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Is corporate governance in Singapore on a downward trajectory?

More discussion about investor protection and minority shareholder rights is needed. BY MAK YUEN TEEN

A series of corporate scandals have highlighted the weaknesses of Singapore's CG regime and limitations on minority shareholder rights.
FILE PHOTO

ON Dec 5, the Asian Corporate Governance Association (ACGA) released the 2018 edition of *CG Watch* which covers 12 Asian markets. The report includes a "top-down" market survey undertaken by ACGA and a "bottom-up" environmental, social and governance (ESG) survey of companies by CLSA.

This survey now uses seven categories that are broadly based on the different stakeholders in the corporate governance ecosystem. They are "Government and public governance", "Regulators", "CG rules", "Listed companies", "Investors", "Auditors and audit regulators" and "Civil Society and media". The "Regulators" category is further divided into "Funding, capacity building, regulatory reform" and "Enforcement". These seven categories replace the five "thematic" categories of CG rules and practices, enforcement, political and regulatory environment, accounting and auditing, and CG culture, that have been used since the first survey in 2003.

Other than the changes in the categories, there are also changes in the number of questions used and scoring rubric compared to 2016. This means that the 2018 scores are not comparable to the 2016 scores.

With Australia now formally included in the ranking rather than merely for benchmarking in 2016, Singapore's ranking has fallen to third. Without Australia, Singapore would have been pipped by Hong Kong this time round. In 2016, Singapore was ranked ahead of Hong Kong and behind Australia.

Australia is well ahead on its own with an overall score of 71 per cent, even though it had its problems in the banking sector. Some way behind Australia is a cluster of other countries, each separated by an overall score difference of 2 per cent or less. In descending order, these are Hong Kong (60 per cent), Singapore (59 per cent), Malaysia (58 per cent), Taiwan (56 per cent), Thailand (55 per cent), and India and Japan (54 per cent). Another cluster comprising Korea, China, Philippines and Indonesia follows, with Korea the best of them with a score of 46 per cent. Malaysia is the greatest improver, moving from seventh to fourth, while Japan fell from fourth to seventh.

ENFORCEMENT OVERSIGHT

The fact that Hong Kong and Singapore now permit companies to list with dual class shares (DCS) has weighed down their scores. DCS runs counter to certain fundamental corporate governance principles so a negative impact on the scores is not surprising.

For Singapore, the report said: "Singapore has ... suffered reputational damage due to DCS, while policy contradictions abound in other areas, such as its new CG Code. Underperforming on enforcement despite the creation of a new regulatory entity under SGX. A series of corporate scandals have highlighted the weaknesses of its CG regime and limitations on minority shareholder rights."

Some may quibble about whether the ranking fairly reflects the quality of corporate governance here compared to other markets and grumble that the overall summary of our current state is too harsh. I would say that there has been increasing dissonance in recent years among international investors and stakeholders I have met about the true quality of corporate governance of listed companies here. This is something that I have rarely encountered in the past, when a mention of "Singapore" used to be almost automatically greeted with commendations about its high standards of corporate governance.

Corporate governance problems here are now much more than just an "S-chip" problem. We have seen foreign listings that are not S-chips, such as Noble Group and YuuZoo, large local companies such as Keppel Corp and Singapore Post, and smaller local companies such as Datapulse Technology and Trek 2000, running into significant corporate governance problems. Add to that the number of contentious delistings, the questionable quality and poor performance of many recent IPOs, and certain companies using defamation suits against shareholders or being highly antagonistic towards shareholders at AGMs, it is difficult to put up a convincing case that we are as good as we used to be.

Meanwhile, other markets such as Malaysia and Taiwan seem to have greater momentum and appetite for improving corporate governance. The report warned that fast movers such as Malaysia may soon catch up with Hong Kong and Singapore – after all, it is just a percentage point behind the Republic now. There are a number of areas that Malaysia excels in, such as well-structured mandatory and continuing training for directors, strong enforcement by the stock exchange and securities regulator, an active retail investors body that participates actively in AGMs, and healthy board renewal. Taiwan has mandatory online electronic voting for all listed companies and strengthened investor protection through its Securities and Futures Investor Protection Centre which helps mediate disputes and litigate on behalf of investors, with funding provided by the stock and futures exchanges, securities firms and futures firms.

Let's look at the seven categories and see where we are found wanting, and possible areas for improvement. While Singapore is one of the markets lauded for its public governance, legal system and judiciary under "Government and public governance", with an overall fourth-place ranking, contradictory government policy on CG weighed down its ranking in this category. This is partly due to the "DCS" effect. The DCS factor also negatively impacted the second category of "Regulators", but in addition, other countries such as Hong Kong, India, Korea, Malaysia and Thailand are seen to do better in terms of funding for, and capacity building by, the securities regulator.

Singapore does lack a separate securities regulator unlike most other markets, and funding for the securities regulation function that currently resides within the Monetary Authority of Singapore is not known. It is also important that other regulators such as SGX Regco, Commercial Affairs Department and Corrupt Practices Investigation Bureau are adequately funded. As the market develops and grows, it is important that the mandate and capacity of the regulators keep pace.

Securities regulators and stock exchanges are also seen to have done relatively better in Korea, Malaysia and Thailand when it comes to regulatory reform, which the report attributed partly to better funding.

When it comes to enforcement by the securities regulator and the stock exchange, Singapore is ranked around the middle among the 12 markets. Enforcement is an area that requires urgent attention in Singapore in my view. Enforcement is obviously also dependent on whether regulatory agencies are adequately funded. Hopefully, recent regulatory action in the Noble Group case is a sign of enhanced enforcement across the whole market.

In terms of CG rules, Singapore is ranked sixth and one of four countries singled out for good ESG and sustainability reporting standards. There are rules in place for many of the key areas mentioned, but disclosure of executive and director remuneration and share pledges by controlling shareholders (other than pledges tied to change of control covenants in debt agreements, for which disclosure is already required) are some possible areas for improvement. Further, while we have strict rules on disclosure of price-sensitive information in place, compliance with these rules in practice leaves much to be desired in my view – with companies often making incomplete or inaccurate disclosures which are then "clarified" without any apparent repercussions.

In the "Listed companies" category, Singapore is ranked joint second with Thailand, behind Australia. This is based on an assessment of CG reporting by a sample of large- and mid-caps and therefore may not reflect practices in the entire market. The positive ranking is somewhat tempered by the statement that "with the exception of Australia, scores in this category were more mediocre than we expected".

LIMITED IMPACT

The "stand-out underperformer" among all categories in the survey is "Investors". This is largely because very few asset owners and managers take their ownership responsibilities seriously, with Australia being an exception. While many markets have introduced stewardship codes, Hong Kong and Singapore are singled out for being two markets where regulators or other national bodies have not actively promoted their adoption by institutional investors. This assessment squares with my own views about the limited impact of the stewardship code in Singapore. Herein lies part of the answer as to why the "comply or explain" approach to improving corporate governance has not worked well in Singapore and many other markets – the lack of institutional investor activism.

The category of "Auditors and audit regulators" is usually the area where Singapore hits it out of the park. While this is the category that has consistently elicited the highest scores in many markets, the report made it clear that this has more to do with regulation rather than audit quality itself. Other markets are catching up or have caught up with us in key areas such as convergence with international accounting standards, long-form auditor reports and independent audit regulator. In fact, the report has now placed us third in this category, behind Australia and Malaysia. It is unclear whether increased regulation has resulted in an increase in audit quality. Public criticism and public sanctions against auditors of listed companies are still relatively rare in Asia. This contrasts with the more developed markets such as UK and US where the performance of individual accounting firms, including the Big 4, is publicly highlighted.

Finally, for "Civil society and media", Singapore is ranked fourth, behind Australia, India and Japan. The emergence of other not-for-profit organisations holding listed companies accountable, such as a "corporate watch" body, a domestic proxy advisory firm focusing on small caps, or an investor protection body that litigates on behalf of aggrieved investors, would in my view be welcome additions to our corporate governance ecosystem. However, the risk of the media, commentators and civil society organisations being sued for defamation by companies and boards may well limit their role in improving corporate governance.

Overall, there are some areas where we appear to have gone backwards. In other areas, other markets have caught up or overtaken us either because we have remained static or others have more momentum.

One key message in the report is that while a belief in transparency and accountability remains largely intact in the region, some markets are showing a striking lack of interest in fairness. This could well apply to Singapore, with the move towards DCS and very little discussion about investor protection and minority shareholder rights.

■ The writer is an associate professor of accounting at the NUS Business School where he specialises in corporate governance. The views in this article are his personal views.