Corporate Governance: The Significance of the Duties of Directors in Promoting Corporate Success

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Declaration

Statement of Originality

This thesis contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. I give consent to the final version of my thesis being made available worldwide when deposited in the University’s Digital Repository**, subject to the provisions of the Copyright Act 1968.

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Acknowledgement

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Abstract

The growing concern over the need to monitor corporate governance practices has gained much attention over the past three decades, primarily due to the failure of corporate giants e.g. the Maxwell Group, Bank of Credit and Commerce International (“BCCI”), Polly Peck International (“PPI”) and Enron (Mayson, French and Ryan, 2012). Corporate governance codes of best practice have been devised as a form of “soft laws” to guide corporations to corporate success and long-term sustainability (Lowry and Dignam, 2009). Although there is yet to be a Code of Best Practice that serves global needs, most codes of corporate governance emphasise the primary responsibility carried by the Board of Directors in ensuring transparency (in accountability, boardroom processes, a balanced make-up of the Board and decision making processes) that is based on stakeholder interests without emphasis on shareholder primacy (Hampel Report, 1998).

It has been proven that companies which comply with recommended best practice of corporate governance perform better and garner better market prices compared to those which place a lower emphasis on such compliance measures (Horwarth Report, 2002). The Horwarth Report makes specific reference to the importance of the role of the Board of Directors and its need to maintain an independent and transparent process to attain corporate success (Horwarth Report, 2002). The Horwarth Report also emphasises the importance of factors, namely: (a) independence; (b) competencies, i.e. skills and characters of the members of the board; (c) the existence of sub-committees under the board; and (d) the composition of the Board (Horwarth Report, 2002).

An interpretivism research approach is undertaken to examine the subjective views of directors who spearhead their corporations in their respective industries to aid the understanding on the practicality of codes of best practice. A series of twenty-four questions is posed in face-to-face interview sessions with selected directors to seek their views on issues that relate to corporate governance codes of best practice. These range from general views on corporate governance and its practical use for their businesses to include non-executive directors on the Board and their major participation in sub-committees like the Audit and Remuneration Committees.
The results of this study reveal that the most robust codes devised (particularly in the UK (“the United Kingdom”), Malaysia and Singapore) adhered to by corporations for better performance and enhancing growth involve the commitment from the Board of Directors to: (a) embrace the importance of understanding the demands and underlying rationale of the codes; (b) have an ideal make-up of the Board to promote independence and avoid domination; (c) have boardroom processes in place for a smooth flow of communications; (d) incorporate sub-committees of the board; and (e) emphasise the importance of including stakeholder interests in boardroom decisions. This study is beneficial to companies which are incorporating best practices into their Board processes.
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Abbreviations and Acronyms

**BCCI** - Bank of Credit and Commerce International

**ICAEW** - Institute of Chartered Accountants in England and Wales

**NASDAQ** - National Association of Securities Dealers Automated Quotations

**NYSE** - New York Stock Exchange

**OECD** - Organisation for Economic Co-operation and Development Principles

**PPI** – Polly Peck International

**SC** – Securities Commission, Malaysia

**SEC** – Securities and Exchange Commission, USA

**UK** – the United Kingdom

**USA** - the United States of America
Chapter 1 – Introduction

1.1 Background

Corporate governance has become the hallmark of many debates in recent times due to major company collapses (Dignam and Lowry, 2009). A key theme in the current business world is for corporations to prioritize the “enlightened shareholder value” in Board decisions (Dignam and Lowry, 2009). This central theme is the current focus after decades of evolution of corporate theory. The “company”, as a business organisation, spawned from the Royal Charters granted from as early as the 11th Century by the Crown to perform public works, like rail and telegraph (Mayson, French and Ryan, 2012). The purpose of the company was to serve the public and, according to Dodd (1932), its objects were defined as: “...business is permitted and encouraged by the law primarily because it is of service to the community rather than because it is a source of profit to its owners”.

This outlook soon began to change as a growing number of a largely untaxed middle class in the United Kingdom and the United States of America (“USA”) had amassed great wealth and needed reliable investment targets. In addition, the growth of legal technology had evolved the concept of the “company” (in the UK) and the “corporation” (in the USA) which was a major advancement when compared to sole-traders and partnerships. Further, the rapid development of transportation made globalisation possible (Dignam and Lowry, 2009).

In the late 19th century, corporate theorists advocated that the existence of a company was a reality (Otto von Gierke, 1868). In fact, companies and corporations preceded the creation of legal rules which defined them, such that their existence compelled the law to recognise them, and subsequently to regulate them. This point was further reinforced by the seminal decision of the House of Lords in Salomon v A Salomon and Co Ltd (1896), where the “company” was ruled to have a real, separate and legal entity (G.R. Rubin, 1983). During the early 20th century, managers were the “oracles” of corporations’ interests and shareholders took passive roles (Dignam and Lowry, 2009). The relevance of a corporation having its own personality is important as it is then recognised as having its own aims and objectives, which are to be realised by its managers. Chandler (1990) states that: “The enlarged enterprises came to be operated by teams of salaried managers who had little or no equity in the firm”. With this approach, managers do not have a personal interest to realise, but
act solely in the best interest of the company. Managerial dominance was also due to dispersed shareholding from the rapid growth of institutional investors in the early 1900s (Mizruchi, 2004).

The problem with managerial dominance was that the corporation existed as a profit driving mechanism for investors, with no social responsibilities. Berle and Means (1932) stated that: “The property owner who invests in a modern corporation so far surrenders his wealth to those in control of the corporation that he has exchanged the position of independent owner for one in which he may become merely recipient of the wages of capital... [Such owners] have surrendered the right that the corporation should be operated in their sole interest.”

Shareholder primacy and profit maximisation have become the centre of considerable political debate globally (Mayson, French and Ryan, 2012). Maximising shareholder wealth as the sole object of a corporation is “unhealthy, demeaning and morally corrupting” (L E Mitchell, 1993). On the other hand, there have been arguments that restricting a company’s directives to its managers to emphasise profit making would ultimately benefit society as a whole. Easterbrook and Fischel (1991) state that: “...maximising profits for equity investors assists the other ‘constituencies’ automatically. The participants in the venture play complementary rather than antagonistic roles. In a market economy, each party to a transaction is better off. A successful firm provides jobs for workers and goods and service for consumers. The more appealing the goods are to consumers, the more profits (and jobs). Prosperity for stockholders, workers and communities goes hand in glove with better products for consumers. Frequently the harmony of interest between profit maximisation and other objectives escapes attention.”

Easterbrook and Fischel present the view that social and moral factors should not be included in a manager’s decision-making process. Nevertheless, there is evidence of companies becoming unaccountable and in breach of social responsibility codes due to managerial dominance and profit maximisation. John Kay (1995) states that: “Is the purpose of a large public company to maximise its profits? Or to develop its business, in the interests of customers, employees, suppliers, investors, and the wider community? Like most people, I think the right answer is the second...”.

It is evident that a new era has emerged where corporations are encouraged to comply with Corporate Social Responsibility (CSR) (Kalbe Ali, 2012). The decision to ensure responsible governance and compliance with the demands of society and stakeholders rests solely in the discretion of the Board of Directors (Dignam and Lowry, 2009). For instance, corporations are encouraged to adopt effective decision-making strategies that enhance long-term profitability. This is a crucial factor for the millions of global investors through pension funds, life assurance, unit trusts
and other forms of investments who need long term assurances or security for their respective hard earned savings, as mentioned by Patricia Hewitt, the Secretary of State for Trade and Industry in 2004 in England and Wales (Draft Regulations on the Operating and Financial Review and Directors’ Report: A Consultative Document, 2004). The latter also emphasised the importance of corporations amassing great wealth to return to society, and the need for assurance or recognition that good working conditions, products, services and successful relationships with suppliers and creditors are given appropriate attention by corporate managers. The global collapses of corporate giants (e.g. Enron and Lehman Brothers) fired debate on the importance of fiduciary duties of directors in making decisions to guide corporations in accordance with responsible corporate governance (Hill and Spiegel, 2002). Good corporate practice by a Board provides shareholders and the public with reliable reports and financial information (Cornelius and Kogut, 2003). The question is whether or not such compliance, especially in the emerging Asian market, encourages investors to pay a premium for well governed companies. Tan Sri Zarinah Anwar, Chairman, Securities Commission Malaysia (“SC”) (Malaysian Code on Corporate Governance, 2012) stated: “Boards and shareholders must embrace the understanding that good business is not just about achieving the desired financial bottom line by being competitive, but by also being ethical and sustainable.”

Corporate governance concerns also emerged in Hong Kong when charges were laid against two of Hong Kong’s billionaires in alleged scandals surrounding land deals involving Sun Hung Kai Properties Ltd. (Yung and Chen, 2012). In India, The Economist published an article on 10th January 2009 (The Economist, 2009) reporting the confession of Mr B. Ramalinga Raju, founder and chairman of Satyam Computer Services (one of India’s largest software companies listed on the New York Stock Exchange (“NYSE”) and Bombay Stock Exchange) as being a party to concealing $1.47 billion in its balance sheet. On the other hand, share prices of the world’s largest offshore drilling rig operator, Transocean, surged on the NYSE when it responsibly accepted liability to pay fines and settlements amounting to USD 1.4 billion after the Deepwater Horizon disaster (BBC News Business, 2013). It is apparent that critical decisions of the Board of Directors substantially affect the growth and reputation of a corporation. In 2008, Professor Keay proposed the entity maximisation and sustainability theory for a corporation (Keay, 2008) as follows: “This focuses on the company as a separate legal entity and maintains that the objective of the company is to maximise the wealth of the entity and maintains that the objective of the company is to maximise the wealth of the entity as an entity and, at the same time, to ensure that the company is sustained financially. The theory involves directors endeavouring to increase overall long-run market value of the company as a
whole, taking into account the investment made by various people and groups. But it maintains that maximisation must be combined with aiming to ensure entity survival and feasible development”.

Compliance with corporate governance codes and heeding social responsibility calls inevitably leads to corporate success. The Singapore Code of Corporate Governance (2012) states that every company should have an effective Board responsible for the long term success of the company, and the Board should establish and account for the company's values and standards (including ethical standards). The Board should also ensure that obligations to shareholders and other stakeholders are understood and met, and should identify the key stakeholder groups and recognise that their perceptions affect the company's reputation. As mentioned in The Bosch Report (1991), compliance with codes of corporate governance increases the creation of wealth.

“The Company Law Review Steering Group, Modern Company Law for a Competitive Economy: the Strategic Framework” led to the Companies Act 2006 (Company Law Review Steering Group, 1999). It stressed the need to support a competitive economy in a coherent and accessible form, while: (a) providing maximum freedom for participants to perform their proper functions; (b) recognising the case for high standards; and (c) ensuring appropriate protection for all interested parties. The Review also expressed grave concerns about companies that failed to note the importance of running their enterprises with a “strategic balanced view of the implications” of a board’s short-term decisions.

Many debates on corporate governance and corporate social responsibility have led to the “enlightened shareholder value” approach (Mayson, French and Ryan 2012). Board decisions that do not account for matters like environment and community benefits will suffer from a tarnished reputation and eventually be impacted economically. Therefore, simple compliance with good governance is beneficial to the performance of a corporation and the well-being of the community. This is solely dependent on board decision making.

1.2 Aim of the Research

The aim of this research is to examine the importance of the role of executive directors (executives in a corporation) and non-executive directors (persons external to a corporation) in terms of appropriate corporate governance, social responsibility and the success of a corporation. There is a widespread belief that boards which encourage good corporate governance perform better than those which do not (Smith, Jacquelyn, 2012). This research aims to highlight the significance of
compliance from the perspective of investors and other stakeholders. The connection between Board decisions relating to good practice and the performance of a company needs to be established. This places importance on qualitative data. Once the findings are established, the most robust codes of good practice may be identified to serve as a benchmark for improving the performance of less successful corporations.

Many regulatory reforms have taken place to ensure compliance by the Board with good practice. This research investigates whether or not such codes are given priority in Board decisions, by examining the nature of boardroom processes, i.e. frequency and sanctity of internal and external audits, independence of boardroom members, whether Board composition complies with the recommendations of the Code of Corporate Governance and the views of Board members based on a series of specific requests and questions.

1.3 Summary of the Research

This study has adopted an interpretivist research approach to illicit the views of directors who deal with the matters of corporate governance and codes of best practice in the management of their respective firms. A series of twenty-four interview questions are used to obtain the pragmatic views of directors who are active in the industry to better understand the crucial roles they play in achieving corporate success. These questions are narrowed to nine themes that represents the common areas of concern raised in a range of reports.

This study provides empirical data to show that directors play a crucial role in determining the success of a corporation, in terms of ensuring that the codes of best practice are diligently followed. These results also highlight that the most robust codes of best practice which promote the success of a corporation stem from factors including: (a) the importance of directors to understand the basis and rationale of corporate governance; (b) knowing their respective duties as directors and to whom they are owed; (c) the significance of employing directors with due standards and skills to make important commercial and/or moral decisions without conflict; (d) the need to observe good boardroom processes so that corporations are able to enhance better communication and the benefits of conducting periodical reviews and rectifications for improvements; (e) the ways in which better accountability is promoted to avoid a corporate collapse; (f) the rationale of a balanced composition of the Board members; (g) the important role played by non-executive directors in providing proper checks and balance; (h) importance of sub-committees such as the Audit and
Remuneration Committees; and (i) the special regard for stakeholders’ interests which benefits the corporation’s success in the long-term.

1.4 Outline of the Thesis

This chapter highlights the history and background and explains the purpose of the study.

Chapter two presents a literature review that analyses the importance of the Board of Directors (executive and non-executive) in complying with corporate governance, company performance and social responsibility.

Chapter three outlines the methodology followed in evaluating directors’ views on corporate governance and identifies best practices for the data reduction techniques of summarising and categorising.

Chapter four analyses all data collected from interview responses and collates all results.

Chapter five concludes with the finding and makes further suggestions on areas for further research.


CHAPTER 2: Literature Review

2.1 Background

Prior to the 1890s, companies were state concessions established to conduct public works rather than corporations formed by investors (Dignam and Lowry, 2009). At the end of the 19\textsuperscript{th} century, the role of the corporation changed and a company was recognised as having its own separate legal personality as stated by Lord Halsbury L.C. in Salomon v A Salomon and Co Ltd (1897): “...it seems to me impossible to dispute that once the company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself, and that the motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are.” The House of Lords specified that a formal and separate personality of a company should prevail in the eyes of the law (Moore, 2006). It was seen as imperative that such a business medium, evolving from sole traders and partnerships, should allow people to invest their disposable income into companies with minimal liability and without direct responsibility for their management.

The concept of a managerial firm developed when company operations expanded and managing the entity became too difficult for shareholders (Mayson, French and Ryan, 2012). Lord Parker of Waddington (1916) stated in Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd (1916) “No one can question that a corporation is a legal person distinct from its corporators [sic] that the relation of a shareholder to a company...is not in itself the relation of principal and agent or the reverse; that the assets of the company belong to it and the acts of its servants and agents are its acts, while its shareholders, as such have no property in the assets and no personal liability for those acts.” In other words, as business grows a corporation generates profits for its shareholders without affecting their personal assets if something goes wrong, with the day to day managing of the firm left to a Board of Directors.

This hands-off approach by shareholders of a corporation became more prominent during the rapid growth of institutional investors, primarily due to massive technological advancements in communication and transport (Lowry and Dignam, 2009). This trend has been influential in the creation of many multinational corporate giants from the banking, insurance, superannuation and mutual fund industries. Shareholders have been closely watching the short-termism or myopic
behaviour of corporate managers in their decision making processes (Sappideen, 2011). This is regarded as a natural attribute of human beings seeking immediate gratification without accounting for future returns. There are several reasons for this short-term approach, including: (a) pressure from investors to see growth and profits; (b) managerial ability to produce positive results; and (c) managerial decisions encompassing risky ventures which would increase their influence or power (Williamson, 1984). Managers are frequently under pressure to make decisions which are solely profit driven to fulfil conditions of employment, avoid hostile takeovers or affect share prices, particularly when frustrated and impatient investors do not see an appropriate return on their investments (Baumol, 1967). Managers must behave in accordance with the demands of shareholders if they are to enhance a firm’s reputation and avoid a take-over (Radnitzky and Bernholz, 1987).

Too great an emphasis on shareholder benefits led to questions relating to the viability of managerial firms and the detrimental effect on employees, consumers and the general public, particularly from the 1970s onwards as the free market was revived (Dignam and Lowry, 2009). Some argue that profit maximisation inevitably benefits stakeholders as it creates jobs, guarantees wages and increases goods and services (Friedman, 1962). Other authors have mooted that: “Managers must develop relationships, inspire their stakeholders, and create communities where everyone strives to give their best to deliver the value the firm promises. Certainly shareholders are an important constituent, and profits are a critical feature of this activity, but concern for profits is the result rather than the driver in the process of value creation.” (Freeman, Wicks and Parmar, 2004). This latter opinion has been adopted by many corporate governance agencies in recent times, particularly after major collapses of corporate giants BCCI, PPI and the Robert Maxwell Group (Dignam and Lowry, 2009). Cheffins (2003) provides additional support, in that: “Companies are too important to the economy to exist for the benefit of a single constituency, namely, the shareholders. Regulation which secures fair treatment for potentially vulnerable stakeholder groups is therefore justified, even if the measures in question may reduce corporate profits.”

An issue recently raised by the Department of Business, Innovation and Skills in the United Kingdom has highlighted that “making companies more accountable in how they work and showing that they are improving - will increase investor and public confidence, making them more attractive to investors and giving the public more trust in their products and services” (Swinson, 2013). It is imperative that such accountability be enforced by shareholders through their respective directors. This calls for greater emphasis on corporate governance, as failure to oversee corporations may result in detrimental consequences.
The Report of the Singapore Corporate Governance Committee in 2001 (Report of the Corporate Governance Committee, 2001) identifies that corporate governance is a process and structure in which businesses are managed and directed in order to enhance long-term shareholder value whilst taking into account the interests of other stakeholders. It was vividly highlighted in the Committee’s Report that 89 percent of the 200 institutional investors throughout Asia responding to a McKinsey Investor Opinion Survey, stated that they would pay more for the shares of a well governed company than for those of a poorly governed company with comparable financial performance (Report of the Corporate Governance Committee, 2001). The Board of Directors is primarily responsible for corporate governance (Monks, Robert A.G. and Nell Minow, 1995).

The focus of corporate governance has recently shifted to the ‘enlightened shareholder value’ approach to directors’ responsibilities (Mayson, French and Ryan, 2012). The Company Law Review Steering Group in the UK released a document entitled “Modern Company Law for a Competitive Economy: the Strategic Framework” in June 2001 that subsequently led to the Companies Act 2006 in the UK (The Company Law Review Steering Group, 2001). This has become a model framework for many other systems. It recommended that directors of a company must act to promote the success of the company and, in doing so, shall take into account: (a) the likely consequences of any decisions in the long term; (b) the interests of the company’s employees; (c) the importance of fostering the company’s business relationships with suppliers, customers and others; (d) any Board decision that may impact upon the environment or the community; (e) the maintenance of high standards of business conduct; and (f) the need to act fairly between members’ interests in the company (The Company Law Review Steering Group, 2001). In addition, there are non-statutory voluntary codes and guides for corporate affairs developed by committees in the 1990s, e.g. the Cadbury Committee (Report of the Committee on the Financial Aspects of Corporate Governance, 1992), the Greenbury Committee (Directors’ Remuneration – Report of a Study Group Chaired by Sir Richard Greenbury, 1995) and Hampel (Committee on Corporate Governance: Final Report, 1998) and Turnbull (Internal Control: Guidance For Directors on the Combined Code, 1999). Many of these recommendations have been amalgamated under the Combined Code (The Combined Code, Principles of Good Governance and Code of Best Practice, 2000) which has been adopted internationally (Cheffins, 2000). In the Combined Code, emphasis is on directors’ duties, shareholder enforcement and transparency because of their central role in underpinning corporate governance structures and processes (The Combined Code, Principles of Good Governance and Code of Best Practice, 2000).
It is therefore evident that the health and growth of a company in luring investments are heavily dependent upon whether decision making is properly tailored around the recommended codes of best practice in relation to corporate governance (Ferran, 2001).

Theories that are relevant to the creation of codes of best practices, applicable to directors of a corporation, are discussed in the following sections.

2.2 Corporate Theories

The concept of a company was an evolutionary “step up” from partnerships as a common means of business (Tomasic, Bottomley and McQueen, 2002). A company had the capabilities to undertake large scale enterprises and was able to hire managers with the appropriate skills to control the enterprises (Mill JS, 1923). Even in 1923, Mill noted that there could be a lack of commitment by hired managers as opposed to owner-managed firms. This could increase the potential of risk through the decisions of managers who are not those who own the capital, i.e. shareholders.

The separation of ownership of a corporate firm and control of the firm was aptly described in Adam Smith (1776) as:

“The trade of a joint stock company is always managed by a court [sic] of directors. The court, indeed, is frequently subject, in many respects, to the control [sic] of a general court of proprietors. But the greater part of those proprietors seldom pretend to understand anything of the business of the company; and when the spirit of faction happens not to prevail among them, give themselves no trouble about it, but receive contentedly such half yearly or yearly dividend, as the directors think proper to make to them. This total exemption from trouble and from risk, beyond a limited sum, encourages many people to become adventurous in joint stock companies, who would upon no account, hazard their fortunes in any private copartnerly.”

Chandler (1990) states that: “… the building and operating of the rail and telegraph systems called for the creation of a new type of business enterprise. The massive investment required to construct those systems and the complexities of their operations brought the separation of ownership from management. The enlarged enterprises came to be operated by teams of salaried managers who had little or no equity in the firm. The owners, numerous and scattered, were investors without the experience, the information, nor the time to make the myriad of decisions needed to maintain a
constant flow of goods, passengers and messages. Thousands of shareholders could not possibly operate a railroad or a telegraph system.

The birth of the “manager controlled” firm in the early 19th century is largely apparent in the corporate world today.

Dodd (1932), the eminent corporate realist, argues that a company becomes something distinct, with its own aims and objectives, and the role of the State is limited to the extent of its formation. This is distinct from the “Concession Theory” where a company is seen to be a “mere fiction” without a corporate personality (Lowry and Dignam, 2009). The relevance of corporate realism is essential to justify the separation of control and ownership, as managerial discretion is confined to the best interests of the company as a whole. Dodd (1932) explained that a corporation, like any ordinary citizen, has social responsibilities and it is the responsibility of managers to ensure that the former is fulfilled. This theory was highly criticised after the Great Depression in 1930, and was defended by Dodd (1932) where he further emphasised that the main aim of a corporation is not solely to ensure dividends to its members but rather to have its own agenda as a corporate citizen, which its managers were tasked to achieve. Berle (1932), on the other hand, rejected Dodd’s opinion as being too vague and, in practice, it seemed too superficial to increase managerial dominance. The problem, as noted by Berle (1932), was that managers had too wide a discretion and were unaccountable to shareholders. Berle’s main focus was positioned on a trust relationship making managers the trustees of shareholders, and thus limiting discretion and resolving the main issue that led to the Great Depression in the 1930s, i.e. accountability. However, it seemed that Dodd’s idea of the managerial firm had garnered more empirical support as witnessed after World War II where corporate pluralism existed in many corporations despite legislative motivations (Dignam and Lowry, 2009). Berle subsequently adopted a pluralist view.

The 1970s saw much concern over the managerial firm (Dignam and Lowry, 2009). This was during the free market economy, where laissez-faire was revived and the State had very little role to play. Zingales (2000) stated that: “The word ‘governance’ implies the exercise of authority. But in a free market economy, why do we need any form of authority?”. The viability of the managerial firm was further questioned by the “contract theory” of Alchian and Demsetz (1972) who were of the opinion that a firm works as a non-hierarchical team with shareholders acting as monitoring agents to supervise management efficiency as shareholders have a vested interest in the distribution of the profits of the firm.
Theorists like Williamson (1974) held the view that managers were not solely profit driven to appease the members of a corporation, but were also concerned with self-gratification in promoting their own status, power and wealth. It is of particular importance to note the work of Jensen and Meckling (1976) which was instrumental in the development of the “agency theory”. Jensen and Meckling (1976) were of the opinion that the managers were the agents of the shareholders who were the principals. Shareholders without sufficient knowledge about the day-to-day running of a firm to monitor management efficiency will incur agency costs to be updated with such information. Agency costs increase when management ownership decreases. However, it is imperative that a high agency cost should avoid a low share price as this would initiate the hostile take-overs that were commonly witnessed during this era (Dignam and Lowry, 2009). Alternative measures were introduced to minimise agency costs and protect shareholders’ interests, e.g. share options, performance based bonuses and the introduction of non-executive directors to promote independence of the Board. The latter point is particularly noted as many recommendations for best practices have incorporated the need for independence of a Board of Directors (Cadbury Report, 1992).

In the early 1990s the theme of corporate theories had somewhat shifted from being solely profit and shareholder centric to balancing stakeholder concerns after the economic downturn in the late 1980s. As argued by Parkinson (1993), it is a seriously mistaken belief that members of a corporation have a moral claim to primacy by virtue of their vested rights in the company. Parkinson has been instrumental in building the case for corporate social responsibility. However, Cheffins (2003) argues that: “Instead, in British interdisciplinary corporate law scholarship, there is a tendency to acknowledge law and economics, cite its limitations and shift to a different theoretical ground. The most typical move UK academicians currently make is to discuss the company by reference to its employees and others potentially having a ‘stake’ in the business, such as suppliers, customers and perhaps society at large.”

The thinking is that companies are too important to the economy to exist for the benefit of a single constituency, namely, the shareholders. Regulation which secures fair treatment for potentially vulnerable stakeholder groups is justified “even if the measures in question may reduce corporate profits.”

The “stakeholder theory” focuses on other groups that are needed and interdependent on the survival of each other, in addition to the sole priority for business which is generating profits (Freeman, Wicks and Parmar, 2004). The main cause of corporate collapses in the early 1990s was
the lack of transparent accountability processes which became a factor of distrust by the general public in those companies (Dignam and Lowry, 2009). It could be seen that the list of recommendations for codes of best practice and reforms centred on the recreation of confidence in good corporate culture and social responsibility habitually practised by large corporations. Managers were given the prerogative to pursue agendas that were not necessarily profit generating as expected by shareholders (Parkinson, 1993).

In summary, the influence of the “concession” or “fiction theory” in the early days was important to identify the purpose of a company. The subsequent dominance of corporate realism, propounded by German theorists, provided an identity to the concept of corporations that separated ownership from control (Mayson, French and Ryan, 2012). This, in turn, gave rise to managerial dominance as institutional investment spawned large scale enterprises. However, there was a fear that managers would exploit their discretion and this would not be favourable to other constituents, as witnessed during the free market economy. A mechanism suggested by the “agency theory” was to view managers as agents of the shareholders, where the latter became monitoring agents who would incur agency costs to garner information pertaining to management efficiency. Themes and theories have yet again changed to what is regarded today as the “stakeholder theory” and the “enlightened shareholder value approach” where the existence or success of a company does not only depend on profit motivated decisions by the Board, but rather, mechanisms and good governance measures that are implemented in the company to boost investor confidence and safeguard stakeholder welfare and ethical factors (Keay, 2010).

2.3 Corporate Governance

The Singapore Report of the Corporate Governance Committee, (2001) states that: “Corporate governance refers to the processes and structure by which the business and affairs of the company are directed and managed, in order to enhance long term shareholder value through enhancing corporate performance and accountability, whilst taking into account the interests of other stakeholders. Good corporate governance therefore embodies both enterprise (performance) and accountability (conformance).”

The Report included an accompanying Code of Corporate Governance which recognised the need to balance enterprise and accountability in creating long term shareholder value. Generally, the Securities and Exchange Commission (“SEC”) in the USA and many other countries emphasised high
standards of disclosure, including corporate governance practices and activities that have been undertaken by an entity so that potential investors would knowingly invest with confidence (Report of the Corporate Governance Committee, 2001). The SC in Malaysia issued a Code of Corporate Governance in 2012 as a monitoring tool for corporations. In the UK, both civil and criminal law governs corporations from different aspects. In 2007, the UK Parliament enacted the Corporate Manslaughter and Corporate Homicide Act 2007. This Act allowed corporations to be prosecuted in the courts for any death caused by them, hence showing the importance of corporate responsibility issues. The “Civil Law” alternative governs the director’s role and powers in ensuring that companies are not used as a tool to commit fraud and that responsible decisions are made. The seminal question is why should a Board decision consider these codes of best practices? A well opined answer is expressed in the Cadbury Report (1992):

“Bringing greater clarity to the respective responsibilities of directors, shareholders and auditors will also strengthen trust in the corporate system. Companies whose standards of corporate governance are high are the more likely to gain the confidence of investors and support for the development of their businesses.”

It was further emphasised in the Cadbury Report (1992) that “all directors are responsible for the stewardship of the company’s assets. All directors, therefore, whether or not they have executive responsibilities, have a monitoring role and are responsible for ensuring that the necessary controls over the activities of their companies are in place – and working.”

Therefore, the only group responsible for ensuring that a company is well managed for the benefit of everyone connected with that company are the directors (Mayson, French and Ryan, 2012).

2.3.1 Role of Directors

Executive directors are important in any organisation in the decision making process. Non-executive directors play a ‘watchdog’ role in ensuring that corporate decisions are made wisely (Mayson, French and Ryan, 2012). The Board has the onus of accepting collective responsibility for actions taken. The Cadbury Report (1992) states: “The responsibilities of the Board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The Board’s actions are subject to laws, regulations and the shareholders in general meeting”. In practice, shareholders do not participate in the decision making process, apart from attending Annual General
Meetings. The onus is therefore on directors to maximise profits and to increase shareholders’ value in the company (Healey, 2003).

Organizations have evolved from profit maximisation to good governance (Brammer, Jackson and Matten, 2012). In most companies today, shareholders place emphasis on good governance as a core value for all directors. Non-executive directors are selected to ensure that companies are properly managed. As documented in the UK Corporate Governance Code 2010, it is good practice to include on a Board an appropriate combination of executive and non-executive directors who are independent, to avoid certain individuals from dominating the Board and to challenge and develop proposals on strategy constructively (Mayson, French and Ryan, 2012). As stated in the Singapore Code of Corporate Governance (2001):

“Such independent Board Members play an important role in areas where the interests of Management, the company and shareholders may diverge, such as executive remuneration, succession planning, changes of corporate control and the audit function. Furthermore, they are able to bring an objective view to the evaluation of the performance of the Board and Management.”

A Board of Directors is responsible for ensuring that decisions made are effective for the benefit of the company and stakeholders, and not merely to rubber stamp all suggestions. The key problem here is that, in some companies, the Board, in particular the non-executive directors, do not possess sufficient knowledge and understanding of the company’s business (Mace, 1986). Executive directors use this as an opportunity to take charge and influence the Board and this leaves the corporate strategy in the hands of the executive directors (Review of the Role and Effectiveness of Non-Executive Directors, 2003).

Although a Board is expected to be involved in the decision making process, it is left to a company’s constitution to determine the roles and functions of Board Members (Gower and Davies, 2008). The reason behind this is to provide freedom to companies.

2.3.2 Role of the Board

As mentioned above, the involvement of shareholders and the Board in a company’s decision making process is minimal or it is controlled by the company’s constitution. This confirms the domination of executive directors in a company (Review of the Role and Effectiveness of Non-Executive Directors, 2003).
The principle of the Combined Code on Corporate Governance (2006) laid down the following roles of the Board:

(a) To set the company’s strategic aims to meet the objectives;
(b) To review management performance; and
(c) To ensure necessary financial and human resources are in place.

The Cadbury Report 1992 listed the following roles of the Board:

(a) Appointment and dismissal of Chief Executive Officer;
(b) To protect shareholders’ interest; and
(c) To define the company’s purpose/object.

To achieve the above, a Board is required to perform the following:

(1) Strategic Planning
   It is essential for companies (both public and private) to develop strategic plans which are usually for the next 5 years (Pease and McMillan (1993). This is undertaken to predict a company’s financial performance. Based on the strategic plan, the Board decides which methods ought to be adopted to achieve the required financial targets. The onus is then transferred to the Executive Director to implement the methods to achieve these targets.

(2) To Develop Company Policies
   In most corporations it is the duty of the Board to establish policies for the company based on its Memorandum of Association. Policies issued must be fair to all stakeholders. The onus then lies on the Executive Director to implement these policies. As published by the Financial Reporting Council in September 2012, the Revised UK Corporate Governance Code stressed that the implementation of effective corporate governance depends internally on the Board’s ability to supervise stringently, policies relating to accountability, transparency, probity and sustainability of the entity over the long term (The UK Corporate Governance Code, 2012).

(3) “Hiring and Firing” the Executive Director
   An important role of the Board is to hire an appropriate Executive Director. An Executive Director has greater responsibility than the remainder of the Board since the Executive Director is solely accountable to the Board and the shareholders for all decisions made (The
UK Corporate Governance Code, 2012). Appointment of an Executive Director should be based on his/her past performance, skills and qualifications. Currently, companies confirm the appointment of their Executive Directors based on Key Performance Indicators over a probationary period. This is the easiest way to judge the talent and to measure the skills attributed to a prospective director (Hansen, Ibarra and Peyer, 2013).

The Board has the authority to dismiss the Executive Director when he/she neglects his/her duty. The Board is given these powers on the basis that the appointment of the executive director is made by the Board and that the Executive Director is accountable to the Board. The Board, when it is consulted by the Executive Director, must provide an opinion in response. Although Executive Directors may have experience, it is quite normal for them to revert to micro managing as opposed to adopting a strategic approach (Kenton, 1995).

(4) Sub-Committees of the Board

The importance of having sub-committees has been emphasised in the roles and functions of the Board of Directors (Mayson, French and Ryan, 2012).

In 1995, the Study Group on Directors’ Remuneration (The Greenbury Report, 1995) was set up and chaired by Sir Richard Greenbury to respond to the public outcry on directors’ rewarding themselves excessively and sought to implement a Code of Best Practice (Directors’ Remuneration – Report of a Study Group Chaired by Sir Richard Greenbury, 1995). The Greenbury Report stressed the importance of setting up a remuneration committee as a sub-committee of the Board which was tasked to ensure full disclosure of remuneration paid to directors.

As highlighted in the Code of Corporate Governance in Singapore (2001), the NYSE and the National Association of Securities Dealers Automated Quotations (“NASDAQ”) require listed companies to have an Audit Committee comprising at least three independent directors. On the issue of leadership structure, the Singapore Code adopted the UK and Australian approach whereby the Chief Executive Officer and the Chairman of the Board individually maintain the independence of the Board to monitor the efficiency of the management process and to avoid any control of decision making.

2.3.3 Members of the Board
As a member of a Board, one is expected to possess some pertinent qualities to meet the expectations of shareholders and stakeholders. The following are important qualities a Board Member ought to possess:

(1) Dedication

As a member of a Board, one should dedicate his/her time to the company. Since important duties (as discussed above) are undertaken by the Board, attending meetings regularly is very important, by allowing one to be updated on developments or losses sustained by the company. Prospective members can be interviewed and their commitment ascertained prior to being invited to become a member of the Board. By doing so, members are appraised of the required commitment and only committed persons shall be appointed (Report of the Corporate Governance Committee, 2001).

(2) Responsibility

A good director accepts responsibility for decisions made or votes cast without hesitation. As stated in the Cadbury Report, 1992, “a clear understanding of responsibilities and an open approach to the way in which they have been discharged will assist Boards of Directors in framing and winning support for their strategies.”. Members of the Board use their respective areas of experience and expertise to render advice in the best interest of the company.

(3) Attitude

Not everyone can be a Board Member. Certain important skills are required. Members should be confident in making decisions, but that does not mean decisions should be made haphazardly. Members of a Board must have market understanding, economic status and be aware of clients’ demands. A person who possesses the leadership qualities should be able to carry out the duties very well.

The Boards of Directors of most corporations have been facing difficult challenges in recent times. Carter and Lorsch (2004) pointed out that, due to the increase in business growth and complexity arising from globalisation and new technologies, Boards of Directors face fundamental changes, from hard assets to human assets. Although these changes (hard assets to human assets) affect shareholders’ values, they emphasise the importance of human assets as opposed to physical assets.
In light of today’s corporate governance, shareholders’ values are no longer the main emphasis of a Board. Being concerned for the welfare of employees is the modern trend in governing corporations (Carter and Lorsch, 2004) and the Board is therefore required to initiate policies which not only favour shareholders and companies but also benefit employees.

The major collapses in the early 1990s, due to a credit crisis at that time, has alerted shareholders. Their objectives have been altered from profit maximisation to good corporate governance. Some recent collapses (e.g. Lehman Brothers) and sovereign bailouts extended to corporations (e.g. Goldman Sachs) have led to a public outcry demanding better accountability and responsibility from Board decisions (Mayson, French and Ryan, 2012).

Due to the mounting pressure, management framework and financial performance are under constant supervision of the Board of Directors. Shareholders are willing to incur the cost of non-executive directors to play a ‘watchdog’ role, namely, observing the Board and analysing its decisions. (Kiel and Nicholson, 2003).

In light of the current pressures and social and legal changes, directors themselves would prefer clearer guidelines in terms of the scope of their activities. Sanctions have been imposed without fear or favour when breaches of duty occur (Dignam and Lowry, 2009). With the new Corporate Manslaughter and Corporate Homicide Act 2007 in the UK, a Board of Directors should be aware that its decisions will determine a company’s potential liability.

On the other hand, the recent Companies Act 2006 in the UK has codified most of the common law principles on directors’ duties (Mayson, French and Ryan, 2012). The focus of the Companies Act 2006 on directors and governance of a company indicates that Parliament’s intention was to ensure that misuse of powers could not affect corporate governance.

2.3.4 Codes of Best Practice

It is evident that the nature of a corporation today has taken on a very different image from its initial purpose as a tool of political creation (i.e. created by way of Royal Charters etc. to serve the needs of society) (Brammer, Jackson and Matten, 2012). The growth of a corporate organisation as an investment vehicle that instilled the concept of separation of ownership and management (i.e. the birth of the agency theory) has led to various reforms in the way it is to be governed (Lowry and
Dignam, 2009). The importance of proper governance has been manifested time and again due to its adverse effect on the economy and society in general as seen from the effects of corporate giant collapses like the Maxwell Group, BCCI, PPI and more recently the global credit crunch in 2008 due to irresponsible management and lack of accountability (Brammer, Jackson and Matten, 2012). Reforms for prudent accountability were pioneered by the Cadbury Report in 1992 and developed into the various Codes of Best Practices adopted by many nations to ensure namely, better business behaviour in terms of Board conduct and composition, transparent accountability and a broader understanding of the link between a corporation and factors like the economy, society, politics and technology (Barley, 2007).

2.3.4.1 Cadbury Report 1992

The Cadbury Report (1992) annexed a Code of Best Practice. The objective of the report is for companies to reflect on principles of openness, integrity and accountability in managing their companies. The recommendations are:

(a) A statement of compliance (reviewed independently by auditors) to be issued as to whether the recommendations made by the Code are complied with, and a proper explanation to be given on areas of non-compliance;

(b) The Board of Directors should be comprised of both Executive Directors (those who are knowledgeable about the business) and non-executive directors (those who are outsiders) to bring a broader view to the company’s activities, to stand independent from executive responsibilities and to reduce dominance by any one individual which usually happens in quasi-partnership corporations;

(c) The recommended number of non-executive directors on the Board is a minimum of three and they are to be independent. Apart from being rendered a director’s fee and/or shareholdings, they are distinct from the day to day running of the company. The onus is on the Board to select independent candidates with impartiality, and all information pertaining to the selection process is to be disclosed in the Directors’ Report. To maintain the independence of the role of non-executive directors, it is recommended that they serve for a fixed term;

(d) The Chairman of the Board is required to assess the efficiency of the Board to ensure that it is in full control of its obligations. The Chairman of the Board must also ensure that non-
executive directors receive timely notices of activities and company progress, and that shareholders are diligently updated on management efficiency;

(e) The roles of the Chairman of the Board and the Chief Executive Officer must not overlap;

(f) Due to their varying backgrounds, it is recommended that directors attend internal and/or external training;

(g) An effective Board structure should include audit, remuneration and nomination committees. The purpose of these committees is to review thoroughly matters within their respective areas of responsibility, as this promotes greater disclosure;

(h) In order to avoid fraudulent situations, there should be proper procedures or systems in place for internal control, especially with regard to the financial management of the company. To ensure effectiveness of these systems, directors are to issue statements in their respective reports, to be verified by an approved auditor; and

(i) There should be greater openness with regard to directors’ remuneration. Total emoluments and separate figures for performance related bonuses should be openly disclosed;

2.3.4.2 Greenbury Report 1995

The Greenbury Report (1995) on “Directors’ Remuneration” is the findings of a Study Group chaired by Sir Richard Greenbury with the objective of determining a Code of Best Practice addressing concerns of excessive remuneration of company directors in the UK. The study makes recommendations and raises standards dealing with procedures of setting and disclosing Executive Directors’ remuneration. The recommendations are:

(a) Setting up a Remuneration Committee comprising non-executive directors who would, on behalf of the Board and shareholders, determine the company’s policy on executive remuneration, pension benefits and compensation payments;

(b) The Remuneration Committee is to disclose to the Board annually the company’s remuneration policy, performance criteria and measurement, pension provisions, contracts of service and compensation commitments for early termination;

(c) The Remuneration Committee is to render full consideration to best practices outlined in the Greenbury Report pertaining specifically to devising respective remuneration policies and compensation commitments to which directors are entitled in the event of early termination, particularly for unsatisfactory performance; and
(d) The Remuneration Committee is responsible for determining performance based bonuses for directors. In doing so, matters to be taken into account shall include relevant conditions, which would link rewards to performance and this is to be aligned in a manner that would promote and enhance business.

2.3.4.3 Hampel Report 1998

The Hampel Report (1998) is the product of a Committee on Corporate Governance chaired by Sir Ronald Hampel which was set up to review the implementations of the Cadbury and Greenbury Committees’ recommendations. The Hampel Report specifically identifies certain areas relating to directors so that compliance in these areas implies compliance with good practice. Amongst them are:

(a) There should be an effective Board of Directors to lead and control a company;
(b) The designation of the Chairman of the Board and the Chief Executive Officer should not be fused;
(c) There should be a sufficient number of non-executive directors on the Board to ensure independence and transparency;
(d) There should be an effective process for supplying information to the Board, especially to non-executive directors so that they are constantly advised prior to a Board meeting;
(e) There should be a formal and transparent process of appointing new directors to the Board via a Nomination Committee; and
(f) The Board should maintain a sound system of internal controls to safeguard shareholders’ investments and a company’s assets, financially, operationally and from a point of view of compliance with laws and regulations.

2.3.4.4 Higgs Review 2003

The Higgs Review (2003) was produced in January 2003 as a review of the role and effectiveness of non-executive directors. The review highlighted the role of non-executive directors being poorly understood with regard to their importance in ensuring an effective Board and maintaining checks and balances, and as a monitoring agent for shareholders. The review also contributed to a
recommended Code of Best Practice in relation to non-executive directors. The Code of Best Practice includes:

(a) The Board is collectively responsible for promoting the success of the company by directing and supervising the company’s affairs, providing entrepreneurial leadership, establishing strategic aims, ensuring sufficiency of resources and confirming that obligations to shareholders and others are understood and met;

(b) Reinforcing the importance of the separate roles of Chairman of the Board and Chief Executive Officer and that the latter should not eventually take on the role of the former. The Chairman of the Board should meet the test of independence;

(c) The important role of the non-executive director is reinforced from several points of view, including: (i) challenging and contributing, constructively, to the development strategy; (ii) scrutinising the performance of management in achieving its respective targets; (iii) being satisfied that financial controls and risk management in the company are robust and defensible; and (iv) play an important role in appointing, dismissing and determining an appropriate remuneration scale for Executive Directors; and

(d) To monitor the performance of the Chief Executive Officer.

It also suggested that listed companies establish a Nomination Committee to be chaired by a non-executive director.

2.3.4.5 Combined Code of Corporate Governance 2003

Published by the Financial Reporting Council, the Combined Code of Corporate Governance (2003) revises the Combined Code published in 1998. The old Code was revised and the new Code became applicable to companies reporting years commencing 1st November 2003. Some of the recommendations suggested in the Code are:

(a) In line with the objective of a company to have an effective Board, company values and standards should be set to meet the company’s obligations to shareholders and stakeholders;

(b) The role of non-executive directors is, in a constructive manner, to challenge the decisions of the Board, to scrutinise management performance, to have a prime role in the appointment and removal of Executive Directors and determining their levels of remuneration, and to contribute to the development of proposals on strategy;
(c) The Board should meet regularly and the Annual Report should include a statement on how the Board operates, and identify which decisions are to be taken by the Board and which decisions are to be handled by management;

(d) The role of chairman is to be separate from the chief executive and should be expressed in writing and agreed by the Board;

(e) The Board should have a strong presence of independent non-executive directors (at least half the Board should comprise non-executive directors). The latter should satisfy an “independence” criterion. This includes consideration of whether the “director has been an employee of the company within the last five years, has or has had within the last three years a material business relationship with the company directly or indirectly, has received or receives additional payout from the company apart from directors fees, has close family ties with any of the company advisers, directors or senior employees, represents a significant shareholder or has been serving on the Board for more than nine years from the date of its first election”;

(f) There should be a transparent procedure for the appointment of new directors to the Board. A Nomination Committee should evaluate the skills, knowledge and performance of the Board and lead the process for Board appointments and recommendations;

(g) The Board and its directors must be subject to an annual performance review; and

(h) At least one member of the Audit Committee must have recent and relevant financial experience.

2.3.4.6 Organisation for Economic Co-operation and Development Principles 2004 (a.k.a. OECD Principles)

The OECD Principles (2004), is a revision by by Donald J. Johnston in 2004 of the OECD Principles of Corporate Governance which was first endorsed in 1999 and has become an international benchmark for policy makers, investors and other stakeholders worldwide. The OECD Principles has been identified as one of the 12 key standards for sound financial systems. It is evident that policy makers in the current commercial sphere understand the importance of observing good corporate governance standards to ensure financial market stability, investment and economic growth. OECD has also identified several common elements that support good corporate governance measures, be they applicable to OECD or non-OECD nations. The revised OECD Principles in 2004 were meant to strengthen the fabric of corporate governance across the globe. The OEDC Principles, particularly in relation to the responsibility of the Board, are:
(a) The Board should exercise due skill and diligence, and act with full information in the best interest of the company;

(b) The Board is to act fairly without favour to all shareholders;

(c) The Board is to ensure high ethical standards whilst taking into account the best interests of stakeholders;

(d) The Board is to ensure that timely and accurate disclosure is made in all material matters;

(e) The Board is to recognise the rights of the stakeholders and encourage active cooperation; and

(f) The Board also shoulders the responsibility of: (i) reviewing and guiding corporate strategy; (ii) monitoring the effectiveness of corporate governance practices; (iii) selecting and monitoring key executives; (iv) promoting transparency of the Board nomination and election processes; (v) ensuring a fair financial reporting process and the integrity of the corporation’s accounting systems; and (vi) exercising objective and independent judgments on corporate affairs.

2.3.4.7 ASEAN Corporate Governance Scorecard – Country Reports and Assessment 2012-2013 (Joint Initiative of the ASEAN Capital Markets Forum and the Asian Development Bank)

This Report (ASEAN Corporate Governance Scorecard – Country Reports and Assessment 2012 - 2013) was prepared by corporate governance experts and publication of the Report was an initiative jointly led by the Asian Development Bank and the SC. Being a “first ever” such report, the findings were collated and released on 5 June 2013. In an opening speech by the Chairman of the SC, YBhg Datuk Ranjit Ajit Singh, particular emphasis was placed on: “Increasing cross-border activities and investment flows have led to greater convergence of corporate governance standards and motivated many countries around the world to adhere to international standards of corporate governance as a means of increasing their competitiveness to tap domestic and international capital. The convergence of corporate governance standards also helps create an environment for investors to make comparable assessments and be assured that similar disclosure and governance standards are being implemented.”

Due to the emerging Asian economies in recent times, it is noted that the Asian economic landscape has changed and the implementation of international standards of corporate governance like the OECD Principles is promoted and commended. The ASEAN Corporate Governance Scorecard was
created to raise corporate governance standards and practices in ASEAN countries to correspond with global corporate governance standards, in a bid to promote ASEAN as an asset class based on corporate governance. The Malaysian model strongly advocates that sustainability of an enterprise should be complemented by corporate governance. Particular emphasis has been placed by the Corporate Governance Blueprint (Corporate Governance Blueprint, 2011) issued in Malaysia in July 2011 on strengthening Board structure and composition as well as its importance in guarding the interests of the company. The Blueprint has also echoed similar themes in placing due emphasis on: (a) stakeholder interests that should not be compromised; (b) disclosure and transparency for informed decision making; and (c) the need for the Board to facilitate ownership rights.

In the foreword of the ASEAN Corporate Governance Scorecard, 2012–2013, by Shigeko Hattori, the Director Public Management, Financial Sector, and Trade Division Southeast Asia Department Asian Development Bank, it has been highlighted that, despite vast resources pumped into promoting corporate governance as the key to sustaining Asia, there needs to be co-operation at a macro level, and this initiative must move beyond a national level through ASEAN. The main objective of the Scorecard is to seek an international best practice for corporate governance based on the five areas of the OECD Principles. The highlighted focus on the responsibilities of a Board in Indonesia, Malaysia and Singapore are shown in Table 2.1
<table>
<thead>
<tr>
<th>Country</th>
<th>Strengths</th>
<th>Weaknesses</th>
<th>Areas For Improvement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indonesia</td>
<td>Members of the Audit Committee are entirely independent</td>
<td>Lack of disclosure in the nomination process of the Board</td>
<td>There should be more awareness amongst the controlling shareholders and Board Members to comply with the recommendations of corporate governance and its benefits.</td>
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<td></td>
<td>There is at least one Commissioner in the company with prior work experience in the business of the company</td>
<td>Inadequate disclosure on the performance appraisal of the Board</td>
<td>There should be stricter penalties to ensure strict compliance</td>
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<td>Adequate disclosure in Audit Committee tasks</td>
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<tr>
<td>Malaysia</td>
<td>Commendable disclosure at the Board level in relation to duties and responsibilities and types of actions that would require Board approval</td>
<td>Non-disclosure of the Code of Ethics</td>
<td>Disclose the workings of the respective committees which are subsidiary to the Board</td>
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<td></td>
<td>Good size of the Board is 5 to 12 Directors</td>
<td>Lack of Board structure, process and independence</td>
<td>Disclose the remuneration of all executive, non-executive and the chief executive of the company to promote transparency</td>
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<td>Some companies have strictly separated the roles of the chairman of the Board and the chief executive</td>
<td>Non-disclosure of the remuneration of directors and chief executive</td>
<td>Requiring either the Board or shareholders to approve the remuneration of Executive Directors</td>
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<td></td>
<td>Presence of an Audit Committee with specified functions</td>
<td>No shareholder or Board approval for director’s remuneration</td>
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<td></td>
<td>Disclosure of internal control procedures</td>
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<tr>
<td>Singapore</td>
<td>Disclosure of Board responsibilities</td>
<td>Independence of the Chairperson of the Board</td>
<td>Better communication in relation to meetings including agenda items, matters requiring approval of shareholders, and provide more detailed minutes of meetings</td>
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<td>At least 1/3 of the composition of the Board are independent directors</td>
<td>Directors to be independent of management and shareholding</td>
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<td></td>
<td>Establishment of key committees, e.g. Audit and Remuneration Committee with independent chairs</td>
<td>Disclosure of appointments of Directors</td>
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<tr>
<td>Establishment of an Audit Committee with a chairperson who is independent and has accounting experience</td>
<td>Approval of Audit Committee for appointments and dismissals</td>
<td>with Directors and other key officers in dealings in shares. The Board should be notified by the respective Director prior to shares being traded</td>
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<td>Disclosure of committee meetings and attendance</td>
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<td>Companies need to adopt robust policies in reporting corporate social responsibility activities</td>
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<td>Ensuring that companies have specific procedures and policies in place to monitor the compliance of the Board with corporate governance principles</td>
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The Scorecard is based on the OECD Principles of Corporate Governance, which means that the recommendations and results will be more readily accepted by ASEAN companies in order to lure international investments. This serves also as a guide for a corporate governance framework.

### 2.5 Chapter Summary

The topic “Good Governance Standards” is one which will constantly evolve and be revised. Corporate theories, from the basics of Concession Theory to the enlightened shareholder value of Agency Theory, have played a vital role in determining and influencing the stance corporations adopt to fulfil the demands of corporate governance good practice. As the saying goes, “Rome was not built in a day”, the same applies to enforcing good corporate governance in most countries.

This chapter briefly explores various corporate theories and their influence on the development of corporate governance principles in the UK, the OECD and ASEAN region. In short, the following items are significant in complying with good practice to boost the performance of a company: (a) an independent Board of Directors; (b) steps taken to ensure directors do not abuse their powers and are held accountable to the stakeholders; and (c) the essential presence of non-executive directors.
CHAPTER 3: Research Methodology

3.1 Introduction

Compliance with corporate governance affects the success of a corporation (Shleifer and Vishny, 1997). Good governance is practised to ensure that investors are in a position to profit since others (e.g. managers and directors) are entrusted with utilising and growing their respective funds as “agents” (Love, 2010). However, the key question is whether better governance leads to better performance (operating performance, market value and stock returns) or whether better performing entities practise better corporate governance (Love, 2010). It is recognised that most studies linking firm performance to adherence to corporate governance have been undertaken in either the US or the UK and, therefore, emerging markets ought to be considered (Love, 2010).

The issues of corporate governance and the entrusted roles of directors have been examined by various reports and committees following scandals that have erupted globally (Davies, 2008). The Combined Code on Corporate Governance by the Financial Reporting Council, in June 2006 states: “Every company should be headed by an effective board, which is collectively responsible for the success of the company” (Financial Reporting Council, 1992). The report by the Cadbury Committee in 1992 (Report of the Committee on the Financial Aspects of Corporate Governance 1992, “the Cadbury Report”) has drawn attention to defects in the corporate governance systems of British companies as the cause of major collapses, e.g. The Maxwell Group.

Studies previously conducted have linked independence of the Board to performance of the company (Muth and Donaldson, 2002). It has been proven that the proportion of independent members of the Board renders a good relationship with the performance of the firm (Kiel and Nicholson, 2002). It has also been proven that companies which comply with recommended best practices of corporate governance perform better and garner better market prices as compared to ones which exhibit lower compliance measures (Horwarth Report, 2002). The Horwarth Report emphasises the importance of the role of the Board of Directors and the need to maintain an independent and transparent process to attain corporate success (Horwarth Report, 2002). The Horwarth Report also emphasises the importance of factors such as independence, competencies, (skills and characters of the members of the board), the existence of Board sub-committees and the composition of the Board (Horwarth Report, 2002). Love (2010, p. 45) recognises that corporate governance improves performance specifically as follows:
(a) With better oversight, managers are more likely to invest in value-maximizing projects and be more efficient in their operations;

(b) Fewer resources are wasted on non-productive activities (perquisite consumption by the management, empire-building, shirking);

(c) Better governance reduces the incidence of tunnelling, asset-stripping, related party transactions, and other ways of diverting firm assets or cash flows from equity holders;

(d) If investors are better protected and bear less risk of losing their assets, they should be willing to accept a lower return on their investment. This will translate into a lower cost of capital for firms and hence higher income; and

(e) The availability of external finance may also be improved, allowing firms to undertake an increased number of profitable growth opportunities.

It has been recommended that more research is needed into Board processes that would ultimately be linked to corporate success (Stiles, 2001). Examining Board behaviour is difficult due to the strategic deliberations held within the confines of Board confidentiality (Stiles, 2001). It is important to examine the views of directors on aspects of corporate governance and the role of directors that results in a significant impact on the success of the company, confidence of the stakeholders and other issues relating to corporate governance (Ayuso and Argandona, 2007).

3.2 Research Objectives

Previous studies have shown a strong correlation between strict adherence to corporate governance and firm performance (Black, 2001). The main objective of this study is to assess and examine the views of directors in relation to issues of corporate governance and firm performance. Directors’ opinions are sought in 24 areas (numbered appropriately as 1-24) as follows:

(1) The general nature of corporate governance.

(2) An understanding of the primary duties of a director and to whom such duties are owed.

(3) There are currently many regulations that provide a director with a duty to promote the success of a company, an example being Section 172 of the Companies Act 2006 (UK
Companies Act). A general understanding of a director’s point of view on this provision is essential.

(4) Views on the prioritisation of good governance as opposed to profit maximisation.

(5) Does strict compliance with good practice gain a strong advantage in improving company profits by instilling investor confidence?

(6) Views on the ideal composition of a Board.

(7) Views on whether the size of a Board matters in effective decision making.

(8) Views on what constitutes a proper boardroom process before a decision is finalised.

(9) Opinions on what should be the minimum standard of skill and experience of a director pertaining to the specific industry of the corporation.

(10) In examining boardroom culture or behaviour, whether the consideration of compliance with corporate governance issues is a focal strategic management concern before making major boardroom decisions.

(11) Views on the role of a non-executive director on a board.

(12) An insight into whether the opinions of a dissenting non-executive director should be considered before a Board decision is finalised.

(13) Views on the usefulness of evaluation processes in order to enhance the performance of the board.

(14) The traditional view is that the Board of Directors owes a duty only to shareholders (Berle and Means, 1991). The view of the directors in this area is important for examining boardroom behaviour.

(15) Most business investors send a mandate to the Board to maximise profits, i.e. increase shareholder value. The director’s view of how can this be balanced with good practice is essential.

(16) Maximising shareholder profit is not the only factor for creating value in line with proper corporate governance. A view on other factors which should be considered by the Board in driving value creation is important.
(17) Views on whether the reason to corporate collapses in the past are primarily due to concealed auditing.

(18) Views on the importance of a transparent and independent Audit Committee as a sub-committee of the Board and associated audit processes to ensure the stability and growth of a corporation.

(19) Views on the importance of a Remuneration Committee as a sub-committee of the Board and a recommended composition of members of such a committee.

(20) Views on how corporate accountability is best promoted.

(21) Views on the importance of other stakeholder interests, such as creditors and employees, have in maintaining proper corporate governance.

(22) The global economy has a keen eye for proper corporate governance in the current era. Directors of a company are personally accountable and liable when compliance with proper corporate governance is not met. An opinion on this matter is important to determine if sanctions would work to discipline delinquent directors.

(23) Opinions on the effectiveness of non-executive directors as watchdogs to monitor proper checks and balances.

(24) In some collapses, directors have stood to benefit from their positions, e.g. conflicts of interest. Views and suggestions for further reform in the area of compromising the interest of the company and its stakeholders.

By obtaining views on the above, this research aims to highlight the significance of director compliance with regard to best practice, from the perspective of investors and other stakeholders in addition to the company. The connection between Board decisions relating to good practice and the performance of a company needs to be established. Once this is established, the most robust codes of good practice may be identified to serve as a benchmark for improving the performance of unsuccessful corporations.

3.3 Methodology

The research methodology depicts the principles underlying research questions and how they cohere to the need to respond to the collation and interpretation of data (Saunders, Lewis and
Thornhill, 2012). This research methodology is exploratory, where the researcher has minimal knowledge of its context. Exploratory research involves mainly qualitative assessments which entail interviews and related observations and discussions (Saunders, Lewis and Thornhill, 2012).

In examining the interrelationship of the coherence of boardroom processes with good corporate governance and the success of the corporation, qualitative research methods are chosen.

3.3.1 Philosophy

The research philosophy one adopts is influenced by practical considerations (Saunders, Lewis and Thornhill, 2012). Business research is concerned with the way an organisation operates and should strive to solve problems relating to managerial practices (Byrman and Bell, 2007). The chosen qualitative research approach is associated with an interpretive philosophy where the researcher needs to establish trust, participation, access to meanings and in-depth understanding (Denzin and Lincoln, 2000).

The research paradigm embodies research philosophies of positivism, realism, interpretivism and pragmatism which can be compared to the characteristics of ontology, epistemology, axiology and corresponding data collection techniques (Saunders, Lewis and Thornhill, 2012). A paradigm is an analysis of a revolution in science that modifies a belief system and influences hypotheses and solutions (Byrman and Bell, 2007).

Ontology is accepted as a basis of producing valid knowledge in business and management and is primarily concerned with reality; i.e. the commitment of the researcher to a particular view which is adopted (Saunders, Lewis and Thornhill, 2012). Ontology is then further divided into: (a) objectivism, factors which are external and independent of the participants (Crotty, 1998); and (b) subjectivism, factors that are internally focused upon specific meanings and actions (Saunders, Lewis and Thornhill, 2012).

Epistemology relates to “what is considered as acceptable knowledge in a field of study” (Saunders, Lewis and Thornhill, 2012). Epistemology focuses on objectivism based on reality. It is linked to the positivist school of thought which applauds the “resources researcher” who places authority on real data, as opposed to studies conducted by the “feelings researcher” who bases findings on factors that are not external or objective (Saunders, Lewis and Thornhill, 2012).

Axiology, which is seen as a process of social enquiry, relates to the study of the role of values in a particular study (Saunders, Lewis and Thornhill, 2012). Judgments are primarily based on the
articulation of values that are demonstrated by the researchers (Heron, 1996). In essence, these are: (a) the positivist method is free of values as it is based upon an objective stance; (b) the realist method is swayed by real factors that are current in society and are “value laden”; (c) the interpretivist approach articulates “value based” on a subjective standpoint as the researcher is imbedded in the study; and (d) the pragmatist approach produces great value in mixed points of view (Saunders, Lewis and Thornhill, 2012).

3.3.2 Positivism

Using the philosophy of positivism places much emphasis on views of a natural scientist and the collection of data from observable realities, whether or not it is based on an existing theory (Gill and Johnson, 2010). The method focuses mainly on hypotheses which are empirically based on the concept of deductivism and empirical evidence is collated through the gathering of facts which are “value free” and objective (Byrman and Bell, 2007). There are often elements of statistics involved in testing hypotheses and the production of credible data. The produced hypothesis is tested, and confirmed in whole or in part or refuted. This develops a theory that can evolve in the future (Saunders, Lewis and Thornhill, 2012). In corporate governance research, statistics on Board composition and diversity ratio compared to performance, have been used (Ayuso and Argandona, 2007).

The positivist method arrives at a result based on collection of external data and the researcher maintains an objective stance (Saunders, Lewis and Thornhill, 2012). Using a positivist methodology leads to the analysis of a large range of data and does not focus on subjective issues within the boardroom (Lorsch and Maclver, 1989).

3.3.3 Realism

This research philosophy calls upon a scientific enquiry which is quite independent of the mind and provides an account of the nature of scientific practice (Saunders, Lewis and Thornhill, 2012). Byrman and Bell (2007, p. 18) states that:

“Realism shares two features with positivism: a belief that the natural and the social sciences can and should apply the same kinds of approach to the collection of data and to explanation, and a commitment to the view that there is an external reality to which scientists direct their attention (in other words, there is a reality that is separate from our descriptions of it).”
Realism is also termed: (a) dialectical materialism; (b) class analysis; and (c) structuralism (Neuman, 2009). There are two major types of realism: (a) direct realism; and (b) critical realism (Byrman and Bell, 2007). Direct realism is “what you see is what you get”, meaning that, through the use of appropriate methods, reality will be observable (Saunders, Lewis and Thornhill, 2012). In critical realism, what we experience are sensations or images of objects and which often deceive us. For example, there is a gap between the object and the sensation it gives. A mental processing phase exists from the time the sensation arises and reality (Saunders, Lewis and Thornhill, 2012). Bhaskar (2008) argues that the positivist way of thought, that “research shall reflect reality”, is in fact an attempt by the researcher to know or conceptualise reality. Direct realists rebut critical realists by stating that the sensations which deceive us are due to the fact that one has insufficient information (Saunders, Lewis and Thornhill, 2012).

Generally, business and management research concerns social actions that the researcher will comprehend only if the social structure giving rise to the particular phenomenum is understood (Bhaskar, 2008). Access to boardroom beliefs and social realities is not easy due to confidentiality of the boardroom decision making and deliberation process (Charan, 2005). Most research regarding how a Board actually operates has been based on published reports and other external academic material (Charan, 2005).

3.3.4 Pragmatism

Pragmatism is the hallmark of multiple methods (quantitative and qualitative research) and is based on the relevance of a particular concept which supports an action (Kelemen and Rumens, 2008). Saunders, Lewis and Thornhill (2012) define pragmatism as:

“...there are many different ways of interpreting the world and undertaking research, that no single point of view can ever give the entire picture and that there may be multiple realities.”

However, mixing methods poses serious philosophical difficulties (Davies, 2003). Because of this, the pragmatism methodology will not be used in this research.

3.3.5 Interpretivism

Interpretivism is concerned with human action rather than external or observable behaviour. For example, people and institutions are distinct from abstract laws or formulas, and there are stark differences between humans (Neuman, 2009). The interpretivist approach accounts for the
subjective views and social actions of humans and reflects the distinctiveness of such actions against the natural order (Von Wright, 1971). The method is subsumed under sociology as a “science which attempts the interpretive understanding of social action in order to arrive at a causal explanation of its cause and effect” (Henderson, Parsons and Webber, 1947). Therefore, there is little point in analysing external factors which have no relevance to social actions, but rather to focus on interpreting the roles of the subjects which are interpreted in a particular way (Byrman and Bell, 2007). The researcher becomes part of the research process by: (a) taking an interpretative stance; (b) adopting epistemological considerations of the social phenomena; and (c) focusing upon the details which are relatively subjective (Saunders, Lewis and Thornhill, 2012).

It is argued that the interpretive method suits business research because, in comparison with positivist characteristics which are objective and tend to generalise, interpretivism appreciates subjectivity and changes in business environments which ultimately affects social actions in the boardroom (Saunders, Lewis and Thornhill, 2012). An analysis of the social structure and motivating actions (skills, character, composition, diversity, rationales and reasoning) underlying Board decisions are pertinent factors in assessing performance (Charan, 2005).

3.4 Research Approach

The research approach adopted for this study is interpretivism due to situations that are subjective and susceptible to change in the boardroom environment. Data collected from interviews will explain and explore issues on corporate governance which are important to the directors and deliberated upon in the boardroom.

In addition, it is important to distinguish deductive and inductive research approaches. A deductive approach is favourable to positivists and is the most general way of knitting a relationship between theory and practice, as a researcher deduces a hypothesis and translates it into operational terms (Byrman and Bell, 2007). A deductive approach uses a highly structured methodology and collects data that can be measured in a sociological context and in a quantitative form (Saunders, Lewis and Thornhill, 2012). A structured methodology involves: (a) investigating a theory and deducing a hypothesis; (b) data collection using interviews or survey questionnaires; and (c) using the findings to confirm or reject the hypothesis (Byrman and Bell, 2007).

However, it should be noted that this logical structure may not always be a linear process as there is the possibility that the original theory is modified before the findings are concluded, or that the data
does not support the original hypothesis (Byrman and Bell, 2007). Byrman and Bell (2007, p. 13) notes that:

“There is a certain logic to developing theories and testing them...in everyday contexts, we commonly think of theories as things that are quite illuminating but that need to be tested before they can be considered valid or useful...in point of fact, however, while the process of deduction does undoubtedly occur, it is better considered as a general orientation to the link between theory and research...its broad contours may frequently be discernible in business research...”

An inductive approach, on the other hand, enables researchers to overcome rigidity in deductive methodology and provides an allowance for variance in interpreting different situations (Saunders, Lewis and Thornhill, 2012). With an inductive approach, the main focus is on producing theories from observations (Byrman and Bell, 2007). The inductive strategy links data and theory and is concerned with qualitative data rather than quantitative data (Byrman and Bell, 2007).

The inductive approach is deemed to be more applicable to business research and relates well with boardroom practices and processes as it entails gathering qualitative data (Saunders, Lewis and Thornhill, 2012). Therefore, this research uses an inductive approach to produce findings based on qualitative data obtained from interviews.

3.4.1 Qualitative Research Strategy

The qualitative research strategy is cross-sectional (Byrman and Bell, 2007). Qualitative research often involves one or more of a diverse range of methods such as ethnography, in-depth interviewing, oral history, autoethnography, focus group interviewing, case study, discourse analysis, and content analysis.

Ethnography relates to studying a group of people, from a work group or in an organisation, who interact amongst each other (Saunders, Lewis and Thornhill, 2012). This strategy falls under the qualitative research strategy and it was developed initially to study cultures in “primitive” societies which were once ruled by colonial powers (Tedlock, 2005). Ethnography strategy adopts a more interpretive concern requires the researcher to “live amongst whom they studied” in order to produce an accurate account of the cultures and beliefs of the respective subjects (Tedlock, 2005). Researchers tend to benefit by learning about organisational culture from differing subjective views of individuals and by exposing a “hidden environment” (Qu and Dumay, 2011).
Such a wide collection of methods enables qualitative researchers to investigate a vast range of research topics and questions. The research is a holistic process based on a qualitative strategy and involves differing ontology. Ontology is the researcher’s view of the nature of reality and epistemology. Epistemology is the researcher’s view of what is acceptable knowledge (Saunders, Lewis and Thornhill, 2012). A qualitative research strategy is one that focuses on the subjective meanings and social phenomena with a realistic insight into the multiple meanings of a social construction (Saunders, Lewis and Thornhill, 2012). In this strategy, the researcher employs interpretive ethnography (Tedlock, 2005) and accepts varying social actions and behaviour in the boardroom. The strategy produces an insider’s perspective to expose unexpected findings (Byrman and Bell, 2007).

3.4.2 Interviews

The interview process is arguably one of the most important means of collecting qualitative data and is favourably used in conducting ethnographic studies (Qu and Dumay, 2011). It is a “pipeline for transmitting knowledge” (Holstein and Gubrium, 1995).

The interview approach has been chosen for collecting qualitative data in this study. Saunders, Lewis and Thornhill (2012, p.372) define an interview as:

‘...a purposeful conversation between two or more people, requiring the interviewer to establish rapport, to ask concise and unambiguous questions, to which the interviewee is willing to respond, and to listen attentively.’

Interviews that are carefully planned and tactfully executed enable the researcher to extract subjective meanings and motivating actions from the interviewee in line with the philosophy of interpretivism, and gain a rich set of data (Qu and Dumay, 2011). In such interviews the researcher customises questions and procedures according to the responses to previous questions (Doyle, 2004). Two metaphors are often used to describe the researcher in interviews: (a) a “miner” who probes for “nuggets of essential meanings” seeking the truest meaning; and (b) a “traveller”, where the researcher conceptualises the garnered knowledge as a “story to be told” (Kvale, 1996).

Interview methods are generally distinguished by varying degrees of structure in an interview (Fontana and Frey, 1998). Three categories of interviewing methods are: (a) structured; (b) semi-structured; and (c) unstructured (Alvesson, 2003).
A structured interview is organised and employs the use of questionnaires involving social interaction between the researcher and the interviewees whereby preliminary explanations are provided by the researcher to the interviewees (Saunders, Lewis and Thornhill, 2012). A structured interview is straightforward, scripted with room for deviation, and is less likely to evoke an objective point of view (Qu and Dumay, 2011).

A semi-structured interview is the most common method used for qualitative research purposes (Alvesson and Deetz, 2000). The interview is based on “prepared questioning guided by identified themes in a consistent and systematic manner interposed with probes designed to elicit more elaborate responses” (Qu and Dumay, 2011). The prepared questions or guides are meant to ensure that there is no deviation from the theme of the topic (Qu and Dumay, 2011).

An unstructured interview is known as an “informant interview” as the researcher encourages the interviewee to speak freely about “events, behaviour and beliefs in relation to the topic area” and it is “the interviewee’s perceptions that would guide the flow of the interview” (Saunders, Lewis and Thornhill 2012).

This qualitative research approach entails an in-depth face-to-face semi-structured interview, based on a standard set of questions, to participants who are directors of companies. Semi-structured and in-depth interviews allow the researcher to obtain, first-hand, insights from the directors’ perspectives based on the theme in context (Gubrium and Holstein, 2001). The reasons for selecting this semi-structured form of interview are:

(a) A semi-structured method of interview based on set questions offers “approximately the same stimulus to each subject to ensure that responses to the questions are comparable” (Berg, 1998);
(b) A list of questions has been designed based on the literature review in Chapter 2. Questions that are accurately phrased obtain rational answers which are transparent in the relevant topic (Qu and Dumay, 2011);
(c) In contrast to other methods of interviews, the semi-structured interview possesses versatility because, although it is scripted to a certain extent, it is “flexible, accessible and intelligible and, more important, capable of disclosing important and often hidden facets of human and organizational behavior” (Qu and Dumay, 2011);
(d) As access to internal boardroom processes are quite difficult, a semi structured interview is used by an experienced interviewer to determine the perspectives of the interviewees (Qu and Dumay, 2011); and
As compared to structured interviews that produce objective responses, semi-structured interviews are designed to evoke a subjective point of view, whereby the interviewer shoulders the role of creating reality to uncover truths (Denzin and Lincoln, 1998), e.g. by prompting the interviewee to produce a response (Gilbert, 1994).

3.5 Data Collection Strategy

Pursuing an exploratory study involves conducting in-depth interviews with respective participants who guide the research (Saunders, Lewis and Thornhill, 2012). However, it is not practical to collect and analyse all potential data relating to the context of this research and sampling techniques known as probability and non-probability sampling are utilised (Saunders, Lewis and Thornhill, 2012).

Probability sampling is a technique used to make inferences from a sample selected statistically to represent a population. This technique is not appropriate for answering business research question (Saunders, Lewis and Thornhill, 2012).

Non-probability sampling offers alternative sampling methods: (a) quota; (b) purposive; (c) volunteer; and (d) haphazard (Saunders, Lewis and Thornhill, 2012).

Quota sampling is used for structured interviews and gathers data that is needed quickly, where selection of cases within the strata is “entirely non-random” (Barnett, 2002).

Purposive sampling, also known as judgemental sampling, enables the researcher to meet the respective objectives as the data collection is based on a specific case study which may be extreme, heterogeneous, homogenous, critical, and typical or a theoretical research (Saunders, Lewis and Thornhill, 2012).

Volunteer sampling is classified as either snowball or self-selection sampling. Snowball sampling is like a snowball rolling down a hill. When the researcher seeks to make contact with one or two cases in the population, they identify other potential participants in order to increase the list of interviewees. This technique is normally used when the researcher faces difficulties in “identifying members of the desired population” (Saunders, Lewis and Thornhill, 2012). Self-selection sampling is when the interviewees volunteer to participate in the research (Saunders, Lewis and Thornhill, 2012).
The haphazard technique renders “availability sampling” as a common means of sampling performed without any specific principles of organisation in relation to the research. Cases are selected on a convenience basis due to the “ease of obtaining them” (Saunders, Lewis and Thornhill, 2012).

This study uses availability sampling. The interviewees are part of a corporate network of the researcher. The actual sample consists of 10 interviewees who are existing company directors. Interviews are conducted to analyse their respective in-depth views to determine how Board decisions and good practice affect the performance of a company.

3.6 Chapter Summary

The research methodology chosen for this study is based on the interpretivist school of thought to generate qualitative data. Semi-structured interviews are adopted as they allow flexibility to explore the opinions of directors in relation to compliance with corporate governance and its impact on the corporation.
CHAPTER 4: Results and Discussion

4.1 Introduction

This study involves in-depth interviews with participants who guide the research (Saunders, Lewis and Thornhill 2012). As discussed in Chapter 3, the sampling technique known as “non-probability sampling” is utilised (Saunders, Lewis and Thornhill 2012). This haphazard technique adopts “availability sampling” (Saunders, Lewis and Thornhill 2012) as a means of sampling which is undertaken without interference to the research. Cases are selected on a convenience basis based on the “ease of obtaining them” (Saunders, Lewis and Thornhill 2012). The research involves obtaining views on corporate governance from ten participants who are directors of their respective organisations. The participants are from diverse industries which include manufacturing, service and general trading in Singapore and Malaysia. The participants are chosen based on their experience as directors, with some participants having vast experience of 20-30 years and others who have only been directors for the past 2-4 years. The reason for choosing directors with such a range of experience serves the need to obtain objective views from long and short term office holders so that a more prudent analysis can be obtained to sustain discussion.

4.2 Data collected during interviews

The interviews aim to seek in-depth views of participants concerning the connection between Board decisions relating to good practice and the performance of a company. All interviews are corroborated with the interviewees at the time of the interviews. All corroborated statements, detailed in appendix F, are categorised based on the themes or questions that are developed. Interview responses are filtered to fit the context of this research based on the significance of substantive issues of the study. Table 4.1 below represents the significance of views obtained from the interviews.
Table 4.1 – Significant views of Participants

| Q.1 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.2 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Q.3 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.4 | Y | N | Y | Y | N | N | N | N | Y | Y |
| Q.5 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.6 | N | Y | Y | N | Y | Y | Y | Y | N | Y |
| Q.7 | Y | N | Y | Y | Y | N | Y | Y | Y | Y | Y |
| Q.8 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.9 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.10 | Y | Y | Y | N | N | N | N | Y | Y | Y |
| Q.11 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.12 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.13 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.14 | Y | Y | N | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.15 | Y | Y | N | Y | Y | N | N | Y | Y | Y |
| Q.16 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.17 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.18 | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.19 | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.20 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.21 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.22 | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.23 | N | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Q.24 | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |

Table 4.1 Legend:

Q = Question

P = Participant

Y = Valid, and is used in the discussion (The response has been substantiated for the purpose of this research in identifying the best codes of practice. Responses which were vague have been discarded.)

N = Invalid, and is not used in the discussion
4.3 Themes derived from the collected data

The 24 questions are narrowed down to nine themes for clarity and simplicity, and to reduce the data in a cohesive manner to arrive at appropriate conclusions.

The themes are derived from the general concerns raised by the various reports that have led to the codes of corporate governance. Codes of best practice that emanated from such reports (e.g. *the Report of the Committee on the Financial Aspects of Corporate Governance, 1992*, *Directors’ Remuneration – Report of a Study Group Chaired by Sir Richard Greenbury, 1995*, *Committee on Corporate Governance: Final Report, 1998*, *Internal Control: Guidance For Directors on the Combined Code, 1999*, *The Combined Code, Principles of Good Governance and Code of Best Practice, 2000*, *Report of the Corporate Governance Committee, 2001*, *Combined Code of Corporate Governance 2003*, *Organisation for Economic Co-operation and Development Principles 2004*, *The UK Corporate Governance Code 2012*, *Malaysian Code on Corporate Governance 2012*, *The UK Stewardship Code 2012 and the ASEAN Corporate Governance Scorecard – Country Reports and Assessment 2012-2013*) have emphasised several issues from the reports. These have culminated into themes of discussion concerning this research. The common issues raised in such reports for reform and compliance relate to corporate governance perspectives, directors’ duties and expected skills, the composition of the board, recommended processes, the significance of sub-committees of the Board and issues regarding stakeholders.

For the purpose of analysis and discussion, the particular areas in relation to the research are narrowed down to themes relating to:

(a) discussion on general views of the importance of corporate governance measures in a corporation;

(b) discussion on the importance of directors’ duties in the decision making process in a corporation;

(c) discussion on the standards and skills required of a director in a corporation;

(d) discussion relating to the ideal composition of a Board of Directors and Board dynamics;

(e) discussion relating to appropriate boardroom processes;

(f) discussion relating to the significance of non-executive directors on a Board of Directors;
discussion relating to the relevance and significance of an Audit Committee as a sub-committee of a board;

discussion relating to the relevance and significance of a Remuneration Committee as a sub-committee of a board; and

discussion on the importance of deliberating stakeholder interests to achieve corporate success.

These questions are narrowed down to nine themes based on the mapping method shown in Table 4.2.

Table 4.2 – Relationship between Themes and Research Questions

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All responses obtained in the above areas are identified as the key variables in order to make comparisons and interpretations leading to appropriate conclusions (Saunders, Lewis and Thornhill, 2012). The interview process renders the researcher “a tool to be used as effectively as possible by capable researchers establishing a context-free truth about objective reality producing relevant responses, with minimal bias” (Qu and Dumay, 2011). The interviewees’ personal perception about issues relating to corporate governance and its relevance to corporate success provides the researcher with important data, which is practical and objective, to be examined to yield appropriate conclusions.
4.4 Discussion

Data derived from the interviews is channelled to the respective themes indicated in (a) to (i) above. Detailed discussions on the significance of factors contained within such themes are critically analysed and examined below in Sections 4.4.1 to 4.4.9.

4.4.1 Discussion on the general views on the importance of corporate governance measures in a corporation

Issues relating to corporate governance have garnered much needed attention, especially after the collapse of many corporate giants (e.g. BCCI, PPI and Maxwell) which was mainly due to inadequate standards of financial reporting and overpaying of directors (Report of the Committee on The Financial Aspects of Corporate Governance, 1992). Corporate governance has gained international recognition especially after the Organisation for Economic Cooperation and Development (“OECD”) introduced its principles of corporate governance (Takeshi, 2001). The term corporate governance can be viewed from different perspectives and has a significant impact on the performance of companies (Black and Khanna, 2007). Corporate governance can be seen as a set of legal and institutional arrangements that dictate how corporations operate, how activities are undertaken, what is to be reported and how the health of a corporation can be ensured (Blair, 1995). It also refers to processes through which a corporation operates in order to enhance long term shareholder value, taking into account the interests of other stakeholders by focusing on matters relating to corporate accountability and proper management (Report of the Corporate Governance Committee, 2001). Participant 3 states that principles of corporate governances are important because “it is a system of control to manage the directions of the business and also to ensure that shareholders’ interests are being looked after”. Participant 8 views corporate governance quite aptly as “a framework of accountability, checks, balances and controls to limit managerial discretion and at the same time promote transparency in reporting mechanisms to the investors”. Participants 1, 3 and 4 have commonly stressed the importance of “control” as being vital in proper corporate governance. This manifests the view that corporate governance is crucial to a business as raised by Theme (a).

This framework of better accountability and reporting emphasises the primary responsibilities of a Board to “setting up the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to the shareholders on their stewardship” (Report of the Committee on the Financial Aspects of Corporate Governance, 1992). It is generally understood that corporate governance involves the initiation of stringent boardroom processes, corporation of robust strategic plans which relate to long term benefits of the
corporation and its stakeholders. It is especially important in corporate situations which include “corporate acquisitions, management buyouts, financial reporting, performance appraisal, hiring and replacement of senior management, and executive compensation” (Report of the Corporate Governance Committee, 2001). This falls in line with the views of Participant 5 who has stressed that compliance with corporate governance would “force Directors/Managers to make long term policies, which will be beneficial to the company, shareholders and stakeholders”. Corporate governance issues revolve around issues of a corporation’s constitution, namely: (a) duty imposing and power conferring rights of the board; (b) systems for accountability and transparency; (c) performance measures; (d) stakeholder rights; (e) good governance; and (f) gate keeper standards (Apreda, 2008). Due to global corporate collapses and inherent problems in corporate management, investors are placing more emphasis on issues relating to corporate governance before making decisions, and “shareholder activism in the U.S. and elsewhere stems from the conviction that better corporate governance will deliver higher shareholder returns” (McKinsey and Company Investor Opinion Survey on Corporate Governance, 2000). The Report of the Committee on the Financial Aspects of Corporate Governance (1992) states that: “Companies whose standards of corporate governance are high are the more likely to gain the confidence of investors and support for the development of their businesses”.

Although different views are expressed on “what corporate governance should entail”, the main focus is on the responsibility of directors pertaining to: (a) the independence of the board; (b) the evaluation processes of the board; and (c) the responsiveness the Board to members of the corporation (McKinsey and Company Investor Opinion Survey on Corporate Governance, 2000). The commonality of responses from Participants 1 to 10 exhibits the following factors:

(a) Proper direction and control;

(b) Accountability and transparency;

(c) The responsibilities of the board;

(d) The role of a corporation to fulfil societal needs; and

(e) Catering to the needs of stakeholders apart from profit making.

There are many recommendations for improving corporate governance practices by emphasizing the reporting functions of the Board and the role of auditors in ensuring that Board freedom is exercised subject to compliance within a framework of effective accountability (Report of the Committee on
The factors that lead to good governance can be further elaborated into issues like: (a) monitoring roles by the Board in a corporation’s long-term goals and corporate performance; (b) evaluating senior management performances; (c) compliance with legal and ethical issues; (d) salient communication to be maintained with the shareholders and stakeholders; (e) determining a viable executive compensation plan; (f) evaluating management effectiveness; (g) having independent corporate leadership; and (h) regular evaluation of Board performance (McKinsey and Company Investor Opinion Survey on Corporate Governance, 2000). Corporations that follow a Code of Best Practice have the ability to “strengthen both their control over their businesses and their public accountability”, and this leads to fostering a “spirit of enterprise” (Report of the Committee on the Financial Aspects of Corporate Governance, 1992).

The Anglo-American system of corporate governance is market based, whilst the European and Asia Pacific markets are based mainly on relationships (Clarke, 2007). The market based approach relates to publicly traded funds, whereas the European and Asia Pacific systems emphasize shareholder approval of Board decisions in matters relating to: (a) altering the constitution; (b) listing a company on a stock exchange; (c) issuing shares or varying rights to shares; (d) reduction of share capital; and (e) rendering financial assistance (Gower and Davies, 2008). There are issues relating to good governance in which shareholder participation is of importance, namely: (a) appointing auditors to the company; (b) transactions that cause conflicts of interest; and (c) matters relating to take overs and mergers (Gower and Davies, 2008). This echoes the views of Participant 8 wherein corporate governance principles stand to be a “framework of accountability, checks and balances and controls to limit managerial discretion and at the same time promote transparency in reporting mechanisms”.

These issues are of importance to investors who are permitted only to act through the management of a company and this requires the company to comply with the most robust practices of corporate governance (Mayson, French and Ryan, 2012). Greer L.J. in Shaw & Sons (Salford) Ltd v Shaw (1935) as quoted in (Mayson, French and Ryan, 2012) which states that: “A company is an entity distinct alike from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers”.

Directors are the stewards of the assets of a corporation and have a primary task of ensuring the necessary control mechanisms for the sound day-to-day operations of the corporation are in place to avoid instances of corporate fraud and fabrication of accounts (Report of the Committee on the
Financial Aspects of Corporate Governance, 1992). Shareholders in a publicly traded company are not personally involved in the day-to-day management of the company as such matters are left to the discretion of the directors. Although this is the case, Participant 1 points out that principles of corporate governance are in place to “control the management and to ensure that the management adheres to the system”. In monitoring the performance of the management, a Board incurs “agency costs” (Cheffins, 2013). This separation of ownership and control is identified as “The Agency Theory” and is one of the many reasons which have led to corporate collapses. It is viewed as a problem in corporations where ownership remains deeply embedded in the board, and also in market based corporate governance systems (La Porta, Lopez-de-Silanes, Shleifer and Vishny, 1999).

Measures of corporate governance have focused on promoting better management accountability as well as minimising agency costs for the engagement of external parties, e.g. independent auditors to comment on the accuracy and objectivity of directors’ statements, financial reports and other information (Gower and Davies, 2008). However, monitoring managerial accountability in “blockholder” companies (i.e. an alliance of shareholders who control a large number of shares in a company) is simpler than those which involve institutional investors (Cheffins, 2013). Having a robust and objective framework for corporate governance (providing transparent accountability in financial reporting and auditing) is essential to shareholders and other stakeholders, e.g. employees and suppliers (Report of the Committee on the Financial Aspects of Corporate Governance, 1992). This is in line with the views of Participant 10 who regards corporate governance as “a collective effort to realise the expectation of both shareholders and stakeholders by the Board to implementing and ensuring that recommendations of best practice codes, like the Malaysian Code on Corporate Governance especially in matters of transparent accounting and financial reporting, is followed”.

The Malaysian Code of Corporate Governance highlights the need to raise standards in corporate governance. The principles of best practice self-regulated corporate governance focus at a micro level on structures and processes relating to: (a) the composition of the board; (b) the recruitment of new directors; (c) remuneration of directors; and (d) Board committees, like the Audit and Remuneration Committees, and their responsibilities (Malaysian Code on Corporate Governance, 2007). Participant 9 states: “The importance on corporate governance is specific to matters relating to internal self-regulating mechanisms within the corporation that would complement, and not be in breach of, external statutory mandates that prohibit for example, anti-competitive or collusive behavior and those that could possibly lead to infringing anti-bribery laws”.

The Malaysian Code on Corporate Governance (2007) also states that compliance with codes of best practice promotes full-disclosure. This is due to the shift in the current economic environment that
is moving to a market-based system that demands greater clarity and accountability especially in relation to directors’ roles. Participant 6 defines the critical role of “corporate governance in the demanding commercial sphere today relates to the various responsibilities which have to be clearly envisioned and spelt out so that goals imposed on the management are plausible and are not seen to contradict each other, and so, a balance between making profits, self-gratification and accounting for stakeholders’ interests must all fall in line, which is in practice tough”. Though being tough, it should be noted that the ultimate role of management is to have the expertise to make correct decisions and be able to comply with the current demands of the competitive economic sphere. Compliance with codes of best practice requires the Board to provide competent and consistent management which is essential for undertaking the firm’s responsibilities in terms of “efficiency and competitiveness” (Malaysian Code on Corporate Governance, 2007). Participant 7 states: “Corporate governance is a duty imposed on the management and its efficiency is measured against the ability of the whole managerial team to comply with such demands of enabling agency costs reduction, promoting responsible management discretion and complying with demands of corporate social responsibility”.

Hansen, Ibarra and Peyer (2013) states: “Developing a simple yet rigorous way to gauge long-term performance is crucial; after all, in business, leaders default to managing what’s measured”. According to Jeffrey P. Bezos, the Chief Executive Officer of Amazon which went public in 1997, several factors are important for a corporation to ensure that its plans for the long term are clear in order to encourage investors to invest in the corporation. Such long term plans are designed to align shareholder and customer interests, as well as other stakeholders, e.g. employees and vendors (Hansen, Ibarra and Peyer, 2013). Much of the Code of Corporate Governance revolves around the principle of creating long-term shareholder value via a good corporate governance framework that is balanced, flexible and disclosed to investors as a “sound basis for making their investment decisions” (Report of the Corporate Governance Committee, 2001). Participant 2 suggests that “corporate governance policies should be framed in a manner that will avoid short-termism as the long term sustainability of the corporation and its stakeholder interests should be given paramount consideration”. As indicated by Participant 6, investors in the current era have placed much importance on corporate governance as “it assures the existence of the company in the long term”. The issue in relation to “short-termism” (i.e. the corporate strategy by a company and its managers is related to short-term profits at the expense of those over the long term) is one where dramatic changes to the corporate governance structure have occurred and management focus has been on a “four legged strategy of short term managerial employment contracts, stock based compensation,
high stock price, and the pursuit of high-risk high-return investment strategies to achieve the latter” (Sappideen, 2011).

This corporate behaviour of unreasonable risk-taking in markets (e.g. hedge funds, pension funds and insurance companies) benefits investors and managers but hampers the long term results, namely “the welfare of markets, the economy and society generally” (Sappideen, 2011). A major cause of the 2008 financial crisis is short-termism adopted by managers who undertook risky corporate ventures which result in corporate collapses, impacted global markets and adverse losses to society in general (Sappideen, 2011). One reason for this behaviour which does not meet good governance objectives is the realisation by managers that they are unlikely to be in their current positions to profit from long term goals (Palley, 1997), or due to ‘investor pressure’ (Bushee, 1998). Due to such pressures, managers rely on short-term performance measures to assure their investors that the company’s targets are being achieved (Laverty, 1996). Another cause of short-termism is the offering of compensation to shareholders (Sappideen, 2011). There are three different approaches to avoiding short-termism: (a) a prescriptive approach; (b) a non-prescriptive approach; and (c) a balanced approach. These promote good corporate governance so that long-term shareholder value can be created, and are described as follows:

(a) A prescriptive approach is where corporations adopt a “one size fits all” corporate governance practice, which may not be apt for developed economies like Singapore or developing economies like Malaysia, as it is rigid in application. The prescriptive approach is strictly regulated with less room to manoeuvre, and best serves undeveloped economies (Report of the Corporate Governance Committee, 2001).

(b) A non-prescriptive approach is prevalent in countries like the USA which does not practise a prescribed list of corporate governance practices, although the SEC requires disclosure of corporate governance practices by companies. Stock exchanges, e.g. NYSE, NASDAQ and the Australian Stock Exchange, impose listing rules (e.g. to have an Audit Committee in the board) which requires disclosure as part of corporate governance practices that have been adopted by participating companies (Report of the Corporate Governance Committee, 2001).

(c) A balanced approach is practised in countries like the UK and Canada, and has been adopted by the Corporate Governance Committee in Singapore to improve corporate governance practices. This promotes best industry practice in a prescribed fashion and, at the same time, allows for a departure from a prescriptive approach by means of appropriate
disclosure measures. With this hybrid approach, the best of both worlds can be attained and issues specifically relating to corporate governance (e.g. operation of the board, director remuneration, accountability and audit and stakeholder interests) can be resolved in a non-regimented manner, allowing flexibility whilst manoeuvring within the prescribed framework (Report of the Corporate Governance Committee, 2001).

It is further argued that a balanced approach is beneficial to the Board which must develop a plan or strategy to adjust to unpredictable economic environments and face possible failure to achieve long term objectives (Hansen, Ibarra and Peyer, 2013). Ensuring such long-term goals match the increasing demands by shareholders and enhance shareholder value (Report of the Corporate Governance Committee, 2001). Participant 8 notes that: “Investments from shareholders are primarily dependant on the level of cohesive disclosure, clarity of corporate goals and mechanisms which are in place to realistically achieve them”. In fact, this view echoes the point that corporate governance should focus not only on the “corporate board’s accountability” but also on the notion of building long term business relationships with groups like suppliers and employees to ultimately increase shareholder value in the long term (Hampel Report, 1998).

Participant 5 states: “Corporate governance is essential in any industry. It enhances the corporation’s duties owed to the shareholders, employees and society. Complying with corporate governance will ‘force’ Directors/Managers to make long term policies, which will be beneficial to the company, shareholders and stakeholders”. This compliance with corporate governance does not only relate to doing well financially, but also gives due consideration to factors like the community, the environment and the employees (Porter and Kramer, 2011). Participant 3 relates factors which should also be included: “Corporate governance should also be used by the corporate entity as a reason or mechanism to serve the wider aims of a societal purpose; a benevolent aim to serve the needs of society in terms of corporate social responsibility like taking special care for matters like the environment or educational needs for those who cannot afford them”. Corporate social responsibility relates to the voluntary undertakings of the company to improve the workplace environment and benefit society (Vogel, 2006), or more formally: “A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis” (European Commission Green Paper, 2001). The concern towards social responsibility is one that is more than a corporate aim of maximising profits, and has a wider focus on matters relating to “employment, consumption, environmental quality, social inequality” (Brammer, Jackson and Matten, 2012). After the 2008 financial crisis, corporations, though being separate entities, may be a liability to society if irresponsible
management strategies are used to maximise profits (Brammer, Jackson and Matten, 2012). Social responsibility has become institutionalised in many nations and has become a legitimate expectation rather than voluntary in nature (Okoye, 2009).

It is noted that the aim of social responsibility in today’s context exists alongside shareholder values (Aguilera and Jackson, 2003). This is particularly evident under recent legislative changes in Europe, where Section 172 of the Companies Act 2006 in the United Kingdom has redefined the duty of directors to exercise their powers for a “proper purpose” within the corporation, including: (a) the consequences of their decision in the long term; (b) the interests of the company’s employees; (c) the need to foster the company’s business relationships with suppliers, customers and others; (d) the impact of the company’s decisions on the community and the environment; (e) the desirability of the company maintaining a reputation for high standards of business conduct; and (f) the need to act fairly (Section 172 Companies Act, 2006). In the UK Department of Trade and Industry (2007) as quoted in (Mayson, French and Ryan, 2012), Margaret Hodge states: “There was a time when business success in the interests of shareholders was thought to be in conflict with society’s aspirations for people who work in the company or in supply chain companies, for the long-term well-being of the community and for the protection of the environment. The law is now based on a new approach. Pursuing the interests of shareholders and embracing wider responsibilities are complementary purposes, not contradictory ones.”

The Final Report of the Committee on Corporate Governance indicates that the redefinition of the role of directors encompasses the identification of the various stakeholder groups (Hampel Report, 1998). Express statutory obligations are placed in the Act to impose a duty on directors to ensure that Board decisions are made for the long term benefit of the company, its members and stakeholders as measures to avoid short-term high-risk ventures which could lead to a global financial crisis as witnessed in 2008 (Mayson, French and Ryan, 2012). The statutory regimes confirm that social responsibility by corporations can co-exist with stakeholder empowerment and participation, e.g. better labour standards (Brammer, Jackson and Matten, 2012). The embodiment of the new rules is consistent with “enlightened shareholder value” in which, while promoting the interests of the shareholders, directors must account for the interests of stakeholders (Mayson, French and Ryan, 2012). This new idea of good governance, which is a far cry from the classical corporate governance model, has garnered support in the UK and in Asia, where it is evident that the approach is strongly supported by one out of every three senior management personnel in Japan (Keiza Doyukai, 1998). The recent changes to the Japanese Commercial Code emphasise factors such as changing employment practices, while “maximising capital efficiency” is an example of the
move from conventional corporate governance measures to the enlightened shareholder value approach (Takeshi, 2001). The conventional or classical model of corporate governance has been described as maximising profits based on short-termism which could lead to risks of buy-outs or harsh take-overs (Lowry and Dignam, 2009). In comparison, the new era of the “enlightened shareholder value model” emphasises that corporate strategies are not based on short-term quick profits but focuses on long term business prosperity where relationships with stakeholders are of paramount importance (Takeshi, 2001).

In summary, it is noted that the ideal form of corporate governance is one which the management can:

(a) conform with due discipline to minimise losses in compliance with all regulations;

(b) operate efficiently with due disclosure and transparency in terms of accounting standards;

(c) conduct regular meetings between management and investors to foster the need for communication;

(d) strive hard to become a good corporate citizen by undertaking activities to benefit entities external to the members of the company; and

(e) make decisions at the firm level for the long term benefit of both shareholders and stakeholders.

4.4.2 Discussion on the importance of directors’ duties in the decision making process in a corporation

The discussion of this issue focuses on the primacy of duties of directors in the decision making process in a corporation, and how it is to be undertaken in order to fulfil the practices of good corporate governance. Traditionally, directors act exclusively in the best interests of shareholders (Mayson, French and Ryan, 2012). Participant 5 views his duties as follows: “As a director I primarily owe a duty to the company and shareholders. Making good and long terms decisions would be beneficial for the company. This would indirectly be beneficial to the stakeholders as well. As for the shareholders maximising the profit and increasing sales can be classified as primary duties. Although the duties owed to shareholders are non-contractual, in reality there is a huge expectation from the shareholders”. It is noted that the response is expressed as duties primarily being owed to the
company and shareholders and that, although long term decision-making will indirectly benefit stakeholders, there is a huge expectation from shareholders. Directors have been seen to be the oracles of the corporation and, when a corporation collapses, the finger points to the failure of the Board to manage efficiently (Clarke, 2007). There is very often a mistaken expectation by directors that they have the inherent discretion to make decisions when, in reality, other factors take precedence over them, e.g. the need to ensure that management delivers value to shareholders (Jensen and Meckling, 1976).

The issue of direct managerial share ownership is also a matter of concern in relation to the importance of directors’ duties in the decision making process, as it is viewed that managers who do not own shares in the corporation manage the business less efficiently (Mayson, French and Ryan, 2012). A famous passage by Adam Smith (1976) in An Inquiry into the Nature and Causes of the Wealth of Nations (Smith, A. (1976), p. 741) is noteworthy, where: “The directors of such companies, however, being the managers rather of other people’s money than their own, it cannot well be expected, that they should watch over it with the same anxious vigilance...Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company.” In relation to this, corporations incur agency costs in monitoring the diligence of directors to make appropriate decisions to benefit shareholders (Mayson, French and Ryan, 2012). It is noted that in order to keep expectations high and agency costs low, directors are forced to make decisions to produce high profitability in a short span of time, which leads to the problem of taking high risks to yield high returns, i.e. short-termism (Sappideen, 2011). In addition, in previous collapses of corporate giants, accounts have been tampered with and inflated to project unrealistic profits, as pointed out by Participant 1 “the cases of Enron and Olympus have eroded the investors’ confidence and have caused a huge damage to their reputations due to unlawful accounting practices”.

As such, Participant 8 highlights that: “as indicated in the Code of Corporate Governance 2012, Directors are expected to perform functions by understanding the importance of making decisions that are based on a long term strategy”. This should be viewed from the point of view that the Board should understand its role to ensure that strategic objectives are clear and sufficient resources are available to achieve long term goals. A robust risk management system safeguards the interests of shareholders and the corporation as a whole, constantly running checks to: (a) review management performance; (b) account for the interests of key company stakeholders; (c) ensure that obligations to shareholders are met; and (d) account for external factors such as the environment and society (Code of Corporate Governance, 2012). Such factors in the Code are regarded as essential because, according to Participant 2: “The Codes are to ensure that the directors
comply with the regulations so as to ensure that they are protecting the rights of the stakeholders. For example, to ensure that investors’ money is properly invested, whilst staying accountable to other interests that are capable of affecting the corporation”.

It has been highlighted that directors should collectively be responsible for “monitoring managerial performance” in that obligations of the Board as a whole should be distinct from “management responsibilities” as a measure to achieve the projected long term strategic aims which run parallel to the day-to-day management of the corporation (Report of the Corporate Governance Committee, 2001). However, Participant 10, who takes a pragmatic approach, highlights that: “Though factors of profit maximisation should be seen as secondary in the current economic climate, and as demanded by the various Codes of Corporate Governance, it is hard to imagine in reality as to how a developing medium sized firm would be able to set aside its profit maximisation objectives to be seen as being secondary in order to cater for other stakeholdership interests and enterprises.” This view has been supported further by most of the participants and shares the sentiments of Participant 3 who states that “the ultimate aim of all companies is profit maximization, good corporate governance habits usually come after the company has stable cash flow”. Nevertheless Participant 2 suggests that though it is difficult to balance both aspirations, it is achievable with a “good board”. It is possible to achieve such strategic aims if the firm is a coalition of individuals who include “managers, workers, shareholders, suppliers, customers, lawyers, tax collectors and industry regulators” (Cyert and March, 1992). In addition, directors understand that shareholders are owners of the investments, not the corporation, so that their duties may be fairly distributed and functional in other aspects (E F Fama, 1980).

Participant 10 points out that “the inherent directors’ duties to act and think independently, separate from pressures from investors are extremely crucial for the fulfilment of the greater purpose of the corporation which should not merely be seen as a profit making vehicle”. Directors’ duties that are in line with good governance allow the Board as a whole to adopt a long term vision and to view the composition of the firm as more than shareholders (Mayson, French and Ryan, 2012).

A common sentiment that the majority (Participants 3, 4, 6, 7, 8, 9 and 10) share is the view that factors of profit maximisation should still be the paramount consideration of the board. However, the minority (Participants 1, 2 and 5) indicates that, although reconciling both factors could be an oxymoron, it is vital that the Board places corporate governance on the same footing as profit making for the long-term sustenance of the company, avoiding breaches of law and fulfilling the
wider purpose of the existence of a corporation. This is achievable with a good Board. The make-up of a good Board is discussed in Section 4.4.3.

4.4.3 Discussion on the standards and skills required of a director in a corporation

As stated in the Singapore Code of Corporate Governance, an effective Board comprises directors who possess the standards and skills which are reasonable and, in particular, tailored to the business of the corporation (Code of Corporate Governance, 2012). This requirement has been imposed by way of Statute after recent legislative reforms in the UK, whereby directors are required to exercise reasonable care, skill and diligence (Section 174, Companies Act 2006). The participants have generally indicated that the standard and skills expected of a director should include:

(a) understanding the basic principles of financial accounting and corporate law (Participants 1, 3, 4, 5 and 9);

(b) knowledge in business and economics (Participant 5);

(c) good leadership skills (Participant 6); and

(d) the expertise to balance the interests of the corporation as a whole, which includes stakeholders’ interests and the long term sustenance of the business (Participants 7, 8 and 10).

The standards and skills of a director are expressed by Participant 8 as “in reality, many corporations hire directors who have a vast portfolio and manage from a macro level, which is dangerous to tenets of corporate governance as actions or inactions at the apex could very well damage the reputation or the long term sustenance of the business.” It is acknowledged that a director’s direct involvement, as opposed to a superficial presence in the various aspects of the business and affairs of the company, is of utmost importance due to the fiduciary nature of duties (i.e. those based on a relationship of trust and confidence) that are held (Mayson, French and Ryan, 2012).

Due to the fact that a director may not be experienced in the industry in which the corporation has its business, it is mandated that “incoming directors should receive comprehensive and tailored induction on joining the Board” so that office holders are fully aware of the expectations of standards and skills, not only from a commercial aspect but also for compliance with governance practices (Code of Corporate Governance, 2012). As expressed by the interviewees, directors should
receive such induction to enhance or refresh their respective knowledge in the basic principles of business, economics, accounting and law, besides briefing about the industry in which the company is involved. It is also important that directors be aware of the rapid changes in regulations, codes and economic demands. This can be achieved by attending regular training sessions and skill development courses (Code of Corporate Governance, 2012). Though some corporations may view such training initiatives as an additional cost, it is important to raise the standards and skills of directors and should be included as part of the corporation’s development framework and disclosed in the Annual Report (Report of the Corporate Governance Committee, 2001). Participant 1 notes: “a director must know how to read the financial statements of a company and possess some basic knowledge of corporate law. Most importantly, he/she must have knowledge on the requirements of corporate governance.” Participant 10 mentions that “a minimum standard and skill required of a director should not merely be a formal academic based requirement or experiences as a previous office holder, but also be assessed based on the diligence of the director to reach out to the ground level to assess the performance and sufficiency of resources for the welfare of employees”. This is particularly important as the fiduciary duties of a director are owed to the company and entail dealing with the assets of the company (Mayson, French and Ryan, 2012).

Participant 5 notes that an important “factor in accounting for the standard and skills of a director to fulfil requirements of good governance is that the office of a director in one corporation does not conflict with his office in another”. This view coincides with recommendations for Board composition and holds that there should be a strong “independent element on the Board” (Code of Corporate Governance, 2012). Recent statutory reforms in the UK have codified the need to avoid situations of conflicts of interest, where instances of stealing corporate opportunities by directors on multiple boards and acting illegally have increased (Lowry and Dignam, 2009). Directors have a duty to avoid conflicts of interest with regard to “exploitation of property, information or opportunity”, unless it has been duly disclosed and authorised by the Board (Section 175, Companies Act 2006). This avoids failing the corporate system that results in major collapses due to accounting frauds and the “lack of effective Board accountability” (Report of the Committee on the Financial Aspects of Corporate Governance, 1992). Participant 7 highlights: “A director should be able to possess the standards and skills which enables him/her to be able to balance out personal gains that should not override corporate opportunities that belongs to the company. This is because in practice, many directors of a corporation are indifferent or unaware that certain directorial decisions are capable of conflicting with the basic principle of no-conflict, no profit rule.” The breach of this duty, which is likened to a trusteeship of a corporation, could cause losses not only to investors but also to
stakeholders (Lowry and Dignam, 2009). The requirement of the no-conflict rule should also be contrasted with current international regimes that regulate the conduct of listed companies, for instance in the US Stock Exchange, to avoid collusive behaviour and bribery (Foreign Corrupt Practices Act 1977). Directors should be aware and possess the relevant skills to pre-empt and take decisions necessary to prevent any corporate activities which could be seen as bribing a foreign official to seek favours, as it could very well lead to the corporation being prosecuted and subject to the heavy fines that have been imposed on multi-national conglomerates in the past, e.g. Daimler and General Electric Co. (US Department of Justice, 2013).

It is therefore determined that the skills and standards expected of a director in fulfilling the requirements of corporate governance are not an exercise of “box or form ticking” but due adherence to render reasonable judgments relevant to industry demands, assessed on an objective and subjective basis (Malaysian Code on Corporate Governance, 2007). Participant 4 highlights the importance of the knowledge of a director in the fields of “accounting, corporate law and economics among others, which is specifically related to the industry as a practical standard and skills required of a director”. This response is tied to requirements of the Code of Corporate Governance to ensure that companies fund the training and skill enhancements of directors (Code of Corporate Governance, 2012).

4.4.4 Discussion relating to the ideal composition of a Board of Directors and Board dynamics

It has long been established and incorporated in various codes of best practice that every corporation ought to be spearheaded by an effective Board to provide reliable leadership and control (Report of the Committee on The Financial Aspects of Corporate Governance, 1992). Such a Board should comprise executive and non-executive directors as recommended by the UK Corporate Governance Code (Mayson, French and Ryan, 2012). As highlighted by Participant 2, the rationale of an ideal composition of a Board is such that directors are able to “work together and are independent in character and are not swayed by influential figureheads on the Board who could compromise objectivity”. In achieving this, Participants 1, 3, 4, 7, 8 and 9 agree that the inclusion of independent “non-executive directors” is the key to achieving an ideal composition.

Another rationale behind the composition of a Board is: “the Board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-
executive directors) such that no individual or small group of individuals can dominate the board’s decision making” (UK Corporate Governance Code, 2012).

Participant 3 states that an effective composition of a Board is “the number of non-executive directors should exceed the other directors to ensure independence of the board”. Though it may not be pragmatic to involve more non-executive directors than Executive Directors, the role of the former should not merely be passive in the board, but should constructively challenge the board’s proposals or strategies (Mayson, French and Ryan, 2012). Participant 8 suggests that the ideal composition of the Board should give “sufficient room for challenges from independent parties like non-executive directors and this could mean that a balanced Board shall be fairly divided to include both; i.e. a 50% participation from each side”.

The Malaysian Code on Corporate Governance recommends that, as a measure of best practice, a nominating committee should constantly review the composition of the Board and this should involve reviewing the core competencies and skills of the Executive Directors and the relevance of the non-executive directors to provide value to the Board (Malaysian Code on Corporate Governance, 2007). This is coupled with a recommendation that every board should annually re-evaluate its size “to determining the impact of the number upon its effectiveness” (Malaysian Code on Corporate Governance, 2007). In relation to Board composition and dynamics, Participant 3 responds that: “a big Board may lead to delay in decision making and planning. A small Board may result in power being too concentrated in the hand of the chairman and influence independence and objectivity, compromising the interests of other shareholders.” This view stresses that diversity in relation to skill sets (industrial experience, technology, compliance and finance) is essential in boards. Larger corporations tend to include outsiders, whereas boards of smaller firms comprise insiders (Hoskisson and Hitt, 1988).

The ideal composition of a Board has also been suggested by the Code of Corporate Governance 2012 which emphasises that there should be a strong and independent element on the Board so that judgments on matters relating to the corporation are made in an independent and objective manner (Code of Corporate Governance, 2012). The recommendation suggests that to maintain independence in the board, at least half of the Board should be “independent directors” (i.e. a director who has no relationship, other than as a director, with the corporation, its related corporations, its shareholders, its officers with authority, or anyone who is capable of interfering with the independent judgments of the director of the corporation). When the same person acts as Chairman and Chief Executive Officer or are immediate family members, or when the Chairman
plays an active role in the management of the corporation, or when the Chairman is not an independent director, and in all other situations, the Board should comprise of at least one-third independent directors (Code of Corporate Governance, 2012). The burden of disclosing any relationships between a director and the corporation, or personnel in the corporation who are capable of affecting independent judgments by the director, are to be borne by the director (Code of Corporate Governance, 2012). Participant 10 notes: “An ideal composition of the Board should be based on the principle of promoting an independent and efficient decision making process. Independence in the members of the Board is the key to many successful decisions and this has also been the hallmark in many recommendations of best practices which has also been adopted by regulations and lawmakers in the US. For instance, the Sarbanes-Oxley legislation, NASDAQ and NYSE listing rules all require a Board that has more independent members to ensure objectivity.” Derek Higgs (2003) reports that an ideal Board composition is that at least half of the members of the Board be independent (non-executive directors), excluding the Chairman (Review of the Role and Effectiveness of Non-Executive Directors, 2003).

Many recent codes of best practice on corporate governance stress the importance of separating the role of the Chairman and Chief Executive Officer, as the risk of the Board being dominated by an individual compromises independence (Hampel Report, 1998). Participant 2 states that “usually, the Chairman is responsible for the Board and all of its duties and the Chief Executive Officer is responsible for the running of the company and a clear demarcation between these two roles has to be drawn”.

In summary, the ideal composition of the Board centres on a fair participation of up to half the Board size of independent directors to provide better judgment, transparency and objective decision making (Mayson, French and Ryan, 2012). In general, most participants (80%) have a consensus that independence in the Board is a crucial factor in avoiding bad decisions that could impact the corporation. In addition, a fusion between the roles of the Chairman of the Board and the Chief Executive Officer which could compromise the objectivity of Board decisions has to be publicly explained to alleviate any elements of bias and non-independence (Hampel Report, 1998).

4.4.5 Discussion relating to appropriate boardroom processes

The Malaysian Code on Corporate Governance recommends that a Board should meet regularly to deliberate issues relating to matters of corporate governance (Malaysian Code on Corporate
Governance, 2007). Participant 10 states that: “An effective boardroom process would be well grounded on principles of promoting togetherness and teamwork with a clear vision to promote corporate successes. This process would also entail the notion of clear communications, transparency and accountability. With these, the collapse of a corporation may very well be avoided.” Boardroom processes must be fair and balanced to manifest the notion of providing proper checks and balances and avoiding the dominating role of one member influencing other directors, “whether or not they have executive responsibilities, have a monitoring role and are responsible for ensuring that the necessary controls over the activities of their companies are in place and working” (Report of the Committee on The Financial Aspects of Corporate Governance, 1992). Participant 3 highlights that an “appropriate boardroom process would include factors like regular and smooth communications for the supply of information like the circulation of proper notices well in advance before Board meetings and the provision of a dedicated team to work the agenda and clarify queries prior to Board meetings”. The need to foster appropriate communication processes is especially important due to the fact that, in larger corporations, it is more difficult to call for meetings and reach agreements as this ultimately reduces the efficient working of the Board (Jensen, 1993).

As a process to monitor the effectiveness of Board procedures, a regular review must be undertaken by a designated Board sub-committee (i.e. usually the Nomination Committee) on “committees of the board, and for assessing the contribution of each individual director, including independent non-executive directors, as well as the chief executive officer” (Malaysian Code on Corporate Governance, 2007). This also involves the inclusion of such assessment and evaluation criteria in the company’s Annual Report to identify shortcomings and work towards rectifying problems (Code of Corporate Governance, 2012). The recommendation is supported by Participant 8 who stated that: “Appropriate and effective boardroom processes should focus on factors which must constantly undergo reviews and corresponding alterations must be made to suit best practices. An effective process involves clear and proper record keeping.” As recommended in the Malaysian Code on Corporate Governance, the committee responsible for reviewing proper boardroom processes bears the responsibility to update and store records for future reference on precedents or shortfalls of the board, including all “deliberations, in terms of the issues discussed, and the conclusions in discharging its duties and responsibilities” (Malaysian Code on Corporate Governance, 2007). Participant 9 highlights that “appropriate boardroom processes will ensure that directors attend Board meetings as planned and any absentees will have to render reasonable explanations as to their non-participation to a said meeting, which will be recorded”.

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The participants in this study have indicated that an appropriate boardroom process should entail the following:

(a) Incorporating the notion of teamwork and synergy;

(b) Effective process of communications and service of notices well in advance prior to Board meetings;

(c) A process rendering an opportunity for a dissenting opinion of a member to be heard;

(d) Rigorous mechanisms in place for periodical review for improvements and developments; and

(e) Boardroom processes that instil a long-term vision for the corporation.

In summary, as part of an appropriate boardroom process, factors of clear and consistent communication amongst directors are stressed, in addition to the need to perform constant evaluation of the processes of respective committees (Code of Corporate Governance, 2012). The views of Participant 5 are: “Evaluation processes benefits the company. Directors will be able to assess and reflect on their actions through evaluation processes. Corporate governance will also be observed. A constant review is definitely a must in any organisation.” Participant 4 notes that “the focus and review of boardroom processes should be on promoting directors’ deliberations on the current theme of promoting long-term shareholder value.” A process to record the flow-chart of Board operations, roles, frequency of Board and committee meetings, attendance by directors and the general operations of the board, should be established and published in the company’s Annual Report to achieve proper communications (Review of the Role and Effectiveness of Non-Executive Directors, 2003). With the rise of institutional investors, accurate reporting and accountability become issues and, as noted by the UK Corporate Governance Code, the Board processes should promote as many ways as possible to ensure smooth communication between the Board and shareholders (Mayson, French and Ryan, 2012). As noted by the UK Stewardship Code, processes that foster the engagement between institutional investors and boards will certainly assist to realise “long-term returns to shareholders and the efficient exercise of governance responsibilities” as effective stewardship which benefits the “companies, investors and the economy as a whole” (UK Stewardship Code, 2012). The UK Stewardship Code recommends re-electing the chairman and members of the Board on an annual basis to “enhance accountability to shareholders”, providing a robust system to evaluate and review the performance of the Board and align pay to performance (UK Stewardship Code, 2012).
4.4.6 Discussion relating to the significance of non-executive directors on a Board of Directors

In general, non-executive directors serve in a part-time capacity whereas Executive Directors serve in full-time employment to oversee the day-to-day management of the company and other functions (Guest, 2010). The role of a non-executive director in a corporation is significant as it is meant to ensure that decisions made by the Board are not unduly biased according to the wishes of a particular director or directors and, as highlighted in the UK Corporate Governance Code 2010, to “constructively challenge and help develop proposals on strategy” (Mayson, French and Ryan, 2012).

The general consensus among the participants on the significance of including non-executive directors on the Board is that non-executive directors should:

(a) act as a watchdog, e.g. the monitoring agents of shareholders to maintain proper checks and balances, and ensuring the due adherence to processes;

(b) ensure the implementation of transparent processes;

(c) render independent views before Board decisions are finalised, to achieve objectivity; and

(d) participate in sub-committees of the board, e.g. Audit and Remuneration Committees.

Most participants (90%) agree that the role of non-executive directors on the Board is certainly crucial in ensuring the success of the corporation. Participant 5 highlights: “it is important to have non-executive directors on Board as they are the guarantee to the shareholders that good corporate practices are being observed by the board. Non-executive directors are crucial in ensuring shareholders and stakeholders are protected and Executive Directors’ acts within the given powers.”

However, as raised by Participant 10, one must be wary of instances where the role of the non-executive directors is merely “superficial” as they can “easily be tampered with by the more influential Executive Directors”.

The review compiled by Derek Higgs (2003) has been instrumental in highlighting the importance of the role of non-executive directors in a corporation (Review of the Role and Effectiveness of Non-Executive Directors, 2003). The review highlights that:

(a) non-executive directors are the custodians of the governance process which provides accountability and their roles need to be fitted into the concept of the Board as a whole;
(b) the workings of the Board comprising Executive Directors together with non-executive directors bring wider experience and better decision making;

(c) non-executive directors have the same legal obligations as an Executive Director in ensuring that all decisions are made in the best interest and the “probity of the business and contributing to sustainable wealth creation by the company as a whole”. What needs to be appreciated is that non-executive directors do not report to the Chief Executive Officer and, since they are not involved in the day-to-day management of the corporation, they can bring “fresh perspectives and contribute more objectively” to the decision making process of the board;

(d) at present, the average composition of a Board of a UK listed company has an equal number of non-executive directors and Executive Directors, and the membership has a balance of skills and experience relevant to the business of the corporation, together with good business ethics, impartiality, confidence to “challenge and probe” and “strong interpersonal skills” which lead to a high level of trust;

(e) non-executive directors should play an active role in scrutinising management performance in meeting agreed objectives;

(f) non-executive directors should also play an active role in the Remuneration Committee, appointments, termination of service and succession planning; and

(g) in a unitary board, it is essential that non-executive directors work alongside Executive Directors to “build recognition by executives of their contribution in order to promote openness and trust”.

Participant 8 highlights: “The role of a non-executive director can only be significant if the respective individual possesses the requisite skills, integrity and independence to work the office. An effective non-executive director would realise the importance of the know-how of the business, financial health, economic climate and the strategic plan of the corporation for at least the next five years so that he/she could work towards such goals alongside Executive Directors.” Derek Higgs (2003) has linked the word “non-executive” to “independence of a director” and such independence relates to several factors which define a non-executive director, listed by Mayson, French and Ryan (2012) as:

(a) not an employee of the company for the past five years;
(b) does not have a business relationship with the corporation, at least in the past three years, either as a “partner, shareholder, director or senior employee of a body that has such a relationship”;

(c) does not receive any other forms of payment from the corporation apart from his director’s fee;

(d) does not have close ties, including family relationships, with “the company’s advisers, directors or senior employees”;

(e) is not involved in cross-directorship situations;

(f) does not represent a “significant shareholder”; and

(g) has not served on the Board for more than nine years.

The independence factor is essential because a non-executive director who has a personal or vested interest in the decisions of the Board may not be impartial and this could compromise the value placed by shareholders on the Board (Stuart, 2006). The independence of a non-executive director can be manifested by examining if he/she has been nominated by non-major shareholders, or has demonstrated a challenge or has voted against the Board on certain issues (Love, 2010). Participant 10 states that: “It is well understood that the functions of the Board need the role of a non-executive director to promote independence, but this can easily be tampered with by the more influential Executive Directors who would simply filter crucial information which is important for impartial Board decisions. It is important for such independent directors to pro-actively search for and verify accurate information prior to acting on Board decisions.” A good example is where Executive Directors may wish to disguise information relating to their remuneration, which has led to many corporate collapses globally (Guest, 2010).

The current demands of best practice call for more independent directors who are well informed and trained to perform monitoring tasks, especially in relation to making bold decisions as to matters relating to executive remuneration (i.e. by linking remuneration to performance) (Guest, 2010). The initial recommendation to appoint independent non-executive directors by the Cadbury Report (1992) to reduce cases of executives overpaying themselves has led to better overall performance of corporations (Dahya and McConnell, 2007). Participant 6 points out: “The inclusion of non-executive directors to the Board has an obvious positive effect on the performance of the company and the increasing confidence and trusts of the shareholder that executives of the company
are constantly under the watchful eyes of those who would recommend and link pay to performance.” In fact, it is evident from previous studies conducted by various researchers [i.e. Main and Johnston (1993), Cosh and Hughes (1997), Kren and Kerr (1997), etc.] that there exists a positive correlation between the number of non-executive directors on the Board and higher executive pay linked to performance (Guest, 2010).

Generally, non-executive directors play an equally important role on the sub-committees of the board, i.e. they are the majority on the Nomination Committee which recommends the appointments of directors and hold the entire membership on the Audit Committee to perform audits on the Board and management (Lowry and Dignam, 2009). In other nations, e.g. Germany and Netherlands, non-executive directors perform their functions as a “Supervisory Board”, effectively as a watchdog to ensure appropriate checks and balances in complying with processes and procedures as well as rendering independence to instil confidence in shareholders (Mayson, French and Ryan, 2012). One-third of the appointments to such supervisory boards are made by employees and the remainder by the shareholders (Lieder, 2010). Participant 9 highlights that: “The role of a non-Executive Director becomes significant from many angles in the success of the corporation and it is important that such office holder is well versed with the operations of the company before embarking on the task. The company will have to provide such office holders with sufficient information and inductions and whenever possible, to sponsor them to undertake courses to polish and sharpen their skill sets.”

The main problem with the effectiveness of the role of the non-executive director is that the role can be somewhat pointless especially when it is rare that non-executive directors are held accountable for non-compliance with fiduciary duties owed to the company (Guest, 2010). Participant 10 highlights: “in practice, the role of the non-executive director can be sometimes superficial. The individual occupies the seat for the benefit and is in effect under the control of the Executive Director. Though on the surface of things it is wrong, in reality, this does happen because of the low remuneration they are entitled to hold the sanctity of their fiduciary relationship to the company as a whole”.

In summary, it is to be noted that the role of the non-executive director as a monitoring agent is significant to the success of the corporation as recommended and incorporated in the various reports, i.e. Cadbury, Greenbury, Hampel, Higgs and the Combined Code (Guest, 2010). The prominence of the role of non-executive directors in a corporation is assisting in avoiding the repetition of collapses of corporate giants, e.g. Enron and WorldCom (Keasey, Thompson and
Wright, 2005). The issue of maintaining an independent group of non-executive directors in corporations is minimised by the guidelines provided in the codes of corporate governance, i.e. UK Corporate Governance Code 2010 (Mayson, French and Ryan, 2012). It is important to maintain the independence of non-executive directors as they are instrumental in moderating the increase in directors’ remuneration and various studies have been conducted reiterating that a “higher proportion of non-executive directors will both lead to less excessive pay growth and a stronger link between pay and performance” (Guest, 2010). To maintain the strength of the non-executive director in a corporation, non-executive directors should undergo sufficient induction and training to be well-versed in industrial matters and should possess sufficient “strength of character to seek and obtain full and satisfactory answers within the collegiate environment of the board” (Review of the Role and Effectiveness of Non-Executive Directors, 2003).

4.4.7 Discussion relating to the relevance and significance of the Audit Committee as a sub-committee of the board

The prominence of better audit processes to enhance accountability is due to the lack of accountability which has caused the collapse of corporate giants from the late 1980s (Report of the Committee on The Financial Aspects of Corporate Governance, 1992). The prevalence of irresponsible corporate scandals, which involve the manipulation and artificial “bloating” of figures to boost investments and which manage to escape the meticulous eyes of external auditors, demands more robust regulations and the adoption of best practice in relation to transparent accountability (Lutz, S., Eberle D. and Lauter, D., 2011). Participant 4 states that “good governance relates to the co-existence between transparent accountability and robust audit processes to seal gaps (if any)”. For instance, the Institute of Chartered Accountants of England and Wales (“ICAEW”) has taken the matter of corporate manipulation of accounts very seriously and sponsored the Committee on the Financial Aspects of Corporate Governance headed by Sir Adrian Cadbury (Lutz, S., Eberle D. and Lauter, D., 2011).

The relevance and importance of the Audit Committee as a sub-committee of the Board has been stressed in various codes of best practice, including the Report of the Committee and Code of Corporate Governance, Singapore, where ensuring better accountability and auditing requires management to provide accurate, timely and clear information to the Board (including non-executive directors) to facilitate access of correct information to shareholders (Report of the Corporate Governance Committee, 2001).
Generally, the participants agree that the significance of an Audit Committee is to:

(a) ensure proper internal audit systems and controls are in place to be reviewed by external auditors;
(b) perform as a reliable body within the organisation to conduct rigorous scrutiny;
(c) ensure transparent auditing and no room for abuse of powers or mismanagement of funds; and
(d) provide a reliable avenue for whistle blowers.

Participant 5 notes that “Audit Committees are important in ensuring the company is managed accordingly. Any abuse of powers and mismanagement will be identified by the Audit Committee”. This view is also echoed by codes of best practice where an effective Audit Committee (with a Chairperson who is a non-executive director) independent from the management is essential to perform internal audits to ensure compliance with policies and procedures (Report of the Corporate Governance Committee, 2001). Participant 3 highlights that: “The internal auditor ensures that the company follows a robust and transparent corporate governance process before being reviewed by external auditors. External auditors will review the company’s process as well as the financial statements. This two pronged approach helps to make the company more transparent and accountable to shareholders.” Another pragmatic view is provided by Participant 1 who states that an independent Audit Committee is not only required to ensure appropriate checks and balances but also essential for “whistleblowing” in the event of a breach of regulations or other compliance matters. For the effective workings of the committee, each member appointed shall be given terms of reference detailing “authority and duties” (Malaysian Code on Corporate Governance, 2007). It is also noted that 90% of the participants have a consensus that independent non-executive directors should make-up the Audit Committee to avoid “conflict of interests” and “fraudulent accounting”. Participant 5 particularly emphasises that members of the Audit Committee should be equipped with experience, i.e. one who has “been with the company for at least more than 5 years to be able to fully comprehend the existing business process”. However, this could reduce the independence of such personnel. Perhaps, it is best if a member of the Audit Committee is a non-executive director with adequate knowledge of “accounts, auditing, legal” as suggested by Participant 7.

In summary, though there have been doubts raised as to the effectiveness of Audit Committees to ensure improved financial reporting (Zaman, Hudaib and Hanniffa 2011), the UK Corporate Governance Code has indicated that boards should consist of an Audit Committee of independent
non-executive directors to review the scope and results of internal and external audits (Mayson, French and Ryan, 2012). This view has primarily stemmed from cases of corporate collapses in the late 1980’s (e.g. the Maxwell Corporation in the UK) which prompted organisations like the Confederation of British Industry (CBI) and the ICAEW to increase reform efforts in corporate governance, particularly in relation to financial reporting and auditing (Lutz, S., Eberle D. and Lauter, D., 2011). To ensure the effectiveness of the Audit Committee, there should be effective disclosure pertaining to its activities which include: (a) the frequency of meetings; (b) the record of attendees; (c) decisions in key areas of concern; (d) deliberation processes on suspected manipulation of accounts; and (e) an established head for internal audits to report directly to the committee (Malaysian Code on Corporate Governance, 2007). The result of codes of best practice has a similar theme to focus on accountability and disclosure (Keasey, Thompson and Wright, 2005). Participant 4 notes that “accountability relates to responsibility and authority which has to be exercised with professionalism, due diligence and care”. This is the focus of any independent Audit Committee (Mayson, French and Ryan, 2012). Like the German system that emphasises independence, concern should be focused on “substantive independence requirements” and on “disclosure requirements” (Lutz, S., Eberle D. and Lauter, D., 2011). As part of their role on the Audit Committee, it is imperative that members are duly equipped with skills to perform their respective functions which are “useful to the board” (Review of the Role and Effectiveness of Non-Executive Directors, 2003). By bringing such skills to the corporation, the task of providing better accountability to shareholders becomes less complicated (Report of the Corporate Governance Committee, 2001).

4.4.8. Discussion relating to the relevance and significance of the Remuneration Committee as a sub-committee of the Board

It has been expressed that “No director should be involved in deciding his own remuneration” (Code of Corporate Governance, 2012). This is primarily due to the fact that, in recent times, there have been numerous cases of directors and senior executives (i.e. chief executives) overpaying themselves without regard to the performance of the company or the Board (Guest, 2010). Participant 1 raises “the purpose of the Remuneration Committee is to determine if directors are paid accordingly without being over remunerated”. More and more nations are adopting ways in which to curb excessive remuneration paid to directors linked to a company’s share price, which could prompt short-termism (Lutz, S., Eberle D. and Lauter, D., 2011). The Greenbury Report states that the focus of any reforms in this area should be on “accountability, responsibility, full disclosure,
alignment of director and shareholder interests and improved company performance” (Directors’ Remuneration – Report of a Study Group Chaired by Sir Richard Greenbury, 1995). As such, the recommendation taken to avoid damaging reputation and morale within a corporation is to appoint a Remuneration Committee as a sub-committee of the board.

The Remuneration Committee is comprised wholly or substantially of non-executive directors (Code of Corporate Governance, 2012). Participant 3 states that “a Remuneration Committee makes recommendation for directors pay and ensure that the salary is in line with the interests of the shareholders. The committee should consist of independent directors”. The requirement of independence, once again, is seen to be a crucial factor. Directors who fail to justify their approval for an executive salary linked to the best interest of the company will be found to have breached their fiduciary duties and the current regulations imposed by the SEC, NYSE and NASDAQ (Holder-Webb, Cohen, Nath and Wood, 2008). Participant 8 elaborates that: “In the commercial sphere today, competition is vast and investors actually make an effort to inquire about the effectiveness of the Remuneration Committee in moderating executive payments, which reflects as a benchmark for the corporate governance compliance of the corporation. In short, the purpose of such sub-committees is to prove transparency, and pay commensurate to performance without favour. However, the system and framework to adequately reward such officers must be in place so as to ensure the continued loyalty and commitment on the job.” The approach to be taken is that the Remuneration Committee, with or without the advice from experts, shall “review and recommend to the Board a general framework of remuneration for the Board and key management personnel (i.e. the Chief Executive Officer and other persons having authority and responsibility for planning, directing and controlling the activities of the company)” and the proposals on the framework shall be approved and endorsed by the Board as a whole (Code of Corporate Governance, 2012).

The Greenbury Report states that the way to regulate and avoid the over-paying of directors should not be based on legal statutes. Rather, in-house controls should be established to ensure accountability which in turn would enhance performance (Directors’ Remuneration – Report of a Study Group Chaired by Sir Richard Greenbury, 1995). Participant 9 quotes that the fundamental codes of best practice in relation to directors’ fees had been discussed and devised by the Greenbury Report which focused on providing “a committee to enforce provisions that directors are not in a conflicting position where personal interests clash with those of the company’s to determine their own salaries, and end up overpaying themselves”.

In general, the participants agree that the need for a Remuneration Committee as a sub-committee
of the Board is to:

(a) deter top executives from over paying themselves and ensure that remuneration is based on performance based criteria;

(b) conduct reviews to ensure that remuneration packages are within a reasonable sphere; and

(c) promote independence and transparency to avoid conflicts of interests.

It is also noted that 90% of the participants have a consensus that independent non-executive directors should make-up the Remuneration Committee to ensure objectivity.

In summary, the need to reward each director individually based on performance and talent enhances a company’s public reputation (Hampel Report, 1998). In this regard, performance should not be limited to return on investment, but on other significant considerations that render the “long-term state of well-being of the company”, including finance, strategy, clients and suppliers and issues of corporate social responsibility (Lutz, S., Eberle D. and Lauter, D., 2011). It should be standard practice to disclose the names of directors who earn a minimum of $250,000.00 (Singapore Dollars) per annum and the top five key executives of the company, as investors have a right to know (Report of the Corporate Governance Committee, 2001). The Committee should account for the “risk policies of the company, be symmetric with risk outcomes and be sensitive to the time horizon of risks” and identify methods for disclosing the rationale of directors’ remuneration based on performance. These items should be annexed to the Annual Report so that existing and potential investors could access the information (Code of Corporate Governance, 2012). The significance of the Remuneration Committee should be understood to promote better disclosure on remuneration policies and to fix director (including departing directors) and executive packages to a standardised framework to ensure consistency, which would result in better investor confidence (Directors’ Remuneration – Report of a Study Group Chaired by Sir Richard Greenbury, 1995).

4.4.9 Discussion on the importance of deliberating stakeholder interests to achieve corporate success

It has been expressed that part of a Board’s decision making process is to account for obligations to stakeholders in addition to shareholders as part of its fiduciary duties (Code of Corporate Governance, 2012). Participant 8 states that there “is a general perception public has on Directors. In light with economic crisis and collapse of Lehman Brothers in the past, the government through
regulations in Singapore has indirectly interfered with companies’ decision making process. The truth is, although there is shareholder primacy, stakeholders are also given importance during the decision making process”.

Empirical data from the responses of the participants indicates that the deliberation of stakeholders’ interests:

(a) ensures corporate social responsibility to serve a societal aim that promotes corporate success;
(b) avoids mismanagement which could lead to corporate collapses; and
(c) enhances investors’ confidence.

It has been noted by prominent figures, e.g. Lord Wedderburn, that decisions made by firms based on the new theme of “enlightened shareholder value” embodied in current legislation like the Companies Act 2006, must take into account the interests of persons other than shareholders holding stakes in a corporation, e.g. employees and suppliers (Johnston, 2009). As initiated by Lord Wedderburn, there should be more encouragement at the firm level to accept employee participation in the decision making process and this is currently the framework in Europe (Mayson, French and Ryan, 2012). Participant 10 states that: “decisions that are solely made for the interests of maximising shareholder profits could have an adverse effect on the general health and future of the business in the long run. Boards will have to base decisions on factors like the welfare of employees and relationships with established suppliers to ensure the corporation’s sustenance. This can be achieved by ensuring that stakeholder interests as such are prioritised at Board level.”

Many studies have moved from shareholder primacy to focus on implementing measures to protect stakeholder interests, i.e. the productive coalition model, based on the importance of labour in enhancing the productivity of a corporation (Johnston, 2009). Participant 10 indicates that it is the board’s “duty to give effect to both shareholders and stakeholders interests”. This has been manifested in various regulatory frameworks, i.e. European Union and in law, i.e. Section 172 Companies Act 2006, in the pursuit of balancing profit maximisation against social responsibilities (Mayson, French and Ryan, 2012). A vast majority of the participants (90%) has agreed that the primary responsibility of a corporate collapse should be borne by directors through mismanagement, although Participant 1 recognises that “there are numerous other market forces that could compel a collapse”. It is to be noted that shareholder value is different from corporate social responsibility as the latter is concerned with matters that are external to the corporation (i.e.
reputation and the environment) whereas the former places importance within the firm itself to value stakeholders, namely employees (Johnston, 2009).

Participant 8 states that: “Though the Board is under strict mandates to ensure the progress of the firm’s financial health, this has to be viewed from an overall context which also includes matters of corporate social responsibility. Matters relating to corporate social responsibility here is not only meant to strengthen the reputation of the corporation in the commercial sphere like legal compliance, but also a genuine and voluntary concern for societal needs.” Following the separation of ownership and control in a firm, “the relegation of business ethics to the side-lines” has occurred (Khurana, 2007). Due to this, regulators of corporate governance compliance encouraged firms to “integrate social and environmental concerns” as part of the decision making process, as these affect the progress of the corporation in the long term (European Commission Green Paper, 2001).

In summary, it is crucial for Board decisions to move away from the traditional concept of shareholder primacy, and to include the interests of stakeholders for the progress and development of the corporation in the long run (Brammer, Jackson and Matten, 2012). As indicated in the Companies Act 2006 concerning the need to promote the success of a company, directors owe a duty to take into account factors such as “consequences of their decisions in the long term”, interests of company employees, suppliers, customers, community, environment, and to maintain a strong industrial reputation (Lowry and Dignam, 2009). This is certainly due to the fact that corporations have an impact on society and the environment, as witnessed by phenomenon such as “McDonalization” and “Starbuckization” (Ritzer, 2010). The impact created by the 2008 global credit crisis due to the irresponsibility of business corporations causes an adverse effect internally upon employees and related stakeholders, and also causes a widespread crisis that affected many nations (Brammer, Jackson and Matten, 2012). Although in the past it has been viewed that the shareholder is of primary importance as the shareholder is responsible for injecting capital, every Board should note that the shareholder is merely the owner of the capital that is vested in the company and not the owner of the company itself (E F Fama, 1980).
4.5 Chapter Summary

All data obtained from the interviews conducted as part of this research has been presented as personal opinions from industry experts on matters relating to the significance of directors’ duties in steering a corporation to success.

The views of the participants correlate with the codes of best practice in Malaysia and Singapore that have followed the framework of the UK. The nine areas above are highlighted as the main areas affecting issues of corporate governance that could affect a firm’s performance. Opinions have been rendered on how directors ought to understand these principles for the progress of a corporation and its stakeholders in the long term.
CHAPTER 5: Conclusions

5.1 Introduction

The importance given to corporate governance and to the fiduciary role of directors has been examined by various reports and committees following scandals that have erupted globally (Gower and Davies, 2008). Reforms leading to codes of best practice have evolved in many nations since the 1980s, commencing in the United States of America and subsequently Germany, France, other parts of Continental Europe and Asia (Takeshi, 2001).

It has been argued that, although there is not an ideal model for global corporate governance, the latter incorporates issues relating to the accountability of a Board (Hampel Report, 1998) and fosters corporate goals which are based on a long-term vision (Mayson, French and Ryan, 2012). Although the adoption of corporate governance by firms is voluntary, most firms introduce corporate governance based on the positive impact it creates (Love, 2010). The Hampel Report acknowledges that corporate failure cannot be avoided, but can be minimised with a proper ‘boardroom climate’ (Hampel Report, 1998). In many nations, non-compliance or deviation from such practices requires a salient explanation by the board, especially for companies which are listed on a Stock Exchange, e.g. the Singapore Stock Exchange (Report of the Corporate Governance Committee, 2001).

Complying with codes of best practice leads to: (a) promoting better accountability and transparency; (b) balanced composition of the Board of Directors; (c) clearer focus on stakeholder interests; (d) a more active role from independent parties like non-executive directors; and (e) the general importance given to corporate social responsibility factors. These ultimately “increase investor and public confidence, making them more attractive to investors and giving the public more trust in their products and services” (Swinson, 2013). Today, corporate governance in the commercial sphere emphasises that profits are not the sole focus for the existence of a firm. The enlightened shareholder value model states that “the primary objective of a firm is to expand shareholder value over a medium to long term by attaining business prosperity, and it is imperative for the firm to establish amicable relations with various stakeholders”. This is far from its predecessor, the classical model which focuses upon short-term profit orientated objectives mainly to benefit shareholders (Takeshi, 2001). In addition, the codes of best practice in corporate governance prescribe appropriate processes and procedures to be adopted by corporations, e.g. the use of sub-committees of the board, e.g. the Audit Committee and Remuneration Committee, to render better accountability and avoid collapses of corporate giants, e.g. the Maxwell Group, PPI and BCCI (Report of the Committee on The Financial Aspects of Corporate Governance, 1992).
The main purpose of this research has been to examine the most robust codes of best practice which have been implemented from the recommendations of Commissions and regulatory bodies, primarily in the UK and adopted in the Asian regions. The views proffered have aided in the understanding of an internal viewpoint of company Board members which have been detailed and discussed in Chapter 4, and summarised below.

5.1.1 Importance of complying with corporate governance measures

From the study, with regard to compliance with corporate governance, participants in the interview acknowledge the following:

(a) The significance of corporate governance measures in a corporation is that proper “control” or supervision over the management is administered to avoid deviations from the corporate vision;

(b) The implementation of corporate governance measures is to realise the wider purpose of the corporation in creating a “benevolent aim to serve the needs of society”;

(c) To avoid the deficiencies of total managerial discretion and enable “agency costs reduction”; and

(d) “A framework of accountability” in promoting “transparency” to avoid the repetition of undesirable corporate collapses.

As acknowledged in the previous chapters, the prominence of the need to comply with corporate governance has been due to the fact that most “publicly traded companies, especially the larger ones, have lacked a dominant shareholder, and investors have typically taken a hands-off approach to corporate affair” (Cheffins, 2013). This “agency theory” is recognised as the sole reason for the downfall of transparent corporate accountability for shareholders, who are impatient for a quick and profitable return on their investments, and stakeholders (Gower and Davies, 2008). As acknowledged by Participant 7, the costs of monitoring (e.g. “agency costs”) can be reduced with measures of proper corporate governance. The mid–1990s is a crucial era for the development of corporate governance codes and rules as there is an increasing demand for firms to undertake more responsible decisions that benefit stakeholders; e.g. labourers (Deakin, Hobbs, Konzelmann and Wilkinson, 2006).

The general scheme of corporate governance has evolved from a focal strategy for internal processes within the firm, e.g. ensuring an effective Board of Directors and sub-committees, to
accounting for interests of stakeholders, e.g. the enlightened shareholder value model for the long term sustenance of productivity and profits of a firm (Takeshi, 2001).

The importance of complying with corporate governance codes has been emphasised to avoid the major collapses of corporate giants which have occurred in the past (Mayson, French and Ryan, 2012). On a micro scale, the general emphasis on conforming with such codes of best practice recommends that firms should: (a) adopt sound mechanisms for good communications between the shareholders, the management and external parties; (b) require clear mandates from the Board to practise reasonable accounting standards which are transparent and efficient (Malaysian Code on Corporate Governance, 2007); (c) obtain voluntary undertakings by the firm to focus on corporate activities that benefit stakeholders (Brammer, Jackson and Matten, 2012); and (d) emphasise the need for checks and balances within the Board by including non-partisan roles, e.g. the non-executive directors (UK Corporate Governance Code, 2012). It is also crucial that the boards of such corporations be able to function as a group to achieve collective decisions and objectives (Harper, 2005). What needs to be noted particularly is that companies should “observe the spirit, and not just blindly follow the letter of the code, as the latter may not always achieve the intended result” (Report of the Corporate Governance Committee, 2001). A process or mechanism implemented must be reviewed through an appropriate channel, and the Board must have the opportunity to report on governance practices through the Annual Report so that sufficient disclosure can promote investments and faltering processes can be amended (Malaysian Code on Corporate Governance, 2007). A coinciding reason for the significance of corporate governance, as recognised by Participant 8, is a viable “reporting mechanism to shareholders”.

5.1.2 Importance of directors’ duties in the decision making process

The directors of a company owe their duties to the company as a whole, including investors and stakeholders (Mayson, French and Ryan, 2012).

From the study, with regard to the importance of directors’ duties, participants in the interview acknowledge the following:

(a) Directors owe a duty in the decision making process to “safeguard shareholders’ interests”;

(b) Directors also owe a duty to act in the best interest of the “company as a whole”, which includes “stakeholders such as the public, employees and creditors”;
(c) The significance of the duties are specific to acting in “good faith and promote the success of the company”; and

(d) In promoting the success of the company, directors’ decisions must be based on a “long-term strategy”.

It is the board’s responsibility to ensure that the company adopts corporate governance practices for the operation of the firm and proper disclosure of explanations given when there are deviations from best practices (Report of the Corporate Governance Committee, 2001). Directors who are the “oracles” of a corporation should avoid making decisions that would render short term benefits to the company. Sapideen (2011) states there are many adverse consequences of decisions that are made based on short-termism (including “excessive risk taking, risk shifting that favours shareholders generally and managers in particular) and increase in the cost of capital entities with short term focus, and the neglect of investments that yield returns in the long-term” (Sapideen, 2011). The cause of such behaviour by directors is usually motivated by short term employment contracts whereby managerial compensation is pegged to high-risk high-return ventures for the benefit of equity holders, and this ultimately led to the 2008 global financial crisis (Sapideen, 2011).

In relation to this point, a view raised by Participant 8 is that directors should make decisions based on a vision that promotes “the overall success and sustenance of the company and not merely from the viewpoint of making a profit” which is a short-term measure. One way to avoid the occurrence of short-term strategies is to adopt the “clawback” method, i.e. holding back on compensation paid to the higher management for performance that does not meet agreed long-term targets, and/or the “two strike rule”, i.e. where the Board is forced to resign when at least 25% of shareholders vote against the remuneration packages paid to senior executives at two consecutive annual general meetings (Sapideen, 2011).

Although directors are given substantial discretion in their decision making powers, the aims of “profit maximisation” and “delivering value to shareholders” is eroded (Jensen and Meckling, 1976). The traditional view that directors owe a fiduciary duty to their companies has changed for the better (Mayson, French and Ryan, 2012). Despite investors being seen as the “financial engineers interested in the largest possible profit in the shortest period of time” (Lipton and Savitt, 2007), there is a real need for directors to act in the long-term benefit of the firm. It is important that investors make clear and informed decisions before injecting capital into the business (Report of the Corporate Governance Committee, 2001). Long-term decisions must be taken with consideration of factors including: (a) sound long-term relationships with the suppliers, customers, employees, the
5.1.3 Importance of directors possessing a reasonable standard and skills in executing their duties

Having an effective Board provides clear leadership and strategies to reach corporate goals with appropriate planning to: (a) allocate resources prudently, i.e. finance and human resource; (b) adopt a robust framework to have effective control over risk management and to conduct the review of management performance; and (c) keep a balanced account of the welfare of shareholders and stakeholders (Code of Corporate Governance, 2012).

Participants in the study have acknowledged that:

(a) Directors should possess adequate skills and knowledge in areas like “business”, “financial accounting”, “corporate law” and the industry in which the corporation is involved;

(b) Directors, who are the stewards of the corporation, should also be able to demonstrate “leadership” skills;

(c) Directors should be well equipped with proper “management experience” and be able to “reach out to the ground level”; and

(d) Directors need to be impartial and always maintain a position where “the office of a director in one corporation does not conflict with his office in another”.

It is also essential that directors be involved more actively in obtaining information on a first hand basis about the day-to-day management of a firm so that accurate reports and information can be rendered to respective parties (Mayson, French and Ryan, 2012).

The importance of directors adhering to their respective duties with integrity is of utmost importance, so that the substance of the codes of corporate governance can be fulfilled (Report of the Corporate Governance Committee, 2001). This is especially important where a possible conflict of interest could rise, as recognised by Participants 5 and 7. There is also a clear emphasis that members of a Board should possess the qualifications and quality, be it academia or industrial experience, to ensure the effectiveness of the Board (Malaysian Code on Corporate Governance, 2007). Every director on a Board is to be subjected to a comprehensive and tailored induction on matters of how they discharge their duties, and a programme to orientate directors on the business of the corporation and its industry (Code of Corporate Governance, 2012). The requirement of
ongoing training on newly enacted regulations, and the emphasis on compliance, is a priority of training programmes within companies (Code of Corporate Governance, 2012). The primary obligations of directors as managers must be distinct from their duties to the Board so that the long term vision on the corporation can be attained (Report of the Corporate Governance Committee, 2001).

Directors should also possess the necessary skillset to produce a legible report on: (a) the company’s financial performance; (b) future prospects within the industry; (c) activities undertaken in the public interest; (d) employee welfare; (e) servicing of debts to suppliers and creditors; and (f) an overall corporate governance statement, namely, a statement on the compliance of the company with corporate governance codes (Mayson, French and Ryan, 2012). The need to produce such reports, which are in addition to business reviews (e.g. performance review of directors), is to provide shareholders with a clear source of information about the strengths and weaknesses of their investments, and any shortcomings to be addressed (Mayson, French and Ryan, 2012). As highlighted by Participant 9, the company should prioritise continuous development and render “sufficient information and inductions and whenever possible, to sponsor them to undertake courses to polish and sharpen their skill sets” in support for them being able to meet the call of duties diligently.

It is essential that directors be able to balance the interests of shareholders with those of other entities within the firm (e.g. employees) and external to the firm (e.g. suppliers) (E F Fama, 1980). Certain regulations, e.g. Section 174 Companies Act 2006, mandate that director possess skills that can “reasonably be expected of a person carrying out the functions” and this can particularly be seen to be in terms of knowledge of accounting and corporate regulations and compliances, amongst others” (Mayson, French and Ryan, 2012). The Nominating Committee of a Board, comprising mostly of non-executive directors, holds the task of nominating directors after an objective evaluation of the strengths, weaknesses and skills that are required of a Board member (Review of the Role and Effectiveness of Non-Executive Directors, 2003). For example, “lawyers, accountants and consultants are used to working in an advisory capacity” or those from charitable or public sectors are able to provide much needed experience and industrial knowledge to the Board (Review of the Role and Effectiveness of Non-Executive Directors, 2003).
5.1.4 Importance of having the right composition of the Board of Directors

The composition of a Board is important and consideration should be given to the essential elements of independence and integrity to allow decision making without fear or favour, and to avoid conflicts of interests (Code of Corporate Governance, 2012).

A vast majority of the participants in the interviews agree that the “right” composition of the board:

(a) avoids any delays in the decision making process;

(b) is a balanced Board with equal participation from “independent non-executive directors” to promote an “independent and efficient decision making process”; and

(c) should draw a clear “demarcation” between the role of the Chairman of the Board and the Chief Executive Officer so that Board decisions are impartial.

At least half the Board should comprise independent directors, i.e. non-executive directors, to avoid the dominance by one particular group. This is particularly important when: (a) the same person is the Chairman and Chief Executive Officer; (b) the Chairman and Chief Executive Officer are immediate family members; (c) the Chairman is part of management; or (d) the Chairman is not an independent director (UK Corporate Governance Code, 2012). In all other cases, the recommendation is that independent directors should comprise at least one-third of the Board (Code of Corporate Governance, 2012). The notion of independence required from a director means that he/she should not have any relationship with: (a) the company or its related corporations (i.e. holding company, subsidiary or fellow subsidiary); (b) its members who hold 10% or more of shares; or (c) any officers of the corporation who are capable of interfering with an independent director’s judgments (Code of Corporate Governance, 2012). An independent non-executive director should not play a passive role, but should provide constructive criticisms or views pertaining to the strategies of the corporation (Mayson, French and Ryan, 2012). A Nominating Committee, which is a sub-committee to the board, should periodically review the composition of the Board with regard to the value that each member contributes to achieve better efficiency of the Board as a whole (Malaysian Code on Corporate Governance, 2007). In addition, a fusion of the roles of Chairman and Chief Executive Officer requires an appropriate public explanation, as such measures could lead to one party domination Board decisions (Hampel Report, 1998).
5.1.5 Importance in cultivating appropriate boardroom processes

The focus on best practice of boardroom processes rests on principles of transparent accountability, coherence of working together and sound mechanisms to ensure smooth communications (Malaysian Code on Corporate Governance, 2007).

The majority of participants in the study have agreed that boardroom processes should:

(a) implement systems to ensure due notice is given well in advance of Board meetings to render sufficient room for preparation, etc.;

(b) be based on principles of “clear communications, transparency and accountability”;

(c) prioritise a robust filing mechanism as “an effective process involves clear and proper record keeping”;

(d) promote the notion of continual improvement by implementing periodical “reviews” and rectification where necessary.

In addition to establishing proper boardroom processes that produce transparent accountability and independence, boards must ensure that one member, e.g. a Chairman who is also the Chief Executive Officer, cannot dominate the decision making process (Report of the Committee on The Financial Aspects of Corporate Governance, 1992). In order to avoid such domination, boardroom processes are required to incorporate mechanisms which are balanced and promote independence, such as establishing a Nominating Committee, Audit Committee and Remuneration Committee (Report of the Corporate Governance Committee, 2001). The details of each member representing these sub-committees should be published in the company’s Annual Report so that investors and potential investors are able to gauge the effectiveness of the independence of the Board (Code of Corporate Governance, 2012).

It is important, especially in larger firms, for boardroom processes to incorporate strategies for effective communication and dissemination of information (Jensen, 1993). This requires robust reporting on matters such as disclosure of accounts in relation to directors’ remuneration and the company’s performance and activities the company has undertaken with regard to: (a) external parties, e.g. society and suppliers; (b) internal parties, e.g. employees welfare; (c) general corporate governance matters; and (d) a statement by directors to confirm that all relevant information required by auditors has been rendered (Mayson, French and Ryan, 2012). In addition to promoting good communication and information pertaining to the company’s activities, a business review
(based on key performance indicators including future developments, the impact of the company’s business on the environment, the company’s employees and related social community issues) should be published to allow understanding of the performance and position of the company’s business (Section 417 Companies Act, 2006). To ensure that boardroom processes are effective, regular reviews must be conducted in relation to the performance of the Board and operational matters, so that areas for improvements can be highlighted and addressed (Code of Corporate Governance, 2012).

5.1.6 Importance of non-executive directors in the board

The significance of non-executive directors’ participation in the Board is that proper checks and balances are in place to ensure that the Board of Directors decides in the interests of the company as a whole, and not in favour of particular individual(s) in the company, and to avoid any member from dominating Board decisions (Mayson, French and Ryan, 2012).

Almost all participants in the study (90%) have agreed and recognised the significance of non-executive directors as:

(a) being an institution in the corporation to serve as an independent medium to shareholders;

(b) preventing abuse of directorial discretion by Executive Directors, e.g. “colluding, or making decisions which will lead to a conflict of interest”; and

(c) being members of the Board and its sub-committees to promote “independence and objectivity” and “prevent partial decisions”.

The study conducted by the Hampel Report (1998) delved into the importance of placing non-executive directors on the boards of companies so that “corporate malpractice, lapses of governance and value destruction” are avoided to ensure the “highest standards of boardroom governance” (Review of the Role and Effectiveness of Non-Executive Directors, 2003). In addition, the need for such non-partisan independent directors is due to the fact that the current commercial sphere has made the monitoring role of Executive Directors on boards more complicated and, in view of justifying high remunerations paid out, shareholders insist that non-executive directors play the “watchdog” for better accountability of the Board (Hampel Report, 1998). This is a view echoed by Participant 5 who noted that the role of non-executive directors is “crucial in ensuring shareholders and stakeholders are protected and Executive Directors act within their given powers”.

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The independence “in character and judgment” of a non-executive director is extremely important for the workability of the role (Code of Corporate Governance, 2012). The independence of a non-Executive Director can be compromised in the event that he/she: (a) has been an employee of the company in the past 5 years; (b) has a “material business relationship with the company in the past three years”; (c) receives a benefit from the company in addition to a director’s fee; (d) has close family ties with higher management of the company; (e) holds cross-directorships or close links with the company’s directors; or (f) has served as an Executive Director of the company for more than nine years (Mayson, French and Ryan, 2012). In addition to these, the independence of a non-executive director requires that he/she is not: (a) a professional adviser to the company; (b) a main supplier or customer to the company, or otherwise closely associated to such persons or organizations; and/or (c) contractually bound by any such obligations with the company besides being a non-executive director (Horwarth 2002 Corporate Governance Report).

Non-executive directors participate in the normal functions of the board, and also serve on Board sub-committees, e.g. the Remuneration, Audit and Nomination Committees (Review of the Role and Effectiveness of Non-Executive Directors, 2003). Non-executive directors should: (a) “constructively challenge and help develop proposals on strategy”; (b) play an active role in monitoring the performance of management; and (c) be confident that the mechanisms and processes for transparent financial reporting and risk management within the company are “robust and defensible” (Code of Corporate Governance, 2012).

5.1.7 Importance of sub-committees of the Board (Audit Committee and Remuneration Committee)

The Audit Committee, as a sub-committee of a board, ensures that there is transparency in the “results of the internal and external audits” (Code of Corporate Governance, 2012). The majority of members of the Audit Committee are independent non-executive directors, with at least one member having accounting expertise, to “monitor the integrity of financial statements” and keep a close watch on risk management systems and internal audit functions (Review of the Role and Effectiveness of Non-Executive Directors, 2003). In Malaysia, Audit Committees are composed of independent non-executive directors to “effectively discharge their functions” (Malaysian Code on Corporate Governance, 2007). The Audit Committee is also responsible for reviewing the appointment of the company’s external auditors (Review of the Role and Effectiveness of Non-Executive Directors, 2003). In addition, the Audit Committee appoints an independent internal auditor, reporting directly to it, who possesses qualifications which are compliant with international
standards of professional practice set by recognised auditing bodies (Report of the Corporate Governance Committee, 2001).

As noted by participants in the study, the significance of Audit Committees is:

(a) to monitor “internal controls” so that processes are well in place prior to being reviewed by “external auditors”;  
(b) to deliberate, form, implement and periodically review all measures necessary to deter “fraudulent accounting”; and  
(c) to function as an objective and safe avenue for “whistle blowers”.

In the current competitive commercial sphere, remuneration paid to Executive Directors is “reward based” on the individual’s performance. Non-executive directors receive payment commensurate with the level of experience and responsibilities undertaken (Malaysian Code on Corporate Governance, 2007). To ensure transparency with regard to remuneration, the Remuneration Committee is a sub-committee of the Board with at least three members and a majority of independent non-executive directors (Report of the Corporate Governance Committee, 2001).

The participants in the study have recognised the significance of the Remuneration Committee as being:

(a) a sub-committee to ensure that directors’ remuneration is decided according to reasonable standards or frameworks which have been decided by the corporation, in order to avoid overpayment;  
(b) a sub-committee to recommend the implementation of a framework to ensure that directors’ “pay is commensurate with performance”; and  
(c) a sub-committee to ensure that principles of “transparency” and “independence” are promoted in respect to setting remuneration policies.

In other words, it is the responsibility of the Remuneration Committee to draw up a clear remuneration framework for directors based on the “company’s relative performance and the performance of individual directors” (Report of the Corporate Governance Committee, 2001). In addition, the level of remuneration of highly paid executives in the corporation shall be disclosed (Report of the Corporate Governance Committee, 2001) and the activities of the committee, i.e.
“frequency and attendance of members” is to be published in the Annual Report (Review of the Role and Effectiveness of Non-Executive Directors, 2003).

5.1.8 Importance of accounting for stakeholder interests in boardroom decisions

Codes of corporate governance stress the importance of Board conduct particularly in relation to its structure and responsibilities (Becht, Bolton and Roell, 2002).

Factors of stakeholder interests have been noted by the participants in this study to be:

(a) an important element to be given due deliberation by the Board before decisions are finalised;

(b) comprising of matters like “employee welfare”, “relationships with established suppliers”, “serving the needs of society” and the “environment”; and

(c) a decision that is made to ensure the “long-term sustenance” of the corporation.

In the developing days of corporate governance standards, the focus was seen as a “power game between managers and investors” (Lutz, Eberle and Lauter, 2011). The role of the state was to protect minority shareholders while a ‘hands-off’ approach was taken to the interests of stakeholders, e.g. employees (Davies, 2000). This has changed in that the interests of outsiders (e.g. suppliers, customers and creditors) have been embedded into law and codes of corporate governance, embracing the enlightened shareholder value model (Mayson, French and Ryan, 2012). The Company Law Review Steering Group has conducted a review on the concept of “stakeholder society and economy” (Lutz, Eberle and Lauter, 2011). The review highlights the importance of accounting for the interests of “employees, customers and suppliers, and in the community more widely” in Board decisions for the long-term benefit of the company (Mayson, French and Ryan, 2012). Board decisions must be balanced to reflect the interests of the firm as a whole, for long-term sustenance (Keay, 2008).

5.2 Contribution of this study

This exploratory study is designed to illicit practical views from participating directors in the area of compliance with the best practice in corporate governance. The views of the participants are crucial in identifying issues on corporate governance which are important to directors. The major areas of concern and a suitable solution in relation to corporate governance measures are highlighted as
being major contributions of this study. The study has also made a contribution by highlighting the main tenets of a successful corporation as being:

(a) the importance of every Board to digest the rationale of complying with corporate governance advocated by the codes of best practice;

(b) the importance of ensuring that directors are adequately skilled and equipped to manage a company and make appropriate decisions that would benefit the company as a whole;

(c) the significance of having a balanced number in the Board of Directors, with the aim of achieving independence by including independent non-executive directors;

(d) the general importance for a company to hire non-executive directors;

(e) the necessity to account for reliable Board processes and factors to promote transparent accountability;

(f) the rationale of incorporating sub-committees to the Board and the crucial role played by non-executive directors on such committees;

(g) the importance of avoiding decisions that portray short-termism which could adversely affect the sustenance of a corporation.

(h) the reason to cater for factors of stakeholder interests, apart from shareholders’ primacy in Board decisions, which instil the latter’s confidence in the management; and

(i) the importance of realising that decisions in breach of best practice and ethical behaviour could lead to adverse consequences for individuals inside and outside the company. It should be noted which a company that complies with the codes of corporate governance could deter corporate collapses due to mismanagement and enjoy a good reputation for better business.

5.3 Limitations of the research

The limitations of this research are generally tied to those associated with qualitative research. The limitations faced in this research are:
(a) This research has been conducted on the views provided by a small sample of company directors, and may not reflect the views of the majority. The choice of the company directors is made on an assumption that they are well-versed in issues of corporate governance;

(b) Obtaining information directly from the boardroom is not possible due to the nature of confidentiality in the boardroom decision making process. Access to the deliberation process would have aided the researcher to understand better boardroom behaviour and matters that influence decisions made on the long-term or short-term interest of the corporation;

(c) The interpretation of the responses obtained from the interviews is based on the subjective views of the researcher;

(d) The volume of data obtained from the interviews is vast and consumed a significant amount of time being tabulated and analysed;

(e) The truth value obtained from the responses of the participants can be easily disputed;

(f) The objectivity of data obtained from the interviews cannot be accurately stated as the presence of the researcher during data collection can tamper with the participant’s response which could bias the outcome; and

(g) As the data obtained from interviews is qualitative, the inability to present the data in a coherent visual manner is a limitation.

5.4 Future Research

Many studies in relation to corporate governance are undertaken in a quantitative manner which is not able to identify the best tenets of corporate governance (Pande, 2012). Research that looks further than the “one size fits all” approach and considers other factors which are tailor-made to the strengths and weaknesses and geographic location of a corporation, should be crucial factors for future research.

The current outlook of the global business world on corporate governance specifies the significance of one particular point in common, i.e. stakeholder interests (UK Stewardship Code, 2012). As noted in this research and various other academic writings, stakeholder interests come in many
forms, namely: (a) employees welfare; (b) fostering long-term relationships with suppliers; (c) appreciating general societal concerns like the community; and (d) the environment. The question remains as to how it is that this group of stakeholders be able to enforce its right(s) against a corporation that does not cater for its interests. Future research is needed to point out the specific rights of such stakeholders and their locus standi in enforcing them.

In addition, the current theme of corporate governance studies in the Eurozone is based on a balanced shareholder and stakeholder approach (Lutz, Eberle and Lauter, 2011). A more in-depth study is needed to incorporate such an approach into the codes of best practice, especially in relation to the Asian region, which would be useful for the long-term growth of such corporations.

The role of directors is seen to be crucial for a successful corporation from many aspects and a good “boardroom climate” renders better governance (Hampel Report, 1998). Most participants in this study agree that the inclusion of non-executive directors in a Board renders the notion of independence and transparency. Although this is the case, it is acknowledged by a participant in the study that the role can easily be influenced by the more domineering characters on the Board and that in some instances, their participation in the corporate affairs are insignificant, hence diminishing the effectiveness of the office. Further research on the behaviour of boardroom members or factors of the optimum “boardroom climate” as indicated in the Hampel Report (1998) and ways to actively involve non-executive directors in corporate processes, ought to be undertaken.

Another concern of corporate governance issues is centred on decisions by the Board based on short-termism, which has caused such devastating effects evidenced by the 2008 financial crisis (Sappideen, 2011). Further research is recommended to be undertaken to provide a more in-depth understanding the rationale of such corporate decisions and to generate a method to balance the need to profit in the short-term with long-term sustenance of the corporation.
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APPENDIX A
Appendix A: Ethics Approval

HUMAN RESEARCH ETHICS COMMITTEE

Notification of Expedited Approval

| To Chief Investigator or Project Supervisor: | Doctor Len Whitehouse |
| Cc Co-investigators / Research Students: | Mr Teik Toe Teoh |
| Re Protocol: | Corporate Governance: The Significance of the Duties of Directors in Promoting Corporate Success |
| Date: | 06-Aug-2013 |
| Reference No: | H-2013-0200 |
| Date of Initial Approval: | 06-Aug-2013 |

Thank you for your Response to Conditional Approval submission to the Human Research Ethics Committee (HREC) seeking approval in relation to the above protocol.

Your submission was considered under Expedited review by the Chair/Deputy Chair.

I am pleased to advise that the decision on your submission is Approved effective 06-Aug-2013.

In approving this protocol, the Human Research Ethics Committee (HREC) is of the opinion that the project complies with the provisions contained in the National Statement on Ethical Conduct in Human Research, 2007, and the requirements within this University relating to human research.

Approval will remain valid subject to the submission, and satisfactory assessment, of annual progress reports. If the approval of an External HREC has been "noted" the approval period is as determined by that HREC.

The full Committee will be asked to ratify this decision at its next scheduled meeting. A formal Certificate of Approval will be available upon request. Your approval number is H-2013-0200.

If the research requires the use of an Information Statement, ensure this
number is inserted at the relevant point in the Complaints paragraph prior to distribution to potential participants. You may then proceed with the research.

**Please Note**
Please change the word 'anonymity' to 'confidentiality' in the sixth paragraph of the Participant Information Statement (Version 1, 8/7/2013) as a known participant cannot be anonymous.

**Conditions of Approval**

This approval has been granted subject to you complying with the requirements for Monitoring of Progress, Reporting of Adverse Events, and Variations to the Approved Protocol as detailed below.

PLEASE NOTE:
In the case where the HREC has "noted" the approval of an External HREC, progress reports and reports of adverse events are to be submitted to the External HREC only. In the case of Variations to the approved protocol, or a Renewal of approval, you will apply to the External HREC for approval in the first instance and then Register that approval with the University's HREC.

- **Monitoring of Progress**

  Other than above, the University is obliged to monitor the progress of research projects involving human participants to ensure that they are conducted according to the protocol as approved by the HREC. A progress report is required on an annual basis. Continuation of your HREC approval for this project is conditional upon receipt, and satisfactory assessment, of annual progress reports. You will be advised when a report is due.

- **Reporting of Adverse Events**

  1. It is the responsibility of the person first named on this Approval Advice to report adverse events.
  2. Adverse events, however minor, must be recorded by the investigator as observed by the investigator or as volunteered by a participant in the research. Full details are to be documented, whether or not the investigator, or his/her deputies, consider the event to be related to the research substance or procedure.
  3. Serious or unforeseen adverse events that occur during the research or within six (6) months of completion of the research, must be reported by the person first named on the Approval Advice to the (HREC) by way of the Adverse Event Report form (via RIMS at https://rims.newcastle.edu.au/login.asp) within 72 hours of the occurrence of the event or the investigator receiving advice of the event.
  4. Serious adverse events are defined as:
     o Causing death, life threatening or serious disability.
     o Causing or prolonging hospitalisation.
     o Overdoses, cancers, congenital abnormalities, tissue damage, whether or not they are judged to be caused by the investigational agent or procedure.
     o Causing psycho-social and/or financial harm. This covers everything from perceived invasion of privacy, breach of confidentiality, or the diminution of social reputation, to the
creation of psychological fears and trauma.
  o Any other event which might affect the continued ethical acceptability of the project.

5. Reports of adverse events must include:
  o Participant's study identification number;
  o date of birth;
  o date of entry into the study;
  o treatment arm (if applicable);
  o date of event;
  o details of event;
  o the investigator's opinion as to whether the event is related to the research procedures; and
  o action taken in response to the event.

6. Adverse events which do not fall within the definition of serious or unexpected, including those reported from other sites involved in the research, are to be reported in detail at the time of the annual progress report to the HREC.

• Variations to approved protocol

If you wish to change, or deviate from, the approved protocol, you will need to submit an Application for Variation to Approved Human Research (via RIMS at https://rims.newcastle.edu.au/login.asp). Variations may include, but are not limited to, changes or additions to investigators, study design, study population, number of participants, methods of recruitment, or participant information/consent documentation. Variations must be approved by the (HREC) before they are implemented except when Registering an approval of a variation from an external HREC which has been designated the lead HREC, in which case you may proceed as soon as you receive an acknowledgement of your Registration.

Linkage of ethics approval to a new Grant

HREC approvals cannot be assigned to a new grant or award (ie those that were not identified on the application for ethics approval) without confirmation of the approval from the Human Research Ethics Officer on behalf of the HREC.

Best wishes for a successful project.

Professor Allyson Holbrook
Chair, Human Research Ethics Committee

For communications and enquiries:
Human Research Ethics Administration

Research Services
Research Integrity Unit
The Chancellery
The University of Newcastle
Callaghan NSW 2308
T +61 2 492 18999
F +61 2 492 17164
Human-Ethics@newcastle.edu.au


Linked University of Newcastle administered funding:

<table>
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<th>Funding project title</th>
<th>First named investigator</th>
<th>Grant Ref</th>
</tr>
</thead>
</table>

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APPENDIX B
Appendix B: Cover Letter for Consent to participate in face to face and group discussion

9 September 2013

Newcastle Business School
Faculty of Business and Law
Level 3, University House
Corner King and Auckland Street
Newcastle 2300
AUSTRALIA

For further information:

DBA Candidate: Mr. Teoh Teik Toe
Mobile: +6597905202
Email: teiktoe.teoh@studentmail.newcastle.edu.au

Supervisor: Dr. Leonard Whitehouse
Mobile: +61 4 09 707 717
Email: LWhitehouse@bigpond.com

Dear Madam/Sir,

Consent to participate in a face-to-face interview and group discussion for the Research Project:

**Corporate Governance: The Significance of the Duties of Directors in Promoting a Corporation**

Document Version No 01: dated 08/07/13

The following information is provided to enhance your awareness of this study and seek your voluntary consent to participate in the study.
Interviews and group discussions are being undertaken as part of a postgraduate research project to understand the significance of directors’ duties in steering a company in line with proper corporate governance. Please refer to the Participant Information Statement for further information.

Data will be collected during a face to face interview (between the researcher and you) and a group discussion comprising four other participants, to be confirmed at your convenience between September and October 2013. Data will also include analysis of documents comprising publicly available information, media reports and any relevant information you are at liberty to provide. All such information is confidential and any information provided by you will be used solely for the scholarly purpose of this study and will not identify you or your organization. After the interviews and focus group discussions you will have the opportunity to review and edit the transcript before the results are finalised and collated.

There are no apparent risks/hazards associated with this study.

However, your responses may play an important role in bridging the gap between the theory and practice of identifying problems in proper corporate governance in promoting successful corporations and to prevent collapses of corporations in the future. It is also expected that information provided by you may reveal potential enhancements that could be incorporated into future developments in steering corporations towards good corporate governance and social responsibility.

If you agree to participate in this study, please indicate your informed and voluntary consent by electronically signing and returning a duplicate copy of the consent form via email to teohteiktoe@gmail.com.

Thanking you in anticipation.

Yours faithfully,

Teoh Teik Toe
DBA Candidate, The University of Newcastle, Australia

Dr. L. G. Whitehouse
Supervisor
APPENDIX C
Appendix C: Consent to participate in face to face and group discussion

9 September 2013

Newcastle Business School
Faculty of Business and Law
Level 3, University House
Corner King and Auckland Street
Newcastle 2300
AUSTRALIA

For further information:

DBA Candidate: Mr. Teoh Teik Toe
Mobile: +6597905202
Email: teiktoe.teoh@studentmail.newcastle.edu.au

Supervisor: Dr. Leonard Whitehouse
Mobile: +61 4 09 707 717
Email: LWhitehouse@bigpond.com

Dear Madam/Sir,

Consent Form for the Research Project:

Corporate Governance: The Significance of the Duties of Directors in Promoting a Corporation

Document Version 01: dated 08/07/13

I agree to participate in the above research project and give my consent freely.

I understand that the project will be conducted as described in the Information Statement, a copy of which I have retained.
I understand I can withdraw from the project at any time and do not have to give any reason for withdrawing. I also understand that after the interviews and focus group discussions I will have the opportunity to review and edit the transcript before the results are finalised and collated.

I consent to

• participating in a face-to-face interview; and

• participate in a focus group discussion.

Yes/No

Yes/No

I have had the opportunity to have questions answered to my satisfaction.

Print Name:

__________________________________________________________

Email Address: ____________________________________________

Signature: ________________________________________________

Date: _________________________
APPENDIX D
Appendix D: Participant Information Statement for Research Project

9 September 2013

Newcastle Business School
Faculty of Business and Law
Level 3, University House
Corner King and Auckland Street
Newcastle 2300
AUSTRALIA

For further information:

DBA Candidate: Mr. Teoh Teik Toe
Mobile: +6597905202
Email: teiktoe.teoh@studentmail.newcastle.edu.au

Supervisor: Dr. Leonard Whitehouse
Mobile: +61 4 09 707 717
Email: LWhitehouse@bigpond.com

Dear Sir/Madam,

Participant Information Statement for the Research Project:

**Corporate Governance: The Significance of the Duties of Directors in Promoting a Corporation**

*Doc Version No 01: dated 08/07/13*

You are invited to take part in this research project which examines “the importance of the role of executive directors (executives in a corporation) and non-executive directors (persons external to a corporation) in compliance with appropriate corporate governance and social responsibility, especially in trying times when major corporations are collapsing”. The research is part of Teoh Teik Toe’s Doctorate of Business Administration studies at the University of Newcastle, supervised by Dr. Leonard Whitehouse from the Faculty of Business and Law.
The purpose of this research is to understand the significance of directors’ duties in steering a company in line with proper corporate governance. Your responses will play an important role in identifying problems in proper corporate governance and adhering to the best codes of corporate governance to prevent corporate collapses. You have been selected to participate in this study based on your credentials and experience as a director of your corporation. Other potential participants to this study are company directors in Malaysia and Singapore.

If you consent to participate, this will involve:

- Allocating your time for a face to face interview which I shall conduct (with prior appointment) that should take no longer than 2 hours;

- Participation in a group discussion with four (4) other peers who are directors in their respective industries pertaining to the same topic which will take approximately 2 hours of your time at a pre-determined date (with prior appointment).

Participants are required to read and understand this Information Statement and objectively answer the list of questions which is attached herewith and which will be discussed during the face to face interview. All collected data will be coded and no personal information will be collected.

Participation in this study is entirely voluntary. Your decision to participate, or not to participate, will have no effect on your business or your employment, and no one will know whether or not you have participated. You can withdraw at any time prior to the interview and/or group discussion and there will be no disadvantage if you decide not to participate in the interview or group discussion. All information collected will be confidential. No financial remuneration or incentive will be offered for participating in this research. However, by completing this research, many companies would stand to benefit from a guide that would render clear advice on the essential codes of best practices on corporate governance that ought to be observed to ensure the sustainability of corporate success. The face-to-face interview will not be audio recorded and transcribed thereafter, save for the handwritten corroboration of your responses during the said interview. Contents of the corroborated responses will be available for your vetting, approval and/or editing before it is finalised for results. There is no cost incurred to you apart from your time.
While you will not be specifically named, as pseudonyms will be used in the online focus group discussions, there is a minimal risk to maintaining your anonymity in the interview or group discussion.

The confidentiality of your responses is assured as the data will be stored by the researcher in an encrypted file with password protection for the duration of the research project and access will be restricted to the researcher and the project supervisor. On completion of the research project, a copy of the files will be forwarded to UoN for secure storage. After five years the data will be destroyed.

You will be provided with access to a summary report of the research findings that will be mailed to you as soon as the analysis of results is completed. (currently expected at the end of 2013).

The findings of this study may be published in a scholarly journal but neither you nor your organisation will be named or be able to be identified from the published report.

If you would like more information, please contact Mr. Teoh Teik Toe or supervisor Dr. Leonard Whitehouse. If you agree to participate in this study, please indicate your informed and voluntary consent by electronically signing and returning a copy of the consent form via email to teohteiktoe@gmail.com.

Thank you for taking the time to consider this invitation.

Yours faithfully,

Teoh Teik Toe

Dr. L. G. Whitehouse

DBA Candidate, The University of Newcastle, Australia

Supervisor

Complaints Clause:

This project has been approved by the University’s Human Research Ethics Committee, Approval No. – H2013-0200
Should you have concerns about your rights as a participant in this research, or you have a complaint about the manner in which the research is conducted, it may be given to the researcher, or, if an independent person is preferred, to the Human Research Ethics Officer, Research Office, The Chancellery, The University of Newcastle, University Drive, Callaghan NSW 2308, telephone (+61 249 216 333), email (HumanEthics@newcastle.edu.au) or local contact in the complaints, The University of Newcastle (Singapore), PSB Academy @Delta 355 Jalan Bukit Ho Swee Singapore 169567, telephone (+65 6885 1000), fax (+65 6276 3103), email (contactus@psb-academy.edu.sg)
APPENDIX E
Appendix E: List of Questions to be raised during the interview with Directors

1. What are your views on corporate governance?

2. What are your primary duties as a director and to whom are these owed to?

3. There are currently many regulations that provide a director with a duty to promote the success of the company. What, in your view, does this mean?

4. Do you believe that, before a board decision is made, factors of good practice should come second to profit maximisation?

5. In your opinion, do you think that boards that strictly comply with good practice have a very strong advantage in improving company profits by instilling investor confidence? Why?

6. What should be an ideal composition of a board?

7. Would the size of a board matter in effective decision making, and what is an ideal number?

8. What should be a proper boardroom process before a decision is finalised?

9. What in your opinion should be the minimum standard of skill and experience of a director?

10. Would compliance with corporate governance issues be a focal strategic management concern before making major boardroom decisions?

11. Why is it important to include a non-executive director on a board?

12. How would the opinions of a dissenting non-executive director be considered before a board decision is finalised?

13. How useful are evaluation processes in order to enhance the performance of the board?

14. The traditional view is that the board of directors owes a duty only to shareholders. How far is this proposition true in the present context?

15. Most business investors send a mandate to the board to maximise profits, i.e. increase shareholder value. How, in your opinion, can this goal co-exist with proper corporate governance?

16. Maximising shareholder profits is not the only factor for creating value in line with proper corporate governance. What other factors should be considered by the board in driving value creation?
17. Would you agree that many collapses of corporations are caused by concealed auditing?

18. How important are audit committees in a corporation and who should be on the audit committee? Why is such a composition ideal?

19. How important is a remuneration committee in a corporation and what should be the composition of such committee? Why is such a composition ideal?

20. What is accountability? How is corporate accountability promoted?

21. What role do other stakeholders such as creditors and employees have in maintaining proper corporate governance?

22. The global economy has a keen eye for proper corporate governance in the current era. Directors of a company are personally accountable and liable when compliance to proper corporate governance is not met. What is your opinion on this?

23. How effective is it to have non-executive directors on the board as a watchdog to monitor proper checks and balances?

24. In some collapses, directors have stood to benefit from their positions, e.g. conflicts of interest. What would you suggest is the best way to prevent such issues in corporate governance?
APPENDIX F
APPENDIX F: Data Obtained From the Interviews

The tables below indicate the data obtained from the interviewees based on the list of questionnaires.

Note: P1 to P10 represents Participant 1 to Participant 10.

1. What are your views on corporate governance?

<table>
<thead>
<tr>
<th>Participant</th>
<th>View</th>
</tr>
</thead>
<tbody>
<tr>
<td>P1</td>
<td>Corporate governance refers to the system by which corporations are directed and controlled. It is in place to control the management and to ensure that the management adheres to the system.</td>
</tr>
<tr>
<td>P2</td>
<td>It is the Framework of rules and practices by which the board ensures accountability, fairness, and transparency of a company in relationship with its shareholders. It is important that corporate governance policies should be framed in a manner that will avoid short-termism as the long term sustainability of the corporation and its stakeholder interests should be given paramount consideration.</td>
</tr>
<tr>
<td>P3</td>
<td>It is a system of control to manage the directions of the business and also to ensure that shareholders interest are being looked after. Corporate governance should also be used by the corporate entity as a reason or mechanism to serve the wider aims of a societal purpose; a benevolent aim to serve the needs of society in terms of corporate social responsibility like taking an especial care for matters like the environment or educational needs for those who cannot afford them.</td>
</tr>
<tr>
<td>P4</td>
<td>It is the way to control the management of company and help to improve the business concurrently. In addition, good governance relates to the co-existence between transparent accountability and robust audit processes to seal gaps (if any).</td>
</tr>
<tr>
<td>P5</td>
<td>Corporate governance is essential in any industry. It enhances corporation’s duties owed to the shareholders, employees and society. Complying with corporate governance will ‘force’ Directors/Managers to make long term policies, which will be beneficial to the company, shareholders and stakeholders.</td>
</tr>
<tr>
<td>P6</td>
<td>Corporate governance in the demanding commercial sphere today relates to the various responsibilities which has to be clearly envisioned and spelt out so that goals imposed on the management are plausible and is not seen to contradict each other, and so, a balance between making profits, self-gratification and accounting for stakeholders’ interests must all fall in line, which is in practice tough.</td>
</tr>
<tr>
<td>P7</td>
<td>Corporate governance is a duty imposed on the management and its efficiency is measured against the ability of the whole managerial team to comply with such demands of enabling agency costs reduction, promoting responsible management</td>
</tr>
</tbody>
</table>
discretion and complying with demands of corporate social responsibility.

| P8 | Corporate governance is a framework of accountability, check and balances and control to limit managerial discretion and at the same time promote transparency in reporting mechanisms to the investors. |
| P9 | Corporate governance is to ensure company operate with less risk and more profit. In addition, the importance on corporate governance is specific to matters relating to internal self-regulating mechanisms within the corporation that would complement the and not be in breach external statutory mandates that prohibit for example, anti-competitive or collusive behavior and those that could possibly lead to infringing anti-bribery laws. |
| P10 | Corporate governance is a collective effort to realise the expectation of both, shareholders and stakeholders by the board to implementing and ensuring that recommendations of best practices codes like the Malaysian Code on Corporate Governance especially is matters of transparent accounting and financial reporting is followed. |

2. What are your primary duties as a director and to whom are these owed to?

| P1 | The director is to guide the company towards the corporate goals and vision, to fulfil the expectations of the shareholders and also other stakeholders such as the public, employees and creditors. |
| P2 | To ensure compliance with general and specific laws applying to the company's operations, and the primary duty is to the shareholders. Duties are also to contribute area of competence to enable profitability of company. The Codes are to ensure that the director complies with the regulations so as to ensure that they are protecting the rights of the stakeholders. For example, to ensure that investors’ money are properly invested, whilst staying accountable to other interests that is capable of affecting the incorporation. |
| P3 | The directors are responsible for leading the company and making the correct decisions and safeguard shareholders’ interests. Non-executive directors and independent directors have to do their job to ensure that proper corporate governance procedures are followed. |
| P4 | The director is to set the direction of the company, to help the company to improve the business, and compliance with corporate governance is part of director’s duties. |
| P5 | As a director I primarily owe a duty to the company and shareholders. Making good and long terms decisions would be beneficial for the company. This would indirectly be beneficial to the stakeholders as well. As for the shareholders maximising the |
profit and increase in sales can be classified as primary duties. Although the duties owed to shareholders are non-contractual, in reality there is huge expectation from the shareholders.

| P6 | As a director I should maximise profit and to ensure the company is managed accordingly. These duties are owed to the shareholders and I am solely responsible for the management of the company. |
| P7 | Duties are owed to the company. Primary duties owed to company are, to act in good faith and promote the success of the company. |
| P8 | The primary duties as a director is to ensure the smooth operation to generate profits for shareholders as well as accounting for interests of persons external to the company. And as indicated in the Code of Corporate Governance 2012, Directors are expected to perform functions by understanding the importance of making decisions that is based on a long term strategy. |
| P9 | Directors owe their duty to all stakeholders including shareholders, employees, customers and suppliers. |
| P10 | Duties are owed to the company as a whole, including internal and external parties. |

3. There are currently many regulations that provide a director with a duty to promote the success of the company. What, in your view, does this mean?

<p>| P1 | The regulations are to ensure that the director comply with the regulations so as to ensure that they are protecting the rights of the stakeholders. For example, to ensure that the investors’ money are properly invested. |
| P2 | Directors should be involved in setting major goals of company and ensure that the company is moving towards them within a stipulated time. |
| P3 | The regulations serve to promote the image of a clean and transparent company where directors worked for the benefit of the shareholders interest, this will indirectly help to bring in more business for the company due to its highly regarded reputation in the industry. |
| P4 | This implies that the directors should be helping the business part as well, like ensuring the reputation of the business is good. |
| P5 | This principle affirms the relationship between the director and the company. As answered earlier, primary duties are owed to company and promoting the success of the company is one of it. |
| P6 | Despite the existence of these regulations, it is an implied duty imposed on all directors. The meaning of ‘promoting the success of the company’ may vary. Some |</p>
<table>
<thead>
<tr>
<th><strong>P7</strong></th>
<th>A director is the key personnel in managing a company, and such duty imposed on director would therefore be beneficial to generate profits for the company.</th>
</tr>
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<tbody>
<tr>
<td><strong>P8</strong></td>
<td>This means that the director has to account for the overall success and sustenance of the company and not merely from the viewpoint of making a profit.</td>
</tr>
<tr>
<td><strong>P9</strong></td>
<td>Directors today have more responsibility and need to be answerable to stakeholders apart from improving both financial and non-financial performance.</td>
</tr>
<tr>
<td><strong>P10</strong></td>
<td>This can be understood as the inherent directors duties to act and think independently, separate from pressures from investors are extremely crucial for the fulfilment of the greater purpose of the incorporation which should not merely be seen as a profit making vehicle’.</td>
</tr>
</tbody>
</table>

4. Do you believe that, before a board decision is made, factors of good practice should come second to profit maximisation?

| **P1** | I would agree to a certain extent that factors of good practice should come second to profit maximisation as I would think that both factors are equally important. |
| **P2** | That depends on the size and nature of the business. It is always difficult to balance between the two. But a good board should be able to do both well. |
| **P3** | The ultimate aim of all companies is profit maximization, good corporate governance habits usually come after the company has stable cash flow. This is especially evident in small to medium enterprises, large companies will focus more on corporate governance. |
| **P4** | No, I belief profit maximization is still the priority for companies in countries like Singapore. However, in countries like US or Europe, good practice would be more important as opposed to profit maximisation. |
| **P5** | As much as the Board attempts to maximise profit, the board is to also consider good practice as the laws in Singapore can be harsh for any wrong decisions made resulting in an unfavourable outcome. |
| **P6** | No. |
| **P7** | No, it should not. |
| **P8** | Theoretically, it should not, but practically it can be a difficult task. |
| **P9** | Profit maximization is still the most important purpose and that is why a company |
is created in the first place. Good practise is good to have but at lower priority.

| P10 | Though factors of profit maximisation should be seen as secondary in the current economic climate, and as demanded by the various Codes of Corporate Governance, it is hard to imagine in reality as to how a developing medium sized firm would be able to set aside its profit maximisation objectives to be seen as being secondary in order to cater for other stakeholdership interests and enterprises. |

5. In your opinion, do you think that boards that strictly comply with good practice have a very strong advantage in improving company profits by instilling investor confidence? Why?

| P1  | Yes definitely agree. The case of Enron and Olympus have eroded the investors’ confidence and have caused a huge damage to their reputation due to unlawful accounting practices. |
| P2  | Good practice is very important and is necessary to instil investor confidence. There are many cases of fraud and investors are worried about them. |
| P3  | Yes, because there have been many accounting scandals like Enron and Worldcom which have diminished the confidence of investors in companies, and a company with good corporate governance is likely to be welcomed by investors. |
| P4  | Yes, because investors worry about the repetition of an Enron scenario, as without regard to corporate governance, the company may go bankrupt. |
| P5  | Many public companies adopt this practice to assure their shareholders that it is safe to invest. I think it is a good practice but I am sceptical whether this is something which can generally be practiced by all the companies. |
| P6  | Yes. These days’ investors are only willing to invest in companies which complies with good practice as it assures the existence of the company in a long term. |
| P7  | By merely complying with strict practice, the company will not be able to boost profit. No doubt it may however instil investor’s confidence. |
| P8  | Invoking confidence and investments from shareholders are primarily dependant on the level of cohesive disclosure, clarity on corporate goals and mechanisms which are in place to realistically achieve them. |
| P9  | By right, the answer is yes but in real life, but compliance with good practices generates more costs which leads to lesser profit. Another good practice is transparency, but by doing that, your competitor will know more about your company. |
Yes. Because investors these days place a lot of importance in well managed and governed companies from a corporate governance perspective.

6. What should be an ideal composition of a board?

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<thead>
<tr>
<th>P1</th>
<th>Seven members with four non-executive directors.</th>
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<tr>
<td>P2</td>
<td>The Board should comprise of directors who could work together and are independent in character and are not swayed by influential figureheads on the board who could compromise objectivity as usually, the Chairman is responsible for the board and all of its duties and the Chief Executive Officer is responsible for the running of the company and a clear demarcation between these two roles has to be drawn.</td>
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<tr>
<td>P3</td>
<td>The number of non-executive director should exceed the directors to ensure independence of the board.</td>
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<tr>
<td>P4</td>
<td>Six members with four non-executive directors.</td>
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<tr>
<td>P5</td>
<td>It depends on the size of the company. Huge corporations should have more members in it.</td>
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<tr>
<td>P6</td>
<td>There is no ideal composition of a board.</td>
</tr>
<tr>
<td>P7</td>
<td>An ideal board is a board which is monitored by non-executive directors. Number of non-executive directors would be dependent on the number of the Executive Directors.</td>
</tr>
<tr>
<td>P8</td>
<td>An ideal composition should allow for sufficient room for challenges from independent parties like non-executive directors and this could mean that a balanced board shall be fairly divided to include both; i.e. a 50% participation from each side.</td>
</tr>
<tr>
<td>P9</td>
<td>Two executive directors and four non-executive directors.</td>
</tr>
<tr>
<td>P10</td>
<td>An ideal composition of the board should be based on the principle of promoting an independent and efficient decision making process. Independence in the members of the board is the key to many successful decisions and this has also been the hallmark in many recommendations of best practices which has also been adopted by regulations and lawmakers in the US. For instance, the Sarbanes-Oxley legislation, NASDAQ and NYSE listing rules all require a board that has more independent members to ensure objectivity.</td>
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7. Would the size of a board matter in effective decision making, and what is an ideal number?

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<tr>
<td>P1</td>
<td>Yes, seven should be the minimum and should try not to exceed eleven members. Decision making process might be delayed due to the number of directors involved in the decision making and plans might take longer than needed to be execute.</td>
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<tr>
<td>P2</td>
<td>Yes, seven.</td>
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<tr>
<td>P3</td>
<td>Yes, six would be minimum and up to twelve will be the maximum. A big board may lead to delay in making decision and planning. A small board may result in power being too concentrated in the hands of the chairman who could influence independence and objectivity, compromising the interests of other shareholders.</td>
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<td>P4</td>
<td>Yes, six would be minimum and up to twelve would be best. If the size if too big, decision will be slow and many plans would be difficult to execute.</td>
</tr>
<tr>
<td>P5</td>
<td>The size of board is essential in ensuring bad decisions or short term plans are not made. There is no such thing as ideal composition.</td>
</tr>
<tr>
<td>P6</td>
<td>Not necessarily. When there isn’t ideal composition, there can’t be an ideal number.</td>
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<tr>
<td>P7</td>
<td>It may matter. A smaller board can be easily controlled and decisions can be made faster contrary to a larger board. I can’t think of an ideal number.</td>
</tr>
<tr>
<td>P8</td>
<td>Yes the size does certainly matter. An ideal number depends on how big the company is, and in any case, there should not be too many directors in the board as a consensus may be tougher to be obtained.</td>
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<tr>
<td>P9</td>
<td>Yes, definitely. A size of six would be best as it will be cost effective with half being non-executive directors.</td>
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<tr>
<td>P10</td>
<td>No. What matters more are efficient members of the board.</td>
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8. What should be a proper boardroom process before a decision is finalised?

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<td>P1</td>
<td>Any issues or plans should be made known to the director approximately two to four weeks before the board meeting so that the directors can have sufficient time to prepare before the board meeting.</td>
</tr>
<tr>
<td>P2</td>
<td>Proposals should be given one month before meetings. Revisions and discussions should be thorough before finalisation of decisions.</td>
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<tr>
<td>P3</td>
<td>Proposal to be submitted at least one month before meeting followed by continuous review and revisions on decisions made. In addition, appropriate boardroom process would include factors like regular and smooth communications for the supply of information like the circulation of proper notices well in advance</td>
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before board meetings and the provision of a dedicated team to work the agenda and clarify queries prior to board meetings.

P4 Proposals should be given about one month before the board meeting. Periodical review and control is also important. The focus and review of boardroom processes should be on promoting director’s deliberations on the current theme of promoting long-term shareholder value.

P5 Members should be notified on the proposed action a month ahead. Votes should be taken during the decision. Non-executive directors should be consulted and their views should be taken into account before finalising the proposed actions.

P6 Shareholders should be notified on the issues to be discussed prior to the meeting. If it is an important decision, a special resolution would be necessary. The requirements in the Articles should be complied with.

P7 Members should be informed on the topic and be given time to deliberate on the matter. During meeting, members should be given the opportunity to voice out their views. If board is unable to arrive at a consensus, voting should be then conducted.

P8 Appropriate and effective boardroom processes should focus on factors which must constantly undergo reviews and corresponding alterations must be made to suit best practices. An effective process involves clear and proper record keeping.

P9 All proposals should be notified to directors a month before for consideration. During this one month, they could raise their respective queries. In addition, appropriate boardroom processes will ensure that directors attend board meetings as planned and any absentees will have to render reasonable explanations as to their non-participation to a said meeting, which will be recorded.

P10 An effective boardroom process would be well grounded on principles of promoting togetherness and teamwork with a clear vision to promote corporate successes. This processes would also entail the notion of clear communications, transparency and accountability. With these, the collapse of a corporation may very well be avoided.

9. What in your opinion should be the minimum standard of skill and experience of a director?

P1 A director must know how to read the financial statements of a company and possess some basic knowledge of corporate law. Most importantly, he/she must have knowledge on the requirements of corporate governance.

P2 Directors should hail from different background. They should possess a combined skill set that would be useful for the business of the company and the industry it is
<table>
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<tr>
<td>P3</td>
<td>A non-executive director should possess skill which are not related to the business but yet provide a different angle to view the business for example they can contribute to matters like financial accounting and law. For executive directors, knowledge of the business is extremely important preferably with more than fifteen years of experience.</td>
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<tr>
<td>P4</td>
<td>Any director should possess knowledge in accounting, corporate law and economics among others, which is specifically related to the industry as a practical standard and skills required of a director.</td>
</tr>
<tr>
<td>P5</td>
<td>A director should possess a good degree in business, economics, law or accounting. This does not mean that one will not be able to be a good director by holding a degree from another field. A director should be able to think and act fast during crisis. Any individual with such talent will be able to become a good director. You will not be able to measure a good director by his experience but by his performance and achievements. In any case, an important factor to account for standard and skills of a director to fulfil requirements of good governance is that the office of a director in one corporation does not conflict with his office in another.</td>
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<tr>
<td>P6</td>
<td>It is important for a director to have management experience. Leadership experience and skills are crucial for an appointment of a director.</td>
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<tr>
<td>P7</td>
<td>A director should be able to possess the standards and skills which enables him/her to be able to balance out personal gains that should not override corporate opportunities that belongs to the company. This is because in practice, many directors of a corporation are indifferent or unaware that certain directorial decisions are capable of conflicting with the basic principle of no-conflict, no profit rule.</td>
</tr>
<tr>
<td>P8</td>
<td>In reality, many incorporations hire directors who have a vast portfolio and manage from a macro level, which is dangerous to tenets of corporate governance as actions or inactions at the apex could very well damage the reputation or the long term sustenance of the business.</td>
</tr>
<tr>
<td>P9</td>
<td>The most important knowledge is finance, followed by law and reasonable skills in relation to the industry the corporation is in.</td>
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<tr>
<td>P10</td>
<td>A minimum standard and skill required of a director should not merely be a formal academic based requirement or experiences as a previous office holder, but also be assessed based on the diligence of the director to reach out to the ground level to assess the performance and sufficiency of resources for the welfare of employees.</td>
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10. Would compliance with corporate governance issues be a focal strategic management concern before making major boardroom decisions?

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<tr>
<td>P1</td>
<td>Yes definitely, as corporate governance governs the board of directors.</td>
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<td>P2</td>
<td>Yes, good corporate governance can ensure business sustainability and continuity and is an important strategic management concern.</td>
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<tr>
<td>P3</td>
<td>A business with good corporate governance practice encourages honesty and reliability and instils confidence in investors thus keeps the business going, and so compliance with it is an important decision making factor.</td>
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<tr>
<td>P4</td>
<td>Yes.</td>
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<tr>
<td>P5</td>
<td>No, such considerations have not been a major focal point in our boardroom deliberations.</td>
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<tr>
<td>P6</td>
<td>At times.</td>
</tr>
<tr>
<td>P7</td>
<td>Not necessarily.</td>
</tr>
<tr>
<td>P8</td>
<td>It should be a concern, but not necessarily a major one.</td>
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<tr>
<td>P9</td>
<td>Yes, definitely. Because the company will have to justify any non-compliance.</td>
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<tr>
<td>P10</td>
<td>Certainly. It is the board’s duty to give effect to both shareholders and stakeholders interests.</td>
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11. Why is it important to include a non-executive director on a board?

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<td>P1</td>
<td>Non-executive directors are like the watch guard for the shareholders, to prevent the executive directors from colluding, or making decisions which will lead to a conflict of interest.</td>
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<tr>
<td>P2</td>
<td>Non-executive directors are important to maintain checks and balances and attest for proper governance.</td>
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<tr>
<td>P3</td>
<td>To ensure the independence and objectivity of the board and to take care of shareholders’ interest.</td>
</tr>
<tr>
<td>P4</td>
<td>Non-executive directors are responsible to ensure the independence in board decisions and prevent partial decisions. They are also required to be part of the audit and remuneration process to ensure proper policies are in place.</td>
</tr>
<tr>
<td>P5</td>
<td>It is important to have non-executive directors on board as they are the guarantee to the shareholders that good corporate practices are being observed by the board. Non-executive directors are crucial in ensuring shareholders and stakeholders are</td>
</tr>
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</table>
protected and executive directors’ acts within the given powers.

P6 They play a check and balance role. The inclusion of non-executive directors to the board has an obvious positive effect on the performance of the company and the increasing confidence and trusts of the shareholder that executives of the company are constantly under the watchful eyes of those who would recommend and link pay to performance.

P7 To monitor and check on the board.

P8 The role of a non-executive director can only be significant if the respective individual possesses the requisite skills, integrity and independence to work the office. An effective non-executive director would realise the importance of the know-how of the business, financial health, economic climate and the strategic plan of the corporation for at least the next five years so that he/she could work towards such goals alongside executive directors.

P9 Non-executive directors are watchdogs to prevent fraud and error.

P10 It is well understood that the functions of the board needs the role of a non-executive director to promote independence, but this can easily be tampered with by the more influential executive directors who would simply filter crucial information which is important for impartial board decisions. It is important for such independent directors to pro-actively search and verify for accurate information prior to acting on board decisions.

12. How would the opinions of a dissenting non-executive director be considered before a board decision is finalised?

P1 Minutes of the meeting should be recorded down. And should the non-executive directors be unhappy about the board decision, they may further escalate these issues to the shareholders via the AGM.

P2 The secretary should record down, through voting from board, the opinions of the non-executive directors. All decisions that are made despite dissents from them are to be properly justified and recorded. Any constructive feedback can be channelled through the AGM.

P3 Meeting minutes should record the dissent and if need be, escalated during AGM.

P4 It should be on the same footing as a dissenting opinion forwarded by an executive director.

P5 The non-executive director’s views are recorded by the company secretary during the voting procedure. Any issues raised by the non-executive directors will be
tabled during the Annual General Meeting.

P6  Non-executive director may voice out his/her views anytime. NED may also raise his agreement or disagreement during meeting which ought to be recorded.

P7  Non-executive directors should regularly convene with the board and share their views with board. Though the Board has all the discretion to ignore the non-executive director’s views it should be reasonably justified for doing so.

P8  Usually, all dissenting opinions from non-executive directors should be recorded and be deliberated upon before a justification to agree or disagree with such views will be rendered.

P9  All opinions from non-executive directors should be seriously considered as it is capable of carrying much weight and reasons must be given by the Board for not doing so.

P10 All dissenting opinions should be justified, and if it carries weight, it ought to be given due consideration prior to a decision.

13. How useful are evaluation processes in order to enhance the performance of the board?

P1  An appropriate evaluating process will be able to assess the performance of the directors.

P2  Correct evaluating processes can help to motivate, reduce risks and improve company’s profitability.

P3  Evaluation processes help to filter out potential mistakes that could be avoided thus allowing better decisions to be made in future which also improves the business process.

P4  Correct evaluating process can help reduce risks and errors.

P5  Evaluation processes benefits the company. Directors will be able to assess and reflect on their actions through evaluation processes. Corporate governance will also be observed. A constant review is definitely a must in any organisation.

P6  Evaluation processes are good. This however depends on how far the management is willing to reflect and make necessary changes.

P7  Evaluation processes are good as mistakes will be identified and ratified.

P8  Such processes are to ensure that the board is always kept on check, and errant or underperforming personnel be kept under stricter surveillance, and be removed if necessary.
Evaluation processes is always vital as it will reduce the complacency and dominance of the board which leads to more effective and strategic decisions.

Evaluation processes benefits the company. Directors will be able to assess and reflect on their actions through evaluation processes. Corporate governance will also be observed. A constant review is definitely a must in any organisation.

14. The traditional view is that the board of directors owes a duty only to shareholders. How far is this proposition true in the present context?

Yes. The directors are hired so as to manage and run the company, i.e. solely to its investors.

It is still true. Directors are appointed by shareholders, to run and manage the company. Directors owes a duty solely to shareholders.

It is very true in the present context.

Yes, the proposition is true as shareholders hire directors to run and manage the company, therefore directors owes a primary duty to shareholders.

This is a general perception public has on Directors. In light with economic crisis and collapse of Lehman Brothers in past, the government through regulations in Singapore has indirectly interfered with companies’ decision making process. The truth is, although there is shareholder primacy, stakeholders are also given importance during the decision making process.

This is not true in present context. Directors are agents of the company and not shareholders. Duties are owed to the company as a whole and not shareholders.

Today, directors owe duties to the company in its whole form and not only to the investors.

Traditionally, this has been the picture which has largely changed today. The board today owes a duty to shareholders alongside with whoever that is capable of being affected directly or indirectly by the operations of the company.

Directors are hired by shareholders. However so, they would have to consider the interests of stakeholders as well despite as they are capable to influencing the business.

In smaller companies, this could be still the case, but in bigger ones, it is difficult not to account for interests of stakeholders as well.
15. Most business investors send a mandate to the board to maximise profits, i.e. increase shareholder value. How, in your opinion, can this goal co-exist with proper corporate governance?

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<tr>
<th>P1</th>
<th>Yes both can exist. A company can exist longer when the reputation is good.</th>
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<tr>
<td>P2</td>
<td>Yes, a good corporate governance ensures the business profitability and so both can co-exist.</td>
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<td>P3</td>
<td>It is difficult in practice for both to co-exist.</td>
</tr>
<tr>
<td>P4</td>
<td>Yes, indeed good corporate governance practices will ensure the business and profit is sustainable but a proper balance needs to be stroke in order to ensure the co-existence of both simultaneously.</td>
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<tr>
<td>P5</td>
<td>This is definitely a challenging task for all directors. Mandates which one has to comply with on one hand and on the other hand regulations to comply with to ensure corporate governance are observed. In practice, as mentioned earlier, directors have a duty to give effect to both shareholders and stakeholders.</td>
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<tr>
<td>P6</td>
<td>It is difficult for both to co-exist together. A balanced compromise ought to be reached.</td>
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<tr>
<td>P7</td>
<td>It is really a tough mandate to be practiced with good governance and cannot co-exist together.</td>
</tr>
<tr>
<td>P8</td>
<td>This sounds good in theory but is very difficult to be practiced and to co-exist with proper corporate governance. But one way to look at it is that by proper corporate governance, agency costs are reduced, and profits are enhanced.</td>
</tr>
<tr>
<td>P9</td>
<td>Yes, it can co-exist as most of the activities in corporate governance is to help to lower the risk of the company and in return to reduce any unnecessary losses and improve profits ultimately.</td>
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<td>P10</td>
<td>It is difficult to balance both, but with proper boardroom planning, it is certainly possible to achieve.</td>
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16. Maximising shareholder profits is not the only factor for creating value in line with proper corporate governance. What other factors should be considered by the board in driving value creation?

<table>
<thead>
<tr>
<th>P1</th>
<th>Corporate social responsibility.</th>
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<tbody>
<tr>
<td>P2</td>
<td>Society, environment and ethics are important in driving value creation.</td>
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<tr>
<td>P3</td>
<td>Persons who are internal to the organisation like employees and external to the</td>
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organisation like suppliers.

P4 Corporate social responsibility is as important. A company should be responsible to help the society and environment and must be ethical. This leads to the corporation earning a better reputation which is good for a long-term sustenance.

P5 The state has been circulating Regulations in order for companies to have social responsibility. Directors have to ensure not only the stakeholders are protected but they do have equal responsibility on protecting the environment. Responsible decisions ought to be made in ensuring shareholders, stakeholders, environment and state are not in any way affected by the decisions.

P6 Companies should consider the welfare of the employees. In some companies employees share option schemes are offered as incentive. This is encouraged in some states as it can be seen as part of corporate governance.

P7 Factors board should consider: if decision is beneficial for the company, employees and stakeholders in general.

P8 Though the board is under strict mandates to ensure the progress of the firm’s financial health, this has to be viewed from an overall context which also includes matters of corporate social responsibility. Matters relating to corporate social responsibility here is not only meant to strengthen the reputation of the corporation in the commercial sphere like legal compliance, but also a genuine and voluntary concern for societal needs.

P9 Other stake holder considerations like employee’s welfare, environment and the society.

P10 Decisions should certainly reflect a long-term goal which would not solely reflect profit maximising.

17. Would you agree that many collapses of corporations are caused by concealed auditing?

P1 Yes, agreed, and an example is the recent City Harvest Church case in Singapore.

P2 Yes.

P3 Yes, Enron and WorldCom are some of the recent examples where accounting are manipulated to paint a false picture to investors. Another recent example includes the China Gaoxian (listed company on the Singapore Exchange) which artificially inflated their cash balance and after being exposed, were suspended for trading for up to two years.

P4 Yes.
### 18. How important are audit committees in a corporation and who should be on the audit committee? Why is such a composition ideal?

| P1 | An independent audit committee is very important to watch over internal control, audits and provide a safe avenue for whistle blowing with regard to misfeasances. It should be comprised only of independent directors. |
| P2 | Audit Committees are extremely crucial as a sub-committee to a board of directors. Only non-executive directors should sit on the audit committee. This is to avoid conflict of interest. |
| P3 | Audit Committees are very important to a company. The internal auditor ensures that the company follows a robust and transparent corporate governance process before being reviewed by external auditors. External auditors will review the company’s process as well as the financial statements. This two pronged approach helps to make the company more transparent and accountable to shareholders. The audit committee should consist of experienced personnel who have been with the company for at least more than 5 years to be able to fully comprehend the existing business process. |
| P4 | The Audit Committee is very important. It is primarily responsible for internal auditing and control and should mainly comprise of non-executive directors. |
| P5 | Audit committees are important in ensuring the company is managed accordingly. Any abuse of powers and mismanagement will be identified by the audit committee. Qualified auditors and non-executive directors ought to be part of the committee. |
| P6 | Audit committees are essential in any corporation. Members should be independent from the management to avoid conflict of interest. |
| P7 | Audit committees are important to ensure there is internal and external audit control and corporate governance are complied with. Proper qualified [accounts, auditing, legal etc. related] individuals should be part of the audit committee. They
will be able to make use of their skills and scrutinise the decisions made by the company.

P8 Audit Committees are important to ensure that the company undergoes thorough internal and external audits which are independent and transparent, so that fraudulent accounting can be avoided.

P9 Audit committee is very important as it reports directly to shareholders and allow to call for an EGM if any major lapses are found. It should be represented solely by non-executive directors.

P10 Audit committees are crucial to manage a more efficient, transparent and robust audit and accounting procedure in the corporation. It should comprise mainly of non-executive directors to ensure its independence.

19. How important is a remuneration committee in a corporation and what should be the composition of such committee? Why is such a composition ideal?

P1 The purpose of the remuneration committee is to determine if directors are paid accordingly without being over remunerated. The committee should be made up of non-executive directors to ensure its independence.

P2 A remuneration committee in a corporation is crucial so that top officers are not overpaid. Only non-executive directors should be part of the remuneration committee to ensure its independence.

P3 A remuneration committee makes recommendations for directors’ pay and ensures that it is in line with the interests of the shareholders. The committee should consist of independent directors.

P4 Very important to regulate the pay package of directors and it should be comprised with a majority of non-executive directors.

P5 Remuneration committees can be seen as part of enhancing corporate governance. Directors salary and benefits will be controlled and under constant review by the committee. Non-executive directors can be considered as ideal composition as it would be absurd for directors to review their own salary and benefits.

P6 This committee serves as a medium to uphold corporate governance. This committee is important to prevent directors from rewarding them excessively and should be made up of non-executive directors.

P7 Remuneration committees are important to ensure that remunerations are supported by the board and to prevent directors from being paid excessively. The committee should be made up of independent directors to ensure there is effective
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<th>P8</th>
<th>In the commercial sphere today, competition is vast and investors actually make an effort to inquire about the effectiveness of the Remuneration Committee in moderating executive payments, which reflects as a benchmark to the corporate governance compliance of the corporation. In short, the purpose of such sub-committees are to prove transparency, and pay would commensurate to performance without favour. However, the system and framework to adequately reward such officers must be in place so as to ensure the continued loyalty and commitment on the job. The Committee should be made up of solely independent directors.</th>
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<td>P9</td>
<td>As per the Greenbury Report, the Remuneration Committee is a committee to enforce provisions that directors are not in a conflicting position where personal interests clash with those of the company’s to determine their own salaries, and end up overpaying themselves.</td>
</tr>
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<td>P10</td>
<td>Remuneration committee is important to avoid a situation where certain directors are overpaid. The Committee shall be responsible to recommend a suitable package based on a standard policy that they have created. The Committee shall be comprised mainly of non-executive directors to ensure its independence.</td>
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20. What is accountability? How is corporate accountability promoted?

| P1 | This means responsibility. It is promoted through proper control without personal interests, fear or favour. |
| P2 | Accountability means responsibility and authority. Accountability should be promoted with proper scrutiny. |
| P3 | Accountability implies responsibility and authority. It can be promoted with proper processes, especially audits in place. |
| P4 | Accountability relates to responsibility and authority which has to be exercised with professionalism, due diligence and care. Corporate accountability can be promoted with the right attitude and management. |
| P5 | Directors should be accountable for their actions. They ought to account to the company, shareholders, board of directors and stakeholders. Corporate accountability is promoted through transparency in finance, profit and losses made in particular. Some companies in recent years have been showing much interest in promoting the environment, which could possibly be a way to promote accountability. |
| P6 | One should be accountable for his/her actions. Directors should be accountable for |
their actions and this is done by reporting to the shareholders during the meetings. Corporate accountability can be promoted by making directors and companies to be responsible for their actions.

P7 Accountability is where directors/ companies should be accountable for their actions and decisions made. Directors should be accountable to company and stakeholders for any decisions made and in managing the company. Accountability can be promoted by ensuring there are sufficient check and balances on directors and in fact director’s reports can be said to be a form of accountability.

P8 This is a very subjective question. Accountability coheres with responsibility and ownership of decisions in a company. Accountability can be promoted through loyalty and independence of a person’s character.

P9 Accountability simply means being answerable to stakeholders and shareholders. It can be promoted by creating awareness on the importance of proper accountability.

P10 Accountability refers to owning up to actions or inactions that are made by directors. It can be promoted through good corporate values and culture.

21. What role do other stakeholders such as creditors and employees have in maintaining proper corporate governance?

P1 Employees of the company will be in the position of obtaining information on unlawful practices of the directors or the management and should be encouraged to inform the compliance sector about such lapses without fear.

P2 Their welfare must be considered before a decision is made.

P3 Creditors can review the payment cycle to detect if there is any irregularity in payment while employees can play a part by whistle blowing if they suspect anything amiss.

P4 Stakeholders like employees should work in a team in promoting the reputation of the corporation and flag any breaches to the appropriate channel within the organisation so that immediate steps to rectify the breach can be undertaken.

P5 Stakeholders and creditors are definitely the governing eye. Mismanagement and fraudulent accounting can be reported to auditors or relevant authorities.

P6 Creditors and employees do not play a major role in maintaining corporate governance.

P7 Creditors and employees should be part of the decision making process to instil a
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<td>P8</td>
<td>They are stakeholders who are directly capable of being affected and to influence corporate decisions. Therefore, they occupy a central role in the current theme of corporate governance in any organisation.</td>
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<td>P9</td>
<td>Employees definitely have very important role in corporate governance. Especially from an ethical perspective that every employee should emphasize on ethics to each other to maintain the reputation of their employers.</td>
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<td>P10</td>
<td>Decisions that are solely made for the interests of maximising shareholder profits could have an adverse effect on the general health and future of the business in the long run. Boards will have to base decisions on factors like the welfare of employees and relationships with established suppliers to ensure the corporation’s sustenance. This can be achieved by ensuring that stakeholder interests as such are prioritised at board level.</td>
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22. The global economy has a keen eye for proper corporate governance in the current era. Directors of a company are personally accountable and liable when compliance to proper corporate governance is not met. What is your opinion on this?

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<td>P1</td>
<td>The current atmosphere in the business world stresses a lot on proper governance and when a big or highly reputable corporation collapses, the immediate focus of failure looms the directing mind of the company. However, this is not a very accurate position as there are numerous other market forces that could compel a collapse.</td>
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<td>P2</td>
<td>Improvements have been made, but this is never enough to ensure directorial responsibility and the need for further developments and proper guidance for directors should continue.</td>
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<td>P3</td>
<td>Take for example, the Sarbanes Oxley Act, which was introduced shortly after the Enron incident. Nowadays improper corporate governance is highlighted by the media in a wider scale than before to discourage dishonest practices. As a result, investors lose confidence almost immediately when news of poor corporate governance in a particular company hits the market. This, inevitably encourages directors of companies to observe proper corporate governance practices.</td>
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<td>P4</td>
<td>Usually a collapse is due to the mismanagement or wrong decisions made by the directing minds. Therefore, it is imperative that ownership of unfavourable decisions has to be prescribed to such directors.</td>
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| P5 | Making a director personally liable can be harsh. This however is justified by the
recent collapse and fraud by many companies. Directors should not be personally liable for all actions done by company. The law ought to consider the position of the director in balancing duties owed to shareholders and stakeholders.

**P6**

It is good to make directors to be personally liable. This would encourage them to be managing companies responsibly. It is however unfair to impose liability on directors for the group’s mismanagement.

**P7**

This is good as it ensures corporate responsibility.

**P8**

There is a general perception public has on Directors. In light with economic crisis and collapse of Lehman Brothers in the past, the government through regulations in Singapore has indirectly interfered with companies’ decision making process. The truth is, although there is shareholder primacy, stakeholders are also given importance during the decision making process.

**P9**

Definitely, the director makes the decisions, whether wrong or right and they should be accountable for any non-compliance.

**P10**

It is the primary responsibility of directors to ensure that all corporate governance policies are in place. They should be able to justify and be accountable for any shortcomings.

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23. How effective is it to have non-executive directors on the board as a watchdog to monitor proper checks and balances?

| P1 | Very effective. |
| P2 | It is becoming more and more obvious that there is a need of non-executive directors as a watchdog. And more emphasis has been placed to improve the process of including their roles in a more active manner. |
| P3 | Judging by the reduction in accounting scandals, having non-executive directors has certainly led to better and more transparent processes. |
| P4 | Currently in Singapore and Malaysia, it has caused some effect to the better though there is still much room for improvement. |
| P5 | Non-executive directors are certainly instrumental to a successful company. |
| P6 | Non-executive directors are definitely effective in monitoring proper checks and balance. They represent shareholders and any discrepancies will be reported. |
| P7 | It is definitely effective. Non-executive directors promote corporate governance by forwarding their views during the meetings. On the other hand, often their role can be said to be redundant as the collective decisions of the board may undermine |
non-executive directors’ views.

| P8 | It is certainly an effective role to maintain proper checks and balances. However, in many corporations, non-executive directors devote too little time, which diminishes the purpose of such office. |
| P9 | It is extremely important to have the non-executive director as the watchdog. The role of a non-executive director becomes significant from many angles in the success of the corporation and it is important that such office holder is well versed with the operations of the company before embarking on the task. The company will have to provide such office holders with sufficient information and inductions and whenever possible, to sponsor them to undertake courses to polish and sharpen their skill sets. |
| P10 | In practice, the role of the non-executive director can be sometimes superficial. The individual occupies the seat for the benefit and is in effect under the control of the executive director. Though on the surface of things it is wrong, in reality, this does happen because of the low remuneration they are entitled to hold the sanctity of their fiduciary relationship to the company as a whole. |

24. In some collapses, directors have stood to benefit from their positions, e.g. conflicts of interest. What would you suggest is the best way to prevent such issues in corporate governance?

<p>| P1 | Before the appointment of the directors, it is crucial that they make a disclosure of for example, what other boards are they working for, if they hold shares in any other companies etc. |
| P2 | Full disclosure of interest in other related businesses or companies can help restraint and prevent such issues. |
| P3 | Tougher penalties for non-compliance with duties on disclosure. |
| P4 | With better regulation and tougher penalties on errant directors. |
| P5 | Directors should be asked to disclose any profit made. Some companies expect directors to make an annual declaration. |
| P6 | It could be as easy as directors disclosing their interest. This may not however be effective as some directors may choose not to do so. Sanction should perhaps be the best way to prevent directors from benefiting from their positions. |
| P7 | Law should play an important role in regulating director’s duties. Companies should also constantly monitor directors’ remuneration and that includes benefits received. |</p>
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<tbody>
<tr>
<td>P8</td>
<td>Proper regulations and tougher penalties.</td>
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<td>P9</td>
<td>Conflict of interest is the biggest issue in corporate governance. Better awareness and educating the directors to disclose any conflict of interests will be one way to prevent this from happening.</td>
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<tr>
<td>P10</td>
<td>Legal regulations should be clearly in place to ensure that such conflicts are avoided at all cost.</td>
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