

CFM HOLDINGS: WHAT SGX DO FOR (TO?) INDEPENDENT DIRECTORS

Mak Yuen Teen¹

On 9 January 2025, Catalist-listed CFM Holdings announced that it was convening an EGM to be held on 10 February 2025. The EGM is requisitioned by Mr Ip Kwok Wing and Mdm Lim Fong Li, the Executive Chairman and Executive Director/Chief Executive Officer respectively of the company, under section 176(1) of the Companies Act. Mr Ip and Mdm Lim are husband and wife.

The purpose of the EGM is to consider the proposed removal of the Lead Independent Director, Mr Chia Seng Hee, and the proposed appointment of three new independent directors, Mr Lim Chi Yuen, Ms Lin Sijia, and Mr Abdul Khair Bin Abdul Jabar.

Mr Chia is the sole ID on the three-member board comprising him, Mr Ip and Mdm Lim. As of 19 September 2024, Mr Ip held 36.88% of the issued and outstanding shares, while Mdm Lim held 30.57%. Therefore, the outcome of the EGM is certain.

The circular for the EGM includes representations by Mr Chia under section 152 of the Companies Act, which gives him the right to attend and be heard at the EGM, including on matters of his proposed removal. Mr Chia deserves credit for standing firm and not resigning, and forcing the two EDs/controlling shareholders in the company to remove him through an EGM. The following are his representations from page 16 of the circular:

¹ The writer is a corporate governance advocate. He is also a Professor (Practice) of Accounting at NUS Business School and founding director of the Centre for Investor Protection at the School, and a founding member and director of Corporate Monitor Limited. The views in this article are his personal views.

"1. With reference to my appointment more than three years ago, the SGX-ST raised queries about the same, which the Company responded to. Please refer to the Company's announcement dated 12 November 2021.

For quick reference, the Requisitioning Shareholders' argument for my appointment is reproduced below in bold:

...the Executive Directors consider the appointment of Mr Chia to be uncontroversial and would benefit from his experience and expertise. ...

For the record, I am a Senior Accredited Director by the Singapore Institute of Directors, having practised corporate governance on many listed companies, since 2007.

2. At the Company's recent annual general meeting (AGM) on 28 October 2024, I was re-elected by the shareholders, including the Requisitioning Shareholders.

Shortly after that, Mdm Lim asked me to resign on 20 November 2024, just because I could not agree on the appointment of the three candidates introduced by Mr Kenneth Ip, the COO. In my opinion, they were inexperienced and were not the best of the nine candidates the Nominating Committee (comprising only myself and Mdm Lim) interviewed. Therefore, it is not in the best interests of the Company. But she insisted.

3. At the Nominating Committee meeting on 19 December 2024, I made a compromise to accept one of the Proposed New Independent Directors, Mr. Abdul Khair bin Abdul Jabar, on the condition that another candidate, with the requisite qualifications and recent relevant experience be appointed. With this arrangement, the two new independent directors and myself, there would be continuity of independent directors on the board, to represent minority interests. The high turnover of independent directors was also an issue raised by SIAS prior to the recent AGM.

However, this was rejected by Mdm Lim.

4. I do not understand why the Executive Directors who are the Requisitioning Shareholders, sought to remove me, when this disagreement can be easily be resolved by consulting SGX-ST and accepting their opinion.."

In response, the two EDs, the company and the requisitioning shareholders (who are one and the same) state:

- (a) the Directors (save for Mr. Chia Seng Hee) share in their views in support of the Proposed New Independent Directors, and strongly disagree with Mr. Chia Seng Hee that these three (3) chosen candidates are inexperienced and not the best of the nine (9) candidates;
- (b) the Requisitioning Shareholders had previously communicated to the Sponsor that the requisition is not grounded in mere disagreement. The Company further understands that the Sponsor is indeed in touch with the SGX-ST to keep them updated on the situation;
- (c) with a view to mediating the situation and assisting the compliance with the Company's obligations under the Companies Act, the Catalist Rules and the Code of Corporate Governance, the Company's legal adviser, Icon Law LLC (acting through its Director, Mr. Jeremiah Huang) attempted to reach out to Mr. Chia multiple times over two (2) weeks, but was refused. Consequently, the Requisitioning Shareholders had no choice but to proceed as they did;
- (d) Mr. Stephen Poh Yong Meng had resigned for his own personal reasons, while Mr. Teo Kian Huat had retired. Crucially, they confirmed that they do not have any unresolved differences in opinion on material matters with the Board; and
- (e) the Requisitioning Shareholders wish to state that they had only voted in favour of Mr. Chia Seng Hee's reappointment at the recent annual general meeting because they felt compelled to do so, with the Company's best interests in mind, in light of the resignation and retirement of Mr. Stephen Poh Yong Meng and Mr. Teo Kian Huat respectively. Indeed, of the 136,380,650 votes cast in favour of Mr. Chia Seng Hee's reappointment, 135,920,450 votes belong to the Requisitioning Shareholders (i.e. 99.66% with just 0.34% belonging to other shareholders). Regrettably, they now find themselves with no choice but to requisition his removal.

The reason why we have reached this highly unsatisfactory state of affairs is a combination of the decision of the two IDs who left together on 28 October 2024, and weak SGX rules and enforcement.

One of the IDs, Mr Stephen Poh Yong Meng, resigned citing “increased time commitments required for other matters”. The other ID, Mr Teo Kian Huat, retired at the AGM, citing “to focus on his other work commitments”. Mr Poh joined the board in January 2023 while Mr Teo did so in October 2021. Mr Teo was the NC Chairman while Mr Poh was a NC member.

By leaving at the same time, they left CFM with just a three-member board comprising Mr Ip, Mdm Lim and a single ID, Mr Chia. The Audit Committee (AC) and Remuneration Committee (RC) were left with just Mr Chia as the sole member and Chairman, while the NC was left with Mr Chia and Mdm Lim as members, with no Chairman.

At the time of the departure of Mr Poh and Mr Teo, the company said that the Board will endeavour to fulfil the requirements of the Catalist Rules and Code of Corporate Governance relating to the composition of its Board and Board Committees as soon as possible, and in particular in respect of the composition of the AC, within two months but in any case, not later than three months.

With the clock ticking, the company needs to appoint new IDs. But the process of achieving compliance is highly compromised.

SGX should not permit companies to be in temporary non-compliance with the Listing Rules and the Code in the first place, unless there are highly exceptional circumstances. Unfortunately, it routinely does so.

Based on the disclosures of the reasons by the two IDs who left, there are no compelling reasons why they should not be expected to stay on until new IDs have been appointed to take their place.

Under the SGX Rulebook, each director and executive officer is required to provide an undertaking to SGX that states:

- (a) In the exercise of my powers and duties as a director or executive officer of [the Issuer] I, the undersigned, shall:-
 - (i) use my **best endeavours** to comply with the requirements of Singapore Exchange Securities Trading Limited (the “Exchange”) pursuant to or in connection with the SGX-ST Listing Manual from time to time in force; and
 - (ii) use my **best endeavours** to procure that the Issuer shall so comply” [emphasis mine]

[I have checked with some directors, and some are not aware of this undertaking, which raises another question as to whether SGX ensures that this undertaking is complied with].

By allowing directors to resign or retire giving unsatisfactory reasons such as the above, despite requiring an undertaking from them to use their “best endeavours”, and giving issuers

automatic temporary waivers from compliance with the Listing Rules and the Code, SGX has contributed to the situation we see at CFM (and other issuers).

At CFM, there are nine candidates for filling the vacant ID positions, but it would be the EDs and controlling shareholders who would end up choosing the ones they want. According to Mr Chia, Mdm Lim asked him to resign just because he could not agree with the appointment of the three candidates proposed by the COO, Mr Kenneth Ip, who is the son of the two EDs and controlling shareholders. Mr Chia felt those three candidates were inexperienced.

While the reality in many SGX-listed issuers is that controlling shareholders ultimately get to choose the IDs, at least there is some semblance of a proper NC and nominating process. It would be harder for controlling shareholders to push through their preferred candidates if the IDs on the NC have some spine.

However, in the CFM case, there is no properly convened NC and the nominating process is broken. The company will end up with three new IDs who are recommended by the COO, who is the son of the Executive Chairman and CEO. How would we expect these three IDs to oversee management?

SGX has contributed to this debacle through its weak rules and enforcement.