

Singapore

Corporate Governance Institutions, Practices and Developments

1. Key Institutional Features of Corporate Governance and Company Profile in Singapore

1.1 Background

All companies which are incorporated in Singapore have to comply with the Companies Act, which is administered by the Accounting and Corporate Regulatory Authority (ACRA). Companies seeking to list on Singapore Exchange Limited (SGX), whether local or foreign, must meet the minimum admission standards, and are carefully evaluated by SGX before they are admitted. Once listed, they are required to comply with SGX's continuing listing obligations. Their governance framework and practices are guided by both the SGX's Listing Rules and the Singapore Code of Corporate Governance (Code).

The Companies Act is undergoing a review that was initiated in October 2007. The Listing Rules are currently in the process of being amended while the Code, which was issued in July 2005, is under review.

More details on Singapore's key corporate governance rules and practices can be found in Key Corporate Governance Rules and Practices in Singapore, p. 204.

1.2 Trends

The number of publicly traded companies has increased over the last five years. Market capitalization was similarly on an uptrend until 2007, before the market was adversely affected by the financial crisis. More details can be found below.

Year	No. of Listed Companies	Range of Market Capitalisation
2005	681	S\$2.7 million—S\$43.6 billion
2006	725	S\$3.5 million—S\$52.1 billion
2007	773	S\$5.5 million—S\$63.7 billion
2008	774	S\$1.1 million—S\$40.6 billion
2009	775	S\$2.1 million—S\$49.5 million

Note: Figures as at 31 December 2009. De-listed companies are excluded from the number of listed companies.

2. Development, Enforcement and Assessment of Implementation of Corporate Governance Rules

2.1 Development and Enforcement of Corporate Governance Rules

The Monetary Authority of Singapore (MAS) and the SGX took over the oversight of corporate governance of listed companies with effect from September 2007. This move was to clarify and streamline responsibilities for corporate governance matters for listed companies.

MAS is responsible for market conduct regulation in the financial sector with regard to development of rules and regulations, enforcement, market supervising and licensing. Under the Securities and Futures Act (SFA) and Financial Advisers Act (FAA), MAS has a mandate to perform its market conduct regulatory responsibilities. In addition to MAS's regulation, for entities listed on the SGX, SGX performs self-regulatory functions by developing rule books for entities listed on the securities and derivatives markets, conducting market surveillance, investigating alleged misconduct by its members and enforcing compliance with its Listing Rules.

The Code is under the purview of MAS and SGX. While compliance with the Code is not mandatory, companies listed on SGX are required under the Listing Rules to disclose their corporate governance practices and to give explanations for deviations from the Code in their annual reports.

Where relevant, SGX has incorporated some of the recommended practices in the Code into the Listing Rules for compliance by listed companies. SGX will take the necessary disciplinary action (private or public reprimand) against listed companies for breaches of the Listing Rules.

In 2009, SGX undertook 29 disciplinary actions against listed companies for failure to comply with disclosure requirements, of which, three were public reprimands. In 2008, five private reprimands were issued.

3. Awareness and Advocacy for Good Corporate Governance

3.1 Company Directors

The Singapore Institute of Directors (SID) seeks to promote the professional development of directors and corporate leaders and encourage the highest standards of corporate governance and ethical conduct.

SID currently has about 1,500 members. Further details on the membership of SID can be found on the Internet: (http://www.sid.org.sg/main/membership_breakdown)

Training for directors is not mandatory under Singapore's legislation. Directors are encouraged to receive further relevant training, particularly on relevant new laws, regulations and changing commercial risks, from time to time. SID organises and conducts professional training courses and seminars to meet the needs of its members and company directors generally.

3.2 Media

Local academic institutions work with journalists to cover corporate governance issues responsibly. For instance, the leading business newspaper in Singapore, The Business Times,

introduced the Business Times Corporate Transparency Index (CTI) in conjunction with the NUS Corporate & Financial Reporting Centre to gauge the transparency of Singapore-listed companies. In addition, the financial press regularly reports on corporate governance issues and developments. For instance, The Business Times organizes the Singapore Corporate Awards annually to recognize excellence in shareholder communication and corporate governance.

3.3 Educational System

Students interested in corporate governance have the option of taking related modules in tertiary institutions. MBA programs do allow students to take courses in corporate governance. For instance, the Nanyang Business School has a division in business law that offers modules in company law and corporate governance.

Judges and judicial officers are required to learn the basics of company law before they can practice. More advanced corporate governance modules can be taken at tertiary institutions at the officer's discretion.

3.4 Stock Exchange

SGX supports SID in its efforts to enhance director training and professional development in corporate governance practices, in particular, through the following two programs:

- SGX-SID Listed Company Director Program—Provide comprehensive training of company directors on corporate governance.
- SGX-SID Growing Enterprise Management Program—Provide practical framework and principles-based guidance on evaluating and improving governance in growing enterprises.

SGX promotes investor education and financial literacy among the general public through regular seminars and events. SGX has also issued two reference guides to equip retail investors with the skills to obtain important information in annual reports and to ask pertinent questions during AGMs. Further, SGX engages its shareholders through annual Investor Relations open days.

4. Corporate Governance of State-Owned and Family-Controlled Enterprises

4.1 State-Owned Enterprises

The Government of Singapore Investment Corporation (GIC) and Temasek Holdings are the government's key investment companies. GIC is an investment management company whose objective is to achieve a long-term real rate of return on assets belonging to the Singapore government by investing internationally. Temasek is an investment holding company which owns and invests a diversified portfolio of assets in Singapore and overseas with the objective of delivering long-term returns to its shareholder, the Singapore government. Government-linked companies are subjected to the same requirements as those in the companies and securities laws and there are no important corporate governance issues with them. In fact, government-linked companies in Singapore have been recognized as good examples of corporate governance. For instance, SingTel and SMRT Corporation have received the Singapore Corporate Awards, which recognize excellence in shareholder communication and corporate governance.

4.2 Family-Controlled Enterprises

Listed family-controlled enterprises are subjected to the same requirements and corporate governance standards as any other listed company.

5. Role of Professional Service Providers in Corporate Governance

There are currently no specific requirements under the Listing Rules for accounting and auditing firms or corporate governance consultants to provide comments, whether to the public or to the companies they serve, in respect of the companies' compliance with the principles of good corporate governance.

6. Recent Developments in Corporate Governance

6.1 Corporate Governance Developments

MAS and SGX took over the oversight of corporate governance of listed companies with effect from September 2007. The initiatives following the transfer of the oversight of corporate governance of listed companies focused on improving the practical implementation of the Principles of the Code. In January 2008, MAS, ACRA and SGX established the Audit Committee Guidance Committee (ACGC) to develop practical guidance for audit committee members of SGX-listed companies to enhance their effectiveness. The ACGC completed its work in October 2008 with the submission of its *Guidebook for Audit Committees in Singapore*. MAS and SGX also initiated a strategic review of SID to recommend improvements to the structure and activities of the institute to better meet the changing needs of directors and the corporate community in Singapore.

In February 2010, MAS established the Corporate Governance Council to promote a high standard of corporate governance in companies listed in Singapore, so as to maintain investors' confidence and enhance Singapore's reputation as a leading and trusted international financial centre. Members of the Council are drawn from the business community and stakeholder groups. Representatives from MAS, ACRA and SGX have also been appointed to the Council. The Council is in the process of reviewing the Code.

In March 2010, MAS issued a consultation paper that sets out proposed enhancements to the MAS Corporate Governance (CG) Framework which is applicable to locally-incorporated banks, financial holding companies and direct insurers. More details on the consultation paper can be found in 6.3.2.

6.2 Enforcement of Corporate Governance Rules

The disclosure rules of securities exchanges in Singapore are given statutory backing, in that the SFA prohibits a listed company from intentionally, recklessly or negligently failing to notify the exchange of information required by the exchange's listing rules to be disclosed to the exchange, for the purpose of making the information available to the market. A company that breaches this statutory provision commits a criminal offence and may also be subject to civil penalty suits by MAS. For example, in April 2006, a company listed on SGX paid a civil penalty settlement sum to MAS for failing to properly disclose to SGX its expected growth in sales and earnings.

Furthermore, directors of listed companies may also be prosecuted for wrongdoing concerning timely and accurate disclosures of material information. For instance, an independent director and non-executive chairman of a company listed on SGX, who also chaired its audit committee,

was fined and disqualified from acting as a company director for a year after he was convicted in August 2009 of failing in his director's duties. The director had approved the release of a misleading announcement to SGX without seeing or knowing what the announcement was about. On his appeal against his sentence in May 2010, the period of disqualification was doubled to two years by the High Court, which issued a stern message reaffirming the exemplary standards of corporate governance expected in Singapore. Two other independent directors and the former chief operating officer of the company are facing criminal charges for failing to disclose material information and disclosing inaccurate information to SGX.

SGX itself has undertaken the following recent enforcement actions:

- In May 2010, SGX issued a public reprimand against a listed company and its directors for breaching Listing Rule 703 by failing to disclose material information on a timely basis and Listing Rule 704(12) by failing to comply with SGX's directive to release the executive summary of the Special Auditors' report to the public. SGX had previously directed the company to appoint Special Auditors to investigate into the affairs of the company. Further, SGX-listed companies are required to consult SGX before they appoint any of the company's directors as a director or member of management.
- In April 2010, SGX published a list of 10 ex-directors whom SGX had found to not demonstrate the qualities expected of directors and management of SGX-listed companies pursuant to Listing Rules 210(5)(b) and 720. SGX also advised its listed companies to consult SGX before they appoint any of the persons as a director or member of their management.
- In March 2010, SGX issued a public reprimand against a listed company for breaching Listing Rule 703 by making false and misleading statements in its announcement on the reasons for the resignations of five directors.

6.3 Current Issues and Challenges for Corporate Governance

6.3.1 Challenges

The challenges faced in efforts to promote compliance with better standards and practices of good corporate governance are as follows:

- Enhancing the pool of quality independent directors
- Promoting active participation by shareholders during AGMs
- Ensuring the compliance by companies with the Code in substance rather than in form

The recent financial crisis also highlighted the importance of effective risk management oversight at the Board level. In the recently issued MAS consultation paper that sets out proposed enhancements to the MAS Corporate Governance Framework, the key corporate governance issues that have been identified are:

- The need for directors to be equipped with the appropriate skills to oversee the operations of companies
- The time commitment expected of each director to ensure that directors are able to devote the time needed to perform their oversight roles
- Issues related to the independence of directors
- Role of the boards in relation to remuneration
- Role of boards in relation to the management of risks for companies

6.3.2 Priorities for Reform

Both the Companies Act and the Code are currently under review.

In December 2009, SGX issued a public consultation on proposed Listing Rule amendments to strengthen corporate governance practices among listed companies. Some of the key proposals include:

- Empowering SGX with the right to approve appointments of directors, CEOs and CFOs under specific circumstances, such as where the issuer is the subject of an investigation
- Requiring disclosure, under certain circumstances, of share pledging arrangements entered into by major shareholders where enforcement over these arrangements may have an impact on the issuer
- Requiring shares of controlling shareholders and their associates to be held in custody with The Central Depository Pte Ltd or a suitable depository agent to give SGX greater visibility over the interests of controlling shareholders
- Audit Committee to have the discretion to commission specific independent audit on internal controls
- Audit Committee to disclose its opinion on the adequacy of internal controls and risk management policies and systems in the annual report
- Requiring at least one independent director in office at all times to ensure continuity of an independent element on the board

MAS has also recently issued a consultation paper that sets out proposed enhancements to the MAS Corporate Governance Framework which applies to locally-incorporated banks, financial holding companies and direct insurers. The proposals emphasize the importance of the role of the Board and the need for directors to be equipped with the appropriate skills and have the commitment to oversee the operations of the financial institutions.

The consultation paper can be accessed here: http://www.mas.gov.sg/resource/publications/consult_papers/2010/Consultation_Paper_on_C_G_Regs_and_Guidelines.pdf

Key Corporate Governance Rules and Practices in Singapore

Element	Yes	No	Source(s) of Rule	Comments
RIGHTS OF SHAREHOLDERS				
1. Do shareholders add items to the agenda for shareholders' meetings?	X		CL	Shareholders can decide on agenda of a meeting in three instances: a) Under section 176, Companies Act - where it is requisitioned by members holding 10% voting rights b) Under section 177, Companies Act where two or more member holding 10% or more of total number shares issued or 5% in numbers for companies with no share capital call a meeting c) Under section 183, Companies Act where members (a) representing not less than 5% of the total voting rights; or (b) who represent not less than 100 members holding shares which have been paid up to an average of S\$500 per member requisition the circulation of members' resolutions. However, under normal circumstances, the agenda for

Element	Yes	No	Source(s) of Rule	Comments
				shareholders' meeting is set by the company.
2. Do shareholders ask questions of directors at shareholders' meetings and do they receive answers?	X		CL, CGC	Under section 180 Companies Act, shareholders can speak and vote at general meetings. Principle 15 of the Code states that companies should encourage greater shareholder participation at AGMs, and allow shareholders the opportunity to communicate their views on various matters affecting the company.
3. Must company transactions with its insiders be on a non-preferential basis?	X		SLR	The transaction must be on normal commercial terms and not prejudicial to the interests of the company and its minority shareholders.
4. Is a super majority vote required for major company acts affecting shareholder rights?	X		CL	For class rights, if the shareholders' rights are specified in the Articles of Association then amendment is by special resolution requiring a 75% majority or as provided in the Articles to be passed at a general meeting of the holders of that class. For those involving all members, e.g., reduction of share capital, amendments of memorandum or articles, members voluntary winding up, a special resolutions (75% majority) is required. There is however no specific requirement in the Listing Rules for super majority vote to be obtained for major company acts affecting shareholder rights.
COMPOSITION AND ROLE OF BOARDS OF DIRECTORS				
5. Must boards have independent directors? What percentage?	X		SLR, CGC	SGX's Listing Rules state that the issuer's board must have at least two non-executive directors who are independent and free of any material business or financial connection with the issuer. A foreign issuer must further have at least two independent directors resident in Singapore. The Code states that independent directors must make up at least one-third of the Board.
6. Do independent directors have significant influence over (a) internal and external audit and (b) executive compensation?	X		CGC	The Code recommends that the Audit committee and the Remuneration committee should comprise majority independent directors.
7. Do independent directors decide what information the board receives from management?		X	CGC	The Code states that Board members should be provided with complete, adequate and timely information prior to board meetings and on an on-going basis. Management has an obligation to supply the Board with complete, adequate information in a timely manner.
8. Are the chairman of the board and chief executive officer different persons in the majority of listed companies?	X		CGC	The chairman and chief executive officer should in principle be separate persons, to ensure an appropriate balance of power, increased accountability and greater capacity of the Board for independent decision making.
9. Are all board members elected annually?		X	CGC	All directors should be required to submit themselves for re-nomination and re-election at regular intervals and at least every three years.
10. Does the board oversee enforcement of a company code of conduct?	X		GP	
TRANSPARENCY AND DISCLOSURE OF INFORMATION				
11. Do financial statements comply with International Financial Reporting Standards (IFRS)?	X		SLR	Financial statements must be prepared in accordance with the Singapore Financial Reporting Standards (SFRS) or the IFRS or the US Generally Accepted Accounting Principles. The SFRS are closely modeled after the IFRS.
12. Are the identities of the five largest shareholders disclosed?	X		SLR	The names of the substantial shareholders (5% and above) and a breakdown of their direct and deemed interests must be disclosed in the annual report. For deemed interests, how such interests are held or derived must be disclosed. In addition, for each class of equity securities, the names of the 20 largest

Element	Yes	No	Source(s) of Rule	Comments
				holders and the number held must be disclosed in the annual report.
13. Is compensation of company executive officers disclosed?	X		SLR, CGC	SGX's Listing Rules require directors' and key executives' remuneration to be disclosed in the annual report as recommended in the Code.
14. Are extraordinary corporate events disclosed?	X		SLR	An issuer must disclose immediately all information 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 listed securities.
15. Are risk factors disclosed in securities offering materials?	X		SL	Section 243 of the Securities and Futures Act states that a prospectus for an offer of securities shall contain all the information that investors and their professional advisers would reasonably require to make an informed assessment.
16. Are transactions of a company with its insiders disclosed?	X		SLR	An issuer is required to make an immediate announcement of any transaction with its insiders (interested person transaction) of a value equal to, or more than, 3% of the group's latest audited net tangible assets. The issuer is further required to disclose the aggregate value of interested person transactions entered into during the financial year under review in its annual report.

Note: CL – company law; SL – securities law; CGC – corporate governance code; SLR – stock exchange listing requirement, GP – general practice but not obligatory