

# Ong Chong Tee: Fostering a strong corporate governance ecosystem

Keynote speech by Mr Ong Chong Tee, Deputy Managing Director (Financial Supervision) of the Monetary Authority of Singapore, at the Singapore Governance and Transparency Forum, Singapore, 6 August 2018.

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Ladies and gentlemen, good morning.

Thank you for the kind invitation to my colleagues and I to join all of you here today. It is my pleasure to offer some remarks.

The timing of this forum is also apt as the MAS has just released the revised Code of Corporate Governance (“Code”) this morning.

Allow me to first take the opportunity to thank members of the Corporate Governance Council (“Council”), chaired by Mr Chew Choon Seng, for their valuable contributions over the last one and a half years. I am told that deliberations had been lively and rigorous throughout. These have culminated in a balanced and thoughtful package of recommendations that took into account the views of various stakeholders.

The MAS has considered the proposals and accepted all the Council’s recommendations. These are now incorporated into the revised Code.

The recognition of high corporate governance (CG) standards is one of the important elements to fostering good practices. A forum, such as this, is one good example of how as a community, we recognise companies that have done well in their CG disclosures and practices.

Companies with good CG are characterised by a sense of mission to hold themselves to high standards of accountability, transparency and sustainability, which are in turn critical to a thriving capital market. Good CG in companies stands for doing right and doing good so as to do well over the long run. Conversely, companies that fall short in their CG practices will hurt investor confidence. Failings in larger institutions can also undermine system-wide financial stability.

There have been recent public commentaries on companies flagged for corporate transgressions. Some reports are accompanied by calls for more forceful regulatory actions, or further tightening of CG standards.

So allow me to briefly describe the regulatory framework for CG in Singapore.

The MAS, as the statutory regulator, is responsible for a sound framework within which market discipline and enterprise can thrive. In regulating and developing the capital markets, we seek to be balanced. On the one hand, to allow for growth and appropriate risk-taking and on the other hand, to curb potential abuses and wrongful acts.

The Singapore Exchange (SGX), as the frontline market regulator, administers the SGX Listing Rules. The SGX is responsible for ensuring that the market operates in a fair, orderly and transparent manner. This includes requiring listed companies to make timely disclosures on

material transactions and have in place adequate internal controls and governance structures. The MAS supervises the SGX in the discharge of its regulatory function. SGX's RegCo Board also has oversight of the exchange's regulatory responsibilities.

This MAS-SGX regulatory model, where the statutory and market regulator each have their distinct role but also share the responsibility to ensure sound functioning of the capital markets, is not unique to Singapore. Similar approaches are adopted in many financial centres, including in the United States, Australia and Hong Kong.

So each time a corporate failing of one firm or another happens, both the MAS and the SGX would review and investigate the matter. The specific regulatory response would obviously depend on the facts and circumstances of each case. Often, a kneejerk tightening of rules may not be in the best interest of the market.

Tighter across-the-board regulations can impose additional costs on all listed companies, and these costs must be weighed against the benefits. It may not be appropriate to prescribe the same standard on all companies, as they can differ in size or business complexity.

The MAS has therefore been deliberate in calibrating our rules. For example, there are more stringent CG standards for banks, compared to for other listed companies; and rightly so due to banks' potential systemic impact.

This is also why in the latest review of the Code, the Council took a pragmatic approach. Important baseline market practices that should apply to every firm – or CG “hygiene” requirements – are hardened by their inclusion in the SGX Listing Rules. Indeed, twelve basic requirements previously couched as guidelines have been shifted from the Code to the Listing Rules. In other aspects, the Code has been streamlined and elaborated in the Practice Guidance.

In considering what should be mandatory in the SGX Listing Rules, Council members had carefully considered their effectiveness in supporting long-term business goals, and how the revised Code compares against international practices.

There may be some concerns that some of the principles in the Code are subject to interpretation and gaming. I can understand such sentiments. This is why the MAS has also accepted the Council's recommendation to set up a standing Corporate Governance Advisory Committee to monitor CG developments on a regular basis, and you can expect more details on this Committee once it is set up.

There are other views calling on regulators to adopt quicker or harsher actions in response to CG violations. Some felt that directors should be held more accountable for their fiduciary duties, or breaches in their fiduciary duties.

Investigations are usually complex and time-consuming affairs especially if there are cross-border elements involved. At the same time, it is important that our financial sector operates with a clear rule of law, as well as fair and transparent legal processes. This is to assure a trusted regime for everyone. We must allow for thorough investigations as a matter of legal and investigation integrity. There is often a web of details to be ascertained in each case of possible misconduct. Any premature updates to the public can also compromise investigations. In such situations, regulators would avoid alerting suspects who are under investigation at the outset, so as not to prejudice the investigations, in the process of evidence gathering.

As a matter of due process, the MAS does not reveal information during ongoing investigations until the investigations have been concluded. Some of these considerations equally apply to the SGX as the frontline market regulator.

Notwithstanding this, the MAS supports putting out more information on our investigation outcomes and of our enforcement approach. Some of our recent measures include:

- (a) Press updates on our enforcement actions as well as publishing these on our website.
- (b) Enhanced disclosure of the MAS' enforcement statistics through the use of infographics and dashboards in our Annual Report. This is to provide the public with a better overview of enforcement actions that the MAS has taken over the past year. Where appropriate, we will provide more information on our investigations that could be of public interest, as long as these do not compromise the reviews.
- (c) In 2016, we also published a monograph that explains the role of enforcement in the supervision of Singapore's capital markets. We are in the process of updating the monograph by later this year. This will provide more clarity on the respective roles of the various agencies – as well as MAS' own approach to investigating misconduct.

Where laws are broken, the MAS will rigorously investigate a case including with the Commercial Affairs Department ("CAD"), and will not hesitate to charge the perpetrators involved. We also supervise regulated financial institutions on a regular basis and will take enforcement actions against an institution that has fallen short of our regulatory requirements. But enforcement actions cannot operate in isolation. No amount of rules can stop someone who is intent on gaming the system or breaking the law.

Our capital market works best in a regime where all stakeholders share some responsibility in holding the line against any mismanagement or misconduct, analogous to community policing. The statutory and market regulators can work closely with the industry, investors, industry associations and other groups to co-create a fair and orderly capital market. This will engender confidence and trust, and allow market discipline to thrive.

This brings me to the important role of market discipline. As our capital markets develop, we can and should expect market discipline to increasingly feature. It is the process by which market participants themselves exercise oversight over companies and call out what may be possible transgressions or dubious practices. The fact that we have indeed seen more of such commentaries and reports in recent years need not be interpreted as a sign of weakness but of strength arising from a more mature capital marketplace.

For market discipline to work, it is essential that companies provide relevant and meaningful disclosures.

Investors, in turn, can play an important role by scrutinising disclosures and providing relevant feedback to companies where boilerplate disclosures are ambiguous or unhelpful. Companies must similarly play their part to engage their stakeholders proactively.

The engagement between companies and shareholders should be conducted responsibly by both parties. Companies should avoid taking an overly-legalistic approach in their dealings with shareholder queries as that can only engender distrust. Rather, they can have more regular dialogues with their investors to facilitate understanding with their investors, and to build a strong relationship that is based on openness and mutual respect. The rights of all shareholders should be respected. Investors in turn should engage companies in a constructive manner, and avoid unfounded allegations or speculative attacks.

Industry associations are another key enabler group to foster strong market discipline. The Singapore Institute of Directors, as the national association of directors, advocates good governance practices through its conferences, training sessions and publications. The Securities Investors Association (Singapore) also serves to connect and empower minority shareholders, through efforts such as its initiative to raise the standards of queries at AGMs.

Other players in the CG ecosystem matter too. Journalists, analysts, academics, lawyers, other advocacy groups and the general public – all can contribute to raising of industry-wide CG standards through their reports and research. Done well, these can also augment market discipline by promoting debates on important CG issues and in educating investors to be discerning.

In sum, building a strong CG ecosystem is most effective when there is collective effort involving multiple gatekeepers – beyond the regulators and the boards of companies.

To end my remarks, let me also acknowledge, as this forum demonstrates, that many companies have and do take good CG seriously. The care and vigilance put into this effort must continue. I am sure the boards and management of all the firms present here will not rest on your laurels either. And I trust that from your examples as good CG stewards, others will follow likewise.