More shareholders drag directors to court.

By Aaron Low.
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Straits Times
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Unlisted companies bear the brunt of 56 cases filed against firms in past eight years; directors lose most, survey shows

Reports THE number of lawsuits against company directors in Singapore has risen dramatically in the past eight years, and the trend is expected to continue.

From 1995 to last year, 56 lawsuits were filed against Singapore companies, more than double the 23 for 1985-1994, according to a survey conducted on behalf of insurance broker Jardine Lloyd Thompson (JLT) Asia.

In the decade previous to that - from 1975 to 1984 - there were just seven cases.

The survey found that the real estate and construction industry accounted for nearly a quarter of all litigation against directors.

And the directors lost 71 per cent of the cases against them, the survey found.

Of the total of 86 lawsuits since 1975, the vast majority - 91 per cent - involved privately held companies rather than listed ones.

The survey, which did not include lawsuits against Singapore companies filed overseas, was conducted for JLT by the Corporate Governance and Financial Reporting Centre (CGFRC), a unit of the NUS Business School.

Assistant Professor Lan Luh Luh, who teaches at the institute, said the survey figures were a reflection of increased awareness here of corporate governance issues and directors' duties.

She added that the number of such cases will probably grow with the strengthening voice of minority shareholders.

Prof Lan attributed the high proportion of litigation involving private companies to several factors, including a better standard of corporate governance at public companies than at privately run firms.

'Another reason is that shareholders in a public company may prefer to sell their shares rather than press charges against an errant director,' she said.

Also, under the law, shareholders of only unlisted companies may take action on behalf of the company for the damage done to it.
Prof Lan noted that the probability of directors successfully defending a suit is very low.

This happened in just 29 per cent of cases filed against them.

This is probably why companies are increasingly interested in directors and officers liability insurance, according to the survey of 105 listed companies.

The project was split into two parts: A survey of 472 listed companies of which 105 responded on corporate governance, and a study of lawsuits against directors in the past 29 years.

The survey found that most companies believed that the standard of corporate governance in Singapore was comparable to that in the United States and Britain.

But the majority of respondents also felt that there was a large diversity of standards of corporate governance between companies and that most companies could do more to strengthen it.

Associate Professor Mak Yuen Teen, co-director of the CGFRC, said corporate governance is now an asset and more should be done to encourage good practices.

'Raising standards must not come only from regulatory bodies but also entities which benefit from increased transparency, like insurers and consultants,' he said.
More directors being hauled to court - and losing.

By Wong Wei Kong.
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Business Times Singapore
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7 in 10 lose case; damages awarded go up to $53m, jail time hits 8 years

(SINGAPORE) More company directors are finding themselves in court and losing, a new study has found.

However, the number of cases involving listed firms is small, partly because existing laws discourage shareholders from taking directors of such companies to court.

The study, conducted by the Corporate Governance and Financial Reporting Centre of NUS Business School and commissioned by top retail insurance broker Jardine Lloyd Thompson, examined cases brought against company directors in Singapore between 1975 and 2003. The study excluded cases filed outside Singapore as well as cases settled out of court.

It found that there were only seven cases against directors in 1975-1984, with the number rising to 23 cases in 1985-1994 and 56 cases in 1995-2003.

Of the total of 86 cases, 79 involved private limited companies and only seven involved listed companies. This may be due to several reasons.

First, shareholders in a listed company may prefer to just sell their shares if they do not like how things are being run, rather than take legal action against the directors.

'In Singapore, the culture is still not for litigation,' said lawyer and NUS assistant professor Lan Luh Luh who led the study. 'Shareholders rather walk out before the share price falls too much.'

Second, derivative action in Singapore, in which shareholders take action in the name of the company to seek redress for damage to the company, is still limited to unlisted companies under the Companies Act.

For an action to seek redress for damage to a shareholder or a group of shareholders in the capacity of shareholders (class action in the US), the applicants will have to bear their own cost and will not be able to apply for indemnification by the company. 'Therefore, it is very unlikely that a shareholder of a public company in Singapore will pursue a legal action against an errant director in court,' the report said.

Another reason why there were fewer cases involving listed companies is that the level of corporate governance in a listed company is more likely to be higher than in a private company due to legal and other requirements.
Once in court, the study found that directors won in just over a quarter of the cases, while the party initiating action won in 71 per cent of cases. 'This indicates that actions against directors are often successful,' the report noted. The amount of damages awarded ranged from $80,000 to a staggering $53.3 million for a case involving a construction company. For criminal cases, jail sentences ranged from three months to eight years.

The biggest proportion of cases, 22 per cent, were criminal-related actions initiated by public prosecutors against directors.

Creditors were next, initiating 21 per cent of the cases. These generally involved banks suing directors for personal liability over the latter's role as loan guarantors.

The company itself initiated 19 per cent of the cases, mostly for breach of directors' fiduciary duties. Shareholders making direct claims were behind 17 per cent of the cases, and customers accounted for 9 per cent.

Sector-wise, construction and real estate accounted for almost a quarter of the cases, while 15 per cent involved industrial goods and services and 13 per cent, transportation.

Ironically, while legal cases against directors in Singapore are on the rise, one in five companies here say they are not insured against directors and officers (D&O) liability.

For those with D&O liability insurance, the coverage was below $10 million for 40 per cent of the companies and between $10 million and $50 million for another 37 per cent. Insured amounts higher than that are very rare.
Companies want cap on number of directorships.

By Wong Wei Kong.
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Business Times Singapore
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They also want tighter definition of independent director: poll

(SINGAPORE) The number of directorships should be capped and independent directors should be free from both management and controlling shareholders, companies polled in a corporate governance survey said.

The study, conducted by the Corporate Governance and Financial Reporting Centre (CGFRC) of NUS Business School, and commissioned by Jardine Lloyd Thompson, polled 472 listed companies in Singapore. A total of 102 responses were received.

While the current Singapore Code of Corporate Governance defines independence as independence from management, almost all the respondents agreed that independent directors should be independent of management as well as controlling shareholders, as is the case in the UK, Australia and Hong Kong. 'One of the things we need to fix is the level of independence,' said CGFRC co-director associate professor Mak Yuen Teen, who led the study.

About 82 per cent of companies said that there should be a limit on the number of non-executive directorships that can be held by a person who is fully employed. The nub of the issue, Prof Mak said, is to decide what the cap should be. In Malaysia, the limit is 25 directorships.

Asked why many listed companies are so keen to appoint PAP MPs - who find themselves holding multiple directorships as a result - to their board, Prof Mak ventured several reasons: 'They hope that the knowledge these MPs have on how the government works or their ability to put them in contact with the right people may help the company.

'Singapore is known for its clean government. Having an MP on the board is to leverage on the reputation of the government to help the reputation of the company.'

'But whether having an MP on the board will improve corporate governance is a complex issue,' he added. 'You cannot improve corporate governance simply by putting an MP on the board.'

Companies were more divided on other issues. While over half said that a majority of directors on the board should be independent, nearly 30 per cent disagreed. The Singapore corporate governance code - which is not mandatory but a best practice guide - recommends that independent directors should make up at least a third of the board. In the US and Australia, independent directors already must make up the majority of the board while in the UK, at least half the board must be independent.
Only a third of the companies agreed that the chairman's position should be held by an independent director. While over half said that the chairman and CEO positions should be held by different persons, 20 per cent disagreed. Nearly three quarters felt that the audit committee should comprise entirely of independent directors.

Almost a third of the companies felt that minority shareholders were treated equitably by family-controlled companies while nearly an equal number thought otherwise.

Most respondents felt that corporate governance in Singapore was better than in most regional countries and on a par with Japan and Hong Kong. About half the companies said good corporate governance had a beneficial effect on the financial performance of the company. Three-quarters felt the corporate governance code should have different guidelines for companies of different sizes.
PAP MPs in demand.
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PEOPLE'S Action Party (PAP) Members of Parliament (MPs) are sought after as independent directors because companies want to project the same image of honesty and transparency that the Singapore Government is known for.

So said Associate Professor Mak Yuen Teen of the National University of Singapore's Corporate Governance and Financial Reporting Centre, who added: 'The clean image that the Singapore Government portrays is what some companies want to capture. They want to leverage on this to help the company's own image.'

He was responding to a query yesterday about why some companies wanted to have PAP MPs as their directors.

Prime Minister Goh Chok Tong sent a letter last month to all ruling party MPs outlining new rules for holding directorships, which stated that MPs should not sit on the boards of companies owned or chaired by grassroots leaders they have appointed.

Accord Customer Care Solutions, an electronics services provider, announced two weeks ago that MP Wang Kai Yuen had resigned as an independent director because of the new ruling.

Another reason why companies wanted PAP MPs as directors would be because they may feel that MPs would know the government better than most, Prof Mak said.

He added: 'As a result, they may want them because they have better knowledge and can help the companies contact the correct people.'
More Singapore company directors facing lawsuits - NUS survey
26 May 2004
Channel NewsAsia
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SINGAPORE: Singapore company directors face an increasing number of lawsuits in the last three decades, according to a National University of Singapore survey.

The survey also found that 71 percent of directors lost their cases.

And the survey notes that directors are likely to face more lawsuits in the future, as both regulators and shareholders keep pushing for better corporate governance.

In 1975 to 1984, there were only seven lawsuits against company directors. But in the following decade, the number jumped to 23, and in the last 10 years, it rose further to 56 cases.

One-fifth of the cases were due simply to creditors, mainly banks, suing directors for liability on personal guarantees for company loans.

But fraud, corruption and other crimes by directors accounted for the highest number of cases - about 22 percent.

Shareholders also took directors to court in 17 percent of the cases.

But most cases involved private companies. Publicly-listed companies account for only 8 percent of the total. This is partly due to generally better corporate governance among listed firms.

Lan Luh Luh, Assistant Professor of Business Policy at the National University of Singapore, said: "Shareholders in public companies would not want a suit anyway. They rather sell out their shares if they do not think that this company has good corporate governance. Because taking an action in court would damage the company, as well as damage their share prices."

But this may be changing.

Organisations such as the Securities Investors Association said were prepared to take up the causes of minority shareholders and take errant directors to task.

So the risk of lawsuits for directors is increasing.

Lan Luh Luh added: "There is definitely an increased awareness of shareholders' rights, for one. And also tightening up of the regulatory framework in Singapore over the last few years in view of what has happened to Enron, in view of what has happened to other big company frauds and all that."
"So because of the awareness on both sides - which is the shareholders and directors, and also the regulators, more and more people know they can take up their issues in court."

The NUS survey also found that inaccurate or inadequate disclosure of information and accounting, and other frauds are the top two reasons for people wanting to make claims against directors. - CNA
Singapore's corporate governance standards can be improved: survey
26 May 2004
Agence France Presse

SINGAPORE, May 26 (AFP) -

Singapore may have one of the best images in Asia for corporate integrity and management practices, but companies here believe more can be done, according to a survey released Wednesday.

A February-March poll of 472 listed firms by the National University of Singapore, of which 105 responded, showed 77 percent agreed companies could do more to raise corporate governance levels while two percent disagreed.

"The respondents had high regard for the standard of corporate governance in Singapore," the report said.

"Despite this two-thirds agreed or strongly agreed that substantial diversity exists amongst the Singaporean companies in their standards of corporate governance.

"Almost all felt that Singaporean companies are making an effort to strengthen corporate governance but they felt that more should be done to improve corporate governance in Singapore than is currently being done."

When asked to make a comparison with the region, 52 percent agreed the city-state's corporate governance standards were high among Asian countries with only three percent disagreeing.

Fifty percent of the respondents agreed Singapore's corporate governance was comparable to the United States and Britain, while 63 percent believed market manipulation or malpractices were not significant problems here.

The Southeast Asian city-state has consistently scored high marks in global surveys for having good business practices and is regularly ranked as having the best corporate governance in Southeast Asia.