

Selection and eligibility criteria of company directors may need updating

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Page 32 | Section: BUSINESS

1155cm on the page



Industry observers caution that new regulations must be implemented with great care to thwart illicit activity, while preserving Singapore's status as an international financial hub. PHOTO: LIANHE ZAOBAO

News analysis

Selection and eligibility criteria of company directors may need updating

Experts suggest more robust licensing frameworks and wider risk oversight



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Recently, several company directors have found themselves in hot water and were brought to task under the Companies Act for not being good stewards of the businesses under their care.

Their wrongdoings ranged from minor offences such as not holding regular annual general meetings or not filing annual returns on time, to more serious ones like dereliction of duty, cheating and fraud.

This was the case with Allied Technologies' former executive director Roger Poh, the latest company director to face the music.

Poh was convicted and sentenced to six months' imprisonment for failing to act honestly in the discharge of his

duties, the Accounting and Corporate Regulatory Authority (Acra) revealed on Jan 8.

Another example is Singaporean Xie Yong, who has been in the news for being the director of 980 companies. He was sentenced to four weeks' jail and fined \$57,000 in December for failing to exercise reasonable diligence in the proper discharge of his duties.

The recent spike in such cases has raised questions about the ease with which a person can become a director of a company, and whether more restrictions as well as updates to existing laws governing directors' appointments and their duties are needed.

While these duties are clearly defined in the Companies Act and clarified by case law over time, the basic and fundamental responsibility of any director is to honestly act in the interest of the company, said Singapore Institute of Technology's Professor of Accounting Ho Yew Kee.

He added that the board of directors stands between shareholders – the owners of the business – and management – who are employed to run the

business. The board is tasked with safeguarding the shareholders' interests, while also acting to bolster the company's value on their behalf.

This is to mitigate any conflict of interest that might arise between management and shareholders, such as a manager acting to maximise his or her own wealth over shareholders', and to exhibit good governance.

Prof Ho noted that a board of directors that discharges its duties well reflects good governance, which appeals to investors and furnishes a clear and dependable assessment of its value.

But, based on the cases, some directors are failing in their tasks.

Experts told The Straits Times that there needs to be a relook into how directors are appointed, while the eligibility criteria to qualify as a director should be re-examined and strengthened.

Professor Lawrence Loh, director at the National University of Singapore Business School's Centre for Governance and Sustainability, said the existing criteria for directors are "quite minimalist".

Of the more than 400 sections comprising the Singapore Companies Act, only 28 deal with various facets concerning directors.

Under Section 145 of the Act,



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anyone at least 18 years of age can become a director, barring a handful of proscriptions.

They include not being of unsound mind and not being an undischarged bankrupt. A person who wishes to become a director must also not have been convicted of any criminal offence involving fraud or dishonesty, or be disqualified by an order of court.

Prof Loh noted: "Because of the increasing complexity of director work and the even higher possibility of breaches with the advent of advanced technologies and modes of information flows, we need to nip the problem at its source – director appointments. "We need broader due diligence in such situations."

Prof Ho said the oversight of independent directors stands out as an aspect requiring ongoing scrutiny. He noted that the Singapore Exchange has set a tenure limit of nine years for independent directors, which aligns with the prevailing global best practice.

He proposed a more robust licensing framework for directors, "such as having to clock a certain number of hours of continuing professional development annually, so that the directors keep abreast of the rapidly changing business environment".

Other considerations when appointing and re-appointing directors include being well-versed in managing risks, such as sustainability and climate change, he said.

Boards have also been under greater pressure to enhance their comprehension of cyber security and exert tighter control over it, given the potential for any data breach to inflict severe reputational damage on the companies they represent.

Still, the Companies Act does have some checks and balances that have served well to date, experts noted.

Mr Robson Lee, senior corporate lawyer and capital markets partner at Kennedys Legal Solutions, said that the Act provides for additional guard rails to keep negligent directors in check.

For example, besides its directors, a company also has other officers who have statutory responsibilities towards the company. These include the corporate secretary and the financial controller or finance

manager.

Mr Lee said: "These officers, whose responsibilities can be very wide, will also be held accountable for any negligence or failure to carry out their duties."

As for deterrence, Mr Lee added that the existing framework of the Act is efficient enough in meting out punishment to match the egregiousness of the misdeed.

This can range from a fine all the way up to a hefty jail term.

Mr Lee, who is also a senior accredited director at the Singapore Institute of Directors, said that it is humanly impossible to monitor all that goes on in every company.

He cited an example of a car running a red light. "If nothing untoward happens and the cameras aren't working, the chances are the offender would get away scot-free," he said.

"But if the driver is involved in a road accident after speeding through that red light, the offence will come to light and the law will eventually catch up with the perpetrator."

In the same way, the enforcement authorities – such as Acra – will jump into action when suspicious activities come to light.

Mr Lee said this usually occurs when public mudslinging by warring factions of a company reveal issues that are eyebrow-raising, or when actual crime is discovered by the liquidator when a company goes belly up.

Still, in view of the recent spate of directors' negligence, Mr Lee agreed that the Companies Act could do with some updating. However, he said a nuanced approach was preferable, rather than a blanket overhaul.

Prof Ho added that any new regulations must be implemented with great care because even the most effective regulations introduce friction and transaction costs into the market.

On the flip side, insufficient regulations may compromise the protection of investors' interests, hurting Singapore's status as an international financial centre as investors may be dissuaded by the market's lack of transparency and openness, he said.

Mr Lee said: "Whatever the solution is, it has to balance both the ease of setting up legitimate businesses, while making it difficult to establish companies for illicit purposes."

"Ultimately, Singapore's reputation is at stake. We don't want to be known as a haven for thieves. As such, the regulations must be more robust to thwart shady characters who want to game the system," he added.

Prof Loh said: "We need to sensitively calibrate the formulation of regulation.

"In one fell swoop, we may roll out all the extreme measures to counter the violations, but we may generate more hoops and hurdles to inconvenience all."

He added: "A fine balance is needed to sustain Singapore as a friendly place to do business, which creates jobs and contributes to economic growth."

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