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Improving corporate governance

While M'sia has a longer journey but greater momentum, S'pore has a shorter journey and greater inertia

By MAK YUEN TEEN

IN 2001, Malaysia introduced a mandatory accreditation programme (MAP) under the then Kuala Lumpur Stock Exchange (now Bursa Malaysia) listing rules. The MAP is a 11/2-day programme which all newly appointed directors of listed issuers and directors of newly listed issuers are required to attend within four months of being appointed as a director of a listed issuer or listing of the issuer. All directors, regardless of their prior experience as director, must attend the MAP and be accredited.

The MAP is organised by an external training provider but the areas covered and the methodology adopted are subject to Bursa's approval to ensure the objectives of the programme are achieved. To the best of my knowledge, Malaysia remains the only country in the world which requires all directors of listed companies to attend a mandatory training programme.

Not long after the MAP was introduced, I was at a conference in Kuala Lumpur and overheard a director asking another director why he had not sent his driver for the conference. This personal experience reinforced rumours I had heard that some directors in Malaysia were sending their drivers for the MAP.

After that, at some conferences I joked that the ones who know most about director duties in Malaysia are the drivers of the directors. Another joke was that the drivers became so good that some became directors. Jokes about drivers attending director training have become a common way to dismiss the standard of corporate governance in Malaysia as being more form than substance.

Not a joke anymore

A couple of years ago, when the same comment about Malaysian directors sending their drivers for training was made at a panel discussion in Singapore, I said: 'Well, even if 5 per cent of drivers are trained along with 95 per cent of directors in Malaysia, it is a whole lot better than the situation here, where many directors don't even bother to go for training.' The joke doesn't seem that funny anymore when one thinks about it this way.

The training provider is required to have procedures in place to confirm the identity of the participants. Absentees are not given certificates of attendance and enforcement action is taken for non-attendance. So while there may have been abuses by some, perhaps we may have allowed our pre-conceptions to interpret those abuses as the norm.

Clearly, mandatory director training may not necessarily make all directors better directors. And realistically, 11/2-day of training is unlikely to be adequate to be a truly effective director, except perhaps for those who are already highly experienced. Nevertheless, the introduction of the MAP shows that the Malaysian regulators are willing to adopt measures that improve corporate governance, even if they are unpopular with directors and issuers.

I cannot imagine that a mandatory accreditation programme will ever be contemplated in Singapore, although the situation with regard to training has improved somewhat with the Singapore Exchange now urging directors and senior management of listed companies to attend development programmes that it organises.

The recent debate in Singapore about whether there should be a guideline - not a mandatory rule - on the number of directorships highlights the stark difference in approach between Singapore and Malaysia. Let the market decide on the maximum number of directorships a director can hold, we are told. This 'market' would include busy directors, busy director wannabes, and controlling shareholders

- because obviously, minority shareholders have no power to vote out a busy director.

Interestingly, Malaysia is also one of the few countries, if not the only, to impose specific limits on the number of directorships in its listing rules. The numbers are currently 10 for listed and 15 for unlisted companies. I believe the limits are too high, and guidelines, not necessarily mandatory rules, setting lower limits may be useful. I am sure some in Singapore will once again use the high limits to argue that this is form over substance. However, at least Malaysia has tried to address the issue in a more proactive manner.

Some directors may be 'untrainable' and may refuse to change their behaviour despite going for training. Similarly, having guidelines on the number of directorships may make some boards and directors more conscious about insufficient commitment by directors, but it would not necessarily ensure that directors will be more diligent. Ultimately, there must be effective enforcement actions. Here again, Malaysia seems to have made much progress.

The table above shows the enforcement actions taken by Bursa Malaysia over the last three years. Bursa Malaysia publishes enforcement statistics in a separate 'Regulation' link on its website, which also includes other comprehensive information such as its regulatory structure, regulatory approach/philosophy, supervision of issuers and brokers, market surveillance, listing rules, corporate governance regulatory framework, and other corporate governance resources.

Recently, I was surprised to learn about the thoughtful way Malaysia has nurtured the development of the current incarnation of the Minority Shareholders Watchdog Group (MSWG), a key player in key corporate landscape in Malaysia.

I was surprised because, in Singapore, we do not seem to have focused much attention on the governance and sustainability of institutions which are supposed to help promote good governance. Without such attention, institutions which claim to promote good governance may become in need of governance reform themselves and lose their moral authority to champion good governance.

In Malaysia, the Capital Market Development Fund (CMDF) pays for the bulk of the overheads and specific projects of MSWG, amounting to 75 per cent for 2009, while the remaining 25 per cent is to be obtained from subscribers' services and publications, which are approved in principle by the Board of MSWG and CMDF.

There are three classes of subscribers' services - retail investors, institutional investors and corporations. Listed companies which are subscribers pay RM2,500 (S$1,025) per annum, and together with sales of publications, they are the only sources of funds that MSWG receive from listed companies. The funding model therefore limits the extent to which MSWG can obtain funding from listed companies, and this in turn will help ensure the independence of MSWG from listed companies - which would seem pretty fundamental for such a body. If Malaysia had chosen to 'let the market decide', it is quite likely that a body like MSWG will find itself highly dependent on listed companies for its funding and beholden to them.

In the area of institutional shareholder activism, the Employees Provident Fund (EPF) has taken an active role in corporate governance since 2001. EPF has regular company visits for companies in which it has substantial holdings. It also attends general meetings for these companies. Where there is common interest, it also works with MSWG and while it seldom raises issues at AGMs, it may do so through the MSWG if necessary.

Historical baggage

In terms of improving corporate governance, Malaysia has a longer journey but greater momentum, while Singapore has a shorter journey and greater inertia. I once told a World Bank official that Malaysia suffers from historical baggage - and sometimes history repeating itself - and therefore ends up having to do much more than Singapore. Singapore's easier ride with the international community has much to do with its reputation for ethics and integrity acquired over a period of time. However, our past achievements and our reputation may also be our baggage as it may make us complacent.

When Singapore lost its No. 1 ranking to Hong Kong in the Asian Corporate Governance Association's survey of Asia countries in 2007, a few people in Singapore said to me: 'We cannot be second to Hong Kong'.

Why not? We have developed a 'my wife is prettier than yours' syndrome in corporate governance. We may have become the hare in the tale of the tortoise and the hare.

Malaysia has clearly done much to try to improve corporate governance. Recently, Bursa Malaysia and the Securities Commission organised a Corporate Governance Week, during which Bursa launched a Corporate Governance Guide, and MSWG launched a Malaysian Corporate Governance Index and Awards. The Corporate Governance Guide is intended to help boards implement good governance in substance rather than form. They are praiseworthy initiatives.

There is still much left for Malaysia to do to improve substance, but it would be unfair to call it the tortoise in the tale of the tortoise and the hare. As for Singapore, we should be careful about turning into an ostrich.

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