

Corporate Governance in an era of Extreme Risk

Good morning Mr Chng, Mr Tham Sai Choy, Dr Lawrence Loh, ladies and gentlemen. It is a pleasure, and a great privilege, to be invited by SID, CPA Australia and the NUS Centre for Governance, Institutions and Organisations (CGIO) to give some remarks at this year's Singapore Governance & Transparency Forum.

Given what has taken place in 2020, the topic for this Forum is very well chosen. Going into a new decade, I don't think any of us anticipated how tumultuous this year has turned out. We are fellow travellers during an extraordinary event that many predict will lead to certain things changing fundamentally. Yet we must not forget that an era of extreme risk was already reasonably clear in the previous decade and even further back. These include climate change and environmental degradation, the growing income divide that can lead to social division and undermine the certainty that businesses value, and the disruption caused by developments in technology. These and other risks have the potential to cause shocks to business enterprises and ultimately the economy.

During this era of extreme uncertainty and therefore risk, it is obvious that high standards of corporate governance including proper disclosure to members of the investing public become even more important. Recently, in their "Regulator's Column" Mr Tan Boon Gin and Michael Tang of SGX Regco outlined some useful principles that should guide companies in their disclosures because of the Covid-19 pandemic. What I want to add this morning is that a "top-down" and highly prescriptive approach to corporate governance by regulators will not always be helpful in such circumstances. Of course this is not binary; there will be times when clear prescriptive rules are necessary and these can co-exist with principles-based rules for corporate governance. The issue as always is what a set of rules and practices should contain as a whole to be "just right" in achieving the goals of good corporate governance without imposing undue burdens on business enterprises.

My personal view is that in a time of rapid change that gives rise to greater uncertainty and therefore risk, it is very important to deeply embed the culture of timely, accessible and

transparent disclosures, especially of financial results and developments that have a material effect on such results. Arguably, there is still too much of a tendency amongst some companies to act according to the letter of the rules rather than their spirit. As a result of this, relevant information is occasionally not disclosed early enough, and can be sparse and therefore vague in its details. Let me provide 2 examples mentioned in the “Hock Lock Siew” column of a past issue of The Business Times.

The first relates to a company that disclosed in a regulatory filing on July 1 that a director had given a police statement in relation to the company being asked to provide assistance for an investigation into an offence. The director’s identity was not provided and it took 2 queries from SGX before this information was given. Further to the queries, the company also said that its nominating committee wanted to state for the record that upon being told of the investigation an emergency board meeting was held and deliberated on the said director’s suitability to remain as an executive director. The company could not confirm if it was the target of the investigation because it was not provided with any such information.

The second concerned the release of a statement that was bereft of key information over a material re-appointment. The company had re-appointed an executive director just two days after he had failed to secure re-election at the AGM. In addition, shareholders at the AGM did not back a resolution to give the director shares as part of his remuneration as the CEO.

When the company disclosed in the filing that two substantial shareholders had put in proxy forms past the deadline supporting the said director’s re-election, and this had resulted in the re-appointment, no information was disclosed as to the identity of the substantial shareholders. It was only after a query from SGX that the company disclosed that the two shareholders were UOB and DBS and provided information about their stakes. 2 days later, the company added that these shareholders were financial creditors and they had earlier nominated the director to manage the company’s financial and corporate restructuring.

Many of you will no doubt know of equivalent incidents. And to be clear, I am not saying that the above 2 incidents are representative of how the said companies approach disclosure issues.

They may well have been aberrations. But I think there is enough to suggest that there are companies within our market that are somewhat tardy with their corporate governance obligations; where the starting point appears to be to disclose as little as possible in the hope that there will be no query, and to drip feed as little information as possible when a query is received in the hope that there will be no follow up questions. It is unlikely to be a matter of ignorance as generally it is clear what the right thing to do is. It is really a matter of common sense.

Where these and other lapses happen, and I want to acknowledge that there are many companies that take the spirit of corporate governance very seriously including the companies that will be honoured this morning. It is often a matter of culture and mindset when lapses happen. There will always be a place for hard coded rules as they have a role to play such as establishing certain bright lines. But the problem with having to enforce such rules is that very often the “horse” has already bolted. As prevention is better, culture and mindset is an area of priority for SGX Regco. One manifestation of this is the emphasis that Boon Gin and his team have given to education and working with relevant industry bodies to establish principles and guides that we hope over time will lead to an even more healthy corporate governance culture being embedded.

This is also the thinking behind the abolition of quarterly reporting. While there are commentators that lament the demise of quarterly reporting, and I thoroughly understand where they are coming from, I firmly believe it was the right decision, not only because of the usual criticisms of quarterly reporting but also because if companies abide by the letter and spirit of the rules there should be no qualitative difference in the flow of information to the public. Many other jurisdictions have also moved away from quarterly reporting. Companies are obliged to report all material developments to its stakeholders and the greater length of time between reporting periods means that companies must be more mindful and proactive of their continuous disclosure obligations rather than hide behind the fact that this can be dealt with properly in the next quarterly reporting cycle. Over the longer term, this is the type of culture that we hope will lead to a more robust market. And our intention is to nudge companies in this direction. At the same time, Regco will buttress this change of culture by also more aggressively calling out companies that fail to meet this important obligation.

Another important shift in mindset and culture necessary for good governance that I also feel can be improved is for all stakeholders to play their roles meaningfully. What is key to this is for all stakeholders, especially management, to more fully internalise the importance of respecting the roles of other stakeholders and to see them as partners rather than as a necessary cost for doing business. Independent directors and professionals such as auditors and legal advisors are partners that can facilitate a successful business rather than persons to be endured or minimally accommodated. Shareholders should be seen as crucial supporters and a potential fount of alternative perspectives rather than as a group that has to be engaged as an annual ritual. An overly domineering Chairman, CEO and/or management can lead to hubris and blind spots that may harm the company. From my personal perspective, the best companies I have been involved with have confident Chairs who encourage alternative perspectives and treat the professionals with respect.

In conclusion, in an era of extreme risk and uncertainty, there are 2 things I wish to highlight. The first is that the playbook must be a flexible one and for this to work the market players must have the right culture to do the right thing as circumstances demand. The rulebook cannot anticipate every eventuality and the spirit behind the rules must be appreciated.

Second, the ability to make sound and informed decisions becomes ever more important in such an era. Over and above giving investors sufficient knowledge on which to make decisions, comprehensive and clear disclosures and other good governance practices can give rise to a positive feedback loop from the ideas and responses that these encourage. Being frank and open with professionals allows them to play their part such as counselling prudence to prevent acts that can lead to severe consequences later. This can only benefit companies and management.

Finally, let me extend my warmest congratulations and deep appreciation to the organizations behind the Singapore Governance and Transparency Index, including and especially Professor Lawrence Loh of CGIO. The Index is a strong enabler of the type of culture that I have spoken off and we owe a debt of gratitude to all of you.

Thank you once again for inviting me to speak this morning and I wish the organisers a very successful Forum.

TAN Cheng-Han

SGX Regco

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