Listing in Singapore: Corporate governance perspectives

Consulting editors: Lucien Wong, Christine Chan, Yap Lune Teng
Allen & Gledhill LLP
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It has been almost two decades since the Corporate Finance Committee signalled in 1998 the shift in the philosophy of capital markets regulation in Singapore from a merit-based system to a predominantly disclosure-based regime.

Today, Singapore has become one of the most well-established capital markets in Asia-Pacific. In the 2014 corporate governance ranking conducted by the Asian Corporate Governance Association, Singapore ranks joint first in Asia. A 2015 ranking by the World Bank Group rates Singapore first among 189 economies in terms of the ease of doing business, as well as in protecting minority investors.

The regulatory regime takes a two-pronged approach that focuses on disclosure and controls: the disclosure-based framework of securities regulation is entrenched at its core, although the penumbra of controls may seem to grow and shrink at times.

Disclosure

A disclosure-based regime stands in contrast to a merit-based regime. A merit-based regime relies on the securities regulators to judge whether transactions should be permitted to proceed, on the basis of their perceived merits, and to sieve out problem cases before they arise.

In one analysis, the essence of the disclosure philosophy is the belief that the market is better placed than securities regulators to evaluate the merits of transactions. The mass of investors, including analysts who are sector or industry specialists, are best able to judge the merits for themselves. Underlying this analysis is the hypothesis that markets are efficient – the market as a collective whole tends to ensure that stock prices correctly reflect the value of any piece of information, once it is disclosed.

In another analysis, a disclosure-based regime does not presuppose that investors make perfect decisions. Humans, fallible as we are, suffer from cognitive limitations such as biases and heuristics. Rather, the view is that it is preferable that certain decisions are left to the market, instead of relying on regulators. Underlying this analysis is the acknowledgement that it is not possible for regulators to root out all that is evil, dangerous or vaguely suspicious before they get to the market. Nor should investors expect them to do so.

In a disclosure-based regime, mandatory disclosure is necessary for various reasons.
To be able to make sound investment decisions, investors must be equipped with the necessary information. Information must be made available to all at the same time, and not selectively disclosed, to create a fair market which retains investor confidence.

Fundamentally, mandatory disclosure mitigates bad behaviour by removing the misplaced hope that actions could remain undetected. Although business failure or wrongdoing can occur among any listed company in any market, high disclosure standards enable more rapid discovery and prompt attention to the problems. As Louis Brandeis said, ‘Sunlight is said to be the best of disinfectants; electric light the most efficient policeman’.

**Controls**

The second focus in the regulatory approach is on controls in corporate governance. Corporate governance refers to the processes and structures by which the business and affairs of a company are directed and managed. Controls in corporate governance, or governance controls, refer to the means of delimiting and allocating decision-making powers in corporate governance among the corporate actors.

In a free market, market forces would allocate decision-making powers among management and shareholders, and participants would agree on the desired arrangements. In reality, not every governance control would be contractible. It may be impossible to anticipate, *ex ante*, all the contingencies that must be provided for in those arrangements. In addition, some governance controls should never be contractible, for that may tilt the balance of power among participants inequitably. Regulators would pay close attention to, and may set rules on, these non-contractible areas of governance controls.

The focus of regulation then lies in designing an equitable framework to enable effective *ex post* decisions to be made. The goal is good corporate governance, which enhances long-term shareholder value through enhancing corporate performance and accountability whilst taking into account the interests of other stakeholders.

**Market regulation**

The objectives of regulation are to preserve confidence by maintaining a fair, orderly and transparent market and reducing systemic risks, which threaten its stability.

Regulation is not without externalities. In setting standards and expectations, sound regulation promotes trust in the marketplace. However, taken to the extreme, pervasive regulation constrains innovation and decreases choice by imposing high compliance costs.

The general case for regulation is market failure, which inhibits efficient outcomes. Each financial crisis prompts a tightening of standards as lessons are learnt; each boom triggers attenuation to facilitate growth. Regulation steps in when its objectives cannot be achieved by market means. Seen in this light, regulation is not a monolith; rather, its intensity waxes and wanes through market cycles.

**Corporate governance in financial crises**

Financial crises precipitate the incidences of bad corporate governance practices. They are also clarion calls for reforms. Regulatory reforms in Singapore have centred on ensuring effective audit committees and internal controls.

In 1985, Pan-Electric Co Ltd, a company listed on the Singapore Stock Exchange (‘SES’), the predecessor to the securities market of Singapore Exchange (‘SGX’), collapsed, leading to the unprecedented closure of the stock market. The event gave rise to scrutiny of the means to prevent and detect fraud in companies. The Institute of Certified Public Accountants (now known as the Institute of Singapore Chartered Accountants) recommended the mandatory establishment of a system of internal accounting controls and an audit committee for public companies. Neither the UK nor US at that time had a statutory requirement on audit committees. The focus of regulation then lies in designing an equitable framework to enable effective *ex post* decisions to be made. The goal is good corporate governance, which enhances long-term shareholder value through enhancing corporate performance and accountability whilst taking into account the interests of other stakeholders.

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About a decade later, in 1996, irregularities in the financial management of Amcol Holdings Ltd led SES to suspend trading in that company’s shares. The SES swiftly introduced new listing rules to enhance the role of audit committees to review internal investigations into suspected fraud, irregularities, failure of internal controls or breaches of law. In 1998, following consultation with participants, the requirements were organised into a Best Practices Guide to provide guiding principles on corporate governance. The guide provided greater flexibility for listed issuers to adopt a system that best suited their needs.

Reforms may not be driven solely by regulation. At critical times, the Singapore financial industry had coalesced to take action to safeguard its reputation. Another decade later, the global financial crisis hit our shores in 2008. Demonstrating the resolve of the market, the Monetary Authority of Singapore (‘MAS’), the Accounting and Corporate Regulatory Authority (‘ACRA’) and SGX jointly formed an industry-led Audit Committee Guidance Committee, which developed a guidebook to provide practical guidance for audit committees. As financial stress deepened in 2009, SGX stepped up engagement with various stakeholders, including issue managers, issuers, audit professionals and market participants. Issues of veracity and governance became the focus of dialogue among SGX, issuers and auditors. Particular attention was drawn to liquidity, financing or refinancing, and foreign exchange volatility. SGX also urged audit professionals, audit committees and independent directors to scrutinise high-risk areas such as cash balances, accounts receivables and off-balance-sheet items, and conduct additional validations as required.

The prompt responses of boards, audit committees and audit professionals demonstrated the strong institutional framework and culture of corporate governance in Singapore.

Picking up from this experience, listing rules relating to audit and internal controls were further strengthened in 2011. Auditing firms must be registered with an independent audit oversight body. Robust and effective internal controls were also articulated as a continuing listing requirement. Audit committees were called upon to commission an independent audit on internal controls for its assurance. Boards, with the concurrence of audit committees, were required to give an annual statement of opinion on the adequacy of internal controls, addressing financial, operational and compliance risks.

In 2015, in the face of a slowing economy and declining exports and imports, SGX asked boards and, in particular, audit committees, to pay close attention to certain adverse developments that could deplete a company’s cash balances or retained earnings.

Looking ahead
Regulatory emphases on disclosure and controls are the bulwarks against market failures and inefficiencies. Traditionally, governance controls have revolved around audit committees and internal controls. Looking ahead, other corporate actors, such as institutional investors and proxy advisers, may play an increasingly important stewardship role in driving good corporate governance practices.
PART I: OVERVIEW

Chapter 1 The Singapore corporate governance framework
Allen & Gledhill LLP

Chapter 2 S-REITs and corporate governance
Allen & Gledhill LLP

Chapter 3 Governance in financial reporting: ACRA’s Financial Reporting Surveillance Programme
Accounting and Corporate Regulatory Authority

Chapter 4 Public enforcement and corporate governance in Singapore: What does it look like?
OECD

PART II: PRE-LISTING

Chapter 5 Preparing for an initial public offering in Singapore
DBS Bank

Chapter 6 Corporate governance, reputation and shareholder value
Brunswick Group

Chapter 7 What is D&O liability insurance?
Federal Insurance Company, a Chubb Company
Marsh (Singapore) Pte Ltd

PART III: POST-LISTING

Chapter 8 Corporate governance for listed companies
Allen & Gledhill LLP

Chapter 9 Building a robust market with high standards of corporate disclosure
PrimePartners Corporate Finance Pte. Ltd.

Chapter 10 The key to effective risk management and governance
Ernst & Young Advisory Pte Ltd
Allen & Gledhill LLP

Chapter 11 The role of a financial adviser in mergers and acquisitions (‘M&A’)
Credit Suisse (Singapore) Limited

Listing in Singapore: Corporate governance perspectives

Contents
### Contents

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 12</td>
<td>Corporate governance in the context of distress or insolvency</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td>Ernst &amp; Young Solutions LLP, Allen &amp; Gledhill LLP</td>
<td></td>
</tr>
<tr>
<td>Chapter 13</td>
<td>In search of the truly independent director</td>
<td>89</td>
</tr>
<tr>
<td></td>
<td>Singapore Institute of Directors</td>
<td></td>
</tr>
<tr>
<td>Chapter 14</td>
<td>Boardroom dynamics in Singapore</td>
<td>97</td>
</tr>
<tr>
<td></td>
<td>Spencer Stuart</td>
<td></td>
</tr>
<tr>
<td>Chapter 15</td>
<td>Board diversity</td>
<td>103</td>
</tr>
<tr>
<td></td>
<td>Slaughter and May</td>
<td></td>
</tr>
<tr>
<td>Chapter 16</td>
<td>Governance reporting: Adapting your model to stakeholder expectations</td>
<td>107</td>
</tr>
<tr>
<td></td>
<td>Brunswick Group</td>
<td></td>
</tr>
<tr>
<td><strong>PART IV: TRENDING</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**CONTRIBUTOR PROFILES** 109
PART I

Overview

Chapter 1  The Singapore corporate governance framework  3
Chapter 2  S-REITs and corporate governance  11
Chapter 3  Governance in financial reporting: ACRA’s Financial Reporting Surveillance Programme  19
Chapter 4  Public enforcement and corporate governance in Singapore: What does it look like?  25
In the aftermath of the 2008 financial crisis and recent corporate events that have exposed significant shortcomings in corporate governance, global business conditions remain challenging, regulatory changes continue in most countries, and shareholder demands for sustained growth remain high. In this constantly evolving business and regulatory landscape, maintaining a robust and high standard of corporate governance is key to maintaining competitiveness and sustainability for companies and growth for the economy. Most countries in the region continue to adapt and improve their corporate governance frameworks to this end, and Singapore is no exception. A sound and responsive regulatory framework is critical to Singapore’s reputation as a leading and trusted financial hub.

In Singapore, there have been recent initiatives by regulatory authorities, such as the Ministry of Finance (‘MOF’), the Accounting and Corporate Regulatory Authority (‘ACRA’), the Monetary Authority of Singapore (‘MAS’) and the Singapore Exchange (‘SGX’), to review and update various key pieces of legislation and regulations, most notably, the Companies Act, the Securities and Futures Act (‘SFA’), the Listing Manual (‘Listing Manual’) of Singapore Exchange Securities Trading Limited (‘SGX-ST’), and the Code of Corporate Governance (‘Code’).

The Singapore corporate governance regulatory framework comprises a balance of mandatory rules, captured mainly in the Companies Act, the SFA and the Listing Manual for listed companies, and best practice recommendations in the form of the Code issued by the MAS, whereby listed companies are required either to adopt the best practice recommendations in the Code or to disclose and explain instances where they have not done so. This chapter explores the key features of these rules and regulations and how transparency and accountability to shareholders remains one of the key cornerstones of the corporate governance framework in Singapore. Financial institutions such as banks, insurers and financial holding companies have their own sets of corporate governance guidelines issued by the MAS, which is not addressed in this chapter.
Regulatory framework in Singapore: Balance of mandatory rules and best practice recommendations

A. Companies Act

The Companies Act is the principal piece of legislation that applies to all companies (both private and public) incorporated in Singapore and, in some limited instances, to foreign corporations with business operations in Singapore. Companies listed on the SGX-ST are additionally subject to the Listing Manual and to certain provisions of the SFA which will be discussed later in this chapter.

The Companies Act has recently undergone a major overhaul, with wide-ranging changes introduced pursuant to the Companies (Amendment) Act 2014. These changes were to implement more than 200 recommendations submitted by the Steering Committee for the Review of the Companies Act in its report dated June 2011, which were aimed at reducing the regulatory burden on companies, providing for greater business flexibility and generally improving the corporate governance landscape in Singapore. Most of the recommendations were accepted by the MOE. The changes took effect in phases in July 2015 and January 2016.

Shareholder approval

Singapore companies are managed by a board of directors. The Companies Act, however, reserves certain key rights and powers to shareholders by requiring shareholder approval for certain matters.

For example, shareholder approval is required to be obtained for the allotment and issue of new shares by a company (section 161), certain forms of capital reduction (sections 78B and 78C), the disposal of the whole or substantially the whole of the company’s undertaking or property (section 160), providing or improving directors’ emoluments (section 169) and the alteration of a company’s constitution or objects (sections 26 and 33).

Directors’ duties

The duties and responsibilities of directors of Singapore companies arise under common law and statute. Singapore law does not impose an all-embracing code of conduct on directors. In practice, a company’s constitution sets out the ambit of the directors’ powers. The Companies Act supplements these internal constitutional checks and deals with areas in which a company’s constitution may otherwise be silent.

The duties and responsibilities of directors of companies that are listed on the SGX-ST are generally more onerous than those of directors of unlisted companies. For example, certain provisions of the SFA, the Listing Manual and, in certain circumstances, the Singapore Code on Take-overs and Mergers, impose additional duties on directors of listed companies. Directors of listed companies must also have regard to the best practice recommendations of the Code.

Under the Companies Act, some of the main duties of a director are:

- **Duty to act *bona fide* in the best interests of the company:** Section 157(1) of the Companies Act imposes a duty on a director to act honestly and to use reasonable diligence when discharging the duties of his office. The duty to act ‘honestly’ is the statutory equivalent of the duty to act ‘*bona fide*’ or ‘*in good faith*’ at common law. The duty to use reasonable diligence is assessed objectively, namely, whether one has exercised the same degree of care and diligence as a reasonable director found in his position. A breach of this duty will attract both civil and criminal liability, and a director may be liable on conviction to a fine or imprisonment.

- **Duty not to make improper use of position or information:** Section 157(2) of the Companies Act prohibits, among other things, a director from making improper use of his position as a director, or of any information acquired by virtue of his position as such, to gain, directly or indirectly, an advantage for himself or for any other person or to cause detriment to the company.

In the case of a nominee appointed by a nominating shareholder to sit on the board of an investee company, while such a nominee director may owe a duty to his nominating shareholder, this duty must always be subordinated to his principal duty to act in the best interests of the company on whose board he sits.
the board of directors and subject to the overarching consideration that the disclosure is not likely to prejudice the company.

**Duty to avoid conflict of interests:** A director cannot place himself in a position whereby this fiduciary duty to the company conflicts with his own personal interests. Under section 156 of the Companies Act, a director who is interested, whether directly or indirectly, in a transaction with the company, must as soon as practicable disclose the nature of such interest at a board meeting or otherwise in accordance with that section. The duty to disclose conflicts of interest has been extended to apply also to the chief executive officer (‘CEO’) of a company (who is not also a director) pursuant to the recent changes to the Companies Act, as he is the person at the apex of the management of a company.

**Financial statements**

The financial statements of a company are a key component of its communications with shareholders and the investing public. Under the Companies Act, all companies must have their annual financial statements audited unless a statutory exemption applies (for example, if the company is exempt as a small company or a dormant company) and must appoint an auditor for these purposes. The audit process serves to enhance confidence in financial reporting; and the role of an independent auditor, in objectively assessing the company’s financial statements, is crucial to the accuracy and reliability of the financial statements and in uncovering any financial improprieties. There have been recent initiatives by ACRA to impose additional requirements on the auditor’s reports of listed entities whereby, from 2017 onward, the auditor’s reports of listed entities must be more transparent and contain more information on key audit matters with the adoption of enhanced auditor reporting standards in Singapore, to enable investors and other stakeholders to draw deeper insights from the auditor’s reports of listed entities.

Under the Companies Act, directors are required to maintain such accounting and other records as will enable true and fair financial statements to be prepared from time to time, to lay the financial statements (which must be accompanied by the auditor’s report and a directors’ statement containing certain prescribed information) before the shareholders at the annual general meeting, in the case of a listed company to appoint an Audit Committee, and to provide shareholders with copies of the financial statements.

**Shareholders’ rights**

In general, shareholders have a fundamental right to attend, speak and vote at general meetings of the company. The annual general meeting of a company provides a platform and forum for shareholders to interact with the board and management on the company’s performance and business operations and to ask questions on the company’s financial statements.

Under the Companies Act, some of the rights accorded to shareholders include:

- **Right to requisition/call for a general meeting:** Shareholders holding not less than 10 percent of the total number of issued shares of the company (excluding treasury shares) may requisition/call for a meeting of the company at any time, in accordance with the procedures set out in sections 176 or 177 of the Companies Act. Although the default position is typically for the board to convene a shareholders’ meeting and determine the content, shareholders may also invoke these statutory provisions to requisition a general meeting where deemed necessary. Under the section 176 procedures, it is the board, on the requisition of shareholders, who convenes the general meeting and they have charge (and bear the costs) of the proceedings.

- **Right to appoint a proxy:** Generally, every shareholder of a company has a right to attend general meetings and to speak and vote on any resolution before the meeting. Section 181 of the Companies Act permits the shareholder to appoint another person as his proxy to exercise those rights at the meeting in his place. Under section 181, a shareholder (who is not...
a ‘relevant intermediary’) cannot appoint more than two proxies, unless the constitution provides otherwise. A multiple proxies regime was introduced as part of the recent changes to the Companies Act, whereby shareholders who are ‘relevant intermediaries’, such as banks, capital markets services licence holders that provide custodial services for securities and the Central Provident Fund Board, can appoint more than two (that is, multiple) proxies to attend, speak and vote at general meetings. The multiple proxies regime, which took effect on 3 January 2016, seeks to enfranchise beneficial owners holding shares through ‘relevant intermediaries’, who in the past were not able to attend, speak and vote at general meetings due to the limit in the number of proxies.

- **Right to remove a director:** Shareholders ultimately control board appointments. For private companies, the removal of directors is governed by the company’s constitution. For public companies, section 152 of the Companies Act provides that the company may remove a director by ordinary resolution, notwithstanding anything contained in the company’s constitution or in any agreement that may exist with the director.

- **Right to information:** Under the Companies Act, a shareholder has a right to inspect company registers and minutes of general meetings and to be provided with a copy of the company’s financial statements and accompanying documents.

### Protection of minority shareholders’ rights

Given the prevalence of family-owned businesses in Singapore with concentrated shareholding structures, there is a real risk of conflict between the controlling and minority shareholders of a company.

Section 216 of the Companies Act provides for recourse where minority shareholders’ rights are unfairly prejudiced. While the courts may be slow to intervene in the management of the affairs of companies on the ground that minority shareholders participate in a corporate entity knowing that decisions are subject to majority rule, section 216 nevertheless enjoins the courts to examine the conduct of majority shareholders to determine whether they have departed from proper standards of commercial fairness, standards of fair dealing and conditions of fair play. If it is found that the company’s affairs are conducted in such manner that is oppressive to the complainant shareholder(s) or that some resolution of the company is passed that does in fact unfairly discriminate or is otherwise prejudicial to the shareholders, the courts have a wide scope of judicial discretion to do justice and to address unfairness in the affairs of a company.

While the basic premise is that the proper claimant in an action in respect of a wrong done to a company is the company itself, section 216A of the Companies Act allows a minority shareholder seeking redress against a defaulting director (who may represent the majority shareholder) to commence action or arbitration in the name of the company pursuant to a ‘derivative action’ for breach of duty in certain circumstances. Notably, the recent amendments to the Companies Act have extended the application of section 216A to companies listed on the SGX-ST.

### B. Listing Manual and Securities and Futures Act

In addition to the Companies Act, entities listed on the SGX-ST are also subject to continuing obligations in the form of listing rules in the Listing Manual. Such rules include requirements on the manner in which securities are to be offered, regulate transactions with ‘interested persons’ and prescribe the disclosure obligations of listed issuers. The principal function of these rules is to provide a fair, orderly and transparent market for the trading of securities.

The SFA enforces the disclosure requirements of the Listing Manual (which, technically, is not statutory in nature and does not have the force of law *per se*) by making it an offence (under section 203) for a listed entity to intentionally, recklessly or negligently fail to meet its disclosure obligations under the Listing Manual. In addition, the SFA empowers the SGX (under section 25) to apply to the court for a court order to enforce compliance with the listing rules. The SFA also prescribes the statutory prospectus requirements as well as the disclosure obligations of directors, CEOs and substantial shareholders of a listed entity in relation to their interests in securities.

The listings and enforcement framework was further strengthened in 2015 when the SGX...
announced the establishment of three independent Listings Committees (namely, the Listings Advisory Committee, the Listings Disciplinary Committee and the Listings Appeals Committee) as well as amendments to the Listing Manual to empower the SGX-ST to impose a greater range of sanctions, which are commensurate with the severity of the breaches. Listed entities are also required, as part of their continuing listing obligations, to procure undertakings to comply with the listing rules from their directors and executive officers.

The Listing Manual contains several disclosure obligations and shareholder approval requirements that aim to ensure transparency and accountability to shareholders, thereby enhancing shareholders’ protection and promoting better corporate governance. These requirements are discussed below.

**Obligation to disclose material information**

Under Rule 703 of the Listing Manual, a listed entity is required, subject to limited exceptions, to promptly announce any material information known to it concerning itself, or any of its subsidiaries or associated companies, that is necessary to avoid the establishment of a false market in its securities or that would be likely to materially affect the price or value of its securities. A listed issuer is required to disclose material information, via an announcement uploaded on SGXNET, as and when it arises, even if during trading hours (a trading halt would be required in such an event).

While there is no definition as to what constitutes ‘material information’ for these purposes, certain types of information and/or events (non-exhaustive) that may be considered material are set out in Appendix 7.1 to the Listing Manual. These include a joint venture, a merger or acquisition, the borrowing of a significant amount of funds and significant litigation. As a guiding principle, a listed company should always consider whether a reasonable person would expect the information to be disclosed.

**Events requiring immediate announcement**

Rule 704 of the Listing Manual prescribes a list of events that require immediate announcement by a listed entity, regardless of materiality. These events include (non-exhaustively) the appointment or cessation of key officers (such as directors, CEO, Chief Financial Officer (‘CFO’) or Chief Operating Officer (‘COO’)), the acquisition or sale of shares resulting in a company becoming or ceasing to be a subsidiary or an associated company of the listed issuer, or resulting in the listed issuer increasing or reducing its shareholding in a subsidiary or an associated company, the use of treasury shares by a listed issuer and the entry into loan agreements or the issue of debt securities by a listed issuer or any of its subsidiaries that make reference to the shareholding interests of a controlling shareholder or that places restrictions on a change in control of the listed issuer, a breach of which would cause a default significantly affecting the operations of the listed issuer.

**Interested person transactions**

Chapter 2 of the Listing Manual regulates interested person transactions (‘IPTs’). Its purpose is to guard against the risk that interested persons could influence a listed entity, its subsidiaries or associated companies that are considered to be at risk to enter into transactions with interested persons that may adversely affect the interests of the listed entity and its shareholders. An ‘interested person’, in relation to a listed company, means a director, CEO or controlling shareholder (that is, a person who holds directly or indirectly 15 percent or more of the total number of issued shares, excluding treasury shares, of the listed company, or a person who in fact exercises control over a listed company), or an associate of any such director, CEO or controlling shareholder.

Generally, IPTs must be announced and/or approved by shareholders if the value of the IPT, alone or in aggregation with other IPTs conducted with the same interested person during the financial year, reaches or exceeds 3 percent (which triggers the announcement requirement) or 5 percent (which triggers the shareholder approval requirement) of the listed entity’s latest audited consolidated net tangible assets.

In practice, a general mandate may be obtained from shareholders to permit the listed entity to enter into recurrent transactions of a revenue or trading nature, or transactions that are necessary for the listed entity’s daily operations, with its interested persons. A general mandate is subject to annual renewal.

To ensure objectivity, where shareholders are required to approve specific IPTs or a general
mandate, the Listing Manual requires those shareholders who have an interest in the subject matter of the resolution to abstain from voting.

Acquisitions and realisations
Chapter 10 of the Listing Manual regulates acquisitions and realisations by a listed issuer or its subsidiary (which is not listed on the SGX-ST or an approved exchange). Transactions that fall within the purview of Chapter 10 include an option to acquire or dispose of assets but exclude an acquisition or disposal that is in the ordinary course of its business or of a revenue nature.

Transactions are categorised as non-disclosable transactions, disclosable transactions, major transactions, or very substantial acquisition, or reverse takeovers, depending on the relative figures as computed on the bases set out in Rule 1006 (which formulates bases to assess the size of the transaction based on factors such as the net asset value, net profits and consideration for the transaction).

The announcement and shareholder approval requirements depend on the relative size of the transaction as regards the listed issuer. Disclosable transactions have to be immediately announced, and the announcement must contain the specific information prescribed under Chapter 10. Major transactions and very substantial acquisitions or reverse takeovers must, in addition to an immediate announcement, be made subject to shareholder approval.

C. Code of Corporate Governance
The Code was first introduced in Singapore in March 2001 and revised in 2005 and 2012. It provides principles and guidelines to listed companies and their boards with the aim of encouraging a high standard of corporate governance.

Singapore adopts a ‘comply or explain’ approach in respect of the Code. Listed companies are therefore required under the Listing Manual to describe in their annual reports their corporate governance practices with specific references to the principles of the Code; and where they deviate from any guideline, the deviation must be disclosed together with an appropriate explanation.

In October 2015, the SGX-ST announced that it would be reviewing companies’ compliance with the Code, as part of its drive to raise governance standards of listed companies. This follows the introduction of a Disclosure Guidance exposition in January 2015 to help companies comply with key aspects of governance. The review will cover the annual reports of over 550 companies listed on the Mainboard of the SGX-ST released in the 12 months to 30 June 2015.

The Code is divided into four sections: Board Matters, Remuneration Matters, Accountability and Audit, and Shareholder Rights and Responsibilities. A brief outline of each is set out below.

1. Board matters

Conduct of affairs
The board is expected to provide effective leadership, manage and assess risks, review management performances, identify key stakeholders and ensure obligations are met. The board should meet regularly and seek to discharge its duties and responsibilities in the interests of the company.

The board must also consider issues of sustainability and formulate the company’s ethical standards (this acknowledges that companies have obligations to a wider group of stakeholders and not just its shareholders).

Independent directors / Board composition
The Code recognises that independent directors are essential for protecting the overall interests of the company and for providing guidance, supervision as well as checks and balances for effective corporate governance.

An independent director is defined as one who has no relationship with the company, its related corporations, its officers or its 10 percent shareholders that could interfere, or be reasonably perceived to interfere, with the exercise of the director’s independent business judgement with a view to the best interests of the company. The Code sets out examples of relationships or circumstances (non-exhaustive), which would deem a director to be not independent.

To address instances where objectivity may be compromised due to friendship and collegiality with management after long periods of service, the independence of any director who has served on a board beyond nine years from the date of his first appointment is to be subject to particularly rigorous review.
To ensure a strong and independent element on the board, at least one third of the board should comprise independent directors. In certain circumstances – for instance, where the Chairman and CEO are the same person or are immediate family members, or where the Chairman is not an independent director – independent directors should make up at least half of the board. In such situations, the Code further advocates the appointment of a lead independent director, whose role is to be available to shareholders where they have concerns and where contact through the normal channels of the Chairman, the CEO or the CFO has failed to resolve those concerns or is inappropriate.

**Board membership, performance, and access to information**

The Code advocates a formal and transparent process for appointments to the board, and that the search and nomination process should be disclosed to shareholders. All directors should be required to submit themselves for renomination and reappointment at least once every three years.

The Nominating Committee is tasked with deciding whether a director is able to and has been adequately carrying out his or her duties. In Singapore, it is not uncommon for directors to have multiple board representations and where this occurs, the ability of a director to carry out his duties effectively remains a cause for concern. Where directors hold multiple board representations, the Code recommends that the board adopts internal guidelines to address the competing time commitment of directors who serve on multiple boards.

**2. Remuneration matters**

**Disclosure on remuneration**

The board should establish a Remuneration Committee to ensure that the procedures and policies on remuneration matters are fair and transparent. Remuneration policies should be disclosed in the company’s annual report so that investors may obtain a better understanding of the link between remuneration paid to executive directors and key management personnel and performance, so as to achieve greater transparency and discourage irresponsible remuneration practices. The remuneration report should include the following key disclosures: the benefits granted to the directors and key management personnel, the remuneration of each individual director and the CEO on a named basis, the remuneration of at least the top five key management personnel in bands of S$250,000 on a named basis (although full disclosure instead of disclosure in bands is encouraged), the details of employee share schemes, and a description of the performance conditions under incentive schemes.

**3. Accountability and audit**

**Accountability and risk management**

The board is responsible for providing a balanced and understandable assessment of the company’s performance, position and prospects. The management should provide such explanation and information as the board may require in making such an assessment. The board has a duty to ensure that the management maintains a sound system of risk management and internal controls by carrying out annual reviews, commenting on the adequacy and effectiveness of internal controls, or establishing a separate board risk committee.

Rule 719(1) of the Listing Manual separately requires a listed issuer to have a robust and effective system of controls, addressing financial, operational and compliance risks. In addition, under Rule 1207(10) of the Listing Manual, the annual report must contain an opinion of the board, with the concurrence of the Audit Committee, on the adequacy of the internal controls, addressing financial, operational and compliance risks.

**Audit**

Under section 201B of the Companies Act, every listed company must establish an Audit Committee. The functions of the Audit Committee are prescribed in section 201B as well as in the Code. The key functions include reviewing significant financial reporting issues, reviewing and reporting to the board on the adequacy of the company’s internal controls, including financial, operational, compliance and information technology controls, reviewing the effectiveness of the company’s internal audit functions, reviewing the scope and results of the external audit and the independence and objectivity of the external auditors.
4. Shareholder rights and responsibilities

Shareholder rights
The Code sets out the overarching obligation on companies to treat all shareholders fairly and equitably and to recognise, protect and facilitate the exercise of shareholders’ rights, as well as to continually review and update such governance arrangements. To this end, companies should facilitate the exercise of ownership rights by all shareholders and ensure that shareholders have the opportunity to participate effectively in, and vote at, general meetings of shareholders. Under Rule 730A of the Listing Manual, polling of all resolutions proposed at general meetings is mandatory with effect from August 2015.

Communication with shareholders
Companies should actively engage their shareholders. The Code encourages companies to put in place an effective investor relations policy to promote regular, effective and fair communication with shareholders. Companies are also encouraged to have greater shareholder participation at general meetings. An ongoing dialogue and communication between shareholders and the company would be integral in fostering good corporate governance practices.

Conclusion
Corporate governance has become increasingly complex in recent years. Apart from the traditional chain of accountability by companies to shareholders and regulators, we have begun to see the addition of third-party analysts and observers in the corporate governance eco-system, acting as whistle-blowers raining down on companies to expose allegedly errant business practices and/or lapses in corporate governance.

With a renewed spotlight on corporate governance in recent times, there has been an increased emphasis on checks and balances, transparency on issues such as remuneration, accountability to other stakeholders, greater board diversity and independence of directors. Singapore companies need to progress beyond what the law requires to maintain Singapore’s standing as a leading and trusted financial hub. Compliance with prescribed legal rules and regulations is necessary, but companies should go beyond the letter of the law and aim to instil a corporate governance culture within the company that prioritises the values of independence, transparency, professionalism and sustainability as part of the key constructs of a robust corporate governance framework.
S-REITs and corporate governance

The listing of the first Singapore real estate investment trust (‘S-REIT’), CapitaLand Mall Trust, took place in 2002. Since then, the S-REIT market has grown, with the number of listed S-REITs increasing to 35 as of 11 December 2015.¹

The growth of the S-REIT market has been accompanied by continued development and fine-tuning of the S-REIT regulatory regime. This chapter discusses the corporate governance of S-REITs. In October 2014, the Monetary Authority of Singapore (‘MAS’) proposed a host of changes when it issued a consultation paper, ‘Enhancements to the Regulatory Regime Governing REITs and REIT Managers’ (‘2014 Consultation Paper’). After receiving detailed feedback from the industry, the MAS issued its response in July 2015 (‘2015 Response’) and will be implementing a series of changes in the course of 2016 and 2017.² As the 2014 Consultation Paper explained, ‘The proposals in this consultation paper are geared towards fostering stronger governance practices and greater alignment of interests, whilst providing REITs with more operational flexibility to enhance their portfolio to deliver stronger performance’.

What is an S-REIT?

An S-REIT is a collective investment scheme that is intended to provide investors with regular and stable distributions through the ownership of real estate and real-estate-related assets.

A trust, unlike a company, has no separate legal personality, and thus the S-REIT has no legal capacity to transact with others. The S-REIT instead acts through its manager (‘manager’) and its trustee (‘trustee’). The manager manages the S-REIT. It typically carries out investment management, accounting and compliance activities. The units of the S-REIT (‘units’) are issued by the manager. The trustee, which is an independent and professional trust company, holds all of the S-REIT’s assets on behalf and for the benefit of the S-REIT’s unitholders (‘unitholders’) and safeguards the unitholders’ interests.

An S-REIT is constituted by way of a trust deed (‘trust deed’) between the manager and the trustee. The trust deed, which is analogous to a company’s constitution, sets out the roles, powers and obligations of the manager and the trustee.
Regulations involving corporate governance of S-REITs

The key regulations governing the corporate governance of S-REITs are the Code of Corporate Governance (‘CG Code’) (now in its 2012 edition), the Code on Collective Investment Schemes (‘CIS Code’), the Securities and Futures Act (‘SFA’) as well as the Trust Companies Act (‘TCA’).

The CG Code was formulated for listed companies and does not expressly refer to S-REITs. Nevertheless, because S-REITs are listed on the Singapore Exchange Securities Trading Limited (‘SGX-ST’), they must comply with the SGX-ST Listing Manual (‘Listing Manual’). Under Rule 710 of the Listing Manual, if an S-REIT deviates from the CG Code, it must give appropriate explanation in its annual report. As S-REITs are trusts, not companies, the principles of the CG Code would have to be adapted to the S-REIT context, taking into account their spirit and intent as well as the differences between the entities.

In addition, being a collective investment scheme, an S-REIT is regulated under the CIS Code issued by the MAS, in particular Appendix 6 of the CIS Code (‘Property Funds Appendix’).

The manager of an S-REIT is regulated under the SFA. It must hold a capital markets services licence for REIT management issued by the MAS (‘CMS licence’). As such, the manager must comply with the MAS’s requirements for CMS licence-holders, including ensuring that its directors and representatives fulfil various criteria to qualify as fit and proper persons.

The trustee is regulated under the TCA. The TCA requires the trustee to obtain a licence from the MAS to carry on trust business. Conditions of the licence include meeting certain capital requirements, maintaining professional indemnity insurance and paying unclaimed moneys into court.

Fees of the manager

To date, all S-REITs listed on the SGX-ST have an external management model. This means that the ownership of the manager is external to the S-REIT and neither the S-REIT nor its unitholders as a whole own the manager. Typically, the manager is owned by the party that establishes the S-REIT (commonly known as the ‘sponsor’), which is also the party that provides the initial property portfolio to be injected into the S-REIT. In contrast, under an internal management model, the manager would be owned by the S-REIT or unitholders as a whole. The MAS has stated in the 2015 Response that ‘both internally and externally managed REIT structures are allowed in Singapore’.

A key difference between the two models is that under the external management model, the manager receives fees out of the S-REIT’s assets according to a clearly defined and publicly disclosed formula, and the manager remunerates its staff and directors out of those fees. Under the internal management model, the remuneration of the manager’s staff and directors comes directly from the S-REIT’s funds, similar to how a company remunerates its staff and directors.

Under the external management model, the manager receives fees based on a fixed formula. Once the formula is crystallised and announced, there is little room for discretion in the determination of the manager’s fees. In contrast, under an internal management model, decisions on remuneration matters would be made by the manager’s board of directors, similar to how companies determine remuneration matters.

Therefore, an external management model arguably provides a clear and objective model for determining the compensation of persons managing the REIT. That said, there is the risk that the manner in which the fee formula is structured could potentially encourage the manager to abuse the fee structure for its own benefit. As the MAS observed in the 2014 Consultation Paper:

Some commentators have noted that the fee structure adopted by some of the REITs could incentivise the REIT managers to grow the REITs’ assets rather than to focus on maximising returns for unitholders. For instance, in the case where the performance fee is pegged to gross revenue or net property income, the REIT manager may have an incentive to acquire additional properties to increase the REIT’s revenue or net property income. However, the increase in the size of the REIT’s portfolio may not necessarily lead to an increase in the REIT’s distributable income, especially if the acquisitions are accompanied by the REIT taking on additional borrowings.
To address this concern, the MAS amended the Property Funds Appendix to impose the following requirements relating to the manager’s fees:

- Crystallisation of the performance fee should be no more frequent than once a year.
- The performance fee should be linked to an appropriate metric, which takes into account the long-term interest of the S-REIT and its unitholders.
- The performance fee should not be linked to the S-REIT’s gross revenue.

Further, the CIS Code states that the justification for each type of fee payable to the manager should be disclosed. Where performance fees are payable, it is also necessary to disclose the methodology for computing them and the justification of how such methodology takes into account the unitholders’ long-term interest.

These changes by the MAS have struck a balance between protecting unitholders’ interests and providing commercial flexibility to managers in the structuring of fees. The manager’s fees are already disclosed in S-REITs’ prospectuses, with any change to such fees to be approved by 75 percent or more of the votes of unitholders present and voting at a general meeting. The MAS has gone a step further by requiring the disclosure of the justification for each type of fees payable to the manager.

**Interested person transactions involving S-REITs**

Potential conflicts of interests frequently arise in transactions between S-REITs and their sponsors. Typically, the sponsor is a well-established property developer, with the S-REIT’s initial portfolio injected by the sponsor and the manager being a subsidiary of the sponsor. Because of the level of influence that the sponsor may have in the S-REIT through its ownership of the manager and its unitholdings in the S-REIT, there could be potential conflicts of interests in transactions between the S-REIT and the sponsor. These interested person transactions (‘IPTs’) are regulated under the Listing Manual and the Property Funds Appendix.3

**Right of first refusal**

Following the initial injection of properties into the S-REIT, the sponsor may continue to own other properties that fall within the S-REIT’s investment mandate. The availability of such an asset pipeline for the S-REIT is an important component of the growth story of the S-REIT.

To mitigate potential conflicts of interests in this regard, Practice Note 4.1 of the Listing Manual requires the sponsor to grant a right of first refusal (‘ROFR’) to the S-REIT in relation to any disposal of assets owned by the sponsor that would fall within the S-REIT’s investment mandate. Under the terms of the ROFR, the S-REIT should have the first right to acquire these assets, and the ROFR should be valid for so long as the manager remains the S-REIT’s manager, the sponsor’s group (directly or indirectly) owns 15 percent or more of the units and the sponsor’s group (directly or indirectly) owns 15 percent or more of the manager. If the S-REIT declines to acquire an asset offered by the sponsor pursuant to the ROFR, the sponsor may sell the asset to third parties provided that the terms of such sale are not better than those offered to the S-REIT.

**Review and approval of IPTs**

IPTs involving S-REITs have to be reviewed by the audit committee (‘AC’) of the manager and approved by the independent directors of the manager, in the same manner as companies listed on the SGX-ST. Under the Listing Manual, if the IPT’s value (together with any other IPT with the same interested person group in the same financial year) amounts to 3 percent or more of the S-REIT’s latest audited net tangible assets, the manager must announce the IPT, and if the percentage amounts to 5 percent or more of the S-REIT’s latest audited net tangible assets, the manager must obtain unitholders’ approval.

IPTs involving S-REITs are also regulated by the Property Funds Appendix, which further requires two independent valuations to be procured in relation to the real estate asset being acquired or divested, with one of the valuers being commissioned independently by the trustee. The valuations will determine the pricing parameters of the transaction. For any acquisition from the sponsor that requires unitholders’ approval, the price must not be higher than the higher of the two valuations. For any divestment to the sponsor that requires unitholders’ approval, the sale price must not be less than the lower of the two valuations. If unitholders’ approval is not required,
the acquisition price must not be higher than the average of the two valuations, and the sale price must not be less than the average of the two valuations, unless the trustee provides written confirmation that it is of the view that the transaction is on normal commercial terms and not prejudicial to the unitholders’ interests.

S-REITs are expected to grow their asset base and they commonly acquire properties from their sponsors, which provide a ready pipeline of assets for disposal to S-REITs. The enhanced measures concerning IPTs will provide confidence to investors in ensuring that IPTs are conducted on an arm’s length basis.

The 2014 Consultation Paper further noted that the disposal of a property to an interested person ‘could fuel queries as to whether the REIT manager has taken all reasonable steps to obtain the best possible offer’. To address this concern, the Property Funds Appendix now stipulates that in such a case the AC of the manager must provide written confirmation that it has undertaken due process to ensure that the terms of the disposal are generally in line with that which would have been obtained had the asset been sold to a non-interested party. This imposes a higher standard on S-REITs compared with listed companies.

Additionally, where a manager enters into a property management agreement with a property manager connected to the sponsor, the AC must satisfy itself at least once every two to five years (and more frequently if the property manager’s compliance record is assessed to be poor) that the manager has periodically reviewed the property manager’s compliance with the terms of the agreement.

Board requirements

Board appointments

Unlike listed companies, the directors of the manager are typically appointed by the sponsor, not by unitholders. The sponsor is free to appoint directors to the manager’s board, so long as it complies with the applicable legal and regulatory requirements.

Under the CG Code, independent directors should generally make up at least one third of the board, and they should make up at least half of the board where (a) the chairman of the board and the chief executive officer (‘CEO’) are the same person, (b) the chairman and the CEO are immediate family members, (c) the chairman is part of the management team, or (d) the chairman is not an independent director.

To enhance the independence of the manager’s board, the 2015 Response stated that independent directors should also make up at least half of the board if unitholders are not given the right to approve the appointment of the manager’s directors. Also, the MAS will require that the chairman of the board not be an executive director or a person who is a member of the CEO’s immediate family.

Independent directors

The independent directors of listed companies are expected to satisfy the independence requirements under the CG Code. Such requirements also apply to the independent directors of managers. Additionally, as stated in the 2015 Response, an independent director of a manager will have to fulfil the following:

- be independent from any management and business relationship with the manager and the S-REIT;
- be independent from any substantial shareholder of the manager and from any substantial unitholder; and
- has not served on the manager’s board for a continuous period of nine years or longer.

Under these new requirements, the fact that a director has served on the board of the manager for a period of nine years or more would disqualify him from being considered independent. This approach is stricter than that under the CG Code, which permits a director who has served on the board of a company beyond nine years to remain an independent director if his independence has been subject to ‘particularly rigorous review’ and the board explains why he should be considered independent.

Audit committee

Under the CG Code, an AC should comprise only non-executive directors, the majority of
whom (including the AC chairman) should be independent. The MAS has further refined the requirements on the composition of the manager’s AC. Individuals with control or back-office responsibilities in the sponsor’s group can be appointed to the AC, but if so, the AC should comprise at least three other independent directors.

Nominating committee
Under the CG Code, a listed company’s board should establish a nominating committee (‘NC’). The NC’s role is to make recommendations to the board on all board appointments. The NC should comprise at least three directors, the majority of whom, including the NC chairman, should be independent.

In the case of an S-REIT, as the manager itself is not listed, the managers of many S-REITs have previously viewed NCs as unnecessary. However, in the 2014 Consultation Paper, the MAS observed that an NC will strengthen a manager’s process of sourcing for new directors, as the NC will have the responsibility of making informed recommendations to the board on all board appointments. Consequently, the MAS now requires that if the manager does not establish an NC, the S-REIT’s annual report should include a clear explanation for the non-establishment, as well as the criteria and process put in place for selecting new directors and for reviewing the performance of existing directors. These requirements will enhance the transparency of the process for appointing new directors of the manager.

Remuneration committee
The CG Code states that the board of a listed company should establish a remuneration committee (‘RC’). The RC’s purpose is to recommend to the board a general framework of remuneration for the board and key management personnel, and the specific remuneration packages for each director and key management personnel.

As the remuneration of the directors and executive officers of a manager with an external management model are not paid out of the assets of the S-REIT but by the manager out of the fees that it receives, the managers of many S-REITs have previously not considered it necessary to set up RCs.

The 2014 Consultation Paper noted that an RC helps to ensure that there is a formal and transparent procedure for developing policies on executive remuneration and for determining the remuneration packages of individual directors, and that the RC could ensure that the level and structure of remuneration are aligned with unitholders’ long-term interests and the S-REIT’s risk policies, instead of with the sponsor’s group.

The MAS now requires that if the manager does not establish an RC, the S-REIT’s annual report should include a clear explanation for such non-establishment, as well as the process put in place for developing policies on remuneration and determining the remuneration packages for each executive.

Remuneration-related disclosures
Under the CG Code, each company should provide in its annual report ‘clear disclosure of its remuneration policies, level and mix of remuneration, and the procedure for setting remuneration’. Many managers have historically disregarded this principle and explained their non-compliance on the basis that the manager is external to the S-REIT and executive remuneration is borne by the manager itself.

In the 2015 Response, the MAS stated that greater transparency of the managers’ remuneration practices would improve market discipline and the managers’ accountability to unitholders. Hence, the MAS now requires each manager to disclose in the S-REIT’s annual report its remuneration policies, the procedure for setting the remuneration of directors and executive officers and whether the remuneration comprises non-monetary components.

The 2014 Consultation Paper also proposed requiring managers to disclose the remuneration of their directors and CEOs on a named basis and the remuneration of at least the top five key executive officers of the manager, on a named basis, in bands of S$250,000. However, as noted in the 2015 Response, the feedback received from the industry was that such ‘disclosures may result in difficulties with talent retention, and upward-ratcheting of remuneration’. Consequently, the MAS has implemented this proposal on a comply-or-explain basis.

Statutory duty on the manager and its directors
Section 157 of the Companies Act requires that a director shall at all times act honestly and use
reasonable diligence in the discharge of the duties of his office. Under general law, the directors of a company owe fiduciary duties to the company and its shareholders.

In contrast, the directors of a manager would owe fiduciary duties to the manager itself and the manager's shareholders. At the same time, the manager is obliged to act in the best interests of the S-REIT. There may be situations in which the manager's interests conflict with the interests of the S-REIT and its unitholders, thus placing the directors of the manager in an invidious position.

To resolve this conflict, the MAS stated in the 2015 Response that the SFA will be amended to require the manager to act in the best interests of all the unitholders, and to prioritise the interests of all the unitholders as a whole over the manager's own interests and the interests of the manager's shareholders, in the event a conflict of interests arises.

As for directors of the manager, the SFA will be amended to similarly require that a director of the manager take all reasonable steps to ensure that the manager discharges its duties to act in the unitholders' best interests, and that the director prioritise the interests of all unitholders as a whole over the interests of the manager's shareholders, in the event a conflict of interests arises.

The previous amendments would be helpful to directors of managers in making it clear that they are required to prioritise the interests of unitholders above those of the manager and its shareholders. This is another positive step towards improving S-REITs' corporate governance.

Requirement to hold a CMS licence
REIT management is an SFA-regulated activity. S-REIT managers must hold a CMS licence for REIT management issued by the MAS and comply with various stringent conditions set by the MAS.

Application for CMS licence
In assessing the manager's application for a CMS licence, the MAS takes into account factors such as the manager's track record, management expertise, financial soundness, the strength of its internal compliance systems and its ability to meet the minimum financial requirements under the SFA.

Further, the manager's directors, CEO, substantial shareholders and representatives must satisfy the MAS' Guidelines on Fit and Proper Criteria, which require these persons to fulfil criteria such as honesty, integrity and reputation, competence and capability, and financial soundness.

Appointed representatives
Under the CMS licensing regime, REIT management work can be carried out by only representatives of CMS licence-holders. In assessing an application for appointment as a representative, the MAS takes into consideration, among other things, whether the applicant meets the minimum age requirement and whether the applicant satisfies the minimum academic qualification and examination requirements.

Conditions of a CMS licence
The CMS licensing regime imposes stringent conditions on the manager, its directors and its key executive personnel. For instance, the manager must satisfy certain capital requirements and restrictions on changes in its shareholding. The licensing regime reassures unitholders that S-REITs are managed by properly regulated entities. There is no similar licensing requirement for a listed company's management.

Other business interests of the CEO, executive directors and the manager
To further reduce conflicts of interests, the MAS now requires the manager to ensure that its CEO and executive directors do not concurrently hold roles in another entity with competing interests (e.g. a property company). Additionally, to ensure that the manager's CEO and executive directors are fully committed to its operations, the manager should ensure that such individuals are employed full time in the manager's day-to-day operations and do not take up an executive role in another entity. In fact, even before issuing the 2014 Consultation Paper, MAS's practice was to require the CEO to be employed full time by the manager.

Further, according to the 2015 Response, the MAS may consider applications from managers to manage more than one REIT, if they have the necessary expertise and properly mitigate the potential conflicts of interests arising from managing multiple REITs.
Conclusion
The MAS has stated in the 2015 Response that it aims to ‘enhance safeguards for investors and unitholders while facilitating the growth of a vibrant S-REIT market’. In refining the S-REIT regime, a balance will have to be struck to avoid over-regulation and to preserve Singapore’s competitiveness and attractiveness as a REIT hub. The latest enhancements to the S-REIT regime reflect this balanced approach. The MAS has carefully taken into account the feedback from the public and industry participants concerning the 2014 Consultation Paper. The new requirements should have the effect of strengthening the corporate governance of S-REITs, through aligning stakeholders’ incentives, enhancing transparency and mitigating conflicts of interests. It is hoped that these measures will solidify Singapore’s status as a REIT hub.

Endnotes
1. This figure includes all stapled trusts comprising REITs and business trusts listed on the Singapore Exchange Securities Trading Limited.
2. To implement these changes, the MAS issued the revised Code on Collective Investment Schemes, the Notice to all Holders of a Capital Markets Services Licence for REIT Management, and the Guidelines to all Holders of a Capital Markets Services Licence for REIT Management, all of which were effective from 1 January 2016. In addition, the MAS has released draft amendments to the Securities and Futures Act as well as the Securities and Futures (Licensing and Conduct of Business) Regulations.
3. Besides the Listing Manual, ‘interested person transactions’ are also regulated by the Property Funds Appendix, which uses the term ‘interested party transactions’ to describe them.
4. These two requirements will take effect no later than the first annual general meeting of the S-REIT relating to the financial years ending on or after 31 December 2016 and will mean that board composition requirements for S-REIT managers will be more stringent than those for listed companies.
5. See proposed new Regulation 13F of the draft amendments to the Securities and Futures (Licensing and Conduct of Business) Regulations issued following the 2014 MAS Consultation Paper.
6. Under the comply-or-explain basis, if the issuer fails to make the requisite disclosure, it must give an appropriate explanation for such non-disclosure.
The level of trust in the business environment depends critically on reliable financial reporting by companies. Inaccurate reporting by individual companies, if left unchecked, may lead to a financial scandal, which would quickly erode the trust and reputation in our financial centre. This played out most vividly in the financial crisis of 2008 when doubts over the financial health of large investment banks such as Lehman Brothers led to their rapid demise and a crisis of confidence in global markets.

While Singapore has managed to avoid a wide-scale crisis for three decades, it has experienced significant near-misses in recent years. Since 2008, accounting irregularities were discovered in several Singapore-listed Chinese companies, commonly known as S-Chips, which led to their suspension or delisting by the Singapore Exchange (‘SGX’). Fears over systemic financial misreporting prompted investors to become wary of S-Chips altogether as an investment class, leading to depressed valuations even on those with strong business fundamentals. More recently, the jury is still out as to the root causes of the penny stock crash that wiped some S$8 billion off the value of three share counters in 2013.

As the dual regulator of companies and auditors in Singapore, the Accounting and Corporate Regulatory Authority (‘ACRA’) maintains oversight over multiple stakeholders in the financial reporting value chain. Company directors are the first link in this chain, given that they are responsible for supervising the efforts of the company’s financial preparers. These preparers include the chief financial officers, financial controllers and other accountants who collectively form the second link in the chain. The third link in the chain is made up of the company’s auditors, who provide assurance on whether the financial statements comply with the prescribed Accounting Standards. As end users, investors depend on the financial statements for decision-making and form the final link in the chain.

Directors set the tone and level of discipline in financial reporting, through their oversight of financial preparers and their role in selecting the auditors. Their legal obligations are also codified in section 201(2) and 201(5) of the Companies Act administered by ACRA. These provisions require that financial statements presented at the Annual General Meeting be prepared in compliance with the prescribed Accounting Standards in Singapore, as well as present a true and fair view of the profit or loss, and the state of affairs of the company. Failure to comply is an offence, which carries a penalty of up to S$50,000. For aggravated offences committed with the intent to defraud, the maximum penalty is S$100,000 and may include imprisonment of up to
The perceived lack of ownership by preparers was reinforced in a subsequent study in 2014 by the Singapore Management University (‘SMU’) in collaboration with ACRA. The study found that the auditors of some 257 Singapore-listed companies proposed 3,222 adjusting entries worth S$33.9 billion for the FY2013 audits. Most of these entries were the result of factual errors or misstatements made by the preparers, indicating deficiencies in the quality of the financial statements prepared by the companies before audit. This was also consistent with the feedback gleaned from our audit inspections, which indicated that poor quality audits were partly due to poor management accounts, providing the impetus for us to adjust the balance of regulation.

In response, ACRA enlarged the scope of the FRSP in 2014 to review financial statements of listed as well as large unlisted companies with ‘clean’ audit reports. ACRA selects these financial statements using a risk-based approach, with emphasis on listed companies with:

- modified audit reports indicating potential non-compliance with the prescribed Accounting Standards
- significant public interest risk based on factors such as market capitalisation, revenue and asset size, as well as multiple employees, creditors, customers and other stakeholders
- operations that require significant judgment in accounting for their transactions
- a change in listing or trading status (e.g. newly listed, suspended or delisted), as well as a change in key stakeholders, such as controlling shareholders, directors and management.

The FRSP review process is premised on two-way communication between the company and ACRA. When potential non-compliances that may significantly impact the key financial measures used by investors such as revenue, profit and operating cash flow are identified, ACRA will seek clarification by writing to the company’s Board of Directors to request for explanations. Section 31(1) of the Accounting and Corporate Regulatory Authority Act (‘ACRA Act’) (read with section 6(1)(a) of the ACRA Act and the Second Schedule to the ACRA Act) empowers
ACRA to require any person to furnish information or produce any book or document in connection with the review. Directors are given up to 21 calendar days to respond with a written reply for the first inquiry. Directors’ requests for physical meetings to clarify enquiries are usually acceded to.

ACRA reviews the financial statements and formulates the findings in consultation with the Financial Statements Review Committee of the Institute of Singapore Chartered Accountants (‘ISCA-FSRC’), which offers its expert views. The committee comprises more than 30 experienced audit partners in Singapore, with a majority from the Big Four audit firms. Measures were put in place to safeguard the confidentiality and independence of the review and deliberation processes, such as setting up small review groups for discussion. More than 50 small-group discussions were held in 2014 to deliberate on review findings.

ACRA next categorises the findings in order of severity: (1) instance of severe non-compliance, (2) instance of other non-compliance, and (3) areas for improvement. In cases of severe non-compliances that are complex and/or involve significant judgment, ACRA will seek a second expert opinion from its Financial Reporting Technical Advisory Panel (‘FRTAP’). The FRTAP was established to ensure that any serious enforcement decision would not unduly prejudice directors. It has 16 members, comprising senior audit partners, directors, chief financial officers, financial controllers and academics. To hear each case, a review group of five members is drawn from the panel. As a safeguard, each member must declare their independence with respect to the case before the proceedings.

ACRA retains the sole and final discretion on the regulatory outcome of the FRSP, which may lead to one of five outcomes. Of these, three are regulatory sanctions applied in cases of severe non-compliance. The lightest sanction is a warning letter to directors, who must disclose the receipt of the warning letter in future directorship appointments or reappointments for any company listed on SGX. For more egregious cases of non-compliance with adverse impact to the financial statements and/or non-rectification of previous lapses, ACRA may elect to impose the heavier sanction of composition fines, or in the most damaging cases, prosecute the directors, which may potentially lead to imprisonment of up to three years.

The two remaining regulatory outcomes that do not carry any sanction are the issuance of closure letters and advisory letters. ACRA will issue closure letters when ACRA is satisfied with the explanations provided by the directors. Closure letters may include areas for improvement, which directors could consider incorporating into the future year’s financial statements. An advisory letter is issued when there are one or more instances of other non-compliance, requiring the company’s rectification in the future year’s financial statements.

Results of the 2014 FRSP Review

In October 2015, ACRA published the results of the first review cycle under the expanded scope in its inaugural FRSP report. Out of 49 sets of listed companies’ 2013 financial statements reviewed, excluding two ongoing cases, ACRA issued warning letters to directors of four listed companies, due to significant misstatements in key measures used by investors such as revenue, profit or operating cash flows. There were 29 advisory letters issued for other non-compliances, and 12 closure letters. There were no prosecutions undertaken, nor composition fines imposed, during this review cycle.

ACRA was encouraged that many audit committees, particularly those from the larger-cap listed companies, exhibited a strong sense of ownership over their companies’ financial reporting. Enquiries were addressed comprehensively, with clear explanations given on the commercial substance of transactions and their basis for accepting management’s judgments. Directors also reflected a willingness to consider alternative viewpoints and take quick action to correct errors in the financial statements. Specifically, all instances of non-compliance highlighted to the directors before the finalisation of 2014 financial statements have been corrected.

However, there is still room for improvement, particularly in three areas identified as the root causes of non-compliance. The first root cause observed was that some directors did not accord sufficient scrutiny to the financial statements and were unable to discern that the reported
financial information was inconsistent with their understanding of the business. Notably, one listed company reported a negative operating cash flow, even though its directors were aware that the company was profitable and generating a positive operating cash flow. In another case, the listed company accounted for the retail component of a mixed-use property as held for sale, even though its directors were aware of the corporate strategy and business intention to retain it for long-term investment. Such instances of non-compliance could be avoided if the directors had studied the financial statements more rigorously.

A second root cause of non-compliance observed was the over-reliance by directors on accounting teams that may lack competence or that may have exercised insufficient due diligence. Some directors also deferred unreservedly to management’s judgments on critical accounting issues. They did not consult further nor obtain additional accounting advice, even in cases where they were sceptical of judgments made by management. It should be emphasised that directors cannot devolve themselves from the responsibility for proper financial reporting by their accounting teams, given their statutory role to exercise proper oversight over the financial reporting process.

The third root cause of non-compliance observed was that some directors did not challenge management’s judgment when preparing the financial statements, even when the judgments deviated from the generally accepted accounting practices and appeared overly aggressive. In one case, a listed company recognised the entirety of revenue and profits on its construction contracts well before the contracts were substantially completed. In another case, a listed company prematurely consolidated the accounts of a newly acquired profitable subsidiary, even though the decision-making power relating to that subsidiary remained with the seller rather than the company. ACRA also struggled to find sufficient documentary evidence of robust discussion on such judgmental accounting issues.

Additional initiatives
ACRA will continue to step up training and guidance to empower directors in discharging their financial reporting duties. In collaboration with the Singapore Institute of Directors (‘SID’) and ISCA, ACRA has developed the Director Financial Reporting Essentials Course, which aims to equip directors who have limited or no financial background with basic accounting knowledge. Pitched at the directors’ level, the course provides practical tips on how directors can apply rigour in their reviews of financial statements and query management on judgments and estimates. ACRA will extend a subsidy of S$300 to each eligible director attending the course until 31 December 2017. ACRA also engaged over 1,500 directors and company management across various outreach events from May 2014 till December 2015 to raise awareness of directors’ duties in relation to financial statements.

In order not to catch the market unawares, before the start of each review cycle ACRA will publicise the areas of review focus. These areas are updated yearly to take into consideration key findings from recent reviews, changes in the prescribed Accounting Standards, as well as emerging issues under the current market conditions. For instance, in the review cycle of 2015 financial statements, ACRA has drawn attention to the need for directors to consider the impact from reserved matters, which are business decisions requiring unanimous consent from all shareholders as agreed upon in shareholders’ agreements, when assessing whether the company controls an investee. Against the backdrop of a low-growth environment with dynamic foreign currency fluctuations, directors are also advised to pay additional attention to the impairment of long-life assets, the impact from foreign exchange translation and any possible breach of borrowing covenants. ACRA does not restrict the review solely to these focus areas but aims to flag them as areas that warrant greater consideration.

New provisions have also been introduced in the Companies Act that are expected to come into effect by mid-2016, which further enhance ACRA’s power in respect of defective financial statements. Under the new section 202B of the Companies Act, ACRA may apply to court for a declaration that the financial statements do not comply with the Companies Act and/or the prescribed Accounting Standards, and to order directors of the company to take steps to revise the defective financial statements. These powers
are timely as they allow ACRA to intervene to ensure high-quality financial reporting across all companies.

**Conclusion**
Regulatory action can only encourage but cannot guarantee quality financial reporting. Accurate and reliable financial reporting is made possible only through the combined efforts of financial preparers, auditors, investors and regulators, although it bears noting that compliance with the prescribed Accounting Standards remains fundamentally the responsibility of the directors. The success of the FRSP, and of ACRA’s other regulatory programmes, depends heavily on the co-operation of company directors. It is only when directors are aware of and properly equipped to discharge their oversight functions that quality financial reporting, as well as trust in Singapore’s business environment, can be maintained and even improved over time.

**Endnote**
1. ‘Accounting Standards’ refers to the accounting standards issued by the Accounting Standards Council (ASC), for application by companies incorporated in Singapore. They include the Singapore Financial Reporting Standards.
Public enforcement and corporate governance in Singapore: What does it look like?

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Over the past two decades, Asian jurisdictions have introduced and substantially upgraded their laws and regulations, strengthening their corporate governance frameworks. In most instances, the frameworks in these Asian economies are influenced by international standards of corporate governance as outlined in G20/OECD Principles of Corporate Governance (2015) (‘Principles’). Despite these changes, the credibility of corporate governance frameworks to the overall economy ultimately rests on the ability to enforce the rules. Public enforcement includes any means taken by a public authority to foster compliance, ex ante and ex post, with the corporate governance regulations and laws. Inadequate enforcement can often mean that any substantial improvements to the design of regulations or laws fail to realise their anticipated benefits. A well-functioning enforcement system is one that not only provides incentives for regulated companies and appropriate guidelines for public enforcement bodies but also minimises the monitoring costs for those being regulated and the public sector (OECD, 2013).

The first of its kind at a regional level, the OECD-Asian Roundtable on Corporate Governance1 Guide to Public Enforcement and Corporate Governance in Asia (‘Guide’) was endorsed by 14 Asian jurisdictions attending the Roundtable in 2014, including Singapore. The Roundtable’s Reform Priorities in Asia: Taking Corporate Governance to a Higher Level report (2011) identified the need for an adequate regulatory framework and effective enforcement in Asia. A task force was formed of decision-makers in the region in order to review the framework. The resulting Guide provides guidance and good practices to support the authorities in Asia to enhance the effectiveness of regulators and contribute to a culture of compliance by companies, in the interest of protecting investors and creating confidence in markets.

Corporate governance frameworks guiding capital markets in Asia are often characterised by multi-layered and overlapping laws and regulations. For some Asian economies, public institutions such as securities regulators, public prosecutors or company registrars often share responsibilities for enforcing corporate governance laws and regulations. The efficiency of enforcement measures can depend on their cooperation. For other jurisdictions, responsibilities are more centralised. Some public institutions have the power to impose both civil and criminal sanctions against companies, whereas others have only the power to impose one or the other. The bodies
with the authority to monitor, supervise, investigate or impose sanctions on non-state operators can be categorised into (1) ‘front-line’ regulators, which are responsible for ensuring up front that markets are fair, orderly and informed, and (2) statutory regulators whose broader authority allows them to initiate investigations and criminal proceedings. Stock exchanges, as front-line regulators, are given the power to impose civil sanctions ranging from caution letters, private or public reprimands, fines, suspension or delisting among others. Capital market statutory regulators, by contrast – usually the Securities Commission or its equivalent – seek to impose criminal remedies through the judicial process.

Singapore has made substantial changes in the last decade in the area of enforcement. What follows is a brief overview of public enforcement in Singapore, which will first outline the economy’s corporate governance framework, followed by a description of the structure, authority and capacity of Singapore regulators and the adequacy and disclosure of enforcement sanctions. The regulatory structure in Singapore involves multiple enforcement authorities, including:

- Monetary Authority of Singapore (‘MAS’)
- Accounting and Corporate Regulatory Authority (‘ACRA’)
- Commercial Affairs Department (‘CAD’)
- Singapore Exchange (‘SGX’).

It should be noted that since 1 September 2007, MAS and SGX have been empowered to regulate corporate governance for listed companies in Singapore, which they do by requiring companies listed in Singapore to comply with the Code of Corporate Governance under the SGX Listing Rules.

The characteristics of public enforcement in Singapore are described through the prism of the Principles. As stated in the Principles, enforcement plays a critical role in shaping sound corporate governance:

**Annotations to Chapter I.B:** Public authorities should have effective enforcement and sanctioning powers to deter dishonest behaviour and provide for sound corporate governance practices. In addition, enforcement can also be pursued through private action, and the effective balance between public and private enforcement will vary depending upon the specific features of each jurisdiction.

**Effectiveness of the legal framework in Singapore**

Capital markets operate within an environment framed by laws and regulations. Only after analysing the environment of a specific jurisdiction and the potential areas where abuses can take place can one assess to what extent there is adequate public supervision and enforcement. The corporate governance legal and regulatory framework in most jurisdictions is divided into three main pillars, including (a) company law, (b) securities regulations and (c) rules governing the issuance of and trading in equity and debt securities of listed companies. Specific issues of corporate governance can be covered by one or more of these pillars. The corporate governance framework in Singapore, like other Asian economies, is built around these three pillars. At its core, the Companies Act is the primary legislation, based generally on the principles of UK company law, which governs all incorporated companies. In parallel, the SGX Listing Rules set out initial and ongoing requirements that apply to all listed companies, while the Securities and Futures Act is the legislation governing the regulation of activities, including the offer of securities, and institutions in the capital markets. Singapore has a robust corporate governance infrastructure in place. However, as with all global markets, the continued and fast-paced internationalisation of financial markets continues to raise important jurisdictional issues for Singapore authorities.

In addition to the mandatory corporate practices stipulated by specific laws and regulations embodied in these three pillars, jurisdictions have also introduced supplementary codes of corporate governance. These codes provide a degree of corporate transparency, thereby shifting some of the onus for timely and accurate reporting onto private actors. Most codes of corporate governance include requirements whereby private actors must reveal their internal corporate governance practices. The Principles state:

**Annotations to Chapter V, Part A.9:** Companies should report their corporate governance practices, and such disclosure should be mandated as part of the regular reporting. Companies should implement corporate governance principles set, or endorsed, by the regulatory or
listing authority with mandatory reporting on a ‘comply or explain’ or similar basis.

The degree to which companies are bound by a code of corporate governance can swing between mandatory disclosure of corporate practices, mandatory explanations of corporate practice or mandatory compliance with the code. In Singapore, listed companies are required under the SGX Listing Rules to either comply with the principles in the Code of Corporate Governance or explain any deviations in their annual reports. Investor behaviour or reaction to these explanations can be a mechanism keeping companies in line. In Singapore, regulators have provided for a degree of corporate transparency with the Code of Corporate Governance.

The greatest potential for abuse in any corporate governance framework is elevated where the legal and regulatory system allows for, and the market accepts, controlling shareholders to exercise a level of control that does not correspond to the level of risk that they assume as owners. The exercise of control at such a level is done by exploiting the exact legal or regulatory devices, outlined previously. Abuses to minority shareholders can be carried out in various ways, including but not limited to, the extraction of direct benefits via high pay and bonuses for employed family members and associates, inappropriate related or ‘interested party’ transactions, systematic biases in business decisions and a change in the capital structure through special issuance of shares favouring the controlling shareholder (OECD, 2007).

Asian business relationships are frequently characterised by informal and predominantly family- or state-run business groups. As a consequence, of the potential abuses that can materialise in corporate governance frameworks, related party transactions have been cited as a concern for Asian economies, including in Singapore. The perception is that related party transactions in Asian capital markets pose a challenge to the integrity of these markets and must be monitored and curbed (Public Enforcement and Corporate Governance in Asia Guidance and Good Practices, OECD, 2014). Among other challenges for most economies are the processes for disclosure of beneficial ownership or financial information, and the fiduciary duties of directors. The corporate governance framework in Singapore has mechanisms in place for each.

In Singapore, the disclosure of related party transactions, or ‘interested person transactions’, is governed by the Companies Act, the Securities and Futures Act and the SGX Listing Rules. One component of this overlapping protection, for example section 162 of the Companies Act, provides that, subject to certain limited exceptions, a company cannot make a loan to a director of the company or of a company that is deemed to be related to that company. Any breach of this specific provision is a criminal offence punishable with a fine of up to S$20,000 (approximately US$15,000) or imprisonment for a term of up to two years.

Disclosure of beneficial ownership and financial information and the fiduciary duties of directors in Singapore are stipulated within multiple complementary sources, including the Code of Corporate Governance, the Companies Act, the Securities and Futures Act and the SGX Listing Rules. Section 156(6) of the Companies Act states, for example, that every director of a company who holds any office or possesses any property that would directly or indirectly affect his duties as a director has to declare as much at a meeting of the directors. On top of that, Listing Rule 905 requires a corporate issuer to make an immediate announcement of any interested person transaction of a value equal to, or more than, 3 percent of the group’s latest audited net tangible assets. This Rule also requires disclosure of transactions (regardless of transaction value) if the cumulative transactions with that interested person and its associates is above the 3 percent threshold. At first it may appear that with greater overlap in the corporate governance system, these abuses are more likely to be eliminated, but much of the framework’s effectiveness would depend on how various state organs cooperate with each other (Public Enforcement and Corporate Governance in Asia: Guidance and Good Practices, OECD, 2014).

Structure of enforcement bodies

A well-formulated enforcement strategy is one that provides correct incentives to market actors all the time while reducing the overall monitoring costs for the public sector. Effective enforcement requires that the allocation of responsibilities for supervision, implementation and enforcement among different state bodies is clearly defined so
that the competencies of complementary bodies and agencies are respected. Conflicting objectives, for example where the same institution is charged with attracting business and sanctioning violations, can hamper both the effectiveness of that state body and the overall framework.

The Principles state:

**Chapter I.C: The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.**

The structure of how responsibilities for supervision, implementation and enforcement are allocated among different state organisations, the extent of the authority they each are given and how they coordinate with one another are imperative to overall efficacy. The structure of enforcement authorities in Asian economies such as China, India, South Korea, Pakistan, Vietnam or Singapore may be either fragmented or concentrated within a single regulator. There are pros and cons to fragmented and concentrated forms of enforcement authority, and there is no easy one-size-fits-all solution for all jurisdictions. The more fragmented the structure, the greater the need for mechanisms of coordination and cooperation among the different authorities. The most notable benefit of a fragmented enforcement structure is that it may foster specialisation, as each enforcement authority deals with problems within its respective authority. Another advantage is that it provides better checks and balances, as power is not concentrated in the hands of one state body. Defining where the authority of one body ends and another starts, however, is no easy task, and fragmented structures may simultaneously lead to overlapping areas of enforcement and even conflicting requirements imposed on companies. If these relationships cannot be rigidly structured, a more centralised ‘super-regulator’ may be better. There again, an efficiency issue may emerge as a single super-regulator can face capacity problems.

The structure and authority of public enforcement cannot simply be categorised according to either a centralised or fragmented structure, however, but rather on a sliding scale. At one end, the Chinese corporate regulatory structure is largely centralised within the China Securities Regulatory Commission (‘CSRC’), while the fragmented arrangement in South Korea permits the Ministry of Justice (‘MOJ’) to take the broader role of overseeing all corporate governance policy, the Financial Supervisory Service to only supervise and regulate listed companies, and the Fair Trade Commission (‘FTC’) to oversee large business conglomerates. The regulatory structure in Singapore similarly involves multiple enforcement authorities, including the MAS, ACRA, SGX and CAD.

The MAS carries a slightly centralised influence. In its role as regulator of the financial services industry, the MAS issues various instruments backed by Acts, which are statutory laws passed by Parliament. To see the MAS’s evolution into this centralised role, consider that between 2002 and 2012 the requirements for disclosure of substantial shareholdings and notification of change in directors’ interests were found in the Companies Act and the Securities and Futures Act. Regulatory actions (such as warnings or offers of composition) were taken by both the ACRA and MAS against substantial shareholders who failed to notify the company and the SGX of their changes in their shareholdings within the stipulated timeframe. In 2011 and 2012, MAS published a total of 14 and 17 compositions made to offenders for breaches of substantial shareholder requirements on its website, respectively. On 19 November 2012 the disclosure requirements were streamlined and consolidated under Part VII of the SFA, and they are now administered solely by the MAS.

Over the same period of time that corporate governance frameworks were being initiated and reformed in many Asian economies, efforts like these were moving forward to minimise the duplication of regulatory responsibility among various enforcement bodies. In Singapore, the areas of responsibility are increasingly defined by law or subject to protocol arrangements among the agencies. Over time, each of the enforcement agencies in Singapore has bolstered its expertise over specialised areas, and working arrangements among the various state bodies have been established and revised. Meetings are conducted every quarter, which include the participation of the MAS, ACRA, SGX and CAD, and individual protocol arrangements now exist between each of the various bodies. With effect from March 2015, the CAD and the MAS have joint powers to investigate market misconduct offences, allowing...
Authority and independence of Singapore enforcement bodies

Apart from internal government processes, the strength of an economy’s overall public enforcement of corporate governance hinges as much on the authority vested in each of the state organisations, both front-line and statutory regulators. Even if the state agencies cooperate smoothly with one another, enforcement might not be effective if, for example, rights of enforcement reside only with a regulator or company registrar who may not have the right incentives, often due to interfering political forces, or they may be lacking in resources.

Market actors formulate corporate strategy and expectations based on the business environment of any given jurisdiction. Beyond the impact of the existing legal structure, as outlined, corporate environments can be forcefully shaped by the tools that market regulators have been given and the resources at their disposal to support those tools. Whether resources are sufficient depends largely on whether the regulatory sanctions at their disposal are proportionate and dissuasive in the event of non-compliance. The corporate strategy and expectations of non-state operators will shift depending on whether enforcement is weak and delayed or forceful and immediate. The Principles highlight:

Chapter I. E: Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

Corporate regulatory bodies in many Asian jurisdictions may utilise rule-making power at their disposal to mandate certain corporate governance principles and guidelines to ensure compliance. Statutory regulators, in particular, have powers that are usually exercised when there is reason to believe that regulated persons are involved in more serious crimes such as fraud, disclosure breaches such as disclosure of false and misleading financial information, and misappropriation or misuse of company funds in connection with the purchase of securities or fundraising by public companies. With the force of law, the statutory regulators can then seize documents and search premises if needed. In Singapore, the police (including ‘CAD’) has powers to conduct investigations and seek information from any persons. In particular, section 35 of the Criminal Procedure Code gives police officers the power to seize, or prohibit the disposal of or dealing in, any property when an offence is suspected to have been committed. The powers of seizure under section 35 of the CPC can be exercised against both regulated and non-regulated entities.

Some statutory regulators, however, do not have sufficient powers of investigation and must work with the police to conduct investigations. In Singapore, the CAD is a division of the Singapore police force, and it is in charge of investigating a wide spectrum of commercial and financial crimes. Further, the MAS has joint investigative powers with the CAD for market misconduct matters.

The incentives, and by consequence overall authority, of these bodies can be swayed by their political independence, and independence is imperative to securing and maintaining trust in the overall enforcement system. Four indicators ensure that regulators operate independently from political and commercial influence: the source of funding, checks and balances and transparency of the same, the right of legal recourse and appeal by the errant party, and the expertise and independence of the courts and judicial system. The Principles state:

Chapter I, annotations to Principle E: Supervisory, regulatory and enforcement responsibilities should be vested with bodies that are operationally independent and accountable in the exercise of their functions and powers, have adequate powers, proper resources, and the capacity to perform their functions and exercise their powers, including with respect to corporate governance.

The SGX, like Bursa Malaysia and the Stock Exchange of Hong Kong, is publicly listed on its own exchange.

Overall, the authorities in Singapore appear to have been empowered to investigate and undertake public enforcement under the relevant Acts outlined previously. However, when investigations involve a substantial overseas component, including companies that are based overseas but listed in Singapore, authorities may be faced with some
obstacles, such as access to documents and witnesses located in foreign jurisdictions and funds tracing. The exact location of where certain powers have been vested demonstrates how critical the meetings among the Singapore authorities are. For example, although the Companies Act and Securities and Futures Act come under the purview of the ACRA and MAS, respectively, the CAD is empowered to investigate all offences under the Companies Act, as well as all breaches of the Securities and Futures Act.

**Conclusion**

Despite several commendable steps to solidify robust corporate governance enforcement mechanisms, the corporate governance regulators operating in Asian economies such as Singapore are facing an increasingly challenging environment owing to the internationalisation of capital markets. As regulators there are quick to point out, a company might be listed in one jurisdiction while its board, management and operations operate from another jurisdiction, or they might use offshore corporate entities or international holding structures to conceal the identity of controlling beneficial owners. Offenders are able to move money across borders and to execute transactions simultaneously in several jurisdictions.

Consequently, the ability to sanction corporate offenders in Singapore, like many jurisdictions around the world, may become an increasingly difficult task. This increases the importance of creating a robust corporate governance framework, supported by various laws and regulations, and backed by multiple agencies that prohibit private actors from taking advantage of any remaining gaps in the framework. In the future, these problems may increasingly have to be addressed with effective cross-border collaboration.

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PART II

Pre-Listing

Chapter 5  Preparing for an initial public offering in Singapore  33
Chapter 6  Corporate governance, reputation and shareholder value  39
Chapter 7  What is D&O liability insurance?  45
Companies undertaking an initial public offer (‘IPO’), representing their transition from a private company to a public company, are well aware of the substantial demands the process entails. Among others, corporate governance often presents one of the greatest challenges, because the company will establish a brand new relationship with a wider group of public investors and the financial community as a whole.

Singapore has made great strides in corporate governance and is widely recognised as having one of the most robust corporate governance regimes in Asia. Corporate governance reporting has become commonplace for listed companies in Singapore. The responsibility also lies with the industry, companies and authorities to continually improve and uphold the standards.

The corporate governance regime in Singapore takes the form of a Code of Corporate Governance (‘Code’). While the Code does not form part of the Listing Rules of the Singapore Exchange Securities Trading Limited (‘Listing Rules’), listed companies are required by the Listing Rules to observe the principles of the Code and describe their corporate governance practices, and explain any deviations from the Code, in their annual reports. Companies undergoing the public listing process must establish a strong corporate governance framework and be able to ‘comply or explain’ in terms of adherence to the Code. The Code covers areas such as board matters, remuneration, accountability and audit, and communication with shareholders; it complements the Listing Rules, which supervise important governance matters such as related party transactions, periodic reporting and disclosure of material information.

As we emerged from the aftermath of the financial crisis in 2008, we took away many invaluable lessons on how board oversight can be strengthened to function as an effective check and balance. Strong corporate governance is the cornerstone of well-functioning capital markets. Upholding high corporate governance standards requires the continuous efforts of all stakeholders, including the authorities, industry and shareholders. This effort to uphold and continually improve the standards of corporate governance in Singapore is critical to maintaining investor confidence and enhancing Singapore’s reputation as a leading and trusted international financial centre.

This chapter aims to provide an overview of the importance of corporate governance and the approach to establishing a framework for it, as a company prepares for its public listing in Singapore.
Corporate governance in Singapore

Singapore is a well-established premier financial hub for Asia, offering robust economic and financial fundamentals within a sociopolitically stable environment. The Singapore Exchange is Asia’s most international exchange, with more than 40 percent of listed companies on the Singapore Exchange based outside Singapore. As a premier international investment destination, Singapore has taken great strides to be at the forefront in upholding corporate governance standards.

Over the years, the Code has been strengthened by referring to best practices in leading jurisdictions and adapting them in a pragmatic and workable manner. The corporate governance regime in Singapore works on a ‘comply or explain’ basis. Basically, compliance with the Code is not mandatory, but listed companies are required under the Listing Rules to disclose their corporate governance practices and explain any deviations from the Code in their annual reports. In providing explanations for any deviations from the Code, companies should avoid boilerplate statements or bare recitals of the Code provisions that do not provide any meaningful information to investors.

Of particular interest in recent times was the matter of ‘one share, one vote’. The amendments to the Companies Act in 2003 saw the one-share-one-vote restriction lifted for private companies that are subsidiaries of public companies, thereby permitting such companies to issue non-voting or multiple-vote shares. The Singapore Government has now decided to lift this restriction in the Companies Act for public companies in view of global developments and demands of increasingly sophisticated investors. However, it will be some time before this change possibly even makes its way into the Listing Rules, as it is still being evaluated by the Singapore Exchange and the Monetary Authority of Singapore.

Importance of corporate governance in an IPO

The separation of ownership and control is the hallmark of the modern corporation. The objective of creating sustainable and financially sound enterprises that offer long-term value to shareholders will be best served through a constructive relationship between shareholders and the board of the company. Companies with good corporate governance standards are also invariably associated with better performance against their peers who do not perform as well in this aspect.

After an IPO, a public company takes upon itself greater responsibility in terms of transparency and accountability to a significantly larger pool of minority shareholders. It also opens itself up to greater scrutiny by the larger financial community. At IPO, institutional as well as retail investors have the opportunity to commit capital into the company, putting them alongside the existing shareholders. Corporate governance exists as a framework to ensure the alignment of interests between shareholders and the management, thereby establishing a modus operandi to ensure the long-term success of the company.

Corporate governance also provides an avenue for relatively newer companies to provide greater confidence to their shareholders, in lieu of a strong operating track record. Companies should put together a board of directors with considerable strengths and experience in various areas such as audit, risk management, strategy and industry know-how. The board of directors is a representation to uphold standards, interest alignment and shareholder protection down to the minority shareholders.

Strong corporate governance among Singapore-listed companies enhances investors’ confidence in Singapore’s capital markets. It is critical to protecting the interests of the investing public, maintaining confidence in listed companies and enhancing Singapore’s global reputation as a trusted financial centre. In the Asian context, we see a greater number of family-owned enterprises, in which family members retain a majority of the shares after the IPO. These companies can consider putting in place a board with a strong independent element, which is also a requirement prescribed under the Code. In so doing and through communication of the company’s approach, directors can reassure investors that their interests will be protected.

Generally, companies undergoing the IPO process will be put under greater scrutiny from the regulators during the review period, which would require more robust considerations and adherence to the Code. It is also worth noting that, as an international exchange, the Singapore Exchange is home to companies from various jurisdictions.
As such, well-governed firms in emerging markets could mitigate some of investors’ concerns about investing in certain countries. Investors would look positively on firms that outperform governance practices in the market in which they operate.

High standards of governance also evidently work in a company’s favour, and it is the company’s prerogative to demonstrate the level of transparency, disclosure and standards it intends to adopt. By volunteering a comprehensive and robust framework for governance, companies will be able to demonstrate to investors that there are appropriate levels of management oversight and mitigation of risks. The company should also keep in mind that corporate governance is an ongoing process that should be maintained continuously throughout the life of the company as a listed entity. With corporate governance reporting becoming of increasing importance in today’s context, investors will reward companies with a commensurate improvement in valuation.

As an adviser to the company during the IPO process, it is essential that recommendations are made in terms of the best practices companies should adopt from the onset. More often than not, companies view corporate governance requirements as a costly burden and end up leaving it as an afterthought. The ability to clearly communicate corporate governance strategies, adherence to best practices and the assembly of a credible board of directors is often an essential and effective tool in the marketing process for an IPO.

**Best practices: Application of corporate governance**

**Board composition**
The CEO is the primary manager of a company, and the chairman is the head of the board, which oversees management. It is a well-established norm that the chairman and the CEO should in principle be separate persons to facilitate independent decision-making, appropriate checks and balances, and increased accountability. Should the CEO have absolute authority in management and if the CEO also chairs the board, it might be difficult for that board to objectively evaluate the CEO’s decisions and performance. In the event the CEO and the chairman are the same person, the Code requires that the board has a majority and lead independent element, which will serve as a counterbalance for authority.

The Code also advocates a formal and transparent process in the selection and appointment of directors to the board. The board should establish a strong, independent nominating committee, which will be tasked to evaluate and make recommendations relating to director appointments. When a director has multiple board representations, he or she must ensure that sufficient time and attention can be given to the affairs of each company. The company and its advisers should decide if a director is able to and has been adequately carrying out his or her duties as a director of the company, taking into consideration the director’s number of listed company board representations and other principal commitments.

An ever-changing and increasingly competitive business environment has prompted greater consideration in putting together a board with the appropriate skills and knowledge to tackle critical issues in the corporate environment. Fundamentally, all directors must objectively discharge their duties and responsibilities at all times as fiduciaries in the interests of the company and its shareholders.

**Remuneration**
During the IPO process, recruitment of independent directors will be an important consideration. It is essential that the company balances remuneration against peer groups to appropriately reward the independent directors, who will be a new but critical element to the company.

The company is expected to design a remuneration framework that is fair, responsible and aligned to the long-term interests and risk policies of the company. The Code also encourages transparency in the form of clear disclosure of remuneration policies, level and mix to enable investors to understand the link between remuneration paid and performance. The company will need to be able to attract, reward and retain executive directors and senior managers, while balancing the interests of the shareholders and the company.

**Audit and risk**
A public listing is always sought after as it increases the prominence of a company and takes it to the next stage of development as a listed entity. As
much as the value it brings the company is invaluable, the fall from grace can be equally impactful during a debacle. This has been evident as public media has made us aware of numerous cases of mismanagement or lack of oversight in companies. Case in point, it was widely recognised that the financial crisis in 2008 happened because of insufficient attention given to risk management by boards.

In May 2012, the Corporate Governance Council also released its Risk Governance Guidelines for listed boards, following its review of the Code. The Council recommended that the Code specify that the board is responsible for the risk governance of a company and should determine the nature and extent of risks that the company may undertake. The board should ensure that management maintains a sound system of risk management and internal controls. The board should also assess appropriate means to assist it in carrying out its responsibility of overseeing the company’s risk management framework and policies.

A common occurrence, and hence an important consideration, is that of potential conflicts of interest arising from interested person transactions. The company has to establish procedures to deal with conflicts-of-interest issues and adequate internal control systems to ensure that interested person transactions will be undertaken under normal commercial terms. The Audit & Risk Committee has to ensure that it reviews such transactions to guard against interested persons influencing transactions that will adversely affect the interests of the company and shareholders.

Leading up to the IPO, the company should also be aware that it would have to present details of the present and ongoing transactions, as well as past transactions that are material, between themselves and interested persons (based on Chapter 2 of the Listing Rules). Investors will expect full disclosure and it will benefit the company’s position to properly evaluate and adopt a transparent approach to such disclosure.

Given that this is a critical aspect of the board formation, the company together with its advisors should carefully consider candidates to be appointed as members to lead the Audit & Risk Committee.

Shareholder communication
Ownership in a listed company is inevitably represented by a myriad of different stakeholders, each with a different set of interests. The company’s management may at times be aligned with controlling shareholders, while certain more vocal or ‘activist’ shareholders tend to be critical of management’s performance. The board represents an essential conduit in the management of various stakeholders’ interests. Just as good execution and day-to-day management of the company is a top priority, communication to and from the broad base of shareholders is no less critical.

In this aspect, the Code is less prescriptive, recommending active engagement of shareholders through the establishment of an investor relations policy, emphasising regular, effective and fair communication. Leading up to the listing, the management, together with the board, should make efforts to comprehensively spell out the corporate governance framework of the company in the prospectus. Companies are also encouraged to build and communicate the independent element in the board. Certain investors will view this positively, enabling management to benefit from their external, diverse and objective perspectives on issues that are brought before the board.

The marketing stage is very useful to remind investors that the company adopts certain best practices, has established frameworks and is well benchmarked vis-à-vis its peers. Whilst a new company may be lacking in track record, these actions will give investors an assurance that will remain long after the company becomes listed.

Conclusion
An IPO is a transformational event for a company, one that changes its character forever. It marks the beginning of a new life as a listed company, with a broad shareholder base, increased public scrutiny and focus on transparency, disclosure and good governance.

Preparing for this milestone requires a fundamental and lasting change to the corporate mindset and the company’s way of doing things. This is particularly so for family-owned enterprises, which typically have informal governance structures and a tight group of management reporting to key family members. Such companies
must appoint independent directors, formulate corporate governance policies and set up robust internal controls, sufficiently in advance of the planned IPO. This will smooth the transition and allow existing stakeholders to get accustomed to the new regime, which is more transparent and has higher levels of accountability. It is also the responsibility of a good adviser in the IPO process to share best practices on corporate governance and help the company to better prepare and be able to meet the expectations of international investors.

Corporate governance standards in Singapore are continuously evolving. Investors have become more discerning and are setting higher expectations of governance from companies they invest in. Recently, the Singapore Exchange has stepped up scrutiny on companies listed on the Singapore Exchange abiding by the ‘comply or explain’ requirement of the Code. Listed companies are required to include a corporate governance report in their annual reports. Disclosure practices from listed companies have generally improved over the last five years and more companies now have majority independent boards. These are moves in the right direction as Singapore capital markets deepen and mature.

Good corporate governance demonstrates the commitment to rational decision-making, respecting diverse opinions, mitigating risk and acting in the best interests of the company and its shareholders. Companies that set high standards of governance at the onset will benefit from better investor following, potentially higher valuations and will be better placed to ride out any storm.
Corporate governance, reputation and shareholder value

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Introduction
Companies must be seen to meet the rules and regulations of corporate governance and disclosure, but there are different ways of doing so. Some limit themselves to ‘box-ticking’ corporate governance, a primarily perfunctory disclosure-driven approach that respects the letter of corporate governance but not necessarily its spirit; others seek to use corporate governance for a broader purpose: derive value from their relationships to build trust with their core stakeholder groups, notably investors but also regulators, employees and wider civil society, who ultimately determine a business’s licence to operate. Whereas box-ticking corporate governance is acknowledged to be a necessity, it is relationship-driven strategic corporate governance that is the cornerstone of a strong corporate reputation and key to protecting and building long-term shareholder value.

This chapter examines the importance of relationship-driven corporate governance, in particular for investors and other market participants. This chapter also offers suggestions on how, before their IPO, companies can set the foundation for trusted relationships with minority shareholders.

Ticking the box versus taking governance seriously
It is entirely possible that companies may meet the standards of good governance but fail to convince stakeholders to take them seriously. In the rush to comply with the myriad legal and regulatory obligations of being a listed company, directors and management teams may not pause long enough to question why the company’s attitude and record on corporate governance matter to investors and what positive or negative consequence may ensue as a result of a good or bad record in these areas. Companies all too often adopt the stance of disclosing the bare minimum required by the regulatory regime, and fail to understand that only by disclosing sufficient information to properly position and anchor their investment story will they be able to differentiate themselves from their peers.

Corporate reputation and shareholder value
The maturity of the market in Singapore means most corporations recognise that corporate reputation and shareholder value go hand in hand. Reputation is an intangible asset that allows the company to better manage expectations and the needs of various stakeholders, creating differentiation from its competitors and barriers to new entrants. From a stakeholder’s perspective, reputation is the intellectual, emotional and behavioural response defining whether
or not the communications and actions of an organisation resonate with its needs and interests.

One of the things that investors like least is to be taken by surprise. Conversely, investors reward companies that set clear expectations and then deliver on those expectations. When promises are followed by concrete and consistent actions, the market shows approval, whether the company is growing from strength to strength or reacting to setbacks. Managing expectations is vital to the long-term health and success of a company. Investors and analysts prefer companies to under-promise and (slightly) over-deliver.

To protect your reputation amongst your stakeholders and build trust with your investors, it is important to set the foundations for openness and dialogue that go beyond an IPO or regular reporting periods. Open communication about the company's exposure to risks and the policies to mitigate them, disclosure of the board director selection process and consideration of investors’ and other stakeholders’ opinions alongside those of controlling shareholders are all crucial to a company’s reputation. In short, such practices build trust, which in turn provides comfort to investors and stakeholders that the company is well managed and in good hands.

**Corporate governance in Singapore**

All the prerequisites for best-in-class corporate governance standards exist in the Singapore equity market: strong rule of law, notably regulations requiring appropriate checks and balances, underpinned by reporting standards and a disclosure regime that err on the side of caution. However, corporate failures and frauds are inevitable, no matter how strong the framework and, equally inevitably, these lead to concerns about whether the framework is sufficiently robust to reassure investors at a time when competition for equity financing on a global scale is fierce.

The good news is that there are councils, committees and boards that are entrusted with evaluating and reviewing the Singapore Exchange (SGX) framework to ensure consistency with global best practice while accommodating the characteristics of the local market, for instance, the new Listings Advisory Committee (LAC), Listings Disciplinary Committee (LDC) and Listings Appeals Committee (LApC) which took effect in October 2015. The reality is that no matter how rigorous the governance regime, there will always be non-compliant companies that make the headlines as did Enron in the US and Sino-Forest in Canada. Singapore has not been immune to such challenges.

In 2009, news of accounting issues at a dozen or so Chinese companies listed on the SGX made front-page news and sent the market into a panic. Seven years on, there has been little progress towards a resolution and many investors remain holding shares that have been suspended since 2009. This legacy issue continues to hurt sentiment. Global investors evaluating the risks and rewards of the ownership of similar companies on SGX will not even begin to look at companies that are far from best practice. For them, the risks are just too high.

Four years later, in October 2013, a sudden and substantial drop in the share prices of three penny stocks – Asiasons Capital, Blumont Group and LionGold Corp – which had previously traded at dizzying highs, stunned the market and wiped out billions of dollars in market value. Online investment forums were filled with discussions on the perceived weakness of corporate governance standards and the lack of transparency, as well as possible conflict of interest given the dual role that the SGX plays as market regulator and a profit-making business. Shareholders became impatient and irritable at the companies’ lack of communication and transparency. More than two years on, these three companies are still trading significantly below their peak and there has been no credible explanation of exactly what happened.

The experiences of 2009 and 2013 demonstrate the value that investors attach to good governance and the frustration they can feel as owners with limited influence over the day-to-day operations of their portfolio companies. Studies by McKinsey & Company have shown that an overwhelming majority of investors are prepared to pay a premium of roughly 15 to 30 percent for companies exhibiting high governance standards. But the standards of behaviour and commitment that are required to command a corporate governance premium go far beyond what regulators require and what a box-ticking approach delivers. At the same time, investor support has never been so valuable to listed companies.
Why is investor support important?

Fair valuation

The primary reason companies list their shares is to access capital markets. The valuation and rating of the company’s shares in turn determine the company’s ability to access debt and equity capital and the price at which it can do so, be it to fund mergers and acquisitions, invest in growth and capital expenditure or provide working capital. If the company’s share price fails fully and reliably to reflect the underlying value of the business and its prospects, the company’s access to capital becomes limited and is more costly.

A listed company wanting to minimise its cost of capital will therefore need to ensure investors:

1. are confident they understand the underlying business well;
2. know they will be informed of developments impacting business performance in a timely manner; and
3. trust the company to guide expectations of future performance effectively.

Trust is not built overnight but earned over a period of time with the right information, shared in a timely and accurate manner. As Warren Buffet says, it takes 20 years to build a reputation but only five minutes to destroy it. A healthy relationship between a public company and its shareholders is necessary for the value of the company to be properly understood by the market and reflected in its valuation. Conversely, companies that do not commit to high standards of investor communication and engagement will not be given the valuations their underlying business deserves and will pay the price through more limited and costly access to capital.

Share price support

In today’s fast-changing market and business landscape, companies are often susceptible to market forces that are not entirely within their control. A market sell-off driven by news of an industry-related issue, a slowdown in forecast economic growth, or weak economic data coming out of the US, China or Europe are all external factors that could affect share price performance. To counter such volatility, having a healthy balance of different types of investors in a company’s shareholder register lends support to the trading of its stock. Support from long-term funds that are less concerned by mid-term volatility or relationships with key investors and equity analysts who understand the underlying value of the company will help ensure that valuations are preserved and protected, minimising external impact on share price.

Leading by example

Every business competes for share of voice, or a proportion of the total conversation, with its peers in its sector. The best way to increase share of voice is to disclose information to investors honestly and openly, provide an avenue for dialogue with shareholders and engage regularly through webcasts, results briefings, capital markets days, annual general meetings, announcements and updates about the latest corporate developments. Appointing competent independent board directors to look after shareholder interests, and ensure the company acts in ways that build shareholder value, goes a long way towards building a trust structure that can withstand the volatilities of the market.

This is not merely an opinion; the investment community has articulated this to Brunswick Group many times over the years. In the most recent annual survey of chief investment officers and senior investment managers, in which Brunswick Group canvassed the opinion of investors who manage approximately US$80 billion worth of assets regionally (Source: IPREO), investors repeatedly brought up corporate governance as a central criterion for judging and evaluating companies. Investors often remind us that corporate governance is a strategic issue, not an exercise in compliance.

‘Corporate governance is tremendously important to us as long-term, engaged owners of companies. It is the first hurdle that companies need to clear in order to be considered for investment – is this company being managed in the interests of all shareholders, or just a small subset of shareholders? Will the spoils be shared equally, or expropriated by insiders? And, are management suitably aligned so as to drive the long-term growth of the company.’

David Smith, Head of Corporate Governance, Aberdeen Asset Management Asia Limited
The investment world is changing
As equity markets mature, individual investors become better informed and more sophisticated in their understanding of the mechanics of the market and the workings of the companies which they are invested in. Low confidence amongst institutional investors reeling from scores of headline corporate stories has prompted investors to demand greater involvement in the way companies run their businesses, elect members to their boards, determine remuneration and draw up strategies for future growth. In recent times, several long-term investors, including mutual funds and pension funds, have been taking on a more active approach to managing their portfolio. Following the global financial crisis of 2009, regulators in a number of jurisdictions actively promote active investment, including in the UK, which in 2010 introduced the UK Stewardship Code that aims to encourage institutional investors to engage with the boards of their portfolio companies on corporate governance matters. Plans for a similar code are currently under discussion in Singapore.

Not to be confused with shareholder activists, more traditional institutional investors with an equity interest in a company will engage in discussion and lobby the board for change if they are dissatisfied with corporate performance or corporate governance practices. This tactic is increasingly employed by traditional mutual funds, irrespective of whether they adopt a passive or active investment strategy, as a means to protect their existing investments.

Ultimately, strong investor support elevates a company’s ability to compete, grow, tap capital markets, move into indices, attract the best customers and partners, and recruit and retain talented staff. In contrast, poor investor support can manifest itself through speculative short-selling and volatility in the company’s stock. There is no question that companies are less vulnerable to short-seller attacks when they have taken the time to build trusted relationships with investors in advance. An example of this is the support Temasek provided to then SGX-listed Olam International through the onslaught by short-seller Muddy Waters.

The extremes of short-seller attacks aside, many listed companies that appear to be complying with the Code of Corporate Governance in their disclosures under the Singapore Listing Rules nevertheless develop a reputation for disregarding the Code in spirit, which holds back their valuation potential.

Setting the foundation
Companies should adopt best-practice corporate governance even before listing. The time before the IPO should be used to set the foundations for how a company is going to communicate with the investment community. The company should learn as much as possible about investing audiences’ motivations, in advance, which will better prepare them for conversations with these investors when they embark on their IPO roadshows.

A number of best practices are key to establishing a good record on corporate governance, which in turn supports a company’s reputation, valuation and future ability to access capital.

The following are guidelines on how to start setting strong foundations:

1. **Well-written IPO prospectus**: A well-written prospectus is invaluable because it sets the tone for the company’s life as a publicly listed firm, and is a cornerstone document for the investment community. The company should learn as much as possible about investing audiences’ motivations, in advance, which will better prepare them for conversations with these investors when they embark on their IPO roadshows.

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that this document is written by someone who understands the company and its industry, rather than one written solely by lawyers and investment bankers. It should also detail board committee structures, recruitment and appointment policies and other corporate governance standards that will be followed after the IPO. Furthermore, a well-written prospectus sends the important message that your company is committed to best-in-class investor relations and market communications.

2. **Competitive governance framework:** Companies should review the corporate governance practices of peers and compare them to best practice listed company standards to ensure governance that is both strong and competitive. A company should begin to align its story and internal governance practices, such as the proportion of independent non-executive directors on the board and its director selection criteria, committee structure, disclosure policy, whistle-blower protection, and board evaluation procedures, to those best practices.

3. **Pre-IPO investor targeting:** Companies should think strategically about the investors that would be interested in their company, start to build a profile of these institutions and create a shareholder wish list to be cross-checked with those of the investment banks. It is important to take time to think about and understand potential investors and how the corporate story will resonate with them.

4. **Commitment to engagement:** Good companies make an open commitment to communicate transparently about executive and board appointments, whether or not it is a regulatory obligation. They also plan regular roadshows, attend strategically important conferences and make plans to engage different sets of investors frequently. The Chief Executive Officer (‘CEO’), Chief Financial Officer (‘CFO’), Chairman and independent non-executive directors must devote time to interacting with minority shareholders, preferably apart from the annual general meetings.

5. **Attention to board composition:** In Singapore, at least one third of the directors on the board must be independent non-executive directors (‘INEDs’). In addition, INED make-up of the board increases to at least half if the roles of Chairman and CEO are shared by the same person or family, or if the Chairman is not independent or part of the management team. As well as ensuring an appropriate balance between independent and non-independent directors, it is also important to demonstrate a diversity of skills, experience, gender and knowledge. Companies should strive to demonstrate that they take director nomination and board composition seriously by being transparent in the selection process rather than doing the bare minimum to meet the requirement.

6. **Consider cornerstone investors with caution:** Cornerstone investors are a key feature of some IPOs in Singapore, which creates a different trading dynamic post listing. An IPO that predominantly features cornerstones can have a negative appeal to large traditionally longer-term investors who need significant allocation and liquidity to own and trade in a stock. If a company chooses to go down the cornerstone route, it needs to manage carefully a number of issues, including stock overhang and the potential of a sell-off post expiration of the moratorium or lock-up.

**Hypothetical case studies of good corporate governance and effect on reputation**

**Clear succession planning**
A family-owned conglomerate still run by its patriarch discloses its succession plan and board member appointment process in the public domain, not only dividing assets clearly amongst children but also announcing that any successor will be chosen on merit. A board diversity policy is clearly articulated at the same time.

Clear succession planning removes doubt and uncertainty and allows time for investors to get to know the successor before he or she takes over, even if the successor is a family member. Share price remains strong, and analyst and media coverage is positive.

**Managing expectations well**
A company explains in detail to analysts and investors that it is likely to miss targets in its previously disclosed three-year plan – before the negative results are announced.

When expectations are successfully managed, analysts are able to forecast accurately and investors
are not surprised, generating goodwill. Share price rises slightly as the market feels that the worst is over.

**Apologising when appropriate**
A company that discovers its joint venture partner has covered up a food safety issue comes out immediately and publicly to apologise and recall the product. Apologising when appropriate generates respect and sympathy; it also limits damage. Investors believe the company has the situation under control and is not hiding anything.

**Listening to investors**
A company that is concerned about the gap between net asset value and share price engages a third party to probe investor opinion and find out how it is being valued. Shareholders appreciate it when a company listens to their views, and they are more likely to give frank feedback when they feel their voice counts. Their suggestion to implement a share buy-back programme is shared with the company, which takes the advice to heart and announces such a programme. The share price rallies.

**Disclosure of price-sensitive information**
A company realises that it has lost money on a complicated financial instrument. The full board of directors is informed right away, and the company promptly issues a statement. Despite a short-term drop in share price, management is respected for coming forward with bad news.

**Hypothetical examples of poor corporate governance and effect on reputation**

**Minimum public float and minimum independence on the board of directors**
A subsidiary is floated with a minimum public float percentage and a minimum number of INEDs but is unwilling to discuss this issue directly.

An appearance of disregard for minority interests is immediately formed. Investors decline to buy into the IPO. Liquidity suffers.

**Informal selection process for directors**
A company CEO blatantly ignores the nominating committee’s oversight of board director nominating protocol and promises a position to a close friend and golfing buddy without using a search firm or any formal process. Rumours float around town about the clubby nature of appointments in this company. Media and stock commentators publish unfavourable gossip.

**Conflict of interest**
A parent company intervenes on behalf of a listed subsidiary in loan financing negotiations. Any hint of a conflict of interest is kept private, and investors only find out months later in a regulatory filing that this has happened. Hedge fund investors quietly build up a short position against the company. When asked by industry colleagues, they voice their negative opinions about the company’s corporate governance.

**Selective disclosure**
A newly public company holds private meetings with inquisitive investors and answers their questions openly, but it fails to disclose the information to others. An analyst publishes the remarks, and a media firestorm results, making the CFO look bad and irritating investors who were out of the loop, yet the company stays silent.

**Static corporate website after listing**
After a company is first listed, it fails to update or change its website for six months, posting only those shareholder notices required under the listing rules or by law. Investors and media cannot get up-to-date information, and the overall impression is one of non-transparency and arrogance.
D&O insurance, or management liability insurance, is a policy that provides indemnity to insured persons (in their capacity as directors and officers of a company) for their personal liability to pay damages to a third party, resulting from a breach of their duties in the course of their managing the affairs of the company. The policy is typically activated when a claim (seeking remedy or damages) is made against the director or officer and subsequently reported during the policy period. Such D&O policies are generally purchased and renewable on an annual basis.

The D&O policy generally operates on the basis of two operative clauses, typically referred to as ‘Side A’ and ‘Side B’.

‘Side A’, or ‘D&O liability’, clause covers the directors and officers personally in the event the company is not permitted by law to indemnify the insured individuals.

‘Side B’, or ‘company reimbursement’, clause provides reimbursement where the company indemnifies the director as permitted by law.

Who are insured persons: directors and officers

Persons who are considered insureds under the D&O policy would usually include all past, present or future directors, officers and, generally speaking, persons employed in an executive, management or supervisory position. Not all policies define the terms ‘directors’ or ‘officers’, but it is accepted practice to consider directors as natural persons occupying the position of director of a company by whatever name the position is called. Indeed, the test is one of function, not title. It may also include employees in employment-related claims as well as in instances where they are co-defendants in a claim against directors and officers. In an amendment to the Companies Act which took effect on 3 January 2016, a formal definition for ‘chief executive officer’ (‘CEO’) has for the first time since the inception of the Companies Act been introduced. The amendment primarily defines the CEO by way of his or her executive role in the management of the company. Post amendment, CEOs of non-listed Singapore companies are required to maintain certain levels of disclosure with respect to their shareholding interests of the companies in which they are employed as CEO. Prior to the amendment, CEOs of Singapore listed companies were already required by the Securities and Futures Act to disclose their shareholding interests. With effect from 3 January 2016, a company has to maintain a register of the CEO’s shareholdings.
What protection does D&O liability insurance provide?

Singapore companies purchase and maintain D&O insurance for their directors and officers in relation to their liability to the company and third parties in respect of any negligence, default, breach of duty or breach of trust in relation to the company (except for fraud, which is against public policy to be insurable). It is actually a very broad policy that pays for not only damages for directors who are found guilty of liability but also out-of-court settlements, and at the early instance of defence costs against allegations of misconduct, regardless of their frivolity.

Indeed, good market-standard D&O insurance presumes innocence of the insured person until he or she is proven guilty of the allegation of misconduct; hence defence costs are advanced on behalf of the insured persons for any civil or criminal proceedings in respect of any negligence, default, breach of duty or breach of trust (including fraud).

When can a company indemnify directors and officers?

Historically, the Companies Act had the effect of rendering void any provision, whether in the company’s constitution or in any contract, exempting any director or officer of the company from or indemnifying him or her against any liability for negligence, default, breach of duty or breach of trust. This caused discomfort amongst many directors who felt that they were not protected against their actions committed on behalf of the company, despite their good intentions, except in limited circumstances, where they could apply to the court for relief from liability under section 391 of the Companies Act.

The opacity of the Companies Act with regard to the enforceability of D&O insurance led to the phenomenon where insurers would issue two separate policies, one to the directors and the other to the company, with the bulk of the premium allocated to the company. Thankfully for directors, this inconvenient state of affairs was addressed when the Companies Act was amended to expressly permit a company to lawfully take up D&O insurance for their directors and officers. This provision is now found in section 172A of the Companies Act. Further, with effect from 3 January 2016 a new section 172B has been introduced which allows a company to, if appropriate, indemnify a director or officer against liability incurred by them in respect of third parties, except for certain specified liabilities.

Typical exclusions in D&O policies

Certain liabilities that are often excluded in D&O policies include the following:

- claims or circumstances (which are likely to give rise to a claim) that have already been notified under a prior policy
- claims relating to lawsuits, demands or administrative proceedings that were pending orders, or judgments entered against an insured prior to the inception of the policy
- claims arising out of the gaining of any personal profit, remuneration or advantage to which the insured person was not legally entitled
- claims arising out of any deliberately fraudulent act or omission or any wilful violation or breach of any law, regulation or by-law anywhere in the world (however, there typically would be coverage for defence costs until judgment against the insured person is handed down)
- claims for profits made from the purchase of or sale by the insured person of the company’s securities
- clean-up costs arising out of a pollution event
- claims arising out of any professional services rendered by the insured person or a failure to render professional services by the insured person
- claims for personal injury, bodily injury, sickness, death of any person or damage to or destruction of any tangible property
- claims for bodily injury or property damage arising out of the failure of any product design or manufacture
- claims brought by or on behalf of any other insured person or the company other than:
  - an employment practice claim
  - any derivative action brought on behalf of the company and which is brought and maintained without the solicitation by, or the active participation, intervention or assistance of the company
  - any claim brought by a past insured director or officer of the company
  - any claim brought by an external administrator on behalf of the company
any claim by an insured person for contribution or indemnity for another claim that would be otherwise covered
• claims brought by a majority shareholder directly or beneficially owning 15% of more of the common stock of the company
• claims arising out of future public offering of stock (‘IPO’). This can be written back by way of an underwriting of the prospectus and then carving back cover for the specific IPO
• claims for intellectual property infringement.

Potential risk exposures arising out of an IPO
In recent years, the purchase of a separate prospectus liability policy (Public Offering of Securities Insurance Policy, or ‘POSI’) to cover the disclosure liability resulting from an IPO, as opposed to including it under the company’s annual D&O policy, has become more commonplace amongst companies. The main reason for this is to ring-fence the attendant disclosure risks from the specific IPO and to allow the D&O policy to respond to the day-to-day management liability of the directors and officers. Besides, the structure of the POSI policy is often one where a policy is put in place at a one-time cost for a period of up to seven years (covering in general the principal limitation period liability for claims arising out of the issue of the prospectus). This allows the cost of the policy to be amortised over the period of the policy and offset against the proceeds of the offering. As such, the cost of the POSI can be seen as a one-time transaction cost arising out of the IPO event.

The POSI would typically not only afford cover to the directors and officers of the company but also extend to the liability of the issuer, selling shareholder and applicable employees. Liabilities may be incurred if the prospectus contains errors or omissions that are relied upon by investors in making their decision to purchase the company’s securities. Importantly, the POSI policy addresses the regulatory risk that companies increasingly find themselves facing in any capital raising exercise, as due care must be taken to comply with all relevant laws and listing regulations, which present a higher level of complication, if simultaneous offerings in more than one exchange take place. In addition, companies and key stakeholders in the capital raising would want to have the peace of mind of knowing that investor claims for disclosure liability may be indemnified by the POSI.

Common risk exposures arising out of an IPO that may be insurable under a POSI include:
• investor action alleging misstatements or failure to make proper disclosures in the prospectus, resulting in wrong investment decisions
• legal representation expenses arising out of regulatory investigations
• crisis management expenses
• claims for misrepresentation in the lead-up to the IPO (e.g. roadshows)
• shareholder derivative actions
• civil fines and penalties.

Amendments to the Singapore Companies Act
Recent amendments have been made to the Singapore Companies Act, and the changes have been implemented in two phases, the first being effective 1 July 2015 and the second being effective 3 January 2016.

By and large, the aim of the amendments to the Companies Act is to: reduce the regulatory burden on companies, making it easier for them to do business in Singapore; promote greater business flexibility; and improve the corporate governance landscape, ensuring greater accountability and transparency.

Enhanced protections for directors have been introduced. These amendments include:
• new sections 172, 172A and 172B, which allow a company to indemnify its officers against third-party liability. The new section 172A is similar to the pre-amendment section 172(2)(a) and allows a company to purchase insurance against liability for its officers
• new sections 163A and 163B, which allow a company to indemnify its directors against potential liability
• new sections 168(1A) and 168(1B), which allow for compensation for termination of employment to be paid to an executive director without shareholder approval, subject to certain terms and conditions.

The amendments to the Companies Act also bring out greater clarity on the roles and duties of directors as well as on the procedure for the appointment and removal of directors. This would include amendments such as those made...
to section 157A(1) in respect of the supervisory role of directors, those made to section 157(2) in respect of directors’ fiduciary duties, and new sections 145(4A), 145(4B) and 152(9) relating to the process of a director’s resignation and the removal of a director of a private company via ordinary resolution.

Certain restrictions that are no longer deemed necessary have been removed, such as the removal of the age restriction of 70 years for directors of public companies and their subsidiaries as well as the relaxed position under section 158 in which the board of directors may allow the disclosure of company information by nominee directors, provided that there is no prejudice caused to the company.

Finally, certain provisions that promote good corporate governance have been enhanced. For example, the new section 155A provides for a five-year disqualification period from acting as a director or taking part in the management of a company if such a person was a director in at least three companies that were struck off by the Registrar of Companies within a five-year period.

Emerging risks for directors and officers
 Increase in regulatory action

Regulatory risks will continue to be one of the greatest exposures for directors and officers in 2016 and beyond.

The global financial crisis of 2008 created a pendulum shift in litigation trends in Asia. The region, including Singapore, has witnessed greater financial market supervision and cross-border regulatory cooperation. As a result, there is increased worldwide regulatory scrutiny, not just from the domestic regulators but also as a result of global legislation, such as the US Dodd-Frank Wall Street Reform and Consumer Protection Act, the Foreign Account Tax Compliance Act (FATCA) and Foreign Corrupt Practices Act, the EU’s Alternative Investment Fund Managers Directive (AIFMD), and the UK Bribery Act. Regulators have become more vigilant and broad enforcement activity is occurring across all industries under existing laws to prevent improper business practices, anti-competitive practices and health and safety violations. Resources are being added to regulatory bodies with the objective of pushing for greater transparency and making directors and officers more accountable for their actions. As a result, there has been a steady increase in regulatory actions against corporations and, more recently, as well as against individual directors and officers. Regulators are becoming more committed to identifying risky conduct and taking enforcement action to reduce crime and misconduct in our markets. In fact, practices once considered standard are also being investigated and reclassified as improper or illegal. Settlements are getting larger, and multiple jurisdictions and multiple law firms are causing defendants’ legal expenses to escalate.

Cyber security: A D&O liability issue too

Cyber security is becoming an increasingly important topic for companies and their shareholders for a number of reasons: (1) global cyber-crime is increasing; (2) there is heightened media attention towards cyber breaches; (3) there are significant risks associated with Internet and social networking platforms; and (4) privacy laws and regulations are evolving and creating new legal exposures.

From exposures such as disgruntled employees to hacktivists and complex supply chain risks in which control is key, the potential for cyber failure can be huge. Hackers have now even turned their gaze onto SMEs, as they are seen as easy targets.

Data breaches can have a significant impact on directors and officers who are vulnerable to civil suits (including class actions) as well as regulatory investigations. Allegations can range from breach of privacy or secrecy legislation and corporate regulations, to allegations of misleading or deceptive conduct (e.g. not adhering to the company's own privacy policy), failure to promptly notify customers, failure to implement controls to detect and prevent a data breach, and allegations that directors and officers violated securities laws or notification requirements by failing to disclose material facts about breaches that could lead to a stock price decline.

Boards that fail to address cyber threats risk loss of income, loss of business reputation, and potentially loss of their position. Regulators and shareholders will hold management accountable for poor risk management and poor cyber governance.

Climate change

Climate change is an emerging risk that requires long-term planning from a corporate governance
perspective. Exposures include crisis preparedness and consequent reputational risk, increased shareholder and investor activism, as well as regulatory risk in a complex and fast-evolving legislative environment. A variety of regulations now require disclosure of a corporation’s climate-related risks and governance. This demonstrates that the seeds for future growth of government and shareholder actions against organisations are being sown. Furthermore, climate-change-related investments are capital intensive and long term. All this raises concerns around the long-term viability and alignment with shareholder expectations.

Directors and officers need to recognise their responsibilities in this regard. They need to accept that good management of environmental governance is crucial for the protection and enhancement of shareholder value of the company.

Endnotes
1. Climate Governance in Asia: Considerations for Corporate Directors and Officers (An ASrIA and Chubb 2015 Publication)

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PART III

Post-Listing

Chapter 8  Corporate governance for listed companies 53
Chapter 9  Building a robust market with high standards of corporate disclosure 59
Chapter 10 The key to effective risk management and governance 65
Chapter 11 The role of a financial adviser in mergers and acquisitions (‘M&A’) 73
Chapter 12 Corporate governance in the context of distress or insolvency 79
Introduction

The listing rules (‘Listing Rules’) of the Singapore Exchange Securities Trading Limited (‘SGX-ST’) are set out in the listing manual of the SGX-ST (‘Listing Manual’) and impose continuing listing obligations on companies listed on the Mainboard of the SGX-ST (referred to as an ‘issuer’). Such continuing listing obligations seek to strengthen corporate governance of issuers through, among other things, requiring issuers to comply with the principles of the Code of Corporate Governance issued by the Committee on Corporate Governance (‘Committee’), as from time to time amended, the current version being the Code of Corporate Governance 2012 (‘Code’).

Other ways in which the Listing Rules have the effect of strengthening corporate governance of issuers include requiring issuers to comply with prescribed best practices on dealing in securities, prescribing provisions that the articles of association of issuers must contain and subjecting issuers to disclosure obligations, including the requirement to announce material information and to undertake periodic financial reporting. The Listing Rules also require issuers that enter into interested person transactions or acquisitions or disposals that cross certain prescribed thresholds to make announcements of and/or to seek shareholders’ approval for such transactions.

Code of Corporate Governance and articles of association

In the Report of the Committee issued together with the first edition of the Code in 2001, the Committee set out the objective of encouraging Singapore-listed companies to enhance shareholder value through good corporate governance. The report further elucidated that for shareholders to have a sound basis for making their investment decisions and to assess the appropriateness of a company’s corporate governance practices, companies must provide appropriate disclosure of their corporate governance framework and practices.

The Listing Rules give effect to the Code by requiring issuers to describe their corporate governance practices with specific reference to the principles of the Code in their annual report and to disclose any deviation from any guideline of the Code together with an appropriate explanation for such deviation. The Code sets out guidelines relating to, among other things, the composition and responsibilities of the board of directors, the remuneration of directors and executives, internal controls and shareholders’ rights.
Certain requirements relating to the appointment, remuneration and voting powers of directors are also prescribed by Appendix 2.2 of the Listing Manual, which sets out certain provisions that the articles of association of an issuer must contain. For instance, Appendix 2.2 of the Listing Manual requires the articles of association to provide that fees payable to non-executive directors shall be by a fixed sum and not by a commission on or a percentage of profits or turnover, that salaries payable to executive directors may not include a commission on or a percentage of turnover and that fees payable to directors shall not be increased except pursuant to a resolution passed at a general meeting. Appendix 2.2 of the Listing Manual further requires the articles of association to provide that a director shall not vote in regard to any contract or proposed contract or arrangement in which he has directly or indirectly a personal material interest and that where a managing director (or equivalent person) is appointed for a fixed term, the term shall not exceed five years.

Best practices on dealing in securities
In addition to requiring disclosure in the annual report of compliance with or deviation from the guidelines of the Code, the Listing Rules, through Listing Rule 1207(19), require an issuer to include a statement in its annual report on how the issuer has complied with the best practices on dealing in securities prescribed by the Listing Rules, namely:

• that an issuer should devise and adopt its own internal compliance code to provide guidance to its officers with regard to dealing by the issuer and its officers in its securities
• an officer should not deal in the issuer’s securities on short-term considerations
• an issuer and its officers should not deal in the issuer’s securities during the period commencing two weeks before the announcement of the issuer’s financial statements for each of the first three quarters of its financial year and one month before the announcement of the issuer’s full-year financial statements (if required to announce quarterly financial statements), or one month before the announcement of the issuer’s half-year and full-year financial statements (if not required to announce quarterly financial statements).

For the purposes of the above, guidance is taken from the Securities and Futures Act, which defines ‘dealing in securities’ as, whether as principal or agent, making or offering to make with any person, or inducing or attempting to induce any person to enter into or to offer to enter into any agreement for or with a view to acquiring, disposing of, subscribing for or underwriting securities.

As a consequence of Listing Rule 1207(19)(c), issuers generally impose a ‘blackout’ period of at least two weeks before the announcement of their quarterly financial statements and one month before the announcement of their full-year financial statements, during which issuers and their officers may not undertake activities that may constitute dealing in securities, including fundraising exercises.

In addition, as a consequence of Listing Rule 704(25), issuers may not announce any dividend, capitalisation, rights issue, closing of the books, capital return, passing of a dividend or sales or turnover after the end of each financial year or period, unless it is accompanied by the results of such financial year or period or such results have been announced.

The broad intention of Listing Rules 704(25) and 1207(19)(c) is to prevent issuers from dealing in securities or undertaking certain corporate actions where there may be material information concerning such issuers that has yet to be made public.

Periodic financial reporting and disclosure of material information
The Listing Rules encapsulate the position of the SGX-ST that disclosure is fundamentally important to the operation of a fair and efficient market for the trading of securities, and impose on issuers continuing disclosure obligations that require disclosure of material information, disclosure of certain specified information (such as appointment or cessation of service of key personnel, appointment of special auditors, any breach of loan covenants or appointment of a receiver, judicial manager or liquidator by the issuer or any of its subsidiaries) and periodic financial reporting.

Issuers are required to announce their financial statements for the full financial year and the first three quarters immediately after the figures are
available and in any event not later than 60 days after the financial year or 45 days after the quarter end, as the case may be.

An issuer is also required to announce any information known to it concerning it or any of its subsidiaries or associated companies that is necessary to avoid the establishment of a false market in the issuer's securities or would be likely to materially affect the price or value of its securities. This requirement is intended to address the situation in which information that would, or would be likely to, influence persons who commonly invest in securities in deciding whether to subscribe for, or buy or sell the securities, is not made available, thus resulting in a false market. The Listing Rules provide for limited exceptions to this requirement, whereby information need not be disclosed if to do so breaches the law, and the issuer may temporarily refrain from publicly disclosing particular information, provided the information is of a certain type, a reasonable person would not expect it to be disclosed and the information is kept confidential.

The Corporate Disclosure Policy of the SGX-ST set out in Appendix 7.1 of the Listing Manual provides guidance as to what is considered to be 'material information' and sets out a non-exhaustive list of events that are likely to require immediate disclosure, including a joint venture, merger or acquisition, the acquisition or loss of a significant contract, the purchase or sale of a significant asset, significant litigation and a significant dispute.

The Corporate Disclosure Policy sets out other requirements intended to ensure the operation of a fair and efficient market for the trading of securities. It prohibits selective disclosure by providing that information must not be divulged to any person (outside the issuer and its advisers) in such a way as to place in a privileged dealing position any person. It further provides that under no circumstances should disclosure of material information be made on an individual or selective basis to analysts, stockholders or other persons unless such information has been fully disclosed and disseminated to the public, except in limited circumstances, such as where the issuer is undertaking a major corporate exercise or due diligence, when the issuer is the subject of an acquisition, on the condition that such disclosure is made on a need-to-know basis and subject to the appropriate confidentiality restraints.

The Corporate Disclosure Policy also provides that public circulation of information, either correct or false, that has not been substantiated by the issuer and that is likely to have, or has had, an effect on the price of the issuer's securities or would be likely to have a bearing on investment decisions must be clarified or confirmed promptly. It then expounds further to require a frank and explicit announcement if rumours indicate that material information has been leaked.

Unusual trading activity is also addressed by the Corporate Disclosure Policy, the concern being that where unusual trading activity in an issuer's securities occurs without any apparent publicly available information that could account for the activity, it may signify trading by persons who are acting on unannounced material information or on a rumour or report, whether true or false, and such market activity may be misleading to investors. In such situations, the Corporate Disclosure Policy requires the issuer to undertake a review to seek the causes of the unusual trading activity in its securities and to respond promptly to any enquiries made by the SGX-ST concerning the unusual trading activity. Further, if the unusual trading activity results from the leak of material information, the information in question must be announced promptly. If it results from a false rumour or report, the issuer is to observe the guidelines on correction of such rumours and reports prescribed by the Corporate Disclosure Policy.

Provisions concerning insider dealing are also set out in the Corporate Disclosure Policy, which requires issuers to establish, publish and enforce effective procedures applicable to the purchase and sale of the securities of the issuer and listed members of its group by officers, directors, employees and other insiders, such procedures to be designed not only to prevent improper trading but also to avoid any question of the propriety of insider purchases or sales. Insider dealing is also prohibited by the Securities and Futures Act.

Interested person transactions
Chapter 2 of the Listing Manual regulates interested person transactions by providing that where the interested person transaction entered into crosses certain thresholds prescribed by the Listing
Rules, the issuer has to make an announcement of and/or seek shareholders’ approval for the transaction.

For this purpose, an ‘interested person transaction’ is a transaction between an entity at risk and an interested person, being a director, chief executive officer or controlling shareholder of the issuer or an associate of any such person. ‘Transaction’ includes the provision or receipt of financial assistance, the acquisition, disposal or leasing of assets, the provision or receipt of services, the issuance or subscription of securities, the granting of or being granted options and the establishment of joint ventures or joint investments, whether in the ordinary course of business, and whether entered into directly or indirectly (for example, through one or more interposed entities). An ‘entity at risk’ would be the issuer, a subsidiary of the issuer that is not listed on the SGX-ST or an approved exchange, or an associated company of the issuer that is not listed on the SGX-ST or an approved exchange, provided that the listed group, or the listed group and its interested person(s), has control over the associated company.

If an issuer enters into an interested person transaction of a value equal to or more than 3 percent of the group’s latest audited net tangible assets, the issuer must make an immediate announcement of the transaction. If the aggregate value of all transactions entered into with the same interested person during the same financial year amounts to 3 percent or more of the group’s latest audited net tangible assets, the issuer must make an immediate announcement of the latest transaction and all future transactions entered into with that same interested person during that financial year.

An issuer must obtain shareholders’ approval for any interested person transaction that itself or when aggregated with other transactions entered into with the same interested person during the same financial year is of a value equal to or more than 5 percent of the group’s latest audited net tangible assets (save that a transaction that has been approved by shareholders or is the subject to aggregation with another transaction that has been approved by shareholders need not be included in any subsequent aggregation). Transactions that are below S$100,000 are not subject to the announcement and shareholders’ approval requirements described above.

For the purposes of the aggregation of transactions described above, the Listing Rules provide that transactions between an entity at risk and interested persons who are members of the same group are deemed to be transactions between the entity at risk with the same interested person. However, if an interested person (who is a member of a group) is listed, its transactions with the entity at risk need not be aggregated with transactions between the entity at risk and other interested persons of the same group, provided that the listed interested person and other listed interested persons have boards the majority of whose directors are different and are not accustomed to act on the instructions of the other interested persons and their associates and have audit committees whose members are completely different.

As an illustration, Entity-At-Risk A, Listco B and Listco C are subsidiaries of Ultimate Company D. Listco B, Listco C and Ultimate Company D have boards, the majority of whose directors are different and not accustomed to act on the instructions of Ultimate Company D and its associates and have audit committees whose members are completely different. Transactions between Entity-At-Risk A and Listco B need not be aggregated with transactions between Entity-At-Risk A and Listco C or with transactions between Entity-At-Risk A and Ultimate Company D.

The Listing Rules prescribe information that the circular to shareholders seeking approval for interested person transactions has to contain. Further, an issuer is required to disclose the aggregate value of interested person transactions entered into during the financial year under review in its annual report.

The Listing Rules exempt certain transactions from the interested person transaction requirements, such as: the grant of options and the issue of securities pursuant to the exercise of options under an employees’ share option scheme approved by the SGX-ST; a transaction in marketable securities carried out in the open market, where the counterparty’s identity is unknown to the issuer at the time of the transaction; and the provision or receipt of financial assistance or services by or from a financial institution that is licensed or approved by the Monetary Authority of Singapore, on normal commercial terms and
in the ordinary course of business. The Listing Rules allow issuers to seek a general mandate from shareholders for recurrent transactions of a revenue or trading nature or those necessary for its day-to-day operations, such as the purchase and sale of supplies and materials but not in respect of the purchase or sale of assets, undertakings or businesses.

**Acquisitions and realisations**

Chapter 10 of the Listing Manual governs the acquisition or disposal of assets by an issuer or a subsidiary that is not listed on the SGX-ST or an approved exchange (including an option to acquire or dispose of assets, but excluding an acquisition or disposal that is in, or in connection with, the ordinary course of its business or of a revenue nature).

Such transactions are classified as:

- **Non-disclosable transactions:** Unless otherwise provided by the Listing Rules, no announcement of the transaction is required if all of the relative figures computed on the bases set out in the Listing Rules (‘relative figures’) amount to 5 percent or less.

- **Disclosable transactions:** Where any of the relative figures exceed 5 percent but do not exceed 20 percent, the issuer must, after terms have been agreed, make an immediate announcement of the matters prescribed by the Listing Rules.

- **Major transactions:** Where any of the relative figures exceeds 20 percent, the issuer must, after terms have been agreed, make an immediate announcement of the matters prescribed by the Listing Rules. In addition, such transaction must be made conditional upon approval by shareholders in general meeting, and a circular containing the information prescribed by the Listing Rules must be sent to all shareholders.

- **Very substantial acquisitions or reverse takeovers:** Where an acquisition of assets (whether or not in the issuer’s ordinary course of business) is one in which any of the relative figures is 100 percent or more, or is one that will result in a change in control of the issuer, the issuer must, after terms have been agreed, make an immediate announcement of the matters prescribed by the Listing Rules (which include the latest three years of pro forma financial information of the assets to be acquired). In addition, the acquisition must be made conditional upon the approval of shareholders and the approval of the SGX-ST.

The relative figures are computed on the following bases:

- The net asset value of the assets to be disposed of, compared with the group’s net asset value. This basis is not applicable to an acquisition of assets.
- The net profits attributable to the assets acquired or disposed of, compared with the group’s net profits.
- The aggregate value of the consideration given or received, compared with the issuer’s market capitalisation based on the total number of issued shares excluding treasury shares.
- The number of equity securities issued by the issuer as consideration for an acquisition, compared with the number of equity securities previously in issue.
- The aggregate volume or amount of proved and probable reserves to be disposed of, compared with the aggregate of the group’s proved and probable reserves. This basis is applicable to a disposal of mineral, oil or gas assets by a mineral, oil and gas company, but not to an acquisition of such assets.

**Non-compliance**

The Listing Rules gives the SGX-ST the power to deal with non-compliance with the Listing Rules. Where an issuer is unable or unwilling to comply with or contravenes a Listing Rule, the SGX-ST may suspend trading of the securities of the issuer or remove the issuer from the Official List of the SGX-ST without the agreement of the issuer. The SGX-ST may also suspend trading or remove the issuer from the Official List where, in the opinion of the SGX-ST, it is necessary or expedient in the interests of maintaining a fair, orderly and transparent market or it is appropriate to do so.

The Listing Rules are also given effect by the Securities and Futures Act, which provides that where any person who is under an obligation to comply with, observe, enforce or give effect to the Listing Rules fails to do so, the Singapore
High Court may, on application of, among others, the Monetary Authority of Singapore or the SGX-ST, make an order directing the person to comply with, observe, enforce or give effect to the Listing Rules. In addition, the Securities and Futures Act provides that an issuer shall not intentionally, recklessly or negligently fail to notify the SGX-ST of such information as is required to be disclosed by the SGX-ST under the Listing Rules or any other requirement of the SGX-ST and that intentional or reckless contravention of such requirement is an offence.
A dopting high standards of ongoing disclosure is fundamental to maintaining a fair, orderly and transparent market and to accord adequate investor protection. Ongoing disclosure generally includes disclosures of information at specified dates or intervals (for example, half-yearly releases of financial results) and disclosures of information required under a general principle of materiality (for example, disclosure of a loss of a key customer contract).

The Singapore Exchange’s (‘SGX’) listing rules (‘SGX Listing Rules’) pre-prescribe mandatory disclosure requirements and recommended best practices for disclosure are set out in the Code of Corporate Governance. In Singapore, there is a well-developed ecosystem which provides market participant insights into the SGX’s perspective on topical regulatory matters, issues and practices. Besides the codification of listing rules, the SGX uses other communication channels such as its ‘Regulator’s Column’, periodic publication of listing rule waivers, formal announcements, public consultation papers and prescribed compliance checklists to communicate its views on listing and governance issues.

An issuer should, in addition, establish its own corporate disclosure policy, which, when coupled with adequate systems and procedures including internal guidelines and policies in disseminating material corporate information, would ensure that all public disclosures are factual, accurate and timely. There are three key principles of corporate disclosure and they are discussed in the following paragraphs.

Principle 1: materiality assessment
The concept of materiality (or price sensitivity) placed on information recognises that some and not all information would likely have a significant impact on share price or value and/or are important to any reasonable investor in making his or her investment decision. The process of determining what sort of information is material (or price sensitive) is subjective and can be daunting to an issuer’s board of directors. The SGX Listing Rules therefore seek to provide guidance through examples of events that can be considered material events that require immediate public disclosure. Issuers are expected to provide timely updates to the investment community on, amongst others, its declaration or omission of dividends, significant improvement or deterioration of near-term earnings prospects, a change in effective control of management, significant litigation, significant change in capital investment plans, significant dispute(s) with customers or suppliers, a joint venture, merger or acquisition, and tender offer of its securities. However,
Principle 2: timeliness

Deciding on the timing of a public disclosure of information is another challenging aspect for directors, more particularly if the issuer is in the midst of negotiations for business contracts or a corporate action, or where matters are in a state of flux or uncertainty, or if the disclosure of such information would prejudice the legitimate interests of the issuer and its shareholders. Announcing premature or incomplete information may not only annoy investors but also subject the issuer to criticisms of disseminating misleading information to the market.

The SGX Listing Rules provide two exceptions from the requirement to make immediate disclosure. One exception allows information not to be disclosed if, in doing so, the issuer breaches the law. The other exception allows an issuer to temporarily refrain from publicly disclosing a particular piece of information if that information is of a type that a reasonable person would not expect to be disclosed and is subject to confidentiality. These exceptions recognise the need for practicality as issuers conduct business in highly competitive environments and need to protect their legitimate interests.

The risk of information leakage increases when public disclosures are delayed. In this instance, the issuer (and sponsor of the issuer under the Catalist regime) must be more mindful of the trading activity of its securities and be prepared to halt or suspend the trading of its securities at short notice to provide an immediate update to the market. Depending on the progress (toward conclusion) on the subject matter, such updates can be either in the form of holding announcements that briefly mention the subject matter and an undertaking by the issuer to provide more details as and when available, or a detailed announcement of the subject matter.

Issuers and their professional advisers are obliged to maintain the strictest confidentiality standards when delaying the disclosure of material (or price-sensitive) information. Issuers should also be mindful of the regulatory requirement to maintain a privy list of persons who possess privileged or inside information when undertaking all material transactions. Having an updated privy list at all times facilitates better analysis of the causes of any unusual trading activity of the issuer’s shares.

If the issuer is listed in more than one jurisdiction, it is important that, in this age of technology in which instantaneous sharing across multiple
platforms and worldwide is the norm, material information to be released in the jurisdiction where the issuer is primarily listed be also released on an identical basis and simultaneously in all the other jurisdictions where the issuer is listed. This principle, however, should be applied pragmatically to take into account factors such as different time zones and trading hours, and applied in conjunction with the use of trading halts to ensure thorough dissemination and prevent information asymmetry.

**Principle 3: meaningfulness**

For a reasonable person to make an informed assessment, the disclosure must be meaningful. Each announcement to the market should:

- be factual, clear and succinct
- contain sufficient quantitative information to allow investors to evaluate its relative materiality to the issuer
- be balanced and fair
- be expressed to the extent possible in language comprehensible to investors
- explain the effects of the information on the issuer’s future prospects.

The Corporate Disclosure Policy in the SGX Listing Rules provides further guidance on the content and preparation of an announcement.

The SGX recognises that skill and experience are important to the preparation and editing of accurate, fair and balanced public announcements. Each issuer listed on Catalist is therefore encouraged to form a specific group of individuals within the company that routinely undertakes such responsibility and enlist the assistance of their sponsors (which are qualified professional companies experienced in corporate finance and compliance advisory work, and which are authorised by the SGX to supervise issuers listed on Catalist) and/or legal counsels in the preparation of these announcements.

**Clarifications or confirmation of third-party rumours or reports**

It is not uncommon for the market to be inundated with third-party rumours, speculative comments on online forums, analysts’ reports and forecasts, and other reports questioning the veracity of an issuer’s financials and other disclosures. Are issuers then expected to respond to such third-party information? The SGX Listing Rules state that public information (regardless of mode of dissemination, correct or false, and that has not been substantiated by the issuer) that is likely to have, or has had, an effect on the issuer’s share price or would likely to have a bearing on investment decisions, must be clarified or confirmed promptly.

Rumours or third-party reports that contain material, non-public information are evidence
Building a robust market with high standards of corporate disclosure

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Communication with investors

Communication with investors cannot be confined to public announcements. Issuers should devise an effective investor relations policy to promote regular, effective and fair communication with its shareholders and stakeholders. The board of directors of an issuer should establish and maintain regular dialogue with investors through analyst briefings and investor roadshows. Such forums provide shareholders the opportunity to voice their concerns and for the issuer to gather third-party views or input.

Designing a corporate disclosure policy

An issuer is responsible for compliance with the ongoing disclosure obligations as set out in the SGX Listing Rules. The actions of the issuer are determined by its directors and executive officers, who provide written undertakings to the SGX that they will use their best endeavours to procure that the issuer shall comply with the SGX Listing Rules.

It is therefore essential to have a robust and effective corporate disclosure operating model that formalises corporate disclosure guidelines
and policies and that defines roles, responsibilities, processes, reporting lines and linkages within the organisation. The issuer’s corporate disclosure policy should promote an understanding among managers of roles and responsibilities, limits of authority and means of escalation, and seek balance between centralisation and decentralisation, and between autonomy and collaboration. It is rarely enough for the issuer’s board of directors or key management to simply articulate principles and policies, no matter how clearly or forcefully they do so. They should also ensure that employees have the understanding, motivation and means to implement them, and it is within the organisational culture.

The following could be considered in the design of the corporate disclosure policy:

- Identify the individuals with primary responsibility for decisions in relation to the disclosure of material information.
- Like the practice of companies listed in other foreign exchanges, a company may set up a dedicated Disclosure Committee, whereby members include persons holding the designations and responsibilities of the Chairman of the Board, the Chief Executive Officer, the Chief Financial Officer, and Head of Corporate Affairs or Investor Relations.
- Establish a process of distributed leadership throughout the various jurisdictions in which the issuer operates, whereby the objective is for each location to have its own structures and processes for monitoring, and reporting to local key management, material developments to the business and/or operations.
- Each location’s key management should be specifically made aware of the issuer’s internal policies and be subject to providing regular reporting to the issuer. Each location’s key management would be expected to use his or her own judgment to determine the timescale for escalation of unforeseen and significant events to the Disclosure Committee.
- In relation to an issuer listed on Catalist, the sponsor could be designated as adviser to the Disclosure Committee and board of directors and would have to be continually updated by these parties in order to dispense the right advice.

- Set out a flowchart that assists in the categorisation of the information on hand and determination of the appropriate course of action:
  - assess whether the information relates to the performance of the issuer’s business or financial position, the personnel of the issuer, corporate transactions or other strategic projects, or one-off unplanned or systemic events (for example, litigation or macroeconomic factors)
  - assess the level of materiality (or price sensitivity) of the information
  - determine whether the disclosure obligation is immediate or may be delayed
  - determine whether the matter should also be referred to the full board of directors, together with the Disclosure Committee. Issuers should be aware that critical events must be escalated to the full board of directors more urgently and hence develop more notification paths to include notification through phone calls, emails and/or meetings convened at short notice.
- Establish a communications policy setting out the person(s) responsible for communications (both internal and external) and policies for dealing with third parties, rumours and leaks of inside information. Authorised individuals of sufficient seniority and experience should be the primary corporate spokespersons to communicate with investment analysts, potential investors and the media. It need not be the intent of the policy nor may it be practical to restrict other senior employees of the issuers from speaking to outside parties. However, when doing so, employees must ensure that any company information that is provided to third parties is in compliance with the issuer’s corporate disclosure policy and should contact a member of the Disclosure Committee if in doubt about the appropriateness of providing certain information.
- Have written guidelines about maintaining the confidentiality of material inside information. For example, the issuer could instruct its employees not to discuss business affairs in public places, properly keep or discard confidential documents, make or receive electronic transmission of material inside information under secure conditions, and inform the
Disclosure Committee where there may have been accidental or unintentional disclosure of material inside information.

- Provide examples of information that is likely to be material or price sensitive, and regular training to employees in relation to the corporate disclosure policy.
- Put in place an investor relations policy to engage shareholders on a regular basis.

**Conclusion**

Although there are rules and regulations to ensure timely and adequate disclosure of material information, directors should also be acutely aware of investors’ needs and concerns. Having the right policies in place and promoting a conducive corporate culture, issuers can lighten the task of making the right judgment in the ‘whats’ and ‘whens’ of corporate disclosures.
Introduction
Risk governance is taking on a new level of importance given the dynamism of businesses today. In view of that, you will find that an audit committee (‘AC’) plays a central role in governance and oversight of companies.

The legal environment
Every listed company in Singapore is legally required to have an AC pursuant to section 201B(1) of the Companies Act (‘Companies Act’). Section 201B of the Companies Act stipulates the requirement for the composition of the AC and the broad functions of the AC.

The role and duties of the AC are further guided by the principles in the Code of Corporate Governance (‘Code’). Whilst compliance with the Code is not mandatory, every listed company is required by Rule 710 of the Listing Manual of the Singapore Exchange Securities Trading Limited (‘SGX-ST’) to ‘describe their corporate governance practices with specific reference to the principles of the Code in its annual report’ and ‘disclose any deviation from any guideline of the Code together with an appropriate explanation for such deviation in the annual report’.

The Code stipulates that the board is responsible for the governance of risk and is required to review the adequacy and effectiveness of the company’s risk management and internal control systems, including financial, operational, compliance and information technology.

The Code also stipulates that the AC’s duties include, inter alia:
• reviewing the significant financial reporting issues and judgments so as to ensure the integrity of the financial statements of the company and any announcements relating to the company’s financial performance
• reviewing and reporting to the board at least annually the adequacy and effectiveness of the company’s internal controls, including financial, operational, compliance and information technology controls (such review can be carried out internally or with the assistance of any competent third parties).

Further, Rule 1207(10) of the SGX-ST Listing Manual also requires that the annual report set out the ‘opinion of the board with the concurrence of the audit committee’ on the adequacy of the internal controls, addressing financial, operational and compliance risks.

Therefore, whilst the Code also provides that the board may establish a separate board risk committee or otherwise assess appropriate means to assist it
in carrying out its responsibility of overseeing the company’s risk management framework and policies, as a result of the AC’s duties to review the company’s internal controls, this responsibility for the governance of risk can also be delegated to the AC.

**Roles of the AC on risk and control governance**

For the reasons above, the AC is often the key body in a company that is responsible for ensuring that policies and a framework, and risk and control governance processes, are in place.

However, the AC should not be the sole body responsible for risk management. It should be a key objective for companies to foster a tone at the top (i.e. from the board) whereby risks are identified, challenged and monitored at all levels of the organisation.4

The management must create and maintain an adequate and effective risk and control system, including internal controls over financial reporting, and mitigate internal and external risks. It should also refresh its approach in evaluating internal controls every year. ACs should question whether their companies are designing and maintaining risk and control processes in a way that keeps pace with emerging economic and business conditions, development in the company’s operations and changes in financial reporting and governance standards.

The AC has a critical role in providing oversight on the risks within the organisation. It should consider the following as part of its risk and control governance roles and responsibilities:

- understand the company’s framework for risk assessment, mitigation and management’s related policies and procedures
- understand how the company documents and responds to identified and emerging risks
- review whether the company is appropriately focusing on its risk intelligence gathering and assessment processes, and understand the company’s ability to identify emerging risks and anticipate risk events
- review whether the risk and governance disclosures in financial statements are appropriate, robust and understandable
- understand and review the company’s major financial risk areas, and understand the adequacy of controls and monitoring procedures in place
- periodically reassess top risks, determine who in management and which board committees are responsible for each risk, and receive periodic reporting on the risk mitigation plans and results
- meet directly with key executives responsible for risk management and focus on whether they understand that they should inform the committee of extraordinary risk issues and developments that require the committee’s immediate attention outside the regular reporting process
- focus on the company’s plans for achieving any information technology (‘IT’) milestones, especially for IT transformation projects, given the importance of IT to most organisations
- understand the use, if any, of emerging technologies, such as cloud computing and cybersecurity, as well as their relevance to the company and the associated risks.

**An effective AC brings real value to companies and shareholders**

There are considerations the company has to take into account to set up an effective AC. It should focus on committee composition issues, including independence,5 financial expertise, broad business and leadership experience,6 as well as succession planning. The company should also evaluate the expertise and competence of the members in the context of the company’s strategy and risk profile today and in future years.

It is imperative that the company consider the ability to work collectively, challenge decisions in a credible manner and avoid groupthink. This can help promote healthy skepticism among fellow committee and board members. They should also consider periodically rotating AC members, staggering the terms of service to bring in new skills and perspectives.

The AC should be open to engage independent advisers as necessary for the required expertise.7 Furthermore, the AC should hold periodic private sessions with independent auditors and the internal auditor (without the presence of management),8 and the auditors should have direct access to the AC.9

**AC charters address the roles and responsibilities of the committee, outlining its scope, structure and processes**

Charters should adequately address: first, the AC membership criteria, focusing on independence
Importance of internal control system for managing risks

The internal control system is the backbone for managing business risks within the organisation and will be one on which the AC can place qualification. All members are, of course, entitled to give independent advice.

Evaluation and appraisal of non-executive directors is an essential, ongoing process that helps to refresh the capabilities of any boardroom. For effectiveness, the AC’s performance can be assessed to determine whether it met the objectives and responsibilities set forth in the charter.

The self-assessment should consider the following criteria:

- AC composition, structure and activities
- how well it understands the business and its risks
- how it sets the tone with management, internal audit and independent auditors
- how well it understands and considers fraud and emerging risks (such as cybersecurity, digital and social media), including the company’s controls to mitigate such risks
- how well the AC oversees the company’s financial reporting process, including reporting from subsidiaries to the holding company
- how well the AC understands the company’s internal controls and governance process, including how it evaluates the effectiveness and conclusions of internal controls, and whether the related disclosures are adequate
- communication with the board on activities and recommendations
- consider the AC’s composition in the context of the company’s current and future strategy and challenges.

The self-assessment results can be used as a catalyst to re-engineer processes, procedures and agendas.

In addition to assessment at the committee level, the AC chairman can also review the performance of the individual member. Each member can be assessed for business knowledge, objectivity, independence, insight, judgment, communication skills and general dedication to the committee. The AC should develop and execute an action plan to address any areas in need of improvement.

AC composition is critical to the effectiveness of the committee

Personal networks still fill boardroom roles to a certain extent in terms of age, gender and professional qualifications; non-executive directors can still be fairly homogenous. The differing structures and needs of boardrooms across companies mean that it is not possible, or desirable, to be overly prescriptive in the selection process. However, every publicly listed company must consider the nature of its own business and what it requires from its non-executive directors. There is widespread agreement about the need for more breadth, perspective and diversity in boardrooms.

A professional, structured approach to recruiting non-executive directors, such as an analysis of the current situation and the make-up of the team, as well as looking at what is missing in terms of core competencies and coming up with appropriate solutions, is essential.

The chairman of an AC has to have financial skills, and it would be unusual for a major company to have one who is not a certified accountant as financial reporting has become more complex in recent years. However, not all committee members need to have an accounting
The key to effective risk management and governance

Ernst & Young Advisory Pte Ltd and Allen & Gledhill LLP

The key to effective risk management and governance

- determine risk management performance indicators
- ensure legal and regulatory compliance.

Critical steps to ensure that risk management is effective and supports the company’s performance include:

- measuring risk management performance against appropriate key risk indicators
- measuring and reporting progress against the risk management plan
- periodically reviewing whether the risk management framework, policy and plan are appropriate and aligned with the company’s strategy and context
- reviewing the effectiveness of the risk management framework, including its usage and adoption.

As illustrated in Figure 10.3, risk management is intricately linked to the internal control system.

significant focus. To properly manage the risks, a robust internal control system typically comprises the key components as illustrated in Figure 10.1.

As part of the internal control system, the introduction of risk management within the company and ensuring its ongoing effectiveness require strong and sustained commitment by the management of the company, as well as rigorous, strategic planning to achieve commitment at all levels.

The management should:

- oversee and endorse the risk management policy
- cultivate a risk management culture within the company
- ensure that risk management is aligned with the strategic objectives of the business
- ensure adequacy of resources and clearly define roles and responsibilities
- communicate the benefits of risk management to all stakeholders
- ensure the risk management framework remains appropriate to the company

Figure 10.1: The Internal Control System
### Figure 10.2: Components of Effective Risk Management

<table>
<thead>
<tr>
<th>Component</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transparent and inclusive</td>
<td>Takes human and cultural factors into account</td>
</tr>
<tr>
<td>Creates and protects value</td>
<td>Systematic, structured and timely</td>
</tr>
<tr>
<td>Dynamic, iterative and responsive to change</td>
<td>Explicitly addresses uncertainty</td>
</tr>
<tr>
<td>An integral part of all organisational processes</td>
<td>Facilitates continual improvement of the organisation</td>
</tr>
<tr>
<td>Part of decision making</td>
<td>Dynamic, iterative and responsive to change</td>
</tr>
<tr>
<td>Takes human and cultural factors into account</td>
<td>Systematic, structured and timely</td>
</tr>
<tr>
<td>Based on the best available information</td>
<td>Explicitly addresses uncertainty</td>
</tr>
<tr>
<td>Tailored</td>
<td>Part of decision making</td>
</tr>
</tbody>
</table>

### Figure 10.3: Aligning Risk Management and Internal Control System with Company’s Goals, Strategies, and Business Initiatives

<table>
<thead>
<tr>
<th>The Risk Agenda</th>
<th>Results lens</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enhance risk strategy</strong></td>
<td><strong>Desired results</strong></td>
</tr>
<tr>
<td><strong>Embed risk management</strong></td>
<td><strong>Value:</strong> Differentially invest in the risks that matter to drive EBITDA; Improve controls around key business processes</td>
</tr>
<tr>
<td><strong>Optimise risk management functions</strong></td>
<td><strong>Cost:</strong> Reduce overall cost of control spend by 30%; Leverage automated controls more effectively</td>
</tr>
<tr>
<td><strong>Coordinate multiple risk functions</strong></td>
<td><strong>Risk:</strong> Align risk to corporate strategy; Embed risk culture across the enterprise and reduce risk overlap through improved coordination</td>
</tr>
<tr>
<td><strong>Improve controls and processes</strong></td>
<td><strong>Enable risk management, communicate risk coverage</strong></td>
</tr>
<tr>
<td><strong>Integrate risk and performance management</strong></td>
<td><strong>Internal Audit, Compliance, IT Risk Management, Information Security, Legal, Tax, Transactions, SOX Compliance</strong></td>
</tr>
</tbody>
</table>

Company goals, strategies and business initiatives

Traditional risk management functions

Audit committee and management expectations

Applying a board ‘risk lens’ to the business

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Ernst & Young Advisory Pte Ltd and Allen & Gledhill LLP  The key to effective risk management and governance
An effective risk management internal control system should contain the key characteristics outlined in the boxes below.

Therefore, an effective risk and internal control environment will contribute to:

**Securing operations**
Making process owners and executives aware of their responsibilities in relation to internal control documentation, implementation and execution will reduce exposure to inappropriate, erroneous and unauthorised operations.

**Protecting a company’s assets**
A robust internal control system is the first milestone of an efficient anti-fraud system, as it minimises the risk of significant weaknesses in internal controls, which could affect the company’s

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**Key factors to ensure effective corporate governance and risk management**

- Enterprise risk management (‘ERM’) is still a compliance-based exercise, with discussions happening in the boardroom, and with risk, compliance and internal audit officers only. However, accountability for ERM should extend through the many levels of business, with the various lines and business units taking responsibility, and supported by the staff of the internal audit, risk or compliance function.

  In other words, effective risk governance cannot be a silo approach to risks, spearheaded by the risk functions. It has to be extended to the business units and operations team.

- There is a need to overcome a limited view of risk. Close collaboration between risk-related functions is vital to ensure a shared view of business risks across the company. However, there is often a disconnect between top management and the risk and compliance functions.

  Concerns remain that collaboration among the three lines of defence (business units, risk and compliance and internal audit) in managing risks is not deep enough. A lack of collaboration could be exposing businesses to capability gaps.

- The discussion on risks with the management should not be passive. The board should expect the management to take a proactive approach to perform scenario analysis on the key risks and make sure that all relevant personnel are fully aware of the steps to take when these risks really occur.

- The risk management processes in companies are mostly entrenched in the monitoring of control activities. They should measure the effectiveness of risk governance via performance measures such as improved inventory obsolescence, production levels, in conjunction to the controls implemented to yield these results.

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**Key characteristics of an internal control system**

**Myth**
Internal control starts with a strong set of policies and procedures.
Internal auditors are the primary owners of internal controls.
Internal control is a finance thing.
Internal controls are essentially negative, like a list of ‘should nots’.
Internal controls take time away from our core activities of making products, selling and serving customers.

**Facts**
Internal control starts with a strong control environment.
Although internal auditors play a key role in the system of control, area management and business owners are the primary owners of internal control.
Internal control is integral to every aspect of business.
Internal control can make the right things happen the first time. Therefore, it can be cost effective. Effective business processes have internal controls built into, not onto them.
reputation. Therefore, identifying the significant risks periodically should be a continuous process for the internal control system due to an ever-changing external environment.

**Improving processes**

- reviewing existing processes and controls to enable the company to identify process improvement areas
- facilitate the integration of new key personnel and staff into their roles and responsibilities efficiently
- enhancing know-how and knowledge throughout the company through an internal control mechanism, such as effective communications and training.

**Conclusion**

In summary, regardless of industry or board size, effective board and committee leadership depends first and foremost on the directors’ commitment to excellence in governing the companies they have been elected to serve. The many ways that the commitment can manifest itself – from committee make-up, to agenda setting, to policies on rotation and removal – in turn rely on thoughtful, deliberate choices made by directors in board leadership positions.

The various components of the risk and control environment comprising the board, AC, risk management processes, internal control system down to the business units are intricately connected. The AC plays a significant role in connecting the board to the risk management processes, the internal control system and the business owners. Everyone’s roles and responsibilities should be aligned to manage the company’s risks.

The overall performance of the company will be significantly affected if the components are not properly managed.

In the face of external threats and business risks, the internal components of the control environment have to ensure that they address all the ‘weakest links’ and put in place a robust and effective governance mechanism that will be the company’s best line of defence, on its journey to success.

**Endnotes**

1. Principle 11 of the Code
2. Guideline 11.2 of the Code
3. Guideline 12.4 of the Code
4. Paragraph 2.2.2 of the Guidebook for Audit Committees in Singapore (Second Edition) (‘AC Guidebook’)
5. Guideline 12.1 of the Code
6. At least two members, including the AC Chairman, should have recent and relevant accounting or related financial management expertise or experience: Guideline 12.2 of the Code
7. Guideline 11.2 of the Code
8. Guideline 12.5 of the Code
9. Sections 201B(6) and 201B(7) of the Companies Act
10. For a sample, see Appendix A2 of the AC Guidebook

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The role of a financial adviser in mergers and acquisitions (‘M&A’)

Edwin Low, Managing Director
Pankaj Goel, Managing Director
Credit Suisse (Singapore) Limited

Introduction
As companies and funds throughout Southeast Asia, and in particular Singapore, grow past their incubation stages, more and more find themselves at the centre of merger and acquisition (‘M&A’) activity. More ultra-high net worth individuals are also entering the M&A playing field, seeking ways to inorganically grow their business empires. Long periods of stable economic growth have whetted the appetite of Singaporean firms for increasingly transformative acquisitions overseas. In Singapore, out of the 34 outbound acquisitions larger than US$1 billion in deal value in the past 10 years, close to a third have occurred since January 2014. Mature-stage companies in international markets, under pressure to seek value-creating opportunities in a ‘search-for-yield’ environment, have also looked to Southeast Asia for inspiration.

In conjunction, the roles fulfilled and services performed by a financial adviser have widened in scale and deepened in complexity.

The rules of the game
A well-regulated market is a key condition for healthy business activity. Singapore remains at the forefront of regulatory framework development in the region and continues to evolve its regulatory governance and oversight to better address the needs of today’s markets. A professional financial adviser assists its clients by keeping track of the latest developments in M&A regulations and their potential impact on any transaction process. The following rules and regulations along with the provisions of the Companies Act have to be carefully considered in a potential M&A transaction in Singapore.

The Singapore Code on Take-overs and Mergers
The Singapore Code on Take-overs and Mergers (‘Code’), which governs mergers and acquisitions of companies in Singapore, is issued by the Securities Industry Council (‘SIC’). The Code is non-statutory but seeks to impose certain guidelines and restrictions on both the offeror and offeree. The Code sets out compliance requirements as well as guiding procedures and principles that all stakeholders must adhere to in a public transaction. The primary role of a financial adviser is to assist its clients in fulfilling these requirements upon undertaking any public takeover.

From a target’s point of view, the Code also requires the board who has received an offer to establish an independent committee and appoint an independent financial adviser (‘IFA’) to opine on the offer. The SIC, in turn, rigorously assesses the independence of the IFA. The independent
committee, after appraising the advice of the IFA, must make a recommendation to all shareholders regarding the offer. The recommendation, along with the advice of the IFA, must then be circulated to all shareholders as a means of allowing shareholders to make more informed decisions with respect to the offer.

The Listing Rules
Whereas the Code governs the process of any public takeover, the Listing Rules set by the Singapore Exchange Securities Trading Limited in turn seeks to secure and maintain confidence in the market by imposing requirements that all publicly listed issuers must adhere to by virtue of their listing (be it on the Mainboard or Catalist). In relation to an M&A situation, the Listing Rules ensure that investors and professional advisers are given all necessary information that they require to make an informed decision with respect to any public offer. Any price-sensitive information, including developments throughout an M&A process, must be disclosed in the principle of fair and equal treatment of all shareholders.

The Competition Commission of Singapore
Enacted in 2004 by the Competition Commission of Singapore (“CCS”), the Competition Act provides a framework in which competitive markets can develop and thrive. The CCS aims to create an environment where businesses voluntarily comply with competition laws and regulations, while maintaining an actionable enforcement regime against anti-competitive behaviour. In addition, the CCS regularly conducts public consultation exercises to gather feedback from interested parties on new and existing legislation and policies.

In relation to Singapore M&A, the CCS assesses transactions on an ongoing basis to ensure that healthy competition is maintained in all sectors. In the event that the CCS deems a particular transaction to be anti-competitive, it may levy financial penalties and/or seek to annul the combination. Therefore, financial advisers working together with legal counsels on a deal must conduct an analysis to assess potential violations of the Competition Act and ensure that potentially anti-competitive transactions are cleared with the CCS in a timely manner.

M&A objectives and the role of a financial adviser
An M&A process is likely to be time consuming and intense for the management team and costly. It is the job of a financial adviser to evaluate if it is the most optimal way to achieve its clients’ objectives. These include achieving inorganic growth, realigning the company’s capital structure, acquiring a strategic foothold in a new market, seizing opportunities arising from under-/overvalued assets, fulfilling regulatory requirements, exiting non-core businesses, realising synergies, meeting financial covenants and defending against competitive threats. Clients rely on financial advisers to both originate strategies to achieve their objectives and execute internally developed plans in the most efficient way.

In any typical M&A transaction, a client can be a seller, a buyer, or a combination of the two. In the following sections, we outline the key steps and parameters that lie before clients when they choose to participate in a sell-side/buy-side transaction process.

Everything’s for sale, at the right price
A company or owner may choose to mandate a sell-side transaction for a multitude of reasons, including raising capital, exiting non-core businesses, monetising part or all of its stakes and finding a strategic partner. Critically, these options must be weighed alongside capital market solutions. A well-managed sale process can maximise value for all parties while minimising the potential negative repercussions of the sale.

Planning and preparation
Although the key objectives outlined typically involve maximising disposal value, other considerations such as the disclosure of commercially sensitive information, transaction timing and probability, and strategic fit with the buyer matter as well. The goal of a financial adviser at this stage is to provide initial advice on the feasibility and value of the sale, sharing an analysis of potential buyers and the competitive investment environment prevalent in the target company’s sector. Taking into account the company’s objectives, the market environment, and input from all other advisers and stakeholders, a financial adviser can recommend an optimal strategy that will then set the tone for the rest of the transaction.
In preparation for the transaction, a financial adviser will also assist in completing all financial and operational analysis of the company to prepare the valuation and marketing materials. Pre-transaction due diligence serves two purposes. First, it allows the financial adviser to understand the target business/asset to be sold, which in turn provides the opportunity to identify potential transaction issues and begin a preliminary assessment of interested parties. In the event that the selling company is a publicly listed firm, the financial adviser must also ensure that communication of all material non-public information is done under strict adherence to the requirements under the Listing Rules and Companies Act. Second, the financial adviser must ensure that the information prepared is sufficient in scope and detail for potential buyers to make meaningful proposals, as well as within the comfort level of the company and the company’s advisers. An experienced financial adviser will be able to pre-empt particular areas of focus of potential buyers and guide the company towards preparing for this eventuality.

At this junction, both financial and legal advisers draft several documents that will dictate the rules of engagement in the upcoming marketing exercises. These include standard non-disclosure agreements between buyer and seller as well as transaction-specific process letters, which set out key steps and deadlines that any participating buyer needs to adhere to.

Marketing and maintaining competitive tension
Concurrently, the financial adviser utilises its network to assist the company in identifying potential interested buyers. More importantly, the adviser may begin to soft-sound its contacts to ultimately decide on how many parties should be contacted and to whom marketing documents are distributed. A company may decide to run a full auction process, which allows it to reach out to a wide number of contacted parties. This can provide for a highly competitive process, as well as increase the likelihood of receiving many bids. However, the trade-off comes in the form of confidential information being shared with multiple parties, as well as the need for a greater management effort in due diligence by multiple parties. Limiting the number of parties approached risks excluding potentially interested buyers but may allow for an expedited negotiation and due diligence process.

The outcome of the marketing process is an indicative non-binding bid proposal. These are evaluated based on a multitude of factors, including price, sources of financing, terms and conditions, and strategic rationale presented by the investors. The financial adviser must then guide the target company in choosing the most highly qualified investors to proceed towards further negotiations. Other than assessing the attractiveness of the bid at face value, an experienced financial adviser will also be able to provide input on the legitimacy and likelihood of success of each bid, as well as identify potential financing constraints of certain parties.

Due diligence
After selected bidders proceed to the second transaction phase, financial advisers then facilitate acquirer due diligence and serve as the conduit between buyer and seller. This process includes the sharing of data and documents, site visits and management presentations. Business confidential information must be properly guarded to minimise business risk in the event that the transaction fails to consummate. Critically, work flow at this stage can be extremely strenuous on management. Financial advisers must balance providing buyers with meaningful information and ensuring that management can continue to run the business as usual.

For transactions involving public listed companies, advisers also must bear in mind any regulatory requirement to make appropriate disclosures and seek necessary approvals.

Buy-side process
Finding the right target, assessing interloper risk
Before beginning a buy-side process, the potential buyer has to outline its acquisition parameters and objectives and align it with the companies’ overall strategic direction. Finding the right target can be a daunting challenge, and financial advisers utilise their geographical reach and market access to help clients achieve this. This will also necessarily entail a thorough evaluation of the target’s business, integration considerations, potential synergies, and management and cultural fit, as well as evaluation of the feasibility of a transaction, including
The role of a financial adviser in mergers and acquisitions (‘M&A’) Credit Suisse (Singapore) Limited

appropriate network reach can provide meaning-
ful insight at this stage.

Due diligence

The acquirer due diligence period is a crucial
stage in the buy-side process, as it offers poten-
tial buyers an opportunity to assess the target
company’s management and business prospects
and verify operational and financial assumptions
required to refine their internal view. This is
achieved via gathering, analysing and interpret-
ing the target’s financial information, analysing
historical and projected financial results, evaluat-
ing potential synergies and assessing operations to
identify opportunities and areas of concern.

Through maintaining continuous dialogue
with the seller, the financial buyer seeks to secure
critical compromises and to develop the percep-
tion that the bidder is the most obvious buyer. In
a competitive situation, financial advisers typically
seek exclusivity periods for their clients, whereby
discussions are then accelerated to the final stage.

Endgame

As negotiations progress, buyer and seller inter-
action intensifies and converges. At this stage,
negotiations become a delicate act of balancing
multiple stakeholders’ conflicting interests. The
ultimate goal of advisers on both the buy- and
sell-side is to bridge valuation and other less
tangible gaps between their client’s expectations.
Successful negotiations also consider the con-
tinuity of the business post-transaction, making
the business’ transition toward its new owners as
seamless as possible.

To bridge valuation gaps, the types of offer
consideration utilised in recent transactions have
also developed beyond traditional cash/stock
deals, including the use of derivatives and other
forms of hybrid securities. Apart from the finan-
cial aspects of the offer, a range of negotiation
points are fought over. These may include dis-
cussions over board composition, non-compete/
non-solicit requirements, earn-out arrangements
and other deferred payment mechanisms, manage-
ment incentive plans, termination rights, break-
fees, payment mechanisms, as well as post-audit
valuation adjustments.

At this stage, the buyer must also begin mak-
ing preparations for business integration upon

willingness of the target’s shareholders to transact
and interloper analysis.

If a buyer chooses to participate in a sell-side
process, a buy-side adviser acts under a more
restrictive time crunch. Upon receiving news of a
particular opportunity, an interested buyer and his
or her adviser may only have several weeks to put
together a comprehensive acquisition plan, source
financing and obtain the requisite approvals for
the investment.

Valuation

For potential buyers, the valuation exercise is
an iterative and continuous process that is initi-
ated early on in the planning stage, refined in
the preparation for the initial bid and finalised
after due diligence for the final bid. Given that
the buyer may not have access to confidential
information of the target company, a financial
adviser’s role also involves significant research to
better assess the target company and its business
outlook.

As opposed to the valuation conducted by
sell-side advisers, the analysis for potential buyers
also must consider the synergies that may arise,
which may include revenue, cost or investment
synergies. A financial adviser can also help facili-
tate a negotiation between the client and seller to
identify areas of cost savings, product cross-selling
and other co-development opportunities. The
types of valuation analyses emphasised will dif-
fer according to the type of buyer. For example,
listed buyers will be interested in pro forma impact
to reported financial metrics, such as earnings-
per-share, return on equity, gearing and liquidity
ratios, and debt covenant requirements, among
others. Financial buyers will instead likely empha-
sise analysis on investment internal rate-of-returns,
as well as the adviser’s view on potential exit
options.

Bidding

For any serious bidder, the objective of the first-
round bid is to prepare a sufficiently attractive but
realistic initial bid to proceed to the next round
of acquirer due diligence. Bid strategy is more of
an art than a science, and any market information
on the other bidding parties (if any) is invaluable.
It is not uncommon for clients to hire advisers
for this purpose alone, as only an adviser with the
A comprehensive negotiation process will likely address other criteria, such as providing future business direction and strategy for the target company’s management and employees. Where appropriate, this may also lead to deliberations surrounding internal reorganisation and leadership change. A financial adviser hence helps to improve the holistic appeal of a buyer to the target company and often sets the foundations for successful post-transaction integration.

**Financing**

Under the Code, a financial adviser is required to provide a confirmation of the availability of financial resources to undertake a public takeover. In connection with this, financial advisers often also offer financing options to a potential buyer. This can involve issuing new debt or securities, restructuring existing obligations, or exploring different monetisation opportunities. Apart from tapping vanilla debt and equity markets, financial advisers have been increasingly called upon to develop more innovative financing solutions and occasionally put their own money on the table. In cross-border situations, advisers also help to financially de-risk the investment for the buyer. For example, an adviser with the appropriate capabilities may provide foreign exchange and interest rate hedging solutions to its clients. Amidst challenging markets, an adviser’s ability to meet clients’ funding requirements in the most cost-efficient way will be thoroughly tested.

In summary, it is critical to note that a financial adviser must be thorough in its strategic, financial and tactical analysis for its client and advise its client appropriately on whether a particular M&A transaction is likely to be value accretive or whether it is better for its client to not undertake a particular transaction.
Many directors know that they owe fiduciary duties to act in the best interests of the company to whose board they are appointed. What exactly are the interests of the company? Are they always primarily those of the shareholders? What if a company is in financial distress or actual insolvency? This chapter deals with these and other pertinent questions that may arise when a company is in distress or insolvency.

What is insolvency?

To aid in the understanding of duties that may arise when a company is insolvent, it would be useful to first understand what is meant by insolvent. Generally, there are two tests of insolvency of general application (‘General Tests’):

- the cash flow test, in which the debtor is unable to pay its debts as they fall due (whether or not its assets exceed its liabilities)
- the overall balance sheet test, in which, on an overall basis, the debtor’s assets are insufficient to discharge its liabilities (including contingent and prospective liabilities).

The ‘General Tests’

In practice, a company is deemed to be unable to pay its debts and therefore insolvent when three weeks have passed after a statutory demand relating to a sum exceeding S$10,000 has been served on the company, and it fails to pay off this sum. Although the General Tests normally apply, special considerations come into play in certain situations. For instance, it may be necessary for directors who are seeking to effect a redemption out of capital or financial assistance to make solvency statements – in such cases, the test would be more stringent than the General Tests.

As another example, when the directors are preparing the financial statements of the company, they must take reasonable steps to make provisions for doubtful debts, write off bad debts and ascertain whether any current assets are unlikely to be realised at the value shown in the accounting records of the company. This is not only to allow users to accurately interpret the financial information but also to aid the directors in their understanding of the company’s proximity to distress or insolvency.

In addition to understanding the nuances and differences in terms of insolvency and its related concepts, the directors should also be careful...
and know the consequences arising from insolvency. For one, the directors must consider the company's best interests, taking into account the positions of shareholders and creditors of the company. 4

However, the weight that a director ought to accord to each of these interests will change, depending on the financial health of the company. When the company is doing well and there is little risk of creditors being unable to recover their debts, its directors would be entitled to give more weight to the shareholders' interests. However, when the company is insolvent, nearing insolvency or in a situation in which its creditors will be prejudiced and the company is or likely to be unable to satisfy its debts, 5 its directors should give more weight to creditors' interests. 6

Common warning signs of distress or insolvency
To help avoid an insolvency situation, it is imperative for management to proactively review and recognise distress signals, which may involve the development of a periodic review framework, and thereafter seek appropriate and specialist advice on a timely basis to address warning signs once these have been identified. Typically, if warning signs are not addressed in an efficient manner, management, in order to fulfill its fiduciary duties and the interests of the company, may see an insolvent procedure as the only option, if it is not already enforced by creditors.

Each business will have specific or unique indicators of distress and, although there is no 'one-size-fits-all' approach, common warning signs can be categorised broadly into two distinct categories: quantitative and qualitative.

Quantitative warning signs
Financial ratio analysis is a common tool used to assess a company's health. Based on information extracted from financial statements, relevant ratio analysis can be used to measure various financial aspects such as liquidity, profitability, working capital and gearing. Ratio analysis can reveal a company's performance and health against levels achieved in previous periods and target industry or market benchmarks (as commonly prepared by analysts). Declining results or consistent underperformance, for example of liquidity or profitability ratios, may indicate signs of distress and the required areas to be addressed, and the impact must be considered in line with the entity's risk framework and strategy.

When using ratios for making industry comparisons, management must keep in mind the various limitations. For example, ratio analysis is reliant on financial statements, and this in turn leads to complications arising from different accounting policies and treatments. Additionally, analysis may be reliant on 'outdated' audited statements, as access to recent management accounts of competitors is not usually available.

A major risk area for most businesses is the non-adherence to covenants, which typically include target ratios set by banks prior to the lending of funds. In a worst-case scenario, non-adherence may lead to the lender initiating insolvency proceedings. As such, management should periodically review that those ratios and other covenants are not in breach of the requirements. It is likely that lenders will also be undertaking periodic monitoring to safeguard their exposures, and the provision of timely financial information to them may likely be a covenant itself.

In addition to ratio analysis, a simpler desktop review of audit status or management accounts may also reveal signs of distress. For example, an auditor's opinion may highlight the entity's going concern status, the balance sheet may show a negative current asset position, a comparison of the previous months' profit and loss accounts may indicate declining sales or profit.

There are other more complex financial analysis methods such as debt to EBITDA, EBITDA-to-interest ratios and working capital analysis. Again, comparisons should be made with the entity's previous levels (thereby requiring ongoing analysis) and also with industry benchmark levels.

Qualitative warning signs
Qualitative indicators are somewhat harder to review as these may be unquantifiable and tolerance may be specific to management's experience, strategic thinking and risk appetite. In addition, qualitative warning signs are wide ranging and can stem either from internal or external factors. A holistic business review may reveal and identify some of these factors, such as overdependency on a major customer or supplier. Management should be careful to diversify risks and review
the quantitative and qualitative profiles of their suppliers, customers and other stakeholders who may directly affect their business. External advisers may be best placed to provide independent but industry-specific recommendations.

Internally, a business’s inability to have robust operational and financial controls may lead to inefficiencies (of different severity), which may in turn lead to distress. For example, a company’s record keeping or automated software system may be outdated or not secure, which heightens risks. Additionally, a high turnover of accounting staff or chief financial officer would have an impact on the success of controls. The development of an internal risk framework could resolve or mitigate this.

For new directors, it may be advisable to undertake a review of formal board meeting minutes early into their appointment. This may reveal areas of distress or other issues to which they may not be privy.

Externally, various events beyond the control of management, such as new political, legislative, environmental or economic changes, may affect the company’s viability. Given the unpredictability, the impact of these distress signs may be more severe than those arising from internal signs. For example, a global or regional financial crisis will almost certainly and immediately affect all businesses in a spectrum of ways, from adverse interest and currency fluctuations to affecting the appetite of banks to continue lending.

Specific industry sectors will have unique causes of distress. For example, a company in the tourism industry may be affected by a terrorist act or environmental changes in certain geographies. An increase in the price of commodities will have a direct impact on the profitability of businesses reliant on commodities. As such, sufficient considerations must be given to the type of business and sector.

Duties of directors in the context of distress or insolvency

General fiduciary duties

As mentioned above, where a company is in financial distress or insolvent, the directors’ fiduciary duties that are owed to the company require the directors to take into account and give primacy to the interests of creditors as a whole. This is because, in the case of an insolvent or close to insolvent company, it has been said that the interests of the company are primarily those of the creditors of the company.

Although each situation should be considered carefully, generally in practical terms, this would mean:

- directors continuing to act in good faith in the interests of the company and in this respect giving primacy to the interests of creditors rather than shareholders
- when considering the interests of creditors, the directors not only taking into account the interests of present creditors but also the interests of future and contingent creditors (hence, a director may not, as a rule, cause the company to undertake risky and money-losing ventures that, while increasing present cash flow and enabling present creditors to be paid, saddle the company with new and additional debts that cannot be paid to creditors)
- directors as a rule being less speculative and more conservative in their approach so as not to worsen the position of creditors
- directors considering what appropriate steps to take to improve the position of the company and to seek external assistance, e.g. in cases of real and significant risk of worsening the company’s position.

It has also been said that directors of an insolvent company should not cause a company to enter into voidable transactions, as doing so would be a breach of directors’ duties. Accordingly, directors should also be mindful not to enter into any transaction that could be voided at law, examples of which can be found below.

Statutory duties and liabilities

Directors are also subject to various statutory duties and liabilities. Amongst other things, section 336(1)(c) of the Companies Act provides that the following acts committed within 12 months before the commencement of the winding-up of the company or anytime thereafter is an offence:

- has concealed any part of the property of the company to the value of S$200 or upwards, or has concealed any debt due to or from the company
Corporate governance in the context of distress or insolvency

Ernst & Young Solutions LLP and Allen & Gledhill LLP

\begin{itemize}
  \item has fraudulently removed any part of the property of the company to the value of S$200 or upwards
  \item has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company
  \item has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company
  \item has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company
  \item by any false representation or other fraud, has obtained any property for or on behalf of the company on credit, which the company has not subsequently paid for
  \item has obtained on credit, for and on behalf of the company, under the false pretence that the company is carrying on its business, any property that the company has not subsequently paid for
  \item has pawned, pledged or disposed of any property of the company which has been obtained on credit and that has not been paid for, unless such pawning, pledging or disposing was in the ordinary way of the business of the company
  \item has attempted to account for any part of the property of the company by fictitious losses or expenses
  \item has been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up.
\end{itemize}

Where any of the above acts take place, the director may be liable on conviction to a fine not exceeding S$10,000 or to imprisonment for a term not exceeding two years.

In addition to the above, directors should not carry on the business of the company without any reasonable prospects of paying the company’s creditors:

\begin{itemize}
  \item Section 339(3) of the Companies Act provides that if a director is knowingly a party to the contracting of a debt, where at the time when the debt was contracted there was no reasonable or probable ground of expectation of the company at that time being able to pay the debt, he or she shall be liable on conviction to a fine of up to S$2,000 or imprisonment for up to three months.
  \item Additionally, under section 340 of the Companies Act, if the business of the company has been carried on with intent to defraud creditors of the company, or for any other fraudulent purpose, the court may declare that any person who was knowingly a party to the carrying-on of the business in that manner shall be personally responsible, without limitation, for any or all debts or other liabilities of the company. The essential element of fraud is dishonesty, which is not easy to make out. Once this element is present, it is within a court’s discretion to decide whether any given circumstances amount to fraud. Where the subject of a civil claim is fraud, the courts will require a higher standard of proof than normally required in civil suits.
\end{itemize}

Other duties and obligations of directors of listed companies

In addition to the above, directors should never forget that they must operate in accordance with other duties – for example, the duty to act with reasonable care and diligence.9

Directors of listed companies must also remember to comply with their disclosure obligations. It is not unusual for listed companies to forget to disclose, amongst other things, receipt of a statutory demand in their rush to deal with that particular creditor’s claim.

Furthermore, in the process of trying to resuscitate a company in distress, it is not unusual for directors to reach out to close contacts, friends and/or family members seeking funds or business for help.

In such circumstances, directors should keep in mind the requirements to seek consent for and/or to announce related party transactions.

Civil liability for breach of director’s duties

It is key for directors to keep the above-mentioned duties at the fore when making decisions for the company, especially in times of financial distress.
and/or insolvency, because in the event that the company is placed into liquidation and a liquidator is appointed to wind down the affairs of the company, decisions made by directors and transactions entered into by the company prior to liquidation will be carefully scrutinised for wrongdoing or impropriety.

If the liquidator finds that a director has acted improperly or in breach of his duties, a suit may be commenced against that director seeking to hold him or her liable for, amongst other things, damages or loss arising out of that breach of duty or as a result of the improper actions.

Such liability may arise in a wide variety of situations. For example:

- where the director has breached his or her duties to the company
- the payment of dividends in excess of profits, or where the company has no profits\(^9\)
- where the company has made an unfair preference\(^10\)
- where the company has entered into an under-valued transaction\(^11\)
- where the company incurred debts without any reasonable prospect of paying its creditors.\(^12\)

**Disqualification**

In addition to civil liability, a liquidator may make an application for an order disqualifying a director, X, from taking part in managing companies for a period of up to five years, if it can be established that:

- X is or has been a director of a company that has gone into liquidation (whether while X was a director at the time, or within three years of X ceasing to be a director) and was insolvent at the time
- X’s conduct as a director of that company either taken alone or taken together with his conduct as a director of any other company or companies makes him unfit to be a director of a company or to take part in the management of a company.

If a director holds more than one directorship, or intends to hold another directorship in future, it is important to ensure that his conduct as a director is beyond reproach in order to reduce the likelihood of such a disqualification being made against him.

**Consequences for future employment**

It is not unusual for companies to require prospective employees, especially more senior employees with greater scope of responsibility, to declare whether they have at any time been a director of a company that has subsequently become insolvent.

Depending on the terms of employment, failing to make the necessary declarations may give the prospective employer the right to terminate the employment if such failure is subsequently discovered.

**Possible options in the face of financial distress or insolvency**

Given the wide-ranging duties and obligations of directors of a company in financial distress or insolvency, it is incumbent on directors to have systems in place to detect the risk of threatened or actual insolvency.

Directors of companies in financial distress should consider whether there are viable options to correct or rectify the situation. Solutions may include a fresh capital injection, a debt-to-equity swap or a short-term standstill with creditors.

In some situations, negotiations with creditors or counterparties could save the company. The difficulty that arises, however, is that creditors may not be prepared to negotiate, and it may be difficult to save an otherwise viable company if the agreement of all creditors must be obtained and not all creditors agree. In such a situation, directors may consider the mechanism of a scheme of arrangement. Very broadly, a scheme of arrangement is a mechanism by which, on compliance with certain procedures, the court is able to approve and impose a plan proposed or supported by the company and a sufficient number and value of creditors. The requisite support is in general a majority in number and three quarters in value of creditors or of each class of creditors.

There may be times, however, where there is breakdown of trust between creditors and the existing management or where existing management is not prepared to continue to be management because of personal risk of insolvency in so continuing. In such and other similar situations, there is for one the option of judicial management. Judicial management is a process in which the court would appoint an independent party, normally a public accountant, to take charge and run the company. The court may be prepared...
to do so where the company is or will become insolvent, and there is a real likelihood that the company or part of its business can be saved, a scheme can be effected and/or the company’s assets can be better realised for creditors. To aid in achieving such goals, there are general moratoriums against court and arbitration proceedings and against the enforcement of security provided by the company. Apart from the company, creditors of the company can also apply to court to place the company under judicial management.

Alternatively, if terminating the company is the best option, the company may be wound up either voluntarily by the shareholders or compulsorily by court (for example, by a creditor or a shareholder of the company). This process is known as liquidation, or winding-up, and tends generally to mark the end of the company. In this respect, a liquidator would be appointed to wind up the company.

If the company’s creditors have a mortgage or charge over assets belonging to the company, a receiver and/or manager may be appointed to realise the assets and/or manage the company respectively, in a process known as receivership.

In some situations, directors may have provided personal guarantees for loans extended to their companies. When a company is in distress or nearing insolvency, counterparties will often call on the said guarantees in an attempt to recover monies extended to the company.

Where such a guarantee has already been given, there is little that a director can do to prevent a creditor from calling on the same unless the director is able to argue successfully that the guarantee or indemnity is void or is voidable because it was procured as a result of, amongst other things, mistake, duress or misrepresentation.

Apart from the above, if the company and its creditors are exploring entering into a scheme of arrangement, a director may seek to have his obligations under the guarantee or indemnity rearranged pursuant to the scheme.13

Other protective mechanisms for directors

Directors of companies in distress or insolvency may consider obtaining insurance or an indemnity from the parent company or their nominee. This topic is dealt with in greater detail in Chapter 7 of this book.

Without insurance or an enforceable indemnity from his nominee, the potential liability of a director of a company in distress would be substantial. Ideally, insurance or indemnities should be obtained prior to appointment as a director.

It would also be important for a director to familiarise himself with the terms of the policy and the indemnity. In particular, it would be important to know:

- What acts by the director or others would void the policy;
- When the director would need to notify the insurer of any impending claim;
- The steps that the insurer may require the director to take prior to making a claim; and
- The information/documents that the director would need to furnish to the insurer in support of any claim.

Directors of companies in distress or insolvency may, in a worst-case scenario, and if not the last resident director, resign:

- A director may usually resign at any time by giving written notice to the company, unless he is the last remaining resident director.14
- While resignation would not normally be recommended simply because the company is in a bad financial state, it may be called for in certain circumstances – or example, where there is fraud in the company and the director does not condone the same, serious dissent among board members, concern that the company is about to undertake illegal or criminal activity, the director is not given access to the books and accounts of the company, or the director suspects that the company’s accounts have been doctored.

Endnotes
2. Section 254(2)(a) of the Companies Act.
3. Section 201(7) of the Companies Act.
53 have previously held that a term in a scheme of arrangement releasing a third-party guarantor from his obligations under the guarantee upon due performance by the company of its obligations under the scheme would be valid and effectual. It may be possible that the constitution of the company provides for more than one director, in which case the requirements of the constitution of the company (unless amended) may prove a difficulty in the way of resignation.


Note: The views reflected in this chapter are the views of the authors and do not necessarily reflect the views of the global EY organisation or its member firms.
PART IV

Trending

Chapter 13  In search of the truly independent director  89
Chapter 14  Boardroom dynamics in Singapore  97
Chapter 15  Board diversity  103
Chapter 16  Governance reporting: Adapting your model to stakeholder expectations  107
Several years ago, the chairman of a multi-billion dollar enterprise said to me, ‘Let’s face it, there is no such thing as a totally and truly independent director.’ That remark put the brakes on the discussion about the independence of a particular director on the board.

On reflection, he was, in a sense, right, of course. Independence, after all, is a state of mind. Who is to really know what is – and what could be – in the mind of a director when a decision is being made?

Instead, the regulations seek to develop yardsticks – based largely on arguable relationships of blood and money – by which to judge a director’s independence.

The subject of director independence and the independence of a particular director can thus be a hotly debated one.

In this chapter, we will seek to shed some light on this heated subject by discussing:

- the rationale for director independence
- the criteria for director independence
- the particular case of the nine-year rule
- the number of independent directors required on a board and its committees
- the emergence of the lead independent director
- the inevitable conflicts of interest that arise even with independent directors.

**Rationale**

In the unitary board system, which is adopted in Singapore, the US and many other Commonwealth countries, the board’s composition can include executive and other directors. The notion of directors who have no relationship with the company (other than directorship), its management and major shareholders was introduced to ensure that there will be independent and objective watchdogs on the board.

In other words, the role of independent directors is to provide an independent and objective perspective on board matters and decisions. They act as a check and balance on the acts of the company’s board and management. They are the vigilant guardians of the company who ensure that corporate assets are used only for, and in the interests of, the company.

To that end, the 2012 Singapore Code of Corporate Governance (‘Code’) sets out the criteria for a director’s independence as well as the minimum number of independent directors on a listed board and its committees.
The Code operates on a ‘comply or explain’ basis – meaning a company has to either comply with each requirement or satisfactorily explain why it has not.

As independent directors stand apart from major shareholders, there is an expectation in some quarters that they exist primarily to promote the interests of minority shareholders. That would not be correct. Independent directors – as with all other directors – exist to serve the interests of the company.

In fact, the Code insists that ‘All directors must objectively discharge their duties and responsibilities at all times as fiduciaries in the interests of the company’. For its part, the Companies Act does not distinguish between different types of directors in terms of their fiduciary duties; the law holds executive and non-executive directors equally responsible and liable for their acts and omissions as officers of the company.

Of course, in being objective and balanced, independent directors must consider the interests of minority shareholders as well as that of other shareholders and stakeholders of the company. By being objective and by querying anything that may seem amiss, independent directors may thus give the impression that they are promoting the best interests of minority shareholders, when, in reality, they are promoting the interests of all stakeholders as a whole.

Criteria
The Code’s Principle 2, ‘Board Composition and Guidance’ and its guidelines provide two sets of criteria on director independence: general and specific.

The general criterion is that an independent director must be ‘independent in character and judgement and [there should not be] relationships or circumstances which are likely to affect, or could appear to affect, the director’s judgement’. The Code then goes on to identify specific situations in which a director could be considered to be independent or not independent. Before we examine them, it is useful to note the definition of two common recurring terms:

- A ‘related corporation’ of a company could be its subsidiary, or its holding company, or the other subsidiaries of the holding company.
- An ‘immediate family member’ of a person means the person’s spouse, child, adopted child, stepchild, brother, sister, or parent.

For the specific criteria of independence, the Code says a director is independent when he ‘has no relationship with the company, its related corporations, its 10 percent shareholders or its officers that could interfere, or be reasonably perceived to interfere, with the exercise of the director’s independent business judgement with a view to the best interests of the company’.

It then goes on to provide examples of specific relationships or circumstances that are likely to affect, or could appear to affect, a director’s judgment:

- A director is employed by the company or its related corporations for the current and past three financial years.
- A director has an immediate family member who, in the current and past three financial years, is or has been employed by the company or its related corporations, and whose remuneration is determined by the remuneration committee.
- Other than director fees, a director or an immediate family member accepts any significant compensation from the company or its related corporations for the provision of services for the current or immediate past financial year.
- A director or an immediate family member who, in the current or immediate past financial year, is, or was (a) a 10 percent shareholder of, (b) a partner (with 10 percent or more stake) in, (c) an executive director of, or (d) a director of, any organisation to which the company or its subsidiaries made, or from which the company or any of its subsidiaries received, significant payments or material services, including auditing, banking, consulting and legal services in the current or immediate past financial year. As a guide, payments aggregated over any financial year in excess of S$200,000 are deemed significant.
- A director who is a 10 percent shareholder, or is an immediate family member of a 10 percent shareholder, of the company.
- A director is, or has been, directly associated with a 10 percent shareholder of the company in the current or immediate past financial year.
If any of the situations described earlier occur, the director is deemed to be not independent. Should the board consider a director to be independent notwithstanding the existence of any of these situations, the board has the responsibility of stating the reasons for its determination and should disclose in full the nature of the director’s relationship in the company’s annual report.7

The independence of a director who has served on the board beyond nine years is described in the next section.

The examples and factors set out earlier are not exhaustive. The general guideline is, in fact, a catch-all for all other ‘relationships or circumstances which are likely to affect, or could appear to affect, the director’s judgement’. These, a board should identify and assess accordingly.

Examples of other situations in which the independence of a director could be called into question are as follows:8

- **Gift or financial assistance:** The director receives a gift of shares or other securities, or financial assistance from the company or its major shareholders for the purchase of shares or other securities in the company outside an approved scheme.
- **Shareholder representative:** The director is appointed to represent or protect the interests of a shareholder, which may not be aligned with those of the other shareholders.
- **Financial dependence:** The director is financially dependent on the company, group of companies or associates. For example, he has no other major source of income and is financially dependent on the director’s fees.
- **Relationships with major shareholders or senior management:** The director has close personal friendships – or current or past business dealings – with major shareholders, executive directors or other key executives that could interfere, or be reasonably perceived to interfere, with the exercise of his independent business judgment.

**The nine-year rule**
The Code requires that ‘the independence of any director who has served on the board beyond nine years from the date of his or her first appointment should be subject to particularly rigorous review’.9

While a director will not be automatically deemed non-independent, the board will need to explain why the director is deemed independent after a ‘particularly rigorous review’.

The nine-year rule is controversial in both its rationale and implementation.

Opponents of the rule ask, ‘How did I suddenly lose my independence upon crossing the nine-year mark?’ The answer is that, of course, a person does not suddenly lose his or her independence. However, overfamiliarity with the business or management team can affect a director’s ability to constructively or unemotionally challenge senior management and existing company policies and practices. The line therefore does have to be drawn at some point in time.

Another objection is that a long-serving director who understands the company is more valuable than a new one. The nine-year rule is, however, stated in the context of the need for ‘progressive refreshing of the board’.10 Taken with the quantitative limit on the proportion of non-independent directors allowed on a board,11 the rule effectively enforces board renewal.

Many jurisdictions around the world restrict tenures of directors. For example, the European Commission recommends a maximum service of 12 years for an independent director, and in Hong Kong, nine years unless shareholders approve reappointment via a special resolution. The UK Corporate Governance Code has a more rigorous nine-year rule than the Singapore Code.

That said, Singapore does specifically address the concern of keeping long-serving directors for their value by allowing boards some flexibility to extend their appointments beyond nine years.

However, the effectiveness of the nine-year rule has yet to be proved. The 2014 Singapore Directorship Report (‘Directorship Report’) produced by the Singapore Institute of Directors (‘SID’) and the Institute of Singapore Chartered Accountants (‘ISCA’)12 reveals that more than half, or 54.1 percent, of companies that have been listed for more than nine years have at least one director who is declared independent despite a standing of nine years or more (see Chart 1).

The explanations provided for considering directors who have served on the board beyond nine years as independent have not been adequate either. Most of the companies baldly state that the
feedback from independent third parties with whom the company deals, on the director’s independence in his dealings with these third parties.

**Number of independent directors**

Having a critical mass of independent directors allows outside directors to feel they have support in raising contrary points of view. For this reason, the Code specifies that independent directors should make up at least one third of the board.14

However, the one-third requirement goes up to at least half the board where the board chairman is also the CEO, or is an immediate family member of the CEO, or is part of the management team, or is not an independent director.15

In addition, the board’s three major committees – audit, nominating and remuneration, – are required to have at least three directors,
the majority of whom, including the chairman, should be independent. For the audit and remuneration committees, all committee members (if not independent) must be non-executive, and the lead independent director (see section below) should also be a member of the nominating committee.16

According to the Directorship Report, there are 4,839 board seats in all the 717 listed entities: 34.1 percent are taken up by executive directors, 47.5 percent by independent directors, and the remaining 18.4 percent by non-independent non-executive directors.

The proportion of independent directors on boards is shown in Chart 2.

Further analysis shows that:

• The proportion of independent directors is higher for larger companies, specifically those with market capitalisation of more than S$1 billion. Here, 62 percent have more than half of their board seats taken up by independent directors, and for 28 percent the proportion is more than two thirds.
• Firms in the finance and real estate industries lead the way with 77.8 percent and 50 percent, respectively; having more than half of their boards comprising independent directors.
• About 81 percent of the companies have a board chairman who is not independent. Of these, only 52.7 percent comply with the requirement that independent directors form half the board. Again, a disproportionate number of large-cap firms meet the guideline.

The lead independent director
The Code requires the board chairman and the CEO to ‘be separate persons, to ensure an appropriate balance of power, increased accountability and greater capacity of the board for independent decision making’.17 This is the case for 69.2 percent of the firms in the Directorship Report.

Although many companies separate the two roles, the board chairman may be part of the

![Chart 2: Proportion of independent directors on boards](image-url)
management team as an executive board chairman, or is a relative of the CEO. Such chairmen would not be deemed to be independent. Many of these companies tend to be controlled by a family or the founder.

In Singapore, it is considered best practice for the board to be chaired by an independent director. Where this is not the case, the Code requires the appointment of a lead independent director as well as a majority of the board to comprise independent directors.

Chart 3 summarises the findings of the Directorship Report on lead independent directors. It shows that of the 537 firms (or 81 percent) that should, under the Code, appoint a lead independent director, only 54.4 percent actually did.

The lead independent director is appointed by the board. He or she can be appointed annually or, if the board decides, for a longer term. In some cases, the position is even rotated amongst the independent directors over time.

The Code identifies only two roles for the lead independent director:

- He or she should be available to shareholders where they have concerns and for which contact through the normal channels of the board chairman, the CEO or the chief financial officer (or equivalent) has failed to resolve the concerns or is inappropriate.

- He or she should arrange to meet the other independent directors without the presence of the other directors and provide feedback to the board chairman after such meetings.
Some companies have added to these roles of the lead independent director, such as chairing the board in the absence of the chairman and being a mediator to resolve conflicts. Some of these duties are not unlike those of a deputy chairman.

Conflicts of interest
A key purpose of the independent director is to minimise the areas and number of conflicts of interest. However, the complex and multifaceted business environment in which companies operate today means that conflicts of interest are almost inevitable.

Conflicts of interest typically arise when:

- Directors have a direct or indirect material interest in transactions that the company enters into. Here, an interest of a family member of a director is treated as the director's interest under the Companies Act.
- Directors hold positions or offices or possess property that may result in conflicting duties.
- Directors stand to benefit from information received, or opportunities that are made available to them, in their capacity as directors.

In dealing with conflicts of interest, directors must be cognisant of the following:

- **Prohibited situations**: Certain situations are specifically prohibited by the Companies Act (for example, the granting of loans to directors, their family members or director-related companies under sections 162 and 163) whilst others require compliance with specified procedures (for example, shareholders' approval for payments in respect of loss of office under section 168).


- **Disclosure requirements**: Section 156 of the Companies Act requires directors to declare the nature of specified conflicts at a board meeting, or to send a written notice to the company as soon as they are aware of circumstances giving rise to such conflict. As a matter of best practice, conflicted directors should ask the company secretary to email information about the conflict to the rest of the board as soon as practicable. Formal disclosure should then be made and minuted at the next board meeting.

Even if they may have complied with their statutory obligations to disclose conflicts of interest to the board, directors are not absolved from their more general fiduciary duties. Their duty not to put themselves in a position where their personal interest that may conflict with those of the company except with the company’s fully informed consent is an ongoing one that cannot be abrogated. Therefore, a director owes a common law duty to disclose such conflicts to the company’s shareholders at a general meeting. Companies are, however, permitted to have a constitution that provides that directors’ disclosure requirements are deemed to have been met so long as there has been a disclosure to the board or compliance with section 156. It is common for directors to generally declare to the board and the company, when they join the board and when their circumstances change, their directorships and significant shareholdings that could potentially create a conflict of interest.

In any event, it is necessary for listed companies to disclose in their annual reports particulars of material contracts of the companies and its subsidiaries that involve the interests of their CEOs, directors or controlling shareholders. Where there is no such contract, a statement to that effect must be included in the annual report.

- **Participation in meeting**: Whether or not directors who are conflicted are allowed to be present at a meeting depends on the company’s constitution. However, it is good practice that they recuse themselves when the subject of the conflict is discussed unless the board is of the opinion that their presence and participation are necessary to enhance the efficacy of such discussion.

Even if the directors are permitted to be present at these meetings and there are no laws or rules that prohibit their participation in discussions, it is nevertheless good practice that they do not do so, unless they are specifically invited.
to or, with the consent of the board, they believe, in good faith, that they can lawfully provide information without which the board cannot make a sound decision.

And even if conflicted directors are allowed to participate, it is good practice that they recuse themselves for an appropriate period during the discussion to allow the other directors to have a full and frank discussion.

**Voting:** Unless they are specifically prevented by the company’s constitution, conflicted directors may vote on conflicted matters after they have disclosed their interests. That said, it is good practice that they do not. They should also offer to excuse themselves from the meeting at the time of voting.

Note, too, that a company listed on the SGX is required to have a provision in its constitution that prohibits its directors from voting on any contract or proposed contract or arrangement in which they have a direct or indirect personal material interest.\(^ \text{25} \)

**Whither the independent director?**

The value of having independent directors has been and will likely continue to be debated.

Much of this debate arises because although most independent directors meet the technical definition, their independence in substance may not always be there. What’s more, too many corporate failures and scandals have shown that the presence of independent directors did not make enough of a difference, notwithstanding that they were otherwise competent men and women of substance.

However imperfect as the definition, role and practice may be, the independent director is unlikely to become an endangered species because no one has come up with a better solution to the need for a level of objectivity on the board that is independent of major shareholders and management.

In my view, the solution is not to do away with independent directors. Rather it is to ensure that boards are populated with the right individuals with the professionalism and moral courage to challenge and ask the important questions and to take a stand, notwithstanding their relationships, no matter how close, with management and major shareholders.

That challenge is within the power of each and every individual director to rise to the occasion and be counted as truly independent.

**Endnotes**

2. Guideline 2.3 of the Code.
3. The Code referring to the definition of ‘related corporation’ set out in section 6 of the Singapore Companies Act.
5. Guideline 2.3 of the Code.
6. The situations are listed in Guideline 2.3 of the Code.
8. These practices are drawn from SID Nominating Committee Guide, Section 4.4.3.
11. See section below on ‘Number of independent directors.’
12. The report collected and analysed information for all 717 listed entities in SGX for their financial year-ends in 2013.
13. SID Nominating Committee Guide, Section 4.5.3.
16. The guidelines of the Code for the composition of the respective committees are as follows: Guideline 12.1 – audit committee; Guideline 7.1 – remuneration committee; and Guideline 4.1 – nomination committee.
18. Guideline 3.3 of the Code.
20. This sample excludes REITs, business trusts and secondary listings.
23. Potential additional functions of a lead independent director is found in section 4.6.2 of the SID Nominating Committee Guide.
Corporate governance in Singapore has gained considerable traction over the past decade or so. With the introduction of the Code of Corporate Governance (‘Code’) in 2001, its implementation in 2003 and two revisions in 2005 and 2012, the Code progressively evolved and ensured its relevance to the changing investor environment and market developments.

Across the globe, the trend towards corporate governance reform, increased governance legislation and more elaborate governance codes continues in response to the global financial crisis and the fast-shifting dynamics we have experienced since then. Through our work advising the boards of some of the world’s leading companies, including many of those in Southeast Asia, we have observed that by its very nature, corporate governance is a complex topic that must be viewed through many lenses. These include the maturity and dynamics of the market, the conditions set by the industry it is in, and the talent that is available at the board and senior executive levels.

The board performs the most critical function in the governance of a business, and it goes beyond that to encompass guiding the management to shape the company’s strategy and ensuring that the stars are aligned for the successful execution of the strategy that concerns matters including talent, culture, systems and process. What are the key dynamics in the boardroom in Singapore, which ensures it is effective, well equipped to perform, and adept in helping the business to navigate through the near term for results, as well as keeping a strategic view for the long run?

This chapter discusses some of these key dynamics, reflecting on the evolving nature of governance and board function, while providing some best-practice observations.

Diversity - gender
Directors are increasingly recognising that boards with a good mix of age, experience, and backgrounds tend to foster better debate and decision-making and less groupthink. It is important to point out that boards do not have to sacrifice critical skills or expertise to increase diversity, but they may have to broaden their approach to director recruitment and their perception about the ideal director.

In recent years, gender diversity in particular has been a growing area of focus. In addition to growing shareholder and government attention to the issue, recent research continues to highlight the benefits of gender diversity on boards. For example, the 2012 Credit Suisse Research Institute Report ‘Gender Diversity and Corporate Performance’ found that, during
the six-year period ending in 2011, companies with at least some female representation had better share price performance, higher return on equity and better average growth than companies with no women on their boards.

Our research shows that by the end of financial year 2013-2014, 7.9 percent of the directors of the 30 companies on the Straits Times Index (‘STI 30’) were women. Female representation is higher among Singapore’s statutory boards, at 19.6 percent. Despite the relatively low representation of women today, Singapore boards appear to be increasing their recruitment of female directors: in the same period, 22 percent of the directors who joined STI 30 boards were women. The last update of the Code of Corporate Governance acknowledges that boards should comprise an appropriate gender balance. The recently established Diversity Action Committee is one further effort by the Singapore Exchange, along with the organisations that support the movement, to further promote the diversity agenda.

International directors
As Asia becomes the strategic market and key destination of growth and development for international companies, a growing number of local companies are also continuing to expand overseas. An international business perspective becomes even more critical for boards. The representation of international directors varies greatly across countries, according to the respective Spencer Stuart Board Indexes. In some European countries, the representation can be as high as 59 percent and, in contrast, in the US 8 percent, and in Asia Pacific approximately 31 percent. International directors can serve two vital roles for boards expanding businesses:

- **Providing market intelligence and entry:** Directors with knowledge of business culture, business dynamics, regulations and key influencers can pave the way for operating in critical countries and regions.
- **Expanding the board’s perspective:** International directors may add something to the board that is harder to quantify than specific market know-how, but potentially is of greater value – promoting a more open and diverse mindset on the board and enhancing directors’ deliberation and problem-solving skills.

Succession planning
Board succession and recruitment are becoming a more and more robust process the world over, yet there is still the tendency of addressing this on an as-needed basis when facing an impending vacancy. This approach may put boards at a disadvantage in this time when growth and innovation are top priorities for most organisations. Facing new global and competitive challenges, companies are transforming themselves through new product strategies, different product mixes and expansion into new markets. Digital disruption is one of the most notable challenges and opportunities companies are grappling with, the recruitment of this new expertise on the board is gaining more notice, and it cannot be taken as an ad hoc strategy.

In an ideal world, outside directors with relevant experiences can serve as valuable advisers to the board and management about the company’s market, geographic and product directions, as well as providing a sounding board for management on the critical issues the company is likely to encounter. The Code of Corporate Governance advises boards to have at least one third independent directors or at least half in certain circumstances. Wise boards will want to foresee where the company is headed in the future and have individuals on the board with the expertise to help the company move in that direction as efficiently as possible. Boards can accomplish this by vigorously managing director succession.

External forces, too, encourage a more proactive stance on global succession planning. Investors have become a potent voice in board governance, holding directors accountable for company performance and even challenging the nomination of directors. Institutional investors, on the whole, are looking for board directors who are independent from management and possess the relevant business and financial expertise. Furthermore, boards that plan for director departure will be better positioned to recruit directors with the desired experience.

Director departure or retirement create openings that enable the board to expand or strengthen its skill sets in certain areas. Boards should take advantage of natural attrition to recruit directors
who can add valuable perspectives about the company’s strategic direction, bringing on, for instance, directors with experience in a particular function, market, industry or business model.

**CEO succession planning**

Most directors and chief executive officers (‘CEOs’) today recognise that the board has ultimate responsibility for CEO succession planning and selecting a CEO successor. Nevertheless, many directors still find aspects of the process challenging and feel less confident than they would like to be that the board will be in the position to make the best decision for the business when transition is imminent.

To increase director confidence in the process, boards may need to take a fresh look at how CEO succession planning is practised today and consider whether it is time to update their approach. We examine some of the most common challenges and consider ways that boards can overcome the obstacles they face to establish a rigorous and effective succession planning approach.

- **Getting started and addressing succession planning with the appropriate regularity**

  Some boards can be reluctant to broach the topic, particularly with a strong, established CEO or when a transition seems distant, or they may overfocus on certain facets of the process. One approach that can be helpful is desensitising the issue by starting early to develop a regular cadence around C-suite succession planning, and encourage the CEO and the chief human resources officer (‘CHRO’) to partner in the process. This helps minimise the emotions often surrounding succession and allows the board to get to know potential candidates and their performance over time. The right structure and approach are essential too – succession planning is arguably one of the more important responsibilities of the board, and yet also one of the most intensive. Many boards establish a smaller working committee to steer the process and handle the regular work but involve the board at critical touchpoints throughout the process.

- **Ensuring that the strategy and criteria for the next CEO is forward-looking enough**

  When the strategy relies too heavily on status quo assumptions or does not look far out enough, it reduces the chances that the process will produce internal candidates with the right skills for the future business. Wise boards agree on strategic issues up front, since these decisions will influence the kind of leader or leaders the company will need, and push themselves to go beyond generalities. They identify the very specific effect the next CEO needs to have on the business against the future-looking strategy, and define the skills that it will take to accomplish that effect.

- **Thoughtfully and effectively assess internal candidates**

  Directors often feel they lack the insights with which to thoroughly assess potential successors or to understand whether a candidate will be ready in a specific time frame. To overcome this, directors should avoid looking at candidates through a very narrow window of observation and judge potential based on past performance. Boards need to embrace an assessment process that is fact based, rigorous and forward looking. This means the process should review the candidates’ track record of delivering against strategic and operational levers similar to that of the next CEO but also strive to gain an understanding of candidates’ ability to stretch into the CEO role. Another critical dimension to consider is external benchmarking. Companies that are strong producers of internal talent sometimes lose a sense of how their talent compares to the best in class talent externally or overlook how the world has shifted around them. Ideally, benchmarking should happen in tandem with the internal assessment.

- **Ensure the development of a robust succession pipeline**

  When they do not set expectations with the CEO and CHRO that succession planning and talent development are ongoing and shared responsibilities, boards can lack confidence in the succession pipeline. To address this, a broad-based effort is needed that incorporates up-to-date definitions for all the senior team, regular assessments and benchmarking, and thoughtful developmental assignments. Without becoming talent managers, boards should take responsibilities for ensuring the right process is in place and they have the appropriate knowledge of potential
leadership. This may require regular interactions with the senior leadership and a ‘deep dive’ talent review annually, to help the board observe performance and develop a more nuanced point of view on executives’ strengths and weaknesses. A long-term view is needed for well-governed companies, where the board ensures talent development at top positions is linked with the senior leaders’ compensation. As such, the board can more effectively prepare succession over the short term and build the bench strength needed for the future.

Board evaluation

Board evaluation continues to gain prevalence as an essential tool to examine and improve the board’s effectiveness. Despite this, board assessments are falling short of their promise in some cases. When done properly, board evaluations provide a forum for directors to review and reinforce appropriate board and management roles and ensure that issues that lie below the surface are identified and addressed promptly. In short, evaluations give the board an opportunity to identify and remove obstacles to better performance and to highlight best practices. In our experience, boards derive the highest value from an assessment that is shaped by five key principles:

• **The board has clear objectives for the evaluation.**

  Whilst it may seem obvious, coming to a shared agreement about what directors collectively want to accomplish encourages board members to commit time and provide candid feedback essential to board effectiveness. Clarifying objectives and defining the scope of the assessment can help to avoid a situation in which the board is using the process as a way to put off dealing more directly with non-performing directors. A few key questions the board should consider at the outset include: What is the scope of assessment? What is the most appropriate assessment approach for the board? Should board leaders be assessed? What areas does the board want to delve into more deeply? What gaps exist in the current assessment process?

• **A board leader is responsible for driving the process.**

  Essential to a successful evaluation is having an independent board leader champion the process, for example, the independent board chair, chair of the governance committee or the lead independent director. While the CEO should be an integral part of the process, he or she should not be leading it. The board leader driving the process plays a significant role in managing expectations about the process, serves as an independent resource for directors and management to turn to with concerns, and may deliver feedback to individual directors if the board is not working with a third party to facilitate the process.

• **The process incorporates perspectives beyond the board directors themselves, including those from senior management and best practices from outside the company.**

  Looking only inwardly at its own effectiveness can limit the value of the assessment. Soliciting input from the executives who participate in most of the board meetings can broaden the perspectives. As regular board observers, these executives often have very thoughtful feedback about what the board does well and what it could do better. Board assessment can be more valuable when boards benchmark themselves against other high-performing boards in the same industry segments or against best practice in a specific area. A third-party facilitator with significant experience in the boardroom and knowledge of governance guidelines and regulations can provide perspectives on how the board measures up.

• **The assessment should go beyond compliance issues.**

  Director questionnaires can provide a sense of how directors feel about compliance issues but are less valuable in revealing issues or concerns that affect the board’s effectiveness. Whilst a board may be doing all the things it is supposed to be doing, these may not yield results improving the outcome of the company. In most effective board assessments, directors are interviewed individually on a confidential basis on both their qualitative and quantitative assessment of the key areas that determine the effectiveness of the board. This should be done by a seasoned boardroom consultant, via a wide-ranging discussion. A full board evaluation including reviewing board documents and
observation of a board meeting is also recom-
mended. The observation of board dynamics and exchange between directors can be very useful input when providing advice and recommendations for improvements particularly in relation to the quality of board discussions. The assessment process and corrective actions can reveal and cover a comprehensive range of issues essential to boards’ performance.

• Directors commit to reviewing the results of the assessments and preparing an action plan to address issues that emerged.

Assessment can fall short when boards do not commit to reviewing the results and follow-through. This can generate cynicism and compromise the commitment to improve effectiveness in the future too. Boards have to be open to the results of the assessment and be prepared to deal with the findings. This involves having an open discussion among the board members about performance issues that were raised and prioritising items that should be addressed in the coming year. Following up is typically delegated to the governance committee, which develops an action plan based on the board’s recommendations. The board reviews its progress as part of the following year’s assessment.

What board needs to know about culture

Corporate boards continue to become more engaged, independent and effective stewards of business performance and shareholder value. Boards have recognised the need for greater oversight of critical levers of business performance such as strategy and people. Yet one lever of performance rarely appears on board agendas: culture. A company’s culture can make or break even the most insightful strategy or the most experienced executive. Cultural patterns can produce innovation, growth, market leadership, ethical behaviour and customer satisfaction. On the other hand, a damaged culture can impede strategic outcomes, erode business performance, diminish customer satisfaction and loyalty, and discourage employee engagement. Despite its sizable contribution to business results, few boards oversee culture with anything like the rigour they do strategy, risk or succession planning. Some of the main reasons we observed include lack of board ownership over the matter, lack of board visibility into the culture, lack of a defined board role and a lack of shared vocabulary and framework to discuss culture.

Nevertheless boards can help foster long-term shareholder value by deepening their understanding of culture, placing it on the board’s agenda and ensuring management is forging a culture that aligns with business strategy. Having a framework for understanding organisational culture can help the board to ensure that the CEO and the executive team have cultural fluency. Boards can consider an executive’s ability to manage culture as part of individual performance reviews and the succession planning process. Boards should be willing to spark discussion about the need for culture change when necessary. Directors should consider how their own actions and behaviours contribute to the culture and whether they are modelling the desired behaviours.

We have found the following questions powerful in helping directors understand culture and ensure the company is on the right path in this regard:

• What is the current culture of the organisation?
• How well aligned is our corporate culture with our strategy?
• What is the difference between our current and ideal corporate culture?
• How well do our organisational structure and practices support our ideal culture?
• How do we consider culture in our succession plans?
• How can we contribute to the right tone at the top?
• Where in the board agenda should we put questions about culture?

Per Peter Drucker, ‘culture eats strategy for breakfast’. Corporate culture is one of the most critical levers for the board to help create shareholder value and realise strategy. However, a company’s culture can also make the company resist strategic changes. By placing culture on the board agenda and asking the right questions, the board can help to ensure that culture supports strategy while preserving the boundary between governance and management.

Conclusion

Corporate governance and boards have made great strides in Singapore over the past decades.
Boards are finding themselves moving beyond overseeing compliance issues to incorporating forward-looking imperatives in helping to steer the business and guiding management. In this chapter, we have shared perspectives and insight on some of the most critical dynamics in the Singapore boardroom, including board composition and in particular diversity and international directors, and we have provided comments on board succession, including the need for increased independence on the board. CEO succession is one of the most critical tasks a board undertakes that is essential to the strategy and operation of the business. A robust process can help boards to ensure the selection of best candidates and the nurturing of bench strength over the long term. Board evaluation is gaining more importance in board development and improvement. Boards also play an important role in ensuring the company nurtures the right structure to align and help achieve the strategy for the company.
Global trends
Owing to the recent bank failures and economic crises across the globe the importance of a healthy organisation, including diversity at the board level, has been brought into focus over the last few years. The case for diversity is almost intuitive: companies’ customer bases are made up of people of different genders, ethnicities, ages and experiences and also, companies that aim for diversity can choose the best available talent from the widest possible pool. Boards are often criticised for having members with similar backgrounds, education and networks, leading to groupthink when it comes to decision-making. Members with diverse backgrounds and experience are likely to bring different perspectives, complementary skills and experiences to the table, which is likely to result in better decision-making.

Gender diversity
Research suggests that a balance of men and women improves board dynamics and the quality of discussion. A recent survey conducted by MSCI ESG Research has found that boards with gender diversity above and beyond regulatory mandates or market norms have fewer instances of governance-related scandals such as bribery, corruption, fraud and shareholder battles. MSCI research also shows that companies that had strong female leadership generated a return on equity of 10.1 percent per year versus 7.4 percent for those without (on an equal-weighted basis). However, although the case for gender diversity is widely accepted, in practice not even 20 percent of board seats are held by women in most countries.

Some countries have regulated to encourage gender diversity. There are differing approaches, including the introduction of legislative quotas for male and female representation in the boardroom and disclosure requirements for companies to publish their strategies towards hiring at the board level. In 2003, Norway became the first country to introduce board gender quotas requiring a 40 percent representation of both sexes on the board of public companies by 2008. Countries including Belgium, France, Germany, Iceland, India, Israel, Italy and Malaysia followed and set quotas for female board representation, mostly at the 30 percent to 40 percent level. Some countries, such as the Netherlands, have introduced quotas but on a ‘comply or explain’ basis.

In the United States (‘US’), the Securities and Exchange Commission (‘SEC’) addressed the issue of board diversity (not limited to gender) in 2010 through enhanced disclosure rules designed to give investors more
information to evaluate corporate leadership. For the purposes of SEC disclosure, diversity was broadly conceptualised to include race, gender and national origin as well as a person’s individual attributes, such as professional experience, education, skills and views. The SEC’s rule requires companies to disclose in their proxy statements whether the nominating companies (or the board) considers diversity in identifying director nominees. In addition, section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (‘Dodd-Frank Act’) was adopted to help correct race and gender imbalances at financial institutions and their regulators by prescribing inclusion requirements at the specified US government agencies that regulate the financial services sector, entities that contract with the agencies and the private businesses they regulate.

There is also more legislative reform in the pipeline. In Europe, for example the European Commission (‘EC’) has led the initiative towards gender diversity by publishing a proposal in November 2012 for a directive on improving the gender imbalance among non-executive directors of listed companies. The proposal sets a quantitative objective of at least 40 percent representation for each gender among non-executive directors of companies listed on stock exchanges, excluding small and medium-sized companies, by 2020. Statistics published by the EC indicated that, as of June 2014, only 17.8 percent of board members of the largest listed companies registered in the European Union (‘EU’) (610 companies covered) are women. Women represent just 11.8 percent of executives and 18.8 percent of non-executives. It was estimated that, if implemented, the proposal would affect roughly 5,000 companies out of the 7,500 listed companies in the EU. However, the proposal has been opposed by some countries, including by the United Kingdom and, as yet, no directive has been implemented.

Research organisations have found that binding measures produce more effective results so legislating for gender diversity would seemingly be the right way forward. Norway, one of the first countries to introduce legislation aimed at tackling gender imbalance on boards, now has the highest percentage of board seats filled by women in the world (over 40 percent). That said, statistics can be misleading. In countries that have a legislative quota, although the quotas have resulted in an increase in the representation of women on boards, mainly in non-executive positions, there has been little evidence of women holding chair or CEO positions. For instance, although in Denmark 21.6 percent of board directors are female, there are no female chairs and although Norway has the highest representation of women in the boardroom, none of Norway’s large-cap companies has a female CEO. In addition, some countries have introduced legislation that is not far reaching. In India, a new law was brought in that required listed companies to appoint only one female to the board. Legislation can also be unrealistic: a large proportion of companies in India do not have any female directors so promoting even one woman to board level is not always straightforward. As a result, some companies in India have elected women who are connected to their directors, as was the case for Reliance Industries Ltd. where the chairman’s wife was chosen.

Legislating to promote gender-balanced boards is not the only solution and other methods have proved effective. In Australia, the Australian Institute of Company Directors introduced a diversity initiative which included a chairmen’s mentoring programme and, since its implementation, the number of female director appointments has increased. The 30 percent Club, launched in the UK in 2010, aims for a minimum of 30 percent women on the Financial Times Stock Exchange (‘FTSE’) 100 boards. Currently the figure stands at 26 percent, an increase from 12.5 percent when the club was set up. More clubs have since been launched in Australia, Canada, Hong Kong, Ireland, Malaysia, Southern Africa and the United States.

Some countries have adopted successful voluntary regimes. Unlike many European countries, the UK has adopted a voluntary framework encouraging businesses to include more women on boards and has no mandatory legal regime imposing representation of women on boards of companies. In response to concerns that progress in the UK towards gender-balanced boardrooms was too slow, the UK Government invited Lord Davies to undertake a review of the then situation, to identify barriers preventing more women from reaching the boardroom and to make recommendations regarding what the government and businesses could do to increase the proportion of
women on corporate boards. Almost 90 percent of the respondents to the review’s consultation opposed the introduction of mandatory quotas for women on boards and, as a result, the report stopped short of condoning such a measure and instead made recommendations which FTSE 350 companies have acted on voluntarily. The Davies Steering Group believes that the approach is working well in the UK: in October 2015, 26.1 percent of the FTSE 100 boards and 19.6 percent of FTSE 250 boards were made up of women. There are no all-male boards in the FTSE 100 and only 15 all-male boards in the FTSE 250. There is also a feeling in the US that ‘one size fits all’ legislation is not appropriate and that, instead, companies should act voluntarily to change the make-up of their boards or that shareholders should pressure them to do so. For instance, in March 2015 public pension funds with more than US$1.12 trillion in assets sent a letter to the SEC, calling on it to require disclosures about directors’ gender, race and ethnicity. Institutional investors are also increasingly supporting organisations such as Thirty Percent Coalition, the 30% Club, 2020 Women on Boards and the Alliance for Board Diversity that promote greater participation by women at the board level.

Some countries have been slow to react to the movement towards more gender-balanced boards. The Prime Minister of Japan, Shinzo Abe, has set out an objective of 30 percent female board membership by 2020 but no action has been taken to implement this at this stage. In Japan, under 2 percent of board members are women. Little progress has been made in Singapore where there is no mandatory legislative quota for women on boards. As per the latest Singapore Board Diversity Report, representation of women on a sample set of 676 SGX-listed company boards was at 8.3 percent in 2013. More than half of the boards (56.2 percent) had no female representation at all. The Board Diversity Report concluded that despite heightened awareness and discussion over the last three years, they could not find an acceleration in the number of female board members.

It is important not to discount the role that culture can play alongside legislation and other initiatives in the movement for higher female board participation, as highlighted by a recent KPMG report. For example, one reason for the relatively high level of female board representation in Norway could be that there is a tendency in the Nordics for women to be more direct and confident, which can ease their route to the senior ranks of companies. A direct culture is also found in many parts of South America. Similarly, many Eastern European and African women are ambitious, career oriented and eager for financial independence. Furthermore, in China, the one child policy in some provinces (meaning that women only take maternity leave once) and the availability of childcare can alleviate some of the career stumbling blocks that many women experience in other countries. Although in the US gender diversity is high on the agenda, it can be practically difficult to promote women to board level because there is a lack of board vacancies owing to the long tenure of many roles. On the other hand, Germany and the UK have relatively conservative cultures and the prevalence of single-sex education in the UK and an ‘old boys’ network’ could be contributing to less inclusive work environments which are difficult for women to succeed in. Likewise, a machismo culture dominates in Southern Europe, with an expectation for women to be stay-at-home mothers; and conservative family values still dominate in Japan and South Korea. At the more extreme end of the spectrum, attitudes to women in parts of the Middle East are illiberal, making it difficult for women to forge their way.

**Ethnic diversity**

Although there has been progress with regard to gender diversity globally, the promotion of ethnic diversity has been very slow. The latest Singapore Board Diversity Report states that ethnic Chinese directors made up 85.7 percent of all the directors of SGX-listed companies, with Malay and Indian directors accounting for 3.5 percent and 2.8 percent, respectively. As per the report, companies with more than one ethnicity represented on the board performed significantly better, with an average return on assets of 2.9 percent compared to 0.8 percent for those without ethnic diversity. Similarly, in a recent report by Green Park, a recruitment consultancy that analysed around 10,000 most senior employees operating within the FTSE 100 in the UK, it was recognised that there are no senior East Asian or Chinese heritage Main Board Executive Directors in the top 20 FTSE 100 companies, and...
Board diversity

black leaders tend to come from companies who have physical assets in Africa. Vince Cable, former Liberal Democrat business secretary, and Chuka Umunna, former shadow business secretary, have recently issued a joint call for Lord Davies to report on progress into the ethnic diversity of boards. In the US, recent research by the Institutional Shareholder Services suggests that 13 percent of the Standards & Poor’s 500 board seats were held by minority directors and Caucasians have accounted for between 87 percent (at the largest firms) and 94 percent (at the smallest firms) of board seats between 2008 and 2014. African American directors generally had the highest proportion of board seats occupied by minority directors, followed by board members of Asian descent, except at the smallest firms where Asian American directors have held a commanding but declining lead with respect to minority directorships, and where the gap between the proportion of Hispanic and African American directors is narrowest.

Best practices

Although there are no legislative measures in many countries enforcing diversity in the boardroom, it is beneficial for companies to adopt practices to encourage diversity in the boardroom. Although a company should consider a wide range of measures to encourage diversity at all levels, the measures recommended to encourage diversity in the boardroom include the following:

• Develop a diversity policy for the board, including setting internal diversity goals for the board
• Ensure that the nominations committee applies the diversity policy effectively and that the nominations are discussed at the board meetings
• Ensure that the chair of the board has the skill to manage a diverse board. The chair of the board has an enormous impact on ensuring that a diverse board works effectively. Successfully managing a diverse board requires greater skill on the part of the chair to ensure that everyone is included and that the more vibrant debate that characterises diverse teams can flourish
• Encourage diversity in the senior management roles
• Encourage transparency and disclosure of the policies.

The 30% Club states that research has suggested that 30 percent is the proportion when a critical mass is reached, in a group setting, in which the voices of the minority group are heard in their own right rather than simply representing the minority. Although 30 percent representation of different kinds of diversity in the boardrooms seems like a long way from where we stand currently, it is encouraging to see that there is progress being made globally and that regulators and investors are beginning to take action in this direction.
This chapter outlines 10 practical steps that already listed companies and their boards can take to demonstrate a commitment to corporate governance that goes beyond box ticking and, in due course, will help the company command a premium in terms of the company’s licence to operate and the valuation of the company’s shares.

1. Company announcements that tell a story
A perfunctory disclosure-driven announcement strategy is the enemy of relationship-building and will quickly limit a company’s licence to operate, especially in the event of an opportunity for a transformative investment or any other bold corporate move. There will be always be bumps along the road in the execution of your strategy, and quarterly financials will dip as a result. You cannot expect the market to continue to trust your company if investors have limited understanding of the board’s strategic priorities and the resilience of the underlying business to such headwinds.

2. Investor section on your corporate website
A dedicated investor webpage or section demonstrates that you attach value to keeping shareholders, analysts and potential investors informed about your business and its prospects. A dedicated section makes their job easier and is necessary if you want to attract a full range of local and international investors to your stock. It does not have to be complicated and expensive to maintain but should be user-friendly and contain up-to-date information.

3. Proactive analyst engagement, including results feedback
Frequent conversations with your leading analyst followers, especially some six weeks ahead of results, will help fine-tune your announcements and presentation and alert you to any simmering concerns. Furthermore, after the results, you should also gather feedback from analysts. Even if you were unable to give them everything they asked for in the pre-results conversations, this will demonstrate the importance that you attach to their, and their clients’, views and concerns.

4. A detailed, frequently updated shareholder register and face-to-face investor meetings
You can only really know your investors if you meet them. We recommend you offer to meet your top 10 to 20 investors face to face at least every year and speak to any smaller significant holders just as frequently, if not in person.
Governance reporting: Adapting your model to stakeholder expectations
Brunswick Group

8. Refresh INEDs regularly
Minority investors will look to the independent directors to protect their interests. This is especially important for companies with large corporate, government or family shareholders. There will always be a concern that long-serving non-executive directors have become too close to either management, or the majority shareholder, to view the protection of minority shareholders as their primary duty. This will undermine confidence in the board’s commitment to good governance.

9. Credible explanations
‘Comply or explain’ is at the centre of corporate governance codes in Singapore and most other leading financial centres. Explaining, however, is not the easy way out. Provide careful, board-level consideration and a watertight, credible explanation whenever you choose not to comply, to avoid damaging the credibility of your stated commitment to high standards of corporate governance.

10. Track market expectations against internal forecasts and market trends
Professional market participants dislike surprises, both bad and good. It is the board’s responsibility to effectively manage expectations. This can be accomplished only if the board knows when the market’s expectations are drifting out of line with those of the business. Tracking market consensus expectations and comparing them with frequently updated internal forecasts and any changes in the trading and competitive environment should be a standard agenda item at regular board meetings. Shareholders and analysts are slow to forgive boards once they have been misled.
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Kenneth Yap is the Chief Executive of the Accounting and Corporate Regulatory Authority (‘ACRA’). ACRA is the national regulator of business entities, public accountants and corporate service providers in Singapore. He also performs the statutory functions of the Registrar of Companies, Businesses, Public Accountants, Limited Liability Partnerships and Limited Partnerships. Kenneth sits on several national councils and committees, including the Accounting Standards Council of Singapore, Corporate Governance Oversight Committee; the Singapore Accountancy Commission, the National Community Leadership Institute Board, and the Appeal Board of the Commission for Foreign Manpower. Internationally, he is on the board of the Executive Committee of the Corporate Registers Forum and XBRL International.

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Lucien is the Chairman and Senior Partner of Allen & Gledhill. He has more than 30 years’ experience in legal practice and specialises in banking, corporate and financial services work. Having been involved in some of the largest and most high-profile corporate and commercial transactions undertaken in recent years in Singapore, Lucien has also established a considerable reputation for his involvement in international transactions.

Over the years, Lucien has sat on several law review committees in Singapore, which reviewed amendments to Singapore company and securities law. He is regularly cited as a leading lawyer in banking, finance, mergers and acquisitions, and corporate governance in publications including Chambers Global, The Legal 500 Asia Pacific and IFLR1000. He was conferred a Special Award for his outstanding contribution to the legal profession at the Chambers Global Awards in London in 2007 and received a Lifetime Achievement Award at the first Chambers Asia Awards 2010 in Singapore.
Lucien graduated from the University of Singapore with a Bachelor of Laws (Honours) degree and was admitted to the Singapore Bar in 1979.

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Christine co-heads the Corporate & Regulatory Compliance practice group at Allen & Gledhill. Her principal area of practice is non-contentious corporate and commercial law, with a special focus on corporate regulatory and compliance.

Her work scope spans advising companies, directors and officers on their reporting and disclosure obligations, and listed companies on their continuing obligations under the listing manual of the Singapore Exchange Securities Trading Limited to drawing up long-term incentive plans and various shareholders’ mandates.

Christine has also assisted multinational companies in the setting up of their regional headquarters in Singapore.

Yap Lune Teng
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Lune Teng’s principal area of practice is corporate law, particularly in the areas of corporate regulatory, governance and compliance for listed and unlisted companies. She regularly advises on employee incentive schemes, scrip dividend schemes, share repurchases, disclosure requirements for substantial shareholders and directors, and other corporate matters.

Lune Teng graduated from the University of Bristol with an LLB (Hons) degree and qualified as a Barrister-at-Law at Bar of England and Wales, Gray’s Inn. She was called to the Singapore Bar in 1991 and joined Allen & Gledhill in the same year.

Andrew Chan
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Andrew’s practice encompasses commercial work, and he is a specialist in dispute resolution (especially arbitration), trusts and insolvency (corporate and personal). In litigation and in arbitration, he has acted as counsel, been appointed arbitrator and appointed to give expert evidence on Singapore law. He has also given expert evidence for use in various foreign courts.

Andrew has been consistently noted as a leading insolvency and restructuring lawyer in The Legal 500 Asia Pacific, Chambers Global and Chambers Asia-Pacific, Who’s Who Legal for Insolvency and Restructuring, and IFLR1000. Besides restructuring and insolvency, Andrew’s expertise is acknowledged in Asialaw Profiles (2016) for litigation and in The Legal 500 Asia Pacific (2016) for international arbitration.

Andrew writes extensively on insolvency and arbitration. He is the General Editor of Law & Practice of Corporate Insolvency and Consultant Editor of Halsbury’s Laws of Singapore on Insolvency. He is also co-author of Law and Practice of Bankruptcy in Singapore and Malaysia.

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Jerry is Co-Head of the Financial Services Department and heads the Real Estate Investment Trusts (‘REITs’) team at Allen & Gledhill. He has extensive experience in international and local equity and debt capital markets, REITs, business trusts (‘BTs’), private funds, securitisations, and mergers and acquisitions. He has been involved in the listing of almost all the REITs and BTs on the Singapore Exchange to date.

Jerry is Senior Vice-Chair of the Securities Law Committee, International Bar Association; Member of the Corporate Practice Committee, Law Society of Singapore; Secretary of REIT Association of Singapore; and Fellow of Singapore Institute of Arbitrators.

Jerry graduated from the National University of Singapore with an LLB (Hons) degree and an LLM degree and is called to the Singapore and Hong Kong Bars. He is a non-practising solicitor of England and Wales.

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Bik Wei’s main areas of practice include civil and commercial litigation and arbitration. She advises listed companies and trust companies and
is involved in Singapore High Court proceedings and appeals.

She has experience in a wide range of areas, including contractual disputes, corporate governance matters such as breach of directors’ duties, employment, construction-related disputes, property and trust, and restructuring and insolvency.

Bik Wei graduated from the National University of Singapore with an LLB (Hons) degree in 2007 and from New York University with an LLM in 2013. She was called to the Singapore Bar in 2008 and has been with Allen & Gledhill since.

Vincent Leow
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Vincent’s practice focuses on employment, banking, corporate and commercial disputes, as well as contentious investigations and inquiries.

He has substantial experience in acting for clients in disputes involving credit and security concerns, shareholders or joint venture disputes, corporate fraud, investigations and asset recovery, corporate governance, economic torts, and employment matters. He also advises clients on financial services regulatory and risk management issues.

He has been recommended for his expertise in The Legal 500 Asia Pacific (2016) as a leading individual and described as one of the ‘market leaders’.

Vincent has written extensively in various journals and has also contributed to a number of leading publications, including Singapore Civil Procedure and Halsbury’s Laws of Singapore. Vincent is currently an adjunct faculty member of the School of Law of the Singapore Management University and was previously an adjunct faculty member of the Faculty of Law of the National University of Singapore.

Tan Tze-Gay
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Tze-Gay is Head of the Equity Capital Markets team at Allen & Gledhill. She has broad experience in international and local equity and debt capital markets, the establishment of investment funds and listings on the Singapore Exchange. She also advises Singapore Exchange listed entities on their corporate regulatory and compliance requirements.

Tze-Gay is a member of the International Bar Association and its Securities Law Committee and Investment Funds Committee.

Tze-Gay graduated from the National University of Singapore with an LLB (Hons) degree and was called to the Singapore Bar in 1988.

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Edward’s main areas of practice are corporate restructuring and insolvency, commercial and banking litigation and property disputes. He has been lead counsel in several high-profile cases, in particular, restructuring matters (both cross-border and domestic) and commercial disputes.

In insolvency, he has advised statutory boards, government-linked companies, major banks, corporates and financial institutions on schemes of arrangement and compromise, judicial management, liquidation and clawbacks. In litigation, he has represented major banks and blue chip companies in private banking, construction, property and commercial disputes, as well as fraud investigations.

Edward has been recommended for his expertise in several legal publications, including The Legal 500 Asia Pacific and Benchmark Asia-Pacific. In Chambers Asia-Pacific he is cited as being ‘very impressive’ (2015) and ‘has an impressive track record’ (2016). Edward has also written extensively and is a co-author of Halsbury’s Laws of Singapore on Insolvency. He is a Fellow of the Insolvency Practitioners Association of Singapore.

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Zhaoqi’s areas of practice encompass equity and debt capital markets and general corporate and compliance advisory work for Singapore-listed companies. She has advised issuers and underwriters in capital markets transactions, including initial public offerings of equity and business trusts, rights issues, debt issuance programmes and debt and perpetual securities offerings.
Zhaoqi graduated from the University of Oxford in 2007, was called to the Singapore Bar in 2009 and joined Allen & Gledhill the same year.

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Edward’s areas of practice encompass insolvency restructuring, employment, tenancy and general litigation work for local and multinational corporations. He has extensive experience advising directors, companies and insolvency practitioners on a variety of issues including directors’ duties, restructuring and insolvency matters. He has also assisted insolvency practitioners in litigation involving breaches of directors’ duties and misappropriation of assets.

Edward graduated from King’s College London in 2009, was called to the Singapore Bar in 2012 and joined Allen & Gledhill the same year.

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Lance’s principal area of practice is in corporate and commercial law with a specialist focus on corporate governance and regulatory compliance advisory work for both private and public listed companies.

Lance graduated from the National University of Singapore with an LLB (Hons) degree in 2012. He joined Allen & Gledhill after being called to the Singapore Bar in 2013. He is also a member of the Singapore Academy of Law.

**Will Carnwath**  
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Will is a founding member of Brunswick’s Singapore office, where he focuses on corporate reputation, social purpose and investor relations, particularly in the natural resources, industrials and healthcare sectors. Past and current clients include GlaxoSmithKline, BAE Systems, BG Group, Rolls Royce, Weir Group, Qatar Holdings, SapuraKencana, PTT EP, ANZ Bank, CP Group and APR Energy.

Before moving to Singapore, Will spent three years as Chief of Staff to Brunswick’s Chairman in London, working with him on the largest and highest profile international clients and deals. He is a former senior investment banker, with more than 10 years in corporate finance at Piper Jaffray and Nomura, where he focused on healthcare and industrials transactions. He has worked on more than 70 deals, including cross-border M&A, IPOs and secondary fundraisings. Prior to joining the City, Will graduated from St. Andrews University with a first-class degree in Physiology.

**Kate Holgate**  
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Kate is responsible for leading the development of Brunswick’s Southeast Asia practice. She has worked on a full range of retained clients in the listed and private sectors as well as on major capital market transactions, including more than 20 initial public offers.

In Southeast Asia her focus has been on constructing corporate reputation campaigns and, in particular, helping clients devise and implement communication and stakeholder engagement programmes to support market entry strategies, capital raisings and business transformation.

Before joining Brunswick, Kate spent six years in the Corporate Finance Division of Dresdner Kleinwort Benson, where she worked on a number of capital market transactions including flotations,
mergers and recommended offers and hostile offers. 

Kate joined the British Diplomatic Service and served as spokesperson and head of the press office at the British Embassy in Ankara after graduating with a first-class degree in physics from Oxford University.

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Noel Tan
Vice President (formerly), Head of Specialty Division
Noel Tan was Vice President and Head of the Specialty Division of Federal Insurance Company, a Chubb Company, in Singapore until 12 April 2016. The division was responsible for structuring specialty financial and liability insurance, such as cybersecurity insurance and professional liability.

Chubb’s insureds in Southeast Asia included the region’s largest banks, venture capital firms, hedge funds, not-for-profit organisations, educational institutions and public-listed Blue Chips.

Mr. Tan regularly contributed articles and conducted seminars on directors’ and officers’ liability, asset management professional liability and cyber insurance.

Noel holds an MBA with the University of Chicago Booth School of Business and is presently an adjunct lecturer with the Singapore College of Insurance.

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Edwin Low is a Managing Director and the Co-Head of Investment Banking and Capital Markets for Asia-Pacific, based in Singapore. Mr. Low has completed a wide range of M&A assignments for Credit Suisse across Asia. He has also led and closed M&A transactions in Australia, the Philippines, Taiwan, Hong Kong, Malaysia, Singapore, Thailand and Indonesia.

Selected transaction highlights include representing the Indonesian Government in the sale of the Surabaya Port in 1998, the sale of Indosat in 2000, representing Temasek Holdings in the sale of Bank Internasional Indonesia to Maybank in 2009, and the sale of the three Singapore-based power generation companies in 2008-2009. Mr. Low also advised GES International on its sale to Venture Corporation in 2006, Barry Callebaut on its purchase of Petra Foods’ cocoa ingredients business in 2013, CapitaLand on the privatisation of CapitaMalls Asia in 2014, Temasek Holdings on the public takeover of Olam International in 2014 and Keppel Corporation on the privatisation of Keppel Land in 2015. Some of Mr. Low’s transactions have been awarded ‘Deal of the Year’ designations from publications, including Asiamoney, International Financing Review, FinanceAsia and others.

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Pankaj Goel is a Managing Director, Co-Head of Southeast Asia Investment Banking and Capital Markets.
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Mr. Goel has led a broad range of M&A advisory assignments in different industries across Asia. His selected landmark transactions include Alibaba’s acquisition of Lazada, Keppel Infrastructure Trust on the merger with CitySpring Infrastructure Trust and acquisition of a 51% stake in Keppel Merlimau Cogen, CapitaLand’s privatisation of CapitaMalls Asia, Temasek Holdings’ public takeover offer to acquire a controlling stake in Olam International, Singapore Power on the sale of stake in Australia-based Jemena and a 19.9% stake in SP Ausnet to the State Grid of China, Heineken’s acquisition of Asia Pacific Brewery, sale of Indonesia’s Bentoel to British American Tobacco and Temasek Holdings’ sale of Singapore power generation companies (Tuas Power, Senoko Power and Power Seraya). Some of Mr. Goel’s transactions have been awarded ‘Deal of the Year’ designations from publications, including Asiamoney, International Financing Review, FinanceAsia and others.

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Seat Moey has been with DBS for more than 20 years.

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Veron Wong holds a Bachelor of Accountancy degree from Nanyang Technological University in Singapore. She is a Certified Chartered Accountant, Singapore, and a member of the Institute of Internal Auditors. Veron is a director in the Singapore Risk Advisory practice of Ernst & Young Advisory Pte Ltd, where she has more than 12 years of experience in enterprise risk management.

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Neo Sing Hwee leads the Risk Advisory Practice of Ernst & Young Singapore with 45 professionals dedicated to the provision of risk management, internal audit and corporate governance services.

He has more than 18 years of experience in providing corporate governance, risk management, performance improvement, internal controls and business advisory services to clients in various industries, including government organisations (covering ministries, statutory boards and government-linked companies), institute of public characters (‘IPC’s)/charities property and real estate (covering REITs and business trusts), engineering and construction, pharmaceutical, manufacturing (including contract manufacturing, precision engineering), education, oil and gas, pharmaceuticals and retail companies.

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management, corporate governance review, internal audit, business processes, financial and operational audits, SOX attestations and readiness.

Veron has international experience leading large-scale projects with a high degree of complexity for major clients based in the PRC, South Asia, ASEAN, Oceania and Europe. She has good understanding of the cross-geographical business environment. She has also been involved in leading projects involving the Code of Corporate Governance and Listing Rules for Stock Exchange.

In particular, she has extensive experience in the government and public, healthcare, real estate, hospitality and construction sectors and is a core member of EY Global Real Estate, Hospitality and Construction Sector.

Before joining EY, Veron was part of the regional internal audit team for US Multinational, which is the worldwide leading corporation in the food industry. She has extensive cross-cultural experience in leading internal audit and suppliers audit projects in different regions such as PRC, North Asia, Southeast Asia, Australia and Europe. Veron sits on the Board of Variety Singapore, which is part of a global children's charity focused on helping less fortunate children to reach their potential, regardless of their circumstances.

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Raja leads the Ernst & Young (‘EY’) Restructuring practice in the ASEAN region, which currently has 88 dedicated specialists attending to corporate restructuring and insolvency projects. With over 30 years in this field, Raja has been involved in numerous assignments requiring turnaround skills. Many of these have involved taking over management of ongoing businesses, restructuring or divestment of assets and developing schemes of arrangement.

The nature of these assignments has been varied and in industries across the spectrum, including trading, retail, construction and manufacturing. As part of his work Raja has acquired extensive general and operational management experience, including dealing with the complex legal and commercial issues arising from insolvency assignments.

In particular, Raja has led a multitude of engagements in which detailed advice has been provided to directors surrounding their duties and options prior to insolvency, with many of these companies listed on the Singapore stock exchange. Other assignments have entailed the investigation of directors’ conduct prior to an insolvency situation.

In addition to his client facing and leadership role at EY, Raja is also a director of the Insolvency Practitioners Association of Singapore Limited.

Angela Ee
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Angela is a transaction advisory specialist and has been with EY’s London and Singapore offices for 25 years. Angela currently leads EY’s Restructuring Practice in Singapore.

Angela has been involved in numerous assignments in a wide range of industries, including advising directors on their duties and options prior to insolvency, advising on and developing consensual debt restructurings and schemes of arrangement, managing of ongoing businesses, winding down of businesses, divestment of distressed assets, advising on dispute resolutions, and acting as judicial manager, receiver and liquidator where necessary.

In the case of listed companies, Angela is also a Capital Markets Services (‘CMS’) licensed representative. She has team-led numerous problem loan workouts and Judicial Management of listed companies in Singapore, including the successful resuscitation of a listed waste recycling company within a year of the appointment and managing and successfully selling the business and assets of a company within the pharmaceuticals sector. She has also been involved in the reverse takeovers of several listed companies in Singapore.
Aaron Loh
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Aaron has 23 years of experience of being involved in corporate recovery and restructuring engagements, including restructuring, receivership, liquidation, judicial management and scheme of arrangement assignments. His work has seen him managing regional engagements in Singapore, the United Kingdom, Indonesia, China, Brunei and Malaysia, requiring turnaround skills, in a spectrum of cases, from family owned businesses to listed companies. Many of these involved taking over management of ongoing businesses, dispute resolution, divestment of assets and winding down.

As part of his work, Aaron has acquired extensive general and operational management experience, including dealing with the complex legal and commercial issues arising from restructuring assignments. Recent engagements have involved Aaron taking directorship roles in large trading companies to safeguard the interests of shareholders.

Paresh Jotangia
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Paresh is an Associate Director with Ernst & Young’s practice in Singapore, with over 11 years of experience dealing with restructuring and insolvency engagements. He is a chartered accountant, Singapore, and a Bachelor of Arts in Business and Accounting. In addition, Paresh is a member of the Association of Chartered Certified Accountants.

Paresh’s experience includes restructuring, receivership, liquidation, administration and scheme of arrangement engagements. Paresh has international experience, beginning his restructuring and insolvency career in the United Kingdom at another Big 4 firm, before relocating to Singapore in 2010 where he joined EY.

Paresh has been involved in a variety of cases, from small family owned businesses to some of the largest restructuring and insolvency engagements, including the UK Enron and Lehman Brothers entities. More recently, Paresh has managed and team-led engagements with complex operational, commercial and legal issues, with large asset and liability positions.

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Arati speaks frequently on these topics at various industry forums, including representing the Asia Pacific region as a speaker on international D&O exposures, at the Professional Liability Underwriting Society (‘PLUS’) D&O Symposium held in New York in 2015.

Arati joins Marsh after 11 years at Chubb Group of Insurance Companies (a Fortune 500 company listed on the NYSE), where she led the charge for underwriting Chubb’s Specialty Insurance business in the Southeast Asia region. Arati was instrumental in expanding Chubb’s presence and capabilities in the region, across distribution, products and industry segments.

Prior to underwriting, Arati was responsible for the area of Strategic Marketing for the Asia Pacific region for Chubb. She worked on a host of strategic issues, including strategy development, distribution optimisation and market opportunity assessment, across Chubb’s markets in the Asia
Gillian Goh
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Gillian has more than 15 years of corporate finance experience, during which she developed her advisory and project management skills across a variety of transactions. Gillian has transactional experience in mergers and acquisitions, divestments, privatisations, initial public offerings, rights issues, and the issuance of fairness opinions for interested party transactions and general offers.

She leads the Continuing Sponsorship team at PrimePartners Corporate Finance Pte. Ltd., which currently supervises more than 55 issuers listed on the SGX Catalist board and provides governance advisory services to several SGX Mainboard-listed issuers.

Gillian graduated from Nanyang Technological University, Singapore, with an MBA (Banking and Finance) degree and Monash University, Australia, with a Bachelor of Business (Banking and Finance) degree.

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Yeng Pheng is a Registered Professional with the Continuing Sponsorship team at PrimePartners Corporate Finance Pte. Ltd. advising SGX Catalyst and Mainboard companies on compliance with the SGX Listing Rules. Yeng Pheng has vast experience in financial markets. She worked for more than 10 years at the SGX, with her last role...
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He was country managing director and managing partner of Accenture’s communications and high-tech practice in Asia before he retired in 2003.

He is actively engaged in the nonprofit sector and sits on the boards or councils of CHARIS, Council for Third Age, SymAsia Foundation, apVentures and Catholic Foundation. He has written extensively on corporate governance and nonprofit matters.

He is an Honorary Fellow of the Singapore Computer Society, and a Fellow of the Singapore Institute of Chartered Accountants and the Singapore Institute of Directors.

Yeng Pheng
Graduated from Royal Melbourne Institute of Technology with a Bachelor of Business (Economics and Finance) degree.

Being with the issuer regulation division. Her key responsibilities included assessing the suitability of listing applications, supervising a portfolio of listed issuers on their compliance with ongoing listing obligations, and providing guidance to listed issuers on capital markets transaction matters.

Yeng Pheng graduated from Royal Melbourne Institute of Technology with a Bachelor of Business (Economics and Finance) degree.
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Malini leads the Board and CEO Practice for Singapore and Southeast Asia for Spencer Stuart. She focuses on board recruitment and evaluations, as well as CEO searches throughout the region. She also leads the Consumer Practice for Asia Pacific and is a member of the firm's Financial Services Practice.

Prior to joining Spencer Stuart, Malini was a consultant in the Singapore-Kuala Lumpur offices of another international executive search firm, where she played a key role in driving the firm's Malaysian practice, led the financial services practice group for Southeast Asia and co-led efforts in the region's consumer industry. Her work also spanned the telecommunications, media, and transportation and logistics sectors, as well as board director and senior executive assignments.

Prior to moving to Singapore in 2001, Malini was based in India, where she conducted cross-border personnel search assignments in the financial, media and telecommunications sectors.

Before entering executive search, Malini served as the India head of business development for cash management services in the corporate financial services group of ANZ Grindlays Bank. She was also a senior deal and relationship originator within the corporate and investment banking groups of the ANZ Bank in the United States and India, focusing on the media and financial services industries. Malini also served as strategic adviser within ANZ Grindlays as a member of the core McKinsey-Grindlays team.

A Singaporean, Malini holds an honours bachelor's degree in economics from St. Xavier's College at Bombay University and master's degrees in both finance and economics from Northeastern University in Boston.
Listing in Singapore: Corporate governance perspectives

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