SID
Singapore Institute of Directors

The Directors' BULLETIN

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Over 500 Industry Professionals And Academics Attend SID Directors' 3rd Annual Conference

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

We are now in our final Quarter of the year with the penultimate issue of the Directors' Bulletin in your hands.

The Institute's flagship event takes centre stage in this issue. This is the Directors' Annual Conference - in its third year this year. The Conference was clearly bigger and more insightful this year with over 500 participants comprising local and regional industry leaders, professionals very involved in governance related matters, regulators and academics.

Following on the style of the prior two years, the Directors' Conference had three panels focussing on distinct issues of the day that confront directors on a regular basis. In each of the three panels, experts shared their views, oftentimes provocative, on issues they have faced and how they were tackled. The views shared elicited various reactions from the audience, including queries, comments and experiences shared, all contributing to a very lively debate during each of the panels. Keeping the panel on Board Diversity to the end was a good ploy as the first panel on New Rules and the New World facing Directors provided good introductory comments and fodder which the third panel picked up seamlessly. The Conference saw more than two-thirds of the participants still present at 5 pm when we ended.

Put together by a small team comprising the Institute's secretariat, a very well known and compassionate industry leader, Mr Willie Cheng, the highly regarded Institute's Chairman, Mr John Lim and just myself, with the backing of the entire Institute's Council, the Directors' Conference has grown from strength to strength over the last three years. Each year, we experiment with something different, just because. This year, we requested and the three major universities readily obliged with students, at under-grad and at post-grad levels, acting as note-takers and converting their notes along with their thoughts into articles. We are pleased to enclose five of these articles in this issue of the Bulletin, as part of our cover story. The aim of doing this was to try and have contributions from different avenues to the growing literature and more so the growing consciousness on corporate governance issues; what better way to do so than to involve the young who will be the future leaders of the country. To those whose articles were not included, we are grateful for the time that you took to attend, listen and contribute.

I would like to take this opportunity, wearing the hat of Conference Committee Chair, to say thank you once again to our Guest of Honour, Mrs Josephine Teo, Minister of Finance and Transport, each of the speakers/panellists, universities, students, and the participants for taking time out to join us for the Conference. A huge thank you to our very valuable sponsors, without whom, the reality is it would have been very difficult to move forward. I would also like to thank our supporting organisations, and in particular the Singapore Exchange and the Accounting and Regulatory Authority. Thank you too to Willie and John for the excellent support and counsel that they constantly provided - I am honoured to have worked alongside them over the years on the Conference. Finally, but not at all least, thank you to the Institute's secretariat support in providing the arms and legs for all things that go unnoticed but which really form the backbone of an organisation – Sovann, Gabriel, Serene, Seok Hwee, Florence, Kerric, Jane and all.

Whilst this issue focuses on the Directors' Conference, the Institute has continued to be busy with its usual activities, including organising a number of other workshops, seminars and dialogue sessions. Many of the events are in keeping with trying to deal with current issues and draw relevance for directors. These included the session on the study of the Air Ocean judgement and the panel discussion on the revised corporate governance code. You will see that each of the many workshops, seminars and dialogue sessions that the Institute organises has practising directors or persons very involved in the industry share their insights. The aim is really to focus on the practical how to(s) rather than on the academic why(s). This has enabled the Institute to attract more participants at each of the events. We look forward to doing more of these in the new year as well.

Seminars and events aside, we have included a couple of articles which we believe are critical that directors read and think about further. The first tracks developments since the Centro decision a year before. This decision has caused much alarm when it was first delivered in Australia. The writer, Ms Domini Stuart, reviews what board directors are doing differently since the decision, but notes that "most observers agree the case was less about adding to directors' responsibilities than reminding them of the ones they already had". From Australia to Singapore, Mr Jaikanth Shankar, examines the Singapore Court of Appeal decision in *Madhavan Peter v PP* [2012]. This Appeal decision was a welcome relieve to directors, as the Court provided, in Jaikanth's words, "some much needed guidance and clarification on the disclosure regime and obligations under the Securities and Futures Act and the Singapore Exchange Listing Manual".

It remains now for me to say thank you to all contributors, and to ask that you do provide us with thoughts on this issue and contributions for future issues. We do want to see views from different quarters. Do also look out for our last Bulletin of the year, which will touch on various issues, including a new area that directors do need to at least garner some slight knowledge on data protection. It is for 2013 the next big thing.

Kind regards,

Kala Anandarajah
Editor

CHAIRMAN'S MESSAGE

Dear Fellow Members,

In this issue of our Bulletin, I would like to touch on three subjects. First, I am pleased to share with you our very successful annual conference held in September. Entitled "Corporate Governance in the New Normal" it was attended by almost 500 corporate directors, regulators, professionals and academics, including participants from Malaysia and Indonesia. Speakers and panellists included some of the most eminent corporate governance policy makers and practitioners from Europe and the region. I trust many of you were there. For those who missed it this year I hope you will be able to participate in next year's event which has been tentatively fixed for 11th September 2013.

Second, as many of you would already be aware, your Council recently presented for members' approval at an Extraordinary General Meeting on 9th October a number of changes to the constitution of our Institute. These changes were proposed following a strategic review of the Institute and its internal governance.

Key changes included new articles that would in the future, after a 3 year transition, limit the tenure of Council Members to a maximum of 3 terms of 3 years each or 9 years in total. The maximum term of office for the Chairman and the two Vice-Chairman shall be 6 years or 2 terms of 3 years each. A year shall be defined as the period between 2 annual general meetings or part thereof. Voting was by poll and all proposed changes were passed with overwhelming majority.

The introduction of the limit on the maximum term for both council members and for key office bearers was made by your Council after careful deliberation taking into consideration the current maturity of the Institute and the desirability of having an orderly council renewal and leadership succession.

Many of your Council members have served your Institute well and for many years, contributing significantly to its growth from infancy to its current stage of development with a comprehensive range of training programmes and director development activities and a membership strength of almost 1900. At the next AGM scheduled for 27th November, several of these long serving Council members will be stepping down, including founding Council member Keith Tay, YC Boon, Reggie Thein and Lim Hock San as well as Yeo Wee Kiong. I would like to take this opportunity to extend our thanks and appreciation to all of them for their steadfast commitment to the Institute throughout their period of service and particularly during the Institute's pioneering years.

Third and my final point for this issue of our Bulletin is the subject of Corporate Governance and directors, particularly non-executive directors. As many of you are already well aware, a revised Code of Corporate Governance for listed companies was approved by MAS on 2nd May this year and effective for financial years commencing 1st November 2012. Recently many changes proposed by the Steering Committee appointed to review the Companies Act were also approved and announced by the Ministry of Finance.

Among the key areas of focus of the Code are the effectiveness of boards, the need to have a formal and transparent process for the appointment and re-appointment of directors and the role of the Nominating Committee (NC) in this process. Additionally, the NC is tasked with ensuring the continued appropriate training and development of directors and their performance evaluation.

This renewed focus on the effectiveness of the board is timely and important as an effective board is in the best interest of all shareholders and is a key assurance of value creation for the company. The desired outcome should be the quality, competence and commitment of the individuals who get elected and not who has nominated them. The lobby we often hear that independent directors should only represent, and be elected by, minority shareholders, is in my view misplaced and is contrary to the well accepted principle that all directors should act in the best interest of all shareholders and the company. Equally erroneous, in my view, is the impression frequently sought to be created that minority shareholders are a homogeneous group sharing a common interest and are somehow in the best position to elect the right directors to the company. Many of you who have served on boards for some time would know from experience that this is often far from the case.

Related to this subject of effective boards is another mis-perception that boards of controlled companies are usually compliant and serve only the interest of controlling shareholders. While it is a fact that there are directors who fall into this category, they usually form a small minority and this perception of large scale compliant and ineffective boards is a gross injustice to the many directors, particularly independent directors, who work tirelessly and use best endeavours to advance the interests of all shareholders.

However, there is always room for improvement and advancing best practices and excellence in corporate governance is a continuous journey. Your Institute remains committed as your partner and co-driver in this journey and will continue to support you and your organisation, with its evolving training and development programmes, its advocacy initiatives, research and board services.

On behalf of our Institute, I thank you for your support and keen interest in our development. I am encouraged by the increasing number of individuals who have step forward to offer their knowledge, experience and services. I look forward to your increased support and that of the many companies and organisations which have steadfastly continued to partner and sponsor us in our many efforts and activities.

Thank you and best wishes.

Warm regards,

John KM Lim
Chairman

SID Governing Council 2011/2012

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	Ms Kala Anandarajah	Mr Soh Gim Teik

The Annual Singapore Institute Of Directors Conference – Corporate Governance In The New Normal

By Kala Anandarajah
Partner, Rajah & Tann LLP and
Council Member, Singapore Institute of Directors

Overview

On 12 September 2012, at the Marina Bay Sands Singapore, the Institute organised, for the third time, the Annual Directors Conference. The theme of the Conference was Corporate Governance in the New Normal. Mrs Josephine Teo, Minister of State, Ministry of Finance and Ministry of Transport, graced the event as the Guest-of-Honour.

The synopsis to the Annual Directors' Conference reads as follows:

The world has changed for many in the last few years. Not just in Singapore, but around the world. Not just for those in politics, government, and the social sector, but also for those in the corporate world. Certainly for corporations and for directors. A new normal has evolved.

In this new normal, corporates have to wrestle with how they can balance their duties to strategise and steer the company to achieve wealth maximisation amidst the increasing perception based scrutiny of how they act and operate. They also have to balance their duties to enhance profits and to shareholders with the increasing demands for greater social responsibility. Directors have to contend with increasing rules and regulations and balancing that with the need to let management drive the company to higher levels of performance. Boards have to decide how to best form themselves and interact with each other as well as management.

This year's SID Directors Conference provides a spectrum of views from regulators, academics, professionals and practitioners on the critical issues that have plagued how directors can manage in the new world order.

Were these views discussed, shared, challenged, debated and a consensus arrived at? Save that no consensus was arrived at, it can be categorically stated that there was considerable debate and discussion, and often times extremely lively as well.

The Institute took the opportunity to have students from the three universities pull their thoughts together on the proceedings of the conference. In the next few pages, we share some of the thoughts of the students here in the

TABLE 1

SAMPLE QUESTIONS
Question 1
I am ______
1. Female
2. Male
3. None of the above
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SAMPLE QUESTIONS
Question 2
I am a ______
1. Director
2. Corporate Executive
3. Professional Advisor
4. Academic
5. Other
SID

SAMPLE QUESTIONS
Question 3
If I were in the US, I will vote for ______
1. Mitt Romney
2. Barack Obama
SID

END OF TRIAL QUESTIONS
SID

Time To Vote!
Panel: Governance & Directorships: New World, New Rules
Question 1
Regardless of how well a director performs his roles and responsibilities, in the event of a problem in the company the public perception will be that he has not
Answers
1. Strongly Agree
2. Agree
3. Disagree
4. Strongly Disagree
SID

SID

Time To Vote!
Panel: Governance & Directorships: New World, New Rules
Question 2
Directors who have obtained requisite certifications in courses designed for directors make for better directors
Answers
1. Strongly Agree
2. Agree
3. Disagree
4. Strongly Disagree
SID

SID

Time To Vote!
Panel: Governance & Directorships: New World, New Rules
Question 3
Further rules and regulations should be introduced to aid directors govern and direct in the new normal
Answers
1. Strongly Agree
2. Agree
3. Disagree
4. Strongly Disagree
SID

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END OF PANEL QUESTIONS
SID

discussion on the conference. Due to space constraints, we have not been able to reproduce all of the articles here; but nevertheless commend all contributors for their contributions; and say thank you to all.

Apart from the articles, the Institute also did a snap poll survey on thoughts by the audience. We attach a quick summary of the poll results at Table 1.

The Panel Discussion Points

The broad issues discussed by each of the panels for the day are set out here for easy references.

Panel 1: Governance & Directorships: New World, New Rules

- What is the New World that we operate in and what are the New Rules?
- How does this new world that we operate in impact governance and directorships in corporations?
- How do directors balance the ideals that perception inculcates with what the rules in fact mandate?
- Are the changing new rules a portend of more severe ones to come?
- How do corporations and directors meet these new rules recognizing that reality dictates meeting multiple stakeholder interest as being paramount?
- Can new rules indeed be introduced to aid directors govern and direct in the new normal?

Panel 2: Business & Social Convergence: New Corporate Social Realities

- Can corporate social responsibility be viewed as a new form of compassionate capitalism?
- How is this new compassionate capitalism being championed by social activists, regulators and the

public at large to make the greater needs of the planet and its people felt in corporate boards across the world?

- What exactly is happening in this emerging landscape of the increasing convergence between the business and the social sectors?
- How should corporations and their boards respond to these new corporate social realities?
- Are there greater burdens or opportunities for companies operating in an endangered world?

In short, is it right to say that business is not simply about more profits?

Panel 3:Board Diversity & Dynamics: Who should be on the Board?

- Is it simply about having more women on the board?
- Or does it go beyond to require more colour, creed and language on the board?
- Or, is it about different stakeholders' representation, bringing on board different cultures, skills, experiences, and aptitudes - regardless of gender, colour, creed or language?
- How do we identify the right mix to be on the board?
- Who is responsible for this task - the nominating committee or more?
- How does board diversity result in greater board dynamics?
- What's the role of the chairman in ensuring greater dynamics?
- Are there differences in approaches depending on the type of board one is dealing with: not-for profit, family run, or multi-national?

PANEL 1 - Governance & Directorship

1) The Independent Director – Who is he?

By Sreemoyee Sen, Nanyang MBA participant, Nanyang Business School, Nanyang Technological University

There has been much talk recently of the "New Normal" – an apparent new world rising from the ashes of the recent economic crisis. A key feature of this new world seems to be the development of a more stringent ecosystem of corporate governance that focuses not merely on policing corporations but rather on ways to help such corporations grow an internal conscience that will hold them accountable from the very beginning of the decision making process.

Alongside governments and other regulatory institutions across the world that have been reviewing the adequacy of their existing legislation, Singapore has also been reviewing its existing governance regime as it determines the kind of regulatory and economic regime it wants to espouse and nurture going forward. Amidst this backdrop of review and revision, it is no surprise that the topic for this year's SID Directors Conference was "Corporate Governance in the New Normal". While some might feel that the topic was clichéd, it in fact could not have been more timely as the advent of Singapore's revised Code of Corporate Governance (the Revised Code).

The first panel discussion at the Conference entitled "Governance And Directorships: New World, New Rules", focussed on the issue of what the new corporate governance regime means for directors. A panel, chaired by Mr Ho Kwon Ping, Executive Chairman of Banyan Tree Holdings Limited, and comprising Professor Walter Woon, Faculty of Law, NUS, & Dean, Singapore Institute of Legal Education, Mr Chew Choon Seng, Chairman of the Singapore Exchange, Dr Mahaleel bin Tengku Ariff, Chairman, of Tien Wah Press Holdings Bhd, and Mr Chang Tou Chen, Managing Director &Head of Global Banking Southeast Asia, HSBC, led a lively discussion focussing on how directors balance the ideals that perception inculcates with what the

rules in fact mandate. Are the changing new rules indicative of more severe ones to come? How do corporations and directors meet these new rules recognizing that reality dictates meeting multiple stakeholder interest as being paramount? And whether, the new rules can indeed be introduced to aid directors govern and direct in the 'new normal'?

Key Focus

Not surprisingly, a significant part of the discussion focused on the issue of Independent Directors. One key

takeaway from the recent global economic happenings has been an acceptance that some of the key factors contributing to the current economic challenges were an excess of risk taking to inflate bonuses and performance linked remuneration incentives, and a marked lack of accountability for corporate actions. One of the most integral systems of introducing accountability and checks and balances on to the Boards of companies has been the creation of the role of the Independent Director. The role of the Independent Director is often seen as the supervisor of the Board, there to slap the Board on its proverbial wrists when the Board is steering the company wrong. However, while regulation can mandate that a specific percentage of the Board of any company be made up of independent directors, the tenure and review period of independent directors and who is not eligible to be an independent directors, the actual measure of an individual's independence is a far more complicated thing.

Definition

The dictionary definition of 'independence' defines it as a state of being independent, of having freedom from control, influence, support, aid and/or the like of others, or having the competency of being independent. 'Independent' is defined to include not being influenced or controlled by others in matters of opinion or conduct, not being subject to another's authority or jurisdiction, being autonomous, not relying on others for air or support, rejecting other's air or support, or refusing to be under obligation to others. The question that is then raised is whether independence is an attribute that can be defined and mandated by regulation or whether it is a state of mind. If one contends that independence is a competency to be looked for, then what required skill, knowledge qualification or capabilities should one be looking for to signify sufficient competence? The Revised Code states that either a third or a half (depending on the circumstances) of a Board's directors must be independent. Further it provides a list of specific persons who are not eligible to be nominated as independent directors based on their existing relationships with the Board or the company. However, independent directors still have to be nominated and recommended by the Board and the Nomination Committee (NC) of the company and approved of by the shareholders. Furthermore, the remuneration of such directors will also be determined by the performance indicators and incentives set up by the Board, the Remuneration Committee of the company and the shareholders.

How 'independent' an independent director really is will depend on a few factors, including –

How committed the Board is to having truly independent directors, who may consistently disagree with the other directors?

How the Board finds and selects its independent directors?

At whose mercy lies the continuing employment and remuneration of the independent director and the influence exercised by such parties?

Structured Values

As proven by the recent economic crisis, 'independence' and 'accountability' cannot be the sole jurisdiction of regulations as they speak to the actual heart and culture of an organization. The capacity to be independent is a state of mind including with it the ability to distance oneself from the influence of others. However, it is the structure and values of a company that will determine whether or not such 'independence' and 'accountability' can truly be effective. One important point of debate during the panel's discussion revolved around the role of the independent director today – is he just a policeman? Or he is a supervising partner whose goal it is to work with the Board to ensure that value is generated for all stakeholders in an ethical and effective manner? Is the independent director supposed to be the Board's conscience? To allow independent directors to be truly effective, Boards need to put in place robust sourcing systems that appropriately vet and select individuals whose diverse experience and background can truly add value to the existing BOARD of the company. But more importantly, the Board needs to commit to a corporate culture that is ok with being questioned, that is committed to transparency and accountability, and that emphasizes an ethical code of conduct through every layer of the organization. It is up to companies and their Boards to choose and implement this path because without a fundamental commitment in the corporate ethos, 'independence' and 'accountability' will remain merely lofty ideals.

2) Corporate Governance: Independent Directors & their Role

By Ong Dai Lin, Associate Editor, Knowledge@SMU, Singapore Management University

The buzz word "corporate governance" is back in the spotlight again as the revised Code of Corporate Governance issued by the Monetary Authority of Singapore takes effect in November. One of the key aims of the code is to emphasis the need for a strong and independent voice on the board of directors. How should companies handle corporate governance and directorships in the dynamic evolving world we live in today? And how should companies meet these new rules while balancing the practicalities of meeting multiple stakeholder interest? The issues saw a rigorous debate at the panel discussion "Governance and Directorships: New World, New Rules" at the SID Directors Conference 2012 held at Marina Bay Sands in September.

Tengku Tan Sri Dr Mahaleel Bin Tengku Ariff, chairman of Tien Wah Press Holdings Bhd, described the new world as one which is built on debt, where the global economic market share has shifted from the west to east and resources are scarcer. It is also a world where competition can come from any corner of the world and consumer values are changing all the time with information being transmitted in real time, he said. In this new economic model, the ability to create and be productive will allow competitive advantage. This means that the role of company boards may be different in the future. Tengku Tan Sri Mahaleel said: "They need to understand tomorrow's world, consumer values and you have to constantly innovate."

What has also changed in the world is that "we have encouraged savers to put their money into corporates rather than banks or put them under their mattresses," said NUS law professor Walter Woon, who was one of the panellists. These small time investors are counting on the investments as their retirement savings or children education funds, he noted. "Therefore when you have a scandal, there will be an outcry for action to be taken."

Why an Independent Director is Important

Corporations should conduct their business well because there is a need to protect the small time investors that are powerless, Woon said. He went on: "It is one thing to have losses because the business environment is bad. It is quite another to have a company which lose money because there has been fraud on the part of management or the board," The usual regulatory response when a corporate scandal erupts is to put in new rules. But having more rules may not always be better; it "just makes life more complicated for people who are trying their best to run a business". Woon, who was Singapore's Attorney-General from 2008 to 2010, said: "The key to good corporate governance is not putting in more rules. Make them simple and enforce them. Enforcement is what stakeholders and the public wants."

There are three possible parties that Woon suggests can do the enforcement: the governing authority who can implement more regulations, shareholders who can put pressure on the board or the company itself can create a corporate culture that encourages compliance. He is not in favour of having more legislation because it means an increased likelihood of "something is going to be missed by somebody, and then you get into trouble". And he noted that greater shareholder activism and more regulations are "unattractive" to companies.

What is good to have is an independent director who does not have a symbiotic relationship with the company's management but is there to supervise their conduct. "They are there to make sure that the company and management keep to the rules, and be honest," said Woon. The problem is that those in power are generally uncomfortable with hearing an opposing view even though they often say they want an independent voice. Even so, companies should be committed to enforcing corporate governance, Woon said. "If the company does not take action, then we are inviting regulatory intervention or shareholder activism."

Executive chairman of Banyan Tree Holdings Ho Kwon Ping, who was the panel moderator, pointed out that most Asian directors are culturally less inclined to raise objections and asked what can be done to encourage the independency of such directors.

Tengku Tan Sri Mahaleel said that it is important for the director to understand the industry which the company is in or else it will be hard for him to challenge the management if he does not have a

good grasp of the industry.

Managing director and head of global banking (Southeast Asia) at HSBC, Chang Tou Chen, shared that some companies have tried to find an independent voice by appointing directors who are based overseas. This may be costly but in some cases, it has "started the path" to improving corporate governance, he said.

Woon said independency is a state of mind and is difficult to inculcate. The rules put in place will not work if the person has an incentive "not to be difficult".

Sharing similar sentiments, chairman of Singapore Exchange Chew Choon Seng said: "Even if the company uses a search firm to identify a new director (from overseas), the minute the jet arrives, he becomes a friend." A way to help address the issue is to encourage minority shareholders to exercise their right at annual general meetings (AGMs) to vote out directors who have not demonstrated their competencies, he suggested. This prompted a question from the audience asking how these shareholders will know which directors are not carrying out their duties if the latter does not have any engagement with the shareholders beyond the AGMs.

Chew replied that with the widespread use of the Internet and social media, shareholders can use these platforms to rally opinions or engage the boards on issues they want to discuss. He went on: "It is up to shareholders to make use of these opportunities rather than wait for boards to engage then or wait for some rules to say that boards must have informal tea sessions and corporate conversations."

The Bottom Line

At the end of the day, businesses are all about profits. Should the primary role of an independent director be creating wealth for the company or guiding it on a straight line? Chang said he believes that an independent director should not be antagonistic and adopt an "I'm here to catch you if you do wrong" attitude. "That is completely the wrong objective. The objective must be to maximize the wealth of the company for shareholders and stakeholders. The key is to balance profits and governance by making sure there is framework of governance within which that primary objective is achieved", he felt.

Woon said the issue is about the company's view of the independent director's function: if he is part of the team running a business or as a supervisor to ensure the company adhere to rules. Maximising a company's profits can be done by breaking rules, said Woon. He raised bribery as a business dilemma that companies may face. "There are some markets where you need to do it if you want the business. The question is who is going to hold you back?" If the independent director is to play the role of a watchdog, then what is needed is someone "who think his job is not to ingratiate himself with the management and he has got a role to play to make sure that these people who put their money in the company don't lose it because of malpractices," Woon said.

In July, the SGX said it was tightening its regulations for companies looking to list in order to make it more attractive for larger firms to go public in Singapore. The announcement came in the wake of a series of accounting scandals at small Chinese firms listed on the bourse. One participant asked about the possibility of having extradition arrangements with China so that the executive directors who are residing in China can be brought to Singapore for legal action. Chew replied that some investor groups have made representations that SGX should only allow listings for companies in territories that have extradition treaties with Singapore. That is not desirable because it lumps the good with the bad and exclude legitimate well-run companies from listing here in Singapore, he said. It would also mean that if a shareholder in China "creates a fuss over directors of companies that are here, we will in turn have to extradite them to foreign jurisdictions to stand trial for grievances, real or imagined." Chew said: "Apart from that, the truth of the matter is that if people are up to no good, it doesn't matter which country they come from— they will indulge themselves anyway."

PANEL 2 - Sustainability

3) The Growth of Compassionate Capitalism

By John Rae Philippe Cortes and Zhang Rui, Nanyang MBA, Nanyang Business School, Nanyang Technological University

In what is increasingly becoming the new norm in business and society, corporate and social interests are slowly converging into a hybrid economy where generating value is not just measured through profits but also through the value created for society. It was therefore only fitting that corporate social responsibility (CSR) was one of the main topics in this year's SID Directors Conference on the New Normal in corporate governance, and a distinguished panel of business and social sector leaders shared their thoughts on this growing phenomenon.

Willie Cheng, the Chairman of CHARIS (Caritas Humanitarian Aid and Relief Initiatives, Singapore), believes that the merging of the business interest of "doing well" and the social interest of "doing good" is changing the way corporations operate, going beyond just "doing well with goodness" to actually "doing good well." He also explained that CSR covers a wide spectrum beyond mere corporate volunteerism and philanthropy. Doing good well also means environmental responsibility, good governance and ethics and fair HR and labor practices. A company can be socially responsible without giving away money, and this, he explains, is the core of CSR.

IBM has been identified as a company leading the way in this new corporate reality. Janet Ang, Managing Director of IBM Singapore, highlighted their Smarter Cities Challenge, a new model for leadership development, market expansion and corporate citizenship. In 2010, IBM decided to spend about $50 million in time and expertise to help more than 100 cities over a three-year period address some of their critical challenges and become smarter and more effective. So far, they have partnered with cities in the United States, Brazil, Japan, Vietnam, and many others, and helped them develop capabilities and sustainable solutions.

Locally, NTUC Fairprice is another company widely recognized for their embrace of CSR. With a social mission to moderate the cost of living in Singapore, they care and do the right thing for their customers, employees and the community through responsible retailing, community care, ensuring a sustainable environment and providing a wonderful workplace. In March 2008, they established the FairPrice Foundation, which has since donated over $28 million in cash and in-kind contributions. They also launched a successful Earth Day 2012 campaign in April which saved more than 143,000 plastic bags in a 1-week period.

Despite these shining examples, there is some way to go in truly instilling

corporate social responsibility across all businesses. Seah Kian Peng, CEO of NTUC Fairprice Co-Operative and Co-Chair of the Social Enterprise Association, explained the four key challenges of smaller social enterprises: attracting quality manpower, management expertise, funding sources, and ability to scale. Nevertheless, he believes there are bright spots for small social enterprises, due to a higher level of awareness and interest in CSR, availability of more funding sources, and greater clarity in purpose of these smaller social enterprises.

The panel was asked what else is needed to increase the momentum of CSR. For Dr. Andreas Heinecke, Founder and CEO of Dialogue Social Enterprise Ltds, this new understanding of a convergence economy will eventually lead all businesses to be social businesses, and he challenged the directors in the conference to come up with his or her own idea and contribution to CSR. In his engagement with young people, it is evident that these future leaders embrace the ideology of social responsibility, so current leaders must set the example now. For Mike Stamp, a Senior Consultant at FSG, a non-profit consulting firm that focuses on helping its clients develop, implement and strengthen their strategies for creating shared value, the answer is simple – business leaders just need to do the math.

Managers have the desire to embrace CSR but often get caught up in business realities, but what they will easily realize is that it makes good business sense to be more socially responsible. They simply need to crunch the numbers to see that adopting CSR in a number of relevant issues can indeed increase value for the firm.

Seah Kian Peng also challenged the media to also heighten attention on positive business practices, rather than focus on publicizing negative news. There are already many examples of good governance and social responsibility in many businesses, and in highlighting these, the media can help increase the momentum of CSR. Janet Ang puts it simply and philosophically; when we are given, we have the responsibility to do more. Successful businesses have a moral obligation to do their share in giving back to and developing the communities they operate in.

Near the end of the discussion, one interesting point was raised by one of the conference participants, and made many pause for thought. It is sad that corporate social responsibility even needs to be touted as a new mantra for doing good business, when in fact, many profitable businesses in the past embraced CSR as a key to success, even though it was not explicitly defined as such. Do we accept that businesses are inherently irresponsible and need to be reminded of their role in society? The core of CSR is actually a business imperative, and should not be seen as just a branding tool or differentiating factor for corporations.

Whatever the view about CSR, what is obvious is that in this new world of social media and widespread access to news and information, where a single person's misdeed can spread virally across Facebook or Twitter or YouTube within a matter of hours, businesses cannot afford to be seen as villains in the global social consciousness. On the other hand, visibly responsible businesses can enjoy more extensive public goodwill than previously possible. Like Willie Cheng, we believe there is strategic value in corporate social responsibility, not just as a differentiator or for generating profit, but as a matter of long-term survival in this new global economy.

PANEL 3 - Board Diversity

4) Board Diversity and Dynamics: Who should be on the Board?

By Martin Schmidt and Henry Tseng, Nanyang Business School, Nanyang Technological University

After listening to a very interesting and controversial discussion about Board diversity, the writers share their opinions on the topic. This article discusses gender diversity at the Board level – an issue that has received increased attention, not only at the Singapore Institute of Directors (SID) Conference 2012, but on a global scale.

Gender diversity is definitely a hot topic. Hot, not only because it is broadly discussed (searching for "gender diversity on Board level" on Google gives back more than 4 million results), but also because it is a rather emotional topic. We are all potentially affected by this and thus many of us will have an opinion on the topic. It is therefore important to use scientific methods to analyse the issue.

Numerous studies have revealed some important facts: gender diversity within a team improves decision-making, innovation, and performance. In the United States, those companies with more than 33% of women on the Board are found to outperform market and investment style benchmarks.

From a customer focus viewpoint, we can observe growing female purchasing power and financial independence, especially in emerging markets. According to a Nielsen survey in 2011, consumer confidence of Chinese women aged between 30 and 39 matches the confidence level of men in that age group. There is also a growing tendency amongst younger Chinese women who are willing to pay more for their favourite items than Chinese men. Moreover, governments in Asia

currently focus on increasing domestic consumption and hundreds of millions of customers are now entering the middle class, with a rapidly growing disposable income. Being to a large degree in charge of household spending, women's importance as customer is increasing. This shift in consumer characteristics paired with an increasingly complex marketplace, requires companies to have a very sound understanding of their customers. Evidence suggests that not only are women in general more customer focused, but they also tend to understand female customers better than male managers do. These facts strongly support investments in the development of female employees and also gender diversity on the Board.

It does not take a genius to come to the conclusion that gender diversity is to be a good thing - so let's get some women on the Boards! Whilst it may seem like having more woman on the Boards would make perfect sense, the actual figures paint quite a different picture.

Most boards, irrespective of industry or region, share one common feature: women are rare amongst Board members. EIRIS's data shows that 73% companies in the Asia Pacific region do not even have one woman on the Board. Adding one and one together, we have to ask ourselves: Are we being irrational? If not, then why do we act so irrationally?

Now there are numerous explanations for why we tend to stick with this situation, starting with education and the perceived roles of men and women, as well as in-group/out-group and other theories from social psychology. The important question though, is "How can we change the state-of-the-art?" Are quotas, as recently implemented in some European countries, the right way? Or is it enough to raise awareness, not only among managers, but among everyone?

It is clear that a leap from a one-digit to a 50% share is a large one that cannot be accomplished in the short-run. Where to get qualified women? How should they build the relevant network? And what happens to male Board members that do a good job and want to continue their work? Here at last we see the complexity of this topic, which lies not only in philosophical considerations, but also in the implementation and execution.

In our opinion, the right way to achieve a representative Board is a mix of measures. Legislation is most likely needed, even though a poll during the conference showed that the majority of the audience is not in favour of imposing new rules. The main problem is that the current process is too slow and we have been long waiting for a signal that triggers a quicker change. Looking at Europe, recent history suggests that legislation is unfortunately necessary to increase women's presence on Boards at an acceptably fast rate. However, if this does not happen based on legal requirements, companies may themselves imposing corporate governance rules and corresponding programs that aim at establishing equality, or collaborating with external organisations to do so.

Another engine to expedite the revolution is direct engagement by the shareholders. They can put pressure on companies to take affirmative action in establishing gender balance at all levels in their organizations. From a shareholders point of view this makes perfect sense (from a basic economic theory point of view) in order to increase company performance and maximise company value, as suggested by evidence.

At the end of the day there are probably several ways to achieve this target, a target which itself may be different for each company. An overall effort needs to undertaken, both from companies as well by other external factors, to give equal opportunities to woman, who by the way account for the majority of university graduates.

Positioned at the crux of business activities in Asia Pacific region, Singapore is expected to spearhead the new era of gender diversity in corporate governance and to take a strategic approach to solve this issue. The SID has to pioneer this evolution and start a broad-based discussion among companies, government, interest groups and other parties involved.

However, we feel that other dimensions of diversity, like the functional, cultural, or educational background of Board members, were not sufficiently covered during the panel. Given that these are important factors that determine the effectiveness of the Board, this topic should be the focus of a future discussion.

5) Panel Discussion on "Business & Social Convergence: New Corporate Social Realities"

By Jiancheng Guo, Rekha Malisetti and Shaili Pandia, NUS Business School

The motives behind conducting business have always been an issue of great contention. The often quoted Milton Friedman phrase, "The business of business is business" is no longer accepted as the sole legitimate purpose of a business and there is an increasing pressure on companies to make a positive social impact. With "corporate conscience" being the buzzword today, it is debatable whether there is a need to maintain social good and shareholder value as separate silos. By embedding social good into its core business strategy, a company can simultaneously achieve both purposes. The esteemed speakers who were part of the panel discussion on "Business and Social Convergence: New Corporate Social Realities" held during the Singapore Institute of Directors Conference on 12th September 2012 addressed these issues and gave their perspectives, ideas and wish lists on this subject.

Mr Willie Cheng (Author, Doing Good Well and Chairman, CHARIS) opened the panel discussion by highlighting the significance of 'Doing Well by Doing Good'. According to Mr Cheng, The convergence of earning profit and creating a social and environmental impact has gradually led to a cross pollination of values and adoption of best practises (as is evident in various CSR initiatives).

Firstly, in the current Hybrid Economy it is true that many companies are just focusing on doing well in their business. However, more and more companies becoming aware of the importance of Corporate Social Responsibility. In fact, most of these companies are having a good balance between doing well in their business and "doing good" by making a positive social impact.

Furthermore, Mr Cheng stressed that companies should make CSR a core part of their overall agenda and strategy, not just an activity to be engaged in during the good times of a business cycle. In a nutshell, it is crucial for companies to have a strong sustainability agenda.

Finally, Mr Cheng emphasized that the net of stakeholders of a business has widened considerably. These include Social Activists who demand a more compassionate form of capitalism (as is evident in the series of "Occupy Wall street" protests), conscious consumers who demand environmentally friendly products, authorities such as national governments, Stock Exchanges and International organisations, investors favouring impact investments and even Business Leaders who have committed to the Vision 2050 Project of the World Business Council for Sustainable Development.

Under such circumstances, it is imperative that companies work actively towards changing the frames of actions and addressing all the dimensions of CSR-good labour policies, strong governance and corporate ethics, environmental responsibility and corporate philanthropy. As Mr Cheng aptly stated in the Q&A later, "A company can engage actively in CSR even without giving away any money".

The next panelist, Mr. Mike Stamp, (Senior Consultant at FSG) took the discussion further by describing the concept of "Shared Values" . The system of "Shared Values" helps to address social and environmental problems prevalent today while building a sustainable competitive advantage.

By embedding sustainability and social good directive into their core business strategy, we feel this dimension raised by Mr Stamp could be effectively addressed. Some companies have already created a link between their CSR initiatives and their business activities, which create a win -win result to both companies and communities.

Mr Stamp pointed out that the concept of Shared Values could be implemented at three levels-Reconceiving products and markets, redefining products in the value chain and strengthening local clusters. Moreover, in the Q&A, he emphasized that even different Business Units in a single organization could work together by finding issues and their solutions or methods to create Shared Value.

Reconceiving products that better meet the needs of the consumers and are environmentally friendly would help a company to increase its revenue by satisfying consumer needs while meeting its sustainability agenda. The second driver for Shared Value would be to improve the value chain by reducing costs and improving quality wherever possible. To strengthen his point, Mr Stamp cited the example of Dow, which took several initiatives in this regard and saved $ 9 bn. per year while simultaneously creating tremendous value. Lastly, he spoke about strengthening local clusters, with a case in point being CISCO, which had a strong emerging market focus. CISCO established ties with local colleges and helped them develop a curriculum to enable the students enrolled to find suitable jobs.

We feel that Mr Stamp's concept of "Shared Values" chimed well with the overall ethos of "creative capitalism", a concept propounded by Bill Gates in the World Economic Forum at Davos in 2008, an approach wherein all organizations in the economic eco

system worked together to reduce inequities in wealth.

In his concluding remarks towards the end of the discussion, he urged organizations present to devote some thought to social issues and try to establish how much it was worth to the organization to think and implement strategies to propel the fundamentals of "Shared Values" forward.

The panel discussion took an interesting turn with esteemed representatives from the corporate world sharing their ideas on the subject.

The next panelist, Ms Janet Ang, Managing Director, IBM Singapore, spoke about the various initiatives taken by IBM which reflected the earlier speakers' ideas on CSR and Shared Values. IBM has undertaken wide ranging corporate citizenship initiatives in varied spheres such as education, metropolitan infrastructure, social service etc. It has been leveraging its market leadership position effectively to help various social causes.

In particular, Ms Ang spoke about the Smart City initiative. In 2010, IBM created the Smarter Cities Challenge to help 100 cities over three years to tackle various challenges that they faced. IBM employees spent two weeks in each city that had been identified (some examples being Ho Chi Minh, Chiang Mai and Rio de Janeiro) and unleashed the IBM capabilities of innovation and technology supremacy to deliver recommendations for surmounting the challenges faced by these cities.

Ms Ang reiterated in the Q&A subsequently that there was a dire need to instill the right values regarding social awareness from a young age to ensure a sustained and continuous focus on the same. In order for companies to effectively help their stakeholders, it was also desirable that companies collaborated with one another so that they could leverage their collective strengths and use their spheres of influence for the collective good of society. As she succinctly stated, "when given, we have a responsibility to do even more"

Bringing more perspectives from the business dimension, Mr Seah Kian Peng, Co-chairman, Social Enterprise Association, and CEO (Singapore), NTUC Fairprice addressed the various challenges that social enterprises faced today. He spoke about the urgent need to build capability, especially in the sphere of social enterprises. Social enterprises today faced various challenges such as the difficulty of attracting talented manpower, lack of adequate funding and insufficient management expertise. However, by creating more clarity and awareness regarding the social entrepreneurship system and building sufficient capability, several of these challenges could be tackled.

He then spoke about the need to create effective metrics to monitor performance. As he said, "What gets measured, gets done". In this context, he spoke about the various initiatives taken by NTUC, "the supermarket with a social conscience". NTUC has earmarked four key areas of improvement- Responsible Retailing, Community Cares, Sustainable environment and Wonderful Workplace.

By creating a performance scorecard replete with targets such as monitoring turnover ratios, effectively managing supplier relationships, setting target volunteer hours and activities, energy efficiency etc. NTUC is ensuring that CSR is a core focus of the organization.

We feel that the activities of IBM and NTUC, while vastly different in approach are extremely heartening. Both have leveraged their strengths to make a difference and create an impact. While IBM has adopted a more global approach, NTUC has adopted a focused and top down one. However, the effectiveness of both companies serves as a good case in point to prove that companies can achieve the optimum balance of doing good while doing well.

At this juncture, Dr. Andreas Heinecke, Professor of Social Business, European Business School, and Founder, Dialogue in the Dark, the last panelist, emphasized the need to show compassion, both at an organizational and individual level. Since the age of 24, he has been urging people to employ disabled people on global scale and has been consistently promoting the cause for the employment of disabled people in main stream organizations through various business workshops and exhibitions.

According to Dr. Heinecke, the organizations that have created jobs for people with disabilities have viewed their apparent deficits as their potential. These changes have not only strengthened the self-esteem of disabled people but also positively changed the mind sets of others. Every organization tries to be socially responsible, but the change is apparent when the CEO of the company understands the potential of the innovations and in this context, organizations which have adopted social enterprises in their business models have different culture, control and mind set.

When asked for a wish list for CSR, Dr. Heinecke spoke of the need to move from" Success" to "Significance" and from "I" to "We". We concur with his ideas and feel that every organization should try to find the areas where they can add value for the society. The final change which an organization adopts depends on vision, mission, culture, and leadership of the organization.

Thus, this engaging discussion brought together eminent speakers each with varied perspectives but with a unified, optimistic outlook towards the future of business and social convergence. The discussion gave each member of the audience tremendous food for thought on how one could contribute as an individual and as a member of an organization (whether corporate or non-profit) by using his/her abilities and strengths to "do better while doing well".

Speech By Mrs Josephine Teo, Minister Of State For Finance And Transport, At The Singapore Institute Of Directors' Directors Conference 2012

Date: 12 September 2012
Venue: Marina Bay Sands Expo & Convention

Editors' Note:

With the kind permission of our Guest-Of-Honour, we have reproduced her speech here, given her practical and useful insights.

Mr John Lim, Chairman of the Singapore Institute of Directors

Distinguished Guests

Ladies and Gentlemen

Good morning and thank you for inviting me to the Directors' Conference 2012.

Let me begin by commending the Institute for your efforts in organising this annual conference, which has become a useful platform for exchanging views on critical issues facing directors.

Positive Feedback on Revised Code of Corporate Governance

Earlier this year, the Monetary Authority of Singapore ("MAS") issued the revised Code of Corporate Governance. MAS had accepted, with slight modifications, all the recommendations submitted by the Corporate Governance Council. The "Code" is applicable to companies listed on Singapore's stock exchange and is therefore an important component of Singapore's corporate governance regime. It adopts a "Comply or Explain" approach which complements the statutory requirements in the Companies Act.

Feedback on the revised Code has mostly been positive. Specifically, on the matter of directors' independence, a balance had to be found when defining substantial shareholders and setting the appropriate look-back period. The revised Code could neither be too stringent to be workable in practice nor too lax as to give inadequate protection to minority shareholders. While there are still differing views on the right balance, most commentators agree that the revised Code is a major step forward in enhancing Singapore's corporate governance standards without being impractical.

Effective Dates provide Adequate Time for Transition

However, there has been some confusion on the effective dates, which even after clarification, bear repeating. Compliance with the Code – or explanation of non-compliance – must be reflected in annual reports, beginning with those issued for financial years starting on or after 1 November 2012. If, for example, a listed company starts its financial year on 1 July, the annual report for the financial year July 2013 to June 2014 must be in compliance with the revised Code, or the company will have to explain the reasons for non-compliance.

This effective date applies to all revisions

except for one, which concerns having independent directors make up at least half of the board if the Chairman is also the CEO or part of the management, if the Chairman and CEO are immediate family members, or if the Chairman is not independent. A much longer transition of five years is accorded to help especially smaller listed companies meet this particular requirement.

Affected companies must make changes to board composition at the annual general meetings held for the financial years starting on or after 1 May 2016. If, for example, a listed company starts its financial year on 1 July, the changes to board composition must take place at the AGMs held for financial year July 2016 to June 2017. In other words, depending on the company's financial year, the revised requirement kicks in at the earliest on 1 May 2017 and must be complied with by 30 April 2018, failing which the company will be obliged to explain its non-compliance.

A very helpful survey conducted by SID has found that about 40% of Singapore listed companies would need to change their board composition to comply with the revised Code. The MAS acknowledges that such changes are not trivial and had therefore decided to grant a longer transition period. Nevertheless, companies that are ready to comply with the revised Code should do so as soon as possible.

Another key change in the revised Code is the increased emphasis on the roles and responsibilities of directors. For instance, the Nominating Committee (NC) is now expressly required to assess if a director is independent and adequate in carrying out his duties. The NC will also need to give recommendations on the professional development of the board.

In addition, the Code makes clear that the board is ultimately accountable for risk governance even if it sets up a board committee to assist with risk management responsibilities. Therefore, I am glad that the SID intends to further tailor its existing courses and include additional components to better prepare directors for these new responsibilities.

Review of Companies Act Nearly Completed

Another important pillar of our corporate governance framework is the Companies Act, a review of which last begun in 1999 and completed in 2002, more than a decade ago. In 2007, the Government appointed a Steering Committee chaired by Professor Walter Woon and including many eminent members to undertake a comprehensive review of the Companies Act. The objective was to further reduce regulatory burden and ease compliance, while retaining an efficient and transparent corporate regulatory framework that supports Singapore's growth as a global hub for both businesses and investors.

After rigorous and intense debate, the Steering Committee submitted 217 recommendations in April 2011. The report of the Steering Committee was published. This was followed by extensive public consultation which closed in September last year.

I am pleased to share with you

two observations from the public consultation exercise. First, there was a consistently high level of agreement with the Steering Committee's recommendations, which suggests that they are relevant and practical. Second, while differing views were in the minority, they provided useful counter-points which sharpened our thinking on a number of recommendations.

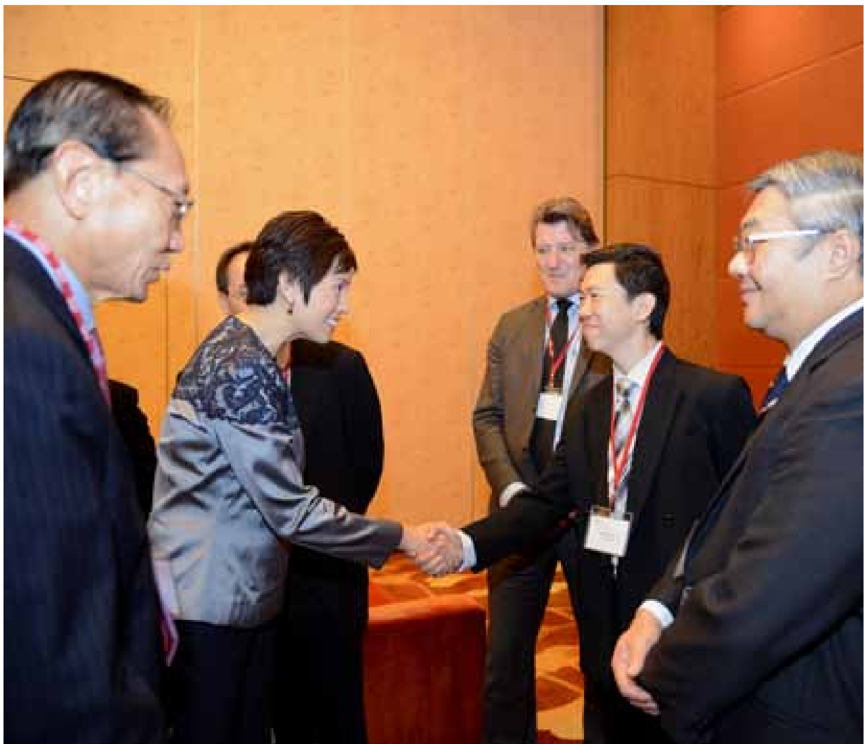
The Ministry of Finance (MOF) is deeply appreciative of the many individuals and organisations that have studied the recommendations, and provided constructive and well thought-through feedback. In the past year, the Government has been carefully considering the comments and suggestions. The review is nearly done and the Government will soon release a summary of the feedback received. We will also state our decisions on the 217 recommendations, which will form the basis of legislative changes.

In MOF's deliberations, we have taken a balanced approach of getting the principles right and avoiding onerous compliance. It is equally important to refer to practices in other leading jurisdictions, to affirm our own thinking and to assess the impact on Singapore's competitiveness.

Of the 217 recommendations, 29 relate to directors and directors' duties. For today's conference, I shall highlight some of the arguments for and against four of these recommendations which attracted useful debate. I should add that MOF has not made a final decision on these recommendations. As with all good things in life, we have to be patient and wait a little longer.

Recommendation: Not to introduce Corporate Directorships

The first recommendation was not to introduce corporate directorships. This means that only a natural person can be appointed as a director, and not a corporation which could choose to have different persons represent it at different meetings. This recommendation was met with some disagreement by several respondents who felt corporate directorships allowed for a more efficient use of talent resources. Also, where subsidiaries are set up purely for asset holding purposes, corporate directorships offer greater flexibility than requiring the subsidiaries to be managed by individuals. On the other hand, it is not inaccurate to say that corporate directorships lack transparency – people are left to wonder who actually controls a company and has ultimate accountability.



We note that corporate directorships are disallowed in Australia, Canada, New Zealand, Malaysia and the US. In the UK and HK which have always allowed corporate directorships if at least one director is a natural person, there have also been attempts to remove the provision. In MOF's view, our final decision must uphold the high level of integrity of Singapore's corporate regulatory regime. This is an important principle that should not be easily set aside in the name of efficiency.

Recommendation: No Need to Codify Directors' Duties

The Steering Committee had also recommended that there was no need to codify directors' duties in the Companies Act. Some respondents disagreed as they believed that codifying directors' duties would make the law more accessible to non-experts and allow for greater certainty and consistency in application. However, some respondents argued that in the event directors were sued for breach of duties, the courts should be given full flexibility to exercise judgment and tailor their decisions according to the circumstances of the case.

A useful point was raised about the UK which is the only country to exhaustively codify directors' duties in their legislation. Hong Kong had considered the UK approach and had decided against codification in its recent review. Australia and New Zealand have a lighter form of codification. Importantly, commentators observed that there have not been noticeable changes in the behaviour of directors in the UK and so, recommended further monitoring before Singapore considered a similar move. MOF supports this

view. While striving for clarity in the Companies Act, we need also to be mindful about introducing unintended rigidities, particularly in comparison to other jurisdictions.

Recommendation: Retain Automatic Disqualification Regime but allow Court Application for Leave

A third recommendation was to retain the automatic disqualification regime for directors convicted of offences involving dishonesty or fraud. However, the Committee also recommended allowing automatically-disqualified directors to apply to the courts for leave to act as directors, as is allowed in Australia. Some respondents disagreed and counter-proposed a regime where directors could only be disqualified through a court order, as is the case in the UK and Hong Kong. This counter-proposal was itself contentious as it was thought to place additional burden on the courts.

The Government noted that a likely gap was ambiguity regarding what constitutes "an offence involving dishonesty or fraud". Therefore, a meaningful improvement could be achieved by providing greater clarity for stakeholders. We could also provide guidance on examples of such offences via other channels instead of hard-coding them in the law.

Recommendation: Extend Disclosure Requirements to CEOs

The last recommendation that I will touch on concerns the extension of existing directors' disclosure requirements to CEOs. As you know, breach of disclosure requirements, such as non-disclosure of interested party transactions, may attract criminal penalties. Some respondents had disagreed on the basis that it would increase regulatory burden on CEOs and because there should be some distinction of roles and responsibilities between the board and the management. However, other respondents felt that with increasingly important decision-making roles played by key management officers, CEOs of companies should be held to similar standards of conduct as directors.

In MOF's view, directors and key management officers may have different roles but share the common responsibility of company stewardship to the shareholders. In fact, the Securities and Futures Act already imposes the same disclosure requirement on directors and CEOs of listed companies. The CA should likewise promote the same duty of care in both directors and CEOs.

The examples I have outlined give you a sense of the deliberations over the recommendations and public feedback relating to directors. There are other recommendations relating to shareholder rights, capital maintenance, accounts, audit and company administration which also attracted lively exchange. As I shared earlier, MOF will take a principled yet pragmatic approach that strives to balance the interests of various stakeholders.

Conclusion

In conclusion, let me just say that Singapore has done well in putting in place a pro-business and robust corporate governance ecosystem. There will always be areas we can improve on, areas we can enhance in response to fast-changing circumstances, including greater shareholder activism. In all likelihood, another review will be needed in a few years, but hopefully, not before the ink is dry!

As directors of companies, you are well aware of the challenges of discharging your duties effectively. I am confident that today's conference will provide you with new perspectives and fresh insights into how you can discharge your duties effectively. I wish all of you a fruitful day ahead. Thank you.

Corporate Governance, Value Creation And Growth

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

Editors' Note:

Mats Isakson very gamely stepped up to deliver his speech at the beginning of the day in lieu of doing so over lunch. We have reproduced his thought-provoking speech here in full.

It is a great pleasure and privilege to address this very qualified audience. The Singapore Institute of Directors has, during its relatively short existence, come to play a central role in the corporate governance community. Not only in Singapore, but also throughout Asia and around the world. The way in which you live up to your mission

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

has served as an example to many.

We at the OECD have had the pleasure of cooperating with the Institute on many occasions over the years. Representatives of the SID have contributed greatly to our work in Asia. Both in our Asian Corporate Governance Roundtable and the Asian Network on Corporate Governance of State Owned Enterprises where we are fortunate to have your President, Mr. John Lim, as the Chairman.

You have also contributed to our meetings in Paris and the development of the OECD Principles of Corporate Governance, which today is the world reference for governments and regulators in the area of corporate governance.

On behalf of the OECD, I would like to thank the Singapore Institute of Directors for making yourself available in this work: And for sharing your collective knowledge and experience. It is much appreciated.

I hope that this cooperation will be further strengthened and deepened in the years to come. Because today, policy makers around the world are facing a number of important challenges in the area of corporate governance. Challenges that may change the way we approach and formulate corporate governance regulations.

Today everyone would agree with the importance of good corporate governance. And most of us probably recognise it when we see and live it. Getting this message across is not the challenges I am talking about.

What I think about is a number of profound market driven changes in the way corporations operate, investors act and equity markets function. These developments may not be negative in themselves. But as I mentioned, their combined impact on equity markets may very well alter the way we think about regulation and how we set priorities. Such adaption of rules and

regulations is no big drama. When the economic environment changes, existing rules, regulations and practices may become obsolete, inefficient and even counterproductive. And as a consequence, they may need to be adjusted or complemented to fit a new reality.

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

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

First of all, we often have an outdated understanding of the shareholder. Most company law today rests on the assumption that shareholders look like they did 150 years ago and that they are driven by the same incentives as they were when modern company law first came into place: In essence, that there is a direct link between company performance and shareholder wealth. But we know better. We know that the relationship is much more complex than that. Today, shareholders are very often themselves profit-maximising corporations. They are intermediaries who make their living out of managing other people's money. There is obviously nothing wrong in that. But this can have profound consequences on their ability and their incentives to carry out some fundamental shareholder functions that are assumed in legal and economic doctrine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This may not be the corporate governance address you are used to hearing. But again you are not the usual corporate governance audience. You are practitioners and understand that nothing in the world of business is static. And this is why your input and participation in the future work of the OECD is so important.

Thank you very much for your attention.

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  Panel 3
  - Associate Professor Ho Yew Kee, Department Of Accounting, NUS Business School

  Panel 3 (Cont'd)
  - Ms Lee Suet Fern, Managing Partner, Stamford Law Corporation
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All who contributed in one way or another and graced the 3rd Annual Directors' Conference. Each and everyone of you was valuable to making the conference a resounding success.

Thank you.

Please mark your calendars to our 4th annual conference to be held on 11 September 2013.

Centro: A Year On

By Ms Domini Stuart
Journalist & Author

Overview

As directors sit down to review their companies' accounts this month, Domini Stuart examines how the Centro case may have changed boardroom behaviour.

Just over a year ago, the Australian Securities and Investments Commission (ASIC) hailed the Federal Court's verdict against eight directors and former executives of Centro Properties Group as a "landmark" decision. The case was widely reported as having serious implications for company directors – there was even talk of boardrooms emptying overnight.

Today, with boardrooms still well populated, most observers agree the case was less about adding to directors' responsibilities than reminding them of the ones they already had.

Financial Literacy

A central fact in the Centro case was the directors' failure to notice that $2 billion in current liabilities had been wrongly classified as non-current. The court found they knew, or should have known, these liabilities were payable in less than 12 months. All eight directors argued they had employed accounting firm PwC as auditors and should have been able to rely on it to ensure the accounts were correct. However, Justice John Middleton found they had breached the Corporations Act 2001 by not checking the figures.

"All that was required of the directors in this proceeding was the financial literacy to understand basic financial conventions and proper diligence in the reading of financial statements," he said.

While this caused many directors to question their own financial acumen,

Leigh Warnick FAICD sees no grounds for panic.

"Directors would be entitled to react to the Centro case with alarm if it obliged them to read financial statements with the eyes of an expert, but it does not," says Warnick, a partner at Perth-based law firm Lavan Legal who specialises in corporate law.

"The Centro directors didn't miss the errors because they didn't understand the financial statements, but because they didn't read them carefully before they were issued."

Nevertheless, "financial literacy" is open to interpretation.

"I know people from accounting or finance backgrounds who don't consider themselves financially literate because they're not up to date with the latest accounting standards and interpretations," says John Allpass FAICD, who holds a number of directorships and is chairman of Envestra.

"I don't agree with that view. I see financial literacy as being able to understand financial concepts, how they're applied, the consequences of certain applications and what questions to ask if there is something in financial reports that is obscure or exceptional. The risk is that some people will be frightened off the board because they don't have a financial qualification. If people carry the Centro judgment too far, boards could end up with higher proportions of financial expertise at the expense of diversity."

Volume and Complexity

The Centro directors also suggested it might be unreasonable to expect them to have detected the error given the complexity and quantity of the material they had to work through.

"It's true that one line item – one number in a balance sheet – was wrong," says Meredith Paynter, a partner at King & Wood Mallesons. "But the company's debt position was front and centre; the directors had been discussing the issue at board meetings."

The Centro Group structure was certainly very complex and the process of preparing annual accounts for the group did impose a heavy workload on the directors, but Justice Middleton did not accept that as an excuse.

"People seem to have forgotten that, if you take on these board responsibilities, you've got to be able to manage the amount of work generated by the structures," says Warnick.

"If you're on the boards of 99 subsidiaries, you're going to have to read 99 sets of accounts, so get ready to do it."

What are Directors doing Differently?

After the finding, some audit committees suddenly became very popular.

"There was a rush of directors attending these meetings," says Paynter. "They felt that if they were ever going to get into trouble it would be by getting the numbers wrong, so they should be aware of every detail. Then they paused to reflect that they were making the audit committee superfluous."

However, Allpass cautions boards against swinging back too far the other way.

"On any board, and as chairman of an audit committee, I've always been at pains to remind all board members they can't just flick things off to an audit committee and say: 'Well, they have given their imprimatur to this, therefore, tick, we can sign off'," he says. "Financial statements and reporting are matter for the whole board. I've been even more particular about that since Centro."

The circumstances of the Centro case were quite specific; most directors have come to realise it has had no effect on their duties or responsibilities.

"I think they want to be confident they are operating with executives who are professionals and know what they're doing," says Paynter.

"They also see now that they can still take advice from someone who is properly qualified and has applied due care and diligence. It's just that they can't take it on blind faith."

For some, the case has clarified the role of the auditors – that, while they provide an important check for companies, they are not an alternative to directors doing their duty.

"An external audit should add value to a business by providing a comprehensive review of the entity's governance practices," says Dianne Azoor Hughes, a partner at Pitcher Partners.

"However, the quality of that review will vary according to the depth and breadth of the experience of the reviewer. Many boards have treated audits as an exercise in compliance, but they may make false savings when they look for the cheapest option."

Lynda Tomkins, assurance partner at Ernst & Young, has noticed boards, and audit committees in particular, taking more time to "turn the pages" of the financial statements and discuss their contents, although she believes this reflects current economic circumstances as much as the outcome of the Centro case.

"There's more engagement between the audit committee and the auditors, with the auditor asked to attend more meetings," she says. "There are also more discussions between the chairman of the audit committee and the auditors between meetings."

Auditors are being asked to provide more points of view to the board about management conclusions – not just whether they can accept the outcomes.

"This is particularly the case for areas of significant judgement such as impairment and provisions," continues Tomkins. "For example, the board doesn't just want to hear we concur with the conclusion, but rather

wants to hear where management's conclusion sits within the range of acceptable outcomes. It also wants to understand the alternative views that could have been taken, the effects of those views and why, ultimately, they were not taken."

ASIC has announced that directors and auditors should pay particular attention to a number of areas, including revenue recognition and expense deferral policies; asset values and the disclosure of associated assumptions; off-balance sheet arrangements; and going-concern assessments.

"These are very important for accurate reporting of earnings and could influence reporting in challenging economic circumstances," says ASIC commissioner John Price.

However, experienced director Fiona Harris FAICD does not believe the boards she is involved with will change their processes this year.

"In my role as chairman of the audit and risk-management committee, I would always read the financial statements in detail and try to view them through the lens of my overall knowledge of the company," she says. "Regarding the specific issue at Centro, for those of my boards that have debt, the structure is very simple and the board has a good understanding of maturity dates.

"In terms of other ASIC areas of focus, my expectation is that most of my boards will update their internal models to test for carrying value and impairments – those internal models have been subjected to external validation in previous years. And, in terms of interaction with external auditors, in the committee's private sessions with them, we always ask the 'Warren Buffett question' about how the accounts would differ if they were solely responsible for their preparation."

What should Directors be Doing Differently?

ASIC has also made it clear that directors and auditors need to be thinking carefully about disclosure.

"In particular, directors need to have a keen understanding that the statutory financial report is intended to meet the financial information needs of investors," says Azoor Hughes.

"The nature of information provided in the statutory financial report based on the concept of economic value may be somewhat different from the financial information used for commercial decisions and the internal management of the business. However, commercial decisions will always affect how transactions and proposed transactions are reported in the financial report.

"It follows that directors should ensure significant commercial decisions have been considered and appropriately presented in the financial report. They also need to remain up to date in their professional development to be aware of changes in the business and reporting environment."

What have we Learned?

Lavan Legal's Leigh Warnick suggests five practical lessons can be learned from the Centro case:

- Every board should ensure it has at least one "financial terrier" among its members – a director who has real financial expertise and can be relied on to bring that expertise to bear on a thorough review of the financial statements.
- Directors should not leave it all to the "financial terrier". They must read the financial statements, notes and directors' report, carefully and critically. If they find anything that raises any questions, they should ask management to explain. Any director not confident in his or her ability to understand the basic accounting concepts in financial statements should undertake a course – or find a different occupation.
- Directors should insist management provides draft financial statements to the audit committee and board with enough time to review them. If the corporate structure is complex and generates multiple sets of accounts, directors will need even more time.
- Directors must ensure the CEO and CFO provide the declaration required by section 295A of the Corporations Act 2001, stating that financial records have been properly maintained and that the financial statements give a true and fair view and comply with accounting standards. This will expose any concerns held by senior management about the financial statements. But even if management gives a clean declaration, it does not give directors an excuse to avoid reading and focusing on the financial statements themselves.
- Directors should review the way management presents information to the board throughout the year. Board papers and presentations must give directors a clear picture of what's going on in the company, without overloading them with information. Ultimately, that's what the Centro case said: Directors must have their own picture of the company, understand the picture being presented by the financial statements, and ensure there is no difference between the two.

This article by Domini Stuart first appeared in the Company Director (Vol. 28, Issue 7), the monthly publication of the Australian Institute of Company Directors, and is reproduced with permission

FEATURE

Independent Director Acquitted Of Convictions Under The Securities & Futures Act

Madhavan Peter v Public Prosecutor and other appeals [2012] SGHC 153

By Jaikanth Shankar
Associate Director, and
Vishal Harnal, Associate
Dispute Resolution
Drew & Napier LLC

Overview

Lawyer Peter Madhavan, the first independent director to be sentenced to imprisonment in Singapore for market misconduct, has had his convictions, sentences and disqualification order overturned by the High Court.

In a landmark decision, Chief Justice Chan Sek Keong gave some much needed guidance and clarification on the disclosure regime and obligations under the Securities and Futures Act and the Singapore Exchange Listing Manual.

Background

Madhavan, Ong and Chong (collectively, the "Appellants") were charged with and convicted of market misconduct under the Securities and Futures Act ("SFA") by District Judge Liew Thiam Leng last year. The charges arose out of events that occurred in 2005 when Madhavan and Ong were independent directors, and Chong was an executive director, of air cargo firm Airocean Group Limited ("Airocean").

The Appellants were each convicted of an offence under section 331 of the SFA read with section 199(c)(ii) of the SFA for consenting to Airocean making a statement that was misleading in a material particular and was likely to have the effect of stabilising the market price of Airocean's shares ("Misleading Disclosure Charges").

The statement in question was an announcement that Airocean released via the Singapore Exchange ("SGX") on 25 November 2005. The District Judge held that the statement was misleading in a material particular as it omitted to disclose that Airocean's Chief Executive Officer, Thomas Tay, was under investigation by the Corrupt Practices Investigation Bureau ("CPIB") and that the CPIB investigations concerned two transactions involving two of Airocean's subsidiaries.

According to the District Judge, the statement suggested that the CPIB investigations concerned other companies in the air cargo industry and not Airocean.

Madhavan and Chong were each also convicted of an offence under section 331 of the SFA read with section

203(2) of the SFA for consenting to Airocean's reckless failure to notify the SGX of information which was likely to materially affect the price or value of Airocean's shares as required by rule 703(1)(b) of the Singapore Exchange Listing Manual ("Listing Rules") ("Non-disclosure Charges").

According to the charges, Airocean recklessly failed to disclose the fact that Thomas Tay was questioned by the CPIB, was released on bail and that his passport was impounded ("Information").

Chong was also convicted of three charges of insider trading under section 218 of the SFA ("Insider Trading Charges").

On the Misleading Disclosure Charges, Chong was fined $180,000 while Ong was fined $170,000. Madhavan was sentenced to four months' imprisonment. The District Judge took the view that Madhavan was the "most culpable" and had played an "active role" in the commission of the offence.

On the Non-disclosure Charges, Chong was fined $100,000 and Madhavan was fined $120,000.

On the Insider Trading Charges, Chong was sentenced to four months' imprisonment.

All of the Appellants appealed against their convictions and sentences.

The facts of the case, along with a detailed discussion of the District Judge's decision in Public Prosecutor v Chong Keng Ban @ Johnson Chong, Peter Madhavan, Ong Seow Yong [2011] SGDC 97, can be found in an earlier legal update on the Airocean case, which can be accessed here.

High Court's Decision

Chief Justice Chan Sek Keong ("Chan CJ"), sitting in the High Court, set aside the Appellants' convictions on the Non-disclosure and Misleading Disclosure Charges.

While Chan CJ affirmed Chong's convictions on the Insider Trading Charges, he imposed a fine of $200,000 in place of the custodial sentence.

Chan CJ held that the District Judge had erred in applying the same concept of materiality in convicting the Appellants of the different types of offences with which they were charged.

On the Non-disclosure Charges, Chan CJ held that there was insufficient reliable evidence to show beyond a reasonable doubt that the information in question was likely to materially affect the price or value of Airocean shares and that the District Judge erred in holding that Airocean was reckless in not disclosing the information.

On the Misleading Disclosure Charges, Chan CJ held that the Prosecution had failed to prove beyond reasonable doubt that Airocean's statement on 25 November 2005 was misleading in a material particular and that it was likely to stabilise Airocean's share price.

Concept of Materiality under the SFA

While "materiality" is a common element running through the offences under sections 199, 203 and 218 of the SFA, Chan CJ held that a plain reading of those sections shows that Parliament and the SGX had prescribed different concepts of materiality for the purpose of the offences under sections 199 and 203 on the one hand, and the offence under section 218 on the other.

The Non-disclosure Charges under section 203 of the SFA involve the offence of intentionally or recklessly breaching rule 703(1)(b) of the Listing Rules.

According to Chan CJ, the word "material" in rule 703(1)(b) (which imposes an obligation on an issuer to disclose information that is likely to materially affect the price or value of its securities) refers to information that is likely to effect a significant change in the price or value of an issuer's securities.

Chan CJ clarified that the concept of materiality for the Insider Trading Charges under section 216 of the SFA (which is expressly stated to apply only to section 218 of the SFA) refers to information which would, or would be likely to, influence persons who commonly invest in securities in deciding whether to subscribe for, buy or sell the securities concerned.

Chan CJ held that rule 703(1)(b) of the Listing Rules read with section 203 of the SFA has a narrower scope of operation than section 218 read with section 216 of the SFA.

On the Misleading Disclosure Charges, Chan CJ held that while the word "material" in section 199 of the SFA is not defined, it must be a reference to sufficiently important information which is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities.

According to Chan CJ, it follows from the nature of the offence under section 199 that the false or misleading information in question must, just as in the case of an offence under section 203 read with rule 703(1)(b) of the Listing Rules, be of sufficient importance to significantly affect the price or value of securities.

As section 216 of the SFA is not applicable to section 199 of the SFA, Chan CJ held that it was reasonable to infer that Parliament had intended section 199 (like section 203) to have a narrower scope than section 218 of the SFA.

Element of Recklessness under the SFA

Chan CJ held that the word "recklessly" under section 203 of the SFA had the same meaning as the common law meaning of the word "reckless", which was established by the House of Lords in R V G and another [2003] 4 All ER 765 in the context of s1 of the Criminal

Damage Act 1971 (c 48) (UK). In that case, the House of Lords held that "reckless" conduct comprised two elements:

- the subjective awareness of a risk; and
- unreasonableness on the part of the offender in taking that risk.

Application to the facts

Non-disclosure Charges

Chan CJ overturned the convictions on the Non-disclosure Charges on the ground that the District Judge had erred in finding that the Prosecution had made out two essential elements of those charges, namely, that:

- the Information was likely to materially affect the price or value of Airocean shares; and
- Airocean was reckless in not disclosing the Information to the SGX under the Listing Rules.

On the element of materiality, Chan CJ held that there was insufficient reliable evidence to show beyond a reasonable doubt that the Information was likely to materially affect the price or value of Airocean's shares. Chan CJ held that the District Judge had erred on three main grounds. According to Chan CJ:

- The District Judge misdirected himself on the law in relation to the concept of materiality which was applicable to the Non-disclosure Charges in that he failed to consider whether the Information was likely to materially affect the price of Airocean's shares. Chan CJ held that the District Judge made no finding on an essential element of the Non-disclosure Charges and that that was a fundamental error.
- The District Judge erred in accepting the opinion of the Prosecution's expert witness that the CPIB investigations could impair the future performance of Airocean because those investigations did not, as a matter of fact, affect the ability of Airocean's chief executive officer to manage the company's affairs.

- The District Judge erred in accepting the analysis of the Prosecution's expert witness on the movements in Airocean's share price after Airocean's statements of 25 November 2005 and 2 December 2005 were made because the price movements over a reasonable period of time after those statements were made showed that they did not have a substantial effect on Airocean's share price.

On the element of recklessness, Chan CJ held that the District Judge erred in holding that Airocean was reckless in not disclosing the Information. According to Chan CJ, the likely market impact of the Information was not clear and Airocean could not be held to be reckless given that it had acted on the advice of its external counsel, which was that disclosure of the Information was not necessary. Chan CJ held that the directors of Airocean acted properly and prudently in seeking legal advice on whether to disclose the Information immediately after it became aware of the Information.

Chan CJ also clarified that clients have no duty to question their lawyer's advice as it would be unreasonable to expect or require them to do so, unless the advice is manifestly absurd, irrational or wrong.

In light of his findings on these two elements of the Non-disclosure Charges, Chan CJ took the view that he did not have to consider the other elements and set aside the convictions and sentences.

Misleading Disclosure Charges

Chan CJ overturned the convictions on the Misleading Disclosure Charges on the ground that the District Judge erred in finding that the Prosecution had made out two essential elements of those charges, namely, that:

- Airocean's statements were misleading in a material particular; and
- Airocean's statements were likely to have the effect of stabilising the market price of Airocean's shares.

On the element of materiality, Chan CJ held that the District Judge erred in law for two reasons.

According to Chan CJ, the first error made by the District Judge was that His Honour had applied the test for materiality under section 216 of the SFA to the Misleading Disclosure Charges (which were charges under section 199(c) of the SFA). As stated above, Chan CJ held that the tests for

materiality under section 216 of the SFA and section 199(c) of the SFA are (and are intended by Parliament and the SGX to be) different.

According to Chan CJ, the second error made by the District Judge was His Honour's finding that the statements were misleading in a material particular. Chan CJ explained that the statements did in fact disclose that Airocean's CEO was under investigation by the CPIB. Chan CJ was also of the view that the information that the CPIB investigations concerned two transactions involving Airocean's subsidiaries was not a material particular. On that basis, Chan CJ held that any suggestion in the statements that the CPIB investigations concerned other companies in the air cargo industry and not Airocean (which according to the Prosecution distanced Airocean and its officers from investigations by the CPIB) was not materially misleading.

Chan CJ also held that the District Judge erred in finding that the statements were likely to have the effect of stabilising the price of Airocean's shares. According to Chan CJ, that finding was based on the incorrect premise that the statements failed to disclose that Airocean's CEO was being investigated by the CPIB.

On account of Chan CJ's findings on those elements, Chan CJ did not consider it necessary to deal with the remaining elements of the Misleading Disclosure Charges.

Insider Trading Charges

Chan CJ held that the elements of the offence of insider trading under section 218 of the SFA had been made out.

One of the elements was whether Chong knew or ought reasonably to have known that if the Information was generally available, it might have a material effect on the price or value of the Airocean's shares. According to Chan CJ, given that Chong was Airocean's director and the Information was not generally available, Chong was presumed to have known that if the Information was generally available, it might have a material effect on the price or value of the Airocean's shares.

On the facts, Chan CJ held that Chong had not rebutted that presumption. Chan CJ therefore upheld Chong's conviction on the Insider Trading Charges. However, Chan CJ reduced the sentence that had been imposed on Chong by the District Judge.

Comment

Chan CJ's decision brings some much needed clarity to the different concepts of materiality under the SFA and the Listing Rules as well as the disclosure obligations of directors of listed companies.

Chan CJ has clarified that directors are not under an obligation to disclose information that is merely trade-sensitive, ie information that may influence persons who commonly invest in securities in deciding whether to subscribe for, buy or sell securities. The obligation is to disclose information that is materially price-sensitive in the sense that the information must be likely to effect a significant change in the price or value of an issuer's securities. As Chan CJ held, this ensures that "issuers are not unduly burdened by having to disclose every kind of information, however trivial, that may be likely to have an effect – but not a material effect – on the price of their securities". The key consideration is the materiality of the information in question.

In situations where the likely market impact of information is unclear and a board is uncertain as to whether disclosure of the information is required, it is not unreasonable, and would in fact be prudent, for a board to take independent legal advice on the question of whether disclosure should be made. In this connection, Chan CJ accepted Madhavan's argument that it was not unreasonable for Airocean to be cautious and to seek independent legal advice as to whether disclosure should be made as a misjudged disclosure can be as detrimental to the interests of the company and the shareholders as material non-disclosure.

In this context, Chan CJ held that a board is not under any obligation to question the legal advice that it receives unless such advice is manifestly absurd, irrational or wrong. That being said, Chan CJ's decision should not be taken to mean that boards can simply refer the matter to lawyers and wash their hands of the matter. The board is required to exercise independent judgment at every step of the way, ie first, in determining whether disclosure is required having regard to the nature of the information and the circumstances and facts of the particular case, second, in determining whether legal advice should be taken, third, in determining whether the advice that is obtained is manifestly absurd, irrational or wrong and should be disregarded and whether a second opinion should be sought and fourth, whether disclosure should be made having regard to any legal advice that has been sought and obtained and in all the circumstances of the particular case.

Impending Changes To The Companies Act

By Kok Moi Lre, Partner and
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Accounting Consulting Services
PricewaterhouseCoopers LLP

Overview

The Singapore Companies Act (the "Act") is poised for the largest number of changes since its enactment as the Ministry of Finance ("MOF") accepts the recommendations resulting from a four-year deliberation.

The case for change is to enable an efficient and transparent corporate regulatory framework within Singapore. Would these impending changes be transformational to that effect?

The 209 recommendations are put forth by a Steering Committee set up by the MOF, debated through public consultations involving a wide range of stakeholders, including businessmen and professionals such as lawyers, accountants and academia. The laws and practices in other leading jurisdictions such as Australia, Hong Kong, New Zealand, United Kingdom and United States have also been considered.

These changes are designed to benefit companies, SMEs, retail investors and company shareholders, particularly by (a) reducing regulatory burden and compliance costs; (b) offering greater flexibility; (c) encouraging greater activity by indirect shareholders; and (d) boost transparency and corporate governance standards. They are expected to be effective by end of 2013.

Reduced Compliance Costs via Audit Exemption of "Small Companies"

One key change is to extend audit exemption to "Small Companies".

A "Small Company" is defined as a private company that fulfils two of the three following criteria:

- total annual revenue of not more than S$10 million;
- total gross assets of not more than S$10 million;
- number of employees not more than 50.

Such companies have limited public interests and therefore there are few compelling reasons to mandate an audit.

With this change, the MOF estimated that 25,000 and more companies will be exempted from audit, an increase of 10 percentage points from the current 79%, out of 250,000 "live companies" estimated as at end of September 2012.

However, this change is likely not

applicable for smaller companies belonging to groups as the "Small Company" criteria above will have to be assessed based on the consolidated accounts of the group to which the subsidiary belongs.

In addition, when the "Small Company" criteria are assessed on a consolidated basis, the group will include all local and foreign-incorporated companies within the group. To achieve parity of treatment of subsidiaries of local parent and those of foreign parent, the requirement to consider at consolidated level will also apply regardless of whether the parent company is incorporated in Singapore or otherwise.

As an illustration, a parent company P has two active subsidiaries, S1 and S2. S1 is incorporated in Singapore whilst S2 is incorporated overseas. To determine whether the Singapore subsidiary S1 qualifies for audit exemption, the "Small Company" criteria are assessed based on the consolidated accounts of P (i.e. consolidating the financial effects of P, S1 and S2). This is applicable even when P is incorporated outside of Singapore.

Where the requirement to assess is applicable to overseas companies, there are some practical barriers to be considered. For example, overseas parent companies may not prepare consolidated accounts or when they do, the consolidated accounts may not be prepared under the recognised accounting frameworks such as International or Singapore FRS or U.S. GAAP. Directors may be expected to apply their best judgement in determining whether the group would satisfy the "Small Company" criteria on a consolidated basis.

Whilst the impact from the audit exemption would be less extensive for groups, this could be viewed as beneficial to directors of parent companies.

Directors of a Singaporean parent company that produces consolidated financial statements have to form a view that the consolidated financial statements (in addition to the company level only balance sheet) are true and fair. In doing so, directors would need to have assurance that the financial statements of the subsidiaries are free from misstatement or errors and fit for consolidation purposes.

Codifying the requirement for Singaporean subsidiaries to be independently audited would provide one form of assurance on the quality of these financial statements, thereby assisting the directors of the parent company to discharge their responsibilities. However, directors would still need to exercise their care and discretion for overseas subsidiaries in jurisdictions with no audit requirements.

Summary of financial reporting and auditing obligations for different companies			
	Prepare	File	Audit
Public companies			
Dormant (listed and unlisted)	√	√	x
All, other than 1a.	√	√	√
Private companies – A subsidiary of a listed company			
Dormant	√	√	x
All, other than 2a.	√	√	√
Private companies - Non-subsidiary - A subsidiary of a non-listed company			
Dormant (with assets <=$500,000)	x	x	x
Dormant (with assets >$500,000)	√	√	x
SC that is also a solvent exempt private company	√	x	x
Not SC that is a solvent exempt private company	√	x	√
SC that is - not an exempt private company, or - an insolvent exempt private company	√	√	x
All, other than 3a to e.	√	√	√

"Dormant Companies" need not prepare Accounts Subject to Safeguards

Another key change is to exempt a "dormant company" (other than a listed company and a subsidiary of a listed company), from preparing accounts, subject to:

- the "dormant company" not holding total assets of more than S$500,000;
- its directors make an annual declaration of dormancy;
- the company is dormant for the entire financial year in question; and
- the company is not directed by its shareholders or ACRA to prepare its accounts and/or to lodge them.

As dormant companies are exempted from audit since 2003, exempting them from preparing accounts is long overdue. Generally, it is less likely that anyone will be prejudiced if a dormant company does not prepare accounts and/or be exempted from audit.

However, the existing requirement to prepare accounts and file them, despite being exempted from audit, will be retained from both listed companies and dormant subsidiaries of listed companies.

We would expect a listed company, albeit being dormant, be subjected to a higher level of compliance as it would still have public shareholders.

The basis for retaining the requirement to prepare accounts and file them by dormant subsidiaries of listed companies is somewhat less apparent. There could be a case for exemption with the same safeguards as mentioned above.

It should also be noted that whilst the asset size criterion (asset size must be less than S$500,000) has been newly included, it is unlikely to cause significantly more companies to prepare accounts. This is because a company with such assets is likely to have income generating activities (for example, interest income, income tax expense, property tax, etc) and is therefore not dormant.

Encourage Greater Activity by Indirect Shareholders

To encourage greater shareholder activism among retail investors, members who provide nominee or

custodial services will now be allowed to appoint multiple proxies, beyond the currently allowed maximum of two.

For equality, this multiple-proxy regime will also be extended to Central Provident Fund ("CPF") members who purchase company shares using their CPF fund. These CPF shareholders will be given their due shareholders' rights as though they were cash investors.

In lieu of these changes, the cut-off time for filing of proxy forms will be increased from 48 to 72 hours prior to the shareholders' meeting to give companies more time to handle increased number of proxy forms.

These changes will definitely help to provide a platform for more active (and equitable) participation at general meetings of indirect investors and help to strengthen the culture of corporate governance.

Boosting Transparency and Corporate Governance Standards

Other key changes towards this objective include extending statutory duty to disclose conflict of interests for directors to Chief Executive Office ("CEO") who is not a director. A contravention of any of these disclosure requirements would attract a criminal penalty.

This change is deemed necessary as CEO frequently plays an influential role in the decision-making of a company, sometimes more so than the directors of the company who may not work on a full-time basis for the company. This will also put the CEOs of non-listed and/or private companies at the same level of disclosure requirements as CEOs of listed companies.

Having said that, the MOF backed down from extending the directors' duty to act honestly and use reasonable diligence to CEOs. This is despite the fact that all respondents but one, to the public consultation agreed with this recommendation by the Steering Committee.

The MOF is of the view that it is not timely to adopt the recommendation since most jurisdictions have not done so. The MOF also cited the SC's observation that in practice, the CEO is usually a director of the company. Even if not formally appointed, the CEO may be considered as a de-facto director.

Considering these, would there an expectation for more CEOs to be appointed as directors of the companies that they are serving? This is not uncommon in practice amongst the listed companies so as to enable the CEOs to have as much "skin in the game" as the other directors.

Abolishing Directors' Report

One of the changes that is welcomed by almost all is the abolishment of Directors' Report.

Currently, a Directors' Report must be prepared together with the statutory accounts presented to shareholders. In practice, a Directors' Report typically contains only the prescribed disclosure requirements stipulated in the Act, hence resulting in boilerplate report.

Having considered these, and that the mandatory disclosures (for example, the list of directors in office, directors' interests in shares and debentures of the company and related corporations) could be made elsewhere, the Act will be amended to abolish the requirement for Directors' Report for all companies, whether listed or not.

Dividend Distribution

One of the more controversial issues that was debated but left unchanged is the "profits" test on dividend distribution. Currently, a company can only distribute dividends out of "profits". However, there is no definition in the Act as to whether "profits" are current year's profit or accumulated profits, measured on a realised or unrealised basis, etc. In addition, a private company that is unsure in interpreting "profits" or is unable to pay dividends due to insufficient profits could still take the route of capital reduction which is not too onerous.

There was a suggestion to the MOF to adopt a solvency test for dividend or capital distribution to shareholders. This test has already been adopted by New Zealand. Conceptually, this aligns well to the aim of protection of creditors, i.e. not distributing in excess of what a company owes to its creditors. However, this model may be too different from the current one that is purported to be "well-understood" by stakeholders. Perhaps, this is what we can look forward to in the next round of amendments.

Conclusion

On an overall basis, the changes are aligned to the objectives set.

Those changes geared towards reducing the regulatory burden and compliance costs will be welcomed by businesses, particular in the current economy climate and thrust together increased productivity. Those relating to enfranchising indirect investors and CPF investors will also send a desirable signal to investors on the overall corporate governance of Singapore businesses.

Some may also argue certain changes could have been further liberalised so as to reap more benefits. Some changes such as allowing listed public companies to issue shares with multiple and non-voting rights, and to repurchase odd-lots through discriminatory repurchase offer (i.e. selective off-market buybacks) are pending concurrence by the Singapore Exchange and will take time to be implemented. It is therefore early days to conclude whether the changes will be transformational in a substantive sense.

Notwithstanding that, the efforts and decisions made should be applauded. Approving 209 recommendations by the Steering Committee, albeit 17 were modified, would not have been easy. More importantly, by implementing these changes, we will effectively move the Act from a UK-centric law to one customised to local needs and practices.

Insider Trading & Market Rigging: A Peace of Mind

On 14 August 2012, at a breakfast event at the Marina Mandarin Singapore, speakers from Stamford Law Corporation – Mr Lim Swee Yong and Mr Daniel Chia – shared with participants recent caselaw developments arising from recent Singapore court decision on marketing rigging and insider trading. Two high profile cases discussed were the Airocean saga and the conviction in the U.S. of Rajat Gupta, retired head of McKinsey & Company and former Goldman Sachs board member.

Forming the panel discussion together with the presenters were Mr Bernard Lui, Mr Ng Joo Khin and Mr Tan Chuan Thye, Partners from Stamford Law Corporation.

Daniel Chia
Tan Chuan Thye
Bernard Lui

What's The Scam? Insights Into An Accounting Fraud

Mr Ng Siew Quan, Partner at PricewaterhouseCoopers LLP and Ms Joy Tan, Partner of WongPartnership LLP, gave insights to a real-life scenario involving a Singapore-listed company where external auditors reported a series of adjustments to restate by over $8 million the previously announced quarterly results. The Chairman and CEO of the company were subsequently charged and convicted.

At this exclusive event held at the Raffles Hotel on 21 August 2012, 20 selected participants who were mainly currently serving directors of listed companies had the opportunity to discuss the actions required on part of the Board in response to such incidents and what could be done to prevent future occurrences.

EXIT

A Study Of The Air Ocean Judgment: Important Lessons For Company Directors

Lawyers from Drew & Napier LLC, Mr Wendell Wong, Director and Mr Jaikanth Shankar, Associate Director, from Dispute & Resolution, who successfully represented one of the Airocean's independent directors in his appeal against the lower court's decision, shared with participants the lessons that can be learned from the case. Questions such as "What are the implications for directors who are faced with what is often a difficult judgment call as to whether to disclose certain information", "What are the principles and guidelines that can be distilled from the Chief Justice's decision in relation to the disclosure regime under the Securities and Futures Act" were discussed.

This breakfast event was held on 24 August 2012 at the Marina Mandarin Singapore.

Wendell Wong

Members Feedback Session On "Improving" The Auditor's Report: An Invitation To Comment By International Auditing And Assurance Standards Board (IAASB)

On 29 August 2012 at The Executives' Club, members were invited to participate in a session for the Institute to collect feedback for submission to IAASB on the Invitation to Comment ("ITC"): Improving the Auditor's Report.

The session was facilitated by Mr Adrian Chan, SID Vice-Chairman, and Mr Kevin Kwok, Council Member. The session started off with a presentation on IAASB's ITC by Ms Loh Chay Hiah of Ernst & Young.

Discussion that followed was lively and members not only provided some feedback but also sort clarification on some of the issues raised in the consultation paper.

A Panel Discussion – Revised Code Of Corporate Governance

Speakers from Drew & Napier LLC – Mr Sin Boon Ann, Deputy Managing Director of Corporate & Finance and Ms Lam Shiao Ning, Director of Corporate & Finance, discussed key changes made to the Code of Corporate Governance ("Code") with participants on 31 August 2012 at the Raffles Hotel Singapore. Mr Sin and Ms Lam also explained the impact of the changes on listed companies and the corporate environment as a whole and what was to be expected going forward.

Mr Lim How Teck, Chairman and Director of Redwood International, also shared during the panel discussion his experiences sitting on Singapore and International Boards.

CORPORATE
GOVERNANCE

Fraud Risk Management

Mr Owen Hawkes, Director, Forensic Practice, KPMG in Singapore, gave participants an insightful breakfast presentation on 18 September at the Raffles Hotel Singapore. He shared how increased vulnerability to internal and external fraud posed new challenges for companies to identify and mitigate fraud risk. He felt that there should be greater emphasis on directors' duties with regard to companies' fraud risk management frameworks and practices in light of developing corporate governance standards. Giving examples on recent fraud scandals involving listed companies, Mr Hawkes hoped that board members are aware and conscious when it comes to fraud risk management so that they can help their companies protect their assets and reputation.

Chairing The Nominations Committee

This exclusive breakfast seminar held on 10 October 2012 at the Raffles Hotel Singapore was one of the Institute's Chairmanship series featuring Egon Zehnder International. It was designed for board chairman and Nominations committee chairman of Singapore listed companies. Ms Elaine Yew, Managing Partner of Egon Zehnder International's Singapore office and Mr Ashley Summerfield from Egon Zehnder International UK shared with participants global perspectives on People issues that needed to be guided by the Nominations Committees of Boards. These issues included overseeing board composition and succession, long-range development of successors for key executive positions, and reviewing the effectiveness of the board. Moderating the session was Mr Kai Nargolwala, Nominating Committee Chairman of Singapore Telecommunications.

Upcoming Talks/ Courses

Upcoming Events

NOVEMBER 2012

Thursday & Friday, 22 & 23 November	LCD Mandarin Programme (Xiamen, China)
Tuesday, 27 November	14th Annual General Meeting & Luncheon
Thursday, 29 November (Morning Session)	LCD Director Programme Module 4 *Nominations Committee Essentials*
Thursday, 29 November (Afternoon Session)	LCD Director Programme Module 5 *Remuneration Committee Essentials*

JANUARY 2013

Wednesday, 16 January	LCD Director Programme Module 1 *Listed Company Director Essentials: Understanding The Regulatory Environment In Singapore: What Every Director Ought To Know*

MARCH 2013

Wednesday, 6 March	LCD Director Programme Module 1 *Listed Company Director Essentials: Understanding The Regulatory Environment In Singapore: What Every Director Ought To Know*
Wednesday, 20 March	LCD Director Programme Module 2 *Audit Committee Essentials*
Wednesday, 27 March	LCD Director Programme Module 3 *Risk Management Essentials*

SID-SMU Executive Certificate in Directorship

Modules	Programme Dates	Assessment Date
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

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

Welcome Aboard

September 2012

Amirtham	Mohan
Chan	Heng Toong Jehu
Chan	Michael
Chan	Yew Kiang
Chew	Robert
Dogan	Glen
Elhence	Rohit
Eu	Shirwin
Foo	Kwee Joen Junie
Franck	Christopher
Jetley	Vivek
Lee	Chung Ngee Vincent
Lee	Ying Boey Winnie
Loke	Wai San
Mills	Victor
Sin	Li Choo
Singh	Alvinder
Tan	Chong Ming
Wee	Liang Hiam
Wong	Keng Chun

October 2012

Bokhari	Syed Salman Ali
Chang	Shyre Gwo
Chew	Yee Teck Eric
Dignam	Jennifer
Foo	Terence
Gan	Seng Tiong
Khor	Peng Soon
Liew	Ham Chow
Low	Kian Beng
Maeloa	Hano
Narayanan	Shubha
Oh	Cindy
Sng	Sharon
Sukamto	Sumitro
Tan	Wee Seng Gerard
Tan	Cheang Shiong
Tan	Jee Ming
Tian	Sun
Verma	Sonali
Yeo	Chin Tuan Daniel

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

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.