National University of Singapore

Source: *The Business Times*, p17
Date: 29 January 2020

Future code revisions will likely continue the increasing focus on broader stakeholders' interests and ESG issues, to further promote their integration into corporate strategies and board decision-making. BT PHOTO: CHONG JUN LIANG

Reflections on Singapore's 20-year corporate governance journey

The priorities now are vigorous enforcement, stronger investor protection and a higher bar on the quality of listings in the market. BY MAK YUEN TEEN

IT HAS been 20 years since the establishment of the first Corporate Governance Committee, which commenced its work in early 2000 and released the first Code of Corporate Governance for listed companies in Singapore in April 2001. It was one of three committees formed under the auspices of the Ministry of Finance (MOF), Attorney-General's Chambers and Monetary Authority of Singapore (MAS).

The East-Asian financial crisis had happened just over two years prior, with poor corporate governance recognised as a key contributing factor, although Singapore had escaped relatively unscathed. The stock exchange had just been demutualised in 1999 and listed in November 2000. There were about 410 listings with total market capitalisation of about S$456 billion, compared to 723 listings with total market cap of S$938 billion (including secondary listings) today.

Setting the course

The 1998 Combined Code on Corporate Governance from the United Kingdom served as the key reference point for the Corporate Governance Committee, chaired by then Singtel chairman, Koh Boon Hwee.

It adopted a definition of corporate governance which emphasised the enhancement of long-term shareholder value, consistent with the Anglo-Saxon-based shareholder model. While it recognised that the interests of other stakeholders should be taken into account, there was little discussion about stakeholders' interests then.

A key decision was to adopt the "balanced approach" through a code of corporate governance based on "comply or explain", rather than highly prescriptive, one-size-fits-all rules. This approach was pioneered by the UK. At that time, the US then was non-prescriptive, requiring companies to disclose their corporate governance practices without much direction from regulators. That was soon to change following the Enron and WorldCom scandals, which led to the introduction of the Sarbanes Oxley Act (SOX) in 2002 and the start of a highly prescriptive approach to corporate governance in the US.

To this day, US does not have a code based on comply or explain – rather it has legislation like SOX and Dodd-Frank Act, Securities and Exchange Commission (SEC) rules, and listing rules containing prescriptive corporate governance requirements. Australia was likewise non-prescriptive, and it was only some years later that it adopted a set of corporate governance principles and recommendations based on its "if not, why not?" approach.

The committee recognised that the "comply or explain" approach requires the Singapore Exchange (SGX) to ensure that companies disclose their corporate governance practices and their reasons for deviation from the Code, but it is for the market to assess and judge the quality of the explanations.

This did not happen. SGX did not monitor whether companies provided adequate disclosures or disclosed reasons for not complying. Unlike the UK, where institutional investors challenged companies' non-compliance and reasons, institutional investors here proved to be rather apathetic. The result was that companies were often not complying and not explaining, or provided boilerplate disclosures, or in some cases, false disclosures.

Independent directors, remuneration and internal audit were some of the major topics that received attention by that Committee. It was recommended that there should be at least one-third of independent directors. The concept of independent directors was based on independence from management and business relationships, but not from substantial shareholders. This was how the UK at that time defined director independence, which to this day, is still how the US defines it.

Ownership of US and UK companies was largely dispersed, which meant divergence between dominant shareholders' and minority shareholders' interests was generally not a major issue. Furthermore, under US law, controlling shareholders owe fiduciary duties to the company and other shareholders, which helps counters the risk that they may act against the interests of minority shareholders. In contrast, most Singapore companies have dominant shareholders and controlling shareholders do not have fiduciary duties.

Disclosures in bands of S$250,000 for individual directors and top five key executives were recommended in the Code, as was disclosure of remuneration of immediate family members of directors and CEOs who earned more than S$150,000. The latter was not in the UK Code, but the committee recognised the risk of family companies expropriating from minority shareholders using excessive remuneration paid to family members.

At that time, performance-based remuneration for CEOs and executive directors was thought to be relatively low. Hence, the Code – like the UK Code – recommended that performance-related elements should form a significant element of the total remuneration package of executive directors.

The reporting relationship of the head of internal audit (IA) also received attention. Most IA heads then reported to management, usually to either the CEO or CFO. The Code recommended that they should report primarily to the audit committee chairman instead, and "administratively" to the CEO.

Caution sets in

Following the release of the first Code and the dissolution of the three committees, the Council on Corporate Disclosure and Governance (CCDG) was formed. Chaired by JY Pillay, then chairman of the SGX, it was under the auspices of the MOF. The CCDG's role was to prescribe accounting standards in Singapore; strengthen the existing framework of disclosure practices and reporting standards; and review and enhance the existing framework on corporate governance and promote good corporate governance in Singapore.

The Disclosure and Accounting Standards Committee (DASC) had recommended that quarterly reporting be required for all listed companies. The CCDG agreed, but proposed that companies with market capitalisation of S$20 million or less be given an extra year to do so. However, the government eventually decided to mandate quarterly reporting only for companies with market cap of at least S$75 million.

The CCDG set up a Review Committee in May 2004 to review the Code. Two key revisions proposed by the CCDG were rejected by the MOF. One was that independent directors should be independent from management, business relationships and substantial shareholders, and the other was disclosure of exact remuneration of individual directors. MOF instead opted to recommend in the Code that the chairman of the nominating committee should meet the stricter definition of independence proposed by the CCDG.

By then, the UK had expanded its definition of director independence to include independence from significant shareholders. This was likely due to the listing of companies from outside the UK, with their concentrated ownership structures. However, the rejection of the CCDG's recommendation meant that Singapore did not follow suit.

A turning point

The second edition of the Code was released in July 2005. Within a 10-month period between 2004 and early 2005, the market witnessed several scandals, including the first involving a Chinese company listed here, China Aviation Oil, and several involving Singapore-based companies – Accord Customer Care Solutions (ACCS), Auston International Group, Citiraya, and Informatics. In those cases, investigations and enforcement actions were swift, as my co-authors and I wrote in a paper presented at an Organisation for Economic Co-operation and Development (OECD) conference in 2006. However, no independent directors were charged.

A large number of S-chips also started listing on SGX between 2005 and 2007. By the end of that decade, there were about 155 S-chips, making up 20 per cent of all listed issuers. It was perhaps the best of times for the SGX from a listings standpoint, but was arguably the start of the malaise in the market.

A Code based on "comply or explain" was ill-equipped to mitigate the type of accounting and corporate governance lapses in S-chips.

Taking stock

In 2007, I authored a report commissioned by MAS and SGX on improving the implementation of corporate governance practices in Singapore based on research on practices of SGX-listed companies. The first set of recommendations was aimed at improving the implementation of the "comply or explain" approach, which by that time had been heavily questioned.

The report also raised concerns about corporate governance issues in foreign listings, especially S-chips. I expressed the hope that improved scrutiny of foreign listings and increased responsibility placed on sponsors would improve the quality of such listings. Another concern was excessive remuneration paid to controlling shareholders who were directors or management or related to them.

The report also made other recommendations, such as separate announcements and disclosure of reasons for cessation of directors, and separate disclosure of secondary listings, which were quickly implemented.

The issue of busy directors was also examined – the busiest director then sat on 13 boards of listed companies, while also being a Member of Parliament and holding a job as a managing director of a subsidiary of a multinational corporation.

Although I did not consider long tenure of independent directors as an issue then – since the concept of independent directors was only formally introduced in the 2001 Code – I said that trends should be kept under review, and shareholders should scrutinise this as many boards had not adopted formal term limits or renewal policies.

Female directors then made up 8.27 per cent of all directors. Suggestions were made on improving the process of appointment of independent directors and the pool of independent directors. Recommendations were also made for improving director training and institutional shareholder activism, through removing barriers to engagement such as limits on number of proxies and putting more pressure on institutional investors and assets managers to discharge their fiduciary duty to beneficiaries.

There have been improvements in some areas, although progress had generally been glacial and some concerns remain. In particular, I had mentioned that independent directors had little accountability – and this remains the case today.

A challenging time

In September 2007, the purview of the Code shifted from MOF to SGX and MAS, where it rightly belonged since the latter were the key regulators overseeing listed companies.

In 2010, MAS established the Corporate Governance Council, chaired by Alan Chan, then CEO of Singapore Press Holdings, and the third Code of Corporate Governance was released in May 2012.

By then, the first wave of scandals involving S-chips had hit in the late 2000s. The global financial crisis (GFC) a few years earlier had also raised questions about issues such as executive remuneration and risk management practices. The shareholder value model was criticised. CEOs of failed financial institutions walking away with outsized termination payments caused outrage. The common US practice of CEOs serving as chairmen was more widely acknowledged as a weakness of the US system of corporate governance.

The 2012 Code raised the bar on board independence, recommending that boards without an independent chairman should have at least half independent directors. Director independence was expanded to include independence from 10 per cent shareholders. Disclosure of exact remuneration of individual directors and the CEO was recommended. Guidelines on clawbacks of remuneration were introduced.

The 2012 Code also saw a greater nod to the interests of other stakeholders – a slight convergence towards the stakeholder model, and the first step towards a broader focus on sustainability and environmental, social and governance (ESG) issues that we are witnessing today.

Risk governance and management also received attention, and companies were given a nudge to consider having a separate risk committee. This is unsurprising given the deficiencies in risk management practices in the failed financial institutions during the GFC. Other markets such as Australia and Hong Kong which revised codes after the global financial crisis likewise introduced new principles and guidelines in this area.

A reboot

When the Corporate Governance Council, chaired by Chew Choon Seng, then chairman of SGX, was formed in 2017 to revise the Code again, issues such as the role of the board in promoting innovation and setting corporate culture were gaining more prominence. The Council recognised that the "comply or explain" approach was not working as intended. There was also a view that the Code, after several revisions, had become too cumbersome.

The result was a significant change in approach. The number of principles and guidelines (renamed provisions) were reduced significantly, with some moved to practice guidance which was not subject to comply or explain. However, the principles and provisions that remained were given more weight, with principles becoming mandatory and variations from provisions permitted only if the principles are still complied with and explanations for variations are comprehensive and meaningful. Certain guidelines were moved to listing rules, making them mandatory.

For the first time, a standing committee promoting corporate governance, the Corporate Governance Advisory Committee, was formed under MAS. It will fall on this committee to help ensure that the new Code and approach are indeed effective in raising corporate governance standards.

As for the problems with S-chips, there are no obvious solutions. Today, only 93 remain, and many of those that have disappeared were delisted after accounting and corporate governance scandals. There are calls to give them another try or attract listings from other countries such as Russia. SGX and market regulators owe it to the investing public not to repeat the mistake of the S-chip debacle.

What now?

I have been increasingly downbeat about corporate governance practices in our market in recent years. Despite all the work that has gone into the trying to improve corporate governance here over the last 20 years, my view is that things have actually become worse.

It is no longer just an S-chip problem. The malaise has spread to non-China foreign listings, Singapore companies and newer listings, especially those on Catalist, which now accounts for nearly 30 per cent of all listings, compared to less than 18 per cent 10 years ago.

Enforcement in recent years has been weak, whether it is for local or foreign companies. In my view, other markets such as Hong Kong and Malaysia have overtaken us in terms of regulatory enforcement, and private enforcement is virtually non-existent here.

So where do we go from here over say the next five to 10 years? Strengthening investor protection and improving enforcement – both regulatory and private – are essential in my view. Not doing so while continuing to revise the code of corporate governance will be akin to moving the deck chairs on a sinking ship.

Future code revisions will likely continue the increasing focus on broader stakeholders' interests and ESG issues, to further promote their integration into corporate strategies and board decision-making. Remuneration policies, including pay-for-performance practices, may need to be revisited to ensure that they help promote better income equality.

But in these next few years of the new decade, my view is that the priorities for Singapore are vigorous enforcement, stronger investor protection and a higher bar on the quality of listings in the market – even if it means fewer listings. The downward spiral in market quality and conduct simply has to be stopped.

The writer is an associate professor of accounting at the NUS Business School where he specialises in corporate governance. He was a member of the Corporate Governance Committee between 2000 and 2001, the Council on Corporate Disclosure and Governance from 2002 to 2005, the Corporate Governance Council from 2017 to 2018, and is a current member of the Corporate Governance Advisory Committee. The views here are his personal views.