

# International Corporate Governance

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# SINGAPORE

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## Audit Committees in Singapore

BY JEAN WAN | ALLEN & GLEDHILL LLP

The Singapore Companies Act (Chapter 50) (the “CA”) requires all Singapore-incorporated companies that are listed on the Singapore Exchange Securities Trading Limited (“SGX-ST”) to have an audit committee (“AC”). The Code of Corporate Governance 2005 (the “Code”) sets out principles of good corporate governance practices which companies listed on the SGX-ST (“listed companies”) are encouraged to follow, which include the setting up of an audit committee. All listed companies are required by the SGX-ST Listing Manual (“Listing Manual”) to disclose their corporate governance practices and explain deviations from the Code in their annual reports. The oversight of corporate governance of listed companies comes under the purview of the Monetary Authority of Singapore (MAS) and the Singapore Exchange Ltd (SGX).

### Composition

The Code provides that the board of directors of every listed company should establish an AC comprising at least three directors, all non-executive, the majority of whom, including the chairman, should be independent. At least two members should have accounting or related financial management expertise or experience. The CA additionally provides that a majority of the AC should not comprise executive directors of the listed company or any of its related corporations, close family members of an executive director of the listed company or any of its related corporations, or any person having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the functions of an AC.

### Role and Functions

In general, each AC should have its own written terms of reference which sets out its authority and limits, and may regulate its own procedure as to meeting proceedings and the custody, production and inspection of meeting minutes.

The functions of an AC are prescribed in the CA and the Code. The AC is also entrusted with certain duties under the Listing Manual.

### Functions of AC under the Companies Act

Under the CA, the AC has to review, together with the external auditor, the audit plan, the external auditor’s evaluation of the system of internal accounting controls, the external auditor’s audit report, the assistance given by the company’s officers to the external auditor, and the scope and results of the internal audit procedures. The

AC's functions under the CA include reviewing the balance-sheet and profit and loss account of the company and, if it is a holding company, the consolidated balance-sheet and profit and loss account, prior to submission to the directors of the relevant company.

The external auditor of the company is entitled under the CA to appear and be heard at any of the AC's meeting and must appear before the AC if the AC requires it to do so. On the other hand, if requested to do so by the external auditor, the AC chairman has to convene an AC meeting to consider any matters the external auditor believes should be brought to the attention of the directors or shareholders.

### **Functions of AC under Code**

Under the Code, the AC is charged with nominating a person as the external auditor of the company and should review the independence of the external auditors annually. The AC should also review the scope and results of the audit and its cost effectiveness, and the objectivity of the external auditors. The AC is also charged with reviewing the significant financial reporting issues and judgements so as to ensure the integrity of the financial statements of the company and any formal announcements relating to the company's financial performance.

An important role of the AC is to review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The AC's objective should be to ensure that arrangements are in place for the independent investigation of such matters and for appropriate follow up action.

Another aspect of the AC's functions under the Code is to review at least annually the adequacy and effectiveness of the company's internal financial controls, operational and compliance controls, and risk management policies and systems established by the management to safeguard the shareholders' investments and the company's assets (collectively "internal controls"). Such review can be carried out by the internal and/or public accountants, provided that the AC should be satisfied of the public accountant's independence where the public accountant is also the external auditor of the company. The board should comment on the adequacy of the internal controls, including financial, operational and compliance controls, and risk management systems in the company's annual report.

The AC is also responsible for reviewing at least annually the adequacy and effectiveness of the company's internal audit function. In this regard, the AC should ensure that the internal audit function is adequately resourced and has appropriate standing within the company. The internal auditor's primary line of reporting should be to the AC chairman although the internal auditor would also report administratively to the CEO.

### **Functions of AC under Listing Manual**

Chapter 9 of the Listing Manual sets out certain duties of the AC with respect to transactions between a listed company, its subsidiaries or associated companies and their interested persons. Generally, the AC is responsible for reviewing interested person transactions and should form a view as to whether such transactions are on normal commercial terms and are not prejudicial to the interests of the listed company and its minority shareholders.

In relation to any sale of units of a listed company's property projects to the listed company's interested persons or a relative of a director, chief executive officer or controlling shareholder, the AC of the listed company must review and approve the sale and satisfy itself that the number and terms of the sale are fair and reasonable and are not prejudicial to the interests of the listed company and its minority shareholders.

A renewal of a general mandate for interested persons transactions would not require an independent financial adviser's opinion if the AC confirms that (i) the methods or procedures for determining the transaction prices have not changed since the last shareholder approval, and (ii) the methods or procedures for determining the transaction prices are sufficient to ensure that the transactions will be carried out on normal commercial terms and will not be prejudicial to the interests of the listed company and its minority shareholders.

The views of the AC are also relevant in ascertaining whether certain joint venture transactions are exempted from the requirement for shareholder approval. In the case of an investment in, or a loan to, a joint venture with an interested person, such transactions do not require shareholder approval if, inter alia, the AC is of the view that the risks and rewards of the joint venture are in proportion to the equity of each joint venture partner, and the terms of the joint venture are not prejudicial to the interests of the listed company and its minority shareholders; and in relation to the provision of a loan, the AC is additionally of the view that the provision of the loan is not prejudicial to the interests of the listed company and its minority shareholders.

In announcements relating to interested persons transactions, the announcement of the listed company must include a statement as to the AC's views regarding the transaction, or that the AC is obtaining an opinion from an independent financial adviser before forming its view. The AC's opinion should also be stated in a circular to shareholders seeking approval for an interested person transaction, if the AC's opinion is different from that of the independent financial adviser, or if the interested person transaction relates to the issue of shares or other securities (other than a rights issue) for cash, or the transaction relates to the purchase or sale of any real property (i) where the consideration is for cash, (ii) an independent professional valuation has been obtained for the purposes of the purchase or sale, and (iii) such valuation is disclosed in the circular to shareholders.

Apart from reviews of interested persons transactions, the AC is obliged under the Listing Manual to report to its board of directors, after discussion with the external auditor, any suspected fraud or irregularity, or suspected infringement of any Singapore laws or regulations or rules of the SGX-ST or any other regulatory authority in Singapore, which has or is likely to have a material impact on the listed company's operation results or financial position.

### **Audit Committee Guidance Committee**

On 15 January 2008, the SGX, the MAS and the Accounting and Corporate Regulatory Authority (the "ACRA") jointly established the Audit Committee Guidance Committee (the "ACGC"). The ACGC is tasked with developing practical guidance for AC of listed companies to assist them in better appreciating their responsibilities and enhancing their effectiveness. Among other things, the guidance will focus on the practical aspects and considerations of the work of ACs, including the implications of the requirements of the CA and the Code, and identify and describe best practices of effective ACs.

Following the survey on AC members of listed companies, the ACGC issued the *Guidebook for Audit Committees in Singapore* (the "Guidebook") on 30 October 2009. The Guidebook strives to assist AC members in achieving higher standards of corporate governance by setting out certain best practices for ACs. ACs are strongly encouraged to adapt and modify the recommended best practices to make them relevant and applicable for their company where necessary.

The Guidebook also contains practical tools such as FAQs, case studies, checklists and sample forms to provide practical solutions and guidance to issues ACs commonly faced.

The Guidebook is divided into two main sections, namely, a section on “AC Composition” and a section on “Roles and Responsibilities of ACs”.

The section dealing with the composition of ACs aims to provide guidance for current and prospective AC members to assess their independence and suitability for membership in the AC. The guidance in this section aims to get the AC started off on the right footing, with directors who have the appropriate qualities to handle the job and the time and resources to focus on their responsibilities and duties as AC members.

The section on the “roles and responsibilities of ACs” focuses on the key roles and responsibilities of the AC including internal controls, risk management, internal audit, financial reporting, external audit, and other duties and responsibilities which relate to interested person transactions, conduct of meetings, performance assessment, whistleblowing and training. The best practices in this section attempt to clarify areas in which ACs often face uncertainty, as well as provide practical solutions and guidance to issues ACs commonly face.

The Guidebook represents a key initiative in strengthening the corporate governance practices of listed companies in Singapore, particularly as ACs play a central role in the governance and oversight of companies.

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## Rights and Remedies of Minority Shareholders in Singapore

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The law provides for certain rights to which minority shareholders may have recourse. These rights seek to provide protection from, and remedies against, the hegemony of majority shareholders.

Singapore is a common law country where well-established principles for the protection of minority shareholders espoused by, primarily, the English courts – such as the rule in the oft-cited English case of *Foss v Harbottle* (also known as the “proper plaintiff” rule which, briefly, states that the proper plaintiff in a suit for the enforcement of a corporate right is the company itself) – are applicable. The rights of minority shareholders are also codified in the Companies Act (the “Act”) to supplement those provided by the common law. This article outlines the main rights and remedies of minority shareholders in Singapore.

### **Breach of the Memorandum and Articles of Association and Ultra Vires Transactions**

The basic constitutional documents of a company are its Memorandum and Articles of Association. The Memorandum of Association defines and limits the objects and powers of a company, whereas the Articles of Association sets out the regulations by which the company is governed. The provisions in the Memorandum and Articles of Association constitute a contract among the members inter se. Accordingly, if either the company or its majority shareholders act in breach of the Memorandum and Articles of Association, a member may commence legal proceedings based on common law (that is, contract) principles.

A company acting outside its objects and powers as set out in its Memorandum of Association would also be