took the position that his only role was oversight? There are many nuances to this question and it is not possible to provide a simple answer; although without more, I would take the view that a director, even an independent one, has a wider role to play than mere oversight.

I started off the discussion in this issue of the Directors' Bulletin with a discussion on director duties for two reasons.

First, the focus of this issue is on workplace safety and health. Many an un-enlightened individual would ask what has workplace safety and health got to do with the director or director's duties. Everything I say. Although the relevant legislation, ie the Workplace Safety and Health Act has been around since 1 March 2006, not many fully appreciate the board's role in ensuring workplace safety and health at the workplace. This is discussed in the first and second articles in this issue. The issue is particularly pertinent as the Act will be extended with effect from 1 September 2011 to apply to all workplaces.

Second, the Institute's Annual Director Conference will be held in September 2011. The theme for the conference is Heat or Hope - viewed from the perspective of directors. The Conference aims to respond to the many vexed questions that come up on exactly what is the duty, responsibility and so role of the director. Varied panels comprising of international and local stakeholders will lead discussions. Do make a date with the Institute to attend this event.

Separately from directors' duties and responsibilities, workplace safety is an important issue to manage. To this end, we are pleased to include in this issue the speech delivered by then Minister for Manpower, Mr Gan Kim Yong, at the launch of the National Workplace Safety & Health campaign on 20 April on critical steps being taken to improve workplace safety and health in Singapore. This includes a new Messenger programme. It is apt and a privilege for me to take this opportunity to thank the Minister not just for allowing us to use his speech, but more importantly, for his invaluable contributions to safety and health in Singapore. Thank you Minister and wishing you the best in your new portfolio.

Workplace safety and health is not only a localised issue in Singapore but a matter viewed seriously in a number of jurisdictions, including Australia, which recently introduced stringent rules. We have included a couple of articles from other jurisdictions on this topic as well.

It remains for me to thank all contributors to this issue, and to once again invite all to provide the Institute with articles, comments and feedback. Many thanks!

Kala Anandarajah
Editor

CHAIRMAN'S MESSAGE

Dear fellow members,

In this issue of The Directors' Bulletin I would like to address very briefly an issue which has caused some anxiety among some members of the director community.

This issue relates to the custodial sentence that was handed down recently to an independent non-executive director of a listed company over the accuracy and timeliness of a public disclosure. This case which is currently under appeal has prompted several directors to ask if regulations and laws relating to disclosures have changed or has punishment for breaches of such laws become more severe if found guilty. Others have sought guidance on how directors should act when confronted with circumstances that may require a public disclosure.

Our regulations on this subject which are embodied mainly in the Securities and Futures Act (SFA) and the Listing Manual of the Singapore Exchange have not changed and require disclosures when made to be both accurate and timely. The requirement for such timely disclosure is to ensure the market has the information to prevent a false market in the securities of the company concerned. The issue for each board to decide is when an event is sufficiently significant as to require immediate disclosure or can such disclosure be delayed given the nature and circumstance of such an event, bearing in mind the need of the market for timely and accurate information and the need to act in the interest of the company.

In order to address members' request for some guidance on this subject your Institute is currently preparing a guidance paper based on the knowledge and experience of some of our senior members. This paper is expected to be completed shortly and, when finalized, will be disseminated to all members. However, as no guidance paper, no matter how comprehensive, is likely to be able to address every situation, your Institute will be organizing a special panel discussion for members only to discuss the subject and to answer members' queries. We plan to conduct this discussion towards the end of June and after the special guidance paper has been sent to all members. Details on this will be communicated by the Secretariat shortly.

In recent months the SGX has also been sending reminders to the audit committees of some companies, in particular those with businesses located mainly or totally in China, to review and implement appropriate controls to safeguard cash and other assets of such companies and to incorporate certain amendments or provisions in their Articles. Such requirements have further emphasized the importance of the roles of audit committees and of directors and the increasing need for companies to ensure their directors are competent and are kept up to date with the latest developments in regulations, best practices and knowledge through continual training. In this regard, I would like to remind members who are company directors, specially of listed companies, of the value of widening their search for new directors, of continual training and regular performance evaluation. Your Institute currently maintains a registry of suitably qualified members who have indicated their willingness to be considered for director positions and will soon be organizing a networking event with investment houses and sponsors to further promote the Institute's Board Appointment Services.

Your Institute is also currently finalizing it's report on the latest Singapore Board of Directors' survey and this is expected to be sent to all members in June.

On June 12th we will be holding our Annual Golf Tournament at the Sentosa Golf Club. This tournament which is our premier networking event has been very well supported and all available flights are once again fully taken up. We are grateful to our many sponsors and participants, in particular, Keppel Corporation who for the second year running is our Platinum sponsor. All surplus generated from this event will be utilized to support the further development of our director training and development programme and other initiatives of our Institute. Emeritus Senior Minister Goh Chok Tong has kindly agreed to be the Guest of Honour for this event.

On 14th September we will be hosting our Directors' Conference for 2011 at the Shangri-La Hotel. Arrangements are being finalized for what promises to be a "must attend" corporate event for all directors and senior members of the corporate community. More details on this Conference can be found on page 5 of this bulletin.

2011 is shaping up to be another busy and productive year for your Institute and we are grateful for the increased number of members and corporations who have stepped forward to assist us and support our activities. I would like to take this opportunity to thank them, the SGX and MAS for their close collaboration and our Council members, our various committees and our Secretariat who have continued to work tirelessly for the continued advancement of good corporate governance in Singapore.

Warm regards,

John KM Lim
Chairman

SID Governing Council 2010/2011

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SAVE THE DATE

SID

Singapore Institute of Directors

SID DIRECTORS CONFERENCE 2011

Heat & Hope:

The New Realities In Corporate Governance

The annual one-day conference organised by
Singapore Institute of Directors
9.00 am to 5.00 pm, Wednesday, 14 September 2011
Shangri-La Hotel, Singapore

Directors are under siege. With the financial crisis and corporate failures, the focus on corporate oversight and performance has increased in leaps and bounds. They are asked to do more and to be more effective. With each corporate misdeed, new rules and regulations are introduced. The accounting profession continually produces new FRS, change age-old accounting principles and introduce new ways of accounting that even accountants find hard to keep pace with. Legislation and compliance requirements have also greatly broadened. Concurrently, the business environment and industry context in which companies are operating, is becoming more complex and changing rapidly. As a corollary to all these changes is the increasing liability risk of directorships.

Are directors simply feeling the heat or is there hope in store?

This year's SID Directors Conference seeks to provide attendees a balanced perspective of the current hot areas related to corporate governance, from the often discussed and unresolved issues of board composition, to the role and value of auditors, and the new sustainability agenda. A mutli-stakeholder perspective panel discussion will provide insights and incite thinking on the issues.

For those involved in corporate governance - whether as directors or as observers and supporters - this is the corporate governance conference to attend.

Workplace Safety & Health – What Have Directors Got To Do With It?

By Kala Anandarajah
Partner
Rajah & Tann LLP

Singapore is a country where a large number of businesses, whether hardcore construction and marine industry based or otherwise, are carried out by corporate entities which are regulated by the Companies Act. Entities regulated by the Companies Act have directors at their helm managing the company and directing its strategy, very broadly put. Directors also have oversight functions, which include ensuring that the best people are hired for specific tasks. Whilst this function can be delegated downwards to management, the function of the directors will nevertheless be to ensure that the management team hired were capable of ensuring that appropriate persons were hired, and that there were processes in place to ensure the hiring and compliance.

It is this oversight role that directors have that requires them to be aware of the new workplace safety and health laws, not that they do not need to be aware of any other laws. Directors must be alert to the environment they operate within, which includes the legal environment. Although there have as yet been no cases where directors have been personally implicated or said to have breached their duty of skill and care in the Singapore context for a workplace safety and health violation, this does not mean that they could never be taken to task. Directors can be taken to task under the Companies Act as well as under the Workplace Safety & Health Act; and hence, must recognise it as an imperative duty of theirs to ensure that proper personnel are assigned the task of ensuring workplace safety and health, with regular reports fed back to the board on the performance level.

This short article explores the revised Workplace Safety and Health Act, the implications for directors under that legislation, and relooks the directors' duty to act with due skill and care under the provisions of the Companies Act as well as under common law principles.

Importantly, it stresses that directors cannot take workplace safety and health complacently.

> Directors must be alert to the environment they operate within, which includes the legal environment. Although there have as yet been no cases where directors have been personally implicated or said to have breached their duty of skill and care in the Singapore context for a workplace safety and health violation, this does not mean that they could never be taken to task.

Snapshot Of The Workplace Safety & Health Act And Who It Extends Over

When The Act First Came Into Force And Reasonably Practical Steps

The Workplace Safety and Health Act came into force on 1 March 2006, replacing the Factories Act and, in its place, provided for the following:

- secure the safety, health and welfare of persons at work in workplaces;
- impose specific duties on various persons, which include employers, self-employed persons, principals, occupiers of workplaces, persons at work, manufacturers or suppliers of machinery or equipment for use at work, persons who erect, install or modify machinery or equipment and persons having control over common areas, etc;
- provide a range of enforcement methods, so as to enable an appropriate response to a failure to comply with the Act depending on its nature;
- provide for the appointment of authorised examiners and inspectors to carry out such safety and health inspections as are prescribed under the Act; and
- provide for safety and health management arrangements.

When introduced, the Act took a drastic step of moving away from a typical prescriptive approach to a more principal based approach, requiring all employers, amongst other stakeholders, to take reasonably practicable steps to ensure that the safety and health of workers and others who may be affected by their work. The reason for this was that the prior regulatory regime defined which workplaces and aspects of work were regulated, and also prescriptively fixed the methods of achieving OSH competency on the ground. Such an approach had led to a morass of legislative rules and regulations, which invariably ended up being ill-suited to particular sets of circumstances but had to be followed nonetheless. It promoted a mindset of simply following the letter of the law, without applying one's mind to how the measures should be implemented to be effective or if there is a better or more efficient solution. Further, it was easy for directors to just leave to the personnel on the ground to manage risks.

However, with the movement to a performance-based approach, the law does not for example prescribe that your factory windows must be 10% of the floor size. The duty is simply to ensure that there is sufficient ventilation according to the number of people at work. The intention is to let the employer, which in a company, must involve the directors as the mind of the company, to decide how to achieve this. If there is inadequate wall space for windows, or if windows are not practical in the work environment, alternatives such as forced ventilation or suction fans can be used.

The Act adopts this performance-based approach by requiring stakeholders to take all reasonably practical measures to ensure the safety and health of their workers and the public. The burden is put on the party responsible to show that he has taken such reasonably practicable measures. To make sure companies internalise this, they are required to conduct risk assessments, and take steps to eliminate or minimise identified risks, and disseminate this information.

Additionally, stakeholders will also need to comply with Regulations under the Act that are relevant to their work activities. These include requirements for risk management and incident reporting, which apply to all workplaces covered by the Act. There are also regulations that deal with specific hazards such as excessive noise, confined spaces, the use of hazardous chemicals, etc. that stakeholders must comply with if their work involves such hazards.

Extended Coverage Of The Act To All Workplaces

With the passing of the recent amendments to the Act in early April 2011, all workplaces will be covered by the Act, instead of certain classes or descriptions of workplaces that are currently specified in the First Schedule to the current Act. The First Schedule will be deleted in view of this amendment. The Act defines "workplace" as "any premises where a person is at work or is to work, for the time being works, customarily works, and includes a factory." It will be seen that coverage of the new Act extends beyond just factories, which were effectively the only premises covered under the Factories Act. In this regard, the then Minister for Manpower had previously said that this limited coverage was archaic, as every worker deserved to be protected against safety and health risks. He also noted

that OSH legislation in other developed countries, including the US and the UK, have long moved on to cover all workplaces.

As such, the amended Act has extended coverage in stages to the other sectors. As noted in a Workplace Safety and Health Council update, "all workplaces will be covered under the Workplace Safety and Health (WSH) Act from 1 September 2011. This brings on board more than 100,000 organisations employing more than 1.6 million workers (about 57% of Singapore's workforce). In the second reading speech for the WSH (Amendment) Bill, Manpower Minister Gan Kim Yong highlighted that this intent was first announced in 2005. The WSH Act was progressively extended over three phases in 2006, 2008 and 2011, allowing industry time to adjust to the extension of the WSH Act."

However, certain occupational groups remain exempted, such as members of the Singapore Armed Forces, the Police and other members of the Home Team. These agencies need the flexibility to make urgent operational decisions without being encumbered by the legislative requirements. Nevertheless, the Ministry of manpower had indicated that it will work with those exempted to ensure that their OSH management systems are comprehensive and up to date.

Responsibility For Safety Should Lie On Those Who Create Risks

The extended coverage means that employers, amongst other persons, of any workplace must take reasonably practicable steps to ensure the safety and health of its employees. This is managed primarily by identifying who is responsible and the duties attributable to them, along the entire line of the hierarchy. Hence, directors of companies must ensure that they are taking positive steps to ensure that proper processes are put in place, suitable people are employed, including in certain instances, safety officers, and changing the culture.

Under the regime that existed prior to 1 March 2006, legal liability in respect of all persons in the factory fell on the shoulders of the registered occupier. It is noted that for a traditional assembly-line plant, this is comprehensive as the factory occupier is typically the employer of all the workers and has control over the risks to which they are exposed. However, with the changes in the way business has been undertaken, including outsourcing, specialisation of work and more diverse employment relationships, workplaces often have workers employed by third parties and other specialists. To illustrate, construction sites, where employees from various specialist sub-contractors work together on the same project but under the direction of their respective

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employers. In such a scenario, placing legal liability on the registered occupier alone may be unfair and ineffective, as the employees of sub-contractors may choose to ignore the safety instructions of the occupier or carry out unsafe work practices or introduce unsafe work processes without the knowledge of the occupier.

Given the above, the Act expanded responsibility and better defined persons who are accountable for safety outcomes. In this regard, a more direct liability regime which assigned legal responsibility to those who created and had control over safety and health risks was been created. Specifically, liability will be assigned to occupiers for dangers arising from the physical environment under their control, whilst another will assign responsibility for safety to employers and self-employed persons respectively.

Responsibility was also extended to cover principals who engaged contractors for specialised tasks or the services of workers from third party labour suppliers. In such situations, there is no contract of employment between the principal and the contractor or the worker supplied. Traditionally, a principal who engages a contractor would be engaging the specialist services of the contractor, and would not be directing the contractor on how to do the work. However, this practice has changed, and principals often engage "contractors" and third party labour not for their specialist expertise, but precisely so that they can avoid entering into direct employment relationships, for organisational or other reasons. In such situations, the principal in terms of supervision takes on the role of an employer. The Act thus places on him responsibility for the worker's safety and health as if he were his employer. If this were not the case, then the duties under the Act could be simply circumvented by a careful crafting of the legal relationship.

The most recent amendments widen the above by requiring the principals, even if they are not involved in directing the work of his contractors, to still be required to exercise reasonable care to ensure the safety of the workers. To this end, the amendments to the Act require all principals to ensure that any contractor they engage is able to carry out the work safely, whether these contractors work under their direction or not.

This duty on principals is not an onerous one. Contained in the new Section 14A, the requirement is still one of "reasonably practicable" measures; ie it requires principals to take only such measures that are "reasonably practicable", which takes into account the level of knowledge and expertise that the principal could reasonably be expected to possess. To provide stakeholders with some clarity on what such measures would entail, Sections 14A(2) and 14A(3) state that such measures include ascertaining that the contractor and his employees have sufficient experience and training to carry out the work, and that the contractor has conducted a risk assessment on the safety and health risks posed by the work.

The Minister for Manpower in his second reading for the passing of the amendments in parliament in April 2011 cited the following example: "For example, a principal who engages a contractor to repair his roof should minimally verify that the contractor and his employees have been trained to work safely at heights, including the proper use of the necessary fall prevention equipment. The principal should also be satisfied that the contractor has conducted a risk assessment to identify the risks involved and the measures to mitigate such risks. A principal who himself can be expected to possess expertise for the work that he has contracted out will be held to a higher standard. For instance, if the principal is also a contractor himself, he would be expected to assess whether the risk assessment conducted by the contractor is adequate and if need be, let the contractor know what risks have not been adequately addressed. As with other stakeholders under the Act such as employers and occupiers, principals who fail to discharge these new duties with due diligence can be subject to the maximum penalties allowed under Workplace Safety and Health Act, that is, a maximum fine of S$200,000 for individuals and S$500,000 for businesses."

The Minister further noted that the recent amendments to the Act expressly extend responsibility and so liability for workers who acted negligently in the workplace and in doing so, endangered the safety and health of themselves or of others. It was observed that this change merely seeks to make the Act more consistent internally, to allow the Ministry to take all responsible stakeholders to task for negligence under the same piece of legislation, rather than to rely on the Penal Code for persons at work. The penalties for the new Section 15(3A) are aligned to those under Section 304A of the Penal Code for causing death by a negligent act and are capped at a fine of S$30,000, a jail term of 2 years or both.

The Act is to be welcomed as it heralds a risk-based approach to managing the operational safety and health concerns at workplaces. This will, if rightly implemented, indeed help to reduce workplace accidents.

Changing Culture And Top Management Support

For directors, whilst these changes are not new, it is something that not all would have taken seriously. This is especially so if the director works in an office environment traditionally not covered by the Act and one not traditionally viewed as being high risk, such as a bank or a professional services firm.

To engender a strong safety culture, commitment of top management is critical. Hence, the Act holds managers and directors of companies accountable for safety and health practices at their workplace. This is so even if the managers may not be able to police safety and health on the ground. This means that even though physical supervision of workers may be delegated, management must show that they have taken active steps to implement sound OSH management systems, including proper risk assessments and reporting systems, provide adequate resources, and ensure that full information is disseminated to workers and other persons exposed to risks. This is in effect already a requirement for directors, who are required under the Companies Act to act with due skill and care in the discharge of their duties.

The Act, however, adopts a balanced approach. It recognises that whilst management commitment is critical, management cannot neccesarily be taken to task if employees ignore clear instructions. Thus, responsibility for the safety and health of others will lie not only with employers, but also extend to employees, whether they be supervisors or rank-and-file workers. In this regard, persons at work are required to use the personal protective equipment provided by their employer and co-operate with the employer on OSH matters. They also have a duty to not wilfully or recklessly endanger the safety and health of themselves or others, with appropriate penalties in place to deter such behaviour.

Practically, some of the questions that would be asked in the event of a violation include the following (as drawn from the *Singapore case PP v Guthrie Engineering (S) Pte Ltd [2007]*, which had reviewed various cases from across the world on health and safety):

a. How far short of the appropriate standard the company fell in meeting the reasonable practical test of ensuring the safety of the employees?

b. Was this a deliberate breach of the legislation with a view to profit at the expense of proper protective action?

c. Was this an isolated incident or a culmination of practices continued over long periods?

d. Was it aggravated by failure to heed warnings?

e. Had the company deliberately profited financially from a failure to take the necessary health and safety steps to run a risk order to save money?

f. Was there a prompt admission of responsibility and steps taken to remedy the deficiencies upon discovery?

g. Was there a good general safety record?

It follows therefore that to ensure that employers are taking reasonably practicable measures, they ought to be able to respond to the queries raised above in a responsible manner. More importantly, in doing so, they should be taking a proactive approach and providing responses. Anything short of this, would suggest that a breach of the Workplace Safety and Health Act would have occurred.

For directors, it would mean having an understanding of what the business is about and the type of risks that typically arise. From this, and working with management, the following minimum steps must be taken:

a. appropriate personnel and processes need to be put in place;

b. regular training and dialogue sessions must also take place with clear communication being transmitted to all employees;

c. directors must then ensure that there are regular reports to the board on the safety and health standards maintained in the company, whether within its premises, on various sites that the company operates in as well as with sub-contractors that it appoints;

d. directors must ensure that safety and health rules are updated regularly and communicated to all relevant people.

Concluding Words

The Act is to be welcomed as it heralds a risk-based approach to managing the operational safety and health concerns at workplaces. This will, if rightly implemented, indeed help to reduce workplace accidents.

This article has only provided a quick overview of the critical elements of the Act and what directors must potentially be aware of. It has not gone into details at this time. Nevertheless directors, must take it upon themselves to ensure that, as with financial auditing, there is a safety and health auditing going on as well. A life loss is never replaceable; and a limb loss is no consolation.

Speech by Mr Gan Kim Yong, Minister for Manpower at the Launch of the National WSH Campaign 2011, 20 April 2011,

12:00 PM, Raffles Place Park

Mr Heng Chiang Gnee, Deputy Chairman, WSH Council

Mr Stephen Lee, President, Singapore National Employers Federation

Mr John de Payva, President, National Trades Union Congress

Members of the Workplace Safety and Health Council and Committees

Industry leaders,

Ladies and gentlemen,

Good afternoon,

I am pleased to see so many of you today at the launch of the National Workplace Safety and Health (WSH) Campaign 2011, especially our partners from industry. It is the strong support of the industry that has helped to improve WSH performance over the years. Last year, our workplace fatality rate has fallen to a new low of 2.2 per 100,000 workers, bringing us closer to our 2018 target of 1.8 fatalities per 100,000 workers. To sustain our progress, we need to focus on three areas: cultivating leadership, raising professionalism and deepening WSH knowledge.

Sustaining progress through leadership, professionalism and knowledge

Our progress so far would not have been possible without the support and drive by strong leadership. Leaders set the direction of their organisations in all aspects, including WSH. This is seen in organisations with good WSH performance, such as City Developments Limited and United Engineers Limited. They are led by highly committed management teams which place WSH high on their business agenda and walk the talk on the ground to push for better WSH outcomes. To raise the WSH standards of industries and companies, we need more of such committed leaders to put in place infrastructure and allocate resources to protect the safety and well-being of their employees and other stakeholders.

Strong leadership must be complemented by dedicated and competent personnel to drive WSH improvements on the ground. Therefore, we need to raise the professionalism of our managers and WSH personnel. My Ministry has earlier established the WSH Professionals Workforce Skills Qualification (WSQ) framework. Since 2007, more than 9,000 have been trained. This provides a clear and structured path for professionals to build up their competencies and advance their careers in workplace safety and health. Increasingly, the WSH profession is gaining credence and popularity, with more taking up a WSH career.

> Strong leadership must be complemented by dedicated and competent personnel to drive WSH improvements on the ground.

With strong leaders and professionals in WSH, we need to deepen our WSH knowledge to better understand our challenges and find the right solutions. We must develop better training programmes for our leaders, professionals and workers, as well as develop innovative WSH solutions to address pertinent concerns.

WSH Institute drives efforts in focus areas

While we have achieved some progress in the three areas that I mentioned, we must do more to sustain our progress. The newly formed WSH Institute, which was first announced in July 2009, will drive efforts in these areas as it aims to be a leading institute in WSH Knowledge and Innovations. First, in leadership and professional development - the WSH Institute will cultivate WSH leadership ethos and raise the competency of WSH professionals. Here, the Institute will partner top business schools and other Institutes of Higher Learning (IHLs) to develop leadership programmes and executive WSH courses. It will also invite renowned business leaders and international WSH experts to engage local leaders and professionals through executive workshops.

Second, the Institute will enhance WSH knowledge by developing effective solutions to address the issues facing industry today. For example, in-depth applied research into work processes such as working at height may yield new solutions to help industry better manage the risk of falling from heights. This is one of the items in the draft national WSH research agenda prepared by the Institute to guide its efforts. This draft agenda was developed with key industry stakeholders and will be open for public consultation today on the WSH Institute website. I urge you to provide inputs to help us map out key areas where research can build stronger national WSH capabilities. My ministry has set aside $8 million over the next 4 years to help kick-start the work outlined in the agenda.

Finally, the Institute will facilitate the promulgation of WSH knowledge through its information and consultancy services. The WSH Institute aims to build a repository of WSH information and solutions that would be readily accessible by the industry, in order to facilitate knowledge transfer. The Institute would also develop consultancy services and capabilities so as to offer customised WSH solutions to companies to help them manage their WSH risks.

Getting workplaces WSH-ready

As with previous years, the annual NWSH Campaign brings everyone together to keep our workplaces safe. This year, there is new meaning to this "National" Campaign. Just last week, I announced in Parliament that the WSH Act would cover all workplaces in Singapore from September 2011. These include new sectors such as retail, entertainment, administrative services and finance. As these sectors, while less risky, still account for 30% of work injuries and 6% of fatalities, it is important that everyone in these sectors is mindful of workplace risks. It is, therefore, apt that this year's campaign is held right here, in the heart of Singapore's business district.

In addition to the Campaign, as Mr Heng mentioned earlier, my Ministry and the WSH Council will continue to help workplaces be WSH-ready. We will step up promotional efforts to engage all our stakeholders through TV commercials and roadshows. While I shan't give the plot away, let me give you a little hint. Keep your eyes open when you view our new TV commercial later and see what work risks you can spot. In line with this year's Campaign theme, let us work together and say "No" to risks at work!

Thank you.

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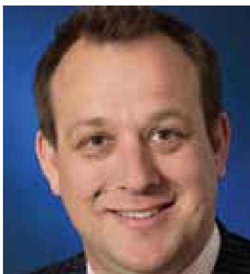
> While we have achieved some progress in the three areas that I mentioned, we must do more to sustain our progress. The newly formed WSH Institute, which was first announced in July 2009, will drive efforts in these areas as it aims to be a leading institute in WSH Knowledge and Innovations.

Putting Your Fingerprints On Safety

By Cormack Dunn
Senior Associate, Employee Relations
Freehills



Cormack Dunn discusses how directors can meet their legal obligations and develop safer workplaces ahead of the likely introduction of nationally consistent OH&S laws next year.

On 1 January 2012, it is anticipated that all states and territories will introduce nationally consistent occupational health and safety (OH&S) legislation. For the first time, the legislation sets out what steps directors must personally take to meet their legal obligations on workplace safety.

The consequences for directors failing to meet these obligations are significant. In the most serious cases involving death and reckless conduct, the new legislation provides for a maximum criminal penalty of five years' imprisonment and a $600,000 fine. Thus, in preparing for the introduction of the legislation, directors will need to carefully consider whether they are taking appropriate action to ensure their company is managing its safety obligations.

Directors' Duties

Under the *Model Work Health and Safety Act*, company officers are required to exercise due diligence to ensure their company is appropriately managing its safety responsibilities. The legislation places this obligation on company officers because safety regulators believe the commitment and leadership of people at the senior level are essential to achieve safer workplaces.

In addition to directors, the definition of company officer includes:

- Secretaries;
- Managers who have the ability to affect a substantial part of the company or the company's financial standing;
- Those who provide instructions on which the directors are accustomed to act; and
- Receivers, administrators, liquidators and trustees.

While the legislation does not set out all the actions company officers must take to meet their due-diligence obligations, under the legislation they are required to:

- Have a good knowledge of safety matters;

> Under the *Model Work Health and Safety Act*, company officers are required to exercise due - diligence to ensure their company is appropriately managing its safety responsibilities.

- Understand the nature of the safety risks associated with their company's operations;
- Ensure their company has appropriate safety systems in place;
- Ensure appropriate resources are provided by the company to eliminate or control safety risks; and
- Receive and consider OH&S information.

While the inclusion of these actions in the legislation is designed to promote greater involvement by directors in safety, there remains practical issues concerning how directors should put their fingerprints on safety.

Although every company operates differently and every board will need to develop its own strategy to address its obligations, there are well-established principles that underpin how directors should go about putting their fingerprints on safety.

Principle 1: Demonstrate A Personal Commitment To Safety

Directors first need to clearly demonstrate a personal commitment to safety to all levels of their company. To achieve this, they should:

1. Clearly articulate the importance of safety at board meetings.
2. Set a safety vision and promote safety initiatives that support this vision.
3. Encourage "beyond compliance" and "best practice" behaviours.
4. Celebrate safety achievements.
5. Hold people accountable for not taking safety seriously.

Principle 2: Establish The Systems

Directors should set about ensuring their company has appropriate systems in place to translate this commitment into action. This means directors should:

1. Ensure that safety is appropriately addressed in the board charter and that there are safety values underpinning all company activities.
2. Commission a board committee with the responsibility to more closely examine safety matters.
3. Ensure there is a safety governance policy that sets out the safety responsibilities of the board, the board committee and all levels of management.
4. Require the development of a strategic plan that maps out how the company will improve its safety arrangements.
5. Satisfy themselves that the company has allocated appropriate resources to safety and that its safety professionals have the necessary skills and experience.

Principle 3: Ensure Continuing Performance

Directors should ensure the systems remain in place and continue to be appropriate by:

1. Ensuring audits and independent reviews of safety arrangements are conducted and that any gaps are closed out.
2. Ensuring board reports include all relevant OH&S information and provide updates on remedial measures. Board reports should include lagging and leading indicators.
3. Requiring management to be across what actions are being taken to address reported matters.
4. Requiring detailed briefings on what actions have been taken to address significant safety issues.
5. Recording performance on OH&S in annual reports.

The planned introduction of this legislation on 1 January 2012 means there is a relatively short window of opportunity for directors to ensure their company has the necessary arrangements in place. In some cases, this may mean minor improvements are required while in others, more significant changes may be necessary. If there is any uncertainty, the starting point is to simply ask management how the company is preparing for these changes.

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This article appeared in Company Director, the monthly magazine of the Australian Institute of Company Directors.

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Tackling Dysfunctional Directors

By Stephen A Miles
Vice-Chairman
Heidrick & Struggles

Stephen A Miles provides some tips on how to spot a dysfunctional director and how to remove him or her.

Chairmen sometimes turn a blind eye to underperforming directors and address the issue only when it has got out of hand. The problem is that by then, the media almost certainly knows about it and suddenly the corporate dirty linen is being aired in the full glare of publicity.

Even iconic companies are not immune to missteps, as we saw with the simultaneous departure of the CEO and chairman from one major corporation, triggering a board shake-up and revealing a weakness in the company's succession process.

Underperformance clues are there for all to see and vary from organisation to organisation. A useful set of indicators is given by the dean of the University of Toronto's Rotman School of Management, Roger Martin. Among other things, he says chairmen should watch out for a director who:

- Talks about the directors' fees not being high enough to compensate for the onerous work involved;
- Expresses excessive pride over being on the board; and
- Shows enthusiasm for the personal growth opportunities the board provides him or her.

The line of sight from the board to management is often opaque. Unless strong chairmen and directors drill down into key issues and question management with some rigour, the board will hear only what management wants it to hear.

The global financial crisis sifted through corporations like wheat, and those that had sown the wind with leverage and hubris suddenly reaped the whirlwind. Boards found themselves embroiled in public scandal and we saw a succession of and senior leaders depart the executive suite. However, the difference between the effect on directors and the executives is stark. The board is legally liable for the oversight, but executive perpetrators get paid handsomely on the way out!

Today more than ever, having a high-performing board is a critical success factor for company leadership and

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performance. Chairmen, non-executive directors and CEOs are challenged to perform effectively as a group, debating the issues, making critical decisions, formulating strategy and executing succession planning processes. It is no longer acceptable for one or more board member to be along for the ride. Companies and shareholders simply cannot afford it.

Hire On Skill, Fire On Fit

So what is a chairman to do? To state the obvious, the ideal is to get director selection and recruiting right at the start of the process. But selecting the best people in terms of experience and business expertise is a given. The hardest part is often the cultural "fit".

With executives, we often say you hire on skill and fire on fit. Similarly, if directors don't fit, the dynamics around the boardroom table change dramatically. Bad behaviour that may fly under the radar until real damage is done include:

- Engaging in bilateral conversations with other board members outside the boardroom in an attempt to pre-align on topics before they reach the full board;
- Leaking sensitive information to the media;
- Being habitually unprepared and therefore unable to contribute at a meaningful level; and
- Being overly aggressive and combative, assuming everyone is "bad", rather than asking the difficult questions in a direct yet supportive manner, allowing for a "discussion" rather than a position-based argument or fight.

Such behaviour erodes trust and drags down the board's effectiveness and performance.

The director selection process needs to be robust. No matter how well-known a candidate may be to other directors, he or she must still go through a rigorous process.

When we interview directors, we often assign different tasks to different consultants. Board members should also divide up the interviewing, with one person exploring a candidate's experience and another assessing the cultural fit. If you don't do this, you simply engage in the same interview multiple times, which is much less effective. Additionally, a tandem interview can be powerful, providing for two viewpoints to then be debated in greater detail later. Directors should also meet the candidate in formal and informal settings.

The key in director selection and recruiting is to not make it a secret process in a hidden committee that lacks transparency to the full board. This is an activity the full board should be engaged in.

Diagnosis Trumps Dysfunction

A major inconsistency between directors and executives is that while CEOs are rapidly removed when performance slips, directors are not usually held to account by the same standard. I recommend chairmen deal with director performance before it becomes dysfunctional and affects reputation and share price. The best way to do this is for the chairman to enter into "diagnostic" mode to draw out the factors causing the underperformance.

Underperformance might be caused by:

- Over-commitment in other professional areas;
- Health or family issues;
- Political undermining of the rest of the board;
- Poor cultural fit;
- Being too "executive" in trying to run the company; or
- His or her original expertise is exhausted as the company begins to focus on other strategic fronts.

Professional diagnosis will quickly sort out the causes and suggest responses. It does no good guessing, or letting the dysfunction fester or leak into management ranks.

Underperformance can range from an over-committed director who is less able

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to contribute to more serious scenarios, such as the CEO who feels unsupported and spends his or her time dealing with political issues rather than running the company. Or even worse, when trust is lost between the board and management and as a result, management does not bring as much information (or as early) to the board, potentially leading to company performance issues and embarrassment.

Best-practice boards expect to have their performance rigorously evaluated in the same way they evaluate their management teams, employing external advisers for rigour and objectivity.

Methodologies range from 360-degree feedback from boardroom peers and upper management to an examination of how each director is performing as a chairman or chair of a committee, as well as at the individual level in the full board environment.

Ideally, these reviews are conducted annually with check-ins throughout the year to guide and coach performance. Final evaluations are used to form a set of recommendations to the board and to implement personalised development plans for individual board members. While this process can initially seem daunting, our experience is that immensely positive personal and professional development results. After all, leadership at the corporate or board level is not innate – it is learned.

Finessing Through Rules And Regulations

The best way to handle low-performing directors is through a combination of tools and processes. In addition to the commonly understood measures described earlier, the board can also adopt age and term limits to transition a board member. This can sometimes obviate the need to enter into a "performance discussion".

Former BHP Billiton chairman Don Argus AC FAICD recently called for board members to come up for election annually. He backed an international move to annual re-election of company directors to shake up what he called "serial offenders" and shore up corporate accountability.

"Annual election provides for accountability to shareholders and the ability for shareholders to express a view about the performance of each director as their representative," Argus told the Australian Institute of Company Directors annual dinner in Perth.

He noted that corporations in the US were adopting annual re-election in many instances. Under the US Securities and Exchange Commission's Exchange Act Rule 14a-11, proxies will be able to challenge the automatic re-election of directors and propose alternative candidates.

Other criteria that can be used to replace directors might include the development of expertise or geographical metrics. For example, the company may be moving into a new region – say, China – or require specific expertise – say, government or finance or manufacturing.

Alternatively, the board might mandate that former or current CEOs are needed at a particular stage of the company's development. For instance, if there has been a recent succession and you have a new CEO, he or she might benefit tremendously from having recently retired or sitting CEOs on the board who can provide him or her with wisdom and guidance and be a sounding board on key issues. Identifying these gaps in expertise can help to manage the transition of directors who are underperforming.

Replacing or transitioning directors is a sensitive matter. But when combined with solid rationale, professional evaluation and the "distancing" provided by an objective and external process, the winner will always be the company, its performance and the goodwill of major shareholders, who will clearly see the value inherent in transparency and rigour.

Be warned though, it will take stamina and commitment.

This article appeared in Company Director, the monthly magazine of the Australian Institute of Company Directors and is reproduced with permission of the author, Stephen A Miles - Vice Chairman, Heidrick & Struggles. Mr Miles runs the firm's Leadership Advisory Services and is also a member of the firm's CEO & Board Practice.

Panning For Gold In The Wake Of The Budget

By David J Sandison
Partner, Corporate Tax
PricewaterhouseCoopers LLP

It was of little surprise that it was slim pickings for the corporate taxpayer in the 2011 Budget. With a general election just round the corner (in true Singapore fashion acronymed to GE), a significant threat of inflation, and a generally contented multi-national group getting back into action after the global financial crisis (GFC), there was little doubt as to where attention would be directed.

Nevertheless, in raking over the coals after the dust has settled, there are a couple of interesting nuggets to be found for businesses, in particular the small and medium sized enterprises (SMEs!). These revolve around the Productivity and Innovation Credit (PIC), the Equity-based remuneration schemes (EBRS) and one or two other concessions introduced, although some that had the appearance of gold nuggets (GNs) on first sight seem to have tarnished on closer examination into NSGNs (Not so gold nuggets).

PIC

Most of you will remember the introduction of the productivity and innovation credit that was initially brought into being in the 2010 Budget. This incentive package was aimed at providing enhanced tax deductions for six categories of activities that were considered key to Singapore's aspirations to increase productivity and work towards a world class knowledge based economy. These six categories were Research and Development (R&D), Design work (both done in Singapore), Acquisition of intellectual property (IP), Registration of IP, Automation through technology or software, and Training of employees.

Obviously, not every business will be involved in R&D or design work and it is not every day you acquire or come up with some wonderful new invention that needs to be patented. However the last two categories do seem to offer some pretty attainable benefits as every busines these days has computers, and most businesses with staff (can't think of one that doesn't have any) probably either train or should think about training them.

When first introduced, the PIC offered tax deductions of up to 250% of the qualifying expenditure, subject to an expenditure cap of $300,000 for each qualifying activity, per year. The first good news from the 2011 Budget was that the expenditure limit is to be increased to $400,000 and the 250% deduction is to be raised to 400%. This means that for every dollar of qualifying expenditure, the government will fund 68% of it. So if you hit the maximum spending limit for a particular category, the government will throw in $272,000. You may be thinking, "Well, that should only be $204,000, because I am already getting deductions for the actual expenditure of $400,000" (at the corporate tax rate of 17%). However the point to note is that not all the expenditure in question might ordinarily rank for deduction according to normal principles, and so in some cases the full $272,000 is being made available.

The other helpful feature of the 2011 Budget enhancements is that certain years can be grouped together, so that uneven expenditure can be captured. The years pooled are years of assessment (YAs) 2011 and 2012 (making an aggregate of expenditure of $800,000 for those two years) and YAs 2013 to 2015 (totalling $1,200,000). In other words, if you spend only $300,000 of qualifying expenditure in YA 2011, you have the balance of $500,000 left to spend in 2012. Why all five years were not just lumped together does require some working out, however leaving a bit of mystery on the table may help keep interest levels up.

The Devil as they say, is generally in the detail, and there is still quite a bit about the scheme that makes it somewhat cumbersome and difficult to use. However, sometimes you can find little angels too. The qualifying expenditure under the scheme is tied in with the Income Tax (Automation Equipment) Rules 2004 as amended by the same in 2010. I will not trouble you with the detail here (as there is a lot of it). However the items that qualify seem to include just about everything in your office you can plug in and could throw a stick at, as well as many from a whole host of industrial and service related activities. Some I am not sure even exist. (What, for example, is "Automated housekeeping equipment including any mattress lifting equipment for hospitality related operations"? (Whatever happened to the chamber maid?). And can anybody describe for me what you use a "Ride-on power float machine for"?

One other interesting feature is that qualifying expenditure also includes expenditure on leasing any of the equipment described. You do not need to be on NASA's headhunt list to work out that if the cost of the item is well above the annual limits, by spreading the costs over the life of a lease or on hire purchase, you may be able to massage the cashflows to take advantage of the spending caps. For example an asset that costs $2 million would only have $400,000 qualify if bought it in year one. However under, say, a finance lease over five years.....

The same message goes for training costs, which broadly cover costs incurred on in-house training (i.e. Singapore Workforce Development Agency (WDA) certified, Institute of Technical Education (ITE) certified), or, quite simply, all external training.

My point is that this is an area really worth looking at if you want some low-hanging fruit from the PIC, and it presents an opportunity not to be missed. So get out your chequebook and go shopping.

EBRS

The problem with EBRS has primarily been with the deductibilty of costs associated with providing the employees with shares. Typically in Singapore we see listed companies with subsidiaries here where the local employees participate in share option schemes over the shares in the listed parent company.

The Inland Revenue Authority of Singapore (IRAS) has always taken the view that where the shares acquired by the employees on exercise were freshly issued, then there was no outlay to the group and thus, even if the parent company made a recharge for the notional cost of issue (ie the difference between the market price and the strike price for the employee), no tax deduction was available. Despite many years of dispute, the IRAS view had almost come to be accepted by the taxpaying population. However, it was also tacitly accepted that where real costs were involved, these would be deductible as employee remuneration costs.

Enter the treasury share. The treasury share was a concept that had not existed in Singapore corporate law until 2005. Essentially, it is a listed share that the company has bought back from the market but which has not been cancelled. The company is thus registered as the owner. Typically treasury shares would be bought in for the purpose of giving out to employees under their EBRS, and there might be a pool of them bought in when market timing was right.

Because treasury shares are recorded as an asset in the books of the company and not as an expense, it was not clear whether a deduction would be available for them. Enter tax legisltaion for treasury shares (and the problems). The law was very kindly changed to accommodate the purchase price of treasury shares (less any recoveries from the employee) as a deductible expense. However, the legislation in the Income Tax Act (ITA) so drafted, had the (we suspect) unintended effect of disallowing costs that had previously ranked for deduction. Baby was thrown out with the bathwater.

The situation that this change in the law most commonly affected was where employee benefit trusts were involved. The role of such a trust was to acquire shares in the market and hold them on behalf of the employees, charging the company, as it did, for the cost of the purchase. There was thus an undeniable cost to the group under such arrangements and typically a good case for deduction – until the treasury share legislation was brought into effect in the ITA.

Fortunately and after significant lobbying, a change to the law was announced in the Budget. Unfortunately rather than allowing a reversion to basic principles such that if a cost is incurred (in whatever shape or form) it should be deductible, a more perescriptive approach was taken. A deduction now will be available for actual costs of satisfying obligations under an EBRS. However this will happen only where a special purpose vehicle, in the form of company or trust, is set up for the purpose.

Nothwithstanding this, it has to be said that some improvement is better than no improvement at all; and so taxpayers can go back to simply worring about why on earth there needs to be a provision under FRS 102 in their accounts, when an option is granted.

Pre-Commencement Expenses

Where a new business starts up, certain expenses will be incurred that are required to get the company in a position to commence its income generating activities. These are to be contrasted with expenses that are incurred in the operation of the business once it has started. The distinction is that so-called "pre-commencement" expenses are not deductible for tax purposes, whereas normal operational expenses are. To date the IRAS have taken a fairly blunt instrument to deal with this distinction, taking the view that you have not commenced business until you have earned your first dollar of income, which of course we all know does not make a lot of sense in the real world.

While there has been a circular attempting to clarify the issue in the past, and a concession that allows a taxpayer to go back to the beginning of the accounting year in which the first dollar was earned, the IRAS have still stuck to the "first dollar" principle. Without letting go of this concept, the 2011 Budget did improve things by allowing taxpayers then go back one year even further. The concept is that the taxpayer is deemed to have incurred all expenses that fall within that timeframe on the day he earns his first dollar. Not exactly a gold nugget, but certainly a step in the right direction to help start-ups get off to a less expensive start than has been the case in the past.

Pooling Of Foreign Tax Credits

This change I would place in the NSGN class. While on the face of it, the ability to pool foreign tax credits (FTCs) would appear to be a significant concession, when the practicalities are examined, it is not as exciting as it may seem. Here is why.

Currently, foreign tax paid on income received in Singapore by companies is given as a credit against the Singapore tax payable on that specific source of income. To the extent the foreign tax exceeds the Singapore tax, the excess is lost. So if you suffer 20% withholding tax on interest income there should be no tax to pay in Singapore as the credit is greater than the 17% Singapore corporate tax on that income. However, the additional 3% is wasted.

The pooling system introduced in the Budget now allows that wasted 3% to be used against other streams of income that have a shortfall. For example, income that has suffered foreign withholding tax at 10%, will leave another 7% of Singapore tax payable. Under the new system, this can be partly absorbed by the excess 3% on the other income, leaving only 4% payable.

Brilliant you might think. Well brilliant if you happen to be lucky enough to run a company that does not have any expenses. The problem is that most companies do, and there will be a need, generally, to allocate expenses to the foreign sourced income (typically this is done on a formula basis). This reduces the amount of Singapore tax that would be payable, and thus creates more excess foreign tax credits. To use the example above, let us say that each income stream produces net income of, say, $40 out of the gross $100 income. I am not going to do the maths for you, but under the existing system, there would be no Singapore tax payable. Under the new system there would be no Singapore tax payable. I am struggling to see the benefit here. It is only when you can boast margins of over 60% on your income, that the pooling system starts to show some glimmer of advantage.

Undoubtedly there may be strategies for massaging this concept around, and of course the outcome depends on the actual facts, but the point I am making is that this is not a major step forward. A shinier nugget would have come in the form of total exemption for foreign sourced income, which is what is on offer in Hong Kong and Malaysia.

Gold In Them Thar' Hills

On balance, it was not therefore as barren a Budget as it might have seemed, and there may still be rewards to be had for the hardy prospecter. Hopefully, the distant hills of Budget 2012 will yield better results. In the meantime however, it is always worth remembering, that all that glisters is not gold.

GST Risk Management For Enhanced Corporate Governance

IRAS unveils a new initiative in April 2011 - Assisted Compliance Assurance Programme (ACAP), that rewards GST voluntary compliance. As directors, you have a part to play in putting in place a control framework to ensure that any GST risk will be managed and contained. ACAP is the solution that helps you set up the control features necessary for GST compliance. ACAP calls for your active oversight and commitment.

This article tells you what and why.

The Changing Landscape

The fast changing economic and business landscape have made companies more vulnerable to tax risks, an area often overlooked due to its specialized nature and complexity. Tax errors can present significant costs for companies, impacting cash flow as well as operational decisions. To effectively manage tax risks, companies should recognize the need for integrating tax risk management with corporate governance, thereby safeguarding reputation and also help save compliance costs in the long run.

Consequences Of Ignoring GST Risks

A company may be faced with transactional, compliance and reputational risks as a result of failing to comply with GST legislation. Board of directors and senior management should take interest in proper tax risk management to safeguard the corporate reputation.

IRAS has a regular audit programme which targets a cross-section of industries and businesses to check on their level of GST compliance. GST-registered businesses that are assessed to be more error-prone are selected for audit by IRAS. IRAS has audited about 40% of large corporate and those with complex corporate structures and voluminous transactions. On average,

Board of directors and senior management should take interest in proper tax risk management to safeguard the corporate reputation.

$500,000 in GST has been recovered from each of these companies.

These results signal the need for companies to strengthen their controls and processes to manage GST risks. Otherwise, the implications arising from weak managerial controls and accounting for GST would affect the whole enterprise significantly.

Tax Risk Management

As tax naturally fits within the ethos of good corporate governance, managing tax risks enables company directors to discharge their responsibility to the authorities, investors, employees and other stakeholders. In addition, tax governance, if designed and executed correctly, can help protect stakeholders' rights and interests, manage a company's risk profile and create long term business value to the enterprise.

To establish effective internal controls for tax, the board of directors need to set the right tone at the top. The board can cultivate an internal corporate environment that defines parameters to handle tax matters appropriately, in line with the overall business agenda. This includes making a commitment to comply with tax laws and regulations, defining roles and responsibilities for managing tax issues, and putting in place a monitoring mechanism ensuring ongoing compliance.

In addition to the above, adequate communication can also be maintained by the board to the internal and external stakeholders in addressing tax requirements, information and disclosure. With the right message sent across the enterprise, appropriate internal tax controls can be consistently implemented to support a proactive tax risk management framework that minimizes exposure to tax risks and increase profits.

ACAP - New GST Initiative For Tax Risk Management

To motivate companies to be pro-active and committed to ensure that internal controls are robust on an ongoing basis, "Assisted Compliance Assurance Programme" or ACAP has been designed as a holistic solution that helps companies to self-manage their GST risks.

ACAP provides step-by step guidance for companies to independently assess the effectiveness of their GST internal controls at three critical levels, namely, the entity, transaction and GST reporting levels.

To embark on ACAP, your company may either choose to undertake this in-house with the help of the Internal Audit Team or engage a CPA firm or its tax affiliate as the ACAP Reviewer for the exercise. Based on the findings, IRAS may accord your company either a Premium or Merit status, based on the standard guidance provided by IRAS.

Benefits Of ACAP

A company endorsed with an ACAP status would have a high level of certainty that their business transactions are running smoothly without major risk exposure to GST errors. As ACAP emphasises controls at the entity and transaction flow levels, the requisite controls will help companies address compliance at source, and enable the company to prevent or identify GST errors on a timely basis. In the long run, this will help companies reduce GST compliance costs even as the business grows.

In addition, an ACAP approved company is entitled to the following benefits for 3 to 5 years:

- Exemption of GST audits by IRAS
- Dedicated IRAS officer to handle GST rulings and resolve GST issues expeditiously
- Automatic renewals of GST schemes
- Expeditious GST refunds

Companies that voluntarily participate in this initiative would be able to provide its stakeholders with the necessary reassurance that tax is not being managed to the detriment of their interests.

IRAS Co-Funds 50% On Cost Of Engaging An ACAP Reviewer

To encourage companies to undertake ACAP, IRAS will co-fund 50% of the fees incurred, subject to a cap of $50,000 per ACAP applicant. IRAS will also grant a one-time waiver of penalties for past non-fraudulent GST errors disclosed voluntarily in the course of the

As tax naturally fits within the ethos of good corporate governance, managing tax risks enables company directors to discharge their responsibility to the authorities, investors, employees and other stakeholders.

first ACAP Review undertaken by the ACAP applicant.

What The Business Community Is Saying About ACAP

Since the launch of ACAP, several corporations in Singapore have already committed or shown interest to participate in the new initiative. PT. Trakindo Utama, Cold Storage and Singtel are amongst the first to step forward in undertaking ACAP accreditation.

Ms Fang Fang, Singtel's Group Tax Director, said: "ACAP will enhance standards of financial and tax management amongst Singapore companies."

Teng Bee Suan, Vice President (Group Tax) of Sembcorp Marine Ltd, welcomes the scheme. "With ACAP, corporations are required to do a self-assessment of their GST control framework. While this entails adaptation to the prescribed acceptable controls during the initial review process, corporations would benefit from this exercise as it creates a preventive and detective control framework for proper GST compliance."

"This type of GST audit programme is the wave of the future", comments Mr Robert Tsang, Deloitte's Director for Tax. "Experience from North America and Europe shows that the early adopters in these sorts of programmes do the best in minimising the impact on their businesses. Those who move quickly can secure the best positions."

ACAP provides a means for companies to proactively manage GST risks and ensure compliance. By integrating tax risks management with wider corporate governance, ACAP presents the opportunity for companies to partner the tax authority in enhancing overall GST compliance.

As company directors, consider carefully the benefits of ACAP and put the company on track towards better GST compliance.

For more information, please visit www.iras.gov.sg.

The article is contributed by the Inland Revenue Authority of Singapore.

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Who Needs Personal D&O Insurance?

By Michael Griffiths
Director of Professional Services
Aon Singapore

If you were a director of a company in Singapore before 1997, then chances are that you were not covered by D&O Insurance. Throughout the Asia-Pacific region, for that matter, D&O Insurance was once in very low demand. Then the Asian financial crisis erupted. In the space of just a few months, the Thai stock market dropped by 75%, Indonesia's official interest rates reached 65%, and in Korea both Kia motors and Daewoo Motors were acquired under rescue packages.

The Rise of D&O Insurance

Asian economies recovered from the crisis, but as foreign capital was invested into newly-privatized companies a change in the attitude of Asia's directors emerged. The dramatic events of the crisis had heightened awareness of the risks faced by directors. There was a new and heightened awareness of the importance of sound corporate governance, championed by the Singapore Institute of Directors and other organizations. Directors of Asian companies also began to think differently about D&O Insurance, to the extent that by 2006 a Lloyd's Underwriters survey would reveal that 63% of Asian directors considered D&O Insurance either "important" or "extremely important". All the signs indicated that throughout Asia, but particularly in more developed countries like Singapore, there would be a boom in legal actions against directors and a corresponding boom in the demand for D&O Insurance.

The Singapore Experience

So, has Singapore experienced this boom? Well, not exactly. In the last few years there has been an undoubted increase in the number of legal actions against directors, particularly those brought by Singapore's regulatory authorities, but not the predicted explosion of litigation. It is also clear that more companies in Singapore are buying D&O Insurance than ever before, but it is still not a mainstream class of insurance. What we have seen in Singapore is a gradual shift

> Asian economies recovered from the crisis, but as foreign capital was invested into newly-privatized companies a change in the attitude of Asia's directors emerged.

rather than a boom. As a result, there is a divergence of opinions amongst Singapore's directors on the relative importance of D&O Insurance.

Problems With Traditional D&O Insurance

What this means today at the board level is that some directors will see D&O Insurance as more important than others. There are many reasons for this; independent directors, directors who are about to retire, and directors who are simply more conservative in facing personal liabilities will all place a higher value on D&O Insurance. The problem is that traditional D&O Insurance is purchased collectively, so directors need the support of the entire board to purchase cover, and then need to reach agreement on an adequate limit of indemnity. Unfortunately, this means that there are many Singapore companies that are yet to take up D&O Insurance.

Even in cases where D&O Insurance cover is purchased, directors cannot assume that they are protected. In cases where a director is accused of wrongdoing by his or her company, that company may well seek to block access to the D&O Insurance policy. This is also a problem where one director is accused of wrongdoing by another director. Such cases, where a director is sued by his own company or by fellow directors, are actually some of the most common sources of claims.

And the fact that a company is purchasing D&O Insurance today does not mean that cover is assured for the future. D&O Insurance is written on a "claims made" basis. This means that if a policy is not renewed, cover for future claims will immediately cease. For directors who resign or retire, there is no guarantee that cover will still be available should they be subsequently targeted in a legal action.

Personal D&O Insurance

In response to this issue, the SID and Aon Singapore have developed a unique Personal D&O Insurance policy. Available exclusively to members of the SID, Personal D&O Insurance will enable Singapore's more risk-conscious directors to hold a S$1 million policy exclusively for their own protection. Personal D&O Insurance provides important peace of mind for directors without the need to convince an entire board of the merits of the cover, or arguing about an appropriate limit and the associated cost. Directors with SID membership will be able to access a S$1 million Personal D&O Insurance policy covering up to three directorships at an annual premium of S$1,000, and will be entitled to ask their companies to pay that premium on their behalf.

Who Needs It?

Of course, it is not only full-time company directors who will benefit from the introduction of Personal D&O Insurance. Accountants, lawyers, and other professional who accept temporary or permanent positions on the boards of their client companies have an obvious need for such a portable, personal cover. Companies that are trying to attract top talent to their board may also offer a Personal D&O Insurance policy as an extra inducement. The key benefit of this policy is its inherent flexibility.

Ten years on from the Asian financial crisis, a truly global financial crisis has claimed some of the world's major financial institutions and left the economies of several countries in tatters. As the painful lessons of this most recent downturn are learned, focus is likely to turn again to questions of corporate governance and the performance of directors. In such an environment, we believe that the case for a Personal D&O Insurance policy is stronger than ever, and we are delighted to partner with the SID to provide it.

> The problem is that traditional D&O Insurance is purchased collectively, so directors need the support of the entire board to purchase cover, and then need to reach agreement on an adequate limit of indemnity.

Personal D & O Insurance

Many Singapore company directors worry that their company does not buy or renew D&O Liability insurance, that the coverage is not adequate, or that the policy may not be activated to protect them when the need arises. For directors who resign or retire, there is no guarantee that cover will be still be available should they be subsequently targeted in a legal action.

Wouldn't it be nice if you could buy an extra level of protection on your own?

NOW YOU CAN. Aon Singapore in partnership with the Singapore Institute of Directors (SID) has developed Singapore's first ever Personal D&O Insurance policy. With a limit of up to S$1 million and cover for up to 3 separate directorships, you can now decide for yourself the level of protection you desire.

This policy covers costs incurred in defending a claim, plus settlements and awards of damages and costs. It is exclusively underwritten by Allianz Insurance Company of Singapore for members of SID (SID has arranged this coverage as an additional service to its members and has no financial benefits whatsoever in this arrangement).

If you have always wanted a D&O policy with your name printed on it and a limit that will be there when you need it, then this policy is for you. Because when it comes to protecting your personal assets, sometimes you need something all to yourself.

Please contact SID at telephone no. 6227 2838 for more information or call Ms Gladys Ng, Aon Singapore at telephone no. 6239 8880 for an over-the-phone quotation.

Steps For Safeguarding Cash & Critical Assets And Tightening Controls On Legal Representatives

In a luncheon talk conducted on Monday, 11 April 2011, representatives from law firm, KhattarWong gave a presentation on Singapore Exchange Limited's (SGX) latest requirements on safeguards over cash and other critical assets and the right of companies to appoint and remove legal representatives in entities established in the People's Republic of China (China).

Organised by the Singapore Institute of Directors and KhattarWong, this talk was held at the Marina Mandarin Singapore and attracted more than 90 senior business executives keen to learn what companies must do in order to comply with SGX's latest requirements. The panel discussion also featured Mr. Lim Lee Meng, Senior Partner of RSM Chio Lim as one of the panellists and was moderated by Mr. Sovann Giang, Executive Director of the Singapore Institute of Directors.

Background

In March 2009, SGX called on Boards and Audit Committees (ACs) to heighten vigilance during a time of economic turbulence inundated with corporate collapses and financial scandals. SGX required that Boards and ACs:

- conduct checks and balances (safeguarding of cash, impairment of receivables, etc …); and
- execute cash validation checks; and
- arrange for timely disclosure of material information; and
- review the adequacy of internal controls; and
- take efforts to enhance an understanding of the Boards' responsibilities.

Around the same time, the Accounting and Corporate Regulatory Authority Singapore (ACRA) released a bulletin entitled, "Audit Considerations in the Current Economic Environment" which also focused on the above mentioned areas that SGX wanted Boards and ACs to focus on.

SGX's Latest Reminder

SGX now requires companies listed on SGX to review their internal processes to further strengthen the roles of legal representatives so that steps can be taken to reduce their exposure to fraud. Accordingly, SGX requires that the board of directors and ACs of companies principally operating in China provide it with a report by 31 May 2011 on two (2) matters:

- Issuers should have adequate safeguards over cash and other critical assets. The Board should consider engaging qualified auditors and legal professionals to determine whether checks and balances and controls, including significant disbursement of cash and safeguarding of seals, need to be enhanced. After implementing any necessary changes, companies should engage these professionals to review whether these controls are working effectively and additional procedures, such as cash validation could be performed by auditors on an ongoing and regular basis.
- As powers over management and assets in China-incorporated companies are vested with their legal representatives, Boards and ACs of SGX-listed companies must ensure that provisions in the articles of association of its key subsidiaries in China allow for the Board of the SGX-listed company to have the right to appoint and remove their legal representatives. ACs are strongly encouraged to include this provision as soon as practicable, if it is not already in place. Otherwise, the companies are required to provide an explanation to SGX.

SGX's latest reminder to S-chips is reminiscent of the one it issued in March 2009 with the exception of providing SGX with a report confirming that the listed company has fully incorporated a provision for its Board to have the legal right to appoint and remove its legal representatives.

SGX now requires companies listed on SGX to review their internal processes to further strengthen the roles of legal representatives so that steps can be taken to reduce their exposure to fraud.

The Tasks

Based on SGX's latest directive, listed companies with a substantial presence in China are required to:

- review whether checks, balances and controls need to be enhanced;
- ascertain whether the controls are working efficiently, post-implementation;
- implement additional procedure(s) regarding cash validation; and
- report to SGX by 31 May 2011 on the outcome of the review and confirm that the listed company has fully incorporated a provision for the

When companies are allowed to be listed on the Shanghai and Shenzhen stock exchanges, they must appoint a bank and all of the proceeds from the initial public offering and net expenses must be deposited with the bank.

Board of the listed company to have the right to appoint and remove its legal representative.

Lessons From Cases

KhattarWong highlighted a number of legal cases involving fraud in China as illustrations to the fact that:

- Singapore and China have different sets of laws;
- difference in what constitutes misappropriation or what attracts criminal liability in China and Singapore;
- co-operation from the management and government agencies in China is needed to reduce the time needed for removing legal representatives;
- existing controls can be improved upon to prevent unauthorised cash use, awarding of loans and disposal of company assets by errant legal representatives;
- regular checks on cash are needed; and
- the parent company must have the full power to appoint and remove legal representatives as and when needed.

Panel Discussion

The following are excerpts of key concerns raised by members of the floor and recommendations provided by the panel.

Q: What are some of the existing internal controls used in China and Hong Kong and can they be adapted for use in Singapore?

A: When companies are allowed to be listed on the Shanghai and Shenzhen stock exchanges, they must appoint a bank and all of the proceeds from the initial public offering and net expenses must be deposited with the bank. Further, three (3) parties, namely, the bank, the listed company and the sponsor, must enter into a contract stipulating that: (i) all of the previously-mentioned proceeds must be deposited

Panel discussion from left: Sovann Giang - Executive Director, SID; Lim Lee Meng- Senior Partner, RSM Chio Lim and Partners of KhattarWong - Hoon Tai Meng, Chew Kok Liang, Lawrence Wong and Lin Song

For companies listed in China and Hong Kong, auditors must generate reports on the use of proceeds. So, for companies listed in Hong Kong wanting to raise a further round of funds, they must explain how funds raised during their previous fund-raising exercise was used.

with the bank and (ii) the bank will provide monthly statements to the listed company on how the proceeds are used.

Further, if there is a withdrawal from the bank that exceeds a certain amount, the sponsor must be informed. For example, if a withdrawal threshold of twenty per cent (20%) is reached, the bank must provide the listed company and the sponsor with a bank statement which states how the money was used.

For companies listed in China and Hong Kong, auditors must generate reports on the use of proceeds. So, for companies listed in Hong Kong wanting to raise a further round of funds, they must explain how funds raised during their previous fund-raising exercise was used.

Some Chinese companies have stringent internal controls. For instance, some will insist that major bank accounts are only operated with banks with Internet banking facilities. For Internet banking, two (2) codes or keys are needed. One (1) of these codes or keys will usually be mainly held by the Chief Financial Officer (CFO) while the other will be held by another party appointed by the parent company from Singapore. Therefore, one (1) of the code or keys for Internet banking can be held by a Singapore executive from the parent company. Hence, whenever payments are made through the bank, effective monitoring of any movements in the accounts can be conducted rather easily. In short, Internet banking helps to prevent any unilateral and major disbursements of funds. Additionally, a company's finance department can be required to provide a monthly list of disbursements (e.g. exceeding S$200,000) indicated on the bank accounts by detailing the purpose and payees of the disbursements. In addition, checks on cash balances can be done by Internet banking.

Q: Are there any issues with the validation of cash?

A: The process of validation of cash is no easy task. There are four (4) issues that must be considered when companies decide to conduct cash validation. The first issue is the frequency of the cash validation process. For instance, companies must consider whether the cash validation process should only be conducted at the end of the financial year or on a quarterly basis. The second issue is that of the nature and extent of the cash validation process. Companies must consider whether the management in China (e.g. Chairman)

can dictate which bank officials auditors can communicate with in relation to conducting cash validation so as to minimise the possibility of any collusion. The third issue is whether to accept the validity of any cash validation report from the bank if bank officials take a relatively long time to complete the process. The fourth and final issue is one of timing. Companies should consider conducting validation checks at the end of the financial year (period) instead of a few months after this period when the accounts are to be signed by the auditors.

Q: Are changes to a company's articles of association effective in removing a legal representative given that he or she can simply be dismissed by filing the necessary forms with the authorities?

A: As S-chips have been recently hit by accounting scandals, it is vital that these companies take stock of situation and closely examine their articles of association. Generally, the company's articles of association will not specifically detail how a legal representative should be appointed or removed.

For instance, the articles of association of some companies may dictate that a legal representative should be a certain individual (who is the controlling shareholder himself or his associate). Further, there may be a provision to the effect that the legal representative should assume office for a period of three (3) years but nothing may be mentioned about the process of his or her removal. Clearly, such a provision is faulty. Therefore, uncertainty will arise and much time and money will be spent on engaging lawyers to research the relevant laws on how a legal representative can be removed. Ultimately, the parent company will have the power to remove the Board of a subsidiary company in China. However, if the Articles of Association of the relevant subsidiary are unclear, embarking on the path of removing a legal representative will be a most onerous task.

Q: Even if the parent company has the power to remove the legal representative, what are the likely difficulties to be encountered when implementing steps for the legal representative's removal?

A: Articles of association may be amended to bestow the parent company with the power to remove the legal representative. However, the litmus test will be whether the authorities in China will recognise the legal implications of such a power. For example, a legal representative can be held to be personally liable for not resolving a wage dispute and thus incarcerated by the Chinese authorities because the doctrine of separate legal entity does not apply in China. In China, a company's top executive, and not the company itself, is usually the party held responsible for the company's acts.

> Articles of association may be amended to bestow the parent company with the power to remove the legal representative.

In the example cited above, the only recourse open to the affected legal representative will be to raise sufficient funds and pay off any outstanding wages before he or she can be released from prison. Therefore, it is vital that companies foster strong ties with the Chinese authorities so that their co-operation can be relied upon for situations such as the one listed in the example and also for cases involving removal of a legal representative.

The importance of acquiring the co-operation of the authorities in China is made abundantly clear when implementing steps to remove a legal representative. In China, the process of removing a legal representative begins with a submission to the State Administration of Industry and Commerce (SAIC). The SAIC will require various documents to be submitted by the company, which include a stamped registration form (denoting the new legal representative), company licence and other supporting documents. To circumvent the need for forms to be stamped by any seal(s), companies should prepare such documents in advance.

In some parts of China, the local banks and entrepreneurs are so adept at colluding with each other that almost any document can be fabricated or forged. Therefore, even if extremely experienced and capable auditors are engaged to perform checks on a company's accounts, it may be extremely hard for them to detect that something is amiss.

Q: Can using qualified auditors to conduct thorough checks of a company's accounts totally prevent fraud from occurring?

A: Unfortunately, no. In some parts of China, the local banks and entrepreneurs are so adept at colluding with each other that almost any document can be fabricated or forged. Therefore, even if extremely experienced and capable auditors are engaged to perform checks on a company's accounts, it may be extremely hard for them to detect that something is amiss. Nonetheless, auditors must still be very careful and exercise due care and utmost professionalism to ensure that all necessary steps and procedures are executed during the course of any audit checks.

Therefore, companies must not wholly rely on their auditors to unearth discrepancies or irregularities during the course of conducting their audit checks. Instead, companies should conduct regular checks and have in place proper internal control procedures. In additional, the underlying reasons, transactions and documents giving rise to the cash balances should be closely reviewed and verified.

Conclusion

The financial scandals unearthed in recent times serve to remind companies that they must perform periodic checks to identify situations where their subsidiaries in China do not have clear processes to remove their respective legal representatives. If the company's articles are not specific on this point, the process of removing its legal representative will present more difficulties if such a need arises.

SGX's reminder to S-chips to review their internal controls and reduce exposure to risk will benefit shareholders in the long-term. As the world continues to globalise, China will continue to foster trade with more countries and also adopt international codes of business practice. Therefore, it is vital that individuals and corporations alike familiarise and adhere to China's legal framework in order to facilitate smooth passage for their business expansion plans in China.

Corporate Membership Scheme

The Corporate Membership scheme, a new initiative of the Institute, is introduced to encourage and enhance support from companies the Institute's pursuit of improving and raising the standard of corporate governance practices in Singapore.

By joining as Corporate Members, companies will signify their support for good corporate governance practices and will have full access to continuing professional training of their board directors and senior management as well as stay abreast of the latest developments in corporate governance practices.

To encourage companies to sign up as Corporate Members, the Institute is offering a range of benefits, which include:

- Complimentary membership for one Principal Nominee from each company and waiver of entrance fees for two Supplementary Nominees who are directors and/or senior management staff.
- Complimentary use of SID Board Appointment Service, once every year, in the company's search for suitable independent non-executive directors.
- Two complimentary invitations to SID Annual Corporate Governance Conference.
- Complimentary vouchers worth a total of $1,200 to attend training courses organised by the Institute.
- Complimentary copies of the Institute's corporate governance related guidebooks.
- Discounts for advertisements placed in The Directors' Bulletin.

For an annual membership fee of $2,400 (plus GST), Corporate Members receive benefits with a monetary value of about $7,000 each year.

Membership is open to any body corporate or entity formed, incorporated or registered in Singapore or elsewhere that has its affairs directed or managed by a board or council of directors or members and which supports and practises good corporate governance.

2-day LCD Programme in Shanghai, China

The first Mandarin LCD Director Certification programme was held in Beijing, China, from 25 October to 27 October 2010 and was well received.

On 10 and 11 March 2011, SID held her Second Mandarin LCD Director Certification programme in Shanghai, China. It was attended mainly by directors of Chinese listed companies.

Mr Richard Teng, Senior Vice President, Head of Issuer Regulation, Singapore Exchange, gave the opening address. The speakers were Hee Theng Fong, then Partner, KhattarWong, Lim Lee Meng, Senior Partner, RSM Chio Lim and Ng Siew Quan, Partner, PricewaterhouseCoopers LLP.

Panel discussion from left: Richard Teng, Ng Siew Ouan, Hee Theng Fong, Sovann Giang and Lim Lee Meng

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江明才

Upcoming Talks/ Courses

Upcoming Events

JUNE 2011

Thursday, 2 June 2011	Whistleblowing Policy That Works
Wednesday, 8 June 2011	LCD Director Certification Programme Module 1 Listed Company Director Essentials: Understanding the Regulatory Environment in Singapore: What Every Director Ought to Know
Wednesday, 29 June 2011	GEM Director Certification Programme Module 5 Practical Guide for Investor and Media Relations

JULY 2011

Tuesday, 5 July 2011	LCD Director Certification Programme Module 2 Audit Committee Essentials
Wednesday, 13 July 2011	SID-SGX 1-day Listed Company Directors Development Programme (Mandarin) in Xiamen, China
Tuesday, 19 July 2011	LCD Director Certification Programme Module 3 Risk Management Essentials

SID-SMU Executive Certificate in Directorship

Modules	Programme Dates	Assessment Date
Module 3: Finance for Directors	Monday, 20 June 2011 Tuesday, 21 June 2011 Wednesday, 22 June 2011	Wednesday, 29 June 2011
Module 5: Leading from the Board of Directors	Thursday, 28 July 2011 Friday, 29 July 2011	Take home assessment

Welcome Aboard

February 2011

Asianto	Robby	Khoo	Joo Lin Lena	Tan	Kian Chew
Banati	Amit	Lee	Fook Wah Francis	Teo	Siew May
Chan	Kok Fai	Lin	Rebekah	Webb	Daryl
Chong	Ee Yong Stephen	Merszei	Leslie George		
Fong	Keng Yeow	Ng	Kian Chuan		

March 2011

Bier	Rob	Hemrajani	Asha	Reid	Kenneth
Briant	Michael John	Johnston	Phil	Serene	David
Chan	Hui Yuh	Lai	Keng Wei	Tan	Kah Koon
Chan	Wei Ting	Leong	Choon Fai Michael	Tan	Hai Beng
Chay	Wai Chuen	Lim	Keng Chong	Teo	Hong Lim
Cheng	Lai Yuk Hilda	Long	Ross	Yeo	Meng Hin
Chin	Chee Choon	Maknawi	Ratna	Yeung	Shun Meng Stephen
Chinnu	Palanivelu	Ng	Chai Choey	Yong	Teng Wei
Crothers	William Christopher	Ong	Siew Chin	Yoong	Ee Chuan
Fu	Hao	Pan	Peiwen		

Call for articles, thoughts, snippets, etc.

The institute would like to hear from you. Send us aricles, thoughts or even short snippets of issues that you are keen on, that you want to share about, or that keeps you awake at night. It only needs to relate to directors and/or corporate governance. For articles, keep it to 1200 to 1500 words at most. Send your materials by email to the Institute at secretariat@sid.org.sg

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