1 October 2013

Substantive Report

Asian Roundtable on Corporate Governance
5-6 June 2013, Kuala Lumpur, Malaysia

Background

The June 2013 meeting of the Asian Roundtable on Corporate Governance took place at a crucial time. It marked a new era of thinking and approaches to corporate governance reforms amongst Asian economies. Whatever their origin, international standards have a global impact. There has been a cross-fertilisation between the OECD Principles of Corporate Governance and corporate governance developments in Asia, which in turn provide useful input to the upcoming review of the OECD Principles.

This meeting provided an important conduit for sharing knowledge and experience, especially at a time when many of the Asian Roundtable countries are starting to participate in global standard-setting, being members of the Financial Stability Board, the G-20 and Associates to the OECD Corporate Governance Committee. Compared to when the Roundtable was first launched in 1999, there is enormous progress in the use of the Principles of Corporate Governance. The Principles have permeated policy making from regulations, corporate governance codes, scorecards, listing rules, to academia. Corporate governance developments in Asia have global relevance and the Roundtable is where the policy reform agenda is being formed. The fact that the ADB decided to launch at this meeting its ASEAN Corporate Governance Scorecard-Country Reports, using the OECD Principles to assess top listed companies, attests to this fact.

Equity markets all over the world are undergoing important changes, including a shift in global IPOs to larger emerging markets, mostly in Asia. One consequence of this development is that, on a global scale, companies with concentrated ownership – much like in Asia – are becoming the norm. This meeting provided the opportunity to reassess, in light of practical experiences, the role of controlling shareholders from the perspective of growth and value creation as well as smart enforcement and effective boards.

The agenda was designed to address special characteristics of Asian markets, such as the prevalence of concentrated ownership, notably by the state and families and how corporate governance policies, regulations and practices have evolved and should be adjusted to fit the particular challenges and opportunities associated with such characteristics. Finding a balance in the relationship between majority and minority shareholders is a real challenge shared globally. The recommendations that were endorsed at the meeting on improving board nomination and election in Asia demonstrated the importance of rethinking and clearly defining the role of the board in an environment dominated by informal relationships and controlling shareholders.

At the meeting, regulators responsible for maintaining healthy and stable capital markets also committed to making 'smart' enforcement of corporate governance rules a top priority. A clear message was that enforcement is not simply about maintaining the rule of law, but it is also a precondition for deep and liquid markets, building trust of investors and citizens, and underpinning growth. Countries seeking to

develop their equity markets must assure public investors that their assets will be protected. However, more than regulations and laws on the books, good corporate governance in practice is critical to creating an effective and equitable business environment. Poor governance undermines public trust, threatens market integrity, and is detrimental to economic growth — a view acknowledged and embraced at this meeting.

The Securities and Exchange Board of India volunteered, and the OECD has accepted, to host the next meeting of the Asian Roundtable on Corporate Governance in February 2014. Going forward, suggestions were made to focus more in-depth on the following topics: role of proxy advisors, shareholder associations, small versus larger investors, institutional vs. individual and fiduciary duties of controlling shareholders, corporate governance of family business and SOE corporate governance, board diversity, disclosure and transparency.

Many participants acknowledged the important role being played by the OECD in influencing and helping the Asian Roundtable countries in their efforts to develop and promote high standards of corporate governance in their jurisdiction. Participants also provided a number of examples of how the OECD's work on corporate governance is having an impact on their country's reforms. For example, in India – the securities regulator has developed a consultative paper that references the OECD Principles and Asian Roundtable material. The same is true for Indonesia and Chinese Taipei that are developing a Blueprint for corporate governance reform, using the Roundtable's material. OECD DSG Richard Boucher's continued attendance and welcoming remarks highlight the importance of the Asian Roundtable's work to the OECD.

Main points of discussion

Corporate governance developments in Malaysia

Malaysia is at the heart of efforts to facilitate economic integration of ASEAN. As such, there is concern about unintended consequences of regulation and extra-territorial implications of regulation. At the same time, there is awareness of the need to meet international standards but also to put them into national context, in order to achieve the right outcomes and balance. Malaysia has taken an incremental approach, focused on changing mind-sets not only rules, in an effort to move away from a compliance attitude. However, a box-ticking mentality still persists and implementation in practice of certain rules is still a challenge. The quality of boards is below expectations, shareholder activism is rising but still lagging and despite enhanced efforts enforcement outcomes are not optimal.

The Securities Commission Malaysia (SC) works very closely with the industry in terms of advancing corporate governance initiatives, including the issuance of the Corporate Governance Blueprint in 2011 and the Code on Corporate Governance in 2012. The Blueprint outlines the strategic initiatives aimed primarily at strengthening self and market discipline, moving away from regulatory discipline. It seeks to promote great adherence to a good corporate governance culture and emphasises the role of directors, shareholders, gatekeepers and influencers. This was reflected in Malaysia's choice of speakers in this session, a director, investor and minority shareholder watchdog group representative.

The director of a telecom company stressed the importance of 'understanding your shareholder' given a recent case when a hedge fund walked into a general meeting wanting to remove directors and appointing their own. Another question is whether board minutes should be made public to help

investors understand the extent of deliberations. The quality and commitment of board members needs to be enhanced, therefore continuous training is important.

According to the Minority Shareholder Watchdog Group (MSWG) , retail shareholders are more well-informed; shareholders are exercising more actively their role in electing and removing directors. They have also demanded poll voting, as voting by a show of hands is still common practice. However, there is pressure on institutional investors to be more transparent with their voting policies and how they exercise their stewardship responsibilities. MSWG is leading the initiative to develop an institutional investor code. The OECD has been invited to contribute to the effort.

The investor representative noted positive developments in Malaysia, notably new laws to protect minority shareholders and better disclosure as well as transparency. Convergence with international reporting standards has improved accounting procedures. However, with conglomerates and family-run companies still dominating the market, there are still occurrences of poor board oversight and weak enforcement of rules.

Risks and opportunities of controlling shareholders in Asia

The discussion focused on a defining characteristic of listed companies in Asia, notably the large number of controlled companies, either by the state or family. Concentrated ownership can be more stable with a long term perspective of value creation. However, there are vulnerabilities such as the potential abuse of minority shareholders and confusion between political and economic power as well as lack of accountability. The discussion helped illuminate the experience of ownership and governance practices in these companies, in view of the need to assess influence on the ability of Asian companies to grow and attract capital, in a sustainable manner. These issues are particularly important in view of the evolution of ownership structures globally, with more concentrated ownership, and challenges to corporate governance policy formation as well as the role of institutional investors. Key issues include: access to finance, access to professional management, board selection and effectiveness, as well as long term sustainability of business and value creation.

In Pakistan, corporate governance of state-owned enterprises faced several challenges. This includes: inadequate accountability mechanisms and slowed decision-making, lack of transparency, and ineffective boards. There are high hopes that Pakistan's recent adoption of the first ever Public Sector Companies (Corporate Governance) Rules, 2013 - that went into force August 2013 - will improve accountability, minimise political intervention and improve the independence of these board. However, there are still persistent challenges, such as lack of qualified non-executive directors due to remuneration issues, delayed start in achieving 40% of independent directors on boards within 2 years, selection of CEOs. An overall challenge is the need to change behaviour and mindset, which requires political will to bring growth in long-term sustainable value and ensure implementation beyond rules and legislation. In summary, for SOEs a real hurdle is lack of competent and effective boards arising from non-transparent and informal nomination processes as well as lack of accountability by the board.

In China, almost 40% of listed firms are state-owned enterprises representing 51% of market capitalisation. Overall 90% of listed firms have controlling shareholders, decision-making is still top down by the controlling shareholders or senior management, nomination is mainly based on internal promotion but external appointments are increasing. Some of the risks of this ownership model include: a wide-spread related party transactions, scandals of controlling shareholders tunnelling assets out of listed firms,

inactive hostile takeovers limit the role that the market for corporate control can play, weak long-term incentives for managers and low efficiency at firm level. However, some progress has been achieved to enhance enforcement especially of insider trading and disclosure. Further challenges to address include tackling: minority shareholder protection, such as abusive RPTs, misleading and delayed disclosure, insider transactions and less interference by the state in board nominations and senior management. There is a need for greater clarity on which state-owned listed firms will be reformed and how much ownership will be reduced as well as improved corporate governance of SOEs.

With regard to family owned firms, the discussion was informed by one of the top academics in the field as well as a top manager from a family-owned company. The key issues in aligning family governance and corporate governance are: succession planning, dividends and reinvestments, employment by family, institutionalising values or culture, control versus growth, owners' commitment and strategy. A risk is that in a family business with concentrated ownership, the family may extract private benefits of control (e.g. self-dealing, related party transactions) and non-economic ones (e.g. social standing, family employment). One conclusion was that ownership structures should be kept simple and at low cost, empowering and incentivising family members to improve corporate governance in a collaborative and rewarding way for the family, company and its stakeholders. The challenge for policy-makers is to design corporate governance frameworks that secure the benefits of large shareholders as effective monitors of management while preventing them from extracting private benefits of control.

Asian equity markets and long term growth

Participants took stock of how corporate governance trends and other relevant factors have influenced capital market growth in Asia. The context for the discussion was global trends in capital markets, including the declining use of markets for IPOs, increased use of high frequency trading and indexing and how governments are responding in terms of revised policy frameworks for corporate governance. Regardless whether companies have dispersed or concentrated ownership structures, more IPOs are needed to create more jobs and economic growth. Various markets were discussed and compared, notably Brazil, China, the US, UK, India, South Korea, Chinese Taipei and Thailand. While IPOs in Asia have generally dropped, there is a backlog of 800 companies waiting to be listed. Cross border listings are increasing and there is a certain amount of competition. This has resulted in exchanges coming up with new forms of listing vehicles (e.g. REITs, real estate investment trust) and raised new questions about treating these vehicles as listed companies.

The experience in Chinese Taipei highlights the following characteristics that may influence equity market growth: family owned enterprises, reverse mergers (including through backdoor listings), scattered small (retail) investors and proxy fights, highly interconnected business with China. Their coping methods include emphasising checks and balances and corporate governance at the managerial level as well as remuneration that is reasonable in order to reduce corporate fraud. Mandatory rules on appointment of independent directors, establishing audit and nomination committees are expected to improve the situation further.

In Thailand, the equity market is growing rapidly, accounting for 115% of GDP, and is classified as an advanced emerging market in the FTSE index. Steady improvements have been noted with regard to corporate governance, in the Asian Corporate Governance Association's Corporate Governance Watch report as well as the World Bank ROSC. One of the key remaining challenges is the role and responsibility of the board as well as building awareness in the private sector about the benefit of

corporate governance to society as a whole. The ASEAN CG Scorecard and more investor activism is expected to play a strong role to incentivise competitive practices.

Endorsement of the board nomination and election in Asia report

Nomination and election of board members is one of the key elements in a functioning corporate governance system around the world. The discussion of the draft recommendations for Asia in Tokyo in 2012 highlighted that while there is agreement about the desirable outcomes, finding specific solutions for implementation in a controlled ownership environment is a challenge. Participants agreed that the focus should be on a transparent process, with accountability, that attracts the most competent board members. An independent nomination committee can play a more effective role in this regard as well as fair board evaluations.

The Asian Roundtable report was presented, proposing policy options for consideration and endorsement by the Asian Roundtable to improve transparency of the board nomination and election process with the ultimate goal to have effective boards. While each country may have the flexibility to implement the options at their discretion, the aim was to reach a consensus on the direction of reform efforts. Several shortcomings were identified including: a lack of formal, transparent and adequate board nomination and election process; nomination committees are still uncommon and their effectiveness is questionable, lack of shareholder engagement in the process, lack of transparent and well established board evaluation and insufficiently qualified, independent and diverse board members. The policy options proposed in the report seek to address these challenges.

Indonesia and Korea shared their experiences and views on the policy options, given their involvement in the OECD Corporate Governance Committee's peer review on board nomination and election. Indonesia will consider how to benefit from the Asian Roundtable's report that provides more in-depth and specific suggestions, specifically mandating disclosure of the nomination and election process, establishing nomination committees, requiring a policy concerning information about candidates, and more investor engagement.

Korea appreciated the spirit of the Asian Roundtable report, which despite the diversity of the region, proposes a common direction for reform. It was stressed that given the variety of regulatory environments and level of developments across many countries in the region, developing the report was a challenge. It addresses common issues in the region while acknowledging differences across borders. The report is well suited to the Asian region since it does not dictate any specific regulations or system but contains necessary measures to improve the independence and effectiveness of the board. In particular, Korea stressed that various recommendations suggested in the report are very well suited for Asia's concentrated ownership and family controlled structure. It was suggested that future work focus more in-depth on the issue of concentrated ownership by business groups.

The paper was unanimously endorsed by the Asian Roundtable.

Reports from the six small group sessions on enforcement

The following areas were discussed: comprehensive legal framework; the structure and capacity of enforcement authorities; authority to monitor, supervise, investigate, enforce and impose sanctions; disclosure of enforcement actions and practices; courts and judicial systems; and cross border

enforcement. These topics were the outcome of an informal meeting of the Taskforce on Enforcement in Tokyo on 25 October 2012 and were finalised during the Asian Roundtable on Corporate Governance Taskforce on Enforcement in Kuala Lumpur on 4 June 2013. The Taskforce aimed to articulate and facilitate the discussion of key issues and challenges to effective public supervision and enforcement in Asia with specific focus on related party transactions, disclosure of beneficial ownership and directors' fiduciary duties. There were six topics with several sub-topics discussed in the small group sessions on 5 June 2013 and the discussions were presented before the Asian Roundtable participants on 6 June 2013.

The discussion group felt that there was a comprehensive legal framework to address gaps in the laws in their respective jurisdictions. Regulatory authorities or the securities commission utilized their rule-making power to mandate certain corporate governance principles and guidelines which would otherwise have been voluntary. However, there was a need to make certain rules more specific and clear as the wording of the current rules at times is so broad as to be ineffective or uncertain.

While a fragmented enforcement structure may foster specialization, it could lead to problems with coordinating enforcement actions. Although dialogues, inter-agency meetings and other methods of cooperation may reduce such problems, different enforcement authorities may have different priorities or methods of achieving their aims. This may lead to delays in prosecution or lack of coordination. The discussion group felt that there are pros and cons to a single unified structure versus a more fragmented structure. The latter allows for more specialization and provides better checks and balances as power is not concentrated in the hands of one enforcement authority. However in a fragmented structure, those responsible for investigations and enforcement may lack focus and accountability due to different priorities.

The capacity of regulators to carry out enforcement actions is under threat due to the lack of skilled staff. It is difficult to attract talent unless pay structures are competitive with the private sector. However the latter is often driven by performance based remuneration which is not suited to enforcement officers as it creates perverse incentives. Regulators will have to strive to strike a balance. The group was of the opinion that regulators in most jurisdictions have powers of investigation and access to relevant information but there are statutory restrictions such as in Chinese Taipei and Hong Kong where authorities do not have the power to investigate and compel companies to open their books. Principal regulators may have sufficient powers but this does not extend to front line regulators (e.g. the Stock Exchange) which have the responsibility for taking initial actions.

A challenging task for regulators is to have access to information held by unregulated persons. The key to addressing the challenge is through coordination and information sharing among different authorities such as tax authorities, the police or public prosecutors. In many jurisdictions there are formal mechanisms to facilitate communication between authorities. Other challenges faced by regulators are legal limits on information which can be shared, inadmissibility in court of information which has been obtained through informal channels, regulators with different priorities, and the difficulty of optimal coordination when there are stringent time constraints and disincentives to share information especially when regulators are self-funded.

Regulators often take pre-emptive actions such as suspension to prevent further violation and damage which may have a significant impact on the capital market. It is important to develop an efficient method of measuring the seriousness of each violation quickly ('seriousness test') in order to ensure that the action taken is swift but accurate. It is important for enforcement actions or practices to be transparent

as it ensures accountability, checks and balances and also helps to focus the actions of various enforcement authorities which are especially useful in a fragmented enforcement structure. It also is useful as a means for investors to assess whether enforcement actions have been taken properly and are fair.

The discussants felt that regulators in most Asian jurisdictions disclose enforcement actions taken but there is room for improvement. Regulators should distinguish between criminal and administrative cases and also between material and non-material cases. They should assess whether systemic risks in these cases are significant. In doing so, they should take into account, the legal principle that the party being investigated or charged is presumed innocent until found guilty. The group stated that greater focus and attention should be given to material violations of laws and regulations compared to less material violations. In cases which have high potential of systemic risk that could destabilize a sector of the market or a segment of society, regulators have to exercise care and prudence and must be circumspect when disclosing the contents and wording of enforcement actions.

It is important to have a credible, independent and efficient judicial system to enforce corporate governance. A common problem, however, is the lack of expertise of judges in governance matters and a backlog of cases due to the sheer volume of cases. While there may be the temptation to bypass the judicial system as much as possible, the complication is that the system is a foundation for public and private enforcement and is the ultimate legal authority in some jurisdictions.

Role of institutional shareholders in Asia

This session was innovative, organised in collaboration with the Asian Corporate Governance Association, and much appreciated as it permitted a discussion with actual institutional investors. The discussion began with a comprehensive overview of the OECD's new project on corporate governance, value creation and growth. In particular, the issues concerning the changes in equity markets were of great interest, particularly the impact of these developments on shareholder monitoring and engagement. Traditional and new institutional investors hold almost 50% of equity globally. In dispersed markets, such as the US and UK, institutional investors hold mostly 70% of equity. This has implications for shareholder engagement by institutional investors. The data for Asia is still being collected but it shows considerably lower numbers. The OECD Principles recognize the role of institutional investors due to the increasing professionalism in the investment environment.

The *Reform Priorities in Asia: taking corporate governance to a higher level* (OECD, 2011) also includes Priority 6 "Shareholder engagement should be encouraged and facilitated, in particular by institutional investors." This includes reducing obstacles for shareholders to vote in meetings, liberalizing rules on proxy and mail voting as well as improving the integrity of voting process. The recommendation to encourage institutional investors to play a greater role in influencing the corporate governance practices of their investee companies is crucial; this could include its own code of best practices – which Malaysia is starting.

Aberdeen provides long-term investment and up to 20% holding in a particular company. But since it's a significant minority shareholder in an illiquid market, they put a lot of effort in researching corporate governance. They pay particular attention to: management quality, corporate structures, succession planning, risk management and related party transactions. They also care about whether management is managing the company in the interest of all shareholders. They can engage management 3 to 4 times a

year. Asset management companies tend to cooperate with other minority shareholders to ensure their voices are heard. Engagement picks up when there are particular issues but this is done behind closed doors in order to protect the relationship with the company.

Blackrock has a different business model, with multiple investment vehicles. When they manage an index, they can't sell unless management agreed, which makes corporate governance important as they need to protect the client's money. Considerable effort is invested in incorporating corporate governance and considerations how it impacts the portfolio, also as a result of failed risk management. Engagement is considered a long-term 'painful' exercise, learning to understand the investee company and motivations. This approach is the 'traditional' rather than the quantitative kind, based on research, involving internal platforms and monitoring that enables managers to effectively fulfill their fiduciary duties to engage companies on the material and relevant risk to the business. Blackrock's paper/model portfolios suggest that companies with good corporate governance strategies are performing ahead of the index and all companies at the bottom are under performing in the markets, with various cycles.

An advisor to institutional investors in the region stressed that the extent of interest in corporate governance will influence investing behaviour. Some of the drivers are : regulatory pressure, disclosure pressure for example in relation to voting results, brand positioning and whether it takes into account Performance Review Indicators (PRI), client pressure to outsource investment management and the monitoring of performance, and fundamental belief that corporate governance is good for performance and risk management.

Asian Roundtable Task Force on Enforcement

Background

Enforcement has been a long-standing issue for Asia. In October 2012, the Asian Roundtable Task Force on Enforcement met informally in Tokyo, back-to-back with the Asian Roundtable meeting. Senior officials from Malaysia, Hong Kong China, India, Indonesia, Singapore, South Korea and Japan were very active and engaged in helping set the main objectives and outcomes for the work ahead. An issues note provided a good basis for discussion about the key areas of focus. The Task Force defined the scope of its future work programme.

The Task Force met officially for the first time on 4 June 2013, back to back with the Asian Roundtable meeting in Kuala Lumpur, Malaysia. Senior officials from 11 countries discussed key challenges to effective public supervision and enforcement as well as shared experiences which will ultimately be incorporated into a "guidance report". An issues paper provided a valuable structure to the discussions; it also set the context and clarified what enforcement means from an economic context i.e. to benefit stable healthy capital market. While the discussion addressed six key areas, the specific focus was on related party transactions, disclosure of beneficial ownership and directors' fiduciary duties.

The work produced by the Task Force will also be useful input to the review of the OECD Principles in 2014.

Key issues and outcomes

An OECD survey of 14 Asian jurisdictions enlightened the discussion on current practices and policies regarding public enforcement of corporate governance. The key conclusions point to convergence at a macro level showing that most Asian jurisdictions have fairly developed laws, regulations, rules, regulatory institutions and judicial processes. However, there is divergence in the details of the laws or adequacy of the laws, in how the regulatory institutions are organized, staffed and funded; priorities and strategies for enforcement; sanctions imposed; the approaches taken; the efficacy of the judicial process and competency of the judges.

The seriousness test was also referred to, for example:

- How serious are the regulators in enforcing corporate governance, which will determine the outcome. There is a need to look at incentives by regulators to ensure that they do what they are supposed to do. In this respect, incentives to the business community should also be considered;

- How independent are the regulators – this relates also to funding, whether regulators are self-funded or otherwise; whether there are sufficient checks and balances or conflict of interest procedures within the regulatory bodies; and

- What is the approach taken in enforcement – strategic/smart enforcement namely bringing the full force of law on serious infractions which undermine investor protection and apply the soft enforcement approach (e.g. warnings and private reprimands) for less serious breaches.

Adequacy of the legal framework

Generally, the laws on the books are comprehensive. The problem lies in the overlapping functions within the enforcement agency itself. There is a need for more clear demarcation. Internally within the same regulator, the relevant parties are trying to clarify their roles. Externally amongst the various authorities, efforts are being undertaken to set out the parameters for co-operation. Incentives and remuneration are a concern as well as the need for high quality talent. Hence, one issue to consider is how regulators compete with the private sector to attract and retain competent and motivated staff.

It is important to determine the effectiveness of the measures taken - not just the legal system or sanctions but also the incentives for good behaviour. Incentives for good behaviour should be measured to see whether they outweigh the incentives for bad behaviour. Enforcement agencies should also consider whether to spend their resources in going after all breaches or be selective and enforce the serious breaches only – i.e. smart enforcement rather than mechanical enforcement. Adopting the right strategy for enforcement is important.

Performance based compensation is linked to effective enforcement and should include target setting. Smart enforcement entails the choice between formal or informal sanctions. It should be guided by strategic considerations in order to have a clear understanding of the objectives and the desired outcomes.

Structure and capacity of enforcement authorities

Securities or financial regulators typically are responsible for enforcement of corporate governance rules but this is one of the many responsibilities of regulators - therefore it is not always a priority. Self-funding is not always the best option due to conflicts of interest - regulators undertaking enforcement actions while also promoting market development. Government funding on the other hand is secure and stable but open to control, budget cuts and staff cuts. Therefore, a combination of self and public funding may be the better solution.

Fragmentation has led to difficulty in enforcement – there is no single authority which has control over the entire enforcement process; multiple authorities are involved such as the police, public attorney, judiciary. There is a need to balance the objective of reducing breaches and the due process of law. Normally securities regulators are closer to the international market and standards. However, this is not the case for the other agencies. Sharing experience among agencies can lead to a better targeting of enforcement action and sharing of tasks.

Penalties that are prescribed should be based on the burden of proof; the more difficult it is to get evidence, the higher the penalties imposed. On the issue of uniformity across jurisdictions, this may be difficult due to the diversity; however options or alternatives, a range of sanctions based on severity of the offences could be helpful.

How regulators are funded depends on each country's environment. The SEC in Thailand, for example, is 100% self-funded. The reason is to enable the SEC to maintain its independence. The Financial Supervisory Commission in Chinese Taipei is partly self-funded. The other half of its funding is approved by the Parliament. However, the expertise of the staff is a challenge.

Independence is also an issue. In addition to making financial policies, securities regulators also formulate certain policies as requested by the Government. In this regard, independence from political influence is also important. The issue of a demutualised stock exchange and its role in corporate governance was raised. If a stock exchange is self-funded from high frequency trading, how will it regulate this area? Inevitably, there will be a conflict. Therefore, the issue of independence of regulators includes not only being free from political influence but also commercial interest.

Disclosure of Enforcement – Actions/Practices

In Chinese Taipei, the securities commission provides full disclosure of the enforcement actions taken. The disclosures are seen as "norm-making" in nature as the information can serve to enhance companies' awareness and understanding of what they should or should not do. Publication on the website also helps deter future violations. Among others, the Commission issues FAQs, interpretations of rules or orders, newsletter and news releases of companies' violations. Some of the information that is disclosed includes the types of sanctions imposed and reasons, time of the act and conduct and the relevant rules or laws that have been violated. The Commission also issues letters to companies informing them of the reasons for the sanctions, reasons for the decisions made and possible means to appeal.

In general, regulators in Asia do disclose enforcement actions and grounds for such actions. In some developed markets, the regulators have transparent enforcement procedures and policies. It is important for regulators to disclose their annual strategy or annual plan on supervision and enforcement as this can enhance whistle-blowing. However, some expressed concern that this may work against the regulator as well because the company may conceal information after reading the annual plan or strategy. To counter this, there must be a strong investigation department within the regulator. More strict sanctions may also be imposed to address this issue.

Cross-border Enforcement

Many companies, even those listed in Hong Kong or Singapore, are not domiciled there – the operations are usually undertaken by subsidiaries outside the jurisdictions; directors also reside outside the jurisdictions. This gives rise to difficulties in enforcement and therefore, the co-operation of the other regulators is needed (particularly where there are numerous requests for assistance).

The work undertaken by the ASEAN Capital Markets Forum ("ACMF"), in particular the Working Group on Dispute Resolution Mechanism came up with guidelines on cross border enforcement. Cross-border enforcement should also include the judiciary, not just the regulators/enforcement authorities. Cross-border enforcement is difficult because the authorities must ensure that the evidence gathered complies with the laws relating to the admissibility of evidence in the courts of the requesting country.

Conclusion

- The issues discussed at this meeting were followed through at the breakout session at the Asian Roundtable the next day, further shared recommendations/experiences.

- The output from the breakout sessions will serve as the basis for the guidance report. However, in order to be meaningful, a certain level of details in the issues and guidance identified will be

required. For this, there may be a need to contact some of the participants directly or the relevant persons in the jurisdictions for further information to finalise the report.

- The report, once ready, will be circulated for comments. The targeted timeline for issuance of the report is at the next Asian Roundtable Meeting in India early 2014.

- The Task Force is an effective format for more technical and in-depth substantive discussions between regulators.