THEME

Developments in corporate governance and disclosure regime in Singapore

"If you govern the people legalistically and control them by punishment, they will avoid crime, but have no personal sense of shame. If you govern them by means of virtue and control them with propriety, they will gain their own sense of shame, and thus correct themselves." –Confucius, The Analects of Confucius

Corporate governance and disclosure regulation

There has been a paradigm shift in Singapore's legislative and regulatory framework for the corporate and financial industry from a merit-based regime to a disclosure-based one. Major changes include:

- The establishment of a national code of corporate governance.
- Legal changes to promote greater disclosure.
- Adoption and legislation of national accounting standards.
- Tightening of rules governing insider trading.
- Various changes to the Companies Act.

The Code of Corporate Governance, released in April 2001, came into full effect on January 1, 2003. The Code sets out recommended corporate governance principles and practices in areas such as board composition, board performance, directors' remuneration, accountability, and communication with shareholders. The Code is currently non-mandatory and takes a 'comply or explain' approach. i.e. it specifies corporate governance best practices and listed companies are required to describe their corporate governance practices in their annual reports as well as disclose and explain areas of deviation from the Code. The private sector-led Council on Corporate Disclosure and Governance (CCDG), formed in 2002 is responsible for regularly updating the Code to ensure it remains relevant and consistent with international practices and the CCDG also prescribes accounting standards in Singapore.

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The importance of good corporate governance can hardly be exaggerated. Post Enron, Tyco and WorldCom (to name a few), a lot has been happening in several countries to strengthen the legal and regulatory environment for corporate governance. Singapore is no exception to this and Singapore authorities have placed an increasing emphasis on corporate governance, generally bench-marking local standards to international best practices.

Summary of specific legislative changes

The Securities and Futures Act (SFA), which was fully implemented on October 1, 2002, introduced a host of policy reforms in Singapore's capital markets, moving them to a disclosure-based regime. The SFA requires corporations listed on the Singapore Exchange (SGX) to disclose material information on a continuous basis (previously this was only a quasi-regulatory requirement under the SGX Listing Manual). Failure to disclose will either constitute a criminal offence or give rise to civil liability, and not just a breach of the listing rules. For financial years beginning January 1, 2004 or later, the reporting deadline for quarterly/half-yearly or annual results has been reduced to 45 days. Since January 1, 2003, listed companies with more than S$75 million market capitalisation have been required to do quarterly financial reporting. The SFA requires persons acquiring shareholdings of five per cent or more of the voting shares of a listed company to disclose such acquisitions as well as any subsequent changes in their holdings directly to the Exchange within two business days. The SFA also contains enhanced market misconduct provisions.

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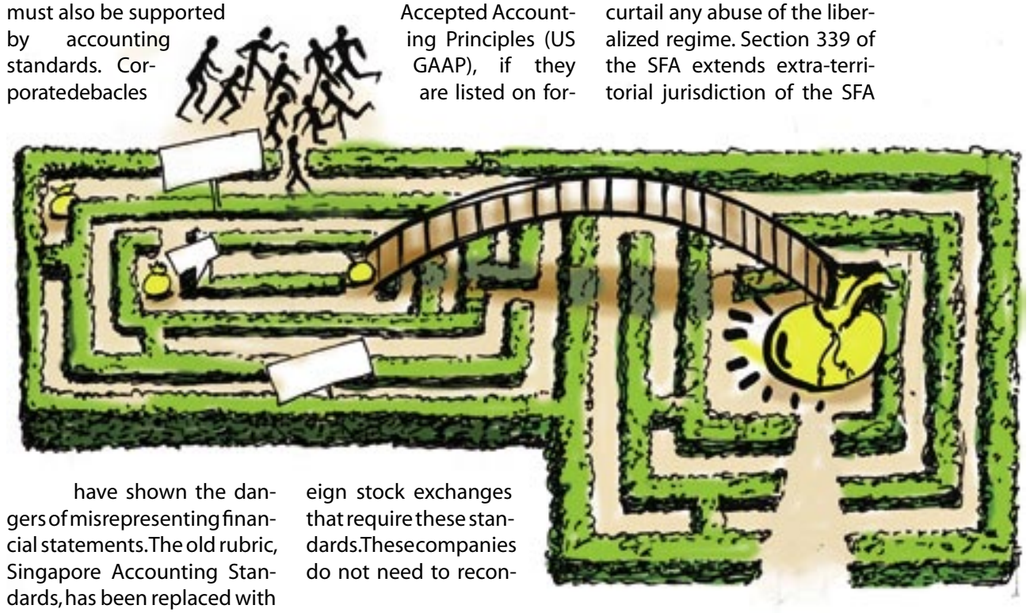
A regulatory framework must also be supported by accounting standards. Corporate debacles have shown the dangers of misrepresenting financial statements. The old rubric, Singapore Accounting Standards, has been replaced with Financial Reporting Standards, or FRSs. The International Accounting Standards Board aligns Singapore's prescribed accounting standards with the accounting standards issued. The Companies Act expressly requires directors of every company to prepare financial statements that comply with the prescribed FRS and also reflect a true and fair view of the profit and loss, as well as the state of affairs of the company as at the end of the period to which it relates. Auditors, too, have a similar counter-obligation. Companies can deviate from the prescribed accounting standards if such deviations are required to present a 'true and fair' set of financial statements. Singapore-incorporated companies whose shares are publicly traded can use certain alternative standards, such as International Accounting Standards (IAS) or U.S. Generally Accepted Accounting Principles (US GAAP), if they are listed on foreign stock exchanges that require these standards. These companies do not need to reconcile their accounts with FRS. All other Singapore-incorporated companies must use FRS unless, they are exempted by the Accounting and Corporate Regulatory Authority (ACRA). Greater penalties for non-compliance with Accounting Standards have been prescribed - a fine up to S$50,000 can be imposed, but this will be increased to S$ 100,000 with possible imprisonment up to three years for the offender if the offence was committed with intent to defraud.



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While the reforms are seen to have loosened up the regime, they also seek to implement checks and balances to curtail any abuse of the liberalized regime. Section 339 of the SFA extends extra-territorial jurisdiction of the SFA to acts that are committed outside Singapore, but have a reasonably foreseeable effect in Singapore. Transgressions against a number of rules under the SFA now carry stiffer penalties and can be subject to

civil suits and criminal charges by the relevant authorities.

The new insider-trading law is now able to handle a sophisticated market with its complex web of transactions and connections. It is no longer necessary to establish a connection between the information and any person connected to the company. A person need only trade while in possession of the inside information to be caught under the new law. New requirements to prohibit auditors from providing non-audit services were introduced. All companies are now required to include the Company Registration number in all business letters and other communications.

Industry watchdogs, such as the CCDG and ACRA will be looking into the disclosure, accounting and reporting practices and standards of the industry to align them with a constantly evolving market. And the broad-based government reforms have been supplemented by increased activism and involvement by organizations such as the Singapore Institute of Directors and the Securities Investors Association of Singapore.

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statutory audit requirement for dormant and small exempt private companies and allows for general meetings to take place by written means. The Act is being further amended - abolishing the concepts of par or nominal value of shares and authorised share capital, introducing treasury shares and allowing, to an extent, financial assistance for companies dealing in their own shares.

It is noteworthy to mention here that the Singapore Code on Corporate Governance is currently undergoing review to make some changes in line with changes going on internationally. There are also proposals to give greater 'bite' to independent directors. There is also some consideration being given as to whether Presentation and Disclosure requirements for Small and Medium sized entities should be less rigorous. This becomes more relevant:

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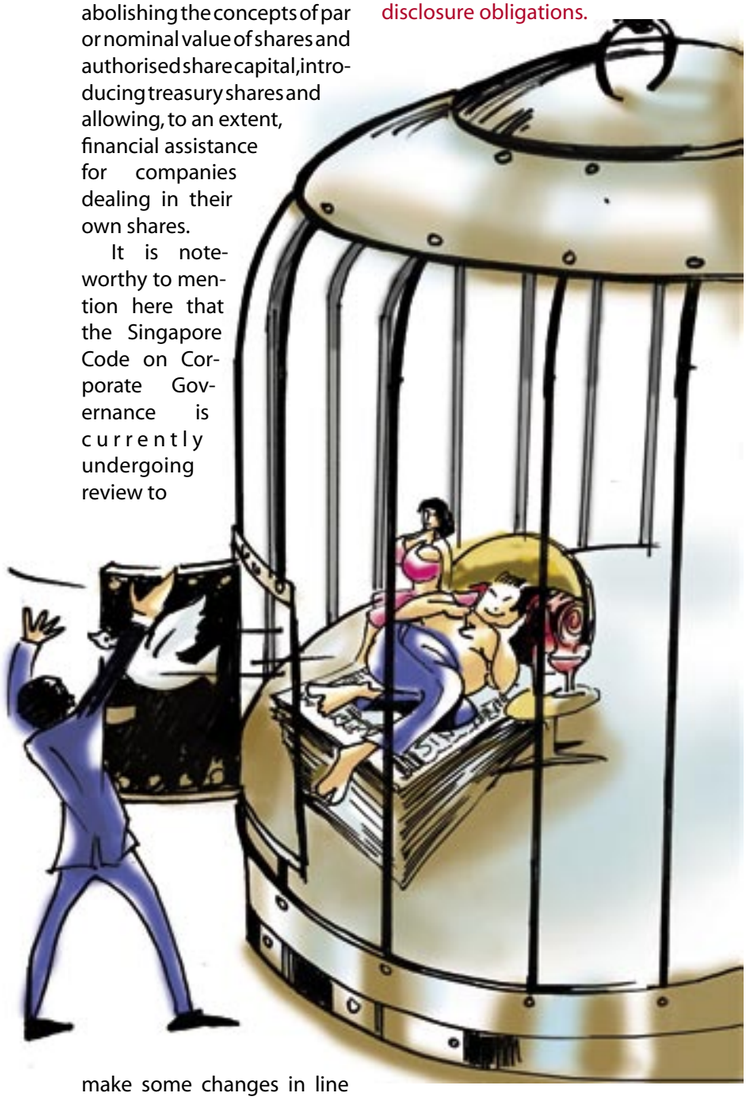

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a. With the dispensation of audit requirements for smaller companies in certain context.
b. Given that a private company need not employ professionally qualified person as Company Secretary.
c. Since companies can have just one director/ shareholder.

According to a consultation paper released May 30 2005, SGX has proposed certain changes to its listing rules. The proposals aim mainly to heighten oversight by company directors and to extend the role of intermediaries such as the issue managers of initial public offerings (IPOs).

- SGX wants every firm to have at least two independent directors continually, and not just at its listing.
- As for foreign-based listings, SGX would like them to have a minimum of two independent directors residing in Singapore, as well as a resident executive or adviser.
- SGX is also seeking to increase board participation in corporate governance via 'negative assurances'. At every interim result announcement, the board would have to give a formal confirmation to the market that it has received nothing to render the financials false or misleading. The board and the chief executive officer (CEO) would also have to give a yearly assurance that internal controls have been explicitly assigned and reviewed.

Quality control for auditors

To ensure that auditors are performing at least minimum acceptable quality of work, the Practice Monitoring Program has been legislated and reviews are now conducted by ACRA. Among things that ACRA reviewers will look for is the satisfactory adherence to the standards of auditing and quality of work papers. The outcome of such reviews will determine the renewal of the Practice Certificate for a Public Accountant.

Recent corporate events

Compared to other countries in the region, Singapore and Hong Kong have made great strides to improve the quality of corporate governance in its listed companies.

There have been a few corporate scandals lately, which indicate that the quality of governance at the corporate level is clearly mixed and not always impressive.

Conclusion

A recent PwC survey (January 2005) of institutional investors found that many want the country's code of corporate governance to be made law.

A number of regulatory controls and guidelines are in place. While more legislation will not necessarily be a panacea for improving Singapore's corporate governance and disclosure regime, what might perhaps be more useful is an enhanced enforcement environment. Some people also draw attention to the fact that over-regulation may increase business costs and may reduce the 'attractiveness' of Singapore to foreign investors

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And there have been opinions expressed that part of that environment may involve divesting the SGX (which itself is a profit making listed company) of the responsibility of enforcement of corporate governance code and listing rules and setting up a separate body like the U.S. SEC.

As far as the corporates go, they should recognise that the end goal is not in meeting the corporate governance norms but build lasting competitive strengths and improving the chances of superior business performance. To do this quality matters more than form and compliance should be more than a 'check the box' exercise. For example, the quality of independent directors matters more than their numerical representation on the board.

Good corporate governance is an evolving process and the journey never ends. ❐