

Top Print Edition Stories

Director resignations: When personal is not really personal

Mak Yuen Teen And Cynthia Hu

1,192 words

20 July 2009

Business Times Singapore

STBT

English

(c) 2009 Singapore Press Holdings Limited

THE announcement template for resignation of directors and key officers, introduced by the Singapore Exchange Ltd (SGX), became effective on Oct 1, 2007. On June 9, 2008, SGX changed the name of the template to 'announcement of cessation'. Chapter 7 of the listing rules on continuing obligations for issuers requires companies to disclose the information set out in the 'announcement of cessation' template, including detailed reason(s) for cessation.

Not 'till death do us part' but no casual flings either

While directors are not expected to serve on boards 'till death do us part' - and independent directors should not serve on boards for too long - they should help the company 'in sickness and in health'. 'Fair weather' directors who resign at the first sign of difficulty for a company are arguably breaching their duties to the company.

Non-executive directors would ordinarily be expected to serve out their terms. While there are situations where it becomes untenable for independent directors to continue - for example, when management persist in withholding vital information from them - they should only resign as a last resort. While **resignations** of independent directors part-way through their terms may not necessarily indicate that something is amiss, they could be an indicator of corporate governance issues within the company.

Consider the case of Oriental Century. On April 26, 2007, three directors of Oriental Century resigned, including one independent **director** who was appointed on March 29, 2006. In addition, another independent **director** who was only appointed on Sept 1, 2006 decided not to stand for election at the annual general meeting (AGM) held on April 26, 2007. About two years later - in March 2009 this year - Oriental Century was rocked by an accounting scandal involving its chairman-cum-CEO, who is also the second-biggest shareholder. While the earlier **resignations** and the subsequent accounting scandal may not necessarily be connected, the mass **resignations** do raise questions as to whether the directors already had concerns at that time.

Personal-related reasons dominate

In a study of announcements from Oct 1, 2007 to May 31, 2009, we found 163 cases of resignation of independent directors. Eighty-five companies had one resignation, while another 24 companies had two, three companies had three, four companies had four, and one had five **resignations**. Reasons for these 163 **resignations** can be categorised into personal-related, corporate governance-related, and others. Personal-related reasons made up 112 out of the 163 cases, or 69 per cent.

The three most common personal-related reasons were 'other commitments' (43 cases), 'personal reasons' (15 cases) and 'personal interests' (11 cases). Examples of other personal-related reasons include age, health and business interests. In a few rare cases, very specific reasons were given.

Reading between the lines in resignation announcements

Are personal-related reasons usually really personal in the sense of having to do with the personal circumstances of the independent **director**? One way to assess this is to examine whether the **director** also resigns as independent **director** from other boards he sits on.

Forty-one of the independent directors who resigned sat on at least one other board. We looked at whether these directors also resigned as independent directors from other boards within the next three months or six months. Eleven independent directors resigned between March 2009 and May 2009 onwards and we cannot be sure whether they will resign from other board(s) within the next three or six months, as our data only covered the period until May of 2009.

Of the remaining 30 independent directors who resigned before March 2009, four resigned from other boards within a three-month period, while five out of the 28 independent directors who resigned before December 2008 resigned from other boards within a six-month period. However, these five directors remained on other boards as independent directors. In fact, one of them still had seven directorships after he had resigned from three boards - two for personal-related reasons - and another had five

directorships after he resigned from two boards for personal-related reasons.

Of course, if an independent **director** resigns from one board and not from others, it does not necessarily reflect negatively on the company or on the **director** himself. For example, he could be resigning from boards because he wants to be able to commit enough time to his directorships. However, in such cases, we would expect the company to say so rather than use bland reasons like 'other commitments' or 'personal interests'.

More common now for independent directors to resign noisily

Twenty-three out of the 163 cases, or 14 per cent, cited corporate governance-related reasons. This is virtually unheard of before the introduction of the current regime. These include independent directors resigning because of differences of opinion with the board, chairman, executive directors and/or major shareholders; and unsatisfactory information flow. Such **resignations** should at least alert shareholders about possible problems in the company.

Other reasons independent directors resign

The remaining 28 cases (17 per cent) include those which could not be clearly classified as personal-related or corporate governance-related, and include board reorganisation, change of business, and change of major shareholder. Some of these are arguably negative from the corporate governance perspective but they are less clear-cut.

Early retirement of independent directors

There were 63 cases of directors retiring and not seeking re-election. We would not have captured all retirements because, prior to June 9, 2008, the template was named 'resignation' rather than 'cessation'. Not surprisingly, there were only 18 cases before the change from 'resignation' to 'cessation', and 45 cases after.

The chart (on the right) shows the tenure of these retired directors. Thirty-three per cent had served for three years or less. There were eight independent directors who had served for one year or less. In these cases, the companies generally stated 'retirement' or 'did not seek re-election at AGM' as reasons. It would seem that these independent directors were appointed to the board but decided not to go for election at the AGM. While there may be unexpected extenuating circumstances such as poor health, these cases may indicate that the **director** himself, the board or controlling shareholders had a change of heart.

Greater scrutiny of **resignations** and early retirements needed

The SGX template for announcing cessation of directors has improved transparency. Nevertheless, boilerplate disclosures citing personal-related reasons are still common.

Shareholders can, however, examine whether independent directors who resign from a board citing personal-related reasons also resign from other boards (or join other boards shortly after resigning). Particular attention should be paid to independent directors resigning citing corporate governance concerns. Finally, where independent directors 'retire' after a very short tenure, for example where they are appointed and do not go for election, the 'courting' may have led the parties to call off the 'engagement'.

Mak Yuen Teen is co-**director** and Cynthia Hu is research analyst of the Corporate Governance and Financial Reporting Centre at the National University of Singapore. This article is based on a forthcoming report

Document STBT000020090719e57k00005

Top Print Edition Stories

Quitting for 'personal reasons' under scrutiny

Lynette Khoo

869 words

20 July 2009

Business Times Singapore

STBT

English

(c) 2009 Singapore Press Holdings Limited

Study asks if these reasons are really linked to personal circumstances of IDs

(SINGAPORE) Boilerplate disclosures on resigning directors are still prevalent, while early retirements by directors with very short tenures do warrant a closer look.

These are some of the key issues raised in the latest study by the Corporate Governance and Financial Reporting Centre (CGFRC) at the National University of Singapore.

The CGFRC collected information from company filings on SGXNET on cessation or resignation of directors and key officers from Oct 1, 2007 to May 31, 2009. It found 163 cases of resignation of independent directors (IDs).

The study found that a majority of directors - 69 per cent - tend to attribute their **resignations** to personal-related reasons while 14 per cent of them cite corporate governance-related reasons.

This raises the question of whether 'personal-related' reasons are really connected to the personal circumstances of the IDs, say the co-authors of the report, CGFRC co-**director** Mak Yuen Teen and research analyst Cynthia Hu.

One way to assess is to see whether the **director** also resigns as ID from other boards, they said.

The study therefore zoomed in on the IDs who resigned for 'personal reasons' before March and sit on at least one other board as IDs. Of the 30 IDs who resigned before March, only four resigned from other boards within three months from their **resignations**.

Five out of 28 IDs who resigned before December 2008 also resigned from other boards within the next six months. But the five IDs still remained on other board(s) as IDs.

When an ID resigns from one board but not the other, it doesn't necessarily reflect badly on the board he is leaving. For instance, the ID may resign only from some boards because he has become more aware of taking on too many directorships. The co-authors believe that in such a case, the company should state the reason clearly as such.

While **resignations** of IDs half-way through their terms may not always mean that something is amiss, they could be an indicator of corporate governance issues, they add.

The authors cited the case of Oriental Century, where three IDs resigned in April 2007, including two IDs who served less than one-two years. Two years later in March this year, fraud was uncovered at Oriental Century's Chinese subsidiaries.

On a positive note, SGX's change in template for cessation of directors on Oct 1, 2007 has led to improvement in disclosures. Before the change, an earlier study by NUS Business School found that most **director resignations** were included under 'Miscellaneous' announcements or buried under other news announcements.

It is also more common now for IDs to flag corporate governance issues when resigning, which was virtually unheard of before SGX's change of the announcement template, the report says.

'Multiple **resignations** from the same board citing disagreement with management or controlling shareholders would be of particular concern,' the co-authors say.

A case in point was Advance SCT, which saw a spate of departures of its IDs, who cited difficulties in discharging their duties because of the lack of timely information and regular updates from management. A special audit subsequently found a lack of veracity in certain transactions by the group's Malaysian subsidiaries.

The CGFRC study also found 63 cases of directors retiring and not seeking re-election. It would not have captured all retirements because prior to June 9, 2008, SGX's announcement template was named 'resignation' instead of 'cessation'.

Some 33 per cent of these directors had served for three years or less. There were eight IDs who served for one year or less. These cases may indicate that the **director** himself, the board or controlling shareholders had a change of heart.

The co-authors felt that 'fair weather' directors who resign at the first sign of difficulty for a company are arguably breaching their duties to the company.

IDs that BT spoke to appear to understand this principle pretty well.

Robson Lee, an ID on several listed companies, noted that IDs should not opt out at the first sign of trouble by resigning but ensure that problems detected under their watch are properly resolved and accounted for before they step down.

'From my experience and observations, the SGX gives enormous support to IDs when red flags are detected,' he added. It is available for consultations by the IDs and provides suggestions and guidance under such circumstances.

Lim Jit Poh, chairman of ComfortDelGro and ID of some listed firms, felt that it is not true that IDs step down the moment problems crop up. 'Most face the problems and discharge their responsibilities,' he said. Mr Lim remains as chairman of China Printing & Dyeing, after its parent firm went broke and its CEO and deputy CEO absconded.

Ng Joo Khin, a lawyer at Stamford Law and ID of a Chinese firm, said he believes that 'an ID who resigns citing difficulties in discharging his duties would most likely have already spent months reaching out to the company's management to resolve any such difficulties or differences before quitting'.

Document STBT000020090719e57k00001