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Revised Corporate Governance Code

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

Warm Greetings to one and all as we present you with the next issue of the Directors Bulletin. Perhaps the biggest event that is upcoming is the Directors' Conference – Corporate Governance In The New Normal. This is on 12 September 2012 and is the third run by the Institute. This year the Institute is doing bigger and stronger, with a panel of speakers from Singapore as well as various overseas jurisdictions.

As a run up to the Conference, you would have been seeing various articles by the panellists in the Bulletin over the last few issues. This issue is no different and we have at least two articles from our panellists. The first is by Mats Isaksson, Head of the Organisation For Economic Cooperation & Development's ("OECD") Corporate Governance Division, who writes about value creation and growth in corporate governance – an area that he is seemingly passionate in and will speak to as well at the Conference. The second article is by Elaine Yew, the Managing Partner, Singapore of Egon Zehnder International, who writes on who should be on the board – a critical issue that continues to plague boards the world over – how does a board achieve the right framework of diversity to ensure true effectiveness.

The Directors' Conference promises to be an exciting one with much discussion in and around current topics. If you have not already registered to attend, please do so IMMEDIATELY. The Conference will be held on 12 September 2012 at the Marina Bay Sands Singapore. Minister of State Mrs Josephine Teo is Guest of Honour and The Honourable Barbara Hackman Franklin, Chairman of the National Association of Corporate Directors will deliver the Keynote Address.

We look forward to seeing you at the Conference.

With the issuance of the final Code of Corporate Governance ("Code") on 2 May 2012, which takes effect in respect of financial years falling after 1 November 2012, this issue of the Bulletin provides a series of articles touching on the Code. The Code makes several key revisions in the corporate governance sphere, including director independence, board composition, multiple directorships, remuneration practices and disclosures, risk management, and shareholders' rights and role.

The series starts with an article from Annabelle Yip, who is also a member of the Publications Committee of the Institute. Annabelle's article looks at the various provisions of the Code. Rather than taking a practical approach to the provisions of the Code, the writer focuses on the values introduced or expanded on, which underlie the revisions made to the principles and guidelines of the Code 2012 by the Corporate Governance Committee and the Monetary Authority of Singapore.

The next article provides a snapshot of the views from the ground on the changes to the Code. This article was a result of a quick reaction poll on the feel of the revisions brought about by the CG Code. The aim was to pull together thoughts and views from directors, managers, lawyers, auditors and more. The Institute was heartened to receive a fair number of responses. The general trend of the responses was that on an overall basis, the proposed changes were to be welcomed; although many felt that the rules have been made more demanding.

A series on the Code cannot not deal with the importance of the element of independence. This is what Farhana Siddiqui and Lam Shiao Ning do in their article. Some of the critical changes introduced by the Code include having more than 50% of the board being independent where the chairman and the CEO roles are fused or held by related persons, introducing a 10% shareholding limit when independence is lost, and a new 9 year requirement, after which the continued independence of the independent director must be rigorously reviewed.

The series of articles on the Code ends with a look at remuneration concerns by Na Boon Chong, Managing Director, Talent & Rewards, Southeast Asia, Aon Hewitt.

Another interesting article comes out of the recent decision in Yeap Wai Kong v Singapore Exchange Securities Trading Ltd [2012], by Bill Jamieson and Clarence Lun. This case had looked at the powers of the Singapore Exchange and the circumstances in which it was subject to judicial review or otherwise. This is a particularly significant decision, which is a must read, and hence, the article is a welcome one. Finally, I also thank the Supreme Court for allowing us to reproduce their note on the Madhavan Peter case.

It remains for me to thank all contributors to this issue. We look forward to your contributions as well as feedback and comments on this issue.

Kind regards,

Kala Anandarajah
Editor

CHAIRMAN'S MESSAGE

Dear Fellow members,

In the last three issues of this Bulletin I have in my messages referred to the global and domestic economic uncertainty and the changing corporate governance environment. In the latter, I have referred specifically to the changes in the SGX Listing Rules as well as the revised Corporate Governance Code which will come into effect in respect of annual reports for financial years commencing from 1 November 2012. More important, however, is the recent increased attention being given to the independence, competence, performance and commitment of directors, particularly, independent directors, and the board's responsibility for risk governance, by both regulators, investors and the media.

I have both personally observed and been informed, that investors have become more vocal at company general meetings and have raised questions on the suitability of director candidates, the non-payment of dividends when the company has been profitable and executive directors have received substantial remuneration, and matters relating to executive compensation. At the same time, regulators have also appeared to have stepped up disciplinary efforts against alleged breaches of regulations and non-compliance with apparently proper instructions from regulators.

These developments have been referred to by many as the "new normal", a term no doubt borrowed from political observers and politicians following our last General Election.

Fittingly our annual conference this year which will be held on 12 September has, as its theme, "Corporate Governance in the New Normal" and will be addressing many important and relevant issues confronting boards and directors. Additionally, this issue of our Bulletin has also devoted significant space to the revised code and to many of these issues. I urge all of you to take a close look at these articles and to participate in this annual conference.

Your Institute has in recent months stepped up its director training and development activities to better equip and prepare its members in their efforts to further improve their effectiveness as directors and to meet the higher expectations of all stakeholders. Particular public attention is expected to be directed on the performance of the Nominating Committee which has been tasked with ensuring a transparent and proper nomination and election process for suitable directors and for their continued training and development, objective performance evaluation and commitment. We hope all boards and directors will embark on an early review of their existing internal practices and take steps, where appropriate, to address any shortcomings and strengthen these processes.

In recent months, your Council has also been reviewing the Institute's current vision, mission and strategy and a strategy retreat facilitated by an independent professional, was held some months ago for this specific purpose.

As a result of this strategic review, certain changes in our constitution relating to the composition of our Council, its renewal and leadership and other relevant matters will be proposed for members' approval at an extraordinary general meeting (EGM) in early October. Details of the proposed changes, their rationale and date of the EGM will be given shortly and I look forward to seeing many of you at this important meeting.

Reviews of our existing strategy and programmes for our Professional Development and our Advocacy activities and our current Secretariat resources are also currently being undertaken and recommendations for these are expected to be finalized by year end.

I look forward to your continued support and contributions as we collectively work towards firmly establishing SID as an institute that all of you can be justifiably proud to be a part of.

Warm regards,

John KM Lim
Chairman

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Developments In Governance: Revisions To The Singapore Code Of Corporate Governance

By Annabelle Yip
Partner
WongPartnership LLP

On 2 May 2012, the Monetary Authority of Singapore ("MAS") issued a revised Code of Corporate Governance. The changes were made after a public consultation and following recommendations made by the Corporate Governance Council ("CGC"). The revisions reflected in the new Code of Corporate Governance (Code 2012) effect changes to the existing Code of Corporate Governance (Code 2005) in several key areas including director independence, board composition, multiple directorships, remuneration practices and disclosures, risk management, and shareholders' rights and role.

The CGC subsequently issued its Risk Governance Guidance for Listed Boards in May 2012, which complements the principles and guidelines of the Code relating to risk management and internal controls and gives guidance to listed company boards on the carrying out of their risk governance oversight responsibility.

The Code 2012 will generally take effect in respect of annual reports relating to financial years commencing from 1 November 2012. Accordingly, for companies with financial years commencing 1 January, their annual reports for FY2013 — typically issued in March/April 2014 — should describe their corporate governance practices with specific reference to the principles of the revised Code, including disclosing any deviation from any guideline of the revised Code together with an appropriate explanation for such deviation. The exception is the requirement for independent directors to make up at least half of the board in the circumstances specified in the Code (as discussed below). Changes to meet this requirement should be made at the annual general meetings following the end of financial years commencing on or after 1 May 2016. Hence, companies with financial years

commencing 1 January should make the necessary changes by their annual general meetings for FY2017.

Since the Code 2012 was issued, much has been written and spoken about the practical steps that need to be taken by listed companies in order for their governance practices to meet the new standards set by it. This article focuses rather on the values introduced or expanded on, which underlie the revisions made to the principles and guidelines of the Code 2012 by the CGC and the MAS.

Sustainability And Ethics

The role of the board captured in Guideline 1.1 reflects the broader sense of corporate responsibility that has arisen particularly over the last decade. The Code 2012 acknowledges that companies have obligations to a wider group of stakeholders than just its shareholders. As the Guide to Sustainability Reporting for Listed Companies of the Singapore Exchange notes, stakeholders include shareholders, employees, customers, suppliers and communities, with varied nature and interests. The Code 2012 recognises that companies have a responsibility to consider sustainability issues such as environmental and social factors, as part of their strategic formulation. It also specifically refers to the board's responsibility to set the company's ethical standards.

Long-Term Interest Versus Short-Term-ism

Underlying a number of principles and guidelines of the Code 2012 is the focus on the company's long-term interest and success. This is evident from the various references to it in the sections dealing with the board's role as well as those dealing with remuneration, as well as in the reference to sustainability. The sections on remuneration make several references to long-term incentives that companies are encouraged to adopt as part of the remuneration of directors and key management personnel ("key management personnel" being defined as the chief executive officer or equivalent, and other persons having authority and responsibility for planning, directing and controlling the company's activities). This emphasis on taking a longer-term view may be construed as a response to the misguided drive to achieve short-term profits at the expense of business sustainability that is widely considered to have contributed to the 2008 global financial crisis.

Training

Professionalising boards and raising their standards of performance will improve governance standards and enhance value creation. The Code 2012 makes clear that it is the company that is responsible for arranging and funding the training of its directors.

The Code 2012 increases the emphasis on directors' training, expanding on the guidelines of the Code 2005 in several ways: training for incoming directors should be comprehensive and tailored, and first-time listed company directors should receive training in areas such as accounting, legal and industry-specific knowledge as appropriate. The tasks of the Nominating Committee ("NC") have also been expanded to cover the review of training and professional development programs for the board.

The training provided should be disclosed in the company's annual report. In addition, the Code 2012 requires the board to disclose in the company's annual report measures taken by Audit Committee ("AC") members to keep abreast of changes to accounting standards and issues which have a direct impact on financial statements.

Independence

After considering various perspectives as well as international developments, the CGC arrived at the view, stated in the Consultation Paper on the Proposed Revisions to the Code issued in June 2011, that to enable independent directors to act effectively in companies, it was important for them not to possess any relationship with stakeholders (which would include 10% shareholders and organisations providing material services to the company). This view has been enshrined in the Code 2012 through various provisions that tighten the existing requirements for independence:

Formal Measures Of Independence

Independent directors should be able to exercise objective judgment on corporate affairs independently, in particular, not just from management, but also from shareholders with an interest in 10% or more of the total voting shares in the company. Accordingly, an independent director is now defined as one with no relationship with the company, its related corporations, its 10% shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of his independent business judgment with a view to the best interests of the company.

This means that a director will generally not be considered independent if he, inter alia:

- is a 10% shareholder of the company;
- is an immediate family member of a 10% shareholder of the company; or
- is or has been directly associated with a 10% shareholder of the company (i.e. if he is accustomed or under a formal or informal obligation to act in accordance with its directions, instructions or wishes in relation to the company's affairs) in the current or immediate past financial year.

The Code 2012 also stipulates that where a company or any of its subsidiaries has made or received from certain organisations significant payments (generally, in excess of S$200,000 per annum in aggregate) or material services

(such as audit, banking, consulting and legal services) in the current or immediate past financial year, a director associated with that organisation (or whose immediate family member is so associated) may not be considered independent. Such association arises by being that organisation's 10% shareholder, its partner with a stake of 5% or more, or its executive officer or director.

The Code 2012 also provides that once an independent director has served for a continuous period of nine years from the date of his first appointment, his continued independence beyond this period should be subject to particularly rigorous review. In doing so, the board should also take into account the need for progressive refreshing of the board, and explain why any such director should be considered independent This nine year principle, which is new to the Code and which has caused substantial controversy, recognises that directors who have been on the board for a substantial length of time may develop a level of familiarity and cosiness with management and major shareholder which may impede their ability to exercise independent judgment from them.

Board's Discretion To Determine Independence

In all the above cases, it is, at the end of the day, up to the NC and the board to assess each director's independence, and open to the board to come to the conclusion that he should be considered independent, and to explain its basis for that conclusion in the company's annual report. Assessment of independence is an ongoing requirement and not just to be done annually.

Half The Board To Be Independent

The Code was further amended to stipulate that at least half of the board should be independent in specific circumstances. Where these circumstances do not apply, the existing requirement in the Code of at least one-third of the board to be independent continues to apply.

The circumstances that will require that half of the board be independent (which are also the circumstances in which a lead independent director should be appointed) are the following:

- Where the Chairman and CEO is the same person (the Code states that these roles should in principle be held by different persons);
- Where the Chairman and CEO are immediate family members;
- Where the Chairman is part of the management team; or
- Where the Chairman is not an independent director.

As mentioned above, a longer grace period will be given to companies to comply with this requirement.

Diversity

It is now widely accepted that a diversity of backgrounds and expertise of directors brings with it a diversity and richness of views which, when shared openly and constructively, help companies to make better, more aware and informed decisions.

The Code 2012 specifies that the board and its board committees should comprise directors who as a group "provide an appropriate balance and diversity of skills, experience, gender and knowledge of the company". The reference to gender is notable; while some other jurisdictions have introduced gender diversity on listed boards through mandatory quotas or disclosure requirements, Singapore has gone down the gentler route of a Code recommendation.

It remains to be seen if companies will take note and act accordingly. In any case, given that there will be an increased demand for independent directors given the changes to the definition and circumstances relating to independence in the Code, it may be inevitable that more women, and indeed, a much wider pool of potential directors with a range of different ages, countries, skills and experiences, will be tapped on to meet the need.

Board Renewal And Succession

A company's business is dynamic, and over time, its geographical, business and strategic focus will change, and the composition of its board must evolve to meet the company's changing needs.

The Code 2012 places renewed emphasis on board succession and renewal, referring to it in the nine-year principle, the expanded role of the NC to make recommendations to the board on relevant matters relating to review of board succession plans for directors, and the fact that important issues to be considered as part of the process for the selection, appointment and re-appointment of directors include composition and progressive renewal of the board.

Information Flow

Under the Singapore Companies Act, the business of a company is to be managed by or under the direction of the directors. The Code expresses it another way, specifying that the board's role includes providing entrepreneurial leadership, setting strategic objectives, and ensuring that the necessary resources are in place for the company to meet its objectives.

Because of this fundamental responsibility of the board, it is imperative that directors have independent access to management and full, timely access to information on an on-going basis relevant for them

to make fully informed decisions in the company's interest. The Code 2012 enhances the existing provisions of the Code in this regard.

Devoting Sufficient Time And Attention

At the same time, directors have to be committed to devoting sufficient time and effort to reading, understanding and digesting all the information provided to them, and arriving at considered views on the matters before them for decision.

The commitment and competencies of a director as well as his contribution and performance (e.g. attendance, preparedness, participation and candour), including, if applicable, as an independent directors, is specified by the Code to be relevant to the determination of whether he is to be re-appointed to the board.

In addition, one matter that has been debated in the media is the issue of whether the recent corporate governance scandals in Singapore were attributable at least in part to directors not having sufficient time to give proper attention to the businesses of the companies whose boards they sit on. Publicity has been given to some prominent examples of persons holding what may be considered to be an excessive number of listed company directorships.

In the light of this, the Code 2012 specifies that the NC's decision whether a director is able to and has been adequately carrying out his duties as director should take into consideration his number of listed company board representations and other principal commitments. "Principal commitments" is defined as all commitments involving a significant time commitment e.g. full-time occupation, consultancy work, committee work, non-listed company board representations and directorships, and even involvement in non-profit organisations. In addition, the Code 2012 requires the board to determine the maximum number of listed company board representations that any director may hold, and disclose this in the company's annual report.

Transparency

The Code 2012 improves transparency in several areas by requiring enhanced disclosure in the annual report.

One notable area is in remuneration, where remuneration of individual directors and the CEO must now be disclosed on a named basis to the closest $1,000, with a breakdown of remuneration earned through fixed salary, variable/performance-related income/bonuses, benefits in kind, stock options, share-based incentives and other long-term incentives. Additional disclosure is required of the aggregate remuneration paid to the top five key management personnel who are not directors or the CEO, and of the aggregate amount of termination, retirement and post-employment benefits that may be granted to directors, CEO and the top five key management personnel. Disclosure is also required of salaries of employees who are immediate family members of a director or the CEO whose annual remuneration exceeds $50,000. Such disclosure should be made on a named basis, indicating the employee's relationship, and in bands of $50,000.

An important new requirement which will aid the understanding of shareholders of how performance is rewarded is the requirement that companies disclose more information on the link between remuneration of the executive directors and key management personnel and their performance. The annual remuneration report should set out a description of performance conditions to which entitlement to short-term and long-term incentive schemes are subject, an explanation on why such performance conditions were chosen, and a statement of whether such performance conditions are met.

Link Between Remuneration And Risk

It has become common wisdom that a key factor contributing to the global financial crisis was the disconnect of remuneration from risk, thereby resulting in excessive risk-taking to inflate bonuses coupled with a lack of accountability. To address this view, the Code 2012 now expressly refers to the connection between remuneration and risk in several places. Principle 8 states that the remuneration level and structure should be aligned with the long-term interest and risk policies of the company. Guideline 8.1 specifies that performance-related remuneration should take into account the risk policies of the company, be symmetric to risk outcomes and be sensitive to the time horizon of risks.

Additionally, companies are now encouraged to include contractual provisions that allow for clawback of remuneration in exceptional circumstances of misstatement of financial results, or of misconduct resulting in financial loss to the company.

Complementing the Code 2012, the Risk Guidance provides in its sample terms of reference for a board risk committee the duty to provide advice to the Remuneration Committee ("RC") on risk weightings to be applied to performance objectives incorporated in executive remuneration.

Risk Governance

New Principle 11 and guidelines on risk management and internal controls have been included in the Code 2012, underscoring their importance. Notably, the first statement of Principle 11 makes it clear that the board is responsible for the governance of risk. The new

guidelines relevant to risk management and internal controls included in the Code 2012 clarify the board's role as inter alia being the following:

To determine the company's levels of risk tolerance and risk policies, and oversee management in the design, implementation and monitoring of the risk management and internal control systems.

To comment on the adequacy and effectiveness of the internal controls, including financial, operational, compliance and information technology controls, and risk management systems, in the company's annual report. The board's commentary should include information needed by stakeholders to make an informed assessment of the company's internal control and risk management systems. This obligation supplements the obligation found in the SGX Listing Manual, to set out in the annual report, the opinion of the board, with the concurrence of the AC, on the adequacy of the internal controls, addressing financial, operational and compliance risks.

To comment in the annual report on whether it has received assurance from the CEO and the CFO on the effectiveness of the company's risk management and internal control systems and that the financial records have been properly maintained and the financial statements give a true and fair view of the company's operations and finances.

To establish a separate board risk committee or otherwise assess appropriate means to assist it in carrying out its responsibility of overseeing the company's risk management framework and policies.

In recognition of the important role of the AC, the Code 2012 states that at least two members, including the AC Chairman, should have "recent and relevant" accounting or related financial management expertise or experience (as the board interprets such qualification in its business judgement).

New provisions in the Code 2012 relevant to internal audit include the assignment of the AC to approve the hiring, removal, evaluation, and compensation of the head of the internal audit function (or the accounting/auditing firm or corporation if the internal audit function is outsourced), and that internal audit should have unfettered access to all the company's documents, records, properties and personnel, including access to the AC.

Shareholder Rights And Responsibilities

The most significant change to the Code with respect to shareholders has been to include a new statement on the role of shareholders. While this is not part of the Code, it was issued together with the Code by the CGC in its final recommendations to the MAS in November 2011, and is intended to encourage shareholders to engage constructively with the board and with management. By becoming more actively involved in questioning boards and management and holding them accountable for their actions and decisions, shareholders can play an important role in improving the corporate governance of companies whose shares they hold, bringing poorly managed or under-performing companies to account, and thereby improving shareholders' value.

The Code 2012 itself places renewed emphasis on recognising the ownership rights of shareholders and facilitating their right to participate and vote at general meetings. Companies are recommended to devise an effective investor relations policy to promote communication with shareholders, and boards to establish and maintain regular dialogue with shareholders, to gather their views and address their concerns. The steps taken by the board in this regard should be stated in the annual report.

Conclusion

Many of the principles and guidelines of the revised Code are grounded in the values which underpin good corporate governance such as independence, transparency, integrity, professionalism, diversity, ethics and sustainability. Much has already been written about the business case for good corporate governance, and companies should bear this in mind as they approach this transitional period before the coming into effect of the revised Code and decide which of the recommendations of the revised Code they intend to adopt.

This article also appeared in the Institute's Conference booklet for the Annual Directors Conference held on 12 September 2012.

Your Take On The Corporate Governance Code 2012 – An Informal Survey Of What Different Stakeholders Feel

By Kala Anandarajah
Partner, Rajah & Tann LLP And
Council Member, Singapore Institute
Of Directors

With the introduction of the revamped Corporate Governance Code 2012 ("CG Code") to take effect with respect to financial years commencing on or after on 1 November 2012, the Singapore Institute of Directors ("Institute") did a quick reaction poll on the feel of the revisions brought about by the CG Code. The aim was to pull together thoughts and views from directors, managers, lawyers, auditors and more.

The Institute was heartened to receive a fair number of responses. The general trend of the responses was that on an overall basis, the proposed changes were to be welcomed; although many felt that the rules have been made more demanding. The reality is that not a lot of what has been introduced is new insofar as the roles and obligations of the directors are concerned. What is new goes to the definition of independent directors and the requirements related to risk management. What is encouraging is the slightly more fleshed out recitals of what is expected of the chairman of the board as well as some of the other directors and the committees. Time will tell as to the effectiveness of these revisions to the Code on how companies are managed.

Set forth in this article are the quick views on what you thought. The Institute will be happy to continue to receive feedback – do keep them flowing to us – which we will then review and consider how best it can be dealt with, if the need arises.

Q1. The revised CG Code comes after nearly 7 years from when the last round of revisions were made in 2005, and which had come into force in 2007. Do you see the CG Code as having evolved with the times, and if so how?

The general response observed that rules have become more stringent, particularly with every round of review of the CG Code. Some saw this as part of an evolution, whilst one respondent saw this as "plugging holes that have been exposed, i.e. a tightening".

On the stricter approach, one respondent observed that the requirements are now stricter for directors to perform their roles and responsibilities. This respondent saw this as a positive change.

Query, however, whether the rules have indeed become stricter in this respect, or is it more that there the revisions provide slightly more clarity. This was a suggestion by one respondent who felt that the revisions provided greater clarity to the topics and roles, reflecting a maturity of roles in the industry.

Another respondent noted that the rules are now tighter as regards the definition of who qualifies as an independent director. This is true, and perhaps was necessary, although perhaps the 10% threshold as regards relationships with shareholders might still have not gone far enough. This writer's further personal query is whether any number of rules can indeed address the issue of independence adequately.

Q2. Some of the key changes introduced are in and around the definition of independence of directors. Do you think that the proposed changes have gone far enough? If yes, how so? If no, how so?

The majority of the respondents agree that the changes were necessary, and in fact now provide better clarity as to who qualifies as an independent director. One respondent even observed that "independence is reinforced where it was lax before". Yet another, however, noted that the spirit and intent of the definition of independent directors remain the same, with independence really a matter of a "state of mind and strength of character". This respondent's observation is astute, yet it is to be noted that the CG Code has still not been able to deal with these issues of "state of mind and strength of character"; obviously these are not matters that can be effectively dealt with through rules and guidelines.

All said, one respondent felt that the CG Code now provides a good balance even currently, with the changes introduced to tweak the definition of independent director. Whether this is indeed a fact remains to the seen.

Q3. The CG Code introduces a new 9 year period pursuant to which a director who has occupied a directorship for a continuous period of 9 years or more will be deemed in the first instance to be non-independent, although this can be explained away. This rule mirrors that in the financial industry. Is this requirement a fair one? Will it be hard to implement in practice?

On whether a 9 year period should be applied beyond which to deem a director as non-independent, the majority of the views were affirmative. It was observed that over a "prolonged period, complacency sets in and arms length judgment could be influenced".

Quite a few of the respondents also felt that this was a requirement that would not be difficult to implement in practice. There was just one strong view suggesting that the requirement was arbitrary, and that it would be hard to prove independence (or more likely continued independence) in any specific situation in any event.

Q4. The CG Code makes specific reference to 'gender' when it makes mention of diversity. This is new. Do you think that gender diversity on the board is necessary? What changes would having gender diversity bring to the board? Are there enough women (let's face it, the requirement is targeted at women) to enable boards to have gender diversity?

This query garnered the most number of responses. This was not to be unexpected as the reality in the words of one respondent is that "most CEOs, key personnel of board members remain men".

Whilst there were some responses specifically addressing the issue of gender, most of the responses were focussed on having a diversity of skill set and views. On this, one respondent noted that directors should be drawn from different industries and ages as these are "beneficial to bring across … more 'rounded' views and input". Another respondent noted that "in the economic field, man and woman should be evaluated / assessed on the same platform. We should be neutral".

On those specifically wanting gender diversity, one respondent noted that it "was necessary [as it] brings different view points and opportunities; should require more women on the board".

The debate is still out on this one, although any attempts in trying to regulate whether formally or otherwise this particular issue should be one carefully treaded. Whilst man and woman are made differently, better boards are not made just through gender diversity. At the end of the day, diversity is necessary – but it is an animal that must be managed not tamed.

Q5. Do too many directors hold too many directorships? The CG Code does not make mention to a limit on the number of directorships that a director can hold; although it does require the board to disclose this and consider if a director has too many directorships. Additionally, the CG Code does, as the Code has done in the past, allude to the fact that a director must devote sufficient time and attention to his director function. Do directors in fact devote sufficient time to their work? Has the CG Code gone far enough in ensuring that they do? Could anything else have been done?

The results appear to weigh in favour of having limits in the number of directors, as there is a general feel that many "ride on reputation rather than actual work done and contribution". Whether this is true or not, what is clear is that regulation is not going to be easy as every company has different requirements and every individual is made differently. The laments of sufficiency of time are not one that can be objectively determined in all situations. Hence, the decision on the number of directorships one individual should hold is best left to himself to assess, and to the company deciding to bring him on to assess.

On the former, the candid observation by one respondent hits the issue on the nail – "let the directors get into trouble first;

then they will realise that they too many directorships and eventually they will make their own decision to relinquish". On the latter, the nominating committee has been tasked with this function in recent times, and they must and should be allowed to perform their roles responsibly. As one respondent observed, "this should be a commercial decision taken by the company".

Q6. Risk Governance is seemingly a new concept introduced by the CG Code. Is the responsibility for the governance of risk rightly placed with the directors? How can directors manage this?

The consensus here was that this was a matter that was best handled by the CEO together with management and not by the board.

This writer's personal views are that risk management cannot be left entirely to management. Even if we go with the narrow view that the board can only exercise oversight and nothing more, they need to be responsible for ensuring that the right people have been appointed to review the specific risks issues in the organisation, that the risks have indeed been identified and be assured that they are looked into and processes to manage these are looked into, and to ensure that the veracity of the systems and processes are tested from time to time. In this regard, the article on Developments In Governance: Revisions To The Singapore Code Of Corporate Governance elaborates further on the critical responsibilities now expected of directors in relation to risk management.

Q7. How well equipped are directors to comment on the adequacy and effectiveness of the internal controls, including financial, operational, compliance and information technology controls, and risk management systems? Do you think you are ready to take this challenge on? Are you concerned about the potential liabilities?

This is an issue related to risk management. The majority of the views were that directors needed to be better equipped to be able to handle reviewing and commenting on the adequacy and effectiveness of internal control issues. One respondent alluded to the fact that directors needed to be aware and mor sensitive to business risks and have the requisite acumen. This is obviously not something that can be learnt in school – it comes with experience. Several other respondents suggested that directors needed professional qualifications.

All said, the revisions to the CG Code clearly provide more guidance.

Q8. Are directors paid too much or too little for what they have to do? Do you think their remuneration rightly reflects the risk levels they undertake? Do explain your response.

The general view here is that directors are not paid sufficiently for the risks that they undertake. However, several also recognised the difficulties associated with identifying the best approach to ascertaining how much directors ought to be paid. What is intended to assist is the Risk Guidance, which complements the Code, which provides in its sample terms of reference for a board risk committee the duty to provide advice to the Remuneration Committee on risk weightings to be applied to performance objectives incorporated in executive remuneration.

Q9. Do you believe that you as a director get sufficient information on boards? Does the CG Code aid in enuring that better and the right information is given to you? What can be done to improve this further?

The responses were mixed as regards this question. Some felt that they were getting sufficient information, whilst others felt they were not. One felt that there was enough information available, and it was really up to the directors to endeavour to get more from the company as they saw the need to do so.

The more accurate response perhaps is one which indicated that given boards meet infrequently, there is little information exchanged and shared. Further, this respondent noted that with non-executive functions and low remuneration, the frequency of engagement was limited. If these facts were indeed true, then it raises the query of whether the directors can truly perform their role effectively.

To this end then, surely the guidance provided by the Code must certainly help, and will at least ensure that more frequent and timely information is provided to directors. This was the consensus of the respondents. Indeed, in this writer's view, directors who do not receive sufficient information owe it to themselves to request for more, and to make mention of the fact of lack of information being provided at board meetings eve, so that it is properly minuted.

Q10. Board renewal and succession planning has always been a part of the CG Code. Is this a practical approach to take? How does such planning sit in the with the likes of the issues at Barclays given the recent Libor announcements?

The respondents did not directly respond to this question, nor were there clear responses touching on Barclays, as expected.

Yet, a couple of views proffered are useful. One respondent notes that succession and renewal planning are part of risk management particularly viewed as part of the long term performance of the company, whilst another said that these were part of the company's strategy. Both views are of course absolutely correct, and which clearly recognise that time and effort must be put into the process.

The views and opinions expressed are those of the writer and not necessarily those of the Institute.

A Calling For More Independent Directors

By Farhana Siddiqui, Director, And
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Corporate & Finance
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Singapore has come a long way in building up its corporate governance standards aimed at promoting investor confidence in companies listed on the Singapore Exchange and putting Singapore on the global map as a trusted international financial hub.

The Code of Corporate Governance ("Code") was first introduced in 2001 and has been recently revised.

The motivation for the changes can partly be attributed to the corporate scandals which have dogged Singapore's corporate environment leading investors to call for greater corporate governance.

The recent changes were the result of a review undertaken by the Corporate Governance Council (comprising representatives from the business community and stakeholder groups) set up in February 2010 by the Monetary Authority of Singapore ("MAS") to look into enhancing corporate governance practices in view of changing investor environment and market developments.

The new Code is meant to address the need to tighten the rules on corporate governance, especially in terms of checking the power of the Chairman/CEO of the company, and the need for a strong and independent element on the board of directors.

Enhanced Corporate Governance?

Corporate governance advocates have generally reacted favourably to the new Code. Some of the key changes to the Code relate to the areas of director independence, board composition, remuneration practices and disclosure and risk management. The new revisions do appear to address the key concerns of investors and regulators surrounding corporate governance issues

It now remains to be seen how effectively these measures will be implemented in practice.

This article looks at the following particular changes:

- The tightening of the concept of "independence" and in particular the introduction of the relationship with a 10% shareholder and relationship with external organisations through provision of material services in the determination of independence; and
- "The 9 year rule".

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Tightening Of Concept Of Independence

In recognition of the need for a strong element of independence on the board, instead of a general requirement that one-third of the board be independent, the Code now requires independent directors to make up half of the board where the chairman and CEO is the same person, or are immediate family members, or are part of the same management team, or if the chairman is not independent.

10% Shareholding

Some of the factors to be taken into account in the determination of independence now include a situation where the director is or related to a 10% shareholder or has a direct association (emphasis added) with a 10% shareholder.

In the Code, a "10% shareholder" refers to a person holding not less than 10% of the voting shares of a company. The introduction of this concept of a director's relationship with a 10% shareholder is in recognition of the fact that the interests of a shareholder appointing a director may not necessarily be aligned with the interests of the other shareholders as a whole and potential conflicts arising from such relationship may affect a director's ability to exercise independent judgment.

MAS felt that the 10% threshold was more appropriate than the 5% threshold recommended by the Council which is the basis for determining substantial shareholding under the Companies Act and the Securities & Futures Act.

The Code also elaborates on what amounts to "direct association" with a 10% shareholder. This essentially is premised on the director being accustomed or under an obligation to take instructions from or to act in accordance with the directions or wishes of the 10% shareholder in relation to the corporate affairs of the company. The fact that the director is nominated by the 10% shareholder in itself does not negate his independence.

While this is theoretically clear, it may not be so easy to demonstrate in practice. Often there would not be any formal understanding. Every case will need to be assessed on its own facts.

Ultimately, this will need to involve a 2 step process:

- The director nominated will himself need to assess his ability to exercise independent judgement; and
- The Nominating Committee will need to scrutinize the relationship including the reasons for the nomination, past dealings between the 10% shareholder and the nominee. This is particularly where the director is of the view that he is independent notwithstanding any relationship with the 10% shareholder. The Nominating Committee may well think of setting down certain categories of relationships where the director will not be considered independent regardless of such director's view taking into account the Code's guidelines.

Provision Of Material Services

Under the Code, a director who in the current or immediate past financial year is or was a 10% shareholder, partner, executive officer, or director of any organization to which the company or any of its subsidiaries made, or received payments or material services in the current or immediate past financial year is unlikely to be considered independent.

The 10% shareholding concept has already been discussed above.

This change formally sets out parameters which companies have often used to scrutinize candidates for independent directorships.

In recognition of the need for a strong element of independence on the board, instead of a general requirement that one-third of the board be independent, the Code now requires independent directors to make up half of the board where the chairman and CEO is the same person, or are immediate family members, or are part of the same management team, or if the chairman is not independent.

However the Code does not elaborate on what amounts to "material services" and requires again a judgement call for the board.

In practice, often professionals sit as independent directors and bring to the board their relevant expertise in their professional fields which is often invaluable. If the company then engages the services of the firm in which the independent director is a partner, executive or director, under the Code, it is now likely to bring into question whether the director ceases to be independent solely as a result of the firm being involved.

It is not unreasonable to take a view that the mere involvement of the professional firm ought not affect the directors independence as a whole. However, going forward, prior to the appointment of the professional firm, the board should consider whether the proposed matter for which the firm is being engaged is of such a nature where a potential conflict of interest may arise. If there is any concern that there may be potential for conflict, the board ought to err on the side of prudence and take the view that the independence has been affected. Factors which the board may wish to consider in its determination include (i) the nature of the services to be provided (ii) the value of the services and (iii) the duration of the services.

The 9 Year Rule

The Code now provides that a director who has served on the board of a company for more than 9 years should be subject to particularly rigorous review in his re-appointment as independent director.

Again this is a logical change which addresses the concern that after a long period of service a director may have developed close ties with management which may well compromise on independence. This is weighed against the benefit of having an independent director who would have gained valuable understanding of the business of the company which may be crucial for an independent director to discharge his role effectively.

The Code however does not go on to discuss what would amount to particularly rigorous review. Again this requires the Nominating Committee to develop the parameters for review of the re-appointment of long-serving independent directors.

> The new Code is likely to call for more qualified persons to step up as independent directors. If an analysis is made of independent directors of listed companies in Singapore, it will not come as a surprise that there are some names which crop up more often. This then begs the question whether there is a reluctance to serve as independent directors. While this in itself is not an indication of shortage, it is clear that to give proper effect to the revisions, the greater the pool of candidates, the better.

Conclusion

The new Code is likely to call for more qualified persons to step up as independent directors. If an analysis is made of independent directors of listed companies in Singapore, it will not come as a surprise that there are some names which crop up more often. This then begs the question whether there is a reluctance to serve as independent directors. While this in itself is not an indication of shortage, it is clear that to give proper effect to the revisions, the greater the pool of candidates, the better.

Additionally, the Code requires a director who has multiple directorships to ensure that sufficient time and attention is given to the affairs of each company he represents. The Code recommends that the board of a company should determine the maximum number of directorships any director should hold and disclose this in the annual report.

This is meant to discourage a director from holding too many directorships and may add to a crunch in the number of directors who may be immediately available to serve on boards as independent director.

However, this is likely to be a perceived shortage as there are many qualified candidates out there who have probably not been tapped.

With the new changes, the time is ripe for more candidates to come forward and uphold the standards promoted in the Code.

Addressing Remuneration Matters As Set Forth In The New Code of Corporate Governance

By Na Boon Chong
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Aon Hewitt

In today's global environment of heightened investor, activist, regulator and media attention (not helped by the high profile corporate scandals that kept popping up just when you think you saw the last of it), the pressure is increasingly placed on the Remuneration Committee ("RC") to exercise due diligence and sound decision making, to uphold good corporate governance process and generate shareholder returns. The demands are made the more difficult with the increasing complexity of the business and talent markets.

In line with these changes, Singapore also revised its Code of Corporate Governance, which will take effect from 1st November 2012 for financial statements issued from that date.

Based on our consulting experience in Singapore and globally, and our research on shareholder advisory and regulatory groups, we would like to present our views on how best to meet the new requirements relating to remuneration matters (Principles 7, 8 and 9 in the Code), not just in form but in a substantive way.

Let' start by reviewing what the new requirements are, along with our suggestions.

Principle 7

In Guideline 7.1, there is an intention to strengthen governance via the RC. RC should have a "written terms of reference which clearly set out its authority and duties…and disclose in the company's Annual Report…the key terms of reference…"

While most RCs currently have a charter or terms of reference, the quality of such varies widely. Authority and duties of the RC should include most if not all of the following:

- Development of a compensation philosophy for the executive management, which serves as a basis to cascade down to the rest of the organization.
- Identification of the company's key strategic, financial and operating objectives which can be used as a basis to incentivize the executives.
- Development of compensation

In Guideline 7.2, the new Code added "share-based incentives and awards" to share options. This is a clear recognition of the increasing use of alternative share plans since the early 2000s, especially plans with performance linkage. Whichever form it takes, the underlying concern is that plan recipients do not benefit merely by the extraneous market movements. In the same vein, they should not be disadvantaged by the mere fact that markets are down.

practices, which utilize the different compensation components of base, annual and long-term incentives, perks and benefits, to meet the following objectives:

- Attraction and retention of executives,
- Alignment to shareholders' interests;
- Maintenance of internal equities;
- Appropriate mix between fixed pay versus variable pay based on the desired risk profile and time horizon;
- Balanced focus on the annual business performance and long-term sustainability;
- Reinforcement of the company's desired culture;
- Avoidance of shareholder and media criticism;
- Efficiency and compliance with tax, accounting, and securities laws; and
- Protection of executives in corporate development events (for example, change-in-control, retention or severance provisions), yet, not setting barriers to value-enhancing corporate transactions.

• Initiation of compensation program review, and the recommendations to the board on changes.

• Review and approve CEO base pay increase and variable incentive awards.

• Ratify compensation decisions for the other key executives.

• Oversee all aspects of incentive pay programs, especially for jobs where incumbents as a group is undertaking material risk for the company. Examples are front-office jobs where incumbents are involved in sales and product development activities.

• Hiring and contracting with key executives, and protecting proprietary information from future competition through executive employment agreement and non-compete covenant.

• Make decisions regarding severance pay of key executive when needed.

• Review director compensation.

• Approve the draft RC report to be inserted in the annual report.

• To deliver on these duties, RC should have a pre-determined year-round agenda, maintain proper documentation of the context, design considerations, eventual decisions and the rationale.

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In Guideline 7.3, in addition to encouraging the RC to use internal and external experts, the new Code underscores the importance of the "Independence and objectivity of the remuneration consultants" and to make the appropriate disclosure in the annual report.

In our experience working with Singapore boards, we observe that RCs today are much more knowledgeable about the issues and facts, and they are no longer taking what management

In our experience working with Singapore boards, we observe that RCs today are much more knowledgeable about the issues and facts, and they are no longer taking what management presents as a given. They are more critical in their thinking and much more challenging in their review of proposals. In spite of that, there is more public disclosure, more scrutiny and more analysis of executive pay. In this environment, it is essential for the RC to have an effective advisor and to get the most out of the advisor.

Selection and working with an advisor cannot be delegated totally to the management although the advisor should work with the management in understanding the business context and executive viewpoints. Each RC should be able to answer this question if it is posed by the shareholders: “Please explain the basis for your characterization of the RC’s advisor as independent.” If you can’t give a reasonable, good faith answer to that question, then you must either change the circumstances or change the advisor.

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Thus RC should ensure that they have advisors who are willing to take a stand in writing, reputable and acknowledged thought leaders who are knowledgeable about the company’s business and industry, in full command of the data and facts as well as the emerging trends in executive compensation, and most importantly, has the best interest of the organization at heart and the process skills to drive the RC discussions towards a common understanding and decision.

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Principle 8

The new Code calls for the design of the remuneration structure to be aligned with “the long-term interest and risk policies of the company”. Specifically, Guideline 8.1 states that remuneration design should “promote the long-term success of the company… symmetric with risk outcomes and be sensitive to the time horizon of risks”, and Guideline 8.4 encourages the use of “contractual provisions” to “reclaim incentive components…in exceptional circumstances”.

Our suggestions to addressing these requirements are as follows:

- Firstly, determine the appropriate performance measures for incentive plans. Include an accurate “price” of risks in all profitability calculations by using risk-adjusted measures. RCs should recognize that profits are most usefully measured relative to a referenced return on the amount of capital supporting the business. The amount of capital should reflect the risks associated with the business.
- Measure performance at the company level and avoid having individual businesses taking a first call on “their” profits unless they are autonomous units bearing their full funding costs.
- Decide on the time frame to measure performance. While the short term should remain to be one year to coincide with the budgeting cycle, the time frame for the long-term incentives is less clear as it needs to parallel the business cycle.
- Use deferred bonus and clawback provisions in the plans. The former refers to bonus plans that do not pay out fully at the end of the financial year but defer a portion to the next 2-3 years. The latter refers to clauses that stipulate that the incentives could be taken back in future years under certain circumstances.

  The new Code has suggested the following for clawback provision:

  - Positions: “executive directors and key management personnel”
  - Acts: “misstatement of financial results, or of misconduct resulting in financial loss to the company”
  - Means: “contractual provisions”

  Assuming that a RC finds these definitions suitable for its situation, that leaves the RC to define the time period for the right to clawback and any due process considerations.
- Decide on the weights to be given to the short vs. long-term incentives. Traditionally, the long-term incentives have been weighted one to two times the amount of the short-term incentives. This may increase as the emphasis over long-term results takes prominence.
- Lastly, and perhaps the most difficult part, create a “partnership” mindset and mechanisms in the company, going beyond stock ownership and withholding requirements. Compensation is only one of the levers in shaping executive behaviors. Leadership values and beliefs, and role models convey strong messages and confer intangible rewards. Leadership, together with performance and compensation, are the three priorities for the governing boards in terms of managing executive behaviors. Having this multi-dimensional

consideration requires the RC to retain a certain hindsight and discretion as opposed to strict adherence to pre-set formulae.

In fact, many of the leading companies in Singapore are already using risk-adjusted measures, deferred shares, bonus banks, performance shares and other incentive plans that are paying for long-term shareholder value creation, which adhere to many of these good design principles.

Principle 9

In our view, the most impactful change in the new Code lies here by calling for enhanced disclosure in a number of areas. In the absence of prescriptive measures, investors would need to rely on disclosed information in order to review and judge for themselves if the plans adopted by the companies are reasonable, fair and in good faith. We would encourage companies to strive for greater transparency in key executive compensation in order to demonstrate accountability to the public market.

We highlight a couple of notable areas below:

Guideline 9.1, other than the remuneration levels, remuneration report should include "aggregate amount of any termination, retirement and post-employment benefits" granted to directors and top executives. These benefits generally are not an issue in Singapore companies, unlike the controversy of "golden handshakes" in other markets.

Most importantly, Guideline 9.6 points to the need to provide "more information on the link between remuneration … and performance". While disclosing the actual remuneration levels and mix provides a view on how much is paid, it is what you are paying for that is more informative. Disclosure is an effective shareholder communication tool, if done well, to elucidate the figures disclosed.

To take on the challenges looming ahead, RCs should consider taking the following preparatory steps towards disclosure:

- Understand your shareholder base and if you think shareholders may be critical of certain areas of your program, consider explaining the rationale for these program features and why they continue to make business sense for your company.
- Ensure that RC members and committee advisors are not only independent in thinking but follow a due process to safeguard their independence.
- Assemble a team (internal and external) early, and coordinate efforts among Finance, HR, compensation advisor, management reviewers, and RC reviewers that can challenge many of the assumptions that underlie the current program.
- Ensure that pay levels meet business and talent objectives while considering internal pay relationships (e.g., between the CEO and next-level), and external benchmarks such as those of a peer group.
- Demonstrate how the compensation plans align with financial performance and stock price, and support other business objectives that create shareholder value. This can be done by assessing incentive-pay measures and goals as well as incentive-pay mix (i.e., short-term and long-term incentives, and cash versus equity).
- Determine whether a quantitative analysis of historical pay-versus-performance makes sense with incentives as granted and as vested for the corresponding performance periods.
- Use shareholder-friendly mechanisms such as stock ownership guidelines, stock withholding requirements, deferrals and clawback provisions.

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

- Are your compensation plans performance-based and aligned with shareholders/long-term value creation?
- Are your compensation plans related to the business strategy and tailored based on size, industry, performance and competitive position?
- Does the plan articulate a coherent compensation philosophy appropriate to the company and clearly understood by all directors?

Conclusion

In summary, the new Code asks for greater accountability on the part of the RC to ensure good remuneration design and disclosure to the public. Well-managed companies have this opportunity to blaze the trail and demonstrate that they indeed have a robust remuneration system in place and, more importantly, a governance process that is not unduly influenced by management but is actually supported by the management.

SGX-ST Reprimand Subjected To Judicial Review

By Bill Jamieson, Partner, And
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The basis on which the Singapore Exchange Securities Trading Limited ("SGX-ST") exercises its powers under its Listing Rules has long been a source of debate among commentators. Prior to the recent decision in Yeap Wai Kong v Singapore Exchange Securities Trading Ltd [2012] SGHC 103 ("YWKvSGX"), there were two views on the source of the SGX-ST's power under its Listing Rules: firstly, the powers arise by virtue of the contract each company admitted for listing on the SGX-ST enters into with the SGX-ST, and secondly, the powers are derived from the Securities and Futures Act and the statutory underpinnings of the SGX-ST's functions as market regulator.

The significance of this distinction was supposedly that only if the SGX-ST was exercising powers derived from statute in carrying out its functions as market regulator would it be deemed to be exercising a public function, and accordingly its decisions would be subject to judicial review. YWKvSGX has affirmed that certain acts of the SGX-ST are susceptible to judicial review, and this article attempts to shed light on the basis of the Honourable Justice Philip Pillai's decision as well as the impact on both the SGX-ST and market participants.

The brief facts of the case are as follows: The applicant, Yeap Wai Kong ("Yeap") was a non-executive, independent director and member of the Audit Committee of China Sky Fibre Chemical Limited ("China Sky"), a company incorporated in the Cayman Islands and listed on the SGX-ST. The SGX-ST had noticed discrepancies in China Sky's financial statements and on 19 April 2011 asked China Sky to furnish certain information, which was not provided to the SGX-ST despite several requests. On 23 August 2011, the SGX-ST sent a 'show cause' letter addressed to China Sky and collectively its board of directors (but not to the individual directors by name) for breaching the SGX-ST's Listing Rules through non-disclosure of documentation in relation to discrepancy on a land acquisition agreement.

This was followed by a document directive from the SGX-ST on 3 November 2011, requiring China Sky to deliver specified documents to the SGX-ST. On 16 November 2011, the SGX-ST also ordered a special auditor be appointed by China Sky. China Sky failed to comply with these directions, despite the SGX-ST setting a deadline of 2 December 2011, and on 16 December 2011 the SGX-ST publicly reprimanded all the directors of China Sky, including Yeap for failure to comply with the Exchange's directive pursuant to Listing Rule 704(14) to appoint a Special Auditor. The application in YWKvSGX came about when Yeap subsequently sought a court order quashing his public reprimand, on the basis that he was not accorded a fair and proper hearing and that the show-cause letter had not been addressed to Yeap as an individual director.

Basis For Pillai J.'s Decision In YWKvSGX

Pillai J. considered the case law on judicial review, such as the English case of Reg v Panel on Take-overs and Mergers, ex parte Datafin plc And Another [1987] 1 QB 815 and Singapore cases such as Public Service Commission v Lai Swee Lin Linda [2001] 1 SLR 644 and UDL Marine (Singapore) Pte Ltd v Jurong Town Corp [2011] 3 SLR 94. In coming to his decision, Pillai J. took into account the legislative and regulatory matrix of the Singapore securities market, the statutory underpinning of the SGX-ST's power to reprimand and the nature of the reprimand function.

Pillai J. noted that the public reprimand of directors of a listed company by the SGX-ST, a front-line securities regulator, carries financial and business implications and that the SGX-ST's public reprimand of a listed company's directors accordingly may potentially impact a director both domestically and internationally (for example, business reputational implications, implications on their continued service on board committees and directorships of other listed companies and other professional and financial services licence implications).

Therefore Pillai J. held that the reprimand power would properly be characterised as a public function by its nature and consequently susceptible to judicial review for minimum compliance with the standards of "legality, rationality and procedural propriety" after consideration of the case law and various factors listed out.

What Constitutes A Fair Hearing?

Pillai J. held at paragraph [29] of the judgment that "The common law prescribes minimum standards of procedural propriety by requiring a fair hearing and the absence of bias. There is no one-size-fits-all template for a fair hearing; instead, what constitutes a fair hearing will depend on the nature and context of each decision." His Honour further added that "in the context of disclosure of information in the securities market, it requires that the person affected is informed of the case against him and that he has an opportunity to make representations before the decision for a public reprimand is made."

In deciding that Yeap had been accorded a fair hearing, Pillai J. took note of two key issues: firstly, the reprimand by the SGX-ST came only after a lapse of six months of continuing non-disclosure and non-compliance with various directives of the SGX-ST by China Sky, and secondly, as regards to the fact that the show-cause letter was not addressed to Yeap personally, "if any individual director wished to put his personal representation … which was at variance with their subsequent directors' approved Company announcements and communications to SGX-ST, he had full opportunity to do so".

Conclusion

Pillai's J. decision to allow judicial review with regards to the SGX-ST's exercise of its powers of public reprimand leaves open the ambit of the court's power to review other types of decisions by the SGX-ST in carrying out its functions regulating the market for listed securities. However, the facts of this case are confined only to judicial review with regards to public reprimand which clearly has the potential to severely impact a director personally. Pillai J. did not go so far as to rule that the entirety of the SGX-ST's exercise of its powers is within the domain of judicial review. It remains to be seen if judicial review is available for light sanctions by the SGX-ST in the form of fines or warnings that would not put the company or directors in the public limelight.

It is also unclear to what extent judicial review will be available with regard to the governance of other approved exchanges in Singapore, in particular for exchanges that have a robust internal control system. For instance, if an exchange has a transparent selection of discipline committee procedure in place as well as a right to appeal with the appeal committee separate from the original disciplinary committee, it remains to be seen if the High Court would grant a judicial review given that the aggrieved has already been accorded a right to fair hearing and appeals process.

However, the argument that was put forward by the SGX-ST, that it exercised its powers by virtue of the contract embodied in its rules, and its decisions to enforce its rules vide public reprimand were on that basis outside the scope of judicial review, was firmly laid to rest by the decision in YWKvSGX.

YWKvSGX also serves as a lesson for directors, in particular for independent directors that they carry personal responsibility for the company's actions. It is the authors' suggestion that if an individual director is of the opinion that the company is heading in the wrong direction and failing to comply with regulatory standards, notwithstanding their own efforts on the board to steer the company in the right direction, proactive steps to disassociate themselves from the company's actions are needed, if they wish to avoid sharing responsibility for them.

Supreme Court Note:

Madhavan Peter V PP [2012] SGHC 153 (the element of materiality in continuous disclosure and insider trading)

The High Court explains the concept of materiality in the continuous disclosure and insider trading regimes.

Rule 703(1)(b) of the Singapore Exchange Trading Limited Listing Manual ("the Listing Rules") requires a company that issues securities traded on the Singapore Exchange to disclose information which would be likely to materially affect the price or value of its securities. The information in question must be likely to effect a significant change in the price or value of securities. This follows from the use of the word "materially" in rule 703(1)(b) of the Listing Rules. Information falling under rule 703(1)(b) of the Listing Rules may be referred to as "materially price-sensitive information". Section 199 of the Securities and Futures Act (Cap 289, 2002 Rev Ed) ("SFA") prohibits, inter alia, the making of any statement that is misleading in "a material particular". The expression "a material particular" in s 199 of the SFA refers to a particular that is likely to materially affect the price or value of securities as per the concept of materiality in rule 703(1)(b) of the Listing Rules. Hence, information falling under s 199 of the SFA may also be referred to as "materially price-sensitive information".

As for the insider trading regime, it is an offence under s 218(2)(a) read with s 221(1) of the SFA for a person connected with a corporation to, inter alia, sell the corporation's securities while in possession of information concerning the corporation which is not generally available but which, if generally available, a reasonable person would expect to have a material effect on the price or value of the corporation's securities. The element of materiality here relates to whether, if the information in question were generally available, a reasonable person would expect it to have a material effect on the price or value of the securities of the corporation concerned. The concept of materiality in s 218 of the SFA read on its own is the same as the concept of materiality in rule 703(1)(b) of the Listing Rules and s 199(c) of the SFA. Hence, information falling under s 218 of the SFA read on its own is likewise materially price-sensitive information.

In the context of the insider trading regime, however, there is another provision, viz,s 216 of the SFA, which states that a reasonable person would be taken to expect information to have "a material effect on the price or value of securities" if the information "would, or would be likely to, influence persons who commonly invest in securities in deciding whether or not to subscribe for, buy or sell the … securities [concerned]". The effect of s 216 is to equate the concept of "material effect on the price or value of securities" in s 218 with the likelihood of influencing persons who commonly invest in securities in deciding whether to subscribe for, buy or sell the securities of the corporation concerned. Information falling under s 218 read with s 216 of the SFA may be referred to as "trade-sensitive information". In this case, the information in question was not proven to be materially price-sensitive information. The information in question was, however, trade-sensitive information.

Madhavan Peter v Public Prosecutor and other appeals [2012] SGHC 153 at paras 42–64.

Disclaimer: The above is provided to assist in the understanding of the High Court's judgment. It is not intended to be a substitute for the reasons of the High Court.

The Note first appeared in Singapore Law Watch (www.singaporelawwatch.sg).

Corporate Governance, Value Creation & Growth

By Mats Isaksson
Head Of Corporate Governance Division
Organisation For Economic Cooperation & Development ("OECD")

The OECD Corporate Governance Committee and the Capital Markets Board of Turkey organized the meeting "Corporate Governance, Innovation and Value Creation" on 1 February, 2012 in Istanbul. A volume of the presentations at the meeting was published by the OECD. The publication and further information is available at http://www.oecd.org/corporate/corporateaffairs/.

This article provides an overview of the publication and the issues discussed.

Assessing Effectiveness Of Corporate Governance Rules

Corporate governance rules, regulations and practices are not a goal in themselves. They are supposed to be means to a greater end. Be it minority rights, mandatory bids, or independent directors, the rules and regulations that we put in place should serve a purpose. And it is against this purpose and these objectives that the quality of any corporate governance system should be evaluated. So, we need to find a benchmark against which we can assess new regulations and evaluate existing ones.

From a public policy perspective, this benchmark consists of three core criteria against which we can evaluate the effectiveness of individual corporate governance rules. The criteria are closely linked to the investment process and the ability of the financial sector to serve the needs of the real economy.

The first criterion is that corporate governance rules should ensure that new business opportunities get access to capital. For this, the rules must be credible enough to make investors take money out of their mattresses and invest in equity. But they must also be designed to provide company founders and entrepreneurs with the right incentives to seek external funding for innovation and growth. Just as investors may keep their money in the mattresses, some entrepreneurs would rather keep their companies in the tool shed or at least out of the public domain. Sometimes at a cost in terms of lost business opportunities and growth.

Second, corporate governance rules should ensure that capital is efficiently allocated among corporations. That is to say that the rules should reward investors who contribute to bringing new and genuine information to the market. They should also discourage any opportunities for pure rent seeking. Only then will equity prices provide the best possible information about a corporation's potential. And only then can we be sure that capital is allocated to those who can make the best possible use of it. A market where everyone is rewarded for trying to second guess everybody else, obviously does not meet this criterion.

Finally, a good corporate governance system should reward competent monitoring of corporate operations once the resources are allocated among them. This requires both a long-term commitment and a lot of talent among owners. A corporation is not a self-playing piano. It requires a tremendous amount of work to keep it innovative, dynamic and on the cutting edge. Where do we find shareholders with the incentives and skills to carry out this very demanding but also pivotal task?

Impact Of Corporate Governance On Investments

Looking at these criteria, it is easy to see that the corporate governance system affects every step and aspect of an economy's investment process.

At the first stage, corporate governance is all about creating an environment for access to capital.

At the second stage, the focus is on efficient allocation of capital between competing ends.

And at the third stage, corporate governance should encourage competent monitoring of investments once they are in place.

We know from history that nothing is more important to economic prosperity than the level and quality of investment. This is also why corporate governance from a public policy perspective, should never be seen as a static zero-sum game whose main objective is to regulate how different parties to the company should split a given set of assets or a given result. The economic objective is to make sure that the rules serve the purpose of innovation, value creation and growth.

Organizing For Innovation & Growth

This dynamic, economic and growth-oriented approach to corporate governance is well-reflected in the three sections of this volume.

The first section addresses the process of value creation within the corporation and analyses how that process is influenced by different financial and contractual arrangements. It also analyses the merits of contractual freedom and the balance between strictly mandatory rules on one side and a more enabling corporate governance environment on the other side. We are also reminded that both capital markets and the corporate world are constantly evolving. So, what is an efficient corporate governance rule at a certain point in time may no longer be efficient as circumstances change; as financial markets evolve, as new instruments appear and as corporate structures develop.

The second section focuses more closely on the role of owners; in particular, controlling owners who hold large stakes in individual companies that they actively monitor, sometimes at a considerable cost. In the early days of the corporate governance debate, Berle and Means saw controlling owners as a straightforward solution to the corporate governance problem. Yet that section of their book is seldom quoted. Most of the academic community got carried away in a different direction. This is unfortunate, because worldwide, companies with concentrated ownership is actually the rule, not the exception. So it is obvious that the shaping of corporate governance rules and regulations need to take the incentives and dynamics of large and sometimes controlling owners into account.

The third section focuses on emerging markets. It is inevitable that a growth-oriented and dynamic approach to corporate governance will lead us to the emerging markets, with their sometimes unique corporate governance structures and saving patterns.

Today's extensive shift of financial assets towards emerging markets is one of the main factors that change the global capital markets. However, contrary to developed economies, investors in these economies have a relatively low appetite to buy listed equities. Because of this and demographic trends in developed economies, long term projections point toward a shortage of equity capital for enterprises in emerging markets. By 2020 this may amount to more than 10 trillion USD and, if nothing is done, it may very well create an obstacle to entrepreneurship, growth and better paid jobs. Improvements and adaption of corporate governance practices will play a key role in bridging this equity gap by creating a robust and credible investment environment for both domestic and foreign equity investors.

These issues are discussed extensively in the third section. It addresses the particular needs of businesses in emerging markets and how companies that are often semi-informal or privately held can gain access to the capital they need by adopting a more institutional structure, without losing their entrepreneurial spirit and flexibility.

This article also appeared in the Institute's Conference booklet for the Annual Directors Conference held on 12 September 2012.

Who Should Be On The Board?

By Elaine Yew
Managing Partner, Singapore
Egon Zehnder International

Introduction

It is broadly accepted that the role of the board is critical in all aspects of corporate governance including setting the strategic direction of the company, its culture and values; defining performance objectives and their monitoring; selecting, supporting and supervising the executive team; and ensuring compliance and risk management. In order to live up to this role fully, the board must function effectively, and board effectiveness starts with having the right people.

So, who should be appointed to the board?

Through Egon Zehnder's board advisory work all over the world, and many conversations with executives and non-executive board members about what makes an effective board, it is clear that there are some "must-have" characteristics and competencies that apply in any situation where the board is truly acting as a steward of the company and its stakeholders.

At the same time, however, beyond those fundamentals, there is no "template" for the background, experience and style that determines the ability of a director to contribute meaningfully. Every company and its board faces its particular challenges and has its particular needs and culture, so making good decisions about who would be effective on the board will vary from case to case, once the fundamental

Every company and its board faces its particular challenges and has its particular needs and culture, so making good decisions about who would be effective on the board will vary from case to case, once the fundamental criteria are met.

criteria are met. Depending on the current state of the business and the market, the focus of the board - and therefore which individuals will be the biggest assets - will inevitably vary. Each company needs to formulate a board with the right balance, chemistry and diversity of experience, gender, culture and personalities.

"Must-Have" Competencies

Going back to the "must-have" qualities for an effective board member, we consistently observe four key competencies that characterize exceptional members of any board:

- independence and integrity
- ability to work collaboratively with others
- drive for results
- strategic mindset.

The fundamentals for a board director to be effective start with integrity and independence, of both thought and action. Integrity includes taking the role seriously and investing time to understand the business and get deeply into the subjects that are deliberated at the board. A board director needs to have the clear appetite and capacity to put in the time to deliver well against that role. This will often require a meaningful amount of time beyond attending meetings and reading meeting papers. We see integrity also as having the courage to speak one's mind and being candid and honest in one's views, and being willing to challenge fellow board members and executives in a constructive way when necessary. Boards should have directors who are willing to put themselves on the line and to defend what they believe to be right for the company and the stakeholders, even if against the tide of popular opinion to the contrary. Independence from any particular stakeholder's agenda is the other important qualifier; objectivity and the judgment and ability to balance sometimes conflicting interests of different stakeholders is fundamental to being an effective board director.

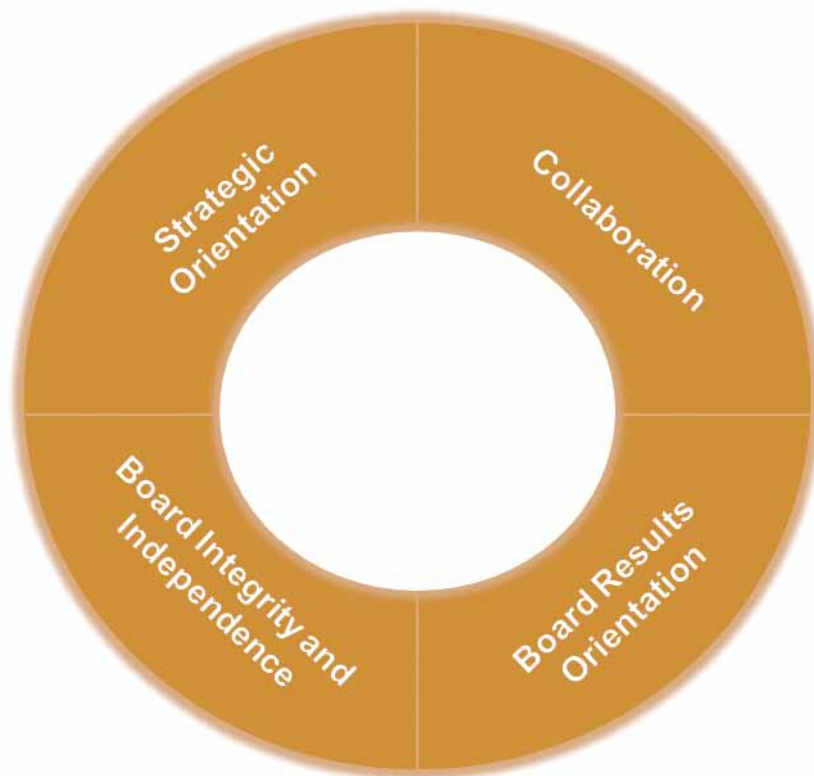

Figure 1: "Productive tension" amongst essential qualities for effective Non-Executive Directors

Another important skill for a board director is the ability to collaborate well with fellow board members and with the Executive team, such that the whole is greater than the sum of its individual parts. With the executive team, the challenge is in finding the right balance between constructive questioning and offering advice and support. A board director should also stimulate productive debate amongst fellow directors to arrive at a well thought-through point of view, stimulating input from others to raise the bar in terms of the quality of the board's dialogue and decisions. Being ready to hear others' opinions with sensitive listening but questioning when needed, and the ability to pull together different perspectives in coming to a decision are important attributes of being a good chairman, but these are equally important for all board directors . Given they do not have the opportunity to spend much time together, board directors face an additional challenge in acting as a team and thus it is all the more important that each director brings a fundamental disposition to engaging proactively and working well with others.

The role of a board is to ensure that the company delivers on its commitment to its shareholders and its fundamental responsibilities to other stakeholders. Board members need to have a drive for results and a focus on getting to good outcomes. Underlying that must be strong business sense and an ability to weigh up risk return in a sophisticated way, decisiveness, and a strong appetite to keep doing better. Being a director means taking ownership for how the company performs, and holding the management team accountable to meeting high standards in every way. Directors must come with a clear understanding of "what good looks like", so should themselves have experienced a high-quality organization, and have the drive to guide the company to perform in the same way.

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In addition to being accountable for the immediate performance of the company, a key requirement of any board is to take a broader and longer term view of the market and the company's positioning within it. This involves having a vision and looking beyond the obvious, but also requires synthesis of a great deal of information, to arrive at views that will shape decisions in the boardroom. Genuine curiosity about the business and the industry, and agility in thinking, are important indicators of an ability in this area. The best board directors are those who have demonstrated that ability in their earlier career, and reflexively look beyond today in their thinking for the company.

Productive Tension Of Competencies

As can be seen in Figure 1, the competencies diagonally opposite each other exist in a kind of productive tension in each board director that needs to be carefully balanced. Any shift in this balance can hinder good decision making.

When considering an individual for a role as a non-executive director, a judgment needs to be made based on their demonstration of a balanced skill level in each of the four areas.

The Composite Picture

In addition to considering the qualities of directors individually, the overarching challenge is to ensure that the combination of individuals on the board is right. The most effective boards are ones that can think and operate as a team, and create a whole greater than the sum of the parts.

There should be enough similarities – particularly in breadth of experience and stature – for the individuals to regard each other as peers and come more easily together as a group, but enough differences to avoid the directors approaching situations with too similar views and mindsets, leading to "group think". The chemistry of the group also needs to create constructive peer group pressure for each individual to pull their weight and to engage fully.

There has been much discussion around the importance of diversity in representation on boards. Our view is that the focus should not be on gender or ethnic diversity per se; rather, the commitment should be to have diversity of experience and perspectives, however that may be brought onto the table. Benefiting from that diversity is another challenge in itself, and requires a conducive environment to draw out the different perspectives and strengths of each individual. That conducive environment starts with having directors who are open-minded, curious and fundamentally confident.

The Selection Process

In discussing who should be on the board, we need to touch on the process of selection. There needs to be a rigorous, thorough and transparent procedure for the appointment of new directors to the board that is clearly understood by all.

This is not yet the case with many Singapore companies today. There needs to be a clearer articulation of criteria for the selection, how it links with the company's strategic priorities and current board profile, and how each candidate fits with the criteria. Criteria should go beyond skills and experience, to include the competencies discussed earlier, and also personal attributes including intellect, critical thinking and judgment, courage, openness, honesty and tact, the ability to listen, forge relationships and develop trust.

The search for the right candidate should involve a broad and systematic process, such that the Nominating Committee is considering and selecting amongst a number of possible strong candidates.

The Journey To Do Better

Many Singapore companies and organizations have boards that are highly committed to living up to their responsibilities of governance and are approaching this role thoughtfully. An important big step in the continued journey of these boards to keep doing better will come from conducting their selection of board members with some of the considerations shared above in mind.

This article also appeared in the Institute's Conference booklet for the Annual Directors Conference held on 12 September 2012.

Managing The Risk Of Risks

By David Van
Managing Director
The De Wintern Group

Until recently, organisations have not had the tools to identify, measure or manage reputational risk. David Van discusses how directors should be managing this risk in the same way they manage other risks.

In 2005, an Economist Intelligence Unit (EIU) survey identified reputation as the "risk of risks", with respondents identifying it as their most significant risk because they saw reputation as their source of competitive advantage, yet did not know how to manage it. Seven years later, the rise of citizen journalism and social media have further increased the scrutiny of organisations and therefore boosted reputational risk. Seemingly untouchable organisations have suffered enormous effects as their reputations are scrutinised and judged. One need only think of News International to see the effect of reputational damage.

As the News International example shows, reputation is important as it is the "currency" organisations must have to "buy" their social licence to operate. Social licence to operate is a fundamental concept in reputation management and is a key source of competitive advantage. This competitive advantage derives from the fact that we all naturally extend greater licence to entities we think highly of and revoke or impose conditions on entities we believe will not act in our interests. Those conditions extend from full freedom to operate through to restrictions on operations (such as regulatory control, media scrutiny, willingness to purchase and willingness to invest).

Different organisations will be afforded more or less freedom to operate based on the expectation stakeholders have of

Social licence to operate is a fundamental concept in reputation management and is a key source of competitive advantage. This competitive advantage derives from the fact that we all naturally extend greater licence to entities we think highly of and revoke or impose conditions on entities we believe will not act in our interests.

how those operations will affect them.

Yet since the EIU survey was conducted, few Australian listed companies appear to have put in place any significant systems to help them manage or mitigate reputational risk.

This is not because they are unwilling, as no director would accept risk in any other part of their business without some process to manage it.

Some directors seem to accept reputational risk as inevitable as knowledge about how to manage it has been difficult to find.

In the past, systems to manage reputational risks have been somewhat ineffectual as the traditional definitions of reputation were focused on the wrong thing. The old definitions focused on the "perceptions that stakeholders have of an organisation", which is fair but is a rear-view mirror way of looking at reputation. This is why 99 per cent of public relations programs are designed in the way they are.

Perception is a good measure to check for changes in reputation or your reputation relative to another organisation (for example, Net Promoter Scores) but makes managing reputation nearly impossible.

I have redefined reputation as "the expectation stakeholders have of how the organisation will affect them or their interests". By including expectations one automatically takes account of perceptions and factors in a forward looking aspect.

Why is this useful in managing reputation? Because it introduces a forward looking element, so that reputation managers are not just working historically, only assessing what may have shaped present reputation. Reputation managers can work to set or change expectations of how stakeholders believe the company may affect them in the future.

At the very least, reputation managers can ensure their marketing messages match perceptions to known expectations.

As an oversimplified illustration of this concept, think of the different reputations of Qantas and Jetstar. The perceptions are different (Qantas: higher service; Jetstar: lower service) but so are the expectations because of the price differential. This leads to Jetstar's reputation (as measured by Net Promoter Scores) being roughly the same as Qantas', despite different perceptions. This illustrates how managing expectations can lead to better reputation management. (As an aside, it is interesting to note that their profit contributions to the Qantas Group are similar too.)

With this definition we can start to understand and manage reputational risk, which we can identify as the gap between perception and expectation (risk = perception – expectation).

By understanding perceptions and setting realistic expectations, organisations can manage their reputational risk.

The responsibility for reputation lies ultimately with the board, and its management.

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

David Van, managing director of The De Wintern Group, a specialist Reputation Management firm, is an expert in the field of managing reputational risk and is the author of one the few management toolsets available. David has worked with organisations around the world on reputational management and counselled boards through many major crises as well as being the lead adviser during three Royal Commissions. He is vice president of the Public Relations Institute of Australia and regularly speaks on reputation management.

Golf Tournament

There was no mistaking the shot gun tee off at 1.30pm on Sunday, 24 June 2012. This marked the start of 32 flights of the SID Annual Golf Tournament 2010 at the Tanjong Course, Senotsa Golf Club, an event graced by Dr Ng Eng Hen, Minister for Defence.

From stories and banter heard during the course of as well as post the day's events, it was evident that the 128 participants present did have a fun-filled time. Special thanks go out to all sponsors and participants for making the event a success. Congratulations to all the winners too!

From left to right: Mr Magnus Bocker, Mr Choo Chiau Beng, Dr Ng Eng Hen and Mr John Lim Kok Min

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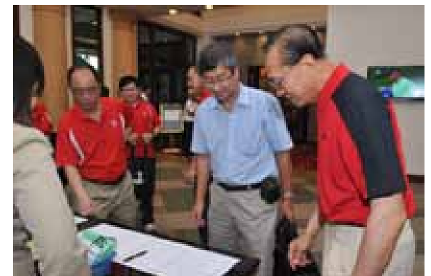

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Results of SID Annual Golf Tournament

- **Overall Winner**
  David Wong
- **1st Runner Up**
  Darryl Wee
- **2nd Runner Up**
  Ho Lon Gee
- **Nearest to Pin**

Hole #2	Yeoh Oon Jin
Hole #5	Chow Yew Yuen
Hole #13	Kaka Singh
Hole #16	Darryl Wee

- **Nearest the Line**

Hole #4	John Lim Hwee Chiang
Hole #17	Darryl Wee

- **Furthest to Pin**

Hole #13	T K Chen

Keppel Challenge Trophy

- **Best Flight/Team Winner**
  - Michael Lim
  - Low Teo Ping
  - Ho Lon Gee
  - Chaly Mah
- **Best Flight/Team – Runner-up**
  - Kelvin Tan
  - Chew Heh Chwen
  - Michael Ng
  - Paul O'Dwyer

Overall Winner: Mr David Wong

1st Runner-Up: Mr Darryl Wee

2nd Runner-Up: Mr Ho Lon Gee

Mr Tong Chong Heong (third from left) presents the Keppel Challenge Trophy to Mr Ho Lon Gee, Mr Low Teo Ping & Mr Chaly Mah (from left to right); Not in picture: Mr Michael Lim

Executive Share Schemes: Design Considerations & Cost Implications

On 15 June 2012, Mr Na Boon Chong, Managing Director, Executive Compensation & Performance, Southeast Asia, Aon Hewitt, presented to about 40 participants on why performance shares and restricted shares are becoming increasingly popular. He also explained what the typical design considerations and cost implications are for such schemes in Singapore and drew highlights from some Singapore case studies.

The event was held at the Marina Mandarin Hotel Singapore.

Chairing The Remuneration Committee

Mr Fermin Diez and Ms Lee Shiau Fei from Mercer, together with panel discussion moderator, Mr Chew Choon Seng, Chairman of the Singapore Exchange, discussed issues on regulation, metrics and governance at a half-day boardroom style session at the Marina Mandarin Hotel on 6 July 2012.

This module was specially designed for board chairman and remuneration committee chairman of Singapore listed companies. It addressed the myriad issues faced by Remuneration Committee Chairs as they develop effective executive compensation plans which are tightly linked to the company's talent strategy, aligned with corporate governance, and which create long-term shareholder value.

It was an exclusive event attended by only 20 board chairman and selected senior management.

IT Governance

A breakfast event co-organised together with KPMG Singapore was held on 13 July 2012 at the Marina Mandarin Hotel. Mr Lyon Poh, Partner, Management Consulting, KPMG Singapore, gave an insightful presentation on how having an increased awareness of IT Governance and having the responsibilities of the Board can contribute to an effective application of an IT Governance framework. He went on to explain that this framework should address strategic decisions concerning IT investments, services delivery, performance measurement, internal controls and risk management. With good IT governance in place, the board will know about the benefits of good IT management such as investing with returns and risk management. This will enable the organisation to make sound decisions on IT-related matters.

Remuneration Matters - Meeting The New CG Code Requirements

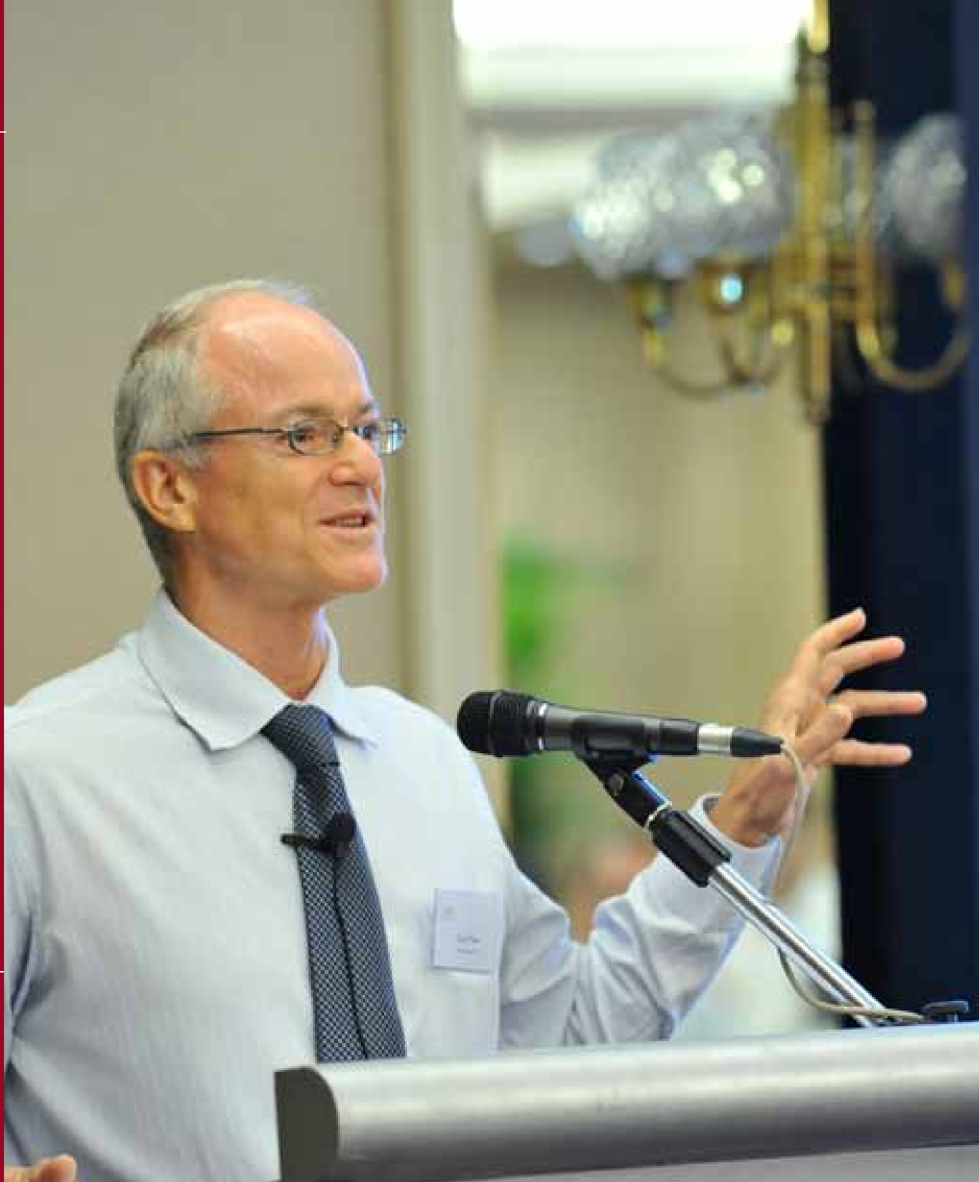
On 20 July 2012, Mr Lee Voon Keong, Senior Consultant, and Mr Kumar Subramanian, Practice Leader, Executive Compensation and Performance, Southeast Asia, Aon Hewitt, examined the latest requirements in the section on Remuneration Matters as stated in the recently revised Code of Corporate Governance. He focused on 3 principles:

- Principle 7: Procedures for Developing Remuneration Policies
- Principle 8: Level and Mix of Remuneration
- Principle 9: Disclosure on Remuneration

The speakers discussed implications of these requirements, direction all were heading, and provided Singapore's and global best practices in fulfilling these requirements.

The event was attended by about 60 people.

Takeovers: Private Affairs – Being Courted



Globally, increasing numbers of listed companies are being taken private. This occurs via various routes but a number of common issues need to be faced by the management and directors of the listed company.

On 27 July 2012 at the Marina Mandarin Hotel, Mr Gary Pryke, Head of Corporate & Finance, and Ms Sandy Foo, Director of Corporate & Finance, both from Drew & Napier LLC, discussed the following topics and provided participants with practical pointers when faced with these issues:

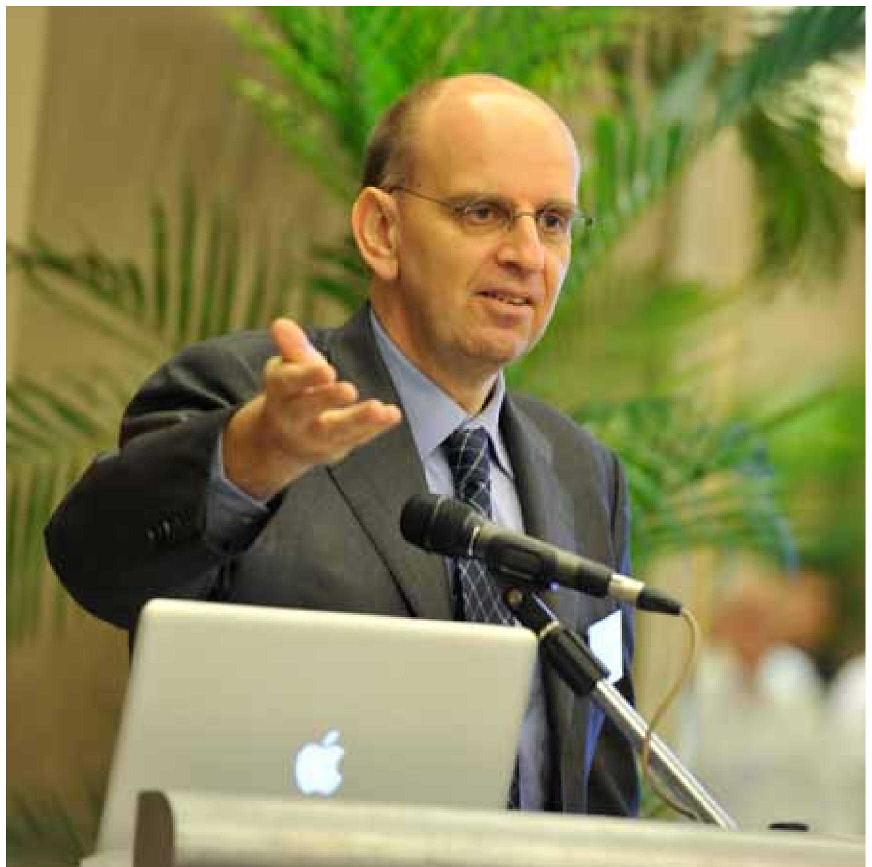
- The usual offer structures
- Privatisation offer procedures and processes
- Handling of commercially sensitive and price sensitive information – Implementation agreements, warranties and undertakings by the company
- Special deals
- Inducement fees and break fees
- Conflicts of interest and fiduciary duties for directors

PROCESS

Board-Level Strategic Oversight – Practical Tips to assess the Quality of Executive Strategic Decision-Making

Mr David Wilkins, Partner, and Mr Henrik Glarbo, Consulting Principal, both from Decision Processes International ("DPI") gave a breakfast presentation on 31 July 2012 at the Marina Mandarin Hotel on the need for Directors to become better Strategic Thinkers – to ask, and prompt the executive to answer, the right critical questions in relation to the organisation's past, present and future.

The aim was to equip participants with the ability to conduct careful analysis of the key inputs used in the strategy formulation process. Armed with a set of tried-and-tested critical strategic thinking questions and tools, participants were also able to robustly and constructively challenge and guide management personnel on the strategic challenges facing the organization, thereby contributing to its sustainable success.



EXIT

SID

Personal D&O Insurance

Allianz Insurance Company of Singapore Pte Ltd and Aon Singapore Pte Ltd in collaboration with the Singapore Institute of Directors (SID) have recently launched a Personal D&O Insurance program exclusive to SID members, protecting them against liability arising from their responsibilities as a director, of up to $1 million. The first group of policies has already been issued on the 15th October 2011.

Personal D&O Insurance provides similar protection as traditional D&O Insurance policies, but is taken out in the name of an individual director or officer rather than as an entire board of directors. Cover can be provided for up to three separate directorships.

Why Is It Necessary?

Personal D&O Insurance provides directors and officers with an individual, portable policy for their exclusive benefit. Such cover is relevant to all directors, and is of particular importance to the following:

- Directors of companies that do not purchase D&O Insurance.
- Directors of companies that purchase inadequate insurance, whether in terms of breadth of cover or policy limit.
- Independent directors.
- Directors who are resigning or retiring from their positions, and who seek run-off protection.
- Professionals who assume positions on client company boards.

"Independent directors are uniquely exposed to liability arising from the companies whose boards they sit, while lacking the ability to directly assure that the company purchases relevant insurance coverage to respond to these exposures," said Mr James Amberson, Regional Manager of Financial Lines for Allianz Insurance Company of Singapore. He added that the insurance program developed in collaboration with Aon and SID is a proactive response to this issue and provides directors with the opportunity to mitigate this risk for themselves.

"We are delighted to partner with Allianz and the SID in providing this innovative protection to directors in Singapore. Personal D&O Insurance provides the opportunity for directors to control the breadth and level of protection available to them," said Mr Michael Griffiths, Director of Professional Services at Aon Singapore.

Exclusive to SID Members

Personal D&O Insurance cover is available exclusively to SID members.

A $1 million Personal D&O Insurance policy covering up to three separate directorships will cost S$1,000 plus GST.

For further details please refer to the SID Website, or call Gladys Ng at Aon Singapore on 6239 8880 or email gladys.ng@aon.com.

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Upcoming Events

SEPTEMBER 2012

Wednesday, 12 September	SID Directors Conference 2012
Wednesday, 18 September	Fraud Risk Management By KPMG
Wednesday, 26 September	EBL Module 2 The Board and Fund Raising
Friday, 28 September	EBL Module 3 Enterprise Risk Management

OCTOBER 2012

Thursday, 4 October	EBL Module 3 Enterprise Risk Management
Thursday, 11 October	LCD Director Programme Module 1 Listed Company Director Essentials: Understanding The Regulatory Environment In Singapore: What Every Director Ought To Know
Tuesday, 16 October	EBL Module 4 Financial Literacy & Governance
Thursday, 18 October	EBL Module 5 Investor & Media Relations
Tuesday, 23 October	LCD Director Programme Module 2 Audit Committee Essentials
Tuesday, 30 October	LCD Director Programme Module 3 Risk Management Essentials

NOVEMBER 2012

Wednesday, 7 November	Directors' responsibilities and financial reporting: The risk of material fraud By KPMG Singapore
Thursday & Friday, 22 & 23 November	LCD Mandarin Programme (Xiamen, China)
Tuesday, 27 November	LCD Director Programme Module 4 Nominating Committee Essentials
Thursday, 29 November	LCD Director Programme Module 5 Remuneration Committee Essentials

SID-SMU Executive Certificate in Directorship

Modules	Programme Dates	Assessment Date
Module 1: The Role Of Directors: Duties, Responsibilities & Legal Obligations	18 to 20 September 2012	Take-home assessment
Module 2: Assessing Strategic Performance: The Board Level View	15 to 17 October 2012	Take-home assessment
Module 3: Finance for Directors	20 to 22 November 2012	Take-home assessment
Module 4: Risk & Crisis Management	5 to 6 December 2012	Take-home assessment

Welcome Aboard

July 2012

Surname	Given Name
Bartlett	Roger
Chang	Yew Chan
Chatterjee	Pradeep Kumar
Cheng	Jih Min
Chew	Eh Pin Kenneth
Chia	Yew Boon
Chin	Bernard
Dutta	Deb
Fang	Heng Kuan Jim
Fong	Wai Keong
Goh	Geok Cheng
Khong	See Yun
Koch	Adrian
Kwok	Wei Woon
Lam	Joon Khoi
Lee	Kuen Yip Thomas
Lee	Rene
Lim	Kee Way Irwin
Low	Melvin
Martin	Iain
Naga	Murali
Ng	Tee Yong Jeffrey
Ng	Choo Beng
Ng	Keng Kwang Elson
Quek	Bin Hwee
Schlosser	Dieter
Scott	Alan George
Shum	Sze Keong
Sibal	Arun
Siow	Yeun Khong Alex
Tan	Francis
Tan	Ser Ping
Tan	Hock Soon Adrias
Tay	Cheok Phuan Edwin
Wee	Sung Leng
Wong	Lai Ping
Wong	Loong Kin
Yau	Thiam Hwa Francis

August 2012

Surname	Given Name
Ang	Choon Cheng
Brown	Felicia Jane
Chidambaram	Thangaraju
Dalal	Ashish
Daud	Sulaiman Bin
De Mello	Alexandra
Goh	Hoi Lai
Ho	Cheng Kwee
Hong	Keah Huat
Jagtiani	Ramchand N
Johnson	Michael N.
Kochhar	Rajiv Virendra
Kwong	Yong Sin Raymond
Lee	Mui Ling
Lin	See-Yan
Ling	Ping Sheun Arthur
Low	Weng Fatt
Loy	Soo Chew
Ng	Yong Hwee
Ooi	Eng Peng
Siah	Boon Hock
Skipworth-Button	Jon Kerman
Soh	Yeow Hwa
Soh	Daniel
Tan	Kee Leng Hanson
Tay	Seok Kian Victoria
Thyagarajan	Venkatraman
Wyatt	Stephen
Yap	Beng Geok Dorothy

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

SID

Singapore Institute of Directors

SID Directors Conference 2012
Corporate Governance In The New Normal

The annual conference organised by the Singapore Institute of Directors (SID)

9.00 am to 5.30 pm, Wednesday, 12 September 2012 • Marina Bay Sands Singapore

Guest-of-Honour

Mrs Josephine Teo, *Minister of State*
Ministry of Finance and Ministry of Transport

Keynote Address

The Honourable Barbara Hackman Franklin
Chairman, National Association of Corporate Directors

Lunchtime Address

Mr Mats Isaksson
Head of OECD's Corporate Governance Division

Governance & Directorships: New World, New Rules	**Business & Social Convergence: New Corporate Social Realities**	**Board Diversity & Dynamics: Who Should Be On The Board**
▪ Mr Ho Kwon Ping	▪ Mr Gerard Ee	▪ Associate Professor Ho Yew Kee
▪ Ms Barbara Hackman Franklin	▪ Mr Willie Cheng	▪ Ms Lee Suet Fern
▪ Professor Walter Woon	▪ Mr Seah Kian Peng	▪ Mr Mats Isaksson
▪ Mr Chew Choon Seng	▪ Dr Andreas Heinecke	▪ Ms Aliza Knox
▪ Tengku Tan Sri Dr Mahaleel bin Tengku Ariff	▪ Ms Janet Ang	▪ Mr Irving Low
▪ Mr Chang Tou Chen	▪ Mr Mike Stamp	▪ Ms Shireen Muhivdeen

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