

THE OECD ASIAN CORPORATE GOVERNANCE ROUNDTABLE 2007
“The Independent Director’s Role”

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Distinguished participants, guests, ladies and gentlemen. Good afternoon.

There has been flurry of recent media reports concerning the role of independent directors. In one situation, the independent directors resigned en-masse from the board following a change of shareholders. This led to an outcry from the man in the street who felt abandoned and without board representation. In another situation, the minority shareholders tried to remove the independent directors because they felt the independent directors had not acted in their interests by not fully utilising the company’s tax credits for dividend distribution. We also read about investors questioning why the independent directors did not sound the alarm when the former chairman of a listed company was repeatedly absent from board meetings. And most recently, a company’s new major shareholder found himself engaged in a media battle with the independent directors, in seeking their removal.

I think this media attention and ongoing public debate is healthy and good. It demonstrates an increasing awareness amongst the investing public and the man in the street that the independent director has an important role to play in corporate governance.

But it also indicates that there may be a lack of clarity in the definition of an independent director. The investing public expects the independent directors to be there primarily to protect the interests of the minority shareholders. And more specifically, vis-à-vis the interests of a major or controlling shareholder. This is probably so as a major or controlling shareholder has the ability to appoint its nominees to the board, and the minority shareholders often do not. And because independent directors do not have any relationship with the major shareholder, the company or its management, they would by default, be seen as the representatives of the minority shareholders.

So what is an independent director?

If I may quote John Lim, the President of the Singapore Institute of Directors, who wrote the article “The Independent Director: What It Takes to be One”. He pointed out that just like any other director, the independent director, is duty bound, and legally bound, to act in the interest of the company as a whole.

However, having said that, the independent director has a special place in the governance of a company, its board and its management. He is able to exercise objective judgement on corporate affairs independently. This is especially critical in areas where the interests of management, the company and shareholders may diverge. The Corporate Governance Committee, in its 2001 report, suggested that these areas include executive remuneration, succession planning, changes of corporate control and the audit function, as well as the objective evaluation of board and management performance.

To this, we should also add the issue of interested person transactions. Which goes towards explaining why the audit committee, the nominating committee and the remuneration committee are filled with a majority of independent directors.

Therefore, the challenge for independent directors is, in the light of diverse interests of different shareholders, that they find the right balance and ensure that the important decisions taken by a company's board and management are equitably aligned to these sometimes competing interests. And to do so without fear or favour.

So what can we do to ensure that the independent director is better able to fulfil his rightful role in corporate governance?

Let's start with how independent directors should be selected.

Independent directors must have integrity and common sense. They must believe in doing the right/best thing for the company above self-interest. They need good communication skills and analytical skills. They must be able to exercise informed business judgment and have a genuine openness to the opinions of others. They should also possess a strong independent mindset in order to maintain a balanced viewpoint. This is important for sound decision-making.

An enquiring, probing mind is also a requisite attribute. An independent director should not be afraid to ask the relevant questions of management and challenge the accepted thinking of executives. Independent directors must be prepared to say "no" to management when appropriate. However, it is important that issues are deliberated carefully with management and other directors and that the decisions of independent directors can withstand scrutiny.

The independent director's role also is not for the faint hearted. Investors rely on their vigilant oversight to ensure the responsible management of their assets. Their responsibility is significant – and the consequences of failure can be severe, especially for the investors they are charged with protecting. They play an important function in safeguarding the financial reputation of the company.

In view of the fact that the personal attributes of independent directors are so critical to their effectiveness, boards must have the willingness and the discipline to exercise the necessary rigour to identify such attributes in their prospective board appointments. I would suggest that going forward, boards are likely to increasingly rely on professional search firms to support their nominating committees to identify suitable candidates to come on board as independent directors. Boards may also wish to take advantage of the register of directors set up by SID to identify potential candidates.

Let's now look at qualifications and training.

It goes without saying that independent directors need both a clear understanding of formal governance structures and policies, and in-depth knowledge of the business they are responsible for steering and guiding. This is particularly important with the changes in the accounting, regulatory and business environment that companies operate in.

It is also important for independent directors to keep up-to-date with changes in accounting standards and regulatory requirements in this increasingly complex business environment. To overcome a knowledge gap, perhaps a diversity of independent directors who specialise in a variety of disciplines should be appointed.

A balanced board needs to have directors, including independent directors who have a complementary mix of skills and experiences. They need not necessarily be dominated by accountants or lawyers, or by any other professional group but be suitably qualified to lend credibility to the board decision-making process. Independent directors serving on audit committees should be sufficiently financially sophisticated - in particular, I believe that the chairperson should preferably be CPAs. It is also preferred that independent directors should possess management or policy-making experience (such as an advisor or a consultant) and have general familiarity with an industry or related industries in which the companies conduct their business so that they can effectively discharge their oversight role.

For the professional development of independent directors, institutions such as SID and the tertiary institutions do offer training for directors and would-be directors on their roles and responsibilities as members of the board. Independent directors should also be encouraged to attend talks, seminars and workshops on directorship, changes in legislation and other related matters organised by the SID and other professional organisations. Looking ahead, perhaps directors should be encouraged to engage in a continuous education programme.

Next, the ongoing evaluation of the effectiveness of directors.

Many independent directors are themselves full-time executives or may sit on the boards of several companies. Busy directors find that they do not have time to keep up with the workings of the business and to fully digest the information they are confronted with in their board papers, much less to have the time to learn more about the broader industry trends that will determine the future of the company.

Independent directors must be able to commit sufficient time to properly carry out their roles and responsibilities. There also a need to impress upon management the need to provide information in good time so that there is sufficient time to digest the material provided. Be prepared to take time to carefully study the materials and make all the necessary enquiries of management and executives. One frequent criticism typically levelled at independent directors who sit on many boards is whether they are able to spend the requisite amount of time to do their jobs well.

I would suggest that in the evaluation of the effectiveness of directors, consideration be given, not only to the quality of their contributions at board and committee meetings, but that consideration should also be given to the amount of time they have available to devote to a particular board. Consideration should also be given to board renewal and succession planning.

The role of an independent director needs greater clarity. I'm glad that the Singapore Institute of Directors has recently issued a statement of good practice on the role, duties and responsibilities of the independent director, which provides useful reference for not only the independent director, but also provides greater clarity to the investing public at large.

Why is this important?

I believe that the shareholders and the investing public at large can also play their role in improving the effectiveness of independent directors. In being more proactive, in exercising their votes with more discernment and speaking up at shareholder meetings, they would invariably be providing more support to the independent directors in their roles and responsibilities, and thereby raising the standards of corporate governance in Singapore. I applaud the efforts of the Stock Exchange and the Securities Investors Association of Singapore and other stakeholders towards this end.

Thank you very much. And now I would be glad to hear your observations and take any questions you may have.