

# The changing landscape of corporate governance in Asia's investment fund industry

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The topic of corporate governance is not new. In Asia, interest in corporate governance stepped up in the late 1990's following the Asian financial crisis. However, with investment funds in the region carrying smaller ticket sizes on average than compared to their Western counterparts, Asian stock markets displaying lower market capitalisations and a host of other geopolitical reasons, this area has yet to mature such that standardised codes of conduct are well practiced and commonplace. With scandals such as Madoff and Weaving lurking in the wings, the question of corporate governance is back in focus. The selection of independent directors and the conduct of due diligence on them has now become a much more structured process primarily focused on providing effective corporate governance for investors rather than for just tax structuring reasons.

There have been developments in recent years in 3 of the region's most active centres for investment fund management. In May 2012 Singapore issued its new and revised corporate governance code including tighter standards for independent directors and in the same year the Hong Kong stock exchange amended the Code of Corporate Governance and Corporate Governance Report which included amendments with respect to remuneration committees, board independence and pay disclosures. Japan's first corporate governance code came into effect on 1 June 2015. Whilst these regulations do not apply to the regulation of non-listed investment funds, they provide a framework for some of the standards that might be adopted by the industry.

The Cayman Islands, one of the most utilised offshore jurisdictions for establishing investment funds managed in Asia, issued a formal response to the the issues raised by the Weaving case.

The Statement of Guidance (**SOG**) issued by the Cayman Islands Monetary Authority (**CIMA**) at the end of 2013, following a formal private sector consultation process, provided guidance on CIMA's minimum expectations for sound and prudent governance of regulated funds.

Some general trends in Asia that we are seeing are:

- **Independent Boards.** It is now common to see at least one independent director sitting on the fund's board and increasingly a majority of independent directors. Without doubt, boards comprised of entirely or a majority of investment manager representatives is no longer the norm.
- **Mixed service providers.** The one stop shop approach is less common. We are, for example, now unlikely to see one provider being appointed as both trustee and administrator in unit trust structures, as managers are driven to show separation of roles and that service providers are held fully accountable. Whilst it is not common to see the fund and the manager appointing separate legal counsel at the time of the establishment of the fund, fund boards should consider whether it is appropriate to do so when certain situations arise, for example, in the context of a conflict of interest.
- **Much more formality around fund governance.** Managers are best advised to provide for regular and structured board meetings. Meetings held at least twice a year is now considered a minimum standard although quarterly meetings are recommended and more commonly adopted. We are also seeing better documentation of board meetings.
- **Conflicts of interest.** Increased focus on dealing with conflict of interest issues including around disclosure to investors.

Competition in the asset management environment has forced managers to react to the demands of investors and these demands, at the most basic level, are looking for independent directors to sit on fund boards, ones that will seek to uphold fiduciary duties and ultimately the interests of the shareholders. The rise in demand for truly independent, professional, skilled and non-apatetic directors has clearly risen in the region and will most likely continue to rise.

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