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# **ASIA TECHNOLOGY INNOVATION SERIES**

**Technology Disputes Involving Founders  
and Startup Companies in Asia**

Daniel Chia

**September 6 | 10:00 am SGT/CST/HKT**

# Presenter



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**Morgan Lewis**

# General Investment Structure



# Key Contextual Points for Investors

A lack of deep knowledge of the idea/company

Trust must be placed in the CEO/founders

A lack of management oversight

Some founders actively curtail investor control

# Reasons for Dispute

Strategic differences  
regarding the  
direction of the  
company

Excessive legal and  
financial control held  
by CEO/founder

The cult of  
personality  
surrounding the  
CEO/founder

# Typical Disputes

- Removal of founder
- Investigations into misconduct
- Fraudulent accounts
- Convertible loan defaults
- Breach of contract
- Breach of fiduciary duties

## Past Disputes

**wework**



**ZILINGO**

# we work

- Poor governance standards gave co-founder and former CEO, Adam Neumann, free reign to frivolously spend company money. This included buying a \$60m private jet and a \$5.9m purchase of the trademark “we” from Neumann himself.
- His leadership was exposed as the company prepared for an IPO. The revelations caused investors to significantly reduce WeWork’s valuation from \$47 billion to less than \$20 billion.
- Following the postponement of the offering, Neumann resigned as CEO but remained as non-executive chairman.
- In 2021, Neumann received \$245m in company stock and \$200m in cash as part of an enormous exit package. He was able to negotiate such a high price for ceding control because his shareholdings controlled 10 times the votes of a normal shareholder.



# ZILINGO

- Co-founder and former CEO Ankiti Bose was suspended after shareholders found alleged financial irregularities in the company's accounts.
- She was subsequently terminated on the grounds of insubordination after an investigation led by independent forensics firm, Kroll Inc.
- Bose claims that she is victim of a witch hunt and argues that she is getting blamed for decisions and practices that were well known by senior managers and directors.



- Co-founder and former CEO Ashneer Grover took voluntary leave from the company after a leaked phone conversation exposed him threatening an employee of Kotak Bank.
- According to several reports, Grover has single-handedly driven the company's growth, but he has also developed an arrogance that has made him foul and aggressive towards the company's employees and shareholders. This was the reason for his demotion to Managing Director in 2021.
- Grover resigned from the company minutes after he received notice that the results of an inquiry into BharatPe's books were to be presented to the board.
- The company has since alleged that Grover and his family engaged in excessive misappropriation of company funds through an elaborate scheme where payments were made to non-existent vendors.

# Risk Mitigation Tools

Strong  
Contractual  
Documentation

Strong Corporate  
Governance  
Controls

Appointment of  
Independent  
Lawyers

Breaking Cult of  
Personality

Right to Conduct  
Independent  
Audits

Whistleblower  
Protection

# Contractual Documentation

- Force of contract
- Usually negotiated and subject to change with subsequent funding rounds
- Terms to curb founder powers / c.f. to entrench founder
  - Terms as to vote to remove CEO
  - Reserved Matters protection
  - Classes of shares
  - “gross misconduct”
- Unless you are lead investor, may be difficult to amend



# Corporate Governance Controls

- More fluid and less rigid than the contractual documentation
- Company policies – less contractual force but can be a basis to reign in founders
- Breach of the Company policies may be a basis for sanction and termination to equate to gross misconduct
- Align with contractual documentation
- Can be revisited and amended more easily
- Usual to pass at board level where the board adopts certain corporate governance controls.
- Easy to get buy in on basis it attracts later investment

# Independent Lawyers

- Usual for founders to have “friendly” lawyers in the infant stage of the Company
- Should look to retain different independent lawyers that may not be linked to the founder to advise the Company and the board
- As a resource, they can be tapped upon and also guide the founder on what is the expectation of his role as chief executive
- \*\*Keep the lawyers who are involved in contentious reviews and investigations separate from the Company’s normal corporate counsel



# Independent Audit / Review

- Include in the subscription documentation a right to call for an independent audit or review
- Common in JV set ups. Usually missed in the subscription / shareholder agreements in VCs
- Can help to shift fact finding / financial irregularities to a more neutral forum than being a source of bickering amongst Board
- Can also form the basis of misconduct if there needs to be a leadership change



# Cult of Personality

- Poster boy for the company can be a double edged sword
- Good to force through loyalty in work force and is a key driver for new investment
- Can be out of control
- Strong board – importantly strong and well regarded chairman
- Insist on constant updates – even if short to spot signs of trouble
- Key executives should have a line to board and key board committees



# Whistleblower

- Most misconduct and issues will be first alerted by a whistleblower
- Need to ensure whistleblowing can be safe and if need be anonymous in a set up where the founder has a strong personality and is driving growth
- Things to implement
  - Whistleblowing policies
  - Hotlines and protection
  - Anonymity if need be
  - Direct access to board members in certain categories of complaints
- Independent lawyers

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# Why are these important

- Investment Protection
  - Dollars and Sense
- Reputation Protection
  - Future fund raise
  - Investor reputation – WeWork and Softbank
- Most issues and concerns can be resolved easily if spotted early
- Chance to pivot / re-make the business
- More costs efficient to put these in place early than dealing with costly remediation

# Conclusion

- Array of tools at various stages
- Need to safeguard Investor interest
- Tension with giving freedom to founders
- A lot can be gained by the use of company policies and other “soft” guidelines
- Entrench whistleblower protection
- Independent advisors – lawyers, auditors etc.

# Questions?

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# Next Session:



## WEBINARS

### CFIUS CONSIDERATIONS WITH FOREIGN INVESTORS

ASIA TECHNOLOGY INNOVATION SERIES 2022

Tuesday, September 13, 2022

10:00 AM - 11:00 AM JST

09:00 AM - 10:00 AM SGT

09:00 AM - 10:00 AM CST

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Join us for a webinar where we will discuss how companies can successfully address novel issues when considering noncontrolling investments from foreign investors, which may affect your fundraising options.

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# Upcoming Sessions

September

Title	Date / Time	Speaker(s)
<b>Digital Innovation and Disruption: Tech &amp; Sourcing—The Year in Review</b>	Wednesday, September 21, 2022 09:00am CST/SGT   10:00am JST	Mike Pierides, Peter M. Watt Morse
<b>Key Issues in Tech M&amp;A</b>	Wednesday, September 28, 2022 09:00am CST/SGT   10:00am JST	Wai Ming Yap, Todd Liao, Shaobin Zhu, Motonori Araki, Yuting Zhu

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# Biography



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*Daniel is a partner at Morgan, Lewis & Bockius LLP and also a director at Morgan Lewis Stamford LLC, a Singapore law corporation affiliated with Morgan, Lewis & Bockius.*

Based in Singapore, Daniel Chia is the leader of Morgan Lewis's disputes practice in Asia, covering contentious matters relating to dispute resolution, restructuring and insolvency, and government investigations and enforcement. He is sought for his experience—both as legal advisor and trial counsel—in devising and executing strategies for disputes relating to commercial crime, white collar proceedings, professional indemnity insurance, shareholder litigations, insolvency claims, and securities and regulatory enforcement in Asia. In his personal practice, he has over 15 years of experience as a corporate and commercial trial and appellate litigator representing clients in complex, cross-border, and multidisciplinary disputes in court hearings, international arbitrations, and other dispute resolution forums.

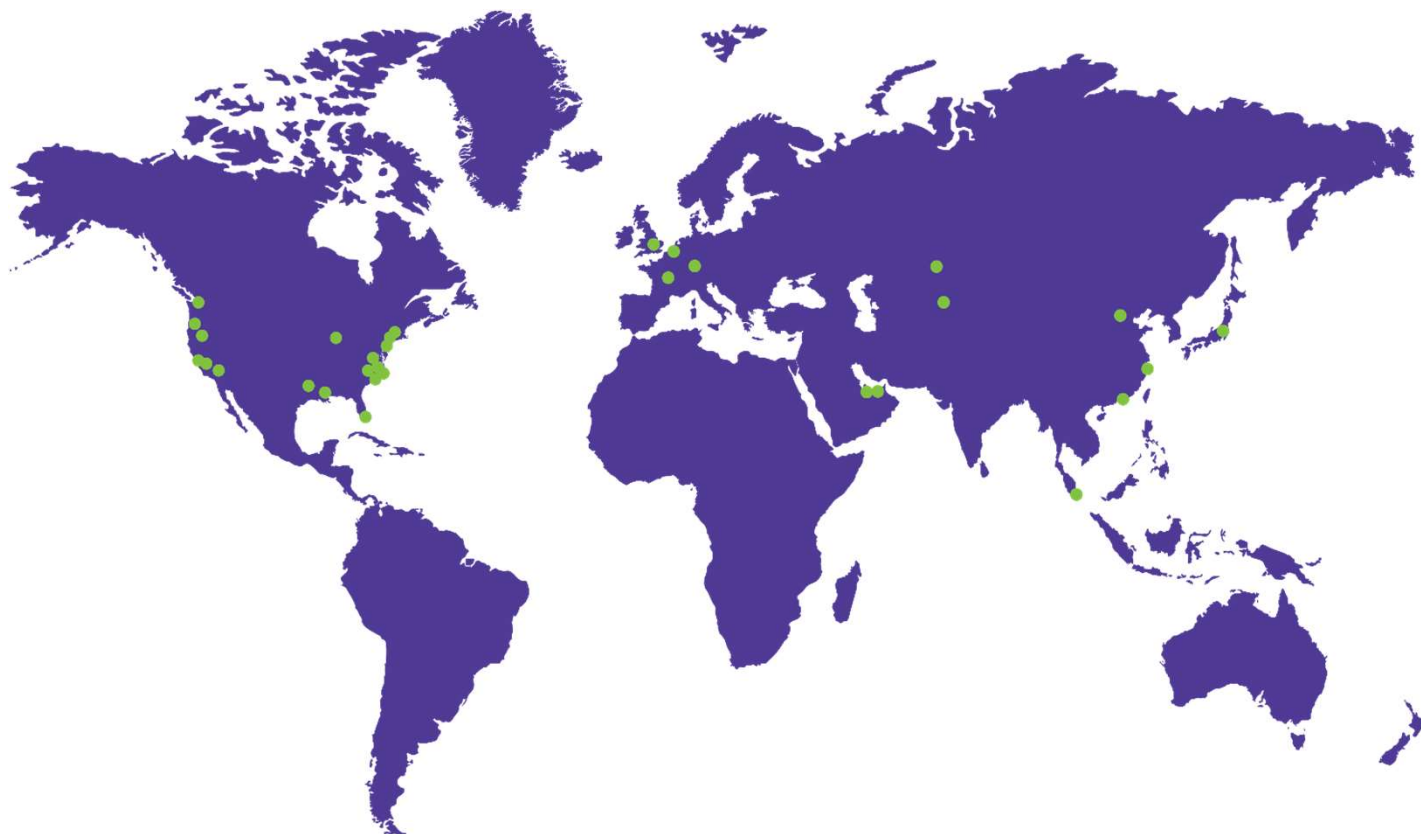
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