Recent Case Studies on Corporate Governance in Singapore: The “Good”, the “Bad” and the “Ugly”

by

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Abstract

Corporate governance has been the hot topic in recent times following widespread publicity of corporate scandals around the world and even in Singapore. Big names like Enron, WorldCom, China Aviation Oil or even individuals such as Jeffery Skilling and Chen Jiulin “enjoyed” celebrity-like coverage by the media. Globally, governments and regulatory bodies are prescribing new rules and guidelines to preserve public interest and restore trust and corporate integrity.

This report aims to discuss the Code of Corporate Governance, hereinafter referred to as “The Code”, which had been established since 2002 by the Council of Corporate Disclosure and Governance (CCDG). The report will examine the key principles of the Code seen through “bad” cases like China Aviation Oil and Barings Bank, as well as good practices adopted by listed companies such as Qian Hu Corporation Ltd and Keppel Corporation Ltd.

Issues such as the lack of segregation of duties, insufficient access to information and unavailability of specific duties for the committees on the board and risk management are discussed in-depth. In addition, recent cases of boardroom tussles in Singapore will be discussed with recommendations for reform.

I. INTRODUCTION

In recent years, there have been many cases of corporate fraud and scandals around the world. Some of the more prominent and sensational ones include WorldCom Inc, in which the management improperly capitalised expenditures instead of expensing them and Tyco International, where top executives were charged for their roles in fraudulent actions against the company. In the local context, the near collapse and suspension of China Aviation Oil (CAO, “The Company”) as a result of the huge debts it incurred in speculative oil trading; the imprisonment of former chief executive of Accord Customer Care Solutions, Victor Tan, for bribery and corporate fraud; and the

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revelation of improper business practices and disclosure standards adopted by Citiraya are just some examples of corporate fraud and scandals that have happened right at our doorstep.

All these shocking examples clearly highlight the lack of supervision and controls within organisations. More importantly, it has brought the deterioration of corporate integrity into the limelight and sparked a series of transformations in both the finance world and the political stage. Governments and various parties have begun to work together to regain public trust and confidence in the reporting and disclosure standards of companies. In the United States, the Sarbanes-Oxley Act was enacted in 2002 to provide more enforcement tools, hold corporate executives accountable for the accuracy of financial reports and increase criminal penalties for securities fraud. The recent financial meltdown has also seen Lehman Brothers, AIG and other big American banks investigated by the authorities for possible misdeeds.

In Singapore, the Council on Corporate Disclosure and Governance (CCDG) was formed on 16 August 2002 to prescribe accounting standards in Singapore. Its aims are to strengthen disclosure practices and reporting standards by taking into account trends in corporate regulatory issues and international best practices, to review and enhance the existing framework on corporate governance and promote good corporate governance in Singapore.

II. AIMS / OBJECTIVES

The aim of this paper is to arouse greater interest in corporate governance and hopefully, encourage companies in Singapore, regardless of their being listed or not, to adopt the Code. More importantly, it is to convince companies that adhering to the best practices of corporate governance and upholding business integrity will further establish Singapore as a credible global financial hub, bringing about many advantages and opportunities to the company.

The paper will specifically look into the bankruptcy of Barings Bank and the near-collapse of CAO as examples of bad corporate governance in the Singapore context. This case study will examine the key issues of what exactly went wrong and how huge losses could have been avoided if more surveillance had been in place. Lastly, the paper will also look at recent board room tussles in Singapore, what I would call the “ugly” cases and discussed the problems causing these tussles and recommendations for resolving them.

In conclusion, review points and recommendations will round up the paper, with practical advice offered by Mr. Lim Chee Onn, Executive Chairman of Keppel Group and Mr. Kenny Yap, CEO of Qian Hu Corporation Ltd, both of whom were interviewed by this writer.

III. LITERATURE REVIEW / BACKGROUND

One problem identified by both *Laura F. Spira and Louis Braiotta, Jr* was that many companies never understood the purpose of the various committees and the duties that the appointed directors should carry out. Many simply went ahead with compliance because it was a mandatory procedural requirement for them to comply, and that was it! However, the committees can only be as good as the people who sit on them and who understand what is required of them; if not, companies would simply be adhering to the letter and not the spirit of the regulations. Furthermore, directors should be appointed based on their knowledge, expertise and level of commitment they possess and not on their relationship with the management.

Managing business and operational risks are also very critical issues and companies are beginning to recognise the need to evaluate and mitigate the risks threatening their businesses. A report from the Economic Intelligence Unit found that risk management has become a core function within the boardroom of many companies and as the economy evolves, new risks such as human capital risk, information risk and compliance risk have started to spring out. According to another report by KPMG, the responsibility and onus is now on the senior management and the board to understand and support risk management, conveying a clear and consistent message throughout the organisation, down to every employee in the company.

It is crucial that the top level stresses on the importance of risk management, making risk management an organisational philosophy and culture.

IV. THE CHINA AVIATION OIL SAGA

China Aviation Oil (Singapore) Corporation Ltd was listed on the Singapore Exchange on 6th December 2001. It was stated in the prospectus that the Company's main business was in the procurement and trading of petroleum products. The Company also conducted oil derivative business at the time of its listing. It was disclosed then that the instruments used were swaps and futures that were meant to hedge the Company's risk in its core business and also for speculative purposes to derive profits. There was a Risk Management Manual (RMM) in place within the Company to govern and provide guidance for its derivative business. There was however, no specific provision for options trading in the manual.

On 20th March 2002, the Company conducted its first options trade. According to the management, options trading was conducted in view of the potential gains that could benefit the Company despite the fact that option trading was never part of its business and expertise. The Company began engaging in **speculative** options trading in late March 2003. The Company had predicted that oil prices would increase during the period and thus bought call options and sold put options in its trades. It made profits correspondingly by exercising the call options as oil prices were on an upward trend at that time.

As mentioned earlier, there was no proper documentation of specific provisions for options trading to control the trading activities and more importantly, there were no margin calls in place to stop the Company from further trading when losses were made. In addition, there was also no documentation of the proper measurement and accounting of the option trades. No disclosure guidelines were available to address what should be included in the financial statements to account for these options and the profit or loss arising from them. Furthermore, there was no active independent third party involvement in verifying the financial statements and probing into the Company's business despite there being three independent directors as required by the Code.

A number of corporate governance failures can be identified here. Firstly, the Company valuation methodology was not only different from industry standards, it failed to comply with FRS 32 *Financial Instruments: Disclosure and Presentation*, that is to adopt a pricing model to correctly value the option prices and in turn reflecting a true and fair financial statement. Notwithstanding the incorrect valuation, there were also improper and misleading disclosures. Information of the Company's losses was deliberately withheld by the management and not communicated to its shareholders and independent directors.

Mr. Chen Jiulin, Managing Director of the Board and Chief Executive Officer of the Company, deliberately withheld information from the independent directors such that these directors were ignorant of the huge losses that the Company had been trying to cover through the series of restructuring exercises it undertook. The exercises were meant to avoid realising the losses and also to portray a facade of a thriving company. The management was hoping that the downward trend of oil prices would reverse and they would be able to recoup all their losses before announcement day. Yet, reality turned out worse for the Company as losses escalated further and eventually led to an uncontrollable situation where the Company was forced to come clean.

The case concluded with Mr. Chen Jiulin, being sentenced to four years and three months imprisonment and fined S$350,000 for his part in the trading losses CAO suffered.

V. THE BARINGS BANK DEBACLE

The Barings Bank ("The Bank") case is a classic example of a failure in corporate governance where key duties were not segregated and were totally concentrated in a single person, Nick Leeson. The Bank also did not have a proper system of control in place to keep watch of all activities of its employees and there were no risk management procedures at the Singapore branch during that time to check the trading activities that were carried out. A lack of active involvement by the Board and management of Barings, allowed Nick Leeson to chalk up astronomical losses from his trading activities that brought the 200-year old financial institution to its knees .

Barings Bank was Britain's oldest merchant bank until it went into receivership on 27th February 1995. Barings established a small office in Singapore in 1987 named Baring Securities (Singapore) Limited ("BSS"). Its main business was on equities and futures trading on the floor of the Singapore International Monetary Exchange (SIMEX), today's Singapore Exchange. Mr. Nick Leeson was transferred to BSS as General Manager - his duty being to purchase and maintain a seat on SIMEX and to hire traders and staff. He was however, not authorised by the Bank to trade.

Despite this, Leeson soon took the necessary qualifications and began trading with his team of traders. Hence, in addition to being a general manager and leader of the trading team, he was also the *de facto* head of the back office, given his vast experience in operations. Such an arrangement made it possible for Leeson to approve unauthorised transactions carried out in the front trading room and fabricate spurious information to the main office. Although the fact that Leeson was holding too many positions was pointed out in an internal audit report in August 1994, the Bank continued to allow him to carry on with his duties.

Due to the negligence on the part of the head office in taking heed to the internal audit report, Leeson was able to cover up his huge trading losses by putting it through the unused error account (88888), which was set up to cover losses of inexperienced traders and was hidden away from the report to the head office. He manipulated the day trading books and created fictitious contracts that never existed in order to record profits in the reports that were sent to the head office in London. By the end of his game, which the management was completely unaware of a whole three years, Leeson was sentenced to six and a half years jail after chalking up £827 million of losses which led to the bankruptcy of the Bank.

VI. REASONS FOR THE COLLAPSE OF CAO AND BARINGS BANK

The Code of Corporate Governance had not been passed during the time of the collapse of Barings Bank. However, it would be appropriate to use the underlying principle of the Code as a scorecard to analyse what actually went wrong in the processes of both companies. The discussion that follows will pick out specific principles from the Code and analyse the facts of the two cases closely with these principles.

(a) Segregation of Duties

The problem arising out of the concentration of power and the need to segregate duties is one of the many lessons we can learn from the two cases. In CAO, the power Mr. Chen held as both the MD and the CEO allowed him to obstruct the free flow of information to the Board, for them to make meaningful and independent decisions. In Barings, the multiple roles Leeson held at the Bank with no one to supervise him, effectively allowed him to authorize out of limit and scope the unauthorized transactions and fabricate letters without anyone's knowledge.

Therefore, it is very important to ensure that there is a balance of power and authority and that controls are put in place to segregate key duties and to guard against any fraud risks. The principal solution is to have a system of checks in place so that no fraud will go undetected. In our interview with Mr. Lim Chee Onn, Chairman and CEO of Keppel Corporation Ltd whether there would be significant risks to Keppel in view that he wears two hats, Mr. Lim replied that to prevent board "capture" and to ensure the independence of the Board, a Lead Independent Director, Mr. Tony Chew Leong-Chee, had been appointed to act as a principle liaison between the independent directors and the Chairman on sensitive issues.

On the other hand, the practicality of having separate roles and duties will also mean that those responsible will bear narrower job scopes and in turn be more focused and thorough in their jobs. Furthermore, creating more clearance and authorisation levels will provide for greater deterrence to anyone to commit any fraudulent acts against the company.

(b) Control Over Information

Very often, the people that cause the biggest scandals are the senior management, people who are seen to be the "leaders" of the company. They misuse the information and authority that they had been given and use it for their own benefit. However, having control and power calls for even higher corporate integrity and moral ethical standards.

Although it is in common regard that management should present all information truly and fairly to the Board, this has not always been the case in many instances. Enron's former Chairman and CEO, Kenneth Lay and ex-CEO, Jeffery Skilling, misled investors and employees alike by lying about the company’s financial position while they engage in insider’s trading to dispose of the company’s shares to mitigate their own losses.

The importance of timely, true and fair disclosure cannot be overemphasized. In CAO, full and proper disclosure was not made even to the audit committee and the nominee directors, which according to the investigation, was a serious failure of corporate governance. Likewise, the management of Barings Bank was fooled by the apparent profits and spurious documents created by Leeson.

The principle of access to information really depends on the integrity and transparency of management. However, above that, it is also crucial that a system, where the Board can gain direct access to all information without any restrictions, be in place. In Keppel for example, independent directors are given full access to all information and the right to contact any employee. An office room is even given to them for that purpose. Non-executive directors meet without management and management provides the board members with monthly accounts to keep the Board updated on the Group’s performance. A 2-day off-site Board Strategy Meeting is also held once every two years for the directors to gain in-depth understanding of the Group’s business and the industry.

(c) Non-existent of Risk Management

In both cases, the companies went into an area of trading that both the Board and management were unfamiliar with. They were not sure how the derivatives that their traders were dealing with day-to-day worked, the expected returns as well as the risks involved in dealing with such derivatives. Even though this is the case, no actions were taken to identify the specific risks involved; there was also no department or person in charge to administer to trades taken up in the daily operations. More importantly, there was no need for any authorization from senior management to any amount of trades and the traders were given full power in conducting their daily trading activities.

Furthermore, the unavailability of an operating manual to check the trading activities and a clear trading limit or margin calls could be the fundamental reason to explain why things went completely out of hand. Losses were not cut in time but allowed to snowball into astronomical amounts; human emotions were allowed to come into the picture and misguided those involved. This essentially caused the collapse of Barings Bank and the suspension of CAO. Although in the CAO case, it was identified that a trading limit was later imposed upon options trading, however, it was too little too late.

VII. RECOMMENDATIONS FOR ADDRESSING THE CORPORATE GOVERNANCE FAILURES IN CAO AND BARINGS BANK

(a) A Principle-guided Code

The essence of corporate governance should be moving towards a principle-guided approach similar to the movement in the accounting profession. Bright line rules such as the number of independent directors and the specific roles should serve as guidance rather than cast in stone. Other relevant factors should be taken into consideration in view of the big picture, such as the industry the company is in, its size and hence the size of the Board, the relevant expertise needed in order for the Board to function effectively etc.

The Code should be adopted for the **spirit** behind it and not merely followed according to its letter. Although it is compulsory for listed companies to adopt the Code, removing the bright line tests would push companies to interpret the principles more faithfully, than just meeting the numbers requirement.

(b) Instil a Culture of Integrity and Honesty

From the interviews with the CEO of Qian Hu and Keppel Corporation, both companies which clinched awards in the area of corporate governance, it was evident that good corporate governance was built within the culture of the two companies. Everyone from the junior employees to senior management understood the importance of adhering to the spirit of the Code as well as upholding high moral ethics.

In the book, "The Making of an Asian Entrepreneur", Mr. Kenny Yap, CEO of Qian Hu, said that "good individuals will perish one day but good family values and corporate culture will last forever." He stressed on the importance of building trust and selecting competent people to be in the right job.

In his speech at the Singapore Corporate Awards dinner, Mr. Lim Chee Onn emphasized that "corporate governance is not a destination but a journey with a direction, but without an end". After taking over the helm in 2000, Mr. Lim began to take corporate governance seriously starting in 2002 in synch with the efforts of the CCDG. He also pointed out that commitment towards corporate governance should start from the top and that increasing stakeholders' value should never be achieved at the expense of good corporate governance. Mr. Lim reiterated during the interview that directors and management are stewards of the Company's assets and accountable to all stakeholders. In the face of escalating corporate scandals in 2004, Keppel instituted a whistle blowing system to encourage employees to raise any possible improprieties directly to the Chairman of the Board or to the Audit Committee.

(c) Incorporate a Risk Management Committee within the Board

Presently, the Code recommends that each company should institute a Nomination Committee, Remuneration Committee and Audit Committee. However, according to the KPMG report, as risk management is increasingly getting more focus, making companies set up a Risk Management Committee on their boards would be an appropriate measure in today's business climate.. The Committee will regularly review the various risks that are inherent and surrounding the business.

To emphasize the importance of risk management and convey the message, it is essential that the movement starts from the top. With a committee on the Board to set out the guidelines and scope of the various risk inherent in their businesses, operations and investments, the company will be able to take up substantive measures to tackle these risks. This is what was done in Keppel, as Mr. Lim believes the best way to demonstrate the Company's emphasis in safeguarding against any potential risks is to initiate a risk sensitive culture from the top down. A risk management committee and another board safety committee were formed to examine and advise on the formulating of risks policies and processes to effectively evaluate and manage significant risks, particularly operational risks.

VIII. DIVERGENCE OF INTERESTS BETWEEN CONTROLLING AND MINORITY SHAREHOLDERS: THE "UGLY" CASES

Apart from government-linked companies, many listed companies in Singapore are family-owned, leading to the government or families controlling significant blocks of shares in a company.[2] As such, another kind of agency problem arises where majority shareholder may expropriate minority shareholders.

We see such problems arising in the Isetan and Craft Print International Ltd sagas. On 29 November 2006, a group of disgruntled Isetan shareholders served notice on the Board asking for an extraordinary general meeting to be held so that all shareholders can vote on the removal of all of Isetan's independent directors and the installation of new ones. These minority shareholders felt that the independent directors had not protected their interests arising from Isetan's continued refusal to utilize its section 44 tax credit balance. It appeared in Isetan's FY 2005 Annual Report

[2] In a study by a group of students from Nanyang Business School, entitled "The Effects of Executive Directors' Variable Remuneration and Board Independence on Corporate Performance: A Singapore Study", it was found that of 260 SGX-listed companies, a majority have a block shareholder holding 15 per cent or more shares in the company.

that it had section 44 tax credit of $60.9 million which means that at the corporate tax rate then of 20 per cent, Isetan could pay up to $305 million in tax-franked dividends. But Isetan had been reluctant to declare such dividends because its parent company Isetan Tokyo refused to support the idea. This could be because Japan had a much higher tax rate than Singapore and a huge dividend payout would put the parent company in a disadvantageous position.[3] The matter became more urgent as the deadline for the section 44 tax credit expiration was 31 December 2007. The issue of the tax credit had been discussed at five AGMs to no avail.

At the extraordinary general meeting on 10 January 2007, the Board gave strong indication that it will pay a dividend and that it had hired tax experts to study the utilization of Isetan's tax credits. The Board further met with officials from Securities Investors Association Singapore (SIAS) in February 2007 and the meeting appeared fruitful as the directors of Isetan told SIAS's chief, David Gerald that they were "hopeful" of finding a solution to the long-standing issue and it could mean a dividend payout in 2007.[4] On 28 February 2007, Isetan Ltd declared a special and final dividend of S$1.50 but Isetan Japan blocked a rights issue proposal.

Not so happy was the outcome of the tussle at Craft Print International Ltd. The crux of the dispute at Craft Print was the perceived excessive remuneration of its executive directors since the company's listing in 2000. It appeared that the executive directors' remuneration had been consistently above its profits and the company had not paid any dividends for four years since listing. In February 2003, OWWS Ltd, a minority shareholder proposed resolutions at the company's AGM for the remuneration committee to review directors' remuneration in accordance with the Code of Corporate Governance and to set the remuneration of the executive directors at not more than $480,000, a level comparable with the company's industry peers and other SESDAQ companies. At the AGM, these resolutions were defeated by the majority shareholders, a company in which the executive directors have a deemed interests.[5] OWWS was, however, given a right to nominate a director to the board.[6] In my discussion with corporate practitioner, Mr. Tan Lye Huat, who was involved with the dispute, it had transpired that the Board of Craft Print refused to accept OWWS's nominee to be designated as an independent director. Such being the case, OWWS saw no benefit in accepting the board seat.

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[3] Group Seeks Ouster of Isetan Independent Directors, *Business Times*, 30 November 2006.

[4] Prospects of Isetan Payout Brightens, *Business Times*, 8 February 2007.

[5] Don't Let Related Parties Help Set Directors' pay, *Business Times*, 26 October 2004.

[6] See Tan Lay Hong, Tan Chong Huat and Long Hsueh Ching, "Corporate Governance of Listed Companies in Singapore" Sweet & Maxwell, 2006 at page 249.

Public shareholders who perceived the company's independent directors to be their champions in such situations are understandably disenchanted with them and often sought to remove them. It is of course trite knowledge that with a controlling shareholder commanding the majority of votes, minority shareholders are often defeated on such motions. But we ask the question that will solve this festering issue: What is the role of the independent director? And to whom does he owe his duties?

Sir Adrian Cadbury in his book, "Corporate Governance and Chairmanship" wrote that outside directors (equivalent to our independent directors) virtually all agreed that their role was "to provide an independent viewpoint". Independence of mind and judgment is the particular quality which outside directors bring to their boards. They bring their independent viewpoint to bear on issues of strategy and governance, and on the running of the business. Cadbury opined that "in all the surveys I have seen, outside directors regard strategy as the field in which they feel they should be able to make their greatest contribution. They place governance next and give a lower rating to operational issues".[7] However, it is acknowledged that non-executive directors[8] may face a number of limitations because of time constraints[9] and information asymmetry. Information asymmetry, where non-executives have to rely on the information CEOs provide to them to do their advising and monitoring jobs of these very same people, have led to the "independence paradox".[10] Case law has clearly underscored the point that non-executive directors have a monitoring role to play against misfeasance, fraud and other financial reporting irregularities. But do they have a role to play in arbitrating disputes arising from conflicts of interests between controlling and minority shareholders?

In most developed economies, independent directors have also been charged with the responsibility to mediate on conflicts of interest between management and the board or board members and the shareholders in situations of conflicted transactions and executive remuneration.[11] In Singapore, Rule 917(4) of the Listing Manual mandates that the audit committee, *inter alia*, make a statement

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[7] Adrian Cadbury, "Corporate Governance and Chairmanship: A Personal View" Oxford University Press, 2002 at page 55 to 56.

[8] The term non-executive directors include independent directors in this paper.

[9] In Mak Yuen Teen, "Improving the Implementation of Corporate Governance Practices in Singapore" for SGX/MAS dated 26 June 2007, it was reported that the median (mean) number of board meetings during the most recent financial year was 4 (4.5) for Mainboard companies and 3 (3.5) for SESDAQ companies.

[10] Reggy Hooghiemstra and Jaap van Manen, "The Independence Paradox: (Im)possibilities Facing Non-executive directors in The Netherlands" (2004) 12.3 Corporate Governance 314 at page 317.

[11] Eric M Fogel and Andrew M Geier, "Strangers in the House: Rethinking Sarbanes-Oxley and the Independent Board of Directors" (2007) 32 Delaware Journal of Corporate Law 33.

on its view as to "whether the interested person transaction is question is on normal commercial terms and is not prejudicial to the interests of the issuer and the *minority shareholders*…". This has therefore given rise to an expectation by the investing community that independent directors have a duty to safeguard the interests of the minority shareholders.

But there is certainly no legal support for such proposition. Case law and section 157 of the Companies Act generally provide that directors owe a duty to act in good faith in the best interests of the company. The company is generally regarded as the body of shareholders as a whole. But this ostensibly facile proposition is anything but facile. Shareholders come in different classes and stripes. Some are longer-term investors, some are speculators and shorter-term investors, and some have competing interests as the Isetan and Craft Print sagas have illustrated. So the question, "To whom does the independent director owe his duty of care?" bears no easy answer.

The perceived ineffectiveness of the independent director as a stalwart of shareholders' interests has led academics such as Lucian Bebchuk to argue for shareholder empowerment in the setting of company charters and the selection of directors.[12] Shareholder activism in Singapore is at a nascent stage and institutional shareholders have played a minor role in enforcing high standards of corporate governance in our listed companies. The legal powers of shareholders in Singapore are limited to requisitioning for extraordinary general meetings and shareholder proposals. Again a minimum threshold of equity ownership is required, usually 10 per cent which has deterred many minority shareholders. In situations of disputes between majority and minority shareholders, it is clear that what is needed is a neutral forum for mediation between the parties. It is therefore suggested that an investors' tribunal, akin to the Small Claims Tribunal be set up to mediate investors' disputes in listed companies for the benefit of public shareholders who own small stakes in the company. Of course, this is an entirely novel approach. But with the government's push to establish Singapore as an arbitration and mediation centre, providing a channel for mediation of investors' disputes would further enhance Singapore's reputation as a financial centre.

In addition, in regard to executive compensation, Mak Yuen Teen in his report to the SGX/MAS of 26 June 2007 had recommended that minority shareholders (including institutional shareholders) apply more pressure on companies to provide full disclosure of remuneration of individual directors and key executives who are controlling shareholders or related to controlling shareholders. Minority shareholders should consider using section 164A to requisition for full disclosure of individual directors' remuneration. The SGX can also use Rule 704(11) to improve disclosure of remuneration

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[12] Lucian Bebchuk, "The Case for Increasing Shareholder Power" (2005), available at Social Sience Research Network.

of executives who are related to a director, CEO or substantial shareholder. Furthermore, the pressure to bear on controlling shareholders can be brought at the IPO-stage by IPO sponsors and outside investors including venture capital and institutional investors, promoting the use of longer-term and appropriate incentives in the remuneration packages of the executives.

Lastly, the regulator can assume a more vigilant stance in situations where the controlling shareholder appears to be behaving and managing the company without regard to the minority shareholders' interests. Such a situation was seen in the Swissco affair where two independent directors resigned and claimed in lengthy letters that they had resigned because "the executive chairman, Yeo Chong Lin had suddenly wanted to shorten the duration of independent directors' appointments and take it upon himself to decide whether they could stay on". The duo alleged that this would undermine independence and the principles of corporate governance. The company's public explanation for the duo's resignation, however, appeared to differ from what the pair had said in writing.[13] The storm brewed on with SIAS's intervention and finally the regulator, SGX stepped in and demanded that Swissco appoint a "compliance advisor" for at least two years to guide the company on its listing and disclosure obligations.[14] SGX should be applauded for taking this step in bringing listed companies into compliance with their listing and disclosure obligations. But before the regulator takes controlling shareholders to task for expropriating minority shareholders, it is suggested that controlling shareholders who are often the founders of the company be educated at the IPO-stage on their duties towards minority shareholders. IPO sponsors should require controlling shareholders to sign undertakings that the raising of money from the public comes with accountability to the investors for those funds.

IX. THE ROLE OF THE INDEPENDENT DIRECTOR IN TRANSITIONAL PERIODS

It often happens in Singapore that when there is a change in control of a listed company, the independent directors chose to resign, citing reasons that the new substantial shareholder will want to appoint their own board of directors. But should independent directors resign just because there is a change in control and ownership? Aren't independent directors supposed to be independently-minded and disaffiliated from the substantial shareholders?

We see such occurrences in the Oculus and Robinson's saga. In Oculus, former substantial shareholder Ariel Singapore delayed in repaying $15 million of trust money. Half of it was

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[13] Boardroom Controversy at Swissco; Eyebrows Raised as Two Independent Directors Quit the Marine Services Supplier, *TODAY*, 15 April 2008

[14] SGX Raps Swissco; In Contrast, SIAS Gives Company the Thumbs-up, *TODAY*, 24 April 2008

recovered with the remaining half retrieved by selling 54 million Oculus shares held by Ariel to Advance Assets Management. Advance Assets Management and some minority shareholders wrote to Oculus' board accusing it of delays in appointing new directors. The shareholders threatened to requisition an extraordinary general meeting to remove the incumbent directors.[15] In the spat, five out of seven Oculus board members, including independent directors decided not to stand for re-election at the company's AGM. The reasons given by some of the independent directors have prompted Associate Professor Mak Yuen Teen to write a commentary in the Business Times on 11 June 2008. In the commentary, Mak drew attention to the fact that independent directors who see their appointment as being closely tied to the previous substantial shareholder may raise questions about their true independence and whether they had acted in the interests of the company or only in the interests of its substantial shareholder.[16] The problem of board independence in the context of a controlling family relationship in the company has been alluded to by Professor Mak but he offers no solution.[17]

Again in the Robinson's boardroom tussle, we see Mr. Michael Wong Pak-shong, a long-time chairman of Robinson's removed by the Indonesia's Lippo group without prior warning. This led Ms. Chew Gek Khim, the company's longest-serving director with more than 18 years on the board to resign on 30 October 2006, followed by the resignation of two independent directors Winston Tan and Cham Tao Soon.

In the Robinson's tussle, the Board was left without independent directors for a period of time when the directors resigned en mass. It is not good corporate governance practice for companies to be left without independent directors, for transactions may arise which call for the input of the independent directors.

Elsewhere my learned friend, Tan Chong Huat proposed that exit procedures be instituted and the nomination committees be more engaged in the resignation process. But in circumstances where all the independent directors resign, there may be no more an independent nomination committee to speak of. As such, it is suggested as a best practice that companies should appoint a lead independent director of sufficient stature in the first place, who will stay on and clean up the mess. The lead independent director will take the lead in the search for new independent directors, and

[15] Oculus Shareholders Want Director To Step Down, *Business Times*, 7 June 2008

[16] The Oculus Saga: Lessons For Corporate Governance, *Business Times*, 11 June 2008

[17] See note 24 at page 31.

engage the help of human resource consultants, if necessary. In situations of a corporate crisis, the lead independent director should galvanise into action and see the company through the crisis.

In fact, it has become commonplace to hear from independent directors stepping down once the company hits the headlines for fraud and other securities offences. This does not augur well for the reputation of our pool of independent directors. It is suggested that independent directors should take their role seriously and stick around especially in times of crisis in the company, as was seen in the Citiraya debacle where the independent directors facilitated the rehabilitation of the company.

When calling upon independent directors to take their roles seriously, one must be mindful of their pay structure. Professor Mak in his report to SGX/MAS stated that the current level of basic non-executive fees in Singapore appears to be often unrealistically low compared to other countries, especially the more developed markets such as US, UK and Australia. In this regard, Mak said that companies and shareholders need to be educated about the benefits of having good independent directors who are able to commit sufficient time to the company, and the need to pay realistic fees to attract good independent directors.[18] Despite Mak's recommendations, it is submitted that raising the fees of non-executive directors may not be the solution as it may cause unhappiness amongst shareholders and also cause companies to increase their operating costs. As such, there is a rising trend in awarding shares to non-executive directors as part of their compensation.

X. CONCLUSION

The bottom line of this paper is to highlight the importance of integrity in financial reporting and the importance of quality, disciplined and ethical management. These are the fundamentals of the accounting industry and more so to enhance and add value to the work of financial accounting. Improving the transparency with better corporate governance and comparability of reports serve to benefit the investors and improve the overall image of the industry.

As quoted from the Code, "meeting the form but not the substance of the Code would not lead to improved corporate governance." In many instances of "bad" corporate governance, we see that management focuses on getting to the results more than focusing on the means to get to the desired outcomes. This is perhaps the reason why these people thought they could bend the rules to achieve desired results but such perceptions and actions should not be condoned.

Integrity should be the cornerstone of any business and this could be the differentiating factor between successful and unsuccessful companies. As mentioned earlier in the recommendations,

[18] Mak Yuen Teen's Report to SGX/MAS on 26 June 2007 at page 63.

change is encouraged but realistically we must understand that it will not be achieved overnight. Sustainable change to the Code can only be possible if companies adopt the principles holistically, through faithful understanding of the spirit behind the principles.

The main issue surrounding the “ugly” cases arises from the perceived misconception of the role of independent directors as stalwarts of minority shareholders. Often times, the media and retail investors perceived that independent directors have failed in their duty toward minority shareholders, when in actual fact, independent directors do not owe any duty to minority shareholders apart from specific listing rules concerning interested persons transactions. This state of affairs is unfortunate and extremely unfair to independent directors. Thus it is hoped that this paper will serve to highlight this conundrum to the public.

REFERENCES

[1] Council of Corporate Disclosure and Governance, “The Code of Corporate Governance”

[2] Laura F. Spira (2002), “The Audit Committee: Performing Corporate Governance”

[3] Louis Braiotta, Jr (1999), “The Audit Committee Handbook (Third Edition)”

[4] Kenny Yap, “The Making of an Asian Entrepreneur”

[5] Keppel Corporation, “Annual Report to Shareholders 2006 – Grow Beyond”

[6] PriceWaterhouseCoopers, “Investigation Reports on China Aviation Oil”

[7] http://www.tbssct.gc.ca/pubs_pol/dcgpubs/ RiskManagement/rm-pps1_e.asp#_Toc4566 60314, “Best Practices in Risk Management: Private and Public Sectors Internationally”

[8] http://www.acelimited.com/NR/rdonlyres/7 545D871-396C-43BF-B796-6C3BE7D4870C/ 0/RISK MANAGEMENT 290307may07.pdf, “Best Practices in risk management: A function comes of age by”

[9] http://riskinstitute.ch/137580.htm, “Not Just One Man - Barings”