CORPORATE GOVERNANCE AND ETHICS:

CASE STUDIES

Edited by Prof Mak Yuen Teen

2024 SERIES:
VOLUME 2

NUS National University of Singapore
Centre for Investor Protection
NUS Business School

CORPORATE GOVERNANCE AND ETHICS: CASE STUDIES

2024 Series: Volume 2

ASIA-PACIFIC CASES

© Centre for Investor Protection and Mak Yuen Teen. All rights reserved.

ISBN: 978-981-94-0694-4

Title: Corporate Governance and Ethics: Case Studies, 2024 Series, Volume 2

The reproduction, adaptation, communication or sale of these materials ('the Materials') is strictly prohibited unless expressly permitted under copyright laws in your jurisdiction or prior permission is sought. These cases can be used free of charge with acknowledgement of the source of the cases. Those wishing to use the cases should write to Professor Mak Yuen Teen at bizmakyt@nus.edu.sg indicating the organisation and courses or programs using them.

Disclaimer

The Centre for Investor Protection and Mak Yuen Teen do not provide any warranties or make representations as to the accuracy, completeness, suitability or fitness for purpose of the Materials and accept no responsibility for any acts or omissions made in reliance of the Materials. These Materials have been produced for reference purposes only and are not intended, in part or full, to constitute legal or professional advice. To the extent permitted by the applicable laws in your jurisdiction, the Centre for Investor Protection and Mak Yuen Teen exclude all liability for any loss, damage, claim, proceeding and or expense including but not limited to legal costs, indirect special or consequential loss or damage, arising from acts or omissions made in reliance of the Materials. Where any law prohibits the exclusion of such liability, the Centre for Investor Protection and Mak Yuen Teen limit their respective liability to the resupply of the information.

CONTENTS

PREFACE ..... **iv**

ASIA-PACIFIC CASES

ATA IMS: SUCKED INTO TROUBLE 1

ADANI GROUP: A HINDERBURG MOMENT 18

EVERGRANDE: THE FALL OF A PROPERTY COLOSSUS 35

NAB(BED) FOR FRAUD 59

OPTUS: PROBLEMS DOWN UNDER 74

PWC: THE "FANTAXTIC" SAGA 97

SERBA DINAMIK: A REGULATORY NIGHTMARE 120

THE (FALLEN) STAR ENTERTAINMENT 142

STARK CORPORATION: THE COPPER MAN SAGA 169

SUPERMAX: NAVIGATING FAMILY TURBULENCE 184

VINFAST: TO EV-NITY AND BEYOND 202

ABOUT THE EDITOR **222**

ABOUT THE EDITORIAL ASSISTANT **224**

PREFACE

This is the second volume of the 2024 series of Corporate Governance and Ethics: Case Studies, the inaugural publication from the newly-established Centre for Investor Protection at the NUS Business School.

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 volume includes 11 cases from Asia-Pacific, excluding Singapore cases which are included in volume 1.

There are four Australian cases in this volume. One such case involving Optus 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. Another Australian case involves a major fraud at National Australia Bank. The other two Australian cases in this volume involve the money laundering scandal 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 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 also a case involving the Indian family-controlled conglomerate Adani Group, 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 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 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.

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 the students who helped with checking the accuracy and editing the cases for the three volumes. Their names are listed in the Preface for Volume 1. 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

ATA IMS: SUCKED INTO TROUBLE

Case overview

On 25 November 2021, the high-tech British home appliance maker, Dyson Limited (Dyson), announced that it had severed its partnership and terminated the contract with one of its key suppliers in Malaysia, ATA IMS Berhad (ATA). This followed allegations of ATA violating labour laws at its Far East factories and reports that it was facing investigations by the U.S. authorities.

This issue was raised earlier by a whistleblower. Andy Hall, a prominent rights activist, had flagged complaints that he had received from workers from ATA in 2020 to the Malaysian government but no action was reportedly taken. He subsequently filed the complaints with the U.S. Customs and Border Protection (CBP). Both ATA and Dyson initially rejected the allegations. However, Dyson later released another statement stating that it had, upon learning about the allegations, commissioned a law firm to investigate the claims. Following the results of audits of ATA's labour practices, Dyson terminated its relationship with ATA. This sent ATA's shares plunging.

The objective of this case study is to facilitate a discussion of issues such as the importance of Environmental, Social and Governance (ESG) factors and its impact on companies; the board's responsibilities in relation to ESG; the trade-off between profit and ESG; forced labour practices; and effectiveness of whistleblowing policies.

About ATA

Established in 1972, ATA IMS Berhad (ATA) is an electronics manufacturing service (EMS) provider, headquartered in Johor, Malaysia. The company is listed on Bursa Malaysia's Main Market and was ranked as the 23rd largest EMS company globally.[1] ATA is mainly involved in the manufacturing and sales of precision plastic injection of moulded parts, secondary processing, sub assembly and full assembly of the finished products to the electronic industry. The company also provides a range of services in home care, lighting, environmental care

---

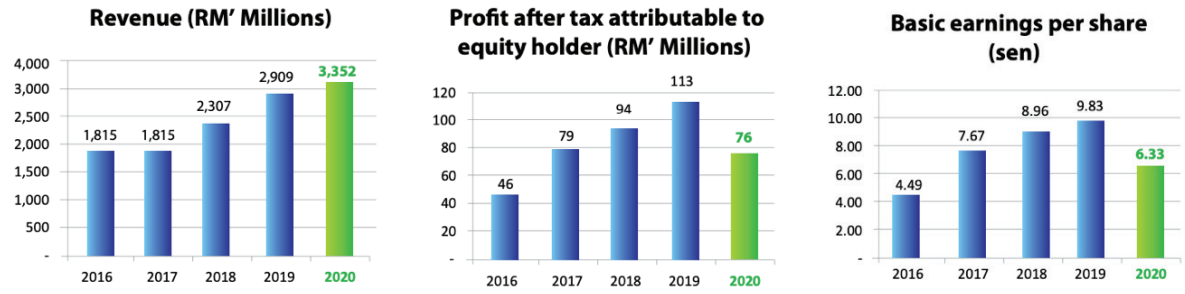
The case study was originally prepared by Gaele Loy Yu Heng, Glenys Foo Rui Shan, Lim Zi Qi Andra, Nicole Sng Jia Lyn, Ong Rou Ying, Pang Yoong Kit Thubten Gyatso and Wu Hao Hsuan. It has been edited by Koh Yan Qi, under the supervision of Professor Mak Yuen Teen, with additional content added. The case 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.

and providing component parts to the automotive industry. According to its annual reports, ATA has more than 8,000 employees, with half being foreign workers.[2]

Financial performance

From FY2016 to FY2019, the Group reported strong financial performance. Revenue increased from RM1,815 million to RM2,909 million, with profit after tax also growing year-on-year, from RM46 million in FY2016 to RM113 million in FY2019. Basic earnings per share had also been steadily rising from 4.49 sen in FY2016 to 9.83 sen in FY2019.[3]

Figure 1: ATA's financial performance between 2016 and 2020[4]



Source: ATA IMS Berhad. (n.d.). 2020 Annual Report.

However, in FY2020, despite the reported increase in revenue, the Group's profit after tax decreased to RM76 million.[5] ATA attributed this mainly to (i) the higher material contents needed for the company's new models, such as those relating to its household product line; (ii) the higher than expected start-up expenses and manpower recruitment costs relating to new projects that were slated to begin production in Q1 FY2021; (iii) the increase in marketing and distribution cost; and (iv) the poor Q4 performance due to the COVID-19 pandemic, which hindered demand.[6]

Although the Group's operations continued to face disruptions in Q1 of FY2021 as a result of the Movement Control Order imposed by the Malaysian government to reduce COVID-19 transmissions, and the Group temporarily halting production in early January 2021, ATA's reported FY2021 earnings were significantly higher than FY2020.[7] In FY2021, revenue reached an all-time high of RM4.2 billion – a year-on-year increase of 26%. ATA stated that its strong revenue performance in FY2021 was due to an increase in orders from its main customer, as the pandemic – which resulted in stay-home notices – increased the demand for home appliances. ATA also saw an increase in revenue due to the acquisition of new customers whose production commenced in FY2021.[8]

In addition, despite the challenges due to the pandemic, ATA continued to expand its business in FY2021. It opened two new production and warehouse facilities at Pasir Gudang and purchased new machines to expand its overall injection moulding capacity, to be better equipped to meet the orders from customers.[9]

Board of directors

ATA's board composition has remained the same from FY2018 to FY2021. The board consisted of six members, with three executive directors and three independent non-executive directors.[10] The roles of Chief Executive Officer (CEO) and Chairman are held by two separate individuals. The Executive Chairman is Dato Sri' Foo Chee Juan, who has more than 30 years of experience in the manufacturing industry. The two other executive directors are Dato' Fong Chiu Wan, the CEO, who has 34 years of experience in the manufacturing industry, and Datuk Balachandran A/L Govindasamy (Bala), the Chief Operating Officer (COO) with 26 years of experience

in the electronics manufacturing sector. The three independent non-executive directors – Koh Win Ton, Wong Chin Chin and Lee Kok Jong – make up the Audit Committee and the Nominating and Remuneration (NR) Committee.

Both Koh Win Ton and Lee Kok Jung are accountants, with Koh Win Ton having more than 20 years of experience while Lee Kok Jung runs his own accountancy practice in Malaysia. Wong Chin Chin is a corporate lawyer and has been involved in advising many corporations on matters regarding mergers and acquisitions, as well as those regarding the privatisation of companies.

On 30 November 2021, ATA announced that Wong Chin Chin had resigned due to "differences of opinions" with the other directors.[11] Further, on 31 December 2021, ATA announced that Bala had resigned from his position as COO "due to health issues".[12] The company subsequently appointed Dharma Rajan Nadarajah (Dharma) as its new COO on 9 May 2022, expressing confidence that Dharma's knowledge and experience will further strengthen its goal of positioning itself as the leading EMS provider in Malaysia and the region.[13]

Major customer Dyson

ATA's largest customer by far is Dyson Limited (Dyson), which accounts for approximately 80% of ATA's revenue.[14] Dyson is a British technology company that designs and manufactures a wide variety of products, ranging from heaters to bladeless fans to hand dryers to vacuum cleaners and more. It was founded in 1978 and is privately owned by British billionaire James Dyson. The company has since grown and expanded to more than 100 countries worldwide.[15]

In 2002, despite opposition from the U.K. government and the public, Dyson transferred its vacuum cleaner production to Malaysia, citing limited space for expansion and other economic reasons. Besides being a lower-cost production centre, James Dyson also revealed that the quality of the local workforce and graduates was also a key reason for the shift to Johor.[16] The company subsequently also shifted its washing machine production to Malaysia in 2004. In 2007, Dyson formed a partnership with the Malaysian electronics manufacturer VS Industry Bhd (VSI) to take on a major role in Dyson's supply chain, from raw material sourcing and production to distribution. VSI also undertook an extensive production plan to supply finished products to Dyson's markets globally.[17]

Dyson later announced its plans to move its company headquarters to Singapore in 2019, citing its intention to be closer with its fastest growing markets throughout the Asia-Pacific region, along with its unhappiness with the overly bureaucratic restrictions of the European Union. It officially moved its headquarters to Singapore at the end of 2021.[18]

Dyson's code of conduct and corporate governance

Dyson has a Code of Conduct which takes guidance from the International Labour Organisation's standards and national laws.[19] This spells out what Dyson and its suppliers will have to adhere closely to regarding employment practices, business morals, health and safety, accountable procuring, and sustainability benchmarks. It is mandatory for Dyson's manufacturing suppliers to comply with these requirements.

The Code of Conduct also includes policies and standards regarding unbiased and principled employment. These policies are revised periodically, with the most recent review undertaken with guidance from external professionals in 2021.

Audits are also carried out to verify that there is strict adherence to Dyson's Code of Conduct. Dyson's audit policy states that if suppliers fail to comply with the requirements laid out in Dyson's Code of Conduct, Dyson will have the final say in imposing business sanctions. Further, Dyson will collaborate with suppliers to rectify issues and improve conditions for workers through corrective actions to meet Dyson's requirements.

In November 2020, it was reported that there was strong dissatisfaction from Dyson's employees over the company's firm stance on them returning to office for work, during the initial outbreak of the COVID-19 pandemic, even when their work could be done from home. An undisclosed employee stated that staff had been intimidated with retaliatory measures if they did not adhere to Dyson's work from office policy.[20]

Dyson also follows the Wates Corporate Governance Principles for Large Private Companies (Wates Principles) for the Group's corporate governance practices.[21]

The Wates Principles consist of six principles namely: Purpose and leadership, board composition, director responsibilities, opportunity and risk, remuneration, and stakeholder relationships and engagement.[22] The Wates Principles follow an "apply and explain" approach rather than a "comply or explain" approach adopted in the Code under the U.K. Listed Rules.[23] In accordance with the approach, Dyson reported on its governance processes against each principle.[24]

Accusations against Dyson and ATA

In 2014, an article published by The Mirror in the U.K. depicted the poor working conditions of workers in Dyson's Wiltshire-based plant, alleging that employees were forced to work in corridors, citing an "aggressive recruitment policy" as the reason for overly cramped working conditions.[25]

In 2019, Andy Hall, a prominent rights activist, allegedly received complaints from workers employed by ATA regarding the poor working and living conditions within the factory.[26] In November 2019, Andy Hall wrote to Dyson regarding the complaints, only to be denied by the company, which claimed that the complaints were factually incorrect according to Dyson's prior audits of ATA conducted from November 2019 to June 2021.[27]

In 2021, Andy Hall submitted a petition to the U.S. Customs and Border Protection (CBP) to initiate an investigation into ATA, alleging that the company engages in forced labour practices and subjects its employees to poor living conditions. However, this was quickly rejected by the CBP, citing insufficient information to commence the investigation. Nevertheless, shares of ATA closed almost 18% down.[28] On 21 May 2021, ATA's Chairman, Datuk Seri James Foo refuted claims that ATA was using forced labour in its manufacturing processes, saying that the employees' living conditions were the "best in class", with amenities like a gym, Wi-Fi, and a cafeteria.[29]

This was supported by AmInvestment Bank back in 2019, which – after a tour of ATA's Jalan Dewani factory as part of its investment research – stated that "the hostel dormitory was clean and hygienic, and equipped with various facilities such as a counselling room, a fitness centre and an in-house convenience store". In addition, it said that frequent audit checks were done.[30] Following this news, the company's shares closed almost 8% higher.[31]

However, an article published by the British newspaper, The Sunday Mirror, on 20 June 2021, reported that foreign workers housed in the ATA factory live in squalid conditions, sharing a room with 60 other people.[32]

ATA and Dyson hit back

ATA replied swiftly to The Sunday Mirror, with ATA's senior legal manager, Jivanadham Kavita Kaushaliya (Jivanadham) rubbishing the claims made, even going further to show a video clip of the worker accommodation, showcasing clean rooms and beds distanced apart to comply with social distancing measures put in place in the midst of the COVID-19 pandemic.[33] Jivanadham added that ATA had filed a police report against Andy Hall, claiming that he has "hidden agendas" which are unfavourable to not only ATA, but also the Malaysian economy.[34]

That same day, Dyson also responded, saying that it conducts regular audits of its suppliers and are confident that the allegations are false. Dyson said it was taking legal action against The Sunday Mirror.[35]

The Sunday Mirror subsequently apologised, conceding that the evidence provided might not have been concrete enough.[36] However, Andy Hall stood his ground regarding his allegations.

Malaysian dream or nightmare?

As of March 2021, approximately 51% of ATA's employees are non-Malaysian.[37]

With over two million migrant workers making up roughly 15% of Malaysia's total workforce,[38] they are one of the main drivers of the economy, especially when industries such as electronics make up over 36% of Malaysia's exports before the pandemic.[39] Stories of employee abuse and forced labour have become increasingly common,[40] with a number of studies apparently showing Malaysia's neglect of migrants and poor enforcement of regulations regarding matters relating to employee welfare. In 2021, Malaysia was downgraded to "Tier Three" in the U.S. State Department's annual "Trafficking in Persons" report, the worst rating a country could get.[41]

ATA's policies on the "S" of ESG

According to ATA's 2020 sustainability statement, one of its 'sustainable social policies' requires that its employees to not be discriminated against or enslaved, but be treated with dignity, with the right to rest and leisure, including reasonable limitation of working hours, and periodic holidays with pay. However, it was only further down in the statement that it identified child labour, minimum wages and workforce diversity as part of its risks related to employment practices.

In contrast, its 2021 sustainability statement – released after accusations of forced labour practices – includes new paragraphs relating to its commitment to prevent forced labour and inhumane treatment to its workers, as well as enhanced measures such as a revised whistleblowing policy and a newly introduced 'grievances and workers' satisfactory survey' as an additional channel for workers to voice their concerns. However, there was no further mention of the workers' living conditions in its latest statement.

Whistleblowing – Policy versus reality

According to ATA's Whistle-blowing Policy and Procedures document, the whistleblower's identity will not be disclosed, unless required by law. In situations where the concerns are not able to be resolved without revealing the identity of the whistleblower (e.g., evidence needed in court), a dialogue will be carried out with the whistleblower to discuss further action.[42]

However, after some whistleblowers surfaced issues to the various media outlets, ATA allegedly tried to identify these whistleblowers, with some even having their mobile phones taken away from them.[43]

ATA was already being investigated by the U.S. over forced labour allegations prior to Dyson's decision to audit ATA. Dyson said it had found out in September 2021 about claims of "unacceptable actions" from a whistleblower at an ATA factory and decided to engage a law firm to investigate those allegations.[44]

Dyson did not reveal the identity of the whistleblower, stating in a statement to Reuters in September 2021 that "we immediately commissioned an international law firm to undertake a full investigation and provided the whistle-blower with support that enabled them to assist with the investigation".[45]

Dyson dumps ATA

> "We have now terminated our relationship with six months' of contractual notice. We hope this gives ATA the impetus to improve and enables an orderly withdrawal in the interests of the workers that they employ."
>
> *– Dyson's response to Reuters*[46]

After Dyson's independent audit of ATA's labour practices carried out by Elevate, Dyson told Reuters on 25 November 2021 that it had cut business ties with ATA. Major forced labour issues at ATA identified in the

report include excessive working hours, the non-repayment of recruitment fees, and the employment of workers without valid visas.[47] Dyson stated that the latest audit findings were from a "comprehensive" audit, which involved interviewing over 2,000 members of ATA staff.[48] Dyson further added that it had already removed several production lines, following unsatisfactory improvements implemented by ATA, despite being engaged in discussions for six weeks.[49]

A Dyson spokesman said the firm "demands high standards of the third-party companies operating in the supply chain, and we take immediate action where we see deviation from our robust global welfare standards".[50]

ATA shares tumble

On 15 November 2021, ATA reported its first quarterly net loss and its share price fell by 19.8%, the largest fall in more than six years.[51] On 17 November 2021, it fell further given the ongoing uncertainty coupled with lack of concrete plans laid out by ATA to resolve the manpower shortage face by the company due to the COVID-19 pandemic.[52]

The shares fell another 29.9% after Dyson announced on 25 November 2021 that it had terminated its relationship with ATA, which was a six-month low.[53] This was followed by another fall of 36.6% the next day, to its lowest level in nearly five years.[54]

The plot thickens

Shortly after a video showing up to 60 workers being crammed into one dormitory emerged, Dhan Kumar Limbu (Limbu), a Nepali citizen and former ATA employee, claimed that his manager picked him up one night and brought him to a police station where he was allegedly interrogated about his links to labour rights activists, insisting that he must have been paid to provide information about the factory. He also claimed that he felt scared when the policemen who were questioning him started to hit him with books and kick him repeatedly.[55,56]

Despite the alleged beatings, Limbu said that he initially refused to sign a confession. He claimed that the police then called in ATA's COO, Bala, who threatened to put Limbu in jail for life. Subsequently, Bala promised to take Limbu out of jail if he cooperated and gave a favourable statement about ATA. Limbu said that he eventually signed a statement under considerable duress, stating that he had received RM4,000 from labour rights activists to leak information about the ATA factory.

The next day, Limbu was allegedly given new instructions by Bala along the lines of "You have to let me know what they ask you, and I will tell you how to answer them" in a bid to represent ATA in a positive light to the labour rights activists.[57]

As of 25 November 2021, seven current and former ATA employees had reportedly told interviewers from Reuters that they had worked excessive overtime hours of up to 126 hours a month, far exceeding the limit of 104 hours under Malaysian law. ATA allegedly told them that refusing overtime when ordered would deprive them of the right and option to work overtime in the future.[58] Without the option to work overtime, workers would not be able to live off their wages which were sometimes less than US$10 on certain days.[59] A review of their payslips also supported their claim that they had worked at the ATA plant even on public holidays, which were supposed to be rest days.[60]

They further revealed that ATA had confiscated and kept their passports while they were employed at ATA, effectively leaving them no choice but to continue working with no means of leaving.[61] Additionally, recruitment fees were also allegedly collected from workers by agents,[62] despite ATA claiming that it practises zero fees recruitment[63] and shoulders the responsibility of paying all recruitment costs for its workers.[64]

According to the International Labour Organisation, the aforementioned factors of recruitment fees, poor living conditions, passport retention, excessive hours, enforced overtime, and restrictions on movement are all clear indicators of forced labour.[65]

On 6 December 2021, 10 current and former employees, including a former ATA executive, also claimed in interviews that the company had trained its migrant dominated workforce to conceal their true working and living conditions from labour inspectors and Dyson, and had also hired thousands of foreigners without work permits.[66]

More denials

> "The Company had also engaged a prominent law firm…the law firm concluded that the allegation made by the aforesaid worker is unjustified and unsubstantiated, and unlikely to have taken place."
>
> *– ATA*[67]

After the contract with Dyson was terminated, ATA reiterated that it had taken swift action to hire professional advisers to review and validate the audit findings,[68] and had also hired a Malaysian law firm to conduct an independent review of the former worker's allegations of physical abuse, which was then due to be finalised shortly.[69]

On 29 November 2021, ATA said in a statement it had only received a summary of the audit on 25 November 2021, and that auditors claimed to be unable to "conclusively determine whether all allegations are true or false". The audit summary indicated poor living conditions, concerns relating to zero-recruitment fees for foreign migrant workers, immoral employment practices by agents, use of improper workers, issues of retaliation, unpaid allowances, and bonus during the COVID-19 pandemic in 2020, as well as illegal deductions for meals.[70] ATA said the findings were "non-conclusive" and that it was reviewing them.[71]

ATA reiterated in a media statement on 7 December 2021 that it was committed to ethical business practices. The company denied that its workers were subject to intimidation, or that it had retained workers' passports or employed illegal workers. It said that "a few managers have allowed their workers to work beyond the hours allowed", and that "only one supervisor was engaged in a highly uncommon incident of coaching employees on what to say to auditors". It added that the necessary remedial measures had been put in place to rectify the issues.[72]

ATA also highlighted that it had several whistleblowing channels in place, but none of these complaints in question was raised through any of the channels. ATA also confirmed that it took Limbu to the police station but denied that he was beaten. It added that it engaged a law firm to investigate his allegations but found them "unjustified and unsubstantiated and unlikely to have taken place".[73]

In a second media statement on 14 December 2021, ATA elaborated on its new remedial actions to be implemented with immediate effect, including a new Zero Sunday Overtime policy as well as increasing the number of information sessions for their various whistleblowing channels.[74]

In addressing the four summonses issued to the company in October 2021 by the Jabatan Tenaga Kerja, Johor Bahru – an agency under the Ministry of Human Resources Malaysia – ATA also claimed that it "went above and beyond the usual practices to provide accommodation for these workers" with their welfare in mind. It said that this was despite the difficulty of its employees returning to their home countries in light of the COVID-19 pandemic, after their permits had expired and it was not supposed to accommodate these workers anymore. ATA reiterated that these summonses were not part of the allegations of forced labour regarding the contract between ATA and Dyson. It further commented that the media had been wrongly accusing ATA of dismissing

the allegations, claiming that it had addressed every issue raised in a timely manner. ATA ended its statement by stating that the ATA-Dyson saga had now been resolved, and once again highlighted that its commitment to improve on its Environmental, Social and Governance (ESG) efforts.[75]

The Malaysian government's response

As of 25 November 2021, the Malaysian police had declined to answer any questions from Reuters, following its interview with the former ATA employees.[76] However, on 27 November 2021, it said that although it had not received any formal complaints, it would investigate the claim that a factory worker from ATA was beaten at one of its police stations. Malaysia's human resources minister M. Saravanan also stated that his ministry would investigate the severance of ties between Dyson and ATA.[77] However, he was satisfied with the conditions of the factory after he visited the ATA factory in December 2021.[78]

On 11 December 2021, it was announced that ATA had been charged with four violations of labour law on accommodation for workers.[79] ATA was also being investigated by the U.S. over forced labour allegations.[80]

Ramifications for Dyson

Ten former workers from ATA engaged British law firm, Leigh Day, to seek compensation from Dyson over poor working and living conditions at ATA factories.[81] The ex-employees claimed that "Dyson was unjustly enriched as a result of the unlawful, exploitative and dangerous conditions at the factory".[82] They argued that Dyson should compensate them for the breaches of their legal rights[83] since it was aware of the alleged unlawful practices at the ATA factory but did not do enough to address the issues.[84] Dyson had also said publicly on multiple occasions that it assumes responsibility for detecting and preventing forced labour and exploitation in its supply chains.[85]

Oliver Holland, a partner at Leigh Day, told Channel 4 News, "Our clients allege that they work under conditions of forced labour. They lived in unsanitary and crowded accommodation, and they lived under the constant threat of punishment and persecution by the factory management if they didn't adhere to what they wanted them to do."[86] In response to such allegations, both Dyson and ATA categorically denied any wrongdoings.[87]

On 10 December 2021, Leigh Day sent a "letter before action" to Dyson on behalf of the workers and four company units were named as the defendants in the claim.[88] The letter is a notice that legal proceedings could be initiated, and in the event that a settlement cannot be reached, the case will progress to the High Court.[89] Leigh Day was representing the workers on a "no win, no fee" basis.[90]

On 14 December 2021, ATA said it has asked for charges that it violated labour laws to be dropped, saying any infractions was caused by "challenges presented during the pandemic".[91]

Room for improvement

> "ATA IMS looks forward to working closely with SUHAKAM, as well as with the government, the Ministry of Human Resources and other relevant bodies in its efforts to step up on its ESG and CSR efforts, towards becoming a leading company in the electronics manufacturing service industry."
>
> – *ATA*[92]

On 3 January 2022, ATA announced that it will work with the Human Rights Commission of Malaysia, known locally as Suhakam, to improve its ESG practices.[93] ATA said Suhakam had conducted site visits to its facilities on 27 September 2021 to verify allegations of forced labour reported by the media.[94] Based on the site visits, ATA was provided with feedback for improvement.[95]

ATA said it had implemented additional grievance channels for workers, terminated an agent that charged workers recruitment fees and improved on communication issues at the company clinic treating workers.[96]

In addition, ATA also introduced a policy of zero overtime on Sunday to prevent recurrence of overtime labour violations.[97] However, such a move led to the resignations of nearly 300 workers in the first week of December.[98]

ATA also said it "looks forward to working closely...with the government, the Ministry of Human Resources and other relevant bodies in its efforts to step up on its ESG and (corporate social responsibility) efforts." [99]

Checking the box?

Audits conducted by Dyson after complaints from ATA employees are examples of social audits[100] which are formal reviews of a company's endeavours, procedures, and code of conduct regarding social responsibility and the company's impact on society.[101] Companies use social audits as a tool to determine if objectives are met, including measurable goals and benchmarks.[102]

With an increased emphasis on Corporate Social Responsibility (CSR) in today's society, corporations are often expected to not only deliver value to stakeholders such as consumers and shareholders, but also meet ESG standards.[103] Social audits can help companies create, improve, and maintain a positive public relations image which can help to dampen negative impacts on earnings from news that portray them in a negative light.[104]

However, several auditors, oversight bodies, factory workers and labour rights groups have pointed out that social audits are not always effective in identifying labour risks, and can even obscure them.[105] In addition, some critics also commented that some companies have turned social audits into a perfunctory box-ticking exercise, conducting social audits just to go through the motions, without actual effort or interest.[106]

In the case of ATA, six audits were conducted from 2019 to 2021. Dyson had mentioned that it carries out audits frequently on its supply chain.[107] It has also released a Modern Slavery and Human Trafficking Statement in 2020 which covers the methodology of risk assessments, endorsed by Sedex, as well as stating that the audits are conducted by qualified Responsible Business Alliance Lead Auditors and external auditors from recognised third-party audit firms.[108] This brought attention to allegations made against Dyson in early 2021 regarding excessive work hours and unsatisfactory living conditions for ATA workers. Dyson had denied these allegations as it claimed that no such problems were detected in the frequent multiple audits it had previously conducted.[109] Only after the investigation in October 2021 did Dyson acknowledge the labour law violations and the fact that ATA was not taking enough actions to improve in this respect.[110]

According to international migrant worker rights activist Andy Hall, Dyson should prioritise reviewing how its social audit procedures had failed to identify the poor labour conditions at ATA over several years. He also called on the Responsible Business Alliance (RBA) – the world's largest industry coalition dedicated to CSR in global supply chains, Sedex, and Association of Professional Social Compliance Auditors (APSCA) along with Dyson, to review their social audit compliance procedures as concerns have been raised over their effectiveness in detecting and rectifying problems.[111]

Andy Hall strongly urged that an independent investigation into the auditors and all parties in the ATA saga be conducted. He believes that the Malaysian government should also be held accountable for this case as he had previously reported several times about the working and living conditions at ATA, only to be ignored, with no response as of the end of 2021.[112]

The saga continues…

> "It's very strange to see a NHRI (national human rights institution) be used like this by a failing single company … the reputation of Suhakam will surely get more damaged here."
>
> – *Andy Hall, migrant worker rights specialist*[113]

In response to ATA's collaboration with Suhakam to improve its ESG practices, Andy Hall described it as "bizarre". He doubted the legitimacy of the collaboration as there were concerns that Suhakam might not possess the relevant expertise in social auditing and forensic forced labour issues to endorse ATA's labour practices.[114]

He pointed out that even forced labour auditors who have ample experience may find it challenging to properly detect sensitive forced labour situations even after spending days conducting checks at suspected premises.[115]

In response to Andy Hall's remarks, ATA hit back and commented that Hall's questioning of "the credibility and capability of a national human rights body, and the genuine intentions of an independent corporate organisation in improving ATA's sustainability efforts borders on bullying".[116]

ATA added that it expected a migrant workers' rights activist such as Hall to appreciate that "concerted efforts are being made and implemented in stages by the company towards safeguarding the well-being of its foreign workers". ATA also claimed that Hall's comments were inappropriate especially since he arrived at his own conclusions without verifying allegations by visiting ATA and conducting site checks.[117]

ATA also believed that Hall's actions were contradictory to what he claims to advocate and ATA's efforts to improve its ESG practices were being undermined by his biased views and actions.[118]

Epilogue

On 11 April 2022, 11 months after the allegations concerning labour issues surfaced, ATA declared that its Johor Bahru facilities and operations adhere to both local and international labour standards. One of the Big 4 accounting firms was appointed by ATA and has verified that "ATA's activities are governed by human rights principles, laws, and industry best practices and standards, to manage impacts in its areas of operation".[119] This assessment took place over a two-week period, from 9 March 2022 to 25 March 2022.[120]

On 7 February 2023, ATA's share price experienced a 143% surge, rising from its lowest point of 19.5 sen on 13 January 2023 to 47.5 sen.[121] According to CGS-CIMB, this may be due to optimistic retail investors anticipating ATA securing a new major customer, thereby improving the company's earnings prospects.[122] ATA has also announced plans to streamline operations, reduce excess capacity and terminate leased assets as necessary.[123]

However, ATA faced legal challenges. Two of ATA's wholly-owned subsidiaries, ATA Industrial (M) Sdn Bhd (AIM) and Jabco Filter System Sdn Bhd (Jabco), were sued by their suppliers, with both suppliers seeking payment for stock ordered earlier based on customers' orders and forecasts.[124,125,126]

Looking ahead, will ATA be able to recover from its "ESG" nightmare and successfully secure new major customers? What other Malaysian companies may be in the firing line for failure to comply with "ESG" standards?

Discussion questions

1. In what way has ATA failed from an ESG perspective? What is the impact on the company? What are the key contributory factors?
2. Do you think the ATA board, including the independent directors, are at least partly responsible for the poor labour practices in the company? What could it have done to more effectively oversee ESG risks? Do

you think corporate culture and board composition of ATA were factors in the problems faced by ATA? Explain.

3. Critically evaluate the effectiveness of ATA's whistleblowing policy and its response to whistleblower complaints. How can companies enhance the effectiveness of their whistleblowing policies?
4. Critically evaluate Dyson's and ATA's response to allegations by external parties such as the media and labour rights activists. What could they have done differently to improve and rectify the situation?
5. Critically evaluate the importance of ESG factors to companies in today's world. What do you think are the material ESG factors for a company and business like ATA?
6. How can a company like ATA balance profit and ESG considerations? What steps should a company take to manage ESG risks (and opportunities)? What is the role of the board of directors with respect to overseeing ESG risks, such as those faced by ATA?

Endnotes

1 ATA IMS Berhad. (n.d.). 2021 Annual Report. Retrieved from https://www.ataims.com.my/data/cms/files/ATA%20IMS%20Berhad%20%20AR%202021.pdf

2 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

3 ATA IMS Berhad. (n.d.). 2020 Annual Report. Retrieved from https://www.ataims.com.my/data/cms/images/1602040248_ata-ims-2020-high.pdf

4 *Ibid*.

5 *Ibid.*

6 *Ibid.*

7 ATA IMS Berhad. (n.d.). 2021 Annual Report. Retrieved from https://www.ataims.com.my/data/cms/files/ATA%20IMS%20Berhad%20%20AR%202021.pdf

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

11 Seah, E. H. (2021, November 30). Ata Ims Independent non-executive director resigns, citing 'differences in opinion' with the Board. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ata-ims-independent-nonexecutive-director-resigns-citing-differences-opinion

12 Salim, S. (2021, December 31). Balanchandran resigns as ATA IMS Chief operating officer. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/balanchandran-resigns-ata-ims-chief-operating-officer

13 Chung, H. (2022, May 11). ATA IMS appoints Dharma Rajan Nadarajah as COO. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/ata-ims-appoints-dharma-rajan-nadarajah-coo

14 Ananthalakshmi, A. (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

15 Dyson Limited. (n.d.). About. Retrieved from https://www.lb.dyson.com/en-LB/community/aboutdyson.aspx

16 Azhar, K. (2018, October 1). Dyson transforming Johor's high-value manufacturing ecosystem. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/dyson-transforming-johors-highvalue-manufacturing-ecosystem

17 *Ibid.*

18 Ang, H. (2022, March 25). Dyson opens new global HQ at St James Power Station, to invest S$1.5 billion in Singapore operations over next 4 years. *CNA*. Retrieved from https://www.channelnewsasia.com/singapore/dyson-global-headquarters-hq-st-james-power-station-2585726

19 Dyson Limited. (n.d.). Dyson Modern Slavery and Human Trafficking Statement 2020. Retrieved from https://manuals.plus/m/c4e62c75eea187fa976292c95b15e45641347b761d6d8f941c4b1d4bff1282ae_optim.pdf

20 Jolly, J., & Davies, R. (2020, November 11). Dyson staff express concern over return to workplace order. *The Guardian*. Retrieved from https://www.theguardian.com/technology/2020/nov/11/dyson-staff-express-concern-over-return-to-workplace-order

21 Dyson Limited. (2021, February 24). Corporate Governance Statement. Retrieved from https://www.dyson.co.uk/content/dam/dyson/documents/uk/Dyson_CG_Statement_FY2020_Final.pdf

22 Bamford, C. (2019, September 10). An update on the introduction of the wates principles and corporate governance in large private companies. *Michelmores*. Retrieved from https://www.michelmores.com/news-views/news/update-introduction-wates-principles

23 *Ibid.*

24 Dyson Limited. (2021, February 24). Corporate Governance Statement. Retrieved from https://www.dyson.co.uk/content/dam/dyson/documents/uk/Dyson_CG_Statement_FY2020_Final.pdf

25 Bradley, C. (2014, January 30). Dyson factory so crowded it has 'workers in the corridors' after new staff intake. *The Mirror*. Retrieved from https://www.mirror.co.uk/news/uk-news/dyson-factory-crowded-workers-corridors-3093847

26 Soni, D. (2022, February 10). Exclusive: Dyson Faces Legal Action Over 'forced labour' and exploitation. *Channel 4 News.* Retrieved from https://www.channel4.com/news/exclusive-dyson-faces-legal-action-over-forced-labour-and-exploitation

27 *Ibid.*

28 Yahoo! Finance. (2022, April 7). Denko Industrial Corp. Bhd (8176.kl) stock historical prices & data. Retrieved from https://finance.yahoo.com/quote/8176.KL/history?period1=1621123200&period2=1621900800&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true

29 Lim, J., & Azhar, K. (2021, May 21). ATA IMS denies allegation of forced labour as share price tumbles. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ata-ims-denies-allegation-forced-labour-share-price-tumbles

30 AmInvestment Bank. (2019, January 16). ATA IMS. Retrieved from https://www.bursamarketplace.com/mkt/tools/research/ch=research&pg=research&ac=626845&bb=639200

31 Yahoo! Finance. (2022, April 7). Denko Industrial Corp. Bhd (8176.kl) stock historical prices & data. Retrieved from https://finance.yahoo.com/quote/8176.KL/history?period1=1621123200&period2=1621900800&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true

32 Asia News Day. (2021, June 20). Foreign workers at Dyson supplier allege exploitation – UK report. Retrieved from https://www.asianewsday.com/foreign-workers-at-dyson-supplier-allege-exploitation-uk-report/

33 Sooi, C. C. (2021, June 25). ATA IMS: We aren't what we are portrayed to be in the UK tabloid. *Focus Malaysia*. Retrieved from https://focusmalaysia.my/ata-ims-we-arent-what-we-are-portrayed-to-be-in-the-uk-tabloid/

34 *Ibid.*

35 *Ibid.*

36 Vinod, G. (2021, August 3). "We're sorry": The Sunday Mirror tells Dyson Manufacturer, ATA IMS. *Focus Malaysia*. Retrieved from https://focusmalaysia.my/were-sorry-the-sunday-mirror-tells-dyson-manufacturer-ata-ims/

37 ATA IMS Berhad. (n.d.). 2021 Annual Report. Retrieved from https://www.ataims.com.my/data/cms/files/ATA%20IMS%20Berhad%20%20AR%202021.pdf

38 Lee, Y. N. (2020, November 4). Neglect of migrant workers could hurt Malaysia's economic recovery. *CNBC*. Retrieved from https://www.cnbc.com/2020/11/05/covid-19-migrant-worker-neglect-may-hurt-malaysia-economic-recovery.html

39 Ramchandani, A. (2018, June 28). Forced labor is the backbone of the world's Electronics Industry. *The Atlantic*. Retrieved from https://www.theatlantic.com/business/archive/2018/06/malaysia-forced-labor-electronics/563873/

40 Pandiyan, M. V. (2021, June 24). End the abuse of migrant workers: The star contributor. *The Straits Times*. Retrieved from https://www.straitstimes.com/asia/se-asia/end-the-abuse-of-migrant-workers-the-star-contributor

41 Associated Press. (2021, July 5). Malaysia pledges to tackle forced labor after US downgrade. Retrieved from https://apnews.com/article/malaysia-forced-labor-health-coronavirus-pandemic-business-7e2ff9fb0e6b7f47e9d2d3f1414a589c

42 ATA IMS Berhad. (n.d.). Whistle-blowing Policy and Procedures. Retrieved from https://www.ataims.com.my/data/cms/images/1590649045_ata-ims-whistleblowing-policy-and-procedures.pdf

43 Soni, D. (2022, February 10). Exclusive: Dyson Faces Legal Action Over 'forced labour' and exploitation. *Channel 4 News.* Retrieved from https://www.channel4.com/news/exclusive-dyson-faces-legal-action-over-forced-labour-and-exploitation

44 The Irish Times. (2021, November 25). Dyson dumps Malaysian supplier ATA over labour concerns. Retrieved from https://www.irishtimes.com/business/technology/dyson-dumps-malaysian-supplier-ata-over-labour-concerns-1.4738729

45 Lee, L., & Ananthalakshmi, A. (2021, December 6). Dyson splits with Malaysia supplier, stoking concern over migrant worker treatment. *Reuters*. Retrieved from https://www.reuters.com/business/dyson-splits-with-malaysia-supplier-stoking-concern-over-migrant-worker-2021-12-05/

46 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

47 Soni, D. (2022, February 10). Exclusive: Dyson Faces Legal Action Over 'forced labour' and exploitation. *Channel 4 News.* Retrieved from https://www.channel4.com/news/exclusive-dyson-faces-legal-action-over-forced-labour-and-exploitation

48 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

49 *Ibid.*

50 Freeman, S. (2021, November 25). Dyson pulls plug on Far East supplier ATA at centre of "forced labour" row. *Evening Standard*. Retrieved from https://www.standard.co.uk/business/dyson-ata-malaysia-working-practices-labour-b968256.html

51 Lim, J. (2021, November 15). ATA IMS quarterly loss of RM11 million wipes off RM613 million market cap. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ata-ims-falls-144-or-37-sen-rm220-earnings-plunge-2q

52 Tan, S. M. (2021, November 17). ATA IMS sees over RM1b market cap wiped off in three days after reporting quarterly loss. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ata-ims-extends-fall-after-reporting-quarterly-loss-down-1613

53 Murugiah, S. (2021, November 25). ATA IMS slumps to six-month low after Dyson cut ties on alleged labour practices. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/shares-malaysias-ata-slump-30-after-dyson-terminates-relationship

54 Tan, S. M. (2021, November 26). ATA IMS hits limit down, extends loss after Dyson cuts ties over labour practices. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ata-ims-hits-limit-down-extends-loss-after-dyson-cuts-ties-over-labour-practices

55 The Straits Times. (2021, November 27). Malaysian police to look into claim whistleblower beaten at station. Retrieved from https://www.straitstimes.com/asia/se-asia/malaysian-police-to-look-into-claim-whistleblower-beaten-at-station

56 Channel 4 News. (2022, February 11). Dyson faces legal action over 'forced labour' and exploitation [Video]. *YouTube*. Retrieved from https://www.youtube.com/watch?v=vJaHQNrh0tM

57 Soni, D. (2022, February 10). Exclusive: Dyson Faces Legal Action Over 'forced labour' and exploitation. *Channel 4 News.* Retrieved from https://www.channel4.com/news/exclusive-dyson-faces-legal-action-over-forced-labour-and-exploitation

58 *Ibid.*

59 *Ibid.*

60 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

61 IndustriALL Global Union. (2022, February 14). Reports of abuse in Dyson Factory, Malaysia. Retrieved from https://www.industriall-union.org/reports-of-abuse-in-dyson-factory-malaysia

62 Lee, L., & Chu, M. M. (2021, November 26). Malaysia to investigate Dyson decision to cut Ata Ties. *Yahoo! Finance*. Retrieved from https://sg.finance.yahoo.com/news/malaysias-ata-takes-serious-view-015535893.html

63 The Business Times. (2021, May 21). Malaysian electronics firm ATA says it does not use forced labour. Retrieved from https://www.businesstimes.com.sg/consumer/malaysian-electronics-firm-ata-says-it-does-not-use-forced-labour

64 Lim, J., & Azhar, K. (2021, May 21). ATA IMS denies allegation of forced labour as share price tumbles. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ata-ims-denies-allegation-forced-labour-share-price-tumbles

65 Leigh Day. (2022, February 10). Dyson accused of forced labour and dangerous conditions by migrant workers in Malaysian factory. Retrieved from https://www.leighday.co.uk/latest-updates/news/2022-news/dyson-accused-of-forced-labour-and-dangerous-conditions-by-migrant-workers-in-malaysian-factory/

66 Lee, L., & Ananthalakshmi, A. (2021, December 6). Dyson splits with Malaysia supplier, stoking concern over migrant worker treatment. *Reuters*. Retrieved from https://www.reuters.com/business/dyson-splits-with-malaysia-supplier-stoking-concern-over-migrant-worker-2021-12-05/

67 Lai, T. D. (2021, December 8). Action taken against managers over unlawful labour practices, says ATA. *HRnews.my.* Retrieved from http://hrnews.my/2021/12/08/action-taken-against-managers-over-unlawful-labour-practices-says-ata/

68 ATA IMS Berhad. (2021, November 25). Receipt of (1) Notice of Termination of Contract Manufacturing Agreement dated 15 October 2020 between Dyson Operations Pte Ltd ("Dyson Operations") and ATA Industrial (M) Sdn. Bhd; (2) Notice of Termination of the Agreement for the Supply of Goods and Services dated 1 March 2013 and the Framework Agreement for the Supply of Goods (Tooling) dated 17 June 2009 between Dyson Manufacturing Sdn. Bhd. ("Dyson Manufacturing") and ATA Industrial (M) Sdn. Bhd. *Bursa Malaysia*. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3212287

69 Reuters. (2021, November 27). Malaysia police to look into claim ATA whistleblower beaten by police. Retrieved from https://www.reuters.com/world/asia-pacific/malaysia-police-look-into-claim-ata-whistleblower-beaten-by-police-2021-11-27/

70 Ananthalakshmi, A. (2021, November 29). Dyson supplier ATA says forced labour allegations not conclusive. *Reuters*. Retrieved from https://www.reuters.com/markets/europe/dyson-supplier-ata-says-forced-labour-allegations-not-conclusive-2021-11-29/

71 Business Today. (2021, December 6). Dyson splits with Malaysia supplier over migrant worker treatment. Retrieved from https://www.businesstoday.in/latest/world/story/dyson-splits-with-malaysia-supplier-over-migrant-worker-treatment-314493-2021-12-06

72 ATA IMS Berhad. (2021, December 7). ATA IMS BERHAD ("ATA IMS" OR "THE COMPANY") - Press Release. *Bursa Malaysia*. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3216764

73 *Ibid.*

74 BusinessToday. (2021, December 14). ATA IMS Says Remedial Measures In Place With ESG Initiatives. Retrieved from https://www.businesstoday.com.my/2021/12/14/ata-ims-says-remedial-measures-in-place-with-esg-initiatives/

75 ATA IMS Berhad. (2021, December 15). ATA IMS BERHAD ("ATA IMS" OR "THE COMPANY") - Press Release. *Bursa Malaysia*. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3218890

76 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

77 Reuters. (2021, November 27). Malaysia police to look into claim ATA whistleblower beaten by police. Retrieved from https://www.reuters.com/world/asia-pacific/malaysia-police-look-into-claim-ata-whistleblower-beaten-by-police-2021-11-27/

78 Malay Mail. (2021, December 10). HR minister orders probe into allegations of forced labour at ATA IMS. Retrieved from https://www.malaymail.com/news/malaysia/2021/12/10/hr-minister-orders-probe-into-allegations-of-forced-labour-at-ata-ims/2027331

79 The Business Times. (2021, December 11). Malaysia charges Dyson supplier ATA with labour law violations. Retrieved from https://www.businesstimes.com.sg/consumer/malaysia-charges-dyson-supplier-ata-with-labour-law-violations

80 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

81 Asia Financial. (2022, February 12). Dyson, ATA face claims from ex-workers at Malaysian supplier. Retrieved from https://www.asiafinancial.com/dyson-ata-face-claims-from-ex-workers-at-malaysian-supplier

82 Ananthalakshmi, A. (2022, February 14). Dyson faces claims from former workers at Malaysian supplier. *Reuters*. Retrieved from https://www.reuters.com/business/dyson-faces-claims-former-workers-malaysian-supplier-2022-02-11/

83 *Ibid.*

84 Leigh Day. (2022, February 10). Dyson accused of forced labour and dangerous conditions by migrant workers in Malaysian factory. Retrieved from https://www.leighday.co.uk/latest-updates/news/2022-news/dyson-accused-of-forced-labour-and-dangerous-conditions-by-migrant-workers-in-malaysian-factory/

85 *Ibid.*

86 Soni, D. (2022, February 10). Exclusive: Dyson Faces Legal Action Over 'forced labour' and exploitation. *Channel 4 News.* Retrieved from https://www.channel4.com/news/exclusive-dyson-faces-legal-action-over-forced-labour-and-exploitation

87 *Ibid.*

88 The Business Times. (2022, February 12). Dyson faces claims from former workers at Malaysian supplier. Retrieved from https://www.businesstimes.com.sg/consumer/dyson-faces-claims-from-former-workers-at-malaysian-supplier

89 *Ibid.*

90 *Ibid.*

91 The Business Times. (2021, December 14). Dyson supplier ATA asks Malaysia to drop charges it violated worker accommodation laws. Retrieved from https://www.businesstimes.com.sg/consumer/dyson-supplier-ata-asks-malaysia-to-drop-charges-it-violated-worker-accommodation-laws

92 Khalid, S. (2022, January 3). ATA IMS says it is collaborating with SUHAKAM to improve ESG, CSR initiatives. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ata-ims-collaborates-suhakam-improve-esg-csr-initiatives

93 Malay Mail. (2022, January 3). Dyson supplier Ata to work with Suhakam to improve ESG practices. Retrieved from https://www.malaymail.com/news/malaysia/2022/01/03/dyson-supplier-ata-to-work-with-suhakam-to-improve-esg-practices/2032722?utm_source=headtopics&utm_medium=news&utm_campaign=2022-01-03

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 The Business Times. (2021, December 14). Dyson supplier ATA asks Malaysia to drop charges it violated worker accommodation laws. Retrieved from https://www.businesstimes.com.sg/consumer/dyson-supplier-ata-asks-malaysia-to-drop-charges-it-violated-worker-accommodation-laws

98 *Ibid.*

99 Malay Mail. (2022, January 3). Dyson supplier Ata to work with Suhakam to improve ESG practices. Retrieved from https://www.malaymail.com/news/malaysia/2022/01/03/dyson-supplier-ata-to-work-with-suhakam-to-improve-esg-practices/2032722?utm_source=headtopics&utm_medium=news&utm_campaign=2022-01-03

100 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

101 Murphy, C. B. (2020, March 31). Social audit. *Investopedia*. Retrieved from https://www.investopedia.com/terms/s/social-audit.asp

102 *Ibid.*

103 *Ibid.*

104 *Ibid.*

105 Ananthalakshmi, A., (2021, November 25). EXCLUSIVE Dyson dumps Malaysian supplier ATA over labour concerns. *Reuters*. Retrieved from https://www.reuters.com/business/exclusive-dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour-2021-11-25/

106 The Straits Times. (2021, November 26). Dyson dumps Malaysian supplier ATA over Labour concerns. Retrieved from https://www.straitstimes.com/asia/se-asia/dyson-terminates-relationship-with-malaysian-supplier-ata-over-labour

107 Channel News Asia. (2022, February 12). Dyson faces claims from former workers at Malaysian supplier. Retrieved from https://www.channelnewsasia.com/business/dyson-faces-claims-former-workers-malaysian-supplier-2493716

108 Kashyap, A. (2022, February 14). Workers Sue Dyson on Allegations of Forced Labour in Malaysia Supplier. *Human Rights Watch*. Retrieved from https://www.hrw.org/news/2022/02/14/workers-sue-dyson-allegations-forced-labor-malaysian-supplier

109 The Business Times. (2021, November 25) Dyson dumps Malaysian supplier ATA over labour concerns. Retrieved from https://www.businesstimes.com.sg/companies-markets/dyson-dumps-malaysian-supplier-ata-over-labour-concerns

110 Channel News Asia. (2022, February 12). Dyson faces claims from former workers at Malaysian supplier. Retrieved from https://www.channelnewsasia.com/business/dyson-faces-claims-former-workers-malaysian-supplier-2493716

111 Hall, A. (2021, November 26). Labour activist: So long has the writing been on the wall for ATA IMS. *Focus Malaysia*. Retrieved from https://focusmalaysia.my/labour-activist-so-long-has-the-writing-been-on-the-wall-for-ata-ims/

112 *Ibid.*

113 Cheah, C. S. (2022, January 4). Will Suhakam endorsement clear ATA IMS' forced labour allegation?. *Business & Human Rights Resource Centre*. Retrieved from https://www.business-humanrights.org/en/latest-news/will-suhakam-endorsement-clear-ata-ims-forced-labour-allegation/

114 *Ibid*.

115 *Ibid.*

116 FMT. (2022, January 5). ATA slams activist's remarks on partnership with Suhakam. *Free Malaysia Today.* Retrieved from https://www.freemalaysiatoday.com/category/nation/2022/01/05/ata-slams-activists-remarks-on-partnership-with-suhakam/

117 *Ibid.*

118 *Ibid.*

119 Aziz, A. (2022, April 11). ATA IMS says JB facilities meet labour standards after third party assessment. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/ata-ims-says-jb-facilities-meet-labour-standards-after-third-party-assessment

120 *Ibid.*

121 Vijeyasingam, T. (2023, March 2). ATA IMS hit by double whammy of huge losses, lawsuit. *Free Malaysia Today*. Retrieved from https://www.freemalaysiatoday.com/category/business/2023/03/02/ata-ims-hit-by-double-whammy-of-huge-losses-lawsuit/

122 Chung, H. (2023, February 7). ATA IMS rally may be due to optimism about securing new major customer, says CGS-CIMB. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/654208

123 Vijeyasingam, T. (2023, March 2). ATA IMS hit by double whammy of huge losses, lawsuit. *Free Malaysia Today*. Retrieved from https://www.freemalaysiatoday.com/category/business/2023/03/02/ata-ims-hit-by-double-whammy-of-huge-losses-lawsuit/

124 Lim, J. (2023, March 1). ATA IMS units sued by motor supplier over RM20 mil claim. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/657427

125 Ikram, I. (2023, May 26). Another supplier files suit against ATA IMS, claiming RM27.6 mil. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/668718

126 Hazim, A. (2023, April 26). ATA IMS unit sued by industrial products supplier over RM2.57 mil claim. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/664738

ADANI GROUP: A HINDERBURG MOMENT

Case overview

Adani Group (Adani), an Indian multinational conglomerate with a diverse range of businesses ranging from electric power generation to airport operations, lost over US$47 billion in combined market capitalisation within two days following the release of a bombshell report by Hindenburg Research on 24 January 2023. The report accused the group of "pulling the largest con in corporate history", alleging Adani's involvement in a brazen stock manipulation and accounting fraud scheme worth US$218 billion spanning multiple decades. The report led to considerable scrutiny of Adani's operations and the ties between the Adani family and India's Modi government.

The objective of this case study is to facilitate a discussion of issues such as corporate governance of family-run businesses; board composition; related party transactions; complex structures and offshore entities; high promoter ownership; role of short sellers in corporate governance; effectiveness of regulators; and the impact of links between government and business on corporate governance.

Meteoric rise of Adani

Adani Group (Adani) is an Indian multinational conglomerate headquartered in Ahmedabad. Founded in 1988 by Gautam Adani (Gautam) at the age of 26, the group steadily grew to become a market leader in its transport logistics and energy utility portfolio businesses, focusing on large scale infrastructure development in India. Over the years, Adani has diversified into various business segments, encompassing sea and airport management, electricity generation and transmission, mining, natural gas, food, and infrastructure.[1] The group's successes have often been attributed to lucrative government deals stemming from Chairman Gautam's ties to India's ruling Bharatiya Janata Party.[2]

As of April 2024, Adani comprises ten publicly traded companies.[3] The first is Adani Enterprises, established by Gautam to serve as the group's holding company. Adani Enterprises primarily trades commodities such as power and agriculture.[4] It is the flagship company of Adani, housing all businesses requiring shareholder support until they are listed separately.[5] Adani Green Energy is one of India's largest renewable energy companies, specialising in developing, maintaining, and operating utility-scale grid-connected solar and wind farm projects.[6] Adani

---

This case study was originally prepared by Michael Chua Wen Hui, Magnus Chew Kia Ming, Phang Chen Yi, and Ryan Teng Shao Yang. 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.

Ports & Special Economic Zone (SEZ) operates as a port business, providing networks and services for ports, terminals, logistics, and industrial land.[7] Adani Power is India's largest private producer of thermal energy with over five thermal power plants spread out across India.[8] Adani Total Gas is responsible for setting up city gas distribution networks in India, supplying compressed natural gas and piped natural gas to several parts of India.[9] Adani Energy Solution, formerly known as Adani Transmission, operates in the power transmission business sector and is the largest private transmission company in India.[10] Adani Wilmar is a food company that sells kitchen commodities such as flour, rice, sugar, and edible oils.[11] ACC Limited (ACC) and Ambuja Cements Limited (Ambuja Cements) operate in the cement business in India, both seen as the most trustworthy building material brands in the country.[12] Lastly, New Delhi Television Ltd (NDTV) is an Indian news media company focusing on broadcast and digital news publication.[13]

Since the group's inception in 1988, Adani has maintained steady growth and enjoyed moderate success. However, at the turn of the decade in 2020, the group experienced an unprecedented spike in its growth and success.[14] During the same period, Gautam saw his wealth expand rapidly, with his net worth skyrocketing from US$17.9 billion in September 2020 to US$150 billion in September 2022.[15]

Growth with badness?

Adani's core slogan that encompasses all its businesses is "Growth with Goodness".[16] However, there are indications that a significant portion of Adani's growth has been achieved through a "growth at all costs" approach instead. On 24 January 2023, Hindenburg Research released findings from a two-year investigation, accusing Adani of engaging in a brazen stock manipulation and accounting fraud scheme over the course of decades.[17]

Diamond in the rough

It was alleged that between 2004 and 2006, Adani firms were engaged in circular trading whereby diamonds were exported to various offshore companies based in the UAE, Singapore, and Hong Kong before being transferred back to the firms within Adani in India.[18] These offshore companies were later discovered to have been controlled by or associated with Adani Enterprises.[19] The scheme was alleged to be perpetrated to inflate the value of Adani's goods and boost the volume of its exports, hence allowing the Adani companies to capitalise on various export incentive schemes provided by the Indian government. Through Adani's elaborate diamond trading scheme, the group was said to have managed to claim almost US$151 million in illegitimate export credits.[20]

Adani's alleged abuse of India's export incentive schemes underwent an investigation led by the Directorate of Revenue Intelligence in 2007 which detailed the elaborate planning that went into the scheme.[21] In 2013, after five and a half years of investigations, Adani was found guilty of most of the charges made against the group. Members of the Adani family such as Rajesh Adani (Rajesh), Gautam's younger brother, and Samir Vora (Samir), Gautam's brother-in-law, were both fined for their central involvement in the scheme.[22] Nevertheless, both of them continue to hold key roles on the boards of Adani companies today.

However, in 2015, the appeals tribunal completely dismissed and overruled the findings of the original verdict made in 2013, clearing all parties involved of all charges. It declared that all the transactions were valid despite the considerable evidence pointing towards Adani's wrongdoings.[23]

Nothing to see here

Additionally, between 2006 and 2010, Adani was accused of exporting undeclared volumes of illegally mined iron ores, allegedly facilitated by bribery at all levels of the government. This accusation was part of a larger investigation into the corruption of the Karnataka state government in India, with the findings compiled into a 466-page report dated 27 July 2011.[24] However, the criminal investigations stalled with no noticeable progress. Justice Hedge, the former Supreme Court judge who originally presided over the investigation but eventually

resigned over the government's inaction, was puzzled over why Adani was not held accountable by the courts. He was also perplexed by how the group managed to get away with their illegal activities while continuing to receive greater government concessions.[25]

Another report by the Directorate of Revenue Intelligence (DRI) dated 15 May 2014 alleged that between 2009 and 2014, two Adani Power subsidiaries had "grossly" overvalued their imported power plant equipment by falsifying invoices.[26] The aim of the scheme was to facilitate money laundering, with the excess proceeds being siphoned off to various offshore entities controlled by Vinod Adani (Vinod), the older brother of Gautam. Similar to the investigation by the Karnataka Lokayukta, the DRI investigation was called off in 2017 with the DRI dismissing the evidence collected in its original 2014 report. The ruling stated that the transaction between the two Adani Power subsidiaries and the entities controlled by Vinod were not considered related party transactions but instead, were conducted at arm's length.[27] Subsequent appeals against this ruling failed, and allegations suggest that Adani had ties with the ruling Bharatiya Janata Party which enabled them to avoid regulatory scrutiny.[28]

Another report by the DRI dated 30 March 2016 alleged that five Adani companies, together with another five companies supplied by Adani, had artificially inflated coal values between 2011 to 2016 with the intent to siphon money abroad to gain higher power tariff compensation based on the artificially inflated costs.[29] Again, investigations came to a halt in 2019. Adani managed to avoid another inquiry into its operations as the DRI was banned by the Bombay High Court from seeking further corporate information regarding Adani.[30] However, that ruling was overturned by the Supreme Court in early 2020, which later also blocked a tariff hike that prevented Adani from netting more profits from inflated coal values.[31]

In debt or not?

In August 2022, Bloomberg reported the findings of CreditSights,[32] an independent credit research unit that is a subsidiary of the Fitch group.[33] The report warned that Adani was "deeply overleveraged".[34]

Figure 1: Adani's financial ratios and free cash flow[35]

Name	Net Debt / EBITDA	Industry Average	Current Ratio	FCF (mil INR)
Adani Green Energy	12.1x	6.3x	0.5	-146,850
Adani Power	3.3x	6.3x	0.9	71,527
Adani Total Gas	1.5x	4.1x	0.2	-2,389
Adani Transmission	9.1x	6.3x	0.8	-19,615
Adani Enterprises	6.4x	2.9x	0.7	-120,420
Adani Wilmar	1.9x	2.9x	1.2	3,886
Adani Ports	4.1x	1.3x	1.5	52,220

Source: Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history.

As shown in Figure 1, Hindenburg Research pointed out that most of the Adani companies face short-term liquidity issues, with current ratios below one.[36] CreditSights suggested that Adani's aggressive expansion efforts were mainly funded by debt and have "spiralled them into a debt trap and possibly a default".[37] CreditSights indicated that Adani was exposed to moderate levels of governance risks and raised concerns about Adani expanding into capital-intensive businesses.[38] For instance, on 10 January 2023, Adani acquired the Haifa port in Israel for 4 billion Israeli new shekel (ILS).[39] Less than a year before the Haifa acquisition, Adani acquired two leading cement companies in India – ACC and Ambuja Cements.[40]

On 27 August 2022, Adani responded to CreditSights in a 15-page note,[41] by presenting improved net debt to operating profit ratios, using figures that differed widely from those presented by CreditSights.[42] Adani presented

significantly more favourable earnings before interest, taxes, depreciation, and amortisation (EBITDA) to gross interest ratio for its listed companies.

Adani also reaffirmed their successful execution of inorganic growth plans that enabled the group to outpace its competitors over the past decade. The group also highlighted their listed companies' ability to de-lever themselves from a seemingly overleveraged financial state,[43] emphasising how their net debt to EBITDA ratio had declined to 3.2 from 7.6 from 2014 to 2022.[44] Adani also justified their rationale behind such "aggressive" expansion tactics, highlighting the existence of synergies amongst the newly acquired businesses.[45]

Too close for comfort

In their report, Hindenburg Research identified 38 offshore shell companies based in Mauritius under the control of Vinod and his close associates. According to the report, a majority of these 38 companies showed no signs of business operations, had no known employees, provided no physical addresses, and had a very limited online presence. Despite this, the companies were able to move billions of dollars into Adani-linked entities.[46]

Hindenburg Research alleged that another Vinod-controlled Mauritius company with no known business operations had engaged in undisclosed related party loans with a private Adani entity amounting to INR11.71 billion at the time.[47] This private Adani entity had lent funds to other entities like Adani Enterprises that amounted to INR9.84 billion.[48]

Vinod was also in control of another UAE entity known as Emerging Market Investment DMCC. Hindenburg Research reported that the entity had no list of employees on its LinkedIn page, no announcement of clients or deals, and was located in an apartment in the UAE. This company had lent US$1 billion to an Adani Power subsidiary and was alleged to be subsequently believed to be part of an offshore shell network used for earnings manipulation. Hindenburg Research examined the series of transactions between a subsidiary of Adani Enterprises and a private Singapore entity under the ownership of Vinod, where assets were transferred between both entities. Upon transfer, the assets were deemed as impaired once recorded on the books of the private Singapore entity, to aid Adani Enterprises in circumventing the negative impact on net income due to any material write-down of the impaired assets. There was no disclosure of these deals being related party transactions.[49]

In 2019, the winning bid to supply Adani Transmission's subsidiary with coal came from Pan Asia Coal Trading Pte Ltd (Pan Asia), a bidding company which quoted a price 6% lower than its nearest competitor,[50] a significant discount in the coal industry. Hindenburg Research pinpointed the company's leadership to a single director named Chetan Kumar S/O Mulchand Ambalal Parikh (Chetan). Chetan was a former managing director of Adani Wilmar (Singapore) and a former director of Libra Shipping Pte Ltd, a subsidiary of Adani Enterprises. Furthermore, Pan Asia had also loaned US$30 million in 2019 to a private entity controlled by Adani, with Vinod as the director of the entity. This raised concerns about potential undisclosed related party dealings used by Adani to siphon money.[51]

Maze of money trails

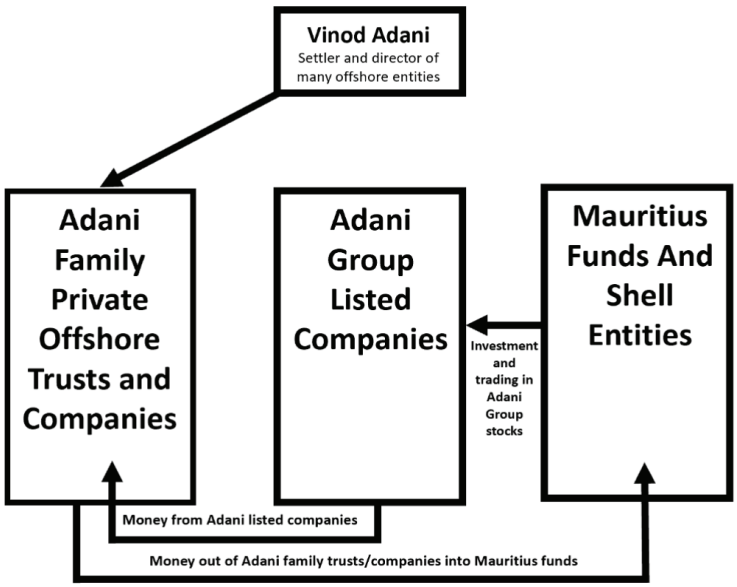
The Hindenburg Report also outlined that seven of Adani's listed companies collectively maintained 578 subsidiaries, with a majority of these subsidiaries incorporated in opaque jurisdictions such as Mauritius, the UAE, and Panama. In FY2022, these listed entities engaged in a staggering 6,025 related party transactions.[52]

In 2021, Adani faced accusations from Indian pundits, who alleged that the conglomerate utilised its intricate and concentrated shareholding structure, spanning multiple offshore entities, to orchestrate round-tripping and manipulate shares.[53] These accusations asserted that Vinod set up numerous offshore trusts and companies on behalf of the Adani family, which received money from the Adani's listed companies. Among the companies

under scrutiny was Electrogen Infra FZE (Electrogen), a Dubai-based company that sells power equipment. Electrogen had been investigated for selling equipment to Adani listed companies at inflated prices.[54]

Figure 2 provides a simplified overview of the alleged scheme, which entails funds being channelled out of Adani-controlled companies through multiple tax havens, only to be reinvested in Adani listed stocks. Such a scheme could have significant implications for investors in Adani listed companies.[55] If Adani secretly controls significant amounts of publicly traded stock without disclosure, the resulting share price of Adani listed companies could be easily manipulated to serve Adani's the immediate needs.[56]

Figure 2: Structure of suspected round-tripping of cash[57]



Source: Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history.

These offshore funds and shell entities also presents challenges to corporate governance due to their ability to easily obscure beneficial ownership through the utilisation of a nominee director. They are also typically located in tax havens such as Mauritius and similar foreign jurisdictions with minimal disclosure requirements. Unlike traditional investment funds, they often lack web presence or any information regarding key personnel. Additionally, they do not disclose information such as investment thesis, strategy, or portfolio, which would be necessary information to attract prospective investors to fundraise for future funds being set up.[58]

Parking the stock

Monterosa Investment Holdings (Monterosa) is an entity that controls five funds established in Mauritius by the same incorporator and sharing the same address, along with numerous overlapping nominee directors. These funds include the APMS Investment Fund, Albula Investment Fund (Albula), Cresta Fund Limited, LTS Investment Fund Limited, and Lotus Global Investment Fund (Lotus Global). In the case of Albula and Lotus Global, their percentage of assets in Adani companies remained undisclosed, as they held less than one percent of the equity in the company, therefore exempting them from the requirement to disclose such information. However, the other three funds were reported to have held at least 89% of their portfolio in Adani stocks, collectively holding US$4.5 billion in shares. This investment pattern, where a holding company has five seemingly independent funds predominantly invested in Adani stock, raised suspicions and implicated Monterosa as a prime suspect for potential market manipulation of Adani stocks.[59]

Accounting red flags

Over the past decade, Adani has been subject to allegations of accounting irregularities and related red flags, raised by various stakeholders including investors, journalists, and researchers.[60]

Carousel of CFOs

The is high turnover of Chief Financial Officers (CFOs) across its various subsidiaries in the Adani group. For example, Hindenburg Research highlighted that Adani Enterprises had witnessed five different CFOs within an eight-year span from 2014 to 2022.[61] These CFOs had relatively short tenure with durations ranging from 8 months to 3 years and 2 months.[62]

Tiny auditor

Hindenburg Research also raised concerns about the selection of auditors for its various subsidiaries. For example, Adani Total Gas and Adani Enterprises opted for a small auditor named Shah Dhandharia to oversee their audits. It was found that the auditor's website had gone offline and appeared to have no web presence. Archived versions of the website from February 2020 showed that the firm consisted of only four audit partners and seven support staff, with three of the partners being in their twenties. This may suggest that they lacked the necessary experience and seniority to scrutinise the finances of a billion-dollar company with hundreds of subsidiaries.[63] Furthermore, the only other listed company audited by Shah Dhandharia is a penny stock called Globe Textiles, with a market capitalisation of approximately INR640 million.[64]

Auditors raise concerns

Audits for other listed entities under Adani's umbrella have been performed either entirely or in part by Big Four firms such as Deloitte Haskins & Sells LLP or affiliates of Ernst & Young (EY). However, some of these audits have raised concerns. For instance, in Adani Power's financial year (FY) 2022 report, the auditor, SRBC & Co LLP, an affiliate of EY, issued a "qualified" opinion. The auditor noted that they had identified a "material weakness" in the company's internal financial controls over financial reporting during the annual audit, specifically related to the valuation of certain assets linked to Adani Power's power plant in Mundra.[65]

The invisible company

Hindenburg Research revealed that Adani listed companies have largely been overlooked by investment banks and professional investors. In several instances, major banks and brokers have provided minimal sell-side coverage for Adani stocks. Some brokers have discreetly voiced apprehension regarding the trading of Adani stocks. The absence of sell-side and broker research coverage for Adani subsidiaries such as Adani Enterprises, Adani Green, Adani Transmission, and Adani Green Energy leaves a significant gap. Hindenburg Research believes that the lack of coverage is a deliberate choice rather than a coincidence.[66]

For example, CLSA Ltd. (CLSA), a well-known brokerage and investment group, dropped coverage on Adani Transmission on 7 May 2021.[67] The reason cited for this decision was the stock's reliance on speculative interest and its perceived lack of "real" effective liquidity. Adani Transmission's valuation was 16 times higher than the sector average, which may suggest that it may be significantly overvalued. CLSA also highlighted concerns about a "worrying" balance sheet, with net debt to equity rising to 4.6 times.[68]

In contrast, companies that are comparable to Adani in terms of market capitalisation receive significantly higher analyst coverage than Adani companies.[69]

One big family

Adani's combined 22-man leadership team consists of at least eight members of the Adani family, with Gautam chairing seven out of ten of Adani's publicly listed companies.[70] This concentration of power has raised concerns regarding keyman risk, with CreditSights warning that the group's ability to function without him may be compromised given the high dependence on him.[71] Senior executives interviewed in the Hindenburg Research report also echoed the view that Adani operates much like a family business, maintaining a corporate culture similar to its origin as a small business. Another insider interviewed by Hindenburg Research also pointed out that all important decisions have to be rubber-stamped by Gautam himself before they could be approved. Employees have also been afraid to criticise and point out any wrongdoings of Adani, claiming that they are cognisant of how Adani would retaliate against its critics by taking them to court. Consequently, this alleged dynamic fostered a "ripe environment for unilateral and opaque financing decisions".[72]

Family web of scandal

Board members of the Adani family have also been alleged to partake in illegal activities within the group such as import-export scams, corruption, money laundering, and theft of taxpayer funds. However, the Adani family members have never been officially indicted. The Indian public perceives this as the family being well-protected by the Indian government,[73] which has close ties to Gautam.[74]

Brothers' alleged involvement in crime

Rajesh, the former managing director of Adani Enterprises, faced accusations of involvement in a diamond trading import/export scheme between 2004 to 2005. He was arrested in 2010 for tax evasion, forgery, and illegal imports of goods,[75] but was released on interim bail.[76] Despite the controversial allegations and arrest, Rajesh was promoted and currently holds director positions in five out of the ten Adani publicly traded companies. He retained his appointment as the managing director of Adani Enterprises.[77]

Similarly, Samir was alleged to have headed the diamond trading scam but was nonetheless promoted to executive director of Adani Australia in 2017.[78]

As for Vinod, Adani has continually denied his involvement in the group's operations.[79] However, a pre-initial public offering (IPO) prospectus for Adani Power from 2009 indicated that Vinod held directorship in at least six Adani companies.[80] Vinod was also implicated in the diamond trading controversy and power equipment scams.

In 2022, Gautam released a biography stating that Vinod "remains actively involved with the group, especially when negotiating international finance and connections".[81] Hindenburg Research alleged that Vinod's involvement with Adani included setting up a huge number of shell companies in various countries (at least 38 in Mauritius alone) which are used to transfer assets into and out of Adani companies, often to facilitate illicit activities.[82] An investigation by Forbes also revealed that Vinod owns or has been associated with at least 60 shell companies domiciled in various tax havens in the world, such as the British Virgin Islands, Cayman Islands, Singapore, and Cyprus.[83]

One of the key accusations by Hindenburg Research was that these offshore shell companies have been used to engage in related party transactions with Adani companies. For example, one of Vinod's businesses based in Singapore was reported to have borrowed money from a Russian bank in 2020, with the loan backed by two of Vinod's offshore vehicles, both of which own a total of US$4.7 billion in Adani shares.[84] Additionally, a US$253 million loan from a company headquartered in Mauritius known as Krunal Trade & Investment (Krunal), where Vinod himself was a director, was provided to an Adani entity, without any disclosure that the loan was a related party transaction.[85] Considering that Krunal has no employees or any clear business operations capable of facilitating such a large loan, the transaction raised red flags of potential money laundering.[86]

Promoter holdings

In India, public companies are required to disclose all promoter holdings, also known as insider holdings. Promoter holdings refer to entities who have "control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise".[87] The Securities Contracts (Regulation) Rules (1957) drafted by the Securities and Exchange Board of India (SEBI) stipulate that publicly listed Indian companies must maintain a 25% non-promoter float requirement.[88] This regulation ensures transparency for investors regarding the extent of influence insider entities wield over invested companies. By fostering an open market where more investors can participate, these requirements promote price discovery and enhance efficiency in financial market allocation. Moreover, they mitigate the risk of market manipulation and uphold transparency, as companies become more accountable to a broader shareholder base that demands transparency and accountability.[89]

As of February 2023, four Adani listed companies face the risk of breaching India's delisting threshold due to high insider ownership. Adani Enterprises, Adani Transmission, Adani Power, and Adani Total Gas all report over 72% of their shares held by insiders, while Adani Wilmar must reduce its insider holdings from 87.94% to 75% by early 2025.[90]

Many of the "public" shareholders of Adani's listed companies are funds located in the opaque jurisdiction of Mauritius, and may potentially constitute insider entities with sufficient shares to trigger delisting.[91] The Hindenburg Report identified suspicious entities as "suspect holders" and believed that these entities should be deemed as "promoter holdings", thereby indicating that Adani listed companies may be in breach of the listing requirements and face delisting based on the public float requirements.[92] Furthermore, as shareholding lists in India require foreign funds to be disclosed only if they hold more than one percent of equity, it provides a loophole for companies \to utilise numerous offshore companies set up to invest just below the one percent threshold for disclosure.[93] Hence, Hindenburg Report's "suspect holders %" may be understated, as a 2021 parliamentary disclosure revealed over 20 Mauritius-based funds holding equity in Adani listed companies below the one percent threshold, and thus not disclosed on the Bombay Stock Exchange website.[94]

Local watchdogs in limbo

In 2021, reports surfaced regarding SEBI's investigation into potential breaches of Indian securities laws by Adani companies.[95] The investigation's scope included issues such as beneficial ownership of Adani companies, compliance with disclosure requirements, and related party transactions.[96] However, there have been no findings published by SEBI about the ongoing investigation. Following the release of the Hindenburg Report, SEBI was ordered by the Indian Supreme Court to finalise their report against Adani by May 2023.[97]

SEBI itself has been accused of corrupt practices, with its management alleged to have taken bribes in the early 2010s. Jerome K Alexander, an assistant general manager at SEBI, was reported to be involved in the forgery of official documents in exchange for a bribe.[98] Another assistant general manager, Rajesh Pratap Singh (Singh), was suspended from his role due to the "possession of disproportionate assets"[99] and soliciting a bribe totalling approximately US$30,000 in exchange for SEBI to refrain from investigating illicit business activities.[100] Investigations revealed around US$34,000 in cash at Singh's residence, alongside evidence of substantial property investments.[101]

In 2022, it emerged that SEBI had received information in 2016 regarding potential corruption among employees at the National Stock Exchange of India (NSE).[102] SEBI had access to email exchanges between the former NSE Chief Executive Officer, Chitra Ramkrishna, and an unidentified individual, sharing confidential information along with findings from forensic auditors EY. Despite this, SEBI did not report the matter to the Central Bureau of Investigation (CBI). This led to a probe by the CBI into SEBI's negligence in dealing with potentially conspiring with the NSE.[103]

In the case of Adani, SEBI was accused of having foreknowledge of the alleged illicit dealings of Adani by Hindenburg Research.[104] An insider that Hindenburg Research interviewed alleged that SEBI was cognisant of how large Indian conglomerates use Mauritius funds to cover up their illegal activities but would ignore it in exchange for bribes.[105]

Hindenburg fallout

Following the bombshell release of the Hindenburg Report on 24 January 2023, Adani responded to the criticisms on 29 January 2023, with a 413-page response.[106] The Indian conglomerate claimed that the report was "not merely an unwarranted attack on any specific company but a calculated attack on India".[107] Adani also claimed that the allegations put forth by Hindenburg Research were "baseless" and that the group has always complied with local regulations and made the necessary disclosures. That same day, Hindenburg Research responded with a follow-up report to rebut Adani's response. Hindenburg Research asserted that Adani failed to address 62 out of the 88 questions raised in the original Hindenburg Report.[108] Hindenburg Research noted that Adani had not disputed the claims made relating to related party transactions, suspicious entities associated with Adani, and stock manipulation.[109]

Financial ripples

Due to the publicity generated by the original report, fuelled by responses from both Adani and Hindenburg Research, Adani came under greater scrutiny in 2023, with more individuals and institutions paying closer attention to its operations. Investors of Adani listed companies responded adversely to the report and began panic selling their stakes in Adani companies. This is reflected in the significant fluctuations in Adani's share prices from 24 January 2023 to 3 February 2023. Adani Enterprises saw a decrease of 54%, while Adani Transmission saw a decrease of 49.1%. Both Adani Wilmar and Adani Power witnessed declines of 30.1%. Adani Total Gas faced the greatest share price drop of 58.2%.[110]

Despite the mass sell-off and the prevailing stock price being 30% lower than the offer price at the time of the sale, Adani Enterprises, the flagship company of the group, managed to undertake a fully subscribed stock sale worth US$2.5 billion on 31 January 2023. However, Adani called off the stock sale the following day on 1 February 2023 due to reputational concerns if it had allowed the stock sale to proceed.[111]

It was reported that by 6 February 2023, the conglomerate had accumulated market losses of US$118 billion.[112] Adani Enterprises was delisted from the Dow Jones Sustainability Index as of 7 February 2023 due to the controversy surrounding the legality of its business operations.[113] Adani companies were also denied loans from large financial institutions such as Citigroup, Credit Suisse, and Standard Chartered Bank.[114] Gautam himself lost over 30% of his personal net worth after the Hindenburg Report's release due to investor fears.[115]

Race to revamp

In March 2023, Adani decided to limit its capital expenditures and focus on managing its excess debt.[116] This marked a shift in Adani's growth strategy from debt-fuelled expansion with a "growth at all costs" strategy to being more measured and methodical in managing their debt. Apart from withdrawing from the stock sale earlier in 2023, Adani Power limited its spending by halting the US$847 million acquisition of an Indian coal power plant.[117] It was also reported in March 2023 that Adani had ceased work on a US$4.2 billion petrochemical project in Mundra, a coastal town in Northwest India.[118] To further address investor concerns regarding the debt situation, Adani repaid loans amounting to US$2.65 billion, demonstrating Adani's prudence in liquidity management.[119]

Despite these efforts, S&P Global, reaffirmed a "BBB-" rating for Adani assets,[120] indicating that Adani's assets are barely investment-grade and would be on the verge of being classified as "speculative". S&P Global has

maintained that the probe led by SEBI would influence its review of the ratings, as well as Adani's ability to secure fundraising and comply with existing regulations.[121]

Into the future

On 2 April 2023, SEBI briefed the Indian Supreme Court over Adani's legal issues, including breaches of listing requirements and related party transactions.[122] Initially, the Indian regulatory authority was expected to conclude and report its findings to the Supreme Court in May 2023. However, as of 3 January 2024, two cases remained pending, with only 22 out of 24 investigations completed. In response, the Supreme Court ordered SEBI to conclude its investigation into Adani within three months.[123] As of April 2024, there have not been any further updates.

Additionally, on 3 January 2024, it was reported that the Indian Supreme Court ruled that Adani was no longer required to undergo more investigations beyond SEBI's current scrutiny. The Supreme Court rejected requests from public interest litigants calling for a special investigation team or the CBI to intervene,[124] stating that the "facts of this case do not warrant" a transfer of investigation.[125] Therefore, the verdict indicates that Adani will not face increased regulatory or legal risk beyond the ongoing SEBI investigation.[126] Gautam welcomed the ruling, saying "truth has prevailed"[127] and that his "humble contribution to India's growth story will continue."[128]

Despite experiencing a US$150 billion meltdown in share prices, Adani has faced no further repercussions.[129] Meanwhile, Gautam witnessed his personal wealth collapse by over US$80 billion in January 2023 following Hindenburg's release of the report.[130] However, in the week of 5 January 2024, Adani's stocks rallied following the Indian Supreme Court's order to expedite the investigation and halt further probes.[131] Adani Enterprises shares rose almost 7%, and Gautam once again became Asia's richest man, with his net worth increasing by US$7.7 billion to US$97.6 billion, according to The Bloomberg Billionaires Index.[132]

On 1 July 2024, Hinderburg posted a copy of a 46-page "show cause" notice that it had received from SEBI and its response.[133] The notice said that "six entities including Hindenburg, Kingdon Capital Management and a Mauritius-based trading fund set up by Kotak Mahindra Bank violated certain rules under the Prevention of Fraud and Unfair Trade Practices regulation."[134] SEBI said that it had received information from or through the U.S. Securities and Exchange Commission (SEC) in the course of its investigation.[135] It said that Hinderburg had shared an advance copy of its report on Adani with Mark Kingdon, a New York-based fund manager, about two months before publishing it, and profited from a deal to share profits from the share price movement.[136] Hinderburg dismissed the notice, calling it "nonsense". It said: "SEBI has neglected its responsibility, seemingly doing more to protect those perpetrating fraud than to protect the investors being victimized by it."[137]

The saga appears to be far from over.

Discussion questions

1. What are the benefits and drawbacks of a family holding significant power and control such as in the case of the Adani group?
2. Critically evaluate Adani's board composition.
3. Adani has a complex corporate structure with its ten publicly listed companies. Discuss how this complexity may pose a threat to good corporate governance.
4. What are some red flags that indicate the possibility of improprieties in the Adani group? How should Adani address these red flags?
5. Critically evaluate whether Adani's undisclosed related party transactions are a cause for concern and breached India's Corporate Code of Governance and the Securities and Exchange Board of India (SEBI)'s

listing rules. What are some safeguards that could have been implemented to mitigate such abuses of the listing rules?

6. In relation to Adani, discuss how high promoter holdings may either facilitate or impede good corporate governance.
7. Analyse the roles played by external stakeholders, including the Indian government, regulators, and audit firms, in the alleged governance failures within Adani. Discuss the importance of regulatory enforcement, transparent reporting standards, and effective oversight mechanisms in promoting good corporate governance practices.
8. Do you believe short sellers like Hinderburg Research are good or bad for corporate governance? Why are such short sellers often able to unearth potential wrongdoings that are not discovered by others such as external auditors and regulators?
9. How does a close relationship between government and business affect corporate governance in cases such as Adani? In your country, does a similar close relationship exist and what is the impact?

Endnotes

1 Adani Group. (n.d.). About Us. Retrieved from https://www.adani.com/About-us

2 Rajvanshi, A. (2023, January 29). India's richest man accused of pulling the 'largest con in corporate history'. *Time*. Retrieved from https://time.com/6250052/adani-hindenburg-fraud/

3 Adani Group. (n.d.). About Us. Retrieved from https://www.adani.com/About-us

4 *Ibid.*

5 Adani Group. (2023, January 29). Adani Response. Retrieved from https://www.adani.com/-/media/Project/Adani/Invetsors/Adani-Response-to-Hindenburg-January-29-2023

6 Adani Renewables. (n.d.). About us: Adani Renewables. Retrieved from https://www.adanigreenenergy.com/about-us

7 Adani Ports and Logistics. (n.d.). About APSEZ. Retrieved from https://www.adaniports.com/About-us

8 Adani Power. (n.d.). About APSEZ. Retrieved from https://www.adanipower.com/about-us

9 Adani Total Gas. (n.d.). Adani Gas About Us. Retrieved from https://www.adanigas.com/about-us

10 Adani Transmission Limited. (n.d.). Adani Transmission. Retrieved from https://www.adanitransmission.com/about-us

11 Adani Wilmar. (n.d.). Adani Wilmar About Us. Retrieved from https://www.adaniwilmar.com/about-us

12 Adani Group. (n.d.). Adani enters the cement business, acquires stakes in Ambuja Cements and ACC. Retrieved from https://www.adani.com/businesses/materials

13 NDTV. (n.d.). About the company. Retrieved from https://www.ndtv.com/convergence/ndtv/corporatepage/index.aspx

14 Khan, A. (2022, September 16). $65 billion in 2022 and counting: Meteoric rise in Adani's wealth. *The New Indian Express*. Retrieved from https://www.newindianexpress.com/business/2022/sep/04/65-billion-in-2022-and-counting-meteoric-rise-in-adanis-wealth-2494634.html

15 Bloomberg. (n.d.). Gautam Adani. Retrieved from https://www.bloomberg.com/billionaires/profiles/gautam-s-adani/#xj4y7vzkg?leadSource=uverify%20wall

16 Adani Group. (n.d.). Businesses: Growth with goodness. Retrieved from https://www.adani.com/businesses

17 Hindenburg Research. (2023, January 24) Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

18 *Ibid.*

19 Thakurta et al. (2017, September 15). Adani Group accused of evading ₹1,000 crore taxes in diamond trade. *Economic & Political Weekly*. Retrieved from https://www.epw.in/journal/2016/53/web-exclusives/adani-group-accused-evading-1000-crore-taxes-diamond-trade.html

20 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

21 Hindenburg Research. (2022, November 10). Diamond scam order 2013. *Slideshare*. Retrieved from https://www.slideshare.net/HindenburgResearch/diamond-scam-order-2013pdf

22 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

23 *Ibid.*

24 Public Intelligence. (2011, August 4). Indian Karnataka Lokayukta (People's Commissioner) report on mining industry corruption. Retrieved from https://publicintelligence.net/indian-karnataka-lokayukta-peoples-commissioner-report-on-mining-industry-corruption/

25 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/#_ftn68

26 Hindenburg Research. (2022, November 11). DRI 2014. *Slideshare*. Retrieved from https://www.slideshare.net/HindenburgResearch/dri-2014pdf/1

27 Hindenburg Research. (2022, November 11). DRI Aug 2017. *Slideshare*. Retrieved from https://www.slideshare.net/HindenburgResearch/dri-aug-2017pdf/1

28 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

29 Hindenburg Research. (2022, November 11). DRI Coal 2016. *Slideshare*. Retrieved from https://www.slideshare.net/HindenburgResearch/dri-coal-2016pdf/1

30 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

31 *Ibid.*

32 Sanjai, P. R., & Shrivastava, B. (2022, August 23). Adani's empire is 'deeply overleveraged,' creditsights warns. Bloomberg. Retrieved from https://www.bloomberg.com/news/articles/2022-08-23/adani-group-is-deeply-overleveraged-says-fitch-group-firm?leadSource=uverify+wall

33 Fitch Ratings. (2021, 5 May). Fitch Group completes acquisition of CreditSights, Inc. Retrieved from https://www.fitchratings.com/research/corporate-finance/fitch-group-completes-acquisition-of-creditsights-inc-05-05-2021

34 Sanjai, P. R., & Shrivastava, B. (2022, August 23). Adani's empire is 'deeply overleveraged,' creditsights warns. Bloomberg. Retrieved from https://www.bloomberg.com/news/articles/2022-08-23/adani-group-is-deeply-overleveraged-says-fitch-group-firm?leadSource=uverify+wall

35 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

36 Ibid.

37 Sanjai, P. R., & Shrivastava, B. (2022, August 23). Adani's empire is 'deeply overleveraged,' creditsights warns. Bloomberg. Retrieved from https://www.bloomberg.com/news/articles/2022-08-23/adani-group-is-deeply-overleveraged-says-fitch-group-firm?leadSource=uverify+wall

38 *Ibid.*

39 The Economic Times. (2023, January 10). Adani-led group completes purchase of Israel's Haifa Port. Retrieved from https://economictimes.indiatimes.com/industry/transportation/shipping-/-transport/adani-led-group-completes-purchase-of-israels-haifa-port/articleshow/96888119.cms

40 Adani Group. (n.d.). Adani enters the cement business, acquires stakes in Ambuja Cements and ACC. Retrieved from https://www.adani.com/businesses/materials

41 Adani Group. (2022, August 27). Adani Response. Retrieved from https://www.adani.com/-/media/Project/Adani/Invetsors/Adani%20Portfolio_Response_270822_vFF

42 The Economic Times. (2022, September 6). Adani Group says not overleveraged, loans from public sector banks halved. Retrieved from https://economictimes.indiatimes.com/news/company/corporate-trends/adani-group-says-not-overleveraged-loans-from-public-sector-banks-halved/articleshow/94028799.cms?from=mdr

43 The Economic Times. (2022, September 6). Adani Group says not overleveraged, loans from public sector banks halved. Retrieved from https://economictimes.indiatimes.com/news/company/corporate-trends/adani-group-says-not-overleveraged-loans-from-public-sector-banks-halved/articleshow/94028799.cms?from=mdr

44 *Ibid.*

45 Adani Group. (2022, August 27). Adani Response. Retrieved from https://www.adani.com/-/media/Project/Adani/Invetsors/Adani%20Portfolio_Response_270822_vFF

46 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 Adani Electricity. (n.d.). Generation MYT Order FY21 to FY25. Retrieved from https://www.adanielectricity.com/-/media/Feature/ElectricityNew/PDFs/Regulatory/Generation_MYT_Order_FY_21_to_FY_25.pdf#page=37

51 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

52 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

53 Coutinho, A. (2021, June 14). Mauritius, Cayman Islands funds under watch for ownership info gaps. *Business Standard*. Retrieved from https://www.business-standard.com/article/markets/mauritius-cayman-islands-funds-under-watch-for-ownership-info-gaps-121061500049_1.html

54 Business Standard. (2018, May 2). CBI flayed for closure of probe into Adani group firm. Retrieved from https://www.business-standard.com/article/news-ians/cbi-flayed-for-closure-of-probe-into-adani-group-firm-118050200979_1.html

55 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

56 *Ibid.*

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

60 *Ibid.*

61 *Ibid.*

62 Adani Enterprises. (n.d.). Investor Downloads. Retrieved from https://www.adanienterprises.com/investors/investor-downloads

63 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

64 The Economic Times. (n.d.). Globe Textiles (Ind Director Report). Retrieved from https://economictimes.indiatimes.com/globe-textiles-india-ltd/directorsreport/companyid-66237.cms

65 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

66 *Ibid.*

67 The Economic Times. (2021, May 7). CLSA drops coverage on Adani Transmission on speculative interest. Retrieved from https://economictimes.indiatimes.com/markets/stocks/news/clsa-drops-coverage-on-adani-transmission-on-speculative-interest/articleshow/82451800.cms?from=mdr

68 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

69 *Ibid.*

70 *Ibid.*

71 The Hindu Business Line. (2022, August 23). Adani Group is "deeply overleveraged", warns CreditSights. Retrieved from https://www.thehindubusinessline.com/companies/adani-group-is-deeply-overleveraged-warns-creditsights/article65800924.ece

72 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

73 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

74 Rajvanshi, A. (2023, January 29). India's richest man accused of pulling the 'largest con in corporate history'. *Time*. Retrieved from https://time.com/6250052/adani-hindenburg-fraud/

75 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

76 Indian Express. (2010, February 28). Rajesh Adani held for fraud, gets bail. Retrieved from https://indianexpress.com/article/cities/ahmedabad/rajesh-adani-held-for-fraud-gets-bail/

77 Adani Enterprises. (n.d.). Rajesh Adani. Retrieved from https://www.adanienterprises.com/about-us/board-of-directors/rajesh-adani#:~:text=Rajesh%20Adani%20%2D%20Managing%20Director

78 The Free Press Journal. (2023, January 25). Adani Group calls Hindenburgs report alleging accounting fraud a malicious attempt. Retrieved from https://www.freepressjournal.in/business/adani-shares-drop-after-hindenburg-report-alleges-brazen-fraud

79 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

80 Adani Power Limited. (2009, July 14). Red Herring Prospectus. Retrieved from https://www.capitalmarket.com/pub/dp/dp17808.pdf

81 Hindenburg Research. (2022, November 10). Gautam Adani by Bhaskar. *Slideshare.* Retrieved from https://www.slideshare.net/HindenburgResearch/gautam-adani-by-bhaskar-pg-94pdf/1

82 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

83 *Ibid.*

84 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

85 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

86 *Ibid.*

87 Setindiabiz Team. (2023, July 7). Difference Between Shareholders and Directors. Retrieved from https://www.setindiabiz.com/learning/difference-between-shareholders-and-directors

88 SEBI. (n.d.). Securities Contracts (Regulation) Rules, 1957. Retrieved from https://www.sebi.gov.in/sebi_data/attachdocs/1399433501593.pdf

89 *Ibid.*

90 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

91 *Ibid.*

92 *Ibid.*

93 *Ibid.*

94 Hindenburg Research. (2023, January 4). Shareholder Lists (Parliament). *Slideshare.* Retrieved from https://www.slideshare.net/secret/2ulgtnSc0KJN6h

95 Choudhary, S. (2021, July 27). Sebi asks for ultimate beneficial owners' information in Adani firms. *Business Standard.* Retrieved from https://www.business-standard.com/article/markets/sebi-asks-for-ultimate-beneficial-owners-information-in-adani-firms-121072800007_1.html

96 Laskar, A. (2021, July 21). Sebi lens on 3 Adani firms over suspected breach of laws. *Mint*. Retrieved from https://www.livemint.com/companies/news/sebi-lens-on-3-adani-firms-over-suspected-breach-of-laws-11626806563510.html

97 Mahajan, S., & Sanjai, P.R. (2021, July 21). Top India Court Clears Adani From More Probes in Hindenburg Saga. *Bloomberg*. Retrieved from https://www.bloomberg.com/news/articles/2024-01-03/top-india-court-asks-sebi-to-close-adani-probe-in-three-months

98 Dalal, S. (2012, September 4). SEBI officially admits to its manager's involvement in the Pyramid Saimira case. *MoneyLife.* Retrieved from https://www.moneylife.in/article/sebi-officially-admits-to-its-managers-involvement-in-the-pyramid-saimira-case/28263.html

99 The Indian Express. (2012, August 9). Bribes: Sr Sebi staff under govt scanner. Retrieved from https://indianexpress.com/article/news-archive/web/bribes-sr-sebi-staff-under-govt-scanner/

100 *Ibid.*

101 Moneylife. (2010, February 1). CBI arrests SEBI official for taking Rs25-lakh bribe. Retrieved from https://www.moneylife.in/article/cbi-arrests-sebi-official-for-taking-rs25-lakh-bribe/3481.html

102 Rajput, R. (2022, March 3). NSE case: CBI probe finds Sebi 'erred on multiple occasions'. *The Economic Times*. Retrieved fromhttps://economictimes.indiatimes.com/news/india/nse-case-cbi-probe-finds-sebi-erred-on-multiple-occasions/articleshow/89978324.cms

103 Shah, P. (2022, February 20). CBI to question SEBI officials on regulatory action against Chitra, NSE. *The Hindu Business Line*. Retrieved fromhttps://www.thehindubusinessline.com/markets/cbi-to-question-sebi-officials-on-regulatory-action-against-chitra-nse/article65068597.ece

104 Hindenburg Research. (2023, January 24). Adani Group: How the world's 3rd richest man is pulling the largest con in corporate history. Retrieved from https://hindenburgresearch.com/adani/

105 *Ibid.*

106 Adani Group. (2023, January 29). Adani Response. Retrieved from https://www.adani.com/-/media/Project/Adani/Invetsors/Adani-Response-to-Hindenburg-January-29-2023

107 *Ibid.*

108 Hindenburg Research. (2023, January 29). Our reply to Adani: fraud cannot be obfuscated by nationalism or a bloated response that ignores every key allegation we raised. Retrieved from https://hindenburgresearch.com/adani-response/

109 *Ibid.*

110 Statista. (n.d.) Change in Adani Group share prices between January 24 and February 3 in 2023, by subsidiary. Retrieved from https://www.statista.com/statistics/1368864/adani-group-change-in-shares-between-january-and-february-by-subsidiary/

111 Reuters. (2023, February 1). Adani abandons $2.5 billion share sale in big blow to Indian tycoon. *CNBC*. Retrieved from https://www.cnbc.com/amp/2023/02/01/adani-abandons-2point5-billion-share-sale-in-big-blow-to-indian-tycoon.html

112 The Business Times. (2023, February 7). Adani stocks climb after eight-day rout. Retrieved from https://www.businesstimes.com.sg/companies-markets/adani-stocks-climb-after-eight-day-rout

113 Lee, J. (2023, February 3). S&P Dow Jones is knocking Adani Enterprises off its sustainability index. *CNBC*. Retrieved from https://www.cnbc.com/2023/02/03/sp-to-remove-adani-enterprises-from-sustainability-index.html#:~:text=S%26P%20Dow%20Jones%20is%20knocking%20Adani%20Enterprises%20off%20its%20sustainability%20index,-Published%20Fri%2C%20Feb&text=Adani%20Enterprises%20will%20be%20removed,Mumbai's%20trading%20session%20on%20Friday

114 Bloomberg. (2023, February 6). After Credit Suisse and Citigroup, Standard Chartered stops accepting Adani bonds as collateral: Report. *Mint*. Retrieved from https://www.livemint.com/companies/news/standard-chartered-stops-accepting-adani-bonds-as-collateral-report-11675647249164.html

115 Sinha, V. (2024, January 1). How Gautam Adani raised $15 billion after major net worth loss during Hindenburg saga. Hindustan Times. Retrieved from https://www.hindustantimes.com/business/how-gautam-adani-raised-15-billion-after-major-net-worth-loss-during-hindenburg-saga-101704076008612.html

116 The Wire. (2023, March 13). Adani Group to halt some investments: report. Retrieved from https://m.thewire.in/article/business/adani-group-to-halt-some-investments-report/amp

117 Cornish, C. (2023, February 16). Adani halts $847mn acquisition of coal-fired power plant in India. *Financial Times*. Retrieved from https://www.ft.com/content/694736a5-5e1a-4281-b80e-d4ae7abb7c4c

118 Reuters. (2023, March 19). Adani Group suspends work on $4.2 billion project in India's Gujarat, PTI reports. Retrieved from https://www.reuters.com/world/india/adani-group-suspends-work-42-bln-project-indias-gujarat-pti-2023-03-19/

119 Mukherjee, S. (2023, March 12). Adani Group fully prepays $2.65 billion share-backed financing. *Mint*. Retrieved from https://www.livemint.com/companies/adani-group-fully-prepays-2-65-billion-share-backed-financing-11678636623585.html

120 Basudha, D. (2023, March 22). Adani-Hindenburg row: S&P says future ratings action on Adani Group will depend on THESE parameters. *Business Today*. Retrieved from https://www.businesstoday.in/amp/latest/corporate/story/adani-hindenburg-row-sp-says-future-ratings-action-of-adani-group-will-depend-on-these-parameters-374438-2023-03-22

121 A&P Global Ratings. (2023, February 2). Research Update: Outlook On Adani Ports And Adani Electricity Revised To Negative; Ratings Affirmed. Retrieved from https://disclosure.spglobal.com/ratings/en/regulatory/article/-/view/sourceId/12628967

122 The Wire. (2023, April 5). SEBI briefs SC panel on Adani-Hindenburg matter. Retrieved from: https://m.thewire.in/article/business/sebi-briefs-sc-panel-on-adani-hindenburg-matter/amp

123 Ananthakrishnan, G. (2024, January 4). Adani-Hindenburg Case Verdict: SC rejects prayer for SIT probe into allegations against Adani; asks SEBI to complete investigation in 3 months. The Indian Express. Retrieved from https://indianexpress.com/article/india/adani-supreme-court-verdict-sebi-probe-9092873/

124 Zachariah, R. (2024, January 5). ET explains: Allegations against Adani Group, Sebi probe and SC order. *The Economic Times*. Retrieved from https://economictimes.indiatimes.com/news/et-explains/et-explains-allegations-against-adani-group-sebi-probe-and-sc-order/articleshow/106554195.cms?from=mdr

125 Chaturvedi, A and Upadhyay, J.P. (2024, January 3). India's Adani wins court relief on scrutiny after Hindenburg attack. *Reuters*. Retrieved from https://www.reuters.com/world/india/indias-top-court-asks-regulator-complete-adani-group-probe-within-3-months-2024-01-03/

126 *Ibid.*

127 Madhol, D. (2024, January 5). His fortune shrank by $80 billion last year. Now India's Gautam Adani is back as Asia's richest man. *CNN*. Retrieved from https://edition.cnn.com/2024/01/05/business/gautam-adani-india-richest-asian-intl-hnk/index.html

128 *Ibid.*

129 Reuters. (2024, January 4). Explainer: Adani vs Hindenburg Research: What you need to know. Retrieved from https://www.reuters.com/world/india/adani-vs-hindenburg-research-what-you-need-know-2024-01-03/

130 Madhol, D. (2024, January 5). His fortune shrank by $80 billion last year. Now India's Gautam Adani is back as Asia's richest man. *CNN*. Retrieved from https://edition.cnn.com/2024/01/05/business/gautam-adani-india-richest-asian-intl-hnk/index.html

131 *Ibid.*

132 AFP News. (2024, January 5). India's Adani Reclaims Asia's Richest Mantle After Scandal. *Barron's*. Retrieved from https://www.barrons.com/articles/india-s-adani-reclaims-asia-s-richest-mantle-after-scandal-5244b030#

133 Hinderburg Research. (2024, July 1). Adani Update – Our Response to India's Securities Regulator SEBI. *Hinderburg Research*. Retrieved from https://hindenburgresearch.com/adani-update-sebi/

134 Dugar, U.M., Ramakrishnan, S. and Upadhyay, J.P, (2024, July 2). Hindenburg Denies Indian Regulator's Allegations on Adani Short Bet. *Reuters*. Retrieved from https://www.reuters.com/business/hindenburg-receives-show-cause-letter-indian-markets-regulator-2024-07-01/

135 *Ibid.*

136 Mukherjee, A. (2024, 7 July). Hindenburg Showed Adani's Report to Client Two Months Before Publishing: SEBI. Mint. Retrieved from https://www.livemint.com/companies/news/hindenburg-showed-adanis-report-to-client-two-months-before-publishing-sebi-11720348677283.html

137 Hinderburg Research. (2024, July 1). Adani Update – Our Response to India's Securities Regulator SEBI. Hinderburg Research. Retrieved from https://hindenburgresearch.com/adani-update-sebi/

EVERGRANDE: THE FALL OF A PROPERTY COLOSSUS

Case overview

China Evergrande Group (Evergrande), one of China's largest property developers, found itself in hot water when China introduced the "three red lines" policy in August 2020. This policy comprised three financial metrics designed to encourage deleveraging in China's property industry. Evergrande, which had relied on an aggressive debt-financing strategy to fuel its rapid expansion into various sectors, failed to meet all three metrics due to its high financial leverage and was subsequently denied access to new bank loans.

By September 2021, Evergrande started missing coupon payments on its debt, including offshore bonds and wealth management products, leading to a series of liquidity crises. It reported net losses of RMB476 billion and RMB106 billion in 2021 and 2022 respectively, and was the world's most indebted property developer. Despite receiving multiple extensions, Evergrande was unable to finalise concrete debt restructuring plans. Consequently, on 29 January 2024, a Hong Kong court issued a liquidation order against Evergrande.

The objective of this case study is to facilitate a discussion of issues such as business environment in the Chinese real estate industry; reasons leading to Evergrande's downfall; corporate governance of founder-controlled companies; board composition; diversification into unrelated businesses; risk management; corporate culture; Chinese government's role in restructuring; and accounting fraud.

Evergrande's meteoric rise

China Evergrande Group (Evergrande) was founded by Hui Ka Yan (Hui) in 1996, during a period of rapid urbanisation in China, as the Chinese government transitioned from state-provided housing to privatised urban housing. The company was incorporated in 2006 in the Cayman Islands and is headquartered in Guangzhou, Guangdong Province. While Evergrande's core business is property development, it diversified into other sectors

---

This case study was originally prepared by by Andee Lim Ping Xin, Dashmesh Singh Bajaj, Marcus Chan Sai Hoong, Sherman Chew Quan Heng, Timothy Lee Kay Hwee, and Yu Tian Yi. It has been edited by 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.

such as electric vehicles (EVs), finance, healthcare, and tourism.[1] In November 2009, Evergrande went public and was listed on the mainboard of The Stock Exchange of Hong Kong Limited (SEHK).[2]

Evergrande entered the Fortune Global 500 in 2016, just two decades after its establishment, and remained on the list until 2022.[3] By 2020, it had become China's largest property developer by sales, generating an annual revenue of RMB507 billion and holding total assets valued at RMB2.3 trillion. Additionally, Evergrande managed more than 1,300 projects across 280 cities, created 3.8 million jobs annually, and employed over 200,000 people.[4]

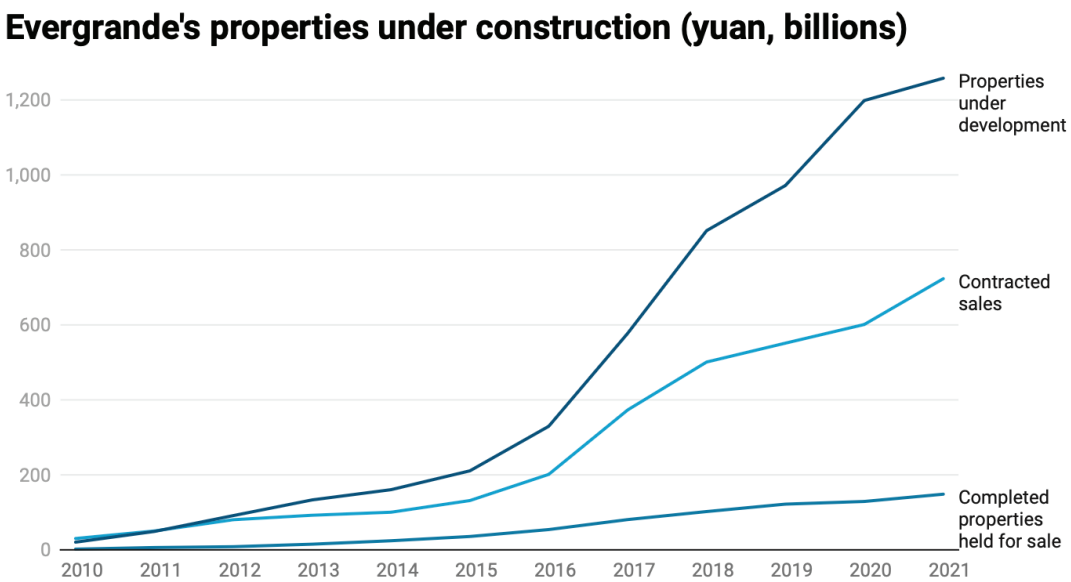
As of 30 June 2023, the public float for Evergrande's shares was 34.22%.[5] Hui had a deemed interest of 59.78% held through Xin Xin (BVI) Limited. Another substantial shareholder was Ding Yumei, the spouse of Hui, who a had deemed interest of 5.99% held through Even Honour Holdings Limited.[6]

The "build, build, build" model

In response to the 2008 global financial crisis, China introduced a massive RMB4 trillion stimulus package, flooding the economy with money and enabling property developers to borrow at low costs.[7] Evergrande capitalised on the opportunity and bet on a continuous rise in housing prices. It sold properties still under construction to customers, using the generated cash to repay existing loans and taking up more loans to finance other projects.[8] This business model allowed Evergrande to continuously expand and take on more development projects while existing projects were still in progress, causing its debt to pile up.[9] By August 2017, Evergrande had the second-largest debt pile among China's corporations and pledged to reduce its net gearing ratio from 240% in June 2017 to 70% by June 2020.[10]

Fast forward to 2020, Evergrande had RMB1.26 trillion worth of projects under construction, but this was about 70% more than the RMB723.2 billion worth of properties the company was able to sell that year. Moreover, only about RMB148.47 billion worth of projects were eventually completed.[11] Figure 1 illustrates Evergrande's property development and sales trend from 2010 to 2021.

Figure 1: Evergrande's property development and sales trend (RMB, billions)[12]



Source: Cheng, E. (2021, October 20). How Evergrande found itself on the wrong side of China's regulators.

Fuel or burden for growth?

China's meteoric economic rise had been fuelled in large part by substantial debt financing, propelling it to the status of a global economic powerhouse.[13,14] In 2021, the nation's corporate debt amounted to US$27

trillion, accounting for 31% of the global total. Additionally, China's debt-to-gross domestic product (GDP) ratio stood at 159%, significantly higher than the global average of 101% and nearly double that of the United States (US).[15]

This reliance on debt was particularly noticeable in the real estate industry. Real estate contributed approximately 30% to China's GDP, making it the single biggest contributor to the world's second-largest economy.[16] According to research conducted by S&P Global Ratings, 45% of the sampled corporate debt in China was in construction, engineering, and real estate.[17] This was largely due to the favourable borrowing conditions such as lower capital requirements and interest rates, which resulted in a continual rise in real estate prices.[18]

Between 2010 and 2018, Evergrande made the bulk of its acquisitions and investments, a period during which its debt soared from around RMB31 billion in 2010 to approximately RMB800 billion in 2019.[19,20] In comparison, its year-over-year revenue growth has slowed considerably, dropping from a high of around 50% between 2015 and 2018 to just 2% and 6% in 2019 and 2020, respectively.[21]

Evergrande's gross profit margin (GPM) showed a steep decline of 12% over just three years, from 2018 to 2020.[22] According to Evergrande's 2020 annual report, "Gross profit for the Year decreased mainly due to a decrease in the average selling prices caused by nationwide sales promotion activities and sales price concessions of the Group as a result of COVID-19."[23] Similarly, the 2019 annual report stated, "Gross profit rate was 27.8% for the Year, which was mainly due to the lower selling prices of clearance stock properties and slight increases in construction and installation costs per square meter for delivered properties, land costs, and interest capitalized."[24] These statements indicate that in the years following Evergrande's acquisitions, the decline in GPM was due to sharp cuts in selling prices to boost property sales. Moreover, Evergrande's days payables outstanding jumped from 379 days in 2016 to 553 days in 2020.[25]

"Three red lines" policy

Amid the persistent specter of COVID-19 and the real estate industry's reliance on highly leveraged strategies, significant concerns arose regarding the potential for a property bubble to burst. In response, Chinese regulators convened a meeting in August 2020 with 12 major property developers, including Evergrande, to introduce new caps for three different debt ratios, collectively termed the "three red lines" policy.[26] The policy aimed to improve the financial health of the real estate sector by reducing developers' leverage, enhancing debt coverage, and increasing liquidity.[27]

The "three red lines" policy imposes three criteria that property developers must satisfy in order to obtain financing:

1. "A 70% limit on liability to assets which excludes early payments from contractual projects;
2. a 100% limit on net debt to equity; and
3. a cash to short-term borrowing ratio of at least one."[28]

Property developers will be evaluated based on the number of criteria they fail to meet. Generally, the more criteria they fall short on, the stricter the restrictions placed on their ability to access financing for the following year. Developers meeting all three criteria are allowed to increase their debt by a maximum of 15% in the subsequent year.[29]

The strangling of Evergrande

Due to its business model, Evergrande experienced mostly negative cash flow from operating and investing activities between 2016 and 2020, as seen in Figure 2. Consequently, it relied heavily on financing activities as the primary source of cash flow, obtaining new loans to sustain its operations.[30]

Figure 2: Changes in Evergrande's cash flows over the years[31,32,33]

(RMB in million)	2016	2017	2018	2019	2020
CF from operating activities	-58,610	-150,973	54,749	-67,357	110,063
CF from investing activities	-119,559	-47,482,	-60,363	-55,308	-24,128
CF from financing activities	273,079	152,913	-17,651	143,163	-76,885
Cash and cash equivalents at end of year	198,420	152,008	129,364	150,056	158,752

Source: Evergrande Group. (2021). 2017, 2019, and 2020 annual report.

With the enforcement of the "three red lines" policy, Evergrande found itself in breach of all three criteria, significantly limiting its ability to secure new loans.[34] The insufficient financing made it challenging for Evergrande to sustain construction and other assets that could be sold, thereby triggering the onset of the company's liquidity crisis.[35]

Blueprints for survival

On 24 September 2020, Evergrande's financial struggles became public with the circulation of a letter dated 24 August 2020, seeking government assistance for a corporate overhaul.[36] Allegedly sent by the company to the government of southern Guangdong province, the letter pleaded for assistance in gaining approval for a restructuring plan involving Evergrande's subsidiary Hengda Real Estate (Hengda). This plan aimed to list Hengda on China's A-share market through the acquisition of a Shenzhen-listed company, a move announced in 2016 but still awaiting regulatory approval. Evergrande warned of potential systemic financial risks if the proposed restructuring failed, citing the need to repay RMB130 billion to strategic investors by 31 January 2021 and the risk of cash flow collapse.[37] However, Evergrande swiftly denied the letter's authenticity, terming it defamatory and pledging legal action to safeguard its interests. At that time, Evergrande had outstanding liabilities and interest amounting to RMB835.5 billion, involving 128 banks and 121 non-banking institutions.[38] Despite these efforts, Evergrande ultimately terminated the reverse takeover in November 2020.[39]

To raise cash and reduce debt to meet the "three red lines" policy, Evergrande began exploring alternative means of raising cash.[40] These measures included offering a 30% discount on all real estate properties,[41] selling the company's shares at a 14.7% discount,[42] and divesting stakes in some of its subsidiary businesses, such as the EV unit China Evergrande New Energy Vehicle Group, and the online home and car sales platform FCB Group.[43]

S&P Global Ratings analysts also assessed Evergrande to be in a highly precarious position due to its extensive reliance on supplier commercial bills, particularly using transferable payment contracts to pay their suppliers and developers. Additionally, most of Evergrande's ongoing developments were situated in smaller Chinese cities where economists believed there was an oversupply of properties and a lack of demand. This situation prevented Evergrande from raising the selling prices of its developments to meet its cash requirements.[44] Between 2017 and 2021, Evergrande's write-downs for properties under development and completed properties held for sale increased by 4,353%, from RMB1,034 million in 2017 to RMB46,048 million in 2021.[45,46]

Among the 12 companies present at the initial meeting in 2020, only Evergrande and Greenland Holdings, another major property development firm in China, remained in violation of the "three red lines" policy by August 2021.[47] Evergrande breached all three lines, while Greenland Holdings breached only one.[48]

Evergrande's debt woes

In May 2021, an online complaint platform run by Sina Corporation revealed that at least four commercial paper holders reported they had not received payments from various Evergrande units. One post, which included images of six commercial papers, highlighted that four Evergrande units in Kunming had delayed payments totalling nearly RMB4 million for three months. Commenting on the post, Evergrande said it had instructed its

project companies to resolve the repayment on the day it discovered the problems, and the four Kunming units had already completed the payments.[49] On 7 June 2021, Evergrande announced it was arranging payment for overdue commercial paper from some of its project companies.[50]

However, in August 2021, Evergrande once again failed to pay some overdue suppliers. Advertising firm Leo Group applied to a Chinese court to freeze RMB356 million in Evergrande's assets due to overdue payments. This follows similar legal actions by other companies, including Huaibei Mining Holdings' construction unit which sued Evergrande for RMB400 million in overdue fees. Additionally, a court ordered the freezing of Evergrande's shares in Langfang Development for three years due to another lawsuit.[51] Meanwhile, China's central bank summoned Evergrande's executives and issued a rare warning, emphasising the need for the company to reduce its debt risks and prioritise stability.[52]

With liabilities exceeding US$300 billion and having borrowed approximately US$88.5 billion from financial institutions, nearly half of which was due in less than a year, cash-strapped Evergrande was struggling to meet its loan and interest payment obligations on time.[53] In total, Evergrande had US$669 million of coupon payments to be disbursed in 2021, and by 2022, it had to repay US$7.4 billion of maturing bonds.[54] Evergrande had missed interest payments to at least two of its largest bank creditors. Banks were expecting Evergrande to miss the deadline after China's housing ministry had told them the company would be unable to pay on time.[55] US$131 million bond interest payments on 23 September 2021 and 29 September 2021 were missed, both of which triggered 30-day grace periods for these payments.[56]

On 7 October 2021, it was reported that JPMorgan estimated Evergrande and several major Chinese property rivals had billions in off-balance sheet debt, significantly increasing their leverage ratios. Analysts believed this tactic was used to appear compliant with the "three red lines" policy, with Evergrande's case being the most extreme. "Instead of true deleveraging, we think Evergrande has shifted some of the interest-bearing debt to off-balance sheet debt,"[57] JPMorgan's analysts stated, referring to commercial papers, wealth management products, and perpetual capital securities. They estimated Evergrande's net gearing was at least 177% at the end of the first half of 2021, compared to the 100% reported, suggesting real gearing could be higher due to undisclosed off-balance sheet debt.[58]

Evergrande's woes also extended to the local market, where the credit stress level for China's bond market increased throughout 2021. The higher the level, the greater the market stress relative to historic averages. This adversely impacted the Asian high-yield bond market, from which real estate companies primarily obtained most of their bond sales. Despite being the largest issuer of high-yield bonds, Evergrande did not conduct any bond sales since January 2020, which was one of the ways they typically sought to repay their debt.[59]

A slight relief

Evergrande managed to avoid default on its offshore bonds by making last-minute payments on 21 October 2021 and 28 October 2021, just before the 30-day grace periods expired. Failure to pay within the 30-day grace period would have triggered cross-defaults on all of the company's US$19 billion worth of bonds in international capital markets, potentially resulting in the world's second-largest emerging market corporate debt default.[60]

Last-ditch efforts

> "Evergrande has tried its best to solve liquidity problems, but it's a little bit difficult to gather enough capital to pay all the debt,"
>
> – *Cliff Zhao, Chief Strategist at China Construction Bank International*[61]

Evergrande attempted various methods to resolve its liquidity crisis These included divesting its entire stake in the film and TV streaming company HengTen Networks Group for US$684 million,[62] the sale of its 26-storey China headquarters in Hong Kong that was purchased for US$1.61 billion in 2015,[63] off-loading a US$1.55 billion stake in Shengjing Bank Co. by transferring a 20% share to the local Shenyang government,[64] and selling numerous other non-core assets.[65]

However, Evergrande's situation remained bleak due to its enormous debt and looming maturities. The company's debt had been downgraded several times, with both Fitch Ratings and S&P Global Ratings indicating a high likelihood of default.[66] In September 2021, Fitch Ratings downgraded Evergrande from 'CCC+' to 'CC', suggesting "very high levels"[67] of credit risk and a probable default.[68] Three months later, in December 2021, it downgraded Evergrande again to 'Restricted Default' due to the company's failure to pay its coupons due on 6 November 2021, after the grace period had lapsed.[69] This marked the first time Evergrande defaulted on its bond debt.[70] Since then, Evergrande had announced its intention to engage with creditors to formulate a "viable restructuring plan" to address its offshore debts.[71]

By September 2021, Evergrande shares had lost nearly 85% of their value, plummeting from HKD14.10 on 4 January 2021 to HKD2.30 after news broke about a missed payment on an onshore bond.[72] Following its default in December 2021, the shares hit a record low of HKD 1.72, the lowest since Evergrande's debut in November 2009.[73]

Relentless diversification

Evergrande diversified into several areas which were unrelated to its core business.

China, the rising World Cup superstar

In China, owning a football club was seen to be able to foster valuable 'guanxi,' or special relationships with politicians and businessmen. President Xi Jinping (Xi) had expressed a clear desire to see China qualify for, host, and eventually win the World Cup,[74] laying out a strategic plan for China to become a "true football nation".[75]

Evergrande's acquisition of Guangzhou Football Club (FC) marked a significant foray into football. Since 2015, Guangzhou FC had consistently reported losses, including a RMB1.9 billion loss in 2019.[76] In 2020, Evergrande began construction of the RMB12 billion Guangzhou Evergrande Football Stadium, which was set to be the world's largest upon completion in 2022. However, construction halted in 2021 due to a lack of funds and Evergrande facing a liquidity crisis.[77] The stadium was ultimately taken over by a subsidiary of China State Construction.[78] Evergrande reportedly invested RMB2.1 billion in construction cost for the stadium and was seeking a RMB5.52 billion refund by returning land use rights to four parcels of land in Guangzhou.[79]

Farmers market

Evergrande also ventured into agribusiness, including grain and oil, spring water, and dairy products. In 2014, Evergrande launched its mineral water brand "Evergrande Spring", investing RMB5.54 billion in the venture. The company also launched a marketing campaign featuring Jackie Chan to promote the brand.[80] The agribusiness sector resulted in a loss of approximately RMB4 billion, leading to the sale of these businesses for RMB2.7 billion in 2016.[81]

The next 'Tesla'?

In January 2019, Evergrande acquired 51% of the shares in NEVS AB, a Swedish car manufacturer through Evergrande Health Industry Group Limited, marking its transition from health management to the EV market.[82]

On 20 August 2020, Evergrande Health Industry Group Limited changed its name to China Evergrande New Energy Vehicle Group Limited (Evergrande Auto),[83] aiming to become the world's largest and most powerful green energy car company within the next three to five years.[84]

In 2020, Evergrande Auto introduced six electric car models, including sedans, minivans, and SUVs, with plans to begin mass production in 2021. However, as of April 2021, it had not sold a single car under its own brand.[85] It reported a RMB4.8 billion loss for the six months to 30 June 2021. By September 2021, facing a severe cash crunch, Evergrande Auto struggled to pay its employees and halted EV production.[86] This led to a rapid exit of investors, causing the stock price of Evergrande Auto to plummet from an all-time high of HKD72.25 in February 2021 to HKD3.20 by 11 April 2022.[87]

In March 2022, Evergrande Auto received official approval for two of its car models to be sold under the brand name "Hengchi".[88] The Hengchi 5 was launched in July 2022, began production in September 2022, and delivered its first batch of EVs to 2022 to 100 customers on 29 October 2022.[89,90] The launch of the Hengchi 5 was a great success with 37,000 vehicles ordered within 15 days of the start of pre-sales. However, Evergrande Auto once again suspended production in April 2023 due to insufficient funds. It was revealed that only 900 units of the Hengchi 5 had been delivered by then.[91]

Allies count their losses

Wealthy investors who supported Chinese billionaire Hui's empire faced significant losses due to growing concerns about Evergrande's ability to repay its debts. Hui had relied on his close associates who supported Evergrande by buying stakes, purchasing bonds, or not calling in debts.[92]

One of Evergrande's closest business allies was Hong Kong property tycoon Joseph Lau (Lau). Along with his wife, Lau held just over a 9% stake in Evergrande, making them the company's second-largest shareholder as of August 2021.[93] However, in September 2021, the couple offloaded 48% of their shares in Evergrande and indicated plans to sell their remaining 4.68% stake in the near future, expecting to incur losses of HKD10.6 billion.[94,95] Another close associate was billionaire Zhang Jindong, who lost control of the retail arm of his Suning empire after a state-backed bailout in July 2021. In September 2021, he waived his right to a RMB20 billion payment from Evergrande, helping Hui save his company but raising concerns among investors about Suning's cash flow.[96]

House of cards

Facing payment deadlines, China government authorities urged Hui to use his fortune to pay Evergrande's debt.[97] In a desperate bid to save Evergrande, Hui raised about US$1.1 billion by pledging assets, shares, and selling off his personal assets, injecting the funds into Evergrande to "improve liquidity and sustain its day-to-day operations".[98] In December 2021, after Evergrande was officially labelled a defaulter for the first time, Hui was forced to sell 277.8 million of his shares in the company, worth US$64 million, decreasing his stake in Evergrande from 61.88% to 59.78%.[99] It was believed that Hui might need to contribute more of his personal wealth to pay back Evergrande's debts.[100]

Superheroes of Evergrande

During the year ended 31 December 2020, Evergrande's board consisted of nine directors, with Hui serving as the Executive Chairman. The board also established three committees: the Audit Committee (AC), Remuneration Committee (RC), and Nomination Committee (NC).[101] A brief breakdown of the board is shown below.

Figure 3: Evergrande's board of directors[102]

Name	Age	Gender	Role	Board committee memberships, Experiences, and Qualifications
Hui Ka Yan	62	Male	Founder and Executive Chairman	• Chairman of Nomination Committee and member of Remuneration Committee. • Over 36 years of experience in real estate investment, property development, and corporate management. • Graduated from Wuhan University of Science and Technology and was awarded an honorary doctorate degree in commerce from the University of West Alabama.
Xia Haijun	57	Male	Vice Chairman and CEO	• Over 32 years of experience in property development and corporate management. • A senior economist in China. • Graduated from Jihan University with a master's degree in business administration and doctor's degree in industrial economy.
Shi Junping	37	Male	Executive director	• Over 14 years of experience in marketing and management for property development and brand image strategic operations for multiple industries, including real estate and finance. • Has a bachelor of arts degree and a bachelor of laws degree, and a master's degree in engineering management.
Pan Darong	48	Male	Executive director and CFO	• Over 26 years of experience in auditing, accounting, and finance. • Graduated from the investment and economic faculty of Zhongnan University of Economics.
Huang Xiangui	50	Male	Executive director	• Over 24 years of experience in marketing, human resource management, foreign capital and funds operation, and management. • Graduated from Harbin Engineering University with a bachelor degree in chemical engineering and obtained a master degree of science in banking and finance from the University of Stirling.
Lai Lixin	41	Male	Executive director	• Over 27 years of experience in operation and management of real estate projects. • Holds a master's degree in engineering management.
Chau Shing Yim, David	57	Male	Independent non-executive director	• Chairman of Audit Committee and member of Nomination Committee. • Over 20 years of experience in corporate finance and was formerly a partner of the big four accounting firms in Greater China. • A member of the Institute of Chartered Accountants of England and Wales and the Hong Kong Institute of Certified Public Accountants.

Name	Age	Gender	Role	Board committee memberships, Experiences, and Qualifications
He Qi	65	Male	Independent non-executive director	• Chairman of Remuneration Committee and member of Audit Committee . • Currently the secretary of Circulation and Leasing Committee of China Real Estate Association. • Previously an executive of the Development Center of the China Real Estate Association and an executive deputy mayor of Ji'an City of Jiangxi Province.
Xie Hongxi	62	Female	Independent non-executive director	• Member of Audit Committee and Remuneration Committee. • Currently the deputy director, senior engineer and master degree instructor at the Engineering Training and National Experiment, Education and Demonstration Center of South China University of Technology.

Source: Evergrande Group. (2021). 2020 annual report.

The Company Law of China mandates that all registered companies, including foreign-invested enterprises, adopt a two-tier board structure consisting of a board of directors managing the company and a supervisory board overseeing the management.[103] However, Evergrande was not required to follow this mandate as it was incorporated in the Caymen islands and listed on the SEHK. Consequently, Evergrande did not have a supervisory board. Nonetheless, Hui is the legal representative of the company,[104] as required by the Company Law. This position made him the primary signatory of the company, granting him the power and authority to enter into binding agreements on behalf of the company in accordance with the law and the company's articles of association. Essentially, this role provides him with broad control over the company, its business activities, bank accounts, and assets.[105]

Xie Hongxi (Xie) was the only female member on the board, having been elected as an independent non-executive director on 28 June 2012.[106] Shortly after Xie's appointment, Hong Kong Exchanges and Clearing Limited (HKEX) released a consultation paper on board diversity in September 2012, which highlighted the importance of gender diversity on corporate boards.[107] In December 2021, HKEX mandated that boards must include at least one director of a different gender, allowing firms a three-year transition period to comply.[108] While Evergrande's board met these new regulations, it remained predominantly male.

Captain China

Born in Henan Province, Hui was raised by his grandmother in rural poverty after his mother died when he was eight months old.[109] Despite early hardships, including attending a thatched schoolhouse and eating moldy cornbread, Hui aimed to become a bricklayer to secure a regular salary. However, with universities reopening after the Cultural Revolution, he enrolled at the Wuhan University of Science and Technology and later worked for a decade in a state-owned steel mill before he founded Evergrande.[110]

In 2017, Hui set an ambitious target of achieving RMB1 trillion in sales within three years, approximately five times Evergrande's total sales in 2016.[111] He was reportedly quoted as saying that he wanted Fairyland, Evergrande's amusement park arm, to "outperform Disneyland".[112] Hui had also made similar statements about his EV business, aiming to "become the world's leading electric vehicle provider within five years",[113] directly challenging Tesla.[114] His wealth primarily stems from the capital appreciation of Evergrande's stock price and the dividend payouts he received from the company. In 2017, Hui was crowned "China's richest man" on the year's

Forbes China Rich List after his net worth surged to RMB42.5 billion.[115] The majority of his net worth, up to RMB32 billion, was attributable to his holdings in Evergrande's shares, which saw a dramatic increase in share price from HKD5.04 at the start of 2017 to a high of HKD32.33 in October 2017.[116] Forbes estimated that as of November 2021, Hui had received a total dividend payout of RMB8 billion from Evergrande.[117]

Superhero turned villain

As the Chief Executive Officer (CEO), Xia Haijun (Xia) oversaw the day-to-day activities of the business, managed the group's financing activities, and was responsible for shaping the corporate culture and tone within the company. According to Evergrande's 2020 annual report, Xia held an 8.75% senior note worth US$28 million due in 2025 and an11.5% senior note worth US$50 million due in 2023.[118] On 9 February 2022, media reports revealed that Xia sold his entire stake in these bonds in a series of transactions between July and August 2021, just before Evergrande's debt crisis worsened.[119] However, Xia notified the HKEX of these transactions only in February 2022, six months after the transactions were made, without providing any explanation for the delay in reporting.[120]

Additionally, a common trait among China's wealthiest tycoons is to make their deputies the highest-paid executives.[121] Xia's remuneration was substantially higher than that of his peer directors, exceeding theirs by more than tenfold. In 2017, his recorded remuneration was RMB298 million, nearly 20 times his 2009 salary of RMB15 million. Of his total remuneration package, RMB280 million, or 94%, was in cash. This high remuneration came as he led Evergrande to achieve a record profit of RMB37 billion in 2017, an increase of 110% compared to 2016.[122]

In July 2022, Xia and Chief Financial Officer (CFO) Pan Darong (Pan) were forced to resign following a preliminary probe that uncovered their involvement in diverting loans secured by Evergrande's publicly listed subsidiary, Evergrande Property Services, back to the parent group.[123] The investigation revealed that deposits worth RMB13.4 billion, belonging to Evergrande Property Services, were used as collateral to guarantee a series of loans. These funds were then "transferred and diverted back to the group [Evergrande] via third parties and were used for the general operations of the group".[124] When the loans were not repaid, banks seized the deposits from Evergrande Property Services, threatening to wipe out most of its cash reserve.[125]

Jack of all trades, master of none?

Back in 2016, Siu Shawn (Siu) was Evergrande's executive vice president and Chairman of Evergrande Tourism Group. He was responsible for managing the tourism group, overseeing projects such as Ocean Flower Island Hainan, Evergrande Venice, and Fairytale Land.[126] In 2019, Siu was appointed Chairman of Evergrande Auto and took on the responsibility for the overall business management of Evergrande.[127]

In 2021, despite significant losses and the fact that Evergrande Auto had not yet sold a single EV, Siu announced that Evergrande Auto would open 36 flagship showrooms. He emphasised that a vast sales network was vital for laying a solid foundation to capture significant market share.[128] Meanwhile, most of Evergrande's fairytale-themed amusement parks under Fairytale Land were abandoned and left derelict due to Evergrande's debt crisis.[129] Additionally, a scandal emerged concerning the RMB81 million Ocean Flower Island project. Bribes were given to ZhangQi, a former party secretary of Danzhou government, in exchange for construction projects approvals.[130] Upon the discovery of the scandal, ZhangQi was jailed for life and Evergrande was ordered to demolish 39 buildings under the project due to illegally obtained permits and other factors such as "environmental and constructions violations"[131]

Evolving superheroes

On 23 January 2022, Evergrande announced the resignation of Lai Lixin (Lai) and Huang Xiangui (Huang). Lai resigned to "devote more of his time to his other duties with the Group" and will remain with Evergrande. Huang cited "health reasons" for his resignation but will also stay with Evergrande. Consequently, Siu and Liang Senlin (Liang) were appointed as executive directors to replace Lai and Huang. Siu brings over 28 years of extensive commercial experience, while Liang has over 30 years of experience in banking and asset management.[132]

Further changes to the board included the appointment of a new CEO and CFO. On 22 July 2022, Liu Zhen (Liu) was appointed as the new CEO, replacing Xia, while Qian Cheng (Qian) was appointed as the new CFO, replacing Pan. Liu joined Evergrande in 2011 and has served in various positions, including Chairman of Xinjiang Company of Evergrande Real Estate Group and Vice President of Evergrande Auto. Qian joined Evergrande in 2008 and has experience serving in various financial management positions.[133]

Too late for risk management?

In the years leading up to its liquidity issues, Evergrande did not establish a dedicated Risk Committee. Instead, the board was tasked with evaluating and determining the nature and extent of the risks the company was willing to take to achieve its strategic objectives. It also oversaw the establishment and maintenance of appropriate and effective risk management and internal control systems. Management, on the other hand, was responsible for designing and maintaining these systems and providing the board with assurances regarding their effectiveness.[134] Given the absence of a Risk Committee, the AC was responsible for reviewing the structure of risk management, continuously monitoring its effectiveness, and overseeing the fundamental risk management system.[135]

Evergrande's disclosures regarding risk management consisted largely of broad, general statements.[136] In the company's 2020 annual report, the state of the risk management system was briefly discussed. While the report indicated that Evergrande had revised its risk assessment criteria for each business segment, it offered scant detail on the specifics of these updates. It explained that "the risks that are most likely to affect the achievement of objectives have also been assessed using commonly recognized assessment methods and assessment criteria."[137] However, the report failed to disclose the specific key risks, assessment methods, or criteria involved,[138] and this lack of transparency persisted in the subsequent annual reports for both 2021 and 2022.[139,140]

The birth of Risk Management Committee

On 6 December 2021, Evergrande announced the formation of a Risk Management Committee (RMC) in response to its operational and financial challenges. The company clarified that the RMC was an external committee, distinct from a board or management committee, tasked with addressing Evergrande's current situation and playing a key role in mitigating and eliminating future risks for the company.[141] Chaired by Hui, the RMC primarily consisted of members from state enterprises and was led by the Guangdong provincial government to facilitate Evergrande's restructuring.[142]

The RMC's responsibilities included restructuring Evergrande's offshore public bonds and private debt. For its offshore public bonds, the committee planned to actively engage with offshore creditors by listening to their suggestions and opinions, aiming to formulate a workable solution for refinancing the pending debts.[143] The RMC asked Evergrande's bondholders to source potential investors to commence communications with Evergrande. Additionally, Evergrande had engaged more financial and legal advisors to aid in mediating the demands of its current creditors.[144] For its private debt obligations, the restructuring would likely include bonds of joint ventures such as Jumbo Fortune and the unit Scenery Journey.[145]

Figure 4 shows the members of the RMC and their respective backgrounds.

Figure 4: Members of Evergrande's Risk Management Committee[146]

Name	Position in RMC	Background
Hui Ka Yan	Chairman	Chairman of Evergrande and Executive Director
Liu Zhihong	Co-Chairman	Deputy General Manager of Guangdong Holdings Limited
Pan Darong	Member	Chief Financial Officer of Evergrande and Executive Director
Zhao Limin	Member	Vice President of China Cinda Asset Management Co., Ltd.
Li Feng	Member	Chief Capital Officer of Guangzhou Yuexiu Holdings Limited
Chen Yong	Member	Compliance Director of Guosen Securities Co., Ltd.
Hao Han	Member	Partner of Beijing Zhonglun Law Firm

Source: Evergrande Group. (2021, December 6). Inside Information.

Transparency in China

Regulatory transparency has long been a challenge in China, and progress remains inconclusive.[147] Concerns regarding financial transparency in China's real estate industry have also been growing, as numerous auditors have resigned from Chinese real estate companies due to a lack of access to information. All the property developers whose Big Four auditors have resigned have opted for smaller and in some cases local audit firms.[148] Credit research firm CreditSights noted that the recent changes in auditors were a "cause for concern as they could be a sign of potential accounting irregularities".[149]

In January 2022, PricewaterhouseCoopers (PwC) resigned from Hopson Development (Hopson), citing insufficient information from management on matters such as the valuation of Hopson's investment properties.[150] Shortly after, Shimao Group Holdings, one of China's largest property companies, also announced PwC's resignation as its auditor after it failed to provide information related to "trust loan arrangements".[151] Since then, the Accounting and Financial Reporting Council (AFRC), Hong Kong's audit watchdog, has initiated probes into the financial reports of companies and auditors it deemed of "high public interest," including Evergrande.[152] In an interview, Kelvin Wong Tin-Yau, Chairman of the AFRC, stated, "If we are conducting an investigation in a case that involves high public interest, then we should maintain high transparency and announce the investigation once we start the process."[153]

Financial probe

The AFRC initiated an investigation into Evergrande's 2020 accounts and its audit by PwC, expressing concerns about whether Evergrande had properly disclosed its ability to continue operating as a going concern.[154] By the end of 2020, Evergrande's books showed cash and cash equivalents of RMB159 billion, which were insufficient to cover its existing liabilities of RMB1.5 trillion, with additional borrowings of RMB167 billion maturing in 2022.[155] Additionally, Evergrande's access to loans and borrowings was significantly restricted due to its excessively high debt-to-equity ratio and the implementation of the "three red lines" policy. These warning signs underscored doubts about Evergrande's ability to operate as a going concern. Despite these concerns, PwC issued an unqualified audit opinion on the 2020 financial statements without referencing material uncertainties regarding Evergrande's ability to operate as a going concern.[156]

Earlier, in 2017, Hong Kong-based accounting research firm GMT Research conducted site visits to 40 of Evergrande's projects in 16 cities across China.[157] Based on its findings, GMT Research opined that PwC had failed to take a sufficiently robust stance by allowing Evergrande to overcapitalise interest, misclassify commercial premises and treat car parking spaces as investment properties, and overvalue assets such as unsold

properties and empty investment properties without requiring write-downs.[158] The research firm estimated that a realistic assessment of asset values would necessitate RMB150 billion in asset write-downs, effectively wiping out Evergrande's shareholders' equity almost three times over, suggesting insolvency.[159]

Escalating troubles

On 22 March 2022, Evergrande announced that it would not be able to publish its 2021 audited results by the end of March as required by the Hong Kong Listing Rules. The company cited several reasons for the delay: drastic changes in the operating environment since the second half of 2021, an increased number of additional audit procedures, and the impact of COVID-19.[160] Consequently, Evergrande's shares were suspended for trading indefinitely until it could publish an announcement containing the requisite financial information.[161]

Unexpectedly, on 16 January 2023, Evergrande announced that its auditor PwC had resigned due to disagreements over auditing its 2021 accounts. The announcement explained: "The Company and PwC have not been able to agree on the timetable and the scope of work in respect of the assessment on the Group's going concern basis and implications of the relevant disclosure, as well as the additional audit work and procedures required for the assets impairment assessment. As such, the Board is of the view that it is in the best interests of the Company and its stakeholders to appoint another auditor to complete the audit work as soon as practicable, and therefore the Board recommended PwC to resign as the auditor of the Company."[162] On the same day, Evergrande's board resolved to appoint Prism Hong Kong and Shanghai Limited as the new auditor to replace PwC.[163]

On 17 July 2023, Evergrande finally released its 2021 and 2022 annual report, which revealed total net losses of RMB812 billion over the two years.[164] Following a 17-month suspension, Evergrande announced on 26 August 2023 that it had "adequately" fulfilled the resumption guidance issued by the SEHK and applied to resume trading on 28 August 2023.[165] However, just a month later, Evergrande's shares were once again suspended until further notice after it received notification from relevant authorities that its Chairman, Hui, had been subjected to "mandatory measures in accordance with the law due to suspicion of illegal crimes."[166] Bloomberg reported that it was unclear why Hui was placed under residential surveillance, a type of police action that falls short of formal detention or arrest and does not mean Hui will be charged with a crime.[167]

China's Lehman Brothers?

Concerns arose over the systemic risks posed by Evergrande's crisis and its extensive implications for both the Chinese and global economies.[168] Evergrande's significant involvement in the Chinese economy had led it to be considered "too big to fail."[169] The crisis severely affected China's job market, putting many positions at risk.[170] This impact also extended beyond Evergrande's direct employees to those of contractors and suppliers reliant on Evergrande for business and payment to meet their payroll obligations.[171]

While Evergrande's crisis had been compared to the collapse of the US investment bank Lehman Brothers, financial analysts believed Evergrande's debt issues were unlikely to cause a similar fallout. This was due to major differences in the assets held by the two companies, Evergrande held land while Lehman Brothers held financial assets. In Lehman Brother's case, the global financial crisis caused the bank's financial asset prices to falling towards zero, leading to cash flow issues and eventual bankruptcy. However, Evergrande's situation involved a property development firm that took on substantial debt. Ultimately, Evergrande faced a liquidity crunch, with its main problem lying in cash flow issues. These can potentially be resolved if Evergrande can channel cash flow into its physical assets, allowing the company to complete development projects, sell properties, and pay down its debt.[172]

Additionally, China's strong government control in the real estate sector played a significant role in distinguishing Evergrande's situation from past financial crises. Unlike in many Western economies where market

forces predominantly dictate outcomes, China's government exerts considerable influence over its industries, particularly real estate. This control extends to both state-owned enterprises and non-state entities, with the government often directing lending and financial activities. Commercial bankruptcy, therefore, becomes more of a strategic decision by the state rather than a purely economic outcome. This centralised control gives the Chinese government the ability to intervene in crises and manage risks more directly, shaping the response to Evergrande's debt woes.[173]

Mixed messages

Amid the backdrop of Evergrande's liquidity issues during the COVID-19 pandemic, Chinese authorities reportedly instructed local governments to prepare for the potential downfall of Evergrande, a move described by officials as "getting ready for the possible storm".[174] Local-level government agencies and state-owned enterprises received instructions to intervene only as a last resort if Evergrande fails to manage its affairs in an orderly manner.[175]

These actions signal Chinese authorities' intent to manage debt and curb property speculation. Moreover, the implicit government guarantees that once protected highly leverage firms are now defunct, with financial markets expected to enforce discipline on borrowers.[176] This aligns with China's effort to crackdown on debt. Nonetheless, economists hypothesised that while the Chinese authorities may allow property developers to face the consequences of their actions, they would step in to safeguard the stability of the banking and broader financial systems.[177]

In January 2023, it was reported that China would ease its "three red lines" policy, which restricts borrowing by property developers, as part of a plan to support the struggling real estate industry. This policy relaxation will apply to 30 well-performing developers deemed systemically important based on their scale and operations, signalling a shift towards prioritising economic stability over addressing excessive debts.[178] Beijing may allow some property firms to increase their leverage by easing borrowing caps and extending the grace period for meeting the policy's debt targets.[179] Additionally, China's financial regulators have instructed the country's state-owned asset management companies (AMCs) and approximately 20 banks to assist a dozen Chinese real estate developers facing financial difficulties, which may include purchasing their liabilities.[180]

The end of an era?

Since its default in 2021, Evergrande had proposed several restructuring plans. However, the process encountered various obstacles. While preparing its restructuring proposal, Top Shine Global Limited, an offshore creditor, filed a winding-up petition against Evergrande in the High Court of the Hong Kong Special Administrative Region in June 2022, over a financial obligation of HKD862.5 million.[181] The petition for Evergrande's liquidation was heard six times. Between September 2022 and March 2023, Evergrande secured multiple adjournments in court by demonstrating progress in restructuring its offshore debts through schemes of arrangement (Scheme) aimed at restoring solvency. However, in late September 2023, Evergrande halted its Scheme meeting, stating that the latest plans required reassessment, leading to the dismissal of the scheme proceedings.[182]

On 30 October 2023, during the fourth hearing, the court warned of a potential winding-up order unless Evergrande presented a fully developed restructuring plan at the subsequent hearing. At the fifth hearing on 4 December 2023, Evergrande provided an update on a revised restructuring proposal.[183] Lawyers for Evergrande argued that no creditors were "actively seeking" its liquidation. Hong Kong High Court Justice Linda Chan (Chan) accepted that argument but stipulated that significant advancements were expected by the next hearing.[184]

On 29 January 2024, Evergrande was ordered to be liquidated by the Hong Kong High Court, after failing to convince the court that it had a viable restructuring plan. Justice Chan delivered the ruling, stating: "It would be a situation where the court says enough is enough. It seems to me that the interests of the creditors will be better

protected if the company is wound up by the court, so that independent liquidators can take control over the company".[185,186]

Nevertheless, even with the winding-up order, the liquidator is expected to encounter challenges when dealing with Chinese developers. Many of Evergrande's projects are managed by local entities, posing difficulties for the offshore liquidator to take control. Furthermore, construction, housing deliveries, and other operations in mainland China are likely to persist throughout the unfolding process.[187]

More to uncover

On 1 December 2023, GMT Research released a report alleging that Evergrande had "inflated revenue and profits for years,"[188] adding that the company was "never profitable."[189] Evergrande responded three days later stating that the research firm's report was "without basis".[190] In a subsequent clarification announcement, Evergrande concluded that GMT Research's report failed to provide substantive evidence supporting its claims, relying instead on conjecture and suspicion. Furthermore, the report incorrectly used 2023 results to support its 2016 forecast, lacking substantive basis. Evergrande also mentioned that it reserved the right to take legal action against GMT Research.[191]

However, on 18 March 2024, the China Securities Regulatory Commission (CSRC) charged Evergrande's main onshore unit, Hengda, with inflating revenue by nearly RMB214 billion in 2019 and RMB350 billion in 2020. These falsified numbers were used to raise money. The CSRC fined Hengda RMB4.18 billion and imposed a RMB47 million fine on Hui, who also received a lifetime ban from the securities market. Former CEO Xia and several executives also faced fines and bans.[192] The CSRC attributed much of the fraudulent activity to Hui alleging that he directed personnel to "falsely inflate" Hengda's annual results for those two years. Additionally, Hengda was accused of fraudulently issuing a combined RMB20.8 billion in bonds using these inflated figures in marketing.[193]

Meanwhile, on 16 April 2024, an open letter titled "Who brought PwC into the fire pit of Evergrande?" was widely circulated on social media.[194] Written by "some PwC partners," the letter accused Raymund Chao (Chao), Asia Pacific and China Chairman of PwC China, and his team of overlooking issues in Evergrande's financial statements. The letter claimed that some senior PwC executives had suggested discontinuing Evergrande as a client in 2014, but Chao insisted on retaining the business. PwC responded on 16 April 2024, stating that the letter contained false allegations that damaged the firm's reputation.[195] Nonetheless, on 19 April 2024, the Hong Kong AFRC announced an investigation into PwC's quality management system and the audits of Evergrande following the concerns raised in the open letter. On 31 May 2024, it was reported that PwC is expected to face a fine of at least RMB1 billion in China for allegedly overlooking misconduct Evergrande for over a decade. PwC will also have some of its local operations in China suspended.[196]

Discussion questions

1. What are benefits and risks associated with founder-controlled companies? Discuss this in the context of Evergrande.
2. What were the key contributing factors that led to Evergrande's liquidity crisis? Evaluate which were the most significant factors and explain why.
3. Critically evaluate the composition of the Evergrande board. To what extent do you believe the (1) board of directors, (2) executive chairman, and (3) audit committee are responsible for Evergrande's downfall?
4. Evergrande was very aggressive in pursuing diversification into unrelated businesses. What are the risks and benefits, if any, of such diversification? What is the role of the board in overseeing diversification?

5. Critically evaluate Evergrande's response to the challenges it encountered. How effective were their strategies in managing the crisis, and what could they have done differently?
6. Considering Evergrande's risk profile, risk appetite, and highly leveraged capital structure, analyse whether the company's rapid expansion was justified. What alternative strategies could Evergrande have pursued to manage its growth more sustainably?
7. What are the essential characteristics of an effective risk management framework? Assess whether Evergrande had an adequate risk management framework in place to oversee and manage the risks that led to its crisis.
8. Assess the effectiveness of PwC China, Evergrande's external auditor, in identifying and pre-empting potential issues within the company before they escalated. To what extent do you believe PwC China failed in fulfilling their responsibilities regarding Evergrande?
9. Analyse the impact of the Chinese government's "three red lines" policy on the financial stability of real estate companies. How has this policy influenced debt management strategies within the industry, and to what extent has it contributed to financial distress among property developers?

Endnotes

1 Liu, Z. (2004, February 13). Does Evergrande's Collapse Threaten China's Economy? Retrieved from https://www.cfr.org/in-brief/does-evergrandes-collapse-threaten-chinas-economy

2 Evergrande. (2009, November 5). Evergrande to Be Listed in Hong Kong on the 5th. Retrieved from https://www.evergrande.com/en/News/Details/3298

3 Liu, Z. (2004, February 13). Does Evergrande's Collapse Threaten China's Economy? Retrieved from https://www.cfr.org/in-brief/does-evergrandes-collapse-threaten-chinas-economy

4 Tai, C., & Chen, A. (2022, January 14). The Significance of the Evergrande Liquidity Crisis. Retrieved from https://www.cipe.org/blog/2022/01/14/the-significance-of-the-evergrande-liquidity-crisis/

5 Market Screener. (n.d.). China Evergrande Group. Retrieved from https://www.marketscreener.com/quote/stock/CHINA-EVERGRANDE-GROUP-6171025/company/

6 Evergrande Group. (2024). 2023 interim report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/interim/2023/intrep.pdf

7 Wang, Y. (2021, September 28). Evergrande's wealth wipeout: Hui ka yan's journey from asia's richest person to the brink of collapse. *Forbes*. Retrieved from https://www.forbes.com/sites/ywang/2021/09/28/evergrandes-wealth-wipeout-hui-ka-yans-journey-from-asias-richest-person-to-the-brink-of-collapse/?sh=69347a962f4b

8 Cheng, E. (2021, October 20). How Evergrande found itself on the wrong side of China's regulators. *CNBC*. https://www.cnbc.com/2021/10/19/how-evergrande-found-itself-on-the-wrong-side-of-chinas-regulators.html

9 *Ibid.*

10 Reuters. (2021, August 29). Evergrande to cut debt by 2020. Retrieved from https://www.thenews.com.pk/print/226634-Evergrande-to-cut-debt-by-2020

11 Cheng, E. (2021, October 20). How Evergrande found itself on the wrong side of China's regulators. *CNBC*. Retrieved from https://www.cnbc.com/2021/10/19/how-evergrande-found-itself-on-the-wrong-side-of-chinas-regulators.html

12 *Ibid.*

13 Prasad, E. (2021, October 6). With Evergrande's managed collapse, Beijing is sending mixed messages. *Fortune*. Retrieved from https://fortune.com/2021/10/05/evergrande-collapse-debt-xi-jinping-china-economy-eswar-prasad/

14 Yen, N. L. (2019, September 24). Here are 4 charts that show China's rise as a global economic superpower. *CNBC*. Retrieved from https://www.cnbc.com/2019/09/24/how-much-chinas-economy-has-grown-over-the-last-70-years.html

15 S&P Global Ratings. (2021). Can China Escape Its Corporate Debt Trap? Retrieved from https://www.spglobal.com/_assets/documents/ratings/research/100620188.pdf

16 Wong, S. L., & Ji, K. (2023, December 8). China Can Contain its Property Market Troubles. Retrieved from https://amro-asia.org/china-can-contain-its-property-market-troubles/#:~:text=The%20real%20estate%20sector%20accounts,of%20revenue%20for%20local%20governments.

17 S&P Global Ratings. (2021). Can China Escape Its Corporate Debt Trap? Retrieved from https://www.spglobal.com/_assets/documents/ratings/research/100620188.pdf

18 Delmendo, L. C. (2020, March 28). Investment analysis of chinese real estate market [Text]. *Global Property Guide*. Retrieved from https://www.globalpropertyguide.com/Asia/China

19 Evergrande Group. (2012). 2011 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2011/ar2011.pdf

20 Evergrande Group. (2020). 2019 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2019/ar2019.pdf

21 CFA Institute. (2021, November 1). Evergrande: Not so grand financial statements? CFA Institute Enterprising Investor. Retrieved from https://blogs.cfainstitute.org/investor/2021/11/01/evergrande-not-so-grand-financial-statements/

22 *Ibid.*

23 Evergrande Group. (2021). 2020 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2020/ar2020.pdf

24 Evergrande Group. (2020). 2019 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2019/ar2019.pdf

25 CFA Institute. (2021, November 1). Evergrande: Not so grand financial statements? CFA Institute Enterprising Investor. Retrieved from https://blogs.cfainstitute.org/investor/2021/11/01/evergrande-not-so-grand-financial-statements/

26 Cheng, E. (2021, October 20). How Evergrande found itself on the wrong side of China's regulators. *CNBC*. Retrieved from https://www.cnbc.com/2021/10/19/how-evergrande-found-itself-on-the-wrong-side-of-chinas-regulators.html

27 EAC. (n.d.). Three Red Lines Policy – Regulating China's Real Estate Developers. Retrieved from https://eac-consulting.de/china-three-red-lines-policy/

28 Bloomberg News. (2021, June 30). What China's Three Red Lines Mean for Property Firms. *Washington Post*. Retrieved from https://www.bloomberg.com/news/articles/2020-10-08/what-china-s-three-red-lines-mean-for-property-firms-quicktake

29 *Ibid.*

30 Zhao, B. (2023). Analysis on Financial Risk Management of China Evergrande Group. Retrieved from https://www.clausiuspress.com/assets/default/article/2023/06/08/article_1686232412.pdf

31 Evergrande Group. (2018). 2017 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2017/ar2017.pdf

32 Evergrande Group. (2020). 2019 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2019/ar2019.pdf

33 Evergrande Group. (2021). 2020 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2020/ar2020.pdf

34 Bloomberg News. (2021, April 13). Evergrande Fails 'Three Red Lines' Test as Peers Improve. *Bloomberg*. Retrieved from https://www.bloomberg.com/tosv2.html?vid=&uuid=3dd68402-ba1f-11ec-b15d-765659777854&url=L25ld3MvYXJ0aWNsZXMvMjAyMS0wNC0xMi9ldmVyZ3JhbmRlLWZhaWxzLWNoaW5hLXMtdGhyZWUtcmVkLWxpbmVzL-XRlc3QtYXMtcGVlcnMtaW1wcm92ZQ==

35 Cheng, E. (2021, October 20). How Evergrande found itself on the wrong side of China's regulators. *CNBC*. Retrieved from https://www.cnbc.com/2021/10/19/how-evergrande-found-itself-on-the-wrong-side-of-chinas-regulators.html

36 Wu, H., & Jia, D. (2020, September 25). China Developer Evergrande Denies It's Seeking Government Support. *Caixin Global*. Retrieved from https://www.caixinglobal.com/2020-09-25/china-developer-evergrande-denies-its-seeking-government-support-101609336.html

37 *Ibid.*

38 *Ibid.*

39 Reuters. (2021, September 24). Timeline: China Evergrande's snowballing debt crisis. *Reuters*. Retrieved from https://www.reuters.com/business/china-evergrandes-snowballing-debt-crisis-2021-09-14/

40 Tay, V. (2021, September 7). Fall from grace: Evergrande's debt journey since China's "three red lines" policy. *The Business Times*. Retrieved from https://www.businesstimes.com.sg/real-estate/fall-from-grace-evergrandes-debt-journey-since-chinas-three-red-lines-policy

41 *Ibid.*

42 Nikkei Asia. (2020, October 14). China Evergrande shares tumble 17% after stock sale falls short. Retrieved from https://asia.nikkei.com/Business/Markets/Property/China-Evergrande-shares-tumble-17-after-stock-sale-falls-short

43 Tay, V. (2021, September 7). Fall from grace: Evergrande's debt journey since China's "three red lines" policy. *The Business Times*. Retrieved from https://www.businesstimes.com.sg/real-estate/fall-from-grace-evergrandes-debt-journey-since-chinas-three-red-lines-policy

44 Cheng, E. (2021, October 20). How Evergrande found itself on the wrong side of China's regulators. *CNBC*. https://www.cnbc.com/2021/10/19/how-evergrande-found-itself-on-the-wrong-side-of-chinas-regulators.html

45 Evergrande Group. (2018). 2017 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2017/ar2017.pdf

46 Evergrande Group. (2022). 2021 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2021/ar2021.pdf

47 Lee, A. (2020, October 6). China's 'three red lines' strike delicate balance between curbing real estate debt and local government finances. *Yahoo! News*. Retrieved from https://sg.news.yahoo.com/china-three-red-lines-strike-074836086.html

48 Cheng, E. (2021, October 20). How Evergrande found itself on the wrong side of China's regulators. *CNBC*. Retrieved from https://www.cnbc.com/2021/10/19/how-evergrande-found-itself-on-the-wrong-side-of-chinas-regulators.html

49 Reuters. (2021, June 7). China Evergrande says it is arranging payment for unpaid commercial paper. Retrieved from https://www.reuters.com/world/asia-pacific/china-evergrande-says-it-is-arranging-payment-unpaid-commercial-paper-2021-06-07/

50 *Ibid.*

51 Reuters. (2021, August 3). Two more suppliers say payments are overdue from indebted Evergrande. Retrieved from https://www.reuters.com/business/two-more-suppliers-say-payments-are-overdue-indebted-evergrande-2021-08-03/

52 Reuters. (2021, August 20). Chinese regulators summon Evergrande execs, warn on debt risks. Retrieved from https://www.reuters.com/world/china/chinese-regulators-summon-evergrande-execs-warn-debt-risks-2021-08-19/

53 Bloomberg News. (2021, September 21). Cash-strapped Evergrande missed interest payments due Monday. *Aljazeera.* Retrieved from https://www.aljazeera.com/economy/2021/9/21/cash-strapped-evergrande-missed-interest-payments-due-monday

54 Subramanian, S. (2021, September 24). Evergrande has missed some of its key bond payments. *Quartz.* Retrieved from https://qz.com/2064484/evergrande-has-missed-some-of-its-key-bond-payments-now-what/

55 Bloomberg News. (2021, September 21). Cash-strapped Evergrande missed interest payments due Monday. *Aljazeera.* Retrieved from https://www.aljazeera.com/economy/2021/9/21/cash-strapped-evergrande-missed-interest-payments-due-monday

56 Baibhawi, R. (2021, December 13). As Evergrande Slips Into Default, Here's A Timeline Of Firm's Snowballing Debt Crisis. Retrieved from https://www.republicworld.com/world-news/china/as-evergrande-slips-into-default-heres-a-timeline-of-firms-snowballing-debt-crisis.html

57 Jones, M. (2021, October 8). Evergrande and other Chinese property giants have sizeable off-balance sheet debt - JPMorgan. *Reuters.* Retrieved from https://www.reuters.com/business/finance/evergrande-other-chinese-property-giants-have-sizeable-off-balance-sheet-debt-2021-10-07/

58 *Ibid.*

59 Scanlan, D., & Chan, C. (2021, October 15). Analysis | what is china evergrande and why is it in trouble? *Washington Post.* Retrieved from https://www.washingtonpost.com/politics/2021/10/21/chinas-evergrande-is-trouble-so-is-chinas-top-down-political-economy/

60 Jim, C., Svea, H.-B., & Galbraith, A. (2021, October 29). Evergrande makes coupon payment before Friday deadline-sources. *Reuters.* Retrieved from https://www.reuters.com/world/china/evergrande-makes-coupon-payment-ahead-deadline-nyt-2021-10-28/

61 *Ibid.*

62 Davis, R. (2021, November 19). Evergrande Sells Off Remaining Stake in China's Netflix-Like HengTen for $273 Million. *CNN.* Retrieved from https://variety.com/2021/film/news/evergrande-hengten-sale-1235115861/

63 Jim, C., Wu, K., & Zhu, J. (2021, October 16). EXCLUSIVE Evergrande's $1.7 bln Hong Kong headquarters sale flops as buyer withdraws -sources. *Reuters.* Retrieved from https://www.reuters.com/world/china/exclusive-evergrandes-17-bln-hong-kong-headquarters-sale-flops-buyer-withdraws-2021-10-15/

64 Caixin Global. (2021, September 30). High debts, big money: Can Evergrande continue its high life by living on the edge? Retrieved from https://www.thinkchina.sg/economy/high-debts-big-money-can-evergrande-continue-its-high-life-living-edge

65 Toh, M. (2021, September 30). 5 things to know about the Evergrande crisis: A simple breakdown. *CNN.* Retrieved from https://www.cnn.com/2021/09/24/investing/china-evergrande-group-debt-explainer-intl-hnk/index.html

66 Scanlan, D., & Chan, C. (2021, October 15). Analysis | what is china evergrande and why is it in trouble? *Washington Post.* Retrieved from https://www.washingtonpost.com/politics/2021/10/21/chinas-evergrande-is-trouble-so-is-chinas-top-down-political-economy/

67 Fitch Ratings. (2021, September 14). Credit Event at China's Evergrande Could Have Broader Effects. Retrieved from https://www.fitchratings.com/research/corporate-finance/credit-event-at-chinas-evergrande-could-have-broader-effects-14-09-2021

68 *Ibid.*

69 Fitch Ratings. (2021, December 9). Fitch Downgrades Evergrande and Subsidiaries, Hengda and Tianji, to Restricted Default. Retrieved from https://www.fitchratings.com/research/corporate-finance/fitch-downgrades-evergrande-subsidiaries-hengda-tianji-to-restricted-default-09-12-2021#:~:text=Fitch%20has%20affirmed%20the%20senior,Recovery%20Rating%20of%20%27RR6%27.

70 CBS News. (2021, December 9). Evergrande defaults on $1.2B in foreign bonds, Fitch says, as China intervenes in debt-ridden real estate sector. Retrieved from https://www.cbsnews.com/news/evergrande-stock-china-default-bonds-fitch-chinese-market-intervention/

71 Reuters. (2021, December 4). China's Guangdong summons Evergrande boss after debt repayment warning. Retrieved from https://www.reuters.com/markets/rates-bonds/china-evergrande-gets-260-mln-guarantee-demand-2021-12-03/

72 Toh, M. (2021, September 30). 5 things to know about the Evergrande crisis: A simple breakdown. *CNN.* Retrieved from https://www.cnn.com/2021/09/24/investing/china-evergrande-group-debt-explainer-intl-hnk/index.html

73 Jim, C. (2021, December 8). China Evergrande shares hit new low amid debt crisis; Kaisa misses pay date. *Reuters.* Retrieved from https://www.cnn.com/2021/09/24/investing/china-evergrande-group-debt-explainer-intl-hnk/index.html

74 Simons, R. (2016, February 26). Investor frenzy overheats Xi's football revolution. *CNN.* Retrieved from https://www.cnn.com/2016/02/26/football/china-football-ambition-transfer-window/index.html

75 Harker, G. (2021, September 20). Evergrande's financial troubles threatens its soccer club, Guangzhou FC. *SupChina*. Retrieved from https://supchina.com/2021/09/20/evergrandes-financial-troubles-threatens-its-soccer-club-guangzhou-fc/

76 White, J. (2021, September 17). Guangzhou Evergrande – China's richest football club in need of bailout. *South China Morning Post.* Retrieved from https://www.scmp.com/sport/football/article/3149150/guangzhou-evergrande-chinas-richest-football-club-need-bailout

77 Reuters. (2021, November 26). China Evergrande soccer stadium taken over by government-source. Retrieved from https://www.reuters.com/markets/deals/china-evergrande-soccer-stadium-taken-over-by-government-source-2021-11-26/

78 Rogers, D. (2024, March 14). Evergrande's plans for world's biggest football stadium to be scaled back. Retrieved from https://www.globalconstructionreview.com/evergrandes-plans-for-worlds-biggest-football-stadium-to-be-scaled-back/

79 Liu, P (2022, August 5). China Evergrande cancels land deal for US$818 million refund to overcome liquidity crisis, end grandiose football stadium plan. Retrieved from https://www.scmp.com/business/china-business/article/3187815/china-evergrande-cancels-land-deal-us818-million-refund

80 Yu, X., & Yu, E. (2021, September 18). How Beijing's Debt Clampdown Shook the Foundation of a Real-Estate Colossus. Retrieved from https://www.wsj.com/articles/how-beijings-debt-clampdown-shook-the-foundation-of-a-real-estate-colossus-11631957400

81 Boomberg News. (2016, September 28). Evergrande Sells Food, Beverage Units to Focus on Real Estate. *Bloomberg.* Retrieved from https://www.bloomberg.com/news/articles/2016-09-28/evergrande-sells-food-beverage-units-to-focus-on-real-estate

82 NEVS. (2019, January 15). Evergrande Group new main owner in NEVS AB. Retrieved from https://web.archive.org/web/20190121010752/https://www.nevs.com/en/media/press-releases/evergrande-group-new-main-owner-in-nevs-ab/

83 Market Screener. (2020, August 20). Evergrande Health Industry Group Limited has Changed its Name to China Evergrande New Energy Vehicle Group Limited. Retrieved from https://www.marketscreener.com/quote/stock/CHINA-EVERGRANDE-NEW-ENER-23746639/news/Evergrande-Health-Industry-Group-Limited-has-Changed-its-Name-to-China-Evergrande-New-Energy-Vehicle-33731723/

84 Liao, S.M. (2020, July 27). China's Evergrande Health to Change Its Name as Focus Shifts to NEV Sector. Retrieved from https://www.yicaiglobal.com/news/china-evergrande-health-to-change-its-name-as-focus-shifts-to-nev-sector

85 Loh, M. (2021, October 5). Evergrande's electric car division vowed to beat Tesla at its own game, but it's taken $740 million in losses so far this year and still hasn't sold a single car. Retrieved from https://www.businessinsider.com/debt-evergrande-wanted-beat-tesla-but-hasnt-sold-single-car-2021-10

86 Bloomberg. (2021, September 23). Evergrande debt woes: EV unit stops paying employees, suppliers. Retrieved from https://www.aljazeera.com/economy/2021/9/23/evergrande-debt-woes-ev-unit-stops-paying-employees-suppliers

87 Yahoo! finance. (n.d.). China Evergrande New Energy Vehicle Group Limited (0708.HK). Retrieved from https://finance.yahoo.com/quote/0708.HK/history/?period1=1560436331&period2=1718289123

88 Table China. (2022, March 16). Evergrande authorized to sell cars. Retrieved from https://table.media/en/china/news/evergrande-may-sell-cars/

89 Reuters. (2022, October 29). China's Evergrande delivers first electric vehicles. Retrieved from https://www.reuters.com/business/autos-transportation/chinas-evergrande-delivers-first-electric-vehicles-2022-10-29/

90 Opletal, J. (2023, May 30). Die another day: Hengchi 5 resumed production in the Tianjin plant. Retrieved from https://carnewschina.com/2023/05/30/die-another-day-hengchi-5-resumed-production-in-the-tianjin-plant/

91 *Ibid.*

92 The Business Times. (2021, August 30). Rich friends who helped Evergrande tycoon count their losses. Retrieved from https://www.businesstimes.com.sg/property/rich-friends-who-helped-evergrande-tycoon-count-their-losses

93 Lee, Z. (2021, September 30). Evergrande exit: Billionaire partner sells almost 50% of shares so far. *Forbes.* Retrieved from https://www.forbes.com/sites/zinnialee/2021/09/30/evergrande-exit-billionaire-partner-sells-almost-50-of-shares-so-far

94 The Business Times. (2021, November 24). Chinese Estates, a key Evergrande backer, cuts its stake further. Retrieved from https://www.businesstimes.com.sg/property/chinese-estates-a-key-evergrande-backer-cuts-its-stake-further

95 Caillavet, C. (2021, September 24). Chinese estates dumps evergrande shares at loss. Mingtiandi. Retrieved from https://www.mingtiandi.com/real-estate/finance/chinese-estates-dumps-evergrande-shares-at-loss/

96 The Business Times. (2021, August 30). Rich friends who helped Evergrande tycoon count their losses. Retrieved from https://www.businesstimes.com.sg/property/rich-friends-who-helped-evergrande-tycoon-count-their-losses

97 Watkins, D. (2021, October 26). China urges Evergrande founder to pay debt with personal wealth. *Mint.* Retrieved from https://www.livemint.com/companies/news/china-urges-evergrande-founder-hui-ka-yan-to-pay-debt-with-personal-wealth-11635255830211.html

98 Wang, Y. (2021, November 22). Hui ka yan uses $1 billion of personal fortune to help embattled evergrande. *Forbes.* Retrieved from https://www.forbes.com/sites/ywang/2021/11/22/hui-ka-yan-uses-1-billion-of-personal-fortune-to-help-embattled-evergrande/

99 Ren, D. (2021, December 10). Evergrande chairman Hui Ka-yan forced to sell pledged shares. *South China Morning Post.* Retrieved from https://www.scmp.com/business/banking-finance/article/3159291/evergrande-chairman-hui-ka-yan-forced-sell-pledged-shares

100 *Ibid.*

101 Evergrande Group. (2021). 2020 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2020/ar2020.pdf

102 *Ibid.*

103 Dahya, J., Karbhari, Y., & Zezong, J. X. (2002). The supervisory board in chinese listed companies: Problems, causes, consequences and remedies. *Asia Pacific Business Review.* Retrieved from https://doi.org/10.1080/713999187

104 Evergrande Group. (2021). 2020 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2020/ar2020.pdf

105 Integra Group. (2021, June 30). Understanding the Role of a Legal Representative in China. Retrieved from https://www.integra-group.cn/role-of-legal-representative-in-china/

106 Evergrande Group. (2013). 2012 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2012/ar2012.pdf

107 HKEX. (2012). Consultation paper board diversity. Retrieved from https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2011-to-2015/September-2012-Consultation-Paper/Consultation-paper/cp201209.pdf

108 Mercer. (2021, December 22). Hong Kong to require gender board diversity, corporate governance. Retrieved from https://www.mercer.com/insights/law-and-policy/hong-kong-to-require-gender-board-diversity-corporate-governance/

109 Bloomberg News. (2023, September 28). Rise and Fall Of Crisis Hit Evergrande Founder Hui Ka Yan. Retrieved from https://www.ndtv.com/world-news/hui-ka-yan-rise-and-fall-of-crisis-hit-evergrande-founder-4431493

110 May, T. (2023, October 2). China Evergrande's Founder: From Rags to Riches to Under Investigation. *The New York Times.* Retrieved from https://www.nytimes.com/2023/10/02/business/china-evergrande-founder-hui-ka-yan.html

111 Sito, P., & Liu, P. (2021, September 25). Childhood dreams fuelled a debt binge that's taken Evergrande to the brink. *South China Morning Post.* Retrieved from https://www.scmp.com/business/companies/article/3149983/evergrande-debt-hui-ka-yans-childhood-dreams-fuelled-debt-binge

112 Loh, M. (2021c, October 25). Evergrande's most bizarre holdings? A hodgepodge of amusement parks all over China called 'Fairyland'. *Business Insider.* Retrieved from https://www.businessinsider.com/evergrandes-most-bizarre-holdings-amusement-parks-all-over-china-2021-10

113 Loh, M. (2021d, October 27). Meet Hui Ka Yan, the billionaire at the head of Evergrande, the massive Chinese property development company in danger of defaulting on $300 billion in loans. *Business Insider*. Retrieved from https://www.businessinsider.com/meet-billionaire-at-head-evergrande-the-worlds-most-indebted-company-2021-9

114 *Ibid.*

115 Forbes Press Releases. (2017, November 16). Hui ka yan tops 2017 forbes china rich list. *Forbes*. Retrieved from https://www.forbes.com/sites/forbespr/2017/11/16/hui-ka-yan-tops-2017-forbes-china-rich-list/

116 Yahoo! finance. (n.d.). China Evergrande New Energy Vehicle Group Limited (0708.HK). Retrieved from https://finance.yahoo.com/quote/0708.HK/history/?period1=1560436331&period2=1718289123

117 Wang, Y. (2021, November 22). Hui ka yan uses $1 billion of personal fortune to help embattled evergrande. *Forbes.* Retrieved from https://www.forbes.com/sites/ywang/2021/11/22/hui-ka-yan-uses-1-billion-of-personal-fortune-to-help-embattled-evergrande/

118 Evergrande Group. (2021). 2020 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2020/ar2020.pdf

119 The Business Times. (2022, February 9). Evergrande CEO cut his bond holdings early in crisis. Retrieved from https://www.businesstimes.com.sg/real-estate/evergrande-ceo-cut-his-bond-holdings-early-in-crisis

120 HKEX news. (2022, February 9). Form 3C. Retrieved from https://di.hkex.com.hk/di/NSForm3C.aspx?fn=DC20220209E00489&sa3=3c&3afn=DD20220209E00496&3aft=DD&sa2=nd&sid=37800&corpn=China+Evergrande+Group&sd=10%2f02%2f2021&ed=10%2f02%2f2022&cid=0&sa1=cl&scsd=10%2f02%2f2021&sced=10%2f02%2f2022&sc=3333&src=MAIN&lang=EN&g_lang=en

121 Kwok, B. (2018, May 2). Mirror mirror on the wall, who has the highest pay of all? *Asia Times.* Retrieved from https://asiatimes.com/2018/05/mirror-mirror-on-the-wall-who-has-the-highest-pay-of-all/

122 *Ibid.*

123 Reuters. (2022, July 22). China Evergrande CEO, CFO step down after probe into property services unit. *CNBC.* Retrieved from https://www.cnbc.com/2022/07/22/china-evergrande-ceo-cfo-step-down-after-probe-into-property-services-unit.html

124 *Ibid.*

125 *Ibid.*

126 Evergrande Group. (2017). 2016 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2016/ar2016.pdf

127 Evergrande Group. (2020). 2019 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2019/ar2019.pdf

128 Ren, D. (2021, March 25). Evergrande EV unit reports widening losses, unveils ambitious dealerships plan. *South China Morning Post.* Retrieved from https://www.scmp.com/business/companies/article/3127007/evergrandes-ev-unit-unveils-plan-build-1600-dealerships-across

129 Yahoo! News. (2021, November 5). Abandoned Evergrande theme park has become an eerie ghost town in China. Retrieved from https://uk.news.yahoo.com/abandoned-evergrande-theme-park-become-093125682.html

130 Sheperd, C., & Chen, A. (2022, January 5). China Evergrande's $300 billion cash crunch is deepened by demolition order. Retrieved from https://www.inquirer.com/business/evergrande-demolition-china-banks-debt-20220104.html

131 Liang, X. (2022, January 4). Why ocean flower island is important to evergrande, hainan province. *South China Morning Post*. Retrieved from https://www.scmp.com/business/article/3162082/why-ocean-flower-island-dubbed-dubai-china-important-china-evergrande

132 Evergrande Group. (2022, January 23). Change of directors. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2022/0123/2022012300057.pdf

133 Evergrande Group. (2022, July 22). Change of Directors and Chief Executive Officer. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2022/0722/2022072201496.pdf

134 Evergrande Group. (2021). 2020 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2020/ar2020.pdf

135 *Ibid.*

136 *Ibid.*

137 *Ibid.*

138 *Ibid.*

139 Evergrande Group. (2022). 2021 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2021/ar2021.pdf

140 Evergrande Group. (2023). 2022 annual report. Retrieved from https://doc.irasia.com/listco/hk/evergrande/annual/2022/ar2022.pdf

141 Evergrande Group. (2021, December 6). Inside Information. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2021/1206/2021120601521.pdf

142 Reuters. (2022, January 26). China Evergrande aims for restructuring plan within six months as creditor talks begin. Retrieved from https://economictimes.indiatimes.com/news/international/business/china-evergrande-aims-for-restructuring-plan-within-six-months-as-creditor-talks-begin/articleshow/89139435.cms?from=mdr

143 Tan, W. (2021, December 7). Evergrande set for restructuring, with no word on first formal default. *CNBC.* Retrieved from https://www.cnbc.com/2021/12/07/evergrande-set-for-restructuring-with-no-word-on-first-formal-default.html

144 The Straits Time. (2022, January 21). Evergrande to hire more debt advisers as creditor ire grows. Retrieved from https://www.straitstimes.com/business/property/evergrande-to-hire-advisers-on-debt-risks-creditor-demands

145 Tan, W. (2021, December 7). Evergrande set for restructuring, with no word on first formal default. *CNBC.* Retrieved from https://www.cnbc.com/2021/12/07/evergrande-set-for-restructuring-with-no-word-on-first-formal-default.html

146 Evergrande Group. (2021, December 6). Inside Information. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2021/1206/2021120601521.pdf

147 Nelson, C. (2011, July 1). Transparency in china: A work in progress. *China Business Review.* Retrieved from https://www.chinabusinessreview.com/transparency-in-china-a-work-in-progress/

148 Hale, T., & Kinder, T. (2022, March 29). Big Four under growing pressure as Chinese developers delay audits. *Financial Times.* Retrieved from https://www.ft.com/content/1114aeee-4a8a-479a-815f-1828aa6b12e6

149 *Ibid.*

150 Liu, P. (2022, February 16). Evergrande crisis: Red flag for market as auditors quit Chinese developers. *South China Morning Post*. Retrieved from https://www.scmp.com/business/china-business/article/3167287/evergrande-crisis-auditor-resignations-trigger-alarm-bells

151 Hale, T., & Kinder, T. (2022, March 29). Big Four under growing pressure as Chinese developers delay audits. *Financial Times*. Retrieved from https://www.ft.com/content/1114aeee-4a8a-479a-815f-1828aa6b12e6

152 Yiu, E. (2021, November 21). Hong Kong watchdog to start announcing investigations of 'high public interest'. *South China Morning Post*. Retrieved from https://www.scmp.com/business/banking-finance/article/3156679/hong-kongs-audit-watchdog-start-announcing-investigations

153 *Ibid.*

154 Reuters. (2021, October 15). Hong Kong audit watchdog investigating Evergrande and PwC. Retrieved from https://asia.nikkei.com/Business/Markets/China-debt-crunch/Hong-Kong-audit-watchdog-investigating-Evergrande-and-PwC

155 *Ibid.*

156 *Ibid.*

157 Stevenson, N. (2017, January 17). Are its auditors asleep? *GMT*. Retrieved from https://www.gmtresearch.com/en/research/newletter-12/

158 *Ibid.*

159 *Ibid.*

160 The Business Time. (2022, March 22). Debt-ridden Evergrande urges investor "caution" as audit result delayed. Retrieved from https://www.businesstimes.com.sg/companies-markets/debt-ridden-evergrande-urges-investor-caution-as-audit-result-delayed

161 Evergrande Group. (2022, March 21). Expected delay in publication of 2021 audited results. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2022/0322/2022032200295.pdf

162 Evergrande Group. (2023, January 16). Change of auditor. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2023/0116/2023011601015.pdf

163 *Ibid.*

164 China Banking News. (2024, February 1). Evergrande's Collapse and the Downfall of China's Richest Man. Retrieved from https://www.chinabankingnews.com/2024/02/01/evergrandes-collapse-and-the-downfall-of-chinas-richest-man/

165 Reuters. (2023, August 6). China Evergrande says resumption guidance fulfilled, shares set to trade next week. Retrieved from https://www.reuters.com/world/china/china-evergrande-says-resumption-guidance-fulfilled-shares-set-trade-next-week-2023-08-25/

166 Evergrande Group. (2023, September 28). Inside information. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2023/0928/2023092801875.pdf

167 Murdoch, S., Zhu, J., & Wee, R. (2023, September 27). Evergrande chairman under police watch; liquidation risk mounts. Retrieved from https://www.reuters.com/markets/asia/evergrande-shares-set-open-down-38-amid-uncertainty-over-debt-revamp-plan-2023-09-27/

168 The Straits Times. (2021, September 23). How China Evergrande's debt troubles pose a systemic risk. Retrieved from https://www.straitstimes.com/asia/east-asia/how-china-evergrandes-debt-troubles-pose-a-systemic-risk

169 Sito, P., & Liu, P. (2021, September 25). Is Evergrande too big to fail? *South China Morning Post*. Retrieved from https://www.scmp.com/business/companies/series/3149940/evergrande-too-big-fail

170 Li, S. (2021, October 9). Evergrande: Default alarms put thousands of suppliers, jobs and economy at risk as developer's IOUs balloon. Retrieved from https://finance.yahoo.com/news/evergrande-default-alarms-put-thousands-093000951.html

171 Bray, C., Liu, P., & Li, S. (2021, October 9). Evergrande: Default alarms put thousands of suppliers, jobs and economy at risk. *South China Morning Post*. Retrieved from https://www.scmp.com/business/banking-finance/article/3151669/evergrande-default-alarms-put-thousands-suppliers-jobs-and

172 Cheng, E. (2021, September 22). Here's why the Evergrande crisis is not China's "Lehman moment." *CNBC*. Retrieved from https://www.cnbc.com/2021/09/22/heres-why-the-evergrande-crisis-is-not-chinas-lehman-moment.html

173 *Ibid.*

174 Reuters. (2021, September 23). China preparing for Evergrande's downfall – WSJ. Retrieved from https://ca.finance.yahoo.com/news/china-preparing-evergrandes-downfall-wsj-104624216.html

175 *Ibid.*

176 Prasad, E. (2021, October 6). With Evergrande's managed collapse, Beijing is sending mixed messages. *Fortune*. Retrieved from https://fortune.com/2021/10/05/evergrande-collapse-debt-xi-jinping-china-economy-eswar-prasad/

177 Domm, P. (2021, September 20). The global economy could feel the effects of China's Evergrande crisis. Here's what investors should know. *CNBC*. Retrieved from https://www.cnbc.com/2021/09/20/chinas-evergrande-crisis-could-inflict-pain-on-the-world-economy.html

178 Doi, N. (2023, January 14). China relaxes 'red lines' on property sector borrowing in policy pivot. *Nikkei Asia*. Retrieved from https://asia.nikkei.com/Business/Markets/China-debt-crunch/China-relaxes-red-lines-on-property-sector-borrowing-in-policy-pivot

179 Reuters. (2023, January 6). China may ease 'three red lines' property rules - Bloomberg News. Retrieved from https://www.reuters.com/world/china/china-may-ease-three-red-lines-property-rules-bloomberg-news-2023-01-06/

180 Chen, B., Wang, J., & Guo, Y.Z. (2022, April 28). Chinese banks and bad-debt managers urged to rescue real estate. Retrieved from https://asia.nikkei.com/Spotlight/Caixin/Chinese-banks-and-bad-debt-managers-urged-to-rescue-real-estate

181 The Global Times. (2022, June 28). Evergrande opposes winding-up petition filed by Top Shine Global. Retrieved from https://www.globaltimes.cn/page/202206/1269195.shtml

182 Des Voeux Chambers. (2024, January 31). Re China Evergrande Group [2024] HKCFI 363. Retrieved from https://www.dvc.hk/insights/re-china-evergrande-group-2024-hkcfi-363

183 *Ibid.*

184 Kawase, K., Wong, E., & Pak, Y. (2023, December 4). China Evergrande's offshore winding-up case adjourned yet again. Retrieved from https://asia.nikkei.com/Business/Markets/China-debt-crunch/China-Evergrande-s-offshore-winding-up-case-adjourned-yet-again

185 Aljazeera. (2024, January 29). China's property giant Evergrande ordered to liquidate as debt talks fail. Retrieved from https://www.aljazeera.com/economy/2024/1/29/chinas-property-giant-evergrande-ordered-to-liquidate-as-debt-talks-fail

186 He, L., & Gan, N. (2024, January 29). Evergrande, symbol of China's property crisis, heads to liquidation. *CNN*. Retrieved from https://edition.cnn.com/2024/01/29/business/evergrande-ordered-to-liquidate-intl-hnk/index.html

187 Ma, D., Huang, A., & Chen, L. (2024, January 28). China Evergrande, World's Most-Indebted Property Developer, Ordered to Liquidate. *Time*. Retrieved from https://time.com/6589524/china-evergrande-group-ordered-liquidate-developer-debt-hong-kong-court/

188 Lim, H. J. (2023, December 3). Evergrande rejects report it artificially 'inflated revenue,' court delays liquidation hearing. *CNBC*. Retrieved from https://www.cnbc.com/2023/12/04/evergrande-shares-rise-over-9percent-as-liquidation-hearing-postponed-again.html

189 *Ibid.*

190 *Ibid.*

191 Evergrande Group. (2024, January 9). Clarification announcement. Retrieved from https://www1.hkexnews.hk/listedco/listconews/sehk/2024/0109/2024010900806.pdf

192 Bloomberg. (2024, March 19). Evergrande Accused of Falsifying Revenue by $78 Billion. Retrieved from https://www.livemint.com/news/evergrande-accused-of-falsifying-revenue-by-78-billion-11710789642985.html

193 *Ibid.*

194 Pao, J. (2024, May 31). PwC to be fined over Evergrande auditing work. *Asia Times*. Retrieved from https://asiatimes.com/2024/05/pwc-to-be-fined-over-evergrande-auditing-work/#:~:text=PwC%20failed%20to%20do%20the,Evergrande%27s%20auditor%20in%20January%202023.

195 *Ibid.*

196 *Ibid.*

NAB(BED) FOR FRAUD

Case overview

From the 2004 forex scandal to the 2019 Royal Commission Report, National Australia Bank (NAB) has found itself in the spotlight for a number of failures relating to conduct and governance. In 2018, NAB was hit by a scandal involving a four-year-long embezzlement by Rosemary Rogers (Rogers), the former chief of staff of NAB, and her 'bestie', Helen Mary Rosamond (Rosamond). Together, Rogers and Rosamond siphoned away A$44 million from NAB. These recurring scandals raise questions as to whether NAB has learned from past mistakes and implemented reforms, such as establishing systems and controls to prevent fraud.

The objective of this case study is to facilitate a discussion of issues such as corporate culture; fraud and misconduct; delegation of authority; internal controls and risk management; the three lines model; role of internal and external auditors; whistleblowing policies; and board composition and effectiveness.

Evolution of NAB

On 1 October 1981, the merger between National Bank of Australasia and Commercial Banking Company of Sydney marked the birth of National Australia Bank (NAB).[1] Since then, NAB has experienced growth and expansion, primarily driven by a series of acquisitions. Between 1987 and 1995, NAB completed six overseas acquisitions, including ventures into New Zealand by acquiring the Bank of New Zealand (BNZ).[2] This momentum of acquisition has persisted to the present day, with the most recent being the acquisition of Citigroup's Australian Consumer Business in 2022.[3]

As of the year ended 30 September 2023, NAB has more than 38,000 full-time employees serving more than 8.5 million customers in Australia and overseas.[4] NAB is listed on the Australia Stock Exchange (ASX)[5] and is one of the 'Big Four Banks' in Australia.[6]

NAB currently ranks as the second largest lender in Australia,[7] operating across various business segments including the Business and Private Banking, Personal Banking, Corporate and Institutional Banking, New Zealand Banking, and Corporate Functions and Other.[8] Its online banking platform, NAB Connect, has been

---

This case study was originally prepared by Liao Shih-Wei, Ong Si Quan, Patrick Tan Ze Wei, Soh Si Hui Andrea, Toh Qian Hui, Desiree, and Yeo Yu Xuan. 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 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.

ranked as the best platform in the market for five consecutive years, from 2019 to 2023, outperforming four major domestic banks in the Peter Lee Associates Large Corporate Transactional Banking Survey Australia 2023.[9]

NAB's investor base is diversified, with 33% of its ordinary shares held by domestic institutional investors, 24.7% by foreign institutional investors, and 42.3% by retail investors.[10] As of 12 October 2023, BlackRock Group is the largest shareholder of NAB, owning 6.02% of the bank's ordinary shares. Following closely are State Street Corporation and The Vanguard Group, which hold 5.21% and 5.00% of the bank's ordinary shares respectively.[11]

NAB's troubled history

Based on Institutional Shareholder Services (ISS) Governance QualityScore (GQS), the score for NAB stood at three as of 1 January 2024. The GQS uses a decile-based score that indicates a company's governance risk, where one indicates low governance risk and ten indicates high governance risk.[12] For NAB, the pillar scores are as follows: ten for Audit, two for Board, one for Shareholder Rights, and one for Compensation.[13]

According to NAB's 2022 annual report, it has successfully achieved its targets for financing social costs, including A$70 billion in environmental financing and A$2 billion dedicated to affordable and specialist housing financing.[14] While NAB has demonstrated instances of commendable achievement in corporate governance and sustainability, there have been several past scandals.

Forex fiasco

In 2004, NAB found itself in the spotlight over unauthorised foreign exchange trading activities by four employees, resulting in significant losses of approximately A$360 million.[15] These traders employed various concealment methods. One method involved entering incorrect rates which allowed profits and losses to be shifted from one day or period to another, by exploiting a one-hour window between the bank's closure and review time.[16]

Another method involved engaging in one-sided transactions. In September 2003, the traders lost heavily on the bet that the Australian and New Zealand dollars would fall against the US dollar. The traders then entered one-sided transactions to disguise their true loss position. The one-sided transactions with other divisions within NAB worked by first entering a false transaction at only their end of the position, with no offsetting position created in other divisions. These one-sided transactions were subsequently 'surrendered' during the one-hour window before the bank office checks took place.[17]

Risk management controls were also overridden. NAB required proper approval from Market Risk & Prudential Control (MR&PC) before traders could engage in transactions that involved new products. However, the rogue traders did not seek approval from MR&PC. Despite this concern being raised by MR&PC to their supervisor, no action against the traders was taken. In fact, MR&PC was pressured to approve the options transaction. Although MR&PC eventually did not approve these transactions, they were overridden when the head of global markets gave his approval.[18]

Additionally, although internal audit reports had highlighted some issues, it subsequently stated that weaknesses had been rectified by management and gave an overall rating of "adequate" for the foreign exchange business, including currency options. The Head of Internal Audit introduced a new rating system, which resulted in the number of issues escalated to the Principal Board Audit Committee (PBAC) being reduced from 70 to 21, and two remaining 3-star issues relating to currency options were not reported to the PBAC.[19]

The board and key committees failed to provide sufficient oversight.[20] When concerns were raised by other banks and regulatory authorities, NAB management downplayed them. In January 2004, NAB announced losses of up to A$185 million, later increased to A$360 million.[21]

The four traders implicated in the scandal were taken to court and subsequently sentenced to jail terms ranging from 16 to 44 months.[22] Additionally, NAB was required to adhere to 81 specific remedial measures outlined by the Australian Prudential Regulation Authority (APRA). In response to the crisis, a new Executive Committee was established, signalling the firm's intention to rebuild and strengthen its culture.[23]

The "not-so-royal" treatment

In the 2019 Royal Commission Report by Commissioner Ken Hayne (Hayne), he declared that he was not convinced that NAB's Chief Executive Officer (CEO) Andrew Thorburn (Thorburn) and former Chairman Dr Kenneth R. Henry (Dr Henry) had learnt the lessons of past misconduct.[24] Hayne highlighted NAB's misconduct concerning the charging of adviser service fees to superannuation fund members, a practice initiated around 2008 or 2009 but only acknowledged by NAB subsidiaries by mid-2014.[25] It was revealed that two entities in NAB's wealth management division, NULIS Nominees (Australia) Limited and MLC Nominees Pty Ltd, misled superannuation members about their entitlement to charge plan service fees and members' obligations to pay these fees. Members were led to believe they needed to pay for service fees associated with Plan Advisers, where the services were either not required, not provided, or could be obtained without paying these fees.[26]

Over the period from 2009 to 2018, NAB had levied over A$650 million in fees.[27] Furthermore, in a 200-page court filing, NAB admitted to 445 breaches of the Corporations Act, conceding failures in maintaining policies, procedures, and systems to ensure the provision of promised services.[28] Unfortunately, the problems were not promptly communicated to the board, and when they were, insufficient information was provided.[29] The severity of the matter and the level of engagement with the Australian Securities and Investments Commission (ASIC) were not adequately conveyed. Negotiations with ASIC regarding the issue went on for years, with NAB's proposals for investigation and compensation repeatedly rejected for not sufficiently prioritising customers. The board failed to impress upon management the urgency of resolving the matter appropriately.[30]

This became particularly evident in April 2018 when NAB proposed a remediation plan to address issues related to adviser service fees, a proposal that Thorburn later admitted, with the benefit of hindsight, should not have been made.[31] ASIC responded bluntly, criticising the proposal for inadequately recognising the severity of suspected misconduct that persisted over a long period of time and impacted a substantial number of customers. They further noted that NAB's proposals for multiple remediation methods were consistently rejected, with the latest falling even further short of expectations regarding customer interests.[32] Even as late as November 2018, NAB had not reached an agreement with ASIC regarding the actions or remedies the bank would take for customers receiving financial services through licensees affiliated with or aligned with NAB.[33] As of April 2020, NAB had refunded approximately A$325 million to clients due to this incident, including A$3.7 million in interest.[34]

Dr Henry believed that the board should have intervened earlier.[35] Hayne concurred, emphasising that it was evident that the board should have acted earlier to emphasise to management the importance of addressing the matter swiftly and in a manner that prioritised the interest of NAB's customers.[36]

The "Besties" scandal

On 6 December 2017, an anonymous letter addressed to Dr Henry and Thorburn was sent through NAB's workplace whistleblower channel and found its way to the media. This brought to light another massive fraud, involving Rosemary Rogers (Rogers), NAB's chief of staff to the CEO.[37] The letter alleged that "Rose", believed to be Rogers, had received an astonishing A$1.5 million from the event management company known as Human Group Pty Ltd (Human Group). It further claimed that Rogers had acquired "a number of other things that had been illegally gained".[38]

In response, NAB's management, led by Neil Griffiths, interviewed Rogers and Helen Mary Rosamond (Rosamond), the owner of the Human Group, the next day. Both Rogers and Rosamond vehemently denied the allegations.[39] Rogers even explained that the A$1.5 million transferred from Human Group to her was, in fact, a loan extended by Rosamond with the intention of reducing the interest on her home loan.[40] However, despite their resolute denials, the evidence was firmly against them.[41]

Moving up the fraud chain

Rogers started her career in NAB as a bank teller in 1995 and steadily rose up the corporate ladder, eventually becoming the chief of staff to NAB's CEO Cameron Clyne and his successor Thorburn.[42] Her performance over the years impressed successive NAB's CEOs, gaining their complete trust.

Unfortunately, this trust was exploited by Rosamond, who devised a plan to defraud NAB. She sent falsified and massively inflated invoices through Human Group to Rogers, who would approve them without question. In return, Rogers would receive kickbacks from Rosamond for doing Human Group a "special favour".[43] Among the many invoices approved by Rogers, one was for "Project Eagle", the internal code name NAB used for the recruitment of the former New South Wales (NSW) premier, Mike Baird, into the company. The actual bill for the recruitment, executed by an external company, was A$60,000. However, the invoice submitted to NAB for this service was inflated to A$2.2 million.[44]

The elaborate deception occurred from July 2013 to February 2018. During this time, Human Group received more than A$44 million from NAB. At one point, it was revealed that NAB contributed 97% of Human Group's total revenue.[45]

R&R

> "The extravagance of their spending, the opulence of the lifestyle both pursued was stunning."
>
> *- Judge Robert Sutherland, during Rosamond's sentencing in July 2023*[46]

The kickbacks totalled A$5.6 million, providing Rogers with the means to indulge in a lavish lifestyle. She was able to "go on an A$620,000 family holiday for eight to the United States, an almost A$160,000 European holiday, drive an A$172,000 BMW X5, purchase a house (A$1.5 million), a house deposit (A$380,000), a caravan (A$90,000), and an A$115,000 boat, among other kickbacks."[47]

Meanwhile, Rosamond spent more than A$1 million on personal expenses, including A$86,000 on home renovations, over A$372,000 on landscaping, nearly A$140,000 on a family holiday to the US, A$228,000 on interior design, and more than A$14,000 for catering for her 40th birthday celebration. Additionally, she retained between A$2.4 million and A$4.9 million in unused funds allocated to fulfilling contracts.[48]

> "I find it absolutely staggering that those frauds were not detected by some appropriate system of internal auditing."
>
> *- Judge Paul Conlon, in his sentencing remarks relating to Rogers' criminal activities*[49]

'Besties' and 'sister from another mother'

In the scandal's early stages, Rosamond and Rogers managed to conceal their fraudulent activities due to Human Group's legitimate work for NAB, which included organising executive offsite events and retreats. Their initial connection dates back to 2005 when Human Group was engaged by NAB to oversee an event in Hong Kong.[50] This collaboration deepened over time, with Human Group consistently handling NAB's events and eventually becoming a preferred supplier under a 'panel contract'. Rosamond's exceptional event coordination skills and

ability to deliver high-quality events helped to build rapport with NAB.[51] Their professional relationship quickly evolved into a close friendship through regular meetings, evident from the text message receipts shown in the court trial, where they referred to each other as 'besties' and 'sister from another mother'. Their bond grew so strong that Rosamond even altered her will to include Rogers.[52]

From besties to cellmates

On 20 July 2022, Rosamond was sentenced by the District Court of New South Wales to 15 years' imprisonment, with a non-parole period of eight years.[53] She was found guilty on 90 out of 92 fraud charges brought against her.[54] In February 2020, Rogers pleaded guilty and received a significant discount for admitting to numerous offences and cooperating with authorities. The offences included 27 counts of being an agent corruptly receiving a benefit and for dishonestly obtaining a financial advantage by deception. She was sentenced to a maximum prison term of eight years, with a non-parole period of four years and four months.[55]

> "The overarching motivation of the offender (Rosamond) is accurately described as one of greed, self-gratification and enrichment,"
>
> *- Judge Robert Sutherland, during Rosamond's sentencing in July 2023*[56]

Excessive delegation?

NAB's board delegates the responsibility for day-to-day management of the group's operations to the managing director and CEO.[57] The board retains authority to approve major capital expenditures, acquisitions, and divestitures beyond the authority levels delegated to management and other major business initiatives.[58]

The CEO further delegates authority to members of the Executive Leadership Team (ELT), who are directly accountable for executing the bank's strategy. The ELT's role also includes promoting an inclusive culture that encourages diversity of thought, builds productivity, and supports an engaged and high-performing workforce.[59] At the executive level, risk management is led by the CEO and the Group Risk Return Management Committee (GRRMC), which is accountable for matters relating to culture, risk strategy and performance, and integrated governance processes. Several sub-committees support the GRRMC in governing specific material risks.[60]

As the chief of staff, Rogers was authorised to approve payments of up to A$20 million.[61]

Porous three lines?

NAB adopted a 'Three Lines of Accountability' operating model for managing risk.[62] The first line encompasses business units, such as front office or customer-facing units, responsible for identifying, assessing, and controlling risks.[63] The second line consists of an independent risk function that develops risk management frameworks, defines risk boundaries, and provides advice. The third line involves an independent internal audit function reporting to the board, which monitors the end-to-end effectiveness of risk management and compliance with the risk management framework.[64]

The bank implemented measures against financial crimes, including an anti-money-laundering and counter-terrorism financing program to ensure compliance with international anti-bribery and corruption rules and regulations.[65] It also has a Group Whistleblower Program which is an external hotline and reporting service independently monitored by KPMG FairCall Service.[66] This program is accessible to all employees and subsidiaries within NAB's various operations, with oversight provided by the Audit Committee (AC) and the Group Whistleblower Committee. Whistleblowers who report a genuine wrongdoing concern are offered protection against any form of reprisal taken against them.[67] It was a whistleblower's anonymous complaint which led to the exposure of the collusive fraud involving Rosamond and Rogers.

NAB's internal budgeting practices include the development of an annual financial plan, allocated at a business unit level. Each business unit executive manages their unit's expense plan and is accountable for the costs incurred. The finance department reviews monthly and compares expenses incurred to the business unit plan in consultation with the relevant executives.[68]

NAB publicly acknowledged that the controls in the office of the CEO were inadequate during the fraud. The usual controls that operated in other areas of the bank were not operating in the office of the CEO. [69]

> "Isn't it somewhat unbelievable that leaders of this organisation of 30,000 employees, ... could be so unbelievably lax or grossly negligent that they have no idea what they were spending their or their customers' money on?"
>
> *– Anton Hughes, barrister of Rosamond in the New South Wales district court*[70]

Internal audit

The internal audit at NAB conducts analysis and independent appraisals of the adequacy and effectiveness of NAB's risk management framework and internal control environment. It has full and unrestricted access to all people, records, and systems as necessary to undertake its activities. The AC recommends to the board on the appointment, performance, and dismissal of the executive general manager of internal audit, while also monitoring the activities and performance of internal audit. This includes assessing whether the internal audit remains independent of management and if it is adequately resourced. Senior representatives from external auditors, Ernst & Young (EY), and internal audit attended every scheduled meeting of the AC.[71]

Internal audit has a direct reporting line to the Chair of the AC and informal reporting lines to the CEO and Chief Financial Officer (CFO). It provides regular reports to the AC and Risk and Compliance Committee (RCC) on risk and control matters.[72]

From red to amber

EY has served as NAB's external auditor since 2005, receiving over A$20 million a year for provision of audit services alone.[73] At the end of 2018, following the publication of the Royal Commission into Banking Report, consultants from EY met with the then NAB Chairman, Dr Henry, to discuss the preparation of a report on NAB's risk management and culture.[74] NAB was charged A$450,000 for these services, including a discount of A$80,000 due to EY's concurrent provision of external audit services.[75]

At the time of review, NAB's own risk ratings for compliance was rated "red" on its internal traffic light system for at least 20 months, operational risk was rated "amber" for 35 months, and regulatory risk was rated "amber" for 26 months.[76] Despite these risk management red flags, EY allegedly promised NAB that its leaders could review the supposedly independent APRA report and tone down the language in the final version of the assessment.[77]

These meeting minutes were later leaked by a whistleblower, who said that this revelation "show[ed] a reckless, wanton indifference to what regulatory obligations are"[78] and "NAB's modus operandi has always been to deny, deflect and defend".[79]

There was a large contrast between EY's confidential review notes and the draft report, with the latter seemingly downplaying NAB's true performance in risk management and culture. While the draft used terms like "adequate and appropriate"[80] to describe NAB's risk management framework and concluded that they had "largely" met APRA's regulatory requirements, EY's confidential notes stated that "The bank focuses only on addressing the issues through Band-aid fixes rather than investing in long-term solutions".[81]

Leaked documents further revealed that NAB's Chairman Dr Henry privately told EY consultants that he was "confident"[82] the bank was still selling products that ripped off its customers and would eventually trigger compensation.[83] The corporate regulator warned that auditors were being "compromised" by providing lucrative consulting work to their clients — and the cosy relationship between EY and NAB puts the efficacy of the fourth line of defence into question.[84]

After the leak, EY allegedly received inquiries about the leaked minutes but refused to comment, citing their policy of not discussing client matters.[85]

As of FY2023, EY continues to act as NAB's external auditors.[86]

Backlash from shareholders

NAB faced scathing criticism from its shareholders for the lapses that enabled Rosamond to embezzle millions of dollars from the bank over several years. During NAB's 2022 annual meeting, Chairman Philip Chronican (Chronican) expressed his astonishment and apologised to shareholders.[87]

During the meeting, investors raised questions as to how such a significant fraud had gone unnoticed by NAB's internal controls and auditors.[88] It was only after the whistleblower came forward that the fraudulent activities were brought to light.[89]

Chronican described this episode as a "very sad chapter in the history of this company".[90] Non-executive director (NED) Doug McKay, a member of NAB's AC, admitted the embarrassment and remorse he felt about the incident, viewing it as a blemish on his stewardship and career. He acknowledged the breakdown in the bank's internal controls, emphasising that significant overhauls had since been undertaken.[91]

Fortifying the defences

NAB has taken the following steps to strengthen its internal controls:

- The AC conducted a review of controls in the CEO's office regarding third-party vendor selection and contract management. A review of all contracts then managed by the CEO's office was undertaken to ensure compliance with the group procurement policy.[92]
- The group procurement policy now provides that all procurement and supplier management activity must adhere to approved processes, including supplier due diligence (which includes ESG risk assessment), a mandated selection process, and the use of approved systems. Furthermore, business units must engage the strategic sourcing team when planning to procure any goods and/or services.[93]
- NAB's procurement risk and control environment continues to be reviewed on an ongoing basis to account for new and emerging risks. In 2019, NAB implemented the Sourceline (Source to Pay) system which improves transparency, centralises sourcing records, and improves spend analytics across NAB.[94]
- All employees are now required to undergo annual training to ensure compliance with policies relating to gifts and expenses.[95]

In 2018, NAB conducted a self-assessment into the effectiveness of the bank's governance, accountability, and culture frameworks and practices, on the request of the APRA. Weaknesses were found in areas such as conduct, compliance, and the integrated management of operational risk. Specifically, the self-assessment highlighted that NAB lacked sufficient focus on customer outcomes, precise standards, and promptness in addressing recognised weakness.[96]

In 2019 and 2020, NAB's Risk Division and People and Culture Division, with board engagement, reviewed the root causes of cultural traits identified in NAB's 2018 self-assessment.[97] This led to a series of actions which strengthened NAB's governance and accountability. These actions included:

- An enhanced three lines of defence model that is adequately resourced, with clear separation of accountability and independence between management, monitoring, and oversight.[98]
- A refresh of NAB's corporate values and behaviours, with strong emphasis on accountability for decisions as a key element of corporate culture.[99]
- An update of NAB's Code of Conduct and consequence management frameworks, which apply to all employees and the board of directors to drive clarity on expectations and acceptable behaviours.[100]
- Enterprise-wide mandatory training as well as ongoing communication and reinforcement of the Speaking Up program for all employees, promoting NAB's Whistleblower Program as a safe harbour to raise concerns and issues, fostering a culture where employees are encouraged to raise issues.[101]
- An update to NAB's expense management policy, and gifts and entertainment policy including a new Financial Management Delegations system and review of all management expenditure authority levels.[102]

Changing of the guard

At the time of the fraud discovery in 2017, the board consisted of 10 directors, with nine independent non-executive directors other than the CEO.[103] Dr Henry served as Chairman of the board since 2015. Dr Henry previously served as the Australian Treasury Secretary and special advisor to the Australian Prime Minister, amongst other leadership roles. He was also the recipient of several medals recognising his service to the nation.[104] Dr Henry held six other declared outside interests, including directorship at ASX, chairmanship of the Sir Roland Wilson Foundation, and Governor of the Australian Economic Development Committee.[105]

Following the public release of the final Royal Commission Report,[106] Thorburn and Dr Henry announced their resignation from the board on 7 February 2019, with a press release citing that they were "deeply sorry"[107] about the issues mentioned in the Royal Commission Report.[108]

Thorburn was replaced as CEO by Chronican, who was appointed as interim CEO while also serving as a senior NED of NAB. Subsequently, in July 2019, NAB announced the appointment of Ross McEwan (McEwan), previously the CEO of the Royal Bank of Scotland (RBS), as its new CEO.[109] McEwan was credited for the transformation of the RBS under his watch, with RBS returning to profitability in just five years, following a government bailout.[110] Chronican was then appointed as Chairman of the board.[111]

In December 2019, NAB also appointed Kathryn Fagg (Fagg) as a NED.[112] According to NAB's press release, Fagg was said to be a "respected and experienced director and Chairman, with extensive leadership experience across a range of industries, including banking".[113] She was a board member of the Reserve Bank of Australia and was made an Officer of the Order of Australia..[114] Simon McKeon AO (McKeon) was next to join the board as a NED in February 2020. He is an experienced professional in banking, risk management and governance and was named the 2011 Australian of the Year and 2022 Officer of the Order of Australia for his distinguished service to business and the community.[115]

In May 2023, the board announced the appointment of two more new NEDs, Carolyn Kay (Kay) and Christine Fellowes (Fellowes). Kay boasts over 30 years of experience in the financial services sector in executive and non-executive roles.[116] Fellowes's expertise is in digital disruption, transformation, and technology.[117] They were to replace David Armstrong, the former Chairman of the AC and member of the RCC,[118] and Peeyush Gupta, a former member of the AC and RCC,[119] who were to step down after the Annual General Meeting (AGM) in December 2023.[120] With these latest changes, the board consists of 10 directors, including the CEO.

Gender diversity on the board improved from 30% in 2017 to 37.5%.[121,122] However, only one board member is not of Caucasian origin.[123]

The board also established the Customer Committee (CC) to guide leadership and stakeholder focus on customer feedback and outcomes. Its 2022 focus highlighted the bank's resolve to improve its response to fraudulent activities, customer complaints, as well as advocating for fair treatment of NAB's customers in line with community expectations.[124] This greater focus came after the fraud discovery and the fees-for-no-service scandal, when NAB was found to have charged customers ongoing fees despite not providing advice and appropriate fee disclosures from 2009 to 2018.[125]

In mid to late 2023, McEwan informed Chronican of his readiness to initiate his retirement process.[126] On 7 February 2024, NAB announced the appointment of Andrew Irvine (Irvine) as CEO and managing director. Irvine, who has served as NAB's Group Executive for Business and Private Banking since September 2020, will assume the role on 2 April 2024, succeeding McEwan. Prior to joining NAB, Irvine was Head of Canadian Business Banking at the Bank of Montreal (BMO), Canada's oldest bank and one of its largest financial institutions. He held a range of roles at BMO over more than 12 years and previously worked for McKinsey & Company, Lycos Europe, and Credit Agricole.[127]

According to Chronican, Irvine "had key strengths supporting his appointment including passion for customer service, success leading Australia's largest business bank franchise, people leadership, risk management and international experience."[128]

Meanwhile, McEwan will retire from executive roles after a distinguished career in financial and insurance services. He expressed his delight at Irvine's appointment, stating that after a thorough assessment process, he felt confident in passing on the torch.

Discussion questions

1. What were the key contributory factors to the fraud involving Rosamond and Rogers? Do you believe the underlying causes of this fraud are related to the other cases of fraud and misconduct at NAB described in the case? Explain.
2. Critically evaluate the changes in NAB's board composition. How can a board mitigate the risks of fraud and misconduct, such as those seen at NAB? What factors do you think would contribute to the effectiveness of a board in ensuring compliance and creating value?
3. At NAB, the CEO had delegated considerable authority to the chief of staff. The controls in the office of the CEO were described as inadequate during the fraud. The usual controls that operated in other areas of the bank were not operating in the office of the CEO. To what extent should the board also be responsible for this? Explain.
4. NAB has a 'Three Lines of Accountability' operating model for management of risk. Explain the three lines and why the cases of fraud and misconduct occurred despite NAB having such a model.
5. The fraud involving Rosamond and Rogers was exposed through an anonymous whistleblowing complaint. Why do you think it was not discovered by internal or external audits?
6. What are the key elements of an effective whistleblowing policy? Do you believe the whistleblowing policy was effective at NAB? Explain.
7. It was revealed that NAB's external auditors, Ernst & Young, were aware of some of the governance issues within NAB. Discuss the external auditor's role in such a situation and whether you believe that EY acted appropriately. What factors may have affected the actions or inaction of EY? Should NAB replace the external auditor? Explain.
8. Critically evaluate the adequacy of the actions taken by NAB in response to the scandal. Are the changes to NAB's corporate governance, internal controls and risk management sufficient to prevent similar incidents in the future? Explain.

Endnotes

1 NAB. (n.d.). About Us. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us

2 NAB. (1996, November 21). Annual Report 1996. *National Australia Bank.* https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/annual-report-1996.pdf

3 NAB (2022). Annual Report 2022. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2022-annual-report.pdf

4 NAB (2023). Annual Report 2023. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2023-annual-report.pdf

5 ASX. (2023, October 6). NAB share price and company information for ASX:NAB. *Australian Securities Exchange.* Retrieved from https://www.asx.com.au/markets/company/NAB

6 Richardson, D. (2012, December). The rise and rise of the big banks - Concentration of ownership. *The Australia Institute.* Retrieved from https://australiainstitute.org.au/wp-content/uploads/2020/12/TB-15-The-rise-and-rise-of-the-big-banks_4.pdf

7 Investing.com. (2023, September 22). National Australia Bank faces $2.1 million fine over improper charges. *Yahoo! Finance.* Retrieved from https://sg.finance.yahoo.com/news/national-australia-bank-faces-2-024915661.html

8 Financial Times. (n.d.). National Australia Bank Ltd. Retrieved from https://markets.ft.com/data/equities/tearsheet/profile?s=NAB:DEU

9 NAB. (2023, June 1). NAB corporate and Institutional Bank ranked number one for relationship strength in transactional banking and Debt Capital Markets. *NAB News.* https://news.nab.com.au/news/nab-corporate-and-institutional-bank-ranked-number-one-for-relationship-strength-in-transactional-banking-and-debt-capital-markets/

10 NAB. (n.d.). Share register profile. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/shareholder-centre/Share-register-profile

11 NAB (2023). Annual Report 2023. National Australia Bank. Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2023-annual-report.pdf

12 ISS. (n.d.). Governance QualityScore. Retrieved from https://www.issgovernance.com/esg/ratings/governance-qualityscore/

13 Yahoo! Finance. (2023, November 11). National Australia Bank Limited (NAB.AX) company Profile &; Facts. *Yahoo Finance.* Retrieved from https://sg.finance.yahoo.com/quote/NAB.AX/profile?p=NAB.AX

14 NAB (2022). Annual Report 2022. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2022-annual-report.pdf

15 Corporate Governance Case Studies Volume two. (2013, May). Pg 79-97. Retrieved from https://www.cpaaustralia.com.au/-/media/project/cpa/corporate/documents/tools-and-resources/ethics/cg-vol-2.pdf?rev=f44259e6c24843a2b1a0cb81090486fe

16 Corporate Governance Case Studies Financial Services Edition. (2020). Pg 46-49. Retrieved from https://governanceforstakeholders.com/wp-content/uploads/2020/07/cg-fs-casestudies.pdf

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 Corporate Governance Case Studies Volume two. (2013, May). Pg 79-97. Retrieved from https://www.cpaaustralia.com.au/-/media/project/cpa/corporate/documents/tools-and-resources/ethics/cg-vol-2.pdf?rev=f44259e6c24843a2b1a0cb81090486fe

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 Hayne, K. (2019, February 1). Final Report Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry VOLUME 1. Retrieved from https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf

25 *Ibid.*

26 Australian Securities & Investments Commission. (2020, September 14). NAB superannuation trustee companies to pay $57.5 million penalty for fees for no service breaches. Retrieved from https://asic.gov.au/about-asic/news-centre/find-a-media-release/2020-releases/20-211mr-nab-superannuation-trustee-companies-to-pay-57-5-million-penalty-for-fees-for-no-service-breaches/

27 James F. (2021, June 16). NAB fees-for-no-service scandal draws to a close. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/financial-services/nab-fees-for-no-service-scandal-draws-to-a-close-20210615-p581b1

28 *Ibid.*

29 Hayne, K. (2019, February 1). Final Report Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry VOLUME 1. Retrieved from https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 Easton, S. (2019, February 9). The finance royal commissioner thinks Ken Henry just doesn't seem to get it. *The Mandarin.* Retrieved from https://www.themandarin.com.au/103682-the-finance-royal-commissioner-thinks-ken-henry-just-doesnt-seem-to-get-it/

34 James, F. (2021, June 16). NAB fees-for-no-service scandal draws to a close. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/financial-services/nab-fees-for-no-service-scandal-draws-to-a-close-20210615-p581b1

35 Hayne, K. (2019, February 1). Final Report Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry VOLUME 1. Retrieved from https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf

36 *Ibid.*

37 Whitbourn, M. (2022, September 27). 'Whistleblower' letter triggered NAB probe, trial of alleged fraudster told. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/national/whistleblower-letter-triggered-nab-probe-trial-of-alleged-fraudster-told-20220927-p5blbq.html

38 Mason, M. (2023, July 21). The 'besties' who fleeced NAB and how it all unravelled. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/financial-services/the-besties-who-fleeced-nab-and-how-it-all-unravelled-20230227-p5cnv9

39 *Ibid.*

40 *Ibid.*

41 *Ibid.*

42 Mason, M. (2023b, July 21). The 'besties' who fleeced NAB and how it all unravelled. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/financial-services/the-besties-who-fleeced-nab-and-how-it-all-unravelled-20230227-p5cnv9

43 Stonehouse, G. (2021, January 27). Former NAB executive Rosemary Rogers jailed after defrauding bank of $5.4 million. *7NEWS.* Retrieved from https://7news.com.au/news/crime/ex-nab-executive-jailed-for-fraud-c-2038455

44 Mitchell, G. (2022, August 16). NAB paid false $2.2 million invoice after claim it was needed for Mike Baird, court told. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/national/nsw/nab-paid-false-2-2-million-invoice-after-claim-it-was-needed-for-mike-baird-court-told-20220816-p5ba8r.html

45 *Ibid.*

46 Mason, M. (2022, August 16). NAB fraudster gets 15 years' jail. *Financial Review.* Retrieved from https://www.afr.com/companies/financial-services/nab-fraudster-gets-15-years-for-breathtaking-scheme-20230426-p5d3b3

47 NAB fraudster to await sentence in jail. (2022, December 6). *The Sydney Morning Herald*. Retrieved from https://www.smh.com.au/national/nsw/nab-fraudster-to-await-sentence-in-jail-20221206-p5c421.html

48 *Ibid.*

49 Australian Associated Press. (2021, January 27). Former NAB executive Rosemary Rogers jailed for defrauding bank of millions of dollars. *The Guardian.* Retrieved from https://www.theguardian.com/australia-news/2021/jan/27/former-nab-executive-rosemary-rogers-jailed-for-defrauding-bank-of-millions-of-dollars

50 Ton, W. (2022, November 23). Sydney executive guilty over NAB fraud. *PerthNow.* Retrieved from https://www.perthnow.com.au/news/crime/sydney-executive-guilty-over-nab-fraud-c-8945296

51 Scheikowski, M. (2022, September 8). Jailed fraudster tells jury of kickbacks. *The Standard.* Retrieved from https://www.standard.net.au/story/7895083/jailed-fraudster-tells-jury-of-kickbacks/

52 Australia Associated Press. (2021, January 27). Disgraced bank executive who collected $5.4million in kickbacks over four years is jailed. *Mail Online.* Retrieved from https://www.dailymail.co.uk/news/article-9191179/Disgraced-bank-executive-collected-5-4million-kickbacks-four-years-jailed.html

53 Whitbourn, M. (2023, July 20). 'Breathtaking in its audacity': NAB fraudster jailed for maximum of 15 years. *The Sydney Morning Herald*. Retrieved from https://www.smh.com.au/national/nsw/breathtaking-in-its-audacity-nab-fraudster-jailed-for-maximum-of-15-years-20230424-p5d2uh.html

54 Noyes, J. (2021, January 27). Former NAB chief of staff sentenced to eight years' jail over kickback scheme. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/national/nsw/former-nab-chief-of-staff-sentenced-to-eight-years-jail-over-kickback-scheme-20210126-p56x0z.html

55 Australian Associated Press. (2021, January 27). Former NAB executive Rosemary Rogers jailed for defrauding bank of millions of dollars. *The Guardian*. Retrieved from https://www.theguardian.com/australia-news/2021/jan/27/former-nab-executive-rosemary-rogers-jailed-for-defrauding-bank-of-millions-of-dollars

56 Australian Associated Press. (2023, July 20). Sydney woman who defrauded NAB of more than $19m jailed for at least eight years. *The Guardian.* Retrieved from https://www.theguardian.com/australia-news/2023/jul/20/nab-fraud-helen-rosamond-jailed-term-sentence-court#:~:text="The%20overarching%20motivation%20of%20the,parole%20period%20of%20eight%20years.

57 NAB (2023, October). Board Charter. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/board-charter.pdf

58 *Ibid.*

59 NAB. (2018). 2018 Corporate Governance Statement. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/2018-corporate-governance-statement.pdf

60 NAB. (2017, November 14). Annual Financial Report 2017. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/2017-annual-financial-report.pdf

61 *Ibid.*

62 NAB. (n.d.). About us. Corporate Governance. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/corporate-governance

63 JX Low. (2020, April 29). Three Lines of Defence. Anti-Money Laundering / Countering the Financing of Terrorism. Retrieved from https://aml-cft.net/library/three-lines-defence/

64 NAB. (n.d.). About us. Corporate Governance. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/corporate-governance

65 NAB. (n.d.). Managing financial crime. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/corporate-governance/managing-financial-crime

66 NAB. (n.d.). National Australia Bank Ltd Code of Conduct. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/corporate-governance/code-of-conduct

67 NAB. (n.d.). Group Whistleblower Protection Policy. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/policy/corporate/whistleblower-policy.pdf

68 Parliament of Australia. (2021, March 2). House of Representatives Standing Committee on Economics Review of the Four Major Banks NAB. *Parliament of Australia.* Retrieved from https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Economics/46p/Banks_and_Financial_Institutions/1_Bank_Review_-_First_Report/NAB_QoNs/NAB72QW.pdf?la=en&hash=BDABFA4DF3F5958A7A84E133E201AF4FABD9398A#

69 *Ibid.*

70 Luke, C. (2022, November 9). NAB 'embarrassment a factor in fraud case'. *The Canberra Times.* Retrieved from https://www.canberratimes.com.au/story/7975916/nab-embarrassment-a-factor-in-fraud-case/

71 NAB. (2022). Annual Report 2022. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2022-annual-report.pdf

72 *Ibid.*

73 Ferguson, A. (2019, August 2). Time's up for Henry but also the billion-dollar audit club. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/banking-and-finance/time-s-up-for-henry-but-also-the-billion-dollar-audit-club-20190802-p52dak.html

74 Ferguson, A. (2019, August 2). Secret interviews reveal risky business for NAB's top executives. *Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/banking-and-finance/secret-interviews-reveal-risky-business-for-nab-s-top-executives-20190801-p52czf.html

75 Tadros, E. (2019, August 2). EY's dual roles at NAB raises concerns. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/ey-s-dual-roles-at-nab-raises-concerns-20190802-p52d5n

76 Ferguson, A. (2019, August 2). Secret interviews reveal risky business for NAB's top executives. *Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/banking-and-finance/secret-interviews-reveal-risky-business-for-nab-s-top-executives-20190801-p52czf.html

77 Tadros, E. (2019, August 2). EY's dual roles at NAB raises concerns. *Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/ey-s-dual-roles-at-nab-raises-concerns-20190802-p52d5n

78 *Ibid.*

79 *Ibid.*

80 Ferguson, A. (2019, August 2). Secret interviews reveal risky business for NAB's top executives. *Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/banking-and-finance/secret-interviews-reveal-risky-business-for-nab-s-top-executives-20190801-p52czf.html

81 *Ibid.*

82 Ratnatunga, J. (2019, August 7). Auditors to the slaughter: why audit opinions are "untrue" and "unfair". *Certified Management Accountants Australia.* Retrieved from https://cmaaustralia.edu.au/ontarget/auditors-to-the-slaughter-why-audit-opinions-are-untrue-and-unfair/

83 Ratnatunga, J. (2019, August 7). Auditors to the slaughter: why audit opinions are "untrue" and "unfair". *Certified Management Accountants Australia.* Retrieved from https://cmaaustralia.edu.au/ontarget/auditors-to-the-slaughter-why-audit-opinions-are-untrue-and-unfair/

84 Tadros, E. (2019, August 2). EY's dual roles at NAB raises concerns. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/ey-s-dual-roles-at-nab-raises-concerns-20190802-p52d5n

85 Ferguson, A. (2019, August 2). Secret interviews reveal risky business for NAB's top executives. *Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/banking-and-finance/secret-interviews-reveal-risky-business-for-nab-s-top-executives-20190801-p52czf.html

86 NAB (2023). Annual Report 2023. National Australia Bank. Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2023-annual-report.pdf

87 Koob, S. F. (2022, December 16). 'How did you miss it?': NAB board grilled over fraud case. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/banking-and-finance/how-did-you-miss-it-nab-board-grilled-over-fraud-case-20221216-p5c6us.html

88 *Ibid.*

89 *Ibid.*

90 *Ibid.*

91 *Ibid.*

92 Parliament of Australia. (2021, March 2). House of Representatives Standing Committee on Economics Review of the Four Major Banks NAB. Retrieved from https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Economics/46p/Banks_and_Financial_Institutions/1_Bank_Review_-_First_Report/NAB_QoNs/NAB72QW.pdf?la=en&hash=BDABFA4DF3F5958A7A84E133E201AF4FABD9398A#

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 NAB. (2018, November). NAB self assessment on governance, accountability and culture. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/nab-self-assessment-2018.pdf

97 Parliament of Australia. (2021, March 2). House of Representatives Standing Committee on Economics Review of the Four Major Banks NAB. Retrieved from https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/243_Reps_Committees/Economics/46p/Banks_and_Financial_Institutions/1_Bank_Review_-_First_Report/NAB_QoNs/NAB72QW.pdf?la=en&hash=BDABFA4DF3F5958A7A84E133E201AF4FABD9398A#

98 *Ibid.*

99 *Ibid.*

100 *Ibid.*

101 *Ibid.*

102 *Ibid.*

103 NAB. (2017, November 14). Annual Financial Report 2017. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/2017-annual-financial-report.pdf

104 NAB. (2017). Annual Financial Report 2017. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/2017-annual-financial-report.pdf

105 *Ibid.*

106 The Australian Financial Review (2019, February 4). Banking royal commission final report: Key Recommendations. Retrieved from https://www.afr.com/companies/financial-services/banking-royal-commission-key-recommendations-20190203-h1at2v

107 NAB. (2019, February 7). CEO and Chairman to leave NAB. *National Australia Bank.* Retrieved from https://news.nab.com.au/news/ceo-and-chairman-to-leave-nab/

108 *Ibid.*

109 Laidler, J. (2019, July 18). Ross McEwan Appointed CEO Of National Australia Bank. *National Australia Bank.* Retrieved from https://news.nab.com.au/news/ross-mcewan-appointed-ceo-of-national-australia-bank/

110 Kollewe, J. and Monaghan, A. (2019, April 25). Royal Bank of Scotland chief executive Ross McEwan resigns. *The Guardian.* Retrieved from https://www.theguardian.com/business/2019/apr/25/royal-bank-of-scotland-chief-executive-ross-mcewan-resigns#:~:text=When%20McEwan%20took%20the%20helm,%C2%A31.6bn%20in%202018.

111 Laidler, J. (2019, July 18). Ross McEwan Appointed CEO Of National Australia Bank. *National Australia Bank.* Retrieved from https://news.nab.com.au/news/ross-mcewan-appointed-ceo-of-national-australia-bank/

112 NAB. (2019, December 18). 2019 Notice of Annual General Meeting. *National Australia Bank.* Retrieved from https://announcements.asx.com.au/asxpdf/20191115/pdf/44blrj9qh4l9r9.pdf

113 NAB. (2021, October 20). Kathryn Fagg appointed to NAB Board. *National Australia Bank.* Retrieved from https://news.nab.com.au/news/kathryn-fagg-appointed-to-nab-board/

114 *Ibid.*

115 NAB. (2020). Annual Financial Report 2020. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/2020-annual-financial-report-pdf.pdf

116 NAB. (n.d.). Board of Directors. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/board-of-directors/carolyn-kay

117 NAB. (n.d.). Board of Directors. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/board-of-directors/christine-fellowes

118 NAB. (n.d.). Board of Directors. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/board-of-directors/david-armstrong

119 NAB. (n.d.). Board of Directors. *National Australia Bank.* Retrieved from https://www.nab.com.au/about-us/board-of-directors/peeyush-gupta

120 Investor Media. (2023, May 19). NAB adds 2 non-executive directors. Retrieved from https://www.investordaily.com.au/appointments/53360-nab-adds-two-non-executive-directors

121 NAB. (2017). Annual Financial Report 2017. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nabrwd/documents/reports/corporate/2017-annual-financial-report.pdf

122 NAB. (2022). Annual Report 2022. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2022-annual-report.pdf

123 *Ibid.*

124 NAB. (2022). Annual Report 2022. *National Australia Bank.* Retrieved from https://www.nab.com.au/content/dam/nab/documents/reports/corporate/2022-annual-report.pdf

125 Hayne, K. (2019, February 1). Final Report Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry VOLUME 1. Retrieved from https://www.royalcommission.gov.au/system/files/2020-09/fsrc-volume-1-final-report.pdf

126 Muroi, M. (2024, February 7). NAB appoints business boss Andrew Irvine as next CEO. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/banking-and-finance/nab-ceo-ross-mcewan-to-exit-20240207-p5f2zq.html#

127 NAB News. (2024, February 7). Andrew Irvine appointed CEO of NAB. Retrieved from https://news.nab.com.au/news/andrew-irvine-appointed-ceo-of-nab/

128 *Ibid.*

OPTUS: PROBLEMS DOWN UNDER

Case overview

In September 2022, Optus fell victim to a cybersecurity attack that impacted approximately 40% of Australia's population. Sensitive personal data including Medicare details and passport numbers were compromised. The breach exposed Optus' security flaws and raised questions about management's handling of the situation. This incident served as a catalyst for much-needed governmental reforms addressing corporate penalties, cybersecurity, and privacy laws. Just as it was recovering from the fallout from the cybersecurity attack, it was faced with a second major incident in November 2023 relating to an outage that affecting all its internet, cellular, and fixed-line services in Australia.

The objective of this case study is to facilitate a discussion of issues such as cybersecurity, data outages and other technological vulnerabilities; role of the board in overseeing technology risks; board structure; risk management; crisis management; governance of subsidiaries; and class actions.

The origins

Headquartered in Singapore, Singapore Telecommunications Limited (Singtel) is a leading communications technology group in Asia.[1] It has played a vital role in Singapore's development as a telecommunications hub for the region over its 140-year history.[2] Singtel provides an extensive range of telecommunications and digital services through three business segments, namely Group Consumer, Group Enterprise, and Group Digital Life.[3]

Singtel was incorporated in March 1992 in preparation for its public listing and impending competition in the telecommunications sector.[4] In 1993, Singtel launched Singapore's largest Initial Public Offering (IPO) to date, offering shares to the public at a discounted price as part of the government's efforts to share the nation's wealth and enlarge the base of share-owning Singaporeans.[5] Singtel listed on the Singapore Exchange (SGX) on 1 November 1993.[6]

This case study was originally prepared by Asaad Khalique, Chua Hai Yee Heidi, Low Zi Lin, Toh Jun Rong, Wang Jingchun. 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.

Since 1997, Singtel has shifted its international focus from the European region to the Asia Pacific region.[7] In 1999, Singtel acquired Advanced Info Service (AIS), Thailand's largest cellular operator for S$591.4 million.[8] The acquisition allowed Singtel to gain a foothold in Thailand's telecommunications market.[9] From 2000, Singtel directed its efforts towards acquiring ownership stakes in telecommunications companies across developing countries in the region, including Malaysia, India, and Indonesia.[10]

Singtel rings Optus

Cable & Wireless Optus Limited's (Optus) beginning traces back to the formation of the government owned AUSSAT Pty Ltd (AUSSAT) in 1981.[11] AUSSAT was one of Australia's national satellite companies and one of the first national communications satellite systems globally.[12] Optus was Australia's second largest telecommunications company,[13] and had 3.4 million Australian mobile phone subscribers.[14] It had a significant presence in both the fixed-line and mobile markets, offering a range of services including voice, data, and internet.[15]

With the goal of deriving more than half its revenue from outside Singapore, Singtel identified Optus as an attractive acquisition target.[16] Singtel believed that the acquisition would expand its foothold in the Australian market,[17] and provide it immediate exposure to one of the Asia Pacific's largest and most attractive communications markets.[18] The acquisition was seen as a strategic move for Singtel, positioning it among the five largest listed communications companies in the Asia Pacific region, excluding Japan. It aimed to bolster Singtel's cellular operations across multiple markets, making it one of the most extensive in the region. Furthermore, the acquisition was expected to diversify Singtel's revenue streams, providing greater stability, and promising growth opportunities.[19]

Moreover, the acquisition was anticipated to elevate Singtel's size and scale beyond what the standalone Singtel and Optus groups could achieve independently, opening avenues for further expansion.[20] Ultimately, Singtel was projected to maintain its financial strength, ensuring the flexibility to fund future growth initiatives post-acquisition.[21]

Not a smooth call

Singtel's acquisition of Optus faced opposition due to reported concerns regarding the Singapore government's reputation for eavesdropping and espionage, both domestically and internationally.[22] The acquisition would grant Singtel control over satellite systems responsible for transmitting sensitive communications for both the Australian military and the United States government, as well as networks handling regular phone calls, television broadcasts, and internet traffic.[23]

Corporate leaders, civil libertarians, and military and intelligence analysts criticised the acquisition.[24] For many years, advocacy groups like Privacy International have accused the Singaporean government of aggressively using surveillance to enforce social control and suppress domestic opposition.[25] Cameron Murphy, Secretary of the Australian Council for Civil Liberties implied that if Singapore could circumvent the law through Singtel, they could potentially do the same in Australia through Optus.[26] Warren Reed, a former Australian intelligence officer, also said that Singapore was "getting some of [their] most closely guarded secrets".[27]

The Australian government did not show any apparent apprehension regarding security.[28] On 22 August 2001, Peter Costello, Treasurer of Australia, raised no objections under foreign investment policy to Singtel's proposal to acquire Optus. However, this approval was contingent upon several conditions aimed at safeguarding Australia's security interests.[29] These conditions included:

1. Singtel and Optus adhering to the terms of the Deed of Agreement;[30]
2. Singtel and Optus adhering to the terms of the Deed of Undertaking,[31] and

3. Singtel and its relevant subsidiaries providing confirmation to the satisfaction of the Treasurer that an export licence by the Office of Defense Trade Controls, US Departments of State, is not required for the A3, B1, B3, and C1 satellites, ground support equipment and technical data.[32]

Although the acquisition allowed Singtel to expand regionally in a market with a penetration rate of about 50%, one possible concern regarding Singtel's goal of launching a pan-Asian presence was the more than 1000 miles separating Singapore from Australia.[33] In the week following the acquisition, investors wiped out S$4.5 billion from Singtel's market value, resulting in a 25% drop.[34] Over the subsequent 18 months following the acquisition, Singtel witnessed a further 57% plunge in its share price.[35]

Singtel wins the battle

On 26 March 2001, Singtel won the bid to acquire Optus for A$17.5 billion.[36] As part of the consideration, a total of 2.41 billion Singtel shares were issued.[37] The offer was pitched at a premium of approximately 20% above the A$3.80 per share at which Optus was trading, and it represented five times the book value of the loss-making Sydney-based telecom company.[38]

Following the acquisition of Optus, Singtel listed on the Australian Securities Exchange (ASX) in September 2001.[39] However, the number of Singtel CHESS Depositary Interests (CDIs) on issue declined significantly, and as at 31 March 2015, represented only approximately 137 million of the 15.94 billion Singtel shares issued.[40] Daily trading volumes and liquidity of Singtel CDIs on the ASX were low.[41] Singtel subsequently delisted from the ASX in April 2015.[42]

Singtel loosens its control

On 15 June 2022, Singtel announced that it was decentralising its organisational structure, granting Optus direct oversight over the Optus Enterprise Division beginning from 1 July 2022.[43] Singtel adopted this strategy to empower its businesses to capitalise on commercial synergies and capabilities, driving growth.[44] The move provided Optus more operational autonomy and direct accountability towards the management of business.[45]

According to Singtel Chief Executive Officer (CEO) Yuen Kuan Moon (Yuen), the decision was "all the more important in today's volatile macro-economic environment where business units need greater independence and agility to better navigate the market."[46] Kelly Bayer Rosmarin (Rosmarin), the then Optus CEO, was thus entrusted with direct oversight over Optus Enterprise in addition to Optus Consumer.[47]

Jewel in the crown… or thorn on the side?

Optus became the biggest contributor to group revenue for the Singtel group. For the financial year ended 31 March 2022, its underlying operating revenue was S$7,745 million, accounting for 53.9% of group underlying operating revenue of S$14,347 million. However, its profitability was well below the rest of the group, with earnings before interest and tax (EBIT) of just S$211 million (18.9%) compared to group underlying EBIT of S$1,115 million.[48]

Ring… Optus receives an anonymous call

On 21 September 2022, Optus detected suspicious activity on its network.[49] After 24 hours, the company issued a media release announcing its investigation into the possible unauthorised access of current and former customers' information.[50] Information which may have been compromised included customer name, date of birth, phone number, passport details, and driver's licence number.[51] Optus stressed that payment details and account passwords remained secure.[52]

On 23 September 2022, the hacker posted a small sample of the stolen customer data on the hacking forum, Breached.[53] Using the alias "Optusdata", the hacker demanded a ransom of US$1 million in cryptocurrency from Optus, threatening to leak the data of all 11 million affected customers if the demand was not met.[54] When Optus did not respond, Optusdata posted a text file of 10,000 customer data records on 26 September 2022, exposing the victims to other malicious actors.[55] However, Optusdata later said that "while the ransom was not paid, they did not care anymore as it was a mistake to scrape publish data in the first place" (sic).[56] They rescinded their demand and apologised to Optus.[57]

During a video conference, Rosmarin expressed disappointment and anger over the data breach, which she described as one of the largest in Australian history.[58] Rosmarin referred to the attack as "sophisticated" and said that while 9.8 million customers might be affected, the actual number could be smaller. She clarified that the attackers only obtained a "small subset of data" that did not "include any financial details and passwords".[59] Rosmarin added that Optus will "proactively contact each individual customer with very clear explanations of which data has been exposed and potentially taken".[60] However, she refrained from divulging details of the attack, citing that "it was still the subject of criminal proceedings".[61]

While Rosmarin maintained that the breach was a "sophisticated attack, coming out of various countries in Europe",[62] Home Affairs Minister Claire O'Neil (O'Neil), argued that Optus had "effectively left the window open" [63] for sensitive data to be stolen.[64] Sydney-based tech reporter Jeremy Kirk (Kirk) delved into the matter, engaging in a detailed conversation with the cybercriminal to understand the execution of the hack.[65] According to Kirk, the cybercriminal revealed, "No authentication needed... All open to the internet for anyone to use." [66]

On 28 September 2022, Optus revealed that almost 37,000 Medicare numbers were compromised in the cyberattack.[67] On 3 October 2022, 12 days after the cyber incident was first reported, Optus appointed Deloitte to conduct an independent external forensic assessment of the company's cyber event with a focus on security systems and processes.[68] The review was recommended by Rosmarin and supported unanimously by Singtel, which had been closely monitoring the situation.[69] On the same day, Optus revealed that 2.1 million customers had one form of ID number exposed, with 900,000 of those being expired ID numbers.[70] The following day, Optus hired a 'crisis expert' to help it navigate the cyberattack amidst ongoing criticism from the federal government and customers on its handling of the situation.[71]

Aftermath of the breach

Singtel's share price dipped 1.12% to S$2.65 per share on 23 September 2022, a day following the announcement of the incident.[72]

Four days following the announcement of the cyberattack, Optus customers who were affected by the cyberattack claimed to be growing increasingly angry and frustrated at the poor communication from Optus.[73] Customers reported issues with Optus' chat application, with staff on the other end initially denying the cyberattack and then offering limited and unhelpful advice.[74]

In the aftermath of the cyberattack, several concerns remained unsettled. Firstly, it was unclear whether Optusdata was solely responsible for the attack, or if others also had access to the data.[75] Additionally, the reason behind the perpetrator backing down remained unknown as Optus did not pay the ransom.[76] Secondly, although Optusdata claimed to have deleted the only copy of the data they possessed, there was no way to verify this.[77] Other attackers could have exploited the same vulnerability to access the data, and it may not have been deleted as claimed.[78] This was supported by cybersecurity expert and founder of the website HaveIBeenPwned, Troy Hunt, claiming that ".. the vulnerability as it's been described is so trivial it's entirely possible it was exploited by other parties as well".[79]

Reasons behind the breach

Three security flaws were identified as contributing factors to the cyberattack. The first pertained to the use of a public-facing Application Programming Interface (API).[80] A publicly exposed API means that it did not require user authentication before facilitating a connection.[81] The absence of an authentication policy allowed anyone who discovered the API on the internet to connect to it without submitting a username or password.[82] Consequently, an API should never be made public facing if it facilitates access to sensitive internal data or permits interactions with core business operations.[83]

The second security flaw was related to how the open API facilitated access to highly sensitive customer data.[84] Whenever an Optus customer accessed their account information via the Optus mobile app or website, an API such as the one that facilitated the data breach is used to complete the request.[85] This triggered backend processes to retrieve sensitive customer records, resulting in the compromise of confidential data.[86]

The third security flaw was related to the use of incrementing customer identifiers.[87] In Optus' case, all customer identifiers were distinguished by an increment of one.[88] When the hacker discovered this pattern, they created a script to systematically request every customer record in the database by incrementing each identifier index by one.[89] This enabled the hacker to execute the data breach much faster and on a larger scale than it would have been possible if unique customer identifiers had been used.[90]

Promises vs reality

On 25 October 2022, Optus issued a letter to its customers detailing the efforts the company had undertaken following the breach.[91] Optus claimed that it had promptly made the breach public, issued widespread warning, contacted all affected customers, and engaged openly, transparently, and swiftly with the government.[92] Additionally, Optus claimed to have reconstructed the dataset that was exposed and began providing individual notification to customers regarding their specific data exposed and necessary actions.[93]

However, contrary to Rosmarin's claims that Optus would "proactively contact each individual customer with very clear explanations",[94] the actual customer experience was said to be different.[95] Customers were left feeling vulnerable and confused due to the company's poor, drip-fed, and contradictory communication.[96] A week after the incident, some had received one email, with no guidance on what to do, while others had received no communications at all.[97] In addition, Optus' online chat platform was inundated with reports of wait times ranging from three to 18 hours.[98] Although Optus offered a 12-month credit monitoring subscription to customers who were most affected, customers expressed frustration at the lack of direct communication regarding how to access this service.[99]

On 10 November 2022, Singtel's media release for the half-year ended 30 September 2022 disclosed that A$140 million had been allocated as an exceptional expense for expected costs related to actions to prevent harm to customers, such as the replacement of identity documents, and for the company's recovery activities.[100]

Other mishaps and allegations

On 7 October 2022, another Singtel-owned Australian subsidiary, Dialog Information Technology (Dialog), discovered that a small sample of the company's data had been published on the Dark Web.[101] The attack took place almost a month earlier, on 10 September 2022.[102] The data breach potentially affected less than 20 clients, and 1,000 current Dialog present and former employees.[103] Dialog reported that they detected unauthorised access on their servers, which were then shut down as a preventive measure.[104] Within two business days, the servers were restored and fully operational.[105]

As scrutiny of Optus increased, Optus was alleged to have made A$70,000 in political donations to Australian political parties between December 2021 and April 2022.[106] If true, this could potentially be illegal under

Australian Electoral Commission's rules which states that foreign donors are only allowed to give amounts less than A$100 to political entities, except for specific circumstances. This was refuted by Optus.[107]

Optus's Managing Director, Gladys Berejiklian (Berejiklian), was also part of an investigation as a subject under the New South Wales (NSW) Independent Commission Against Corruption. It was alleged that she breached public trust when she was the NSW premier by allocating grant money while in a secret relationship with former Wagga Member of Parliament Daryl Maguire.[108] Despite the ongoing investigations, Berejiklian was hired, reportedly due to her connections that could potentially benefit Optus in securing more institutional and governmental contracts, particularly against their major competitor, Telstra.[109] Macquarie's Telecom executive, Luke Clifton, said that "Clearly, Telstra has had the lion's share of the NSW state government telecoms expenditure",[110] adding, "And she [Ms Berejiklian] is going to be able to open some serious doors in NSW government for Optus.".[111] Berejiklian has appealed against the NSW anti-corruption watchdog findings.[112]

Optus' leadership

Rosmarin had served as Optus' CEO since March 2019, with a background in banking.[113] Prior to joining Optus, Rosmarin was a non-executive director at Openpay Group.[114] She was a Special Advisor of Fintech Advisory Group at Australian Government Department of Finance and of Digital Advisory Group at New South Wales Government Australia.[115]

Paul O'Sullivan (O'Sullivan) had been Chairman of Optus since October 2014.[116] Prior to his appointment as Optus Chairman, O'sullivan served as a CEO of Singtel Group Consumer.[117] He held various senior positions within Optus including Chief Operating Officer and Managing Director of Optus Mobile. Additionally, he has worked in various international management roles at the Colonial Group and the Royal Dutch Shell Group in Canada, the Middle East, Australia, and the United Kingdom.[118] He is also the Board Chairman of ANZ Bank in Australia.[119]

Singtel's board under the spotlight

As of financial year (FY) 2023, Singtel's board comprises 13 directors, 11 of whom are independent directors (IDs).[120]

Lee Theng Kiat (Lee) was appointed non-independent non-executive director (NINED) and Chairman-designate on 15 January 2020, and became Chairman on 30 July 2020.[121] At the time of his appointment as NINED of Singtel, Lee did not have prior experience as a director of a listed company. According to Singtel: "Singtel Directors, upon appointment, are advised of the directors' duties and obligations and compliance under the relevant statutes and the SGX-ST Listing Manual. The Company will also arrange for relevant training for Mr Lee Theng Kiat."[122]

Temasek released a statement which stated that "Mr Lee is not a nominee of Temasek on the Singtel board. He will serve as a non-Executive non-Independent Director of Singtel and does not act for Temasek in respect of his board role at Temasek. Mr Lee has also requested that he not be paid any director's fees."[123]

Lee also serves as the Chairman of Temasek International Pte. Ltd, director of SPH Media Trust and Temasek Holdings (Private) Limited.[124] He was an executive director (ED) of Temasek Holdings (Private) Limited between April 2019 and September 2021. Prior to joining Temasek, Lee held the position of President and CEO at Singapore Technologies Telemedia Pte Ltd and STT Communications Ltd.[125] Lee holds a Bachelor of Laws (Honours) from the National University of Singapore.[126]

Yuen was ED and group CEO of Singtel on 1 January 2021.[127] He has held various leadership roles in marketing, business development, and sales.[128] He is a board member of Groupe Speciale Mobile Association

and the Singapore Institute of Management.[129] Yuen holds a First-Class Honours degree in Engineering from the University of Western Australia and a Master of Science in Management from Stanford University.[130]

As of FY2023, there were six female independent directors (IDs) on the Singtel board – Gail Kelly, Christina Ong, Tan Tze Gay, Teo Swee Lian, Yong Hsin Yue, and Yong Ying-I.[131] A summary of the age, educational background, and corporate experiences of the 11 IDs on the Singtel board is shown in Figure 1.

Figure 1: Profile of independent directors of Singtel as of FY2023[132]

Board Member	Age	Educational Background and Corporate Experiences
John Arthur	68	• Bachelor of Laws (Honours) from the University of Sydney. • Director of NCS Pte. Ltd. and Singtel Optus Pty Limited since February 2022 and October 2023 respectively. • Joined the board of Sydney Metro in January 2019 and became Chairman in July 2019. • A lawyer by training, with experience as advisor, executive and director across a broad range of industries.
Gautam Banerjee	68	• Bachelor of Science (Honours) and an Honorary Doctor of Laws (LLD) from Warwick University. • Senior Director of Blackstone Group and Chairman of Blackstone Singapore Pte Ltd. • Sits on the boards of Singapore Airlines Limited and GIC Private Limited. • Over 30 years with PwC and was a Senior Partner and Executive Chairman of PwC Singapore until he retired on 31 December 2012.
Gail Kelly	67	• Bachelor of Arts and Higher Diploma of Education from the University of Cape Town and an MBA (with Distinction) from the University of the Witwatersrand. • Director of the Bretton Woods Committee and Australian Philanthropic Services. • Senior Global Adviser to UBS. • Executive banking career spanning 35 years, including Group CEO and Managing Director St.George Bank and Westpac Banking Corporation.
Lim Swee Say	68	• First Class Honours degree in Electronics, Computer and Systems Engineering from Loughborough University and a Master's degree in Management from Stanford University. • Trustee and Adviser of the National Trades Union Congress (NTUC), Chairman of the NTUC-Administration & Research Unit Board of Trustees, NTUC LearningHub Pte. Ltd. and NTUC LearningHub Co-operative Limited. • Joined the public sector in 1976. Held leadership positions in Singapore's National Computer Board and Economic Development Board. • Former Minister in the Singapore Government, including Minister of Manpower.
Christina Ong	72	• Bachelor of Laws (Second Upper Class Honours) from the University of Singapore. • Chairman and Senior Partner of Allen & Gledhill LLP and Co-Head of its Financial Services Department. • Lawyer who provides corporate and corporate regulatory and compliance advice, particularly to listed companies. Areas of practice include banking and securities.
Rajeev Suri	55	• Bachelor of Engineering (Electronics and Communications) from Manipal Institute of Technology and an Honorary Doctorate from Manipal University. • Non-executive Director of Viasat, Inc., non-executive Director of Stryker Corporation and board member of X0PA AI Pte. Ltd. • Previously the Chairman of the Global Satellite Operators Association, Operating Advisor to Apollo Global Management.

Board Member	Age	Educational Background and Corporate Experiences
Tan Tze Gay	58	• Bachelor of Laws (Honours, Second Upper) from the National University of Singapore. • Partner and the head of the Equity Capital Markets practice at Allen & Gledhill LLP. • Director of SIA Engineering Company Limited. • Areas of expertise span equity and debt capital markets and corporate regulatory and compliance.
Teo Swee Lian	63	• Bachelor of Science (First Class Honours) in Mathematics from Imperial College, London University and a Master of Science in Applied Statistics from Oxford University. • Chairman of CapitaLand Integrated Commercial Trust Management Limited. • Special Advisor in the Managing Director's Office at the MAS until early June 2015.
Wee Siew Kim	62	• Bachelor of Science (First Class Honours) in Aeronautical Engineering from the Imperial College of Science, Technology and Medicine and a Master of Business Administration from the Graduate School of Business, Stanford University • Director and Group GEO of Nipsea Management Company Pte. Ltd. and board Chairman of Jurong Port Pte Ltd. • Former director of Mapletree Logistics Trust Management Ltd and SBS Transit Ltd. • Former Member of Parliament in Singapore Government.
Yong Hsin Yue	51	• MA in Politics, Philosophy and Economics from Worcester College, Oxford, and an MBA from INSEAD. • Managing Director of Kuok (Singapore) Limited and sits on the board of 65 Equity Partners Pte. Ltd. • Started career in investment banking where she spent 19 years working at Goldman Sachs in Singapore and in London.
Yong Ying-I	59	• Master of Economics from the University of Cambridge and a Master of Business Administration from Harvard Graduate School of Business. • Chairman of the Central Provident Fund Board and Senior Adviser (Smart Nation & Digital Economy - Research Innovation Enterprise) at Smart Nation & Digital Government Office in the Prime Minister's Office. • Former Permanent Secretary of Communications and Information and Cybersecurity prior to retirement from the Singapore Public Service.

Source: Singapore Telecommunications Limited. (n.d.). Leadership.

In FY2023, Singtel had an advisory body, the Optus Advisory Committee (OAC), to review strategic business issues relating to the Australian businesses.[133] The OAC comprised both board and non-board members, namely Gail Kelly, Lee, Yuen, John Arthur, Chua Sock Koong, David Gonski, John Morschel, and O'Sullivan.[134]

Who governs Optus?

There was no disclosure of the board of directors for Optus.

Some corporate governance experts said that Singtel and its board members have not faced proper scrutiny.[135]

> "I think this is a case where the directors of the Risk Committee, especially the Chair of the Risk Committee, their positions should be questioned."
>
> – *Elizabeth Sheedy, Professor and Risk Governance Expert*[136]

Chairman of Singtel Risk Committee (RC), Teo Swee Lian, could not be reached for comment regarding the cyberattack.[137] Singtel's management and the governance of Optus have been criticised as "opaque".[138]

According to Helen Bird, a senior lecturer in governance studies at Swinburne Law School: "The governance arrangements for this large 100 per cent-owned subsidiary of Singtel Ltd are at best opaque….Being a private company, there is no expectation of disclosure to the market of news in a timely fashion." She added: "In the absence of the traditional structure of board governance and executive management, it is very hard to determine who can speak or take responsibility on behalf of the company."[139]

Immediately following the cyberattack, Singtel issued just a single update to the SGX about it, alerting shareholders that customer details were stolen.[140]

Singtel's cybersecurity measures

According to Singtel's FY2022 annual report, it has established a comprehensive risk management framework approved by the Risk Committee (RC) (since renamed as Risk and Sustainability Committee).[141] The framework set out the governance structure for managing risks, risk philosophy, risk appetite and tolerance levels, risk management approach, and risk factors.[142]

The board's primary responsibilities regarding cybersecurity included instilling a culture and approach for risk governance, providing oversight of risk management systems and internal controls, reviewing key risks and mitigation plans, and determining the company's risk appetite and tolerance.[143] The RC and Risk Management Committee (RMC) assisted the company in assessing the adequacy and effectiveness of the risk framework.[144]

Singtel's Cyber Security Resiliency Committee was tasked with providing support to the RMC on matters related to cybersecurity risk assessment and mitigations, guiding the company in the direction, strategising the improvement of defence against cybersecurity threats, and reviewing the adequacy of prevailing cybersecurity measures and risk management.[145]

Cybersecurity risk was listed as one Singtel's principal risk types.[146] The measures Singtel had implemented to mitigate cybersecurity risk include building capabilities organically and establishing partnerships with best-of-breed technology partners.[147] Additionally, Singtel's Cyber Security Institute conducted regular training programmes to improve cybersecurity skills and preparedness to tackle cybersecurity attacks.[148] Singtel built close partnerships with vendors and regulators to detect cybersecurity threats, while also working with relevant government bodies to tighten cybersecurity measures and increase monitoring for threats.[149]

Singtel had a third-party security assurance programme to assess and report security risks associated with the use of third-party services, ensuring compliance with security requirements and regulatory obligations.[150]

Securing the cybersecurity framework

In 2016, Singtel bolstered its cybersecurity capabilities with the launch of the Optus Advanced Security Operations Centre (ASOC) in Sydney.[151] The A$10 million investment was designed to strengthen Australia's cyber defence by assisting government agencies and enterprises in defending against an increasing number of sophisticated cybersecurity threats.[152] With the establishment of the Optus ASOC, Singtel's global cybersecurity network expanded to eight ASOCs worldwide, safeguarding millions of businesses globally.[153]

During the same year, Optus made significant investments in cybersecurity in Australia. This included a co-investment of A$10 million with Macquarie University to establish a multi-disciplinary cybersecurity hub to support the wider expansion of cybersecurity training within organisations,[154] and an A$8 million partnership with La Trobe University to establish industry-focused cyber curriculum.[155] Singtel also enhanced its cybersecurity capabilities through strategic partnerships with leading global cybersecurity services providers Palo Alto[156] and Akamai[157] to provide its managed security services to businesses in the region.

In 2017, Optus furthered its commitment by investing $3.5 million into Australia's Cyber Security Cooperative Research Centre (CRC).[158] Launched by the government, the Cyber Security CRC focused on Critical Infrastructure Security and cybersecurity as a service.[159] Through a seven-year agreement, Optus pledged to contribute its cybersecurity team and industry partnerships, and also collaborating with the Cyber Security CRC to provide training and guidance.[160] These contributions were expected to strengthen Australia's cyber defences.[161]

In 2018, Optus signed an agreement to fully acquire Hivint, an award-winning cybersecurity consulting company in Australia, to enhance the company's cybersecurity capabilities.[162] Hivint's advisory services would be integrated into Trustwave Holdings Inc.'s (Trustwave) portfolio of security solutions, managed security services, and advanced education programmes.[163]

Is there trust in Trustwave?

Singtel acquired Trustwave, a cybersecurity company based in the United States in 2015 for US$810 million.[164] Trustwave has since been positioned as the global security arm of Singtel.[165] The services provided by Trustwave encompass managed security services, which entail threat detection and response, vulnerability management, and compliance solutions.[166] However, when asked whether Trustwave was used to safeguard Optus' Australian customers, Optus refused to comment.[167]

On 23 August 2022, Singtel proceeded with the planned sale of Trustwave for approximately S$279.5 million to S$419 million.[168] Singtel said it aimed to streamline its portfolio, raising funds to concentrate on 5G operations and the development of new growth engines, such as IT services and data centres.[169]

Singtel entered into a conditional share purchase agreement with MC^2 Titanium, LLC to sell all of its equity interest in Trustwave for US$205 million on 2 October 2023.[170] As of 30 September 2023, Trustwave was reclassified as subsidiary held for sale and deconsolidated from Singtel's financials.[171]

Class actions

As of April 2023, more than 100,000 current and former customers had joined a class action lawsuit against Optus over the cyberattack.[172]

> "Any class action will be vigorously defended, if commenced."
>
> – *Optus*[173]

According to the Privacy Act, companies are required by law to take reasonable precautions to safeguard any personal information they possess against unauthorised access, abuse, and interception.[174] The representative complaints stipulated that Optus was negligent and failed to protect the personal information of customers and had disclosed private information originally collected for another purpose without customer consent.[175]

Current and former Optus customers could register their interest in Maurice Blackburn's,[176] or Slater Gordon's, investigations for free, with no out-of-pocket or adverse costs to keep up to date with the investigation progress.[177]

According to Simon Burns, a partner in Gilbert + Tobin, the possible Optus Data Breach Settlement amount will vary between $5,000 to $20,000 per individual, depending on the damage suffered.[178] It was reported that tens of thousands of Optus customers have registered for the class action, making it one of the biggest class actions Australia has ever seen.[179]

Once bitten, twice shy?

> "Bad practices in data management can have real-world consequences for people, and to make companies understand that, we will need to start taking them to court."
>
> – *Elizabeth O'Shea, Maurice Blackburn Senior Associate*[180]

In April 2020, Maurice Blackburn brought a class action lawsuit against Optus for a similar breach of the Privacy Act 1988. It was discovered that Optus had mistakenly disclosed the data of 5,000 Optus customers which included their names, addresses, and phone numbers.[181] The information was leaked on both online and locally printed White Pages and may possibly be listed on smaller online directories.[182]

Lightning strikes again

As Optus was still recovering from the massive cybersecurity breach, its reputation took another massive blow as an Australia-wide internet, mobile and landline network outage hit hospitals, homes, businesses and transport services.[183]

At about 4 am Australian Eastern Daylight Time (AEDT) on 8 November 2023, the first reports of the outage broke. An hour later, Optus provided an online statement that it was "aware of an issue impacting Optus mobile and nbn services" and was working to restore services "as quickly as possible".[184] At 10.30 am, Rosmarin told ABC Radio Sydney the company had tested a number of "hypotheses" about what might have caused the problem, but none fixed the issue.[185]

The Federal Communications Minister, Michelle Rowland (Rowland), said a protocol was in place for Optus customers to "camp" on other mobile networks when needing to call 000. However, Victoria's health minister, Mary-Anne Thomas, urged people not to use Optus-linked phones to call 000, saying that some Optus users had reported they were unable to get through.[186]

It was reported that many customers rushed to stores operated by rival companies such as Telstra and Vodafone to buy temporary SIM cards in order to keep using their phones.[187]

At 12.55 pm, Optus wrote on X that some services across fixed and mobile were gradually being restored. It said: "This may take a few hours for all services to recover, and different services may restore at different sites over that time."[188] Optus also reiterated its apology to customers and said it was aware of some mobile phones having issues connecting to 000. It suggested that if Optus customers needed to call emergency services, they should "find a family member or neighbour with an alternative device."[189] Shortly after 1 pm, Rosmarin announced that there was a "path to restoration" and that some users had had services restored.[190]

Rowland the Coalition communications spokesperson urged Optus to keep its customers updated. The Communications Workers Union called the outage an "absolute disgrace", while the Telecommunications Industry Ombudsman advised Optus customers that they can help with refunds, compensation claims and disputes.[191]

Rowland suggested a "deep network problem" and said there was no information suggesting a cyberattack. She advised small businesses to keep receipts for seeking recourse and redress. The Greens said they would push for an urgent Senate inquiry into the outage. The South Australian premier said his government was already talking to Optus' competitor, Telstra, about switching some of its critical services away from Optus and said the state government was disappointed with Optus.[192]

"No soundbite"

With all services restored by that afternoon, Rosmarin was unable to offer much explanation for the outage, citing a technical network fault of such complexity that "there's no soundbite that's going to do it justice". She was deeply apologetic and promised to share the results of a "root cause analysis". She said: "We're very, very sorry that it happened. But I don't think it's something unusual in the grand scheme of things when you're operating a critical infrastructure."[193]

Rosmarin defended Optus communications response and crisis management when the outage happened, as Rowland and the Telecommunications Ombudsman had said that they had heard about the outage through the media. She insisted that the Optus team was rightly focused on fixing the issue and could not say much about the outage. She said: "So I don't think it's a problem with the communications, it's a problem that customers wanted a different message."[194]

Criticisms flow

Telecommunications analyst Paul Budde said that Optus needed to have better disaster recovery planning, and redundancy in its networks. He said: "It is unacceptable for there to be a single point of failure in a network that can bring down an entire country".[195]

The Australian Communications and Media Authority said it was examining whether Optus had complied with its regulatory obligations, which include ensuring emergency calls are transferred to Telstra when there is an outage and that "accurate and timely" information is provided to Australians.[196]

The major Australian business daily Financial Review disputed Rosmarin's statement that there was no more information to provide when the outage happened. It cited updates it had seen provided to wholesale customers saying that "engineers were trying to identify faults with routers and router reflectors, and that their progress had been hindered because they could not access parts of the network using remote tools". Rosmarin said those customers had "more tailored and bespoke communication".[197]

Although Rosmarin was said to be in "full apology mode" for the second time in 12 months, when she eventually appeared on ABC Radio in Sydney, one media report said: "But Optus may find that contrition isn't enough this time around. The company's initial response to this outage would suggest the communications lessons from last year's hack have not been learnt. However, the telco may also find the inevitable hit to public confidence in Optus' ability to protect and operate critical national infrastructure that will flow from this episode may be compounded by its decision not to release the independent review into the hack, as Bayer Rosmarin initially promised…Optus didn't live up to its promise of transparency then. This time around, nothing less than a full and public explanation of what went wrong, and why Optus has responded in the way it did, will suffice… And if Optus won't provide it, then Rowland should make sure the government does."[198]

"A strange coincidence"

The board of Singtel happened to be in Australia at the time of the outage. Remarkably, it was also in Australia when the data breach happened in 2022 and at that time had stood strongly behind Rosmarin's leadership.[199]

In fact, at the Senate inquiry into the outage, Rosmarin said that Optus was worried by similarities between the network outage and the major data breach the previous year, and was concerned that another cyberattack was involved. She added: "When we had the cyber incident, it was the last time the Singtel board was in town, and they were in town again … which was a strange coincidence,"[200]

Who's owning up?

There was much speculation as to what caused the outage. Eventually, a submission for the Senate hearing said that it was caused when about 90 provider edge Cisco routers, which connect internal and external networks, shut themselves off to avoid overloading with information. This was after a software upgrade at one of parent company Singtel's internet exchanges (known as STiX.).[201]

There was some confusion because Singtel had released a statement that it had not caused the outage. According to Singtel's statement: "We are aware that Optus experienced a network outage after the upgrade when a significant increase in addresses being propagated through their network triggered preset failsafes. However, the upgrade was not the root cause".[202]

Rosmarin said Singtel's statement was to clarify a misunderstanding of the problem that had resulted from interpretations of media reports. She agreed that while Singtel's software update had triggered the problem, it was not its cause. She added: "The reality is that our network should have coped with this change, but on this occasion it did not."[203]

Greens senator Sarah Hanson-Young was not impressed, saying "we're not sure who to believe … It's time that someone got the story straight."[204]

"We didn't have a plan"

At the hearing, the head of network operations, Lambo Kanagaratnam (Kanagaratnam), admitted that Optus had never held a crisis planning simulation for an outage similar to the one that occurred. According to him, the level of redundancy built into the system made the company believe it was unlikely everything would go down at once in the way it did. He said: "We did do a network outage exercise in October, but it wasn't for a full outage on the network…We didn't have a plan in place for that specific scale of outage. I think it was unexpected."[205]

After the hearing, an Optus spokeswoman said Kanagaratnam's answer was referring to Optus having never simulated the specific technical failure that occurred, but added that the company had simulated whole-of-network outages. She said: "Optus has comprehensive risk management plans in place and prepares and tests an extensive range of risk scenarios on a regular basis. These plans do also consider a mass outage scenario."[206]

Goodbye, Rosmarin

Less than two weeks after the outage, Optus CEO Rosmarin resigned on 20 November 2023, following speculation she would do so even before her appearance in the Senate hearing three days earlier.[207] She said: "It's been an honour and privilege to lead the team at Optus and to serve our customers. I am proud of the team's many achievements, and grateful for the support of the Optus team, [Singtel Group CEO Yuen Kuan] Moon, and the group. I wish everyone and the company every success in the future."[208]

Rosmarin's tenure at Optus lasted four years, first as deputy chief executive, then as chief executive from 2020. She has two degrees including one in industrial engineering from Stanford University, and was a high flier at the Commonwealth Bank of Australia (CBA) after a stint at Boston Consulting Group. She left CBA when Matt Comyn was appointed group CEO.[209]

Former StarHub chief executive Peter Kaliaropoulos (Kaliaropoulos) was appointed as Chief Operations Officer and Optus CFO Michael Venter took over as interim CEO. Kaliaropoulos was previously chief executive at Zain Saudi Arabia, before running StarHub until 2020. He was also in charge of Optus' business division for two years until 2005.[210]

There was speculation that Berejiklian, the former NSW premier and enterprise and business division head, together with Kaliaropoulos were in the running to be a permanent replacement for Rosmarin. However, it

was reported that Berejiklian's chances of snaring the top job could be affected by a recent finding by the NSW corruption commission that she engaged in serious corrupt conduct – although she is not facing criminal charges and has launched legal action against the Independent Commission Against Corruption.[211]

Singtel said that "Optus will embark on a global search for a leading chief executive to steer the business forward."[212] Optus chairman O'Sullivan said that Optus' next chief executive would benefit from having experience in the telecommunications industry, even though it is Singtel who will appoint the new CEO.[213]

Singtel's role under scrutiny

There was some criticism of O'Sullivan's chairmanship of Optus, given the two crises. O'Sullivan was Optus CEO until 2012 but continued to hold a senior group role with Singtel until 2014. An anonymous source said: "The real question is what has Paul O'Sullivan been doing since he assumed the role of Optus chair in more than name only?" [214]

However, Mark Gregory of RMIT, who researches telecommunications and public policy said the review into the outage should look at Singtel's role in the operations of Optus. He said the fact that both organisations put out statements that appeared contradictory following the outage appeared may be an attempt to cover how much control Singtel has over critical national infrastructure. He added: "We don't know to what extent Singtel is actually running and operating Optus, and this is a major concern not just from the corporate perspective, but also from a national security perspective…It is part-owned by a foreign government…and I think the outage gives a strong justification for the federal government to move immediately to an inquiry where they actually send people into the company and investigate what's actually going on."[215]

Another taxing experience

If Singtel and Optus were hoping for some respite and an opportunity to regain public trust, it did not come. On March 2024, it was reported that Singtel had lost its bid to get almost A$895 million deducted from its taxable income in Australia. This was a Federal Court victory for the Australian Tax Office.[216]

Singtel had attempted to claim the deductions based on interest paid on loans between two of the company's subsidiaries, relating to its 2001 acquisition of Optus. It had appealed a December 2021 ruling from the Federal Court, which had found the lending did not comply with requirements under the "arm's length" test. Companies within the same multinational groups are required to behave as though they are independent parties when transacting with each other, in order to ensure they are not entering deals aimed at enabling tax avoidance.[217]

The Deputy Tax Office Commissioner Rebecca Saint said: "This decision is another win for the tax avoidance taskforce towards maintaining the integrity of the Australian tax system and holding multinationals to account... Whilst many large businesses are meeting their tax obligations, there are some that continue to engage in profit-shifting practices…Taxpayers that set excessive prices for their related party dealings to shift their profits to low-tax jurisdictions should be on notice."[218]

When it purchased Optus in 2001, the Australian-based Singapore Telecom Australia Investments (STAI) issued shares and loan notes to its subsidiary SingTel Australia Investments, incorporated in the British Virgin Islands. STAI then became a subsidiary of SAI though both remained under its Singapore parent company Singtel. Singtel then claimed tax deductions for interest of almost $895 million paid on loans between the two subsidiaries from 2010 to 2013.[219]

Epilogue

In its results for the three months to 31 December 2023, Singtel reported that the Optus cost it A$61 million. However, the total financial cost – not to mention the reputational cost – remains to be seen.[220]

At the end of January 2024, the Australian Financial Review reported that Optus was "exploring options to unlock value for long-standing shareholder Singtel",[221] and said that sources have told it that "Optus executives have considered several divestments over the past two years to help Singtel take some money off the table".[222] That same day, Singtel issued an announcement on SGX regarding the media reports saying that it viewed its Optus stake as strategic and that it believed in the long-term outlook for the Optus business. It added that it "regularly explores and reviews business opportunities, projects and proposals relating to its business and investments from time to time, and there is no certainty any of these will lead to a definitive or binding transactions."[223]

In March 2024, it was reported that Singtel is in advanced talks to offload Optus to Brookfield, a Toronto-headquartered private equity giant for A$16 billion.[224] However, Singtel later issued an announcement saying that there is "no impending deal to offload Optus for the said sum".[225] It was disclosed that Optus "remains an integral and strategic part of the Singtel" and that Singtel is "committed to Australia for the long term".[226]

On 3 April 2024, Singtel shares fell by as much as 4.3% in early trading. This prompted Singtel to request for a trading halt. It issued a report again denying media reports regarding a potential deal regarding Optus. It maintained that Optus remains a "strategic and integral part of the Singtel group".[227] This followed Australian media reports that Singtel's talks with Brookfield to sell a 20 % stake in Optus has collapsed.

In May 2024, Australia's media regulator initiated legal action against Optus over the cyber attack in September 2022.[228]

Will Optus remain in Singtel hands? What does Singtel have to do to ensure that the debacles in 2022 and 2023 do not happen again?

Discussion questions

1. What are the contributory factors to the Optus cybersecurity breach and data outage, and who should be held responsible? What are the potential impacts of the two major incidents from a financial, legal, and reputational standpoint?
2. Critically evaluate how Optus responded to the two incidents. What could they have done differently?
3. Critically evaluate the technological vulnerabilities of Optus. Suggest how companies like Optus can better manage technological risks from the perspective of governance, compliance, risk management, and corporate culture.
4. Critically evaluate the board structure of Singtel. What is the role of a board in overseeing technology risks? To what extent was Singtel's board of directors responsible for the technological problems at Optus? Is the board structure a contributory factor? Explain.
5. Do you think Optus CEO Rosmarin should have resigned or be forced to do so? What is the role of the board in selecting the CEO? What do you think should be the qualities of the new CEO of Optus?
6. Optus chairman, Paul O'Sullivan, said it is Singtel, and not him, who will select the new CEO. Optus also did not publicly disclose any information about its board of directors. How do you think Singtel governs foreign subsidiaries such as Optus? How should company groups approach the governance of subsidiaries?
7. What are the challenges when a company such as Singtel makes acquisitions overseas? What due diligence should it undertaken? What is the role of the board of directors in acquisitions?
8. Optus is likely to face significant regulatory penalties and class actions from investors and other stakeholders. What are the differences in the legal and regulatory environments between Australia and Singapore in these respects? What are the pros and cons of the different environments?

Endnotes

1 Singapore Telecommunications Limited. (n.d.). Retrieved from https://links.sgx.com/1.0.0/corporate-information/2032

2 *Ibid.*

3 *Ibid.*

4 Singapore Telecommunications Limited. (n.d.). Our heritage. Retrieved from https://www.singtel.com/about-us/company/heritage

5 Singapore Telecommunications Limited. (n.d). Singtel share history. Retrieved from https://www.singtel.com/about-us/investor-relations/share-information/singtel-share-history

6 *Ibid.*

7 Chua, A. (2011). Singapore Telecommunications (SingTel). *National Library Board.* Retrieved from https://www.nlb.gov.sg/main/article-detail?cmsuuid=dd78b9f6-29f9-4b7b-bd2a-eb6bbdfe1f8c

8 South China Morning Post. (1999, January 8). SingTel snares stake in Thai firm. Retrieved from https://www.scmp.com/article/268313/singtel-snares-stake-thai-firm

9 *Ibid.*

10 Chua, A. (2011). Singapore Telecommunications (SingTel). *National Library Board.* Retrieved from https://www.nlb.gov.sg/main/article-detail?cmsuuid=dd78b9f6-29f9-4b7b-bd2a-eb6bbdfe1f8c

11 Sky Brokers. (n.d.). Optus Australia. Retrieved from https://sky-brokers.com/supplier/optus-australia/

12 *Ibid.*

13 Holloway, G. (2001, March 25). Singtel bids $8.6 bn for Optus. *Cable News Network.* Retrieved from https://edition.cnn.com/2001/WORLD/asiapcf/auspac/03/25/aust.sing.singtel/index.html

14 Forbes. (2001, March 26). Singtel wins Cable & Wireless Optus bid. Retrieved from https://www.forbes.com/2001/03/26/0326global.html?sh=333c52d768dd

15 Singapore Telecommunications Limited. (2019, July 26). Circular. Retrieved from https://www.singtel.com/content/dam/singtel/investorRelations/fixed-income/2019/optus-finance-pye-ltd.pdf

16 Arnold, W. (2001, April 4). SingTel's chief defends Optus purchase. *The New York Times.* Retrieved from https://www.nytimes.com/2001/04/04/business/singtel-s-chief-defends-optus-purchase.html

17 Singapore Telecommunications Limited. (n.d.). Our heritage. Retrieved from https://www.singtel.com/about-us/company/heritage

18 Singapore Telecommunications Limited. (n.d.). Creating Asia Pacific's leading communications company. Retrieved from https://www.singtel.com/content/dam/singtel/investorRelations/annualReports/2001/attachment_hub_49368D6C-8C02-43C5-B22B-A3084760EA7B_CAPLCC.pdf

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 Gaylord, B. (2001, August 13). In Optus deal, Australians ponder how to trust Singapore. *The New York Times.* Retrieved from https://www.nytimes.com/2001/08/13/business/in-optus-deal-australians-ponder-how-to-trust-singapore.html

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

27 *Ibid.*

28 *Ibid.*

29 Costello, P. (2001, August 22). Singapore Telecommunications Limited - Application for Foreign Investment Approval to Acquire Cable & Wireless Optus Limited. Retrieved from https://ministers.treasury.gov.au/ministers/peter-costello-1996/media-releases/singapore-telecommunications-limited-application

30 *Ibid.*

31 *Ibid.*

32 *Ibid.*

33 Forbes. (2001, March 26). Singtel wins Cable & Wireless Optus bid. Retrieved from https://www.forbes.com/2001/03/26/0326global.html?sh=4a78aa4568dd

34 *Ibid.*

35 *Ibid.*

36 Witcher, S. K., Pemberton, I., Jafri, H. (2001, March 12). SingTel's $8.93 billion offer for Optus is 20% premium above current value. *The Wall Street Journal.* Retrieved from https://www.wsj.com/articles/SB98429396227612265

37 Singapore Telecommunications Limited. (n.d.). Singtel share history. Retrieved from https://www.singtel.com/about-us/investor-relations/share-information/singtel-share-history

38 Crowney, P. (2002, October 31). On the line. *Instituional Investor.* Retrieved from https://www.institutionalinvestor.com/article/2btgijfijoc65b8yvixa8/corner-office/on-the-line

39 *Ibid.*

40 Singapore Telecommunications Limited. (2015, April 21). Delisting of Singtel shares from ASX. Retrieved from https://www.singtel.com/about-us/media-centre/news-releases/delisting-singtel-shares-asx

41 *Ibid.*

42 Singapore Telecommunications Limited. (n.d.). Singtel share history. Retrieved from https://www.singtel.com/about-us/investor-relations/share-information/singtel-share-history

43 Singapore Telecommunications Limited. (2022, June 15) Singtel further decentralises business structure. Retrieved from https://www.singtel.com/about-us/media-centre/news-releases/singtel-further-decentralises-business-structure

44 *Ibid.*

45 *Ibid.*

46 *Ibid.*

47 LinkedIn. (2023). Retrieved from https://www.linkedin.com/posts/singtel_singtel-optus-regionaldatacentre-activity-6942671571018756096-yhhV/?originalSubdomain=mm

48 Singapore Telecommunications Limited. (n.d.). Annual report FY2022-23. Retrieved from https://media.aws.singtel.com/info-singtel/annualreport/2023/Singtel_Annual_Report_2023_Higher_Res.pdf

49 Turnbull, T. (2022, September 29). Optus: How a massive data breach has exposed Australia. *BBC.* Retrieved from https://www.bbc.com/news/world-australia-63056838

50 Optus. (2022, September 2022). Optus notifies customers of cyberattack compromising customer information. Retrieved from https://www.optus.com.au/about/media-centre/media-releases/2022/09/optus-notifies-customers-of-cyberattack

51 *Ibid.*

52 *Ibid.*

53 Powell, O. (2022, September 29). IOTW: Everything we know about the Optus data breach. *Cyber Security Hub.* Retrieved from https://www.cshub.com/attacks/news/iotw-everything-we-know-about-the-optus-data-breach

54 Taylor, J. (2022, September 28). Optus data breach: everything we know so far about what happened. *The Guardian.* Retrieved from https://www.theguardian.com/business/2022/sep/29/optus-data-breach-everything-we-know-so-far-about-what-happened

55 Powell, O. (2022, September 29). IOTW: Everything we know about the Optus data breach. *Cyber Security Hub.* Retrieved from https://www.cshub.com/attacks/news/iotw-everything-we-know-about-the-optus-data-breach

56 *Ibid.*

57 *Ibid.*

58 Baird, L., Mason, M. & Mcllroy, T. (2022, September 23). Optus hack risks data of 9.8m customers, IP addresses point to Europe. *The Australian Financial Review.* Retrieved from https://www.afr.com/companies/telecommunications/data-of-9-8m-optus-customers-at-risk-in-worst-case-scenario-20220923-p5bkgc

59 *Ibid.*

60 *Ibid.*

61 *Ibid.*

62 Shepherd, T. (2022, September 30). The biggest hack in history: Australians scramble to change passports and driver licences after Optus telco data debacle. *The Guardian.* Retrieved from https://www.theguardian.com/business/2022/oct/01/optus-data-hack-australians-scramble-to-change-passports-and-driver-licences-after-telco-data-debacle

63 *Ibid.*

64 *Ibid.*

65 Kedrosky, E. (2022, September 26). Optus Faces $1Million Ransom Due to Cloud Misconfiguration. *Sonrai Security.* Retrieved from https://sonraisecurity.com/blog/optus-faces-1million-ransom-due-to-cloud-misconfiguration/

66 *Ibid.*

67 Chapman, A. (2022, September 28). Optus reveals thousands of Medicare numbers caught up in data breach as calls mount for subsidised passport replacements. *7 News.* Retrieved from https://7news.com.au/technology/optus/optus-reveals-thousands-of-medicare-numbers-caught-up-in-data-breach-as-calls-mount-for-subsidised-passport-replacements-c-8392700

68 Optus. (2022, October 3). Optus commissions independent external review of cyberattack. Retrieved from https://www.optus.com.au/about/media-centre/media-releases/2022/10/optus-commissions-independent-external-review-of-cyberattack

69 *Ibid.*

70 Taylor, J. (2022, October 3). Optus reveals at least 2.1 million ID numbers exposed in massive data breach. *The Guardian.* Retrieved from https://www.theguardian.com/business/2022/oct/03/optus-commissions-independent-review-of-data-breach

71 Samios, Z. & Bonyhady, N. (2022, October 4). Optus recruits crisis expert as poor hack notification shreds brand. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/technology/privacy-chief-pushes-for-multibillion-dollar-fines-for-breaches-after-optus-hack-20221003-p5bmxb.html

72 Yahoo Finance. (n.d.). Singapore Telecommunications Limited. Retrieved from https://finance.yahoo.com/quote/Z74.SI/chart

73 Taylor, J. (2022, September 26). Optus customers exasperated by chatbots and 'rubbish' communication after data breach. *The Guardian.* Retrieved from https://www.theguardian.com/business/2022/sep/27/optus-customers-exasperated-by-chatbots-and-rubbish-communication-after-data-breach

74 *Ibid.*

75 Taylor, J. (2022, September 28). Optus data breach: everything we know so far about what happened. *The Guardian.* Retrieved from https://www.theguardian.com/business/2022/sep/29/optus-data-breach-everything-we-know-so-far-about-what-happened

76 *Ibid.*

77 *Ibid.*

78 *Ibid.*

79 *Ibid.*

80 Kost, E. (2023, August 4). How did the optus data breach happen? *Upguard.* Retrieved from https://www.upguard.com/blog/how-did-the-optus-data-breach-happen

81 *Ibid.*

82 *Ibid.*

83 *Ibid.*

84 *Ibid.*

85 *Ibid.*

86 *Ibid.*

87 *Ibid.*

88 *Ibid.*

89 *Ibid.*

90 *Ibid.*

91 Optus. (2022, October 25). A letter to our customers. Retrieved from https://www.optus.com.au/content/dam/optus/documents/for-you/support/cyberattack/cyber_incident_letter_251022.pdf

92 *Ibid.*

93 *Ibid.*

94 Gaicd, B., O. (2022, October 13). 'Yes' optus, it was a gargantuan data governance failure. Lessons for directors. *LinkedIn*. Retrieved from https://www.linkedin.com/pulse/yes-optus-gargantuan-data-governance-failure-lessons-directors-owens/

95 *Ibid.*

96 *Ibid.*

97 *Ibid.*

98 *Ibid.*

99 *Ibid.*

100 Optus. (2022, November 10). Optus delivers a strong half year performance. Retrieved from https://www.singtel.com/content/dam/singtel/investorRelations/financialResults/2022/h1fy23/H1FY23-Optus-NR.pdf

101 The Straits Times. (2022, October 10). Second Australian business owned by SingTel suffers data hack after Optus breach. Retrieved from https://www.straitstimes.com/asia/australianz/second-australian-business-owned-by-singtel-suffers-data-hack-after-optus-breach

102 *Ibid.*

103 Mascellino, A. (2022, October 12). Singtel's Australian IT firm Dialog suffers data breach. *Infosecurity Magazine*. Retrieved from https://www.infosecurity-magazine.com/news/singtel-dialog-suffers-data-breach/

104 *Ibid.*

105 *Ibid.*

106 Xu, T. (2023, March 9). Singapore Govt-owned telco giant Optus accused of making illegal donations to Australian political parties. *The Online Citizen.* Retrieved from https://www.theonlinecitizen.com/2023/03/09/singapore-govt-owned-telco-giant-optus-accused-of-making-illegal-donations-to-australian-political-parties/

107 Hamzah, A. (2023, March 12). Singtel-owned Optus refutes allegations of making illegal donations to Australian political parties. *The Straits Times*. Retrieved from https://www.straitstimes.com/singapore/singtel-owned-optus-refutes-allegations-of-making-illegal-donations-to-australian-political-parties

108 Davies, A. (2023, September 30). Gladys Berejiklian is fighting to clear her name after Icac's adverse findings. Is it a risk worth taking?. *The Guardian.* Retrieved from https://www.theguardian.com/australia-news/2023/oct/01/gladys-berejiklian-is-fighting-to-clear-her-name-after-icacs-adverse-findings-is-it-a-risk-worth-taking

109 Baird, L. (2022, February 11). Optus' Berejiklian hire throws down gauntlet at Telstra. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/telecommunications/berejiklian-to-take-senior-role-at-optus-20220211-p59vnh

110 *Ibid.*

111 *Ibid.*

112 Zemek, S. (2024, 26 February). Gladys Berejiklian Says She Isn't 'Corrupt', Fights Back Against ICAC, news.com.au. Retrieved from https://www.news.com.au/finance/work/leaders/gladys-berejiklian-launches-legal-bid-to-clear-her-name-after-icac-corruption-findings/news-story/a95b745e9e2ea432dfe2dcacb60dda89

113 Haddon, J. (2023, November 24). Optus Chairman: Next CEO should have telco experience. *Capacity.* Retrieved from https://www.capacitymedia.com/article/2chtqoj9xs1sl10gatslc/appointments/optus-chairman-next-ceo-should-have-telco-experience

114 LinkedIn. (n.d.). Kelly Bayer Rosmarin. Retrieved from https://www.linkedin.com/in/kbr/details/experience/

115 *Ibid.*

116 Optus. (n.d.). Our executives. Retrieved from https://www.optus.com.au/about/corporate/executive-profiles

117 *Ibid.*

118 *Ibid.*

119 Optus. (n.d.). Our Executives. Retrieved from https://www.optus.com.au/about/corporate/executive-profiles

120 Singapore Telecommunications Limited. (n.d.). Annual report FY2021-22. Retrieved from https://cdn2.singteldigital.com/content/dam/singtel/investorRelations/annualReports/2022/Singtel-Annual-Report-2022.pdf

121 Singapore Telecommunications Limited. (n.d.). Leadership. Retrieved from https://www.singtel.com/about-us/company/leadership

122 Singapore Telecommunications Limited. (n.d.). Change – Announcement of Appointment::Appointment of Non-executive Director. *Singapore Exchange.* Retrieved from https://links.sgx.com/1.0.0/corporate-announcements/ZZQL6F4SCLDTT34F/9b1b316999fa5078b6dd85da739def72060249c44fe7c29b11c94bbd5174adb5

123 Singapore Telecommunications Limited. (2019, December 16). Temasek Statement on the Appointment of Mr Lee Theng Kiat as Director and Chairman-designate. Retrieved from https://links.sgx.com/FileOpen/789-sgx.ashx?App=Announcement&FileID=590675

124 Singapore Telecommunications Limited. (n.d.). Leadership. Retrieved from https://www.singtel.com/about-us/company/leadership

125 *Ibid.*

126 *Ibid.*

127 *Ibid.*

128 *Ibid.*

129 *Ibid.*

130 *Ibid.*

131 *Ibid.*

132 *Ibid.*

133 Singapore Telecommunications Limited. (n.d.). Annual report FY2022-23. Retrieved from https://media.aws.singtel.com/info-singtel/annualreport/2023/Singtel_Annual_Report_2023_Higher_Res.pdf

134 *Ibid.*

135 Baird, L., & Stefano, M. D. (2022, September 30). Optus' 'opaque' Singapore owner faces scrutiny over hacking attack. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/telecommunications/optus-opaque-singapore-owner-faces-scrutiny-over-hacking-attack-20220930-p5bm5u

136 *Ibid.*

137 *Ibid.*

138 Baird, L., & Stefano, M. D. (2022, September 30). Optus' 'opaque' Singapore owner faces scrutiny over hacking attack. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/telecommunications/optus-opaque-singapore-owner-faces-scrutiny-over-hacking-attack-20220930-p5bm5u

139 *Ibid.*

140 *Ibid.*

141 Singapore Telecommunications Limited. (n.d.). Annual report FY2021-22. Retrieved from https://cdn2.singteldigital.com/content/dam/singtel/investorRelations/annualReports/2022/Singtel-Annual-Report-2022.pdf

142 *Ibid.*

143 *Ibid.*

144 *Ibid.*

145 *Ibid.*

146 *Ibid.*

147 *Ibid.*

148 *Ibid.*

149 *Ibid.*

150 *Ibid.*

151 Singapore Telecommunications Limited. (2016, November 2). Singtel enhances cyber security capabilities with Optus Advanced Security Operations Centre. Retrieved from https://www.singtel.com/about-us/media-centre/news-releases/singtel-enhances-cyber-security-capabilities-with-optus-advanced-security-ope

152 *Ibid.*

153 *Ibid.*

154 Macquarie University. (2016, May 30). $10 million partnership with Optus for new cyber security hub. Retrieved from https://www.mq.edu.au/thisweek/2016/05/30/10-million-partnership-optus-new-cyber-security-hub/

155 Optus. (2016, October 26). Optus business & La Trobe University connect in tech-collaboration. Retrieved from https://www.optus.com.au/about/media-centre/media-releases/2016/10/optus-business-la-trobe-university-connect-in-tech-collaboration

156 Singapore Telecommunications Limited. (2016, September 23). Palo Alto Networks and Singtel team up to help organisations prevent cyber breaches in Asia Pacific with new managed security service. Retrieved from https://www.singtel.com/about-us/media-centre/news-releases/palo-alto-networks-and-singtel-team-up-to-help-organisations-prevent-cyber-br0

157 Akamai. (2016, October 13). Singtel and Akamai strengthen alliance to boost web security capabilities. Retrieved from https://www.akamai.com/newsroom/press-release/akamai-and-singtel-boost-web-security-capabilities-for-singapore-businesses

158 Barker, S. (2017, November 27). Optus Business dedicates $3.5M to Cyber Security Cooperative Research Centre. *SecurityBrief Australia*. Retrieved from https://securitybrief.com.au/story/optus-business-dedicates-35m-cyber-security-cooperative-research-centre

159 *Ibid.*

160 *Ibid.*

161 *Ibid.*

162 Singapore Telecommunications Limited. (2018, October 10). Optus cyber security expands Trustwave's cyber capabilities in Australia with acquisition of Hivint. Retrieved from https://www.singtel.com/about-us/media-centre/news-releases/optus-cyber-security-expands-trustwaves-cyber-capabilities-in-australia-with-

163 *Ibid.*

164 Digital News Asia. (2015, April 8). Singtel acquires US cybersecurity company Trustwave for US$810mil. Retrieved from https://www.digitalnewsasia.com/business/singtel-acquires-us-cybersecurity-company-trustwave-for-usd810mil

165 Klan, A (2022, October 10). Optus runs global cybersecurity arm. *The Klaxon*. Retrieved from https://theklaxon.com.au/optus-runs-global-cybersecurity-arm

166 The Online Citizen. (2022, October 10). Did hacked-Optus deploy its global cybersecurity giant to protect its Australian customers? Retrieved from https://www.theonlinecitizen.com/2022/10/10/did-hacked-optus-deploy-its-global-cybersecurity-giant-to-protect-its-australian-customers/

167 *Ibid.*

168 The Straits Times. (2022, August 23). Singtel readies $419m sale of cyber-security arm Trustwave, sources say. Retrieved from https://www.straitstimes.com/business/companies-markets/singtel-readies-419m-sale-of-cyber-security-arm-trustwave-sources-say

169 *Ibid.*

170 Singapore Telecommunications Limited. (2023, October 2). Completion of Trustwave strategic review. Retrieved from https://www.singtel.com/content/dam/singtel/investorRelations/factsheetsAndPresentation/2023/Completion%20of%20Trustwave%20strategic%20review%20-%20FINAL.pdf

171 *Ibid.*

172 The Straits Times. (2023, April 22). Singtel-owned Optus hit with class-action lawsuit over 2022 cyber-security breach. Retrieved from https://www.straitstimes.com/business/singtel-owned-optus-hit-with-class-action-over-2022-cybersecurity-breach

173 *Ibid.*

174 Dataconomy. (2023, January 16). Optus data breach compensation can be worth billions of dollars. Retrieved from https://dataconomy.com/2022/10/optus-data-breach-compensation-class-action/

175 *Ibid.*

176 Maurice Blackburn. (n.d.). 2022 Optus Data Breach Investigation. Retrieved from https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/optus-data-breach-2022/

177 Slater Gordon. (n.d.). Optus data breach class action. Retrieved from https://www.slatergordon.com.au/class-actions/current-class-actions/optus-data-breach

178 Bajkwoski, J. (2022, October 12). Optus facing billions in compo as OAIC prosecution looms. Retrieved from https://www.themandarin.com.au/202285-optus-facing-billions-in-compo-as-oaic-prosecution-looms/

179 The Business Times. (2022, October 8). Hacked Optus customers kick off legal search for compensation. Retrieved from https://www.businesstimes.com.sg/companies-markets/hacked-optus-customers-kick-legal-search-compensation

180 Mills, T. (2020, April 27). Optus facing class action over alleged customer privacy breaches. *The Sydney Morning Herald*. Retrieved from https://www.smh.com.au/national/optus-sued-over-alleged-customer-privacy-breaches-20200427-p54nim.html

181 CIO Tech Team. (2020, May 4). Optus Faces class action suit for Data Breach. Retrieved from https://ciotechasia.com/optus-faces-class-action-suit-for-data-breach/

182 *Ibid.*

183 The Guardian. (2023, November 8). Optus service outage at a glance: what we know so far. Retrieved from https://www.theguardian.com/business/2023/nov/08/optus-network-outage-australia-what-we-know-explained-news-updates

184 *Ibid.*

185 *Ibid.*

186 *Ibid.*

187 Wiggins, J. & Smith, P. (2023, November 8). Optus CEO says 'no soundbite' to explain phone outage chaos. *Financial Review.* Retrieved from https://www.afr.com/technology/optus-ceo-says-no-soundbite-to-explain-phone-outage-20231108-p5eid1

188 The Guardian. (2023, November 8). Optus service outage at a glance: what we know so far. Retrieved from https://www.theguardian.com/business/2023/nov/08/optus-network-outage-australia-what-we-know-explained-news-updates

189 *Ibid.*

190 *Ibid.*

191 *Ibid.*

192 *Ibid.*

193 Financial Review. (2023, November 8). Optus CEO Kelly Bayer Rosmarin is sorry – and a little defiant. Retrieved from https://www.afr.com/chanticleer/optus-ceo-kelly-bayer-rosmarin-is-sorry-and-a-little-defiant-20231108-p5eilj

194 *Ibid.*

195 Wiggins, J. & Smith, P. (2023, November 8). Optus CEO says 'no soundbite' to explain phone outage chaos. *Financial Review.* Retrieved from https://www.afr.com/technology/optus-ceo-says-no-soundbite-to-explain-phone-outage-20231108-p5eid1

196 *Ibid.*

197 *Ibid.*

198 Financial Review. (2023, November 8). It's not just Optus' network that has failed. Retrieved from https://www.afr.com/chanticleer/it-s-not-just-optus-network-that-has-failed-20231108-p5eif0

199 Smith, P. (2023, November 17). 'We didn't have a plan': Optus admits it was caught out. *Financial Review.* Retrieved from https://www.afr.com/technology/we-didn-t-have-a-plan-optus-admits-it-was-caught-out-20231117-p5ektm

200 *Ibid.*

201 *Ibid.*

202 Singapore Telecommunications Limited. (2023, November 16). Media Statement. Retrieved from https://links.sgx.com/FileOpen/Ann-20231116-Optus.ashx?App=Announcement&FileID=778378

203 Smith, P. (2023, November 17). 'We didn't have a plan': Optus admits it was caught out. *Financial Review.* Retrieved from https://www.afr.com/technology/we-didn-t-have-a-plan-optus-admits-it-was-caught-out-20231117-p5ektm

204 *Ibid.*

205 *Ibid.*

206 *Ibid.*

207 Hewett, J. (2023, Nobember 20). Why the Optus CEO had to go – and quickly. *Financial Review.* Retrieved from https://www.afr.com/companies/telecommunications/why-the-optus-ceo-had-to-go-and-quickly-20231120-p5elaw

208 Smith, P. (2023, November 20). Optus' leadership up for grabs as CEO resigns. *Financial Review.* Retrieved from https://www.afr.com/technology/optus-ceo-kelly-bayer-rosmarin-resigns-20231120-p5el9o

209 Loussikian, K. (2023, November 20). Inside the Optus HQ rumour mill – and blame game. *Financial Review.* Retrieved from https://www.afr.com/companies/telecommunications/inside-the-optus-hq-rumour-mill-and-blame-game-20231120-p5eldn

210 Hewett, J. (2023, Nobember 20). Why the Optus CEO had to go – and quickly. *Financial Review.* Retrieved from https://www.afr.com/companies/telecommunications/why-the-optus-ceo-had-to-go-and-quickly-20231120-p5elaw

211 Smith, P. (2023, November 20). Optus' leadership up for grabs as CEO resigns *Financial Review.* Retrieved from https://www.afr.com/technology/optus-ceo-kelly-bayer-rosmarin-resigns-20231120-p5el9o

212 *Ibid.*

213 Bonyhady, N. (2023, November 23). Optus chairman says next chief executive should have telco experience. *Financial Review.* Retrieved from https://www.afr.com/technology/optus-chairman-says-next-chief-executive-should-have-telco-experience-20231123-p5emdc

214 *Ibid.*

215 Smith, P. (2023, November 20). Optus' leadership up for grabs as CEO resigns *Financial Review.* Retrieved from https://www.afr.com/technology/optus-ceo-kelly-bayer-rosmarin-resigns-20231120-p5el9o

216 Mellroy, T. (2024, March 8). SingTel slugged in $895m ATO loss. Retrieved from https://www.afr.com/politics/federal/singtel-slugged-in-895m-ato-loss-20240308-p5faz9

217 *Ibid.*

218 *Ibid.*

219 *Ibid.*

220 Wiggins, J. (2024, February 23). Optus outage cost $61m parent Singtel reveals. *Financial Review.* Retrieved from https://www.afr.com/companies/telecommunications/optus-outage-cost-61m-parent-singtel-reveals-20240223-p5f7ac

221 Thompson, S., Sood, K. & Rapaport, E. (2024, Mach 13). Singtel weighs options for Optus; eyes on enterprise division. *Financial Review.* Retrieved from https://www.afr.com/street-talk/singtel-weighs-options-for-optus-eyes-on-enterprise-division-20240130-p5f14d

222 *Ibid.*

223 Singapore Telecommunications Limited. (2024, January 30). Clarification Regarding Media Article. Retrieved from https://links.sgx.com/FileOpen/NR-30012024-ann.ashx?App=Announcement&FileID=785356

224 Thompson, S., Sood, K. & Rapaport, E. (2024, Mach 13). Singtel in advanced talks to offload Optus to Brookfield for $16b. *Financial Review.* Retrieved from https://www.afr.com/street-talk/singtel-in-advanced-talks-to-offload-optus-to-brookfield-for-16b-20240313-p5fc8h

225 Chiew, S. (2024, March 14). Singtel said to hire JPMorgan for Optus stake sale to Brookfield. *The Edge Singapore.* Retrieved from https://www.theedgesingapore.com/news/company-news/singtel-said-hire-jpmorgan-optus-stake-sale-brookfield

226 *Ibid.*

227 Pei, M. (2024, April 3). Singtel slides amid heavy trading on news of scuppered Optus deal; company denies reports again. *The Business Times.* Retrieved from https://www.businesstimes.com.sg/companies-markets/singtel-slides-amid-heavy-trading-news-scuppered-optus-deal-company-denies-reports-again

228 Chatterjee, R.. (2024, 23 May). Australia Takes Singtel-Owned Optus to Court Over 2022 Cyber Attack. *Reuters.* Retrieved from https://www.reuters.com/technology/cybersecurity/australia-takes-singtel-owned-optus-court-over-2022-cyber-attack-2024-05-22/

PWC: THE "FANTAXTIC" SAGA

Case overview

On 23 January 2023, PricewaterhouseCoopers (PWC) Australia was thrust into the public spotlight when it was revealed that one of its partners, Peter Collins (Collins), had been investigated and sanctioned by the Australia Tax Practitioners Board. Collins was banned from practising as a tax agent in Australia for two years for sharing confidential government information with the firm's partners and clients. Subsequently, an internal investigation implicated several more tax professionals at PwC Australia and plunged the firm into a full-blown scandal.

The objective of this case study is to facilitate a discussion of issues such as conflict of interest; use of confidential information; reliance on private sector consultants by government bodies; corporate culture; governance of the Big Four accounting firms; and pay equity in the Big Four accounting firms.

Birth of a behemoth

Founded in 1998 from a merger between two of the Big Eight accounting firms, Price Waterhouse and Coopers & Lybrand, the London-based firm has roots dating back to the 19th century and is now a member of the Big Four accounting firms.[1] Much like the other members of the Big Four, PricewaterhouseCoopers (PwC) operates a vast global network that provides audit, tax, and other professional services to some of the world's largest organisations, achieving gross revenues of over US$50 billion for the year ending 30 June 2023.[2] Currently, PwC boasts a global presence spanning 151 countries.[3]

Through PricewaterhouseCoopers International Limited, PwC Global ensures common standards among member firms in key areas such as strategy, branding, risk management, and compliance.[4] This allows PwC to project a consistent corporate culture globally. It maintains a global board with partners from key regions, including Australia.[5]

PwC has established itself in Australia with nine offices.[6] PwC Australia is led by an executive board, now called the Management Leadership Team, and maintains a governance board that oversees the firm in areas of risk, partner admissions, and approving major transactions.[7,8] It primarily operates three service lines: Consulting,

---

This case study was originally prepared by Dai Hong Li, Lee Zheng Wen, Llyod Koh Kai Boon, Loy Kia Boon Claire, Ngoh Zai Yan, Niki Alani Hartono. 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.

Financial Advisory, and Assurance. For the financial year (FY) ended 30 June 2022, consulting revenue rose 21% to A$740 million, surpassing assurance revenue of A$730 million.[9] PwC Australia has consistently held a leading position in Australia, with substantial growth in consulting revenue compared to the other Big Four firms.[10] However, recent revelations have raised questions on the reasons behind its strong growth in the consulting business.

The Australian regulatory environment

PwC Australia operates within a regulatory environment that includes various statutory boards and government-linked bodies, including the Australian Taxation Office (ATO), Tax Practitioner Board (TPB), Companies Auditors Disciplinary Board (CADB), Board of Taxation (BoT), Auditing and Assurance Standards Board (AUASB), Australian Accounting Standards Board (AASB), and Australian Federal Police (AFP). Figure 1 summarises the roles of these agencies.

Figure 1: Summary of relevant Australian Government Agencies

Organisation	Role
Australian Tax Office (ATO)	The principal tax revenue collection agency of the Australian Government. It mainly manages Australia's taxation system and ensures compliance of businesses in income tax reporting.[11]
Tax Practitioners Board (TPB)	Registers and regulates tax practitioners practising in Australia. Ensures that tax practitioners are in adherence of the Tax Agent Services Act 2009 (TASA) and the Code of Professional Conduct.[12]
Companies Auditors Disciplinary Board (CADB)	The expert disciplinary tribunal that manages the suspension or cancellations of registered auditors' licenses under the Corporations Act. The Australian Securities and Investments Commission (ASIC) or the Australian Prudential Regulation Authority (APRA) may file applications with CADB for consideration.[13]
Board of Taxation (BoT)	A non-statutory advisory board that acts as the bridge between the business/taxation sector and the Australian Government, by providing opinions and perspectives from the commercial stakeholders to the government.[14]
Australian Accounting Standards Board (AASB)	Designs and manages the accounting standards companies in Australia are to adhere to and auditors express an opinion with reference to.[15]
Australian Federal Police (AFP)	Investigates acts of financial crimes in Australia and charges offenders that commit these criminal offences.[16]
Auditing and Assurance Standards Board (AUASB)	Makes auditing and assurance standards under section 334 of the Corporations Act as well as participates in and contributes to the development of a single set of international auditing standards for worldwide use.[17]

Unravelling the scandal

Peter Collins (Collins), who was head of international tax at PwC Australia, was a member of the BEPS Tax Advisory Group involved in high-level Australian Treasury discussions.[18] The Australian Treasury was developing new regulations aimed at addressing multinational tax avoidance, mainly by the US tech companies.[19,20] This form of avoidance involved situations where licensing fees are paid by an Australian entity to a low or no-tax jurisdiction, effectively allowing these companies to avoid Australia's 30% corporate tax rate.[21] Between 2013 and 2018, Collins signed three confidentiality agreements related to Treasury Advice with the Australian Treasury.[22]

On 12 May 2015, Treasurer Joe Hockey (Hockey) announced the Multinational Anti-Avoidance Law (MAAL) which had been crafted following discussions with consultants from the Big Four accounting firms.[23] However, mere hours after the announcement, PwC Australia contacted 23 US tech firms, offering a workaround plan for the impending legislation.[24] Despite having signed multiple confidentiality agreements, Collins intentionally shared confidential information from Treasury consultations and through his engagement with the BoT regarding

Australia's forthcoming anti-avoidance tax laws with PwC partners and others, both in Australia and overseas.[25] By sharing this confidential information, Collins sought to assist existing and potential clients of PwC Australia in avoiding the anti-avoidance tax laws scheduled to take effect on 1 January 2016.[26]

ATO detects a leak

In April 2016, the ATO became aware of companies attempting to avoid the newly introduced MAAL. In response, towards the end of 2016, the ATO sent notices to the Big Four accounting firms, including PwC Australia, alerting them to schemes for tax avoidance.

A prolonged investigation into PwC Australia followed, partly due to its use of legal professional privilege (LPP) to avoid complying with multiple compulsory information gathering notices issued by the ATO from 19 September 2016.[27] It was reported that PwC Australia used thousands of claims of LPP to conceal its internal documents from the ATO that would allegedly have revealed certain PwC Australia's partners' plans for monetising the confidential information that Collins had acquired.[28]

The ATO sought a copy of the Australian Treasury's standard confidentiality agreement with PwC Australia, as well as specific confidentiality agreements involving Collins.[29] During a Senate enquiry, the ATO mentioned that they were unable to outright inform the Treasury about their suspicions due to "secrecy laws".[30]

The ATO struggled to address the LPP claims in a timely manner, only announcing action in January 2018.[31] However, these measures led only to the withdrawal of some LPP claims. Subsequently, on 26 November 2018, the ATO approached the Commonwealth Office of Public Prosecutions to invalidate the LPP claims.[32] It was then assessed that the ATO lacked sufficient evidence to disprove the LPP claims.[33] The ATO also referred this matter to the AFP, but the AFP contended that they lacked adequate information to advance an investigation.[34] In July 2020, the ATO referred the confidentiality breach involving Collins to the TPB, a separate regulatory body for tax practitioners.[35] The TPB commenced an investigation into Collins in January 2021 and then into PwC Australia in March 2021. However, TPB encountered internal obstacles when the ATO refused to cooperate, citing secrecy laws.[36] Nonetheless, TPB managed to access the ATO's records without its knowledge and uncovered details of confidential settlements between tech companies and the ATO.[37]

The LPPs continued to be used to stonewall the ATO's investigations, with 20% of its audits complicated by LPP claims.[38] It was not until 2 February 2021 that the case of CUB Australia Holding Pty Ltd v Commissioner of Taxation confirmed the Tax Commissioner's authority to obtain details about LPP claims in order to assess their validity for potential court challenges.[39] On 21 November 2022, the ATO penalised PwC Australia for its false LPP claims.[40]

After more than seven years of investigation, the ATO finally revealed the scandal to the public in 2022.[41]

Tax-ting in the shadows

Amidst the ongoing tax scandal, Tom Seymour (Seymour) was elected as Chief Executive Officer (CEO) of PwC Australia in March 2020, replacing Luke Sayers.[42] However, Seymour's appointment occurred despite internal warnings from partners and the deputy commissioner of the ATO, who cautioned that allowing Seymour to become CEO "could create a massive headache" [43] due to his past involvement in the firm's tax practice and the ongoing ATO investigation.[44]

> "We take our obligations as tax agents very seriously. I have the utmost faith in the ethical standards of the people we employ. I certainly would be shocked and hugely disappointed if anyone in our firm is breaching laws."
>
> – *Tom Seymour, former CEO of PwC Australia*[45]

Seymour's earlier claim was contradicted when Australian regulators uncovered 144 pages of internal emails[46] circulated among at least 63 partners and staff,[47] dating back to 2014.[48] These emails contained confidential information pertaining to Collin's discussions with the federal government regarding the MAAL. The Senate investigations further revealed that Collins and other PwC Australia partners had disregarded the confidentiality agreements,[49] freely sharing confidential information in emails with phrases such as "Treasury tells me" and "an early confidential draft".[50] A report by the finance and public administration committee described PwC Australia as "aggressively" monetising the information with "no regard for the public interest".[51]

One internal PwC Australia email showed that the firm had made at least A$2.5 million from their dealings with clients through this information.[52] However, this would have cost the Australian economy A$180 million if the scandal was left uncovered.[53] As the tax scandal unfolded, Seymour admitted to being aware of the unlawful tax practices instigated by Collins and subsequently stepped down as CEO in May 2023.[54] Kristin Stubbins (Stubbins) was appointed as acting CEO in his place.[55]

Kevin Burrowes into the thick of things

As the controversy continued to escalate, it became evident that it would take "centre stage" at an upcoming Senate hearing.[56] This prompted PwC Global to intervene.[57] Kevin Burrowes (Burrowes), a key member of PwC Global based in Singapore, was relocated to Sydney to assume the role of PwC Australia's CEO in order to "enhance leadership and governance and reinforce our values throughout the organisation".[58] Burrowes, previously the Global Clients & Industries Leader based in Singapore,[59] was selected for the position due to his expertise in PwC's network standards and governance structures.[60]

One key step he took was the immediate divestment of PwC Australia's government business to private equity firm Allegro Funds for A$1.[61] The divestment was aimed at ensuring there would be no disruption in vital services to public sector clients. PwC Australia took this step as they feel "it is the right thing to do for [their] public sector clients and to protect the jobs of the c.1,750 talented people".[62] With the papers signed in June 2023 and final approval granted on 6 November 2023, Scyne Advisory, PwC Australia's amputated government advisory arm, was permitted to resume public sector work once the Australian Department of Finance was satisfied that none of the remaining staff were involved in the scandal.[63]

Pressure increasing

> "PwC should release these names themselves, and they should do it publicly. In my opinion, this is an attempt to use the cloak of the Senate to maintain confidentiality."
>
> *– Deborah O'Neill, Australian Labour Senator*[64]

Senator Deborah O'Neill (O'Neill) remarked that PwC Australia cannot simply "phoenix their way out" of the scandal, and insist that it must fully disclose details regarding the breach.[65] A subsequent visit by Bob Moritz, PwC Global's Chairman, was perceived as merely a publicity stunt and did not help smooth things over.[66] As a result, pressure continued to mount on PwC Australia as the investigation continued its "painful extraction of information" that is "dribbling out of PwC".[67]

Collins peters out

As the Senate investigation unfolded, it became increasingly evident that the internal emails and list of 63 employees identified revealed very few details about the scandal itself. The list did not set out each person's level of involvement in the breach,[68] and the public was made aware of only eight employees, including Seymour, who were formally dismissed.[69]

The Senate's investigation found that PwC Australia's actions demonstrated an intention to conceal wrongdoing by denying and hindering the ATO's investigation and evidence-gathering process.[70] These actions included numerous LPP claims that are "inappropriate and incorrect".[71] The Senate committee report further found that under the Tax Agent Services Act, PwC Australia was required to report Collins' breach of confidentiality to the TPB.[72] However, it disregarded and breached this legal obligation.[73] The Senate committee concluded that "PwC engaged in a deliberate strategy over many years to cover up the breach of confidentiality and the plan by PwC personnel to monetise it."[74]

In response to the scandal, Senator Barbara Pocock (Pocock) criticised PwC Australia's reliance on scapegoats to absolve blame.[75] According to an interview by The Australian, a PwC Australia partner not involved in the tax scandal stated that Collins had been used as a sacrifice to quell the scandal.[76] Senator Pocock opined that it is untenable for the Australian government to continue engaging with PwC Australia in view of its behaviour.[77] She further expressed to the Senate Committee that based on all the case's facts, it "shows an internal culture at PwC so poor that it has lost the capacity to act honestly".[78] Furthermore, Senator O'Neill informed the Senate that she had previously received reports from whistleblowers in PwC Australia who were "frightened to speak up because they're being intimidated".[79] She added that PwC Australia would not be able to provide stakeholders "a level of assurance" as it currently operates "out of a model that is so clearly devoid of an ethical backbone".[80]

Anthony's path to clarity

Within the confidential list of 63 individuals implicated by PwC Australia and submitted to the Senate was Anthony Klein (Klein), a former PwC Australia partner and a director of the BoT.[81]

Klein was the first government official to step down in light of the scandal.[82] During his tenure at PwC Australia, he had established close working relationships with at least two former partners, Paul McNab and Collins, both of whom were also involved in the scandal.[83] Klein held various titles at PwC Australia, including "Leader of PwC's corporate tax team in Melbourne", "Leader of PwC's private client team in Melbourne", and "PwC's international tax leader for the Asia Pacific region".[84] Klein served as a PwC Australia tax partner for 17 years until July 2021 when he was appointed as the BoT director in October 2021 for a three-year term.[85]

In an email, Klein expressed dismay upon learning that PwC Australia had identified him as a recipient of confidential information.[86] He assured that he had neither used nor misused the information obtained.[87] On 23 June 2023, Klein notified the BoT of his decision to resign, attributing it to the serious nature of the allegations involving various individuals at PwC Australia.[88] His resignation coincided with The Klaxon initiating inquiries into his past at PwC Australia.[89] The Klaxon is an independent Australian news organisation that focuses on exposing misconduct and wrongdoing by both businesses and government agencies.[90]

The advisory panel of the BoT which Klein had resigned from originally consisted of 47 individuals.[91] It was established by the BoT in 2002 as a readily accessible source of high-level expert advice for the board to address taxation issues.[92] Among the panel members, 14 were tax executives from Big Four.[93] Four of them were PwC Australia tax partners.[94] In addition, there were also nine tax partners from other consulting firms, resulting in consulting firms collectively occupying 23 positions, representing 49% of the advisory panel.[95]

In a subsequent review by the BoT, it was announced on 29 June 2023 that the advisory panel would be dissolved as it no longer meets the current needs of the board. The BoT highlighted that the advisory panel's recent involvement in work had been "extremely limited".[96]

Ziggy-zag down a slippery slope

In May 2023, interim PwC Australia CEO Stubbins appointed Ziggy Switkowski (Switkowski), a respected Australian business leader, to lead an independent review of the partnership's culture, governance, and

accountability.[97] This was in response to issues identified by the TPB's investigation into the firm's use of confidential tax policy information.[98]

The Switkowski report's deliverables included (1) evaluation of PwC Australia's current governance practices, and (2) proposed solutions to bridge any gaps.[99] This was achieved through documentation review, interviews, case studies, and focus group discussions.[100] Switkowski made 23 recommendations regarding PwC Australia's governance lapses.[101]

Switkowski suggested that there may not be a straightforward answer as to why the firm found itself caught in the tax scandal.[102] However, the analysis of their governance, corporate structure, accountability, and tone-at-the-top "has been illuminating".[103] PwC Australia operates under a limited liability partnership (LLP) business structure, exempting them from the legal obligation to submit audited financial statements like listed companies.[104] Senator Whish-Wilson criticised this lack of transparency, describing Big Four firms "as a very secretive mob" with no external body auditing them.[105]

PwC Australia creates a layer of governance by delegating key management functions to the board of partners, also known as the governance board.[106] The governance board is intended to act as the ultimate supervisory body responsible for overseeing PwC Australia independently of management.[107] Its responsibilities include ensuring a strong firm by supporting, monitoring, and providing input into strategy as well as various matters related to partnership management, such as protecting the interests of partners, managing partner admissions and retirements, and approving major transactions or referring them to a partner vote.[108] As of 1 August 2023, The governance board comprised of the firm's Country Senior Partner (CSP), also referred to as the CEO, and ten partners who are elected by partner vote.[109]

Switkowski identified issues related to the governance board. It was revealed that historically, the governance board had not used a skills matrix to define the range of skills and expertise among candidates, which is essential for ensuring the board's suitability for governance and oversight.[110] Furthermore, Switkowski noted that the board members prioritised protecting partners' interests rather than ensuring proper governance of PwC Australia. [111]

The effectiveness of governance and oversight was further inhibited by the composition of the governance board. Switkowski commented that "there is no objective, external perspective" on the board. All board members reported, directly or indirectly, to the CEO.[112] This circular reporting structure resulted in board members having insufficient seniority to challenge the CEO and their leadership team.[113] Additionally, since the CEO was involved in the remuneration and partner evaluation of board members, this created reticence among board members to challenge the CEO.[114]

Switkowski's review further disclosed that the CEO's power was reinforced by the terms of the Partnership Agreement, which stated that he cannot be removed by the governance board, but only by the partnership body that elected him.[115] This dynamic created a situation where the CEO tends to exert a dominant voice, which in recent years has been left unchecked.[116]

In September 2023, PwC Australia announced its commitment to appoint at least three non-executive members to the governance board including a non-executive Chair and is implementing other changes to its governance following recommendations made in Switkowski's report.[117]

An independent review?

Despite the comprehensiveness of the report, Senator O'Neill criticised it for only "scratching the surface" and not being entirely independent, as it was commissioned and overseen by PwC Australia themselves.[118]Additionally, concerns about potential conflict of interest were also highlighted.[119] Switkowski had previously served as Telstra's CEO from 1999 to 2004,[120] during which Telstra was one of PwC Australia's major audit clients, with Seymour overseeing the audit at the time.[121]

In addition to Switkowski's report, PwC Global engaged the services of an international law firm, Linklaters LLP, to conduct an investigation.[122] While PwC Global chose not to disclose the full report, they did share a concluding statement from Linklaters.[123] The statement affirmed that there was no evidence indicating that PwC personnel outside of Australia had utilised the confidential information for any gain.[124] However, Linklaters did identify six individuals who should have raised concerns as to whether the information was confidential.[125]

The investigATOr team

There has been criticism of how the ATO handled the scandal, including by Richard Holden (Holden), a professor at the University of New South Wales.[126]

Holden highlighted a series of events where the ATO claimed to be "bound by secrecy laws", which he argued "reeks of regulatory capture".[127] Regulatory capture occurs when the regulators align their interests with the industry they regulate rather than fulfilling their duty of acting in public interest.[128] In addition, the revelation of a confidential settlement between the ATO and PwC Australia during a Senate Inquiry[129] raised concerns that PwC Australia may have secured "a sweetheart deal" with the ATO prior to the full scandal exposure.[130]

It was eventually revealed that the agreement was related to PwC Australia's false LPP claims.[131] The ATO had initially imposed a penalty of A$1,428,000 on PwC Australia for the 170 LPP claims, but the settlement lowered this amount to A$642,600.[132] The agreement also prevents the ATO from pursuing actions against five multinational clients who supported the inaccurate LPP claims.[133] This deal was not disclosed by the ATO until PwC Australia alluded to it during the Senate Inquiry.[134] Senator Pocock opined that the disclosure of the deal was "symptomatic of the secrecy that surrounds the relationship between PwC and the Tax Office".[135]

The ATO's close ties with PwC Australia was further reinforced by revelations that Jeremy Hirschhorn (Hirschhorn), the ATO's second Commissioner, took a trip to Paris for PwC's Global Tax Conference in November 2019, with all expenses amounting to A$12,000 fully paid by PwC Australia.[136,137] As reported by Neil Chenoweth of Australian Financial Review (AFR), this was during a time of heightened dispute between PwC Australia and ATO.[138] Senator Pocock questioned Hirschhorn about the appropriateness of accepting such a trip given the ATO's concerns about PwC Australia.[139]

Australian Government's costly consultancy habit

In the last decade, the Big Four have garnered over A$4 billion in contracts from the federal government, reflecting an increase of 1,270% over the ten-year period.[140,141] These firms consistently made political donations, indirectly fostering a culture of political co-dependency.[142] Senator Pocock emphasised that the persistent donations from PwC Australia to the government represent "a crisis and a scandal", especially considering the collective billions of dollars that major consulting firms receive from taxpayers annually.[143] This elevated spending habit has raised significant concerns about the potential conflicts of interest in matters pertaining to public finances.[144]

Professor Allan Fels, the former Chairman of the Australian Competition and Consumer Commission,[145] has cautioned that consultancy firms have been able to impose higher rates as the government becomes increasingly reliant on their services.[146] Furthermore, Andrew Podger, a former Australian public service commissioner, commented that consultants may be swayed by commercial interests when providing advice to the government.[147]

A new equation

Following the scandal, PwC Australia "developed five key commitments to change and a comprehensive action plan that provides a roadmap to becoming the leading professional services firm", as outlined in an open letter by Burrowes.[148]

PwC Australia's Five Commitments to Change are as follows:[149]

1. Put our purpose and values at the core of everything we do;
2. Increase the independence and effectiveness of our governance board;
3. Improve discipline and rigour of decision making;
4. Strengthen risk and conflict management and accountabilities; and
5. Embed a culture and practice of constructive challenge.

The firm has also since adopted the Australian Securities Exchange (ASX) corporate governance principles and recommendations to achieve point two of its Five Commitments to Change.[150]

The PwC Australia governance board, led by independent Chair, Justin Carroll, will oversee the firm's progress in implementing the reforms. One key change involves granting the governance board the appropriate level of authority to appoint and remove the CEO.[151]

The firm also acknowledged Switkowski's recommendation to restructure the board of partners, clarify and restate the governance role of the board, and establish a skills matrix for board members, along with designing induction and development programs.[152] Furthermore, a new role of Chief Risk and Ethics Leader has been created, with Jan McCahey (McCahey) appointed as the inaugural holder.[153] McCahey previously served as PwC Global's head of public policy and regulation.[154]

After PwC Australia publicised their commitment to change, the other Big Four firms have reassured stakeholders that they maintain "superior governance structures in place".[155] Andrew Yates, Chief Executive of KPMG Australia, said KPMG's governance structure is "unique among its peers in Australia", citing existing compliance with many of the proposed new PwC Australia rules and structures, including independent members on its governance board and centralised risk management.[156]

Tech giants byte-ing their nails

The repercussions of the tax scandal extend beyond the Australian government and PwC Australia, potentially impacting the client involved.

Investigations unveiled that various US tech giants, including Google,[157] Microsoft,[158] and Uber,[159] were among those entangled in the scandal. It exposed PwC Australia's use of confidential Treasury documents to market tax avoidance schemes to these US companies.[160] These companies, known for their tax minimising strategies, have faced scrutiny for their possible association with PwC Australia's misconduct.[161] Questions have been raised about whether these firms should have known that the tax advice was based on confidential information accessible only to PwC Australia and key governmental organisations.[162]

The scandal revealed that the tax avoidance schemes involving Uber and Facebook were established with PwC Australia's assistance weeks before the new MAAL was implemented in Australia.[163] An Uber spokesperson commented that they "had no knowledge [PwC's] advice may have been based on improperly obtained information".[164] Similarly, a Facebook spokesperson expressed surprise upon learning that PwC Australia's advice was based on leaked government plans.[165] Google, which was the first company directly affected, has denied any wrongdoing, asserting that PwC Australia's leaks did not affect their compliance with Australian tax-avoidance laws.[166]

A spokesperson from PwC Australia defended that the firm's clients were not engaged in any wrongdoing, and no confidential information was used in helping them reduce their tax obligations.[167] Despite these clarifications made, the scandal has affected the credibility and the image of these tech giants.[168]

Dual ethical standards

> "The Australian partnership operates largely from a profit seeking perspective, sometimes at the expense of ethics and doing what's right. I do not believe this aligns with our values,"
>
> – *A Partner of PwC Australia*[169]

Operating in a highly competitive and demanding environment, PwC Australia was said to have adopted an aggressive growth and profit-oriented agenda, taking precedence over ethical considerations. Partners who surpass financial targets are hailed as heroes and face little scrutiny on their business practices.[170] This fosters a culture where revenue is king and unethical conducts are justifiable.[171] The "whatever it takes" attitude towards making money also discourages staff from reporting unethical behaviour.[172] According to a survey commissioned by PwC on internal corporate culture, most employees agree that a proper "tone at the top" is essential for mitigating ethical risks.[173] However, 46% of the respondents reported that leadership had not consistently set the appropriate tone.[174]

In contrast, trained accountants, including tax practitioners, are expected to abide by a code of conduct to uphold a high level of integrity.[175] According to the TPB's code of professional conduct, tax practitioners in Australia are expected to "act honestly and with integrity"[176] and to not be "influenced by personal and other interests when acting for clients" by "misusing the registered tax practitioner's position for … personal advantage".[177] In addition, PwC enforces an additional layer of internal ethical code and conduct that holds employees to an even stricter standard than external code.[178] This provides benchmarks and guidelines for employees to navigate in their day-to-day decisions, enabling them to have a reference in the event of an ethical dilemma.[179]

More scandals in the closet

Despite the existence of clear ethical guidelines for accountants and tax practitioners aimed at minimising ethical risks, several other prominent cases have raised questions about PwC's ethical stance.

In 2014, while PwC Australia was providing advisory services to the ATO on transfer pricing matters for European countries, PwC Luxemburg simultaneously facilitated advantageous tax agreements for Australian companies in Luxembourg.[180] PwC Luxembourg had access to confidential tax agreements for more than 30 Australian companies, with a third of them coinciding with the period when advisory services was provided by PwC Australia to the ATO.[181] In response to the revelation, a spokeswoman from PwC Australia responded that "There was no conflict of interest in providing advice to the ATO whilst also providing professional advice to clients".[182] Criticism was also directed towards the ATO's close relationship with PwC Australia as Keith Johnson, a former ATO officer, headed PwC's consultation with the ATO.[183]

Additionally, between 2016 to 2020, PwC Canada was found to have engaged in cheating on ethics and independence exams.[184] These examinations were used to examine technical competence and professional independence, as part of professional certification requirements.[185] Around 1,200 staff were found to have posted the examination answers on internal shared servers, and shared physical and digital copies of the answers via email.[186] Misconduct was discovered across all grades, ranging from associates to partners.[187] PwC Canada was subsequently fined US$750,000 by the Public Company Accounting Oversight Board (PCAOB) and C$200,000 by the Canadian Public Accountability.[188] Journalist Felicity Hawksley commented that it "seems unlikely that at least those at the partner level thought that they were acting with integrity".[189]

In December 2021, PwC Germany came under scrutiny due to its involvement in a tax fraud investigation.[190] The scandal involved the planned evasion of €11 million by eight current and former partners of PwC Germany.[191] They devised a scheme where PwC Germany's revenue was falsely classified as income earned by

its Swiss subsidiary, aiming to avoid value-added tax.[192] PwC Germany downplayed the incident, stating that " investigations by prosecutors do happen time and again"[193] while PwC Switzerland declined to comment on the incident at all.[194]

Accountability of accounting firms?

Such incidents are not isolated to PwC, as other Big Four firms are also plagued with ethical concerns. In 2022, Ernst & Young (EY) was caught in a cheating incident.[195] EY faced a penalty of US$100 million from the US Securities and Exchange Commission (SEC), marking "the largest penalty ever imposed".[196] EY admitted that "over multiple years, a significant number of EY audit professionals cheated on the ethics … exam" and actively hindered the SEC's investigation into the misconduct.[197]

> "It's simply outrageous that the very professionals responsible for catching cheating by clients cheated on ethics exams of all things."
>
> *– Gurbir S. Grewal, Director of the SEC's Enforcement Division*[198]

Additionally, between 2016 and 2021, three firms within the KPMG Global Network incurred a total of US$7.7 million in fines imposed by the PCAOB.[199] These fines were levied for various violations, ranging from cheating on exams, signing off on blank work papers, to the improper use of an unregistered firm.[200] One of the three firms, KPMG Colombia, faced the largest penalty amounting to US$4 million for "violating quality control standards relating to audit documentation and the firm's internal training program".[201]

Is there fair remuneration?

> "You do the hours because everybody else is doing it, even though you could just stop. You can't look your team and your friends in the eyes and walk out the door at five".
>
> *– James, a former employee of the Big Four*[202]

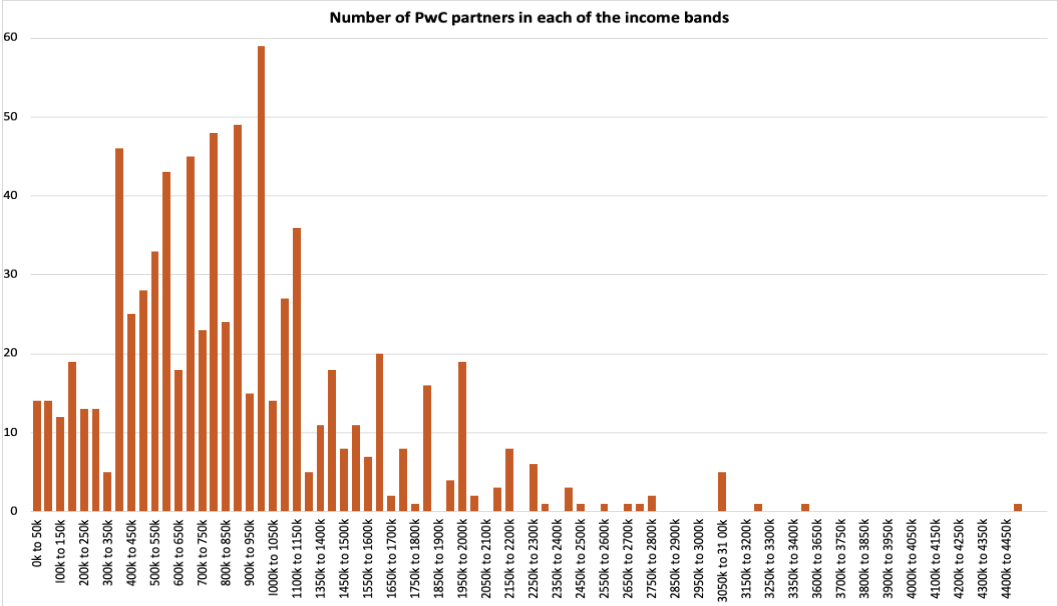
Over the years, the impression of working at a Big Four firm has become stereotyped, with buzz words like "long, hard hours" and "aggressive targets".[203] This has diminished the incentive for fresh graduates to pursue careers at Big Four firms, as there is a prevailing impression that salaries are lower compared to other industries such as finance or consulting.[204,205]

In discussions about ethical remuneration, two primary areas of focus are what constitutes fair wages and considerations related to workday length and workload intensity.[206] According to a PwC study conducted in collaboration with London School of Economics, which surveyed executives from various countries on the Ethics of Pay in a fair society, the findings highlighted the need to address wealth inequality within corporations.[207] This study provided PwC with insights into how to design and distribute executive remuneration effectively, ensuring that a fair and motivating reward system is implemented across all personnel within the company.[208]

Pay extremes

In the FY 2022, the highest earning PwC Australia partner fell within the income band of A$4.45 million to A$4.50 million, compared to the mode income band of A$0.95 million to A$1 million, as shown in Figure 2.[209] It was further revealed that Seymour was the highest-paid partner, earning 90 times more than the lowest earner.[210] However, PwC Australia did not disclose data regarding the proportion of variable and fixed pay in its FY2022 transparency report.[211]

Figure 2: Number of PwC Australia partners in income band of A$50,000 [212]

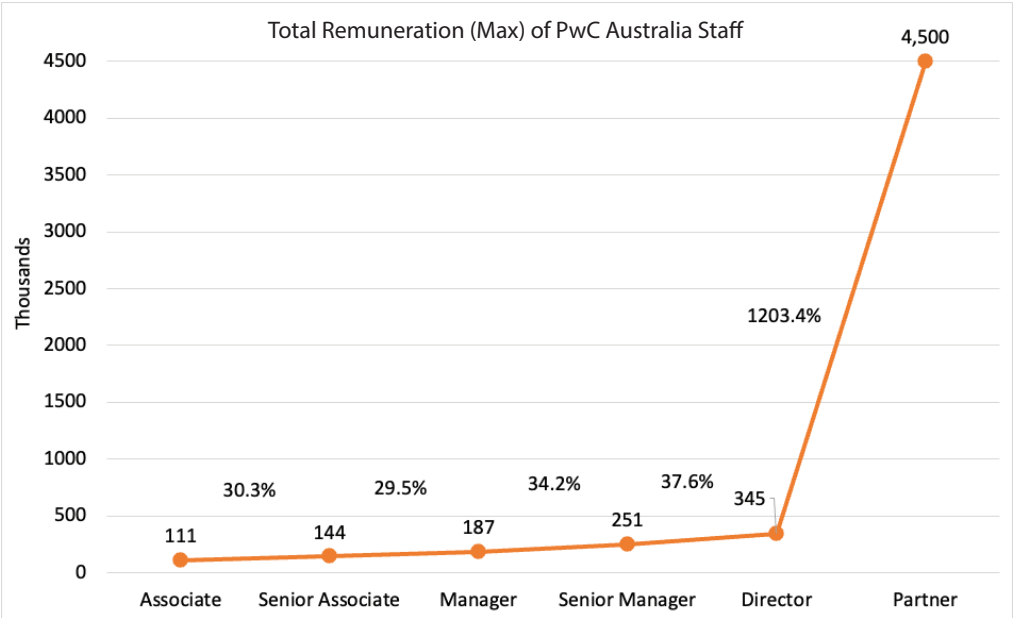


Source: Turner-Cohen. A. (2023, July 16). Insane salaries of PwC partners revealed amid Senate inquiry into tax leak.

While the average remuneration for PwC Australia partners has increased in recent years,[213] salary increments for junior-level executives, such as associates, "have been small over the past decade and have failed to keep pace with salary growth in law and consulting".[214] Sir Jan du Plessis, Chair of the UK Financial Reporting Council, said that salaries should be increased for junior auditors to further attract them to large accounting firms like PwC.[215] He believes that given the substantial increases in profits for these firms, they have the resources available to raise salaries accordingly.[216]

Figure 3 shows the pay discrepancy between PwC Australia partners and the rest of the employees. The most significant disparity is observed when comparing the remuneration of directors and partners, with a difference amounting to 1203.4%.[217]

Figure 3: Total remuneration of PwC Australia staffs[218]



Source: Tadros, E. (2022, April 12). PwC discloses staff, partner pay ranges to help recruit, retain talent.

Additionally, the discrepancy in remuneration extends beyond different positions within the firm to include pay disparities across departments.[219] In PwC Australia, assurance professionals start at a minimum of A$59,800, while consulting associates start at A$61,300. This salary gap is consistently observed across other Big Four firms. For instance, at Deloitte Australia, the minimum salary for a graduate in audit and assurance is A$63,000 in FY2023, whereas for a consulting graduate, it is A$67,000.[220] Similarly, at KPMG Australia, audit graduates receive A$65,000, while consulting graduates receive A$68,000.[221] This trend is also evident at both the manager and director levels.

To be continued…

While the investigation into the tax scandal continues to unfold, the future of PwC Australia remains uncertain, with several key developments currently in progress.

As PwC Australia grapples with the aftermath of the scandal, the firm has announced a reduction of over 330 jobs within its national workforce. Some employees are being made redundant due to factors such as "the reduction in the size of the business, the firm's changing portfolio and strategic areas of focus, and economic headwinds".[222] The Skilled Service Hub established in 2021 was closed, rendering a total of 141 PwC Australia's employees jobless.[223] In addition, 75 employees who were slated to be transferred to Scyne Advisory were informed of their retrenchment after being placed on leave.[224] On 13 March 2024, PwC Australia announced an additional 329 jobs cuts on top of the 338 previously announced in November.[225] Burrrowes commented that this process is crucial for realigning with the firm's new long-term strategy.[226]

Additionally, on 8 November 2023, Westpac, a major Australian bank, announced the replacement of PwC Australia as their external auditor.[227] PwC Australia had a longstanding relationship with Westpac, having served as its auditors since 1988.[228] Westpac cited reasons such as "best practices for audit firm rotation" for this decision, without explicit mention of the scandal.[229]

Collins has been banned by the ASIC from providing financial services for eight years[230] until 17 October 2031.[231] ASIC is also investigating 160 PwC Australia staff members holding financial services licenses through PwC Securities to ensure they were not involved in the scandal.[232]

In the US and UK, government oversight committees are pressing PwC to publish a report to clear its international partners of any wrongdoing.[233] Senator Richard Colbeck and representatives of the US Senate Committee on Homeland Security and Government Affairs Permanent Subcommittee on Investigations have kickstarted discussions on how to obtain the unpublished Linklaters report and break the "quarantine" of the scandal to Australia.[234]

The Australian government announced that Big Four partners could be banned from serving as board members in the TPB.[235] This amendment aims to close the "loophole that allowed big consultants to regulate themselves".[236] The legislation will also raise penalties for companies endorsing tax exploitation schemes hundredfold from A$7.80 million to A$780 million.[237] Additionally, it will extend the TPB's investigation timeframe from six months to 24 months.[238]

Discussion questions

1. Identify the underlying issues and causes that have surfaced in light of the PwC Australia tax scandal. Evaluate which was the most significant factor contributing to the scandal.
2. Discuss the impact of the tax scandal on PwC and other stakeholders. What actions should governments take to mitigate and prevent such misuse of confidential information?

3. What was the role of the various Australian regulatory agencies in the investigation of the scandal? Comment on the level of cooperation between different government offices both internally and externally with PwC, and its impact on the efficacy of the investigation.
4. Comment on the steps taken by PwC Australia to regain public confidence and evaluate the adequacy of the reports released regarding the scandal. What additional steps could PwC Australia have taken?
5. Discuss the governance structure of PwC Australia. Should Big Four audit firms be governed like, or held to similar standards as, listed corporations? Explain.
6. What are the weaknesses of PwC Australia's remuneration policies? How have these affected the firm? Recommend strategies for the accounting industry to ensure a fair remuneration policy and high ethical standards.
7. Discuss the issues arising from the Australian government's reliance on private sector consultation services.
8. The PwC scandal highlights the need for strong and efficient regulatory authorities. Could a similar scandal arise in your home country? Contrast your country's approach to the oversight of auditors, tax professionals and other consultants to Australia. Should there be stricter regulation and oversight of auditors, tax professionals and other consultants? Why or why not, and in what way?
9. There have been many critical comments about the culture of the Big 4 accounting firms. What do you think are the major factors that could have contributed to the poor corporate culture of these firms, or perceptions about poor corporate culture?

Endnotes

1 PricewaterhouseCoopers. (n.d.). History and milestones: PwC. Retrieved from https://www.pwc.com/us/en/about-us/pwc-corporate-history.html

2 PricewaterhouseCoopers. (n.d.). About us: PwC. Retrieved from https://www.pwc.com/gx/en/about.html

3 *Ibid*.

4 PricewaterhouseCoopers Singapore. (2015). Transparency report 2015. Retrieved from https://www.pwc.com/sg/en/about-us/assets/pwc-sg-fy15-transparency-report.pdf

5 PricewaterhouseCoopers. (2023, July 11). Global Board of PricewaterhouseCoopers International Limited (PwCIL). Retrieved from https://www.pwc.com/gx/en/about/corporate-governance/global-board-governance-structure.html

6 PricewaterhouseCoopers. (n.d.). PwC office locations in Australia (by city). Retrieved from https://www.pwc.com/gx/en/about/office-locations/australia-by-city.html

7 PricewaterhouseCoopers Australia. (n.d.). PwC's management leadership team. Retrieved from https://www.pwc.com.au/management-leadership-team.html

8 PricewaterhouseCoopers Australia. (2022). PwC Australia transparency report FY22. Retrieved from https://www.pwc.com.au/about-us/assets/firmwide-transparency-report-fy22.pdf

9 PricewaterhouseCoopers Australia. (2022, August 23). PwC Australia reports revenue growth of 17% to $3 billion for FY22. Retrieved from https://www.pwc.com.au/media/2022/pwc-australia-delivers-full-year-revenue-fy22.html

10 Consultancy.uk. (2021, August 27). PwC remains the largest of the Big Four in Australia. Retrieved from https://www.consultancy.uk/news/28812/pwc-remains-the-largest-of-the-big-four-in-australia

11 Australian Taxation Office. (2022, November 2). Tax and Corporate Australia. Retrieved from https://www.ato.gov.au/general/tax-and-corporate-australia/

12 Tax Practitioners Board. (2022, October 17). Overview: About us. Retrieved from https://www.tpb.gov.au/overview

13 Companies Auditors Disciplinary Board. (2023, March 1). About CADB. Retrieved from https://www.cadb.gov.au/about-cadb/

14 The Board of Taxation. (2023). About the Board of Taxation. Retrieved from https://taxboard.gov.au/about

15 Australian Accounting Standards Board. (2023, July 1). About the AASB. Retrieved from https://aasb.gov.au/about-the-aasb/about-the-aasb/

16 Australian Federal Police. (2023). Money laundering and financial crime. Retrieved from https://www.afp.gov.au/crimes/money-laundering-and-financial-crime

17 Australian Government Auditing and Assurance Standards Board. (n.d.). Organisational Structure. Retrieved from https://www.auasb.gov.au/about-auasb/corporate-information/organisational-structure/

18 The Treasury. (2022, December 22). Ministerial Submission. Retrieved from https://treasury.gov.au/sites/default/files/2023-03/foi-3269.pdf

19 Boland, H. (2023, July 11). US tech giants restructured to sidestep Australian tax law, following PwC advice. Retrieved from https://www.icij.org/investigations/luxembourg-leaks/us-tech-giants-restructured-to-sidestep-australian-tax-law-following-pwc-advice/

20 Holden, R. (2023, July 19). Australian PwC scandal reeks of regulatory capture. *ProMarket*. Retrieved from https://www.promarket.org/2023/07/19/australian-pwc-scandal-reeks-of-regulatory-capture/

21 *Ibid.*

22 Chenoweth, N. & Tadros, E . (2023, May 5). The inside story of PwC's tax scandal. *Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/the-inside-story-of-pwc-s-tax-scandal-20230504-p5d5k5

23 *Ibid.*

24 Chenoweth, N. & Tadros, E. (2023, May 15). PwC targeted Apple, Google, Microsoft with leaked tax plan. *Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/pwc-targeted-apple-google-microsoft-with-leaked-tax-plan-20230513-p5d85y

25 Financial Review. (2023, June 22). PwC tax leaks scandal: A timeline. Retrieved from https://www.afr.com/companies/professional-services/pwc-tax-leaks-scandal-a-timeline-20230622-p5dip8

26 *Ibid.*

27 Australian Financial Review. (2023, August 8). The ATO's complete timeline of events in the PwC scandal. Retrieved from https://www.afr.com/politics/federal/the-ato-s-timeline-of-events-in-the-pwc-scandal-20230807-p5dulx

28 *Ibid.*

29 Holden, R. (2023, July 19). Australian PwC scandal reeks of regulatory capture. *ProMarket.* Retrieved from https://www.promarket.org/2023/07/19/australian-pwc-scandal-reeks-of-regulatory-capture/

30 *Ibid.*

31 Australian Financial Review. (2023, August 8). The ATO's complete timeline of events in the PwC scandal. Retrieved from https://www.afr.com/politics/federal/the-ato-s-timeline-of-events-in-the-pwc-scandal-20230807-p5dulx

32 *Ibid.*

33 *Ibid.*

34 Holden, R. (2023, July 19). Australian PwC scandal reeks of regulatory capture. *ProMarket.* Retrieved from https://www.promarket.org/2023/07/19/australian-pwc-scandal-reeks-of-regulatory-capture/

35 *Ibid.*

36 Holden, R. (2023, July 19). Australian PwC Scandal Reeks of Regulatory Capture. *ProMarket.* Retrieved from https://www.promarket.org/2023/07/19/australian-pwc-scandal-reeks-of-regulatory-capture/

37 *Ibid.*

38 McIlroy, T. (2019, June 26). Legal privilege claims in 20 per cent of ATO multinational cases. *Australian Financial Review*. Retrieved from https://afr.com/policy/tax-and-super/legal-privilege-claims-in-20-per-cent-of-ato-multinational-cases-20190626-p521h3

39 Australian Financial Review. (2023, August 8). The ATO's complete timeline of events in the PwC scandal. Retrieved from https://www.afr.com/politics/federal/the-ato-s-timeline-of-events-in-the-pwc-scandal-20230807-p5dulx

40 Australian Financial Review. (2023, August 8). The ATO's complete timeline of events in the PwC scandal. Retrieved from https://www.afr.com/politics/federal/the-ato-s-timeline-of-events-in-the-pwc-scandal-20230807-p5dulx

41 Crowe, D. (2023, June 2). What the PwC scandal tells us about a broken system, and how to fix it. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/companies/what-the-pwc-scandal-tells-us-about-a-broken-system-and-how-to-fix-it-20230531-p5dctl.html

42 PricewaterhouseCoopers Australia. (2020, March 5). PwC Australia's partners elect Tom Seymour as CEO. Retrieved from https://www.pwc.com.au/media/2020/pwc-australias-partners-elect-tom-seymour-as-ceo.html

43 Nilsson, A. (2023, August 10). More taxing times for PwC. *Crikey.* Retrieved from https://www.crikey.com.au/2023/08/10/pwc-tom-seymour-ceo-warnings/

44 *Ibid.*

45 Financial Review. (2023, June 22). PwC tax leaks scandal: A timeline. Retrieved from https://www.afr.com/companies/professional-services/pwc-tax-leaks-scandal-a-timeline-20230622-p5dip8

46 Kruger, C., & Danckert, S. (2023, June 5). PwC hands over names of all staff involved in tax scandal. *The Sydney Morning Herald*. Retrieved from https://www.smh.com.au/business/the-economy/pwc-hands-over-names-of-all-staff-involved-in-tax-scandal-20230605-p5de2v.html

47 Clarke, T. (2023, June 5). PwC reveals names of partners involved in leak of confidential government tax policy. *Sky News Australia*. Retrieved from https://www.skynews.com.au/australia-news/pwc-reveals-names-of-partners-involved-in-leak-of-confidential-government-tax-policy/news-story/0db888f66fc59a2ed66aaa5c57717d75

48 Jackson, L., & Paul, S. (2023, June 6). PwC asked to name companies it pitched on basis of leaked Australian tax plans. *Reuters.* Retrieved from https://www.reuters.com/business/finance/pwc-asked-name-companies-it-pitched-basis-leaked-australian-tax-plans-2023-07-06/

49 Karp, P. (2023, June 21). PwC tax scandal: firm engaged in a 'calculated' breach of trust, Senate committee finds. *The Guardian*. Retrieved from https://www.theguardian.com/business/2023/jun/21/pwc-tax-scandal-firm-engaged-in-a-calculated-breach-of-trust-senate-committee-finds

50 Maley, K. (2023, May 28). Why PwC's US tech targets will be deeply anxious. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/financial-services/why-pwc-s-us-tech-targets-will-be-deeply-anxious-20230528-p5dbty

51 Karp, P. (2023, June 21). PwC tax scandal: firm engaged in a 'calculated' breach of trust, Senate committee finds. *The Guardian*. Retrieved from https://www.theguardian.com/business/2023/jun/21/pwc-tax-scandal-firm-engaged-in-a-calculated-breach-of-trust-senate-committee-finds

52 Ainsworth, K. (2023, June 5). What is the PwC tax scandal? Who is Peter-John Collins? Who knew about it? Why does it matter? *Australian Broadcasting Corporation News.* Retrieved from https://www.abc.net.au/news/2023-06-05/pwc-pricewaterhousecoopers-government-tax-leak-scandal-explained/102409528

53 *Ibid.*

54 Belot, H. (2023, May 8). PwC Australia chief executive Tom Seymour resigns in wake of tax policy leak. *The Guardian*. Retrieved from https://www.theguardian.com/business/2023/may/08/pwc-australia-chief-executive-tom-seymour-resigns-in-wake-of-tax-policy-leak

55 *Ibid.*

56 Boland-Rudder, H. (2023, May 17). Accounting giant PwC is in crisis mode amid a growing Australian tax leak scandal. *International Consortium of Investigative Journals.* Retrieved from https://www.icij.org/investigations/luxembourg-leaks/accounting-giant-pwc-is-in-crisis-mode-amid-a-growing-australian-tax-leak-scandal/

57 The Straits Times. (2023, June 25). PwC Global takes control of Australia arm, replaces CEO. Retrieved from https://www.straitstimes.com/business/pwc-global-takes-control-of-australia-arm-replaces-ceo

58 PricewaterhouseCoopers Australia. (2023, June 25). PwC Australia appoints new CEO Kevin Burrowes; intent to divest Government Business to Allegro Funds. Retrieved from https://www.pwc.com.au/media/2023/pwc-australia-appoints-new-ceo-kevin-burrowes-intent-to-divest-government-business-to-allegro-funds.html

59 PricewaterhouseCoopers. (2022, August 29). PwC Australia appoints new CEO Kevin Burrowes; intent to divest Government Business to Allegro Funds. Retrieved fromhttps://www.pwc.com.au/media/2023/pwc-australia-appoints-new-ceo-kevin-burrowes-intent-to-divest-government-business-to-allegro-funds.html

60 PricewaterhouseCoopers. (2022, August 29). Kevin Burrowes. Retrieved from https://www.pwc.com/gx/en/contacts/k/kevin-burrowes.html

61 Liang, A. (2023, June 26). PwC Australia sells division for 50p after tax leak scandal. *British Broadcasting Corporation*. Retrieved from https://www.bbc.com/news/business-66016270

62 PricewaterhouseCoopers Australia. (2023, June 25). PwC Australia appoints new CEO Kevin Burrowes; intent to divest Government Business to Allegro Funds. Retrieved from https://www.pwc.com.au/media/2023/pwc-australia-appoints-new-ceo-kevin-burrowes-intent-to-divest-government-business-to-allegro-funds.html

63 Jackson, L., Hogue, T., & Fahmy, M. (2023, November 6). Allegro Funds gets final regulatory approval to take over PwC Australia spinoff. *Reuters.* Retrieved from https://www.reuters.com/markets/deals/allegro-funds-gets-final-regulatory-approval-take-over-pwc-australia-spinoff-2023-11-06/

64 Kruger, C., & Danckert, S. (2023, June 5). PwC hands over names of all staff involved in tax scandal. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/the-economy/pwc-hands-over-names-of-all-staff-involved-in-tax-scandal-20230605-p5de2v.html

65 Jackson, L. (2023, June 25). PwC Australia to sell government business for A$1, appoint new CEO. *Reuters*. Retrieved from https://www.reuters.com/markets/deals/pwc-australia-sell-govt-business-a1-appoint-new-ceo-2023-06-25/

66 Canales, S. B. (2023, October 2). PwC expected to face Senate inquiry over tax scandal as global CEO travels to Australia. *The Guardian*. Retrieved from https://www.theguardian.com/business/2023/oct/02/pwc-tax-scandal-senate-inquiry-ceo-bob-moritz

67 Melzer, M. (2023, July 3). 'A painful extraction': Labor Senator Deborah O'Neill slams PwC as more staff depart over tax leaks scandal. *Sky News Australia*. Retrieved from https://www.skynews.com.au/business/a-painful-extraction-labor-senator-deborah-oneill-slams-pwc-as-more-staff-depart-over-tax-leaks-scandal/news-story/38269cd8150f77ce5b2e90536ec7af4b

68 Karp, P. (2023, June 21). PwC tax scandal: firm engaged in a 'calculated' breach of trust, Senate committee finds. *The Guardian.* Retrieved from https://www.theguardian.com/business/2023/jun/21/pwc-tax-scandal-firm-engaged-in-a-calculated-breach-of-trust-senate-committee-finds

69 Tadros, E. (2023, July 3). PwC names eight partners it says were involved in tax leaks scandal. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/pwc-australia-names-eight-more-partners-it-says-where-involved-in-tax-leaks-scandal-20230703-p5dla7

70 Karp, P. (2023, June 21). PwC tax scandal: firm engaged in a 'calculated' breach of trust, Senate committee finds. *The Guardian.* Retrieved from https://www.theguardian.com/business/2023/jun/21/pwc-tax-scandal-firm-engaged-in-a-calculated-breach-of-trust-senate-committee-finds

71 *Ibid*.

72 *Ibid*.

73 *Ibid*.

74 *Ibid*.

75 *Ibid*.

76 Ross, D. (2023, August 17). Cheat in a windcheater: at home with 'quiet' crook Peter Collins who burned down PwC. *The Australian*. Retrieved from https://www.theaustralian.com.au/business/financial-services/cheat-in-a-windcheater-at-home-with-quiet-crook-peter-collins-who-burned-down-pwc/news-story/37bb3b23f04b3f07f7c0c6b6efbb1434

77 Karp, P. (2023, June 21). PwC tax scandal: firm engaged in a 'calculated' breach of trust, Senate committee finds. *The Guardian.* Retrieved from https://www.theguardian.com/business/2023/jun/21/pwc-tax-scandal-firm-engaged-in-a-calculated-breach-of-trust-senate-committee-finds

78 *Ibid*.

79 *Ibid*.

80 Kruger, C. (2023, May 9). 'Devoid of an ethical backbone': PwC scandal raises questions about the firm. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/the-economy/devoid-of-an-ethical-backbone-pwc-scandal-raises-questions-about-the-firm-20230509-p5d6xt.html

81 Kruger, C., & Clun, R. (2023, July 18). Former PwC partner resigns from Board of Taxation. *The Sydney Morning Herald*. Retrieved from https://www.smh.com.au/business/companies/former-pwc-partner-resigns-from-board-of-taxation-20230718-p5dp23.html

82 Klan, A. (2023, July 23). Tax Board run by PwC partner. The Klaxon. Retrieved from https://theklaxon.com.au/ztem-48/

83 Klan, A. (2023, July 18). Gov't "Advisory Panel" of PwC tax partners axed. *The Klaxon*. Retrieved from https://theklaxon.com.au/ztem-47/

84 *Ibid*.

85 Kruger, C., & Clun, R. (2023, July 18). Former PwC partner resigns from Board of Taxation. *The Sydney Morning Herald*. Retrieved from https://www.smh.com.au/business/companies/former-pwc-partner-resigns-from-board-of-taxation-20230718-p5dp23.html

86 *Ibid.*

87 *Ibid.*

88 *Ibid*.

89 Klan, A. (2023, July 23). Tax Board run by PWC partner. *The Klaxon.* Retrieved from https://theklaxon.com.au/ztem-48/

90 The Klaxon. (2023). About. Retrieved from https://theklaxon.com.au/about/

91 Klan, A. (2023, July 18). Gov't "Advisory Panel" of PwC tax partners axed. *The Klaxon*. Retrieved from https://theklaxon.com.au/ztem-47/

92 The Board of Taxation. (2023, June 29). Advisory panel. Retrieved from https://taxboard.gov.au/about/advisory-panel-members

93 Klan, A. (2023, July 18). Gov't "Advisory Panel" of PwC tax partners axed. *The Klaxon.* Retrieved from https://theklaxon.com.au/ztem-47/

94 *Ibid.*

95 *Ibid*.

96 The Board of Taxation. (2023, June 29). Advisory panel. Retrieved from https://taxboard.gov.au/about/advisory-panel-members

97 PricewaterhouseCoopers Australia. (2023, May 15). Ziggy Switkowski AO to lead independent review of PwC Australia. Retrieved from https://www.pwc.com.au/media/2023/ziggy-switkowski-leads-pwc-independent-review.html

98 *Ibid*.

99 Tadros, E. (2023, July 26). Scope of Switkowski's PwC review revealed. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/scope-of-switkowski-s-pwc-review-revealed-20230726-p5drck

100 *Ibid*

101 Danckert S., & Chrysanthos, N. (2023, September 27). PwC tolerated poor behaviour, gave CEO too much power, review finds. *The Sydney Morning Herald*. Retrieved from https://www.smh.com.au/business/companies/pwc-tolerated-poor-behaviour-gave-ceo-too-much-power-review-finds-20230927-p5e7xg.html

102 PricewaterhouseCoopers Australia. (2023). Review of Governance, Culture and Accountability at PwC Australia. Retrieved from https://www.pwc.com.au/about-us/commitments-to-change/independent-review-of-governance-culture-and-accountability-at-pwc-australia.pdf

103 *Ibid*.

104 Wootton, H. (2019, December 11). Big four consulting firms use partnership structure to avoid scrutiny. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/big-four-consulting-firms-use-partnership-structure-to-avoid-scrutiny-20191205-p53hed

105 *Ibid*.

106 PricewaterhouseCoopers Australia. (2023). Review of Governance, Culture and Accountability at PwC Australia. Retrieved from https://www.pwc.com.au/about-us/commitments-to-change/independent-review-of-governance-culture-and-accountability-at-pwc-australia.pdf

107 *Ibid*.

108 PwC Australia. (2023). Transparency Report FY23. Retrieved from https://www.pwc.com.au/about-us/assets/firmwide-transparency-report-fy23.pdf

109 PricewaterhouseCoopers Australia. (2023). Review of Governance, Culture and Accountability at PwC Australia. Retrieved from https://www.pwc.com.au/about-us/commitments-to-change/independent-review-of-governance-culture-and-accountability-at-pwc-australia.pdf

110 *Ibid*.

111 *Ibid*.

112 *Ibid*.

113 *Ibid*.

114 *Ibid*

115 *Ibid*

116 *Ibid*.

117 PwC Australia. (2023). Transparency Report FY23. Retrieved from https://www.pwc.com.au/about-us/assets/firmwide-transparency-report-fy23.pdf

118 PricewaterhouseCoopers Australia. (2023). Review of Governance, Culture and Accountability at PwC Australia. Retrieved from https://www.pwc.com.au/about-us/commitments-to-change/independent-review-of-governance-culture-and-accountability-at-pwc-australia.pdf

119 Robin, M. (2023, May 17). Switkowski's Telstra was major client of PwC. *Australian Financial Review*. Retrieved from https://www.afr.com/rear-window/switkowski-s-telstra-was-major-client-of-pwc-20230517-p5d940

120 Academic Dictionaries and Encyclopedias. (n.d.). Ziggy Switkowski. Retrieved from https://en-academic.com/dic.nsf/enwiki/922931

121 King, A. (2016, September 8). How PwC boss Luke Sayers embraces disruption. *Australian Financial Review*. Retrieved from https://www.afr.com/work-and-careers/management/pwc-boss-luke-sayers-thrives-in-adversity-20160517-gowtd5

122 Niesche, C. (2023, May 22). Linklaters to Conduct Independent Investigation Into PwC Australia Tax Scandal. *Law.com*. Retrieved from https://www.law.com/international-edition/2023/05/22/linklaters-to-conduct-independent-investigation-into-pwc-australia-tax-scandal

123 *Ibid*.

124 Stanton, S., & Davies, M. (2023, September 27). Statement on Linklaters' PwC Network review. Retrieved from https://www.pwc.com/gx/en/news-room/press-releases/2023/statement-linklaters-pwc-network-review.html

125 *Ibid*.

126 Holden, R. (2023, July 19). Australian PwC Scandal Reeks of Regulatory Capture. *ProMarket*. Retrieved from https://www.promarket.org/2023/07/19/australian-pwc-scandal-reeks-of-regulatory-capture/

127 *Ibid*.

128 Parliamentary Joint Committee on Corporations and Financial Services. (2019, February 13). Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 45th Parliament: Chapter 3: Integrity risks. *Parliament of Australia*. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/No1of45thParliament/Report/c03

129 Chenoweth, N. (2023, October 25). Tax Office halved $1.4m PwC fine for false privilege claims. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/tax-office-halved-1-4m-pwc-fine-for-false-privilege-claims-20231017-p5ed2e

130 Belot, H. (2023, July 26). PWC scandal: PWC Australia reached Confidential Settlement with ATO months before tax scandal fallout revealed. *The Guardian.* Retrieved from https://www.theguardian.com/business/2023/jul/26/pwc-scandal-pwc-australia-reached-confidential-settlement-with-ato-months-before-tax-scandal-became-public-documents-reveal

131 Chenoweth, N. (2023, October 25). Tax Office halved $1.4m PwC fine for false privilege claims. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/tax-office-halved-1-4m-pwc-fine-for-false-privilege-claims-20231017-p5ed2e

132 Chenoweth, N. (2023, October 25). Tax Office halved $1.4m PwC fine for false privilege claims. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/tax-office-halved-1-4m-pwc-fine-for-false-privilege-claims-20231017-p5ed2e

133 *Ibid*.

134 Belot, H. (2023, July 26). PWC scandal: PWC Australia reached Confidential Settlement with ATO months before tax scandal fallout revealed. *The Guardian.* Retrieved from https://www.theguardian.com/business/2023/jul/26/pwc-scandal-pwc-australia-reached-confidential-settlement-with-ato-months-before-tax-scandal-became-public-documents-reveal

135 Chenoweth, N. (2023, October 25). Tax Office halved $1.4m PwC fine for false privilege claims. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/tax-office-halved-1-4m-pwc-fine-for-false-privilege-claims-20231017-p5ed2e

136 Tadros, E., & Chenoweth, N. (2023, November 12). PwC paid $12,000 to fly ATO's Hirschhorn to Paris. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/pwc-paid-12-000-to-fly-ato-s-hirschhorn-to-paris-20231110-p5ej6n

137 Chenoweth, Neil (2023, October 2). PwC paid for tax officer's Paris trip. The *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/pwc-paid-for-tax-officer-s-paris-trip-20230930-p5e8sa

138 *Ibid*.

139 Ravlic, T. (2023, November 12) ATO's Jeremy Hirschhorn's trip to Paris paid for by PwC. *The Mandarin.* Retrieved from https://www.themandarin.com.au/234657-atos-jeremy-hirschhorns-trip-to-paris-paid-for-by-pwc/

140 Bajkowski, J. (2023, May 24). Big four's vicious $4bn circle of government contracts and political donations. *Crikey.* Retrieved from https://www.crikey.com.au/2023/05/24/big-four-consultants-political-donations/

141 Belot, H. (2023, July 17). Australian government spending on big four consultancy firms up 1,270% in a decade, analysis shows. *The Guardian.* Retrieved from https://www.theguardian.com/australia-news/2023/jul/17/australian-government-spending-big-four-consultancy-firms

142 Bajkowski, J. (2023, May 22). $4bn APS addiction to Big Four fostered by steady flow of political donations: Centre for Public Integrity. *The Mandarin*. Retrieved from https://www.themandarin.com.au/220875-political-donations-foster-apss-4bn-addiction-to-big-four-cpi/

143 Klan, A. (2023, 13 July). Gov't tax boss at heart of PwC Tax Scammers Nest. *The Klaxon*. Retrieved from https://theklaxon.com.au/ztem-44/

144 Belot, H. (2023, July 17). Australian government spending on big four consultancy firms up 1,270% in a decade, analysis shows. *The Guardian.* Retrieved from https://www.theguardian.com/australia-news/2023/jul/17/australian-government-spending-big-four-consultancy-firms

145 Monash University. (2023). Professor Allan Fels AO. Retrieved from https://www.monash.edu/alumni/alumni-events/graduation/speaker-profiles/december-2021/professor-allan-fels-ao

146 Belot, H. (2023, July 17). Australian government spending on big four consultancy firms up 1,270% in a decade, analysis shows. *The Guardian*. Retrieved from https://www.theguardian.com/australia-news/2023/jul/17/australian-government-spending-big-four-consultancy-firms

147 *Ibid*.

148 PricewaterhouseCoopers Australia. (2023, September 27). An open letter from PwC Australia CEO Kevin Burrowes. Retrieved from https://www.pwc.com.au/media/2023/an-open-letter-from-pwc-australia-ceo-kevin-burrowes.html

149 PricewaterhouseCoopers Australia. (2023, September 27). PwC Australia's commitments to change. Retrieved from https://www.pwc.com.au/about-us/commitments-to-change/pwc-australias-commitments-to-change.pdf

150 *Ibid*.

151 PricewaterhouseCoopers Australia. (2023, September 27). PwC Australia's commitments to change. Retrieved from https://www.pwc.com.au/about-us/commitments-to-change/pwc-australias-commitments-to-change.pdf

152 *Ibid*.

153 Ahmed, N. (2023, July 5). PwC Australia taps new risk, ethics head after tax info scandal. *Bloomberg*. Retrieved from https://www.bloomberg.com/news/articles/2023-07-05/new-pwc-australia-ceo-burrowes-makes-mark-with-leadership-moves

154 *Ibid*.

155 Tadros, E. (2023, Oct 3). KPMG, EY and Deloitte: We already have the PwC reforms in place. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/kpmg-ey-and-deloitte-we-already-have-the-pwc-reforms-in-place-20231002-p5e962

156 *Ibid*.

157 Brown, A. (2023, July 6). Google defends tax action after PwC leaking scandal. *The Canberra Times*. Retrieved from https://www.canberratimes.com.au/story/8260778/google-defends-tax-action-after-pwc-leaking-scandal/

158 Chenoweth, N., & Tadros, E. (2023, May 15). PwC targeted Apple, Google, Microsoft with leaked tax plan. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/pwc-targeted-apple-google-microsoft-with-leaked-tax-plan-20230513-p5d85y

159 Boland-Rudder, H. (2023, July 11). US tech giants restructured to sidestep Australian tax law, following PwC advice. *International Consortium of Investigative Journals*. Retrieved from https://www.icij.org/investigations/luxembourg-leaks/us-tech-giants-restructured-to-sidestep-australian-tax-law-following-pwc-advice/

160 Chenoweth, N. (2023, September 26). PWC tax scandal raises question for global firm. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/pwc-tax-scandal-raises-question-for-global-firm-20230926-p5e7lm

161 Maley, K. (2023, May 28). Why PWC's US Tech targets will be deeply anxious. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/financial-services/why-pwc-s-us-tech-targets-will-be-deeply-anxious-20230528-p5dbty

162 *Ibid*.

163 Boland-Rudder, H. (2023, July 11). US Tech Giants restructured to sidestep Australian tax law, following PWC Advice. *International Consortium of Investigative Journals*. Retrieved from https://www.icij.org/investigations/luxembourg-leaks/us-tech-giants-restructured-to-sidestep-australian-tax-law-following-pwc-advice/

164 Jackson, L. (2023, July 7). Uber, facebook linked to PWC Australia Tax Schemes based on leaked government plans. *Reuters*. Retrieved from https://www.reuters.com/business/uber-facebook-linked-pwc-australia-tax-schemes-based-leaked-government-plans-2023-07-07/

165 *Ibid*.

166 Brown, A. (2023, July 6). Google defends tax action after PWC leaking scandal. *The Canberra Times*. Retrieved from https://www.canberratimes.com.au/story/8260778/google-defends-tax-action-after-pwc-leaking-scandal/

167 *Ibid*.

168 Maley, K. (2023, May 28). Why PWC's US tech targets will be deeply anxious. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/financial-services/why-pwc-s-us-tech-targets-will-be-deeply-anxious-20230528-p5dbty

169 *Ibid*.

170 Belot, H. (2023, September 27). PwC's 'rainmaker' partners often pursue profits ahead of ethics, scathing review finds. *The Guardian*. Retrieved from https://www.theguardian.com/australia-news/2023/sep/27/pwc-scandal-ziggy-switkowski-report-findings

171 *Ibid*.

172 Jackson, L., Paul, S., & Schmollinger, C. (2023, September 27). PwC Australia gave clients other than Google confidential tax info. *Reuters*. Retrieved from https://www.reuters.com/business/pwc-australia-external-review-assails-whatever-it-takes-culture-2023-09-27

173 PricewaterhouseCoopers United Kingdom. (2010). Tone from the top: Transforming words into action. Retrieved from https://pwc.blogs.com/files/tone-from-the-top.pdf

174 *Ibid*.

175 International Ethics Standards Board for Accountants. (2023, September). Handbook of the International Code of Ethics for Professional Accountants. Retrieved from https://ifacweb.blob.core.windows.net/publicfiles/2023-10/2023%20IESBA%20Handbook.pdf

176 Tax Practitioners Board. (2022 April 1). TPB(EP) 01/2010 Code of professional conduct. Retrieved from https://www.tpb.gov.au/explanatory-paper-tpbep-012010-code-professional-conduct

177 *Ibid.*

178 PricewaterhouseCoopers. (2022, December 8). Our purpose and values. Retrieved from https://www.pwc.com/gx/en/about/purpose-and-values.html

179 Ethics & Compliance Initiative. (2021, October 25). Why have a code of conduct. Retrieved from https://www.ethics.org/resources/free-toolkit/code-of-conduct

180 Chenoweth, N. (2014, November 13). PwC in secret tax deals while advising ATO. *Australian Financial Review.* Retrieved from https://www.afr.com/policy/tax-and-super/pwc-in-secret-tax-deals-while-advising-ato-20141113-11lh2v

181 *Ibid*.

182 *Ibid*.

183 *Ibid*.

184 Hawksley, F. (2022, October). Concerns grow over ethical behaviour. *Association of Chartered Certified Accountants Accounting and Business Magazine*. Retrieved from https://abmagazine.accaglobal.com/content/abmagazine/global/articles/2022/oct/practice/concerns-grow-over-ethical-behaviour.html

185 *Ibid*.

186 *Ibid*.

187 *Ibid*.

188 *Ibid.*

189 *Ibid*.

190 Storbeck, O. (2021, December 1). PwC's German offices searched in tax fraud investigation. *Financial Times*. Retrieved from https://www.ft.com/content/2b5bb56b-af00-4749-a3ee-5e5ce4148aa9

191 *Ibid.*

192 *Ibid*.

193 *Ibid.*

194 *Ibid.*

195 United States Securities and Exchange Commission. (2022, June 28). Ernst & Young to pay $100 million penalty for employees cheating on CPA ethics exams and misleading investigation. Retrieved from https://www.sec.gov/news/press-release/2022-114

196 *Ibid.*

197 *Ibid.*

198 *Ibid*.

199 Public Company Accounting Oversight Board. (2022, December 6). Imposing $7.7 Million in Fines, PCAOB Sanctions Three Firms and Four Individuals From KPMG Global Network. Retrieved from https://pcaobus.org/news-events/news-releases/news-release-detail/imposing-7-7-million-in-fines-pcaob-sanctions-three-firms-four-individuals-kpmg-global-network

200 *Ibid*.

201 *Ibid*.

202 Spencer-Elliott, L. (2023, May 12). Overworked and underpaid: Why grads are ditching jobs at the Big Four. *The Tab*. Retrieved from https://thetab.com/uk/2023/05/10/big-four-grad-scheme-whats-it-like-306634

203 Wright, B. (2022, June 28). Big 4 vs mid-tier accounting firms: Which path is right for your career? *Becker*. Retrieved from https://www.becker.com/blog/career/big-4-vs-mid-tier-accounting-firms-which-path-is-right-for-your-career

204 Big 4 Confidential. (2021, March 30). Why Work in Big 4 (and When to Leave). Retrieved from https://www.big4confidential.com/post/why-big4

205 O'Dwyer, M. (2023, June 13). Big Four accounting firms urged to pay junior auditors more. *Financial Times*. Retrieved from https://www.ft.com/content/f38ff331-18a6-4701-a87f-42561969a9f9

206 MacDonald, C., & Marcoux, A. (2018, April 25). Ethics of Wages and Working Conditions. *Concise Encyclopedia of Business Ethics*. Retrieved from https://conciseencyclopedia.org/entries/wages-and-working-conditions/

207 Gosling, T., Olsen, S., & Brown, J. (2017). The ethics of pay in a fair society: What do executives think? *PricewaterhouseCoopers*. Retrieved from https://www.pwc.com/gx/en/services/workforce/publications/the-ethics-of-pay-in-a-fair-society.html

208 *Ibid*.

209 *Ibid*.

210 *Ibid.*

211 PwC Australia. (2022). Transparency Report FY22. Retrieved from https://www.pwc.com.au/about-us/assets/firmwide-transparency-report-fy22.pdf

212 Turner-Cohen. A. (2023, July 16). Insane salaries of PwC partners revealed amid Senate inquiry into tax leak. *News.com.au*. Retrieved from https://www.news.com.au/finance/work/leaders/insane-salaries-of-pwc-partners-revealed-amid-senate-inquiry-into-tax-leak/news-story/7228c6cb63ddb8057e384cdec1e5b8ac

213 O'Dwyer, M. (2023, June 13). Big Four accounting firms urged to pay junior auditors more. *Financial Times*. Retrieved from https://www.ft.com/content/f38ff331-18a6-4701-a87f-42561969a9f9

214 *Ibid.*

215 *Ibid.*

216 *Ibid*.

217 Tadros, E. (2022, April 12). PwC discloses staff, partner pay ranges to help recruit, retain talent. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/pwc-discloses-staff-partner-pay-ranges-to-help-recruit-retain-talent-20220411-p5acpz

218 *Ibid*.

219 Rapoport, M. (2018, April 7). How Did the Big Four Auditors Get $17 Billion in Revenue Growth? Not From Auditing. *The Wall Street Journal*. Retrieved from https://www.wsj.com/articles/how-did-the-big-four-auditors-get-17-billion-in-revenue-growth-not-from-auditing-1523098800

220 Shanahan, M. (2023, September 12). Market uncertainty restrains Deloitte staff pay. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/professional-services/market-uncertainty-restrains-deloitte-staff-pay-20230911-p5e3te

221 *Ibid.*

222 Belot, H (2023, November 8). PwC to cut more than 330 jobs in Australia after scandal over misuse of Treasury information. *The Guardian.* Retrieved from https://www.theguardian.com/business/2023/nov/08/pwc-job-cuts-australia-tax-scandal-south-australia

223 *Ibid*.

224 *Ibid*.

225 Reuters. (2024, March 13). PwC Australia cuts another 300-plus jobs in wake of leaked tax plan scandal. Retrieved from https://www.reuters.com/business/pwc-australia-cuts-another-300-plus-jobs-wake-leaked-tax-plan-scandal-2024-03-13/

226 *Ibid.*

227 Eyers, J., Baird, L., & Tadros, E. (2023, November 8). Westpac to dump PwC as its auditor. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/financial-services/westpac-to-dump-pwc-as-its-auditor-20231108-p5eidy

228 *Ibid.*

229 *Ibid.*

230 Tadros, E. (2023, October 20). ASIC bans ex-PwC partner Peter Collins for eight years. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/asic-bans-ex-pwc-partner-peter-collins-for-eight-years-20231020-p5edvk

231 AFSL. (n.d.). Collins, Peter John. Retrieved from https://search-afsl.com/Collins,%20Peter%20John/banned-person/31322945/

232 Tadros, E. (2023, October 20). ASIC bans ex-PwC partner Peter Collins for eight years. *Australian Financial Review*. Retrieved from https://www.afr.com/companies/professional-services/asic-bans-ex-pwc-partner-peter-collins-for-eight-years-20231020-p5edvk

233 Belot, H. (2023, November 3). Powerful US and UK committees lobbied to pressure PWC to release report sought in Australia. *The Guardian*. Retrieved from https://www.theguardian.com/australia-news/2023/nov/04/pwc-report-us-uk-parliamentary-oversight-committees-lobbies-international

234 *Ibid.*

235 Benlot, Henry. (2023, November 7). Big four consultancy firm partners could be banned from being on board of regulator after PwC scandal. The Guardian. Retrieved from https://www.theguardian.com/australia-news/2023/nov/08/big-four-consultancy-firm-partners-could-be-banned-from-being-on-board-of-regulator-after-pwc-scandal

236 *Ibid.*

237 *Ibid.*

238 Australian Government Federal Register of Legislation. (2023, October 20). Tax Agent Services 2009. Retrieved from https://www.legislation.gov.au/Details/C2023C00384

SERBA DINAMIK: A REGULATORY NIGHTMARE

This case is dedicated to Jamaliah (Lya) Rahman who sadly passed away on 27 December 2022. Lya was the adviser of the Institutional Investors Council Malaysia and spent 18 years at the Minority Shareholder Watchdog Group (MSWG), including as general manager. She was well known for her advocacy of corporate governance and constantly raised pertinent issues related to the rights of minority shareholders.

Case overview

Serba Dinamik Holdings Berhad (Serba Dinamik) was one of Malaysia's leading oil and gas service and equipment companies. The company made headlines when it announced that it had filed a legal suit against its external auditor, KPMG PLT (KPMG), alleging that the Big Four accounting firm was negligent and had breached its contractual and statutory duties. This came after KPMG flagged audit issues relating to RM4.54 billion in transactions and bills for the financial year ended 31 December 2020. Subsequently, several independent directors on Serba Dinamik's board resigned.

In light of the lawsuit, KPMG resigned as the external auditor. In August 2021, Nexia SSY PLT was appointed to replace KPMG. Ernst & Young Consulting Sdn Bhd (EY) was also appointed as the special independent reviewer to assess the issues raised by KPMG.

Serba Dinamik subsequently took legal action against Bursa Malaysia and EY as well, accusing the former of acting "in excess of power" and the latter of lacking independence and misrepresenting itself to be appointed as the company's special independent reviewer.

The objective of this case study is to facilitate a discussion of issues such as accounting and corporate governance problems; independence of independent directors; relationships amongst directors; conflicts of interest; roles of external and internal auditors; regulatory framework in Malaysia; and the role of regulators.

This case study was originally prepared by by Lin Yuxuan, Ng Kok Jun, Shaun Lee Jun Long, Sherry Ng Ke Xin, Tan Jia Mi Sharon, and Tang Kai Jun, Terence. It has been edited by 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.

About Serba Dinamik

On 2 December 2015, Serba Dinamik Holdings Berhad (Serba Dinamik) – then Serba Dinamik Holdings Sdn. Bhd. – was incorporated in Malaysia as a private limited company.[1] It was subsequently listed on the Main Board of Bursa Malaysia[2] in 2017.[3] Serba Dinamik's core business comprised operations and maintenance; engineering, procurement, construction and commissioning; information and communication technology; and education and training. Besides its main presence in Malaysia, it has operational offices in Singapore, India, Indonesia, Switzerland, the Netherlands, the U.K., United Arab Emirates, and Qatar.[4] Over the years, Serba Dinamik has evolved from a total engineering services provider in power, energy, and broad industries to "a leader in the Industrial Revolution 4.0"[5] through expansion into digitalisation, innovation and technology initiatives.[6]

The fight begins

> "Serba Dinamik contends that the findings raised by KPMG were not substantive in nature, which warranted an independent review and that the issues faced by KPMG were entirely attributable to their own negligence in the course of the audit process."
>
> *– Serba Dinamik*[7]

Serba Dinamik announced on 22 June 2021 that it would be suing the Big Four accounting firm KPMG PLT (KPMG) for negligence and breach of contractual and statutory duties.[8] The then-newly appointed Serba Dinamik Chairman Mohamed Ilyas Pakeer Mohamed (Ilyas) claimed that KPMG had "negligently red flagged some issues"[9] and "blown the audit issues out of proportion".[10] The civil claim was filed after KPMG raised audit issues in relation to the company's sales transactions, trade receivables and payables, and material on site balances for FY2020.[11] The total transactions in question amounted to RM4.54 billion.[12] As part of the audit issues raised, KPMG was unable to verify contracts and transactions relating to transactions with 11 customers, which in total were valued at RM3.5 billion. Serba Dinamik rejected the concerns and said it saw no issues with the existence or legitimacy of the contracts.[13]

In response to the suit, KPMG said that the audit was "conducted in accordance with the relevant professional standards"[14] and that it would contest any litigation.[15] The Big Four accounting firm further commented that the suit "had no legal basis" but if the matter proceeded to court, it would firmly refute the allegations.[16]

What caused the fight?

> "KPMG can be a big firm, but the standard of accounting they do, or the standard of auditing they do is just like a shoplot auditor."
>
> *– Datuk Mohamed Ilyas Pakeer Mohamed, Serba Dinamik's Chairman*[17]

Earlier on 25 May 2021, Serba Dinamik announced that its external auditors had informed its board about some concerns relating to its statutory audit and that the company was "in the midst of appointing an independent firm to commence a special independent review to assess the veracity and accuracy of the matters".[18] It was reported that Malaysia's regulators had ordered the independent review after they were alerted by KPMG about the audit issues.[19]

On 28 May 2021, the second-largest shareholder of Serba Dinamik, non-independent non-executive director (NINED) Datuk Abdul Kadier Sahib (Abdul Kadier), requisitioned an Extraordinary General Meeting (EGM) to remove KPMG as the company's external auditor and replace it with BDO PLT.[20] That same day, the audit issues raised by KPMG with Serba Dinamik were released publicly through a filing made by the company with Bursa Malaysia.[21]

On 29 May 2021, it was reported that prior to Abdul Kadier's proposal to change external auditor, Serba Dinamik's board of directors had already asked KPMG to step down from its role as external auditor due to its untimely replies, but it allegedly refused to do so.[22] Four days later, on 2 June 2021, Serba Dinamik said that it had received a notice from Abdul Kadier which requested for the earlier EGM requisition notice to be withdrawn. The board accepted the withdrawal notice.[23]

Subsequently, during a press conference on 22 June 2021, Chairman Ilyas called KPMG a "shoplot auditor" and said it "behaved like gangsters".[24] He also denounced and criticised KPMG's audit as being "substandard"[25] in nature and accused the audit firm of misleading Serba Dinamik's directors, Bursa Malaysia, and the Securities Commission Malaysia (SCM).[26]

KPMG steps out of the ring

Following the filing of the lawsuit, KPMG resigned as external auditor on 24 June 2021. It said that Serba Dinamik's decision to take legal action against it over the ongoing statutory audit "had compromised the auditors' ability to independently continue the audit engagement and discharge its professional duties".[27]

In August 2021, KPMG filed a defence to Serba Dinamik's civil claim, which sought to strike it out as frivolous, scandalous and an abuse of the court's process. It claimed that the company's actions "were done in bad faith" and "intended to vilify and compromise its liability to continue the statutory audit independently which purported to force its resignation".[28]

On 4 August 2021, it was reported that Nexia SSY PLT (Nexia) was appointed as Serba Dinamik's new external auditor.[29]

Acting without fear or favour

Under Section 320(1) of the Capital Markets and Services Act (CMSA) 2007, when an auditor of a listed company is of the professional opinion that there has been a breach or non-performance of any requirement or provision of the securities laws or stock exchange rules which may adversely affect the financial position of the company to a material extent, the auditor shall submit a written report to the SCM and Bursa Malaysia immediately.[30] Furthermore, Section 320(2) of the CMSA stipulates that "no auditor shall be liable to be sued in any court for any report submitted by the auditor in good faith and in the intended performance of any duty imposed on the auditor under this section."[31] Section 286(3) of Malaysia's Companies Act 2016 echoes the same qualified privilege as Section 320(2) of the CMSA, which protects auditors from being sued in court.[32]

However, Serba Dinamik "challenged that the requirements under Section 320 had not been complied with and therefore actionable against KPMG"[33] after the external auditor filed a report to the SCM in May 2021.[34] In its statement of claim, Serba Dinamik said: "The defendant (KPMG), without completing the audit exercise and without knowing conclusively the status of the required confirmations decided to invoke Section 320 of the Capital Markets and Services Act 2007 to whistle-blow on the Plaintiff (Serba Dinamik) to the Securities Commission, which led to the raid on the Plaintiff's premises."[35] Serba Dinamik alleged that KPMG had not formed a professional opinion that the company had breached the securities law before reporting to SCM and thus "did not report to the SC[M] in good faith and in the intended performance of its duty".[36] As a result, Serba Dinamik was of the view that "KPMG had breached the contract by failing to conduct itself in a professional manner, and breached the statutory duty by reporting the red flags to the SC[M] "without cause"."[37]

What are the issues?

The audit issues raised by KPMG, which were made known publicly through a filing with Bursa Malaysia, consisted of four main issues.[38,39]

Certain customers' confirmation relating to sales transactions, trade receivables and material on site balances

For the first issue, 11 out of 12 customers of Serba Dinamik initially did not reply to confirmations sent out by KPMG on the balances for sales transactions, trade receivables and material on site balances. When Serba Dinamik later sent out a second confirmation to the 11 said customers, all of them replied. However, it was alleged that based on the meeting dated 3 May 2021, KPMG had yet to test the completeness assertion and thus could not verify the authenticity of the confirmations identified or even validate the party who signed them. The 11 customers had in aggregate accounted for sales transactions of RM2.32 billion, trade receivables balance of RM652 million, and material on site balance of RM569 million.[40,41]

Serba Dinamik's response to this issue was that the company had proposed to arrange for interviews and other means of communication between KPMG and certain debtors to clarify matters; suggested to KPMG to send the third confirmation; requested KPMG to share the signed confirmation for the company's further investigation; and expressed its commitment to continuously assist KPMG.[42]

Certain transactions on purchases and trade payables balances on local supplier

For the second issue, KPMG highlighted that two local suppliers were incorporated on the same day, and that four local suppliers were found to have the same registered address as the two said local suppliers. Moreover, five out of the six suppliers had only a paid-up capital of RM100,000 each and are owned by only one shareholder despite having transactions amounting to between RM60 million and RM96 million.[43,44]

In response, Serba Dinamik said: "Companies that were appointed as the Group's vendors do not require to have huge share capital as a condition to assign and fresh vendors will also be considered, through [the Vendor Development Program]."[45] It further said that it had informed KPMG that the registered address used by the six identified local suppliers was the office address of the company secretary and these companies were using the same secretarial services. It also mentioned that two local suppliers had agreed to meet KPMG but the external auditor had not undertaken any further action.[46]

Further information relating to customer and supplier in Bahrain

For the third issue, KPMG raised the following issues:[47]

- "Office address cannot be located on physical site for our supplier and customer".
- "Fax contact number of the customer as indicated in the official website is registered under one of the Group's employee but using 'Truecaller' application".

Serba Dinamik alleged that KPMG had sighted the incorrect address and that the correct address was provided to KPMG. The company also said that it provided KPMG with the official telecommunication bill to support the contact number.[48]

Trade receivables balances and sales transactions for information technology contracts

With regards to the last issue, KPMG noted that there was no company registration number and registered business of the customers indicated in the respective contracts. Furthermore, three of Serba Dinamik's customers were only incorporated within the last two years with a minimal amount of share capital, and the principal activities for one of the three customers appeared to be non-IT related. Due to the abovementioned findings and certain other discrepancies, KPMG said it was unable to determine the appropriateness of the contracts and transactions as well as the revenue and cost recognised.[49,50]

Serba Dinamik provided its explanations to the discrepancies and also stated that there was no requirement to put company's registration number in invoices or company stamps. It also explained that "The Company does not view that its customers' profile must include huge paid-up capital in their books so long that the relevant customers are able to secure the contracts from the ultimate contract awarder and meet the legal requirements to perform such contracts. In relation to the company of which the principal activities do not appear to be IT related, there is no legal restrictions for them to participate in any other business activities."[51]

Into the heart of the storm

> "As a result, the company's market capitalisation has lost over RM3 billion. This is a big sum for an oil & gas company… shareholders have suffered,"
>
> *– Datuk Mohamed Ilyas Pakeer Mohamed, Serba Dinamik's Chairman*[52]

After the audit issues were disclosed to the public, there was an adverse impact on Serba Dinamik's share price. Over two days, the company's share price plummeted by 26.11%, closing at 83.5 sen on 1 June 2021.[53] As a result, Serba Dinamik lost RM2.89 billion in market capitalisation.[54] On 28 June 2021, its share price fell further and hit an all-time low of 32 sen following the announcement that it would be bringing KPMG to court.[55]

Several institutional investors including Malaysia's Employee Provident Fund (EPF) and Kumpulan Wang Persaraan (KWAP) reduced their shareholdings in Serba Dinamik. The EPF – Serba Dinamik's third biggest shareholder[56] – voiced its concerns about the audit issues[57] and sold off 96 million shares on 25 June 2021, thus decreasing its shareholding in Serba Dinamik to under 5%.[58] Meanwhile, KWAP disposed of 26.03 million shares on 1 June 2021, reducing its overall shareholdings from 5.24% to 4.53%.[59] Other institutional shareholders such as Permodalan Nasional Bhd (PNB) – Malaysia's largest fund manager and Serba Dinamik's fifth biggest shareholder – also expressed their concerns about the developments at the company. PNB commented that there was no merit in removing KPMG before the annual audit was completed and said that it reserved its right to vote against any resolution to replace the existing auditor.[60]

The Minority Shareholders Watchdog Group (MSWG) previously called upon minority shareholders in Serba Dinamik to vote against the resolution to remove KPMG as the external auditor,[61] and later commended Abdul Kadier for withdrawing the EGM requisition notice a few days later. It opined that KPMG should be allowed to complete its work and report to the company's shareholders at its upcoming Annual General Meeting.[62]

The deputy president of the Malaysian Institute of Corporate Governance (MICG), David W. Berry, said that the incident raised concerns about corporate governance issues within the company. He said that "it is inappropriate to remove an auditor when the executive is unhappy with the audit findings", stressing that the main purpose of an external audit is its independent adoption of accounting standards and to report the findings accordingly. Moreover, Berry commented that "the silence of the Audit Committee and the company's independent directors raises questions".[63]

Fallen credit ratings

On 3 June 2021, ratings agency Fitch Ratings (Fitch) downgraded the company's long-term issuer default rating from "BBB-" to "B-" while Standard & Poor's (S&P) downgraded its rating from "B+" to "B-" due to doubts about the company's debts and maturities.[64] In August 2021, S&P further downgraded Serba Dinamik's credit rating to "CCC" due to its concerns about the company's sizeable debt maturities and refinancing risks.[65] S&P also added: "In our view, the company's decision to take legal action against the previous auditor, KPMG, further complicates its bid to restore market confidence."[66] In November 2021, Fitch downgraded Serba Dinamik's rating to "CCC-",[67] and subsequently to "C".[68]

Who is in charge?

Figure 1 shows the board of directors based on Serba Dinamik's 2019 Annual Report,[69] before the legal dispute with KPMG occurred.

Figure 1: Serba Dinamik's board of directors as at 31 December 2019[70]

Name of director	Date of appointment	Role	Board Committee memberships
Dato' Mohamed Nor bin Abu Bakar	31 May 2016	Chairman, Independent non-executive director	• -
Dato' Dr. Ir. Ts. Mohd Abdul Karim bin Abdullah	31 May 2016	Group managing director, CEO, Non-independent executive director	• Chairman of Investment Committee
Dato' Awang Daud bin Awang Putera	31 May 2016	Non-independent non-executive director	• Member of Investment Committee
Datuk Abdul Kadier Sahib	31 May 2016	Non-independent non-executive director	• Member of Audit and Risk Committee • Member of Nomination and Remuneration Committee
Sharifah Irina binti Syed Ahmad Radzi	31 May 2016	Independent non-executive director	• Member of Audit and Risk Committee • Member of Nomination and Remuneration Committee
Tengku Dato' Seri Hasmuddin bin Tengku Othman	31 May 2016	Independent non-executive director	• Member of Investment Committee
Hasman Yusri bin Yusoff	16 November 2016	Senior independent non-executive director	• Chairman of Audit and Risk Committee
Rozilawati binti Haji Basir	19 April 2019	Independent non-executive director	• Member of Audit and Risk Committee

Source: Serba Dinamik Holdings Berhad. (2020). 2019 annual report.

Audit and Risk Committee

Serba Dinamik's Audit and Risk Committee (ARC) comprises Hasman Yusri bin Yusoff (Hasman) (Chairman), Abdul Kadier, Sharifah Irina binti Syed Ahmad Radzi (Irina), and Rozilawati binti Haji Basir (Rozilawati).[71]

Hasman was senior independent non-executive director (INED) and Chairman of the ARC.[72] He was appointed onto the board on 16 November 2016, but resigned on 24 June 2021,[73] citing "differences in opinion that he has with the decisions made by the board which in his view are not to the best interest of the company".[74]

Hasman is a member of the Malaysian Institute of Accountants (MIA) and a fellow of the Association of Chartered Certified Accountants. Prior to joining Serba Dinamik, he was an audit partner in KPMG Malaysia until his retirement in December 2015.[75] According to Practice 9.2 of the Malaysian Code on Corporate Governance 2021, a former partner of the external audit firm of must observe a cooling-off period of at least three years before being appointed as a member of the Audit Committee.[76,77] Hasman was appointed to Serba Dinamik's ARC less than a year after he resigned from KPMG as a partner.

In its 2017 corporate governance report, Serba Dinamik acknowledged that it departed from the (then) two-year cooling-off period. Under the explanation for departure, the company stated its alternative practice to achieve the principle as "none of the members of the board were former key audit partners. Thus, no member of ARC appointed was a former key audit partner."[78]

In July 2021, Hasman was charged in court for threatening to cause physical harm to one of the board members.[79] He was also one of the defendants among the 44 KPMG partners in the 1Malaysia Development Bhd legal suit filed by the Malaysian Government and Ministry of Finance Inc.[80]

Irina is a Chartered Accountant and has memberships with Chartered Accountants Australia and New Zealand, and MIA. She has experience in business advisory, internal audit, and accounting systems.[81] Rozilawati was previously CEO of Nationwide Express Courier Services Berhad and managing director of Nationwide Express Holdings Berhad. She is said to have a long-standing list of achievements in corporate exercises, mergers and acquisitions, initial public offerings (IPOs), amongst others.[82]

Internal audit function

> "In executing this responsibility, the board via the Audit Committee and the internal audit & risk management function, has adopted procedures to monitor the ongoing adequacy and integrity of the system of risk management and internal control. The board is of the view that the system of risk management & internal control in place during financial year 2019 is sound, sufficient and effective to safeguard the Group's assets, as well as shareholders' investments, and the interest of customers, regulators, employees and other stakeholders."
>
> – *Serba Dinamik, 2019 Annual Report*[83]

Serba Dinamik outsourced its internal audit function to Salihin Consulting Group Sdn. Bhd (SALIHIN) to undertake a risk based internal audit, as per the approved internal audit planning memorandum by ARC.[84] Founded by Salihin Abang (Abang) in 2002, SALIHIN provides services in audit and assurance, tax, advisory and corporate finance, Shariah advisory, and digital consultancy.[85] Abang was elected as a member of the MIA on 19 September 2015, and he was subsequently elected as its president on 24 August 2017,[86] till his term ended on 23 August 2019.[87]

According to the internal audit charter, the mission of the internal audit is to be "an independent, objective assurance function" and add value to improve the Group's operations in order to achieve the Group's objectives.[88] The main roles of the internal audit function include the approval of the internal audit framework and the annual audit plan; review and monitor the internal audit performance, progress of achievement of approved annual audit plan and adequacy of audit coverage every quarter; review and approve action plans to address competency gaps and audit methodology of the internal audit function; and monitor the progress of corrective actions undertaken by management, where applicable.[89]

The internal audit function reviews, examines and evaluates the adequacy and effectiveness of the Group's risk management processes, internal control assurance and corporate governance practices in carrying out assigned responsibilities to achieve the Group's stated mission and vision. The internal auditors are authorised to have unrestricted access to all the Group's departments, records, functions, property and personnel relevant for review. [90]

Board reshuffle

In July 2020, Serba Dinamik appointed Syed Nazim Syed Faisal (Syed Nazim) as an executive director. Prior to the appointment, he was the Group Chief Financial Officer (CFO) since June 2016 and was said to be "primarily responsible" for the success of the Group's IPO in 2017 and other corporate exercises.[91]

On 14 June 2021, Serba Dinamik announced the appointment of three new INEDs – Ilyas, Masleena Zaid (Masleena) and Johan Mohamed Ishak (Johan).[92] Ilyas is the Chairman of Koperasi Amanah Pelaburan Bhd, Hartanah AP Rakyat Bhd, and AP Holding Bhd.[93] Johan was previously the Chief Executive Officer (CEO) of Media

Prima Bhd from 2017 to 2020, and since then has served as managing director of Awesome Media Network Sdn Bhd, where Ilyas is Chairman of the board.[94] Masleena is managing partner at Messrs Masleena, Yee & Partners, having previously been head of section at the Companies Commission of Malaysia from July 2008 to December 2009 and prosecuting officer at the SCM from February 2001 to June 2008.[95] She also holds directorship positions at Eastland Equity Bhd as well as AP Holding Bhd, where Ilyas is Chairman.[96] The three INEDs joined the existing five independent directors[97] and three non-independent directors on Serba Dinamik's board.

The appointments of the three new INEDs, who appeared to be connected, raised eyebrows. Lya Rahman, adviser to the Institutional Investors Council, commented that the Serba Dinamik board should be more transparent on the nomination process of the new INEDs and questioned whether they would be able to handle the company's ongoing issues with "an objective and independent mind".[98]

On 15 June 2021, Ilyas was re-designated as Chairman of Serba Dinamik's board, while outgoing Chairman Datuk Mohamed Nor Abu Bakar (Mohamed Nor) was re-designated as an independent director.[99] Mohamed Nor quit the board four days later, on 19 June 2021, citing personal reasons.[100]

During a press conference held by Serba Dinamik on 22 June 2021, the company offered several reasons why it appointed three additional independent directors to its board. CEO Dato' Dr. Ir. Ts. Mohd Abdul Karim bin Abdullah (Abdul Karim) shared that the company needed credible and more qualified independent directors to help the company face ongoing difficult challenges and that "a more action-oriented motion"[101] should be taken, "talking to people and also to explain the real issue behind this".[102] The company also felt that "the additional independent directors with the relevant qualifications and experience and network will play an important role to sail through these difficult times".[103]

A few days later, on 25 June 2021, five independent directors – Hasman, Rozilawati, Irina, Masleena, and Tengku Datuk Seri Hasmuddin Tengku Othman – resigned from Serba Dinamik's board. Apart from Masleena, who resigned citing "personal commitment", the remaining four directors decided to step down from their roles due to differences in opinion with the company over its decision to take legal action against KPMG.[104]

More credible and stronger figures as new directors?

> "These are very highly reputable individuals who have garnered the respect from the public at large during their tenure serving the people of Malaysia…So, there will be more credible and stronger figures who are coming to take up the vacancies left by the exiting directors."
>
> *– Datuk Dr Mohd Karim Abdullah, Group managing director and CEO of Serba Dinamik*[105]

Following the resignation of the five independent directors, Serba Dinamik appointed another two new independent directors in July 2021. They are Siti Zaleha Sulaiman (Zaleha) and Datuk Seri Mohamed Farid Abu Hassan (Farid). Zaleha was the former head of corporate risk management of Bursa Malaysia and is currently an INED in Aimflex Bhd.[106] Farid is a retired senior police officer who held the position of the special branch director.[107]

A special audit review for Serba Dinamik

> "To provide clarity to the market, it is imperative that (Serba Dinamik) undertake the necessary steps to appoint the independent reviewer immediately to address the uncertainty surrounding the veracity and accuracy of the matters, as highlighted by its external auditors, in a timely manner."
>
> *– Bursa Malaysia*[108]

Pursuant to paragraphs 2.23 and 2.24 of the Main Market Listing Requirements of Bursa Malaysia (MMLR),[109] Bursa Malaysia ordered Serba Dinamik to appoint an independent reviewer by 2 July 2021 to address the audit concerns raised by KPMG.[110] On 2 July 2021, Serba Dinamik formally appointed Ernst & Young Consulting Sdn Bhd (EY) as the special independent reviewer.[111]

The scope of the special audit is as follows:[112]

1. (a) To assess the validity and veracity of the transactions and balances with respect to the 11 identified customers on sales transactions, trade receivables and materials on sites;

   (b) To quantify the possible financial impact, if any.

2. To assess the validity and veracity of the purchases from six identified local suppliers.

   (a) To assess the validity and veracity of the IT contracts/ transactions entered into with the six identified customers and two identified suppliers;

   (b) To assess the appropriateness of the revenue and costs recognised in the financial year in relation to the identified customers and suppliers above.

3. To assess the existence (where possible); and validity of the transactions and balances of the one identified customer and one identified supplier located in Bahrain.

Serba Dinamik conveyed its commitment to cooperate fully with EY for the special independent review. During the review, EY would provide bi-weekly updates to the INEDs of Serba Dinamik and directly report its findings to Bursa Malaysia.[113]

The suspense (and shares suspension) continues…

> "At the moment, everything is very much work-in-progress and in piece-meal basis, hence it's very inappropriate to release the findings which otherwise would further cloud the achievement of our target rather than to resolve the problem at hand."
>
> – *Serba Dinamik directors*[114]

On 21 October 2021, three Serba Dinamik INEDs, together with representatives from Bursa Malaysia, attended a presentation by EY.[115] A day later, on 22 October 2021, Bursa Malaysia suspended the trading of Serba Dinamik shares and issued a directive to the company to make an announcement on the shared findings from the Factual Findings Update (FFU) by 26 October 2021.[116] However, the Serba Dinamik directors claimed that EY had yet to reach a conclusion and said that the briefing was "a preliminary finding", and thus the company was unable to meet the deadline.[117] They said that "EY is still in the midst of performing the special independent review"[118] and that the company had no intention to delay the release of the findings of the special independent review.[119]

The delay was said to be because EY required the integrated oil and gas service provider to clarify certain matters before releasing the findings of the special independent review. The matters were regarding operational matters as business conduct differs across the various countries Serba Dinamik had operations in.[120]

In a statement on 27 October 2021, Bursa Malaysia highlighted that a listed issuer must make immediate public disclosure of any material information as stipulated in MMLR.[121] The market regulator had also granted Serba Dinamik a one-month extension for the issuance of its annual report and annual audited financial statement until 30 November 2021.[122]

More legal action

On 3 November 2021, Serba Dinamik filed an originating summons against Bursa Malaysia at the Kuala Lumpur High Court. Serba Dinamik alleged that Bursa Malaysia acted "in excess of power"[123] regarding its directive to appoint an auditor to conduct a special independent audit on Serba Dinamik's financial accounts and its 22 October 2021 instruction to announce a findings update made by EY.[124]

Serba Dinamik also sought interim injunction relief against Bursa Malaysia pending the full and final disposal of the originating summons to restrict it from:[125]

1. Making any announcement or otherwise publish, distribute or make available to anyone the FFU prepared by EY
2. Exercising any power to do anything, to instruct and/or otherwise issue any directive against the company pursuant to paragraph 2.24 of the MMLR pending the full and final disposal of the originating summons
3. Issuing any notice to the company and its directors to show cause for any purported breach of the MMLR.

In response, Bursa Malaysia argued that it is "entitled to exercise its power pursuant to the listing requirements in the interest of maintaining an orderly and fair market"[126] and mentioned that it would defend its position vigorously and while fulfilling its statutory roles and functions in the marketplace.[127]

On 5 November 2021, Serba Dinamik commenced a third legal action, this time against EY, as it sought to restrain the auditor from sharing any findings, report, memorandum and opinion about the company with others.[128] Serba Dinamik claimed that EY's appointment was void ab initio since the beginning as EY is not registered with the Audit Oversight Board (AOB).[129] It further alleged that EY misled the company into thinking it met the criteria to be appointed as its special independent reviewer.[130] Serba Dinamik also purported that EY "lacked independence" as its affiliate serves as the auditor of Bursa Malaysia.[131] In response, EY expressed its disagreement with Serba Dinamik and stressed that it had undertaken its duties professionally.[132]

On 11 November 2021, the High Court rejected Serba Dinamik's application for the interim injunction against Bursa Malaysia and EY but granted its request to adjourn the hearing of the injunction application to respond to the affidavits filed by Bursa Malaysia and EY.[133] Later that same month, Bursa Malaysia filed an originating summons to compel Serba Dinamik to disclose the FFU of the special independent review conducted by EY.[134]

Path to PN17

On 23 November 2021, Serba Dinamik requested another extension from Bursa Malaysia, seeking a new deadline of 31 December 2021 to issue its Annual Report 2021. The company cited delays in finalising the audited financial statements due to a change of external auditor and the impact of COVID-19 movement restrictions. However, Bursa Malaysia rejected this request.[135]

Eventually, on 6 January 2023, Serba Dinamik issued its annual report for the financial period ended 30 June 2021, which included a disclaimer of opinion from its external auditor Nexia. Consequently, the company was classified as a Practice Note (PN) 17 company and was required to regularise its financial condition within 12 months, failing which it could be delisted from Bursa Malaysia.[136]

Motions are denied!

In February 2022, Serba Dinamik was ordered by Judicial Commissioner Wan Muhammad Amin Wan Yahya in the origination summons by Bursa Malaysia against Serba Dinamik[137] to make an immediate public announcement of the FFU by EY within two market days.[138] The released FFU revealed that EY's audit had

reaffirmed some concerns previously raised by KPMG. EY cast doubt on the veracity of transactions valued at RM1.44 billion. The Big Four accounting firm's review raised concerns on the veracity of the transactions with six identified local suppliers. It further found that the Bahrain customer identified in the previous audit by KPMG could be related to Serba Dinamik and cast doubt on the veracity of the transactions with the Bahrain supplier. Additionally, EY uncovered anomalies regarding other customers and suppliers not identified by KPMG, which totaled to over US$76 million.[139]

Serba Dinamik subsequently stressed that it was not hiding the FFU. Instead, it claimed that it was not able to release it as EY refused to sign off on it. The company further said that it was compelled by Bursa Malaysia to announce it and as such requested for EY to sign off on the FFU but EY allegedly had refused to do so.[140]

On 10 February 2022, the High Court decided against Serba Dinamik's application to impose an injunction on Bursa Malaysia to prohibit the regulator from compelling the company to release the FFU by EY. It found the application "not defensible and factually not supported". Justice Datuk Ahmad Fairuz Zainol Abidin (Ahmad Fairuz) added: "Furthermore, the court should not second-guess the functions of a regulator in imposing such conditions [for the company to make the announcement]. If so, there would be chaos if the court were to choose and accept to undertake Serba Dinamik's own interpretation rather than that of Bursa Malaysia, which is the regulator."[141]

On 8 March 2022, the High Court dismissed Serba Dinamik's originating summons on EY. It said that an EY partner who was on the special independent review engagement team is registered with the AOB and that "while EY Consulting was not registered with the AOB, it took steps to ensure it had a registered auditor in its team".[142] Justice Ahmad Fairuz also said that EY did not misrepresent itself to the company in its letter of engagement as it did not claim to be an auditor. EY's appointment was also found not to have raised any issue of conflict of interest with Bursa Malaysia or SCM and "there is no issue of no curtailment of its independence".[143]

We accept cash

In December 2021, SCM announced that it had secured a warrant seeking a police arrest of Serba Dinamik's CEO Abdul Karim, and has charged company officers with submitting a false statement to the Malaysia bourse. The securities regulator said the false statement was in respect of a RM6.014 billion revenue figure published in the company's quarterly report for the period ended 31 December 2020.[144] Serba Dinamik and four key personnel – CEO Abdul Karim, executive director Syed Nazim, Group CFO Azhan Azmi, and vice president of accounts and finance Muhammad Hafiz Othman (Muhammad Hafiz) – were charged with submitting a false statement to Bursa Malaysia.[145]

However, four months later, the Attorney General's Chambers (AGC) decided to drop the prosecution against Serba Dinamik and its officials under the CMSA.[146] On 13 April 2022, the SCM announced that it had imposed the maximum compound against Serba Dinamik and the four individuals for submitting the false statement to Bursa Malaysia. The key personnel were compounded RM3 million each, with Muhammad Hafiz being issued an additional compound of RM1 million for falsifying the accounting records of Serba Dinamik Sdn Bhd.[147] The compounds, which were issued under Section 373(1) of the CMSA, settled the criminal charges they faced.[148] This followed the decision of the public prosecutor to accept the representation made to the AGC by Serba Dinamik and the individuals involved.[149]

The SCM's decision shocked market participants and observers, who felt that the compounds "send the wrong message to corporate and capital market players".[150] The Edge Markets went so far as to say that "the developments at Serba Dinamik indicate that corporates can now "falsify" numbers and documents and not even serve a day in jail". Further, it was reported that the quantum of revenue falsified far exceeded other financial crimes in Malaysia in recent years. Some observers were of the view that the RM3 million compound was not

commensurate with the extent of the fraud. This was especially since the law that Serba Dinamik and its officials had breached provided for a maximum jail term of ten years.[151]

SCM's Executive Chairman, Datuk Syed Zaid Albar, tendered his resignation about two weeks later, just six months after his term had been extended for a three-year period.[152] Three more senior SCM officials – managing director Foo Lee Mei, general counsel Chee Fei Meng, and executive director of digital strategy and innovation Chin Wei Min – were reported to have followed suit in resigning shortly after.[153]

In May 2022, the AGC defended its decision for the compound on the basis that the evidence against the accused parties was "circumstantial in nature". It said that the AGC was of the view that the "public interest would be better served" by compounding the alleged offences and to avoid a long and protracted trial". It added that criminal proceedings ought not to be pursued due to economic consequences, saying that the impact of the charges on Serba Dinamik "is disproportionate with the severity of the alleged offences committed". Further, Serba Dinamik and the accused executives were willing to accept the maximum compound imposable by SCM.[154]

On 9 May 2022, Bursa Malaysia lifted the suspension of trading in Serba Dinamik's shares, which had been in place since October 2021. It closed at 11 sen that day, down 24 sen, having last traded at 35 sen.[155]

From settlements to liquidation

On 29 April 2022, Serba Dinamik and its three subsidiaries were served with winding up petitions from six financial institutions which had provided RM1.7 billion in syndicated term financing.[156]

In June 2022, it was reported that the six lenders had arrived at an settlement with Serba Dinamik and four of its subsidiaries in respect of a scheme of arrangement and restraining order sought by the latter.[157] In July 2022, creditors voted in favour of Serba Dinamik's scheme of arrangement, with between 83% and 100% creditors voting in support.[158] However, on 11 August 2022, the High Court allowed Hongkong and Shanghai Banking Corp Ltd (HSBC), a foreign holder of Serba Dinamik's sukuk – a Shariah-compliant bond-like instrument used in Islamic finance – to intervene in the scheme of arrangement. Nevertheless, the applications filed by the four subsidiaries to allow their respective schemes of arrangement to proceed were allowed, as there were no other interveners.[159]

On 23 August 2022, The Kuala Lumpur High Court appointed an interim liquidator to take control of Serba Dinamik and three of its subsidiaries. This decision stemmed from Serba Dinamik breaching a Consent Order that required it to commence repaying a syndicated loan owed to six banks in accordance with the scheme of arrangement.[160] Subsequently, on 10 January 2023, the High Court allowed the winding-up petitions filed by six financial institutions earlier against Serba Dinamik and its three subsidiaries over debts totalling about RM5 billion. These liquidated companies were placed under Victor Saw, a liquidator from PricewaterhouseCoopers (PwC).[161]

On 16 March 2023, despite an appeal to the Court of Appeal, the High Court declined to grant a permanent stay of the winding-up petition against Serba Dinamik and its three subsidiaries.[162,163] Judge Ahmad Murad Abdul Aziz, in his ruling, emphasised that these companies did not establish special circumstances warranting the stay of the winding-up order issued on 10 January 2023. He highlighted the importance of having the provisional liquidator accountable to the court rather than leaving it to the companies' directors. The court also directed the company's executive directors to pay RM11,000 in total costs to the syndicated and bilateral financiers, and Hong Leong Islamic Bank.[164]

On 7 July 2023, the High Court approved Victor Saw's application for authorisation to continue the operations of Serba Dinamik and the three liquidating companies from 9 July 2023 until 8 July 2024.[165]

Not a smooth journey

Following its classification as a PN17 company, Serba Dinamik was required to submit a regularisation plan to SCM or Bursa Securities by 6 January 2023, as per the MMLR.[166] However, the company was granted a six-month extension by Bursa Securities.[167] Despite this extension, Serba Dinamik failed to submit the plan and applied for another extension on 5 July 2023, explaining that "it was still in the midst of formulating the plan".[168] This request was however rejected by Bursa Securities, raising the possibility of the company being delisted from the Main Market of Bursa Malaysia on 28 August 2023.[169] On 23 August 2023, Serba Dinamik submitted an appeal to Bursa Securities, resulting in a deferral of the company's securities delisting. During this period, the company's securities remain suspended.[170] Subsequently, on 16 April 2024, Serba Dinamik announced that it had been granted a second extension of time until 15 May 2024 by Bursa Malaysia to submit its regularisation plan.[171]

There have also been multiple delays by Serba Dinamik in submitting its annual report and financial statements. The company only released its annual report and audited financial statements for the financial year ended 30 June 2022 to Bursa Malaysia on 12 January 2023, which was 28 days later that the extended deadline.[172] Additionally, from February 2023 to November 2023, Serba Dinamik failed to release its quarterly financial reports by the deadline for four consecutive quarters, beginning from 2QFY2023 to 1QFY2024. The company cited "significant loss of manpower and loss of critical personnel"[173] as the reason for the delays for 2QFY2023 and 3QFY2023 but did not clarify the reasons for 4QFY2023 and 1QFY2024.[174,175]

The end of Serba Dinamik?

On 21 December 2023, Bursa Malaysia reprimanded Serba Dinamik and 10 of its directors for breaching the MMLR, citing "a serious dereliction of duties" that resulted in corporate governance failures, particularly in ensuring proper and timely disclosure of material information and compliance with the regulator's directive. Fines ranging from RM355,200 to RM1.38 million were imposed on the 10 directors, with CEO Abdul Karim being fined RM1.38 million for numerous violations, including those related to financial reporting.[176]

After a series of setbacks, Serba Dinamik announced on 30 May 2024 that it will be delisted from Bursa Malaysia effective 5 June 2024,[177] following its failure to obtain a third extension to submit its regularisation plan. In the company's filing to Bursa Malaysia, it was stated: "The company is still able to continue its operations and businesses and proceed with its corporate restructuring and its shareholders can still be rewarded by the company's performance. However, the shareholders will be holding shares which are no longer quoted and traded on Bursa Securities."[178]

Serba Dinamik has been loss-making since the first quarter ended 30 September 2021.[179] It reported a significant net loss of RM1.09 billion in FY2022 as revenue dropped to RM1.35 billion. The company's annual net loss grew to RM1.3 billion in FY2023 as revenue further declined to RM403.23 million. In 1QFY2024, it recorded a net loss of RM80.67 million, a 23% improvement from the RM104.6 million loss incurred the previous year, due to reduced expenses and finance costs. Revenue, however, fell 93.6% to RM13.75 million from RM213.58 million.[180] It remains to be seen how will the company proceed with its restructuring.

Discussion questions

1. Identify the key accounting issues in Serba Dinamik. What is the role of internal and external audit in relation to the issues identified?
2. What are the duties of directors with respect to ensuring proper financial reporting?
3. Critically evaluate Serba Dinamik directors' responses to KPMG's audit findings. How should an audit committee and board respond to audit findings in such situations?

4. In your opinion, did the responses provided by Serba Dinamik regarding the various accounting irregularities address the concerns? What about the reasons provided by Serba Dinamik for not releasing the Factual Findings Update by EY? Explain.
5. Critically evaluate the Serba Dinamik board's composition before and after the scandal and comment on how the change in board composition could have affected how the company addressed the issues. Do you think the independent directors on the board were truly independent? Explain.
6. Several independent directors resigned. Should they have done so? Under what circumstances is it justified for an independent director to resign?
7. Critically evaluate the regulatory and enforcement actions taken in the Serba Dinamik case and the decision to compound the alleged offences. Why do you think regulators may decide to compound offences or impose civil penalties, or take other actions, rather than opting for criminal prosecution?
8. Compare the debt restructuring process through a scheme of arrangement at Serba Dinamik against other option(s) available to creditors and their pros and cons, and explain why companies and creditors may prefer a scheme of arrangement.

Endnotes

1 Serba Dinamik Holdings Berhad. (n.d.). About Serba Dinamik. Retrieved from https://www.e-serbadk.com/about-serba-dinamik/

2 *Ibid*.

3 Aziz, A. (2021, May 28). Serba Dinamik's second largest shareholder proposes removal of KPMG as auditor. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-second-largest-shareholder-proposes-removal-kpmg-auditor

4 Serba Dinamik Holdings Berhad. (n.d.). About Serba Dinamik. Retrieved from https://www.e-serbadk.com/about-serba-dinamik/

5 *Ibid*.

6 *Ibid.*

7 Tan, S. M. (2021, June 23). Selling persists as Serba Dinamik sues KPMG for alleged negligence. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-share-price-down-after-announcing-legal-action-against-kpmg

8 Aman, A. S. (2021, June 22). Serba Dinamik sues KPMG for alleged negligence, breaching duties. *New Straits Times*. Retrieved from https://www.nst.com.my/business/2021/06/701292/serba-dinamik-sues-kpmg-alleged-negligence-breaching-duties

9 Lee, L., Sipalan, J., & Ananthalakshmi, A. (2021, June 22). Update 3-Malaysia's Serba Dinamik takes auditor KPMG to court. *Reuters*. Retrieved from https://www.reuters.com/article/malaysia-serbadinamikhldg-idINL2N2O40L9

10 Fong, K. (2021, June 22). Serba Dinamik to take legal action against external auditor KPMG for alleged negligence. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-take-legal-action-against-external-auditor-kpmg-negligence

11 Aziz, A. (2021, May 29). KPMG raised audit issues on transactions involving over RM3 billion, says Serba Dinamik. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/kpmg-raised-audit-issues-transactions-involving-over-rm3-billion-says-serba-dinamik

12 Khalid, S. (2021, June 25). KPMG quits as Serba Dinamik auditor; it's now up to SC to uncover the truth. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/kpmg-quits-serba-dinamik-auditor-its-now-sc-uncover-truth

13 Lee, L., Sipalan, J., & Ananthalakshmi, A. (2021, June 22). Update 3-Malaysia's Serba Dinamik takes auditor KPMG to court. *Reuters*. Retrieved from https://www.reuters.com/article/malaysia-serbadinamikhldg-idINL2N2O40L9

14 Khalid, S. (2021, June 25). KPMG quits as Serba Dinamik auditor; it's now up to SC to uncover the truth. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/kpmg-quits-serba-dinamik-auditor-its-now-sc-uncover-truth

15 Aziz, A. (2021, June 23). SC says Serba Dinamik probe ongoing and auditors must do their work without fear or favour. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/sc-bursa-deny-having-spoken-serba-dinamik-chairman-mohamed-ilyas

16 Khalid, S. (2021, June 25). KPMG quits as Serba Dinamik auditor; it's now up to SC to uncover the truth. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/kpmg-quits-serba-dinamik-auditor-its-now-sc-uncover-truth

17 Aziz, A. (2021, June 23). SC says Serba Dinamik probe ongoing and auditors must do their work without fear or favour. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/sc-bursa-deny-having-spoken-serba-dinamik-chairman-mohamed-ilyas

18 The Star. (2021, May 25). Serba Dinamik to start independent review after external audit raises concerns. Retrieved from https://www.thestar.com.my/business/business-news/2021/05/25/serba-dinamik-to-start-independent-review-after-external-audit-raises-concerns

19 Aziz, A. (2021, July 12). Serba Dinamik formally appoints EY for independent review. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-formally-appoints-ey-independent-review

20 Aziz, A. (2021, May 28). Serba Dinamik's second largest shareholder proposes removal of KPMG as auditor. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-second-largest-shareholder-proposes-removal-kpmg-auditor

21 Aziz, A. (2021, May 29). KPMG raised audit issues on transactions involving over RM3 billion, says Serba Dinamik. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/kpmg-raised-audit-issues-transactions-involving-over-rm3-billion-says-serba-dinamik

22 Aziz, A. (2021, May 29). Serba Dinamik board wanted KPMG to resign, but auditor refused to do so, says executive director Syed Nazim. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-board-wanted-kpmg-resign-auditor-refused-do-so-says-executive-director-syed

23 The Star. (2021, June 3). Serba Dinamik shareholder withdraws EGM notice. Retrieved from https://www.thestar.com.my/business/business-news/2021/06/03/serba-dinamik-shareholder-withdraws-egm-notice

24 Barrock, J. (2021, July 5). The drama at Serba Dinamik continues. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/drama-serba-dinamik-continues

25 Yap, W. X. (2021, June 24). Why Did Serba Dinamik's Chairman Call KPMG 'Gangsters'? A Guide To The Ongoing Spat. *SAYS*. Retrieved from https://says.com/my/news/why-did-serba-dinamik-s-chairman-call-kpmg-gangsters-a-guide-to-the-ongoing-spat

26 The Edge TV. (2021, June 22). NEWS: 'KPMG is like a shoplot auditor'. Retrieved from https://www.theedgemarkets.com/content/news-kpmg-shoplot-auditor

27 Khalid, S. (2021, June 25). KPMG quits as Serba Dinamik auditor; it's now up to SC to uncover the truth. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/kpmg-quits-serba-dinamik-auditor-its-now-sc-uncover-truth

28 New Straits Times. (2021, August 30). KPMG's defence walks right into Serba Dinamik's claim?. Retrieved from https://www.nst.com.my/business/2021/08/722536/kpmgs-defence%C2%A0walks-right-%C2%A0serba%C2%A0dinamiks%C2%A0claim

29 Salim, S. (2021, August 4). Serba Dinamik finally appints Nexia SSY PLT as new external auditor after receiving KPMG's nod. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-finally-appoints-nexia-ssy-plt-new-external-auditor-after-receiving-kpmgs-nod

30 Securities Commission of Malaysia. (2021). *Capital Markets and Services Act 2007*. Retrieved from https://www.sc.com.my/api/documentms/download.ashx?id=70b43137-9a48-4540-b955-f1114ceb3445

31 *Ibid*.

32 Suruhanjaya Syarikat Malaysia. (2016). Companies Act 2016. Retrieved from https://www.ssm.com.my/Pages/Legal_Framework/Companies%20-Act%20-1965-(Repealed)/aktabi_20160915_companiesact2016act777_0.pdf

33 New Straits Times. (2021, June 26). Serba Dinamik vs KPMG, a "shoplot auditor" case?. Retrieved from https://www.nst.com.my/business/2021/06/702410/serba-dinamik-vs-kpmg-shoplot-auditor-case

34 Aziz, A. (2021, June 23). SC says Serba Dinamik probe ongoing and auditors must do their work without fear or favour. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/sc-bursa-deny-having-spoken-serba-dinamik-chairman-mohamed-ilyas

35 Aziz, A. (2021, July 12). Serba Dinamik formally appoints EY for independent review. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-formally-appoints-ey-independent-review

36 *Ibid*.

37 *Ibid*.

38 Serba Dinamik Holdings Berhad. (2021, May 28). Announcement – Special Independent Review. Retrieved from https://www.insage.com.my/BursaNews/Attachment/202105/20210528/SERBADK-AN20210528A4-1.pdf

39 Aziz, A. (2021, May 29). KPMG raised audit issues on transactions involving over RM3 billion, says Serba Dinamik. *The Edge Markets*. Retrieved from The Edge Markets: https://www.theedgemarkets.com/article/kpmg-raised-audit-issues-transactions-involving-over-rm3-billion-says-serba-dinamik

40 Serba Dinamik Holdings Berhad. (2021, May 28). Announcement – Special Independent Review. Retrieved from https://www.insage.com.my/BursaNews/Attachment/202105/20210528/SERBADK-AN20210528A4-1.pdf

41 Aziz, A. (2021, May 29). KPMG raised audit issues on transactions involving over RM3 billion, says Serba Dinamik. *The Edge Markets*. Retrieved from The Edge Markets: https://www.theedgemarkets.com/article/kpmg-raised-audit-issues-transactions-involving-over-rm3-billion-says-serba-dinamik

42 Serba Dinamik Holdings Berhad. (2021, May 28). Announcement – Special Independent Review. Retrieved from https://www.insage.com.my/BursaNews/Attachment/202105/20210528/SERBADK-AN20210528A4-1.pdf

43 *Ibid*.

44 Aziz, A. (2021, May 29). KPMG raised audit issues on transactions involving over RM3 billion, says Serba Dinamik. *The Edge Markets*. Retrieved from The Edge Markets: https://www.theedgemarkets.com/article/kpmg-raised-audit-issues-transactions-involving-over-rm3-billion-says-serba-dinamik

45 Serba Dinamik Holdings Berhad. (2021, May 28). Announcement – Special Independent Review. Retrieved from https://www.insage.com.my/BursaNews/Attachment/202105/20210528/SERBADK-AN20210528A4-1.pdf

46 *Ibid*.

47 *Ibid*.

48 *Ibid*.

49 Serba Dinamik Holdings Berhad. (2021, May 28). Announcement – Special Independent Review. Retrieved from https://www.insage.com.my/BursaNews/Attachment/202105/20210528/SERBADK-AN20210528A4-1.pdf

50 Aziz, A. (2021, May 29). KPMG raised audit issues on transactions involving over RM3 billion, says Serba Dinamik. *The Edge Markets*. Retrieved from The Edge Markets: https://www.theedgemarkets.com/article/kpmg-raised-audit-issues-transactions-involving-over-rm3-billion-says-serba-dinamik

51 Serba Dinamik Holdings Berhad. (2021, May 28). Announcement – Special Independent Review. Retrieved from https://www.insage.com.my/BursaNews/Attachment/202105/20210528/SERBADK-AN20210528A4-1.pdf

52 Fong, K. (2021, June 22). Serba Dinamik to take legal action against external auditor KPMG for alleged negligence. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-take-legal-action-against-external-auditor-kpmg-negligence

53 Tan, S. M. (2021, June 1). Serba Dinamik plunges another 26%, RM2.89b in market value lost over two days. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-hits-limit-down-falls-335-sen-795-sen-open

54 *Ibid.*

55 The Star. (2021, June 28). Serba Dinamik hits new low in active trade. Retrieved from https://www.thestar.com.my/business/business-news/2021/06/28/serba-dinamik-hits-new-low-in-active-trade

56 Lee, L. (2021, June 2). Serba Dinamik's major shareholders express concern over audit issues. *Reuters*. Retrieved from https://www.reuters.com/business/serba-dinamiks-major-shareholders-express-concern-over-audit-issues-2021-06-02/

57 Lee, L. (2021, June 2). Serba Dinamik shareholder EPF concerned about audit issues surrounding firm. *Reuters*. Retrieved from https://www.reuters.com/article/malaysia-serbadinamikhldg-epf-idUSL3N2NK2QM

58 Aziz, A. (2021, June 30). EPF ceases to be substantial shareholder in Serba Dinamik while Abdul Karim forced to trim stake. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/epf-ceases-be-substantial-shareholder-serba-dinamik

59 *Ibid*.

60 Lee, L. (2021, June 2). Serba Dinamik's major shareholders express concern over audit issues. *Reuters*. Retrieved from https://www.reuters.com/business/serba-dinamiks-major-shareholders-express-concern-over-audit-issues-2021-06-02/

61 Idris, A. N. (2021, May 29). MSWG urges Serba Dinamik minority shareholders to vote against removal of external auditor. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/mswg-urges-serba-dinamik-minority-shareholders-vote-against-removal-external-auditor

62 Cheah, C. S. (2021, June 3). MSWG applauds Serba Dinamik for withdrawing EGM requisition. *Focus Malaysia*. Retrieved from https://focusmalaysia.my/mswg-applauds-serba-dinamik-for-withdrawing-egm-requisition/

63 Lim, J. (2021, June 1). MICG: Dispute between Serba Dinamik and external auditor raises serious governance concerns. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/micg-dispute-between-serba-dinamik-and-external-auditor-raises-serious-governance-concerns

64 Barrock, J., Shanmugam, M., & Aziz, A. (2021, June 17). Cover Story: Serba Dinamik in the eye of the storm. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/cover-story-serba-dinamik-eye-storm

65 Lee, E. (2021, August 19). S&P downgrades Serba Dinamik's rating further to 'CCC' from 'B-' on growing refinancing risks. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/sp-downgrades-serba-dinamiks-rating-further-ccc-b-growing-refinancing-risks

66 *Ibid*.

67 Fitch Ratings. (2021, November 2). Fitch Downgrades Serba Dinamik to 'CCC-' on Refinancing Risk. Retrieved from https://www.fitchratings.com/research/corporate-finance/fitch-downgrades-serba-dinamik-to-ccc-on-refinancing-risk-02-11-202

68 Fitch Ratings. (2021, November 12). Fitch Downgrades Serba Dinamik, to 'C'. Retrieved from https://www.fitchratings.com/research/corporate-finance/fitch-downgrades-serba-dinamik-to-c-12-11-2021

69 Serba Dinamik Holdings Berhad. (2020). 2019 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2019

70 *Ibid.*

71 Serba Dinamik Holdings Berhad. (2020). 2019 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2019/6/

72 Serba Dinamik Holdings Berhad. (2020). 2019 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2019/42/

73 Cheah, C. S. (2021, July 27). Former Serba audit committee chairman charged in court. *Focus Malaysia.* Retrieved from https://focusmalaysia.my/former-serba-audit-committee-chairman-charged-in-court/

74 Khalid, S. (2021, June 25). Four Serba Dinamik independent directors resign in protest over company's lawsuit against KPMG. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/five-independent-directors-including-newly-appointed-masleena-zaid-resign-serba-dinamik

75 Serba Dinamik Holdings Berhad. (n.d.). En. Hasman Yusri Bin Yusoff. Retrieved from http://staging.serbadinamik.com/?personnel=hasman-yusri-bin-yusoff

76 Securities Commission Malaysia. (2021). Malaysian Code on Corporate Governance (as at 28 April 2021). Retrieved from https://www.sc.com.my/api/documentms/download.ashx?id=239e5ea1-a258-4db8-a9e2-41c215bdb776

77 Kok, C. K. (2021, May 17). Securities Commission Malaysia updates the Malaysian Code on Corporate Governance. Retrieved from https://www.lexology.com/library/detail.aspx?g=f5285b2d-1b68-48b1-9f7a-abce5827e76d

78 Serba Dinamik Holdings Berhad. (n.d.). 2017 Corporate Governance Report. Retrieved from https://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=185505&name=EA_DS_ATTACHMENTS

79 Cheah, C. S. (2021, July 27). Former Serba audit committee chairman charged in court. *Focus Malaysia.* Retrieved from https://focusmalaysia.my/former-serba-audit-committee-chairman-charged-in-court/

80 Cheah, C. S. (2021, July 27). Former Serba audit committee chairman charged in court. *Focus Malaysia.* Retrieved from https://focusmalaysia.my/former-serba-audit-committee-chairman-charged-in-court/

81 Serba Dinamik Holdings Berhad. (2020). 2019 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2019/38/

82 Serba Dinamik Holdings Berhad. (2020). 2019 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2019/44/

83 Serba Dinamik Holdings Berhad. (2020). 2019 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2019/189/

84 Serba Dinamik Holdings Berhad. (2019). 2018 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2018/163/

85 SALIHIN. (n.d.) About Us. Retrieved from http://www.salihin.com.my/page/about/31/

86 Willy, A. M. (2017, August 24). Salihin Abang is new MIA president, Narendra the new VP. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/salihin-abang-new-mia-president-narendra-new-vp

87 Malaysian Institute of Accountants (2019, September 30). Salihin Abang. Retrieved from https://www.mia.org.my/v2/discover-mia/council_details.aspx?ID=M13933477C

88 Serba Dinamik Group Berhad. (n.d.). Internal Audit Charter. Retrieved from https://www.e-serbadk.com/wp-content/uploads/2018/08/3-IA-Charter-2nd-Draft.pdf

89 Serba Dinamik Holdings Berhad. (2020). 2019 Annual Report. Retrieved from https://www.insage.com.my/ir/interactiveAR/SERBADK/interactiveAR2019/203/

90 Serba Dinamik Group Berhad. (n.d.). Internal Audit Charter. Retrieved from https://www.e-serbadk.com/wp-content/uploads/2018/08/3-IA-Charter-2nd-Draft.pdf

91 Bernama. (2020, July 7). Serba Dinamik appoints Syed Nazim Syed Faisal and Azhan Azmi to senior posts. *The Malaysian Reserve.* Retrieved from https://themalaysianreserve.com/2020/07/07/serba-dinamik-appoints-syed-nazim-syed-faisal-and-azhan-azmi-to-senior-posts/

92 Shankar, A. C. (2021, June 14). Serba Dinamik appoints EY as independent reviewer on audit matters, sees entry of three independent, non-executive directors. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-appoints-ey-independent-reviewer-audit-matters-sees-entry-three-independent

93 Yusof, A. (2021, June 14). Serba Dinamik appoints E&Y as independent auditor, three directors to board. *New Straits Times*. Retrieved from https://www.nst.com.my/business/2021/06/698673/serba-dinamik-appoints-ey-independent-auditor-three-directors-board

94 Shankar, A. C. (2021, June 14). Serba Dinamik appoints EY as independent reviewer on audit matters, sees entry of three independent, non-executive directors. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-appoints-ey-independent-reviewer-audit-matters-sees-entry-three-independent

95 *Ibid*.

96 Yusof, A. (2021, June 14). Serba Dinamik appoints E&Y as independent auditor, three directors to board. *New Straits Times*. Retrieved from https://www.nst.com.my/business/2021/06/698673/serba-dinamik-appoints-ey-independent-auditor-three-directors-board

97 The Edge Malaysia. (2021, June 21). Frankly Speaking: New independent directors at Serba Dinamik raises eyebrows. Retrieved from https://www.theedgemarkets.com/article/frankly-speaking-new-independent-directors-serba-dinamik-raises-eyebrows

98 Rahman, L. (2021, June 24). Serba Dinamik's EY appointment could be a baby step to many unforeseen discoveries. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamiks-ey-appointment-could-be-baby-step-many-unforeseen-discoveries

99 Tan, S. M. (2021, June 18). Serba Dinamik's new independent director Mohamed Ilyas redesignated as chairman. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-independent-director-mohamed-ilyas-redesignated-chairman

100 The Star. (2021, June 21). Serba Dinamik former chairman Mohamed Nor resigns. Retrieved from https://www.thestar.com.my/business/business-news/2021/06/21/serba-dinamik-former-chairman-mohamed-nor-resigns

101 Aziz, A. (2021, June 22). What Serba Dinamik says on its audit issues today. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/what-serba-dinamik-says-its-audit-issues-today

102 *Ibid*.

103 *Ibid*.

104 Khalid, S. (2021, June 25). Four Serba Dinamik independent directors resign in protest over company's lawsuit against KPMG. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/five-independent-directors-including-newly-appointed-masleena-zaid-resign-serba-dinamik

105 Serba Dinamik Holdings Berhad. (2021, June 28). Serba Dinamik to rejig board with reputable appointments. Retrieved from https://www.e-serbadk.com/serba-dinamik-to-rejig-board-with-reputable-appointments/

106 Khalid, S. (2021, July 07). Serba Dinamik names former Bursa official and ex-police officer as new independent directors. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-names-former-bursa-official-and-expolice-officer-new-independent-directors

107 *Ibid.*

108 Reuters. (2021, June 24). Malaysia bourse wants independent reviewer of oil firm's deals after auditor's red flags. Retrieved from https://www.reuters.com/business/energy/malaysia-bourse-wants-independent-review-oil-firms-deals-after-auditors-red-2021-06-23/

109 Fong, K. (2021, July 2). Serba Dinamik appoints Ernst & Young as independent reviewer under directive of Bursa Malaysia. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-appoints-ernst-young-independent-reviewer-under-directive-bursa-malaysia

110 Aman, A. S. (2021, June 28). Bursa asks Serba Dinamik to hire independent reviewer by July 2. *New Straits Times.* Retrieved from https://www.nst.com.my/business/2021/06/703140/bursa-asks-serba-dinamik-hire-independent-reviewer-july-2

111 Fong, K. (2021, July 2). Serba Dinamik appoints Ernst & Young as independent reviewer under directive of Bursa Malaysia. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-appoints-ernst-young-independent-reviewer-under-directive-bursa-malaysia

112 *Ibid.*

113 Cheah, C. S. (2021, September 9). Serba will release its special independent review findings once finalised. *Focus Malaysia.* Retrieved from https://focusmalaysia.my/serba-will-release-its-special-independent-review-findings-once-finalised/

114 New Straits Times. (2021, October 26). "Premature to release Serba Dinamik's special independent review". Retrieved from https://www.nst.com.my/business/2021/10/739774/premature-release-serba-dinamiks-special-independent-review

115 *Ibid.*

116 Azman, N. H. (2021, October 27). Serba Dinamik's special audit review facing 'operational matters'. *The Malaysian Reserve.* Retrieved from https://themalaysianreserve.com/2021/10/27/serba-dinamiks-special-audit-review-facing-operational-matters/

117 New Straits Times. (2021, October 26). "Premature to release Serba Dinamik's special independent review". Retrieved from https://www.nst.com.my/business/2021/10/739774/premature-release-serba-dinamiks-special-independent-review

118 *Ibid.*

119 *Ibid.*

120 Azman, N. H. (2021, October 27). Serba Dinamik's special audit review facing 'operational matters'. *The Malaysian Reserve.* Retrieved from https://themalaysianreserve.com/2021/10/27/serba-dinamiks-special-audit-review-facing-operational-matters/

121 Idris, A. N., & Salim, S. (2021, October 27). Serba Dinamik remains suspended, has not complied with directive, says Bursa. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/bursa-announces-continued-suspension-serba-dinamik-share-trade-due-not-meeting-directive

122 The Star. (2021, October 25). Serba Dinamik says EY review on-going, gets one-month extension to submit accounts. Retrieved from https://www.thestar.com.my/business/business-news/2021/10/25/serba-dinamik-says-ey-review-on-going-gets-one-month-extension-to-submit-accounts

123 Salim, S. (2021, November 8). Serba Dinamik sues Bursa for acting 'in excess of power'; stock exchange says it is entitled to exercise its authority. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-challenges-bursa-court

124 *Ibid.*

125 *Ibid.*

126 Seah, E. H. (2021, November 9). The stock exchange is entitled to exercise its power, says Bursa in response to Serba Dinamik lawsuit. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/stock-exchange-entitled-exercise-its-power-says-bursa-response-serba-dinamik-lawsuit

127 *Ibid.*

128 Kana, G. (2021, November 11). Serba Dinamik's next target: Ernst & Young. *The Star.* Retrieved from https://www.thestar.com.my/business/business-news/2021/11/11/serba-dinamiks-next-target-ernst--young

129 Aziz, A. (2021, November 10). After KPMG and Bursa, Serba Dinamik now sues EY and seeks injunction to bar it from sharing review findings. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-sues-ey-seeks-block-any-sharing-review-findings

130 Aziz, A. (2021, November 11). EY Consulting tells Serba Dinamik it stands by all its actions. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/ey-consulting-tells-serba-dinamik-it-stands-all-its-actions

131 Aziz, A. (2021, November 10). After KPMG and Bursa, Serba Dinamik now sues EY and seeks injunction to bar it from sharing review findings. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/serba-sues-ey-seeks-block-any-sharing-review-findings

132 Aziz, A. (2021, November 11). EY Consulting tells Serba Dinamik it stands by all its actions. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/ey-consulting-tells-serba-dinamik-it-stands-all-its-actions

133 Yatim, H. (2021, November 11). Serba Dinamik stumbles in attempt to block Bursa and EY from releasing findings of special audit. *The Edge Markets.* Retrieved from https://www.theedgemarkets.com/article/court-dismisses-serba-dinamiks-application-ad-interim-injunction-against-bursa-and-ey

134 Ikram, I. (2022, April 14). Bursa Malaysia files contempt proceedings against Serba Dinamik for failing to reveal FFU. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/bursa-malaysia-files-contempt-proceedings-against-serba-dinamik-failing-reveal-ffu

135 Bursa Malaysia. (2021, November 25). Issuance of Annual Report for the Financial Period Ended 30 June 2021. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3212295

136 Bursa Malaysia. (2022, January 6). Practice Note 17 / Guidance Note 3 : First Announcement. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3224781

137 Yatim, H. (2022, March 8). High Court dismisses Serba Dinamik's bid to restrain EY Consulting from releasing special independent review findings. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/high-court-dismisses-serba-dinamiks-bid-restrain-ey-consulting-releasing-sir-findings

138 Birruntha, S. (2022, February 8). Serba Dinamik told to disclose findings by E&Y Consulting. *The Malaysian Reserve*. Retrieved from https://themalaysianreserve.com/2022/02/08/serba-dinamik-told-to-disclose-findings-by-ey-consulting/

139 Birruntha, S. (2022, February 9). EY audit raises doubt on RM1.4b of Serba Dinamik transactions. *The Malaysian Reserve*. Retrieved from https://themalaysianreserve.com/2022/02/09/ey-audit-raises-doubt-on-rm1-4b-of-serba-dinamik-transactions/

140 Khalid, S. (2022, March 29). Serba Dinamik says not hiding EY Consulting's FFU but latter refuses to sign off on it. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/serba-dinamik-says-not-hiding-ey-consultings-ffu-latter-refuses-sign-it

141 Yatim, H. (2022, February 10). High Court strikes out Serba Dinamik's bid to stop Bursa Malaysia from compelling company to release fact-finding update. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/high-court-dismisses-injunction-application-serba-dinamik-stop-release-factfinding-update

142 Yatim, H. (2022, March 8). High Court dismisses Serba Dinamik's bid to restrain EY Consulting from releasing special independent review findings. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/high-court-dismisses-serba-dinamiks-bid-restrain-ey-consulting-releasing-sir-findings

143 *Ibid*.

144 Reuters. (2021, December 29). Malaysian securities regulator charges Serba Dinamik, seeks arrest of CEO. Retrieved from https://www.reuters.com/business/aerospace-defense/malaysian-securities-regulator-charges-serba-dinamik-seeks-arrest-ceo-2021-12-29/

145 Tee, K. (2022, May 13). Report: Serba Dinamik, top execs acquitted over Bursa charges after settling RM16m fine. *Yahoo! News*. Retrieved from https://malaysia.news.yahoo.com/report-serba-dinamik-top-execs-055836777.html

146 Azhar, K., & Yatim, H. (2022, April 28). Cover Story 2: Capital market players question decision to compound Serba Dinamik four. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/cover-story-2-capital-market-players-question-decision-compound-serba-dinamik-four

147 Securities Commission Malaysia. (2022, April 13). SC Imposes Maximum Compound Against Serba Dinamik, CEO, Director, And Officers For Submitting False Financial Statement To Bursa Malaysia. Retrieved from https://www.sc.com.my/resources/media/media-release/sc-imposes-maximum-compound-against-serba-dinamik-ceo-director-and-officers-for-submitting-false-financial-statement-to-bursa-malaysia

148 Azhar, K., & Yatim, H. (2022, April 28). Cover Story 2: Capital market players question decision to compound Serba Dinamik four. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/cover-story-2-capital-market-players-question-decision-compound-serba-dinamik-four

149 *Ibid*.

150 *Ibid*.

151 *Ibid*.

152 Aziz, A. (2022, April 28). SC executive chairman tenders resignation six months after three-year extension. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/sc-executive-chairman-tenders-resignation-six-months-after-threeyear-extension

153 Khalid, S. (2022, April 29). Three more top officials leave SC. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/three-more-top-officials-leave-sc

154 Ikram, I. (2022, May 13). AGC opted for Serba Dinamik compound as SC evidence 'circumstantial', compound means public interest 'better served'. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/ag-says-decision-compound-serba-dinamik-executives-based-circumstantial-evidence-against

155 Aman, A. S. (2022, May 9). Serba Dinamik shares fell due to severe selling pressure. *New Straits Times*. Retrieved from https://www.nst.com.my/business/2022/05/794791/serba-dinamik-shares-fell-due-severe-selling-pressure

156 Idris, A. N. (2022, April 29). Creditors file winding up petitions against Serba Dinamik. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/creditors-file-winding-petitions-against-serba-dinamik

157 Yatim, H. (2022, June 2). Banks reach settlement with Serba Dinamik on scheme of arrangement. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/banks-reach-settlement-serba-dinamik-scheme-arrangement

158 Aziz, A., & Yatim, H. (2022, July 25). Creditors vote in favour of Serba Dinamik's scheme of arrangement. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/creditors-vote-favour-serba-dinamiks-scheme-arrangement

159 Yatim, H. (2022, August 11). Court allows HSBC to intervene in Serba Dinamik's debt restructuring scheme. *The Edge Markets*. Retrieved from https://www.theedgemarkets.com/article/court-allows-hsbc-intervene-serba-dinamiks-debt-restructuring-scheme

160 Chester, T. (2022, August 23). Court appoints interim liquidator to take control of Serba Dinamik after it missed payment under Consent Order. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/article/court-appoints-interim-liquidator-take-control-serba-dinamik-after-it-missed-payment-under

161 Yatim, H. (2023, January 10). High Court allows winding-up of Serba Dinamik, three subsidiaries. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/651171

162 Yatim, H. (2023, March 16). High Court refuses to grant permanent stay order against winding up of Serba Dinamik, three units pending appeal. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/659446

163 Yatim, H. (2023, January 30). Serba Dinamik applies to stay winding-up order pending appeal. *The Edge Markets*. https://theedgemalaysia.com/node/653461

164 Yatim, H. (2023, March 16). High Court refuses to grant permanent stay order against winding up of Serba Dinamik, three units pending appeal. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/659446

165 Yatim, H. (2023, July 7). Court allows liquidator to continue operations of Serba Dinamik and three others for a year, starting July 9. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/673974

166 Ikram, I. (2023, January 6). Serba Dinamik seeks to extend regularisation plan submission deadline. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/650807

167 Salim, S. (2024, May 30). Serba Dinamik to be delisted on June 5 after failing to get more time to submit regularisation plan. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/713712#

168 Hazim, A. (2023, August 17). Serba Dinamik faces possible delisting on Aug 28. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/678983

169 *Ibid.*

170 The Malaysian Reserve. (2023, August 23). Serba Dinamik appeals delisting decision by Bursa Malaysia Securities. Retrieved from https://themalaysianreserve.com/2023/08/23/serba-dinamik-appeals-delisting-decision-by-bursa-malaysia-securities/

171 Zainul, E. (2024, April 16). Bursa grants Serba Dinamik second extension of time until May 15 to submit regularisation plan. Retrieved from https://theedgemalaysia.com/node/708153

172 Muhamed, S. (2023, June 1). Serba Dinamik says couldn't release 3Q results by May 31 due to 'significant loss of manpower'. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/669459

173 Muhamed, S. (2023, June 1). Serba Dinamik says couldn't release 3Q results by May 31 due to 'significant loss of manpower'. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/669459

174 *Ibid.*

175 Zainul, E. (2023, November 30). Serba Dinamik misses deadline to submit quarterly report for the fourth time. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/692235

176 Khalid, S. (2023, December 21). Bursa reprimands Serba Dinamik and 10 directors, fines board members. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/694853

177 Salim, S. (2024, May 30). Serba Dinamik to be delisted on June 5 after failing to get more time to submit regularisation plan. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/713712

178 *Ibid.*

179 *Ibid.*

180 Lim, J. (2024, January 11). Serba Dinamik's listing status now up for grabs. *The Edge Markets*. Retrieved from https://theedgemalaysia.com/node/697104

THE (FALLEN) STAR ENTERTAINMENT

Case overview

In 2018, The Star Entertainment Group Limited (Star Entertainment) was touted as the global leader in the casino and gaming industry by the Dow Jones Sustainability Index, with a strong commitment to corporate social responsibility and ethical practices through philanthropic contributions. However, by the end of 2022, Star Entertainment was battered by civil proceedings and multiple class action lawsuits. In 2023, it reported a half-year loss of A$1.26 billion. This cascade of legal challenges followed two separate inquiries into its casinos in New South Wales and Queensland, Australia, which concluded that Star Entertainment was unfit to hold casino licences in these states.

During the inquiries, rampant misconduct and dysfunctional corporate governance came to light, involving the utilisation of China UnionPay cards, dealings with the Suncity junkets, engagement with third-party remitters, the conduct of Entertainment's international VIP team, and deficiencies in its anti-money laundering and counter-terrorism financing regime. These issues were highlighted in a report by KPMG.

The objective of this case study is to facilitate a discussion of issues such as corporate governance and risk management issues of casino operators; corporate culture; duties and responsibilities of the board of directors and management; board structure and composition; money laundering; and regulatory oversight and enforcement.

About The Star

The Star Entertainment Group Limited (Star Entertainment) is an Australian public company listed on the Australian Stock Exchange.[1] It was established on 2 March 2011 under the name of Echo Entertainment Group Limited (Echo Entertainment) following the demerger of Tabcorp Holdings Limited's casino operations.[2] As part of its aspiration to become Australia's leading integrated resort company, Echo Entertainment rebranded itself as Star Entertainment in 2015.[3] This renaming aimed to establish brand consistency across all of its casino

---

This case study was originally prepared by Darren Yap Chu Shun, Kwek Chun Wei, Gerald, Muhammad Aqashah Bin Mohamad Hasidi, Yeo Zhi Yu. 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.

operations.[4] In addition to its casino operations, the group offers a wide range of services including hospitality, entertainment, and accommodation facilities across three major cities in Australia – Sydney, Gold Coast, and Brisbane.[5] Across these cities, Star Entertainment operates three casinos – The Star Sydney, The Star Gold Coast, and Treasury Brisbane. In 2022, the revenue generated from these gaming facilities amounted to A$1.53 billion.[6]

Corporate structure

Star Entertainment conducts its operations through a complex corporate structure through which it controls more than 40 entities, most of which are wholly-owned subsidiaries.[7] Most of these entities were incorporated in Australia, with five entities incorporated in Hong Kong, Macau, and Singapore.[8] The key entities within Star Entertainment holding casino licenses includes The Star Pty Ltd for The Star Sydney, The Star Entertainment QLD Limited for Treasury Brisbane, and The Star Entertainment QLD Custodian Pty Ltd for The Star Gold Coast.[9]

The stars of Star Entertainment

As of 13 September 2021, Star Entertainment's board comprised seven directors, consisting of six non-executive directors (NED) and one executive director (ED). The board has established four committees, namely the Audit Committee (AC), Risk and Compliance Committee (RCC), Remuneration Committee (RC), and the People, Culture and Social Responsibility Committee (PCSRC). Prior to financial year (FY) 2023, Star Entertainment did not disclose the independence status of the NEDs, except that it indicated that all directors on the RC are independent.[10]

The Chairman, John O' Neill AO (O' Neill) was appointed as a NED on 28 March 2011 and is a member of the AC, RCC, RC, and PCSRC.[11] Previously, he served as the Managing Director (MD) and Chief Executive Officer (CEO) of the State Bank of New South Wales, Chairman of the Australian Wool Exchange Limited and director of Tabcorp Holdings Limited, an Australia-based gambling entertainment company. He currently holds the position of Chairman at Queensland Airports Limited and Bate Smart Advisory Board.[12]

Another NED, Gerard Bradley AO (Bradley) was appointed on 30 May 2013 and is a member of the AC, RCC, and RC.[13] He is said to have "extensive experience in public sector finance in both the Queensland and South Australian Treasury departments",[14] having served for 14 years as Under Treasurer and Under Secretary of the Queensland Treasury Department. He also served as a NED of Pinnacle Investment Management Group Limited.[15]

The third NED, Ben Heap (Heap) was appointed on 23 May 2018. Heap is described as "an experienced company director with wide-ranging experience in asset and capital management in the finance sector and in technology and digital business".[16] He is the founding partner of H2 ventures, a venture capital investment firm, Chairman of the CBA New Digital Business and a NED of Colonial First State. He was previously MD for UBS Global Asset Management in Australasia and prior to this, Head of Infrastructure for UBS Global Asset Management in the Americas. He chairs the RCC and is a member of the AC and PCSRC.[17]

The fourth NED, Katie Lahey AM (Lahey) was appointed on 1 March 2013. Lahey chairs the PCSRC and is a member of RCC and AC.[18] She is said to have "extensive experience in the retail, tourism and entertainment sectors and previously held chief executive roles in the public and private sectors." [19] She is the director of Carnival Corporation & plc, and is a member of the National Indigenous Culinary Institute Advisory Board.[20] She was previously the Chair of Carnival Australia and the Chairman Australasia of Korn Ferry International.[21]

The fifth NED, Sally Pitkin AO (Pitkin) was appointed on 19 December 2014. Pitkin has over 20 years of experience as a NED and board member across a wide range of industries in the private and public sectors.[22] She is said to have "extensive experience in the gaming industry".[23] She is a former lawyer and senior corporate partner

with a national law firm and was the Chair of Super Retail Group Limited and a NED of Link Administration Holdings Limited. She chairs the RC, and is a member of the PCSRC and AC.[24]

The last NED, Richard Sheppard (Sheppard) was appointed on 1 March 2013. Sheppard chairs the AC and is a member of RCC. He is said to have an "extensive executive career in the banking and finance sector including an executive career with Macquarie Group Limited spanning more than 30 years".[25] He was previously the MD and CEO of Macquarie Bank Limited and chaired the boards of a number of Macquarie's listed entities. He has also served as Chairman of the Commonwealth Government's Financial Sector Advisory Council. He is the Chairman and a NED of Dexus Property Group and a NED of Snowy Hydro Limited.[26]

Matt Bekier (Bekier) was appointed as an ED on 2 March 2011, and subsequently served as the MD and CEO of Star Entertainment on 11 April 2014. He was previously the Chief Financial Officer (CFO) of Tabcorp Holdings Limited and held various roles with McKinsey.[27]

The executive team of Star Entertainment comprised of nine members. Among them, Bekier, Harry Theodore (Theodore), Paula Martin (Martin), and Gregory Hawkins (Hawkins) were primarily involved in the context of this case.

Theodore was appointed CFO in November 2019. He is responsible for Star Entertainment's finance, strategy, investor relations, and IT functions. Prior to this role, he held various positions in commercial and finance functions, and was the Head of Gaming and Food and Beverage in the equities research team at the Royal Bank of Scotland. He was also a lawyer with Allens Arthur Robinson.[28]

Martin assumed the role of Chief Legal and Risk Officer in August 2019. She is said to have 15 years of experience in the gaming industry, first with Tabcorp Holdings Limited and continuing with Star Entertainment. In addition, she also has commercial law and regulatory background specialising in telecommunications, information technology, and competition law areas.[29]

Hawkins was appointed Chief Casino Officer (NSW) in July 2020 and is responsible for The Star Sydney's gaming strategy and gaming revenue growth.[30] His duties encompassed managing the international and domestic rebate business, the local premium business, and the Online Social Gambling Unit of Star Entertainment.[31] He is said to have over 22 years of experience spanning key Australasian and Asian gaming markets and "extensive operational and strategic gaming experience and provides valuable insight into the Asian VIP and premium mass market sectors".[32] He is formerly the Chief Executive of Crown Melbourne and was based in Macau where he oversaw the development and operation of hotels and casino.[33]

The executives of Star Entertainment who sat on the board of The Star Sydney only met as a board to pass statutory accounts for formal purposes.[34] All key decisions affecting The Star Sydney were the responsibility of the board and senior management of Star Entertainment.[35]

In addition, Star Entertainment appointed its senior executives as directors and company secretary of The Star Sydney. As of 13 September 2021, Theodore and Bekier held positions as directors of The Star Sydney.[36] They were not considered independent directors due to their executive roles within Star Entertainment.[37]

Wayward Star

> "It's something I've reflected on, and I feel [there was a culture where the business goals took priority over compliance goals] from time to time"
>
> *– Oliver White, former Star Entertainment's in-house lawyer*[38]

In 2019, China UnionPay (CUP), a financial services provider offering various payment cards, contacted the National Australia Bank (NAB).[39] CUP highlighted transactions occurring at Star Entertainment's premises that

could potentially breach their contractual agreement.[40] NAB, serving as CUP's Australian local partner, supplied Star Entertainment with payment terminals that had access to CUP's electronic payment network.[41] Hence, Star Entertainment was subjected to CUP's regulations as part of their supply agreement. One of the CUP's scheme rules prohibits the use of CUP cards for gambling activities by Chinese nationals when processed through payment terminals issued by CUP's partners.[42] This was to comply with the money laundering and capital flight regulations of the People's Republic of China's (China).

Instead of adhering to the prescribed regulations, Star Entertainment made concerted efforts to obfuscate transactions that facilitated gambling activities since June 2013.[43] The company adopted a process allowing patrons to swipe their CUP cards at the hotel, with the transferred funds then used to obtain chips or chip purchase vouchers. This was referred to as the CUP process. David Aloi (Aloi), the then cashier service manager, promulgated the acceptance of CUP's debit cards at the Astral Hotel's (now known as The Grand Star Hotel) VIP arrival lounge.[44] The decision to accept CUP's debit card at the hotel was part of a deliberate effort to circumvent Australia's laws that prohibit the use of credit or debit cards for the provision of money or chips within gaming facilities, which was only relaxed on 21 December 2018.[45]

The CUP process

The CUP process first involved making a transaction at the payment terminal with the CUP card at The Star Sydney hotel's VIP arrival lounge.[46] The transaction amount would then be credited into the customer's hotel account as hotel-related expenses and an invoice would be issued to the customer.[47] The customer's front money account would then be credited with the amount of funds transferred and the customer would be issued chips or chip purchase vouchers for gambling purposes at The Star Sydney's gaming facilities.[48] The fictitious invoices served to depict a customer staying at the hotel, when in fact, their purpose was to facilitate the fund transfer process.[49] The process "obscured the true nature of the transactions",[50] rendering The Star Sydney susceptible to potential exploitation by money launderers.[51] Despite implementing a mandatory screening process to identify and verify customer identities, this screening process only involved public domain searches on the customers and no further checks were conducted to corroborate the sources of funds or the wealth accumulated by the customers.[52]

Despite Aloi expressing reservations about the CUP process and raising concerns to Brett Houldin (Houldin), the then general manager of group finance, Houldin pressured Aloi to "get it done".[53] Additionally, while Martin, the then Chief Legal and Risk Officer of Star Entertainment, demanded that the practice of generating fictitious invoice should cease when it was brought to her attention by Andrew Power (Power), the then general counsel of Star Entertainment, the transfer of funds using the hotel's payment terminal was allowed to continue.[54]

Searching the galaxy for workarounds

During the early stages of the practice, The Star Sydney observed that funds transacted by customers using CUP cards through the hotel's terminal for gambling were not immediately received in The Star Sydney's bank account.[55] Although funds were not received, The Star Sydney issued customers with receipts, allowing them to exchange it for gambling chips. This meant that The Star Sydney was extending credit to customers before actual funds were transferred.[56] Without seeking approval from the authority or seeking external opinion on the legality of the procedure, The Star Sydney adopted a temporary solution known as the cheque cashing facility (CCF) to address the issue of time lag. This procedure was proposed by Adrian Hornsby, the then general manager of credit and collections at Star Entertainment, and Oliver White (White), the then general corporate counsel of Star Entertainment.[57]

Under the temporary CCF, The Star Sydney issued counter-cheques signed by the patrons, containing the bank details of the relevant overseas bank.[58] In the proposal, White noted that the authority might consider the

use of temporary CCF as a breach of the Casino Control Act. Despite this, Bekier and John Redmond, the then CEO and MD of Echo Entertainment, verbally approved the temporary CCF workaround.[59] This workaround was subsequently employed to facilitate the CUP process.

Tapping out from CUP

The CUP procedure continued until it caught the attention of CUP in 2019. In June 2019, CUP enquired, through NAB, about several suspicious transactions and requested Star Entertainment to provide specific details as well as corresponding corroborative evidence of those transactions.[60] NAB intermediated the enquiry and requested the information from Paulina Dudek (Dudek), the then senior treasury manager, who subsequently reported it to Sarah Scopel, the then group treasurer of Star Entertainment, and White. Forwarding the response drafted by White, Dudek responded by categorising the suspicious transactions as hotel accommodation services purchased by patrons and attached the artificial invoices as supporting documents.[61] On 27 August 2019, CUP again requested for similar information regarding suspicious transactions that occurred in Star Entertainment's Queensland and Sydney casinos.[62] However, the same response was provided. Unsatisfied, CUP requested for specific breakdowns of the transactions but The Star Sydney responded that the supporting documents had already been provided.[63] NAB continued to represent CUP and requested again on 22 October 2019 for detailed information on another set of suspicious transactions.[64] Similarly, Star Entertainment continued to reiterate that transactions were related to general hotel expenses and made no reference to any gambling activities.[65]

On 6 November 2019, NAB informed Star Entertainment that China's central bank was not satisfied with the explanations received from CUP.[66] Consequently, NAB received a warning from CUP, indicating that CUP may direct NAB to cease accepting any transactions made with CUP cards at The Star Sydney. In the event that NAB failed to comply with the directive, CUP threatened to terminate its relationship with NAB and impose a fine.[67] NAB then requested for a further breakdown and corroborating evidence to confirm that CUP cards were not used to fund gambling expenses.[68] Throughout the correspondence with NAB, some responses from Star Entertainment to NAB were drafted by Theodore, the then CFO of Star Entertainment.[69] Some misleading responses had been approved by Theodore before its dissemination.[70] Similar information requests were made until CUP issued a warning letter to NAB and demanded remedial actions to be completed by 9 March 2020.[71]

When Theodore came to know of the warning letter, he gave instructions to stop the CUP process with effect from 7 March 2020.[72] Throughout the period when the CUP process was operational, the non-executive directors were apparently not notified of any risks and issues that occurred.[73]

Missing risk

According to the FY2021 annual report, Star Entertainment adapted its risk management framework from ISO31000.[74] Since 2017, the company has identified major risks that could impact the achievement of its strategic objectives and disclosed the corresponding mitigating strategies in its annual reports.[75] It did not identify money laundering as a major risk in its operations. Following a series of media allegations which prompted regulatory reviews and investigations, Star Entertainment was found to have failed in addressing the risks associated with money laundering, terrorism financing, and corruption within its casinos.[76]

> "The 2013 assessment was plainly an unsophisticated risk assessment for a process through which around $900 million ultimately flowed from overseas banks to the casino."
>
> – *Adam Bell, the Head of the Inquiry of The Star Pty Ltd*[77]

Before the CUP process became operational, an assessment of its money laundering and terrorism financing risks was requested by Aloi.[78] The 2013 assessment by David Kelley (Kelley) who was the anti-money laundering (AML)/counter-terrorism financing (CTF) compliance manager at that time, concluded that the proposed CUP

process posed no significant risks.[79] However, it was later discovered that the assessment had been conducted using inadequate assessment methodology and documentation. Kelley failed to evaluate the process and identify potential money laundering or terrorism financing risks.[80] Furthermore, the assessment did not identify existing controls or specify measures required to mitigate risks associated with the CUP process.[81]

In addition to the AML/CTF risk assessment, The Star Sydney sought external legal advice from a reputable law firm, King & Wood Mallesons (KWM) to determine whether its proposed CUP process would contravene any applicable regulations, potentially resulting in a breach of its casino license and the law.[82] KWM advised The Star Sydney to amend its Internal Control Manual (ICM) to expand its scope to allow funds via electronic funds transfers (EFT) to be credited to patrons' account with The Star Sydney.[83] While the law prohibits the use of credit and debit cards for gambling purposes, it permits The Star Sydney to establish deposit accounts for customers and utilise these accounts to credit amounts received through methods such as cheques or traveller's cheques.[84] Despite the absence of a specific definition for the term "money" in the law, KWM pointed out that the regulator had previously approved The Star Sydney's ICM, granting permission to accept funds via "hexagon, telegraphic transfer, or direct deposit" [85] for customers' deposit accounts.[86] Given that The Star Sydney is required to conduct its operations in accordance with the ICM, which must be approved by the independent liquor and gaming authority of NSW, KWM advised that it was imperative for The Star Sydney to seek approval for allowing funds via EFT.

While The Star Sydney sought approval from the authority and eventually obtained it, they omitted material information during their meetings with the authority in an attempt to obfuscate the true purpose of the amendment.[87] Graeme Stevens (Stevens), the then regulatory affairs manager, who represented The Star Sydney in requesting approval, was aware that the sought-after amendment was related to the CUP process, which was in breach of the CUP's rules. Specifically, Aloi believed that had they disclosed all pertinent information, the authority would not have approved the amendment.

Black Hole

> "I would have expected a mature AML program to have in place a comprehensive AML and counter-terrorism financing risk assessment methodology and risk assessment. Our engagement found that not to be the case."
>
> *– Mr Jeff O'Sullivan, a KPMG Partner*[88]

In November 2017, KPMG was engaged by Star Entertainment to review its AML/CTF programme.[89] This followed the appointment of Paul McWilliams (McWilliams) as the Chief Risk Officer with the responsibility of managing risks associated with AML and CTF. McWilliams reviewed the last assessment report of Star Entertainment's AML/CTF programme dated 21 August 2015.[90] He identified limitations in the scope of the review and deemed the AML/CTF programme as non-compliant, with remedial actions had to be taken.[91] Coupled with the requirement of the AML/CTF Act mandating the periodic independent review of Star Entertainment's identification, management, and mitigation of AML/CTF risks (Part A), the AML/CTF review was initiated. The scope of the review was expanded to include the independent assessment of Star Entertainment's customer identification procedures (Part B).

Draft reports on Parts A and B were provided on 3 May 2018 to McWilliams, Micheil Brodie (Brodie), the then general manager of compliance, and Skye Arnott (Arnott), the then compliance manager.[92] This was to ascertain the factual accuracy of the results obtained from interviewing 37 employees across Star Entertainment's casinos and the review of over 400 documents.[93] The accuracy of the reports was confirmed by the three individuals and KPMG issued two finalised reports on 16 May 2018.[94]

The reports highlighted serious deficiencies in Star Entertainment's AML/CTF programme. These include the lack of documented risk assessment methodology and AML/CTF assessments, especially for its junket operation which accounted for 12% of its earnings.[95] It was also noted that customers could walk into Star Entertainment's casinos with hundreds of thousands of dollars in cash but would not be assessed as higher risk.[96] Additionally, the AML/CTF programme did not account for CTF.[97] Moreover, its transaction monitoring programme (TMP) to detect and assess risks of customers transactions was found to be inconsistently applied across Star Entertainment's properties.[98] This limited the effectiveness of the TMP. It was also noted that there were inadequate AML/CTF resources in Star Entertainment.[99]

On 23 May 2018, the AC of Star Entertainment met and were presented with the executive summaries of the KPMG reports.[100] The committee was informed that the reports were still undergoing review by the management.[101] Further, given that the issues presented in the summary had limited context, they were informed that the outcomes of the management review should be read in tandem with the KPMG reports for the board to adequately assess the reports.[102] Nevertheless, the committee members accepted the KPMG's findings and that the recommendations needed to be considered and addressed.[103]

> "Mr Bekier was sat down, turning the pages of the report, essentially berating us for the whole entire time of that meeting."
>
> *– Mr Alexander Graham, a then KPMG Director*[104]

While the AC was receptive to the KPMG reports, this was not echoed by Star senior management, especially Bekier. Bekier expressed visible dissatisfaction when the executive summaries were presented to the board and questioned the factual accuracy of the reports.[105] O'Neill, then non-executive Chairman, also objected to the tone of the KPMG reports.

In the initial meetings with KPMG following the release of the reports, both Alexander Graham, a director at KPMG, and Jeff O'Sullivan described their interactions with Bekier as hostile and tense as he scrutinised the report and listed his disagreements.[106] These sentiments were shared by McWilliams and Martin. While Bekier acknowledged that the meetings were very uncomfortable, he claimed that he was not being rude but rather attempting to clarify the highlighted issues. [107]

Star Entertainment's management raised 22 specific queries with KPMG regarding the reports.[108] However, KPMG ultimately stood by its findings and Star Entertainment relented by implementing the proposed recommendations.[109]

Behind the sun

On 14 September 2018, Australian Transaction Reports and Analysis Centre (AUSTRAC), Australia's AML and CTF regulator, requested Part A of the KPMG reports from Star Entertainment.[110] Multiple requests were made over a period of 16 months as Star Entertainment rejected each request on the basis of legal professional privilege.[111] It was only on 20 January 2020 that Star Entertainment conceded and provided the report.[112]

Despite the adverse findings in the KPMG reports, no one from the company evaluated if the findings should be raised to AUSTRAC and the authority.[113] Section 674 of the Corporations Act 2001 and Australian Securities Exchange's (ASX) Listing Rule 3.1 also require a company to disclose any information that the company assess to have material financial impact on its shares to the market. However, Star Entertainment's legal team and company secretary did not proactively advise the management and the board as to whether the KPMG reports should be disclosed.[114]

The beginning of trouble

> "I'm going to call it out early, Suncity is operating a business model under our noses which is problematic for the Star Entertainment Group with regards to AML/CTF Laws"
>
> – *Andrew McGregor, Senior Investigator of Star Entertainment*[115]

Junkets play a significant role for casinos in attracting international high-net-worth individuals to gamble at the casino's establishments.[116] On 30 June 2017, The Star Sydney entered into a rebate agreement with Kit Lon Iek (Iek), an employee of Suncity, the largest junket operator in Macau. Iek also served as the junket promoter. This agreement was acknowledged by Chad Barton, the then CFO, on behalf of The Star Sydney. While the rebate agreement provided Iek with access to an exclusive VIP gaming room called 'Salon 95', Clause 6 of the agreement provided that The Star Sydney ultimately "retains sole operational and management control" [117] of the VIP Salon, including "the operation of the Cage".[118] The term "Cage" referred to an enclosed area for cashier activities. In August 2017, following a request from a junket staff to "set up a cage with two windows and a service counter with two seats",[119] internal communications began between key representatives of Suncity and Star Entertainment. These included Michael Whytcross (Whytcross), the then general manager of commercial finance and international marketing. The key representatives did not find the request controversial and accommodated it. [120]

On 12 October 2017, Stevens submitted a proposal to Liquor & Gaming New South Wales (L&GNSW).[121] The proposal was to install windows and a service desk in accordance with Suncity's request to enhance its service for its customers.[122] However, Stevens' submission did not make any reference to the Cage. He allegedly knowingly misled the regulator as he knew that the indication of a cage operation could affect Star Entertainment's ability to hold a casino license.[123]

On 12 March 2018, White received queries from Wallace Liu, assistant vice president of VIP international operators at Star Entertainment, on AML requirements for the "cash desk" in the junket. In response, White made it clear that Suncity was neither allowed to operate a cage nor handle cash transactions at their service desk as they did not have the license to do so.[124] However, Suncity continued to push for the handling of cash transactions at the service desk.[125] Hence, Brodie was brought in by White to conduct an AML/CFT assessment. On 6 April 2018, Brodie approached Marcus Lim (Lim), the then senior vice president of international marketing, for more information regarding The Star Sydney's arrangement with Suncity.[126] Instead of providing the information, Lim hurried to ensure that Salon 95 was operational as soon as possible, citing Suncity's CEO, Alvin Chau, as a major source of revenue and highlighting his connections with other joint venture partners of The Star Sydney.[127]

While Salon 95 was operational by 18 April 2018, the risk assessment led by Arnott was only completed and signed off by McWilliams on 27 April 2018. The assessment pointed out significant risks with serious consequences due to the potential violation of both the AML Law and Casino Control Act. The assessment also included controls proposed by Arnott, which mainly focused on prohibiting cash-chip exchanges.

A shaky start to Salon 95

Since the commencement of Salon 95, The Star Sydney have had troubles tracing the sources of money entering and leaving its premise. From 18 April 2018, CCTV footages revealed multiple occasions of bags and suitcases containing large amounts of cash being handled at the service desk at Salon 95. In early May, the surveillance team flagged out a plaque, worth A$100,000, being exchanged for an equivalent amount in cash that breached Arnott's controls.[128] The surveillance team also flagged unknown individuals who were not recorded as junket participants entering Salon 95. This raised grave AML/CTF concerns in relation to KYC requirements and prompted the first warning letter sent by Hawkins, the then MD of The Star Sydney, to Iek to comply with the rules and controls in place on 10 May 2018.[129]

However, the issues continued when another cash transaction was observed by a surveillance staff. This prompted an investigation by Andrew McGregor (McGregor), the then senior investigator of Star Entertainment, which was concluded on 16 May 2018. He found that The Star Sydney faced difficulties in connecting large sums of cash entering Salon 95 with the junket's patrons.[130] This indicated "clear and obvious money laundering risks".[131]

Prior to the investigations, McGregor already forewarned Power about the gravity of AML/CTF risks associated with the operation of Salon 95.[132] Power then sent an email to Hawkins highlighting the legal and regulatory risks.[133] He suggested to "cease all cash transactions at the service desk until there was a clear set of permitted and prohibited activities laid out."[134] This message was also relayed to senior management, including Bekier, White, Martin, and Kevin Houlihan (Houlihan), the then group investigations manager of Star Entertainment.[135] Despite being informed, The Star Sydney elected for Salon 95 to continue its operations with a set of standard operating procedures (Service Desk SOP).[136] The final version of the SOP was introduced on 23 May 2018.[137]

RFS – Red flag Suncity and red flag Star

Days after the release of the Service Desk SOP, tip-offs were received from cashier staff regarding continued cash transactions at the service desk.[138] This prompted a second warning letter from Hawkins, which was delivered to Suncity on 8 June 2018.[139] However, Salon 95 and its service desk continued to operate.[140]

On 15 June 2018, more surveillance footages were captured. The CCTV footage showed Suncity staff carrying large amounts of cash proceeding towards a blind spot and disappearing from view for a period of time. This raised suspicion about the activities undertaken at the blind spot, as there was no legitimate reason for them to congregate in that area.

Despite this, The Star Sydney renewed their agreement with Iek on 21 June 2018.[141] In addition, during a board meeting on 26 July 2018, management briefly mentioned some concerns occurring in Salon 95 and the corresponding measures in place.[142] However, detailed disclosures regarding the activities and concerns relating to Salon 95 were lacking.[143] As a result, the directors could not arrive at an appropriate decision to address the adverse misconduct in Salon 95 as the gravity of the misconduct was not fully disclosed.[144]

From March 2019 to May 2019, Stevens and Will Kumarasinghe, the then assurance manager for gaming operations, was tasked by Brodie to review Suncity's compliance with the Service Desk SOP.[145] Stevens concluded that it was satisfactory in his report on 23 May 2019.[146] However, several incidents related to the inappropriate storage of cash and cash transactions were brought to his attention through an email on 24 June 2019 from Ian Tomkins, the then senior regulatory manager.[147] In particular, some of these incidents had taken place before he concluded his report.[148] These concerns raised "contradicted his findings" and it was accepted that his conclusion was "highly problematic".[149]

The end of Salon 95?

Angus Buchanan (Angus) joined The Star Sydney in May 2019 as a due diligence programme manager. He had previously worked with Hong Kong Jockey Club (HKJC), the sole licensed horseracing and sport wagering services provider in Hong Kong.[150] In HKJC, he finalised an April 2018 report into Suncity and Alvin Chau.[151] On 12 June 2019, he shared this report with senior management including Martin, White, and Houlihan.[152] Despite the report raising concerns about Suncity's integrity and possible connections with triads and organised crime, senior management did not raise it with Bekier or the board.[153]

Media allegations regarding Suncity also emerged at the end of July 2019. It was revealed that HKJC had its own "deep mistrust" of Suncity and had blacklisted them.[154] Furthermore, an article published by The Sydney Morning Herald and The Age reported Suncity's possible connections to organised crime and Suncity's retreat

from the Australian casino market.[155] It was also revealed that Crown Resorts (Crown), a rival Australian casino of Star Entertainment which is associated with Suncity, was found to have breached AML laws.[156] This revelation surfaced after media alleged that Crown had links to organised crimes.[157]

From end of July 2019 till 16 August 2019, Star Entertainment's share price dropped 15% from A$3.88 to A$3.30.[158] An article published on 16 August 2019 featured a response from Bekier who announced that Salon 95 will be shut down.[159] Following that announcement, the share price rose around 6% from A$3.30 to A$3.49 that same day.[160] However, Bekier did not disclose that Suncity was provided with a new private gaming room, Salon 82, that replaced Salon 95.[161] He said this was because Salon 82 was not to have the "special privileges" of Salon 95.[162]

Following the media allegations, management formed a focus group of senior leaders from different departments. The focus group's role was to monitor the media and assess information as it unfolds, update risk assessment in areas of potential vulnerability, act on recommendations arising from a review of the allegations of anti-money laundering and counterterrorism failings against fellow casino operator Crown, and coordinate responses to regulator inquiries.[163] The AC also requested for a paper to be presented to the board regarding the media allegations. The directors wanted to be kept in the loop and understand if Star Entertainment could face similar allegations as Crown.[164]

On 15 August 2019, a board paper was prepared by Arnott, Brodie, Martin, and Whytcross.[165] The paper examined the allegations made against Crown and The Star Sydney, The Star Sydney's areas of improvement, and their risk mitigation plan.[166] However, it made no disclosure about the fact that various members of senior management held a copy of the HKJC report that contained "serious adverse information" about Alvin Chau and Suncity.[167] The board paper also did not disclose Suncity's repeated breaches of controls and activities in Salon 95.[168] This gave an impression that "there were no problems with Star Entertainment continuing to deal with Suncity and Alvin Chau".[169] This was despite the fact that the authors of the board paper were aware that the report did not include various disclosure about Suncity and Alvin Chau, as outlined above.[170]

In light of the media allegations, L&GNSW also reached out to The Star Sydney on 29 July 2019 to request for a risk assessment to be conducted.[171] This was intended to assess any risks from The Star Sydney's associations with the junkets and to review current mitigating procedures in place to address ongoing risks as a result of these associations.[172] Power reassured the regulator on 31 July 2019 that current processes were "robust".[173] However, he did not highlight issues regarding Suncity and Salon 95.[174] This prompted L&GNSW to request for more information.

The Star Sydney provided its response on 10 September 2019 after a further probe by the regulator on 6 September 2019.[175] This response was vetted by many members of senior management and approved by Bekier and Martin before it was sent to L&GNSW.[176] Yet, it was noted that the response was "narrow, technical and inappropriate".[177] Furthermore, the content mainly focused on defining specific words in the regulator's inquiry and "made no mention of Alvin Chau, Suncity, or any of the steps that had been taken to manage Suncity in relation to the operation of Salon 95".[178]

Shining a light on risk assessment

By 21 August 2019, Star Entertainment had decided to continue the business relationship with Suncity with an "improvement team" to oversee the business relationship.[179] In early September 2019, The Star Sydney moved Suncity to a new private gaming salon called Salon 82. Arnott was tasked to perform an updated risk assessment. However, this risk assessment, which would be the first update to its preceding risk assessment in April 2018, was never completed.[180]

It was only on 2 September 2020 when Angus was instructed by Houlihan to provide a due diligence assessment of Alvin Chau.[181] This was to provide a recommendation about how Star Entertainment "might proceed in its relationship" with Suncity.[182] The report also assessed The Star Sydney's business relationship with Alvin Chau, and the effectiveness the joint AML/CTF programme during this business engagement.[183]

On 1 October 2020, the first due diligence report was completed. It was confirmed that Alvin Chau was a member of the 14K triad society, one of the biggest Chinese organised syndicates.[184] Although the latest information suggested that he was no longer an active member, there were suspicions that Alvin Chau and/or his subordinates continued to have close connections with triad entities that provided assistance to his VIP junket business.[185] Angus also concluded the report by expressing concerns regarding the company's decision to maintain a business relationship with him.[186]

However, this memorandum subsequently went through two amendments after feedback was given by both Power and Houlihan, both of whom were Angus' superiors.[187] Between the first version of the memorandum and the last iteration on 7 January 2021, Angus made certain changes. He removed his opinion that "given the extent of Suncity's continued non-compliance, The Star's response was somewhat weak and not proportionate to the risk".[188] This pertained to breaches by Suncity at the service desk around May 2018.[189] He also removed his concluding opinion where he had expressed concerns regarding the continued engagement with Alvin Chau.[190] There were also other deletions from the memorandum, including criticisms of The Star Sydney's own due diligence process and the "Buchanan Chronology" which included "important and material" information of Star Entertainment's relationship with Suncity from 2011 to 2019.[191] Instead, in his 7 January 2021 memorandum, Angus used Steven's "highly problematic" report dated 23 May 2019 to support the continuation of business relationships with Suncity.[192]

Starry-eyed business relationships

In the due diligence assessment of Suncity and Alvin Chau, The Star Sydney had to assess whether a person was of a "good repute".[193] It was found that The Star Sydney's had applied the wrong test, as they "did not appropriately consider whether those junket operators and funders were not of good repute".[194] Instead, the assessment revolved around addressing the question of "whether it can be clearly proven that Alvin Chau and Iek were of bad character"[195].

To this, Commissioner Patricia Bergin Senior Counsel (SC) commented that the industry practice among Australian casino operators was one where substantive proof of wrongdoing or criminality was required before they would cease relationships with an entity.[196] They noted that the rationale was that if business relationships were terminated simply based on allegations, competitors could "steal" these partnerships to the casino's detriment.[197] Hence, it was noted in a NSW report that these insights provided by Commissioner Patricia Bergin SC "provide guidance in trying to understand the actions of Star Entertainment".[198] It was said that "their approach likely reflected the prevailing attitude in the industry whereby business interests took precedence over compliance and probity considerations".[199] The report also noted that it may be the reason why Star Entertainment also "misapplied the appropriate test".[200]

The workaround

In the late 2017, due to recent changes in Macau's AML legislation and increased regulations, Star Entertainment's bank accounts in Macau were closed. In the 26 September 2017 board paper prepared by Bekier and John Chong, the then president of international marketing, it was noted that the closure of bank accounts "posed both financial and operational risks".[201] It was estimated to have a A$21.5 million annual EBITDA impact unless a solution was found.[202]

Hence, The Star Sydney approached Kuan Koi, a junket operator and patron with The Star Sydney for further discussion.[203] This resulted in the Initial Kuan Koi Arrangement (The Initial Arrangement) in January 2018.[204] Patrons who intended to repay CCF debts in Macau could make payments to Kuan Koi, who would then transfer these funds to The Star Sydney. The agreement required Kuan Koi "to conduct his activities in accordance with the laws of the jurisdictions" [205] and to keep "due and proper records of the payments made by customers".[206] However, it did not require Kuan Koi to conduct KYC checks on patrons or verify their sources of wealth and funds.[207] In the NSW report, it was also noted that The Initial Arrangement "does not identify whether, and if so, how Kuan Koi was to transfer the funds he received in Macau to his front money account with The Star".[208]

Furthermore, The Initial Arrangement was originally intended only to involve payments of CCF debts. However, in February 2018, an amendment was made to the agreement to include front money deposits prior to play.[209] In response, White sought advice from HWL Ebsworth (HWLE), and they advised him that the only implication of such an amendment was "the need to update its AML/CTF program to assess the risks and to design mitigation methods". [210]

In January 2018, Arnott undertook a AML/CTF risk assessment on The Initial Arrangement and characterised the risk as "low".[211] When The Initial Arrangement was extended to include front money deposits in February 2018, Arnott's updated risk assessment "did not change much from the previous draft" [212] even though she noted that there were significant money laundering risks with limited KYC procedures.[213] The only risk control she proposed to mitigate this was the use of an "international depositor identify form" to identify the parties in the transaction.[214] In a subsequent investigation, it was found that there were difficulties keeping track and monitoring the deposits made by patrons with Kuai Koi.[215] Moreover, Whytcross did not know who was required to complete the form. [216] The form also only required minimal customer details. Information about sources of wealth and funds were not required.[217]

The board was only informed of the arrangement in an 8 February 2018 board paper.[218] The paper stated that McWilliams had also assessed the AML/CTF risks to be low, and external legal advice had been sought. Given such details, the board approved The Initial Arrangement.[219]

Modified Kuan Koi arrangement

In March 2018, Bank of China (BOC) Macau had blocked all of Kuan Koi and his associates' Macau accounts.[220] The original problem resurfaced as The Star Sydney was unable to accept deposits in Macau again.[221] To counter this, The Initial Arrangement with Kuai Koi was modified in April 2018, leading to the Modified Kuan Koi Arrangement (The Modified Arrangement).[222] Under the new arrangement, patrons would utilise other third party remitters that would provide remittance services and The Star Sydney would reimburse service fees to the patrons, through separate payments to Kuan Koi.[223] Due to the inclusion of third party remitters, The Modified Arrangement "posed even higher money laundering risks".[224] However, Star Entertainment did identify and quantify these risks.[225]

EEIS, the long-term solution

The arrangements with Kuan Koi were intended to be "temporary".[226] EEI Services (Hong Kong) Limited (EEIS) was regarded by Star Entertainment to be their long-term solution.[227] In the 26 September 2017 board paper, Bekier and John Chong recommended Star Entertainment to "activate" EEIS, Star Entertainment's wholly owned subsidiary so as to establish a Macau marketing subsidiary (MMS).[228] It was delayed as White wanted EEIS to be fully operational before they implemented it.[229] The proposed EEIS structure entailed setting up MMS to collect repayments of debts.[230] In addition, EEIS would be established as a licensed money lender and licensed remittance agent, changing the nature of payments from customers to being repayment of loans from repayment of gambling debts.[231] In May 2018, the board of Star Entertainment approved the commencement of EEIS.[232]

With EEIS, the payments by third party remitters from the Modified Arrangement were deposited into EEIS' NAB accounts.[233]

In 2019, NAB discovered that there were "material discrepancies" between the stated purpose of the accounts and its actual usage.[234] Moreover, there was no evidence of transaction monitoring on EEMS bank accounts.[235] During the subsequent investigation, it is clear that proper monitoring did not occur until NAB began to investigate.[236] Whytcross and Arnott, both serving as the AML/CTF compliance officer for EEIS, provided testimonies highlighting deficiencies in the transaction monitoring of the EEIS NAB accounts.[237] Whytcross disclaimed responsibility for overseeing the operations of EEIS and its transaction monitoring program, attributing that responsibility to Arnott.[238] Meanwhile, Arnott had "very little understanding of what transactions were occurring in the EEIS NAB account". [239] This was despite the huge number of deposits by third party remitters, amounting to approximately A$104 million.[240]

From June 2019 to July 2020, EEIS also issued loans amounting to A$213 million to patrons of The Star Sydney and junket operators.[241] It was contended that The Star Sydney may have breached the Casino Control Act. According to the Act, should EEIS operate as an agent of The Star Sydney, it could be deemed to have breached the prohibitions on lending or provision of credit outlined in section 74(1)(b).[242] However, ultimately, it was concluded by NSW Independent Casino Commission (NICC) that The Star Sydney did not breached the provision.[243]

> "We weren't looking at the bank accounts in enough detail. And there may not have been as much monitoring of repayments of loans as there should have been."
>
> *– Skye Arnott, the then Chief Financial Crime Officer of Star Entertainment*[244]

The VIP team – Very ignorant party?

The international VIP team was in charge of the international VIP rebate business (IRB) at Star Entertainment, contributing approximately 11.9% of Star Entertainment's net revenue in 2019.[245] However, issues arose with several senior personnel in the international VIP Team.

Firstly, John Chong led the international VIP Team up till March 2018.[246] His employment was subsequently terminated, and the reasons for his dismissal was detailed in a document produced by Kim Lee, Chief People and Performance Officer at Star Entertainment.[247] In the document, Kim Lee expressed concerns that "he had a fundamental lack of understanding of what was instructed by the CFO", [248] and that he was "completely ignorant of company policies".[249] In addition, it had been raised internally that John Chong had "poor leadership and management" over the VIP team, and was constantly promoting "poor behaviour that drives division among the departments".[250]

However, there were no investigations made to substantiate those concerns raised, and John Chong was not given the chance to speak for himself. The only reason provided by Bekier to the board for John Chong's termination was "redundancy". [251]

After John Chong's termination, Lim, president of international VIP Sales, took over as leader of the international VIP Team from April 2018.[252] There were a series of allegations made against Lim between 2017 and 2019.[253] These include gambling at a casino in Macau in 2017, misusing credit card expenses in 2018, and receiving commissions from junket operators for collecting money owed to them in 2019.[254]

The latest issue was brought up by a whistleblower in May 2019, and an investigation called Operation Great Wall was commenced by Houlihan.[255] The whistleblower was interviewed in July 2019 and it was only five months later that an independent investigator was hired to conduct a background check on Lim.[256] The investigator's report found that one of Lim's relatives controlled a company that provided junket support services to Star

Entertainment.[257] This association gave rise to a conflict of interest and a second interview with the whistleblower was conducted on 20 December 2019. In that meeting, the whistleblower provided documents to support his allegations but Houlihan did not agree.[258] Following this, Houlihan agreed with Martin to conduct a formal face to face interview with Lim to seek a formal response to these allegations.[259] However, he did not do so and Lim was subsequently terminated in January 2021 due to "redundancy of the role".[260] He was also not given the chance to challenge the allegations made against him. Furthermore, the board was not aware of the allegations of misconduct and the investigation into those allegations.[261]

Hwa Ryong (Simon) Kim (Kim) was the senior vice president of international marketing at Star Entertainment and the principal relationship manager for Suncity. In March 2020, Kim disappeared. Following his disappearance, a series of allegations were made against him. These included misappropriation of funds, defrauding a customer of his winnings at the Suncity junket, issuing a A$13.3 million false transfer instruction to Suncity, and involvement in a fraud on Suncity amounting to A$4 million. Although the issues were known to Houlihan, no investigations were initiated as there was no evidence provided by the whistleblower to support his claims. Similarly, the board was also not informed of these allegations.

Investigations begin

On 10 October 2021, The Sydney Morning Herald, The Age and 60 Minutes, jointly released a report that raised concerns about suspected activities at Star Entertainment such as money laundering, organised crime and large-scale fraud.[262] The report, mirroring previous media allegations against its rival Crown in 2019, caused Star Entertainment's share price to tumble by almost 25%, dropping from A$3.94 to A$3.04 on the same day.[263,264]

On November 2021, L&GNSW launched an inquiry against The Star Sydney. The purpose of the inquiry was to review The Star Sydney's compliance with regulations and their suitability to hold a casino licence.[265] In June 2022, Australia's Queensland state also announced that they would conduct a review into the suitability of Star Entertainment's Queensland operations to hold a casino licence.[266] This announcement sent Star Entertainment's share price down 6% on the same day.[267]

The reviews found Star Entertainment unfit to hold casino licences in both states.[268,269] Regarding the L&GNSW inquiry, the NSW Independent Casino Commission fined The Star Sydney A$100 million and suspended its casino license for 90 days with effect from 21 October 2022.[270] To preserve the livelihood of the 8,000 employees, the regulator invited an independent manager to continue the casino's operations instead of permanently revoking its license.[271] On 9 December 2022, the Queensland's government also imposed similar penalties on Star Entertainment.[272] The state also delayed the licence suspension to 1 December 2023 to provide Star Entertainment with the opportunity to "get its house in order".[273]

On 30 November 2022, AUSTRAC launched civil lawsuits against The Star Pty Ltd and The Star Entertainment QLD Limited for "alleged serious and systemic non-compliance with Australia's AML/CTF laws".[274] It was reported by the Australian Broadcasting Corporation that "there is virtually no limit to the potential maximum fine" [275] due to the innumerable violations by the Star Entities.[276] Following the announcement, Star Entertainment's share price slid roughly 6% over the week from A$2.50 to a low of A$2.36.[277]

Individuals on the chopping block

On 13 December 2022, the Australian Securities and Investments Commission (ASIC) filed civil charges in the Federal Court against 11 current and former directors and officers of Star Entertainment for alleged breach of their duties under Section 180 of the Corporations Act.[278]

The board

> "They are required to bring an inquiring mind to business operations. It is not 'set and forget.'"
>
> – *Joseph Longo, ASIC chairman*[279]

Among the individuals facing charges are Bekier, O'Neill, Lahey, Sheppard, Bradley, Pitkin, Heap and Zlatko Todorcevski.[280] ASIC claims that the board members were in favour of deepening business relationships with certain individuals with reported criminal connections rather than addressing money laundering risks.[281] As ASIC Chairman Joseph Longo (Longo) says, "If you're a director of a company, then part of your job is to address foreseeable, observable risks. We're not talking about a situation of a subtle risk, or a risk that is a surprising risk. We're actually talking about risks that go to the core of the business that are readily foreseeable".[282]

Senior management

> "Large corporations can't really function well unless boards of directors can rely on what they're told by senior executives."
>
> – *Joseph Longo, ASIC chairman*[283]

The remaining three individuals are former senior executives, namely Martin, Hawkins and Theodore.[284] ASIC asserted that Martin and Theodore allowed the submission of misleading responses to NAB regarding the use of CUP cards on Star Entertainment's premises.[285] It also alleged that the three individuals hid these issues from the board.[286] ASIC also claimed that Hawkins, together with Martin and Bekier, breached their duties as they did not "adequately address the money laundering risks that arose from dealing with Suncity as well as continue to deal with them despite becoming aware of reports of criminal links and did not appropriately escalate these concerns to the board."[287] Longo said, "On the senior executive side, we want them doing their job, responding to those queries and inquiries coming from the directors and escalating issues, because the directors can't be expected to do their job unless they're told what is going on." [288]

Each individual charged faced different counts, from Heap with two to Bekier with seven.[289]. If proven guilty, they can be barred from future directorships and face penalties of over A$1,000,000 for each breach.[290]

The fallen stars

Since 2021, there have been significant changes to the board and executive team of Star Entertainment due to the resignations of key individuals as shown in Figure 3. Bekier was the first among the many to announce his resignation. While most of the previous board members of Star Entertainment resigned prior to the civil charges filed by ASIC, Heap and Lahey announced that they will step down from their positions once additional directors are appointed, citing that it is crucial for the board to maintain a sufficient number of directors while the company carries out its reformation efforts.[291] The resignation of Heap was also after several calls for his removal from corporate and risk governance experts such as Helen Bird from Swinburne University and Professor Elizabeth Sheedy from Macquarie University.[292]

Figure 3: Resignations of key individuals[293]

Individual	Position before resignation	Resignation Date
Matt Bekier	Managing Director and Chief Executive Officer of Star Entertainment, Director of The Star Sydney	28 March 2022
Harry Theodore	Chief Financial Officer of Star Entertainment, Director of The Star Sydney	6 May 2022

Individual	Position before resignation	Resignation Date
Paula Martin	Chief Legal & Risk Officer and Company Secretary of Star Entertainment, Company Secretary of The Star Sydney	6 May 2022
Greg Hawkins	Chief Casino Officer (NSW) of Star Entertainment	6 May 2022
Andrew Power	Group General Counsel of Star Entertainment	13 May 2022
Graeme Stevens	Group Compliance Manager of Star Entertainment	13 May 2022
John O'Neill	Chairman of Star Entertainment (Following Matt Bekier's resignation)	20 May 2022
Micheil Brodie	General Manager, Social Responsibility of Star Entertainment	20 May 2022
David Aloi	NSW Regulatory Manager of Star Entertainment	20 May 2022
Skye Arnott	Chief Financial Crime Officer of Star Entertainment	23 May 2022
Kevin Houlihan	Group Investigations Manager of Star Entertainment	15 June 2022
Sally Pitkin	Non-Executive Director of Star Entertainment	30 June 2022
Gerald Bradley	Non-Executive Director of Star Entertainment	31 October 2022[294]
Richard Sheppard	Non-Executive Director of Star Entertainment	22 November 2022[295]
Katie Lahey	Non-Executive Director of Star Entertainment	30 December 2022[296]
Ben Heap	Non-Executive Director and Chairman of Star Entertainment (Following John O'Neill's resignation)	31 March 2023[297]

Source: Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 1.

The newly revamped board

Following the resignation of key individuals, the board underwent a renewal process. Star Entertainment also improved its disclosure by indicating the independence status of each NEDs starting from FY2023. As of 31 March 2024, the board of Star Entertainment consists of seven members, six of whom are independent non-executive director (INED), and one serving as an ED.[298]

David Foster (Foster) was appointed as an INED on 15 December 2022 and subsequently assumed the role of Chairman on 31 March 2023. With over 25 years in financial services, including serving as CEO of Suncorp Bank during the global financial crisis, Foster has led significant turnarounds and restructuring efforts before retiring in 2013. He brings a wealth of experience serving on boards across diverse industries, including financial services, retail, government, education, and professional services. Currently, Foster serves as a director of Bendigo and Adelaide Bank Limited.[299]

Michael Issenberg (Issenberg) joined the board as an INED on 11 July 2022. With over 40 years of experience in the hotel and casino industries, Issenberg is an experienced executive and non-executive director. He currently serves as Chairman of Tourism Australia and director of TFE Hotels. Previously, he served as Chairman of Reef Corporate Services Limited and CEO of Mirvac Hotels.[300]

Anne Ward (Ward) was appointed as an INED on 18 November 2022. She brings considerable experience in complex governance, transformation, and risk management across highly regulated sectors, including casinos. Ward also serves as the Chairman of ASX-listed ecommerce group Redbubble Ltd and Symbio Holdings Ltd. Previously, she was a commercial lawyer for 28 years and was General Counsel for Australia at the National Australia Bank.[301]

Deborah Page AM (Page) was appointed as an INED on 13 March 2023. Page is a Chartered Accountant with dual audit partner and CFO experience during her executive career. She has extensive experience as a company director gained across ASX listed, private, public sector, and regulated entities. She currently serves as a NED at Brickworks Limited and Growthpoint Properties Australia Limited.[302]

Toni Thornton (Thorton) was appointed as an INED on 17 October 2023. She is an experienced executive with more than 15 years' corporate finance and strategic advisory experience, and 13 years' experience in audit at board-level. She currently serves as a NED of G8 Education Limited and significant private companies including Millovate Pty Ltd and Habitat Early Learning. Previously, she served as a NED of South Bank Corporation Devcorp.[303]

Peter Hodgson (Hodgson) was appointed as an INED on 7 February 2024. Hodgson is an experienced director with extensive global financial services experience and a strong business track record. Currently, he serves as Chairman of ASX-listed Judo Bank and the Centre of Evidence and Implementation, and as a director of Planum Partners. He previously held senior executive roles in Australian and global financial institutions, including Chief Risk Officer and Group MD (Institutional) at ANZ Banking Group.[304]

Robert Cooke (Cooke) is the sole ED on the board. He was appointed as CEO on 17 October 2022 and subsequently as MD of Star Entertainment on 18 November 2022. Cooke had an 11-year executive career in lotteries, race wagering and sports betting at Tatts Group Limited. Furthermore, he has led four ASX listed companies in a business career spanning more than 30 years. Prior to joining Star Entertainment, Robbie was CEO and MD of Tyro Payments, an Australian based payments fintech which he successfully led to Initial Public Offering in 2019.[305]

What is to come?

Four class action lawsuits were filed against Star Entertainment in the Supreme Court of Victoria by different law firms: Slater and Gordon, Maurice Blackburn, Phi Finney McDonald, and Shine Lawyers.[306,307,308,309] There were slight differences in each lawsuit such as the eligibility of group members with regards to the dates of shareholdings and terms of the lawsuit. However, all lawsuits were filed in relation to Star Entertainment's alleged misleading conduct and improper disclosure obligations as an ASX-listed company which resulted in shareholders purchasing their shares at an inflated price. On 19 September 2023, the court appointed Slater and Gordon to act as the primary representative for the class action lawsuits.[310]

Will Star Entertainment prevail in its legal battles and regain investors' confidence with the strength of its newly revamped board's diverse expertise and governance capabilities?

Discussion questions

1. What were the key contributory factors to the scandal at Star Entertainment? Explain how they contributed to the scandal.
2. What were the major breaches at Star Entertainment?
3. "The board sets the culture in an organisation." How far do you agree with this statement with reference to Star Entertainment? Explain.
4. Critically evaluate the board structure and composition of Star Entertainment prior to the scandal. To which extent could the board structure and composition have affected the board's apparent lack of effectiveness? What other factors could have contributed to its effectiveness? Explain.
5. John O'Neill was the board chairman and served on all the board committees. Do you think a board chairman should chair or be a member of board committees? Explain.
6. Critically evaluate the current board structure of Star Entertainment. Do you believe that the new board structure is an improvement? Explain.
7. What are the key risks that a business like Star Entertainment are likely to face? Evaluate Star Entertainment's risk management framework. What were the major failings? What improvements would you recommend?

8. A recurring theme is the lack of reporting of key information by senior management of Star Entertainment to the board. Who is responsible for this? What steps should a board take to mitigate such a risk?
9. Critically evaluate the role as well as the involvement of the relevant authorities and regulators in overseeing and supervising the casino industry in Australia.
10. How does the media aid in promoting good corporate governance in companies? Are there factors that may limit the effectiveness? To what extent did the media play a role in exposing the problems at Star Entertainment? Explain.

Endnotes

1 The Star Entertainment Group Limited. (n.d.). Investor Centre. Retrieved from https://www.starentertainmentgroup.com.au/investor-centre/

2 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 1. *NSW Government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488.pdf

3 *Ibid.*

4 *Ibid.*

5 The Star Entertainment Group Limited. (2022). Annual report 2022. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2022/10/2022-Annual-Report.pdf

6 *Ibid.*

7 *Ibid.*

8 *Ibid.*

9 Gotterson, R. (2022, September 30). External review of the Queensland operations of The Star Entertainment Group Limited. Retrieved from https://www.publications.qld.gov.au/dataset/f7def9f0-5a10-455c-af2d-fee0579dffcd/resource/7d676433-015d-49fc-8cb9-57de41eefef6/download/external-review-of-the-queensland-operations-of-the-star-gotterson-report.pdf

10 The Star Entertainment Group Limited. (2021). Annual report 2021. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2021/09/2021-The-Star-Entertainment-Group.pdf

11 *Ibid.*

12 *Ibid.*

13 *Ibid.*

14 Businessnews. (n.d.). Gerard Bradley. Retrieved from https://www.businessnews.com.au/Person/Gerard-Bradley

15 The Star Entertainment Group Limited. (2021). Annual report 2021. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2021/09/2021-The-Star-Entertainment-Group.pdf

16 *Ibid.*

17 *Ibid.*

18 *Ibid.*

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 *Ibid.*

26 *Ibid.*

27 *Ibid.*

28 *Ibid.*

29 *Ibid.*

30 The Star Entertainment Group Limited. (2021). Annual report 2021. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2021/09/2021-The-Star-Entertainment-Group.pdf

31 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 1. *NSW Government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488.pdf

32 *Ibid.*

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*

36 *Ibid.*

37 *Ibid.*

38 Whitbourn, M. (2022, April 7). 'I should have done more': Star lawyer gives emotional evidence at casino inquiry. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/companies/i-should-have-done-more-star-lawyer-gives-emotional-evidence-at-casino-inquiry-20220407-p5abkt.html

39 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 1. *NSW Government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488.pdf

40 *Ibid.*

41 *Ibid.*

42 *Ibid.*

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

46 *Ibid.*

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 *Ibid.*

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*

54 *Ibid.*

55 *Ibid.*

56 *Ibid.*

57 *Ibid.*

58 *Ibid.*

59 *Ibid.*

60 *Ibid.*

61 *Ibid.*

62 *Ibid.*

63 *Ibid.*

64 *Ibid.*

65 *Ibid.*

66 *Ibid.*

67 *Ibid.*

68 *Ibid.*

69 *Ibid.*

70 *Ibid.*

71 *Ibid.*

72 *Ibid.*

73 *Ibid.*

74 The Star Entertainment Group Limited. (2021). Annual report 2021. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2021/09/2021-The-Star-Entertainment-Group.pdf

75 The Star Entertainment Group Limited. (2017). Annual report 2017. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2020/10/2017-Annual-Report.pdf

76 McKenzie, N. & Tozer, J. (2021, October 10). The fallen Star: Sydney's cleanskin casino caught in 'dirty' company. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/national/the-fallen-star-sydney-s-cleanskin-casino-caught-in-dirty-company-20211006-p58xqq.html

77 *Ibid.*

78 *Ibid.*

79 *Ibid.*

80 *Ibid.*

81 *Ibid.*

82 *Ibid.*

83 *Ibid.*

84 *Ibid.*

85 *Ibid.*

86 *Ibid.*

87 *Ibid.*

88 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

89 *Ibid.*

90 *Ibid.*

91 *Ibid.*

92 *Ibid.*

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 *Ibid.*

98 *Ibid.*

99 *Ibid.*

100 *Ibid.*

101 *Ibid.*

102 *Ibid.*

103 *Ibid.*

104 *Ibid.*

105 *Ibid.*

106 *Ibid.*

107 *Ibid.*

108 *Ibid.*

109 *Ibid.*

110 *Ibid.*

111 *Ibid.*

112 *Ibid.*

113 *Ibid.*

114 *Ibid.*

115 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

116 Royal Commission into the Casino Operator and Licence. (2021, October 15). Report of the Royal Commission into the Casino Operator and Licence, Volume 1. Retrieved from https://content.royalcommission.vic.gov.au/sites/default/files/2021-10/The%20Report%20-%20RCCOL%20-%2015%20October%202021.pdf

117 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

118 *Ibid.*

119 *Ibid.*

120 *Ibid.*

121 *Ibid.*

122 *Ibid.*

123 *Ibid.*

124 *Ibid.*

125 *Ibid.*

126 *Ibid.*

127 *Ibid.*

128 *Ibid.*

129 *Ibid.*

130 *Ibid.*

131 *Ibid.*

132 *Ibid.*

133 *Ibid.*

134 *Ibid.*

135 *Ibid.*

136 *Ibid.*

137 *Ibid.*

138 *Ibid.*

139 *Ibid.*

140 *Ibid.*

141 *Ibid.*

142 *Ibid.*

143 *Ibid,*

144 *Ibid.*

145 *Ibid.*

146 *Ibid.*

147 *Ibid.*

148 *Ibid.*

149 *Ibid.*

150 AAP. (2022, March 23). Star let junket with laundering risk go on. *The Bull.* Retrieved from https://thebull.com.au/star-let-junket-with-laundering-risk-go-on/

151 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

152 *Ibid.*

153 *Ibid.*

154 *Ibid.*

155 *Ibid.*

156 Vercoe, P. (2022, March 1). 'Shoeboxes of cash' detailed in Crown money laundering suit. *Bloomberg.* Retrieved from https://www.bloomberg.com/news/articles/2022-02-28/crown-resorts-sued-for-alleged-anti-money-laundering-breaches?embedded-checkout=true

157 Bavas, J. (2020, October 25). The damning evidence that brought Crown Resorts to its knees. Retrieved from https://www.abc.net.au/news/2020-10-25/inquiry-evidence-that-brought-crown-resorts-to-its-knees/12806694

158 Australian Securities Exchange. (n.d.). The Star Entertainment Group Limited. Retrieved from https://www2.asx.com.au/markets/company/sgr

159 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

160 Australian Securities Exchange. (n.d.). The Star Entertainment Group Limited. Retrieved from https://www2.asx.com.au/markets/company/sgr

161 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

162 *Ibid.*

163 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

164 *Ibid.*

165 *Ibid.*

166 *Ibid.*

167 *Ibid.*

168 *Ibid.*

169 *Ibid.*

170 *Ibid.*

171 *Ibid.*

172 *Ibid.*

173 *Ibid.*

174 *Ibid.*

175 *Ibid.*

176 *Ibid.*

177 *Ibid.*

178 *Ibid.*

179 *Ibid.*

180 *Ibid.*

181 *Ibid.*

182 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 2. *NSW government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

183 *Ibid.*

184 *Ibid.*

185 *Ibid.*

186 *Ibid.*

187 *Ibid.*

188 *Ibid.*

189 *Ibid.*

190 *Ibid.*

191 *Ibid.*

192 *Ibid.*

193 *Ibid.*

194 *Ibid.*

195 Bell, A. (2022, August 31). *Review of The Star Pty Ltd: Volume 2*. Independent Casino Commission, State of New South Wales. Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

196 *Ibid.*

197 *Ibid.*

198 *Ibid.*

199 Bell, A. (2022, August 31). *Review of The Star Pty Ltd: Volume 2*. Independent Casino Commission, State of New South Wales. Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

200 *Ibid.*

201 *Ibid.*

202 *Ibid.*

203 *Ibid.*

204 *Ibid.*

205 *Ibid.*

206 *Ibid.*

207 *Ibid.*

208 *Ibid.*

209 *Ibid.*

210 *Ibid.*

211 *Ibid.*

212 *Ibid.*

213 *Ibid.*

214 *Ibid.*

215 *Ibid.*

216 *Ibid.*

217 *Ibid.*

218 Bell, A. (2022, August 31). *Review of The Star Pty Ltd: Volume 2*. Independent Casino Commission, State of New South Wales. Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

219 *Ibid.*

220 *Ibid.*

221 *Ibid.*

222 *Ibid.*

223 *Ibid.*

224 *Ibid.*

225 *Ibid.*

226 *Ibid.*

227 *Ibid.*

228 *Ibid.*

229 *Ibid.*

230 *Ibid.*

231 *Ibid.*

232 *Ibid.*

233 *Ibid.*

234 *Ibid.*

235 *Ibid.*

236 *Ibid.*

237 Bell, A. (2022, August 31). *Review of The Star Pty Ltd: Volume 2.* Independent Casino Commission, State of New South Wales. Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488_0.pdf

238 *Ibid.*

239 *Ibid.*

240 *Ibid.*

241 *Ibid.*

242 *Ibid.*

243 *Ibid.*

244 *Ibid.*

245 *Ibid.*

246 *Ibid.*

247 *Ibid.*

248 *Ibid.*

249 *Ibid.*

250 *Ibid.*

251 *Ibid.*

252 *Ibid.*

253 *Ibid.*

254 *Ibid.*

255 *Ibid.*

256 *Ibid.*

257 *Ibid.*

258 *Ibid.*

259 *Ibid.*

260 *Ibid.*

261 *Ibid.*

262 McKenzie, N., & Tozer, J. (2021, October 10). The fallen Star: Sydney's cleanskin casino caught in 'dirty' company. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/national/the-fallen-star-sydney-s-cleanskin-casino-caught-in-dirty-company-20211006-p58xqq.html

263 Australian Securities Exchange. (n.d.). The Star Entertainment Group Limited. Retrieved from https://www2.asx.com.au/markets/company/sgr

264 BBC News. (2021, October 11). Star Entertainment: Shares fall on money laundering claim. Retrieved from https://www.bbc.com/news/business-58866576

265 Thomson Reuters. (2022, September 27). Bell Review into Star Entertainment Group presents significant lessons for in-house lawyers. Retrieved from https://support.thomsonreuters.com.au/product/practical-law-australia-incl-nz-resource-centre/updates-alerts/bell-review-star

266 Kaye, B., & Jose, R. (2022, June 14). A second Australian state launches probe into casino firm Star. *Reuters*. Retrieved from https://www.reuters.com/business/australian-state-launches-probe-into-star-entertainments-licence-2022-06-14

267 *Ibid.*

268 Jose, R., Jackson, L. (2022, September 13). 'Frankly shocking': Inquiry says Star unfit to hold Sydney casino licence. *Reuters.* Retrieved from https://www.reuters.com/world/asia-pacific/australia-state-regulator-says-star-unfit-hold-casino-licence-2022-09-13/#:~:text=SYDNEY%2C%20Sept%2013%20(Reuters),criminal%20infiltration%20released%20its%20report.

269 The Guardian. (2022, October 6). Star 'unsuitable' to hold a casino license in Queensland, state government says. Retrieved from https://www.theguardian.com/australia-news/2022/oct/06/star-unsuitable-to-hold-a-casino-licence-in-queensland-state-government-says

270 Reuters. (2022, October 17). Australia's Star says regulator-named manager to run Sydney casino. Retrieved from https://www.reuters.com/business/australia-casino-firm-star-be-fined-62-mln-following-inquiry-sydney-morning-2022-10-16/

271 McGuire, A. (2022, October 17). 'Very weird' first day for Star CEO as Sydney casino licence suspended. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/companies/star-hit-with-100m-fine-sydney-casino-licence-suspended-20221017-p5bqah.html

272 Smee, B. (2022, December 9). Star fined $100m and threatened with a 90-day suspension of its Queensland casino licence. *The Guardian.* Retrieved from https://www.theguardian.com/australia-news/2022/dec/09/star-fined-100m-and-threatened-with-a-90-day-suspension-of-its-queensland-casino-licence

273 *Ibid.*

274 AUSTRAC. (2022, November 30). AUSTRAC commences proceedings in the Federal Court against Star Entertainment Group entities. Retrieved from https://www.austrac.gov.au/news-and-media/media-release/austrac-commences-proceedings-federal-court-against-star-entertainment-group-entities

275 Ziffer, D., & Janda, M. (2022, November 30). Star Entertainment sued by AUSTRAC for alleged money-laundering breaches. *ABC News.* Retrieved from https://www.abc.net.au/news/2022-11-30/star-entertainment-sued-by-austrac-for-money-laundering-breaches/101714982

276 Ziffer, D., & Janda, M. (2022, November 30). Star Entertainment sued by AUSTRAC for alleged money-laundering breaches. *ABC News.* Retrieved from https://www.abc.net.au/news/2022-11-30/star-entertainment-sued-by-austrac-for-money-laundering-breaches/101714982

277 Australian Securities Exchange. (n.d.). The Star Entertainment Group Limited. Retrieved from https://www2.asx.com.au/markets/company/sgr

278 Australian Securities & Investments Commission. (2022, December 13). ASIC launches proceedings against 11 current and former Star Entertainment directors and officers. Retrieved from https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-351mr-asic-launches-proceedings-against-11-current-and-former-star-entertainment-directors-and-officers/

279 McGuire, A., & Danckert, S. (2022, December 13). 'Failed in their duties': ASIC seeks heavy penalties for Star executives. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/companies/asic-takes-action-against-11-star-executives-20221213-p5c5tb.html

280 Australian Securities & Investments Commission. (2022, December 13). ASIC launches proceedings against 11 current and former Star Entertainment directors and officers. Retrieved from https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-351mr-asic-launches-proceedings-against-11-current-and-former-star-entertainment-directors-and-officers/

281 *Ibid.*

282 Australian Financial Review. (2022, December 13). The three crucial themes in ASIC's landmark case against Star. Retrieved from https://www.afr.com/chanticleer/the-three-crucial-themes-in-asic-s-landmark-case-against-star-20221213-p5c5tt

283 *Ibid.*

284 Australian Securities & Investments Commission. (2022, December 13). ASIC launches proceedings against 11 current and former Star Entertainment directors and officers. Retrieved from https://asic.gov.au/about-asic/news-centre/find-a-media-release/2022-releases/22-351mr-asic-launches-proceedings-against-11-current-and-former-star-entertainment-directors-and-officers/

285 *Ibid.*

286 *Ibid.*

287 *Ibid.*

288 Australian Financial Review. (2022, December 13). The three crucial themes in ASIC's landmark case against Star. Retrieved from https://www.afr.com/chanticleer/the-three-crucial-themes-in-asic-s-landmark-case-against-star-20221213-p5c5tt

289 McGuire, A., & Danckert, S. (2022, December 13). 'Failed in their duties': ASIC seeks heavy penalties for Star executives. *The Sydney Morning Herald.* Retrieved from https://www.smh.com.au/business/companies/asic-takes-action-against-11-star-executives-20221213-p5c5tb.html

290 *Ibid.*

291 The Star Entertainment Group Limited. (2022). ASIC Proceedings and Board Renewal. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2022/12/13-December-2022-ASX-Announcement-ASIC-Proceedings-and-Board-Renewal.pdf

292 Wootton, H. & Fowler, E. (2022, December 13). Star chairman's role 'untenable' after ASIC claim, legal experts say. *Australian Financial Review.* Retrieved from https://www.afr.com/companies/games-and-wagering/star-chairman-s-role-untenable-after-asic-claim-legal-experts-say-20221213-p5c5wk

293 Bell, A. (2022, August 31). Review of The Star Pty Ltd: Volume 1. *NSW Government.* Retrieved from https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid319488.pdf

294 The Star Entertainment Group Limited. (2022, October 31). Resignation of Director. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2022/10/31-October-2022-Resignation-of-Director-Gerard-Bradley.pdf

295 The Star Entertainment Group Limited. (2022, October 31). Final Director's Interest Notice. Retrieved from https://www.starentertainmentgroup.com.au/wp-content/uploads/2022/11/22-November-2022-Appendix-3Z-Richard-Sheppard.pdf

296 Nichols, N. (2022, December 15). Heap the last man standing at the star after Lahey quits. *Business News Australia.* Retrieved from https://www.businessnewsaustralia.com/articles/heap-the-last-man-standing-at-the-star-on-asic-s--hit-list--after-lahey-quits-board.html

297 Mittal, N. (2023, March 21). Australia's Star Entertainment replaces chairman after lawsuit. *Nasdaq.* Retrieved from https://www.nasdaq.com/articles/australias-star-entertainment-replaces-chairman-after-lawsuit

298 The Star Entertainment Group Limited. (n.d.). The Star Entertainment Group Limited Board. Retrieved from https://www.starentertainmentgroup.com.au/meet-the-board/

299 *Ibid.*

300 *Ibid.*

301 *Ibid.*

302 *Ibid.*

303 *Ibid.*

304 *Ibid.*

305 *Ibid.*

306 Slater and Gordon. (2022, March 29). Star Entertainment Group Limited Class Action. Retrieved from https://www.slatergordon.com.au/class-actions/current-class-actions/star

307 Maurice Blackburn. (2022, November 4). Star Shareholder Class Action. Retrieved from https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/star-shareholder-class-action/

308 Phi Finney McDonald. (2023, February 6). Star Entertainment Class Action. Retrieved from https://phifinneymcdonald.com/action/star-entertainment-class-action/

309 Shine Lawyers. (2023, February 6). Star Entertainment Group Class Action. Retrieved from https://www.shine.com.au/service/class-actions/star-entertainment-group-class-action

310 Phi Finney McDonald. (2023, February 6). Star Entertainment Class Action. Retrieved from https://phifinneymcdonald.com/action/star-entertainment-class-action/

STARK CORPORATION: THE COPPER MAN SAGA

Case overview

On 28 February 2023, Stark Corporation (Stark) announced the need for an extension of time to submit its financial statements to the Stock Exchange of Thailand. This led to the suspension of its shares, triggering a series of actions that eventually escalated into a large-scale criminal investigation for fraud.

Its former Chairman fled to Hong Kong, leaving behind an estimated THB100 billion in debt owed to shareholders, bondholders, and creditors. Over 1,300 of Stark's 11,000 shareholders filed a class-action lawsuit against the company.

The objective of this case study is to facilitate a discussion of issues such as corporate governance issues of a company with a dominant shareholder; corporate governance of Thai-listed companies; board composition; risk management; fraud; roles of internal and external auditors; and regulatory issues.

About Stark Corporation

Stark Corporation (Stark) once ranked as the 14th largest manufacturer of wires and cables globally and one of Thailand's top 100 listed companies.[1,2] In Thailand, Stark's major customers include state-owned enterprises such as the Mass Rapid Transit Authority of Thailand and Vietnam Electricity.[3] Since its listing on the Stock Exchange of Thailand (SET), Stark has pursued an aggressive expansion strategy, making global acquisitions.

Prior to April 2023, the board was led by Chairman Chanin Yensudchai (Chanin).[4] Vonnarat Tangkaravakoon (Vonnarat), who was a non-independent director and acting Chief Executive Officer (CEO) of Stark before his resignation on 6 July 2023,[5] was the largest shareholder as at 31 December 2021, with 50.16% of the ordinary shares.[6] The remaining shares are held by Stark Investment Corporation Limited (Hong Kong) and other shareholders, at 21% and 28.84% respectively.[7]

This case study was originally prepared by Chew Xin Yun, Darren Oh Ger Wei, Oh Shi Ting Jermaine, Tan Sheng Hui Darren, and Zahirah Binte Zaid. 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.

However, Stark was not always the wire company it is today. Founded in 1990, it began as Siam Inter Multimedia (SMM), operating as a comics publisher and distributor.[8] In 2019, Vonnarat, the eldest son of one of Thailand's affluent families famous for founding TOA Paint (Thailand) Co., Ltd, gained majority control of SMM.[9] Subsequently, the company rebranded and adopted the name Stark. The transition to Stark involved the company being listed on the SET through a backdoor listing. Under Vonnarat's leadership, Stark shifted its focus from printing comics to manufacturing electrical wires and cables. This transition was facilitated by the acquisition of Phelps Dodge International (Thailand) Ltd. (PDITL), originally the Thai operations of the US-based Phelps Dodge International.[10]

Following its listing on SET, Stark's share price fluctuated within the range of THB3 to THB5. Towards the end of 2022, the share price took a downturn, ending the year at THB2.50 per share.[11]

Stark the villain

On 28 February 2023, Stark failed to submit its financial statements for the year ended 2022.[12] The company cited pending processing of certain information and ongoing review by its auditor, PricewaterhouseCoopers ABAS Ltd (PwC), as reasons for the delay.[13] The SET suspended trading of its shares on 1 March 2023.[14] Stark had earlier, during its 2022 annual general meeting (AGM) held on 29 April 2022, passed a resolution to replace its external auditor Deloitte Touche Tohmatsu Jaiyos Co (Deloitte) with PwC.[15] Initially, Stark expected to submit by 31 March 2023, but later postponed it for another month citing the same reason.[16] This delay continued until June 2023.

In March 2023, Stark appointed PwC to conduct a special audit (initial phase) after it was notified by PwC in a letter that it had found "reasonably suspicious circumstances in respect of the performance of the director, manager or any person responsible for the Company's operation as implied by section 89/25 of the Securities and Exchange Act B.E. 2565".[17] The company subsequently filed a complaint with the Department of Special Investigation (DSI) and the Central Investigation Bureau under the Economic Crime Suppression Division, to conduct an investigation and identify the offender.[18]

The special audit was conducted between March and April 2023 and the draft final report was submitted to the newly-constituted Audit Committee (AC) on 23 May 2023.[19] A summary of the results of the special audit was released on 16 June 2023.[20]

The special audit revealed numerous irregularities amounting to THB15.6 billion, including the discovery of fake payer names and payments on behalf of customers from the accounts of Stark's former officers.[21]

PwC identified 220 unusual sale transactions amounting to THB8,063 million in 2022 and THB3,593 million in 2021 from accounts receivable (AR) confirmations carried out by Stark.[22] Additionally, irregular stock quantities were observed, with 3,140 stock items showing negative numbers in the company's Enterprise Resource Planning (ERP) system at the end of the financial period. Negative numbers suggested counting errors, possibly occurring during the shipping or transportation of the items.[23] Stark's AR ageing report was also incorrect, with the auditors re-computing it based on the data in Stark's Systems Applications and Products (SAP) system and discovering that there was an understatement in Stark's AR ageing report. Moreover, there were irregular figures in each quarter of 2022.[24]

Stark released its long-overdue financial statements on 16 June 2023, revealing a net loss of THB6.1 billion in 2022 and a restated loss of THB5.97 billion in 2021. This was a stark contrast to the figures signed off by its former auditor Deloitte in 2021, when it reported a profit of THB2.79 billion.[25]

Justice League strikes

On 6 July 2023, the Securities and Exchange Commission (SEC) filed fraud charges against 10 individuals, including Vonnarat, Chanin, and Sathar Chantrasettalead (Sathar), the former Chief Financial Officer, over alleged

financial misconduct involving Stark.[26] They were charged with financial fraud, which included accounting fraud and unfaithful representation in their financial statements.[27]

Further, on 7 July 2023, the DSI raided Stark's office, PDITL's office, and Chanin's residence, among other locations.[28] In addition, DSI issued summons to Vonnarat and Chanin. Despite these summons, both Vonnarat and Chanin avoided meeting with the DSI. Vonnarat postponed the meeting claiming that he was sick and submitted a medical certificate as evidence. Meanwhile, the DSI signalled to the Interpol to issue a red notice for Chanin when he fled to Hong Kong.[29]

Unravelling the script

In a televised confession on 4 July 2023, Sathar claimed that he was "directly ordered" by Chanin to falsify financial statements.[30] Upon investigation, it was revealed that the window dressing of the financial statements all boiled down to a failed investment.

On 28 April 2020, Stark had acquired two Vietnamese cable makers, Thinh Phat Cables (TPC) and Dong Viet Non-Ferrous & Plastic (DVN), for US$240 million.[31] However, by 2021, it became clear that TPC and DVN would not be able to generate cash flows in time to repay bank loans taken out by Stark when acquiring the two subsidiaries, partly due to underperforming assets and the rising costs of raw materials. In an attempt to repay loans without highlighting Stark's precarious situation, two plans were devised.[32]

To cover the debt, Stark executives initially planned to sell shares in the parent company to a state-owned enterprise, believed to be the state oil and gas company PTT, based on reports by local media. For this plan to work, Stark would have to increase its share price to THB5.[33]

> "We were told to do it [falsify financial statements] to secure the state enterprise's confidence, so they would buy our shares,"
>
> *– Sathar Chantrasettalead, former Chief Financial Officer of Stark*[34]

According to Sathar, Stark's books were already under pressure from years of fake sales and accounts receivables. Despite Stark's "efforts" to secure the state-owned enterprise's confidence, the company was not convinced and refused to purchase Stark's shares. Consequently, there was no incoming cash flow to tide over Stark's pressing liabilities, prompting them to devise a second plan.[35]

The second plan involved the acquisition of Leoni Kabel GmbH (Leoni Kabel), the automotive cable arm of Leoni AG, Germany's largest wire maker, and Leonische Holding Inc (Leonische), a holding company for Leoni AG's Automotive Cable Business in the Americas.[36] The plan was to raise THB5.58 billion to acquire the German subsidiaries and subsequently withdraw from the deal, allowing Stark to utilise the raised funds for other purposes.[37] Stark's board convened on 23 May 2022 and the company held an Extraordinary Shareholders' Meeting on 23 September 2022, where they approved entering into a sale and purchase agreement with Leoni AG for the acquisition of the Business Group Automotive Cable Solutions.[38] However, at that time, the Russia-Ukraine war was escalating rapidly with no resolution in sight.[39]

> "The military offensive in Ukraine has resulted in an economic growth rate downshift in several jurisdictions, cost of energy, wages and inflation rate increasing, and supply chain disruption, for example,"
>
> *– Stark Corporation*[40]

Considering the escalating Russia-Ukraine war as a substantial and compelling reason to justify the abandonment of the deal, Stark announced the termination of the agreement on 13 December 2022. While Stark managed to

retain the fund raised, reneging on the deal resulted in a nearly 30% plunge in the share price.[41] Stark also faced legal ramifications from Leoni AG, who initiated proceedings by filing a case with the German Arbitration Institute to seek compensation of EUR608 million.[42] Leoni AG alleged a violation of the sales and purchase agreement by Stark.[43]

Bondholders snap their fingers

Admist the turmoil relating to its financial statements, Stark found itself under pressure from its creditors. Prior to the scandal, Stark had been regarded as one of Thailand's premier companies poised for profitability. Hence, there was a high level of confidence in the company, leading Stark to issue five unsecured bonds between 2021 and 2023, aimed at raising funds for its acquisition activities and operational needs. These bonds were identified by the series numbers "STARK239A", "STARK249A", "STARK245A", "STARK255A", and "STARK242A". However, during the scandal, these bonds plummeted and Stark defaulted on payments totalling THB9.2 billion.[44]

According to the Terms and Conditions of these bonds, Stark is required to submit the annual financial statements to the Office of the SEC. However, Stark's delay in submitting the 2022 financial statements beyond the two-month period from the end of the accounting period, as specified under the "Notification TorJor 44/2556", constitutes a failure to comply with the law. This delay resulted in an event of default under the Terms and Conditions of the bonds.[45]

On 28 April 2023, three groups of bondholders' meetings were held online to consider the waiver of the event of default. STARK239A and STARK249A were addressed collectively, while STARK245A and STARK255A constituted another joint session. STARK242A, however, held its meeting independently. The meetings were attended by 436 bondholders representing 59.31% of the total bonds,[46] 677 bondholders representing 51.99% of the total bonds,[47] and 1102 bondholders representing 62.57% of the total bonds respectively.[48] In all three sessions, the bondholders passed a resolution to waive the event of default, suggesting that the event of default be deemed as if it never occurred, and that the bondholders cannot claim against Stark on the same grounds again unless the right has been reserved.[49]

On 25 May 2023, Stark announced another event of default arising from its delay in submitting the 2022 annual registration statement to the SEC within three months from the end of the accounting period. Stark explained that "given the preparation of the annual registration statement for the year 2022 requires the information from the 2022 Financial Statements, which is presently still not completed, the bond issuer [Stark] therefore is required to prepare and to submit the annual registration statement for the year 2022 to the SEC later than the deadline."[50]

As a result, on 31 May 2023, a second bondholders' meetings was held to consider waiving the event of default. However, this time, the bondholders of STARK239A and STARK249A resolved not to waive the event of default and exercised their rights to declare that all principal and interest of the bonds become due immediately.[51] This meant that Stark had to promptly furnish the funds for the payment to the debenture holders. Eventually, all the other bondholders followed suit. Kasikornbank (KBank) and Asia Plus Securities (ASPS), the representatives for Stark's bondholders, cancelled the scheduled bondholders' meeting on 23 June 2023 for STARK 245A, STARK255A, and STARK242A and called for immediate repayment. Stark was swaddled in debts with seemingly no solution in sight.[52]

Disappearing share price

Amid the challenges facing Stark, its shares experienced significant fluctuations within the span of a few months. The initial drop occurred in mid-December 2022, following Stark's withdrawal from the Leoni AG deal. In March 2023, SET suspended the company's shares due to its failure to meet the deadline for reporting its 2022 financial results.

In April 2023, Stark was removed from the SET100 index.[53] Following a three-month pause, trading in Stark shares resumed on I June 2023. The shares fell to THB0.25, down 89% from the closing price before the initial suspension.[54] At one point, the shares plummeted to THB0.01 before trading was indefinitely suspended in July, leaving investors to close out their positions at significant losses.[55]

Meet the Avengers

Stark's board of directors comprised nine members, with six non-independent directors and three independent directors.[56] It separated the roles of the Chairman and the CEO.[57] The directors were selected according to the requirements set by the SEC, the SET, and the Board Skill Matrix of qualifications.[58]

Busy Avengers

The Thailand Corporate Governance Code for Listed Companies (CG Code) recommends that listed companies establish and disclose a policy limiting the number of directorships an individual can hold in listed companies. The guideline suggests a maximum of five directorships to ensure that directors can adequately fulfil their duties, responsibilities, and provide effective oversight of management. However, Stark did not implement a policy to limit the number of directorships for its board members.[59] While the directors at Stark might not hold positions in more than five publicly listed companies, many exceeded the stipulated number when considering roles in private companies.[60]

Vonnarat, the major shareholder and founder of Stark, had served on the board as a non-independent non-executive director since 9 July 2019. He holds a Bachelor of Business Administration degree from Chulalongkorn University. Prior to his appointment, he held various directorships in Imagica, Team A Holding 2, and Supersave Corporation, which operate in the paint, real estate, and convenience store industries respectively.[61] As of 2021, he held 67 simultaneous director roles across various companies. These companies operate in diverse sectors including hotels, rental services, sports facilities, electric power generation, sugar refining, and the wire industry where Stark also operates. Apart from Vonnarat, other directors also held numerous roles. Kusol Sangkananta (Kusol) held 28 other roles while Sathar held 22.[62]

Additionally, many of Stark's directors served on multiple subsidiary boards. Chanin, Vonnarat, Chinawat Assavapokee (Chinawat), and Nirouth Jeakvathanyoo all served on the boards of PDITL, PDTL Trading Company Limited, Thai Cable International Co., Ltd. and NMN Holding 2 Company Limited.[63]

Age of Ultron

Stark's board of directors had a relatively youthful profile when compared against the average of directors for companies listed on the SET. With an overall director's mean age of 59, Stark's board was younger than the SET average of 67.[64] Stark's non-executive directors were also younger, with a mean age of 53 compared to the SET mean of 59. However, Stark's executive directors were four years older than the SET mean age for executive directors, which is 55. Meanwhile, Stark's independent directors had a mean age of 64, comparable to their counterparts in other SET-listed companies.[65]

A monochrome assembly

According to research conducted by the SET covering 731 companies, 87.3% had at least one female director on their boards. In contrast, in FY2021, Stark did not have any female director on its board.[66]

Dividing the tasks

Stark's board had established an Audit Committee (AC) and a combined Nomination and Remuneration Committee (NRC), but did not have a Risk Committee.[67]

Audit Committee

In financial year (FY) 2021, the AC comprised three independent directors, in compliance with the company's corporate governance charter which mandates that the AC must consist of at least three independent directors. The AC included Dr. Songpope Polachan (Dr. Songpope), serving as the Chairman, along with Kusol and Niti Jungnitnirundr (Niti) as members.[68]

Dr. Songpope holds a PhD Geology (Petroleum) degree from the University of London and a Bachelor of Science Program in Geology from the Chiangmai University. He had four years of prior experience in ACs across industries such as petroleum and the construction of roads and bridges.

Kusol has over 20 years of directorship experience. Outside of Stark, he held 27 other concurrent director roles mainly in the manufacturing industry. In addition, Kusol was a non-independent director in Thai Encom Co., Ltd., a subsidiary of Stark.[69] He was a part of the Audit Committee Program (ACP) class 27/2009 at the Thai Institute of Directors. Niti holds a Master's Degree and Bachelor's Degree in Accountancy from Chulalongkorn University. He served as an Audit Partner and Director of the Auditing Office at Deloitte Audit from 1996 to 2018[70] prior to his appointment as an independent director at Stark.

Like 62% of companies analysed in a Deloitte study, Stark did not have a separate Risk Committee.[71] SET rules permit companies to delegate the responsibility of risk governance to either the AC or a separate Board Risk Committee. According to Stark's Corporate Governane Policy: "The audit committee should express its opinion on the adequacy of the Company's internal control and risk management systems, and disclose its opinion in the Company's annual report."[72] As such, Stark's risk governance approach complies with the rules.[73]

Nomination and Remuneration Committee

The NRC consisted of three members. In FY2021, it was chaired by Kusol, with Niti and Chinawat serving as members. Kusol and Niti were independent directors, while Chinawat was not. The composition was in accordance with Stark's corporate governance charter which stated that the NRC is required to have a majority of its members as independent directors, and the Chairman of the NRC is specifically required to be an independent director.[74]

Chinawat holds a Master of Law in Taxation from the Washington University and a Bachelor of Law from the Thammasat University. He previously served for five years as the Chairman of the NRC at Sherwood Corporation (Thailand) Public Co., Ltd., a company specialising in the manufacture of pesticides.[75]

Checking the operations

In Thailand, there is no specific requirement for listed companies to maintain an internal audit function under SEC and SET rules.[76]

Stark engaged an external firm P&L Corporation Company Limited (P&L) to audit the company's internal control system. In FY2021, P&L audited Stark's fixed asset management, human resources management, expense cycle system, and revenue cycle system. P&L concluded that PDITL had maintained sufficient internal control. Furthermore, it said that Stark had established policy regulations and operational guidelines, as well as complied with the generally accepted accounting standards.[77] Additionally, P&L was appointed to audit the internal control system of PDITL, with Monnapat Phumirattanajarin assigned as the head of internal audit. Monnapat Phumirattanajarin is the vice president of P&L and is knowledgeable about Stark's operation, corporate governance principles, risk assessment, and internal control.[78]

New Avengers

Since the scandal erupted, there have been multiple changes in the composition of the board. Stark announced Chinawat's resignation on 17 April 2023, citing "health limitations".[79] Two days later, Stark announced the resignation of another seven directors, citing reasons that "due to their personal business which they were unable to perform their duties as a director of the Company at full capacity".[80] The directors who resigned are shown in Figure 1.[81]

Figure 1: List of directors who resigned[82]

Name	Position when resigned
Chanin Yensudchai	Chairman
Sathar Chantrasettalead	Non-independent non-executive director
Kusol Sangkananta	Independent director / Member of the AC / Chairman of the NRC
Prakorn Makjumroen	Non-independent non-executive director
Nirouth Jeakvathanyoo	Non-independent non-executive director
Songpope Polachan, Ph.D.	Independent director / Chairman of the AC
Niti Jungnitnirundr	Independent director / Member of the AC and NRC
Chinawat Assavapokee	Non-independent non-executive director / Member of NRC

Source: Tangkaravakoon, V., & Tangeakchit, A. (2023, April 19). The organisational structure of the company.

This marked an almost complete overhaul of Stark's board, with only Vonnarat remaining as the acting CEO. From then on, directors were frequently replaced, citing personal commitments as the reason. Stark's newly appointed directors as of 20 November 2023 are shown in Figure 2.[83,84]

Figure 2: Stark's newly appointed directors as of 20 October 2023[85]

Stark's appointed directors (as of 20 November 2023)	
Name	**Position**
Prinya Junsunjai	Chairman
Attapol Watjarapairoj	Non-independent non-executive director
Montri Sriskul	Independent director
Pheera Dulayanurak	Independent director
Vijak Arkubkriya	Independent director

Source: Stark Corporation. (2023, November 23). Notification of the Resignation of director of the Company.

X-Men United

The class action law was introduced in Thailand in 2015 with the amendment of Thailand's Civil Procedural Law. This allowed a large number of victims to coalesce and file a claim against a common offender. This collective action simplified many small individual cases into one, reducing costs and increasing the chances of winning against large organisations.[86]

With Stark's share price plummeting by 99.40%, shareholders lost nearly everything. Given that Stark was a large company in the SET100 index, it attracted many investors, which translated into substantial losses.[87] The SET and the Association of Investment Management Companies are preparing to utilise class action law to protect retail investors' equity interests.[88] More than 1,300 shareholders stepped forward to identify themselves as the victims of the Stark's fiasco. A representative of the victims filed the class-action lawsuit on behalf of the

victims who signed up, seeking compensation of THB2.5 billion. If successful, it would mean that potentially both criminal and civil action would be taken against those convicted.[89]

Government forces under the spotlight

SET employes special supervisory signs to regulate trading and alert investors about unique situations and conditions that could impact the securities of a listed company. The "SP" sign indicates Trading Suspension, meaning that "trading in a security is being suspended for more than one trading session."[90] Trading suspensions may be enforced for the following reasons:

1. Replacement of the NP sign with the SP sign, following the failure of the issuer to adhere to SET disclosure regulations.[91]
2. Failure of the issuer to follow regulations or to provide adequate explanation of share price changes without a legitimate reason.[92]
3. Failure of the issuer to submit required financial statements within the period specified by SET.[93]
4. The securities of the listed company are under delisting consideration, or the company has yet to ameliorate noted deficiencies within the period specified by SET.[94]
5. The listed securities are due for redemption, conversion, or exercise of rights.[95]
6. There is any other event which may seriously affect the trading of listed securities.[96]

On the other hand, the "C" sign, which was changed to the "CB" sign effective from 25 March 2024 stands for Caution - Business. It represents listed companies involved in events that may affect their financial position, business operation, financial liquidity, or non-compliance with the SET rules.[97]

Following the initial announcement of the delay in submitting financial statements, the SET promptly assigned Stark an "SP" sign.[98] The "SP" was posted on Stark due to its failure to submit financial statements ending 31 December 2022 and 31 March 2023 by the deadline.[99] Subsequently, when Stark repeatedly failed to file its financial statements and defaulted on its bond repayments, the SEC assigned a "C" sign, notifying the company to conduct a special audit.[100]

Following the Stark scandal, many investors lost confidence in the Thai financial market. Thailand's benchmark SET index fell by 11% in 2023. With foreign investments being a key driver of the Thai economy, the public called for better regulations and enforcement. The Thai regulators have been criticised for their slow reaction in the Stark's case.[101]

> "While the incident is an isolated case, the slow reaction by the authorities is what makes it worrying for asset managers like us."
>
> *– a Bangkok-based fund manager*[102]

Despite multiple red flags since March 2023, the DSI only began its investigation in June 2023. However, some commentators said that regulators were not solely to blame given the corporate culture in Thailand. It was said that there is a "traditional reluctance in Thailand to prosecute elite members of society, such as business or political leaders, for any crimes whatsoever, let alone a crime so difficult to prove as securities fraud."[103]

In response to the scandal, the Thai regulators promised to upgrade listing regulations and strengthen supervision to enhance the quality of the listed companies and strengthen oversight by revising the regulations for assigning the caution sign.[104]

To be continued…

On 12 October 2023, four financial creditors of PDITL jointly filed for PDITL's rehabilitation with the Central Bankruptcy Court. The application was approved on 8 February 2024, with the Central Bankruptcy Court appointing EY Corporate Advisory Services Company Limited as the planner. As a creditor of PDITL, Stark has submitted its application for debt repayment, including debts under bills of exchange, promissory notes, cheques, and guarantees, totaling approximately THB24.4 billion and US$15 million along with accrued interest calculated until the court order approving the rehabilitation.[105]

On 12 February 2024, Vonnarat was arrested by Thailand's law enforcement agency at a hospital where he had been admitted for medical treatment. His arrest followed his failure to respond to a summons to appear before prosecutors. Vonnarat's detention occurred shortly after Thailand's Prime Minister, Srettha Thavisin, urged authorities to expedite actions against those behind major corporate misconducts, particularly the accounting fraud at Stark, to restore investor confidence.[106] Meanwhile, on 16 February 2024, Chanin had an additional THB2.5 billion of assets seized and frozen, bringing the total seized and frozen assets to THB2.54 billion. Chanin's assets were the largest seizure linked to Stark's case.[107] There have been no further updates regarding Chanin's whereabouts.

On 29 April 2024, DSI recommended legal action against seven Stark employees, including Vonnarat and Chanin, and five companies, including Stark and its subsidiaries, for financial misconduct.[108] The alleged wrongdoing has impacted 4,704 shareholders, resulting in estimated financial damage of THB14.7 billion.[109] As of May 2024, Stark's shares are still listed but suspended from trading as the company has yet to submit the financial statements for the year ending 31 December 2023.[110]

After eight months on the run, Chanin was arrested in Dubai on 22 June 2024 and extradited back to Thailand the following day.[111] The DSI transferred him to public prosecutors on 24 June 2024 for indictment on charges including falsifying financial statements, money laundering and fraud. Upon his return, Chanin was interrogated by DSI officials and informed of the charges against him. Despite his denial of the allegations, DSI opposed his release on bail due to his previous history of flight risks.[112]

Will this case damage investor confidence and hurt the Thai stock market, which has been doing well recently compared to its regional peers? Or will it demonstrate that regulators and investors in Thailand are able to hold companies and management accountable for fraud and ultimately improve confidence in the market?

Discussion questions

1. What are some key red flags in the corporate governance of Stark Corporation? What are the pros and cons of a company with a dominant shareholder like Stark? To what extent did the ownership structure contribute to the scandal?
2. Explain how the fraud at Stark occurred and how the risk of such frauds can be mitigated.
3. Who do you think should be held responsible for the fraud? To what extent are the internal and external auditors responsible for preventing and detecting the fraud at Stark?
4. Evaluate the risk management framework of Stark Corporation based on the three lines of defence and suggest possible improvements. Should a Board Risk Committee have been established? What types of companies do you think should establish a separate Board Risk Committee? Explain.
5. Critically evaluate the board composition of Stark Corporation before April 2023 in accordance with the Thailand Corporate Governance Code for Listed Companies. To what extent do you believe the board composition and committees contributed to the fraud at Stark?

6. Many of the directors at Stark resigned following the revelation of the scandal. Should they have resigned? Under what circumstances should independent directors resign?
7. Critically evaluate the effectiveness of the regulators in Thailand in light of the issues at Stark Corporation.
8. Compare the regulatory framework for listed companies in Thailand with your home country. What are the similarities and differences? Focus in particular on the regulatory roles of the stock exchange and the securities regulator. Which approach is better?
9. The Stock Exchange of Thailand (SET) is not listed, unlike stock exchanges in many other countries. What are the pros and cons of listing a stock exchange? What safeguards do you think should be in place if a stock exchange is listed?

Endnotes

1 Stark Corporation. (n.d.). Stark Corporation 2021 Annual Report. Retrieved from https://www.starkcorporation.com/web/wp-content/uploads/2022/04/STARK-One-report-2021-EN_FINAL.pdf

2 Regelado, F. (2023, July 31). How Thailand's Stark covered up debt and losses at Vietnam wire maker. *Nikkei Asia*. Retrieved from https://asia.nikkei.com/Spotlight/Market-Spotlight/How-Thailand-s-Stark-covered-up-debt-and-losses-at-Vietnam-wire-maker

3 Corporation, S. (n.d.). Stark Corporation 2021 Annual Report. Retrieved from https://www.starkcorporation.com/web/wp-content/uploads/2022/04/STARK-One-report-2021-EN_FINAL.pdf

4 *Ibid.*

5 MarketScreener. (2023, July 6). Stark Corporation Public Company Limited Announces Resignation of Vonnarat Tangkaravakoon as Acting Chief Executive Officer. Retrieved from https://www.marketscreener.com/quote/stock/STARK-CORPORATION-105525574/news/Stark-Corporation-Public-Company-Limited-Announces-Resignation-of-Vonnarat-Tangkaravakoon-as-Acting-44278448/

6 Stark Corporation. (n.d.). Stark Corporation 2021 Annual Report. Retrieved from https://www.starkcorporation.com/web/wp-content/uploads/2022/04/STARK_One-report-2021_TH_FINAL.pdf

7 Stark Corporation. (n.d.). Shareholder Information. Retrieved from https://www.starkcorporation.com/web/irshare/

8 Stark Corporation. (n.d.). Stark Corporation 2021 Annual Report. Retrieved from https://www.starkcorporation.com/web/wp-content/uploads/2022/04/STARK_One-report-2021_TH_FINAL.pdf

9 Regalado, F. (2023, July 30). How Thailand's Stark covered up debt and losses at Vietnam Wire Maker. *Nikkei Asia*. Retrieved from https://asia.nikkei.com/Spotlight/Market-Spotlight/How-Thailand-s-Stark-covered-up-debt-and-losses-at-Vietnam-wire-maker

10 *Ibid.*

11 Yahoo! Finance. (n.d.). Stark Corporation Public Company Limited (STARK.BK). Retrieved from https://finance.yahoo.com/quote/STARK.BK/

12 Regalado, F. (2023, July 30). How Thailand's Stark covered up debt and losses at Vietnam Wire Maker. *Nikkei Asia*. Retrieved from https://asia.nikkei.com/Spotlight/Market-Spotlight/How-Thailand-s-Stark-covered-up-debt-and-losses-at-Vietnam-wire-maker

13 Stark Corporation. (2023, February 28). Notification on the delay submission of the financial statements. Retrieved from https://weblink.set.or.th/dat/news/202302/23026537.pdf

14 Wiriyapong, N. (2023, May 30). Stark shares return from SET suspension for one month. *Bangkok Post*. Retrieved from https://www.bangkokpost.com/business/general/2581051/stark-shares-return-from-set-suspension-for-one-month

15 Stark Corporation. (2022, April 29). Minutes of the 2022 Annual General Meeting of Shareholders held via electronic devices. Retrieved from https://www.starkcorporation.com/web/wp-content/uploads/2023/11/Stark-Minutes-AGM-2022-EN_-2.pdf

16 Yensudchai, C. (2023, March 31). Notification of postponement the submission of the financial statements. Retrieved from https://weblink.set.or.th/dat/news/202303/23039080.pdf

17 Stark Corporation. (2023, June 6). Clarification of facts related news on the filing of compliant by the Company. Retrieved from https://weblink.set.or.th/dat/news/202306/0832NWS060620230742110462E.pdf

18 Tangkaravakoon, V. (2023, June 6). Clarification of facts related news on the filing of compliant by the Company. Retrieved from https://weblink.set.or.th/dat/news/202306/0832NWS060620230742110462E.pdf

19 Stark Corporation. (2023, June 16). Summary of Special Audit Result (Initial Phase). Retrieved from https://weblink.set.or.th/dat/news/202306/0832NWS160620232218110483E.pdf

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Ibid.*

24 *Ibid.*

25 Wiriyapong, N. (2023, July 5). The Stark reality of a company in decline. *Bankkok Post*. Retrieved from https://www.bangkokpost.com/business/general/2605686/the-stark-reality-of-a-company-in-decline#

26 Wiriyapong, N. (2023, July 7). SEC files charges against Stark Corp for misconduct. *Bangkok Post*. Retrieved from https://www.bangkokpost.com/business/general/2607161/sec-files-charges-against-stark-corp-for-misconduct

27 The Business Times. (2023, July 6). Thai regulator files fraud charges against debt-ridden Stark. Retrieved from https://www.businesstimes.com.sg/international/asean/thai-regulator-files-fraud-charges-against-debt-ridden-stark

28 Department of Special Investigation. (2023, July 7). The DSI provide an update on the progress of the Stark Stock Case (Special Case No. 57/2566). Retrieved from https://www.dsi.go.th/en/Detail/e34fb66360cc0cc2186a1951f5aab66f

29 Reporters, P. (2023, July 22). DSI charges two Stark execs. *Bangkok Post.* Retrieved from https://www.bangkokpost.com/thailand/general/2615699/dsi-charges-two-stark-execs

30 Regalado, F. (2023, July 30). How Thailand's Stark covered up debt and losses at Vietnam Wire Maker. *Nikkei Asia.* Retrieved from https://asia.nikkei.com/Spotlight/Market-Spotlight/How-Thailand-s-Stark-covered-up-debt-and-losses-at-Vietnam-wire-maker

31 Vietnam News (2020, April 28). Thai Stark Corporation acquires Vietnamese cable makers in a $240m deal. *Vietnam News.* Retrieved from https://vietnamnews.vn/economy/715943/thai-stark-corporation-acquires-vietnamese-cable-makers-in-a-240m-deal.html

32 Regalado, F. (2023, July 30). How Thailand's Stark covered up debt and losses at Vietnam Wire Maker. *Nikkei Asia.* Retrieved from https://asia.nikkei.com/Spotlight/Market-Spotlight/How-Thailand-s-Stark-covered-up-debt-and-losses-at-Vietnam-wire-maker

33 *Ibid.*

34 *Ibid.*

35 *Ibid.*

36 Stark Corporation. (n.d.). Information Memorandum of Stark Corporation Public Company Limited Re: Acquisition of Assets Relating to Investment in LEONI Kabel GmbH (in Germany) and LEONIsche Holding Inc (in the United States). Retrieved from https://www.starkcorporation.com/web/wp-content/uploads/2022/09/2.-Enclosure-2-IM-Asset-Acquisition-EN-7SEP22-revised11SEP22.pdf

37 Regalado, F. (2023, July 30). How Thailand's Stark covered up debt and losses at Vietnam Wire Maker. *Nikkei Asia.* Retrieved from https://asia.nikkei.com/Spotlight/Market-Spotlight/How-Thailand-s-Stark-covered-up-debt-and-losses-at-Vietnam-wire-maker

38 Polkuamdee, N. (2023, June 13). Stark enters arbitration with two firms. *Bangkok Post.* Retrieved from https://www.bangkokpost.com. https://www.bangkokpost.com/business/general/2590519

39 Ellyatt, H. (2022, May 27). White House says Russia will likely default on debt; U.S. official says Moscow making 'incremental progress' in Donbas. *CNBC.* Retrieved from https://www.cnbc.com/2022/05/26/russia-ukraine-live-updates.html

40 Abraham, T.K. (2023, June 20). Thai Firm Cites Russian War in Ukraine to Exit €560 Million Deal. *Bloomberg.* Retrieved from https://www.bloomberg.com/news/articles/2023-06-20/thai-firm-cites-russia-ukraine-war-to-exit-560-million-deal?embedded-checkout=true

41 *Ibid.*

42 Regalado, F. (2023, June 20). Thai wire maker faces German arbitration, potential bond default. *Nikkei Aisa.* Retrieved from https://asia.nikkei.com/Business/Markets/Thai-wire-maker-faces-German-arbitration-potential-bond-default

43 Polkuamdee, N. (2023, June 13). Stark enters arbitration with two firms. *Bangkok Post.* Retrieved from https://www.bangkokpost.com/business/general/2590519/stark-enters-arbitration-with-2-firms

44 Stark Corporation. (2023, June 30). The Non-Payment of the Principal and Accrued Interest of Bonds Series Nos. STARK239A and STARK249A. Retrieved from https://weblink.set.or.th/dat/news/202306/0832NWS300620231945340747E.pdf

45 Stark Corporation. (2023, April 26). Clarification on actionsaccording to the event of defaultunder theTerms and Conditions of the Bonds of Stark Corporation Public Company Limited Retrieved from https://weblink.set.or.th/dat/news/202304/23046766.pdf

46 Stark Corporation. (2023, April 28). Notification of the Resolutions of the Bondholders' Meeting of the Bonds of Stark Corporation Public Company Limited. Retrieved from https://weblink.set.or.th/dat/news/202304/23048852.pdf

47 Stark Corporation. (2023, April 28). Notification of the Resolutions of the Bondholders' Meeting of the Bonds of Stark Corporation Public Company Limited No. 1/2022 Tranche 2 (STARK245A) and the Bonds of Stark Corporation Public Company Limited No. 1/2022 Tranche 3 (STARK255A). Retrieved from https://weblink.set.or.th/dat/news/202304/23048854.pdf

48 Stark Corporation. (2023, April 28). Notification of the Resolutions of the Bondholders' Meeting of the Bonds of Stark Corporation Public Company Limited No. 2/2022 due 2024 (STARK242A). Retrieved from https://weblink.set.or.th/dat/news/202304/23048858.pdf

49 Stark Corporation. (2023, April 26). Clarification on actionsaccording to the event of defaultunder theTerms and Conditions of the Bonds of Stark Corporation Public Company Limited. Retrieved from https://weblink.set.or.th/dat/news/202304/23046766.pdf

50 Stark Corporation. (2023, May 25). Clarification on the event of defaultunder theTerms and Conditions of the Bonds of Stark Corporation Public Company Limited. Retrieved from https://weblink.set.or.th/dat/news/202305/0832NWS250520232050470101E.pdf

51 Tangkaravakoon, V. (2023, May 25). Clarification on the Demand for the Principal and Accrued interest of Bonds Series Nos. STARK239A and STARK249A, and the Convocation of the Bondholders' Meeting No. 3/2023 for the Bonds Series Nos. STARK245A, STARK255A and STARK242A. Retrieved from https://storage-th-xbkk.stockradars.co/psims/News/202306/0832NWS150620232011590605E.pdf

52 Polkuamdee, N. (2023, June 22). Stark told to pay B6.9bn to bondholders. *Bangkok Post.* Retrieved from https://www.bangkokpost.com/business/2596863/stark-told-to-pay-b6-9bn-to-bondholders

53 SET. (2023, April 3). SET Index Series Announcement. Retrieved from https://weblink.set.or.th/dat/news/202304/23039548.pdf

54 Regelado, F. (2023, July 31). How Thailand's Stark covered up debt and losses at Vietnam wire maker. *Nikkei Asia.* Retrieved from https://asia.nikkei.com/Spotlight/Market-Spotlight/How-Thailand-s-Stark-covered-up-debt-and-losses-at-Vietnam-wire-maker

55 *Ibid.*

56 Stark Corporation. (n.d.). Annual Report. Retrieved from https://www.starkcorporation.com/web/annual_report/

57 *Ibid.*

58 *Ibid.*

59 Stark Corporation. (n.d.). Annual Report. Retrieved from https://www.starkcorporation.com/web/annual_report/

60 The National Corporate Governance Committee. (2017, October 24). Thai Corporate Governance Code for listed companies - 2017. *ECGI.* Retrieved from https://www.ecgi.global/sites/default/files/codes/documents/Thai%20cgcode%20EN.pdf

61 Stark Corporation. (n.d.). Annual Report. Retrieved from https://www.starkcorporation.com/web/annual_report/

62 *Ibid.*

63 Stark Corporation. (n.d.). Annual Report. Retrieved from https://www.starkcorporation.com/web/annual_report/

64 Inlakorn, S., Lhaopadchan, S., & Sabsombat, N. (2017, May 16). Board diversity in Thai publicly listed firms. Retrieved from https://weblink.set.or.th/dat/vdoArticle/attachFile/AttachFile_1495692931176.pdf

65 *Ibid.*

66 Languepin, O. (2023, February 9). Women on boards: Thai listed companies lad the way. *Thailand Business News.* Retrieved from https://www.thailand-business-news.com/companies/94365-women-on-boas-thai-listed-companies-lead-the-way

67 Stark Corporation. (n.d.). Annual Report. Retrieved from https://www.starkcorporation.com/web/annual_report/

68 *Ibid.*

69 *Ibid.*

70 Kaohoon International (2023, August 2). To what level does "Deloitte" involve in Thai market's biggest fraud scandal. *Kaohoon International.* Retrieved from https://www.kaohooninternational.com/markets/528922

71 Deloitte Thailand. (2014, November 27). As risks rise, boards respond: A global view of risk committees: Deloitte Thailand: Governance, compliance, risk oversight, risk committees. Retrieved from https://www2.deloitte.com/th/en/pages/governance-risk-and-compliance/articles/a-global-view-of-risk-committees.html

72 Stark Corporation. (n.d.). Corporate Governance Polic. Retrieved from https://www.starkcorporation.com/web/wp-content/uploads/2022/01/STARK_1-Corporate-Governance-Policy_en.pdf

73 Stock Exchange of Thailand. (n.d.). Rules and regulations for listed companies - The Stock Exchange of Thailand. Retrieved from https://www.set.or.th/en/rules-regulations/listed-companies

74 *Ibid.*

75 *Ibid.*

76 SET. (n.d.). Rules and Regulations. Retrieved from https://www.set.or.th/en/rules-regulations/search-result

77 Stark Corporation. (n.d.). Annual report 2021. Retrieved from https://www.starkcorporation.com/web/annual_report/

78 *Ibid.*

79 Stark Corporation. (2023, April 17). Notification of the Resignation of a director of the Company. Retrieved from https://weblink.set.or.th/dat/news/202304/23043129.pdf

80 Tangkaravakoon, V., & Tangeakchit, A. (2023, April 19). The organisational structure of the company. Retrieved from https://weblink.set.or.th/dat/news/202304/23044053.pdf

81 *Ibid.*

82 *Ibid.*

83 Simply Wall Street (n.d.) Stark Corporation Management. Retrieved from https://simplywall.st/stocks/th/capital-goods/set-stark/stark-shares/management

84 Stark Corporation. (2023, November 23). Notification of the Resignation of director of the Company. Retrieved from https://weblink.set.or.th/dat/news/202311/0832NWS231120231701110196E.pdf

85 *Ibid.*

86 Siam Legal International. (2022, November 10). Class action lawsuit in Thailand. Retrieved from https://www.siam-legal.com/litigation/class-action-lawsuit-thailand.php

87 Nation Thailand. (2023, June 25). Deadline is tonight for Stark shareholders to join lawsuit. *Nation Thailand.* Retrieved from https://www.nationthailand.com/business/trading-investment/40028837

88 Polkuamdee, N. (2023, June 7). Class action law to be used to protect Stark investors. *Bangkoj Post.* Retrieved from https://www.bangkokpost.com/business/general/2586564/class-action-law-to-be-used-to-protect-stark-investors

89 Nation Thailand. (2023, June 25). Deadline is tonight for Stark shareholders to join lawsuit. *Nation Thailand.* Retrieved from https://www.nationthailand.com/business/trading-investment/40028837

90 SET. (n.d.). Trading Signs. Retrieved from https://www.set.or.th/en/market/information/trading-procedure/trading-signs

91 *Ibid.*

92 *Ibid.*

93 *Ibid.*

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 *Ibid.*

98 Google Finance (2023). Thai Baht to United States Dollar. Retrieved from https://www.google.com/finance/quote/THB-USD?sa=X&ved=2ahUKEwigo9iRw8qCAxWZfGwGHdMvAUAQmY0JegQIBhAr&window=1Y

99 Stock Exchange of Thailand. (n.d.). Trading signs - The Stock Exchange of Thailand. Retrieved from https://www.set.or.th/en/market/information/trading-procedure/trading-signs

100 Stock Exchange of Thailand. (2023, May 19). C sign posted on Stark's securities. Retrieved from https://weblink.set.or.th/dat/news/202305/0832NWS180520230923420561E.pdf

101 The Business Times. (2023, July 9). Corporate scandals spark crisis of confidence in Thai market. Retrieved from https://www.businesstimes.com.sg/international/asean/corporate-scandals-spark-crisis-confidence-thai-market

102 Goh ,T. E. (2023, July 5). In Thailand, Stark fiasco damages investor confidence, regulators criticised. *Asia Asset Management*. Retrieved from https://www.asiaasset.com/post/27424-starkreact-gte-0704#:~:text="While%20the%20incident%20is%20an,speaking%20on%20condition%20of%20anonymity

103 Lin, J.M. (2018). The Evolution of Securities Law in Thailand. *The University of Chicago.* Retrieved from https://chicagounbound.uchicago.edu/international_immersion_program_papers/82/

104 Polkuamdee, N. (2023, June 23). Bourse, Sec eager to revamp listing criteria. Retrieved from https://www.bangkokpost.com/business/general/2597801/bourse-sec-eager-to-revamp-listing-criteria

105 Stark Corporation. (2024, April 17). Application for Debt Repayment under Phelps Dodge International (Thailand) Limited's Rehabilitation (revised). Retrieved from https://weblink.set.or.th/dat/news/202404/0832NWS180420241703510638E.pdf

106 Nguyen, A. (2024, February 15). Thai Tycoon Vonnarat Arrested for Missing Prosecutor's Summons Order in Stark Scandal. *Bloomberg.* Retrieved from https://www.bloomberg.com/news/articles/2024-02-12/thai-tycoon-vonnarat-arrested-for-missing-prosecutor-s-summons-in-stark-scandal

107 Nguyen, A. (2024, February 15). Stark's Ex-Chairman Has $69 Million of Assets Seized by Thailand. *BNN Bloomberg.* Retrieved from https://www.bnnbloomberg.ca/stark-s-ex-chairman-has-69-million-of-assets-seized-by-thailand-1.2035632

108 Ngamkham, W. (2024, April 29). Stark Corp suspects face huge asset seizures. *Bangkok Post.* Retrieved from https://www.bangkokpost.com/thailand/general/2783959/stark-corp-suspects-face-huge-asset-seizures

109 Yonpiam, C. (2024, February 11). Authorities nab Stark's acting CEO in financial misconduct case. Retrieved from https://www.bangkokpost.com/business/general/2739876/authorities-nab-starks-acting-ceo-in-financial-misconduct-case

110 SET. (n.d.). Company Profile. Retrieved from https://www.set.or.th/en/market/product/stock/quote/STARK/company-profile/information

111 The Business Times. (2024, June 23). Former Stark chairman in Thai detention after months on the run. Retrieved from https://www.businesstimes.com.sg/international/former-stark-chairman-thai-detention-after-months-run

112 Bangkok Post. (2024, June 24). Former Stark CEO charged, case with prosecutors. Retrieved from https://www.bangkokpost.com/business/general/2816829/former-stark-ceo-charged-case-with-prosecutors

SUPERMAX: NAVIGATING FAMILY TURBULENCE

Case overview

On 18 April 2023, Supermax Corporation Berhad (Supermax), one of the world's largest disposable glove manufacturers, came under the spotlight as Cecile Jaclyn Thai (Cecile), a non-independent non-executive director, voluntarily resigned, citing "bullying and silencing" from fellow board members. What sets her resignation apart is that she is the daughter of the company's co-founder and Executive Chairman, Dato' Seri Thai Kim Sim, Stanley (Stanley). It emerged that Cecile had opposed Stanley's proposal to acquire a new aircraft for RM210.32 million, leading to his intent to remove her from the board.

Adding to the company's challenges, earlier in October 2021, the US Customs and Border Protection imposed a ban on imports of disposable gloves manufactured by three wholly-owned subsidiaries of Supermax. This was in response to allegations of forced labour, debt bondage, and appalling living and working conditions.

The objective of this case study is to facilitate a discussion of issues such as the corporate governance practices of family-controlled companies; family disputes; board composition; role of independent directors; and environmental, social and governance (ESG) issues.

Supermax's humble beginnings

Supermax Corporation Berhad (Supermax), headquartered in Sungai Buloh, Malaysia, began its journey as a trading business distributing latex gloves in 1987. Over the years, it has evolved into a world-class latex glove conglomerate with exports to over 160 countries worldwide.[1] The company was founded by its current Executive Chairman (EC), Dato' Seri Thai Kim Sim, Stanley (Stanley), and his wife, Datuk Wira Cheryl Tan Bee Geok (Cheryl).[2] Supermax is primarily engaged in the production, distribution, and promotion of medical products, with a strong focus on medical gloves and contact lenses. The company has expanded its reach to Canada and the US, catering to diverse markets including dental, pharmaceuticals, and veterinary services.[3] Furthermore,

---

This case study was originally prepared by Joel Keandre Tan, Khaarthik Kumar Amuddhu, Koh Yan Qi, Li Yangyang and Lim Zhi Shin. It has been edited by 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.

Supermax owns subsidiaries in various industries, such as Supermax Energy Sdn. Bhd., which specialises in biomass energy generation.[4]

Supermax was listed on the Main Board of Bursa Malaysia on 4 July 2000. In October 2020, the company initiated a dual listing on SGX, driven by increased earnings during the COVID-19 pandemic.[5] However, it encountered challenges regarding the feasibility of utilising the company's treasury shares for secondary listing and has temporarily put the plan on hold.[6]

The shareholders

Ownership of Supermax is distributed among the general public, corporations, institutions, and individual insiders. As of FY2023, Supermax Holdings Sdn Bhd has the largest shareholding in the company, owning 40.29%. As Supermax Holdings Sdn Bhd is under the control of Stanley and his spouse, Cheryl, they have an indirect interest of 40.29% in Supermax. In addition, two family members also own shares in Supermax. Stanley's daughter, Cecile Jaclyn Thai (Cecile), holds 0.008% of the shares, while his nephew, Tan Chee Keong, owns 0.037%. In total, Stanley's family collectively owns 40.34% of Supermax's shares.[7]

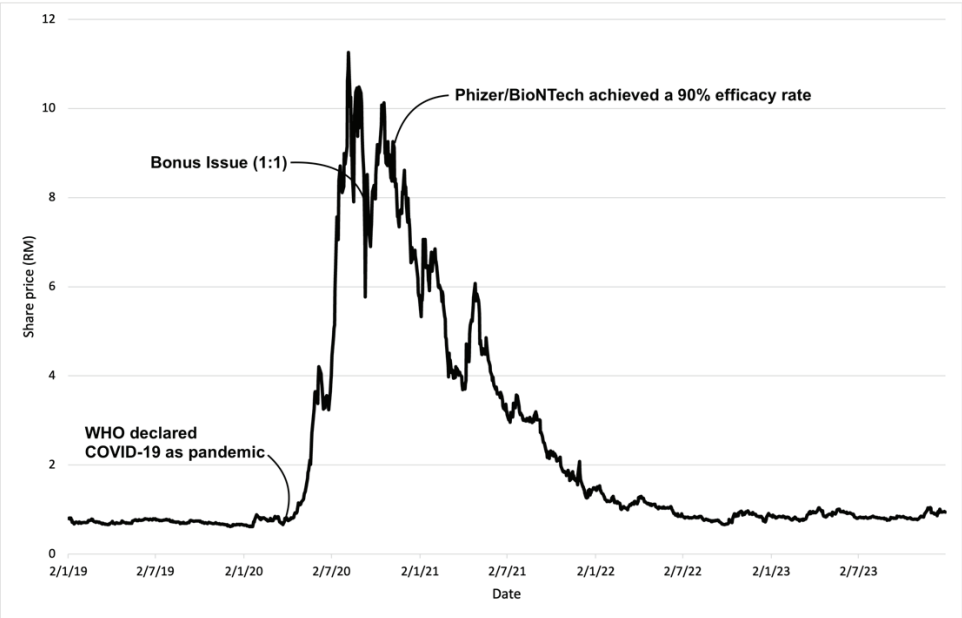
Among the institutional investors, Hong Leong Asset Management Bhd owns 2.94%, making it the second largest shareholder. The two next largest shareholders are The Vanguard Group and the Employees Provident Fund Board of Malaysia which hold 2.35% and 1.05% of the shares respectively.[8]

Share price trajectory

Supermax's share price was around RM 0.70 before the onset of the COVID-19 pandemic. During the pandemic, Supermax leveraged its strong presence in the medical equipment industry and capitalised on the demand surge, which led to its share price peaking at an all-time high of RM24.44.[9] This led Supermax to conduct a one-for-one bonus issue on 8 September 2020.[10] However, the company's performance began to decline around mid-2021, following the announcement of effective vaccines and the pandemic gradually became the new normal. As of 29 December 2023, Supermax's share price was trading at RM0.94.[11]

Figure 1 shows the fluctuations in Supermax's share price over the past five years.

Figure 1: Supermax's share price[12]



Source: Yahoo! Finance. (n.d.). Supermax Corporation Berhad.

From heiress to warrior: the journey of Cecile

With a diverse educational background spanning economics, entrepreneurship, strategic management and marketing management, Cecile is the eldest daughter of Supermax's founders, Stanley and Cheryl.[13] Prior to joining Supermax, Cecile had a stint at Mercer Investments, where she offered investment consulting services to Fortune 500 corporations throughout the US.[14]

On 2 January 2018, Cecile was appointed as Supermax's executive director (ED), succeeding Stanley and Cheryl, who had resigned from their positions as board EC and ED, respectively.[15] Their resignations were the result of their convictions for insider trading offences relating to the shares of APL Industries Bhd (APLI).[16] Stanley, the then-CEO at APLI, allegedly communicated non-public information related to audit adjustments proposed by APLI's auditor to his remisier during an 11-minute phone conversation.[17] Following this, 6.21 million APLI shares that belonged to Stanley's mother and mother-in-law were disposed.[18] A five-year jail sentence and RM5 million fine imposed by the Sessions Court in 2017 on Stanley, leading to his disqualification as a director of Supermax.[19] However, Stanley's conviction was subsequently overturned by the Malaysian High Court, which ruled that it was "not safe" to conclude that he was involved in insider trading based solely on the phone call, and there was insufficient evidence that the purported call pertained to insider information.[20] Following his acquittal, Stanley resumed his position on the Supermax board as EC, effective from 8 December 2021.[21]

In an interview conducted one month after Stanley's conviction which resulted in his resignation, he emphasised that the family would maintain a significant role, affirming, "I built this business for the next generation".[22] Cecile had been groomed to step into her parents' roles as part of the company's succession planning. At that time, she served as the Chief Executive Officer (CEO) of Aveo Vision, a division of Supermax's wholly-owned subsidiary, Supermax Healthcare Incorporated.[23] She spearheaded all aspects of the US contact lens business while also overseeing the development and execution of Aveo Vision's comprehensive global marketing strategy.[24] However, in January 2022, Cecile made the decision to shut down Aveo Vision's contact lens business in the US.[25]

The resignation letter bombshell

Cecile continued to serve on the board as an ED until 28 February 2022, when she was redesignated to a non-independent non-executive director (NINED).[26] On 16 April 2023, Cecile submitted her resignation letter to Supermax's board, detailing the reasons behind her decision to step down from the position. She alleged that she was bullied and silenced by other board members, including Stanley, as she tried to fulfil her fiduciary duties.[27] This drew public attention to Supermax's corporate governance practices.

The epic showdown

> "To my disappointment, my upholding of my fiduciary responsibility has resulted in my experiencing bullying and silencing from other Members of the Board, including the Executive Chairman, over the past 17 months."
>
> – *Cecile Jaclyn Thai, former NINED of Supermax*[28]

Aircraft turbulence

Cecile's resignation letter detailing the controversial purchase of an aircraft brought the family drama into the public spotlight. The month prior to his re-appointment as EC, Stanley proposed the purchase of a new Falcon X private jet for RM210.32 million. The aircraft was to be acquired by Maxter Glove Manufacturing Sdn Bhd, a subsidiary of Supermax, to replace another aircraft purchased just a year earlier. Cecile believed that the purchase was not in the best interest of the company.[29]

Following Cecile's opposition to the proposal, Stanley expressed his intention to remove her from the board. Cecile informed the board via email that she had no intention of stepping down. However, her father responded that the only available position for her would be a non-executive role, without providing any justification. Cecile believed that the decision to remove her initially and then to redesignate her had been made by Stanley back in November 2021 as a direct response to her opposition to the proposed acquisition of the new aircraft.[30]

Who pushed the eject button?

The true reason for Cecile's removal and redesignation was murky. According to Cecile, it stemmed from her refusal to sign the Directors' Written Resolution to approve the proposed acquisition of the new aircraft. However, the board refuted this claim.[31] Supermax director Ting Heng Peng (Ting) explained that Stanley's decision to remove Cecile was primarily due to his return to the board as the EC. Ting further noted that the presence of too many EDs, particularly family members, would be inconsistent with good corporate governance practices.[32]

Since Cecile refused to step down, she was redesignated as a NINED. The reason given to the public was the closure and the cessation of her role as CEO of Aveo Vision. However, Cecile believed that her position as an ED had never been solely tied to the contact lens business. The board again refuted this, asserting that it was Cecile's unilateral decision to shut down Aveo Vision. Consequently, she no longer held any executive role within the group, making her continued position as an ED unjustifiable, leading to her redesignation as a non-executive director.[33]

Bullying or misunderstanding?

Amidst the disagreement over the aircraft purchase, a series of incidents transpired, leading Cecile to accuse the board of employing bullying and silencing tactics. Her allegations, outlined chronologically, were rebutted point-by-point by the board on 20 April 2023, three days after Cecile's initial announcement. This rebuttal attempted to provide a different perspective to all the incidents raised in Cecile's letter[34]

Confusion of roles?

In February 2022, following Cecile's redesignation from ED to NINED, she expressed concerns about Stanley being given sole authority as the single authorised person for Supermax's bank account. Cecile believed that this decision was not aligned with good corporate governance practices and financial accountability. She requested a meeting to be arranged by the Audit Committee (AC) to establish clearer guidelines on fiduciary duties and governance matters, but her request went unanswered.[35]

While acknowledging that Cecile had raised the issue of Stanley being the sole authorised person for Supermax's bank account during a meeting, the board clarified that she had inadvertently confused the roles of "authorised person" and "authorised signatory". Cecile was assumed to have understood that being the single "authorised person" had only conferred Stanley the right to deal with the banks, but not the authority associated with being the "authorised signatory". The board emphasised that the company's banking records could confirm that there had always been multiple authorised signatories for all its bank accounts.[36]

Sorry, authorised personnel only!

In May 2022, Supermax's held an in-person Remuneration Committee (RC) meeting, with the option to attend via Zoom. Despite being a member, Cecile claimed that she was denied admission and kept in the Zoom waiting room until the meeting concluded. She was subsequently excluded as a member of the newly merged Nomination and Remuneration Committee (NRC) without any explanation, leaving her as the only former member of the two committees who was excluded from the new merged committee. Her request for a valid justification went unanswered at that time.[37]

In response to Cecile's allegation of denial of Zoom access to the RC meeting, the board explained that the preceding board committee meetings had overran, causing a delay in the starting time of the RC meeting. Additionally, technical issues or an unstable internet connection caused Cecile to appear on and off-screen, leading the committee to believe that she was present, despite her insistence that she was not. The board clarified that there was no intention to keep her waiting or deny her admission to the meeting. They attributed the situation to a series of unfortunate circumstances. Furthermore, the board stated that a replacement meeting was conducted about a month later, on 28 June 2022, which all committee members attended.[38]

Regarding the removal of Cecile from the newly merged NRC, the board explained that it was based on their view that board committees should ideally consist of independent non-executive directors (INEDs) to avoid conflicts of interest and uphold good corporate governance. Since Cecile was classified as non-independent, she was excluded from the new structure. However, the board did not specify whether this had been communicated to Cecile.[39]

To "apply" or to "depart", that is the question

Cecile raised other concerns about the company's corporate governance. In October 2022, Cecile suggested that the company should disclose in the corporate governance report its departure from Practice 1.6 of the Malaysian Code on Corporate Governance (MCCG) which states that "Directors receive meeting materials, which are complete and accurate within a reasonable period prior to the meeting. Upon conclusion of the meeting, the minutes are circulated in a timely manner."[40] However, a board member opposed this, fearing that such disclosure might create a negative impression among stakeholders. To complicate matters, Cecile's comment was omitted from the minutes of the board meeting, and her feedback to the company secretary was allegedly disregarded.[41]

The board, however, explained that her view was considered and the term "applied" was used in the report based on the majority's opinion. Nevertheless, the board acknowledged that its governance could be improved and agreed to circulate the meeting materials at least two to three business days before the meeting. Moreover, her comments on the draft minutes had been amended accordingly with no further comments received from any directors. As such, the minutes ought to be deemed as complete.[42]

Was Cecile muted?

At the company's Annual General Meeting (AGM) held in December 2022, a shareholder raised a question about the audited financial statements, particularly relating to the aircraft purchase. However, when Cecile attempted to respond, the EC and another board member prevented her from speaking and shifted the discussion away from the topic.[43]

The board explained that questions from the floor were typically answered by the Chairman or directed to the most appropriate individuals. Nonetheless, as Cecile herself had noted in her letter, she did eventually answer the shareholder's question. Therefore, the board concluded that her claim of being prevented from responding was untrue.[44]

More disputes

More disputes pertaining to meetings and minutes surfaced. In August 2022 and February 2023, the quarterly board of directors' meetings were allegedly rescheduled with minimal notice to dates that Cecile had previously stated she would not be available to attend. She therefore missed two of the quarterly meetings held in FY2023. Further, Cecile claimed that she was denied access to the draft minutes of the board meeting held in 16 February 2023 which she was unable to attend. The meeting minutes were shared with her only after her fourth request, five weeks after the meeting took place.[45]

Regarding Cecile's claim about the last-minute rescheduling of board meetings that resulted in her missing two of the quarterly meetings, the board argued that it was due to unforeseen circumstances. The August 2022 rescheduling was a result of auditors requiring additional time to prepare for the meeting, while the rescheduling in February 2023 was due to delayed overseas financial accounts. The board explained that alternative dates were proposed for both meetings, but it was unfortunate that Cecile was unavailable on any of the dates. The need to urgently address the matters to be considered by the board required management to select meeting dates when the majority of directors could attend.[46]

The board also refuted Cecile's claim that she was denied access to the draft minutes, saying it was an unfair assertion. It explained that the delay was due to the minutes having to pass through the company secretary, management, and the EC before being disseminated to the board members. This process, especially during a busy reporting period, made timely distribution challenging, although it acknowledged that there was room for improvement.[47]

What's behind the scenes?

> "It is good that Cecile went public. Blood is thicker than water, but governance should be thicker than blood."
>
> *– Professor Mak Yuen Teen, Corporate Governance Advocate*[48]

Cecile's resignation letter raised potential red flags in Supermax's corporate governance. Although the point-by-point rebuttal by the board presented a different version of the events, they did acknowledge that there is room for improvement in the corporate governance of the company.

Other family members join the fray

It turned out that Cecile was not the only family member who opposed Stanley's proposal to acquire the aircraft. Cecile's younger sister, Aurelia Joie Thai (Aurelia), also opposed her father's proposal.[49] Aurelia held the position of director at Supermax Healthcare Limited, a wholly-owned subsidiary of Supermax. Her act of defiance led Stanley to attempt to remove her from her position.[50]

In response, Aurelia filed an injunction in March 2023, seeking to prevent Stanley and three other committee members from convening a NRC meeting to discuss whether Aurelia should remain in her role as a director of the subsidiary. The meeting, originally scheduled for 15 March 2023 was postponed to 31 May 2023. Aurelia's affidavit supporting the application alleged that the committee had faced pressure from Stanley to assess her suitability to remain as the subsidiary's director.[51] Aurelia further claimed that her father's professional conduct in his business relationships with family members, especially in Supermax's operations, had deteriorated since May 2021, following the oversupply situation post-COVID.[52] Aurelia subsequently resigned from her directorial position on 30 May 2023. The reason for her resignation remains undisclosed.[53]

Mum's the word

On 7 December 2023, just a day before Supermax's AGM, Stanley's wife and Supermax's co-founder Cheryl criticised the company's corporate governance, emphasising the necessity for a "balanced board with more independent directors with the right mindset to provide checks and balances"[54] to steer the company forward. Supermax had incurred losses for the fourth consecutive quarter as of 30 September 2023. While the company attributed the loss to prolonged weak demand from an overstocked post-pandemic period and the imposition of a withhold release order by the US Customs and Border Protection in October 2021, Cheryl believed that the recent purchase of private aircraft and a decrease in productivity also contributed significantly to the company's quarterly loss.[55]

In response to Cheryl's comment, Supermax clarified that "neither the company nor its management, or any of the board members of Supermax are in any way responsible for any claims made in the article or the correctness of the content therein".[56] It further emphasised that shareholders without any management role or position in the company's board have no authority to make any official statement on its behalf.[57] Cheryl previously held the role of ED at Supermax but no longer holds any managerial position in the company.

Behind the gloves

On 18 December 2023, Supermax announced a new organisational structure that includes significant changes to its key management personnel and the appointment of new members to its board. The company appointed a new Chief Operation Officer, Chief Quality Assurance and Regulatory Affairs Officer, and four new directors to its board. Following the changes to the board, Supermax's board consists of 10 members, as shown in Figure 2 below.[58,59]

Figure 2: Supermax's list of board members[60,61]

Name	Role	Key Expertise and Qualifications
Dato' Seri Thai Kim Sim Stanley	Founder and Executive Chairman (Appt Date: 8 Dec 21)	• Glove manufacturing • Bachelor of Commerce
Tan Chee Keong	Senior executive director and CEO (Appt Date: 2 Jan 24)	• Glove manufacturing • Strategic planning • Bachelor of Computing and Information Systems
Albert Saychuan Cheok	Independent non-executive director (Appt Date: 19 Oct 18)	• Mainly banking and finance • Board experience in energy, technology and electronics, real estate, mining, aviation, and hospitality • Chartered public accountant • Bachelor of Economics
Dato' Ting Heng Peng	Non-independent non-executive director (Appt Date: 21 Oct 22)	• Legal • Board experience in glove manufacturing, technology, real estate, construction, and healthcare • Bachelor of Law and Commerce
AR. Eisen Ng Keng Lim	Independent non-executive director (Appt Date: 19 Oct 18)	• Architecture and design • Bachelor of Architecture
Puan Rozita Binti Abdul Rahman	Independent non-executive director (Appt Date: 3 Jan 23)	• Legal • Diploma in Shariah Law & Practice • Bachelor of Law
Gan Kim Khoon	Independent non-executive director (Appt Date: 2 Jan 24)	• Banking and finance • Chartered accountant • Master of Business Administration
Wong Phait Lee	Independent non-executive director (Appt Date: 2 Jan 24)	• Corporate finance, investments, M&A, and strategic planning • Bachelor of Commerce in Accounting and Finance

Name	Role	Key Expertise and Qualifications
Yap Lang Ling	Independent non-executive director (Appt Date: 2 Jan 24)	• Professional services procurement, manufacturing operations and system engineering, and risk management • Board experience in real estate and private equity • Bachelor of Economics, M.Sc. in Human Resource Management, and Ph.D. in Service Supply Chain Management
Yip Kit Weng	Independent non-executive director (Appt Date: 2 Jan 24)	• Banking and finance • Board experience in financial services and technology • Chartered accountant and certified financial planner • Bachelor of Commerce in Accounting and Finance

Source: Supermax Corporation Berhad. (2023). Annual report 2023. & Supermax Corporation Berhad. (2023, December 18). Supermax Restructures with Appointment of New CEO and COO To Drive Synergy Across Malaysia-US Operations.

Board independence

According to MCCG Practice 5.2, large companies are recommended to have a majority of independent directors (IDs) on their board.[62] As of January 2024, seven out of the ten directors are IDs. MCCG Practice 5.3 also outlines criteria to be considered as an ID. For example, the directorship tenure should not exceed a cumulative term of nine years, otherwise, annual shareholders' approval is required through a two-tiered voting process, as outlined in Paragraph 3.1.5.2 of the Supermax Board Charter.[63] All IDs of Supermax have tenures of less than six years.

Under Paragraph 3.1.5.2 of the Supermax Board Charter, INEDs must be redesignated as NINEDs upon reaching a cumulative term 12 years if they remain on the board. This is in compliance with the enhancements made to the Main and ACE Market Listing Requirements aimed at improving board independence.[64,65] Ting has held the role of INED for over 22 years, with justification provided by the NRC, and a two-tier voting process conducted at the AGM. On 21 October 2022, Ting was redesignated as NINED.[66]

Board diversity

The main areas of diversity that Supermax has disclosed in its corporate governance report are gender, age, and ethnicity. MCCG Practice 5.9 recommends that a company's board comprise at least 30% women directors.[67] As of January 2024, three out of ten of Supermax's directors are female, namely, Puan Rozita Binti Abdul Rahman (Rozita), Wong Phait Lee (Wong), and Yap Lang Ling (Yap). While there are no specific guidelines on the other aspects of diversity, the board comprises three members in each of the 41-50 and 51-60 age brackets, and four members aged 61 and above. All except one director is of Chinese ethnicity.[68]

Board changes

Between 30 June 2022 and 31 December 2023, four Supermax board members departed, while four new members joined the board. Apart from Cecile who resigned, Dr. Rashid Bin Bakar (Rashid), Tan Poh Chan (Tan) and Sung Fong Fui (Sung) retired without seeking re-election, with Sung citing personal commitments and increased workload in another publicly listed company.[69,70]

Rozita became an ID on 3 January 2023 and has a legal backtround, similar to Rashid who left. Gan Kim Khoon (Gan), Yip Kit Weng (Yip), Wong, and Yap joined as IDs on 2 January 2024. The banking and finance backgrounds of Gan, Yip, and Wong were similar to two departed Sung and Tan. Yap brought experience in risk management, human resources, and procurement.

Board committees

Supermax's board has established three board committees – the NRC, the Risk Management & ESG Committee (RMESGC), and the AC. All three committees are chaired by an ID.[71]

Nomination & Remuneration Committee

Before merging with the RC, the NC was responsible for appointing and re-appointing directors, evaluating directors' training needs, and assessing directors' performance and effectiveness.[72] It also supports the board in the annual review of the necessary mix of skills, experience, and core competencies for directors to fulfil their duties.

In August 2022, the NC was merged with the RC, which primarily focuses on reviewing remuneration packages, to form the NRC.[73] However, according to Cecile's resignation letter, this merger occurred without due deliberation, and she was the sole director being removed from the newly integrated NRC.[74] Nevertheless, Supermax asserts that this restructuring had received majority approval from the board of directors and was aimed at strengthening the company's corporate governance by including only IDs to mitigate conflicts of interest.[75]

Risk Management & ESG Committee

Established in August 2022 through the merger of the existing Risk Management Committee and the newly formed ESG Committee, the RMESGC is responsible for risk oversight.[76] This committee conducts periodic reviews of the risk management processes and oversees the formulation of guidelines to enhance the effectiveness of risk management. The RMESGC also assists the board in fulfilling its oversight responsibilities regarding sustainability. This includes establishing strategies, priorities, targets, as well as implementing initiatives to address ESG matters and material sustainability risks and opportunities.[77]

Audit Committee

The AC oversees financial matters and helps ensure accountability and transparency.[78] Its key responsibilities include the review of quarterly results and year-end financial statements before board approval. The appointment, resignation, conduct, and audit plans of both the internal and external auditors are also reviewed by the AC. Additionally, the AC examines related party transactions and potential conflict of interest situations. It also oversees the company's internal control system.[79]

Audit committee chairman in the spotlight

Supermax adheres to Practice 9.4 of the MCCG which recommends that the AC should comprise solely of IDs. The current AC compromises the Chairman, Albert Saychuan Cheok (Cheok), and two other members, Gan, and Wong.

Cecile's allegation that the AC ignored her request to convene a meeting and provide specific guidance concerning Stanley's sole authority for the company's bank account turned the spotlight on the AC.[80]

It turned out this was not first time that Cheok or companies he has been a director of have been involved in controversies.

Dodged the first bullet!

Cheok served as an ID of Metal Reclamation Bhd (MRB) during its listing on Bursa Malaysia (BM) from 1998 to 2015. In September 2016, MRB faced a public reprimand by BM for violating Main Market Listing Rules

due to delayed announcements of credit facility defaults by its subsidiary in 2014.[81] However, BM concluded that the sole ED of MRB, Lim Cheng Sang (Lim), was the primary party responsible for assessing the need for an immediate announcement in the event of defaults in payment. Lim was hence the sole individual who was personally sanctioned and he was fined RM100,000.[82]

Cheok was not personally subjected to any sanction by BM. He continued to serve as the vice president of the board of governors of the Malaysian Institute of Corporate Governance until his retirement in 2020. Cheok's directorships in companies listed on the Australia, Hong Kong, and Malaysia stock exchanges remained unaffected.[83]

Hit by the second bullet!

In November 2016, Cheok was found to be in breach of disclosure obligations under the Hong Kong Securities and Futures Ordinance (SFO).[84] The breach was in relation to late disclosure of inside information in 2012 while he was Chairman and ID of AcrossAsia Limited (Accros Asia). Cheok admitted his negligence in the delayed disclosure of information following a petition filed by AcrossAsia's subsidiary and a major creditor against AcrossAsia, along with a related court summons arising from insolvency proceedings.[85]

> "The market misconduct here was very much towards the bottom of the scale."
>
> – *Market Misconduct Tribunal (MMT) of Hong Kong*[86]

The MMT concluded that Cheok was fully aware of the potential severe consequences of the breach, as cautioned by the company's Indonesian counsel.[87] These consequences include serious material adverse effects such as the seizure of company's assets, winding up procedures, and the loss of listing status. The lack of timely disclosure left public investors uninformed about the potential insolvency of AcrossAsia, the risk of losing control over its major assets, and the subsequent significant increase in its financial risks.[88]

Cheok was fined HK$800,000 and mandated to undergo a training program regarding compliance with inside information disclosure requirements.[89] The company's trading was suspended due to the market misconduct, and its share price plunged 22.5% when trading resumed in the following month.[90]

From courtroom to boardroom tussle

In 2021, Cheok was embroiled in a boardroom tussle at MC Payment (now OxPay Financial Limited), a company listed on the Singapore Exchange (SGX). The conflict involved MC Payment's controlling shareholder, Ching Chiat Kwong (Ching), who raised corporate governance concerns shortly after Cheok's appointment as MC Payment's non-executive Chairman and ID on 18 February 2021.[91]

On 4 May 2021, Ching issued his first requisition notice, proposing a resolution urging the board to convene an Extraordinary General Meeting (EGM) and appoint five additional directors.[92] Despite Ching's repeated request, MC Payment's board failed to disclose the requisition notice to the shareholders. Additionally, Ching criticised the board for multiple delays in making SGX announcements regarding the receipt of his requisition notice, a move he alleged was aimed at postponing the EGM for the appointment of new directors. On 6 May 2021, Ching received an email from Cheok in which the former was referred to as a "cunning fox", implying deceitful or underhanded behaviour. Ching stated that such conduct was not what he expected from the Chairman of a listed company. Although Cheok promptly clarified that he intended it as a compliment, Ching chose to omit his response.[93]

On 31 May 2021, Ching issued his second requisition notice proposing the removal of five existing directors of MC Payment, including Cheok. Once again, the company opted not to disclose this to the shareholders. Consequently, Ching expressed a loss of confidence in Cheok's leadership stemming from his perception that

Cheok conflated the roles between executive management and the board. Ching emphasised the crucial need to maintain clear distinctions between executive and board roles to uphold effective corporate governance.[94]

> "I have completely lost confidence in the current Board. I believe that there is a marked lack of character and integrity in the way that the current Board has treated its shareholders and has conducted the Company's affairs. I am unable to support the Company under this sort of leadership."
>
> *– Ching Chiat Kwong, Controlling Shareholder of MC Payment*[95]

The tussle concluded during company's EGM held on 30 June 2021, with Cheok and four of the five other existing directors resigning from the board. Shareholders voted in favour of the resolution to appoint the five proposed directors to the board.[96]

Plunging into an ESG crisis

> "Until Supermax and its subsidiaries can prove their manufacturing processes are free of forced labour, their goods are not welcome here."
>
> *– AnnMarie R. Highsmith, Executive Assistant Commissioner of CBP*[97]

In October 2021, the US Customs and Border Protection (CBP) imposed an import ban on Supermax due to alleged forced labour practices.[98] This followed a petition lodged by a labour rights activist, Andy Hall, based on his interviews with Supermax's workers, alleging appalling living and working conditions.[99]

Following an investigation, CBP concluded that 10 out of 11 forced labour indicators outlined by the International Labour Organization applied to Supermax's manufacturing operations. These indicators include excessive working hours, physical and sexual violence, and abusive working and living conditions. Supermax and its subsidiaries were alleged to be in violation of US trade law, leading to the issuance of a "Withhold Release Order" banning imports from Supermax.[100]

Damage control

In response to the US ban, Supermax implemented a new Foreign Worker Management Policy and enhanced its human resource practices to align with the International Labour Organization standards.[101] The company adopted a zero-cost recruitment policy and introduced an equal pay and benefit structure for foreign workers, eliminating any discriminatory practices by matching them with local workers. It also raised its minimum wage to RM1,400 for workers across all categories. Further, remediation payments were made for eligible former foreign workers, with ongoing refurbishment initiatives aimed at enhancing facilities in its dormitories.[102]

As a result, the US lifted the gloves import ban on Supermax.[103] According to CBP, the implemented labour enforcement measures have significantly improved the living and working conditions for tens of thousands of workers, including the repayment of over RM234.72 million in withheld wages and recruitment fees that had previously entrapped workers in debt bondage. Supermax was allowed to resume exporting gloves to the US, which accounts for 20% of its total sales.[104]

Who oversees ESG?

Supermax has established a sustainability governance structure comprising the board of directors, the RMESGC and the ESG Working Committee.[105] The board of directors is responsible for establishing sustainability goals and ensuring the alignment of sustainability practices with the company's overall strategy. This role includes

providing strategic guidance for sustainability initiatives, monitoring progress, and overseeing sustainability performance.[106]

The RMESGC spearheads sustainability initiatives and drives ESG performance by developing policies and frameworks to manage ESG-related risks. It is also tasked with monitoring compliance with relevant regulations and standards, as well as recommending and guiding the company's sustainability practices.[107]

The RMESGC oversees the ESG Working Committee, which comprises senior management members,[108] and is responsible for integrating sustainability considerations into daily operations.[109] Its primary focus is implementing ESG practices across diverse business units while actively monitoring and reporting on sustainability performance indicators. Through collaboration with various departments, the committee ensures the integration of sustainability practices into business operations and effectively communicates sustainability efforts to stakeholders.[110]

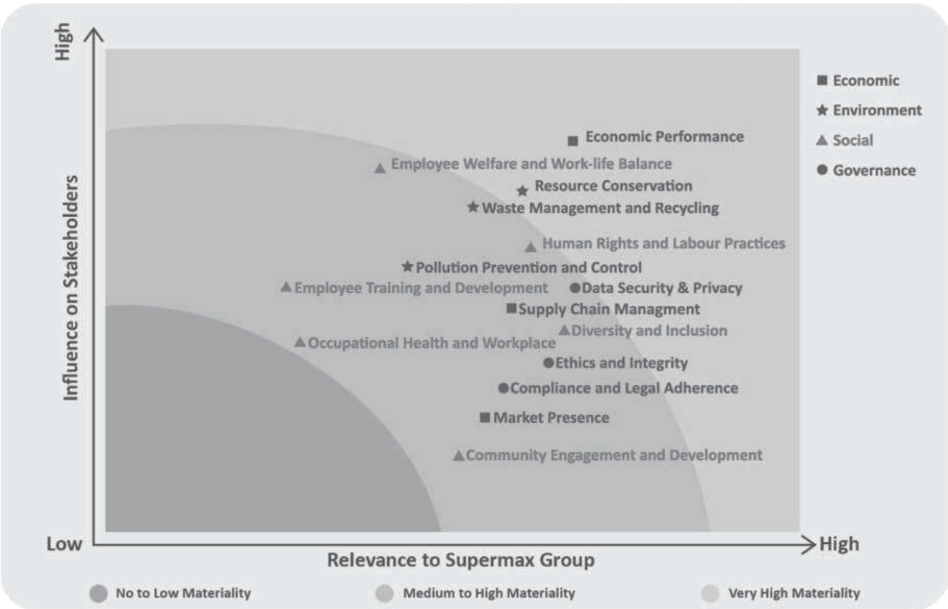
Revenue is all it takes?

Following the import ban, Supermax's RMESGC has published two annual standalone sustainability reports to demonstrate its commitment to sustainability.[111] The reports align with BM's revised Main Market Listing Requirements on sustainability and the reporting guidelines set by the Global Reporting Initiative (GRI).[112]

To identify the key ESG factors, Supermax conducts an annual materiality assessment, highlighting 15 material sustainability matters as shown in Figure 3 below. These matters are categorised into four areas: economic, environment, social, and governance. Within each area, Supermax further classified these material matters into three distinct rankings: no to low materiality, medium to high materiality and, and very high materiality.[113]

Economic performance was ranked top as "very high materiality" in the matrix, followed by resource conservation, which is an environmental indicator. According to GRI 201-1, economic performance is measured by the direct economic value generated and distributed, with revenue being the primary contributor.[114] In contrast, social factors were classified as "medium to high materiality". Social factors encompass aspects such as employee welfare and work-life balance, human rights and labour practices, occupational health, and the workplace.[115]

Figure 3: Supermax's materiality matrix[116]



Source: Supermax Corporation Berhad. (2023). Annual Report 2023.

Are the good times back?

Supermax's financial performance between 2020 to 2022 benefitted significantly from the surge in demand for gloves due to COVID-19. However, the subsequent fall in demand took a toll on its performance and that of other glove manufacturers. Supermax's revenue plummeted by 69% from RM2.69 billion to RM821 million from 2022 to 2023, resulting in a loss of RM171 million in 2023 as compared to a profit of RM757 million in 2022.[117]

When news on the US import ban became public on 21 October 2021, Supermax's share price fell by 5.86%, from RM1.98 to RM1.87.[118] Following Cecile's resignation from the board of directors on 18 April 2023[119] and the revelations of the conflicts between Cecile and the other board members,[120] the share price fell by 11.86% in just 2 days, from RM0.97 to RM0.86. When the US lifted its ban on Supermax's gloves on 20 September 2023,[121] the company's share price increased by 5.56% in one day, rising from RM0.81 to RM0.86.

Are Supermax's corporate governance troubles behind it? Is it equipped to perform well given the intense competition in the glove manufacturing business and the focus on ESG?

Discussion questions

1. What are the major corporate governance challenges in family-controlled companies like Supermax? In the case of Supermax, what are possible factors that led to the disagreements between Stanley Thai and other family members, and what measures can family businesses implement to mitigate the risks of such conflicts?
2. Critically evaluate the structure of Supermax's board before and after the board changes, including the committee structure.
3. What are the major issues relating to independent directors in a company like Supermax? Do you think the directors of Supermax acted independently? Explain.
4. Summarise and critically evaluate the concerns raised by Cecile and other family members and the board's response.
5. Do you think it is justified for a company like Supermax to own a corporate aircraft? How should a board evaluate such a decision? Which board committee should be primarily responsible in supporting the board in making such a decision? What do you think of the decision of the Supermax board to replace the aircraft?
6. Evaluate the actions undertaken by Supermax in response to the US Customs and Border Protection's import ban. What are the major challenges faced by companies such as Supermax which operate or sell their products in markets around the world?
7. How should a company undertake the materiality assessment of ESG or sustainability-related factors? Compare the results of Supermax's materiality assessment with its major competitors in Malaysia, Top Glove, Hartalega and Kossan Rubber. What are the key differences? How can a company ensure that its materiality assessment accurately capture what sustainability-related factors are most important to it?

Endnotes

1 Supermax Corporation Berhad. (n.d.). About us. Retrieved from http://www.supermax.com.my/html/corporate_info.aspx?ID=110&PID=111

2 *Ibid*.

3 Supermax Canada Group. (n.d.). Business Opportunities. Retrieved from https://supermaxcanada.com/en/business-opportunities/

4 Supermax Corporation Berhad. (2023). Annual Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

5 Yunus, R. (2020, October 28). Supermax seeks dual listing on SGX as Covid-19 boost earnings. *The Malaysian Reserve*. Retrieved from https://themalaysianreserve.com/2020/10/28/supermax-seeks-dual-listing-on-sgx-as-covid-19-boosts-earnings/

6 Adilla, F. (2021, May 7). Supermax puts SGX listing on back burner. *New Straits Times*. Retrieved from https://www.nst.com.my/business/2021/05/688513/supermax-puts-sgx-listing-back-burner

7 Supermax Corporation Berhad. (2023). Annual Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

8 *Ibid*.

9 The Edge Markets. (2020, August 7). Supermax market cap tops RM30b as share price jumps to record high. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/supermax-market-cap-tops-rm30b-share-price-jumps-record-high

10 Supermax Corporation Berhad. (2020, August 18). Bonus Issue. *Bursa Malaysia*. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3078558

11 KLSE Screener. (n.d.). SUPERMX 7106. Retrieved from https://www.klsescreener.com/v2/stocks/view/7106

12 Yahoo! Finance. (n.d.). Supermax Corporation Berhad. Retrieved fromhttps://finance.yahoo.com/quote/7106.KL/history?period1=1546387200&period2=1704153600&interval=1d&filter=history&frequency=1d&includeAdjustedClose=true

13 Supermax Corporation Berhad. (2022). Annual Report 2022. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

14 *Ibid*.

15 Zainuddin, A. (2018, September 18). Supermax is not expected to be a takeover target. *The Malaysia Reserve*. Retrieved from https://themalaysianreserve.com/2018/09/18/supermax-is-not-expected-to-be-a-takeover-target/

16 *Ibid*.

17 Securities Commission Malaysia. (2017, November 24). Ex-CEO of APL Industries Bhd and ex-remisier fined and jailed five years for insider trading. Retrieved from https://www.sc.com.my/resources/media/media-release/ex-ceo-of-apl-industries-bhd-and-ex-remisier-fined-and-jailed-five-years-for-insider-trading

18 *Ibid*.

19 *Ibid*.

20 Yatim, H. (2021, January 13). In The Dock: Doubt over 11-minute conversation sets Stanley Thai and remisier free. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/dock-doubt-over-11minute-conversation-sets-stanley-thai-and-remisier-free

21 Aziz, A. (2021, November 17). Stanley Thai to return to Supermax board as executive chairman. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/stanley-thai-return-supermax-board-executive-chairman?e=3193021

22 Aziz, A. (2018, September 12). The road ahead for Supermax. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/road-ahead-supermax.

23 Liew, J.T. (2018, January 3). Newsmakers 2017: Datuk Seri Stanley Thai Kim Sim. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/newsmakers-2017-datuk-seri-stanley-thai-kim-sim

24 Supermax Corporation Berhad. (2022). Annual Report 2022. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

25 Thai, C.J. (2022, January 13). An update for our Aveo family. *Medium*. Retrieved from https://medium.com/the-wink/an-update-for-our-aveo-family-c0bb3e68ba9c

26 Lee, M.K. (2023, April 15). Thai vs Thai: Supermax's boardroom saga raises huge red flag. *Free Malaysia Today*. Retrieved from https://www.freemalaysiatoday.com/category/opinion/2023/04/25/thai-vs-thai-supermaxs-boardroom-saga-raises-huge-red-flag/

27 Hazim, A. (2023, April 9). Stanley Thai's daughter Cecile says she quit Supermax after experiencing 'bullying and silencing'. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/664021

28 Thai, C.J. (2023, April 16). Letter of Resignation. *Stockbit*. Retrieved from https://stream-asset.stockbit.com/stream_92313_f3f9ccd3-5f08-4307-bd63-c468d24f3c3e_doc0.pdf

29 Lim, J. & Yatim, H. (2023, April 20). Supermax saga: The 'Thais' that don't bind. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/664099

30 Thai, C.J. (2023, April 16). Letter of Resignation. *Stockbit*. Retrieved from https://stream-asset.stockbit.com/stream_92313_f3f9ccd3-5f08-4307-bd63-c468d24f3c3e_doc0.pdf

31 Lim, J. & Yatim, H. (2023, April 20). Supermax saga: The 'Thais' that don't bind. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/664099

32 Pillai, D. (2023, April 25). Supermax denies Stanley Thai wanted daughter out because of rm211mil jet. Retrieved from https://www.freemalaysiatoday.com/category/highlight/2023/04/25/supermax-denies-stanley-thai-wanted-daughter-out-because-of-rm211-million-jet/

33 Lim, J. & Yatim, H. (2023, April 20). Supermax saga: The 'Thais' that don't bind. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/node/664099

34 *Ibid*.

35 *Ibid*.

36 *Ibid*.

37 *Ibid*.

38 *Ibid*.

39 *Ibid*.

40 Supermax Corporation Berhad. (2023). Corporate Governance Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

41 *Ibid*.

42 *Ibid*.

43 *Ibid*.

44 *Ibid*.

45 *Ibid*.

46 *Ibid*.

47 *Ibid*.

48 Mak, Y.T. (2023, April). LinkedIn. Retrieved from https://www.linkedin.com/posts/yuen-teen-mak-88b34a15_stanley-thais-daughter-cecile-says-she-quit-activity-7054449648073129984-B8sM

49 *Ibid*.

50 *Ibid*.

51 *Ibid*.

52 *Ibid*.

53 GOV.UK. (n.d.). Aurelia Joie Thai. Retrieved from https://find-and-update.company-information. service.gov.uk/officers/t3OBPkZdtdr1An5erDzhbe1sJmU/appointments

54 Nathan, L. (2023, December 7). Supermax looking to better times on a dynamic work environment. *The Star*. Retrieved from https://www.thestar.com.my/business/business-news/2023/12/07/supermax-looking-to-better-times-on-a-dynamic-work-environment

55 *Ibid*.

56 Supermax Corporation Berhad. (2023, December 11). Company's statement on The Star article entitled "Supermax looking to better times on a dynamic working environment". *Bursa Malaysia*. Retrieved from https://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=142898&name=EA_GA_ATTACHMENTS

57 *Ibid*.

58 Supermax Corporation Berhad. (2023, December 18). Supermax Restructures with Appointment of New CEO and COO To Drive Synergy Across Malaysia-US Operations. *Bursa Malaysia*. Retrieved from https://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=143118&name=EA_GA_ATTACHMENTS

59 Supermax Corporation Berhad. (2023). Annual Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

60 *Ibid.*

61 Supermax Corporation Berhad. (2023, December 18). Supermax Restructures with Appointment of New CEO and COO To Drive Synergy Across Malaysia-US Operations. *Bursa Malaysia*. Retrieved from https://disclosure.bursamalaysia.com/FileAccess/apbursaweb/download?id=143118&name=EA_GA_ATTACHMENTS

62 Securities Commission Malaysia. (n.d.). Corporate Governance. https://www.sc.com.my/regulation/corporate-governance

63 *Ibid.*

64 *Ibid.*

65 Khalid, S. (2022, January 19). Independent director's tenure limited to 12 years under enhanced listing rules. *The Edge Malaysia*. Retrieved from https://theedgemalaysia.com/article/independent-directors-tenure-limited-12-years-under-enhanced-listing-rules

66 Supermax Corporation Berhad. (2022, October 21). Change in Boardroom. *Bursa Malaysia*. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement/announcement_details?ann_id=3301129

67 Securities Commission Malaysia. (n.d.). Corporate Governance. https://www.sc.com.my/regulation/corporate-governance

68 Supermax Corporation Berhad. (n.d.). Company announcement. *Bursa Malaysia*. Retrieved from https://www.bursamalaysia.com/market_information/announcements/company_announcement?company=7106

69 MalaysiaStock.Biz. (2022, December 8). Company announcement: Change in Boardroom. Retrieved from https://www.malaysiastock.biz/Company-Announcement.aspx?id=1449728

70 MarketScreener. (2023, April 27). Supermax Corporation Berhad announces resignation of Sung Fong Fui as Independent and Non Executive Director, effective June 30, 2023. Retrieved from https://www.marketscreener.com/quote/stock/SUPERMAX-CORPORATION-6496395/news/Supermax-Corporation-Berhad-Announces-Resignation-of-Sung-Fong-Fui-as-Independent-and-Non-Executive-43675029/

71 *Ibid.*

72 *Ibid.*

73 *Ibid.*

74 Thai, C.J. (2023, April 16). Letter of Resignation. *Stockbit*. Retrieved from https://stream-asset.stockbit.com/stream_92313_f3f9ccd3-5f08-4307-bd63-c468d24f3c3e_doc0.pdf

75 The Edge Singapore. (2021, July 7). Changing of the board at MC Payment. Retrieved from https://www.theedgesingapore.com/news/catalist-watch/changing-board-mc-payment

76 Supermax Corporation Berhad. (2023). Annual Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

77 *Ibid.*

78 *Ibid.*

79 Supermax Corporation Berhad. (2023). Corporate Governance Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

80 Thai, C.J. (2023, April 16). Letter of Resignation. *Stockbit*. Retrieved from https://stream-asset.stockbit.com/stream_92313_f3f9ccd3-5f08-4307-bd63-c468d24f3c3e_doc0.pdf

81 Mondo Visione. (2016, September 2). Bursa Malaysia Securities publicly reprimands Metal Reclamation Berhad and fines its executive director, Lim Cheng Sang. Retrieved from https://mondovisione.com/news/bursa-malaysia-securities-publicly-reprimands-metal-reclamation-berhad-and-fines/

82 *Ibid.*

83 Artivision Technologies Limited. (2020, December 31). Letter to Shareholders. *Singapore Exchange*. Retrieved from https://links.sgx.com/FileOpen/Albert%20Cheok%20-%20Appendix%20A.ashx?App=Announcement&FileID=648676

84 Securities and Futures Commision. (2016, November 30). Market Misconduct Tribunal fines AcrossAsia Limited, its former chairman and CEO a sum of $2 million for late disclosure of inside information. Retrieved from https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and announcements/news/doc?refNo=16PR130

85 Market Misconduct Tribunal. (2016, November 11). The Report of the Market Misconduct Tribunal. Retrieved from https://www.mmt.gov.hk/files/AcrossAsia_Limited_Report_e.pdf

86 *Ibid.*

87 *Ibid.*

88 Securities and Futures Commision. (2016, November 7). Market Misconduct Tribunal finds AcrossAsia Limited, its CEO and former chairman culpable of late disclosure of inside information. Retrieved from https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=16PR114

89 Securities and Futures Commision. (2016, November 30). Market Misconduct Tribunal fines AcrossAsia Limited, its former chairman and CEO a sum of $2 million for late disclosure of inside information. Retrieved from https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=16PR130

90 Securities and Futures Commision. (2015, July 27). SFC commences MMT proceedings against AcrossAsia Limited, its Chairman and CEO for late disclosure of inside information Retrieved from https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/enforcement-news/doc?refNo=15PR78

91 Second Circular. (2021, June 24). OX Pay Financial. Retrieved from https://oxpay.my/wp-content/uploads/2022/02/Second-Circular-24-June-2021.pdf

92 Koh, A. (2021, May 28). MC Payment Limited Notice to convene an extraordinary general meeting. *Singapore Exchange*. Retrived from https://links.sgx.com/FileOpen/MCP%20-%20Update%20on%20Requisition%20Notice%20.ashx?App=Announcement&FileID=671289

93 Second Circular. (2021, June 24). OX Pay Financial. Retrieved from https://oxpay.my/wp-content/uploads/2022/02/Second-Circular-24-June-2021.pdf

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 U.S. Customs and Border Protection. (2023, September 9). CBP modifies withhold release order against Supermax Corporation Bhd. and its subsidiaries. https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-against-supermax-corporation

98 U.S. Customs and Border Protection. (2023, September 9). CBP modifies withhold release order against Supermax Corporation Bhd. and its subsidiaries. https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-against-supermax-corporation

99 Ananthalakshmi, A. (2021, October 21). U.S. bars Malaysian glove maker supermax over alleged labour abuses. *Reuters*. Retrieved from https://www.reuters.com/world/us-bars-malaysian-glove-maker-supermax-over-alleged-labour-abuses-2021-10-21/

100 U.S. Customs and Border Protection. (2023, September 9). CBP modifies withhold release order against Supermax Corporation Bhd. and its subsidiaries. https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-against-supermax-corporation

101 BusinessToday (2022, June 2). Supermax details changes in worker and HR policy to Comply International Standards. *BusinessToday*. Retrieved from https://www.businesstoday.com.my/2022/06/02/supermax-details-changes-in-worker-and-hr-policy-to-comply-international-standards/

102 Yusof A. (2022, February 8). Supermax rolls out foreign worker management policy to strengthen HR practices. New Straits Time. Retrieved from https://www.nst.com.my/business/2022/02/769668/supermax-rolls-out-foreign-worker-management-policy-strengthen-hr-practices#

103 U.S. Customs and Border Protection. (2023, September 9). CBP modifies withhold release order against Supermax Corporation Bhd. and its subsidiaries. Retrieved from https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-against-supermax-corporation

104 Ananthalakshmi, A. (2021, October 21). U.S. bars Malaysian glove maker supermax over alleged labour abuses. *Reuters*. Retrieved from https://www.reuters.com/world/us-bars-malaysian-glove-maker-supermax-over-alleged-labour-abuses-2021-10-21/

105 Supermax Corporation Berhad. (2023). Annual Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

106 *Ibid.*

107 Supermax Corporation Berhad. (2023). Corporate Governance Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

108 *Ibid.*

109 Supermax Corporation Berhad. (2023). Annual Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

110 *Ibid.*

111 *Ibid.*

112 *Ibid.*

113 *Ibid.*

114 Global reporting initiative. (2016). *GRI 201: Economic Performance 2016*. Retrieved from https://www.globalreporting.org/standards/media/1039/gri-201-economic-performance-2016.pdf

115 Supermax Corporation Berhad. (2023). Annual Report 2023. Retrieved from http://www.supermax.com.my/html/annual_reports.aspx

116 *Ibid.*

117 BusinessToday. (2023, August 29). Supermax closes FY23 in the red with RM178 million in losses. Retrieved from https://www.businesstoday.com.my/2023/08/29/supermax-closes-fy23-in-the-red-with-rm178-million-in-losses/

118 CNA. (2021, October 21). US bars Malaysian glove maker Supermax over alleged labour abuses. Retrieved from https://www.channelnewsasia.com/world/us-bars-malaysian-glove-maker-supermax-over-alleged-labour-abuses-2258626

119 Singh, R. (2023, April 18). Stanley Thai's daughter quits Supermax Board on disagreement. *The Malaysian Reserve*. Retrieved from https://themalaysianreserve.com/2023/04/18/stanley-thais-daughter-quits-supermax-board-on-disagreement/

120 Free Malaysia Today. (2023, April 19). Cecile Thai claims Supermax Board failed in corporate governance, fiduciary duties. Retrieved from https://www.freemalaysiatoday.com/category/highlight/2023/04/19/cecile-thai-claims-supermax-board-failed-in-corporate-governance-fiduciary-duties/

121 Free Malaysia Today. (2023, September 20). US lifts ban on Supermax's glove imports. Retrieved from https://www.freemalaysiatoday.com/category/highlight/2023/09/20/us-lifts-ban-on-supermaxs-glove-imports/

VINFAST: TO EV-NITY AND BEYOND

Case overview

On 15 August 2023, VinFast Auto Ltd (VinFast) finally debuted on the National Association of Securities Dealers Automated Quotations (NASDAQ) Exchange after first announcing plans to list in the US in 2021. It became the first Vietnamese company to be listed on NASDAQ. Just one day after its listing, VinFast surpassed the valuation of established automakers such as Ford Motor and General Motors. The share price remained volatile in the following weeks before eventually cooling down.

The objective of this case study is to facilitate a discussion of issues such as the competitive landscape of the electric vehicle industry; listing through Special Purpose Acquisition Companies; classification of listed companies in the US; board composition; resignation of directors; corporate governance in Vietnam and differences with Singapore and the US; and cross-border regulatory issues.

VinFast's EV venture

Founded in 2017, VinFast Auto Ltd (VinFast) is a majority-owned affiliate of Vingroup, one of the largest companies listed on the Ho Chi Minh Stock Exchange. Led by founder and Chairman Pham Nhat Vuong (Vuong), Vingroup is the country's largest conglomerate, with businesses spanning multiple sectors that together contributed 1.1% of Vietnam's Gross Domestic Product in 2022.[1]

From 2017 to 2022, Vingroup sponsored around US$7.5 billion to fund VinFast's operating expenses and capital expenditures.[2] VinFast also benefits from the shared expertise and cooperation of more than 1,000 engineers within the Vingroup ecosystem, who collectively contribute to the development of technology for VinFast vehicles.[3]

The company aims to lead the future of smart mobility through its intelligent, thoughtful, and inclusive electric vehicle (EV) platform. With a mission to help create a more sustainable future for all, VinFast believes

---

This case study was originally prepared by Ho Zhi Xuan, Goh Zi Ming, Russell Chan Wing Tjuen, Vidonia Tan Ting Yen, Chee Je Yin, and Frederick Yuen Zheng Yang. 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 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.

that accelerating the switch to EVs will contribute to sustaining the planet.[4] The company is primarily focused on designing and manufacturing premium EVs, electric scooters, and electric buses. It phased out all remaining production of internal combustion engine (ICE) vehicles throughout 2022, committing to its vision of creating an e-mobility ecosystem.[5] In 2022, VinFast commenced Phase 3: Go Global, delivering its latest smart EV models, VF 8 and VF 9, on a global scale outside of the local Vietnam market.[6] VinFast's key global markets include North America, primarily the US and Canada, as well as Europe.[7]

VinFast generates its revenue through various channels related to its automotive and EV business operations, with EV sales being the most significant contributor. Additional revenue streams include the sale of spare parts, rendering of services, leasing activities, and sales of merchandise.[8] For the financial year ending 31 December 2022, VinFast reported total revenue of VND14,965.591 billion. Vehicle sales accounted for 82.8% to this total, amounting to VND12,391.500 billion. However, the company suffered a net loss of VND49,848.870 billion, mainly due to the high cost of vehicles sold and substantial research and development expenses.[9]

Founder's aspirations

Vuong's entrepreneurial journey began after he graduated from the Moscow Geological Prospecting Institute in 1993. Seeing opportunities in the post-Soviet Union landscape, he borrowed US$10,000 from friends and family to start a Vietnamese restaurant in Ukraine. Although the restaurant floundered, he found success with instant noodles and subsequently founded Technocom. Through selling instant noodles under the Mivina brand, Technocom achieved remarkable success. In 2010, Vuong sold Technocom to Nestle for US$150 million, with annual revenues exceeding US$100 million.[10]

Following his success in Ukraine, Vuong shifted his focus to Vietnam. He invested his profits from Technocom into real estate, beginning with the development of the Vinpearl Resort on an island off Vietnam's coast. This venture eventually expanded into a major luxury destination. Vuong then diversified his real estate holdings by developing office towers, townships, and shopping malls in Hanoi, consolidating his assets into Vingroup, a conglomerate with interests in healthcare, entertainment, and technology.[11]

Having amassed his fortune, Vuong directed his attention towards capturing a portion of the electric mobility sector through VinFast.[12] He has a grand vision for VinFast: to manufacture affordable, practical, and sustainable EVs of exceptional quality. His goal is for VinFast to become a frontrunner in the EV market. Besides EV production, Vuong envisages VinFast as a comprehensive ecosystem, consisting of services such as innovative transportation strategies, charging infrastructure, and battery manufacturing. Another vital aspect of his vision for VinFast is to boost its reputation as a Vietnamese brand globally.[13]

Vuong has a net worth of approximately US$55.9 billion, making him the richest individual in Vietnam and the 23rd richest globally.[14] Given that VinFast is primarily an EV company, similar to Tesla in the US, Vuong has earned the honour of being called the "Elon Musk of Vietnam".[15]

The power source

As of 18 September 2023, following the business combination with Black Spade Acquisition Co (Black Spade), VinFast's largest shareholder is Vingroup, holding 50.82% of the company's shares. Other substantial shareholder are Vietnam Investment Group (VIG) and Asian Star Trading & Investments Pte. Ltd., holding 33.02% and 14.79% of the shares respectively.[16]

VinFast has only a single class of issued ordinary shares, with each share having one vote. The company's constitution authorises the company to issue new ordinary shares, options over new ordinary shares, or shares of a separate class provided approval is obtained through an ordinary resolution. Any preferential, deferred, or other special rights, privileges, or restrictions are to be determined by the board.[17]

Additionally, VinFast does not have a predefined dividend policy and has no immediate plans to issue cash dividends. Instead, it intends to preserve a substantial portion, if not all, of its capital to support business operations and growth.[18] It plans to introduce the VinFast Incentive Award Plan (VinFast Award Plan), aimed at attracting, retaining, and motivating talented individuals. Under the VinFast Award Plan, a maximum of 232,200,068 ordinary shares, equivalent to 10% of the total outstanding ordinary shares, will be earmarked for issuance. These shares can either be newly issued or drawn from treasury shares.[19]

EV market dynamics

According to International Energy Agency,[20] global EV sales are projected to reach 14 million units in 2023, marking a 33% growth from 2022[21] and to surpass 60 million units by 2030.[22] The primary market drivers are pro-EV government policies via subsidies and tax incentives, rising consumer awareness of the environmental and cost benefits of EV, affordability resulting from the falling cost of batteries, and the increasing availability of EV infrastructure.[23] Furthermore, the younger generation's awareness and activism on climate change and sustainability matters have been increasing, facilitating the adoption of environmentally friendly options such as EVs.[24] This provides VinFast with the opportunity to capitalise on the bright future of the EV industry.

However, according to Canalys, a leading technology market analysts, as of the first half of 2023, BYD Auto leads the industry with a 21% market share, followed by Tesla at 15%, and Volkswagen tying with SAIC Motors at 7%.[25] The top 10 EV companies collectively hold a combined market share of 78%, with VinFast absent from this group.[26]

Nevertheless, VinFast is Vietnam's leading EV manufacturer and is actively pursuing expansion overseas.[27] The company's global expansion is focused on the US market, supported by local dealerships.[28] Moreover, VinFast plans to invest over US$400 million in developing EV markets including India and Indonesia, two of the most densely populated countries globally.[29]

A carload of challenges

VinFast faces several challenges for its listing in the US, including differences in regulations and standards between local and foreign stock exchanges, especially in areas such as accounting, corporate governance, and auditing. US stock exchanges apply the US Generally Accepted Accounting Principles (US GAAP), while the Vietnamese government promotes the use of Vietnam Accounting Standards (VAS).[30] However, VAS will soon be fully replaced by International Financial Reporting Standards (IFRS). The IFRS adoption roadmap is divided into three stages and will become compulsory after 2025 for consolidated financial statements of all state-owned enterprises, listed companies, and large-scale unlisted public companies.[31]

Another cross-border regulatory difference between Vietnam and the US is safety regulations. In 2022, VinFast recalled the entire initial shipment of its vehicles to the US due to the issuance of a safety warning by the US authorities. Nine hundred and ninety-nine of VinFast's VF 8 vehicles had software glitches in the dashboard display which hindered crucial safety information from being displayed, increasing the likelihood of a fatal accident. This recall came just two weeks after VinFast announced its plans to list in the US via a Special Purpose Acquisition Company (SPAC) merger with Black Spade.[32]

Listing adventures

In April 2021, VinFast attempted an Initial Public Offering (IPO) through a SPAC merger on the New York Stock Exchange (NYSE), aiming to raise as much as US$2 billion.[33] However, escalating uncertainties surrounding SPAC regulations in the US emerged. The Securities and Exchange Commission (SEC) was levelling up its scrutiny over SPACs, which experienced a sudden surge in popularity during the COVID-19 pandemic due to

their perceived easier path to public listing and less stringent regulatory scrutiny.[34] Consequently, VinFast's initial plans to go public were temporarily shelved.[35]

In April 2022, VinFast once again endeavoured to launch an IPO through its holding company based in Singapore.[36] However, the plan failed to materialise. When asked about the IPO, VinFast's then Chief Executive Officer (CEO), Le Thi Thu Thuy (Thuy), declined to comment but mentioned that their EV expansion plans did not hinge on the listing, as they "always consider all potential financing transactions".[37]

In May 2022, VinFast announced its decision to relocate its legal and financial headquarters to Singapore while retaining Vietnam as its operational headquarters, citing Singapore as a jurisdiction that instils more confidence in investors.[38] Singapore is widely recognised as the most advanced market within Southeast Asia, with a robust regulatory structure, a mature financial services industry, and readily available arbitration mechanisms.[39] Although Vietnamese laws enable VinFast to conduct an international IPO in the US, there are insufficient regulations and connections with the US legal framework and market. In contrast, Singapore emerged as a prime choice for VinFast to initiate an IPO due to its well-established connections with the US, facilitating the listing process.[40]

VinFast's plans finally came to fruition on 15 August 2023 when it successfully listed on the National Association of Securities Dealers Automated Quotations (NASDAQ) through a merger with the US listed SPAC, Black Spade. The deal with Black Spade valued VinFast at approximately US$23 billion.[41]

"SPAC-tacular" listing

SPAC acquisition is one of the routes for companies to enter the public market. Initially, a SPAC undergoes an IPO as a shell company with the objective of identifying a suitable private entity for acquisition. Upon identifying a target, it merges via a de-SPAC process, thereby taking the merged entity public.[42] This process involves the combination of the SPAC's IPO proceeds and additional capital from private financing. Subsequently, the shares of the SPAC listed on the exchange are rebranded to reflect those of the target company, and shareholders of the SPAC pre-merger become shareholders of the acquired entity. On 15 August 2023, VinFast's shares (NASDAQ: VFS) commenced trading for the first time on a US-based exchange.[43]

SPAC vs IPO

SPACs and IPOs represent two common avenues for companies seeking to go public.[44] Compared to IPOs, SPAC mergers generally proceed more rapidly.[45] Typically, a SPAC merger takes three to six months, while an IPO can take 12 to 18 months on average.[46] In terms of disclosure, SPAC mergers often entail forward-looking financial information, whereas IPO disclosures focus on historical performance.[47]

Accelerating through market volatility

VinFast shares made its trading debut at US$22 per share. Just two weeks later, on 28 August 2023, the shares experienced a remarkable surge, reaching an all-time high of US$93 per share,[48] a 323% increase from its initial price. With approximately 2.33 billion ordinary shares outstanding, VinFast attained a market capitalisation exceeding US$200 billion, despite reporting Q3 revenue of US$343 million.[49] At that time, automakers Ford Motor (Ford) and General Motors (GM) had market capitalisation of around US$48 billion and US$46 billion respectively.[50] However, their Q3 revenues were much higher than VinFast's, with Ford at US$43.8 billion and GM at US$44.1 billion.[51,52]

One month after its listing, VinFast's share price stabilised, showing much lower volatility compared to the unpredictability during its first few weeks. As of 4 March 2024, VinFast's share price was trending downwards, hovering around US$5.79.[53]

In response to the volatile movements in VinFast's share price after listing, then-CEO Thuy expressed confidence in the company's potential and insisted the volatility was to be expected.[54,55] Thuy stated, "it's normal for the share price to be very volatile at the beginning of the listing, especially with such a very small free float."[56] This small free float resulted from only about one percent of VinFast shares being listed for trading.[57]

In the Form F-4 filed by VinFast to the SEC on 15 June 2023, VinFast announced that it would be regarded as a Foreign Private Issuer (FPI) and an Emerging Growth Company (EGC), granting it certain privileges not accorded to other companies listed on NASDAQ.[58]

Foreign Private Issuer

"The term foreign private issuer means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

i. More than 50% of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the US; and

ii. Any of the following:

   a. The majority of the executive officers or directors are US citizens or residents; or

   b. More than 50% of the assets of the issuer are located in the US; or

   c. The business of the issuer is administered principally in the US."[59]

The relevant exemptions that VinFast enjoys as an FPI are as follows:

1. VinFast will be exempt from certain rules that impose disclosure obligations and procedural requirements for proxy solicitations under Section 14 of the Exchange Act.[60]
2. VinFast will be exempt from the sections of the Exchange Act requiring insiders to file public reports of their share ownership and trading activities, and liability for insiders who profit from trades made within a short period.[61]
3. VinFast will not be required to file periodic reports and financial statements with the US SEC as frequently or as promptly as US companies whose securities are registered under the Exchange Act.[62]
4. The information VinFast is required to file with or furnish to the SEC will be less extensive and less timely than that required of US domestic issuers.[63]
5. VinFast has the option to follow certain home country corporate governance practices rather than those of a Qualified Stock Exchange (NYSE and NASDAQ), provided that it discloses the requirements it is not following and describes the home country practices it is following.[64]

In Form F-4, VinFast stated that it intends to publish its quarterly results through press releases, distributed in accordance with the rules and regulations of a Qualified Stock Exchange.[65] However, VinFast cautioned shareholders that they may not receive the same protections or information as they would if they were investing in a US domestic issuer. This is because the information VinFast is required to furnish to the SEC will be less extensive and less timely compared to what is required from US domestic issuers.[66]

VinFast also expressed its intention to rely on the exemption outlined in point 5 above, concerning the rules of a Qualified Stock Exchange for shareholder meeting quorums and rules requiring shareholder approval. VinFast disclosed that they may, in the future, elect to follow home country practices regarding other matters. This allows VinFast a certain degree of flexibility in corporate governance matters compared to if they were listed and operated solely in the US or Singapore. VinFast also advised that shareholders may not receive the same protections as those of companies subject to the full corporate governance requirements of a Qualified Stock Exchange.[67]

Emerging Growth Company

> "The term emerging growth company means an issuer that had total annual gross revenues of less than US$1.235 billion during its most recently completed fiscal year."[68]

The relevant exemptions that VinFast enjoys as an EGC are as follows:

1. VinFast can include less extensive narrative disclosure than required of other reporting companies, particularly in the description of executive compensation.[69]
2. VinFast can provide audited financial statements for two fiscal years, compared to other reporting companies which must provide audited financial statements for three fiscal years.[70]
3. VinFast can forgo providing an auditor attestation of internal control over financial reporting under Sarbanes-Oxley Act S404(b).[71]
4. VinFast can defer complying with certain changes in accounting standards.[72]
5. VinFast can use test-the-waters communications with qualified institutional buyers and institutional accredited investors.[73]

VinFast confirmed that they "do not plan to 'opt out' of such exemptions"[74] afforded to an EGC.

For the year ended 2022, VinFast announced in Form F-4 that its management and its independent registered public accounting firm identified deficiencies that represented material weaknesses in its internal control over financial reporting.[75] Although VinFast has adopted a remediation plan to address the issue, the company cannot assure that it will be successful in addressing the deficiencies sufficiently, or that it will prevent future potential material weaknesses. Since VinFast is currently utilising the exemptions provided to EGCs, especially relating to point 3, there will be no formal attestation on the effectiveness of internal controls in its annual reports. However, when VinFast ceases to qualify as an EGC, it acknowledges that independent auditing firms may potentially issue an adverse report on its internal controls, which may adversely affect investor confidence.[76] Additionally, VinFast anticipates incurring significant expenses and dedicating substantial management effort to ensure compliance with Section 404 of the Sarbanes-Oxley Act of 2002 and other SEC rules and regulations.[77]

Board in focus

As of 23 October 2023, VinFast's board consists of six members, including two independent directors (IDs), as detailed in Figure 1.[78]

Figure 1: VinFast's board of directors as of 23 October 2023[79]

Name	Age	Position	Other Related Roles and Qualifications
Pham Nhat Vuong	55	Chairman	• Founder and Chairman of Vingroup. • He has a long track record as an entrepreneur both inside and outside Vietnam. • He holds a Bachelor's Degree in Geoeconomic Engineering from Russian State Geological Prospecting University.
Le Thi Thu Thuy	49	Managing director and Global CEO	• Vice Chairwoman of Vingroup. • Previously Vice President at Lehman Brothers for Japan, Thailand, and Singapore from 2000 to 2008. • She is a Chartered Financial Analyst Charter holder and holds a Master of Business Administration, with a major in Finance, from the International University of Japan.

Name	Age	Position	Other Related Roles and Qualifications
Ngan Wan Sing Winston	62	Independent director	• An independent director of HSBC Bank (Singapore) Limited, Azalea Asset Management Pte. Ltd., and United Overseas Insurance Limited. • He is a member of the Institute of Singapore Chartered Accountants, the Chartered Professional Accountants of Ontario, Canada, and a Certified Public Accountant in Australia. • He holds a Master of Business Administration (Accounting) from York University, Canada.
Ling Chung Yee, Roy	46	Independent director	• An independent director at several listed companies in Asia, including Amplefield Ltd. and United Food Holdings Ltd. • An Adjunct Professor in Finance at the SKEMA Business School and an Academic Program Director at SMU Academy. • He holds a Master of Business Administration from INSEAD.
Pham Nguyen Anh Thu	42	Non-independent non-executive director	• Chief Investment Officer of Vingroup. • Previously the Head of Investment Banking for Vietnam with Barclays Bank PLC. • She is a Chartered Financial Analyst Charter holder and holds a Bachelor's Degree in Engineering from the National University of Singapore.
Nguyen Thi Van Trinh	49	Non-independent non-executive director	• Director at several companies in Singapore, including Vingroup Global Pte. Ltd. and Vingroup Investment Pte. Ltd. • She holds a Bachelor's Degree in International Commercial Trade from the Foreign Trade University in Vietnam.

Source: VinFast Auto Ltd. (2023, October 23). Form F-1 Registration Statement. SEC Archives.

Board committees

VinFast has established three board committees: the Audit Committee (AC), the Compensation Committee (CC), and the Nominating and Corporate Governance Committee (NCGC).[80]

It did not establish a Risk Committee (RC). Instead, the board assumes a primary role in crafting the risk management framework and supervising the risk management processes within the organisation. The board collectively determines appropriate risk thresholds, evaluates specific risks, and assesses risk identification and mitigation strategies set out by the management. Additionally, the AC is involved in risk evaluation and management and oversees guidelines and policies governing the approach to handling risk exposure.[81]

Audit Committee

The AC is chaired by Ling Chung Yee Roy (Roy), with Ngan Wan Sing Winston (Winston) as a member. VinFast's board has adopted an AC charter setting forth the responsibilities of the AC, consistent with the Singapore Companies Act, the SEC rules and the corporate governance rules of NASDAQ. Additionally, the AC will convene an annual meeting with the independent accountant in the absence of executive officers.[82]

Compensation Committee

Vuong is the Chairman of the CC, with Roy and Pham Nguyen Anh Thu as board members. The responsibilities of the CC, as outlined in the CC charter, include recommending to the board for its approval a compensation policy in accordance with the requirements of the Singapore Companies Act, reviewing the implementation of

the compensation policy and periodically making recommendations to the board, and reviewing and approving the granting of options and other incentive awards to CEO and other executive officers.[83]

Nominating and Corporate Governance Committee

The NCGC is chaired by Thuy, with Nguyen Thi Van Trinh and Vuong as board members. The NCGC assists VinFast's board in selecting individuals qualified to become directors and in determining the composition of the board and its committees. VinFast's board has also adopted a nominating and governance committee charter that outlines the responsibilities of the committee.[84]

Director under the spotlight

Roy, a seasoned veteran with over 20 years of experience in investment banking at JPMorgan, Lehman Brothers, Goldman Sachs, and Salomon Smith Barney, specialises in digital finance, sustainable investing, and Asia real estate. According to his profile, he has executed some of the highest-profile advisory and capital market transactions in the Asia region. He is described as "a distinguished board director with more than 16 years of corporate governance experience across Asia".[85] He received the Real Estate Executive of the Year award from Singapore Business Review in 2016 and was honoured as one of 20 Rising Stars in Real Estate 2008 by Institutional Investor.[86]

Pet trouble

In 2013, Roy was charged for animal cruelty. As the owner of a Border Collie named Hugo, Roy subjected his dog to prolonged exposure to rain and sun on his balcony for over six months, without adequate shelter, food, or water. Despite repeated advice from the Agri-Food & Veterinary Authority of Singapore (AVA) to improve the dog's care, Roy persisted in subjecting Hugo to "unnecessary suffering".[87] Consequently, Roy was convicted of animal cruelty under the Animals and Birds Act and fined S$5,000.[88]

Interlocking relationships

A Business Times article authored by Professor Mak Yuen Teen, a corporate governance advocate in Singapore, noted that Roy was the lead ID of Catalist-listed Singaporean company, Ley Choon, where RHT Capital was the continuing sponsor. The Catalist board is the second board on the Singapore Exchange and a continuing sponsor is required for all Catalist-listed issuers. The role of the continuing sponsor is to advise the issuer on all listing rule and corporate governance matters, or it should arrange an appropriate adviser to do so. It is also expected to investigate and consider the suitability of directors.

Roy was a consultant for RHT Strategic Advisory and RHT Academy, which was part of the same group as RHT Capital. Further, Roy's online biography at that time indicated that he was also a consultant for RHTLaw Taylor Wessing. Questions were raised by Professor Mak about whether RHT Capital could be objective in advising on the suitability or independence of Roy, given that he was associated with several other RHT-related entities.[89]

Following the publication of the article, RHTLaw Asia LLP responded with a letter to the Business Times, asserting that "Roy Ling Chung Yee was never at any time a consultant of the law firm RHTLaw Taylor Wessing and has no current relationship with RHTLaw Asia LLP".[90]

Pining for Pine Capital

Roy was a director at Pine Capital. On 3 February 2019, the company announced the termination of Jessie Sun May Gze (Jessie) as Chief Operating Officer with effect from 31 January 2019. The announcement disclosed

"reasons for cessation and issues including inter alia unresolved differences in opinions on material matters, matters in relation to the cessation that needs to be brought to the attention of shareholders of the Issuer and other relevant information to be provided to shareholders of the Issuer".[91] Jessie was a substantial shareholder, holding 8.23% of the shares.[92]

Five days later, Pine Capital announced that it had received a special notice/notice of extraordinary general meeting (EGM) from Jessie, Pine Partners Pte Ltd, and JMO Pte Ltd calling for an EGM under section 177 of the Singapore Companies Act seeking shareholders' approval for resolutions to remove Tan Choon Wee (Tan), the interim CEO and executive chairman, Chong Chee Hoong (Chong), and Roy as directors of Pine Capital.[93] The shareholders calling for the meeting also proposed to appoint Jessie and two other directors as replacements. On 25 February 2019, the company announced that based on legal advice, the EGM Notice was not "duly served" and was therefore invalid.[94] However, the three directors who were proposed to be removed subsequently resigned, with Roy resigning on 18 March 2019.[95] The reasons cited for the resignation were similar for the three directors. For example, in Roy's case, it stated: "Unable to obtain sufficient information in a timely manner to discharge fiduciary duties. Unable to make an assessment of the state of the affairs in the Group."[96]

On 10 May 2019, Pine Capital, the majority shareholder of Advance Capital Partners Asset Management (ACPAM) with a 51% stake, announced that it had held an EGM at ACPAM and two directors, including Tan, were removed as directors of ACPAM and three new directors were appointed.[97] However, on 21 May 2019, Pine Capital announced it had on 8 April 2019 been served with a writ of summons issued by the High Court of Singapore, with Tan as the plaintiff and the company as a co-defendant. Tan alleged discrimination and/or prejudice by ACPAM against him. On 23 May 2019, Pine Capital announced that ACPAM had on 15 May 2019 filed a writ of summons against Tan and three former ACPAM directors, including Roy, and two employees of ACPAM. ACPAM alleged that these former directors and employees had breached their fiduciary and/or other duties.[98] The claims and counter-claims were eventually settled through mediation.[99]

Pine Capital continued to be tangled in legal claims involving various parties and other issues. It was eventually issued a notice of delisting from SGX on 29 November 2021 and was delisted on 28 January 2022.[100,101]

Desperately seeking information

Pine Capital was not the only company where Roy resigned as a director citing the lack of sufficient information or related reasons. On 8 August 2018, Roy resigned from another SGX-listed company, Ace Achieve Infocom Ltd, stating that: "Despite numerous reminders given to management to complete the annual audit ended 30 April 2018, the Independent Directors have seen limited progress and have not received sufficient information."[102] However, just over three weeks later, together with another ID who had resigned at the same time, Roy was re-appointed following a request from SGX "to be re-appointed as an Independent Director to work with the Management and SGX to resolve the issues currently faced by the Company".[103] Roy eventually resigned for a second time with the other ID on 8 January 2020. The reasons cited for his resignation stated: "Despite numerous reminders given to management to complete the annual audit ended 30 April 2018 and 2019, the Independent Director have seen limited progress and have not received sufficient information, unable to obtain sufficient information in a timely manner to discharge fiduciary duties, unable to make an assessment on the statement of affairs in the Group, Cessation of the Corporate Secretary on 8 January 2020 with no proposed replacement and outstanding director fees have not been paid since 7 June 2018."[104] The company was eventually delisted in December 2022 after it was directed by SGX to do so.[105]

At another SGX-listed company, Debao Property Development, Roy was appointed an ID and lead ID in February 2019 but left in October 2022 citing "to pursue new career opportunity" as the reason for his resignation.[106]

Senior executives reshuffle

Prior to its listing on NASDAQ in August 2023, there were many departures of senior executives at VinFast.

In June 2022, four senior executives left. They included Emmanuel Bret, deputy CEO for global sales; Franck Euvrard, deputy CEO for product development; Hong Bae, deputy CEO for vehicle technology development; and Bruno Tavares, who was chief finance officer. These departures occurred as VinFast was preparing to begin construction of a US$ 4 billion factory in North Carolina, open its first showroom in California, and progress towards a potential IPO of shares.[107] VinFast's statement to Reuters indicated that: "Adjustment in human resources is a common business practice around the world. VinFast is no exception."[108] However, a memo from CEO Thuy's office, seen by Reuters, stated that "the 4 executives had been released from employment for a range of causes related to the quality of their work."[109] Nonetheless, a company spokesman later clarified that the memo had not been properly reviewed and had been withdrawn.[110] Additionally, Huy Chieu, a former GM engineer who was promoted in June 2022 to lead VinFast's EV development efforts resigned in December 2022, just six months after his promotion.[111]

On 17 March 2023, VinFast once again announced the departure of three senior sales and customer service executives. Among them was Gareth Dunsmore, the former deputy chief executive for global sales and marketing, who left for "personal reasons"[112] according to VinFast. Two other US-based executives, Greg Tebbutt, the former chief marketing officer, and Craig Westbrook, the former chief service officer, departed due to "changes in the management model and specific business requirements".[113]

Vietnam's corporate governance landscape

In 1986, Vietnam underwent reform policies known as "Doi Moi", introducing a free market that ushered in new legislative changes. This led to the first iteration of the Enterprise Law in 1990.[114] After numerous revisions and the introduction of new legislation, including the Enterprise Law 2020 and the Vietnam Securities Law, along with various decrees and circulars, Vietnam has developed a framework of "hard law". These are regulations established by the Vietnamese government and enforced by the courts, mandating companies to adhere to them.[115]

Culture of corporate governance in Vietnam

Vietnam first embarked on its venture into corporate governance in 2007 when the Ministry of Finance introduced Decree 12, marking the inception of corporate governance guidelines for listed companies. Following this milestone, in 2019, the States Securities Commission unveiled the first edition of the Vietnam Corporate Governance Code of Best Practices (CG Code). This document outlines recommended corporate governance practices for listed companies, aiming to bolster market stability, foster investor confidence and trust, reduce capital costs, and thereby attract more foreign investment into Vietnam.[116] Although not mandatory, public companies and listed companies are encouraged to follow the CG Code to adopt appropriate corporate governance practices.[117]

Additional pillars of corporate governance in Vietnam include the Code of Conduct for directors and senior management of listed companies, which offers guidance on ethical and professional conduct for leaders in listed companies.[118] The Guidelines on Corporate Governance for State-Owned Enterprises also contribute to the corporate governance landscape.[119]

Board of directors

The Enterprise Law 2020 specifies that in joint-stock companies (JSCs), the board membership must range from three to eleven individuals. Vietnam offers flexibility for JSCs to adopt two distinctive board structures: the one-

tier board and the two-tier board. The one-tier board consists of executive directors, non-executive directors, and IDs, whereas the two-tier board comprises a board of directors and a supervisory board tasked with overseeing the former.[120]

In the context of one-tier boards in Vietnam, the appointment of a director to the board requires a general meeting of shareholders. Subsequently, the board itself will elect a general director, equivalent to a CEO. Regarding two-tier boards, two models exist: the single-line pattern, where shareholders elect the supervisory board, which then selects the board of directors, and the parallel-line pattern, where shareholders elect both the supervisory board and the general board of directors.[121]

As stipulated in Article 148 of the 2020 Enterprise Law, the election of directors for both the board of directors and supervisory board follows a cumulative voting method during a shareholder general meeting.[122] This method results in shareholders having a total amount of votes equal to the total number of shares that they own multiplied by the total number of directors to be elected to the board or supervisory board. Each shareholder has the flexibility to concentrate all their votes on one or more candidates.[123]

Independent directors

The Enterprise Law 2020 in Vietnam does not explicitly outline the roles and responsibilities of IDs.[124] Instead, it empowers shareholders to vote on these aspects, including the roles, powers, and duties of IDs, as outlined in the company's constitution. In line with the Enterprise Law 2020, the independence of directors is safeguarded by prohibiting any material, financial, familial, or other existing relationships between IDs and the company, its executives, or the board of directors.[125] This prohibition ensures that IDs can effectively fulfil their mandate to enhance transparency and corporate governance, thereby safeguarding the rights and interests of stakeholders.[126]

In the framework of one-tier boards, IDs play a crucial role in overseeing the board of directors. IDs must constitute at least 20% of the board and companies must establish an AC.[127] For two-tier boards, the requirement for IDs varies depending on the type of company. While ordinary joint-stock companies, insurance firms, and non-listed public companies are not obliged to appoint IDs or establish an AC, listed public companies, joint-stock fund management companies, and credit institutions are mandated to appoint IDs to the board, even if they already have a supervisory board in place.[128]

Although Vietnamese law does not explicitly define the roles of IDs, in practice, they typically assume two key functions: monitoring and advisory.[129] Their monitoring responsibility often involves chairing the AC, while their advisory role is exercised as needed. The monitoring role may lead to conflicts with other directors and management, prompting IDs to prefer advisory roles to avoid potential conflicts.[130]

In terms of compensation, a report on "Independent Directors in Public Companies in Vietnam"[131] highlights that IDs generally receive low compensation.[132] In many companies, they are perceived as not pivotal, primarily serving to meet minimal regulatory requirements.[133]

Board committees

Beyond the AC, there is no "hard law" dictating the structure and responsibilities of additional subcommittees such as those for remuneration and risk management.[134] According to the Vietnam Corporate Governance Code of Best Practices, public companies' board of directors are advised to establish their own subcommittees (audit, risk, nomination, remuneration, and corporate governance) to provide focused support, mitigate conflicts of interest, and ensure effective task handling. The code emphasises that IDs should lead and predominantly constitute these subcommittees.[135] Further guidance from the Model Charter of Public Companies stipulates that each subcommittee must comprise a minimum of three members, including both board of directors and external members. It is recommended that IDs and non-executive directors constitute the majority of the

subcommittee, with one of them serving as the committee head.[136] The Corporate Governance Code of Best Practices encourages proactive measures by the board in establishing specific subcommittees and delegating powers to enhance oversight in key aspects of the company's operations.[137]

Cross-regulatory complexities

Although Vingroup is predominantly headquartered in Vietnam, VinFast extends its presence with subsidiaries incorporated in nine different countries.[138]

US approach

In the US, a prescriptive approach governs corporate governance.[139] As VinFast is listed on NASDAQ under a SPAC IPO, it is subject to the NASDAQ listing rules. In 2022,[140] the SEC introduced proposed rules targeting SPACs to bolster disclosure and safeguard shareholders. These proposals encompass disclosing the roles, responsibilities, and industry expertise of SPAC sponsors, detailing the quantity and nature of their compensation, and addressing any potential conflicts of interest.[141] Moving forward, barriers to entry and regulatory requirements for SPAC IPOs are expected to become more stringent. This amplifies the liability risks for SPAC participants and diminishes the accessibility to public funds.[142]

Singapore approach

Conversely, Singapore has embraced the "comply or explain" approach in corporate governance.[143] The regulatory framework in Singapore encompasses two broad categories: legal regulation including quasi-legal regulations, and codes and best practices particularly the Singapore Code of Corporate Governance (SCCG) 2018.[144] Since VinFast is not listed on SGX, it does not need to "comply or explain" against the SCCG 2018. However, its Singapore-incorporated entities are obligated to adhere to the Singapore Companies Act.[145] Additionally, given that VinFast's headquarters is in Singapore, the company faces tax implications arising from transfer pricing regulatory requirements spanning multiple jurisdictions.[146]

Vietnam's approach

As Vietnam's corporate governance standards are relatively new, they are deemed of lower quality compared to international standards, despite multiple revisions to the Enterprise and Security laws.[147] Additionally, a study indicates that the corporate governance measures adopted by Vietnamese companies lack effectiveness and have minimal influence on financial performance, although certain exceptions stand out, such as managerial ownership structure, audit quality, and supervisory board size.[148]

Driving into the future

On 5 January 2024, VinFast announced a change to its leadership structure. Vuong transitioned from his role as the Chairman of the board to become the CEO.[149] This means that VinFast has had four CEOs since its founding in 2007.[150] He will remain on the board as a director and also take on the role of managing director. Concurrently, Thuy will step down from her position as CEO to become the Chairwoman of the board.[151]

Further board changes were announced on 25 April 2024. Tham Chee Soon (Tham) replaced Winston as an ID and a member of VinFast's AC and CC. The company clarified that Winston's resignation "was not as a result of any disagreement with the Company relating to its operations, policies or practices." [152] Tham is the founder and director of iCFO Advisors Pte. Ltd. He spent 31 years at Ernst & Young Singapore before taking early retirement as an Audit Partner in June 2018. Tham holds a Bachelor's degree in Accountancy from the National University of Singapore and is a Fellow of Chartered Accountant (Singapore), a Licensed Insolvency Practitioner, a Certified Public Accountant (US and Australia), and a CFA Charterholder.[153]

While VinFast is expanding rapidly overseas with plans to build factories in North Carolina, India, and Indonesia,[154] a car crash involving a VinFast VF8 SUV occurred on 24 April 2024. The accident took place in Pleasanton, California and claimed the lives of a family of four. Local police reported that it appeared the vehicle lost control before crashing into an oak tree and catching fire. Days after the crash, a complaint was filed with the National Highway Traffic Safety Administration (NHTSA) explaining that the owner had loaned the EV to a co-worker. The owner had previously experienced an instance where the car's lane assist feature had jerked the vehicle to the right. The Pleasanton Police Department said its investigation is ongoing, while VinFast did not immediately respond to a request for comment.[155]

Post-listing, for the financial year ending 31 December 2023, VinFast reported total revenue of VND28,596.221 billion, reflecting a 91.1% increase from 2022. Nevertheless, the company still reported a net loss of VND57,176.212 billion, representing a 14.7% increase from 2022.[156] Given the uncertainties and competitiveness in the EV market, coupled with the ongoing net losses, can VinFast successfully expand its global presence beyond Vietnam and establish itself as a dominant player in the industry?

Discussion questions

1. Comment on VinFast's business model and the opportunities and challenges for the company in the EV industry.
2. Evaluate the pros and cons of listing through a SPAC compared to an ordinary IPO. What do you think are the key reasons behind Vinfast's decision to list through a SPAC?
3. What does it mean for a company to be a Foreign Private Issuer (FPI) and an Emerging Growth Company (EGC) in the US? Do you think these special statuses are detrimental to investors and shareholders? Do the benefits outweigh the drawbacks? Explain.
4. Evaluate the leadership and composition of the board of VinFast at the time of the IPO and the subsequent changes. Are there any red flags? If so, comment on how they might affect VinFast's corporate governance moving forward.
5. One of the independent directors of VinFast, Roy Ling, has a criminal conviction for cruelty to his pet dog. He has also resigned from several boards, often after relatively short tenures and citing reasons such as being unable to obtain sufficient information or discharge fiduciary duties. What is your assessment of his suitability to be appointed as a director, also taking into account his extensive senior corporate experience? Explain. Under what circumstances should an independent director resign?
6. Considering VinFast's rapid global expansion and the potential risks associated with supply chains, regulatory compliance, and geographical factors, do you think the company should establish a dedicated Risk Committee? Explain.
7. Given that VinFast is listed on NASDAQ and incorporated in Singapore, identify potential cross-border regulatory issues that VinFast may encounter.
8. Critically evaluate the corporate governance environment in Vietnam. Compare the corporate governance approaches of Singapore, Vietnam, and the US, and discuss their implications for VinFast.

Endnotes

1 VinFast Auto Ltd. (2023, October 23). Form F-1 Registration Statement. *SEC Archives*. Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523260332/d621047df1.htm

2 *Ibid.*

3 *Ibid.*

4 VinFast Auto Ltd. (2022, December 6). Form F-1 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312522299157/d274483df1.htm#rom274483_7

5 Nguyen, H. (2022, January 6). VinFast announces its all electric strategy and full electric vehicle lineup at CES 2022. *VinFast Auto.* Retrieved from https://vinfastauto.com/vn_en/vinfast-announces-its-all-electric-strategy-and-full-electric-vehicle-lineup-at-ces-2022

6 VinFast Auto Ltd. (n.d.). VinFast Auto. Retrieved from https://vinfastauto.com/en/#major-milestones

7 *Ibid.*

8 Statista. (2023, October 6). Annual revenue breakdown by segment for VinFast Auto FY 2021-2022. Retrieved from https://www.statista.com/statistics/1412356/vinfast-auto-annual-revenue-by-segment/

9 VinFast. (2024, February 22). VinFast Reports Unaudited Fourth Quarter and Fiscal Year 2023 Financial Results. Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000110465924026330/tm246968d1_ex99-1.htm

10 Fox, M. (2023, September 4). From Ukrainian noodles to electric cars. Here's how VinFast founder Pham Nhat Vuong built a more than $60 billion fortune. *Business Insider.* Retrieved from https://markets.businessinsider.com/news/stocks/who-is-pham-nhat-vuong-fortune-vinfast-founder-vfs-stock-2023-9

11 *Ibid.*

12 *Ibid.*

13 Tan, G.P. (2023, April 16). What is the secret to success for Vinfast's CEO, Pham Nhat Vuong? *Risk in Asia*. Retrieved from https://www.riskinasia.com/what-is-the-secret-to-success-for-vinfasts-ceo-pham-nhat-vuong/#:~:text=Vuong%20aims%20to%20make%20Vinfast%20a%20global%20brand,vehicles%20that%20are%20affordable%2C%20practical%2C%20and%20environmentally%20friendly.

14 Roeloffs, M.W. (2023, August 28). What to know about Vietnamese automaker VinFast as it surges in value to compete with Tesla and Toyota. *Forbes*. Retrieved from https://www.forbes.com/sites/maryroeloffs/2023/08/28/what-to-know-about-vietnamese-automaker-vinfast-as-it-surges-in-value-to-compete-with-tesla-and-toyota/?sh=6d6995d23a76

15 Tan, G.P. (2023, April 16). What is the secret to success for Vinfast's CEO, Pham Nhat Vuong? *Risk in Asia.* Retrieved from https://www.riskinasia.com/what-is-the-secret-to-success-for-vinfasts-ceo-pham-nhat-vuong/#:~:text=Vuong%20aims%20to%20make%20Vinfast%20a%20global%20brand,vehicles%20that%20are%20affordable%2C%20practical%2C%20and%20environmentally%20friendly.

16 VinFast Auto Ltd. (2023, October 23). Form F-1 Registration Statement. *SEC Archives*. Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523260332/d621047df1.htm

17 VinFast Auto Ltd. (2023, June 15). Form F-4 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523167483/d398992df4.htm#toc

18 VinFast Auto Ltd. (2023, September 21). Form F-1 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523239458/d541681df1a.htm#rom541681_22

19 VinFast Auto Ltd. (2023, September 21). Form F-1 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523239458/d541681df1a.htm#rom541681_22

20 Global EV Outlook 2023. (2023). Global EV Outlook. Retrieved from https://doi.org/10.1787/cbe724e8-en

21 Irle, R. (2023) Global EV sales for 2023 H1. *EV Volumes*. Retrieved from https://www.ev-volumes.com/

22 Global EV Outlook 2023. (2023). Global EV Outlook. Retrieved from https://doi.org/10.1787/cbe724e8-en

23 Virta. (2019, April 29). The 4 drivers of Electric Vehicle Market Growth. *Virta Global.* Retrieved from https://www.virta.global/blog/electric-vehicle-market-growth

24 Tyson, A. (2021, May 26). Gen Z, millennials stand out for climate change activism, social media engagement with issue. *Pew Research Center Science & Society.* Retrieved from https://www.pewresearch.org/science/2021/05/26/gen-z-millennials-stand-

out-for-climate-change-activism-social-media-engagement-with-issue/#:~:text=Compared%20with%20older%20adults%2C%20Gen,volunteering%20and%20attending%20rallies%20and

25 Canalys Newsroom. (2023, October 2). Global EV sales up 49% to 6.2 million units in H1 2023, with 55% of vehicles sold in Mainland China. Retrieved from https://www.canalys.com/newsroom/global-ev-sales-h1-2023

26 *Ibid.*

27 Vietnam Industry Research And Consultancy. (2023, August 22). Vietnam EV market in 2023 welcomes positive growth signals - strong development prospects in the future. *VIRAC.* Retrieved from https://viracresearch.com/vietnam-ev-market-outlook-2023-strong-prospect/#:~:text=Among%20many%20EV%20market%20brands,is%20still%20the%20leading%20brand.

28 Klayman, B. (2023, August 18). Focus: VinFast's new sales approach has US car dealers cautious but interested. *Reuters.* Retrieved from https://www.reuters.com/business/autos-transportation/vinfasts-new-sales-approach-has-us-car-dealers-cautious-interested-2023-08-17/

29 Hoang, L. (2023, October 6). VinFast to invest $400m on India, Indonesia EV factories. *Nikkei Asia.* Retrieved from https://asia.nikkei.com/Business/Automobiles/VinFast-to-invest-400m-on-India-Indonesia-EV-factories

30 VCI Legal. (n.d.). Insight into the initial public offering ("IPO") listing of Vinfast. Retrieved from https://vci-legal.com/news/insight-into-the-initial-public-offering-ipo-listing-of-vinfast

31 PwC Vietnam. (2019). Adoption of IFRS in Vietnam. Retrieved from https://www.pwc.com/vn/en/services/assurance/ifrs/adoption.html

32 Nguyen, P. (2023, May 25). Vietnam's VinFast recalls first batch of US-bound EVS over safety risk. *Reuters.* Retrieved from https://www.reuters.com/business/autos-transportation/vietnams-vinfast-recalls-all-first-batch-evs-shipped-us-over-security-risk-2023-05-25/

33 VCI Legal. (n.d.). Insight into the initial public offering ("IPO") listing of Vinfast. Retrieved from https://vci-legal.com/news/insight-into-the-initial-public-offering-ipo-listing-of-vinfast

34 Tien, L. (2021, May 28). US IPO of VinFast could be delayed due to scrutiny over SPAC. *VIR.* Retrieved from https://vir.com.vn/us-ipo-of-vinfast-could-be-delayed-due-to-scrutiny-over-spac-84494.html

35 VCI Legal. (n.d.). Insight into the initial public offering ("IPO") listing of Vinfast. Retrieved from https://vci-legal.com/news/insight-into-the-initial-public-offering-ipo-listing-of-vinfast

36 Nguyen, P. (2022, April 8). Vietnam automaker VinFast files for U.S. IPO to fund expansion. *Reuters.* Retrieved from https://www.reuters.com/business/autos-transportation/vietnamese-automaker-vinfast-files-us-ipo-2022-04-07/

37 CNA. (2022, May 25). Vietnam EV maker VinFast to shift legal HQ to Singapore ahead of first exports. Retrieved from https://web.archive.org/web/20230206214011/https://www.channelnewsasia.com/business/vietnam-ev-maker-vinfast-shift-legal-hq-singapore-ahead-first-exports-2703691

38 VCI Legal. (n.d.). Insight into the initial public offering ("IPO") listing of Vinfast. Retrieved from https://vci-legal.com/news/insight-into-the-initial-public-offering-ipo-listing-of-vinfast

39 Nguyen, P., & Krolicki, K. (2022, May 24). Vietnam EV maker VinFast to shift legal HQ to Singapore ahead of first exports. *Reuters.* Retrieved from https://www.reuters.com/business/autos-transportation/vietnam-ev-maker-vinfast-shift-hq-singapore-ahead-ipo-first-exports-2022-05-24/

40 VCI Legal. (n.d.) Insight into the inital public offering ("IPO") listing of Vinfast. Retrieved from https://vci-legal.com/news/insight-into-the-initial-public-offering-ipo-listing-of-vinfast

41 Chiang, S., & Rosevear, J. (2023, September 28). Vietnamese EV maker VinFast debuts on the Nasdaq after completing SPAC merger. *CNBC.* Retrieved from https://www.cnbc.com/2023/08/15/vinfast-completes-spac-merger-set-to-start-trading-on-nasdaq.html

42 SEC. (2022, March 26). What are the differences in an IPO, a SPAC, and a direct listing? *U.S. Securities and Exchange Commission.* Retrieved from https://www.sec.gov/education/capitalraising/building-blocks/registered-offerings

43 Vinfast. (2023, August 15). Vinfast debuts on Nasdaq Global Select Market following successful business combination with Black Spade Acquisition Co. Retrieved from https://vinfastauto.us/newsroom/press-release/vinfast-debuts-on-nasdaq-global-select-market-following-successful-business

44 *Ibid.*

45 SEC. (2021, September 27). Overview of Pathways to Going Public. *U.S. Securities and Exchange Commission.* Retrieved from https://www.sec.gov/spotlight/sbcfac/comparison-chart-for-different-pathways-to-going-public-092721.pdf

46 KPMG. (n.d.). Why so many companies are choosing SPACs over IPOs. Retrieved from https://kpmg.com/us/en/articles/2022/why-choosing-spac-over-ipo.html#:~:text=The%20main%20advantages%20of%20going,usually%20takes%2012%E2%80%9318%20months.

47 SEC. (2021, September 27). Overview of Pathways to Going Public. *U.S. Securities and Exchange Commission.* Retrieved from https://www.sec.gov/spotlight/sbcfac/comparison-chart-for-different-pathways-to-going-public-092721.pdf

48 Yahoo Finance. (2023, November 17). VinFast Auto Ltd. (VFS). Retrieved from https://finance.yahoo.com/quote/VFS/?guccounter=1

49 Nguyen, P., & Mehta, C. (2023, October 5). VinFast revenues jump on EV sales to Vietnam affiliate. *Reuters.* Retrieved from https://www.reuters.com/business/autos-transportation/vietnamese-ev-maker-vinfasts-third-quarter-revenue-more-than-doubles-2023-10-05/

50 Oi, B. M. (2023, August 16). VinFast: Vietnam EV maker valued at more than Ford or GM. *BBC News*. Retrieved from https://www.bbc.com/news/business-66517549

51 Wayland, M. (2023, October 26). Ford misses Wall Street's Q3 expectations, pulls guidance due to UAW strike, pending deal. *CNBC.* Retrieved from https://www.cnbc.com/2023/10/26/ford-motor-f-earnings-q3-2023.html

52 Wayland, M., & Rosevear, J. (2023, October 24). GM tops Q3 expectations but pulls full-year guidance due to mounting UAW strike costs. *CNBC.* Retrieved from https://www.cnbc.com/2023/10/24/general-motors-gm-earnings-q3-2023.html

53 Yahoo Finance. (2023, November 17). VinFast Auto Ltd. (VFS). Retrieved from https://finance.yahoo.com/quote/VFS/?guccounter=1

54 Maulia, E. (2023, September 4). VinFast CEO unfazed by stock volatility, sees potential in ASEAN. *Nikkei Asia*. Retrieved from https://asia.nikkei.com/Business/Automobiles/VinFast-CEO-unfazed-by-stock-volatility-sees-potential-in-ASEAN

55 Post, J. (2023, October 1). VinFast boss insists share volatility "normal." *The Jakarta Post.* Retrieved from https://www.thejakartapost.com/business/2023/10/01/vinfast-boss-insists-share-volatility-normal.html

56 *Ibid.*

57 VinFast Auto Ltd. (2022, December 6). Form F-1 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312522299157/d274483df1.htm#rom274483_7

58 VinFast Auto Ltd. (2023, June 15). Form F-4 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523167483/d398992df4.htm#toc

59 eCFR. (n.d.). Definitions of terms. Retrieved from https://www.ecfr.gov/current/title-17/chapter-II/part-230/subject-group-ECFR3ba3c08ffc29ca2/section-230.405

60 VinFast Auto Ltd. (2023, June 15). Form F-4 Registration Statement. SEC Archives. Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523167483/d398992df4.htm#toc

61 *Ibid.*

62 *Ibid.*

63 *Ibid.*

64 *Ibid.*

65 *Ibid.*

66 *Ibid.*

67 *Ibid.*

68 eCFR. (n.d.). Definitions of terms. Retrieved from https://www.ecfr.gov/current/title-17/chapter-II/part-230/subject-group-ECFR3ba3c08ffc29ca2/section-230.405

69 SEC. (2017). Emerging growth companies, SEC Emblem. *U.S. Securities and Exchange Commission.* Retrieved from https://www.sec.gov/education/smallbusiness/goingpublic/EGC

70 *Ibid.*

71 *Ibid.*

72 *Ibid.*

73 *Ibid.*

74 VinFast Auto Ltd. (2023, June 15). Form F-4 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523167483/d398992df4.htm#toc

75 *Ibid.*

76 *Ibid.*

77 *Ibid.*

78 VinFast Auto Ltd. (2023, October 23). Form F-1 Registration Statement. *SEC Archives*. Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523260332/d621047df1.htm

79 *Ibid.*

80 *Ibid.*

81 *Ibid.*

82 *Ibid.*

83 *Ibid.*

84 *Ibid.*

85 Ley Choon Group Holdings Limited. (2024). Annual Report 2023. Retrieved from https://www.leychoon.com/wp-content/uploads/2023/07/2023-Annual-Report.pdf

86 International Property Awards. (n.d.). Roy Ling | The International Property Awards. Retrieved from https://propertyawards.net/judges/ling-roy/

87 *Ibid.*

88 Ee, D. & Poh, I. (2013, September 4). Man fined $5,000 for keeping dog exposed to sun and rain with little sustenance. *The Straits Times*. Retrieved from https://www.straitstimes.com/singapore/man-fined-5000-for-keeping-dog-exposed-to-sun-and-rain-with-little-sustenance

89 The Business Times. (2020, February 11). Sponsors' conflicts symptomatic of a bigger issue. Retrieved from https://www.nus.edu.sg/newshub/news/2020/2020-02/2020-02-11/CONFLICTS-bt-11feb-p17.pdf

90 *Ibid.*

91 SGX. (2019, February 3). Announcement of Cessation::Termination of Ms Jessie Sun May Gze's Appointment as Chief Operating Officer. Retrieved from https://links.sgx.com/1.0.0/corporate-announcements/QNKLQBBOTEKNVXM9/a38fa407adadd68e220ece5a81d524c1e06f926bbe2d22fe82c53c3580227bec

92 Pine Capital Group Limited. (2019). Annual Report 2019. Retrieved from https://links.sgx.com/FileOpen/PCGL_Annual%20Report%202019.ashx?App=Announcement&FileID=570208

93 The Straits Times. (2019, March 4). Pine Capital interim CEO quits as shareholders call for removal vote; new independent director appointed. Retrieved from https://www.straitstimes.com/business/companies-markets/pine-capital-interim-ceo-quits-as-shareholders-call-for-removal-vote-new

94 Pine Capital Group Limited. (2019, February 25). Follow Up Announcement. Retrieved from https://links.sgx.com/FileOpen/PCGL%20-%20Follow%20Up%20Announcement.ashx?App=Announcement&FileID=544886

95 High Court of the Republic of Singapore. (2019, August 30). SGHC 201 Suit No 374 of 2019. Retrieved from https://www.elitigation.sg/gdviewer/gd/2019_SGHC_201/pdf

96 SGX. (2019, March 19). Announcement of Cessation::Cesation of Prof. Ling Chung Yee Roy as Lead Independent Director. Retrieved from https://links.sgx.com/1.0.0/corporate-announcements/109WYOUT2RZCSUDL/05d285abcffc46629659d3856176549bf303170326133fadf02c49f47cc0232b

97 Pine Capital Group Limited. (2019, May 10). Resolution passed at the extraordinary general meeting of Advance Capital Partners Asset Management Private Limited. Retrieved from https://links.sgx.com/FileOpen/PCGL_Resolutions_EGM_ACPAM_10%20May%202019.ashx?App=Announcement&FileID=558939

98 Pant, D. (2019) ACPAM is suing former CEO, Director & Managers for breaching the employer contract. *People Matters*. Retrieved from https://www.peoplemattersglobal.com/news/employee-relations/acpam-is-suing-former-ceo-director-managers-for-breaching-the-employer-contract-21793

99 Pine Capital Group Limited. (2019, May 10). Update of legal proceedings – Settlement of suits. Retrieved from https://links.sgx.com/FileOpen/PCGL_Update_Legal%20Proceedings_18Oct2019.ashx?App=Announcement&FileID=582249

100 Pine Capital Group Limited. (2021, November 29). Receipt of notification of delisting. Retrieved from https://links.sgx.com/FileOpen/PCGL_Delisting%20Notification_29%20Nov%202021.ashx?App=Announcement&FileID=692555

101 SGX. (2022, January 26). Delisting of security::Mandatory. Retrieved from https://links.sgx.com/1.0.0/corporate-announcements/2H92Y2XIKK5PRTE1/315c9ede69c7b1dfedbfe699dcc85305b86386adcb8547a08ef400d1f25c7102

102 Lim, K. (2018, 13 August). Two of three Ace Achieve independent directors quit over audit delay. *The Business Times.* Retrieved from https://www.businesstimes.com.sg/companies-markets/two-three-ace-achieve-independent-directors-quit-over-audit-delay

103 SGX. (2018, August 31). Change - Announcement of Appointment::Re-appointment of Independent Director. Retrieved from https://links.sgx.com/1.0.0/corporate-announcements/6LHQ9VG327DU3XYW/160fdaf993a2a2d91886d23a94adf2f9a8fbc517997afe2f33a698d5b15d74f9

104 SGX. (2018, August 31). Change - Announcement of Cessation::Cessation of Prof Ling Chung Yee. Retrieved from https://links.sgx.com/1.0.0/corporate-announcements/3V6W2OAMUQ49P8BB/8a160f33bfb6731fc684b161e5de48ed68377178b70a259e669044d1b2ce6c5a

105 Ace Achieve Infocom Limited. (2022, December 20). Notification of Delisting Date. *SGX.* Retrieved from https://links.sgx.com/FileOpen/Notification%20of%20Delisting%20Date%20AA_final.ashx?App=Announcement&FileID=742067

106 Debao Property Development Ltd. (2019, February 25). Appointment of Independent Directors. Retrieved from https://links.sgx.com/FileOpen/Debao%20Property_Annt_Composition_of_Board_and_Board_Committees.ashx?App=Announcement&FileID=544885

107 The Business Times. (2022, June 20). VinFast parts ways with 4 top executives as it readies expansion. Retrieved from https://www.businesstimes.com.sg/companies-markets/vinfast-parts-ways-4-top-executives-it-readies-expansion

108 *Ibid.*

109 *Ibid.*

110 *Ibid.*

111 Nguyen, P. (2023, March 18). Vietnam's VinFast says three sales executives have left EV company. *Reuters.* Retrieved from https://www.reuters.com/business/autos-transportation/vietnams-vinfast-says-three-sales-executives-have-left-ev-company-2023-03-17/

112 *Ibid.*

113 *Ibid.*

114 Tuan, H. A. (n.d.). Doi Moi and the Remaking of Vietnam. *Global Asia.* Retrieved from https://www.globalasia.org/v4no3/cover/doi-moi-and-the-remaking-of-vietnam_hong-anh-tuan

115 Bui, X. H. (2011). Corporate governance in Vietnam – A system in transition. Retrieved from https://hermes-ir.lib.hit-u.ac.jp/hermes/ir/re/15924/070inv00201.pdf

116 Thang, N. N. (2011). Corporate governance and its impact on the performance of firms in emerging countries: The evidence from Vietnam. *VNU Journal of Science, Economics and Business*. Retrieved from https://js.vnu.edu.vn/EAB/article/view/838/808

117 ecgi. (n.d.). Corporate Governance in Vietnam. Retrieved from https://www.ecgi.global/publications/codes/countries/corporate-governance-in-vietnam

118 State Securities Commission of Vietnam. (2019, August). Vietnam Corporate Governance Code of Best Practice. Retrieved from https://www.ecgi.global/sites/default/files/codes/documents/vietnam_cg_code_of_best_practices_v1.0_english.pdf

119 ECGI. (n.d.). Corporate Governance in Vietnam. Retrieved from https://www.ecgi.global/publications/codes/countries/corporate-governance-in-vietnam

120 Lu, L. U. (2023, February 17). Duties, Obligations and Liabilities Of Members Of The Board Of Directors Of A Joint Stock Company. Retrieved from https://www.russinvecchi.com.vn/publication/duties-obligations-and-liabilities-of-members-of-the-board-of-directors-of-a-joint-stock-company/

121 *Ibid.*

122 Glass Lewis. (2021). Vietnam. Retrieved from https://www.glasslewis.com/wp-content/uploads/2021/01/Vietnam-Voting-Guidelines-GL.pdf?hsCtaTracking=d0829073-b4a8-4883-9a53-4aebc5437477%7C0c3e1259-5832-4dc2-bd1f-9ea947222664

123 *Ibid.*

124 FiinGroup Vietnam and VNIDA. (2023, February). Report on Independent Directors Survey in Public Companies in Vietnam. Retrieved from https://www.vnida.vn/wp-content/uploads/2019/09/Report-on-Independent-Directors-Survey-in-Public-Companies-in-Vietnam.pdf

125 Glass Lewis. (2021). Vietnam. Retrieved from https://www.glasslewis.com/wp-content/uploads/2021/01/Vietnam-Voting-Guidelines-GL.pdf?hsCtaTracking=d0829073-b4a8-4883-9a53-4aebc5437477%7C0c3e1259-5832-4dc2-bd1f-9ea947222664

126 FiinGroup Vietnam and VNIDA. (2023, February). Report on Independent Directors Survey in Public Companies in Vietnam. Retrieved from https://www.vnida.vn/wp-content/uploads/2019/09/Report-on-Independent-Directors-Survey-in-Public-Companies-in-Vietnam.pdf

127 *Ibid.*

128 *Ibid.*

129 *Ibid.*

130 Nguyen et al. (2019, March). Perceptions of independent directors about their roles and challenges on corporate boards: Evidence from a survey in Vietnam. Retrieved from https://www.researchgate.net/publication/331790783_Perceptions_of_independent_directors_about_their_roles_of_and_challenges_on_corporate_boards_Evidence_from_a_survey_in_Vietnam.

131 FiinGroup Vietnam and VNIDA. (2023, February). Report on Independent Directors Survey in Public Companies in Vietnam. Retrieved from https://www.vnida.vn/wp-content/uploads/2019/09/Report-on-Independent-Directors-Survey-in-Public-Companies-in-Vietnam.pdf

132 *Ibid.*

133 Groysberg et al.. (2021, February). Compensation Packages That Actually Drive Performance. *Harvard Business Review.* Retrieved from https://hbr.org/2021/01/compensation-packages-that-actually-drive-performance

134 *Ibid.*

135 State Securities Commission of Vietnam. (2019, August). Vietnam Corporate Governance Code of Best Practice. Retrieved from https://www.ecgi.global/sites/default/files/codes/documents/vietnam_cg_code_of_best_practices_v1.0_english.pdf

136 *Ibid.*

137 State Securities Commission of Vietnam. (2019, August). Vietnam Corporate Governance Code of Best Practice. Retrieved from https://www.ecgi.global/sites/default/files/codes/documents/vietnam_cg_code_of_best_practices_v1.0_english.pdf

138 VinFast Auto Ltd. (2023, October 23). Form F-1 Registration Statement. *SEC Archives.* Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000119312523260332/d621047df1.htm

139 Barua et al. (2016, November). Comparison of prescriptive and performance-based regulatory regimes in the U.S.A and the U.K. *Journal of Loss Prevention in the Process Industries*. Retrieved from https://doi.org/10.1016/j.jlp.2016.10.009

140 Rubinstein et al. (2022, April 18). SEC proposes rules to regulate SPACs. *White & Case LLP International Law Firm.* Retrieved from https://www.whitecase.com/insight-alert/sec-proposes-rules-regulate-spacs#:~:text=A%20SPAC%20is%20not%20required,under%20the%20Investment%20Company%20Act

141 Purdue Global Law School. (2022, December 16). SEC proposes rules to regulate special purpose acquisition companies. Retrieved from https://www.purduegloballawschool.edu/blog/news/sec-proposes-rules-regulate-spacs

142 BCLP. (2024, January 31). SEC adopts tough new rules for SPACs. Retrieved from https://www.bclplaw.com/en-US/events-insights-news/sec-adopts-tough-new-rules-for-spacs.html

143 Lan, L. L. (2023, February 23). Corporate Governance in Singapore — The Road Thus Far. *Oxford Law Blogs.* Retrieved from https://blogs.law.ox.ac.uk/oblb/blog-post/2023/02/corporate-governance-singapore-road-thus-far

144 Yeo, V. (n.d.). Corporate governance in Singapore. *ACCA Global.* Retrieved from https://www.accaglobal.com/gb/en/student/exam-support-resources/fundamentals-exams-study-resources/f4/technical-articles/corporate-governance-singapore.html

145 SGX Rulebook. (n.d.). Introduction | Rulebook. Singapore Exchange. Retrieved from https://rulebook.sgx.com/rulebook/introduction-0

146 Bose, A., & Pham, A. (n.d.). Considerations for a Singapore regional/global headquarters. *Deloitte.* Retrieved from https://www2.deloitte.com/sg/en/pages/tax/articles/considerations-sg-headquarters.html

147 Walsh et al. (2021, May 27). Time to upgrade corporate governance in Vietnam. *East Asia Forum.* Retrieved from https://www.eastasiaforum.org/2021/05/27/time-to-upgrade-corporate-governance-in-vietnam/

148 Pham, T.N.B. and Nguyen, D.H.U. (2019, August 16). Corporate governance and firm performance: Evidence from Vietnamese listed companies. *Ho Chi Minh City Open University Journal of Science.* Retrieved from https://journalofscience.ou.edu.vn/index.php/econ-en/article/view/158/124

149 VinFast. (2024, January 5). VinFast announces leadership transition. Retrieved from https://vinfastauto.us/newsroom/press-release/vinfast-announces-leadership-transition

150 Nguyen, P. (2023, March 18). Vietnam's VinFast says three sales executives have left EV company. *Reuters.* Retrieved from https://www.reuters.com/business/autos-transportation/vietnams-vinfast-says-three-sales-executives-have-left-ev-company-2023-03-17/

151 VinFast. (2024, January 5). VinFast announces leadership transition. Retrieved from https://vinfastauto.us/newsroom/press-release/vinfast-announces-leadership-transition

152 VinFast. (2024, April 25). VinFast Announces Updates to its Board of Directors. Retrieved from https://vinfastauto.us/newsroom/press-release/vinfast-announces-updates-to-its-board-of-directors

153 CH Offshore Ltd. (n.d.). Board of Directors. Retrieved from https://www.choffshore.com.sg/board-of-directors/

154 The Star. (2024, May 8). VinFast's ambitions get mighty reality check. Retrieved from https://www.thestar.com.my/business/business-news/2024/05/08/vinfasts-ambitions-get-mighty-reality-check

155 Kane, D. (2024, May 20). VinFast crash that killed family of four now under federal investigation. Retrieved from https://techcrunch.com/2024/05/20/vinfast-nhtsa-investigation-fatal-crash-family-fire/

156 VinFast. (2024, February 2022). VinFast reports unaudited fourth quarter and fiscal year 2023 financial results. SEC. Retrieved from https://www.sec.gov/Archives/edgar/data/1913510/000110465924026330/tm246968d1_ex99-1.htm

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.

SINGAPORE

NUS BUSINESS SCHOOL
15 KENT RIDGE DRIVE
SINGAPORE 119245

Scan this QR code to download a soft copy of this book

ISBN 978-9-81-940694-4

NUS National University of Singapore

Centre for Investor Protection
NUS Business School