

# CORPORATE GOVERNANCE AND ETHICS: CASE STUDIES

2024 Series: Volume 1

SINGAPORE CASES

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# **CONTENTS**

PREFACE	iv
SINGAPORE CASES	
AMARA: STORM IN A TEACUP?	1
BANKING LESS ON DBS?	18
ECOWISE: THE UNWISE FIGHT	43
HWA HONG: NOT A HAPPY FAMILY	
LS 2: SQUEAKY CLEAN?	80
MC PAYMENT: BOARDROOM TUSSLE	97
REX INTERNATIONAL: CHANGE THE GAME	116
SATS TAKES A WORLDWIDE FLIGHT	135
SEMBCORP INDUSTRIES: SEIL-ING FORWARD OR BACKWARDS?	
ABOUT THE EDITOR	168
ABOUT THE EDITORIAL ASSISTANT	170

## **PREFACE**

I am delighted to introduce this inaugural publication, Case Studies in Corporate Governance and Ethics: 2024 series, from the newly-established Centre for Investor Protection at the NUS Business School.

This publication will be an annual series comprising case studies on listed companies and other organisations in Singapore and the rest of the world. The cases are written from public information to facilitate discussion and for use in courses and programs for undergraduates, graduates, executives, directors, and other stakeholders. While the cases are selected for their relevance to issues relating to ethics, corporate governance, and investor protection, they often raise many other business issues, such as business models, finance, accounting, and sustainability. I personally reviewed and did the final editing for every case.

These cases are available for use free of charge. We only request that those using the cases write to me at bizmakyt@nus.edu.sg letting me know which cases they are using and for what courses and programs, and to acknowledge the source of these cases.

This 2024 series includes 25 case studies in three volumes. Volume 1 comprises nine Singaporean cases, volume 2 includes 11 cases from Asia-Pacific, and volume 3 includes five cases from the rest of the world.

Several cases involved family businesses. They highlight the importance of both family and business governance in family-controlled companies, especially as such companies evolve from first-generation family businesses and more family members become involved in the management. These cases also spotlight the corporate governance of these companies. Two Singaporean cases, ecoWise and MC Payment (now called OxPay), involved fights among management and substantial shareholders.

Another Singaporean case on LS 2 features a company which holds the unwanted record of being the first-ever SGX-listed issuer to receive a "Trade with Caution" alert issued by SGX Regco on the first day of trading. There are questions of possible market manipulation, with the share price closing at 340% above its IPO price on the first day of trading as most of the placees sold their entire allotment, before subsequently collapsing. At one point, the shares of the company were held by as few as just 20 shareholders. This case raises questions on market quality and the role of intermediaries and the stock exchange in ensuring the quality of companies seeking to list.

Related party transactions, executive remuneration, and director remuneration are some of the issues in the Singaporean case on Rex International, along with sustainability issues for a company in the oil exploration and production business.

The other three Singaporean cases involve government-linked companies (GLCs) – DBS, SATS, and Sembcorp Industries. They provide an opportunity to discuss the governance of GLCs, while also exploring different issues such as repeated data outages in the case of DBS, a major cross-border acquisition in the case of SATS, and accusations of greenwashing in the case of Sembcorp Industries.

One Australian case involving Optus in volume 2 has a strong connection with a Singaporean GLC, Singtel, being the latter's wholly-owned subsidiary. This case involves two major incidents of a cybersecurity breach and data outage which led to the departure of the Optus CEO, and raises issues such as risk management, crisis management, and governance of subsidiaries. The other three Australian cases in volume 2 involve a major fraud at National Australia Bank, money laundering at Star Entertainment, and the "tax leaks" scandal at PwC Australia. The PwC case raises issues regarding ethics and governance of major accounting and consulting firms.

There are three Malaysian cases in volume 2 on ATA IMS, Serba Dinamik, and Supermax, where issues such as "slave labour", accounting irregularities, and family disputes put these companies in the spotlight. There is a case involving the Indian family-controlled conglomerate Adani Group in volume 2, which was accused by a short-seller of "pulling the largest con in corporate history", through related party transactions, complex structures, and offshore entities. The case also allows a discussion of the effectiveness of regulators and the impact of links between government and business on corporate governance.

The Evergrande case in volume 2 involves the collapse of one of the largest property developers in China, which was listed on the Stock Exchange of Hong Kong. It allows a discussion of issues such as the business environment in China, corporate governance of founder-controlled companies, diversification into unrelated businesses, accounting fraud, and the Chinese government's role in restructuring.

The case in volume 2 on Vinfast, a Vietnamese electric car maker incorporated in Singapore which listed in the US, allows a discussion of issues such as the competitive landscape of the electric vehicle industry, listing through Special Purpose Acquisition Companies, rules for foreign issuers listing in the US, corporate governance in Vietnam and differences with Singapore and the US, and cross-border regulatory issues.

Three of the cases in volume 3 involve bank collapses. Poor risk management is a common issue in these cases. There is the Credit Suisse and the government-directed rescue by UBS, and the collapse of First Republic Bank and Silicon Valley Bank in the US. Arguably the biggest scandal over the past few years was the collapse of FTX, the world's second largest cryptocurrency exchange. The case in volume 3 on FTX involves issues such as corporate governance of crypto firms, experience and competencies of management, ethics, risk management, investors' due diligence, external audits, cross-border regulatory issues, and regulation of crypto firms. Major issues in the volume 3 case on Disney include as CEO succession, the role of current CEO in choosing a successor, the continuing involvement of former CEOs in a company, and the role of executive chairman.

I would like to acknowledge the students in the Corporate Governance and Risk Management and Governance, Risk Management and Sustainability courses who worked on the original cases as part of their course requirements. Their names are listed in each case. I would also like to thank Alden Wordsworth Ng, Michelle Koh Jing Wen, Michelle Tan, Otylia Ong, Or Yuan Qian, and Ronn Chiew Wee Meng who helped with checking the accuracy and editing the cases. But most of all, I would like to thank my editorial assistant, Koh Yan Qi, who was excellent in not only checking and editing a few of the cases, but also doing further reviews and editing of all the cases edited by the other students.

This publication and the establishment of the Centre for Investor Protection would not be possible without the generous donation from a donor who believes in the importance of corporate governance and investor protection for a robust capital market. I am deeply grateful to this donor.

### Mak Yuen Teen, PhD

Professor (Practice) of Accounting Founding Director, Centre for Investor Protection NUS Business School National University of Singapore

# **AMARA: STORM IN A TEACUP?**

### **Case overview**

Amara Holdings Limited (Amara) has been a family-owned company in the hotel investment and property management industry over the past few decades. Led by Albert Teo Hock Chuan, the grandson of pioneer founder Teo Teck Huat, Amara expanded its brand name beyond Singapore and across Asia, including Thailand and China. As a family-owned business, Amara's board was heavily dominated by the Teo Family.

In 2022, one independent director (ID) was voted out and two IDs resigned. The resignations and removal of IDs, and revelation of events leading up to them, cast a spotlight on Amara's corporate governance practices and remuneration disclosure policies.

The objective of this case study is to facilitate a discussion of issues such as family governance and corporate governance issues in family businesses; board composition; removal, resignation, and appointment of IDs; employment and remuneration of family members; privatisation of listed companies; and effectiveness of corporate governance rules and regulators.

### The Teo empire

Amara Holdings Limited (Amara) operates as a parent company and brands itself and its subsidiaries as an integrated lifestyle group. Through its subsidiaries, Amara has three main business areas, namely hotel investment and management, property investment and development, and specialty restaurants and food services. The group's business spans across several Asian countries. As of 31 December 2021, Amara has 412 employees.

Amara was founded by Teo Teck Huat (TTH), who was originally from China and worked as a carpenter before relocating to Singapore.<sup>4</sup> In 1928, he started his own building, renovation and repair business under the name of Teo Teck Huat Contractors.<sup>5</sup> The company secured the contract to construct the Cathay Building, known to be the first skyscraper in Singapore and Southeast Asia, at Dhoby Ghaut in 1937.<sup>6,7</sup> TTH passed away on 5 June 1962.<sup>8</sup>

This case study was originally prepared by Desmond Kim Young Jee, Lim Jun Hao Kieran, Ng Peng Kiat Donn, and To Nok Hei. It has been edited by Michelle Tan and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussions and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees.

Under the leadership of TTH's son, Teo Joo Lai (TJL), Teo Teck Huat Enterprises (Private) Limited was incorporated in 1970. It subsequently changed its name to Teo Teck Huat Investments Pte Ltd and later to Amara, with TJL serving as the Chairman of the company. Amara was first listed on the Stock Exchange of Singapore Dealing and Automated Quotation (SESDAQ) on 15 August 1997, and transferred to Singapore Exchange (SGX) Mainboard on 10 July 2000.9

The company undertook numerous construction projects, such as the Pasir Panjang Garden Estate, Tunas Building, Tong Building, and Tengah Military Air Base.<sup>10</sup> To diversify the family business, TJL led the company to venture into the hotel development sector. In the mid-1980s, Amara expanded into hotel investment and management and developed the Amara Hotel and Shopping Centre to leverage the expanding tourism sector in Singapore.<sup>11</sup> Thereafter, Amara opened several specialty restaurants and a food court to supplement its operations in hospitality management.<sup>12</sup> TJL passed away in 1988.<sup>13</sup>

Following TJL's demise, Albert Teo Hock Chuan (THC), the son of TJL, took over the reins of the company, holding the positions of Chief Executive Officer (CEO) and Chairman. <sup>14</sup> THC's leadership and visionary approach were said to have been key factors in Amara's diversification and growth strategy in the Asia-Pacific region. <sup>15</sup>

As of 26 February 2024, Amara has a market capitalisation of just under S\$350 million.<sup>16</sup>

### Family ownership

Among the family shareholders, six were children of TJL, one was a daughter-in-law of TJL, two were grandchildren of TJL, one was a relative of THC, and two were relatives on the daughter-in-law side.<sup>17</sup> In total, there were 12 shareholders directly or indirectly related to the Teo family, collectively owning 42.92% of the shares.<sup>18</sup>

First Security Pte Ltd (First Security) has a shareholding of 26.61% in Amara.<sup>19</sup> THC, Susan Teo Geok Tin (TGT) and Teo Kwee Chuan (TKC) are substantial shareholders of First Security, each holding not less than 20% of the voting shares. These deemed interests raise the total interests of each of the three substantial shareholders to more than 32%.<sup>20</sup> THC also had a deemed interest of 970,300 shares in Amara through Albertsons Capital Pte Ltd.<sup>21</sup>

### "Outsiders" on Amara's board

In 2021, Amara had three independent directors (IDs) on the board.

Foo Ko Hing (FKH) was appointed as an ID on 17 June 2013.<sup>22</sup> On 21 March 2019, he was appointed as Amara's lead ID.<sup>23</sup> He served as the Chairman of the Audit Committee (AC) and a member of both the Remuneration Committee (RC) and Nominating Committee (NC).<sup>24</sup> FKH holds an Honours degree in Economics and Accounting from the University of Newcastle Upon Tyne.<sup>25</sup> He has more than three decades of working experience in the accounting and banking industries.<sup>26</sup>

Chia Kwok Ping (CKP) joined as an ID on 2 November 2015.<sup>27</sup> He served as the Chairman of the NC and a member of both the AC and RC.<sup>28</sup> CKP holds a Bachelor's Degree in Business Administration from the National University of Singapore (NUS).<sup>29</sup> He has more than two decades of working experience in the hospitality industry.<sup>30</sup>

The third ID, Tan Tiong Cheng (TTC), was appointed on 21 June 2018.<sup>31</sup> He served as the Chairman of the RC and a member of the AC.<sup>32</sup> TTC holds a Diploma in Urban Valuation from the University of Auckland, New Zealand.<sup>33</sup> He is a fellow member of the Singapore Institute of Surveyors and Valuers and the Association of Property and Facility Managers, and has more than four decades of working experience in the real estate industry.<sup>34</sup>

In financial year (FY) 2021, the board of directors met three times, the AC met twice, while the RC and NC met once.<sup>35</sup> All directors on the board attended every committee meeting.<sup>36</sup> The annual report also stated

that "management staff are invited to attend board and committee meetings whenever necessary". Therefore, despite THC not being member of the AC and RC, he participated in all AC and RC meetings throughout the vear.

### **Family domination**

Apart from the three IDs, Amara's board comprised three other directors who are related family members.

THC, the Chairman and CEO, holds a Bachelor's Degree in Commerce from the University of Western Australia.38 He is a member of Chartered Accountants Australia and New Zealand and the Institute of Chartered Secretaries and Administrators of London.<sup>39</sup> Before joining Amara, he worked with accounting firm PricewaterhouseCoopers (PwC), an international bank in Singapore, and a large listed group involved in wholesaling, manufacturing, and retailing. 40 THC initially served as a non-executive director in the company. In 1982, he became an ED and in 1989, he became the CEO. 41 He is also a member of the NC. THC's responsibilities as Chairman includes overseeing and spearheading the direction and development of the company.<sup>42</sup> His duties as CEO involve extensive involvement in the company's corporate developments, such as the transformation of Amara Singapore, and the company's entry into the resort hotel business, Amara Sanctuary Resort, Sentosa. 43

Another executive director (ED), TGT, the sister of THC, holds a Bachelor's Degree in Business from the Western Australian Institute of Technology and a Graduate Diploma degree in Computer Science from La Trobe University. 44 She is a member of the Chartered Accountants Australia and New Zealand and the Institute of Singapore Chartered Accountants.<sup>45</sup> In 1984, TGT joined the group as a secretary and in 1995, she became a director. 46 She is also a director or company secretary of the majority of the company's subsidiaries. 47 TGT is primarily responsible for the company's corporate affairs such as finance, treasury, company secretarial matters, human resource, and administration.<sup>48</sup>

Lawrence Mok Kwok Wah (MKW) has served as a non-independent non-executive director (NINED) of Amara since 1995. He is the brother-in-law of THC. MKW is a member of the AC and RC.<sup>49</sup> He holds a Bachelor's Degree in Accountancy from the NUS and is a fellow of the Institute of Singapore Chartered Accountants and CPA Australia.<sup>50</sup> He has more than four decades of experience in the Information Technology and Engineering industries.51

In 2021, Amara's key management personnel also consisted of three immediate family members of THC.<sup>52</sup>

TKC is the brother of THC. He holds a Bachelor's Degree in Civil Engineering from the Queen's University of Belfast.<sup>53</sup> He has more than four decades of working experience in the building construction and development industry.<sup>54</sup> In 1980, he joined Amara as an in-house engineer cum project engineer.<sup>55</sup> Currently, he serves as the director in the property division.<sup>56</sup> Additionally, he holds several directorships in the related companies of the group and is primarily in charge of Amara's building projects in Singapore and overseas.<sup>57</sup>

Corinne Teo Siew Bee (TSB) is the sister of THC and spouse of MKW. She holds a Bachelor's Degree in Computer Science from the University of Western Australia and is a member of the Australian Computer Society.58 Since 1994, TSB has been the company's quality and systems manager.59 She is an alternate director in several related companies of the group and serves as a director in Julius Estates Pte. Ltd, Shanghai Amara Hotel Co. Ltd, and Amara Investments (Europe) Pte. Ltd. 60 She is primarily responsible for the company's management information system, public relations, and quality standards.<sup>61</sup>

Teo Shao-Lynn, Dawn (TSL) is the daughter of THC. She holds a Bachelor's Degree in Economics from the University of Pennsylvania.<sup>62</sup> Previously, she served as an ED in Credit Suisse AG.<sup>63</sup> In 2015, she joined Amara as director of Strategic Planning and Corporate Development and was later appointed as the Senior Vice President to Amara Hotels and Resorts in 2018.<sup>64</sup> As of 9 March 2023, TSL was appointed as an alternate director to THC.

### The AGM fallout

"It is clear that there are disagreements over remuneration matters."

- Professor Mak Yuen Teen, Corporate Governance Advocate<sup>65</sup>

### Removal of independent director

On 26 April 2022, Amara convened its Annual General Meeting (AGM), during which shareholders cast their votes on the re-election of TTC as an ID, and as Chairman of the RC. However, the ordinary resolution to re-elect TTC was rejected by shareholders, with 77.69% voting against. 66 Consequently, TTC retired at the conclusion of the AGM. On the same day, Amara announced the cessation of TTC as the company's ID. 67

In the cessation announcement, TTC stated "yes" for the question as to whether there are any unresolved differences in opinion on material matters between the person and the board of directors. He highlighted that "There are outstanding material issues before the RC which are being investigated to be resolved".<sup>68</sup>

Two months prior to the AGM, on 28 February 2022, FKH, who was then the lead ID of Amara, announced his resignation from the board, effective one day after the AGM. <sup>69</sup> He cited "preoccupations and personal reasons" for his resignation. <sup>70</sup> With TTC's removal from the board, Amara would be left with only one ID after the AGM. Consequently, Amara failed to comply with SGX Mainboard Listing Rules which require at least two IDs and Provision 2.2 of the Singapore Code of Corporate Governance (SCCG), which recommends that IDs make up a majority of the board where the Chairman is not independent. <sup>71</sup> TTC also highlighted that CKP, the remaining ID, had also expressed his intention to step down from the board. <sup>72</sup> This placed the company in dire need of new IDs. TTC revealed that "so far one new ID has accepted the appointment and three more must be found". <sup>73</sup> When CKP resigned on 31 July 2022, he cited "preoccupations and personal reasons" for his resignation, similar to FKH. <sup>74</sup>

### Rejection of share performance plan

The same AGM also saw shareholders refusing to grant authority for directors to issue shares under the Amara Performance Share Plan, which had been approved by Amara's shareholders in 2014. According to the company, the objective of the plan was to acknowledge and retain valuable employees who made significant contributions to the growth and success of the company, measured by their performance or length of service. The plan outlined that "full-time employees (including EDs) who were confirmed in their employment with the company and/or any subsidiary shall be eligible to participate in the plan. Controlling shareholders and their associates within the aforesaid category were eligible to participate in the plan. Amara had proposed the extension of the plan to controlling shareholders, or the Teo family, as it viewed them as "equally entitled" to participate in the share incentive programme. Since the plan's inception until the end of 2021, no shares were awarded to employees.

THC and his sister, TGT, along with their siblings TKC and TSB, who were all eligible to participate in the plan had abstained from voting on the resolution.<sup>78</sup> TGT served on the board as an ED, while TKC and TSB were key management personnel of the company. Collectively, they held 135.7 million shares in the company.<sup>79</sup> Other employees who qualified for the plan also abstained from voting on this resolution.<sup>80</sup> Out of the remaining 2,446,200 shares, 1,578,100 (64.51%) voted against the resolution.<sup>81</sup> Following the AGM, Amara's share price remained unchanged at S\$0.365.<sup>82</sup>

### SGX asks questions

On 27 April 2022, following TTC's removal as an ID, SGX issued a series of queries regarding TTC's comments about the company. Firstly, SGX referred to TTC's statement of a new ID on the board, noting that the company has not made any public statement in regards to the new appointment.<sup>83</sup> Under Rule 704(7) of the Mainboard

Rules, issuers must immediately announce the appointment of any key persons, including directors appointed to the board.84 The SGX query sought clarification as to why "the Company has not complied with this rule" 85 and urged Amara to "immediately comply with the rule by making the required announcement accordingly".86

Amara's response neither affirmed nor denied TTC's statement. Instead, it insisted that the board was in the process of appointing new IDs.<sup>87</sup> The company had published a clarification to its shareholders the day before, stating that the issue was still under discussion with the board and no decision had been made yet.88 The procedures include compiling required information from shortlisted candidates and completing the relevant documentation in compliance with the Listing Manual and SCCG.89 Therefore, the company would announce the appointments in due time. 90

Secondly, SGX referred to TTC's comment about unresolved material issues within the RC.91 SGX sought clarification on the following details:

- (a) Precise information regarding the unresolved differences in opinion;
- (b) Personnel whom the remuneration issues were concerned with:
- (c) Given that TTC had retired as the Chairman of the RC, how would the remaining two members evaluate the remuneration issues of senior management personnel considering the contentious nature of such issues:
- (d) The potential impact on the firm and financial reporting caused by the unresolved issues;
- (e) Specific details on the investigations conducted, including any interim findings;
- (f) How the RC or AC was adequately resourced to conduct the investigations given that only one ID was serving on both committees;
- (g) How the company identifies candidates for the appointment of new IDs and the relevant progress made, and whether there were enough members on the NC to evaluate the competency of shortlisted candidates.92

In response, Amara denied that there were unresolved disputes regarding the implementation of a compensation benchmarking report by a consulting firm engaged to review the compensation of senior management personnel. The board also denied that any investigations were conducted on the issue mentioned by TTC. Additionally, Amara revealed that the remuneration issue concerned an immediate family member of one of the EDs, and the potential financial impact to the company would be up to approximately S\$60,000 annually.93

Amara clarified that once the new IDs had been appointed, the RC would be reconstituted to include at least three directors who would address and evaluate the issue.<sup>94</sup> The decision-making process involves collecting and reviewing feedback provided by every board member, before a conclusion is reached.95 If an unanimous agreement within the committee is not reached, a vote would be held, and the majority consensus would be presented to the board for consideration.96

Lastly, Amara explained that potential candidates were shortlisted from a network of contacts and suggestions from the board and management. 97 The selection procedure had already begun prior to the AGM, and the NC had conducted evaluations on the competence of new ID candidates. 98 Therefore, the assessments were carried out by a sufficient panel of committee members, which included the former member, FKH. The company emphasised its commitment to comply with the requirements of the Listing Manual with the appointment of the new IDs.<sup>99</sup>

### Fresh new board

On 11 May 2022, Amara announced the appointment of three new IDs and the reconstitution of the board. 100 Bill Chua Teck Huat (CTH), Ginney Lim May Ling (LML) and George Seow Ewe Keong (SEK) were appointed with immediate effect.101

CTH was appointed the Chairman of the NC, replacing CKP who continued to serve in the NC as a member, as well as a member of the RC and AC.<sup>102</sup> CTH has 34 years of experience working in various banks including Citibank, United Overseas Bank, and Overseas Union Bank.<sup>103</sup> He holds seven other directorship roles, of which six are independent directorship roles. One of these roles is as an ID of United Hampshire US REIT, a real estate investment trust listed on the SGX Mainboard, while the other ID roles are in unlisted companies.<sup>104</sup>

LML was appointed the Chairman of the RC, replacing TTC, as well as a member of the NC and AC.<sup>105</sup> LML has a Bachelor of Laws (LLB) Honours Degree from the NUS.<sup>106</sup> She is currently a member of the NUS Law Advisory Council and Specialist Mediator in the Singapore International Mediation Centre.<sup>107</sup> LML holds four other directorship roles and serves as a NINED of SPH REIT (now PARAGON REIT), a real estate investment trust listed on the SGX Mainboard.<sup>108</sup> However, it was disclosed that LML has a conflict of interest, as SPH REIT holds retail and commercial real estate assets.<sup>109</sup> On 6 June 2022, Amara announced that LML was appointed the lead ID.<sup>110</sup> This was after SGX's query<sup>111</sup> on whether the NC will recommend the appointment of a lead ID, given Provision 3.3 of SCCG 2018 recommends that the board appoints a lead ID as THC is both the Chairman and CEO of Amara.<sup>112</sup>

SEK was appointed the Chairman of the AC, replacing FKH, as well as a member of the NC and RC.<sup>113</sup> He has a Chartered Accountant qualification from the Institute of Chartered Accountants in Australia and the Malaysian Institute of Accountants.<sup>114</sup> SEK has retired from active work in the past ten years.<sup>115</sup> Furthermore, he has no experience as a director of listed companies. The company disclosed that he will be briefed on the rules of the Singapore Listing Manual and the SCCG<sup>116</sup> and will attend training on the roles and responsibilities of a director of a listed company.<sup>117</sup> SGX queried SEK's suitability for appointment, given his lack of recent working experience and his lack of experience in listed companies.<sup>118</sup> Amara responded that the NC had considered SEK's previous expertise in accounting, corporate finance, and business management in major US multinational corporations.<sup>119</sup> They were of the opinion that SEK's skills and experience would be beneficial to the board's discussions and strategic planning.<sup>120</sup>

On 31 July 2022, Tan Kim Seng (TKS) was appointed to the board as an ID, serving as a member of the AC.<sup>121</sup> TKS holds a Bachelor of Science Degree from the Cornell University's School of Hotel Management, and has more than 30 years of working experience in the hospitality and real estate industry.<sup>122</sup> TKS holds six other directorship roles and has previously served as an ID of Maveric Limited, a firm listed on the SGX Mainboard.<sup>123</sup> However, it was disclosed that TKS has a conflict of interest, as he is also the Chief Operating Officer of Meritus Hotels & Resorts and holds a non-executive role in Advisor (Hospitality) of OUE Limited, both of which operate in the same hotel investment and management industry as Amara.<sup>124</sup>

In FY2022, the board met seven times, the AC met three times, the RC met once and the NC met twice. THC attended two AC meetings and one RC meeting during the year, although he is not a member of these committees. 126

### **Family-friendly remuneration**

On 4 May 2018, Amara announced that SGX-ST had raised a query concerning the inadequate disclosure of employee remuneration in its annual report for FY2017.<sup>127</sup> SGX's query pointed out that the company failed to comply with Paragraph 9.4 of the SCCG 2012, now Provision 8.2 in SCCG 2018, which recommends the disclosure of remuneration details of employees, on a named basis, who are immediate family members of a director or the CEO, and whose remuneration exceeds \$\$50,000 during the year.<sup>128</sup> The relationship of these employees with the director or CEO must be clearly indicated as well.<sup>129</sup> SGX emphasised that Amara must provide the upper limit for the remuneration bands of the three employees who are immediate family members of THC.<sup>130</sup>

In response, Amara said:

"The three employees who are immediate family members of Mr Albert Teo Hock Chuan, Director and CEO, are his brother, sister and daughter.

The remuneration committee has oversight on the remuneration of these family members to ensure independence in remuneration of immediate family members of the directors and CEO. To indicate remuneration bands (including the upper limits) for each of them would give rise to visibility of their remuneration vis-à-vis their fellow colleagues who are not employees related to the directors and CEO, and they would be unfairly disadvantaged while confidentiality of other employees' remuneration is maintained.

The Company believes that it is not in the best interests of the Group to disclose the details as required under Paragraph 9.4 of the Code because of the highly competitive industry conditions and also because it wishes to maintain confidentiality for more harmonious and effective human resource management within the Group."131

SGX did not follow up on this.

In FY2021, Amara merely disclosed the remuneration of the three immediate family members as "individually exceeded \$\$100,000 during the year"132 instead of disclosing it in bands of \$\$100,000 in accordance with SCCG 2018.133

### LinkedIn drama

"On the surface, the EDs' remuneration don't look high but look at how they disclose remuneration - even of the NEDs. No name basis. What's the risk of their exact remuneration being disclosed, including of EDs who are family members? And their remuneration of family members who are not directors is disclosed as more than \$100k each? What does that mean? Maybe the family members who are not directors are being paid a lot?"

- Professor Mak Yuen Teen, Corporate Governance Advocate<sup>134</sup>

The failure to adequately disclose the remuneration of THC's three immediate family members who were employees of Amara came under scrutiny from the public, including through a LinkedIn post by Professor Mak on 27 April 2022. 135 Amara responded that their remuneration had been approved by the RC, with one immediate family member falling in the \$\$100,001 to \$\$200,000 band, while the other two fell in the \$\$200,001 to \$\$300,000 band. 136 Professor Mak responded to Amara in a subsequent post, stating that "it should have (been) disclosed in this way in the first place". 137

The three immediate family members of THC were revealed to be "(i) Director, Property Division, (ii) Group Quality and Systems Manager and (iii) Director, Strategic Planning and Corporate Development, and Senior Vice President, Amara Hotels & Resorts". Amara did not mention their names in the response, but the titles belonged to TKC, TSB, and TSL respectively.<sup>139</sup> They collectively received remuneration of at least S\$500,000 according to Amara's subsequent disclosures. Since S\$713,000 were paid to key management personnel in total in FY2021, this suggests that at least 70% of the remuneration paid to key management personnel went to TKC, TSB and TSL.140

In Amara's FY2021 annual report, the company omitted to disclose the name and exact remuneration amount of each director on the board.<sup>141</sup> Instead, it disclosed three remuneration bands, namely "below \$\$250,000", "S\$250,000 to below S\$500,000", and "S\$500,000 to below S\$750,000", along with the number of individual directors that fall within each band in 2020 and 2021.142 In 2021, one director received "S\$250,000 to below S\$500,000", while the other five directors received "below S\$250,000".143 Yet again, the failure to disclose the necessary remuneration details of directors as recommended by the SCCG 2018 was questioned by Professor Mak, as he challenged the non-transparency of disclosure on a "no name basis". 144

The company stated that the reason behind the non-disclosure was primarily to maintain the confidentiality and sensitivity of disclosing remuneration information.<sup>145</sup> Amara believed that "the disclosure of exact remuneration of directors with (a detailed) breakdown was not in the best interests of the company", 146 as Amara is operating in a highly competitive industry. 147

Furthermore, Amara did not disclose the name, remuneration amount earned by the top five key management personnel in bands of S\$250,000, nor the total remuneration paid to these key management personnel. The reason Amara gave was that there were "many competitors in the same industry" and "the company was susceptible to poaching of its key management personnel in a highly competitive marketplace vying for talent.

Professor Mak pointed out that the company clearly failed to comply with Principle 8 and Provision 8.1 of the SCCG 2018. THC and TGT are siblings while MKW is their brother-in-law. Professor Mak remarked that there could be no "detriment (that) can be caused to the company through disclosure of each director's exact remuneration and breakdown". Professor Mak argued that "the company makes a mockery of the Code".

In FY2022, Amara disclosed that the remuneration of two immediate family members fell in the S\$200,001 to S\$300,000 band, and one immediate family member was in the S\$300,001 to S\$400,000 band. <sup>154</sup> It continued to insist that "it is not in the best interests of the group to disclose the full details as required under Provision 8.2 of the Code" to Amara's "highly competitive industry conditions". <sup>156</sup>

### **Tightening regulation?**

Over the years, significant changes have been made regarding Singapore's remuneration disclosures. A "comply or explain" approach based on the Code of Corporate Governance was used for remuneration disclosures. Under the listing rules, compliance with the principles and provisions in the code was voluntary, and companies were expected to explain if they do not comply. Following the revision of the Code in 2018, principles became mandatory while provisions continue to be subject to "comply or explain". However, explanations of variations from the Code should be comprehensive and meaningful. 159

Despite the tightening of the "comply or explain" requirement, companies continue to have flexibility in complying with the provisions and providing explanations for variation from the provisions, while claiming they are complying with the principle.

Consequently, companies like Amara could still avoid specific remuneration disclosures. Therefore, Professor Mak argued that SGX "should consider mandating the disclosure of exact amount and breakdown of remuneration of individual directors and the CEO through its listing rules". <sup>160</sup> He also argued that the remuneration disclosures are "mandated through listing rules or legislation" <sup>161</sup> in most of the developed markets in the world, "not through codes of corporate governance based on 'comply or explain". <sup>162</sup>

SGX has moved to improve remuneration disclosures. For the FYs ending on or after 31 December 2024, Rule 1207(10D) of SGX Listing Rules requires companies to disclose specific amounts that directors and key management personnel receive in their annual reports.<sup>163</sup> This disclosure must include exact breakdowns of fixed and variable income inclusive of any incentives given.<sup>164</sup>

Other regional markets such as Malaysia (Chapter 9 Appendix 9c (11) of Malaysia Bursa Listing Requirements) and Hong Kong (Appendix 16 Paragraph 24 of HKEX Listing Requirements) also have mandatory requirements regarding the disclosure of directors' remuneration through their listing rules. $^{165}$ 

### **Amara's performance**

From FY2019 to FY2020, Amara experienced a 42% drop in revenue from S\$105.3 million to S\$61.1 million. This was primarily attributable to the fall in revenue in the Hotel Investment and Management segment, driven by the impact of the COVID-19 pandemic, Circuit Breaker measures, shutdowns, and travel restrictions in Singapore, Bangkok, and Shanghai. Additionally, Amara suffered a net loss of S\$11.4 million in FY2020, a 140% drop compared to the net profit of S\$105.3 million recorded in FY2019. The main reasons provided by Amara for this decline in profitability were the fall in revenue and fair value losses arising from revaluation of investment properties, partially offset by lower staff cost, depreciation, finance cost, and other expenses.

In FY2021, Amara experienced a slight recovery from the COVID-19 pandemic. Revenue saw a 10% annual growth, increasing from S\$61.1 million to S\$66.9 million, while net profit surged from -S\$11.4 million to S\$7.6 million.<sup>170</sup> The primary factors contributing to this improvement were "improved revenue, lowered operating and finance costs and narrowed fair value loss of investment properties". 171

In FY2022, Amara experienced a 40% annual growth in revenue, climbing from S\$66.9 million to S\$93.7 million.<sup>172</sup> This was supported by exceptional growth for all three of its business segments including Hotel Investment and Management, Property Investment and Development, and Specialty Restaurants and Food Services. <sup>173</sup> However, net profit experienced a 15% annual decline, dropping from S\$7.6 million to S\$6.5 million. <sup>174</sup>

In FY2023, Amara reported revenue of S\$114.94 million and a net profit of S\$7.18 million, marking a 23% increase in revenue and an 11% rise in net profit compared to FY2022. 175

Amara's share price suffered a 48.39% decline, falling from \$\$0.46 to \$\$0.31 in the first quarter of 2020, as the COVID-19 pandemic struck.<sup>176</sup> Subsequently, the share price experienced a slight increase from \$\$0.33 to S\$0.37 in the last quarter of 2020, remaining within the range of S\$0.35 to S\$0.40 throughout 2021. To Following the removal of TTC on 26 April 2022, Amara's share price stabilised at \$\$0.365 until 4 May 2022.<sup>178</sup> From 4 May 2022 to 26 July 2022, the share price gradually declined from \$\$0.365 to \$\$0.325.179

On 18 June 2023, two major shareholders of Amara were engaged in confidential discussions with a third party relating to a possible transaction involving Amara. 180 Following that disclosure, Amara's share price surged by 23.9% to S\$0.440.181

### Teo's surprise offer

On 14 November 2023, Amethyst Assets Pte Ltd (Amethyst) announced a voluntary unconditional cash offer of S\$0.60 per share for all outstanding shares of Amara. 182 Amethyst, with a 36.2% ownership stake held by First Security, 183 aimed to acquire all shares not already owned by the Teo family. 184 Amethyst cited low trading liquidity and a challenging growth outlook as the rationales for the offer. 185 It further added that this was a "clean cash exit opportunity"186 for Amara, without brokerage and other trading costs. 187

The offer price represented a premium of 53.8% over Amara's share price of \$\$0.39 on 15 June 2023. 188 If Amethyst were successful in its attempt to privatise Amara, Amara would be delisted and become a wholly-owned subsidiary of Amethyst. 189 However, as of 5.30p.m. (Singapore time) on 16 January 2024, the close of the offer, Amethyst had only reached 88.39% in shareholding interest, falling short of the 90% threshold required for a full acquisition of Amara. The unconditional cash offer had therefore failed. Shares of Amara closed at S\$0.60 that day.<sup>190</sup>

### **Discussion questions**

- What are some of the major family and business governance problems that family companies like Amara are likely to face as they move beyond the first or second generations? Explain why these issues may arise and what can be done to minimise the risk of these problems occurring.
- Critically evaluate the composition of Amara's current board and specific board practices highlighted in the case study, and suggest possible improvements.
- Evaluate the importance of independent directors in a family-owned business and its effects on corporate governance. What are some of the challenges faced by independent directors in a family-controlled company like Amara? How can be independence and effectiveness of independent directors in such companies be enhanced?
- What are the key issues surrounding the removal and resignation of the independent directors? Critically evaluate the actions of the independent directors at Amara who were removed or who resigned and whether they acted appropriately?

- 5. After the removal and resignation of the independent directors, Amara's board only consisted of one independent director. What are the potential corporate governance implications of a board having insufficient independent directors and what should Amara have done to better deal with this situation?
- 6. Critically evaluate the remuneration disclosures of Amara and the remuneration payments to family members. How should remuneration policies for family members in a family-owned business such as Amara be determined? Do you think that the remuneration practices at Amara could be prejudicial to minority shareholders and family members who are not involved in management? Explain.
- 7. What are the pros and cons of the "comply or explain" approach to corporate governance? In Amara's case, was this approach effective in ensuring good governance and transparency? Explain. What recommendations would you have to further improve corporate governance and transparency?
- 8. Amara has joined a number of other companies listed on SGX and other exchanges in attempting to go private. What are the reasons that may lead companies to discontinue their listing and go private? What are the key corporate governance issues, including those relating to minority investor protection, that arise in privatisation situations? What are the major rules governing such privatisations in your market?

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# **BANKING LESS ON DBS?**

### **Case overview**

DBS Bank Limited (DBS) is the largest bank in Singapore and has been named the "Best Bank in the World" by various publications such as Euromoney, Global Finance, and The Banker. However, the bank has come under the spotlight for a number of issues, such as those relating to money laundering and SMS scams. Additionally, it has faced scrutiny for repeated disruptions in its digital banking services. These data outages have prompted regulatory actions by the Monetary Authority of Singapore (MAS), resulting in the imposition of various penalties on DBS.

The objective of this case is to facilitate a discussion of issues such as corporate culture, board composition; remuneration policy; risk management; conduct and technology-related risks; and sustainability.

### The rise of DBS

Founded in 1968 by the Economic Development Board (EDB) with the primary objective of financing Singapore's emerging industries, DBS has solidified its position as a leader over the last 50 years, not only within Singapore but also across Asia. The bank has "pioneered many firsts that have revolutionised the banking landscape". In 1997, DBS was the "first bank in the region to launch comprehensive internet banking". In 2007, it was "among first few foreign banks and first Singapore bank to incorporate a fully owned local subsidiary in China". In 2012, it became the "first Singapore bank to introduce secure contactless payments using mobile phones". Today, DBS has over 280 branches across 18 markets, and has a credit rating of "AA-" and "Aa1".

According to the bank, the key to its success lies in its strategy that leverages on megatrends in Asia such as "intra-regional trades, technological advancements, digitalisation of industries and economies, and the shift towards building a sustainable future". It has grown its presence in Asian countries through mergers and acquisitions (M&As), leveraging technology in its banking practices, and making wide-ranging commitments to a more sustainable future.<sup>8</sup>

This case study was originally prepared by Tan En Liang Mark, Koh Yi Ting, Ng Rui Yun, Loh Xian Yang Brendan, Haziqah Binte Mohamed Esa, Sun Xinyang. It has been edited by Or Yun Qian and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussion and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organisations named in the case, or any of their directors or employees.

### Journey of digital transformation

In 2014, DBS Chief Executive Officer (CEO), Piyush Gupta (Gupta) along with his leadership team, conceived the vision of "Making Banking Joyful". Since then, DBS has been actively leveraging digital technologies to deliver "simple, fast and contextual banking solutions". In an interview with McKinsey in 2018, DBS Chief Information Officer, David Gledhill (Gledhill) mentioned that DBS aspires to become the 'D' in GANDALF (Google, Amazon, Netflix, Apple, LinkedIn, and Facebook). Today, DBS prides itself on being less like a bank and more like a technology company, offering financing services that are highly customised and seamlessly woven into everyday life.11 Its tagline of "Live More Bank Less" is intended to signal its innovation in banking.

### Who owns DBS?

Singapore government-owned Temasek Holdings (Private) Limited (Temasek) is the largest shareholder of DBS, with an effective shareholding of 29.14%, of which 17.83% is held indirectly through its wholly-owned subsidiary, Maju Holdings Pte Ltd (Maju).12

### Temasek's governance approach

According to Temasek, it actively tracks and monitors the performance of its portfolio companies but does not directly influence their business decisions or operations. 13 Day-to-day management and business operations are left to the board of directors and management of the portfolio companies.14 Furthermore, Temasek states that it does not interfere with the boards' oversight, and it is the portfolio companies' responsibility to establish the right tone within their companies, and ensure the presence of governance, compliance, and control systems.<sup>15</sup>

Instead, Temasek provides guidance and review the corporate governance structure of its portfolio companies. <sup>16</sup> For instance, it promotes the idea of independent boards that operate separately from management to provide effective oversight and supervision of management.<sup>17</sup> It advocates for the separation of roles of Chairman and CEO and seeks to add value to its portfolio companies by exchanging ideas and best practices relating to sustainability, governance, cybersecurity, and industry trends. 18

### **Business operations**

DBS operates across three main lines of business: Consumer Banking/Wealth Management, Institutional Banking, and Treasury Markets.19

Consumer Banking/Wealth Management offers customers a variety of services including current and savings accounts, fixed deposits, loans, home finance, cards, payments, investment, and insurance products.<sup>20</sup>

Institutional Banking provides financial services and products to financial institutions, government-linked companies, small, medium, and large corporations.<sup>21</sup> These services and products include various credit facilities, ranging from short-term working capital financing to specialised lending.<sup>22</sup> Additionally, DBS provides global transactional services such as cash management, trade finance and securities and fiduciary services, treasury and markets products, corporate finance, advisory banking, and capital markets solutions.<sup>23</sup>

DBS' Treasury Market activities mainly include structuring, market-making, and trading across treasury products.24

### **Expansion into India**

In November 2020, DBS acquired Lakshmi Vilas Bank (LVB), This was following a decline in number of depositors and increase in bad loans at LVB.25 The acquisition was facilitated by the India's central bank,

marking the first time an Indian authority sought the assistance of a foreign bank to revive a distressed local bank.<sup>26</sup>

Before the merger, the Reserve Bank of India (RBI) asked LVB to write off its tier two bonds worth INR3.2 billion.<sup>27</sup> However, holders of LVB's equity shares and tier two bonds took legal action against DBS India for the write-off of their holdings during the acquisition.<sup>28</sup> In response, DBS said that the respondent to the lawsuit would be the RBI as RBI was the one who drafted and approved the amalgamation.<sup>29</sup>

In late 2022, DBS India announced the integration of LVB into DBS. The LVB acquisition enabled DBS to establish a physical presence in India, leveraging LVB's national network of ATMs and over 500 branches across the country.<sup>30</sup> Furthermore, it complemented DBS India's digitised banking infrastructure, enhancing its ability to cater to a broader clientele, particularly, micro, small, and medium enterprises.<sup>31</sup>

### **Controversies**

In recent years, DBS has been entangled in various controversies.

### Sales of risky products and involvement in failed listed issuers

In 2008, DBS agreed to spend up to S\$80 million to compensate investors who were sold structured products linked to Lehman Brothers, which subsequently collapsed. The compensation agreement followed a probe by the Monetary Authority of Singapore (MAS) into alleged mis-selling of these risky products by banks and a deal reached in HK where banks there were to buy back these products from holders.<sup>32</sup> Nearly 10,000 people in Singapore, many of them retirees, stood to lose most or all of their money after they bought such structured products from banks and financial institutions. DBS reportedly sold S\$360 million worth of Lehman Brothers-linked structured products to 4,700 investors in Hong Kong (HK) and Singapore.

The bank also had exposures, or involvement in sale of securities or initial public offerings, in a number of high-profile failures involving Singapore-listed issuers, including Eagle Hospitality Trust, Ezra group, Hyflux, Swiber, and Swissco. 33,34,35,36,37

### 1Malaysia Development Berhad

"[the board and senior management]...must set the tone from the top – that profits do not come before right conduct".

- Ravi Menon, Managing Director of MAS 38

1Malaysia Development Berhad (1MBD) was a Malaysian national state fund set up in 2009 to promote economic development.<sup>39</sup> The fund became the centre of a huge corruption scandal when more than US\$4.5 billion was misappropriated, allegedly to pay off politicians and support the lifestyles of the former Malaysian Prime Minister Najib Razak (Najib) and his spouse, Rosmah Mansor.<sup>40</sup> After Mahathir Mohamad (Mahathir) emerged victorious against Najib in the 2018 general election,<sup>41</sup> an investigation ensued, leading to the seizure of properties and other possessions by the police.<sup>42</sup> Subsequently, Najib was sentenced to 12 years in prison, together with a RM210 million fine.<sup>43</sup>

In response to the scandal, MAS conducted investigations into banks in Singapore regarding their 1MDB-related fund flows. DBS was fined S\$1 million, primarily due to "lapses and weaknesses" in its anti-money laundering (AML) controls, particularly involving specific DBS bank officers who did not effectively fulfil their responsibilities. No pervasive control weaknesses were said to be found. 44,45 DBS said it had held these officers responsible for the lapses related to 1MDB, 46 implemented numerous improvements since the lapses occurred in 2013 and 2014, and that it is "in a materially better position than before".

### Nickel trading fraud

In April 2021, Ng Yu Zhi (Ng), former managing director of Envy Global Trading (EGT),48 was accused of cheating investors in a \$\$1.5 billion nickel trading fraud. Ng promised investors a 15% return each quarter and raised funds from over 1,000 investors for nickel transactions that never occurred. 4950

In 2019, suspiciously large bank transfers from Ng's business account to his personal account prompted OCBC to report the transactions to the police.<sup>51</sup> In 2020, OCBC closed Ng's personal account, following UOB's action a year earlier.<sup>52</sup> However, despite Ng facing fraud charges, DBS and CIMB continued their banking relationship with him.<sup>53</sup> Ng's companies held six bank accounts with a total of S\$7.9 million, 86% of which was banked in four accounts at DBS. 54 Eventually, it was reported that Ng had misappropriated at least S\$201.2 million from EGT's DBS bank account between August 2020 and February 2021.55

### **Phishing scams**

In recent years, there has been a significant rise in phishing scams, with 7,097 cases reported in 2022, marking a 41.3% increase from the 5,023 recorded cases in 2021.<sup>56</sup> Scammers employ tactics such as impersonating officers or trusted entities to deceive victims into divulging their banking information or credit card details.<sup>57</sup>

From January 2022, OCBC made goodwill payouts to customers who fell victims to these scams which started in December 2021.58 Additionally, it acknowledged that "its customer service and response fell short of our customers' expectations". In contrast, DBS did not adopt similar measures for its affected customers. In a joint statement with the Singapore Police Force (SPF), DBS asserted that it "will never send any SMS with clickable links".60 While it mentioned taking short-term measures to disrupt scammers, DBS declined to provide further details when questioned about what these measures entailed.<sup>61</sup>

In 2023, DBS collaborated with SPF anti-scam centre to address phishing scams. Through a joint initiative, it reportedly helped prevent potential losses of over S\$21 million for more than 3,900 individuals.62 DBS also enhanced its anti-scam security measures to protect customers from fraudulent access to their accounts. These include restricting access to DBS banking application upon detecting potential security risks, such as malware, unverified app store downloads, or screen-sharing on the device. 63 Access will be restored to customers once they secure their phones.64

In 2024, Singapore banks introduced anti-phishing scam mechanisms such as Money Lock by OCBC and digiVault by DBS.65 These features allow customers to secure their funds using the bank's app, ensuring that the funds can only be unlocked in person at bank branches.66

### Wirecard scandal

In June 2023, several of Singapore's largest financial institutions faced penalties associated with the collapse of the German payment services group, Wirecard.<sup>67</sup> MAS imposed fines totalling S\$2.8 million on DBS, Citibank, and OCBC,68 with DBS receiving the largest fine of \$\$2.6 million.69 These penalties were imposed for breaches in AML and terrorism financing requirements.<sup>70</sup>

MAS found that DBS had failed to update customers' risk ratings, or to adequately establish the sources of wealth of higher risk customers.<sup>71</sup> Furthermore, it did not inquire into the backgrounds and purposes of "unusually large transactions". DBS issued a statement noting that "the transactions in question were related to a network of customers that were ultimately traceable to Wirecard"73 and were part of an "elaborately orchestrated scheme"74 to conceal actual control and/or beneficial owners. It acknowledged that the bank could have handled the situation better.75 The bank said that it has since taken corrective actions, including improving procedures and conducting staff training to enhance vigilance in detecting and escalating risk concerns.<sup>76</sup>

### S\$3 billion money laundering scandal

In August 2023, DBS found itself as a creditor to investment companies linked to individuals arrested and charged in connection with a money laundering scandal involving assets exceeding S\$3 billion.<sup>77</sup> MAS said that it would take "firm action" against those found breaching AML rules.<sup>78</sup> DBS had registered four charges to Aiqinhai Investment, where the firm's director and sole shareholder, Su Haijin, is among the 10 individuals charged for offences including money laundering and forgery.<sup>79</sup>

Gupta disclosed that the bank had approximately S\$100 million in exposures through property purchases or retail customer accounts used for property financing. BBS' specific allowances for expected credit losses increased almost eightfold from a year ago. Gupta said that this money laundering incident is unlikely to impact Singapore's wealth management scene. He emphasised that the bank has built up enough general provision cushion to handle any stresses within its portfolio. Furthermore, in an attempt to recover the loan amount, DBS has put up for sale the 10 shophouses owned by two of the individuals charged.

### **Outages**

"The frequency of outages is unacceptable, the slowness in recoverability is unacceptable".

- Ravi Menon, Managing Director of MAS<sup>84</sup>

On 29 March and 5 May 2023, DBS encountered disruptions to its online banking and payment services.<sup>85</sup> Customers were unable to log in to DBS/POSB digital banking, PayLah! mobile wallet and DBS Vickers Trading platform.<sup>86</sup> Automated teller machines (ATMs) around Singapore were also affected, and customers had difficulties in using the payWave function on their DBS cards.<sup>87</sup>

In response, MAS issued a statement saying that DBS has "fallen short of MAS' expectations for banks to deliver reliable services to their customers." It imposed additional capital requirements on DBS. The bank was now required to apply a multiplier of 1.8 times to its risk-weighted assets for operational risk, an increment from the 1.5 multiplier imposed in February 2022 following an earlier disruption in November 2021. This resulted in a total additional regulatory capital estimated at S\$1.6 billion. On

Following the March incident, DBS established a special board committee tasked with overseeing a full review of the bank's information technology (IT) resiliency. MAS also directed DBS to conduct a comprehensive review, including assessing the adequacy of management oversight, staff competencies, operational processes, system resiliency, and design of its digital banking services. MAS required DBS to take immediate steps to improve the resiliency and recoverability of its existing system, in order to minimise disruption of its services. 93

However, in October 2023, DBS encountered another disruption. Similar to the incident in May 2023, users were unable to access DBS' digital applications, digital banking or online payment services, and several ATMs were also affected. The disruption was caused by technical issues with the cooling system in the data centre, raising the temperature and causing disruptions to the equipment. In response, MAS stated that banks are required to have in place back-up data centres and systems and test them periodically to ensure that critical systems and services can be restored within four hours following an outage.

MAS issued several directives in response to the multiple disruptions. It directed that DBS pause non-essential IT changes for six months to ensure that adequate resources are dedicated to strengthening its technology risk management systems and controls. MAS also instructed DBS not to reduce its branch sizes or ATM networks to ensure that customers have sufficient alternatives in the event of further disruptions. It also barred DBS from any acquisitions of new business ventures for six months. P

Following the incidents, Gupta announced that DBS will allocate \$\$80million to enhance its system resiliency. 100

### Are the measures enough?

Dennis Khoo, a managing partner at digital consultancy, allDigitalFuture, remarked that these disruptions highlight DBS' failure to fulfil its service commitment of providing around-the-clock service to customers, which could lead to reputational damage for the bank. 101

RHB Bank analysts highlighted that while higher operating expenses are expected, they believe these costs will represent minimal setbacks for DBS. 102 Other analysts said that MAS' ban on DBS acquiring new business ventures will have limited impact. Thilan Wickramasinghe, Head of Singapore Research at Maybank, pointed out that DBS' current focus is on integrating its acquisition of LVB and Citibank's consumer banking business in Taiwan, suggesting limited capacity for significant M&As in the short term. 103 Professor Mak Yuen Teen (Professor Mak), a corporate governance advocate, questioned whether the \$\$80 million set aside by DBS is "anywhere near enough".104

DBS Chairman, Peter Seah emphasised that senior management will be held responsible "in terms of their compensation."105 However, Professor Mak pointed out that both the board of directors and senior management should be held accountable. 106 He questioned the lack of specifics and whether the impact on remuneration would be sufficient to ensure that DBS adopts a "laser focus on technology resilience". 107

### **Board of directors**

The board of DBS comprises ten directors - seven independent directors (IDs), two non-independent nonexecutive directors (NINEDs), and one executive director (ED).<sup>108</sup> Most directors currently hold or have previously held positions within financial institutions. Six directors hold at least five other directorships in addition to their roles at DBS, alongside other full-time commitments. Professor Mak expressed concern as to whether the board members can properly perform their roles given their external commitments, particularly in light of recurring service disruptions. 109

The two non-independent non-executive directors (NINEDs) are Peter Seah (Seah) and Chng Kai Fong (Chng), while Gupta is the only executive director (ED).

Peter Seah Lim Huat (Seah), aged 77, was appointed as an ID on 16 November 2009 and subsequently became the Chairman on 1 May 2010. At that time, he was a member of the Temasek Advisory Panel at Temasek Holdings, DBS' controlling shareholder, and served on that panel from 2005 to 2014.<sup>110</sup> Seah was re-designated as a NINED with effect from 16 November 2018 after serving as a director on the board for more than nine years.<sup>111</sup> Seah chairs the Board Executive Committee (BEC) and sits on the Audit Committee (AC), Board Risk Management Committee (BRMC), Compensation and Management Development Committee (CMDC), and Nominating Committee (NC).<sup>112</sup> In addition, he is the Chairman of DBS Bank (Hong Kong) Limited, Singapore Airlines Limited, and LaSalle College of the Arts Limited. He also serves on the boards of GIC Private Limited, Fullerton Financial Holdings Pte Ltd, and STT Communications Ltd. Seah holds a Bachelor's Degree in Business Administration from the National University of Singapore. 113

Chng, aged 45, was appointed on 31 March 2021. He serves as a member of the AC, NC, and Board Sustainability Committee (BSC). Chng holds key government positions as Permanent Secretary (Information and Development) at the Ministry of Communications and Information, and Permanent Secretary (Development) (Cybersecurity) in the Prime Minister's Office. 114 In addition, he serves on the boards of Singapore Symphonia Company Limited, The Government Technology Agency of Singapore, and Info-Communications Media Development Authority.<sup>115</sup> Prior to joining DBS, Chng was the managing director of the Economic Development Board and held numerous senior positions in various government-related organisations including Ministry of Trade and Industry Singapore and Ministry of Home Affairs. He graduated from the University of Cambridge with a Bachelor of Arts (1st Class Honours) and a Master in Engineering. He also holds a Master of Science in Management from Stanford University's Graduate School of Business. 116

Gupta, aged 64, was appointed as an ED and CEO of DBS on 9 November 2009. He is the Chairman of BSC. Before joining DBS, Gupta accumulated 27 years of experience at Citigroup, where he held position of CEO for South East Asia, Australia, and New Zealand.<sup>117</sup> Gupta is the Chairman of the Board of Trustees of Singapore Management University, Vice-Chairman of the Institute of International Finance, Washington, and Vice-Chairman of the World Business Council for Sustainable Development (WBCSD) Executive Committee. He holds a Bachelor's Degree in Economics from Delhi University India and a Postgraduate Diploma in Management from Indian Institute of Management.<sup>118</sup>

Olivier Lim Tse Ghow (Olivier), aged 59, was first appointed as an ID on 7 November 2017 and became the lead ID on 29 April 2020. He chairs the BRMC/BRMC Technology Risk Committee and sits on the BEC and NC. From 2003 to 2014, Olivier held roles as Group Deputy CEO, Group Chief Investment Officer, and Group Chief Financial Officer at CapitaLand Limited. Currently, he is the Chairman of Starhub Ltd and Singapore Tourism Board and is a director of Raffles Medical Group Ltd. Olivier is a civil engineer by training and holds a First Class Honours degree in Civil Engineering from Imperial College, London.<sup>119</sup>

Bonghan Cho (Cho), aged 59, was appointed as an ID on 26 April 2018. He is a member of the BRMC/BRMC Technology Risk Committee, CMDC, and NC. Cho is the founder and CEO of Equalkey Corp., Korea and a director of Tmoney Co., Ltd. He holds a Ph.D and MS in Computer Science specialising in artificial intelligence.<sup>120</sup>

Tham Sai Choy (Tham), aged 64, was appointed as an ID on 3 September 2018. He is the Chairman of the AC and NC and serves as a member of the BRMC/BRMC Technology Risk Committee and BSC. Tham previously served as the Chairman of KPMG in Asia Pacific until his retirement in 2017. He currently serves on the boards of DBS Bank (China) Limited, DBS Foundation Ltd., Keppel Ltd., Nanyang Polytechnic, Singapore International Arbitration Centre, and Mount Alvernia Hospital. He is also the Chairman of E M Services Private Limited. Tham holds a Bachelor of Arts (Honours) Degree in Economics, University of Leeds, UK.<sup>121</sup>

Punita Lai (Lai), aged 61, joined DBS as an ID on 1 April 2020. She sits on the AC, CMDC, and NC and is a director of DBS Foundation Ltd. Lai has over 30 years of experience in strategy, marketing, and leadership in the consumer-packaged goods industry. Her past experience includes working for Coca Cola in China, and PepsiCo in India. She is currently an ID of Cipla Limited and a director of Carlsberg A/S. Lai holds a Bachelor of Arts, Economics (Honours) degree from St. Stephen's College, Delhi, and a Master of Business Administration from the Indian Institute of Management, Calcutta. 122

Anthony Lim Weng Kin (Anthony), aged 65, was appointed as an ID on 1 April 2020. He is the Chairman of the CMDC and a member of BRMC/BRMC Technology Risk Committee, and BEC.

He previously served as the president of GIC Pte Ltd's London and New York offices. Anthony currently serves on the boards of CapitaLand Hope Foundation and CapitaLand Investment Ltd. He is a member of various committees including Scholar Rescue Fund Selection Committee and Queensway Secondary School Advisory Committee. Anthony graduated with a Bachelor of Science degree from National University of Singapore. 123

Judy Lee (Lee), aged 56, joined DBS as an ID on 4 August 2021. She sits on the AC, BRMC/BRMC Technology Risk Committee, CMDC, and BSC. She is also a director of DBS Foundation Ltd. Lee is Managing Director and Co-Founder of Dragonfly LLC and CEO of Dragonfly Capital Ventures LLC. Additionally, she is a director of multiple companies, including Chairperson of Strides DST Pte. Ltd., and a director of Commercial Bank of Ceylon PLC, SMRT Corporation Ltd, JTC Corporation, Temasek Lifesciences Accelerator Pte. Ltd., Mapletree Logistics Trust Management Ltd., SG Her Empowerment Limited, and AlTi Global, Inc. Lee holds a Bachelor of Science in Finance & International Business from NYU Stern Business School, and a Master of Business Administration from The Wharton School of the University of Pennsylvania. 124

David Ho Hing-Yuen (Ho), aged 64, joined DBS as an ID on 26 April 2023. He is a member of the AC, BSC, and CMDC. Ho was previously a director of DBS Bank (Hong Kong) Limited. He is the founder and Chairman

of Kiina Investment and serves of the board of Air Products and Chemical, Qorvo of the United States, as well as Sun Life Financial and Sun Life Assurance Company of Canada. Ho holds a Bachelor's degree in Engineering and a Master's degree in Management Sciences from the University of Waterloo in Canada. 125

### Less than resounding support from shareholders

During DBS' 21st Annual General Meeting (AGM) held on 30 April 2020, Seah was proposed for re-election as a director retiring under Article 99 of the company's constitution. He received 33.63% of votes against his reelection. 126 At that same AGM, another then NINED, Ow Foong Peng, who is Permanent Secretary at the Ministry of National Development, received 33.73% of votes against her re-election. 127 She stepped down in March 2021 after serving on the board for close to nine years. 128 Meanwhile, at the company's 24th AGM held on 31 March 2023, when Seah stood for election again, the percentage of votes against his re-election had fallen to 10.25%. 129

When Chng, who is a Permanent Secretary, was proposed for re-election as a director at the 23<sup>rd</sup> AGM held on 31 March 2022, he received 9.19% of votes against his re-election. This percentage was much higher than the other directors standing for re-election, whose votes against ranged from 0.03% to 2.01%.<sup>130</sup>

### Fair remuneration?

Four out of the five members of the CMDC, including the Chairman, are IDs.<sup>131</sup> The CMDC exercises supervisory oversight on the overall governance of DBS' remuneration policy, including supervising and providing guidance to the board on the remuneration of all directors. 132

### **NED** remuneration

According to DBS, the remuneration of non-executive directors (NEDs) has been benchmarked against global and local financial institutions.<sup>133</sup> The fee structure for NEDs includes basic annual retainer fees and additional fees for holding specific roles, such as being part of the board committees, and attendance fees. 134

Unless the board decides otherwise, NEDs receive 70% of their fees in cash and the remaining 30% in share awards. The share awards are not subject to a vesting period but are subject to a selling moratorium, with NEDs required to hold the equivalent of one year's basic retainer fees throughout their tenure as a director until one year after resigning.135

Although the NED fee structure for FY2022 remained unchanged from FY2021, the total NED remuneration in FY2022 increased by approximately 8.2% compared to FY2021. 136 This increase was primarily due to higher attendance fees resulting from an increased number of physical meetings, the expansion of the AC, and the establishment of the BSC.137

The NED fee structure for FY2023 also remained unchanged from FY2022. However, total NED remuneration in FY2023 increased by approximately 3.75% compared to FY2022. 138 This increase was primarily due to more frequent BSC meetings and the transition involving David Ho, a newly appointed NED and Ho Tian Yee, who retired as a NED on 31 March 2023, with David Ho serving on more board committees.<sup>139</sup>

In FY2023, Seah, the Chairman, received total remuneration of S\$1.96 million, compared to FY2022's total remuneration of \$\\$1.95 million. Meanwhile, the other NEDs received remuneration ranging from \$\\$221,328 to S\$452,000, with Olivier, the lead ID, being the highest-paid NED. 140

### **Executive remuneration**

The CMDC oversees the compensation principles applied to the CEO and senior executives, ensuring alignment with the Financial Stability Board's (FSB) guidelines.<sup>141</sup> In FY2022, DBS engaged the services of an external compensation consultant, McLagan, to perform an independent evaluation of the bank's compensation framework and procedures to ensure compliance with the FSB principles for sound compensation practices.<sup>142</sup>

As part of the annual variable pay pool review and the remuneration of the CEO and senior executives, the CMDC assesses DBS' performance against the balanced scorecard for each year. <sup>143</sup> The balanced scorecard includes factors with different weightages, including traditional key performance indicators (KPI) (40%), "Transform the Bank - Make Banking Joyful" (20%) and Areas of Focus (40%). <sup>144</sup>

Throughout the year, the CMDC reviews market trends to ensure that the bank's remuneration remains competitive in terms of productivity and performance. The following changes were also reviewed for implementation effective for grants from FY2023: vesting deferred awards for bonus eligible employees equally over four years in line with market practice, changing the vesting period of Special Award from four years to three years to enhance talent retention, and increasing deferral rates to at least 40% for Material Risk Personnel to align with the additional corporate governance guidelines. The following changes were also reviewed for implementation effective for grants from FY2023: vesting deferred awards for bonus eligible employees equally over four years to enhance talent retention, and increasing deferral rates to at least 40% for Material Risk Personnel to align with the additional corporate governance guidelines.

The remuneration of EDs consists of fixed pay and variable pay. Fixed pay considers market dynamics, responsibilities, competencies, and performance of the ED.<sup>147</sup> Variable pay, based on a function of the overall balanced scorecard, is benchmarked against the market.<sup>148</sup> The components of variable pay consist of cash bonus and deferred awards which are paid out in restricted shares and cash.<sup>149</sup> The deferred awards consist of the main and a retention award, with the retention award constituting 15% of the main award to retain talent and compensate for the time value of the deferral.<sup>150</sup> For the main award, 25% is vested on each anniversary after the grant date, and for the retention award, 100% will be vested four years after the grant date.<sup>151</sup>

Malus and/or clawback provisions apply in cases of material violation of risk limits, losses due to negligent risk taking, misconduct, or fraud. DBS retains the ability to clawback both vested and unvested awards within a seven-year period.<sup>152</sup>

In FY2022, the aggregate total remuneration for senior management, excluding the CEO's remuneration, was S\$73.8 million.<sup>153</sup> The breakdown revealed that the remuneration structure comprised 18% fixed pay, 36% variable pay in cash, and 46% variable pay in deferred share and deferred cash.<sup>154</sup> Excluding the CEO, the median increase in total remuneration for senior management members of the Group Management Committee for both FY2021 and FY2022 was 10.7%.<sup>155</sup>

In FY2023, the aggregate total remuneration for senior management, excluding the CEO's remuneration, decreased to S\$63.5 million, marking a 16% decline from FY2022. This decrease was attributed to a reduction in the total variable pay for senior management including the CEO, by 21%, reflecting senior management's accountability for the digital disruptions.<sup>156</sup>

Under the 2018 Code of Corporate Governance, Provision 8.1 states that the company should disclose the remuneration of at least its top five key management personnel.<sup>157</sup> However, DBS did not disclose this information, with that bank saying that the board believes that it would be disadvantageous for the bank to disclose such information because of the constant battle for talent in a highly competitive industry.<sup>158</sup>

### The king of Asia

Gupta's annual remuneration increase from S\$13.6 million in FY2021 to S\$15.4 million in FY2022, a 13% year-on-year increase compared to FY2021.<sup>159</sup>. His remuneration in FY2022 comprised of a salary of S\$1.5 million, a cash bonus of S\$5.77 million, and deferred shares and cash totalling S\$8.04 million. He has consistently been one of the top three highest paid CEOs in the Asia Pacific region, including being the highest paid in FY2022.<sup>160</sup>

Gupta's substantial remuneration in FY2022 can be largely attributable to DBS' outstanding financial performance, with a then record net profit \$\$8.19 billion, marking a 20% increase from FY2021. <sup>161</sup> In particular,

FY2022's return on equity of 15% significantly surpassed previous records. 162 In addition, DBS recognised Gupta's overall leadership and efforts in integrating LVB in India, industrialising artificial intelligence, and advancing DBS sustainability agenda with its net-zero roadmap, all of which contributed to his high remuneration.163

Despite DBS' two-day digital banking service outage in November 2021, Mr Gupta's total pay that year was nearly 50% higher at \$\$13.6 million compared to 2020. Although his 2020 pay was cut, like his counterparts at other banks, as COVID-19 hit profits across the industry, his 2021 package also exceeded his 2019 total pay of S\$12.1 million. His variable pay in 2021 was 55% higher than in 2020. Both his annual cash bonus and deferred remuneration increased compared to the earlier years and increased further in 2022.<sup>164</sup>

Despite achieving record-breaking total income exceeding the S\$20 billion mark for the first time, with a net profit of S\$10.3 billion and a return on equity of 18%, the gaps in technology resiliency resulted in a lower scorecard appraisal by the board in FY2023 compared to FY2022. Given the performance on the scorecard, as well as the board's determination to hold the CEO and other Group Management Committee members accountable for digital disruptions, Gupta's FY2023 remuneration was reduced to S\$11.23 million, representing a 27% decline compared to FY2022. This amount comprised a salary of \$\$1.5 million, a cash bonus of \$\$4.11 million, and deferred shares and cash totalling S\$5.55 million. 165

### **How does DBS manage risks?**

As a financial institution, DBS is required to establish a Risk Management Committee based on the Banking (Corporate Governance) Regulations 2005 under the Banking Act. 166 The board, through the BRMC, sets risk appetites and oversees the establishment of enterprise-wide risk management policies, as well as establishes risk appetite limits to guide DBS' risk-taking. 167

The Chief Risk Officer (CRO) oversees the risk management function in DBS. The responsibilities of the CRO include:

- 1. Managing DBS' risks by identifying, approving, measuring, controlling, monitoring, and reporting risks.168
- 2. Engaging with senior management to address material matters related to all types of risk. 169
- 3. Developing risk controls and mitigation processes. 170
- 4. Ensure DBS' risk management is effective, and risk appetite is adhered to. 171

### **Three Lines Model**

DBS adopts the Three Lines Model for its risk management. The first line comprises the business and support units, which are responsible for identifying and managing risks arising from their respective areas of responsibilities, and ensuring the bank's operations remain within approved boundaries of risk appetite and policies. Additionally, DBS has established an incident notification protocol that sets out processes for the escalation of incidents according to their level of severity. Appropriate levels of management are made aware of such incidents and can act accordingly.<sup>172</sup>

The second line includes the Risk Management Group and Group Legal and Compliance. They provide independent risk oversight, monitoring, and reporting. They are also responsible for developing and maintaining risk management policies and processes, as well as providing objective review and challenge to the activities undertaken by business and support units. Lam Chee Kin (Lam) is the Managing Director and Head of Legal and Compliance. As a lawyer by profession, he has expertise in financial services regulation and financial markets product and business structuring. Before joining DBS, Lam held legal and compliance roles at Standard Chartered, J.P. Morgan, Rajah & Tann, and Allen & Gledhill. 173

The third line is Group Audit, which provides an independent assessment and assurance on the reliability, adequacy, and effectiveness of the bank's system of internal controls, risk management, governance framework, and processes. Group Audit has implemented a quality assurance and improvement programme (QAIP) that governs its audit activity and adheres to the International Standards for the Professional Practice of Internal Auditing. Internal quality assurance reviews (QARs) are conducted quarterly, and external QARs are performed at least once every five years by qualified external professionals. In financial year (FY) 2023, Ernst and Young (EY) was appointed to conduct the external QAR. EY assessment highlighted that Group Audit leads the industry in utilising data analytics and digital tools in its audit activities including risk assessment, fieldwork, and reporting. Group Audit also received the highest ratings for Purpose, People, Risk assessment and Planning; Reporting, Enablement and Innovation; and Impact, Influence and Involvement.<sup>174</sup>

Derrick Goh (Goh) is the Managing Director and Head of Group Audit. He has over 30 years of experience in finance and banking. Previously, he was Head of POSB where he contributed to deepen POSB's community outreach. Goh currently chairs the Board Audit and Risk Committee for GovTech Singapore and is a Member of Parliament for Nee Soon Group Representation Constituency. He is also a member of the Parliament of Singapore's Public Accounts Committee. <sup>175</sup>

### **Operational risk management strategy**

Within DBS, a set of policies, standards, tools, and initiatives are implemented to manage operational risk. This includes corporate operational risk policies and standards, each overseen by their respective corporate oversight and control functions.<sup>176</sup> These policies are designed to address critical risk areas such as technology, compliance, fraud, money laundering, financing of terrorism, sanctions, new product development, outsourcing, and ecosystem partnerships.<sup>177</sup>

DBS uses risk and control self-assessment (RCSA), operational risk event management and key risk indicator monitoring to manage and control its operational risk.<sup>178</sup> RCSA is conducted by each business unit to identify key operational risks and assess the effectiveness of internal controls. DBS' operational risk events are classified according to Basel standards, and any significant incidents that impact DBS' reputation must be reported based on established thresholds.<sup>179</sup> Key risk indicators with predefined escalation triggers are employed to facilitate risk monitoring in a forward-looking manner.<sup>180</sup>

DBS also discloses additional methodologies to address subject-specific risks:

- 1. IT risk is mitigated through an enterprise technology risk management approach which encompasses risk identification, assessment, mitigation, monitoring, and reporting. <sup>181</sup> This approach is supported by governance, IT policies, standards, control processes, and risk mitigation programs. <sup>182</sup>
- 2. The cybersecurity function is overseen and supervised by the Chief Information Security Officer (CISO). As the second line of defence, the CISO conducts regular assessments to confirm the effectiveness of DBS' controls and ensure the control framework remains robust against threats.<sup>183</sup> DBS also allocates substantial resources to enhance its cybersecurity practices and provide relevant training to enhance security awareness among its employees.<sup>184</sup>
- 3. To address compliance risks, DBS has established a compliance program aimed at identifying, assessing, measuring, mitigating, and reporting on these risks using a combination of policies, relevant systems, and compliance testing controls. Moreover, DBS has set a minimum standard for its business units to manage both current and potential risk exposures. It also implements standards to oversee fraud and related issues on a geographical level through its fraud management program.<sup>185</sup>

The risk management group's operational risk unit, along with other corporate control functions, continuously oversee and monitor the effectiveness of operational risk management within DBS. 186 They assess key operational

risk issues and report or escalate key operational risks to risk committees with recommendations on appropriate risk mitigation strategies.<sup>187</sup>

### Reputational risk management strategy

DBS implements a four-step approach to manage reputational risk, which is to prevent, detect, escalate, and respond to reputational risk events.<sup>188</sup> This approach is reinforced by corporate values that reflect ethical behaviours and practices within DBS.<sup>189</sup>

The reputational risk policy focuses on stakeholders' perceptions, such as customers, regulators, and the media, regarding how well DBS manages its reputational risks. 190 DBS has adopted several mechanisms to continuously monitor such risk. Internally, these mechanisms include risk limits, key risk indicators, conduct and culture assessment, and periodic risk and control self-assessment processes.<sup>191</sup> External sources are also utilised to detect potential reputational risk events<sup>192</sup>

Each individual business unit is responsible for the daily management of reputational risk. This includes ensuring that processes and procedures are in place to identify, assess, and respond to such risks. 193 For instance, business units may leverage social media to monitor adverse comments about DBS.<sup>194</sup> Events impacting DBS' reputational risk are included in the reporting of risk profiles to board-level committees and senior management.<sup>195</sup>

### **Digital transformation**

As digital banking transformation initiatives become more deeply integrated into the banking industry, a new wave of operational and systemic risks emerge. The rise of digitally savvy customers and industry players exacerbates these challenges against a backdrop of higher employee turnover and shortages in the technology workforce. 196

DBS recognises that delivering differentiated technological innovation with resilient systems will create a better user experience, instilling confidence in DBS' customers and providing a competitive edge. 197 Moreover, ensuring the recruitment, development, and retention of technology talent is vital for driving DBS' transformation and establishing leadership in digital banking<sup>198</sup>.

DBS is actively developing and expanding robust systems through site reliability engineering (SRE). 199 In addition, DBS has enhanced its cybersecurity capabilities to address a broader attack surface and potential gaps in workflow processes.<sup>200</sup> The bank will continue to experiment with emerging technologies that have the potential to revolutionise banking and provide DBS with a competitive edge.<sup>201</sup>

### **Cybersecurity**

The cybersecurity threat landscape has become increasingly challenging, with malicious cybercriminals and threat actors taking advantage of the unstable macroenvironment. DBS has taken proactive measures and made substantial investments to reinforce preventive and detective cyber defence strategies and strengthen its incident response capabilities.<sup>202</sup> The bank's efforts include conducting security defences assessments and proactively strengthening cyber resilience.<sup>203</sup> Moreover, DBS has adopted a cybersecurity strategy known as 'Inside Is the New Outside' to counter the growing sophistication and volume of cyberattacks. <sup>204</sup> Cutting-edge security controls are also utilised to neutralise threats found in emails and internet content.<sup>205</sup>

Additionally, DBS has implemented robust access controls and advanced threat protection to safeguard its technological assets across multiple database levels.<sup>206</sup> The bank also maintains ongoing surveillance of its external attack surface and participates in bug bounty programmes to further augment its capabilities to identify and address new vulnerabilities.<sup>207</sup> Furthermore, DBS relies on machine learning and automation to effectively manage the increasing volume of security events and alerts.<sup>208</sup>

To strengthen its technology risk governance and oversight, DBS established a new sub-committee of the BRMC, called the BRMC Technology Risk Committee in FY2023. Cybersecurity is included in the scope of governance of the BRMC Technology Risk Committee. In addition, cybersecurity will receive enhanced independent oversight as the bank's Technology Risk Management team was transferred to the Risk Management Group, reporting to the Chief Risk Officer, thereby enhancing independent checks and balances.<sup>209,210</sup>

In terms of working with stakeholders, DBS collaborated with regulators and law enforcement agencies to combat cyber threats targeting customers and deliver a safer online banking experience.<sup>211</sup> The bank also prioritises comprehensive security awareness programs and specialised training to alert its staff to prevalent phishing scams.<sup>212</sup> In response to the Cyber security Code of Practice issued by the Cyber security Agency of Singapore, DBS has aligned its internal control measures and practices to ensure compliance to the guideline.<sup>213</sup>

In FY2023, DBS achieved ISO27001 certification for information security management systems and Singapore Cyber Trust Mark (CTM) certification at the Advocate level, underlining the bank's commitment to maintaining trust and resilience in the face of rising cybersecurity threats.<sup>214</sup>

## **Preventing financial crime**

The swift growth of digital assets has further amplified the potential risks for money laundering and sanction evasions. DBS sees opportunities in a robust governance framework, coupled with extensive data analytics and systems capabilities, to deter financial crime and safeguard its business, partners, and customers.<sup>215</sup>

Technology and data analytics are increasingly leveraged to drive improvements in risk management. DBS' dedication to conducting business professionally, ethically, and in compliance with laws is embodied in its group code of conduct. This commitment is supported by strong governance and oversight of financial crime matters, with emphasis on AML, combating the financing of terrorism, fraud, bribery, and corruption.<sup>216</sup>

To proactively address financial crime risks, DBS employs a multi-layered defence strategy that includes advanced analytics, artificial intelligence, and machine learning.<sup>217</sup> These defence strategies analyse customer behaviours, transaction patterns, and profile data for timely risk surveillance.<sup>218</sup> The bank also conducts regular testing and audits to ensure the proper execution of controls.<sup>219</sup> Furthermore, DBS actively engages in collaborative partnerships within the industry to address money laundering and terrorism financing risks, thereby contributing to the preservation of integrity in the financial system.<sup>220</sup>

# Riding on sustainability trends

In October 2021, DBS became the first financial institution in Singapore to sign on as a member of the Net-Zero Banking Alliance, joining leading global banks in committing to transition towards net zero greenhouse gas (GHG) emissions by 2050. 221,222

DBS subsequently established its own set of targets to tackle scope three financed emissions under the Paris Agreement. With a target of achieving decarbonisation by 2050, DBS has set 2030 to as the initial milestone to monitor its progress. The bank has narrowed its focus to seven key sectors: Power, Oil and Gas, Automotive, Steel, Aviation, Real Estate, and Shipping. Within each sector, DBS has identified primary activities contributing to GHG emissions and established KPIs tailored to each activity. For instance, DBS aims to reduce GHG emissions by 16% in the aviation sector by 2030 through initiatives such as financing more energy-efficient aircraft and supporting novel aviation technologies. Looking ahead, DBS has also identified Food and Agribusiness and Chemicals as sectors for potential future decarbonisation works.

#### **Board sustainability committee**

On 11 February 2022, DBS became the first Singaporean bank to establish a BSC to provide additional governance and oversight of material ESG matters and the sustainability agenda. 227 The committee's key responsibilities include overseeing DBS' strategies, goals, and targets related to its sustainability pillars and Sustainable Development Goals (SDGs), climate-related matters, sustainability disclosures, stakeholder engagement, and governance on sustainability matters.<sup>228</sup>

Several members have been appointed to sit on this committee, and all were said by the bank to have significant experience in sustainability matters.<sup>229</sup> Leading the BSC as chairman is Gupta. Other members include Chng, Judy Lee, Tham Sai Choy, and David Ho, with Ben Caldecott serving as a non-director member.<sup>230</sup> The addition of Ben Caldecott is intended to bring external guidance and experience to the committee, given his role on the adaptation committee of the United Kingdom Climate Change Committee and his previous roles as co-head of the Transition Plan Taskforce and COP26 Strategy Advisor for Finance for the UK Cabinet Office.<sup>231</sup>

DBS has also established a management-level Group Sustainability Council that oversees sustainability initiatives across the bank.<sup>232</sup> This council, chaired by Chief Sustainability Officer Helge Muenkel, includes senior members from other supporting functions within the company.<sup>233</sup>

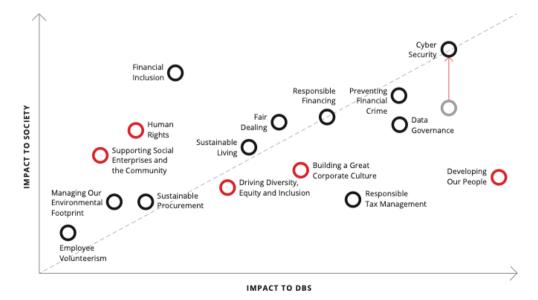
## Sustainability agenda

Under DBS' Sustainability Approach, the bank aims to tackle six of the United Nations SDGs through three main pillars namely Responsible Banking, Responsible Business Practices, and Impact Beyond Banking.<sup>234</sup> In DBS' annual sustainability reports, the bank has performance targets under each pillar to support sustainable outcomes aligned with the UN SGDs.<sup>235</sup>

DBS has also committed to achieving zero thermal coal exposure by 2039.<sup>236</sup> Since April 2021, DBS has ceased onboarding new customers that derive more than 25% of their revenue from thermal coal and intends to increase the threshold over time, with a new benchmark of 50% set for January 2026.<sup>237</sup> DBS has pledged to disclose its thermal coal exposure annually in its sustainability report.<sup>238</sup>

Figure 1 shows the environmental, social, and governance (ESG) matters that have been assessed by DBS to be most material to the bank and society. Cybersecurity, preventing financial crime and data governance were some of the factors which were ranked as most material.<sup>239</sup>

Figure 1: DBS' 2022 materiality matrix<sup>240</sup>



In FY2023, DBS updated its annual review of material ESG factors. Two material ESG factors were amended to provide a clearer description of their associated impacts, risks, and opportunities. "Responsible financing" was changed to "climate change", and "building a great corporate culture" was changed to "employee engagement and culture". A new topic addressing the overall resilience of technology at DBS was also created, which includes the cybersecurity topic from FY2022. Additionally, DBS has updated its presentation of material ESG factors by classifying them into two categories: ESG fundamentals and strategic ESG priorities.<sup>241</sup>

#### What's next for DBS?

On 2 November 2023, DBS announced that it has initiated an action plan to conduct a thorough review of its digital banking infrastructure outlined in its "Technology Resiliency Road Map". The action plan will be implemented in stages, with DBS expecting improvements affecting its system architecture design to take a longer time to complete. DBS stated that it will need up to two years from November 2023 to execute the system adjustments and develop a robust digital banking system.

In July 2024, the reputation of DBS took another hit when its HK unit was fined HK\$10 million by the Hong Kong Monetary Authority (HKMA) for violating AML and counter-terrorist financing regulations. This followed an investigation by HKMA into control failures of the HK unit between April 2012 and April 2019. The unit was said to have failed to continuously monitor business relationships and conduct enhanced due diligence in high risk situations. It also failed to keep records on some of its customers. <sup>245</sup>

The three-page Statement of Disciplinary Action issued by the HKMA detailed the breaches under several sections of the HK anti-money laundering and counter-terrorist financing law. <sup>246</sup> However, a DBS spokesman said the issues at hand were "sporadic and historical in nature" adding that "the bank has implemented new policies over the years to continue to detect and manage new money laundering practices." <sup>247</sup>

Given the various controversies and disruptions to its operations, can DBS truly be considered the best bank in the world?

# **Discussion questions**

- 1. What are the contributing factors to DBS' digital banking disruptions, and who should be held accountable? Critically evaluate the remedial actions taken by DBS and identify areas for potential improvement.
- 2. How would you assess the corporate culture of DBS? Give your reasons.
- 3. What are the roles of the board of directors and senior management in setting and monitoring corporate culture? Give examples of actions that the board and management can take to imbue a good corporate culture in an organisation. What are common indicators of good and bad culture that the board and management should be cognisant of?
- 4. Critically evaluate the board structure of DBS. Are there factors that may undermine the effectiveness of the board? Explain.
- Critically evaluate the current remuneration policy for DBS' directors and senior management. Discuss its compliance with the principles, provisions and practice guidance in the 2018 Singapore Code of Corporate Governance.
- 6. Consider the remuneration of the chairmen of the three Singaporean banks, who are all non-executive or independent directors. Do you think their remuneration is fair considering the size, complexity and nature of the business? Are there risks with high remuneration being paid to non-executive or independent chairmen and directors? How does the remuneration of the Singaporean bank chairmen compare with non-executive chairmen of banks in other countries, such as Australia, UK and Australia? Evaluate whether any substantial differentials are fair.

- 7. Critically evaluate DBS' risk management. Despite what appears to be a very comprehensive risk management framework, why do you think DBS has been dogged by a number of controversies and disruptions?
- 8. The Board Sustainability Committee of DBS is chaired by the CEO, Do you think this is a good sustainability governance structure for DBS to adopt? Are there potential risks? Explain.
- 9. Critically evaluate DBS' sustainability agenda, governance and practices. Are there improvements you would suggest? Explain.

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# **ECOWISE: THE UNWISE FIGHT**

#### **Case overview**

Once a leading environmental solutions provider in Singapore dedicated to contributing to environmental causes and addressing climate change, ecoWise Holdings Limited (ecoWise) was cast into the public spotlight as a dispute unfolded between its Chief Executive Officer (CEO) and Executive Chairman, Lee Thiam Seng (Lee), and Deputy CEO, Cao Shixuan (Cao). Lee had taken matters into his own hands, locking Cao and other company personnel out of the company's office and servers. The ongoing disagreements between Lee and Cao resulted in numerous queries, a Notice of Compliance from SGX Regulation, and lawsuits. Matters worsened as ecoWise faced going concern issues when three banks issued letters of demand to ecoWise's subsidiaries, seeking overdue payments amounting totalling nearly a million Singapore dollars.

The objective of this case is to facilitate a discussion of issues such as authority of a CEO; management disputes; duties and responsibilities of directors, including independent directors; dual roles of CEO and Chairman; board composition; board independence; and differences between the SGX Mainboard and the Catalist Board.

#### **About ecoWise**

Founded in 1979 and headquartered in Singapore, ecoWise Holdings Limited (ecoWise) focuses on three core business segments – Resource Recovery, Renewable Energy, and Integrated Environmental Solutions. ecoWise has acquired extensive engineering experience and expertise through the implementation and operational oversight of diverse waste-to-energy and resource up-cycling projects. This expertise enables ecoWise to tackle challenges across the entire waste management value chain, leading to the creation of sustainable and ecofriendly waste management practices for the community. The company also has projects and operations that extend across China, Malaysia, and Singapore.<sup>1</sup>

As of 26 September 2023, ecoWise's largest shareholder is ecoHub Pte. Ltd. (ecoHub), owning 23% of the company's shares. Lee Thiam Seng (Lee), the company's Chief Executive Officer (CEO) and Executive Chairman, is the sole shareholder of ecoHub. In addition, Lee also holds a direct interest of 3.74% in ecoWise.<sup>2</sup>

This case study was originally prepared by Ang Hao Wen, Ang Jo Li Jolie, Chan Wan Yi, Goh Li Ting, Wang Haomin and Wang Qian Ning. It has been edited by Michelle Koh Jing Wen and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussion and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organisations named in the case, or any of their directors or employees.

The second and third largest shareholders are Ma Ong Kee (Ma) and Tan Jin Beng Winston (Winston), holding 9.27% and 6.80% of ecoWise shares respectively.<sup>3</sup>

# I'm in charge

On 12 June 2021, Lee wrote to the board, the company's financial controller cum secretary, and the sponsor instructing them to refrain from releasing the company's half-year financial results (1HFY2021) until further instructions were provided by him. In his email, Lee emphasised that "he shall not hesitate to take all necessary actions against any person that fail to comply with his instruction". This directive was issued despite the engagement of the company's auditors to conduct agreed-upon procedures and review of the interim financial statements. Earlier, on 9 June 2021, Lee had instructed the company's legal advisors to seek an extension of time from the Singapore Exchange (SGX), which the other two directors then remaining on the board (the lead independent director and the deputy CEO), did not approve. In the early hours of 14 June 2021, with the approval of a majority of board members, the company secretary proceeded to release the 1HFY2021 results.

On 13 and 14 June 2021, Lee sent several email notices purportedly suspending the employment of seven senior management staff. This was done without board approval.<sup>6</sup>

#### Let me in!

On 14 June 2021, Lee engaged Stone Forest IT Pte Ltd (Stone Forest) to take over the company's information technology (IT) infrastructure and IT peripherals. This was done without the prior knowledge or approval of ecoWise's board and sponsor.<sup>7</sup> On 15 June 2021, Lee, accompanied by two individuals and a few Stone Forest employees, entered the Sungei Kadut (SK) office. The two individuals were identified by Cao Shixuan (Cao), the executive director and Deputy CEO of ecoWise, as a former employee of the company and a candidate under consideration for the company's Chief Operating Officer (COO). As access to the server room was only given to the IT assistant manager, and with Lee unable to contact the IT manager, a Stone Forest employee forcefully opened the company's server room which contained confidential data. Lee then padlocked and secured the server room door.<sup>8</sup>

When Cao and Lye Kar Choon (Lye), ecoWise's financial controller and secretary, arrived at the SK office, they discovered two Stone Forest employees apparently meddling with the company's IT servers. The Stone Forest employees also reportedly prevented staff entry to the server room and were observed entering another room utilised by the company's finance department. Cao questioned Lee for evidence on the authorisation for engaging Stone Forest. However, Lee did not provide it. Instead, Lee called the police and requested Cao and Lye to leave the premises, asserting that he had suspended both of them, along with five other employees of the company, effective from 14 June 2021. In response, Cao also filed a police report on 16 June 2021.

Lee also brought a locksmith to ecoWise's main office and changed the door locks to secure access to another of the company's IT servers. This resulted in only selected employees being given access to the company's IT servers, as the passwords had been changed by Stone Forest personnel.<sup>10</sup>

#### The board acts

Cao reported to the board that Lee's actions had negatively impacted the company's operations. He claimed that these actions hindered the company's ability to make payments to other parties such as government agencies and suppliers from 15 June 2021 to 20 June 2021, with the payments only processed on 21 June 2021. Cao further reported that these developments were likely to significantly affect the company's business, operations, and relationships with various organisations and business partners. Additionally, according to Cao, confidential information related to the company's human resources, finance, and clients might have been compromised due to Lee granting Stone Forest personnel access to the company's servers. This could result in security and data breaches, impacting the credibility of the company.<sup>11</sup>

On 18 June 2021, the board resolved, in a resolution without Cao's signature, to appoint Yeo Siak Ling (Yeo) as the COO immediately to oversee and manage the day-to-day operations of the company. Cao was placed on a leave of absence in respect of his executive duties.<sup>12</sup>

# A divided board

Following the release of the company's IHFY2021results, Singapore Exchange Regulation (SGX Regco) raised queries on 14 June 2021. The next day, Lee requested for the company secretary to file a request to SGX for a trading halt, giving the reason as "pending the release of an announcement". This was done without the board's approval. Due to dissent from Lee, the directors were unable to unanimously agree and finalise the responses to the queries for release by the expiry of the trading halt on 18 June 2021. Consequently, the company had to request for a voluntary trading suspension to comply with Rule 1303(3) of the Catalist rules. Moreover, recent developments in the company's operations necessitated more time for obtaining information and updating shareholders. He

On 25 June 2021, ecoWise's board responded to SGX RegCo's queries regarding the release of 1HFY2021 results. When queried about Lee's objections to releasing the 1HFY2021 results and failing to provide necessary confirmation as per Catalist Rule 705(5), Lee explained that it was due to insufficient information provided by the finance team, who reported to Cao. Lee had also requested additional information on transactions relating to the disposal proceeds of ecoWise's Malaysia subsidiary, Saiko Rubber (Malaysia) Sdn Bhd. Lee believed this information was crucial for the board's informed decision-making, potentially impacting the accuracy of the reported 1HFY2021 results. Therefore, Lee sought a delay in the financial results announcement. Additionally, when questioned about ecoWise proceeding to release the 1HFY2021 results without obtaining Lee's consent, Cao and Er Kwong Wah (Er), ecoWise's lead independent director (ID), expressed concerns about the deadline and said they were afraid the company would breach the Catalist Rules.<sup>15</sup>

Lee also expressed concerns about the company's management under the day-to-day supervision of Cao. According to Lee, these concerns were shared by the two former IDs, Hew Koon Chan (Hew) and Tan Wei Shyan (Tan).  $^{16}$ 

# **Regulator steps in**

Following ecoWise's response, SGX RegCo issued a Notice of Compliance (NOC) on 25 June 2021, requiring ecoWise to appoint two new IDs based on recommendations from independent, reputable professional associations or bodies to constitute its Audit Committee (AC). SGX RegCo also directed ecoWise to commission its auditor, RSM Chio Lim LLP (RSM), to conduct an audit of its 1HFY2021 results and initiate an internal audit on the adequacy and effectiveness of the company's internal controls. Furthermore, the new AC was required to remain on the board to oversee the completion of the 1HFY2021 audit and internal audit.<sup>17</sup>

On 29 June 2021, ecoWise responded that Lee and Cao will remain in their executive positions to ensure daily operations, protect the company's interest, and maintain stakeholders' confidence. It also stated that it would implement additional safeguards in respect of funds disbursement and comply with SGX RegCo's NOC requirements.<sup>18</sup>

#### **Prelude to lockout**

A month before Lee locked ecoWise's offices and server rooms, two of the company's IDs, Hew and Tan, resigned on 4 May 2021 and 9 May 2021 respectively.<sup>19</sup> Tan explained that the increasing demands of his legal practice, coupled with the additional time and attention required from the board members, led to his decision to resign to prioritise his professional and personal commitments.<sup>20</sup> Hew highlighted that one of the company's key challenges related to the two investments in China which were under legal proceedings. Lacking proficiency in the Chinese

language, Hew felt that he could not contribute effectively to this aspect. As such, he deemed it appropriate to resign, allowing the board to seek a more suitable candidate to assist with the company's investments in China.<sup>21</sup>

Following the resignations of Hew and Tan, the board was left with three directors, and the AC comprised only one director, which does not comply with Catalist Rule 704(7) which requires the AC to comprise at least three directors. <sup>22</sup> SGX RegCo queried ecoWise on 10 May 2021. In response, ecoWise reassured that its board matters and operations will not be affected by the two resignations and it is in the process of identifying and selecting candidates to reconstitute the board. The company also said that its sponsor was satisfied that there were no other reasons for the resignations other than what was announced. Additionally, the company provided an update on the legal proceedings of the two investments in China mentioned by Hew.<sup>23</sup>

# Shareholders join the fight

On 21 May 2021, ecoWise disclosed that three shareholders – Tan Swee Boon (Tan S.B.), Winston and Sunny Ong Keng Hua – issued a Requisition Notice to convene an extraordinary general meeting (EGM). The purpose of the EGM was to propose the removal of an existing board member and the appointment of three new directors. The board stated that they were seeking legal advice on the validity of the Requisition Notice with regards to the Companies Act Section 176's requirement of a minimum 10% shareholding to requisition a meeting. The company did not name the director to be removed or the three proposed new board members in the filing, and did not provide further details of the notice.

On 21 May 2021, ecoWise requested for a trading halt.<sup>25</sup> No reason was given and the trading halt was lifted on 23 May 2021.<sup>26</sup> On 28 May 2021, ecoWise shares climbed 35.9% from the previous day before a trading halt was requested again. By then, 54.8 million shares had changed hands that morning, which exceeded the monthly average trading volume of 50.6 million shares over the last three months.<sup>27</sup> The trading halt came about an hour after the SGX RegCo issued a query concerning ecoWise's heavy share volume. ecoWise confirmed that it was unaware of any other information that would have resulted in the sudden surge and suggested the previous request for EGM as the only possible explanation for the surge.<sup>28</sup> ecoWise later requested to lift the trading halt on 1 June 2021.<sup>29</sup>

On 1 June 2021, ecoWise announced that the requisition for EGM was valid, and the proposed resolutions were for the removal of director Cao and the appointment of three new directors, Damien Seah Yang Hwee (Seah), Yeo Lai Hock, Nichol (Nichol) and Tan Siok Sing Calvin (Calvin). The announcement stated that the EGM would be held no later than two months after 19 May 2021 as per the Companies Act Section 176.<sup>30</sup>

#### Post-lockout turmoil

On 2 July 2021, ecoWise announced that following the receipt of the NOC, it had decided not to convene an EGM for the removal of Cao and the appointment of the proposed three new directors. The company stated that it believed this decision was in the best interests of the company. ecoWise assured its shareholders that the board would comply with the directives outlined in the NOC and pointed out that stability within the company was critical for effectively addressing the directives. It said that no changes to the current board composition, other than the appointment of at least two new IDs as directed by SGX RegCo, were necessary.

The board also commented on the reasons provided by the requisitioning shareholders, including their concern about the company's poor performance. The board noted that this concern did not align with their proposal to only remove Cao instead of all the executive directors. Additionally, the proposed candidates in the requisition notice did not meet the requirements under the SGX RegCo directives, which stated that new directors appointed had to be recommended by independent, reputable professional associations or bodies. If the company were to appoint them, along with the two new IDs who fulfil the requirements of the directives, it would lead to a board size of at least seven members.<sup>31</sup>

#### Flurry of notices and letters

On 16 July 2021, ecoWise received a letter from Breakpoint LLC (Breakpoint), whose lawyers represented Tan S.B. and Winston. The letter included a draft notice of an EGM and requested its publication on the company website. In response, the company's legal advisors reiterated the reason behind ecoWise's decision to cancel the EGM. Breakpoint subsequently issued a letter with the same request on 21 July 2021, which ecoWise again refused to comply with. On 23 July 2021, Breakpoint informed ecoWise that the two shareholders planned to advertise the notice of EGM through newspaper advertisements. Thereafter, two notices of EGM were published in The Business Times on 29 July 2021 and 30 July 2021.<sup>32</sup>

In response, Er announced on the night of 6 August 2021, with Cao abstaining and Lee dissenting, that the board deemed both notices of EGM to be invalid as both notices of EGM did not comply with the company constitution and the COVID-19 (Temporary Measures) Act 2020. As a result, the company announced that resolutions purported to be passed, if any, at the proposed EGM on 13 August 2021 would be invalid.<sup>33</sup>

# **CEO** airs dirty laundry

On 29 July 2021, ecoWise announced the termination of its sponsorship agreement with its continuing sponsor ZICO due to commercial reasons.<sup>34</sup> Lee expressed his shock and objection to this in an article published in The Business Times on 4 August 2021. The article revealed Lee's dissent over the recent decisions of the company and his support for the previous shareholder requisition and the convening of the EGM.<sup>35</sup>

Er responded to this article on 6 August 2021, again with Cao abstaining and Lee dissenting, clarifying that out of the three proposed directors, Seah and Nichol were previously recommended by Lee to Er to be appointed as IDs of the company. Resolutions for these appointments were prepared by Lee, which were validly passed. However, the appointments were subject to further interviews by the remaining company directors and clearance by the sponsor, which had not yet been fulfilled at the time of announcement.<sup>36</sup>

On 8 August 2021, Er released another announcement, with Cao again abstaining and Lee in dissent, to furnish more information on the company's decision to not convene the EGM. He stated that none of the three directors proposed would satisfy the directives of the SGX RegCo in the NOC, which stated that new directors appointed had to be recommended by independent, reputable professional associations or bodies. Er further disclosed that the company had engaged a third-party service provider to conduct due diligence on the background and qualifications of the three proposed directors.<sup>37</sup>

The due diligence revealed that Seah was previously the non-executive director (NED) of China Powerplus Ltd (Powerplus) from September 2005 to September 2014. Powerplus was placed on the Singapore Exchange Securities Trading Limited (SGX-ST) watchlist on 5 March 2012 and delisted on 5 September 2014 for failing to meet the watchlist removal criteria. It was then struck off on 4 October 2016. Additionally, Seah was the NED of Zhongguo Jilong Limited (Jilong) from April 2004 to August 2005 and served as its Head of Internal Audit from November 2005 to February 2007. Jilong was served with a winding up petition on 26 February 2007 and placed under judicial management on 13 July 2007 due to defaulting on payments related to a US\$10,000,000 Facility Agreement. Jilong was delisted from SGX-ST on 13 October 2009 and struck off on 4 June 2019. Seah was also the Head of Internal Audit of Fabchem China Limited, which was issued with a NOC by the SGX RegCo on 3 June 2021.<sup>38</sup>

It was further revealed that Calvin's current position was as an ID of Libra Group Limited, a company listed on the Catalist which was suspended, and as the lead ID of China Shenshan Orchard Holdings Co. Ltd, which was placed on the SGX-ST watchlist on 4 December 2019. Calvin also previously served as an ID of four other companies that were delisted from the SGX Mainboard, including Qingmei Group Holding, Changtian Plastic & Chemical, Li Heng Chemical Fibre Technologies, and Centraland Limited.<sup>39</sup>

As for Nichol, he had a lack of experience as a director of a listed company.<sup>40</sup>

On 28 August 2021, the company updated that it had appointed Ernst & Young Advisory Pte. Ltd. (EY Singapore) as its internal auditor as required by the NOC. EY Singapore would be reporting to the new AC, SGX RegCo, and the company's continuing sponsor.<sup>41</sup>

# Into the courtroom

On 10 August 2021, the company was served with a writ of summons and an application for immediate interim injunctions filed by Cao's lawyers against Lee, Winston, and Tan S.B. In the writ of summons, Cao claimed that he was facing oppression and disregard of his interests as a director and member of the company, and that the holding of the EGM on 13 August 2021 would unfairly discriminate against him. The Singapore High Court granted the interim injunction on 12 August 2021, prohibiting the three defendants from convening the EGM on 13 August 2021. Later, on 23 February 2022, Cao filed a notice of discontinuance for the writ of summons and interim injunction. <sup>43</sup>

# The search begins

Following the receipt of the NOC issued by SGX Regco on 25 June 2021, ecoWise sought to cast the net wide to identify appropriate candidates to replace the two IDs who resigned in May 2021. However, the exposure of company problems in the media had caused significant reputational damage and deterred qualified candidates from joining the board. In accordance with the directive stated in the NOC, ecoWise sought external assistance by engaging the Singapore Institute of Directors (SID) to search for two new IDs.<sup>44</sup> The company requested and received a four-week extension until 3 September 2021 from SGX RegCo, citing the need for time to conduct due diligence, assess the suitability of shortlisted candidates, and time required for pre-clearance by SGX RegCo for nominated candidates.<sup>45</sup>

Eventually, on 4 September 2021, the company announced the appointment of two new IDs – Lo Kim Seng (Lo) and Tham Chee Soon (Tham).<sup>46</sup>

Lo was appointed as Chairman of the Remuneration Committee (RC) and member of both the AC and Nominating Committee (NC).<sup>47</sup> Lo also served on the boards of other Singapore-listed companies, such as ID of Fragrance Group, lead ID of No Signboard Holdings, and ID of CFM Holdings.<sup>48</sup> Er had also served on the board of CFM Holdings, where he was lead ID from July 2016 until his resignation in July 2021, to focus on his other directorships and comply with the SGX RegCo NOC issued to ecoWise.<sup>49</sup>

Tham was appointed as Chairman of the AC and a member of both the NC and RC. He was said to have prior experience as an Audit Partner in EY Singapore from 2004 to June 2018, with 31 years of experience in accounting. Like Lo, he served on other Singapore-listed companies including Fragrance Group, where Lo was a fellow ID.<sup>50</sup>

#### The wise leader?

Er, the former Permanent Secretary of Education in Singapore, had joined ecoWise in July 2017 as lead ID, Chairman of the NC, and member of both the AC and RC. Er had previously held directorship positions in over 10 listed companies, both local and overseas. As of the financial year 2020, Er held directorship in five listed and three non-listed companies, in addition to ecoWise.<sup>51</sup>

On 6 July 2021, Er resigned from the boards of two Catalist-listed companies – as the lead ID and AC Chairman of CFM Holdings, and lead INED of Chaswood Resources Holdings (Chaswood). Shares of Chaswood had been suspended from trading since June 2018 and the company was undergoing major corporate restructuring. With Er's resignation, both companies would not be in compliance with the Catalist Rules which requires a minimum of three AC members and a minimum of two IDs. Both companies cited Er's intention to focus on "other obligations and commitments by virtue of his directorship in other companies" as the reason for his

resignation, and noted that he would be "devoting a substantial amount of his working hours to comply with the Notice of Compliance of the troubled listed company".<sup>52</sup>

Several other companies where Er had served as ID were also in trouble. He was ID of Singapore-listed China Sky Chemical Fiber (China Sky), located in China, which was placed under judicial management pursuant to a court order. On 16 December 2011, the directors of China Sky, including Er, were reprimanded by SGX RegCo for disregarding a directive to engage a special auditor to investigate several material issues within the company, including interested party transactions, high cost of equipment maintenance, and the purchase of a piece of land. As a result, Er along with the other directors of China Sky were placed under the SGX RegCo director's watchlist. Er was subsequently removed from the watchlist on 24 July 2018.<sup>53</sup>

# Here we go again

On 22 October 2021, ecoWise received a notice from 14 of its shareholders calling for another EGM to remove its Deputy CEO, Cao, from all appointments within the company following a precious failed attempt due to a High Court injunction. The proposed resolutions also included the appointment of Danny Beng Teck, Gan Fong Jek, and Allan Tan Poh Chye as directors of the company. These 14 shareholders, including previous requisitionists Tan S.B., Winston, and Lee, collectively held 118 million shares, representing 12.5% of ecoWise's shares. The EGM was scheduled to be held within the next 28 days from the date of the notice.<sup>54</sup>

In response to the EGM notice, ecoWise highlighted the insufficient information and reasoning provided in the resolutions. This included the basis for calling the EGM, background checks of the proposed directors, and their specific roles following their appointment. ecoWise announced that it was seeking clarifications and would disclose its next steps accordingly.<sup>55</sup> On 12 November 2021, Cao applied for another injunction with the Singapore High Court against the convening of the EGM for his removal. With no outcome from the application as the proposed EGM date approached, ecoWise disclosed in a bourse filing that the company was uncertain of whether the EGM could take place.<sup>56</sup> Subsequently, the shareholders "voluntarily postponed" the EGM.<sup>57</sup>

On 15 March 2022, eight shareholders who collectively owned a 11.3% stake expressed their intentions to convene yet another EGM on 14 April 2022, for the removal of Cao and appointment of the three directors proposed in the notice of EGM on 22 October 2021. Two of these shareholders, Tan S.B. and Winston, were part of the previous group of shareholders who had previously requisitioned for an EGM to be held on 13 August 2021 and 22 October 2021. On 8 April 2022, it was announced that the company's NC and sponsor deemed the three proposed new directors independent and suitable. Therefore the EGM would proceed accordingly on 14 April 2022.

On 13 April 2022, Cao resigned as ED, citing the requisition for his removal and so that the company's operations will not be constantly disrupted by repeated EGMs.<sup>61</sup>

# Playing a "yo-yo" game between the boards

The Catalist board on SGX is the first sponsor-supervised listing platform in Asia, catering to both local and international companies.<sup>62</sup> Its objective is to act as a catalyst for the growth of young companies by providing them with access to financing, with the hope of a subsequent transfer to the Mainboard.<sup>63</sup> The listing process is accelerated due to less involvement of SGX in vetting listing applications.<sup>64</sup>

Companies that meet the Mainboard requirements can list or remain on Catalist. Mainboard companies can also apply to transfer to Catalist. As such, companies can opt to list, remain, or transfer to Catalist, which have more liberal rules. <sup>65</sup>

ecoWise was first listed on the Stock Exchange of Singapore Dealing and Automated Quotation (SESDAQ) in April 2003. On 9 May 2008, following the replacement of SESDAQ with Catalist, ecoWise transferred to the Mainboard.<sup>66</sup>

After seven years on the Mainboard, on 12 August 2015, ecoWise announced its intention to transfer its listing to Catalist.<sup>67</sup> Following a special resolution on 30 September 2015, with a unanimous vote in favour of the proposed transfer, ecoWise moved down to Catalist on 5 October 2015.<sup>68</sup>

## Why transfer?

By transferring to Catalist, ecoWise aimed to "ride out the volatility in the prices of rubber and its related products, as well as the instability of the global financial environment".<sup>69</sup> In addition, the company sought a platform with a flexible regulatory system to float its shares and carry out its restructuring projects efficiently. Ultimately, ecoWise hoped to reposition itself appropriately to better attract investors in the future.<sup>70</sup>

The proposed transfer was announced on 12 August 2015, approximately five months after the implementation of new watchlist criteria. On 1 August 2014, the Monetary Authority of Singapore (MAS) and SGX announced a series of measures aimed at fortifying the securities market structure and practices in Singapore. Among these measures was the introduction of a minimum trading price (MTP Requirement) of at least \$\$0.20 for Mainboard issuers. Mainboard companies failing to meet the MTP requirement would be placed on the watchlist. This new requirement took effect on 1 March 2016.<sup>71</sup>

On 7 September 2015, ecoWise disclosed that its average daily share price over the six months preceding 31 August 2015 had been approximately \$\$0.059, which fell below the MTP Requirement of at least \$\$0.20. Anticipating that its share price would not meet the MTP Requirement if it remained on the Mainboard, ecoWise transferred to Catalist just three months before SGX released a Regulator's Column outlining stricter conditions for transfers from the Mainboard to the Catalist Board.<sup>72,73</sup>

The MTP requirement was subsequently discontinued on 1 June 2020.74

# "Musical chair" sponsors

Stamford Corporate Services Pte. Ltd. (Stamford) was the continuing sponsor of ecoWise when it transferred its listing from the Mainboard to Catalist. However, about four years later, ecoWise announced the termination of Stamford as its continuing sponsor, citing cost as the primary reason. ZICO Capital (ZICO) was subsequently appointed as ecoWise's new continuing sponsor with effect from 11 September 2019.<sup>75</sup>

On 29 July 2021, ecoWise announced its decision to part ways with ZICO. The decision was made "after deliberations and for commercial reasons", with no explicit explanation disclosed. ZICO would officially cease to be the company's sponsor either by 29 August 2021 or when ecoWise has found a new sponsor, whichever was earlier. According to the Catalist Rule 109, a company is not allowed to trade in the absence of a sponsor. If this persist for three straight months, the company may be delisted under the Catalist Rule 745(5). However, these regulations did not apply to ecoWise as its trading had already been suspended since 18 June 2021. The new sponsor, W Capital Markets Pte. Ltd. (W Capital) was appointed after almost three months, on 22 November 2021.

On 6 January 2023, the company announced yet another change of continuing sponsor, this time to SAC Capital, again citing "commercial reasons".<sup>80</sup>

# "Wise" transactions in the past

There have been some transactions in the past which are connected to the recent saga and which may raise corporate governance concerns.

# **Connected acquisition**

On 21 December 2012, ecoWise New Energy Pte. Ltd. (ENE), a wholly-owned subsidiary of ecoWise, entered into a conditional Sale and Purchase Agreement through a vendor SDPC Pte Ltd (SDPC) for the proposed acquisition

of Hivern Investments Pte Ltd (Hivern). Hivern was incorporated on 9 September 1999 in Singapore, primarily as an investment holding company. Due to financial difficulties, it was placed under judicial management on 17 July 2009. One of Hivern's wholly-owned subsidiaries includes Changyi Enersave Biomass to Energy Co. Ltd (CEBEC). 81

According to the board, the consideration paid for the acquisition was "arrived at arm's length negotiations on a willing buyer willing seller basis". There was no disclosure that an independent valuer was appointed to value Hivern. The owner of SDPC was Winston, the brother-in-law of Lee. However, two years after ecoWise acquired Hivern, SDPC was struck off by the Accounting and Corporate Regulatory Authority of Singapore (ACRA), with its last filing of returns on 31 July 2015.

On 30 May 2013, ENE completed the acquisition of Hivern and CEBEC. The board believed that CEBEC had the potential to become a profitable power generation company, having obtained licences to operate and develop power plants from the relevant authorities in China, a market ecoWise was looking to expand into.<sup>86</sup>

Post-acquisition, however, the plants owned by CEBEC failed to meet required standards during trial production. Even before the acquisition, these power plants faced multiple issues, leading to operations being suspended. Despite plans to restart operations within a year post-acquisition, the facility continued to fall short of targets outlined in the contract with China Huadian Engineering Co., Ltd (Huadian), CEBEC's biomass plant provider.<sup>87</sup>

On 10 July 2015, CEBEC faced problems with its debt of RMB2,730,000 in China, resulting in a court order that prohibited the transfer, lease, and mortgage of its buildings. To assist CEBEC in repaying the debt, ecoWise issued 10 million new ordinary shares on 9 October 2015, at S\$0.07 per share, representing 1.05% of its total shares, raising S\$700,000. The court order against CEBEC was withdrawn after the issuance of shares.

On 30 August 2015, ecoWise announced that the SGX-ST had granted it a waiver from the requirement to seek shareholders' approval for the proposed disposal of Hivern. According to ecoWise's unaudited consolidated financial statements for the six months ended 30 April 2015, the net loss attributable to the assets from the disposal of Hivern was approximately 95.44% of ecoWise's total loss.<sup>91</sup> At that time, ecoWise was still listed on the Mainboard. As the threshold under Rule 1006(b) of the Mainboard Rule exceeded 20% in absolute terms, ecoWise would have needed shareholders' approval for the proposed disposal.<sup>92</sup>

In its application for the waiver, ecoWise stated that the proposed disposal would not impact its risk profile or the nature of its main business. Among several reasons provided, the board stated that the disposal would improve ecoWise's overall financial position as Hivern was a loss-making and non-operational entity. Subsequently, the board mentioned that an immediate announcement would follow upon successful negotiations with its third-party purchaser and the company's entry into definitive documentation for the proposed disposal.<sup>93</sup>

The proposed disposal of Hivern and CEBEC was highlighted as an Emphasis of Matter in the 2015 Independent Auditor's Report by RSM, ecoWise's external auditor.<sup>94</sup>

Despite the waiver granted for the proposed disposal, there were no follow-ups. On 6 January 2017, Hivern further increased its investment in CEBEC. ecoWise claimed that this additional investment was not expected to have any material impact on the earnings per share or net tangible assets per share of the company for the financial year ended 31 October 2016.<sup>95</sup>

# More problematic acquisitions and disposals

On 15 March 2017, ecoWise disposed 15% of equity interest in Chongqing Zhongtian Electronic Waste Management, resulting in a 2% increase in net loss attributable to shareholders after the disposal.<sup>96</sup>

ecoWise also acquired a 50% equity interest in Geocycle Singapore Pte. Ltd (Geocycle) on 23 May 2017. Geocycle was incurring losses at the time of acquisition which amounted to 22.8% of the group's profits. 97 According

to Mainboard Rule 1014, ecoWise would have been required to seek shareholders' approval as Geocycle's net loss exceeded 20% of ecoWise's net loss. However, after its transfer to Catalist, ecoWise was exempted from this requirement under the Catalist rules. Following the acquisition, ecoWise's earnings per share fell by 15%.

# ecoWise's profit struggles

From 2010 to 2013, ecoWise had an overall positive profit before tax. In 2014, ecoWise's net profit plunged, primarily due to a drastic increase in impairment loss from Plant, Property and Equipment, which increased by 59 times from 2013 to 2014. This was mainly due to the impairment of Hivern.<sup>99</sup>

ecoWise's profit recovered in 2015. However, its profit declined from 2016 to 2018 due to a prolonged arbitration process between ecoWise and Huadian. Had ecoWise remained on Mainboard, it would have been subjected to the watchlist criteria for three consecutive years of net loss before tax. 100

#### A wiser tomorrow?

On 1 March 2022, The Business Times reported that ecoWise was grappling with going concern issues as it was chased by several banks for overdue payments and was unable to pay a security deposit to National Environment Agency (NEA) to extend its existing property lease. Three banks, Affin Bank Berhad (Affin Bank), Malayan Banking Berhad (Maybank), and Al Rajhi Bank, had sent letters of demand and reminders to ecoWise's Malaysian subsidiaries, seeking overdue payments totalling around RM7,238,000. 102

The company disclosed that the NEA had granted several extensions of the payment deadline until 28 March 2022. However, given the company's poor liquidity position, it remained unable to make the payment. It was, however, in discussions to secure an insurance company to pay the security deposit to NEA in the form of an insurance performance bond. ecoWise urgently needed to explore alternative resources to avoid penalties from customers.<sup>103</sup>

In a filing with SGX on 16 March 2022, ecoWise revealed ongoing discussions with financial institutions to explore alternatives for better cash flow management and ensure the company's long-term sustainability. The board had also engaged external professional firms to assist in negotiating with banks and assessing the long-term prospects in various business areas.<sup>104</sup>

On 11 May 2022, ecoWise reported discrepancies between its audited and unaudited 1HFY2021 results. The audited financial statements showed a net profit of S\$160,000, significantly lower than the S\$1.7 million profit reported in the unaudited financial statements issued on 14 June 2021. This difference was attributed to potential legal claims, fines, taxes, and impairments recorded in the audited statements. In response, SGX Regco has directed EY, ecoWise's internal auditor, to expand the scope of the company's internal audit.<sup>105</sup>

### Issues resolved or escalating?

On 20 June 2022, Al Rajhi Bank issued a revised letter of offer to ecoWise's subsidiary, contingent upon meeting certain conditions. Similarly, on 28 June 2022, Maybank accepted ecoWise's request to withhold legal action against its subsidiaries, also subject to specified conditions. <sup>106</sup>

However, on 30 June 2022, ecoWise received another letter of demand from Alangsi (Chongqing) Technology Group Co, demanding the repayment of RMB3,560,000 plus interest. This outstanding payment stemmed from a longstanding debt owed by CEBEC since 2013, which was had been disputed previously.<sup>107</sup>

On 3 November 2022, Maybank accepted ecoWise's request to restructure all outstanding amounts owed by ecoWise's Malaysian subsidiaries through a restructured loan and repayment arrangement. Subsequently, on 10 November 2022, ecoWise's Malaysian subsidiaries accepted the terms and conditions outlined in the letter of offer, concluding the matter of demand.<sup>108</sup>

#### **New auditor**

On 14 August 2023, ecoWise applied through its sponsor to the SGX-ST for an extension of time to hold the company's AGM, issue its FY2023 annual report and FY2023 sustainability report, and announce its unaudited 1QFY2024 results. This was due to the ecoWise's previous auditor, RSM, not seeking reappointment and retiring at the company's AGM held on 30 May 2022. Although ecoWise subsequently managed to appoint Baker Tilly TFW LLP as its auditor, it stated that "the Group has undergone various changes to its Board, key management personnel, as well as resignations of members of its finance team and operational teams during FY2023. As a result, the current finance team requires more time to retrieve past accounting records to prepare the audit schedules in connection with the audit of opening balances as at 1 November 2021 as Baker Tilly does not have the access to the previous year's audit working papers." SGX approved ecoWise's extension application on 15 September 2023. 110

Looking ahead, will ecoWise be able to overcome its many business and corporate governance challenges?

# **Discussion questions**

- 1. Critically evaluate Lee's action regarding the lockout of Cao and other company personnel from the company's office and servers. As the CEO, does Lee have the authority to do what he did without the board's approval? What corporate governance issues are raised from his actions?
- 2. Do you think Lee's actions are justified given his concerns and the fragmented board? Is there something else he should have done? Explain.
- 3. What do you think are the possible causes of the dispute between Lee and Cao? How can such disputes be avoided? In such a situation, what should the board of directors do?
- 4. Discuss the responsibilities of independent directors. Assess the actions of the independent directors before the lockout events in 2021. Have they adequately discharged their responsibilities and acted in the best interests of the company, including the two independent directors who resigned? What actions do you think they should have taken? Explain.
- 5. Critically evaluate the process of selection of new independent directors. Do you believe the newly appointed independent directors at ecoWise should be deemed as truly independent? Assess the competencies of the current independent directors and whether they are fit and proper, including the lead independent director, Er.
- 6. What are the rights of shareholders with regards to requisitioning or calling of meetings? Do you think the ecoWise shareholders acted appropriately in attempting to remove and appoint directors? Was it reasonable for ecoWise to refuse to hold the EGM on 13 August 2021? Explain.
- 7. Discuss the purpose of the SGX Catalist Board and how it is regulated compared to the Mainboard. What are the advantages and disadvantages of listing on Catalist compared to the SGX Mainboard? Why do you think ecoWise transferred from the Mainboard to Catalist? Do you think SGX should have allowed the transfer? Explain.

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# HWA HONG: NOT A HAPPY FAMILY

#### **Case overview**

Hwa Hong Corporation Limited (Hwa Hong), one of Singapore's oldest family-run companies, made regular headlines due to ongoing disputes among family board members. Following the demise of the founder, Ong Chay Tong in 1993, his sons began fighting over his assets. The latest series of incidents began in 2022 when non-family board members were removed, jeopardising the company's corporate governance and regulatory compliance. This development led one branch of the Ong family, the father-son duo of Ong Choo Eng and Ong Eng Yaw, to initiate a takeover bid for Hwa Hong. The resulting conflicts among several family members ultimately led to the company's delisting from the Singapore Stock Exchange.

The objective of this case is to facilitate a discussion of issues such as family governance and corporate governance issues in family businesses; resignation and appointment of independent directors; the role of intermediaries such as independent financial advisors; board composition; and remuneration.

#### Wealth, wives, and woes

Incorporated in 1952 as a private limited company by Ong Chay Tong (OCT),¹ Hwa Hong Corporation Limited (Hwa Hong) was initially involved in the manufacturing and distribution of edible oils.² It was converted to a public corporation in 1969³ and listed on the Singapore Exchange (SGX) Mainboard in 1979.⁴ Today, Hwa Hong focuses on investing and developing commercial and residential properties located in prime locations of Singapore and UK.⁵

Starting as an impoverished immigrant, OCT achieved success through his entrepreneurial spirit and diligence. With two wives, six sons, and eight daughters, he also built a sizable family. Of his six sons, five were born to his first wife, while the youngest was born to his second wife. Following his passing, the family became splintered with continuous in-fighting.

This case study was originally prepared by Goh Kwan Lin, Cheryl, Henrik Koh, Song Chenyun, Tan Wen Jie Nigel. It has been edited by Michelle Tan and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussions and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees.

The sibling rivalry first came into the public spotlight after Hwa Hong's press release on 30 January 2003 revealed that OCT's fourth oldest son, Steven Ong Kay Eng (OKE) and his son Dr David Ong Eng Hui (OEH), had initiated legal proceedings in the Singapore High Court.<sup>10</sup> They alleged minority oppression against Ong Holdings, the controlling shareholder of Hwa Hong, which had a 40.32% stake at that time.<sup>11</sup> The father-and-son duo, who held a total of 14% of shares in Ong Holdings, were seeking either a buyout or winding-up order for Ong Holdings. 12 The defendants named in the suit included OKE's four brothers and two nephews 13 – Ong Choo Eng (OCE), managing director of Hwa Hong; OCE's son Ong Eng Yaw (OEY); Ong Mui Eng (OME), director of Hwa Hong; <sup>14</sup> OME's son Ong Eng Loke (OEL); Dr Ong Hian Eng, director of Hwa Hong; and Ong Kwee Eng, who held no board position in Hwa Hong. 15 Collectively, the six defendants held about 65% of shares in Ong Holdings, with the remaining shares held by OCT's second wife Chang Yueh Nu (CYN), and their youngest son Ong Hoo Eng (OHE).16

The defendants refuted the allegation of minority oppression and expressed their determination to maintain Ong Holdings' stake in Hwa Hong.<sup>17</sup> However, CYN and OHE were reluctant to continue working with other Ong family members and sought to be bought out of Ong Holdings. Consequently, the defendants proposed that Ong Holdings distribute its assets to CYN and OHE based on their respective shareholdings in Hwa Hong. 18 The legal proceedings were subsequently deferred to an undetermined date.<sup>19</sup>

The months-long dispute ended with an out-of-court settlement on 11 July 2003 before legal proceedings were completed.<sup>20</sup> Under the deed of settlement, OKE and OEH would no longer have any direct or indirect interest in Ong Holdings and its subsidiaries in terms of shares, and would receive approximately 15% of Ong Holdings' assets.<sup>21</sup> Meanwhile, CYN and OHE would receive around 23% of the assets.<sup>22</sup> Additionally, OKE, OEH, CYN, and OHE would also hold a total of 15% of Hwa Hong's shares.<sup>23</sup>

The settlement was met with some apprehension, due to worries of the majority shareholders of Hwa Hong losing control.<sup>24</sup> Under the proposed agreement, Ong Holdings which held 40.32% of shares in Hwa Hong would have its ownership reduced to 25%.25 At that time, Kwek Leng Beng (KLB), the Executive Chairman of Hong Leong Group Singapore, had gradually raised his interest in Hwa Hong from under 18% to 18.66% through a series of purchases<sup>26</sup> starting from December 2002.<sup>27</sup> Should OKE, OEH, OHE, and CYN transfer their new 15% stake in Hwa Hong to KLB, KLB's interests would rise to 33.66%.<sup>28</sup> This would enable KLB to overpower Ong Holdings and make a privatisation offer to gain control over Hwa Hong.<sup>29</sup> However, this did not come into fruition. The Ong family retained control of Hwa Hong despite the split.<sup>30</sup>

On 30 January 2003, the day of the press release, Hwa Hong's shares were trading at \$\$0.325 per share. However, there was little trading in its shares up to then.<sup>31</sup> However, investor enthusiasm subsequently grew and its share price and trading volume increased over the next few months.<sup>32</sup> The shares hit S\$0.495 in early May 2003,<sup>33</sup> higher than all of 2002,<sup>34</sup> and closed at a high of S\$0.615 per share on 11 July 2003 following the settlement of the legal dispute.35

# Ong mansions – a gift or a curse?

"This action is, on its face, a dispute over whether a caveat lodged in the Registry of Land Titles against a property under s115 of the Land Titles Act (Cap 157, 2004 Rev Ed) (LTA) should remain on the land register. The real cause of the dispute was disharmony between the children of the two wives of a patriarch."

— Justice Kan Ting Chiu, Former Judge of the Supreme Court of Singapore 36

OCT built an apartment block, subsequently known as the "Ong Mansions", at 17 Nallur Road to provide his sons with their own homes. <sup>37,38</sup> In 1976, OCT established Ong Chay Tong & Sons (Pte) Ltd (OCT & Sons) to hold this property, with shares issued to himself and his kin.<sup>39</sup> In 1979, the board passed a resolution to authorise the sale of six out of the eight units to each of OCT's sons at a marked down price of S\$100,000.<sup>40</sup> This transaction came with a transfer restriction that prohibited buyers from selling the units to third parties, except to OCT & Sons at the original purchase price.<sup>41</sup> When the resolution was passed, OHE was not a director on the board and he only became a director after OCT's death.<sup>42</sup> All six purchases were executed in 1982 when OCT was still alive.<sup>43</sup>

In 1998, after OCT's death, a second resolution was passed, modifying the transfer restriction to allow the transfer of units to "future generations of male lineal descendants bearing the surname 'Ong''.<sup>44</sup> Although OHE had become a director, he neither supported nor objected to the amendment.<sup>45</sup> Throughout OCT's lifetime, OHE and his mother experienced strained relations with the sons of OCT's first wife,<sup>46</sup> and this animosity worsened after OCT's passing.<sup>47</sup> Consequently, OHE sold his shares, including those belonging to his mother, and resigned from the board of OCT & Sons' in June 2006.<sup>48</sup>

Two months after OHE's resignation from the board, a third resolution was passed to repeal the second resolution.<sup>49</sup> Simultaneously, a caveat was also placed on OHE's flat to prevent the sale, transfer or otherwise dispose or part with possession of the land within,<sup>50</sup> which was opposed by OHE.<sup>51</sup> Unable to decide whether to keep the caveat,<sup>52</sup> the Registrar of Titles asked the parties to seek a court decision.<sup>53</sup> The High Court dismissed OCT & Sons' claim against OHE in October 2007,<sup>54</sup> and the company's appeal was likewise dismissed by the Court of Appeal in October 2008.<sup>55</sup>

# Good things come in pairs, bad things come in threes

Fast forward to Hwa Hong's 68<sup>th</sup> Annual General Meeting (AGM) on 23 April 2021, new signs of trouble became noticeable. Long-reigning director and managing director OCE retired from his position which he has held since 1989.<sup>56</sup> He had initially submitted himself for re-election in accordance with Singapore Exchange Securities Trading Limited (SGX-ST) Listing Rule 720(5),<sup>57</sup> but subsequently informed shareholders on 20 April 2021 that he would not be seeking re-election.<sup>58</sup> OCE's son, OEY, was appointed as an executive director (ED) and acting managing director in his stead.<sup>59</sup> That same day, OEL was appointed as an alternate director to his father OME.<sup>60</sup>

On 31 May 2021, OEH was appointed as a non-independent non-executive director (NINED),<sup>61</sup> and Ong Eng Keong (OEK) was appointed as an alternate director to his father Dr Ong Hian Eng.<sup>62</sup> Excluding the alternate directors, this brought the board composition to a total of eight directors, of which only three were independent. It was later announced on 22 April 2022 that Dr Ong Hian Eng resigned from his role as NINED,<sup>63</sup> thereby terminating OEK's appointment as his alternate director.<sup>64</sup>

Hong Leong Group, which was a majority shareholder at the time, sold a substantial portion of their shareholdings for S\$0.37 per share, reducing their ownership from 18.9% to 5.1% in September 2021.<sup>65</sup> The bulk of the shares were bought by two private equity funds which belonged to Sanjuro United Pte. Ltd (Sanjuro), the consortium OCE would later join and make a privatisation offer with.<sup>66</sup> At the date of the transaction, the market price for the share was S\$0.295 and it increased to S\$0.335 after the transaction.<sup>67</sup>

# Like father like son...or not?

Hwa Hong's subsequent AGM on 18 April 2022 saw further changes to the board – both for executive and non-executive directors (NED). Like his father a year prior, OEY resigned from his role as an ED and acting managing director. OEY was present at the AGM and only informed the board of his resignation just prior to the AGM.<sup>68</sup>

The conclusion of the AGM held on 18 April 2022 left several vacancies in the board committees. According to Rule 720(5) of SGX-ST Listing Rules, Tham Chee Soon (TCS), who was an independent director (ID) and Chairman of the Audit and Risk Committee (ARC), had to be re-appointed as a director.<sup>69</sup> At the same time, a two-tier vote was required for Huang Yuan Chiang (HYC), another ID and Chairman of the Remuneration Committee (RC), for him to maintain his independence designation having been on the board for more than

nine years. 70 The resolutions relating to the reappointment of both directors failed to pass, and TCS ceased being an ID.71 HYC remained on the board but in a NINED capacity. Meanwhile, another NINED, Guan Meng Kuan (GMK), who was a member of both the Nominating Committee (NC) and RC,72 did not stand for re-election and chose to resign from his position.<sup>73</sup> The board was left with just one ID out of the total of five directors.

The two alternate directors on the board replaced their fathers after the AGM. OEK was appointed as a NINED on 25 April 2022,74 while OEL was appointed as an ED and acting group managing director on 5 May 2022,75

# **Independent or inter-dependent?**

On 1 May 2022, Mak Lye Mun (MLM), an ID and Chairman of the board, resigned on 1 May 2022 due to his "disagreement with certain board members on the selection and appointment process of two new independent directors".76

The departure of all three members of the NC (MLM, GMK, and TCS)<sup>77</sup> including two IDs of whom one was also the Chairman, prompted SGX to seek clarification regarding the resignation announcement on 4 May 2022.78 SGX requested for an elaboration on the reasons for the resignation of the Chairman, and the procedures in place to appoint new directors. Hwa Hong responded the next day.<sup>79</sup>

Firstly, Hwa Hong disclosed that MLM resigned due to his disagreement with certain board members which included OEH, OME, and OEK.80 As both MLM and HYC were travelling for two weeks and unable to attend the board meeting either in-person or remotely, MLM had requested that the board meeting to appoint new directors be postponed. Additionally, he emphasised that more candidates should be considered, and more time should be allocated to the process of considering the appointment of directors. However, the remaining three Ong directors believed the board meeting should proceed, due to the urgency of appointing new directors to fulfil the Listing Rules requirement that at least one-third of the board needed to be IDs.<sup>81</sup> Additionally, they wanted to expedite the shortlisted candidates' appointment due to the tight schedule Hwa Hong had to inform the candidates on outcome of their appointment.82

Secondly, the company revealed that the search for eligible candidates was through the "contacts and network of the board and where necessary, external recruitment companies may be engaged".83 The NC would periodically review a ready pool of potential ID candidates, before recommending suitable candidates to the board. Following the conclusion of the 2022 AGM, MLM had been the sole director remaining on the NC.84 Without a NC, all directors had to fulfil the roles of the NC members. In reviewing and recommending suitable candidates, the makeshift board ultimately considered five potential candidates, of which two were shortlisted to be considered for appointment during a board meeting "to be held sometime this week".85 The quick appointment was attributed to the belief that the independent candidates were of high calibre and would bring gender diversity to the board.86

The next day, it was announced that OME would resign from the board effective 31 July 2022,87 hence revoking his son OEL's position as his alternate director.88 On the same day, OEL was appointed as a replacement ED and acting group managing director.89 These drastic changes ultimately triggered a Notice of Compliance from SGX on 6 May 2022, due to the insufficient independent directorships. 90

#### Not above the rules

On 6 May 2022, SGX issued a Notice of Compliance for Hwa Hong to take a more substantial action, using SGX's powers under Listing Rules 1405(1)(b) and (f).<sup>91</sup> The company was required to make an announcement by 9 May 2022, regarding any standing relationships between the potential candidates and the directors and/ or controlling shareholders of Hwa Hong.<sup>92</sup> Additionally, Hwa Hong would have to appoint an independent reviewer to examine the business' board nomination controls, practices, and procedures to find areas for improvement. They would also have to consult the reviewer before making any new board appointments or selecting potential candidates.<sup>93</sup>

The company made the required announcement promptly on the deadline.<sup>94</sup> The company also agreed to appoint an independent reviewer as required by SGX but did not specify when this would be done.<sup>95</sup> Figure 1 shows the backgrounds of the potential candidates considered as disclosed by Hwa Hong, with the identities of the candidates remaining anonymous.

Figure 1: Hwa Hong's potential candidates as directors<sup>96</sup>

Potential candidate	Introduced by	Connections or relationships with any director or controlling shareholder
1	Ong Eng Loke	The company secretary referred this candidate to Ong after the 2022 AGM. Ong does not have any prior connection with this candidate.
2	Ong Eng Loke	<ul> <li>Former classmate of Ong whom he had not been in contact with since 1984.</li> <li>Ong approached this candidate in April 2022 to explore their potential candidature as an independent director, given the candidate's background in audit and real estate.</li> </ul>
3	David Ong Eng Hui	<ul> <li>Referred by a cousin of Ong after the 2022 AGM.</li> <li>Ong did not know the candidate personally and has no prior connection with this candidate.</li> </ul>
4	David Ong Eng Hui	<ul> <li>Ong and this candidate were colleagues in 2012 to 2014, and they had a purely professional relationship. They had not been in contact since 2014 until 2021 when Ong approached this candidate to discuss a potential independent directorship.</li> <li>Ong introduced this candidate to the board at the end of 2021, but no action was taken.</li> </ul>
5	David Ong Eng Hui	<ul> <li>This candidate had been in the company's existing pool of candidates since 2019 when Ong introduced the candidate, based on the candidate's professional qualifications.</li> <li>The two met each other through a mutual friend in 2019.</li> <li>This candidate was considered for an independent directorship in 2020 but was deemed unsuitable due to a then-directorship at another real estate company.</li> <li>The candidate was approached after the 2022 AGM after leaving the board of the other company.</li> </ul>

Source: Hwa Hong Corporation Limited. (2022, May 9). Response to Notice of Compliance [Press release].

# **Another looming threat**

While addressing compliance issues raised by SGX, Hwa Hong soon encountered another predicament as they came under threat of a takeover by Sanjuro.<sup>97</sup> Sanjuro is a consortium consisting of several entities, including Ely Investments (Pte) Ltd. (EIPL), Roswell Assets Limited, Ergonomix Ltd., and Crystalic Star Global Limited.<sup>98</sup> Figure 2 shows the breakdown of Sanjuro's company structure.

Entity	Owners	Shareholding in Sanjuro	Shareholding in Hwa Hong if offer is successful
Ely Investments Pte Ltd. (EIPL)	Ong Choo Eng and Ong Eng Yaw (From Hwa Hong)	30%	31.80 – 44.51%
Ergonomix Ltd.	Dymon (Singapore based fund manager licensed by MAS)	29%	19.10 – 27.93%
Crystalic Star Global Ltd.	Zen Capital (Investment holding company incorporated in Singapore)	29%	19.10 – 27.93%
Roswell Assets Ltd.	Seow Voon Ping and Yee Chin Shiar	12%	12.35 – 17.28%

Figure 2: Company structure of Sanjuro United99

Source: Oversea-Chinese Banking Corporation Limited. (2022, May 12). Voluntary conditional cash offer [Press release].

EIPL is wholly-owned by OCE and his family, including his son OEY.<sup>100</sup> They were two former directors and managing directors of the Ong family, 101 who had previously stepped down from their directorships in Hwa Hong in April 2021<sup>102</sup> and 2022<sup>103</sup> respectively.

Sanjuro made a voluntary conditional cash offer of \$\$0.37 per share on 17 May 2022, in a bid to acquire and privatise Hwa Hong.<sup>104</sup> The offer price was 27.6% higher than the closing price of \$\$0.29 per share at the time of the offer announcement, 105 29.8% higher than its net asset value per share of \$\$0.285 as of 31 December 2021, 106 and higher than all prior closing prices of Hwa Hong's shares in the past nine years. 107 The offer would turn unconditional if Sanjuro acquired more than 50% of Hwa Hong's shares by the closing date, 108 and the company would be delisted if Sanjuro reached 90% of shareholding.<sup>109</sup> For this to happen, the remaining Ong directors and their immediate family members must accept the offer. As a result of the offer, the share price of Hwa Hong spiked up to \$\$0.37, matching the offer price. 110

There were several rationales given for the offer. Firstly, Sanjuro was of the opinion that the offer was lucrative as it provided a viable exit strategy for existing shareholders who wished to retreat from the uncertainty faced by Hwa Hong caused by several existing issues. 111

Secondly, the company was facing external risk factors mainly due to two major events, namely the COVID-19 pandemic and the Russia-Ukraine war.<sup>112</sup> The pandemic had caused severe disruptions in global supply chains as well as labour shortages, as several borders remained fully or partially closed, which disrupted the flow of materials and migrant workers. 113 Concurrently, the heightened geopolitical tensions stemming from the raging Ukraine-Russia war have led to spiking energy costs and production disruptions due to oil and gas sanctions imposed on Russia imports.114

Thirdly, Sanjuro cited corporate governance issues as key factors negatively affecting corporate management and strategy. These have cast severe doubts on the management and the board's ability to lead Hwa Hong amidst the turbulent environment.115 The issues specified were the lack of IDs, recent poor compliance, lack of independent review of the board's nomination process, and unstable management with the managing director's role changing three times from March 2021 to June 2022.<sup>116</sup> Changes in key management personnel within a short time frame were said to have destabilised the corporate structure and caused uncertainty in the direction of the leadership. It had also created significant challenges in the execution of the company's longterm strategy, as it remained unclear to what extent any business plans proposed by prior managing parties would continue being implemented. Recent events raised concerns regarding the corporate governance of the board and the company going forward, and the board's ability to navigate the company through the current volatile markets.<sup>117</sup>

Sanjuro planned to guide the company through the volatile environment by making Hwa Hong a wholly-owned subsidiary.<sup>118</sup> As such, in the event that they acquired less than 90% of outstanding shares, Sanjuro would exercise their right under Section 215(1) of the Companies Act to compulsorily acquire the shares of remaining Hwa Hong shareholders who did not accept the offer.<sup>119</sup> Sanjuro also did not plan to fulfil the Free Float Requirement under Listing Rule 723 of SGX, which stipulates that at least 10% of the total shares must always be held by the public.<sup>120</sup> Sanjuro also considered opting for a voluntarily delisting as per Rules 1307 and 1309 of the listing manual.<sup>121</sup> Privatisation would also allow Sanjuro to be more hands-on in decision making in the best interest of the company amidst a volatile economy.<sup>122</sup>

#### **Outsiders side-lined**

In response to Sanjuro's offer, the remaining non-independent directors of Hwa Hong from the Ong family (OEH, OEL, and OEK), appointed Evercore Asia (Evercore) as the exclusive financial advisor of Hwa Hong. <sup>123</sup> This was due to their intent at the time to reject Sanjuro's offer, as they felt that shareholder value could be "best achieved outside the timeline and constraints imposed by a general offer". <sup>124</sup>

It was later revealed in an announcement on 25 May 2022 that one of the NINEDs not from the family bloodline, HYC, was at odds with the "current Ong directors" regarding the appointing of Evercore Asia as an exclusive financial advisor.<sup>125</sup> He did not sign off on the media statement of 20 May 2022 made by the Ong directors and his personal views were expressed in the same announcement.<sup>126</sup>

Firstly, HYC claimed that he was unable to give an opinion on the ability of Evercore to amplify shareholder value as he had been uninvolved in the appointment of a financial advisor. He also claimed that he was unaware of the terms of the appointment including work scope and remuneration. He also could not provide clarity regarding the existence of past engagements between Evercore and the Ong directors which could have undermined Evercore's ability to maximise value for all shareholders of Hwa Hong rather than just the Ong directors. However, the Ong directors clarified that the board had already considered the appointment of a financial advisor before the announcement of the offer by Sanjuro. They subsequently held a meeting on 13 May 2022 to discuss the proposals put forth by several financial advisors including Evercore earlier in April 2022. They also clarified that contrary to HYC's claims, the Ong directors had discussed their decision to appoint Evercore on the phone with HYC after the meeting.

Secondly, HYC felt it was a "rare and unnecessary" <sup>132</sup> step to appoint an exclusive financial advisor, given that the Singapore Code on Take-overs and Mergers (Code) required companies to appoint an Independent Financial Adviser (IFA). <sup>133</sup> The appointed IFA must give an opinion on the fairness of Sanjuro's offer and advise directors that are considered independent from the offer on the recommendations they should put forth to shareholders. <sup>134</sup> Thus, he disagreed with the appointment of Evercore due to concerns over potential conflicts between Evercore and the future IFA. <sup>135</sup> However, the Ong directors argued in response that the company was not barred from soliciting other potential offers in the shareholders' interest. <sup>136</sup>

Finally, HYC criticised several lines in the media statement published on 20 May 2022 which he felt made assumptions about OEY's intentions and capability. He disagreed with a line in the announcement that Hwa Hong's current affairs and the earlier resignation of OEY from the position of managing director were related issues. He also thought the current Ong directors were insinuating that OEY was neither dedicated to protecting shareholders' interests nor optimistic about the intrinsic value of the company. On the latter issue, he also observed that the media statement was unclear to shareholders regarding the actual intrinsic value of the company. However, when asked to further substantiate his views, HYC was unable to do so. 139

## SIAS press statement

On 25 May 2022, the Securities Investors Association Singapore (SIAS) released a press statement expressing concerns regarding the recent events occurring in the board of Hwa Hong. They questioned if it was appropriate for the current board with no IDs to appoint the IFA. 140 SIAS recommended that the independent reviewer be appointed first, to review the newly appointed IDs. These IDs would subsequently review the opinions of the IFA and make the appropriate recommendations to shareholders. 141

On 26 May 2022, Hwa Hong responded. Firstly, the board felt that IDs and directors independent for the purpose of the offer were two separate matters. 142 They felt that all current board members were considered independent for the purpose of the offer and could thus make a recommendation to shareholders with regards to the offer. Secondly, Hwa Hong addressed the concerns over the appointment of an IFA prior to the independent reviewer.<sup>143</sup> Hwa Hong pointed out that there is no requirement both under the Code and SGX Listing Rules that only appointed IDs can decide on the appointment of the IFA. Additionally, Hwa Hong pointed out that under the Code, they must dispatch a circular containing the opinions of the IFA and the recommendations of directors within 14 days from the date which the formal offer document was circulated to shareholders. Given the tight deadline, Hwa Hong was of the opinion that it was not feasible to appoint the independent reviewer prior to the IFA.144 On the same day, Hwa Hong announced that Provenance Capital Pte. Ltd. (Provenance Capital) was appointed as their IFA.145

In response, SIAS released another press statement on 27 May 2022. SIAS stated they had a "good meeting" with Hwa Hong's board members who "came to see SIAS proactively to seek SIAS' independent guidance on the related issues and to brief SIAS on the next steps". 146 As a result, SIAS retracted their earlier assessment on the appointment of the IFA and no longer objected. 147

On 3 June 2022, KPMG Services (KPMG) was appointed as Hwa Hong's independent reviewer. 148 The board announced that KPMG had conducted its own internal checks to ensure that there is no conflict of interests that would prevent it from carrying out its duties. Additionally, Drew & Napier LLC was selected as KPMG's legal counsel.149

## High blood pressure

After Sanjuro crossed the 30% ownership threshold, a Mandatory General Offer (MGO) for all the shares of Hwa Hong was triggered on 8 June 2022.<sup>150</sup> Sanjuro subsequently revised their offer price to S\$0.40 on 14 June 2022, 151 to match the current share price of Hwa Hong which had risen to \$\$0.41 following the announcement of Evercore as Hwa Hong's financial adviser. 152 The share price would subsequently remain close to this price with slight fluctuations until the company's eventual delisting. 153

A circular was dispatched to shareholders in which Provenance Capital expressed their opinion that Sanjuro's revised offer was fair and reasonable.<sup>154</sup> The IFA also pointed out that while the revalued net asset value (RNAV) could be as high as \$\$0.505, fair value of the shares was around \$\$0.40 to \$\$0.42.155 However, the Ong directors believed this was still an undervaluation of the share price, and that Evercore would be able to source for more lucrative offers. 156 Hence, the directors of Hwa Hong announced on 4 July 2022 that they did not intend to accept Sanjuro's offer. 157 Up to this point, no alternative proposal or competing offer for Hwa Hong had been made. 158

Sanjuro's offer was initially set to close on 22 June 2022, which was later revised to 6 July 2022<sup>159</sup> and ultimately extended to 1 August 2022 as the consortium had failed to garner enough shares.<sup>160</sup> When the extension was announced on 22 June 2022, Hwa Hong's shares were still trading at a price of \$\$0.40 per share, equivalent to Sanjuro's revised offer price.161

On 7 July 2022, Hwa Hong's current directors were informed by the Securities Industry Council (SIC) that it required all potential competing offerors to be announced by 5.00 p.m. on 25 July 2022, or to confirm that they did not intend to make an offer. This was necessary to ensure shareholders had enough information, guidance, and time to make an informed judgment about any bids on the table. 163

On 19 July 2022, Hwa Hong declared that the current Ong directors believed the likelihood of Sanjuro's offer becoming unconditional as to acceptances was slim. This was due to the belief that Sanjuro's offer was unlikely to receive the necessary level of acceptances given the shareholding structure of the company, where the Ong directors still held a significant stake of the company's shares and were unwilling to part with them.<sup>164</sup>

The announcement also said the current Ong directors planned to "engage a leading accounting firm" <sup>165</sup> to undertake a comprehensive strategic review of the company if Sanjuro's offer was unsuccessful. <sup>166</sup> This indepth review would examine areas such as the company's past operational practices and governance processes, to find areas which needed improvement. Any such recommendations arising from the review would then be implemented and disclosed to potential bidders. It added that the Ong directors intended to commence and complete these reviews swiftly and efficiently to maximise shareholder value. <sup>167</sup>

## Out goes the old blood, here comes the young blood

Evercore had been brought in with the task of performing a strategic review of the offer and subsequently sourcing for more lucrative offers than the one put forth by Sanjuro, to ultimately maximise shareholder value. <sup>168</sup> If any offer from Sanjuro or a rival received unqualified acceptance, Evercore would be compensated for the review with a success fee based on the total amount of acceptance. <sup>169</sup> The goal of this fee structure was to level the playing field for all bidders and to maintain the shareholders' best interests by maximising the value of any possible offer accepted. <sup>170</sup> The total value of the consideration received by shareholders from the relevant offeror after the offer was closed would therefore determine the actual amount of financial advisory fees that the company would pay to Evercore. <sup>171</sup>

Ultimately, the Ong directors and their affiliated parties relented and accepted the revised offer from Sanjuro when none of the possible competing offerors submitted a bid. <sup>172</sup> Since Sanjuro exceeded the required percentage of ownership, the bid was thus unconditionally accepted on 27 July 2022. <sup>173</sup> Having reached more than 90% ownership of the shares by 1 August 2022, <sup>174</sup> Sanjuro subsequently delisted and privatised Hwa Hong on 26 September 2022. <sup>175</sup>

## Introducing the new clan

After acceptance of the takeover offer made by Sanjuro, OEL,<sup>176</sup> OEH<sup>177</sup> and OEK<sup>178</sup> resigned from their positions. To fulfil the company's constitutional requirement to have a minimum of three directors, OCE<sup>179</sup> and OEY were appointed to the board as EDs, with the latter appointed group managing director.<sup>180</sup> As of March 2024, the board of directors include OEY, OCE, HYC, Gerald Chiu Yoong Chian and Seow Voon Ping.<sup>181</sup>

#### Start of another battle

The fees paid to Evercore, as agreed by the Ong directors, were three percent of the consideration for an unconditional offer at a price per share equal or above \$\$0.40 but below \$\$0.50.\text{\$^{182}}\$ Thus, costs ranging from \$\$4.2 million to \$\$8.4 million would be due at an offer price of \$\$0.40 per share.\text{\$^{183}}\$ However, Sanjuro was unwilling to pay these fees following the takeover, citing that the letter of engagement with Evercore was "void, unenforceable or liable to be set aside".\text{\$^{184}}\$ This was due to their belief that the Ong directors had not acted in the best interest of shareholders and the company when they appointed Evercore. Thus, Hwa Hong and its new management filed for legal action against Evercore and the four former Ong directors on 1 February 2023, to call into question the \$\$8.7\$ million claims for success fee.\text{\$^{185}}\$

Evercore filed a lawsuit to wind Hwa Hong up on 6 February 2023.<sup>186</sup> Ultimately, the attempt was unsuccessful, and they were instead ordered to pay S\$25,000 in legal costs to Hwa Hong.<sup>187</sup> This ruling came from Justice Hoo Sheau Peng, who dismissed the application after a hearing on 20 March 2022, due to "triable issues with respect

to the S\$8.7 million claims for payment" 188 at the centre of the dispute. 189 Meanwhile, as of April 2023, Hwa Hong's suit to dismiss the claims for payment was still in progress.

## Family buffet - remuneration

Remuneration for directors and key management personnel of Hwa Hong has remained consistent over the years, From 2017 to 2021, Hwa Hong's managing director was paid between \$\$500,000 and \$\$750,000, whereas the top key management personnel were usually paid between \$\$250,000 to \$\$500,000.190,191 All other directors were paid below \$\$250,000. In 2021, directors' fees and remuneration for Hwa Hong amounted to \$\$1.9 million. The net profit for the year ended 31 December 2021 was \$\$5.8 million. 192

Meanwhile, remuneration for EDs and management consisted of a fixed and a variable component. The variable component comprised of an annual wage supplement and a performance bonus, which was based on both Hwa Hong's and the individual's performance measured using financial and non-financial indicators. 193 In 2019, the long-term cash incentive plan (LTCIP) was implemented for EDs and management, to further incentivise and retain them for the future. 194 Performance objectives for the participating individuals would be set by the RC, and the cash award was payable over three years, subject to the individuals satisfying certain conditions. 195 From 2017 to 2021, ED, OME's fixed salary, ranged from 76.8% to 83.0% of his total remuneration. OCE's fixed salary ranged from 73.9% to 76.4% of his total remuneration. His son, OEY, had a smaller fixed salary at 59.0% for 2021. Previously, Hwa Hong had a share option scheme which began in 2001 and was discontinued on 28 May 2021, with no options ever granted under this share option scheme. 200

Hwa Hong's remuneration disclosures have faced scrutiny twice in recent years. Based on its 2019 annual report, SGX noted that Hwa Hong did not fully comply with Provisions 8.1 and 8.2 of the Singapore Code of Corporate Governance 2018.<sup>201</sup> SGX requested for further clarification on how the disclosed information by Hwa Hong aligned with the intent of Principle 8. This same issue was flagged in its 2021 annual report.<sup>202</sup> In both instances, the explanation for the deviation from the Provisions revolved around the importance of maintaining confidentiality regarding remuneration details due to the highly competitive industry landscape. Additionally, Hwa Hong emphasised the significance of fostering a strong sense of teamwork within the organisation.<sup>203</sup>

## **New beginnings**

Post-privatisation meant new beginnings for both the Ong family and the company. With an ambition to transform the business, OEY said, "That was always the vision we had for the business - to drive capital efficiency and generate new income streams in the form of a fee income". Hwa Hong had been reinvesting abroad, especially in UK and Australia as the "returns on properties in the UK and Australia have been higher than what [they] can achieve here in Singapore". 205

Finally, years of family disputes appear to be over – at least at Hwa Hong.

#### **Discussion questions**

- What are key benefits and challenges faced by family-owned companies? Evaluate the key events that led to the eventual takeover offer of Hwa Hong by Sanjuro. Did the takeover help address the problems of Hwa Hong and if so, how?
- Critically evaluate the board composition of Hwa Hong and its changes as described in the case. How might the board composition and changes have affected board effectiveness?
- Should Mak Lye Mun have resigned from the company? Explain. What steps should an independent director take before resigning from the board?

- 4. With the lack of any independent directors or a fully functioning nominating committee, how could the board ensure that the independent directors appointed are truly independent?
- 5. Discuss the appropriateness of the level and composition of remuneration for Hwa Hong's directors. Were their explanations for the deviations from the Singapore Code of Corporate Governance regarding disclosure of remuneration justified? Explain.
- 6. Discuss the appointment of Provenance Capital as Independent Financial Advisor. Given the circumstances, was it appropriate for the current board to appoint them. Was there a need to appoint Evercore as well? Was the appointment of Evercore truly in the Hwa Hong's best interest? Explain.
- 7. What are the rules governing privatisations such as Hwa Hong in your market? How can the interests of minority shareholders be better protected in privatisations?
- 8. How can future generations of a family uphold the legacy of the founder and ensure that generational wealth and cohesion is maintained. In this case, what could have been done to keep the peace among the family members and to grow the business together?

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## LS 2: SQUEAKY CLEAN?

#### Case overview

On 15 February 2022, cleaning services firm LS 2 Holdings Limited (LS 2) launched its Initial Public Offering (IPO), offering 27.75 million placement shares and subsequently listing on the Catalist Board of the Singapore Exchange (SGX) on 24 February 2022. On the first day of trading, 166 out of 207 placees sold their entire allotment, with most of the selling occurring within the first half-hour of trading. LS 2's share price reached an intraday high of S\$1.60 before closing at S\$0.88, marking a 340% increase from its IPO price of S\$0.20. The unusual trading activity on the first day prompted the Singapore Exchange Regulation (SGX RegCo) to issue a 'Trade with Caution' alert that evening, advising investors and potential investors to exercise caution when dealing with the shares of LS 2.

The objective of this case study is to facilitate a discussion of issues such as corporate governance of family-controlled companies; potential share price manipulation; board composition; the SGX Mainboard versus Catalist Board; the role of sponsors in the Catalist regime; and the role of regulators.

#### **About LS 2**

Established in 1993, LS 2 Holdings (LS 2) is a homegrown integrated environmental services provider that specialises in cleaning services. With a workforce of approximately 2,000 workers and a track record spanning over 20 years, LS 2 offers a wide array of cleaning services including conservancy, facilities cleaning, housekeeping, road and beach cleaning, school cleaning, pandemic disinfection, facade cleaning, and F&B cleaning. LS 2 serves a diverse range of clients, such as town councils, educational institutions, shopping centres, dormitories, and industrial buildings. Furthermore, the company collaborates with a network of subcontractors who supplement its cleaning services, particularly in areas like external facade cleaning where specialised licences, equipment, and manpower are required.<sup>3</sup>

LS 2's revenue is largely project-based, with public sector projects forming the main revenue stream.<sup>4</sup> Some of LS 2's major customers include the Ministry of Education, Sport Singapore, Singapore Management University, and Changi Airport Group (Singapore) Pte Ltd, where services supplied mainly include either school or facilities cleaning services.<sup>5</sup>

This case study was originally prepared by Chua Kit Thian, Lee Jia Lin, Rachel, Lee Zi Qi, Alice, and Sim Xuan Hui. It has been edited by Otylia Ong and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussions and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees.

LS 2's workforce decreased from 1,996 employees in financial year (FY) 2021 to 1,503 employees in FY2022. Revenue from public sector customers remained stable at S\$44.0 million, while revenue from private sector customers climbed from \$\$9.9 million in FY2021 to \$\$15.9 million in FY2022. LS 2's adjusted EBITDA, excluding IPO listing expenses, saw a slight rise from S\$4.1 million in FY2021 to S\$4.2 million in FY2022.6

## A very private IPO

LS 2 launched its Initial Public Offering (IPO) on 15 February 2022. LS 2 was looking to sell 27.75 million shares at an IPO price of \$\$0.20 per share. This would allow the company to raise gross proceeds of \$\$5.55 million and net proceeds of \$\$4.41 million after deducting placement-related expenses. Of the \$\$4.41 million, \$\$3 million would be used to fund the company's business expansion plans, which include improving its competitive position in Singapore, increasing the scope of its service offerings, engaging in strategic acquisitions and joint ventures, and investing in equipment and technology. The remaining S\$1.41 million would be allocated to working capital.8

RHT Capital Pte. Ltd. (RHTC) acted as the issue manager and full sponsor for the IPO, while SooChow CSSD Capital Markets (Asia) Pte. Ltd. (SCCM) served as the placement agent. The IPO included only a placement tranche, meaning the shares were not offered to the public.9

Before the placement, the only shareholders of LS 2 were Executive Chairman (EC) Roger Tan (Tan) and Chief Executive Officer (CEO) Alvin Ong (Ong), who held 76.5% and 23.5% of the company's total issued share capital respectively. The placement of 27.75 million shares would make up 15% of LS 2's post-placement share capital of 185 million shares. After the issuance of the placement shares, Tan would remain as the controlling shareholder, holding 65% of the post-placement share capital, while Ong would hold 20% of the shares. 10 The placement would also result in the group having a theoretical market capitalisation of S\$37 million.<sup>11</sup>

By the closing of the Application List at 12.00 pm on 21 February 2022, all 27.75 million placement shares were fully subscribed. Among the 207 places who were allotted the placement shares, 169 received between 1,000 and 10,000 shares, while 30 received between 50,000 and one million shares. The remaining eight placees were allotted over a million placement shares each.<sup>12</sup>

According to the announcement on the application results, the eight placees who received over a million placement shares included six individuals and two companies. The two companies were Best Cosmos Holdings Limited and Star Spring Holdings Limited.<sup>13</sup> Gransing Securities Co., Ltd, which provides stockbroking services in Hong Kong, 14 also held shares on behalf of two individual placees who were allotted 1,400,000 and 2,495,000 shares respectively.15

RHTC, along with SCCM, disclosed that to the best of their knowledge, no persons or institutions specified under Catalist Rules 424 and 428 were allotted the placement shares. 16 Catalist Rule 424 states that the sponsor, underwriter, lead broker, distributor, or any of their connected clients or their discretionary managed portfolios must not be allotted more than 25% of the securities made available for placement by each of them respectively.<sup>17</sup> Meanwhile, Rule 428 requires the acquisition of the securities by certain persons such as the applicant's directors and substantial shareholders to be announced before the securities are listed. 18

#### SCCM's controversial warrant issuance

SCCM, the placement agent for LS 2's IPO, is a full-service investment bank specialising in emerging growth companies across Asia. It is a subsidiary of SooChow Securities Co., Ltd., a state-owned financial services group based in China and listed on the Shanghai Stock Exchange. 19 In its role as the placement agent, SCCM connected LS 2 with qualified investors interested in purchasing LS 2's securities. This allows LS 2 to quickly gain access to potential investors whom SCCM enjoys a pre-existing relationship with, enabling LS 2 to raise capital more quickly and efficiently.20

SCCM was previously involved in a controversial proposed warrant issuance by property developer Hong Lai Huat Group Limited (HLH) in 2021. On 26 November 2021, HLH announced that it had entered into an agreement with SCCM for a proposed issuance of 80 million non-listed and transferable warrants to SCCM for a consideration of S\$800. These warrants would be exercisable within two years from the date of issue, and their exercise prices ranged between S\$0.30 and S\$0.45, representing a premium of approximately 216% to 374% with respect to the volume weighted average price of HLH's shares on that day, which stood at S\$0.095.<sup>21</sup>

At that time, SCCM was also acting as HLH's corporate finance advisor and was providing general corporate finance advisory services to help the company engage with institutional investors.<sup>22</sup>

The rationale provided by HLH for the warrant issuance was that the exercise prices of the warrants were at significant premia to the current market trading price of HLH's shares, which would be beneficial to the company. The funds from the exercise of these warrants would also bolster the company's cash balance to fund HLH's developments and activities in Cambodia.<sup>23</sup>

However, the application for the proposed issuance was rejected by Singapore Exchange Securities Trading Limited (SGX-ST) on 10 February 2022 due to a lack of commercial rationale for the company to use the proposed issuance for fundraising, considering the exercise prices' high premia over HLH's current share price, HLH's historical share price, as well as the consideration of \$\$800 for the proposed issuance.<sup>24</sup>

#### A new record

"Today's trading debut marks a new chapter in LS 2 Holdings' growth journey, which we hope will enhance our corporate image and profile in the industry, open up more business opportunities and projects and also allow us to tap the capital markets in the future to extend our growth runway."

Alvin Ong, CEO of LS 2 Holdings<sup>25</sup>

On 24 February 2022, LS 2 made its trading debut at 9.00 am on the SGX Catalist Board at an opening price of \$\$0.295, 47.5% above its IPO price. By 10.35 am, LS 2's shares had surged to \$\$0.85, 280% above its opening price, with a trading volume reaching 570,100 shares. By the end of the morning session, LS 2's share price had reached \$\$0.87.\text{\$^{26}\$} When trading resumed during the second half of the session, the stock climbed to an intraday peak of \$\$1.60 at 1.58 pm, 700% above its IPO price. However, the stock later dipped to \$\$1.20 before rebounding to \$\$1.50 at 2.30 pm. Subsequently, the counter slid to \$\$0.90 at 3.30 pm before closing at \$\$0.88, 340% higher than its IPO price of \$\$0.20, with a total of 700,000 shares traded.\text{\$^{27}\$} In contrast, the Straits Times Index (STI) fell by 3.45% on the same day.\text{\$^{28}\$}

At 8.49 pm, LS 2 released a press statement on its trading debut. Ong said: "We are very encouraged by the positive response from the market and also grateful to the investors who subscribed for our placement shares under the IPO. We believe that their support underscores their confidence in the strength of our Group's business model, our strong track record and established reputation in the market, as well as our plans to expand in the industry."<sup>29</sup>

Shortly after, at 9.26 pm, the Singapore Exchange Regulation (SGX RegCo) issued a 'Trade with Caution' (TWC) alert on LS 2's shares,<sup>30</sup> prompted by the series of unusual trading activities on LS 2's trading debut. The TWC alert said the SGX Regco "urges investors and potential investors to exercise caution when dealing in the shares of LS 2 Holdings Limited."<sup>31</sup> This was the first time a TWC alert had been issued on the first day of trading for an SGX-listed issuer. SGX RegCo issued a total of three TWC alerts between 1 July 2021 and 30 June 2022, with LS 2 being one of the three companies that received an alert.<sup>32</sup>

According to Catalist Rule 406, at least 15% of post-invitation share capital must be in public hands at the time of listing, and the number of public shareholders must be at least 200. Additionally, the overall distribution of shareholdings should be expected to provide an orderly secondary market in the security when trading commences.<sup>33</sup> However, SGX RegCo noted that out of the 207 placees of LS 2's IPO shares, 166 sold their entire allotment, significantly reducing the distribution of shareholdings. Furthermore, a majority of them were linked to the same trading representative, and much of the selling took place within the first 30 minutes of trading.<sup>34</sup>

SGX RegCo said that it would continue to monitor the trades in the company's shares and would "take the necessary actions including looking into the placement, reviewing the activity and referring the matter to statutory authorities where warranted".35

#### 'Trade with Caution'

TWC alerts are issued on a case-by-case basis and may contain details gathered from SGX's review of trading activities.<sup>36</sup> They are meant to provide early warnings to investors on securities with the potential for disorderly trading and to remind them that the trading activities were not the result of publicly known factors. This measure aims to provide market transparency, allowing the market to self-correct where there is "excessive trading that is not backed by business fundamentals".37

When trading activity in a company's securities is deemed unusual, meaning it cannot be explained by any publicly known factor, SGX will issue a public query to the company. This requires the company to publicly clarify if it is undertaking any activity that would warrant such a price change and address any market rumours affecting its stock price.<sup>38</sup> Prior to December 2015, TWC alerts would be automatically issued as long as the company stated that it was unaware of the reasons for the unusual trading activities.<sup>39</sup>

According to Tan Boon Gin, the Chief Regulatory Officer of SGX, "SGX's public query to a company on unusual share trading already serves as a red flag to investors. To make clearer our concerns about certain unusual activities, we will issue, when necessary, the TWC announcements as a second-level heightened alert."40

#### LS 2 reaffirms

On 25 February 2022, LS 2 responded to the TWC alert issued the previous day. The company informed shareholders that it had addressed the queries from its sponsor, RHTC, regarding the unusual trading activity that took place since its listing and throughout its first day of trading. LS 2 stated that its board was unaware of any undisclosed material information that, if known, could explain the price and volume movements in the company's shares since its listing. 41 Additionally, the company said it was unaware of any possible explanation for the unusual trading activity, and confirmed its compliance with Rule 703 of the Catalist Rules which requires an issuer to announce any non-confidential information or any of its subsidiaries or associated companies that is necessary to avoid the establishment of a false market in its securities or is likely to materially affect the price of its securities. 42,43

The board also emphasised that the company, its directors, and key officers were all aware of the requirements under Rule 1204(19)(c) of the Catalist Rules. This rule prohibits officers, including EC Tan and CEO Ong, from trading in LS 2's shares a month before the company announces its full-year financial results. LS 2 also highlighted that Tan and Ong had provided moratorium undertakings with respect to their shares held in the company.<sup>44</sup>

As set out in LS 2's offer document, Tan had given an undertaking not to transfer or dispose of his shares for six months commencing from the company's listing date, and to comply with these restrictions with respect to 50% of his shares for the next six months. Meanwhile, Ong had provided a moratorium undertaking to sell no more than a total of 3,529,410 shares for twelve months commencing from the listing date. This is more stringent than the requirement set out in Rule 422(1) of the Catalist Rules applicable to promoters, which would have allowed Ong to sell a total of 18.5 million shares in the same period.<sup>45</sup> The board also confirmed that none of its

directors have breached Sections 197 and 198 of the Securities and Futures Act, which covers false trading and market rigging transactions, as well as market manipulation.<sup>46</sup>

Rule 723 of the Catalist Rules requires an issuer to ensure that at least 10% of its total listed securities are held by the public at all times. Regarding the reduced distribution of shareholders noted by SGX RegCo in the TWC alert, LS 2 stated that its total number of issued shares, excluding treasury shares, held in public hands had not fallen below 10%, given the volume of trades conducted since its listing and based on the information available to the company. Furthermore, nothing had come to its sponsor's attention indicating that the company was not in compliance with Rule 723 of the Catalist Rules. Both LS 2 and RHTC would monitor the overall distribution of LS 2's shareholdings to ensure that its shares were traded in an orderly manner and would update the relevant authorities if required. In addition, the company highlighted that it had requested the list of its shareholders from the Central Depository of Singapore and its share registrar to be provided daily. Once available, LS 2 would provide the information to its sponsor and SGX RegCo if needed.

The company also stated that it would continue to monitor its shares' trading price and volume. The board would consult the company's legal advisers and sponsor on the implications of such trading activity in its shares, where necessary, and may request a trading halt in the event of any unusual trading activity to prevent a disorderly market.<sup>50</sup>

However, LS 2's response did not directly address its compliance with Rule 406, which SGX mentioned in the TWC alert. On 25 February 2022, LS 2 shares closed at S\$0.89, S\$0.01 above its closing price on its trading debut.<sup>51</sup>

#### Addressing shareholders' concern

Before LS 2's Annual General Meeting (AGM) held on 27 May 2022, certain shareholders raised questions regarding the TWC alert and compliance with Catalist Rule 723.<sup>52</sup>

In response to a query about whether the board had conducted an "after-action review" of its IPO, including the roles played by the issue manager and the placement agent, LS 2 stated that the board had reviewed the track record and experience of its sponsor and issue manager and was satisfied with their roles. The board had also discussed the placement agent's track record, experience, and licensing status with its sponsor, who had exercised due diligence in appointing the placement agent.<sup>53</sup> The company emphasised that since its debut on the SGX, its board and management have been continuously communicating with its sponsor as well as SGX RegCo, and "[nothing] has come to the Group's attention that there were any matters for the Group to rectify or requiring further action in relation to the Group's debut". It also asserted that, to the best of its knowledge, it had not breached any Catalist Rules.<sup>54</sup>

As of 5 May 2022, LS 2 reported that it had obtained a list of beneficial owners from online brokerage Tiger Brokers (Singapore), which held 26,895,100 shares, or 14.54% of the company's total issued shares and provides securities depository services to its clients. Based on the information provided, besides the EC and CEO, no shareholder held five percent or more of the company's total issued ordinary shares. Given that the public held more than 15% of the company's shares, LS 2 believed it complied with Catalist Rule 723. Furthermore, it noted that based on the list of beneficial owners, there were more than 20 individual ultimate beneficial owners of its shares as of 5 May 2022.<sup>55</sup>

## Scrubbing through the market

Following the TWC alert raised by SGX RegCo pertaining to the unusual trading activity on LS 2's first trading day, there were three other instances where SGX RegCo issued public queries to the company about the unusual trading of its shares.<sup>56</sup>

#### Initial plunge

On 8 September 2022, LS 2's shares fell by 14,29%, reaching a price of \$\$0.066. This decline prompted SGX RegCo to query the company regarding the "unusual price movements" of its shares.<sup>57</sup> SGX RegCo asked if LS 2 was aware of any undisclosed material information or any other possible explanation for the trading activity. It also requested the company to confirm its compliance with the listing rules, particularly Catalist Rule 703.58

LS 2 provided its response on the same day, stating that it was not aware of any previously undisclosed information concerning the company, its subsidiaries or associates which might have sparked such trading activity. It also confirmed its compliance with the Catalist Rule 703, which pertains to the disclosure of material information.59

#### **Unexpected surge**

On 18 October 2022, SGX RegCo issued another query to LS 2 after observing "unusual price and volume movements"60 in LS 2's shares, which had surged over 100%, from a previous closing price of S\$0.034 to a price of S\$0.08. That day, 36.84 million shares of LS 2 were traded, compared to a total volume of 11.43 million shares over the previous week.61

Similarly, LS 2 responded on the same day, largely echoing its previous response. However, it noted that news of the proposed privatisation offer of Colex Holdings Limited, which specialises in contract cleaning and waste management, by Bonvests Holdings Limited on 17 October 2022, could have possibly resulted in the share movements observed.62

#### **Continued volatility**

On 3 November 2022, LS 2 received yet another query from SGX RegCo regarding "unusual price movements" in its shares.<sup>63</sup> That day, its shares opened at S\$0.087, and reached a high of S\$0.124, before closing at S\$0.117, with a trading volume of 13.69 million shares, compared to the average volume of 4.6 million shares in the preceding week.<sup>64</sup> SGX further noted that this was the third query issued to the company in the past two months.<sup>65</sup>

Once again, LS 2 responded that it was unaware of any information or explanation that might have resulted in the unusual movement, and further affirmed its compliance with Rule 703 of the listing rules.66

#### A clean board?

As of 31 December 2023, LS 2's board of directors consists of five directors, including two executive directors (EDs) and three independent directors (IDs). The board has established three committees: the Audit Committee (AC), Nominating Committee (NC) and Remuneration Committee (RC).67

Tan, aged 61, is the EC and ED of LS 2 and was appointed to the board on 18 June 2020. Tan joined the company in May 2000 following his acquisition of LS 2 and has over 30 years of experience in the environmental services industry. He is primarily responsible for steering LS 2's overall strategic direction and expansion plans. Before acquiring LS 2, he was the sole proprietor of Weicom Services, a service maintenance business, from May 1991 to April 2000. He serves as the Chairman of Bukit Batok East Citizens' Consultative Committee's (CCC) Community Development and Welfare Fund and Treasurer of the Bukit Batok East CCC. Tan completed the executive management programme at the Singapore University of Social Sciences. 68,69

Ong, aged 46, is the CEO and ED. He was appointed to the board on 28 September 2021. Ong has over 18 years of experience in the environmental services industry. Prior to joining LS 2, he was the managing director of Integrated Training Consultants Pte. Ltd., a training and consultancy services firm, and the general manager of CSP Maintenance Pte. Ltd., a cleaning and maintenance services firm. Ong has been the Vice-Chairman of Nee

Soon South CCC since April 2016 and the Chairman of the Nee Soon South CCC's Community Development and Welfare Fund since April 2020. Ong holds a Bachelor of Commerce in Marketing, Information Systems and Electronic Commerce from the University of Western, Australia.<sup>70,71</sup>

Tan Siang Leng (TSL), aged 47, is the lead ID and was appointed to the board on 2 December 2021. He chairs the AC and sits on the NC and RC. TSL has extensive experience in the finance industry and has been the senior finance officer at the Asian Development Bank since February 2020. Previously, he held positions such as the Head of the Finance Department and Deputy Director at APM Property Management Pte Ltd. TSL graduated with a Bachelor of Accountancy from Singapore Management University. He is also a qualified accountant with the Institute of Singapore Chartered Accountants, and an accredited tax practitioner with Singapore Chartered Tax Professionals.<sup>72,73</sup>

Ng Hong Whee (Ng), aged 56, is an ID and was appointed to the board on 2 December 2021. He is the Chairman of the RC and serves as a member on the AC and NC. Previously, Ng was the CEO and EC of Sincap Group Limited, a Catalist-listed company and the business development and financial director of Southern Angels Pte. Ltd. He also had experience working as an audit supervisor and audit manager at Tan Kian Tin & Co. Currently, he serves as an ID of Spackman Entertainment Group.<sup>74,75</sup>

Chua Ser Miang (Chua), 55, is an ID and was appointed to the board on 2 December 2021. He is the Chairman of the NC and serves a member on the AC and RC. Chua has over 20 years of experience in corporate finance where he was primarily involved in advising local and foreign corporates on financial and equity capital market transactions. He has been a director of corporate finance advisory firm Crowe Horwath Capital Pte Ltd since November 2020. Chua also serves as an ID on the boards of Aoxin Q&M Dental Group Limited and VCPlus Limited. Chua holds a Master's degree in Global Finance & Banking from King's College London, and graduated with a Bachelor degree in Business Administration (Honours) from the National University of Singapore. He is also a CFA charterholder.<sup>76,77</sup>

## **Qualified management?**

As of 31 December 2023, LS 2 has five key executive officers, excluding Ong. Among them are Tan Wei Ying (TWY) and Tan Wei Li (TWL), who are daughters of Tan.<sup>78</sup>

Ong Han Poh (OHP), aged 48, is the Group Financial Controller (GFC) of LS 2. He joined LS 2 in August 2021 and is responsible for the overall financial accounting, reporting, and corporate finance matters. Previously, he held the position of GFC at JEP Holdings Limited and served as the finance manager with Tee Yih Jia Food Manufacturing Pte Ltd. OHP graduated with a Diploma in Management Accounting from Tunku Abdul Rahman College, Malaysia in 1998. He is a Chartered Management Accountant with the Chartered Institute of Management Accountants, and an associate member of the Institute of Singapore Chartered Accountants and Malaysian Institute of Accountants.<sup>79</sup>

TWY, aged 29, is the Chief Operating Officer (COO). She joined LS 2 in September 2017 as a corporate service manager. TWY was subsequently promoted to corporate service director in July 2019 and COO in September 2021. As the COO, she is responsible for implementing customer and business development strategies and managing client relationships. She obtained a Bachelor of Business from Nanyang Technological University and is a certified professional with the Institute for Human Resource Professionals.<sup>80</sup>

TWL, aged 29, is the company's Assistant Group Financial Controller. She joined LS 2 in January 2021 as Financial, Planning and Analysis Manager and was promoted to Group Finance Manager in September 2021 and subsequently promoted to Assistant Group Financial Controller in August 2023. TWL is responsible for preparing management reports and performing analyses of revenue performance and growth. In addition, she also plays a role in preparing annual budgets, working with external auditors to facilitate their work, and

assisting in compliance reporting matters. Prior to joining LS 2, she held roles such as audit assistant and audit senior associate at Ernst & Young LLP from September 2018 to December 2020. TWL graduated with a Bachelor of Accountancy from the Singapore Management University.81

Susan Lee (Lee), aged 51, is the Operations Director at LS 2. Lee is responsible for overseeing the operations of LS 2's projects. Prior to joining LS 2, Lee has held positions in various companies, including UEMS Solutions Pte Ltd., Ramky Cleantech Services Pte. Ltd., Sembcorp Environment Pte. Ltd., and DBS Bank Limited. She graduated with a Bachelor of Commerce from Deakin University, Australia.82

Ziilia Seah (Seah), aged 28, joined LS 2 in November 2018 and is the Sales and Marketing Manager. Seah is responsible for account and contract management, internal stakeholder management, and business development. Before joining the company, she was an assurance senior associate with Baker Tilly Singapore. She graduated with a Bachelor of Accountancy from the Nanyang Technological University.<sup>83</sup>

## SGX provides opportunities for all

The SGX features two boards: the Mainboard and the Catalist Board.84

Since its inception on 26 November 2007, the Catalist Board has catered to fast-growing companies in Singapore by imposing less stringent listing requirements under the sponsor programme. 85 Key exemptions for companies on the Catalist Board compared to those on the SGX Mainboard include the three broad quantitative requirements as follows:86

- 1. Minimum consolidated pre-tax profit (based on full year consolidated audited accounts) of at least S\$30 million for the latest financial year and has an operating track record of at least three years; or
- 2. Profitable in the latest financial year (pre-tax profit based on the latest full year consolidated audited accounts), has an operating track record of at least three years and has a market capitalisation of not less than \$\$150 million based on the issue price and post-invitation issued share capital; or
- 3. Operating revenue (actual or proforma) in the latest completed financial year and a market capitalisation of not less than S\$300 million based on the issue price and post-invitation issued share capital.<sup>87</sup>

Meanwhile, there are no quantitative requirements for companies to be listed on the Catalist. However, these companies need to appoint a sponsor who will assess their suitability to list and provide advice and guide throughout the listing process. 88

Under the Catalist regime, there are two types of sponsors - full and continuing sponsors. Both must be authorised by SGX, but they have different obligations and minimum eligibility criteria for both. Full sponsors can engage in both pre-listing and continuing activities, while continuing sponsors are limited to continuing activities. Pre-listing activities involve tasks required for the listing to occur, whereas continuing involve ensuring that the listed company complies with applicable regulations and obligations.<sup>89</sup> Regulators rely on the due diligence of sponsors to ensure that companies are of sufficient calibre to be listed on the Catalist Board. Post-listing, sponsors must continue oversight to ensure ongoing compliance.<sup>90</sup>

SGX regularly reviews the quality of the work done by the sponsors in determining the suitability of companies for listing. Should there be any lapses in the due diligence conducted by the sponsors, SGX reserves the right to remove their sponsor status. Full sponsors are required to oversee the continuing activities of the listed company for the first three years post-listing. Thereafter, the listed company may appoint other continuing sponsors.<sup>91</sup>

#### **Catalist conundrum**

There are, however, multiple concerns regarding the nature of the Catalist Board and the role of sponsors within the Catalist regime.92

While the Catalist Board was intended to boost Singapore's capital markets, its performance has been lacklustre thus far. A 2020 study by corporate governance advocate Professor Mak Yuen Teen and Chew Yi Hong showed that in the FY2019, 56.5% of Catalist-listed companies reported losses. Among the companies listed for more than seven years, 71% have reported losses, which was higher than the 37% reported among those listed for less than seven years. Another study noted that as of 2019, only six Catalist-listed companies transferred to the Mainboard since 2014, compared to the 24 companies listed on the Mainboard that had transferred to the Catalist Board in the same period. Therefore, it remains uncertain whether the objectives of promoting a vibrant market and having a secondary board for fast-growing companies can be achieved through the Catalist Board. Additionally, the Catalist Board generally experiences lower liquidity and turnover compared to the Mainboard, with SGX Catalist observing only 22% turnover velocity in financial year to date (FYTD) 2023, compared to the 37% observed for the Mainboard.

#### Sponsorship struggles

There are also multiple issues regarding sponsorships under the Catalist Board. Firstly, as sponsors are inherently for-profit entities, questions arise about their ability to maintain independence and avoid conflicts of interest when overseeing the companies they sponsor. Under the Catalist regime, sponsors are compensated by the companies they are sponsoring, with minimal regulations with regards to the level of compensation allowed. The 2020 study on Catalist sponsors further observed that changes in sponsors are commonplace among Catalist-listed companies.<sup>97</sup>

Due to the nature of sponsors, their business activities often include other financial consulting and advisory services. The potential for sponsors to provide other non-sponsorship-related services to the companies they sponsor has raised concerns about potential conflict of interest. The study on sponsors found that 18% of Catalist-listed companies disclosed that they had paid for non-sponsor services to their sponsors in the financial year covered. Companies also disclosed paying fees to affiliates of their sponsors, with one company disclosing that it had paid non-sponsor service fees to affiliates of its sponsor, and five other companies reporting that they had paid other fees to affiliates of their sponsor.

Furthermore, as of FY2023 Q1, there were 15 full sponsors and four continuing sponsors. <sup>100</sup> This is in comparison to the 217 listed companies on the Catalist Board. As such, concerns have also been raised regarding the small number of Catalist-listed companies relative to the number of sponsors available. <sup>101</sup>

#### **RHTC under the lens**

RHTC has served as LS 2's full sponsor since the IPO. As a MAS-approved capital market services licence holder and a full sponsor approved by SGX, RHTC mainly provides professional advisory services on major transactions such as IPO, reverse takeovers, and mergers and acquisitions. <sup>102</sup> It is one of the top sponsors for the SGX Catalist Board. As of April 2024, RHTC has sponsored 61 companies currently or formerly listed on the Catalist Board. <sup>103</sup> It is also the only sponsor to have been issued a notice of compliance (NOC) as of April 2024. <sup>104</sup>

On 22 January 2020, SGX RegCo issued a NOC to RHTC regarding a potential conflict of interest involving its related companies, RHTLaw Taylor Wessing and other RHT Group entities that service RHTC-sponsored firms. SGX RegCo noted that RHTC-sponsored companies Synagie Corporation and Metech International had engaged RHT Corporate Advisory (RCA) as their designated share register. Meanwhile, two other RHTC-sponsored companies, Jubilee Industries Holdings and Accrelist, had engaged RHT Communications and Investor Relations as their designated investor relations team. RHTC, RCA, and RHT Communications and Investor Relations are all part of the RHT Group of companies under RHT Lex Ultra Pte. Ltd. (RHT Group). The NOC also noted that RHT Group shares common directors and/or shareholders with RHTLaw Taylor Wessing and its associated entities, which provide legal and other services to certain RHTC-sponsored companies.

RHTC was questioned about how it maintained independence and avoided potential conflict of interest, especially since RHT Group entities shared multiple common directors. As a Catalist sponsor, RHTC is required to avoid conflict of interest and remain independent from the companies they sponsor. They are also required to have appropriate controls, procedures, and safeguards in place to maintain independence.<sup>109</sup>

On 23 January 2020, RHT Fintech Holdings' website posted a response to a Business Times article reporting on the NOC. The response clarified that RCA was no longer part of the RHT Group of companies as it was acquired by In.Corp Global in May 2019.<sup>110</sup> The following day, RHTLaw Asia and Taylor Wessing issued a joint statement announcing that they had parted ways and "decided to move towards a collaborative relationship in place of our formal links to enable both businesses to pursue longer-term objectives in accordance with their respective strategies".111

In a Business Times article authored by Professor Mak Yuen Teen, Chew Yi Hong, and Mark Lai, it was noted that the RCA names was still in use despite its sale to In.Corp Global in May 2019. They mentioned that: "RHTC should clarify whether there is any arrangement which provides financial benefits to the RHT Group should any of its sponsored companies use RCA services, or if there are any financial targets or "earn-out" in the sale to In.Corp."112 The article further stated that RCA provided share register and corporate secretarial services before its sale to In.Corp Global, suggesting possible conflict of interest existed prior to the sale.<sup>113</sup>

About a year later, On 26 February 2021, SGX RegCo issued a query to RHTC regarding a company it was sponsoring, Emerging Towns & Cities Singapore Ltd (ETC). The query concerned allegations that ETC was financing the Myanmar Army through its involvement in the Golden City Project in Myanmar.<sup>114</sup> SGX RegCo highlighted that should the allegations be true, ETC and RHTC would have breached Catalist Rule 225, paragraph 8, which pertains to assessing the suitability of listing applicants and their continued listing. The rule specified that entities involved or connected with money laundering, terrorist financing, or illicit activities should not be listed.115

## Regulators keeping it clean

SGX RegCo is a subsidiary of SGX and acts as a frontline regulator on behalf of SGX and its regulated subsidiaries. SGX RegCo performs its duties independently of the business functions of SGX and its regulated subsidiaries. It is responsible for upholding a fair, orderly and transparent marketplace by regulating market participants, and plays an integral role in formulating and enforcing the listing rules on listed issuers. 116 During the listing process for Mainboard issuers, SGX RegCo reviews Mainboard listing applications to ensure that listing requirements are met and refers applications to the Listings Advisory Committee for advice if necessary.<sup>117</sup> It also ensures timely and complete disclosure of material information by listed issuers and conducts direct surveillance of the market.<sup>118</sup>

For Catalist listings, SGX RegCo regularly inspects sponsors for compliance with their continuing obligations. It reviews cases processed by sponsors in addition to their established processes and procedures. Sponsors who fail to comply with the rules may be charged before a Disciplinary Committee consisting of relevant external professionals.119

While SGX's actions are somewhat limited, it can exercise investigative and enforcement powers in administering its Rulebook. This includes conducting investigations, initiating disciplinary proceedings, issuing public reprimand, requiring issuers to perform remedial action, denying issuers access to market facilities, and suspending trading of an issuer's listed securities. 120

Meanwhile, MAS acts as a statutory regulator responsible for administering the Securities and Futures Act (SFA) and exercising oversight of SGX RegCo. MAS directly regulates SGX in terms of its obligations as a listed company and market operator, holding SGX accountable for managing regulatory conflicts arising from being both a listed company and a market regulator. Additionally, MAS approves the rules that SGX establishes for the marketplace. It also reviews Mainboard prospectus disclosures and register prospectuses under the SFA. Most importantly, MAS can conduct civil prosecutions against companies that contravene disclosure laws under the SFA. In contrast to SGX, MAS conducts surveillance on an independent basis.<sup>121</sup>

#### Catalist versus HKEX's GEM

Similar to the SGX Catalist Board, Hong Kong Exchanges and Clearing Limited (HKEX)'s Growth Enterprise Market (GEM) serves the needs of small and mid-sized issuers looking to raise capital for growth, featuring lower eligibility criteria compared to HKEX's main board. However, Hong Kong's secondary board has more stringent listing criteria than the Catalist Board. For example, while the Catalist Board has no quantitative financial requirements for listing, issuers wishing to list on GEM are required to have a positive two-year aggregate operating cash flow of at least HK\$30 million and a market capitalisation of at least HK\$150 million. This assures potential investors that the companies listing on GEM have a track record of sufficiently positive operating cash flow.

Furthermore, for Catalist listings, sponsors determine a company's suitability for listing. In contrast, the HKEX Listing Committee are the ones who review and approve GEM listing applications. Therefore, the regulator in Hong Kong plays a greater role in the listing of companies on its secondary board, as compared to SGX which delegates much of its approval work to sponsors.<sup>124</sup>

#### The road ahead

On 10 April 2023, LS 2 announced it would convene an Extraordinary General Meeting (EGM) to seek shareholders' approval for the proposed adoption of a share buyback mandate. The adoption of the share buyback mandate would give LS 2 the flexibility to purchase or acquire shares of the company if and when circumstances permit, up to a limit of 10% at any given time. The rationale for the share repurchase was to enhance the company's return on equity, optimise the use of surplus cash, mitigate share price volatility, as well as to fulfil the company's obligation to furnish shares to participants in any share-based incentive scheme. The EGM was held on 28 April 2023 and the proposed resolution was passed with 100% supporting votes.

In LS 2's annual report for the FY ending 31 December 2023, it reported a revenue increase of 2.6%, from S\$59.9 million in FY2022 to S\$61.4 million in FY2023. Net profit increased by 139.72%, reaching S\$1.5 million in FY2023 compared to S\$636,092 in FY2022. Additionally, LS 2's shareholder base has gradually expanded since its listing on the Catalist Board. On 5 May 2022, LS 2 reported a total of 20 shareholders. By 31 March 2023, this number had increased to 163 shareholders. According to the latest FY2023 annual report, as of 4 April 2024, the total number of shareholders had grown to 210. As of April 2024, no dividends have been declared since LS 2's listing, despite previously declaring dividends amounting to S\$1 million and S\$4.5 million on 31 March 2021 and 30 June 2021 respectively.

As of 30 April 2024, LS 2's share price stood at \$\$0.079, 60.5% lower than its IPO price and representing a 91% decline from its debut day closing price. Will LS 2 be able to deliver long-term shareholder value as a testament to the success of the Catalist regime?

## **Discussion questions**

- Assess the background and composition of LS 2's board and management team. What are the possible issues associated with family-controlled companies like LS 2? Suggest ways in which LS 2 can improve its corporate governance practices?
- 2. Critically evaluate LS 2's business model and discuss its key risks. How might the nature of LS 2's business model contribute to the unusual trading activity observed in its shares?

- Considering the past controversies involving LS 2's full sponsor, RHT Capital, and the placement agent, SooChow CSSD Capital Markets, do you think they raise any concerns? Explain.
- What constitutes market manipulation? Critically evaluate the adequacy and effectiveness of the rules and regulations in Singapore designed to prevent market manipulation.
- Do you think there was market manipulation in the LS 2 case? What are the responsibilities of LS 2's board with respect to potential manipulation in the company's shares? Assess the adequacy of their response to the 'Trade with Caution' alert issued by SGX RegCo.
- Critically evaluate the actions of SGX Regco in the case of LS 2, in light of the sharp increase in the share price and the sell-off of the shares in the first day of trading, the subsequent behaviour of the company's shares, and the small number of shareholders immediately after listing. What concerns might a small number of shareholders in a listed issuer raise? Do you think LS 2 was in compliance with the Catalist Rulebook requirement on spread of shareholdings? Explain.
- Evaluate the key differences in rules between the SGX Mainboard and Catalist Board. What are the roles of the full sponsor and continuing sponsor on the Catalist Board? Do you think the sponsor-based model is sustainable? Explain.

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# MC PAYMENT: BOARDROOM TUSSLE

#### Case overview

MC Payment (now OxPay Financial Limited) became Singapore's first publicly-listed digital payments firm on 22 February 2021 after a long and arduous reverse takeover. At the time of its listing, the company boasted a market capitalisation of S\$139 million and held one of only 19 Major Payment Institution Licenses issued by the Monetary Authority of Singapore. Additionally, it earned recognition in the Top 20 Singapore Small Cap Company 2021 edition. Despite these promising indicators, MC Payment faced various issues post-listing, including contentious shareholder meetings, hostile boardroom tussles, questionable appointment of directors, and a puzzling proposed investment.

The objective of this case study is to facilitate a discussion of issues such as the duties of directors; shareholder rights; shareholder requisitions; the role of sponsors on the Catalist Board; and the effectiveness of regulators.

## **About MC Payment**

MC Payment (MCP), otherwise known as Mobile Credit Payment Pte Ltd, was incorporated and headquartered in Singapore in June 2005.<sup>1</sup> It was co-founded by former executive directors (EDs) Koh Beng Kiok Anthony (Koh) and Kim Moon Soo (Kim), who held the position of Chief Executive Officer (CEO) and Chief Operating Officer (COO) respectively.<sup>2</sup> The company started off as a payment technology and merchant service provider, focused on facilitating payment collection for commerce transactions in Singapore through the use of wireless Point-of-Sale (POS) devices.<sup>3</sup>

#### A niche business

In response to the evolving technology and payment landscape, MCP built on its existing services to evolve into an online-to-offline (O2O) FinTech company that supports enterprises in digital transformation. This support is

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facilitated through their unified digital payment platforms, other merchant value-added services such as digital marketing initiatives, and innovative financial solutions such as Buy-Now-Pay-Later.<sup>4</sup>

MCP operates within two key business segments:

- 1. Merchant Payment Services (MPS) MCP offers O2O solutions for merchants to integrate their websites and mobile applications securely for customers to make payments via credit or debit cards, e-wallets, or bank transfers.<sup>5</sup>
- 2. Digital Commerce Enabling Solutions (DCES) MCP provides ancillary services, such as the sale and lease of Smart POS terminals as well as both proprietary and licensed software-as-a-service (SaaS).<sup>6</sup>

MCP is also one of the 19 non-bank companies that were awarded the Major Payment Institution License by the Monetary Authority of Singapore under the Payment Services Act 2019. This license allows MCP to conduct payment services such as domestic money transfer, cross-border money transfer, and merchant acquisition.<sup>7</sup> Today, MCP has expanded into other Southeast Asia countries, namely Malaysia, Indonesia, and Thailand, with ambitions to become a regional player.<sup>8</sup>

#### Ching: The source of 'Ka-Ching!'

Ching Chiat Kwong (Ching) is the controlling shareholder of MCP, holding 27.06% of shares in the company as of 2021. Another substantial shareholder was Koh, who had a direct interest of 5.88%. <sup>10</sup>

Ching is also the Executive Chairman and CEO of Oxley Holdings Limited (Oxley), a home-grown Singaporean property developer.<sup>11</sup> Under his leadership, Oxley listed on the Catalist Board of the Singapore Exchange (SGX) in 2010. Ching also sat on the boards of Aspen (Group) Holdings Limited and Pindan Group Pty Ltd (Pindan). <sup>12</sup>

Ching has provided significant financial support to MCP. In 2019 and 2020, he disbursed a total of S\$559,950 of unsecured loans to MCP on four different occasions and extended the repayment dates of these loans.<sup>13</sup> Furthermore, in 2019, Ching acquired an additional 62,305,295 ordinary shares, contributing to the raising of gross proceeds of S\$600,000 and the redemption of bonds plus interest totalling S\$10 million under a settlement agreement.<sup>14</sup> In April 2018, Ching also provided an undertaking to MCP to ensure adequate funds for the company to sustain operations as a going concern and meet its liabilities as and when they fall due.<sup>15</sup>

#### A drawn-out reverse takeover

On 18 February 2021, MCP completed its reverse takeover (RTO) of Catalist-listed Artivision Technologies Ltd (Artivision), becoming the first digital payments service firm to be listed on SGX. ZICO Capital Pte Ltd (ZICO), Artivision's continuing sponsor since November 2016, served as MCP's full sponsor. This planned RTO was first announced in May 2018 after Artivision became a cash company. After two years of delay, the shareholders of Artivision finally approved it during an Extraordinary General Meeting (EGM) held on 22 January 2021. <sup>16</sup>

#### **New appointments from new beginnings**

The completion of MCP's RTO of Artivision led to a board restructuring with the appointment of five new directors.<sup>17</sup> Figure 1 outlined the board's composition and their roles within various committees.

**Board of Directors** Chairman (Non-Executive & Independent) Mr Albert Cheok Saychuan After the Non-Executive & Non-Independent Director Mr Harry Ng Weng Sui Non-Executive & Non-Independent Director Mr Shawn Ching Wei Hung Independent Director Mr Kesavan Nair Independent Director Dr Lillian Koh Noi Keng Executive Director + Chief Executive Officer Mr Koh Beng Kiok Anthony Executive Director + Chief Operating Officer Mr Kim Moon Soo **Audit Committee Remuneration Committee Nominating Committee** Dr Lillian Koh Noi Keng Mr Albert Cheok Saychuan Chairman Chairman Mr Kesavan Nair Chairman Mr Albert Cheok Saychuan Member Mr Harry Ng Weng Sui Member Member Mr Harry Ng Weng Sui Dr Lillian Koh Noi Keng Member Member Mr Shawn Ching Wei Hung Member Mr Kesavan Nair

Figure 1: Board composition after the completion of RTO<sup>18</sup>

Source: MC Payment Limited. (2021, February 18). Completion of proposed acquisition of Mobile Credit Payment Pte Ltd.

Albert Cheok Saychuan (Cheok), Koh, Kim, Shawn Ching Wei Hung (Shawn), and Dr. Lillian Koh Noi Keng (Dr. Lillian) were appointed, joining the current directors, Harry Ng Weng Sui (Ng) and Kesavan Nair (Nair). Both Ng and Nair were previously directors of Artivision. Ng was redesignated as a non-independent non-executive director (NINED).19

#### Cheok, the "colourful" Chairman

The appointment of Cheok stood out due to his prior experience on numerous boards, including Asian banks and real estate investment trusts. However, both Cheok and some of the companies where he was a director have been involved in controversies in the past.

Metal Reclamation Bhd (MRB), a company listed on Bursa Malaysia (BM) where Cheok served as an ID, was reprimanded by BM for breaching the Main Market Listing Rules. This was for the delayed announcement of credit facility defaults by its subsidiary in 2014. BM determined that the sole ED of MRB, Lim Cheng Sang, bore the primary responsibility for deciding whether an immediate announcement was necessary in the event of payment defaults. Cheok was not named and did not face any reprimand or personal sanctions from BM.<sup>20</sup>

Additionally, at AcrossAsia Limited (AcrossAsia) in Hong Kong, Cheok was found to have violated disclosure obligations under the Hong Kong Securities and Futures Ordinance (SFO).<sup>21</sup> This pertained to the delayed disclosure of inside information in 2012 while he was Chairman and independent director (ID). Cheok acknowledged his negligence after a petition was filed against AcrossAsia by its subsidiary and a major creditor, along with a related court summons stemming from insolvency proceedings. The Market Misconduct Tribunal (MMT) determined that Cheok was fully cognizant of the potentially severe consequences of the breach.<sup>22</sup> Consequently, Cheok received a fine of HK\$800,000 and was required to undergo a training program focusing on compliance with inside information disclosure requirements. However, the MMT found that no disqualification or cold shoulder order was necessary. It confirmed that the breach was not caused by either reckless or intentional misconduct of Cheok. It also noted that he had taken proactive steps and behaved responsibly and diligently, and concluded that the misconduct was very much towards the bottom of the scale.<sup>23</sup>

#### **Boardroom tussle**

MCP's board after the RTO comprised of seven directors. Article 111 of MCP's constitution mandates that at least one-third of the directors must retire by rotation and stand for re-election. In situations where the total director count is not a multiple of three, the number closest to, but not less than one-third, must stand for re-election. With seven directors on MCP's board, three had to stand for re-election at the Annual General Meeting (AGM) to be held on 28 April 2021.<sup>24</sup>

Based on the same article, directors retiring by rotation will first include those opting not to seek re-election, followed by those with the longest tenure since their last re-election or appointment. Hence, Ng and Nair, being the longest-serving directors at Artivision, were among the three directors standing for re-election. Article 111 also stated that the last candidate will be determined by lot. Ching's public statements revealed that Koh was originally slated for re-election due to his seniority on the board. However, Koh was not "confident to be re-elected" and Shawn took his place.

Therefore, the three directors standing for re-election were Ng, Nair, and Shawn. During the AGM, Ng and Shawn were voted out, with 56.69% of the votes against their re-election, while Nair was re-elected with 85.01% of the votes.<sup>27</sup> As a result, Ng and Shawn ceased to be directors of the company.

#### **Letters of dissatisfaction from Ching**

Ching expressed dissatisfaction with the AGM results. On 3 May 2021, the board announced that the company had received two letters from Ching dated 29 April 2021 and 3 May 2021.<sup>28</sup> In the first letter, Ching stated his intention to requisition an EGM to nominate Ng, Shawn and himself as directors of the company.<sup>29</sup> In his second letter, conveyed through his solicitors Wong Partnership, Ching sought urgent confirmation from the board that "it would not be taking any steps to allot and/or issue any shares of the company, in particular that it would not be taking any action that would have a dilutive effect on the shareholding of the respective shareholders and/or affect shareholder value, pending the intended EGM to elect additional directors to the board".<sup>30</sup>

#### Requisition notice one: The directorship expertise debate

On 4 May 2021, Ching issued the first requisition notice to the company, urging the board to convene an EGM pursuant to Section 176 of the Companies Act. The purpose of the EGM was to pass resolutions for the appointment of Ng, Shawn, Chee Kheng Hock Rothschild (Chee), Tan Chee Keong (Tan) and himself as directors. Ching proposed the appointment of Chee and Tan as IDs, together with himself as a NINED to the board of the company.<sup>31</sup>

In the requisition notice, Ching outlined several points justifying why he believed the ordinary resolutions were "in the interests of the company and all shareholders and stakeholders". The board interpreted this as an attempt by Ching to create the impression that the company had underperformed, and the directors he sought to appoint were necessary to protect his investment. The board disagreed with Ching's points, finding them "not accurate". They argued that the current management, consisting of MCP's founders with 15 years of experience building the company, possessed the required expertise to manage the digital data business. In contrast, the board said that the proposed directors, Ng and Shawn, lacked experience in digital payment businesses, and that Ng was part of the previous board of Artivision, a loss-making dormant company.

Ching claimed that his objective for putting forward these proposed appointments was "so that these additional directors can assist the company to properly evaluate its strategy in the current financial year, bearing in mind that the company reported a net loss of \$\$1,281,000 during the period from 1 April 2020 to 31 December 2020". The board countered by stating that the losses incurred during that financial period occurred before the completion of RTO and were not incurred under the oversight of the current management. 38

Ching also suggested that without his financial support, the company would struggle to continue. However, the company considered Ching's loans and shares in Artivision prior to RTO were of "limited value".<sup>39</sup>

#### **Change in board composition**

As the events of the boardroom tussle unfolded, on 25 May 2021, David Ong Kim Huat (Ong), a former People's Action Party (PAP) Member of Parliament (MP) who suddenly resigned from the Bukit Batok Single Member Constituency (SMC) in March 2016, was appointed as an ID of MCP. 40,41 According to a Straits Times report, he allegedly had an affair with a grassroots leader in his ward. 42 Ong's only prior experience as a director of a listed company was at a Cayman-incorporated Singapore company called Hon Corporation, which was listed on GEM in Hong Kong, where he served as an ID for only eight months.<sup>43</sup>

Ong would also chair the Nominating Committee (NC) and serve as a member of the Audit Committee (AC) and the Remuneration Committee (RC). Following Ong's appointment, Dr Lillian relinquished her role as the Chairman of the NC and Nair was replaced by Ong as a member of the AC and NC.44

Ching raised questions regarding Ong's appointment. He revealed that the board meeting where Ong's appointment was discussed and Nair's removal was proposed, took place in the absence of the majority of the NC, specifically Dr Lillian and Nair. 45 Ching expressed concerns, stating that "there could not be any assessment as to the suitability and qualifications of David Ong by the NC, and certainly not to the independence".46 Furthermore, Ching pointed out that the notice of meeting was circulated on the same day as the meeting itself due to the "urgency of the agendas to be discussed". Ching questioned the urgency and the appropriateness of removing Nair in his absence, given his expertise. In contrast, Ong had not served on any listed company in Singapore and had not undergone the prescribed training for directors of a public listed company.<sup>48</sup>

Ching also raised concerns about the decision making timeline. In contrast to the swift review and agreement on Ong's suitability within a span of 10 days, the proposed directors from his first requisition notice had not "been reviewed or vetted for their suitability or independence (where relevant) by the company and its sponsor" as of 17 May 2021, almost two weeks after the notice was initially deposited.<sup>49</sup>

## Requisition notice two: Culling of directorships

On 31 May 2021, Ching issued a second requisition notice containing resolutions to remove Cheok, Koh, Kim, Dr Lillian and Ong as directors of the company.<sup>50</sup> Ching also requested that the second set of resolutions be considered on the same day as the first EGM. However, the board unanimously decided that it was unable to accede to Ching's request as "it had to allow sufficient time for the directors involved to exercise their rights under Section 152 of the Companies Act and for shareholders to take the situation into consideration".<sup>51</sup> Hence, the second EGM was scheduled to be held no later than 1 August 2021.<sup>52</sup>

#### First EGM

On 30 June 2021, the first EGM was held to consider the proposed resolutions. The NC had evaluated and concluded that none of the proposed directors were suitable for a directorship position in MCP.<sup>53</sup>

For Chee, the committee highlighted that his business expertise was primarily associated with small enterprises, and his prior role as the co-founder and COO of Red Dot Payment until 1 July 2019 was his sole experience in a large corporate environment. The NC also said that Red Dot Payment was an unlisted company, where the board process and responsibility was different from a listed company. Given these factors, NC determined that Chee was unsuitable to be appointed as a directorship of MCP.54

Regarding Tan, NC acknowledged that he had been "meaningfully employed, up to senior management positions, in well-known card companies".55 From April 2019 to June 2021, he was the Head of Payments Consulting for Singapore, Thailand, and the Global Client Group for the APAC region at American Express. Prior to this, from October 2015 to April 2019, Tan was the Group Head of Commercial Cards and Merchant Acquiring at Citibank Singapore, where he led the team into B2B payments, fostering collaborations with Fintech partners and key global merchants.<sup>56</sup> Despite Tan's extensive experience within the payment sector, he lacked previous experience as a director of a listed company. Hence, NC determined that Tan was unsuitable for directorship at MCP.<sup>57</sup>

Regarding Ng, Shawn, and Ching, the committee highlighted that these directors were sitting on the board of Oxley, and Oxley's subsidiary, Pindan, was grappling with financial difficulties. <sup>58</sup> The NC noted that within the Pindan Group, nine entities had gone straight into liquidation, while three entities were put into administration in Australia. <sup>59</sup> Furthermore, Pindan was also subjected to investigations by local authorities, and owed AUD\$100 million to 900 creditors. <sup>60</sup> However, the NC noted that Ng, Shawn and Ching had not made disclosures about Pindan and its related entities. Hence, the NC concluded that they were not suitable to be appointed as directors at MCP. <sup>61</sup>

# Allegations fly

On 10 June 2021, Ching issued a statement asserting that MCP had not disclosed the first and second requisition notices to the shareholders and had refused to circulate the draft circular to him. Consequently, he aimed to "set out his views, concerns and reasons, so that shareholders of the company would be presented with a complete picture ahead of the 30 June 2021 EGM".

In response, the board provided its views and detailed comments on each of the allegations in two circulars which were published on 15 June 2021 and 24 June 2021.

### Personal motives, dishonesty or manipulation?

Ching contended that the company's SGX announcement and letter to shareholders insinuated his loss of confidence in the board stemmed solely from his personal unhappiness about Shawn and Ng not being reelected at the AGM. Ching disputed this and clarified that it was due to what he perceived as "a lack of ethical principles and basic integrity" demonstrated by the board.<sup>63</sup>

According to Ching, Koh was supposed to stand for re-election, and not Shawn. Ching said that Koh expressed that he was not confident that the board would re-elect him and Shawn agreed to take his place. However, Koh proceeded to vote against Shawn's re-election which Ching described as an "underhanded move" and he questioned Koh's integrity, character and suitability to continue as an ED.<sup>64</sup>

The board refuted Ching's allegations, asserting that he provided no details or evidence to support his claims regarding the conduct of the AGM, deeming his claims "unfounded".65 The board also clarified that it was Ng, the organiser of the AGM, who ultimately put Shawn up for re-election.66 This selection was made based on a drawing lots process, in accordance with Article 111 of the company's constitution. In addition, the board said that despite Shawn and Ng appearing to be the victims in this situation, they had yet to independently corroborate Ching's account of the re-election.67 It also highlighted that even if Koh had voted against their re-election, it deemed this as irrelevant to the governance of the board, asserting that it is a shareholder issue and shareholders are entitled to vote based on their discretion.68

Secondly, Ching believed that the votes cast at the AGM had been manipulated. He asserted that he was "informed that shareholders of the company were asked to sign blank proxy forms ahead of the AGM, and upon the shareholders signing the forms without indicating his or her votes, the proxy form was subsequently filled up without the shareholders' knowledge to indicate votes against the re-election of Harry Ng and Shawn Ching". The company invited Ching on three separate occasions between 3 June 2021 to 11 June 2021 to provide supporting details and evidence of his claims for investigation. However, Ching declined and claimed to have submitted evidence to the authorities. Hence, the board felt that that Ching's claims were unfounded, as he did

not disclose the relevant evidence to support his claims. 70 Further, none of the shareholders had independently corroborated Ching's statements.<sup>71</sup>

The board also pointed out that Ching raised the above claims only a month after the issuance of the first requisition notice. Ching stated that the only reason he submitted the notice and proposed the resolutions was so that these additional directors can assist the company to properly evaluate its strategy in the current financial year, considering the company reported a net loss. 72 In response, the board felt that "this departs from Ching's original impetus, and suggests that Ching has since 4 May 2021 been seeking to generate a basis for the resolutions."73

#### **Factual or fictional allegations?**

Apart from the alleged misconduct at the AGM, Ching asserted that he has been treated unfairly as a shareholder by the current board.74

Firstly, according to Ching, the company failed to disclose the first requisition notice promptly and did not furnish him with a draft of the first circular before its release.<sup>75</sup> However, the company felt that the delay was not deliberate and stemmed from the time required to clarify the inaccuracies in the document. <sup>76</sup> Furthermore, the company felt that providing a draft of the first circular to a specific shareholder is inappropriate.<sup>77</sup>

Secondly, Ching asserted that the company refused to have the second requisition notice dealt with at the EGM.78 In response, the company stated that the board had unanimously decided to convene a separate meeting specifically to address the matters raised in the second requisition notice.<sup>79</sup>

Thirdly, according to Ching, the company took advantage of the goodwill he extended to them and tried to delay the EGM.<sup>80</sup> The company, however, felt that Ching's allegations are "without any basis as the company had consistently acted in accordance with all laws, regulations, and the Code of Corporate Governance".81

The company also countered some of Ching's allegations, deeming them as "misleading".82 These allegations include the improper appointment of Ong as a director, the unfulfilled promise by Koh to appoint Ching as director, the use of the term "cunning fox" by Cheok to describe Ching, and the unjustifiable delay in the company's announcement of the receipt of Ching's first requisition notice.83

#### Self-serving financial support?

Ching issued his second statement on 18 June 2021 saying he was "totally shocked" that the company mentioned he was the net beneficiary of the RTO instead of the company.<sup>84</sup>

Ching argued that the company had substantially benefited from the funds that he injected. He pointed out, "the company's Annual Report 2020 confirms that my financial support and involvement constituted almost all of the reasons why the Company could be considered a going concern in the last financial year."85 However, the company perceived Ching's financial support as given in anticipation of the RTO.86 Furthermore, Ching was in charge of negotiating the RTO terms. Therefore, it is "indisputable that Ching did benefit substantially" from the RTO.87

## Withholding of information?

Ching also alleged that the board had not disclosed the full set of information he requested to be included in the first circular. This included the second requisition notice, his first statement, and the CVs and information about the proposed directors in the first requisition notice. By omitting these information, Ching believed that the company intended to present a one-sided view of the situation.88 However, the board refuted his claim, stating that the proposed directors' details were included in the first circular. As for Ching's first statement and the information and documents on the proposed directors, the company explained that they were not provided in time for inclusion.<sup>89</sup> The company also "regarded it more meaningful for shareholders to provide all the relevant information on the proposed directors, together with the sponsor's and board's assessments, in the same circular – so that shareholders may have a holistic and proper view of these nominees." <sup>90</sup> Moreover, it said that Ching's second statement was only received after the release of the first circular.

However, not all concerns raised by Ching were addressed by the company. These include:

- 1. The letter to shareholder only contained information about the existing management. Details such as Ong's directorship in Hon Corporation up to September 2020 were omitted in the first circular. 91
- 2. The company did not address any of Ching's concerns relating to his loss of confidence in the board and the proposed acquisition of NGSC Limited.<sup>92</sup>
- 3. The company indicated that the information regarding the nominated directors would be furnished to shareholders by 23 June 2021, which is less than five working days before the EGM. However, this appears to be inconsistent with the company's SGX announcement on 28 May 2021. In that announcement, it was mentioned that such information would be released no later than 14 days before the EGM.<sup>93</sup>

## Ching's third statement

On 26 June 2021, Ching issued his third statement to clarify matters that were discussed in the second circular.

Ching claimed that it was "inaccurate and misleading" for the NC to state that he, along with Shawn and Ng, "had not made disclosures about Pindan or its related entities". However, the company refuted his claim and clarified that the concerns raised by the NC stemmed from the lack of disclosure by Ching, Shawn and Ng regarding the "severe financial difficulties of several entities within Pindan Group". This was despite the fact that Shawn is the ED and group general manager of Oxley, Ng is the lead ID of Oxley, and Ching is the Executive Chairman and CEO of Oxley.

Ching also alleged that the NC was "incapable of assessing the suitability of the proposed directors objectively" due to conflict of interest. He substantiated his statements by pointing out the change in opinion by the NC and the board. Two months after the 28 April 2021 AGM, when they had concluded that Ng and Shawn possessed the necessary experience, expertise, knowledge, and skills to serve as directors, the NC and the board's stance changed. The board disagreed with Ching's claims and pointed out the shift in stance was attributed to changes in the composition of the NC. Shawn and Ng had been assessed again on the basis that they had not been reelected at the AGM.

Ching also pointed out that Ong would not qualify as a director of the company, citing his involvement at Hon Corporation in Hong Kong and his lack of experience in digital payment companies.<sup>102</sup> Hon Corporation had "received demand letters from several financial institutions to demand repayment of bills payables and borrowings amounting to S\$17,401,000 and received Writ of Summons from various creditors amounting to S\$7,223,000 in which the legal proceedings are still ongoing."<sup>103</sup> Furthermore, Hon Corporation's wholly-owned Singapore-incorporated subsidiary, Hon Industries Pte Ltd, "applied to enter into a scheme of arrangement on 19 April 2021 and was served with five winding up petitions against it from November 2020 to February 2021."<sup>104</sup> Ching alleged that none of these information were disclosed when Ong was appointed. In response, the board explained that the NC recognised the potential in Ong's expertise and the experience he could contribute to the board.<sup>105</sup> Furthermore, the board highlighted that his directorship in Hon Corporation was disclosed and his role as an ID suggested that his involvement is limited.<sup>106</sup>

# A puzzling potential acquisition

Amid the ongoing boardroom tussle, news surfaced about a potential acquisition involving Next-Generation Satellite Communications Limited (NGSC), with MCP intending to purchase at least a 51% stake. NGSC sells

satellite communication equipment and services, engages in telecommunication infrastructure, and provides international network and engineering services through its subsidiaries. 107

However, NGSC had been placed on SGX's watchlist in December 2008 and faced challenges such as legal proceedings, statutory demands, police reports against previous directors, suspected irregularities, a notice from ACRA citing non-compliance with accounting rules, and questionable director appointments and resignations. Since 3 January 2020, trading of NGSC's stock had been halted. A shareholder pointed out that "NGSC is a suspended company and is facing delisting. What was the rationale for the board to consider at least a 51% stake in NGSC ... although there was no agreement in the final?" 108

"I was stunned by the revelations that MCP had considered acquiring NGSC as the latter's problems go back a long way. It entered the SGX Watchlist based on financial criteria way back on December 3, 2008 and the original end of its cure period was December 2, 2010. For reasons that are difficult to fathom, it took SGX nine years after the end of the original cure period to tell the company that it would be delisted. Trading has been suspended since January 3, 2020 and it is now attempting to satisfy the listing requirement for an exit offer to be made to shareholders.

Since its entry into the watchlist, it has attempted all sorts of corporate actions to exit from it without any success. Its litany of problems is 'hall of shame' stuff, including statutory demands, legal proceedings, police reports against former directors, alleged irregularities, receipt of letter from ACRA regarding non-compliance with accounting standards, and questionable director appointments and resignations."109

- Professor Mak Yuen Teen, Corporate Governance Advocate<sup>110</sup>

## Unfit lawyer, fit and proper director?

Professor Mak also pointed out that on 8 May 2021, NGSC had appointed Mahtani Bhagwandas (Mahtani) as an ID. Mahtani had faced disciplinary proceedings as a lawyer and regulatory action as a director. In 2018, the Disciplinary Tribunal (DT) of the Law Society dismissed a complaint against him for allegedly acting for a client whilst in a position of conflict of interest and/or allegedly preferring the interest of another party over the client. In 2020, he was in front of the DT again for acting for a client against a former client who had passed away, despite having acquired confidential information about the former client, and not making a timely disclosure to the administrators of the former client's estate about his conflict of interest. This time, he was found guilty.111

Professor Mak noted that at the time of his appointment to NGSC, Mahtani had already been found guilty by the DT which had referred the matter to the Court of 3 Judges. A notice of compliance (NOC) issued by SGX to NGSC on 18 May 2021 asked the company to disclose the board and nominating committee's assessment of Mahtani's suitability as an ID and AC chairman of NGSC. By that time, the Court of 3 Judges had already suspended Mahtani from legal practice for two years. That same day, the company announced that the board and NC still considered him to be suitable as an ID. On 21 May 2021, NGSC also responded to the direction in SGX's NOC regarding Mr Mahtani's appointment. It listed the factors considered by the board and NC with regard to his suitability, including the fact that Mr Mahtani had earlier been an ID and AC chair at NGSC from 1 April 2007 to 25 March 2009, and that no other suitable candidate was willing to accept the ID position at NGSC.112

In addition to the disciplinary proceedings, it was also disclosed that in 2019, SGX had referred all of the directors of an SGX-listed company, including Mr Mahtani, to the Listings Disciplinary Committee (LDC) for regulatory action. The LDC found the IDs guilty on two of the four charges that SGX proceeded with. It decided that the matter was to be kept private and confidential in so far as the IDs were concerned and that any publication of the ruling will have the names of the company and the IDs redacted/removed. A public reprimand was imposed only on the ED. However, the case remains in limbo as SGX has appealed the LDC ruling to keep the reprimand against the IDs private, while the ED has also appealed the ruling against him.<sup>113</sup>

#### Have we met?

Professor Mak pointed out that both Ong and Mahtani were appointed together as IDs on January 23, 2020 to Hon Corporation. Each had signed a one-year letter of appointment but both resigned on September 30, 2020. The day before their appointment, the HK Securities and Futures Commission had ordered a securities firm to freeze six client accounts involving H\$170 million assets for links to suspected market manipulation in the shares of the company.

While Ong's appointment at Hon Corporation was disclosed when he was appointed to MCP, Mahtani's appointment at the same company was not included in the list of 17 past directorships.<sup>114</sup>

Professor Mak asked whether the appointment of the two directors with a common association at Hon Corporation – a Singapore company listed in HK – at around the time when MCP was considering acquiring a majority stake in NGSC was a mere coincidence.<sup>115</sup>

#### Disclosure confusion

On 11 June 2021, Singapore Exchange Regulation (SGX RegCo) queried MCP concerning news of a board resolution that authorised Koh to enter into a term sheet to acquire 51% of NGSC for S\$9.6 million via issuance of MCP's shares.<sup>116</sup>

In response, MCP clarified that the board granted Koh to only engage in "exploratory talks", with no binding term sheets or agreements entered into. Hence, no announcements were made. However, on 17 June 2021, MCP had deemed disclosure to be necessary when it announced a Letter of Intent from Indonesia's OY! to explore investment opportunities. This announcement drew the attention of a shareholder, prompting them to question the company during the 30 June 2021 EGM. The company explained that the board would only disclose collaborations, term sheets, or any agreements, if the transaction gives rise to material obligations.

### The line between exploratory and full authority

During the 30 June 2021 EGM, MCP's shareholders expressed significant concerns about the proposed NGSC acquisition. <sup>120</sup> It was revealed that discussions with NGSC began around March 2021 and that on 30 April 2021, Koh was authorised by the board to "complete and do all acts, deeds and things necessary ... in connection with the Proposed Acquisition under this term sheet". <sup>121</sup>

MCP clarified that Koh was the only representative of MCP in negotiations with NGSC. The terms outlined in the term sheet were not binding and the board unanimously authorised Koh to engage in exploratory talks with NGSC. MCP also acknowledged that Koh had signed the NGSC term sheet, even though NGSC did not reciprocate.<sup>122</sup>

In MCP's initial response to SGX RegCo on 11 June 2021, the company stated it had not entered into any "binding term sheets" with NGSC. However, when SGX RegCo sought further clarification on 24 June 2021, MCP eventually disclosed that the company had entered into a non-disclosure agreement with NGSC in March 2021.

**Nominating Committee** 

Mr Chee Kheng Hock Rothchild

Mr Shawn Ching Wei Hung

Chairman

Member

# Only the winners remain

During the 30 June 2021 EGM, MCP's shareholders voted in favour of appointing Ng, Shawn, Chee, Ching and Tan as directors of the company.<sup>123</sup> Five of the six existing directors, Cheok, Dr Lillian, Ong, Koh, and Kim, resigned, leaving only Nair.<sup>124</sup> Koh and Kim also resigned as CEO and COO respectively.<sup>125</sup> Koh cited personal and health issues due to recent events, while Kim expressed fatigue and distress, feeling unsuitable for the company post RTO. 126,127 Meanwhile, Cheok, Dr Lilian and Ong said that having 11 board of directors for a local staff of only 20 placed an undue burden on the company's resources. 128

On 7 July 2021, Ching was appointed the Chairman of the board. Ng and Shawn were redesignated as NINEDs. The AC now comprised of Ng as Chairman, with Nair and Chee as members. Nair remained as the Chairman of the RC with Chee and Tan joining him as members. Chee became the Chairman of the NC, with Nair and Shawn as members. 129

Due to the resignation of five directors, the EGM scheduled on 30 July 2021 was cancelled. <sup>130</sup> On 28 July 2021, Tan was redesignated as MCP's managing director.<sup>131</sup> Following the redesignation, Tan relinquished his role as a member of the RC, with Ng appointed in his place. 132

Figure 2 shows the composition of the board and board committees after the boardroom tussle.

**Board of Directors** Chairman (Non-Executive & Non-Independent) Mr Ching Chiat Kwong After the Deputy Chairman (Non-Executive & Non-Independent) Mr Shawn Ching Wei Hung Non-Executive & Non-Independent Director Mr Harry Ng Weng Sui of Five Directors Non-Executive & Non-Independent Director Mr Kesavan Nair Non-Executive & Non-Independent Director Mr Chee Kheng Hock Rothchild Mr Tan Chee Keong **Managing Director** 

Figure 2: Board composition after the boardroom tussle<sup>133</sup>

Member Mr Chee Kheng Hock Rothchild Member Mr Chee Kheng Hock Rothchild Member Mr Kesavan Naii

Source: MC Payment Limited. (2021, July 27). Composition of board of directors and reconstitution of the remuneration committee.

Chairman

Member

Remuneration Committee

Mr Kesavan Nair

Mr Harry Ng Weng Sui

Chairman

Member

**Audit Committee** 

Mr Kesavan Nair

Mr Harry Ng Weng Sui

# Eye of the watchdogs

On 10 May 2021, SGX RegCo queried MCP.<sup>134</sup> MCP was questioned if it was aware of Ching's rationale behind the first requisition notice. In response, the company stated that they were unaware of the rationale, emphasising that their current operations may not warrant 10 directors, especially since the company only have 20 local employees.135

SGX RegCo also requested MCP to provide a timeline for updating shareholders on its legal advice and the company's next course of action regarding the first requisition notice. The company responded that it had hired Tan Kok Chuan Partnership (TKQP) as legal counsel. By 25 May 2021, the company would inform its shareholders if the requested EGM is convened according to legal timeframes. 136

SGX RegCo further queried about disputes among board members or with management/controlling shareholders post-RTO. The company responded that it was unaware of any disagreements within the board or between board members and the company's management or controlling shareholders.<sup>137</sup>

# The sponsor awakens

Companies listed on the Catalist board have to appoint a full sponsor for their listing and a continuing sponsor following their listing. The full sponsor is required to act as continuing sponsor for three years after the listing. Thereafter, a Catalist company can appoint another continuing sponsor.

ZICO was MCP's continuing sponsor. When assessing directors and/or executive officers of an existing listed issuer, the sponsor is required to obtain and review the directors' updated resumes and declarations. It is also responsible for conducting interviews and relevant background checks as required.

In MCP's case, ZICO remained silent throughout most of the saga but eventually commented that it believed the five proposed directors by Ching were suitable. This was based on its assessment of each of the proposed director on merit, qualifications, relevant industry experience, and prior directorships in listed companies. ZICO also considered the experience, skillsets, and expertise based on resumes and publicly available information.

#### **Better times?**

On 7 September 2021, MCP changed its name to OxPay Financial Limited (OxPay), symbolising the company's new direction under fresh management. This signals a new beginning that aimed to move the company past the unsettling developments of the preceding months.

On 20 September 2021, OxPay partnered with Grab, introducing GrabPay as a payment option across all Watsons' retail stores in Singapore. 141 OxPay also partnered with Shopee to integrate ShopeePay as a digital payment option on its platform, strategically positioning itself for the anticipated S\$2 trillion digital payments market in ASEAN by 2030. 142

Internationally, OxPay partnered with HIVE Ventures, a Thailand integrated food ecosystem with 4,000 restaurants and 200 suppliers on its platform, and TranSwap, a UK-based cross-border payment platform firm with multiple central bank licenses across the UK, Singapore, Hong Kong, and Indonesia. OxPay also ventured into crypto payment solutions through its partnership with TripleA on 14 March 2022.

#### Lingering issues

On 11 March 2022, OxPay lodged a police report against former employees for potential wrongdoing relating to the company's 28 April 2021 AGM.<sup>144</sup> This followed statements made by Ching, who had expressed concerns about potential manipulation of votes during the AGM.<sup>145</sup> Although the company requested thorough investigations into potential wrongdoing, the police decided that it would not be taking any action in the matter.<sup>146,147</sup>

On 10 January 2023, Tan resigned from his position as managing director, citing a pursuit of "other career opportunities". In his place, Koh Jin Kit (KJT) was appointed as OxPay's new managing director. However, just nine months later, on 16 November 2023, KJT resigned, citing health concerns and a need to reduce his work commitments. Shortly after, on 24 November 2023, Chee resigned from his role as ID, citing his intention to concentrate on other work commitments.

The company's share price has continued to decline, closing at S\$0.06 on 29 December 2023.<sup>152</sup> While the boardroom tussle is behind it, significant business challenges clearly remain.

# **Discussion questions**

- Explain the business model of MCP, how it fits within the digital payments value chain, and how it derives its revenues. What are the major business challenges for a company like MCP?
- The boardroom tussle at MCP primarily centred around the actions of the controlling shareholder, Ching. Explain how a major or controlling shareholder such as Ching can influence a company's corporate governance.
- Critically evaluate the composition of MCP's board of directors before and after the boardroom tussle. Identify areas for potential improvements in MCP's board composition following the appointment of the new directors and the resignation of the previous directors.
- What do you think are the key attributes of a good director, including an independent director? Were there certain existing or proposed directors at MCP whom you believe may not be suitable to continue or be appointed as a director? Explain.
- NGSC, the potential acquisition target of MCP, appointed Mahtani Bhagwandas as an independent director even though he had been suspended from practising as a lawyer. Why do you think a company like NGSC would appoint such a director? Do you think his appointment should solely be a shareholders' decision or should SGX Regco be able to intervene? Explain.
- Evaluate the conduct of the MCP board and how it responded to the letters and requisitions from Ching. 6.
- What are the key issues relating to the potential acquisition of Next-Generation Satellite Communications 7. Limited (NGSC) by MCP? What is the role of the board in acquisition decisions and what are the most important areas that should be covered in due diligence in acquisitions? When should companies announce potential acquisitions?
- Examine the role played by Catalist sponsors and regulators in upholding good corporate governance. Critically evaluate the effectiveness of MCP's sponsor, ZICO Capital, and SGX Regco as a regulator in the MCP saga.

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# REX INTERNATIONAL: CHANGE THE GAME

#### Case overview

On 30 December 2022, Moroxite Holding Pte. Ltd. (MHPL), a wholly-owned subsidiary of Rex International Holding Limited (RIHL), entered into a conditional share purchase agreement with Moroxite AB (MA), constituting an interested person transaction. Although RIHL said that the acquisition was part of RIHL's diversification strategy amidst volatile oil prices and global uncertainties, it drew criticism from shareholders. George Morgan, a long-time shareholder, wrote an open letter to RIHL in The Business Times. The acquisition also raised concerns from the Singapore Exchange (SGX) regarding compliance and due diligence issues. Additionally, despite a significant decline in the company's profit after tax for the financial year ending 31 December 2022, RIHL authorised additional remuneration in the form of performance bonuses for its non-executive directors. This prompted questions from external stakeholders and regulators relating to RIHL's remuneration committee and its policies.

The objective of this case study is to facilitate a discussion of issues such as corporate governance of family-controlled companies; interested person transactions; board composition; executive and director remuneration policies; and sustainability issues.

## **Genesis of RIHL**

Founded in 2013 by brothers Dr Karl Lidgren (Dr Karl) and Hans Lidgren (Hans), along with Svein Kjellsvik, Rex International Holding Limited (RIHL) is in the business of oil exploration and production and operates in a number of countries. It holds exploration and production licences in countries such as Oman, Norway, and Malaysia, and operates assets in Oman and Malaysia. Through its wholly-owned subsidiary, Rex Technology Investments Pte. Ltd., RIHL aims to position itself at the forefront of the energy industry. This strategic focus leverages the company's global portfolio of concessions and energy-oriented businesses, driven by technological advancements and scientific breakthroughs.<sup>1</sup>

This case study was originally prepared by Janice Wong Xin Hui, Lau Wen Hao, Kenneth, Patrick Tan Shi Wei, Teo Wei Siang, and Zheng Zhi Kang. It has been edited by Otylia Ong and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussions and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees.

Initially listed on the Catalist board of the Singapore Exchange Securities Trading (SGX-ST) on 31 July 2013,<sup>2</sup> RIHL transferred to the Mainboard on 8 March 2022.3 RIHL's board of directors (BOD) regarded this move as a strategic step that would augment the company's growth prospects. By migrating to the Mainboard, RIHL aims to attract a broader range of investors, potentially improving access to both debt and equity markets. This transition also plays a crucial role in elevating the company's overall profile, increasing its visibility, and enhancing its reputation in capital markets and among the general public investors.<sup>4</sup>

# **Unearthing RIHL's financials**

RIHL reported negative profit after tax (PAT) from 2013 to 2017.5 While the company has shown stronger revenue growth since 2019, its PAT remained inconsistent. For instance, in the financial year (FY) 2020, RIHL experienced substantial revenue growth of 345% from FY2019, yet still incurred a negative PAT of US\$15.21 million.<sup>6</sup> In FY2022, despite revenue reaching US\$170.53 million, PAT plummeted by 99.5%, from US\$78.94 million in FY2021 to US\$353,000 in FY2022.7 Further in FY2023, despite achieving its highest revenue figure since establishment, U\$\$207.02 million, RIHL again suffered a negative PAT of U\$\$69.36 million.8



RIHL's revenue vs profit after tax since inception<sup>9,10,11,12,13,14,15,16,17,18</sup>

Source: Rex International Holding Limited. (2024). Annual report 2013-2023.

RIHL's share price has also undergone significant fluctuations over the years. It opened at \$\$0.59 per share on 28 July 2013 and reached its peak at \$\$0.93 per share on 29 September 2013. However, the share price plummeted over the next two years, plateauing within the \$\$0.10 range from 2016 to 2020. There was a recovery from 2020 to 2022, reaching a peak of \$\$0.44 per share on 27 February 2022, but it has since been declining, hovering around S\$0.13 per share as of 30 April 2024.19

# Family control at the top

RIHL is primarily controlled by its founders, Dr Karl and his brother Hans. Dr Karl has a deemed interest of 35.8% in RIHL. This includes a direct interest of 1.09% through Cresta Group Ltd. (Cresta), a company whollyowned by him, and an additional deemed interest of 34.71% held through Limea Ltd. (Limea), in which Cresta owns a 50% stake. Hans has a similar deemed interest of 34.71% in RIHL, as he owns the other 50% of Limea.<sup>20</sup>

At the board level, Dr Karl serves as an executive director (ED). His nephew, Dr Mathias Lidgren (Dr Mathias), the son of Hans, joined the BOD as a non-independent non-executive director (NINED) on 4 May 2022, representing the interest of Limea.<sup>21</sup>

At the managerial level, the Chief Executive Officer (CEO), Mans Lidgren (Mans), is the son of Dr Karl, nephew of Hans, and first cousin to Dr Mathias. Additionally, the Chief Technology Officer, Lina Berntsen, is the sister of Dr Mathias.<sup>22</sup>

# A contentious interested person transaction

Chapter 9 of Mainboard Rules of the Singapore Exchange Securities Trading Limited (SGX-ST) defines an interested person of a company as: (a) a director, chief executive officer, or controlling shareholder of the issuer; or (b) an associate of any such director, chief executive officer, or controlling shareholder.<sup>23</sup>

Additionally, SGX may deem any person or entity to be an interested person if the person or entity has entered into, or proposes to enter into: (a) a transaction with an entity at risk; and (b) an agreement or arrangement with an interested person in connection with that transaction.<sup>24</sup>

On 30 December 2022, RIHL's wholly-owned subsidiary, Moroxite Holding Pte. Ltd. (MHPL), entered into a conditional share purchase agreement (SPA) with Moroxite AB (MA) to acquire Moroxite T AB (MT).<sup>25</sup> MA is 39.6% held by a company owned by Dr Lars Lidgren (Dr Lars), the brother of Dr Karl and Hans. Upon completion of the transaction, MHPL will own 100% of MT. The SPA between MHPL and MA constitutes an "interested person transaction" pursuant to Chapter 9 of the Mainboard Rules.<sup>26</sup>

#### **Details unveiled**

MHPL was set to acquire the entire issued share capital of MT, totalling 1,000 shares, for a nominal consideration of SEK1 from MA.<sup>27</sup> Additionally, MHPL had committed to investing up to an additional SEK43.2 million, subject to the fulfilment of certain conditions.<sup>28</sup> This additional investment comprised three portions as follows:

- a. a non-refundable capital contribution of SEK9.4 million;
- an additional purchase price of SEK15 million following the fulfilment of certain conditions pertaining to (i) getting at least one patent granted by either European or US patent authorities, and (ii) approval of the Acquisition by RIHL's shareholders at an extraordinary general meeting (EGM) before 30 May 2023;
- c. providing MT additional financing of up to SEK18.8 million upon completion of additional milestones pertaining to, among others, successful scientific studies, clinical trials as well as marketing and production plans.<sup>29</sup>

According to the terms and conditions outlined in the SPA, MA will be entitled to a 5% royalty on MT's product sales. In the event of an initial public offering (IPO) or reverse takeover (RTO) of MT, MA's royalty right will extend for eight years from the IPO or RTO date at a reduced rate of three percent, unless a sale occur.<sup>30</sup> Until a sale of MT or an IPO or RTO takes place, MA will receive 40% of the profit from any licence sales made by MT.<sup>31</sup> If MHPL sells any MT shares before an IPO or RTO, MA shall receive 50% of the proceeds.<sup>32</sup>

The aggregate amounts associated with this acquisition remain uncertain, necessitating an EGM to seek specific approval from shareholders pursuant to Chapter 9 of the Mainboard Rules.<sup>33</sup> If approval is not secured by 30 May 2023, the SPA will automatically terminate. MHPL will transfer all MT shares to MA, and MA will remit the purchase price of SEK1.<sup>34</sup> Any prior transactions will be reversed, but the capital contribution will be retained by MT and indirectly transferred to MA.<sup>35</sup>

#### What's the game plan?

RIHL said that its interest in MT, a Swedish medical technology firm specialising in developing products to impede tumour progression and prevent metastasis, stems from a strategic shift in response to a decade of volatile

oil prices. This aligns with RIHL's proactive approach to mitigate risks associated with factors such as the global COVID-19 pandemic, geopolitical tensions, inflation, and the increasing global emphasis on addressing climate change.<sup>36</sup> Seeking opportunities with unicorn potential, RIHL aims to diversify its portfolio within sustainable business practices while adhering to its overall business profile and risk tolerance.<sup>37</sup> This strategy mirrors RIHL's broader mandate to diversify into sustainable solutions for energy production and materials, following earlier investments in Xer Technologies Ltd. (XTL), a drone company.<sup>38</sup>

On 31 January 2023, RIHL completed the transfer of shares in MT from MA to MHPL and injected a capital contribution. At that time, the acquisition was still conditional on shareholders' approval.<sup>39</sup>

# Shareholders' interest or family's future?

"Management now in their golden years and preparing for retirement, the management is resorting to finding ways to transfer wealth from shareholders to family members."

- George Morgan, a long-term shareholder of RIHL<sup>40</sup>

"As the commercial drone company and medical technology company were both acquired through interested party transactions, UOBKH believes this could lead some investors to question Rex's standards of corporate governance."

- Jessie Lim, a reporter with The Business Times<sup>41</sup>

On 24 March 2023, long-term RIHL shareholder George Morgan (Morgan) expressed his disapproval of RIHL's diversification strategy in an open letter published in The Business Times, citing concerns amidst volatile oil prices and global uncertainties.<sup>42</sup> Morgan questioned RIHL's move into non-oil and gas sectors, highlighting direct investments in unlisted drone and biotech-related companies linked to the management team's family members.<sup>43</sup> Shareholders, including Morgan, raised concerns about RIHL's decision to invest directly in familyassociated businesses rather than opting for professional venture capital managers with proven track records. They cited potential conflict of interest and perceived breaches of corporate governance norms.<sup>44</sup> UOB Kay Hian, a brokerage firm, echoed these concerns about RIHL's corporate governance in unrelated acquisitions, contributing to a diminishing sentiment among investors during its valuation process.<sup>45</sup>

In response to shareholders' concerns and Morgan's open letter, RIHL defended its strategic decisions through a public announcement on 26 March 2023.46 The company emphasised the finite nature of oil and gas resources and the challenges in securing financing amid an increasing focus on Environmental, Social, and Governance (ESG) factors.<sup>47</sup> RIHL stated that diversification is vital for long-term sustainability, pointing out that recent investments in MT and XTL constitute a small fraction (4.14%) of the company's audited net tangible assets (NTA), with the vast majority still within oil and gas.<sup>48</sup> RIHL reassured its commitment to minority shareholders' interests, particularly concerning the proposed investment in MT. This investment was to be tabled for shareholder approval at an EGM to be convened, during which interested persons and their associates will abstain from voting.49

Meanwhile, the investment in XTL fell below the audited NTA's three percent threshold, exempting it from mandatory announcements under Listing Rules Chapters 9 and 10.50 Nevertheless, RIHL voluntarily disclosed the investment.<sup>51</sup> The decision to inject additional funds into XTL was contingent upon the achievement of specific technical and sales milestones.<sup>52</sup> This was further supported by RIHL's response to the Securities Investors Association (Singapore) (SIAS) on 21 April 2023 stating that Rex Technology Investments Pte Ltd committed up to US\$3 million based on milestones for XTL.53 RIHL said that the US\$1 million initial payment and subsequent commitment were determined through negotiations, considering the acquisition's rationale and XTL's potential. It clarified that the interested person transaction adhered to Listing Rules and reiterated its dedication to enhancing shareholder value through well-defined risk mitigation measures.<sup>54</sup>

# **Reworking the transaction**

The SPA to acquire MT was originally contingent on approval at an EGM by 30 May 2023, but the deadline was extended to 31 July 2023.<sup>55</sup> However, on 28 July 2023, the parties to the SPA acknowledged that it was unlikely the EGM would be held and the requisite shareholders' approval obtained by the deadline. MA, the vendor, was unable to extend the long stop date due to financing constraints. Given that RIHL remained keen to pursue the acquisition, an addendum to the SPA was introduced on 28 July 2023, altering the terms to eliminate the need for shareholders' approval.<sup>56</sup> Adjustments included MHPL returning a 30% shareholding interest in MT to MA, partially reversing the initial transfer. Additionally, MA's entitlements to royalty payments, share of profits, and MT's shares were all removed, along with IPO and RTO-related agreements. The capital contribution of SEK43.2 million remained unchanged.<sup>57</sup>

Following the amendments, the aggregate amounts relating to the revised acquisition were fixed. In addition, since the total value of all transactions with Hans, Dr Karl, or their associates in the FY ended 31 December 2022 did not exceed five percent of RIHL's audited NTA as of 31 December 2021, shareholders' approval was not required for the revised acquisition.<sup>58</sup>

# **Questioning the deal**

Both Singapore Exchange Securities Trading Limited (SGX-ST) and SIAS raised concerns about the MT acquisition. SGX-ST queried RIHL regarding the announcements made on 30 December 2022 and 28 July 2023 on MHPL's investment in MT, while SIAS raised questions regarding the acquisition as well as other queries related to RIHL's annual report for FY2022.<sup>59,60</sup>

SIAS questioned the roles of the independent directors (IDs) in the acquisition, specifically who led the negotiation with MT and how the valuation was determined. On 21 April 2023, RIHL responded by stating that: "the board, including the independent directors, discussed the proposed transaction over several board meetings held in the third and fourth quarters of 2022. Dr Karl Lidgren and Dr Mathias Lidgren, the interested persons in the proposed transactions, recused themselves from decision-making regarding the transactions. Management, excluding the Chief Executive Officer Mr Mans Lidgren, led the negotiations with MTAB." Moreover, the consideration for MT "was arrived at after arm's length negotiations between Moroxite Holding Pte Ltd and Moroxite AB, and on a willing-buyer, willing-seller basis, taking into account, inter alia, the Group's analysis of the value of sale shares as at the financial position and performance of MTAB for FY2022, the potential and business plan of MTAB, the rationale for the proposed acquisition as well as the payout structure of the consideration."

SIAS further questioned the board regarding its deal sourcing process to find "low-risk projects with unicorn business potential" and asked whether such projects would be too good to be true or come with extremely high valuations. In response, RIHL highlighted the challenge of finding investments with significant future financial impact while minimising the investment amount.<sup>63</sup> To address this challenge, the company relies on its major shareholder, BOD, and management network to source off-market opportunities.<sup>64</sup> This approach has allowed the company to obtain attractive valuations and exert significant control over the direction of these investments.<sup>65</sup>

SGX-ST, on the other hand, queried RIHL about proceeding with the acquisition on 31 January 2023 before obtaining shareholder approval. In response, RIHL explained that the non-refundable capital contribution was a mutually agreed-upon term, ensuring MT's financial stability for operations and growth. 66 SGX-ST also inquired about the total consideration of SEK43.2 million and whether it remained consistent after the amendment. RIHL clarified that negotiations between MA and MHPL, following an independent valuation by Value Solutions

Group, determined the consideration. The revised acquisition, removing profit-sharing and royalties, was viewed as fair and mutually beneficial.<sup>67</sup>

Furthermore, SGX-ST questioned the due diligence conducted by RIHL regarding the acquisition. RIHL outlined considerations such as MT's short operating history, the payment structure based on milestones, the significance of intellectual property, Dr Mathias's knowledge and involvement, limited financial data, and warranties provided by MA.<sup>68</sup> RIHL's Audit Committee (AC) factored in the rationale of the acquisition, the payment structure tied to milestones, and MT's potential profitability. Despite concerns, RIHL emphasised the thorough evaluation of the decision, including discussions and careful consideration by the management team and directors.69

## **Notice of Compliance**

Following RIHL's reply, SGX Regco issued a Notice of Compliance to the company on 29 August 2023, 70 mandating the appointment of an independent professional by 29 September 2023.71 The independent professional will review whether RIHL conducted proper due diligence concerning the acquisition, ascertain if the acquisition was completed in accordance with the original SPA considering the share transfer on 31 January 2023, and review the adequacy of the company's internal controls relating to acquisitions and interested person transactions.<sup>72</sup>

On 29 September 2023, RIHL announced that it had appointed Ernst & Young Advisory Pte. Ltd. (EY) as the independent reviewer. EY will report its findings directly to SGX Regco and the company's AC. However, no additional information has been provided as of end of May 2024.73

#### Remuneration controversies

On 28 April 2023, RIHL convened its annual general meeting (AGM). Resolution Three sought shareholders' approval for the payment of directors' fees totalling S\$807,433 for the ongoing FY ending on 31 December 2023.74 RIHL had, in the preceding year's AGM, approved the payment of directors' fees of S\$621,383 for FY2022.75 However, given the enlarged board size in FY2022, Resolution Four proposed additional directors' fees of \$\$95,830. Meanwhile, Resolution Five sought authorisation for the payment of additional remuneration amounting to \$\$675,000, to its non-executive directors (NEDs) as a performance bonus for the FY ending on 31 December 2022.76 The remuneration was proposed in alignment with the achievement of the performance target set and approved by the Remuneration Committee (RC) and the BOD.<sup>77</sup> Approval of Resolution Five will grant each NED - including Sin Boon Ann (Sin), Dr Christopher Atkinson, Mae Heng (Mae), John d'Abo (John), and Dr Mathias, an equal amount of S\$135,000 in 2023.78 Resolutions Three, Four, and Five were all approved during the AGM.79

## **NED** remuneration under scrutiny

"How can the RC members, which include two IDs who are recipients of the performance bonus, avoid conflicts in setting and approving the performance targets, which will determine each of their performance bonuses? What are these performance targets and when were they set?"

- Professor Mak Yuen Teen, Corporate Governance Advocate80

Concerns regarding the significant performance bonus were flagged by various stakeholders, including SGX-ST and corporate governance advocate, Professor Mak Yuen Teen (Professor Mak), questioning numerous aspects such as the role of the RC and the performance targets.<sup>81,82</sup>

RIHL's PAT had collapsed from US\$78.939 million in FY2021 to US\$353,000 in FY2022.<sup>83</sup> The company only reached a profit after utilising its tax credit of US\$6.961 million, narrowly averting a loss.<sup>84</sup> The earnings per share also showed a substantial 101.6% decrease, plummeting from US\$5.16 in FY2021 to a negative US\$0.08 in FY2022.<sup>85</sup>

Moreover, three of the NEDs receiving the performance bonuses, Mae, John, and Dr Mathias, were only appointed in May 2022. Yet, RIHL determined that they should receive the same performance bonus as other NEDs. 86 According to Professor Mak: "For executives, performance bonuses are usually prorated for those who join partway through a year." 87

#### Executive member in the RC

According to RIHL's Corporate Governance Report 2023, the RC comprised three members, with the majority, including the Chairman, being independent. Sin, RIHL's lead ID, served as the RC's Chairman. The other two members were Dan Brostrom (Brostrom), RIHL's Executive Chairman (EC), as well as Mae, an ID.<sup>88</sup>

The Report explained that the Brostrom's appointment to the RC stemmed from his ability to provide relevant guidance and input, leveraging his expertise as an EC. His familiarity with the company's activities, industry, and market practices, including remuneration packages which were in line with the current market standards and commensurate with the respective job scope and responsibilities of executives, in the jurisdictions where the company operated served as an added advantage.<sup>89</sup> It was further stated that since the RC would continue to have a majority representation of IDs, they collectively would have the decisive vote concerning executive remuneration matters. Additionally, the appointment would not result in a conflict of interest, as no director or member of the RC was allowed to participate in the deliberation and had to abstain from voting on any resolution relating to their remuneration or that of employees related to him.<sup>90</sup>

However, the board acknowledged the inclusion of an ED in the RC deviated from the Singapore Code of Corporate Governance (SCCG) 2018. Under Provision 6.2, it is recommended that the RC comprises at least three directors, of all whom are NEDs, with the majority being independent, including the RC Chairman.<sup>91</sup>

## Lack of transparency

In the section titled "Performance Criteria for Remuneration" of the Corporate Governance Report, it was stated that ID and NINEDs receive directors' fees based on their responsibilities, effort, and time spent. These fees were recommended by the RC and endorsed by the board for approval by the shareholders at the AGM. However, the report only partially disclosed the remunerations for EDs, the CEO, and Key Management Personnel, citing commercial sensitivity and the confidential nature of remuneration matters as reasons for withholding full disclosure. There was also no mention or rationale provided for the performance bonuses payable to NEDs, except that they were subject to shareholders' approval at the upcoming AGM. Furthermore, the remuneration policy did not specify the details of the performance targets set by the RC and how they ensured the absence of conflicts in setting and approving these targets, which would also determine the performance bonus of the two IDs that were members of the RC.

"Special circumstances which require more time commitment from NEDs may warrant the payment of additional remuneration, but this should be done in a transparent and appropriate manner. Otherwise, it could create a perception that NEDs are paid additional remuneration to support corporate actions that benefit major shareholders or management but not the company."

### **SGX-ST demands clarity**

The lack of transparency prompted SGX-ST to question RIHL about the potential conflict of interest and transparency regarding performance bonuses for NEDs. SGX demanded disclosure of the board's assessment and future information on performance targets. The board provided its response on 15 April 2023, stating that it had assessed that no conflict of interest existed during the setting of the performance targets. They reiterated that the implementation of performance targets is aligned with the shareholders' interest to enhance shareholder value by ensuring the success of the company's financial performance and improvement in share price. According to RIHL's responses, performance targets encompass the company's financial performance, share price, ability to pay dividends, and NEDs qualitative contributions to strategic and other values of the company.98

In addressing concerns about compromising the independence of NEDs, the company argued that performance bonuses are awarded to NEDs due to their vital role in shaping the company's business strategy and interests with their expertise. The board emphasised the nature of the company's operations and the active involvement of NEDs in decision-making processes. They added that the performance bonus aims to attract and retain experienced and qualified individuals from different backgrounds and incentivise the NEDs to take extra efforts to promote the interests of the company. In addition, as a safeguard, such performance bonuses would be subject to shareholder approval and only payable if approved.99

In conclusion, the board took the stance that performance bonuses paid to NEDs under certain conditions should not be considered prejudicial to their independence. 100

# Old game replayed?

Similar concerns regarding the integrity of RIHL's RC were also raised by SIAS in 2019, specifically in relation to the administration of the Performance Share Plan (PSP).<sup>101</sup> On 18 November 2019, RIHL disclosed the vesting of share awards under the firm's PSP. The disclosure stated that a total of 22,669,380 shares were vested following the fulfilment of performance targets set based on the average closing market prices of the company, which exceeded S\$0.15 over a consecutive period of five market days from 7 November 2019 to 13 November 2019.<sup>102</sup>

In 2019, the RC comprised three members: Sin, Muhammad Sameer Yousuf Khan (Khan), and Brostrom. Despite deviating from the SCCG 2018 by appointing Brostrom, an ED, to the RC, the company justified that he brought relevant expertise without compromising independence. They emphasised that no member of the committee, including directors, could participate in discussions or vote on matters concerning their own or related employees' remuneration. However, all three RC members received PSP shares, raising questions from the SIAS regarding potential conflicts. 103 While the majority of RC members were IDs, the allocation of shares to Sin and Khan was managed by a subset of the committee, involving one executive and one ID, rather than the majority of independents. 104

"Since no director was involved in the deliberation of his remuneration, Sin Boon Ann and Muhammad Sameer Yousuf Khan would have deliberated and made the grant of 6.1 million shares to Dan Brostrom (the Executive Chairman). In a 'round robin' format, Dan Brostrom (the Executive Chairman) and Muhammad Sameer Yousuf Khan would then award a grant of 900,000 PSP shares to Sin Boon Ann. Similarly, Mr Dan Brostrom (the executive chairman) and Mr Sin Boon Ann made the decision to grant Mr Muhammad Sameer Yousuf Khan 780,000 PSP shares."

- Securities Investors Association (Singapore)<sup>105</sup>

However, RIHL clarified that all PSP share awards recommended by the RC were approved by the board in adherence to good CG practices, ensuring that no awards were granted under "sub-optimal circumstances". Moreover, RIHL disputed SIAS' characterisation of the process as a "round robin", asserting that the RC did not possess the ultimate authority in deciding PSP awards. The final decision rested with the board, composed predominantly of IDs. 107

# T-Rex sized pay

Amidst the controversy surrounding NED remuneration, RIHL also drew attention from UOB Kay Hian (UOBKH) for having one of the most highly-paid CEOs, ranking 16<sup>th</sup> among the top 20 highest-paid CEOs in 2022.<sup>108</sup>

"Perceptions of fair pay can vary, and the concept of fairness itself is subjective. Ultimately, the goal is to strike a balance between attracting and retaining top talent while ensuring that CEO compensation is reasonable, justifiable and aligned with the long-term success of the organisation."

- UOB Kay Hian<sup>109</sup>

Despite the subjectivity in defining 'fair compensation', UOBKH said the question was whether a CEO has contributed value to his company and if this is evident in his remuneration. Ensuring a fair compensation structure involves comparing CEO pay to industry peers and companies of similar size while incorporating performance-based incentives, encompassing financial metrics such as revenue growth and non-financial metrics such as market share. UOBKH considered remuneration in relation to various financial metrics, including the company's 2022 return on equity, share price performance, and net PAT. In the case of RIHL, CEO Mans received a pay package of S\$4.1 million to S\$4.3 million despite the share price declining by 28% and the net PAT falling by 99.5%, positioning himself as one of the most highly paid CEOs compared to other firms.

While the RC's role is to review and approve executive pay packages, ensuring alignment with company goals and shareholders' interests, UOBKH said that the issues relating to NED remuneration at RIHL have raised significant concerns about the company's corporate governance. A key issue was the conflict of interest within the RC, where committee members reward themselves with substantial performance bonuses.<sup>112</sup>

#### Behind the boardroom curtain

As of FY2023, RIHL's board comprised nine directors, including five ID, as shown in Figure 2.<sup>113</sup> The board welcomed its first female director, Mae, on 4 May 2022. She also assumed the role of Chairman of the AC from Muhammed Sameer Yousuf Khan, who retired on 31 March 2022.<sup>114</sup> Beverley Smith (Smith) joined as the second female director on 1 August 2023, further increasing the female representation on the board. Given RIHL's focus and diversification into sustainable energy since 2019,<sup>115</sup> Smith's expertise as a professional geologist and extensive experience in the oil and gas sector was seen as valuable.<sup>116</sup>

Figure 2: RIHL's board of directors as of 31 December 2023<sup>117</sup>

Name	Position	Working Experience and Qualifications
Dan Brostrom	Chairman and Executive director	<ul> <li>Previously a senior partner at MVI Holdings Ltd, and CEO at Hufvudstaden UK Ltd and Brostrom UK.</li> <li>Degree in Economics from Stanford University in the United States of America, and a Bachelor of Arts in Economics from Gothenburg University in Sweden.</li> </ul>

Name	Position	Working Experience and Qualifications
John d'Abo	Vice Chairman and Executive director	Over 30 years of executive experience in global investment banks and associated businesses mainly in Southeast Asia.
		Had stints at investment banks including Royal Bank of Canada Capital Markets (Hong Kong), Royal Bank of Scotland (Hong Kong), and Credit Suisse (Hong Kong).
		Bachelor of Arts with joint honours in French and Spanish from the University of Bristol, UK.
Dr Karl Lidgren	Executive director	Founder of Rex International Holding Limited.
		Previously a Professor in Lund University and held the role of an investigator for the Swedish Government from 1972 to 1980.
		Degree in Economics and Doctor of Philosophy in Economics from Lund University.
Sin Boon Ann	Lead independent director	Previously the Deputy Managing Director of Drew & Napier's Corporate and Finance Department and the Co-head of the Capital Markets Practice.
		Was a Member of Parliament for Tampines GRC from 1996 to 2011.
		Bachelor of Arts and Bachelor of Laws (Honours) from the National University of Singapore and Master of Laws from the University of London.
Dr Christopher Atkinson	Independent director	A professional geologist with over 35 years of experience in the upstream oil & gas sector.
		Previously a founding investor in several exploration and production start-up ventures in Southeast Asia, the UK and Canada.
		Doctor of Philosophy in Geology and a Bachelor of Science (1st Class Honours) Geology from the University of Wales, Swansea.
Mae Heng	Independent	Over 16 years of experience working at Ernst & Young Singapore.
	director	Currently an independent director of Grand Venture Technology Limited, Chuan Hup Holdings Limited, HRnetGroup Limited, and Ossia International Limited.
		Bachelor of Accountancy from the Nanyang Technological University and a Fellow Chartered Accountant with the Institute of Singapore Chartered Accountants.
Dr Mathias Lidgren	Non- independent non-executive director	A practising medical doctor since 2013 and currently practising at Skane University Hospitals in Lund, Sweden.
		Holds directorships in companies including Propatria AB, Caithness Fastighets AB, and T rolleholms Slott AB.
		Chief Medical Officer of Moroxite T AB.
		Doctor of Philosophy in Health Economics from the Karolinska Institutet, Sweden, a Master of Arts in Genetics, as well as a medical degree (MB BChir) from the University of Cambridge, UK.
Beverley Smith	Independent director	A professional geologist with more than 30 years' experience in the oil and gas industry.
		A 26-year career veteran with the BG Group Plc, where her last held position was Vice President of Exploration and Growth (Europe).
		Master of Science in Petroleum Geology from the University of London, United Kingdom (UK) and a Bachelor of Science in Geology (Honours) from the University of Exeter, UK.

Name	Position	Working Experience and Qualifications
Pong Chen Yih	Independent director	Over 20 years of experience handling complex legal and financial advisory work in relation to domestic and international corporate finance and capital markets transactions.
		Currently a director and the Chief Operating Officer of Novus Corporate Finance Pte. Ltd.
		Previously the Head of the Singapore Domestic Capital Markets Group in Baker McKenzie
		Bachelor of Laws (Honours) from the National University of Singapore.

Source: Rex International Holding Limited. (2024). Annual report 2023.

In addition to the RC, the board established two other board committees: the Nominating Committee (NC) and the AC. The NC is chaired by Sin, with Dr Karl, Dr Mathias, and Pong Chen Yih serving as member. Meanwhile, the AC is chaired by Mae, with Sin and Brostrom serving as members.

#### The centre of controversies

Sin had served as the lead ID for RIHL since his appointment on 24 February 2014.<sup>118</sup> Beyond his position at RIHL, he held several directorships in other listed companies including TIH Limited, OUE Limited, The Trendlines Group Ltd, and Sarine Technologies Ltd.<sup>119</sup> Concurrently, he was the founder and EC of Esseplore Pte. Ltd. and Chairman of Healthway Medical Corporation Limited (Healthway) respectively. There have been disclosure issues on several of his boards in recent years.<sup>120</sup>

On 22 June 2020, Healthway issued a corrigendum to its 2019 Annual Report. <sup>121</sup> The corrigendum sought to amend the original disclosures to include Sin's relationships with a substantial shareholder and the proposed new ID, Poh Mui Hoon. <sup>122</sup> Just two days later, several discrepancies were found in the disclosure template for Sin's appointment as ID of Sarine Technologies Ltd. The disclosure template omitted his directorship in The Trendline Group Ltd, where he was appointed a week ago on 17 June 2020. <sup>123</sup> Furthermore, he was still listed as a current director of Datapulse Technology despite having stepped down on 13 November 2019. <sup>124</sup> Finally, his age was incorrectly disclosed as 61 instead of 62, the age he was during his appointment with The Trendline Group. <sup>125</sup>

## A rexy move

On 30 March 2023, the BOD proposed to the shareholders a change of auditors from KPMG LLP to Deloitte & Touche LLP. According to the BOD, this was part of the company's initiatives in ongoing good corporate governance. The BOD further mentioned that: "a change of auditors would also allow the Company to benefit from fresh perspectives and have access to the views of a new professional audit firm." 126 KPMG has served as RIHL's auditors since its incorporation, and their re-appointment was last approved in the previous FY2022 AGM. 127

## The new game

With increasing pressures from investors, the public, and regulators, the oil and gas industry faces serious sustainability issues and risks from climate change.<sup>128</sup>

RIHL's 2023 Sustainability Report<sup>129</sup> shows that it has adopted a sustainability governance structure where responsibilities for sustainability have been fully integrated into the BOD. All members had attended the sustainability training approved by SGX. The board collectively reviews and approves the climate risks and opportunities identified and articulated by the management. The management, headed by the CEO, oversees, manages, and monitors RIHL's sustainability efforts and materiality topics.<sup>130</sup>

RIHL has engaged a third-party ESG consultant to facilitate the discussions and has identified five material issues to focus on in FY2023 as part of its group-wide sustainability strategy.<sup>131</sup> The five areas of focus align with the United Nations Sustainability Development Goals (UN SDG), reflecting RIHL's commitment to each focus and its importance to stakeholders. 132

#### Focus area one

The first issue of focus is "Upholding Governance and Ethics". RIHL links this to UN SDG 16, "Peace, Justice and Strong Institutions", emphasising full compliance with socioeconomic and environmental laws and regulations while promoting strong corporate governance practices. This covers anti-corruption practices, with new areas of focus in FY2022 including anti-competitive behaviours; compliance with tax regulations; forced or compulsory labour; supplier environmental and social assessments; and customer privacy. 133

#### Focus area two

The second focus is "Prioritising Occupational Health and Safety", tied to UN SDG 8, "Decent work and economic growth", RIHL strives to provide a safe working environment and promote productive employment by conducting regular inspections.<sup>134</sup>

#### Focus area three

"Resilience for Climate Change" is the third focus. RIHL recognises the transition risks associated with moving to a low-carbon economy. As part of UN SDG 7 and 13, "Affordable and Clean Energy" and "Climate Action", RIHL aims to contribute to electrification and reduce the carbon footprint in the oil and gas supply chain. It has diversified into XTL and RIHL believes that the up-and-coming drone company could reduce its carbon footprint by revolutionising the supply chain with drones, thus increasing the efficiency of transports and deliveries. Additionally, RIHL had proposed to diversify into the medical technology company, MT. 135 However, both transactions involving XTL and MT are interested person transactions and have raised concerns from stakeholders.

#### Focus area four

The fourth focus is "Protecting our Environment", linked to UN SDG 12, "Responsible Consumption and Production". RIHL has undertaken precautionary measures to reduce its negative impact on local marine and land biodiversity around its production wells. By using energy-efficient strategies and technologies, RIHL said it has reduced its waste generation and carbon footprint through recycling and reusing resources. 136

#### Focus area five

The last focus area is "Creating Inclusive Communities", tied to UN SDG 1, 5, and 10, "No poverty", "Gender Equality", and "Reduced Inequalities" respectively. RIHL said that it ensures that its employment comply with local laws and regulations, focusing on engaging and hiring local talents to reflect the inclusivity and diversity of local communities. Additionally, all remuneration is merit-based. RIHL also prioritises procuring resources from local suppliers, increasing its resilience to global supply chain disruptions. In 2022, RIHL met its target, with most of its contracts for drilling the Brage South well in Norway and the Yumna-4 well campaign in Oman procured from local service providers. 137

# The risk game

RIHL disclosed that it has implemented a comprehensive risk management framework that incorporates sustainability issues into all its strategies. Along with the independent ESG consultant, the board ensures that material factors identified by the management are approved, well managed, and monitored. Additionally, risk management is viewed as a key governance factor, overseen by the management-level Risk Management Committee (RMC), which is under the AC.<sup>138</sup>

RIHL has identified two climate-related risks: Transition Risks and Physical Risks.<sup>139</sup> Transition Risks include changes to policy and legal obligations, technological innovation, shifting market demand for products, and changing stakeholder expectations. RIHL understands that with the ongoing policies and market efforts pushing for decarbonisation, the demand for oil and gas will diminish over time. However, the company believes that there will still be short-term dependence on these commodities, and it will continue to seek divestment opportunities while managing its cashflows prudently. Regarding technology, RIHL has identified that improvements in electrification technology will impact the demand for oil and gas, hence it will continue to monitor short-term oil prices and hedge accordingly. Lastly, with increasing societal pressure to minimise environmental impact, RIHL has to maintain its brand and reputation. It has contributed towards global efforts in carbon capture and storage technologies to offset its impact on global emissions.<sup>140</sup>

Physical Risks are the acute and chronic physical impacts of climate change. Acute physical risks refer to event-driven impacts such as extreme weather events and disasters, whereas chronic physical risks refer to long-term shifts in climate patterns that may cause sea level rise and persistent heat waves. Such risks negatively impact offshore oil rigs, where rising sea levels and more frequent cyclones increase operational costs and insurance premiums. RIHL will continue to monitor developments in the market and assess technologies to mitigate these physical risks. <sup>141</sup>

# A new beginning?

Against the backdrop of the risks it has identified, RIHL has pinpointed opportunities to create long-term value for its stakeholders and has set targets for 2024.<sup>142</sup> With continuous efforts to improve its in-house proprietary technology, "Rex Virtual Drilling", RIHL said that it has increased its efficiency and resilience to the transition risks identified. RIHL will continue to leverage technology to reduce energy wastage and improve resource efficiencies with carbon footprint reduction targets in mind.<sup>143</sup>

Its medium-term targets include exploring commercially viable renewable energy projects. For long-term targets, RIHL is actively looking for alternative sustainable solutions for energy production beyond conventional renewable energy projects. Additionally, RIHL plans to add value by discovering more oil wells, building up contingent resources and reserves, and maintaining oil production as a stable revenue stream while achieving long-term sustainable profitability as part of its economic performance targets. On 7 November 2023, RIHL announced an oil discovery in Brage Field that added one million barrels of oil to its reserves. Additionally, it has entered into a sale and purchase agreement to acquire a 17% interest in PL740, an oil and gas licence for a field in the Norwegian North Sea.

On 25 April 2025, RIHL announced a series of redesignations and changes to its board composition as part of the board renewal process. Four long-serving directors, Brostrom, Dr Karl, Sin, and Dr Christopher Atkinson, retired from their respective roles following the conclusion of the AGM held on the same day. Meanwhile, John has been redesignated as EC, while Pong Chen Yih has been redesignated as the lead ID and will assume the position of Chairman of the NC and RC. With these changes, RIHL's board now consists of five members, including three IDs.<sup>147</sup>

## **Discussion questions**

- 1. What are some potential corporate governance issues in a family-controlled company like Rex International?
- 2. Assess the composition of the board of directors before and after the additions in 2022 and 2023. Do you think the changes to the board will enable it to be more effective in dealing with the key issues highlighted in the case? Explain.

- The key risks in family-controlled companies often involve interested party transactions. Explain why these transactions can be potentially harmful to minority shareholders, using Xer Technologies Limited and Moroxite T as illustrations.
- In the context of Rex International, is it appropriate for NED remuneration to be tied to the company's performance? How do you think NEDs, including IDs, should be remunerated, considering their roles, responsibilities, and influence on corporate governance? In light of challenges like the "round robin" method of determining remuneration mentioned by SIAS, what additional measures can be implemented to mitigate such issue?
- Should Singapore continue to allow companies to have executive directors in their remuneration committees? Explain. If so, what additional safeguards would you propose?
- Evaluate the effectiveness of regulatory actions taken by SGX-ST in the case of Rex International. 6.
- 7. Critically evaluate the sustainability governance structure and framework of Rex International. Do you think it would be effective in identifying, governing and managing sustainability-related risks and opportunities? Explain. What alternative sustainability governance structure and framework could Rex use?

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# SATS TAKES A WORLDWIDE FLIGHT

#### Case overview

On 28 September 2022, Singapore Airport Terminal Services Limited (SATS) announced the proposed acquisition of Worldwide Flight Service (WFS), the largest air cargo handling company globally, boasting a presence in 27 countries and territories. The acquisition was said to be strategically beneficial as it offered immediate financial advantages and facilitated diversification across both the geography and industry segments. Additionally, there were prospects for medium-term synergies that could result in cost reduction. However, some concerns were raised regarding the amount of debt SATS would take over from WFS and share dilution from the rights issue needed to fund the purchase.

The objective of this case study is to facilitate a discussion of issues such as cross-border mergers and acquisitions (M&As); role of the board in M&As; due diligence for acquisitions; stakeholder communications; board structure; cultural differences; and local and foreign rules governing M&As.

## The beginning

Incorporated in 1972 and headquartered in Singapore,¹ Singapore Airport Terminal Services Limited (SATS) is a global leader in gateway services and Asia's leading provider of food solutions.² With a vision to be the market leader with innovative food solutions and seamless connections,³ it provides two main services, through Food Solutions and Gateway Services. The food solutions business comprises aviation catering, institutional catering, private jet catering, commercial catering food service solutions and distribution, and linen and laundry.⁴ The gateway services business comprises passenger services, apron services, air cargo, low-cost carrier handling, private jet services, cruise terminal services, security services, and travel retail.⁵

SATS has over 46,500 employees and operates in over 210 locations in 27 countries across Asia Pacific, Europe, and the Middle East.<sup>6</sup> Its subsidiaries include SATS Airport Services, SATS Catering, SATS Security Services, Aero Laundry & Linen Services, Aerolog Express, Country Foods, and Singapore Food Industries.<sup>7</sup>

This case study was originally prepared by Agnes Choo Wan Jun, Lee Zong Xian, Lim De Yao, Sammi Lee Mi Si, Sim Zheng Long, Vernice Chong Ke Xin. It has been edited by Michelle Tan and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussions and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees.

SATS was listed on the Singapore Stock Exchange (SGX) Mainboard on 12 May 2000.8 Temasek Holdings has a deemed interest of about 40% in SATS as of 24 May 2022.9 There are no other substantial shareholders. Its market capitalisation at the end of June 2022 was about S\$4.4 billion.<sup>10</sup>

#### SATS' acquisitions and investments

Since 2014, SATS has undertaken a number of acquisitions and other corporate transactions. This includes its partnership with AirAsia in 2017 to establish SATS Ground Team Red Holdings Sdn Bhd. This partnership aimed to serve new customer segments while gaining access to new markets. In 2014, SATS acquired a 41.65% stake in the Indonesian food solutions and gateway services firm PT Cardig Aero Services Tbk (CAS). In November 2021, SATS rolled out a series of ventures in partnership with the Singapore Economic Development Board (EDB) aimed at creating and moving to new business ventures. SATS also collaborated with Singaporean food and beverage (F&B) brands to expand overseas.

But its biggest gamble for growth was yet to come.

# **Taking off**

On 28 September 2022, SATS announced a proposed acquisition of Worldwide Flight Services (WFS) from an affiliate of investment firm Cerberus Capital Management (Cerberus). 14

Founded in 1984 and based in Paris, France,<sup>15</sup> WFS is a leader in air cargo logistics and ground handling services.<sup>16</sup> It operates in more than 18 countries and territories,<sup>17</sup> employing a workforce of more than 30,000 individuals.<sup>18</sup> Leveraging on its four decades of experience in aviation-related handling services, WFS offers a comprehensive range of solutions that encompass cargo handling, baggage handling and processing, ramp services, and passenger services which include premium VIP services.<sup>19</sup>

In June 2018, US private equity firm Platinum Equity agreed to sell WFS to affiliates of Cerberus Capital Management (Cerberus) in a transaction valued at €1.2 billion.<sup>20</sup> Cerberus is a pioneer in alternative investing with an estimated US\$60 billion in assets across complementary credit, private equity, and real estate platforms.<sup>21</sup> The sale was closed during Q4 2018.<sup>22</sup> Since Platinum Equity's acquisition of WFS in 2015, WFS has grown significantly and is the world's largest air cargo handler and one of the world's leading providers of ground handling and technical services, with annual revenues of more than €1.2 billion.<sup>23</sup>

WFS's cargo handling revenue continued to demonstrate resilience even amidst the COVID-19 pandemic.<sup>24</sup> However, ground handling and ancillary revenue were impacted by the overall industry downturn caused by COVID-19 in 2020.<sup>25</sup> Nevertheless, there was consistent improvement as passenger travel picked up again in its primary markets.<sup>26</sup> Earnings before interest, tax, depreciation, and amortisation (EBITDA) and margins continued to benefit from the effects of positive operating leverage, with increases in cargo volumes and a pick-up in ground handling activity.<sup>27</sup>

#### What fuelled SATS' decision?

"This is a transformational opportunity for SATS and our proposed acquisition of WFS will create a global leader that can become the go-to provider of mission critical aviation services. From our hub in Singapore, and in our newly combined markets, SATS and WFS will be at the heart of global trade flows, operating in the world's busiest airports and supporting the biggest companies."

The acquisition of WFS was to enhance SATS' ability to serve its air cargo customers in key hubs across Asia, Europe, the US, as well as emerging markets in Latin America and Africa.<sup>29</sup> The joint network would cover trade routes that account for more than 50% of global air cargo volume. 30 WFS operates in five of the top 10 cargo airports in North America and Europe, Middle East, and Africa (EMEA), including Los Angeles, Chicago, Miami, Frankfurt, and Paris. 31 SATS is established in four of the top 10 cargo airports in Asia, including Hong Kong, Taipei, Singapore, and Beijing.<sup>32</sup>

SATS believed that the combined group will be better positioned to seize opportunities in the cargo supply chain and leverage on the increasing demand for eCommerce and specialised cargo handling for items like pharmaceuticals and perishables.<sup>33</sup> It also claimed that the acquisition can contribute to SATS' sustainability and Environmental, Social, and Governance (ESG) initiatives, including efforts to reduce carbon emissions and engage with society, aligning with its mission to provide food and connect communities.<sup>34</sup>

The circular issued on 3 January 2023 for the proposed acquisition of WFS further outlined the key reasons for SATS' acquisition of WFS. Euleen Goh Yiu Kiang (Goh), the Chairman of SATS, said that the acquisition was "transformational for SATS",35 and will position it "for the future, unlocking significant growth potential, and building business resilience".36 The acquisition was believed to strengthen SATS' core Singapore base and create a leading air cargo handler with an unparalleled footprint and capability to serve customers on a worldwide scale through an interconnected worldwide network of operations in leading airports.<sup>37</sup>

A combined entity was seen to enhance SATS' Singapore base by leveraging on structural advantages through fostering a network effect via increased connectivity.<sup>38</sup> The synergies created would enable SATS to leverage scale for expeditious digitalisation and automation, leading to heightened operational efficiencies.<sup>39</sup> More importantly, SATS can import and enhance best practices, elevating the expertise of its Singapore core to establish itself as a leading authority in aviation hub management. 40

# Too much baggage?

Following SATS' announcement to acquire WFS for S\$1.8 billion, with the deal to be at least partially funded by a large rights issue and a presentation indicating a "base funding plan" of S\$1.7 billion in equity fundraising, its share price sank as soon as trading resumed on 29 September 2022,41 falling by 20.7% to close the day at \$\$2.90.42 As the week progressed, the shares fell further, eventually settling at \$\$2.85 by the end of the week.<sup>43</sup>

In response to the negative market reaction to the potential \$\\$1.7 billion equity fundraising, Kerry Mok (Mok), President and Chief Executive Officer (CEO) of SATS, stated in an interview on 3 October 2022, that "the company is working on a mix of four funding options that will give it the 'right funding structure to maximise benefits for shareholders".44

"We are also very clear that we need to reduce the size of the rights issue, because we know the market doesn't like rights issues."

- Kerry Mok, President and Chief Executive Officer of SATS<sup>45</sup>

On the same day, SATS issued a clarification announcement aimed at addressing certain statements in media reports regarding the proposed equity fundraising, outlining four key points as follows: 46

1. "The Acquisition Announcement presented an illustrative funding requirement of \$\$1.7 billion via a Rights Issue of 609 million New Shares at a price of \$\$2.79 per Share. This illustrative example was provided as part of our disclosure requirements and does not represent the final funding structure or proposed terms of any Rights Issue.

- 2. SATS wishes to reiterate that no decision has been made on the actual funding structure to be implemented. Subject to market conditions, SATS intends to fund the Proposed Acquisition through a combination of equity, hybrid securities, debt and/or cash.
- 3. SATS has flexibility on the timing and structure of the proposed Equity Fund Raising, which will be launched at the appropriate time in conducive market conditions.
- 4. Furthermore, an acquisition bridge facility has been obtained for a Singapore dollar equivalent amount of up to €1,200 million to fund and complete the Proposed Acquisition, if required. This facility gives full funding certainty to SATS for the Proposed Acquisition."<sup>47</sup>

#### Finally, it's clear

On 1 December 2022, SATS announced its finalised funding plan for the proposed acquisition.<sup>48</sup> The total acquisition cost of S\$1.8 billion was to be funded through a combination of a three-year Euro-denominated term loan equivalent to approximately S\$700 billion, a renounceable underwritten rights issue of up to approximately S\$800 million expected to launch in 1Q 2023,<sup>49</sup> and cash of S\$320 million from SATS' existing cash balance.<sup>50</sup>

In the circular dated 3 January 2023, the board of directors of SATS stated their intention to vote in favour of the proposed acquisition and exercise their pro rata entitlements to the proposed rights issue fully.<sup>51</sup> Additionally, Temasek Holdings (Temasek), through its wholly-owned subsidiary, Venezio Investments Pte Ltd (Venezio), which is the largest shareholder of SATS, indicated its intention to fully subscribe to its pro rata entitlement for the rights issue.<sup>52</sup>

On 22 February 2023, SATS announced that it has received the necessary approvals from all jurisdictions for the acquisition of WFS.<sup>53</sup> Additionally, Venezio has given an irrevocable undertaking to subscribe for its pro rata 39.68% entitlement to the rights issue.<sup>54</sup> The remaining 60.32% of the rights issue was underwritten by the banks.<sup>55</sup> DBS Bank acted as the Lead Financial Adviser for the rights issue, while Bank of America and Citibank served as Joint Financial Advisers and Underwriters, and OCBC Bank and United Overseas Bank acted as Co-Lead Managers for the rights issues.<sup>56</sup>

#### Short-term pain for long-term gain?

SATS addressed shareholder concerns through two hybrid dialogues organised by the Securities Investors Association (Singapore) in November 2022 and January 2023.<sup>57</sup> Presenting a narrative of "short-term pain but long-term gain", SATS emphasised the strategic importance of the acquisition, contemplating a global footprint amidst uncertainties such as potential pandemics and China's evolving COVID-19 policy. According to Mok, the uncertain economic outlook caused by high inflation, rising interest rates, and a looming recession in 2023 enabled SATS to secure a lower price for WFS.<sup>59</sup>

Initially, SATS had expected the deal to be "immediately financially accretive", <sup>60</sup> boosting earnings per share by 78% and increasing net profit on a pro forma basis. <sup>61</sup> However, subsequent revision of figures due to adjustments for increased borrowings reduced the pro forma net profit. <sup>62</sup> Despite concerns about WFS' profitability and investor scepticism, proxy advisory firm Glass Lewis recommended that shareholders approve the WFS acquisition. Glass Lewis cited that the transaction for WFS had a last 12-month EBITDA multiple of 12 times and an adjusted EBITDA multiple of 11.1, which ranked in the 55<sup>th</sup> and 52<sup>nd</sup> percentile respectively among its own assessment of 14 completed transactions announced since 2018 in the airport services or air freight industries. <sup>63</sup>

Despite initial scepticism about the acquisition, SATS' shareholders overwhelmingly approved the proposed acquisition at the hybrid Extraordinary General Meeting (EGM) held on 18 January 2023.<sup>64</sup> 96.8% of the total votes supported the resolution to approve the S\$1.82 billion transaction.<sup>65</sup> Approximately 647.6 million shares

were voted, with 626.9 million in favour.66 Excluding SATS biggest shareholder Temasek which held 39.68% of SATS, who voted in favour of the deal, 89.7% of the votes were in favour.<sup>67</sup>

#### SATS' shares: buy or sell?

On 21 February 2023, SATS requested for a trading halt before the market opened, pending the release of an announcement.<sup>68</sup> The next day, it announced its plan to issue 363.1 million new shares at a price of S\$2.20 per share through a renounceable underwritten rights issue, aiming to raise around \$\$798.8 million in funds.<sup>69</sup> The volume of new shares to be issued was approximately 32.3% of all the existing issued shares.<sup>70</sup>

After SATS lifted the trading halt around noon on 22 February 2023, the stock price hit a low of S\$2.63, down from its previous closing price of \$\$2.75.71 However, it ended the day at \$\$2.72, with 10 million shares changing hands.72

The capital raised through the rights issue will serve as partial financing for SATS' acquisition of WFS.73 The rights issue price of \$\$2.20 represented a 20% discount compared to SATS' last transacted price of \$\$2.75 on 20 February 2023, and a 16% discount compared to the theoretical ex-rights price of S\$2.62 per share. 74 Eligible shareholders were granted rights to subscribe to 323 rights shares for every 1,000 existing shares they hold.<sup>75</sup>

#### The acquisition concludes

On 3 April 2023, SATS completed the acquisition of WFS for €1.3 billion, with an enterprise value of €2.25 billion. 76 WFS officially became a fully owned subsidiary of SATS while continuing to be headquartered in Paris.

"It is a clear demonstration that our shareholders recognise the strategic value and growth opportunities that this transformational deal will unlock for SATS and all of our stakeholders."

- Kerry Mok, President and Chief Executive Officer of SATS<sup>77</sup>

#### **Board of directors**

As of 23 May 2023, SATS' board of directors consists of 12 directors, with 11 being independent directors (IDs).<sup>78</sup> Since the Chairman Goh is an ID, SATS does not have a lead ID.

The directors are said to possess expertise across different industries including Finance and Accounting, Legal, Information Technology, Human Resources, Marketing, Branding, Mergers & Acquisitions, Risk Management, Food Solutions, and Supply Chain.<sup>79</sup>

Goh has been serving as an ID at SATS since 2013 and was appointed as the independent Chairman on 19 July 2016.80 She also serves as the Chairman on the Board Executive Committee (BEC), Remuneration and Human Resource Committee (RHRC), and Nominating Committee (NC).81 Her other commitments include serving as Chairman at DBS Foundation Ltd and Singapore Institute of Management Group Limited. Goh is an accountant by training and was CEO of Standard Chartered Bank (Singapore) in her last executive role.82

Tan Soo Nan (Tan) was appointed as an ID on 25 April 2016 and sits on the Audit Committee (AC) and Board Risk and Safety Committee (BRSC). He is also an executive director at Raffles Medical Group Ltd. and Raffles Health Insurance Pte. Ltd., and an ID at Engro Corporation Limited. Tan holds a Bachelor of Business Administration from the University of Singapore.83

Yap Kim Wah (Yap) was appointed as an ID on 20 July 2016. He chairs the BRSC and sits on the AC. He also serves as an ID at SMRT Corporation Ltd., Strides Holdings Ltd., and RTS Link Operations Pte. Ltd. Yap holds a Bachelor of Engineering (First Class Honours) from University of Singapore.84

Achal Agarwal (Agarwal) was appointed as an ID on 1 September 2016 and serves as a member on the BEC and RHRC. He also sits on the board of trustees of World Wide Fund For Nature (Singapore) Limited and is a senior advisor at Accenture Pte. Ltd. Agarwal holds a Bachelor of Arts (Honours) in History and MBA from the University of Delhi.<sup>85</sup>

Chia Kim Huat (Chia) was appointed as an ID on 15 March 2017 and sits on the BRSC and NC. He is a partner at Rajah & Tann Singapore LLP,<sup>86</sup> one of the largest full-service law firms in Singapore.<sup>87</sup> Chia was previously Vice Chairman at Singapore Chinese Chamber of Commerce & Industry (SCCCI) Young Entrepreneur Network and Council Member of the Technology Committee and Research and Publication Committee in SCCCI. Chia has a Bachelor of Laws (Honours) from the National University of Singapore.<sup>88</sup>

Jessica Tan Soon Neo (Jessica) was appointed as an ID on 17 April 2017 and sits on the AC and NC. Additionally, she serves as an ID at CapitaLand India Trust Management Pte Ltd.<sup>89</sup> Her other principal commitments include Member of Parliament for East Coast GRC, Singapore; Deputy Speaker of Parliament, Singapore; and Chairman of East Coast Town Council.<sup>90</sup> Jessica was previously the Managing Director of Microsoft Singapore and Group Commercial Director of Raffles Medical Group. She holds a Bachelor of Social Sciences (Honours) and Bachelor of Arts (Economics and Sociology) from the National University of Singapore.<sup>91</sup>

Jenny Lee Hong Wei (Lee) was appointed as an ID on 25 January 2019 and has various principal commitments including director of Cashshield Pte Ltd, Cloud First, and FLT Holding Limited. She holds a Master and Bachelor of Science in Electrical Engineering from Cornell University and a Master of Business Administration from Kellogg School of Management at Northwestern University.<sup>92</sup>

Deborah Ong (Ong) was appointed as an ID on 16 November 2020. She chairs the AC and sits on the BRSC. She also serves as an ID at CapitaLand India Trust Management Pte Ltd and is a board member of the Monetary Authority of Singapore, Workforce Singapore, SkillsFuture Singapore, and Lee Kong Chian School of Medicine Governing Board. Ong holds a Bachelor of Accountancy (Honours) from National University of Singapore and is a fellow of Institute of Singapore Chartered Accountants.<sup>93</sup> She is a retired partner of PricewaterhouseCoopers LLP in Singapore.<sup>94</sup>

Vinita Bali (Bali) was appointed as an ID on 10 May 2021 and serves as a member on the BEC. Her present directorships in other listed companies include serving as an ID at Cognizant Technology Solutions Corporation, CRISIL Ltd., and Syngene International Ltd. Bali holds a Bachelor of Economics from the University of Delhi and a Master of Management Studies from the Jamnalal Bajaj Institute of Management Studies.<sup>95</sup>

Eng Aik Meng (Eng) was appointed as an ID on 15 April 2023 and serves as a member on the RHRC. He is also the Group CEO of TE Healthcare Advisory Pte. Ltd. and a senior advisor at TPG Capital. Eng holds a Bachelor of Accountancy (Honours) from Nanyang Technological University and an MBA from Harvard University. 96

Dr Detlef Trefzger (Dr Trefzger) was appointed as an ID on 15 April 2023 and sits on the BRSC. He is the founder and Chairman of Larix Equity AG and a board member at Swiss-American Chamber of Commerce. Dr Trefzger holds a Doctor of Philosophy from Vienna University of Business Administration and Economics.<sup>97</sup>

Mok, who is the sole executive director, was appointed President and Group CEO on 15 December 2021. He is a member of the BEC. Mok is also the Chairman at Asia Airfreight Terminal Company Limited, Nanjing Weizhou Airline Food Corporation Ltd, and TFK Corporation. Mok has a Bachelor of Business in Accounting degree from the Monash University, Melbourne, Australia.<sup>98</sup>

#### **Key management**

On 2 May 2023, SATS expanded its group management board to include key management from WFS.<sup>99</sup> They are Francois Mirallie (Mirallie), Michael Simpson (Simpson), and John Batten (Batten).<sup>100</sup> It was also announced

that WFS CEO Craig Smyth (Smyth), who was initially announced to be staying on after the acquisition, 101 was to leave the company due to the "new direct reporting lines to [Kerry] Mok". The CEO role at WFS was split into three executive positions, with Mirallie managing the overall company, and Simpson and Batten managing different regions. 103

As of FY2023, the key management personnel of SATS comprises 13 members, as shown in Figure 1.

Figure 1: SATS' key management personnel<sup>104</sup>

Name	Position	Prior Roles and Experience
Kerry Mok	President and Chief	Chief Executive Officer of YCH Group
	Executive Officer	Acting Chief Executive Officer and Chief Operating Officer of Goodpack Pte Ltd
		Managing Director, Strategy – Operations and Head of ASEAN Supply Chain Strategy practice at Accenture
		Over 25 years of experience in supply chain management and logistics.
Manfred Seah	Chief Financial Officer	Group Chief Financial Officer of SMRT Corporation Ltd
		Over 25 years of experience in investment banking, direct investments, and financial management
Tan Chuan Lye	Chairman,	President and Chief Executive Officer of Food Solutions of SATS
	Food Solutions	Managerial positions in SIA Ground Services and SATS Airport Services Pte Ltd for over 40 years of career at SATS
Stanley Goh	Chief Executive Officer, Food Solutions	Regional Director of Food Services – Global Developing Markets at Fonterra
		Senior leadership positions at Samsung Asia, Nike, and Procter & Gamble
		Over 25 years of leadership experience in diverse industries covering in-country and regional roles spanning general management, sales, retail and product marketing, and business development
Bob Chi	Chief Executive Officer, Gateway Services	Chief Operating Officer, Gateway Services of SATS
		Senior Vice President of Sales & Marketing for Gateway Services of SATS
		Chief Executive Officer of SATS-Creuers Cruise Services Pte Ltd
Tan Chee Wei	Chief Human Capital Officer	Vice President, HR for Northeast & Southeast Asia and the Global Lubricants business at Shell
		Global Head of Talent & Learning, Group Technology & Operations at Standard Chartered Bank
		Over 20 years of experience leading HR communities covering various business sectors including Upstream, Downstream manufacturing, Marketing, Trading, and Supply
Henry Low	Global Head, Special Projects	Director and Country Manager for Amazon Singapore
		Member of board of directors of Amazon Asia Pacific Holdings,     Amazon Payments and the Infocomm Media Development     Authority
		Over 25 years of leadership experience in general management, category management, project management, operations, and global launches

Name	Position	Prior Roles and Experience
Veronique Cremades-Mathis	Chief Strategy and Commercial Officer	Global Head of Strategic Transformation and Market Channel Development of SATS
		Global Head of Sustainable Packaging at Nestlé Head Office
		Managing Director and Chief Executive Officer of Nestlé New Zealand
		Over 30 years of experience in the global Food & Beverage industry, working in the fields of marketing, product development, communications, compliance, sales, and general management.
Spencer Low	Chief Data and Sustainability Officer	Chief Executive Officer, Travel Retail and Chief Strategy & Sustainability Officer of SATS
		Managing Director of Agoda Greater China
		Chief Strategy Officer & Executive Vice-President, Customer Acquisition at Rakuten Kobo
		Over 20 years of professional experience spanning corporate strategy, eCommerce, retail, and management consulting.
lan Chye	Chief Legal Officer	General Counsel at private equity firm Clermont Group
		<ul> <li>Seasoned legal professional with experience in both private practice and in-house leadership roles, with broad expertise in corporate advisory, public and private M&amp;A, competition law, and structured finance</li> </ul>
Francois Mirallie	Deputy Chief Executive Officer, WFS	Chief Financial Officer of WFS
		Group Chief Financial Officer for various companies including Zodiac Marine & Pool, Vizada Group in Paris
		Extensive experience in leading companies owned by private equity
Michael Simpson	Chief Executive Officer, Americas, WFS	Executive Vice President of WFS Americas
		Chief Financial Officer positions in various companies including Sensis, Inc. and CompuCom Systems, Inc.
John Batten	Chief Executive Officer, EMEAA, WFS	Executive Vice President of WFS' cargo operations in EMEAA
		Executive Vice President of Cargo at Swissport and Senior Vice President of Cargo at Qatar Airways
		Over 45 years of experience in the aviation industry

Source: SATS Ltd. (2023, July 7). Annual Report FY2022-23.

#### **Culture clash?**

SATS identified human resources culture as one the key areas of integration. WFS is headquartered in Paris although its more than 32,000 employees serve more than 300 customers at 164 major airports in 18 countries spread across five continents. It has key strategic hubs in Europe and North America. 105

In France, working hours are 35 hours per week under the Aubry Law. French employees are not required to respond to work emails and phone calls after working hours. <sup>106</sup> Apart from the national holidays, French workers get five weeks paid time off in a year. <sup>107</sup>

In 2017, France added the *droit à la déconnexion* (the right to disconnect) to the country's Labour Code. <sup>108</sup> The introduction of the "right to disconnect" was a response to evolving work patterns, notably driven by new

technologies that enable workers to be online at all times. 109 The government led by then-President François Hollande initiated the establishment of official guidelines to safeguard employees and prevent any potential exploitation by employers. 110 The objective of the law was to enhance the overall well-being by establishing a clear demarcation between professional and personal life, ensuring that once an employee finishes their work hours, they are not obligated to engage with work-related emails, phone calls, or text messages.<sup>111</sup>

On 7 March 2023, France experienced widespread street protests and significant disruption as transport employees and refinery workers initiated intermittent strikes due to Emmanuel Macron's proposal to elevate the retirement age from 62 to 64.112 This was the sixth time since the start of 2023 that the labour unions of France have called for a countrywide series of strikes and protests aimed at replicating the substantial participation witnessed during the initial significant demonstration on 19 January 2023, when over a million individuals marched in opposition to the proposed pension modifications. 113

#### Rules governing M&As

In Singapore, the takeover of a publicly listed company is governed by laws, regulations, and a code.

#### Singapore Code on Takeover and Mergers

The Singapore Code on Takeover and Mergers (Code) sets out the principles and general conduct that must be observed with regards to the takeover of a public company incorporated in Singapore, or entities with a primary listing on SGX.<sup>114</sup> It applies to corporations, business trusts and Real Estate Investment Trusts (REITs) with a primary listing of equity securities or units in Singapore. 115 In addition, unlisted public companies and unlisted registered business trusts with more than 50 shareholders or unitholders, and net tangible assets of S\$5 million or more, must also observe the General Principles and Rules in the Code wherever appropriate.<sup>116</sup>

The Code is issued by the Monetary Authority of Singapore (MAS) pursuant to section 321 of the Securities and Futures Act (SFA). 117 Administered by the Securities Industry Council (SIC), 118 its objective is to achieve fair and equal treatment of all shareholders in a takeover or merger situation. 119

The Code comprises a set of General Principles, which are essentially standards of good commercial conduct, and rules which expand on the General Principles, including examples of their application. 120 The Code states the approach, conduct, timing, documentation, and the various types of offers and their terms in a takeover.121

General Principle 10 in the Code states that shareholders of the target company must be provided sufficient information, advice, and time to consider the offer and make a decision. 122 The primary responsibility for ensuring compliance with the Code rests with parties (including company directors) to a takeover or merger and their advisers, not with the Council. 123 Responsibilities for the contents of documents issued in a takeover rests with the offeror, the offeree company, their directors, and advisers. 124

#### **Securities and Futures Act**

Part eight of the SFA contains legal provisions pertaining to takeovers.<sup>125</sup> The SFA lists offences regarding takeovers. 126 For instance, Section 140 stipulates that it is a violation for an individual to present a takeover proposal without reasonable grounds to believe they can meet the specified terms and conditions once the takeover offer is accepted.<sup>127</sup> Section 139 of the SFA (Takeover Code) states how the Code applies to offerors regardless whether they are incorporated or carrying on businesses in Singapore or are foreigners or Singapore citizens. 128 Section 135 and 136 detail certain duties and disclosures substantial shareholders may have to make with regards to their interest or interests. 129

#### **Singapore Companies Act**

The Companies Act 1967 of Singapore (Companies Act) governs private and public Singapore-incorporated companies.<sup>130</sup> It regulates, among others, the criteria and processes by which share transfers, schemes of arrangement, amalgamations, and compulsory acquisitions are effected.<sup>131</sup> The Companies Act provides the framework for schemes of arrangement (Sections 210 & 212) and amalgamations (Sections 215A to 215K).<sup>132</sup>

For instance, Section 215 of the Companies Act allows an acquirer in a takeover transaction to compulsorily acquire the shares held by dissenting shareholders in the target company who have not approved the offer for the sale of their shares.<sup>133</sup>

#### **SGX Listing Rules**

Companies listed on the Singapore Exchange Securities Trading Limited (SGX-ST) are subject to the SGX Listing Rules. The Listing Manual applies where the buyer, seller, or both parties are listed on the SGX-ST.<sup>134</sup>

Under the Listing Manual, relevant disclosures are to be made if the transaction is considered an interested person transaction, disclosable transaction, major transaction, very substantial acquisition, or reverse takeover.

Chapter 10 (Acquisitions and Realisations) lists varying levels of obligations needed to be complied with by an SGX-listed company, depending on which materiality thresholds that are set out are crossed by the transaction proposed to be undertaken by the company (e.g. disclosable transactions, major transactions, very substantial acquisitions, and reverse takeovers). Chapter 11 (Takeovers) relates to takeovers and complements the regulations in the Takeover Code. 136

#### France Takeover and Merger Code

In France, the main rules and principles relating to public takeover bids are based on the Takeover Directive and embedded in the Monetary and Financial Code, the Commercial Code, the *Autorité des marchés* financiers (AMF) General Regulation (and Implementing Instructions), and the rules and regulations of the market operator applicable to the relevant financial market (Euronext Paris).<sup>137</sup>

The general principles relating to public takeovers in France are as follows: 138

- 1. All holders of the securities of a target company of the same class must be given equivalent treatment. Moreover, if a person acquires control of a company, the other holders of securities must be protected;
- 2. The holders of the securities of a target company must have sufficient time and information to allow them to make a properly informed decision on the bid. Where it advises the holders of securities, the board of the target company must give its views on the effects of implementation of the bid on employment, conditions of employment, and the locations of the company's places of business;
- 3. The board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;
- 4. False markets must not be created in the securities of the target company, the offeror company or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- 5. A bidder must announce a bid only after ensuring that they can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and
- 6. A target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

Additional principles tighten the process of ensuring fairness in takeover situations include equal treatment and information for all shareholders, market transparency and integrity, fairness of transactions and competition among bidders, and a level playing field between competing bidders. 139

#### France's foreign investment restrictions

France's foreign direct investment (FDI) rules require foreign investors to file a request and obtain authorisation from the French Minister of the Economy (MoE) to carry out certain investments in France involving certain sectors or strategic assets.<sup>140</sup> Under the French FDI rules, investments under this rule, termed Covered Investments, include the acquisition of control over a French company; the acquisition, in whole or part, of a branch of business of a French company; and for non-European Union (EU) and non-European Economic Area (EEA) foreign investors only, the acquisition of more than 25% of voting rights in a French company (the Threshold Test).141

In July 2020, the French government issued an Interim Rule in response to market implications of the pandemic on French strategic assets.<sup>142</sup> The validity of this rule was extended to 31 December 2023.<sup>143</sup> The interim rule lowered the 25% threshold that triggers foreign investment review to 10% of voting rights for certain investments. 144 The rule applies to investments made by foreign investors from outside the EU and EEA in certain publicly listed French corporations.<sup>145</sup>

#### Has SATS nailed the landing?

Following the acquisition of WFS, SATS experienced a 49.4% surge in group revenue for FY2023 to \$\$1.76 billion, as revenues for both food solutions and gateway services rose on the back of travel recovery and higher cargo revenue contribution from Asia Airfreight Terminal (AAT). There was a 46.7% increase in staff costs for the group to \$\$959.9 million, as well as higher raw material costs, licence fees, company premises, and utilities expenses from the higher business volumes. 147 Depreciation and amortisation increased S\$32.9 million mainly due to the consolidation of AAT for the period. 148 Other costs also increased by \$\$30.1 million due to higher fuel costs and maintenance expenses as well as lower government grants. 149

Overall, SATS suffered a loss of S\$26.5 million in FY2023 ended 31 March. 150 The loss was mainly attributable to the one-off expenses of S\$44.9 million from the acquisition of WFS. 151 SATS did not declare a dividend for FY2023,<sup>152</sup> and said that it will only pay an interim dividend when SATS can return to profitability.<sup>153</sup>

SATS remained optimistic about its business amidst the recovery of travel across the globe.<sup>154</sup> However, it was also cautious that the unpredictable macroeconomic conditions meant that monetary tightening would have additional effects on both consumer and business expenditures, while the persistent geopolitical and trade tensions continue to disrupt global supply chains. SATS emphasised its commitment to enhancing its primary operations in Singapore while concurrently pursuing expansion opportunities overseas.<sup>155</sup>

Fast forward to 2024, SATS is "focused on building up two engines of growth, namely maintaining market leadership at [its] Singapore hub, and growing [its] cargo handling operations and other operations globally, especially in hub airports". 156 Mok shared that the large debt taken on for the acquisition of WFS would be paid down over time.<sup>157</sup> Third quarter results, due in February 2024, are expected to be strong.<sup>158</sup>

Will SATS make a safe landing?

#### **Discussion questions**

- 1. What are the different types of M&As a company may undertake and what are their respective challenges?
- 2. What type of M&A is the SATS' acquisition of WFS and what are the key issues and implications for SATS when undertaking such an acquisition? What due diligence should SATs undertake for its acquisition of WFS?
- 3. Explain the responsibilities of the board in overseeing M&As.
- 4. Evaluate the disclosures and communications by SATS from the time of the announcement of the acquisition to its completion. Do you think that SATS handled these matters well? Explain.
- 5. Former WFS CEO Craig Smith was expected to remain after the acquisition but departed instead due to "new direct reporting lines" to the SATS Group CEO, with his role split into three executive positions. Does the sudden change of plan cause any concerns? Explain.
- 6. How can a company like SATS manage differences in the working cultures of the French employees at WFS and what risk do these differences pose to the success of the acquisition? Explain.
- 7. SATS is a Government-Linked Company while WFS was owned by a private equity firm. What are possible differences in the way SATS and WFS are governed and managed due to the different ownership? How should SATS govern and manage WFS after the acquisition? Would you recommend any changes to the board composition of SATS following the acquisition and, if so, what changes? Explain.
- 8. What are some key regulatory issues that companies should consider when undertaking M&As, including cross-border ones, such as SATS' acquisition of WFS?

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## SEMBCORP INDUSTRIES: SEIL-ING FORWARD OR BACKWARDS?

#### **Case overview**

Sembcorp Industries Ltd (Sembcorp) was accused of greenwashing just a year after declaring its commitment to transition from brown to green. The accusation by Anthropocene Fixed Income Institute (AFII), a non-profit organisation centred around the sale of Sembcorp Energy India Limited (SEIL).

Sembcorp financed the purchaser, Tanweer Infrastructure (Tanweer), for the full amount of the sale price. AFII said this was merely a shift from operational emissions to financed emissions and that Sembcorp should only derecognise the emissions from SEIL after Tanweer fully repays the loan, especially since Tanweer has no plans to reduce emissions substantially.

The objective of this case study is to facilitate a discussion of issues such as the challenges faced by companies transitioning from brown to green; changes in the board of directors and management for companies transitioning to green; sustainability-linked bonds; the role of ESG ratings; sustainability reporting; sustainability assurance; and greenwashing.

#### The power of three ventures

Sembcorp Industries Ltd (Sembcorp) is one of Singapore's largest conglomerates focusing primarily on three core businesses: Marine, Utility, and Urban Development.<sup>1</sup> The company actively participates in various government-led industrial park development projects in Vietnam and China. Its utility business, which comprises gas, power generation, and water processing, experienced significant expansion under the leadership of Tang Kin Fei, Sembcorp's former President and Chief Executive Officer (CEO), who retired in 2017.<sup>2</sup>

This case study was developed from two cases originally prepared by Edris Chua, Gerald Soh Mao Quan, Girvin Rafferty Chang Chi Hao, Joshua Ang Tze Yang, Joshua Teo Yu Xiang, Sheri-Anne Lim, Soh Wei Ming, and Theng Xuan. It has been edited by Otylia Ong and Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case was developed from published sources solely for class discussions and is not intended to serve as illustrations of effective or ineffective management or governance. The interpretations and perspectives in this case are not necessarily those of the organizations named in the case, or any of their directors or employees.

Sembcorp was listed on the Mainboard of Singapore Exchange (SGX) on 5 October 1998.<sup>3</sup> Temasek Holdings (Private) Limited is its largest shareholder, holding a total of 49.52% of Sembcorp's shares through direct and indirect interests.<sup>4</sup>

On 11 August 2020, Sembcorp announced the demerger of its offshore marine arm, Sembcorp Marine (SembMarine). The demerger included a S\$2.1 billion recapitalisation plan for SembMarine in the form of a rights issue to address liquidity requirements and strengthen its balance sheet amidst the prolonged downturn in the offshore and marine industry. The demerger was said to be in the best interests of shareholders, strengthening both companies' financial positions.<sup>5</sup>

#### From brown to green

On 27 May 2021, Sembcorp disclosed its strategic plan to transition its portfolio from brown to green by setting several goals. The first goal is to increase profits derived from its sustainable solutions from 40% in 2021 to 70% by 2025. The second is to achieve a targeted Compounded Annual Growth Rate (CAGR) of 30% for its renewable energy portfolio, while the final goal is to attain a CAGR of 10% for its integrated urban solutions portfolio.<sup>6</sup>

Sembcorp also outlined plans to increase its gross installed renewable energy capacity approximately fourfold, reaching 10 gigawatts. Additionally, it targets to reduce its carbon emissions by lowering its Greenhouse Gas (GHG) intensity from 0.54 tonnes of carbon dioxide equivalent per megawatt hour (tCO2e/MWh) in 2020 to 0.40 tCO2e/MWh by 2025. This commitment includes not investing in new coal-fired energy assets. Sembcorp strengthened its commitments to the United Nations (UN) Sustainable Development Goals (SDGs) number seven and thirteen, focusing on affordable and clean energy as well as climate action, respectively.<sup>7</sup>

Sembcorp reorganised its business into four reportable segments, aligning with its strategic plan to transition its portfolio from brown to green. The four segments are Integrated Urban Solutions, Conventional Energy, Renewables, and Other Businesses and Corporate. Prior to this change, Sembcorp's three reportable segments were Energy, Urban, and Other Businesses and Corporate.<sup>8</sup>

According to Sembcorp's financial year (FY) 2022 annual report, the Conventional Energy segment formed the bulk (83.7%) of Sembcorp's revenue, followed by Renewables (6.5%), Integrated Urban Solutions (5.7%), and Other Businesses and Corporate segments (4.2%). Overall, all revenue segments improved from FY2021 to FY2022. This contributed to a net profit of S\$848 million in FY2022, as compared to a net profit of S\$279 million in FY2021.9

Sembcorp operates in six principal geographical segments. In terms of revenue, customers from Singapore (62.0%) were Sembcorp's primary revenue source, followed by India including Sembcorp Energy India Limited (SEIL) (19.7%), the UK (12.4%), and the rest (5.9%). In total asset terms, 33.8% were in India (including SEIL), followed by China (25.1%), Singapore (20.9%), and the rest (20.2%). Between FY2021 and FY2022, India had a slight decrease in total assets, while Singapore saw a slight increase and there was a sharp increase for China.<sup>10</sup>

#### Sembcorp's green power play

On 29 September 2021, Sembcorp issued its first ten-and-a-half year S\$675 million Sustainability-Linked Bonds (SLBs) at 2.66%, in line with its newly established Sustainable Financing Framework.<sup>11</sup> The SLBs carry a step-up interest rate of 0.25%, effective from the first interest payment date on or after 1 April 2026, if the stated Sustainability Performance Target (SPT) of reducing GHG emissions intensity to 0.4 tCO2e/MWh is not met by 31 December 2025.<sup>12</sup>

Following this, on 13 April 2022, Sembcorp issued S\$300 million Sustainability-Linked Notes (SLNs) with a seven-year tenure at an interest rate of 3.735%. The SLNs feature a unique sustainability-linked mechanism

whereby the interest rate is subject to a step-up margin of 0.25% from the first interest payment date on or after 1 April 2026, should the SPT not be achieved.<sup>13</sup>

On 5 September 2022, Sembcorp announced the proposed sale of SEIL. SEIL operates two coal-fired plants in India, generating 2.6 gigawatts of power. The proposed sale will be executed through Sembcorp's whollyowned subsidiary, Sembcorp Utilities, which will transfer 100% of SEIL's shares to Tanweer Infrastructure Pte. Ltd. (Tanweer). The proposed sale is valued at INR117 billion and will result in the deconsolidation of SEIL from Sembcorp, making Tanweer the sole shareholder upon completion. Tanweer will settle the final consideration via a deferred payment note (DPN) provided by Sembcorp Utilities. 14 The sale was subsequently approved by the shareholders on 8 November 2022.15

Additionally, Sembcorp India Pvt. Ltd. (Sembcorp India), a wholly-owned subsidiary of Sembcorp incorporated in India, will enter into a Technical Service Agreement (TSA) with SEIL upon completion of the proposed sale. Under the TSA, Sembcorp India will act as a Technical Advisor (TA) to provide certain nonexclusive supporting and advisory services relating to technical, financial, environmental, regulatory, legal, and corporate communications-related work. In return for these services, Sembcorp India will receive a fee from SEIL. The TSA stipulates that Sembcorp India will continue in its role as a TA until Tanweer completes full repayment of the loan or if the loan extends beyond the 24-year contract term of the DPN. 16

The TSA is advisory in nature, and following completion of the sale, the operations and management of SEIL will be directed by the board of directors of SEIL under the ownership of Tanweer.<sup>17</sup>

The deal allows Sembcorp to avoid higher interest payments on its green debt even though it retains liabilities in the polluting assets. 18 Sembcorp's strategy was to transfer the control of two coal plants which contribute part of its main GHG emissions to a private consortium. This move aimed to lower Sembcorp's GHG emissions on its balance sheet and avoid paying higher coupons on its sustainability-linked debt which are tied to performance indicators such as carbon emission reductions.19

The sale of SEIL leads to a reduction of Sembcorp's GHG emissions intensity from 0.51 tCO2e/MWh to 0.32 tCO2e/MWh. Therefore, Sembcorp would have reached its goal of 0.40 tCO2e/MWh before the scheduled 2025 deadline. Sembcorp's absolute emissions will also subsequently decline from 26.2 million tCO2e to 10.4 million tCO2e. This "smart" move speeds up Sembcorp's strategy of transitioning from brown to green.<sup>20</sup>

The sale was also deemed to safeguard shareholders' value as the transaction was at an implied price/book multiple of one and it was also seen to protect stakeholders' interests by ensuring the continuation of the current mode of management and operations at SEIL.<sup>21</sup>

#### **AFII** questions

On 6 November 2022, Anthropocene Fixed Income Institute (AFII) released a report outlining reasons why Sembcorp should continue accounting for the carbon emissions by SEIL. AFII argued that Sembcorp was essentially shifting the onus of reporting carbon emissions to Tanweer while fully financing the sale at an interest rate below market rates.22

The DPN extended by Sembcorp Utilities to Tanweer had an initial maturity term of 15 years. However, should the loan not be fully repaid at its maturity, it will be automatically extended by a period of two years, up to a maximum limit of nine years. Any outstanding DPN loan exceeding 24 years will consequently be voided, and Tanweer would not be liable for the outstanding obligations.<sup>23</sup>

Sembcorp's sale of SEIL was intended as an asset disposal to reduce its GHG emissions. However, the financing of the sale via the DPN was argued to be contradictory to Sembcorp's vision of transitioning from brown to green. Sembcorp was said to operate as a "shadow bank" by providing a loan to Tanweer for the transaction for

up to 24 years at below commercial interest rates of 9.2%, while typical interest rates are usually above 11%. The loan was implemented due to restricted access to coal-related project financing from global financial institutions for fear of Environmental, Social and Governance (ESG) concerns.<sup>24</sup>

The sale, detailed in Sembcorp's FY2022 Annual Report, was finalised on 19 January 2023. Sembcorp's 2022 projected carbon emissions intensity (Scope 1 and 2) excluding SEIL is 0.31 tCO2e/MWh. However, when accounting for the relative emissions of SEIL under Scope 3, the company's emissions intensity increased to 0.50 tCO2e/mWh.<sup>25</sup> In addition, employee and contractor benefits were guaranteed for two years, with no mention of potential layoffs.<sup>26</sup>

A number of market observers agreed with AFII. One called the sale of coal plants "purely a greenwashing exercise" saying: "It's the same facilities, same group of employees, same polluting activities, just under a different name".<sup>27</sup> Another said that "NGOs, banks and investors should scrutinise to ensure that companies are not just using financial engineering to reduce their greenhouse gas emissions".<sup>28</sup>

In response to queries by The Business Times, Sembcorp denied any ambiguity about its commitments. It said: "The sale of SEIL underpins Sembcorp's brown-to-green transformation strategy and also progresses us towards one of our 2025 targets - the reduction of our greenhouse gas emissions intensity to 0.40 tCO2e/mWh from 0.54 tCO2e/mWh in 2020." It added: "Our commitments to our stakeholders, including our bondholders, are very clear and are not subject to interpretation. Every step we take advances us towards the transition of our portfolio, underscoring our conviction to meeting our commitments." 30

#### **AFII's roots**

AFII is a non-profit research organisation that adopts a market-based approach to drive positive climate impact in fixed-income markets.<sup>31</sup> It is funded by the Growald Family Fund (GFF), a high-impact venture philanthropy fund dedicated to investing in specialised companies that contribute to a shift towards a cleaner energy future. GFF has a track record of successful investments in climate finance institutions such as the Carbon Tracker Initiative and the Institute for Energy Economics and Financial Analysis (IEEFA).<sup>32</sup>

AFII mainly conducts market and quantitative research, with a focus on climate and greenwashing-related issues associated with fixed-income securities.

#### Sembcorp's leadership green or grey?

As of the end of FY2022, the board of Sembcorp comprised 10 members, as shown in Figure 1. The board had one female director and nine male directors. Apart from two board members who are below 60 years of age, the other board members are above the age of 60, and the board's average age is 62 years old. The Chairman, Ang Kong Hua, was 78 years old.

There were five committees, namely the Executive Committee (EC), Audit Committee (AC), Risk Committee (RC), Executive Resource & Compensation Committee (ERRC), and Nominating Committee (NC). In addition, there was also a Technology Advisory Panel (TAP).<sup>33</sup>

Figure 1: Sembcorp's board of directors<sup>34</sup>

Name	Position	Board committee participation and background
Ang Kong Hua	Chairman, Independent non- executive director (since 26 February 2010)	<ul> <li>Chairman of EC, ERCC, NC, and TAP</li> <li>Chairs the GIC Investment Board and is a member of the Investment Strategies Committee<sup>35</sup></li> <li>CEO of NSL (formerly NatSteel) from 1974 to 2003 and stayed as its Executive Director until 2010<sup>36</sup></li> <li>Previously Chairman of Singapore Telecommunications and Singapore Post, Vice Chairman of Neptune Orient Lines, and a Director of DBS Bank, CIMC Raffles Offshore (Singapore), and k1 Ventures<sup>37</sup></li> </ul>
Tow Heng Tan	Deputy Chairman, Non-independent non-executive director (since 1 June 2021)	<ul> <li>Member of EC, ERCC, and NC</li> <li>CEO of Pavilion Capital International</li> <li>Previously serving as Chief Investment Officer of Temasek International, senior director of DBS Vickers, and managing director of Lum Chang Securities</li> </ul>
Wong Kim Yin	Group President & CEO (since 1 July 2020)	<ul> <li>Member of EC and TAP</li> <li>Has more than 20 years of leadership experience in the energy sector and investment management</li> <li>CEO of Singapore Power from 2012 to 2020</li> <li>Chairman of Skills Future Singapore and Vice Chairman of the World Energy Council</li> <li>Serves on the boards of National Research Foundation, the Inland Revenue Authority of Singapore, DSO National Laboratories, and China Venture Capital Fund Corporation</li> <li>Former investment managing director at Temasek International and The AES Corporation</li> </ul>
Yap Chee Keong	Independent non- executive director (since 1 October 2016)	<ul> <li>Chairman of AC, Member of RC</li> <li>Brings to the board financial, management and audit expertise, as well as experience in industry sectors including energy, infrastructure, and real estate</li> <li>Director of various companies such as Shangri-La Asia, Olam Group, Mediacorp, Ensign InfoSecurity, Pacific International Lines, Singapore Life Holdings (formerly known as Aviva Singlife Holdings), and Sembcorp Marine</li> <li>Former Chief Financial Officer (CFO) of SP Group and executive director of The Straits Trading Company</li> </ul>
Dr Josephine Kwa Lay Keng	Independent non- executive director (since 1 August 2018)	<ul> <li>Member of AC, RC, and TAP</li> <li>Rich experience in technology as well as research and development (R&amp;D) across various industries, including energy and engineering</li> <li>Member of the board and AC of Agency for Science, Technology and Research</li> <li>Previously CEO of NSL and served in various functions over her 23-year tenure with the company</li> <li>Chaired the National Energy Efficiency Committee for Industries in Singapore from 2000 to 2009</li> </ul>

Name	Position	Board committee participation and background
Tham Kui Seng	Independent non-	Member of EC and ERCC
	executive director (since 1 June 2011)	Strong management background in various industries, including over a decade of experience in the real estate sector
		Director of Avanda Investment Management, Sembcorp Properties, Peachwood & Co, and Straits Real Estate
		Former Chief Corporate Officer of CapitaLand
Ajaib Haridass	Independent non- executive director (since 1 May 2014)	Member of AC and RC
		45 years of legal experience specialises in maritime law, and deals with commercial and banking litigation
		Consultant with Haridass Ho & Partners and a panel member of Singapore International Arbitration Centre and Singapore Chamber of Maritime Arbitration
		An accredited principal mediator of the Singapore Mediation Centre and a senior accredited specialist (maritime and shipping law), Singapore Academy of Law
		Lead independent director of Nam Cheong and sits on the boards of Metis Energy (formerly known as Manhattan Resources) and Singapore LNG Corporation
Lim Ming Yan	Independent non- executive director (since 18 January 2021)	Member of RC, ERCC, NC, and TAP
		Chairman of the Singapore Business Federation and sits on the boards of DLF Cyber City Developers, DLF Assets and Enterprise Singapore
		Member of the board of trustees of Chinese Development Assistance Council and Singapore Management University, as well as a member of Singapore's Future Economy Council
		Previously served as president and group CEO of CapitaLand Group
Nagi Hamiyeh	Non-independent non-executive director (since 3 March 2020)	Member of EC
		Temasek's head of portfolio development
		Sits on the boards of Dream International, Olam Group, OFI Group, Kyanite Investment Holdings, Kyanite Investment Holdings (I), Olam Agri Holdings, and Sembcorp Marine
		Previously a banker with Credit Suisse First Boston's Energy Group

Source: Sembcorp. (2022, December 31). Sembcorp Industries Annual Report 2022.

Figure 2 shows the key management personnel of Sembcorp below the group CEO based on its FY2022 annual report.38

Figure 2: Sembcorp's key management personnel, excluding group CEO<sup>39</sup>

Name	Position	Experiences and Educational Background
Eugene Cheng	Group CFO	Chief Corporate Officer of SATS and IMC Industrial Group
		Investment banker with JP Morgan and Citigroup for business combinations, corporate financing, and capital raising
		CFO of Ezra in 2013, which consisted of Ezra Holdings, Triyards Holdings, and Emas Offshore
		First-class honours in Accountancy and a Master of Science in Accountancy from Nanyang Technological University (NTU)
Robert Chong	Chief Corporate & Human Resource Officer	Over 30 years of experience as a senior human resource manager at various global companies such as the Shangri-La Group, Keppel Corporation, Temasek International, and Shell
		Certified as a Master Professional by the Institute for Human Resource Professional
		Bachelor of Arts in Sociology from National University of Singapore (NUS)
		Master of Business Administration in Accountancy from NTU
		Completed Advanced Management Program at Harvard Business School, and other senior leadership programmes at INSEAD, France, and the International Institute for Management Development in Switzerland
Koh Chiap Khiong	CEO, Singapore & Southeast Asia	Chief Security Officer from 2010 to 2018 and played the role of spurring the Sembcorp's growth and investments overseas
		First-class honours in Accountancy from NUS
		Completed the Advanced Management Program at Harvard Business School
Vipul Tuli	CEO, South Asia CEO, Hydrogen Business	Has 30 years of experience in the energy sector
		Senior partner with McKinsey & Company and advised government institutions on relevant issues regarding his expertise
		Bachelor's degree in Chemical Engineering from the Indian Institute of Technology Delhi
		Completed postgraduate studies in business management from the Indian Institute of Management Calcutta
Andy Koss	CEO, UK & Middle East	Has 30 years of experience in the financial and energy sectors
		Spent 15 years at Drax Group and served as its former CEO of Generation
		Former deputy group treasurer of Provident Financial
		Held various accounting and investment banking roles at companies including Coopers & Lybrand, UBS, and Dresdner Kleinwort Benson
		Qualified chartered accountant and treasurer
		First-class honours in Mathematics, Operational Research, Statistics, and Economics from the University of Warwick

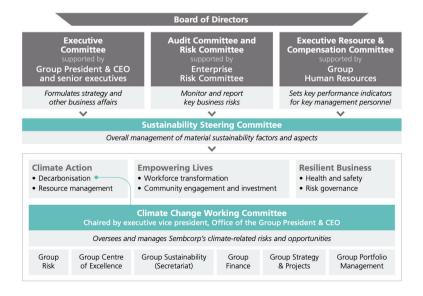
Name	Position	Experiences and Educational Background
Alex Tan	CEO, China	Has over 20 years of experience in the chemical, logistics, and financial sectors
		Spent 17 years at Air Products, an industrial gases company, taking on various management roles in Singapore and China
		Held various corporate development and finance roles at IMC Industrial Group and TD Securities
		Bachelor's degree in Economics and Statistics from NUS
		Master of Business Administration from the University of Rochester (Simon School)
Kelvin Teo	CEO, Urban	Former Urban business' president, Chief Operating Officer and CFO
		Council member of the Singapore-Jiangsu Cooperation Council, the Singapore-Sichuan Trade and Investment Committee, and the Vietnam-Singapore Business Council
		Played a significant role in Vietnam's socio-economic development and relations with Singapore
		Completed the Senior Executive Program jointly conducted by Harvard Business School and Tsinghua University School of Economics and Management, as well as the Advanced Management Program at INSEAD, France

Source: Sembcorp. (2022, December 31). Sembcorp Industries Annual Report 2022.

#### Who governs sustainability?

Figure 3 shows the sustainability governance structure of Sembcorp as shown in its FY2022 annual report. Sustainability governance is the responsibility of the board of directors and several existing committees. The EC oversees the implementation of Sembcorp's Climate Action Plan, while the AC and RC endorse the company's policies, guidelines, and risk management systems, including climate-related risks. Additionally, the ERCC establishes the remuneration framework, linking ESG indicators such as GHG emissions intensity and gross installed renewable energy capacity to the remuneration of key management personnel (KMP).

Figure 3: Sembcorp's sustainability governance structure<sup>42</sup>



Sembcorp has not formed a separate Board Sustainability Committee but has a management-level Sustainability Steering Committee (SSC) for managing strategies relating to sustainability-related risks and opportunities. The SSC is chaired by Wong Kim Yin (Wong), the company's President and CEO, and is made up of senior executives accountable for the management of Sembcorp's material sustainability issues assessed through the sustainability framework.43

The SSC guides the development and improvement of frameworks, policies, guidelines, and processes to ensure that sustainability issues are effectively managed. Additionally, the committee leads the integration of sustainability matters, and oversees issues or concerns pertaining to the community.<sup>44</sup>

#### Risk oversight and management

The key risks of Sembcorp include carbon exposure, regulatory compliance, strategic competition, commodity volatility, investment governance, and project execution and operation. These climate-related risks are managed through the Integrated Assurance Framework (IAF) and are subject to review by both the RC and the AC.<sup>45</sup>

The board's RC is responsible for establishing the foundation for plans, systems, processes, and procedures. It also evaluates and revamps the company's IAF. Furthermore, the RC conducts periodic analyses of group-wide risks, including significant risk exposures and develops plans to mitigate such risks.<sup>46</sup>

The IAF incorporates various industry risk management standards such as ISO 31000 and the Enterprise Risk Management - Integrated Framework of the Committee of Sponsoring Organisations of the Treadway Commission.

The AC engages with both the company's external and internal auditors to discuss their work, the results of their findings, and the evaluation of the company's internal accounting control system. Additionally, the AC examines and endorses interested person transactions, ensuring compliance with the specifications outlined in Chapter 9 of the SGX-ST Listing Rules. 47

The AC also regularly assesses the independence, adequacy, and effectiveness of the Group Integrated Audit (GIA). Any significant audit findings that are escalated to management for action are also followed up by the AC.<sup>48</sup>

To further strengthen the company's corporate governance and ensure ethical business practices across all markets, business lines, and functional units, Sembcorp has implemented a whistle-blowing policy. Whistleblowing complaints are handled confidentially through the GIA department. Any unresolved issues are escalated to the AC.49

#### Unpacking the c-suite's remuneration

Sembcorp has implemented an incentive compensation plan for its KMP. An economic value added (EVA) lined "bonus bank" was created for each KMP. Each year, one-third of the bonus bank balance will be distributed in cash, while the remainder will be carried forward. Based on the yearly EVA performance of the company and its subsidiaries, the carry forward balances may be reduced or increased. The performance targets are approved by the ERCC, which is also responsible for the periodic review of this remuneration plan.<sup>50</sup>

The ERCC established a remuneration framework comprising both variable and fixed components. Additionally, the ERCC reviews and endorses Key Sustainability and Climate-Related Performance Indicators (KPIs) of Sembcorp's KMP. To further align KMP incentives with the company's vision of transitioning from brown to green, the board of directors launched a five-year Performance Share Plan - Transformation Incentive Plan (PSP-TI). The PSP-TI is linked to long-term ESG targets such as GHG emissions intensity reduction, gross installed renewable energy capacity, sustainable solutions' profit, and sustainable land banking and land sales.<sup>51</sup>

#### Sustainability reporting and assurance

Sembcorp adopts the Global Reporting Initiative (GRI) framework for its sustainability reporting. For its climate-related disclosures, it follows the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) and Carbon Disclosure Project (CDP).

Sembcorp engaged PricewaterhouseCoopers (PwC) to perform a limited assurance engagement on selected KPIs in Sembcorp's Sustainability Report for the year ended 31 December 2021. This assessment was conducted against Sembcorp's Sustainability Financing Framework that was released in August 2021. PwC did not provide a reasonable assurance opinion regarding whether the Sembcorp's identified sustainability information had been prepared, in all materials respects, in accordance to the Reporting Criteria. <sup>52</sup>

#### **ESG** ratings

In 2023, Sembcorp received an ESG rating of "AA" from Morgan Stanley Capital International (MSCI), the second highest rating given by MSCI. It also maintained a CDP Climate Change score of "B" in 2021, indicating coordinated action on climate issues. However, Sustainalytics, a company which rates the sustainability of listed companies globally, gave Sembcorp an ESG risk rating of 35.8, signaling a high ESG risk in their business practices.<sup>53</sup>

#### The green dilemma of SLBs

SLBs are an innovative financial instrument that has gained popularity in recent years for promoting sustainability in the corporate sector. Unlike traditional green bonds, which are issued to finance specific green projects, SLBs require issuers to set SPTs that typically impact the bond's characteristics, usually the coupon rate. In return, the issuer of an SLB enjoys unfettered use of the funds raised. However, the adoption of SLBs has been relatively slow, hindered by concerns over credibility and the risk of greenwashing.<sup>54</sup>

A critical issue plaguing SLBs is the credibility of set targets. Some issuers have faced criticism for establishing SPTs that are immaterial to their core business or omit significant emission scopes. This lack of comprehensive and ambitious goals undermines investor confidence and raises accusations of greenwashing. Furthermore, while SLBs often utilise penalty mechanisms, such as coupon step-ups, to enforce target adherence, there are concerns that these penalties may be insufficiently punitive, with fixed-rate step-ups prevalent regardless of an issuer's credit quality or scale. Moreover, issuers may employ call options to evade penalties by redeeming bonds early or engage in financial engineering to reduce their greenhouse gas emissions, as was alleged for Sembcorp.<sup>55</sup>

#### **Epilogue**

In the AGM held on 20 April 2023, Ang Kong Hua (Ang) retired by rotation under the company's Constitution and did not seek re-election after 13 years in the role of Chairman. Ang will be succeeded by Tow Heng Tan, the Deputy Chairman and non-independent non-executive director of Sembcorp. With the appointment of a non-independent Chairman, Lim Ming Yan was designated as the lead independent director. Tham Kui Seng also stepped down from the board after serving for 11 years.<sup>56</sup>

Between August 2023 to November 2023, Sembcorp appointed three new independent directors (IDs) to its board. They are Kunnasagaran Chinniah (Chinniah), Marina Chin Li Yuen (Chin), and Ong Chao Choon (Ong).

Chinniah was appointed on 1 August 2023. He graduated with a Bachelor's in Engineering (Electrical) from NUS and a Master of Business Administration from the University of Berkeley, and is a Chartered Financial Analyst from CFA Institute. Chinniah is a board member of Changi Airports International, CapitaLand Ascendas REIT Management, Azalea Asset Management, and Greenko Energy Holdings. He retired from GIC in 2013

after more than 20 years as the Head of GIC Global Infrastructure Group and Co-Head of Portfolio, Strategy and Risk Group at GIC Special Investments.<sup>57</sup>

Chin was appointed on 1 November 2023. She graduated with a Bachelor of Laws with honours from NUS. Chin is the joint managing partner of Tan Kok Quan Partnership. Additionally, she is currently an ID and a member of the Audit and Risk Committee of Jurong Port Pte Ltd, as well as a board member and AC member of Singapore Land Authority. She is also a member of the appeal advisory panel of the Monetary Authority of Singapore, senate member and fellow of the Singapore Academy of Law, specialist mediator of the Singapore International Mediation Centre, and an accreditation committee member of the Singapore Institute of Legal Education.58

Ong was appointed on 3 November 2023. He graduated with first-class honours in Accountancy from NUS and a Master of Business Administration in Banking and Finance from Nanyang Business School. He is a fellow of the Institute of Singapore Chartered Accountants and the Chartered Accountants Australia & New Zealand. Ong sits on the boards of Community Foundation of Singapore, Lee Kuan Yew Fund for Bilingualism, NCS, and Singapore Food Agency. Ong previously worked in PwC for over 30 years, where he was a partner and held various leadership positions, including Deputy Chairman and advisory leader of PwC Singapore and managing partner of PwC Myanmar.<sup>59</sup>

On 6 November 2023, Sembcorp announced its 2023-2028 strategic plan, outlining an investment of approximately S\$10.5 billion to drive the growth of renewables. This is intended to position Sembcorp on the path to becoming a leading renewable energy player in Asia.<sup>60</sup> Nevertheless, questions arise regarding the company's approach to its stranded assets. What are Sembcorp's plans for these assets, and how does the company intend to address this?

#### **Discussion questions**

- 1. What is greenwashing? Do you think the accusations of greenwashing directed at Sembcorp over the sale of SEIL are valid? Explain.
- 2. Evaluate the board composition of Sembcorp as at the end of FY2022. Do you think Sembcorp had a board with the appropriate skill sets that are required to oversee its transition from brown to green? How about the skill sets of its key management personnel? Explain.
- 3. Sembcorp made a number of changes to its board in 2023. Do you think the changes strengthen its board composition and makes it better equipped to oversee the company's transition from brown to green? Are there other skill sets you would recommend that Sembcorp add to its board? Explain.
- 4. Evaluate the sustainability governance structure of Sembcorp. Which are the committees which are involved in overseeing and managing sustainability? Do the existing members within the sustainability governance structure possess the necessary capabilities and qualifications to steer Sembcorp towards its transition goals? Explain.
- 5. What changes, if any, you would recommend to enable Sembcorp to better oversee and manage its sustainability-related risks and opportunities?
- 6. For a company like Sembcorp, what do you think are the most material sustainability-related risks and opportunities that it faces?
- 7. What are the pros and cons of linking sustainability-related factors to executive remuneration? If a company decides to do so, what are the key issues it needs to consider? Critically evaluate Sembcorp's practices in this regard.
- 8. Should sustainability assurance be made mandatory for listed companies? What are the key issues that companies should consider in subjecting its sustainability disclosures to independent assurance?
- 9. Regulators globally are taking a stronger stance against greenwashing practices. What should regulators in Singapore do in order to combat greenwashing?

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### **ABOUT THE EDITOR**

#### **Professor Mak Yuen Teen**

Professor Mak Yuen Teen is the founding director of the Centre for Investor Protection. He is Professor (Practice) of Accounting at the NUS Business School and a former Vice Dean of the School, where he founded the first corporate governance centre in Singapore at NUS. Professor Mak holds first class honours, master and PhD degrees in accounting and finance. He is a member of the Institute of Singapore Chartered Accountants (ISCA).

He was Asia-Pacific Director of Research at a NYSE-listed global consulting firm and Head of Research (Singapore) at a Big 4 accounting firm while on leave from the university.

Professor Mak has served on three of the four corporate governance committees set up by the Singapore authorities to develop and revise the code of corporate governance for listed companies, including the first committee in 2000 and the most recent committee under the Monetary Authority of Singapore (MAS) which released the 2018 Singapore Code of Corporate Governance. He is currently serving a second three-year term on the Corporate Governance Advisory Committee under MAS aimed at continually raising corporate governance standards for listed companies in Singapore.

He has also served as Chairman and Deputy Chairman of two large not-for-profit organisations in Singapore and currently chairs the nominations committee of a large Singapore not-for-profit healthcare organisation. He also served as a member of the audit advisory committee of two UN funds based in NY over a period of 12 years.

Professor Mak was a former council member of the Singapore Institute of Directors. He is a director of a new not-for-profit company set up to enhance investor protection and education in Singapore called Corporate Monitor Limited. He serves as a member of the Advisory Council of the Vietnam Independent Directors Association and as a member of the International Advisory Board of the Hawkamah Institute of Governance in Dubai.

Professor Mak is actively involved in conducting training on corporate governance for directors and regulators in the region and speaks regularly in international conferences. He is the advisor of a new director programme introduced by ISCA and SAC Capital, which has been accepted the Singapore Exchange as an alternative for fulfilling the mandatory training requirements for first-time directors of companies listed in Singapore.

He has written many op-ed pieces on corporate governance for the media and professional organisations and has been quoted in the media in Singapore and internationally, including The Business Times, BBC News, Bloomberg, Financial Times, Asian Wall Street Journal, Reuters, Nikkei Asia, and others.

His academic work has been published in international journals such as Journal of Accounting and Public Policy, Journal of Corporate Finance, Journal of Business Finance and Accounting, and Accounting Horizons. He is a member of the editorial board of the Journal of Accounting and Public Policy.

Professor Mak edited 11 volumes of Asia-Pacific and global case studies published by CPA Australia between 2012 and 2022 and a special financial services edition, and several volumes translated into Chinese and Vietnamese have been produced. In all, he has written or edited more than 250 case studies related to corporate governance.

Professor Mak developed the first corporate governance rating for Singapore companies and the first Singapore governance rating for REITs and business trusts. He was nominated by MAS as the Singapore expert in the development of the ASEAN CG Scorecard.

He has also produced numerous reports on corporate governance. In 2007, his report on improving the implementation of corporate governance practices in Singapore, commissioned by MAS and the Singapore Exchange, was launched by the Minister of Finance at the OECD Asian Corporate Governance Roundtable held in Singapore.

Professor Mak is one of only two individuals in Singapore to have been given the Corporate Governance Excellence Award by the Securities Investors Association (Singapore) for his contributions to improving corporate governance in Singapore. The Singapore Institute of Directors has also recognised him as a CG Pioneer. He also received the corporate governance excellence award from the Minority Shareholders Watchdog Group in Malaysia for his contributions to corporate governance in the region.

He is a strong corporate governance advocate and comments regularly on current corporate governance issues on LinkedIn and on his personal website, Governance for Stakeholders, which he started in 2013.

# ABOUT THE EDITORIAL ASSISTANT

#### Koh Yan Qi

Koh Yan Qi is an alumnus of the National University of Singapore Business School, holding a Bachelor of Business Administration (Accountancy) with Honours (Highest Distinction). Passionate about exploring new places, she enjoys travelling, cafe hopping, and participating in barre and pilates workout classes at different studios. She frequently visits her hometown in Malaysia, where she relishes the local cuisine and the slower pace of life while spending quality time with her family. On weekends, she loves catching up with close friends, exercising, and watching Korean dramas.

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