

Governance of Company Groups

By Mak Yuen Teen & Chris Bennett

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Authors : Mak Yuen Teen and Chris Bennett

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EXECUTIVE SUMMARY

Many listed companies are company groups, consisting of an ultimate listed parent company and a multitude of group entities including wholly-owned subsidiaries, partly-owned subsidiaries, associates and joint ventures. Often, many of the business activities of the group are conducted through these group entities.

Companies establish separate legal entities for various reasons, such as to minimise corporate taxes or to attempt to “ring-fence” their risks. These group entities may no longer be under the direct oversight of the ultimate parent company. As a result, there is often insufficient attention paid by the board of the ultimate parent company to the governance of these group entities. Not surprisingly, most corporate governance failures occur within these group entities outside of the ultimate listed parent company. In such situations, whilst the “corporate veil” is seldom pierced in establishing legal liability of directors of the ultimate parent, the ultimate parent inevitably becomes financially liable for the “sins” of the group entities and also faces significant reputational damage. The establishment of a complex group of entities creates corporate governance problems for the group and for individuals who are responsible for governance and management within these group entities.

In this report, we discuss some of the major corporate governance problems affecting the group and individuals arising from the establishment of group entities. Although some of these corporate governance problems are a consequence of organisational complexity and may also occur in business units, divisions and branches which are not incorporated as separate legal entities, the creation of separate legal entities gives rise to additional challenges and conflicts affecting the entities and individuals within the group.

We present findings from our research on the importance of group entities to the overall performance and financial position of the largest listed companies in three countries – Australia, Malaysia and Singapore. We also report on the disclosures by these listed companies on the measures they have in place for governing group entities.

We then propose a framework of governance measures which parent companies can consider adopting in governing entities within the group. We also consider the factors relevant for determining the appropriate approach and measures to adopt in governing these entities.

Our research is motivated by the relative lack of attention on the governance of entities within company groups in current governance regulations, codes of practice, the literature and corporate practice.

Our study looked at 150 companies listed on the Australian Securities Exchange (ASX), Bursa Malaysia Berhad (Bursa) and Singapore Exchange (SGX). The 50 largest listed companies on each stock exchange by market capitalisation as at the end of July 2012 were included in the study sample. Publicly available information from company annual reports, websites and announcements were used to determine the financial contribution of group entities to company groups and to identify the governance mechanisms used by these listed companies to govern their group entities.

Key findings from the study of the 150 companies include:

- Most of the largest listed companies consist of many group entities. The average number of group entities disclosed by the Australian, Malaysian and Singaporean companies was 93, 90 and 47 respectively, with the largest number of group entities for these companies being 440, 554 and 239 respectively.
- Many of the listed companies are holding companies only, with most of the assets and liabilities held by group entities rather than the parent. This approach was most common for the Malaysian companies, with 33 being holding companies, followed by the Singaporean companies with 23, and the Australian companies with 5.

- In all three countries, group entities contribute significantly to the financial performance and financial position of company groups. For Australian companies, group entities contributed an average of 39% of the total profit for the latest financial year, and 28% of the total group equity. For Malaysian companies, the percentages were 45% and 32% respectively, while for the Singaporean companies, they were 42% and 40% respectively.

Clearly, the performance and risks of group entities which are legally separate from (but, often, managerially integrated with) the listed entity will have a significant impact on the performance and risk of the listed entity.

Based on the disclosures of governance measures used by the sample companies for governing group entities, interviews and the literature, we classified these measures into five key categories: “Formal Group Governance Programme”, “Board

Governance”, “Learning and Communication”, “Group Policies” and “Audits, Risk Management and Financial Controls”. Among the three countries, we found that, on average, Australian companies disclosed more information about the measures they have in place for the governance of group entities. In all the countries, the most common measures disclosed are those relating to “Group Policies” and “Audits, Risk Management and Financial Controls”.

We then develop a framework to guide parent boards of company groups on the governance of group entities.

The framework includes:

- Measures which can be used as part of a comprehensive group governance programme
- Environmental factors which affect the appropriate approach and measures to be used

Recommendations

In order to improve the governance of company groups, we make the following recommendations:

1. Regulators should review laws and regulations relating to the fiduciary duty of directors in company groups, and consider the need to clarify it for directors of parent companies, subsidiaries and other group entities.
2. Regulators should review corporate governance rules and guidelines to ensure that boards of parent companies recognise the importance of providing adequate oversight and guidance for entities throughout the group, while respecting the duties and responsibilities of boards of group entities to safeguard the interests of the group entity.
3. Regulators should recognise the need for laws and regulations imposing duties and responsibilities on boards of both parent companies and group entities to be accompanied by adequate guidance to assist these boards to interpret these laws and regulations, thereby minimising inter-board conflicts.
4. Boards of the ultimate parent company in company groups should ensure the issue of governance of group entities is discussed and well-communicated throughout the group.
5. Company groups should utilise the framework we have presented in this report for discussing and evaluating the approach and specific measures to be used for governance of group entities.
6. Company groups should improve their disclosures of key measures they have put in place to ensure good governance of the entire group.

INTRODUCTION

In 2011, Sime Darby Berhad (SDB), one of the largest listed companies in Malaysia, introduced new measures intended to strengthen its group corporate governance. One of the key changes was the establishment of six “Flagship Subsidiary Boards” (FSBs) to enhance governance of the Group’s core businesses. These FSBs are intended to assist the ultimate parent board to have better oversight over their different business segments.

The establishment of these FSBs as part of wide-ranging corporate governance reforms followed an announcement in 2010 that SDB’s earnings could be as much as RM964 million (approximately US\$318 million) lower than in 2009 because of losses in its Energy & Utilities (E&U) division. These losses were due to major cost over-runs in four projects.

SDB’s sprawling businesses extend across six major industries in more than 20 countries, with over 550 group entities (including subsidiaries, joint ventures and associates)¹. The E&U division, which contributed 2.9%² of the Group’s total revenue in 2010, was considerably smaller than the other divisions, but caused significant financial and reputational damage to its listed parent.

This raises the question as to whether the SDB board and management paid insufficient attention to the E&U division because of its relatively low level of investment and revenue contribution. Group entities which are relatively immaterial in terms of investment and revenue contribution may pose significant risk to the entire group because of a lack of proper systems, processes and oversight.

SDB provides a good example of the issues found in many company groups - operations in different industries and countries with different rules and regulations, conducted through a complex network of entities with different degrees of managerial control and board oversight.

“The larger the component is, the more attention you pay to those subsidiaries. The more insignificant they are, the less attention you pay to them, and that’s where the problem comes.... It could be small, but there is a lot of risk taking.... A good example is Barings Bank. It was not a significant operation [in Singapore], but it became a significant contributor to risk taking.”

Head of Audit, Big 4 accounting firm

Many company groups only pay attention to the governance of their group entities after a scandal or failure has occurred.

“Bhopal was a big wake up call to the major chemicals companies to pay more attention to subsidiaries”

Finance Director, Multinational Chemicals Company

To minimise the risk of governance failures in group entities causing significant financial and reputational harm to the entire group, a proactive approach to the governance of group entities is needed.

In this report, we propose a framework that can be used to guide the board and management of the ultimate parent company in considering the approach and the specific measures which should be adopted in governing group entities.

SUBSIDIARY/GROUP GOVERNANCE

In the literature, the term “subsidiary governance” has emerged as a relatively new term to describe the governance of entities within the group, but research and guidance on this topic remain sparse. Subsidiary governance has been defined as “an organised system for forming, governing, maintaining and dissolving the legal entities within a group of related companies.”³ Such legal entities can include wholly-owned and partially-owned subsidiaries, joint ventures, associated companies, special purpose entities or vehicles, trusts and other types of entities. A strict definition of a subsidiary refers to a legal entity which is majority-controlled by a parent. However, many group entities are not majority-controlled by a parent, but the parent has joint control (as in the case of a joint venture) or only significant influence (as in the case of an associate). Therefore, the term “subsidiary governance” when used to describe the governance of the myriad of entities within a group is somewhat misleading. In this report, we use the term “group governance” to refer to the governance of different entities within a group.

Currently, even though most companies are actually company groups with many group entities (or are themselves part of a larger company group), corporate law and regulations in most countries focus on the duty of directors to the “company” as a separate legal entity rather than to the group.⁴ Codes and guidelines on corporate governance targeted at listed companies make little reference to the governance of group entities,

In Australia, section 187 of the Corporations Act permits a director of a wholly-owned subsidiary to act in the best interest of the holding company under certain conditions. These conditions include authorisation by the subsidiary’s constitution; the director acting in good faith and in the best interest of the holding company; and the subsidiary is not insolvent or becomes insolvent because of the director’s act.⁵ However, according to Mescher and Bondfield: “The corporate group structure continues to be a challenge for directors

of group companies. There are differing standards in the interpretation of the duty to act in the best interests of the company.”⁶ As a result, directors in company groups face ambiguity about their fiduciary duty and are essentially left on their own to deal with conflicts between their duty to the company and to the group.

The lack of regulatory attention to governance of group entities also means that “parent companies” often pay insufficient attention to group governance for several reasons:

- Group entities are separate legal entities with their own boards. The board of the parent company may feel that governance of group entities can be left in the hands of the boards of these entities. In the case of financial institutions in particular, regulatory approaches may encourage this “hands off” approach from the holding company.
- Parent companies of groups may view governance of group entities as irrelevant. This is especially true where these entities are wholly-owned subsidiaries, and the parent company may govern and manage these subsidiaries like branches, business units or divisions. This effectively renders the boards of the group entities a charade and merely there for compliance with regulations requiring them to have boards of directors.
- In the case of joint ventures, where relationships between shareholders are stated in the joint venture agreement, the parent may also view their governance as irrelevant.
- Where financial investments in group entities are relatively low, parent companies may take a complacent view that adverse events in these “non-material” entities do not pose significant risks to the group

“This is a neglected area of corporate governance amongst academics, practitioners and policy makers. Group entities pose a challenge to traditional concepts of governance. Company law in most jurisdictions typically expects the boards of such entities to define the best interests of their companies in an independent and objective manner. And yet the ownership structure of such entities – and the constraints that such ownership places on directors and boards – means that such independence is very difficult to achieve in practice. The interests of the parent company typically override those of the group entities. This places the directors of such entities in a legally ambiguous and potentially vulnerable position.”

Academic and adviser on governance policy to firms and regulators in the UK

In practice, the financial performance of many companies is highly dependent on group entities outside of the ultimate listed parent company. Often, the parent company is a holding company with no business operations or is a corporate identity holder.⁷

Further, the parent company will often have to ultimately take responsibility for financial losses incurred by the group entities and suffer reputational damage from corporate governance failures in these entities. Inevitably, the board and management of the parent company, rather than the board and management of the group entity, are the ones facing the public scrutiny. There are many recent examples where this has happened, such as the BP Deepwater Horizon disaster and the News Corporation phone hacking scandal, both of which occurred in group entities with their own boards and management.

“The JV/subsidiary or associate may have no understanding of the risks it could cause the Parent. Practices which might be perfectly legal in the subsidiary’s local market (if a geographical subsidiary) may not be legal elsewhere. These can be legal, reputational, FCPA issues, Bribery Act issues and so on. Given the risk profile is higher than if the subsidiary were trading independently, increased or more appropriate governance may be needed: the trick is to ensure this does not stop the subsidiary trading effectively. Aside from the governance issues, the holding company may need to have clear set of objectives for what the relationship is for, particularly if the subsidiary is required to use central services, and competes with other organisations.”

Senior Director of UK PLCs

Regulators of financial institutions have become more aware of the potential problems of governance of group entities and increasingly apply strict corporate governance requirements on all entities within the group, whether listed or unlisted and whether wholly or partly-owned. For example, Bank Negara Malaysia, the Malaysian central bank, expects the board of a financial institution and its senior management to set the general strategies and policies of the group and its subsidiaries⁸ and, at the same time, expects that the parent board will respect the corporate governance responsibilities at both the parent and subsidiary level. In order to achieve this, the parent board is not permitted to prejudice or diminish the corporate governance responsibilities of the subsidiary’s board and senior management⁹. For financial institutions, regulators often require even wholly-owned subsidiaries to have independent directors from outside of the group, something which is relatively rare outside of financial institutions. Such regulations for financial institutions have undoubtedly raised awareness of the importance of governance of entities outside of the ultimate parent company. However, they have also increased intra-group tensions, including between boards of the parent and the group entities, and the conflicts faced by individuals who are responsible for governance and management throughout the group.

COMMON GOVERNANCE PROBLEMS IN GROUPS

Corporate governance problems in groups generally arise where there are unrecognised or inappropriately resolved conflicts between the parent and entities within the group.


The conflicts can manifest in a number of ways, such as:

- Regulatory conflicts: Laws and regulations in the jurisdictions where the parent and group entity are domiciled can be in conflict. Examples we have come across include differences in the requirements of data protection legislation, differences in disclosure requirements and different attitudes to dividend remittance.
 - Commercial or managerial conflicts: Such conflicts are pervasive and arise in a myriad of guises. Some examples we have encountered include:
 - New product launches – a product which a parent wants to launch but which is not seen to be in the interest of the subsidiary.
 - Safety regulations and approvals
 - parent company unwilling to disclose detailed product formulations to the subsidiary.
 - Transfer pricing - parent company unwilling to disclose basis of charges to the subsidiary.
 - Sarbanes-Oxley “sign off” - parent company unwilling to disclose basis of “management charges” to the subsidiary.
 - Conflict over director appointments with the subsidiary’s nominating committee.
 - Conflict over senior executive remuneration with the subsidiary’s remuneration committee.
 - Parent company seeking confidential information from directors of an associate company.
- Conflicts between the interests of two subsidiaries, e.g., factory closures and other supply chain decisions.
 - Conflicts between the organisational and national cultures of the parent and the subsidiary.

“The most obvious situation [of a conflict] is where the group entity and the parent group engage in transactions with each other in a way that favours the parent entity at the expense of the group entity. This may be achieved through non-commercial transfer pricing. Another scenario is where a parent entity uses a group company to distance itself from certain types of activity and thereby preserve its own reputation or financial liability at the expense of the group entity. A famous case in the UK was that of Adams v Cape Industries [1990], where Cape Industries used various subsidiaries to manufacture and market asbestos products in the US, and thereby was able to avoid liability in subsequent court cases brought by US employees on health grounds. Other examples are the use of subsidiaries to shuffle profits between jurisdictions for tax reasons (e.g. Starbucks and many other US technology companies who pay very little tax in the UK despite huge turnover)...”

Academic and adviser on governance policy to firms and regulators in the UK

These “corporate” conflicts in turn create conflicts for individuals who are responsible for governance and management within the group.



“Repatriation of dividends to the Group is a common area where there can be tension/ challenges for a subsidiary board. In some countries, the regulatory environment adds to the difficulties faced. Independent directors often challenge why profits in their subsidiary country are not reinvested in the local franchise (i.e. distribution channels or simply to increase capital). We spend a lot of time reinforcing the broader benefits of a subsidiary operating in a wider Group (such as funding, cross boarder capabilities and therefore being able to deliver a wider range of products/solution in a timely and co-ordinated manner)...Booking transactions that have been originated overseas on the balance sheet of a subsidiary in another country can also bring conflict.”

Company Secretary in major PLC with subsidiary governance responsibility

The complexities of dealing with conflicts are given an additional level of difficulty when they occur in an entity separate from the parent, where laws and regulations in some cases place additional responsibilities on companies and individuals which can supersede those of the line management chain of command.

The following hypothetical case, developed from actual scenarios, illustrates the conflicts by individuals who hold directorships in several group entities.

Case:

Frank Wee serves as an independent non-executive director of First Bank, a commercial bank incorporated and based in Hong Kong. He lives in Hong Kong and is a citizen of Singapore.

First Bank is a wholly owned subsidiary of First Holdings Company, incorporated and headquartered in Singapore. Frank is also an independent non-executive director of First Holdings and of Best Lease, a leasing company that is also owned by First Holdings. Best Lease is incorporated in Bermuda and based in Macau.

First Holdings requires that First Bank purchases its entire payroll processing services from another wholly owned subsidiary of First Holdings, even though independent vendors offer the same services at a lower price. First Holdings also requires First Bank to pay monthly management fees to First Holdings, even though First Holdings provides no real services.

Best Lease has run into serious financial difficulties as a result of an economic downturn and Best Lease is in on the verge of insolvency. First Holdings, the common shareholder of First Bank and Best Lease, would be severely hurt if Best Lease collapses. First Holdings requests that First Bank lend money to Best Lease and issue a series of letters of credit to support Best Lease's deals.

Clearly, in the above case, Frank Wee faces conflicts from holding directorships in several companies within the group, and it is difficult for him to act in the best interest of all the companies in which he is a director. The fact that the different entities operate in different jurisdictions can create additional complications.

Based on our experience and interviews and conversations with individuals who are directors or management in company groups, we believe that individuals often face role conflicts from holding directorships in several group entities, which can confuse these directors.

The conflicts are arguably worse when directors of group entities are employees elsewhere in the "group". They may also act as a "shareholder representative" and "manager" of the group entity and/or other group entities. We have also encountered situations where the directors of a joint venture are mid-level managers drawn from entities in two different groups with different domiciles, neither of which is the domicile of the joint venture.

The consequence is that these individuals may have to balance different duties which may conflict:

- The duty of an employee to act in the interest of the employer and obey reasonable, lawful instructions (note that they may have more than one "employer" in the group).
- The duty of a director to act in the interest of the company of which s/he is a director (and they may be a director of many group entities).
- The duty of a shareholder representative to act in the interest of the shareholder s/he represents.

"There have been many instances in which there have been conflicts between two shareholder representatives in the Board. Dispute resolution clauses have ruled the manner in which these disagreements are resolved. Failing this, an amicable resolution is always the first course of action. Inter-Board disputes are rare as there is no regular medium in which these two bodies can interact."

Director of major Asian MNC

The quote above suggests that parent boards avoid direct disputes with the boards of group entities because they have "delegated" the resolution of disputes to representatives they put on the boards of the group entities. These representatives are then put in an unenviable position of dealing with the kinds of role conflicts we discussed above, and may therefore be pressured to support decisions that are in the interest of the parent but not in the interest of the group entity.

In our interviews, we found that management in company groups are often aware of the potential for conflicts which individuals within the group may face, but often, the attitude is that those conflicts will be surfaced and satisfactorily dealt with.

“To consider conflicts of interest, there are two things. Firstly, you always work for your parent company that is where your long-term career is. Secondly, it could be that the parent company wants you to do something that might be legal from their perspective but might not be legal from the local perspective, then you have to stand up and say no. And you explain to the parent company why you aren't going to do that. Nobody gets hurt. So sometimes it's legal issues, or sometimes it's unrealistic expectations, such as growing the JV by so much, when it cannot be done. There could be different motivations sometimes to do things.”

**Senior Asia-Pacific Director of Accounting
of listed European MNC**

“I would say our wholly-owned subsidiaries are like operating divisions, except that the directors of subsidiaries do have their own separate fiduciary duties. But so far, we've never had conflicts. Subsidiaries' interests are usually aligned with the whole group's interests. So when they sign off on their board resolutions, it will not conflict with their duties as directors. But in the instance where there is a conflict, then we have to be really careful.”

**Group Company Secretary, listed Asian
MNC**

Although, in theory, one would expect individuals to put their duties under the law ahead of their other duties, the practice is often very different. How else would we explain the regular reports of employees who have broken the law or behaved unethically even though they are subjected to codes of conduct imposed by the parent company that clearly prohibit them from doing so?

In our experience, there is often little sympathy or understanding of the conflicts placed on individuals holding directorships in group entities from parent Boards and directors. As a consequence, the impact of governance problems on company groups and individuals

is often over-looked and in most organisations, little training or guidance is provided for the individuals who face these conflicts.

Employees and/or directors of subsidiaries are often uncomfortable raising these issues, feeling that doing so may damage their career prospects or continued retention as a director, although they appear acutely conscious of them. We have heard comments from directors of subsidiaries and parents that the view from the top is “don't get an inflated idea of your own importance, you're not a real director” and “your job is just to implement what the parent board decides, not to make problems”.

The following case, based on actual events, highlights the challenges faced by an individual who wore the hats of an employee, director and shareholder representative within a large company group.

Case

XYZ company operates in a South American country and is a 49% owned group company of a UK parent (UKP). The remaining 51% is split between two local partners (A&B) with equal holdings. UKP is in turn owned by another UK parent, ANO, a very large, old and well respected company.

UKP has a contract for the management of XYZ. XYZ has been in existence for 15 years and has paid regular dividends to the parent company.

The CEO of XYZ has been in place since inception. He is seen as probably the best CEO in UKP and always beats his budgets. He is also the major shareholder in local partner A, with his wife as the other shareholder in A.

A very wealthy local investor who now lives in a remote part of the country owns partner B. His investment in B is a very small proportion of his total wealth.

The Board of XYZ comprised of the CEO, his wife and the regional director of UKP, who is based in the country and chairs the Board of XYZ. He also chairs the board of a number of other subsidiaries in different countries around the region and is a member of the UKP Board. The regional director is newly appointed to the role in succession to a very highly regarded regional director who has been promoted to a more senior post in another subsidiary of ANO.

The newly appointed regional director is asked to sign three dividend cheques; one to UKP, one to A and one to another party. He notes that the third cheque is not made payable to B but to another company F.

When the newly appointed regional director asks why the third cheque is made payable to F he is told:

1. This is the long-standing practice
2. There is a letter authorising B's payments to be made to F

When he views the letter of authorisation to direct dividend payments to F, he notices that it is signed by the wife of XYZ's CEO.

On investigation, F turns out to be a company whose shareholders are the CEO of XYZ, his son and a sweeper from the factory. On further investigation, it turns out that the equivalent of GBP 4 million has been paid to F rather than B.

UKP and ANO have suffered no loss as their dividends have been properly paid. The auditors of ANO, UKP and XYZ are one of the Big 4 firms and have never raised any questions about the payments to F, nor have UKP's internal audit team. The owner of B seems unaware of any problem.

In the above case, the new regional director was put in a predicament as he was concerned that raising the issues may jeopardise his career. In the case that formed the basis of this example, he did raise the issue and it was satisfactorily resolved. However, it is possible that employees in such situations will choose not to raise the issue, which can cause financial or reputational damage to the group.

Parent Boards therefore need full and open communication from the directors of group entities to anticipate and pre-empt problems that may damage the parent and/or the group. They also need to put in place appropriate measures to ensure that issues that occur in group entities are dealt with appropriately.

Unfortunately, the most frequently adopted approach to the problems of group governance appears to be to ignore them and hope for the best. The effect of this is to place the burden on the shoulders of directors of these entities. It can sometimes appear that the objective of the parent board is "plausible deniability" - directors of group entities are "expected" to do the "right thing" but also to be "team players" and not to "rock the boat" and implement the holding companies policies without question.

PREVIOUS RESEARCH ON GOVERNANCE OF GROUP ENTITIES

In one of the earliest studies on the governance of subsidiaries in 1987, Kriger and Rich examined the role of boards of directors in subsidiaries of MNCs and found that such subsidiary boards can be useful in providing governance and advice to local subsidiaries.¹⁰

In 2003, the Global Corporate Governance research initiative at IMD in Switzerland launched a research project on subsidiary governance focusing mostly on European MNCs¹¹. The research found that there were three distinct models of subsidiary governance, based on the ownership characteristics of the particular subsidiary involved. In the first model, the subsidiary maintains a board that is active in subsidiary management. This model was most common in joint ventures and subsidiaries with multiple and minority shareholders. As the following quote illustrates, governance problems in such entities seem to be well-recognised, although not necessarily adequately addressed.

“The conflict may be more in a JV. The group says, let’s extract more for ourselves. Then the group puts you there as a nominee director and wants you to take more than is your share. But if you are a director of that JV, you cannot do it. It’s a conflict and you cannot listen to the main board, or you will run foul of the law as well. What do you do? You have to fend off the pressure and say, we need to do what’s right for the joint venture. So if you have the right people, you will have no issue. But with the wrong people, you may have these problems.”

Independent director of listed companies and nominee director in several foreign joint ventures and former Asia-Pacific CEO of U.S. MNC

Under the second model, the subsidiary has a board, but its role is formal in nature, essentially being a “rubber stamp”. This type of model was found in all sorts of entities. Such boards are often mandated by law and deal with regulatory issues only, for example, legally required reporting.

The most common was the third model, where the subsidiary is wholly owned by its parent and there is no dedicated board at all. Under this model, group headquarters tries to avoid managing the subsidiary via a local board unless it is required to do so by law. The subsidiary management interacts directly with other management layers in the group, as if it were a department rather than a separate company. Governance-related contact between the subsidiary and group headquarters tends to be related only to administrative and legal matters.

As illustrated by the following quotes, the second and third models of governing wholly-owned subsidiaries are still prevalent today, with many companies still managing them like branches and divisions. This is despite the fact that from a legal standpoint, there are directors in these subsidiaries with their own fiduciary duties to the subsidiary concerned.

“For wholly-owned subsidiaries, most major decisions are made by corporate headquarters, including appointment of auditors, tax consultants and bankers.... Our treasury and financing is very tightly controlled”

Group CFO, listed Asian MNC

“For us, subsidiaries are often wholly-owned... They are not independent at all, they are subject to direction by the [parent] board. For our Group, the board is in [city in Europe], and for other MNCs like ours, there is only one group of shareholders and those shareholders are at the listing location. So when you talk about 100% owned subsidiaries, they are no different from the board of the holding company in a listing location. They are no different; they are 100% under the control of the board in the listing location. So we have 100% owned subsidiaries around the world, they are a different legal entity but they are not a different business entity. So, if it is 100% ownership, it is very clear that they do exactly as they are told. Separate legal entity, but not separate management entity...”

**Senior Asia-Pacific Director of Accounting
of listed European MNC**

“If it's a 100% owned subsidiary, what's the issue? There is no issue at all....When you own 100%, you are at liberty to do anything you wish. There is no corporate governance here.”

**Independent director of listed companies
and nominee director in several foreign
joint ventures and former Asia-Pacific CEO
of U.S. MNC**

The corollary to such a “centralised” approach to governing and managing group entities is that the board and management of the parent board should still be held legally responsible for what happens in those entities, since the boards of the group entities are largely there to implement directions from the parent company. In effect, the directors of the parent board are shadow or de facto directors of the group entity. In such cases, there would be a strong case to impose fiduciary and other legal duties (e.g., anti-bribery, health and safety) on directors of the parent board to not only act in the best interest of the parent company, but to the group as well - or at least those group entities which are essentially divisions or branches but which are separate entities only in strict legal form. Otherwise, the duties of the directors are not aligned to their authority and decision-making powers. Such a mismatch between duties and authority can create serious problems for individuals and company groups.


In 2006, Brellochs and Steger examined why subsidiary governance is not evident in most company groups¹². They attributed this to the following three reasons (which they argued were fallacies):

- Firstly, if the group's share price cannot be affected by subsidiary governance, there is no need to implement it. Governance efforts should thus be concentrated on the parent company.
- Secondly, if the law does not mandate subsidiary governance, then it is not needed.
- Thirdly, if the parent company's management delegates the management of subsidiaries to local management, it is also assumed that the local management will take care of subsidiary governance.

These views are of concern as they suggest that many companies ignore the importance of group governance for improving the performance of the overall group and protecting the rights of subsidiaries' shareholders and stakeholders.

In 2007, Brellochs published a dissertation where he examined the corporate governance of subsidiaries in MNCs. He highlighted that effective governance of group entities in MNCs may prevent scandals associated with subsidiary governance and improve operational efficiencies in parents.¹³

In 2008, Jorgenson emphasised the complication of governance issues at the “subsidiary level” as a result of globalisation driving increasing business complexity and regulatory expectations¹⁴. She also highlighted the need for subsidiary governance programmes to be implemented as the boards of parent companies “can't do it all”. She argues that an effective subsidiary governance programme is essential for parent companies to be assured that “downstream governance” reflects similar values as those of the parent.



In 2010, Sabatino and Wolf advocated the importance and advantages of developing a subsidiary governance system¹⁵. They highlighted the ability to investigate and respond thoroughly and quickly if there is alleged wrongdoing in a remote entity as a benefit of a robust subsidiary governance system.

A 2009 article by Windsor documented the challenges that make it difficult for MNCs to tighten corporate governance, even if they wanted to¹⁶. These MNCs face pressures from different stakeholders such as government, international institutions and non-governmental organisations. Their geographical diversity results in significant variance in the legal systems and cultures they experience. Without international standards for corporate governance and reporting, these large groups find it challenging to implement a governance framework that can be applied to all its group entities.

Costello and Costello suggested in a 2009 paper that subsidiary governance mechanisms are needed to align the interests of its headquarters and its subsidiaries. They also highlighted the importance of adjusting the use of corporate governance mechanisms from subsidiary to subsidiary and that there is no one-size-fits-all approach¹⁷.

The limited research on governance of company groups has focused largely on the “corporate” perspective to this issue, rather than on the issues faced by individuals who are often put in difficult positions when governing and managing in group entities.

RESEARCH ON COMPANY GROUPS IN AUSTRALIA, MALAYSIA AND SINGAPORE

In order to increase awareness of the importance of governance of groups and to assist directors and senior management in improving the governance of group entities, we undertook a research project which was conducted in two phases:

- The first phase was to examine the extent to which the performance and financial position of groups are dependent on group entities.
- In the second phase, we examined the practices used by the listed parent companies to govern group entities as disclosed in the annual report and other public sources.

Based on these practices, interviews, the literature and our own experience, we develop a framework setting out the key governance measures that can be used to better govern group entities and the factors which affect the approach and the selection of measures.

Phase One

For this phase, our sample consisted of 150 companies listed on the Australian Securities Exchange (ASX), Bursa Malaysia Berhad (Bursa) and the Singapore Exchange (SGX). The 50 largest listed companies on each stock exchange by market capitalisation as at July 2012 were identified. Trusts and companies in the real estate industry group were excluded.

Data for the study were obtained from the following secondary sources:

- Latest annual report of the company
- Company announcements on the respective stock exchanges
- Company website

The following were determined using the secondary data sources:

- Number of subsidiaries, associates and joint ventures owned
- Whether the parent company of the group is a holding company
- Non-parent profit after tax as a percentage of consolidated group profit after tax for the latest financial year, and non-parent equity as a percentage of consolidated group equity as at the end of the latest financial year

Phase Two

Phase Two involved researching the current governance mechanisms that company groups have in place to govern their group entities. Information from the secondary sources of the same 150 companies studied in Phase One was used.

In addition, interviews were conducted with industry practitioners to gain an understanding of the governance mechanisms currently used by groups and the practical challenges that practitioners face in the governance of group entities.

A recommended framework for governance of group entities was then developed.

FINDINGS

Number of Group Entities

Figures 1 to 3 show statistics on the different types of group entities for the sample companies in the three countries. The average number of group entities for the Australian,

Malaysian and Singaporean companies is 93, 90 and 47 respectively, with the largest number of group entities for these companies being 440, 554 and 239 respectively. On average, wholly-owned subsidiaries make up more than half of the group entities for the companies in each of the three countries¹⁸.

Figure 1: Number of group entities in the largest 50 Australian-listed companies

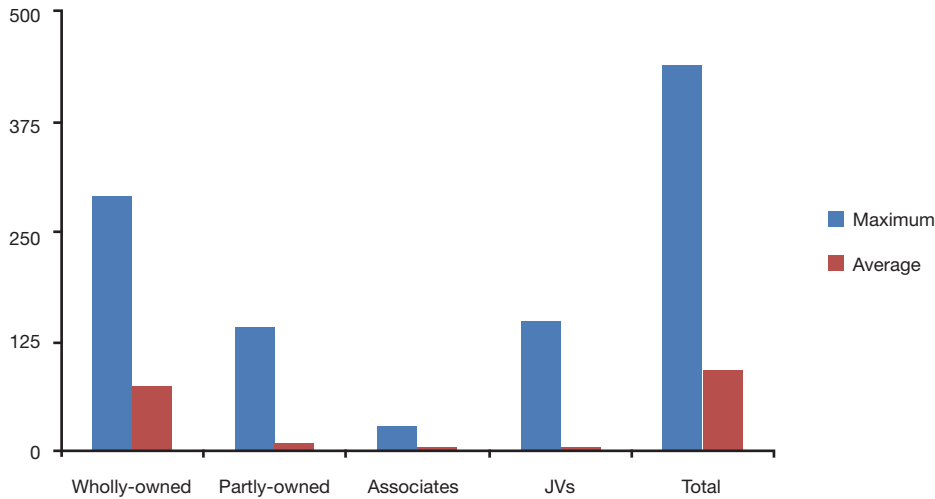


Figure 2: Number of group entities in the largest 50 Malaysian-listed companies

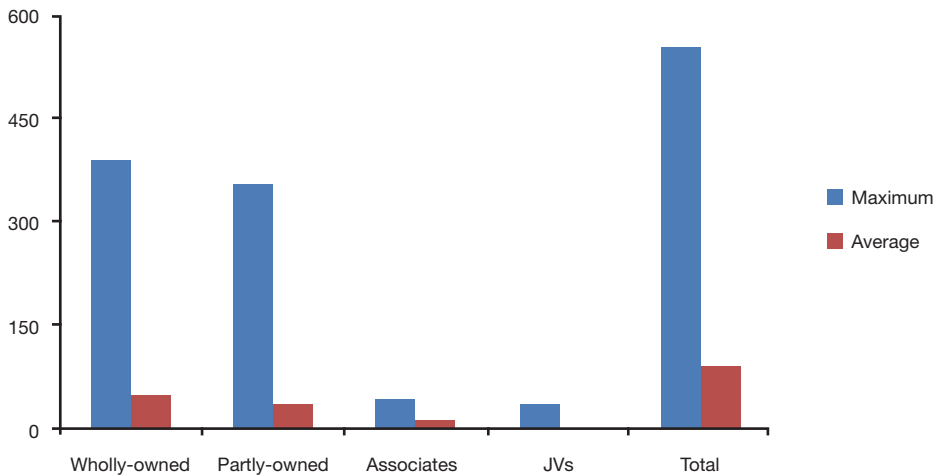
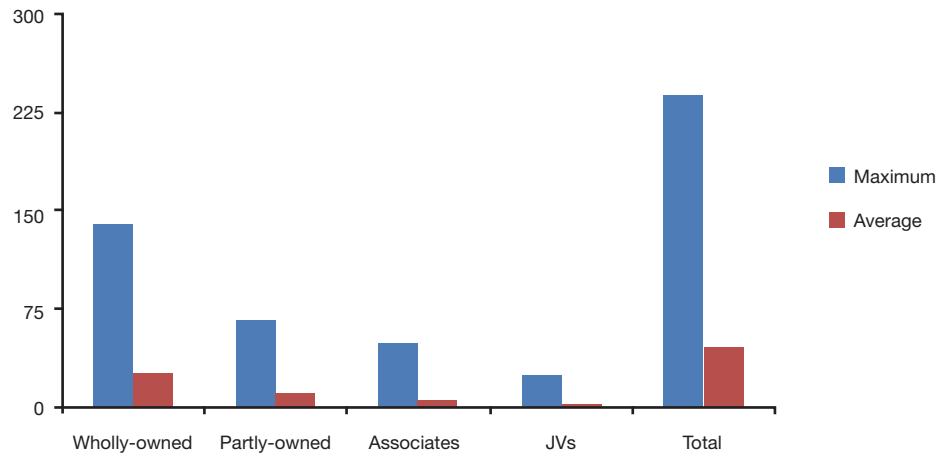


Figure 3: Number of group entities in the largest 50 Singaporean-listed companies



Listed Companies which are Holding Companies

Many parent companies are essentially pure holding companies, where most of the assets and liabilities are held by group entities, and

most of the profits and cash flows are derived from these entities. However, this is less common for the Australian-listed companies, with only 5 being holding companies. For the Singaporean-listed companies, 23 are holding companies, while for the Malaysian-listed companies, 33 are holding companies.

Contribution of Group Entities to Group Performance and Financial Position

For most companies in our sample, group entities outside of the ultimate listed parent company contribute significantly to the overall financial performance of the group

and account for a significant part of the group's equity. For listed companies which are pure holding companies, their performance is essentially totally dependent on the performance of the group entities.

Table 1 below shows the equity and profit contributions of group entities to overall group equity and profits.

Table 1: Financial Contributions of Group Entities

Country	Average equity contributions		Average profit contributions	
	Number of companies	Non-parent equity/ group equity	Number of companies	Non-parent after-tax profit/group after-tax profit
Australia	36	27.66%	34	39.30%
Malaysia	45	32.32%	45	45.03%
Singapore	46	39.64%	36	41.96%

Note: Companies are excluded from the analysis under the following situations : (a) where total equity of group entities outside the listed parent is negative ; (b) where the listed parent has negative after-tax profit; (c) where total after-tax profit of the group entities outside the listed parent is negative ; and (d) ratios exceed 100%. This is to avoid negative ratios and outliers affecting the computation of the averages,

It is clear that group entities contribute significantly to the profitability and financial position of company groups and that the performance and risks of group entities will have a significant impact on the group and the ultimate listed company. This makes the governance and management of these entities of critical importance.

Group Governance Measures Disclosed

We then assessed the extent of disclosure of group governance measures classified into the following major categories, “Formal Group Governance Programme”, “Board Governance”, “Learning and Communication”, “Group Policies” and “Audits, Risk Management and Financial Controls”, defined as follows:

- “Formal Group Governance Programme” refers to a formal and comprehensive approach to governance of entities throughout the group, such as having a comprehensive group governance framework or policy, formal policy on creating and dissolving group entities, a central database tracking all group entities and a head of group governance.
- “Board Governance” refers to measures involving parent company directors or management sitting on boards of group entities, appointment of nominee or independent directors, and board committees with group-wide responsibilities in areas such as remuneration, nomination of directors, human resource management, compliance, health and safety, and sustainability
- “Learning and Communication” includes formal training programmes for directors and senior executives of the parent company and group entities, site visits by directors and senior executives of the parent, formal interactions between directors and senior executives of the parent and group entities, and group-wide internal control/risk/fraud awareness sessions.
- “Group Policies” refers to group-wide policies in areas such as business conduct and ethics, risk management, whistleblowing, remuneration, authority limits, and treasury

- “Audits, Risk Management and Financial Controls” refers to practices such as group-wide risk management and systems, internal audits, control self-assessments, written representations/assurances, budgets and management accounts

We did not find any companies disclosing that they have a formal and comprehensive programme for the governance of entities throughout the group. Among the three countries, we found that, typically, Australian companies disclosed more information about the measures they have in place for the governance of group entities. The most common measures disclosed are those relating to “Group Policies” and “Audits, Risk Management and Financial Controls”. Nearly all disclosed group-wide policies on business conduct/ethics and diversity/equal opportunity, while a large number also disclosed group-wide policies on whistleblowing, remuneration and sustainability.

Disclosures on “Group Policies” and “Audits, Risk Management and Financial Controls” are also more common than other measures for companies in the other two countries. They were also commonly cited by those we interviewed.

“We have our corporate policies: We have anti-corruption, code of ethics, competition policy, a whole string of policies at corporate headquarters. What we do is we cascade it down to our subsidiaries and get them to apply them at their own subsidiary groupings.... For wholly-owned subsidiaries, we control the board, so it is not a problem to cascade down policies, accounting procedures, authorisation matrix, and so on. It is only where we have jointly-controlled entities, where we have to deal with the JV partners, which may have their own procedures and policies, and they may be more lax or strict than us.”

Group Company Secretary, listed Asian MNC

“There must be a broad framework because when you have a group, although you have subsidiaries to focus on what they are doing, as a group you want to optimise your human capital, so you may want to rotate people. Sometimes, it is to rotate people through different divisions of the company, or through different companies in the group, or overseas or things like that. There must be some broad framework, because otherwise if you leave it alone, one company may pay people based on commission, or once you hit your target you are paid a certain percentage of your base component, while another has a higher base pay. What happens when you want to move people around? They don’t want to move because they compare the changes in income. Hence, there must be a general framework.”

Independent director of listed companies and nominee director in several foreign joint ventures and former Asia-Pacific CEO of U.S. MNC

“There is a common whistleblowing policy for the group, and it works. People do occasionally make reports. We have a compliance officer - there is one in Singapore for Asia-Pacific, there is one in Japan, one in North America, and one in Europe. These compliance officers report to the group compliance officer, and there is a structure for how people can make reports or blow the whistle.”

Senior Asia-Pacific Director of Accounting of listed European MNC

In terms of “Audits, Risk Management and Financial Controls”, most companies disclosed the use of internal audits and a group-wide approach to risk management.

“Cascading the policies is not an issue. At the end of the year, we even get the senior management to come back and confirm that they have done that. Whether they confirm that in all honesty, or with a pinch of salt, we wouldn’t know because it is an assurance statement. That all comes down to verification and audit. The audit process is equally important, the financial reporting process is equally important.”

Group Company Secretary, listed Asian MNC

“We have many internal controls because we are a public listed company...we have a structure in place in the group to give assurance to the board that the internal controls in the group are operating as should....In order to implement that, we have risk assessment that's done at the group level... They think about the risks for the group financial statements, and consider where are the major activities occurring for the group, and in which countries? In which countries do we need adequate internal controls to cover the risks for that country? We ensure that the internal controls are documented and followed in each of the key locations and we do that by having a way of documenting and sharing on a global level. We also do something called management testing of the internal controls. So if there are controls that are key for addressing certain risks, we see that the internal controls that mitigate these risks are working.”

Senior Asia-Pacific Director of Accounting of listed European MNC

In the area of “Board Governance”, about 40% of Australian companies disclosed that they appoint directors of the parent to sit on boards of group entities. Just over 20% disclosed the appointment of key executives of the parent to sit on boards of group entities and the same percentage disclosed the appointment of independent directors.

Malaysian and Singaporean companies were similar in terms of disclosure of information on measures in place. For Malaysian companies, the most common measures disclosed were internal audits and group risk management, with all companies disclosing internal audits and nearly all disclosing a group approach to risk management. About 75% of companies disclosed that they appoint parent company directors to sit on the boards of group entities and almost 80% disclosed that they had training programs to help directors understand group operations. Compared to Australian companies, there were fewer companies which disclosed the use of group-wide policies. For example, just over half disclosed group-wide policies on business conduct/ethics and just over 40% disclosed group-wide whistleblowing policies.

The most common measures disclosed by the Singaporean companies were similar to the Malaysian companies, i.e., internal audits, group risk management, having parent company directors sitting on the boards of group entities, and training programs to understand group operations. The frequency of disclosures of these measures was comparable to the Malaysian companies. However, only about a quarter disclosed group-wide policies on business conduct/ethics and just over 40% disclosed group-wide whistleblowing policies. More Singaporean companies disclosed that they had group policies on remuneration and sustainability compared to Malaysian companies, and having remuneration committees with responsibilities for remuneration of the group.

“We have the chairman and several of the directors sit on the boards of subsidiaries. They are supposed to actually impose their mandate through their board membership.”

Group Company Secretary, listed Asian MNC

“Generally we appoint a mix of the management, and these are all people somewhere in the management. They can be in the management of the local entity itself, for example in India, people needed some directors and they used local management. Other directors could come from more senior management in the regional head office here in Singapore. Some of the directors could also be from [our headquarters in Europe]. We use a mix of people.”

Senior Asia-Pacific Director of Accounting of listed European MNC

One former Asia-Pacific Chairman of an Asian MNC with a global business, which is widely recognised as one of the best-governed Asian MNCs, shared the approach it has in place for governing the group:

“First is the code of conduct, and it is the strictest code of conduct I've ever seen. Every employee or anyone who signs a contract must sign the code of conduct. This is mandated. If a contractor does not want to sign this contract, we will walk away from it. On top of that, all our companies have what we call a major business excellence model. This covers everything: How we compete, how we produce competitive returns, how we look at governance, how we look at compliance. The third piece is how we manage subsidiaries. Now, one of the challenges in subsidiaries is that sometimes they are 100% owned, while sometimes they are partly owned. In the case of 100% owned and those under our control, then clearly all of the business excellence model applies. All the same standards are used in every subsidiary, and the subsidiaries go through that same quarterly board meetings and standards of the board meetings are similar, depending on the sizes of the subsidiaries. We prefer sometimes having independent directors, as they bring value to a subsidiary, even to wholly-owned subsidiaries.”

Former Asia-Pacific Chairman, listed Asian MNC



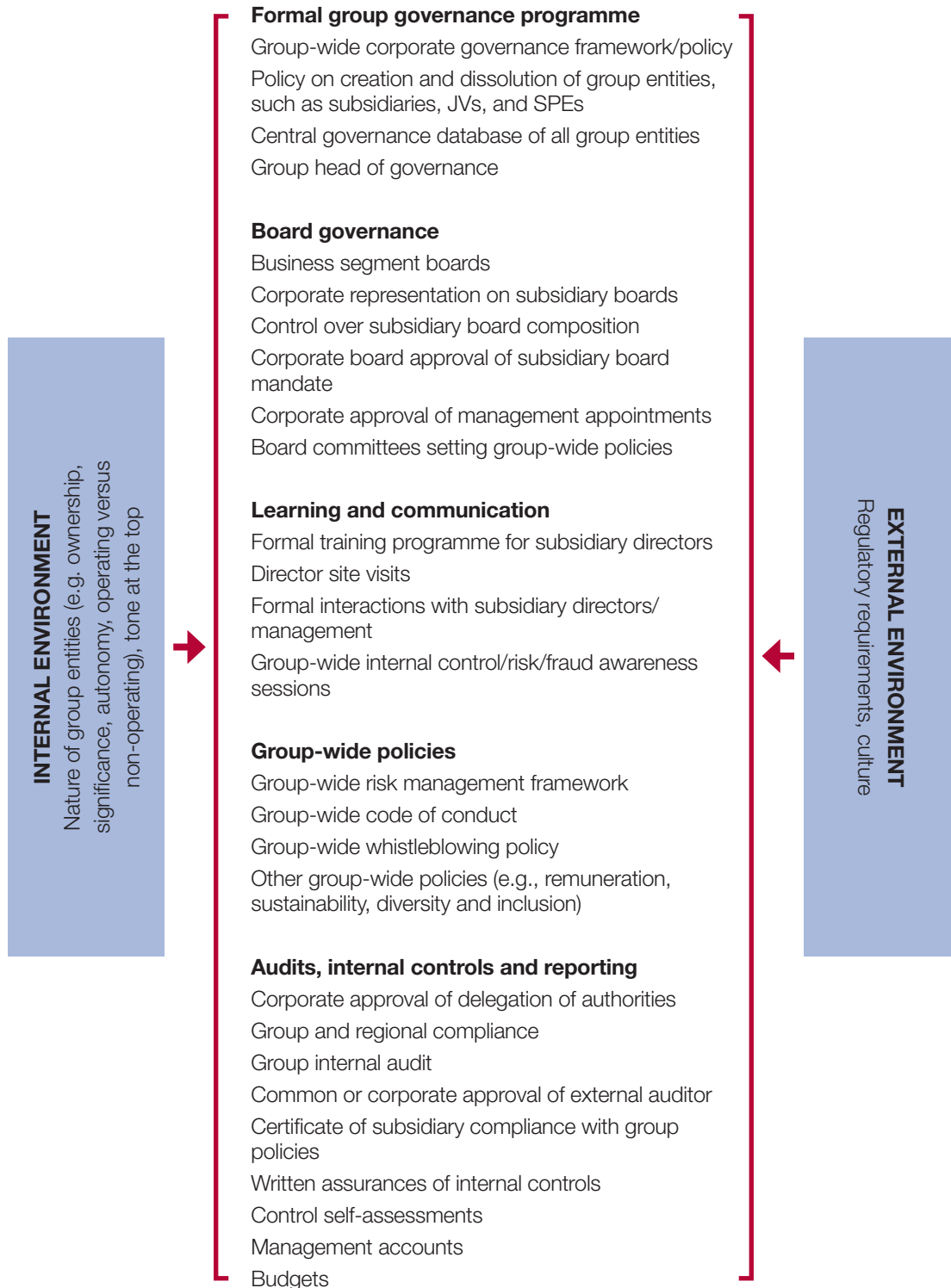
CONCEPTUAL FRAMEWORK OF GOVERNANCE OF COMPANY GROUPS

As seen from our research, group entities are indeed significant. However, there is little guidance on how company groups should govern their group entities.

Combining insights from the literature review, interviews and mechanisms currently used by the companies in the research sample, we have developed a conceptual framework of governance of company groups (Figure 4). This framework is intended to guide boards of

company groups in thinking about the factors which they should consider when deciding on how different group entities should be governed, and the possible measures that can be adopted by the group in improving overall group governance and the governance of specific entities within the group. It is not intended to be prescriptive as we do not believe there is “one size fits all” or “magic bullet” for governing group entities.

Figure 4: Group Governance Framework



Key Components of the Framework

The framework considers governance of group entities along two dimensions—environmental factors and specific governance mechanisms.

Environmental factors play a significant role in determining the approach and governance measures which should be or can be used. There are two broad categories of environmental factors—the internal environment and the external environment.

Internal Environment

One of the key internal environmental factors to consider is the nature of the group entity. Group entities vary based on their ownership, significance, autonomy, risk profile, and extent of operations carried out. As each group entity differs in its capabilities, needs and local challenges, so too must the approach to governing these entities.

For instance, the governance of autonomous subsidiaries will differ from that of subsidiaries operating like branches or divisions. Similarly, governance approaches will also differ based on whether the group entities are wholly-owned or not.

Regardless of the type of group entity, it is important that the approach and specific governance measures to be used are carefully considered by the board and senior management of the ultimate parent company, that they are implemented as planned, and that there is adequate education and communication for those who are responsible for its governance.

A crucial component that determines the governance of group entities is the governance culture of the group. The board and senior management of the ultimate parent plays an important role in setting the tone for the governance culture of the entire group by their behaviour. Their actions (or lack of action), not their rhetoric, exemplifies the governance culture of the group and forms the backbone and determines many of the features of the governance of group entities.

With the right culture and mindset, every member of every group entity will be aware of the group's guidelines on oversight, management, individual conduct, corporate social responsibility¹⁹ and how they can contribute to better governance. A group that values good corporate governance is likely to go beyond compliance, moving towards building a strong governance culture that trickles down to its group entities²⁰.

The operating culture of a group may also affect governance of group entities. For instance, a tightly centralised system of group governance may be optimal in a rules-based culture, while a looser, decentralised system of group governance may be optimal in a values-based culture.

External Environment

The external environment within which a group entity operates will also have an impact on its governance. The external environment includes regulatory requirements, including legislation and regulations. Where a group entity is listed, it will also be subject to listing rules and codes of corporate governance.

Another important element of the external environment is the national culture where the parent company is situated, or where the group entities are situated. An entrenched culture of good public and corporate governance in a country can have a significant bearing on the type of internal governance used by the local entity of a foreign group.

Approach and Specific Governance Measures

The board of the ultimate parent is responsible for determining the approach which should be taken to govern entities within the group. Are the group entities to be governed and managed like branches, divisions or business units wherever practicable, with the boards of group entities playing a minimal role? Or will the parent board set broad guidelines for the entire group and empower boards of individual group entities to play a more active oversight role?

“The Board of the parent company has overall responsibility for the governance of the company and those subsidiaries which it controls. There may be situations in which these subsidiaries are under joint control or are associated companies having separate, independent Boards. In such in cases it would not be feasible for them to control the actions of these entities and hence cannot be held accountable for such actions.”

Director of major Asian MNC

“It is increasingly important that boards of parent companies have line of sight and understand issues being discussed at subsidiary board level. Direct engagement with subsidiary boards can be used as an extra layer of assurance that the issues and matters brought to the parent board by the senior executives is consistent with what is flowing up to the subsidiary boards. However, parent boards need to strike a balance with regard to the channels of communication by which they do this so that they do not jeopardise the independence of the subsidiary board as a decision making body.”

Company Secretary in major PLC with subsidiary governance responsibility

The board and senior management of the ultimate parent company then need to determine the specific governance measures which should be adopted for different entities within the group. The internal and external environmental factors which we have described in the framework can provide the basis for classifying group entities as a starting point for determining specific governance measures which may be appropriate.

In our framework, there are five broad categories of specific governance measure:

- Formal group governance programme
- Board governance
- Learning and communication
- Group policies
- Audit, internal controls and reporting

Open and effective communication is critical for effective group governance.

“By being open and transparent with the subsidiary board and giving them the opportunity to challenge and question why any such transaction would be in the best interests of the subsidiary provides us with the platform to explain the overall benefit to the Group and the ultimate shareholder. Taking advantage of opportunities to have open dialogue with the subsidiary directors fosters high levels of engagement and trust between the parent board and the subsidiary boards.”

Company Secretary in major PLC with subsidiary governance responsibility

“...we have clear linkages between the PLC Board and Committees and the Subsidiary Board and Committees. This facilitates higher levels of engagement particularly with the subsidiaries independent directors and ensure that the Group does not operate as a collection of operate as a distinct units”

Company Secretary in major PLC with subsidiary governance responsibility

“We rarely have strong areas of disagreement. The subsidiary CEO, with the advice of the Company Secretary, will take a forward-looking approach to anticipate the trickier issues that will come before the board and where necessary have a briefing session to give the full context and explain why what will be put to the board is in the best interests of the subsidiary as well as the Group. At [our company], we invest considerable time in ensuring the subsidiary independent directors are engaged and PLC directors (including the Group CEO and Chairman) host annual calls with them and meet them when they travel across the Group’s geographies. This facilitates a more engaging environment at subsidiary board level and reduces the risk of matters where there could be strong disagreements.”

Company Secretary in major PLC with subsidiary governance responsibility

In our research, we did not find any company group which disclosed that they have a formal and comprehensive group governance programme in place, although there are some papers which have described the adoption of such a programme, especially in the financial industry.²¹ A formal group governance programme can include a group governance framework or policy based on the framework we have described, but it may also include a policy on the creation and dissolution of group entities, such as subsidiaries, joint ventures, and special purpose entities; a central database of all group entities which can facilitate coordination and communication across the entire group; and a senior executive responsible for advising on governance matters for the entire group.

“In all cases the Board will need to pay attention to all group entities to be in a position to determine whether the Group’s interests are served in maintaining an equity interest in these entities.”

Director of major Asian MNC

“I think Boards need a strong compliance/governance function capable of monitoring compliance with governance standards at subsidiaries. There’s a tendency toward self-certification at those levels where compliance may not be as high on the agenda as it needs to be.”

Company Secretary of major UK plc

Implementing the Framework

There are several challenges that company groups may face as they attempt to implement the framework suggested. A higher level of monitoring and coordination with the entities within the group and a greater commitment to the governance of the group entities will be required.

For the framework to be effective, the parent company and parent board will also need to seek the participation and commitment of the group entities and to convince these entities of the benefits of implementing such a framework. Parent boards will also need to be more willing to listen to the concerns of directors and boards of group entities. Gaining the support of the entities within the group is essential for the framework of governance of company groups to work effectively in improving the state of governance within the group.

For groups that do not have a group governance framework in place, this framework is useful as a starting point and provides guidance on the important elements of governance. For groups that already have an existing governance framework, the framework can be used as a benchmark for evaluating their current practices. However, companies should ascertain by analysis whether particular practices are appropriate for them, as there is no one-size-fits-all approach to the governance of group entities.

The governance of group entities is important for company groups to ensure that their entire group is well-governed. As a practical matter, group entities cannot be governed effectively as merely branches of the parent company that leave all decision-making to the parent company. Instead, where-ever possible, group entities should exercise their own judgement, while raising concerns to the parent company when there is a need to do so. The framework can also act as a starting point to empower subsidiaries to play a greater role in the governance of the group.

CONCLUSION

Our research findings show that group entities contribute significantly to the performance of company groups, many of which have extremely complex structures and operations. Consequently, one would expect there to be a strong focus on the governance of company groups.

However, based on the literature review and interviews with industry practitioners, the lack of awareness of the importance of governance of group entities from regulators, practitioners and commentators is apparent.

Greater awareness of the importance of the governance of company groups should be promoted. There is clearly a need for more interest in and research about, this important but rather neglected aspect of the corporate governance “eco-system”.

Company groups want to prevent the occurrence of any event that can negatively affect them. In order not to be caught off guard, we recommend that company groups adopt or adapt our framework as a starting point to strengthen the corporate governance of their group entities. Such an approach will improve the governance of group entities within company groups and help avoid reputational or financial risks.

Recommendations

In order to improve the governance of company groups, we make the following recommendations:

1. Regulators should review laws and regulations relating to the fiduciary duty of directors in company groups, and consider the need to clarify it for directors of parent companies, subsidiaries and other group entities.
2. Regulators should review corporate governance rules and guidelines to ensure that boards of parent companies recognise the importance of providing adequate oversight and guidance for entities throughout the group, while respecting the duties and responsibilities of boards of group entities to safeguard the interests of the group entity.
3. Regulators should recognise the need for laws and regulations imposing duties and responsibilities on boards of both parent companies and group entities to be accompanied by adequate guidance to assist these boards to interpret these laws and regulations, thereby minimising inter-board conflicts.
4. Boards of the ultimate parent company in company groups should ensure the issue of governance of group entities is discussed and well-communicated throughout the group.
5. Company groups should utilise the framework we have presented in this report for discussing and evaluating the approach and specific measures to be used for governance of group entities.
6. Company groups should improve their disclosures of key measures they have put in place to ensure good governance of the entire group.

ENDNOTES

- 1 Sime Darby Bhd. (2011). *Annual report 2011*, pp. 238-269. Retrieved from http://www.simedarby.com/Annual_Reports.aspx
- 2 Ibid, p. 7.
- 3 Sabatino, T.J. & Wolf, S.E. (2010). Subsidiary Governance: What It Is, Why It Matters and How to Build a Good System. *The Corporate Governance Advisor, Volume 18, Number 3*
- 4 Exceptions are countries like France and Germany, where directors of a corporate group owe fiduciary duty to the group rather than to the individual company in which he is a director. See Mescher, B. & Bondfield, B. (2013). Corporate Groups and the Duty of Directors to Act in Their Company's Best Interests. *The Journal of Applied Research in Accounting and Finance*, Vol. 8, pp. 2-12.
- 5 Ibid, p. 3.
- 6 Ibid, p. 9.
- 7 Chartier, B.J. (n.d.). The Case for Subsidiary Corporate Governance. Retrieved from <http://cgs.computershare.com/news2/Subsidiary%20Governance%20Article%20V2.pdf>
- 8 Bank Negara Malaysia. (2011). *Guidelines on Corporate Governance for Licensed Institutions*, p. 5. Retrieved from http://www.bnm.gov.my/guidelines/01_banking/04_prudential_stds/16_corporate_governance_20110330.pdf
- 9 Ibid, p. 9.
- 10 Kriger, M.P. & Rich, P. J. J. (Winter 1987). Strategic Governance: Why and How MNCs are Using Boards of Directors in Foreign Subsidiaries. *Columbia Journal of World Business*, Vol. 22 Issue 4, pp. 39-45. Retrieved from <http://web.ebscohost.com.libproxy1.nus.edu.sg/ehost/pdfviewer/pdfviewer?sid=df7e9a66-f959-430a-8a30-c345c538eb6d%40sessionmgr115&vid=5&id=21>
- 11 Brellochs, J. & Steger, U. (2006, June 2). Most multinationals now derive most of their value from subsidiaries. So why do so few have robust systems in place to ensure that principles of governance are applied consistently across their organisational networks? *Financial Times*, p. 4. Retrieved from <http://search.proquest.com/docview/249930702?accountid=13876>
- 12 Ibid.
- 13 Brellochs, J. (2007, December 17). The Corporate Governance of Subsidiaries in Multinational Corporations- Theoretical Analysis and Empirical Evidence from Europe. Retrieved from http://opus.kobv.de/tuberlin/volltexte/2007/1711/pdf/brellochs_jochen.pdf
- 14 Jorgenson, Sandra, M. (2008, March 26). Beyond the Parent Board: Downstream Corporate Governance. Retrieved from <http://corporate.findlaw.com/corporate-governance/beyond-the-parent-board-downstream-corporate-governance.html>
- 15 Sabatino, T.J. & Wolf, S.E. (2010). Subsidiary Governance: What It Is, Why It Matters and How to Build a Good System. *The Corporate Governance Advisor, Volume 18, Number 3*
- 16 Windsor, D. (2009). Tightening corporate governance. *Journal of International Management* 15, pp. 306-316.
- 17 Costello, A. O. & Costello, T.G. (Winter 2009). Aligning the Interests of Subsidiaries and Headquarters in Multinational Corporations: Empirical Evidence. *Multinational Business Review (St. Louis University)*, Vol. 17 Issue 4, pp. 163-203.
- 18 Note that only the group entities which are disclosed in the notes to the financial statements in annual reports are included. Some listed companies only disclose significant group entities as defined by the listed company, and not all group entities.
- 19 Brellochs, J. & Steger, U. (2006, April 6). Herding your subsidiaries towards good governance. *The Financial Times*. Retrieved from <http://www.ft.com/intl/cms/s/2/6ab84478-f0da-11da-9338-0000779e2340.html>
- 20 Chartered Accountants of Canada. (2001). *Beyond Compliance: Building a Governance Culture*. Retrieved from http://www.ecgi.org/codes/documents/beyond_compliance.pdf
- 21 See, for example, Sabatino, T.J. & Wolf, S.E. (2010). Subsidiary Governance: What It Is, Why It Matters and How to Build a Good System. *The Corporate Governance Advisor, Volume 18, Number 3*

BIBLIOGRAPHY

- AMP Limited. (2011, October 27). *AMP Limited Corporate Governance Charter*. Retrieved November 13, 2012, from <https://www.amp.com.au/wps/amp/au/FileProxy?vigurl=%2Fvgn-ext-templating%2FfileMetadataInterface%3Fids%3D33c9d950085c2210VgnVCM10000083d20d0aRCRD>
- Bamford, J. and Ernst, D. (2005). Governing joint ventures. *McKinsey Quarterly*, 2005 Special Edition, pp. 62-69. Retrieved from: <http://web.ebscohost.com.libproxy1.nus.edu.sg/ehost/detail?vid=3&sid=b88819cc-194f-4bf4-ad55-98844f3d5948%40sessionmgr14&hid=123&bdata=JnNpdGU9ZWZwhvc3QtbGl2ZQ%3d%3d#db=buh&AN=16723914>
- Bank Negara Malaysia. (2011). *Guidelines on Corporate Governance for Licensed Institutions*. Retrieved from http://www.bnm.gov.my/guidelines/01_banking/04_prudential_std/16_corporate_governance_20110330.pdf
- Bennett, C. & Mak, Y.T. (2012, August 15). Director's dilemma in a subsidiary. *The Business Times*. Retrieved from <http://newshub.nus.edu.sg/news/1208/PDF/DILEMMA-bt-15aug-p17.pdf>
- Brellochs, J. and Steger, U. (2006, April 6). Herding your subsidiaries towards good governance. *The Financial Times*. Retrieved from <http://www.ft.com/intl/cms/s/2/6ab84478-f0da-11da-9338-0000779e2340.html>
- Brellochs, J. & Steger, U. (2006, June 2). Most multinationals now derive most of their value from subsidiaries. So why do so few have robust systems in place to ensure that principles of governance are applied consistently across their organisational networks? *Financial Times*, p. 4. Retrieved from <http://search.proquest.com/docview/249930702?accountid=13876>
- Brellochs, J. (2007, December 17). The Corporate Governance of Subsidiaries in Multinational Corporations- Theoretical Analysis and Empirical Evidence from Europe. Retrieved from: http://opus.kobv.de/tuberlin/volltexte/2007/1711/pdf/brellochs_jochen.pdf
- Chartered Accountants of Canada. (2001). *Beyond Compliance: Building a Governance Culture*. Retrieved from http://www.ecgi.org/codes/documents/beyond_compliance.pdf
- Chartier, B.J. (n.d.). The Case for Subsidiary Corporate Governance. Retrieved from: <http://cgs.computershare.com/news2/Subsidiary%20Governance%20Article%20V2.pdf>
- CIMB Group Holdings Bhd. (2011). *Annual report 2011*. Retrieved from http://www.cimb.com/index.php?ch=g2_ir_rnp&pg=g2_ir_rnp_annual&tpt=cimb_group
- ComfortDelGro Corporation Ltd. (2011). *Annual report 2011*. Retrieved December 28, 2012, from the SGX database.
- Computershare Governance Services. (n.d.). Microsoft Pinpoint: Global Corporate Manager. Retrieved from <http://pinpoint.microsoft.com/en-ca/applications/global-corporate-manager-4294998690>
- Costello, A. O. & Costello, T.G. (Winter 2009). Aligning the Interests of Subsidiaries and Headquarters in Multinational Corporations: Empirical Evidence. *Multinational Business Review* (St. Louis University), Vol. 17 Issue 4, pp. 163-203. CSL Limited. (2011).
- DBS Group Holdings Ltd. (2011). *Annual report 2011*. Retrieved December 28, 2012, from the SGX database.
- HSBC Holdings plc (2011). *2011 HSBC Holdings plc Annual Report and Accounts*. Retrieved from <http://www.bsx.com/AllCompanyDocuments/2011%20Financials/HSBC%20to%20FYE%2031Dec11.pdf>
- IMD. (n.d.) Projects. Retrieved from: <http://www.imd.org/research/projects/index.cfm>
- Jorgenson, Sandra, M. (2008, March 26). Beyond the Parent Board: Downstream Corporate Governance. Retrieved from: <http://corporate.findlaw.com/corporate-governance/beyond-the-parent-board-downstream-corporate-governance.html>
- Keppel Corporation Ltd. (n.d.). Offshore & Marine. Accessed December 30, 2012, from <http://www.keppcorp.com/en/content.aspx?sid=80>

- Kruger, Mark P. & Rich, Patrick J. J. (Winter 1987). Strategic Governance: Why and How MNCs are Using Boards of Directors in Foreign Subsidiaries. *Columbia Journal of World Business*, Vol. 22 Issue 4, pp. 39-45. Retrieved from: <http://web.ebscohost.com.libproxy1.nus.edu.sg/ehost/pdfviewer/pdfviewer?sid=df7e9a66-f959-430a-8a30-c345c538eb6d%40sessionmgr115&vid=5&hid=21>
- Kulim Malaysia Bhd. (2011). *Annual Report 2011*. Retrieved from <http://www.kulim.com.my/html/InvestorCentre.aspx?id=1.5.2>
- Malayan Banking Bhd. (2011). *Annual report 2011*. Retrieved from http://www.maybank.com/iwov-resources/corporate/document/my/en/pdf/annual-report/2011/20110909_Maybank_Annual_Report_2011.pdf
- Melnitzer, J. (2003, May). Governance Software Eases Pain of Subsidiary Management. *Corporate Legal Times*.
- Sabatino, T.J. & Wolf, S.E. (2010). Subsidiary Governance: What It Is, Why It Matters and How to Build a Good System. *The Corporate Governance Advisor*, Volume 18, Number 3
- Sime Darby Bhd. (2011). *Annual report 2011*. Retrieved 20 November, 2013, from http://www.simedarby.com/Annual_Reports.aspx
- SembCorp Industries Ltd. (2011). *SembCorp Industries annual report 2011*. Retrieved December 28, 2012, from the SGX database.
- SembCorp Marine Ltd. (2011). *SembCorp Marine annual report 2011*. Retrieved December 28, 2012, from the SGX database.
- Singapore Telecommunications Ltd. (2012). *Annual report 2012*. Retrieved December 28, 2012, from the SGX database.
- Starhub Ltd. (2011). *Annual report 2011*. Retrieved December 28, 2012, from the SGX database.
- Tata Group. (n.d.). *Tata Code of Conduct*. Retrieved March 22, 2013, from <http://www.tata.com/aboutus/articles/inside.aspx?artid=NyGNnLHkaAc>
- Telekom Malaysia. (2011). *Annual report 2011*. Retrieved from http://www.tm.com.my/ap/about/cr/Documents/TM_E_2011_10.2mb.pdf
- The Institute of Internal Auditors. (2011). *International Professional Practices Framework (IPPF) 2011 Edition*. Florida: The IIA Research Foundation.
- The Korn/Ferry Institute. (2012). *What makes an exceptional independent non executive director?* Retrieved from http://www.kornferryinstitute.com/sites/all/files/documents/briefings-magazine-download/NED_report_lowres.pdf
- VADS Berhad. (2013). Board of Directors. Accessed 7 April, 2013, from <http://www.vads.com/about-vads/board-of-directors.asp>
- Vora, D., Kostova, T., and Roth, K. (2007, October). Roles of subsidiary managers in multinational corporations: The effect of dual organisational identification. *Management International Review*, 47(4), 595-620. Retrieved from <http://link.springer.com/article/10.1007%2Fs11575-007-0031-3>
- Westpac Banking Corporation. (2011). *Annual report 2011*. Retrieved from http://www.westpac.com.au/docs/pdf/aw/ic/2011_Annual_Report.pdf
- Windsor, D. (2009). Tightening corporate governance. *Journal of International Management* 15, pp. 306-316.
- Yip, A. Independent directors: Neither tigers nor pussy cats. *The Directors' Bulletin*. 2007(1), 4-7. Retrieved from http://www.sid.org.sg/web_publications/articles_detail/20



BIO OF ASSOCIATE PROFESSOR MAK YUEN TEEN

Mak Yuen Teen is an Associate Professor of Accounting at the NUS Business School, National University of Singapore, where he teaches corporate governance and ethics. He holds first class honours and master degrees in accounting and finance, and a PhD in accounting. He is also a Fellow member of CPA Australia.

Prof Mak has served on key corporate governance committees set up by the Singapore government to develop and review the code of corporate governance for listed companies. He has also served on the Charity Council and chaired the subcommittees which developed and refined the code of governance for charities in Singapore. He has also been commissioned to write a primer on governance for social enterprises in Singapore.

His report on improving the implementation of corporate governance practices in Singapore, commissioned by the Monetary Authority of Singapore and Singapore Exchange, was published in 2007. In 2014, he completed a report for the Diversity Task Force set up by the Singapore government on how to improve gender diversity on boards of listed companies and statutory boards. Together with Chris Bennett, he has published a report on corporate governance of 50 of the largest Asian banks and has a forthcoming report on corporate governance of 50 of the largest Asian insurance companies. He also developed the Governance and Transparency Index in Singapore and was the Singapore expert involved in developing the ASEAN Corporate Governance Scorecard and Ranking.

Prof Mak is a regular commentator on corporate governance issues in the Singapore and international media. He also conducts training on corporate governance for directors, regulators and other industry practitioners.

To find out more about Prof Mak's work, visit <http://www.governanceforstakeholders.com>.



BIO OF CHRIS BENNETT

Chris Bennett is the founder of BPA, a social enterprise which focuses on improving corporate governance through delivering professional education, research, and advocacy in the area where behavioural issues meet governance and strategy in the boardroom and "C" suite. He designs and delivers programmes for directors and "C" suite executives on behalf of a number of institutions including the Australian Institute of Company Directors and the Iclif Leadership and Governance Centre in Malaysia (under the auspices of Bank

Negara Malaysia - the Malaysian Central Bank).

Chris has over 30 years of practical experience with global firms and has lived and worked in Europe, the Middle East, Australia and Asia and has served as a director in multi-national companies in many countries. He holds an MBA with Distinction from Aston University in the UK, is a Chartered Fellow of the Chartered Institute of Personnel and Development (UK), a Senior Fellow at The Conference Board, New York, a Member of the Singapore Institute of Directors and a Member of the Australian Institute of Company Directors.

To find out more about Chris and the work of BPA, visit <http://www.bpa-australasia.com>

CPA Australia

1 Raffles Place
#31-01 One Raffles Place
Singapore 048616

T: +65 6671 6500
E: sg@cpaustralia.com.au
W: cpaustralia.com.au



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