2019 Comparative Corporate Governance Conference

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Editorial

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In the modern global market, the impact of corporate governance does not stop at national borders. As the current financial crisis forces a re-examination of corporate governance policies and mechanisms, this special issue showcases scholarship on governance issues in multiple jurisdictions. The issue contains articles developed and presented at the 2019 Comparative Corporate Governance Conference organised by Singapore Management University's ('SMU') Centre for Cross-Border Commercial Law in Asia, the University of Adelaide Regulation of Corporate, Insolvency and Taxation ('ROCIT') research unit and the Singapore Academy of Law. The conference planning began in 2017 and one of the aims of the local conference organizers, Wai Yee Wan (SMU) and Casey Watters (SMU) was to invite many notable Australian and other international scholars to join Singaporean practitioners and local academics in active debate and deep thought. Another aim was to seek the *Australian Journal of Corporate Law*'s ('AJCL') involvement to publish articles following the conference and so co-editor Christopher Symes joined the organising committee for this purpose. The conference presenters included Professor Jean du Plessis from Deakin University on 'The good, the bad and the ugly: Calls for regulating "corporate culture" and the Gupta and Steinhoff case studies', Professor Joan Loughrey from the University of Leeds on 'Corporate lawyers, their ethics and corporate clients', Professor Suzanne Le Mire from the University of Adelaide on the 'Algorithm as director: The future of corporate governance?', Dr Vivien Chen from Monash University on 'The state-business nexus and corporate governance in Malaysia', Associate Professor Anil Hargovan and Professor Pamela Hanrahan from the UNSW Business School on 'Law reform in India: Revisiting the concept of independent director' and Dr Jiang Huiqin from the University of New South Wales on the 'Foreign government investment in Australia: Corporate governance concerns from the Australian government.'

Other Asian presentations at the same conference included Assistant Professor Cheng-Yun Tsang from the National Chengchi University on 'Rethinking the role of regulators in the era of FinTech', Associate Professor Zhao Huimiao from Beijing University of Chemical Technology on the 'Characteristics of and misunderstandings on the adjudication standards for substantive consolidation rule in the bankruptcy of related enterprises', Associate Professor Wee Meng Seng from the National University of Singapore on 'A comparative study of corporate governance in reorganisation proceedings' and his colleague Associate Professor Umakanth Varottil on 'Environmental and Social Reporting In Australia and Singapore: Comparative Analysis.' Unfortunately, all these papers and presentations from

a number of others could not be published in this issue, but as one can see the conference attracted outstanding academics with broad interests across the corporate governance field.

The issue has five articles which represent the diversity in scholarship and the broad interest that corporate governance engenders.

Bird and Locke from Swinburne University of Technology commence the issue with their article on the '[p]erspectives on the current and imagined role of artificial intelligence and collective intelligence in corporate governance practice and regulation'. The authors argue that there is a revolution going on in boardrooms across the globe and it is the incorporation of technology and artificial intelligence ('AI'), and the creation and curation of data that could assist in the use of such AI systems, into the practice of corporate governance and strategy. They consider the challenges that current and foreseen applications of AI in the boardroom hold for directors in the fulfilment of their duties and corporate governance practices generally and explore how these challenges might influence future corporate governance theory and practice.

Gurrea-Martínez, who is an Assistant Professor of Law at the SMU, in his article, 'Towards a credible system of independent directors in controlled firms' ratiocinates that most countries around the world have failed to create a credible system of independent directors. He expresses incredulity that they have failed to do so because their regulators and policy-makers seem to have omitted the fact that the CEO — in companies with dispersed ownership structures — and the controlling shareholder — in companies with concentrated ownership structures — play a very important role in the appointment, remuneration, and removal of independent directors.

Godwin from Melbourne Law School, University of Melbourne, writes on the critical questions that concern the role and regulation of corporate counsel and what reforms might be appropriate in the light of recent experience. He contends that corporate counsel cannot limit their attention to the instructions or information provided by the client and then provide advice based on assumptions about the completeness or accuracy of the instructions and information. He observes that they are often expected to take an open-ended, proactive role in managing risk. Godwin animadverts that there is a dearth of specific guidance for corporate counsel in the professional rules governing jurisdictions in Australia. He also considers that there are no distinct professional rules despite the distinctive nature of the role of corporate counsel — and inhouse counsel generally — and that this appears anomalous in today's environment.

Misra, from the National Law School of India University, in her article claims that the *Insolvency and Bankruptcy Code 2016* of India which promised a robust mechanism for ensuring expeditious rehabilitation or liquidation of companies, with a great emphasis on rights of creditors, is falling short in extending the basic tenets of corporate governance accepted in India. She cites as one example the transformation from 'debtor-in-possession' approach to 'creditor in-control' approach has discouraged entrepreneurial practice.

Symes and Nosworthy from Adelaide Law School considered the Australian governance of companies which fall into distress, drawing comparisons to the relevant positions globally and particularly within the EU.

As is the position when a company is not in distress, directors often play the most significant role in governance. In what is a speculative article the authors tease out new thinking in a little researched area and propose strategies to ensure directors are well equipped to manage distressed companies.

We recommend the issue to you and note that it may be possible in future issues to feature even more of the presentations from this most relevant conference.

The organisers of the conference thank the SMU's Centre for Cross-Border Commercial Law in Asia and the Singapore Academy of Law for their generous sponsorship and provision of support for the conference.

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