

LETTER TITLED “MINORITY SHAREHOLDERS - BULLIED OR BULLY ?” FROM MR JACK CHIA, A PRIVATE INDIVIDUAL, TO MR CHAN CHAO PEH, EXECUTIVE EDITOR OF THE EDGE, RECEIVED BY STAMFORD LAND CORPORATION LTD. ON 8 JANUARY 2019

Dear Chan,

1. I strongly believe that it is unfortunate that the article “After Spate of Corporate Scandals, More Shareholder Protections in View” which was published by the Edge on 31 December 2018, does not provide an accurate view of the issues surrounding the relationship between a company and its shareholders.

2. Besides giving a skewed view of the shareholder landscape in Singapore, it is inaccurate and does nothing to contribute to improving the relationship between the company and its shareholder. For example, the article’s assertion that SGX was referring to the defamatory suit by Stamford Land Corp as an example of companies silencing its minority shareholder is clearly not accurate. The author fails to disclose the fact that SGX Reg Co had clarified unequivocally that when they made those comments at the SGX AGM, they were general comments and they were not referring to Stamford’s defamatory suit.

3. It is amusing that the article should make a comparison between Gordon Gekko and other responsible shareholders. Gordon, whose character was played by Micheal Douglas in the movie “Wall Street”, was an infamous and unscrupulous corporate raider. I do not see the resemblance between him and such responsible shareholders especially when Mr Gekko’s motto is represented by the phrase “Greed is Good” and who was someone who had no qualms practicing insider trading and corporate espionage. The only reason why he gave the “impassioned” speech was to gain control so that he could strip the company of its assets, to the detriment of other stakeholders of his target.

4. The learned gentlemen of the Bar, Mr Thio Shen Yi and Mr S Suresh talk about the possible effects that the suits by Asiatic Group (Holdings) and Stamford Land Corp have on the minority shareholders community. Both gentlemen raised concerns that such defamatory suits had a “chilling effect” of discouraging minority shareholders from raising questions for fear of being sued. I would observe however that in both suits, in particular the claim by Stamford Land Corp, according to public disclosures, the defamation claims were commenced due to the inaccurate and misleading publications by the relevant minority shareholders. The claims were not brought to silence minorities. They were brought by the companies to protect their respective reputation and interest.

5. It is not disputed that shareholder protection provisions are important. However, the article fails to deal with the other equally important aspect of the equation, the behaviour of the minority shareholder. Minority shareholders too have to shoulder part of the responsibility for their treatment.

6. Over the years, I have seen the alarming behaviour of minority shareholders at AGMs. It is really getting out of hand! Demands are made by them for food, beverages and even door gifts at AGMs. I have seen when companies do oblige and provide such niceties, these minority shareholders hit them with a barrage of abuses, for example, for not providing

them plastic bags to "tapao" more food and drinks, after they had their fill. I am ashamed to say that some of these minority shareholders are my own associates. Shareholders are seen leaving the AGM proceedings early, jousting to be the first at the buffet line. These are common sights. When such food, beverages and door gifts stop, their outcry of being unfairly treated is even more astounding.

7. One big issue that returns time and again is the issue on dividends. When dividends are paid, the usual chorus of complaints are that it is not enough. I am afraid that soon it would become tempting for the company to avoid paying dividends altogether, rather than for it to spend so much time defending and justifying the dividend paid.

8. It seems that when it comes to dividends, nothing will satisfy the insatiable appetite of shareholders. We fail to realise that nothing in the Companies Act or the Listing Rules makes it compulsory for the Board to declare dividends. It is a discretion granted solely to the Board. We must realise that the Board understands best the business, the risk and the environment that the company operates in. Most companies have taken the time to explain the reasons for their decisions on dividends. But sadly, it appears to be just a waste of time as such explanations are ridiculed and shamed by certain shareholders (usually the same few troublemakers) on public blogs as if they knew better than the Board.

9. The fear of defamatory proceedings is unwarranted. As long as these troublemakers (usually shareholders with a self-serving agenda) do not make false allegations, and are responsible with their comments, there is nothing to fear. There is a red line which should not be crossed, and any shareholder who crosses that line should be prepared to accept the repercussions of his or her conduct. If such repercussions come in the form of a defamatory suit, he or she who had made those false allegations and irresponsible comments should be prepared to meet the consequences. I am so sick of looking at these trouble-makers behave in AGMS. You will wonder who the bully is - the shocked Board which is violently scolded in the AGM, or the "minority" shareholders making demands and yelling abuses non-stop at the Board, refusing to allow the Board to go about its business. And after the AGMs, they exchange notes and laugh over how they "had fun" bullying the Board at the AGM.

10. A serious investor is not interested in food, beverages and door gifts. Yes, dividends are important, but he or she is also cognisant of the fact that the explanations provided by the Board for its decision on the dividends declared or withheld are equally important. Minority shareholders should understand that they always have a choice. If they are not happy with how the company is managed, it is always open for them to sell their shares and to move on. By doing what they do currently benefits no one, hurts the company and in turn themselves.

Thank you

Jack Chia

The full content of the article by the Edge *"After Spate of Corporate Scandals, More Shareholder Protections in View"* may be found below or at their website at <https://www.theedgesingapore.com/after-spate-corporate-scandals-more-shareholder-protections-view>

After spate of corporate scandals, more shareholder protections in view

By:

Sharanya Pillai
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SINGAPORE (Dec 31): Strengthened. Horrible. Oppressive.

When asked to describe the state of minority shareholder rights in 2018, market watchers gave mixed reactions. S Suresh, Eversheds Harry Elias partner, says it is stronger, but to corporate governance don Mak Yuen Teen, it is “horrible”. And some retail investors, like Teo Hee Huat, say they feel suffocated by the spate of corporate shenanigans.

But among the various parties *The Edge Singapore* spoke to, there was a general consensus: In 2018, mom-and-pop investors were more vocal with their grievances than before.

It certainly has been an eventful year for retail investors. Outrage over the corruption probe at **Keppel Corp** spilled over from last Christmas into early 2018. Once-promising rail parts maker **Midas Holdings** got trapped in a freshly uncovered web of unauthorised loans in February. Cash-rich **Datapulse Technology** made a controversial haircare business acquisition in April, but now wants to reverse the deal. Under a new major shareholder, it wants to buy a hotel in Seoul, Korea.

Such happenings are not new. But perhaps what was notable this year was the way retail investors fought back. Retirees angry about Midas took to messaging app Telegram to find a community. The platform was also used by shareholders of Vard Holdings who were peeved over what they felt was an unfair takeover deal. Datapulse shareholders turned up in droves at an extraordinary general meeting to berate management. And at its AGM, SGX took heat from investors upset over one of their own being sued by **Stamford Land Corp**.

The local bourse has welcomed greater engagement from minority shareholders. But fears of being sued for defamation have also taken hold among them, with two such instances this year. Can minority shareholders continue to make their voices heard in 2019? And what issues should they anticipate?

Suit up

In the 1987 Hollywood classic *Wall Street*, corporate raider Gordon Gekko reminds shareholders of a listed company that they are the owners, as the directors have a collective stake of only less than 3%. Yet, as he tells minority shareholders in an impassioned speech: “You are being royally screwed over by these bureaucrats with their steak luncheons, hunting and fishing trips, their corporate jets and golden parachutes.” Had Gekko made a similar ruckus at a Singapore-listed company today, would he be slapped with a defamation lawsuit?

In July, **Asiatic Group (Holdings)** moved to sue minority shareholder Jerry Low for comments made online and to the media. In September, prominent investor Mano Sabnani found himself facing a lawsuit from Stamford Land over comments about his experience at the AGM, which he had posted on Facebook and wrote in to *The Business Times* about.

In the end, Asiatic did not pursue the lawsuit against Low, while Stamford Land and Sabnani settled their dispute out of court. But those incidents remain top of mind for many market watchers. Thio Shen Yi, joint managing partner of TSMP Law Corp, cites the legal threats as a setback for minority investors this year. “That is the sort of development that chills minority shareholder speech and discourages them from asking difficult questions,” he says. “How many minority shareholders have

the ability to frame their queries in a way that is defamation-proof? They aren't legally trained. And how many have the resources to take on a listed company?"

Mak, an associate professor of accounting at the NUS Business School of National University of Singapore, relates that at a recent AGM he attended, one shareholder invoked "qualified privilege" and chose his words so delicately that it "bordered on the ridiculous". "But I understand why the shareholder did that. Directors are supposed to be accountable to shareholders [but] I think we have turned it upside down," he says.

Others are more sanguine. Suressh of Eversheds agrees that the chilling effect of lawsuits is a concern, particularly when novice investors see more experienced ones getting into trouble. But he notes that it is still very rare for a company to sue its shareholder. He thinks that the Stamford Land case is the exception rather than the rule.

"[The] AGM is a privileged occasion, and comments by a shareholder to the board about the affairs of the company are thus protected, provided they are made in good faith. Another reason is that the company does not have feeling to be injured, so that limits the quantum of damages that the company can recover," he says. "It is worth bearing in mind that ultimately the Stamford Land dispute was settled amicably."

Are there any learning points for investors from these incidents? Suressh notes that investors should be cautious that comments made online and in letters to the press are also subject to ordinary defamation law. "If they are unsure whether what they have written is defamatory, they should [seek] legal advice before publishing it," he says.

Moving into 2019, will companies try to move past such litigiousness? Thio of TSMP certainly hopes so. "The problem with a lawsuit is that once that happens, everyone shuts up and withholds all comment on the basis of ongoing legal proceedings. That is antithetical to an informed and transparent market. There is something to be said in fighting it out in the court of public opinion," he says.

Beyond being able to speak up, minority investors have also found themselves cornered when companies tank. One case that attracted plenty of international attention is that of the embattled commodities trader **Noble Group**.

Now, three years after Iceberg Research first cast allegations on Noble, the company is finally coming under a regulatory probe. Whether the investigation can strengthen minority rights also depends on whether it is "sustained or one-off", Mak reckons.

Changes, more protection underway

Another case that frustrated minority shareholders was the buyout of Vard by its single-largest shareholder Fincantieri, which was able to vote despite being the offeror. Vard's independent financial adviser (IFA) deemed the offer "not fair but reasonable", creating much confusion among investors. The offer price of 25 cents was set in November 2017 at a 0.9% discount to the one-month volume-weighted average price, causing disappointment. Many investors found themselves powerless to do anything, Thio notes.

To be sure, the regulators are addressing such minority shareholder concerns. SGX RegCo has proposed new changes to delisting rules to better protect minorities. One, the offeror and parties acting in concert with it would be barred from voting on a voluntary delisting resolution. In conjunction, the approval threshold would be lowered from 75% to a simple majority, and the block provision of 10% removed. Another proposed change is that IFAs have to deem the offer both reasonable and fair for the voluntary delisting to proceed.

Market watchers are generally welcoming of these protections. Thio thinks they are "fair and balanced". "Of course, the minority is still at the mercy of the majority controlling shareholder if that shareholder is not the one making the offer. But, minority rights cannot go as far as being at the

expense of legitimate majority shareholding rights,” he says. Mak hopes that there can be more clarity on the independence of the IFA, and the assumptions and comparatives they use.

On a broader level, the SGX has announced changes to listing rules after the Monetary Authority of Singapore accepted amendments to the Code of Corporate Governance in 2018. One major change is that from 2022, independent directors need to make up at least one-third of the board. Another change effective from 2022 is that a director would not be considered independent if he has served on the board for more than nine years. Exceptions are to be approved in a two-tier vote: by a majority of all shareholders, as well as a majority of all shareholders excluding those who are the company’s CEO, directors and their associates.

The role of IDs has come under increased scrutiny, in companies under investigation, such as Midas and Yuuzoo Corp (now renamed Yuuzoo Networks Group Corp). Safeguards such as IDs could become even more pertinent as Singapore is now open to dual-class share listings. Earlier this year, experts were split on whether DCS listings did more good, in terms of attracting new-age tech listings, or harm, in terms of eroding minority rights.

Thio says a DCS company has its advantages, but emphasises that minority investors must be realistic that they have “next to no ability” to influence events in such companies. “If you are a minority shareholder investing in a company with a DCS structure, then you should look at it purely as an investment, and a passive one at that,” he says.

Mak is much more pessimistic. “Given the lack of investor protection here and the fact that we are likely to attract second- or third-tier DCS companies, I think we will see a wave of scandals involving such companies in future. Already, we see more signs of problems with dual-class share companies overseas, with the likes of **Facebook**, **JD.com**, **Viacom** and **Snap**,” he says. To him, investing in a DCS company is no different from betting in a casino.

It remains to be seen whether 2019 will bring any DCS IPOs to our shores. Regardless, experts hope more can be done for minority rights here. An item on Thio’s wishlist is the ability for minorities to initiate class action lawsuits. “[Each] minority shareholder may not have a sufficient large claim or grievance against the company as an individual. But, on aggregate, their collective claims are worth pursuing and carry weight,” he says.

Meanwhile, Mak hopes that a committee can be set up to study minority investor protection in Singapore before this group shrinks. “Some of the things I would like to see such a committee look into include electronic online voting, an arbitration mechanism for resolving capital market disputes involving minority shareholders, regulators taking action to recover losses on behalf of investors, contingency fee class action and enhancing regulatory enforcement,” he says.

Ultimately, changes in the law and regulation will take time and resources from market players. In the meantime, though, there is one action corporates can take to improve minorities’ rights that will not cost them much time or money: Simply grow a thicker skin against critical shareholders.

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