Public Enforcement Practices of Corporate Governance in Asia

SURVEY RESULTS FROM 14 JURISDICTIONS
FOREWORD

A strong legal and regulatory framework, complemented by effective supervision and enforcement, constitutes an integral part of the overall measure required to strengthen corporate governance. These three elements are not separate or distinct from each other; in fact, they are interrelated.

Enforcement alone is not adequate, as it seeks to remedy a wrong only after an event has occurred. Similarly, rules or regulations would have little value without supervision or enforcement, as there would be little impetus for compliance or adherence. In strengthening corporate governance, regulation is not an end in itself. Instead, having the appropriate legal framework coupled with regulatory supervision and enforcement is crucial for a sound corporate governance framework.

While most Asian jurisdictions have reported progress in revamping their laws and regulations, effective implementation and enforcement of good governance practices still remain a challenge. At the informal meeting of the Taskforce on Enforcement (“Taskforce”), which took place during the annual OECD Asian Roundtable on Corporate Governance in Tokyo on 24-25 October 2012, it was agreed that a report on good practices/recommendations for enhancement of enforcement in Asia (“good practices report on enforcement”) should be developed. This is a follow-up to the Asian Roundtable’s report on Reform Priorities in Asia: Taking Corporate Governance to a Higher Level that identified improving enforcement as one of six key priorities, in line with Chapter 1 of the OECD Principles of Corporate Governance on the development of an effective corporate governance framework.

As part of the drafting of the good practices report on enforcement in Asia, it was decided that a survey would be conducted on the state and development of enforcement in the participating Asian Roundtable economies. The survey also aimed to identify the key challenges and obstacles to effective enforcement, as well as the practices and policies in the participating Asian Roundtable economies.

The survey covered the following areas:

- Comprehensive legal framework/adequacy of laws;
- Structure of enforcement authorities;
- Authority to monitor, supervise, investigate, enforce and impose sanctions;
- Disclosure of enforcement actions/practices;
- Capacity of the enforcement authorities;
- Courts and the judicial system; and
- Cross-border enforcement.
In discussing the above areas, the survey also focused on three specific areas:

- Related party transactions;
- Disclosure of beneficial ownership; and
- Financial statements, as well as directors’ fiduciary duties.

As highlighted in the report on Reform Priorities in Asia, a defining characteristic of many Asian companies is the presence of a large and controlling shareholder, i.e. a family-owned, state-related or business-related group. Therefore, minority shareholder protection is a key issue, making these three specific areas especially pertinent.

Although an effective and credible enforcement framework is shaped by the complementary and interdependent roles of both public enforcement\(^1\) and private enforcement\(^2\), for purposes of this survey and the good practices report on enforcement, the Taskforce agreed to focus on advancing active, visible and effective public supervision and enforcement. This is to ensure that the good practices report on enforcement provides focused, comprehensive and practical guidance.

The survey was conducted in spring 2013, and a total of 14 Asian jurisdictions took part. The preliminary results were shared with the participants at the meeting of the Taskforce at the Asian Roundtable on Corporate Governance in Kuala Lumpur on 4 June 2013.

The following pages contain the edited (in line with the OECD Style Guide) but unabridged submissions of all survey participants. To make it easier to navigate and compare responses side-by-side, the chapters are not organised by markets; instead, each section contains answers from all 14 Asian jurisdictions to a single question or a set of related questions addressing a specific issue.

This document was presented to the Asian Roundtable on Corporate Governance in Mumbai, India on 11-12 February 2014, as background information to the discussion on enforcement, and for review and updating by the regulators.

The OECD would like to thank the regulators from Bangladesh; People’s Republic of China; Hong Kong, China; India; Indonesia; Korea; Malaysia; Mongolia; Pakistan; the Philippines; Singapore; Chinese Taipei; Thailand and Viet Nam for their time and effort in responding to the survey.

\(^1\) Public enforcement encompasses enforcement actions and sanctions for breach of laws and rules by regulatory bodies, administrative, civil and, in some cases, criminal sanctions (e.g. securities commission, stock exchange or self-regulated organisations, judicial).

\(^2\) Private enforcement involves actions taken by private parties (e.g institutional and retail investors) to pursue civil remedy.
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CHAPTER 1 - COMPREHENSIVE LEGAL FRAMEWORK / ADEQUACY OF LAWS

Question 1.1 – Laws, Regulations, Rules and Guidelines for Enforcement

Are there laws, regulations, rules or guides which form the framework for enforcement of corporate governance in your country? If so, please identify the laws/regulations/rules/guides (e.g. companies act, securities act, the listing rules of the stock exchange, codes of corporate governance, etc). If there is more than one laws/regulations/rules/guides governing the enforcement of corporate governance, please indicate the differences between them (e.g. which is the primary laws/regulations/rules/guides, etc).

In particular, please also highlight the laws, regulations, rules or guides governing the following areas:

(a) related party transactions;

(b) disclosure of beneficial ownership and financial information; and

(c) directors’ fiduciary duties, (collectively referred to as the "Specific CG Areas").
**Bangladesh**

The Companies Act, 1994 (Act)

The Securities and Exchange Ordinance, 1969 (Ordinance)

The Securities and Exchange Rules, 1987 (Rules)

Corporate Governance Guidelines of 2012 (CG Code)


The Rules and CG Code are enacted by the BSEC under the power of the Ordinance.

(a) Related party transactions are governed by the Act and CG Code.

(b) Disclosure of beneficial ownership and financial information are governed by the Rules, and different notifications are issued under the power of the Ordinance and Act.

(c) Directors’ fiduciary duties are governed by the Act and CG Code.

**China**

In China, the framework for enforcement of corporate governance was formed by the following laws, regulations and rules, the primary of which are emphasised in bold:

**Laws**

- Company Law (revised in 2005)
- Securities Law (revised in 2005)
- Accounting Law (2000)

**Regulations**

- Regulations on the Administration of Company Registration (2005)
- Code of Corporate Governance for Listed Companies (2002)
• Regulations on Listed Companies’ Information Disclosure (2007)
• Guidelines for the Articles of Association of Listed Companies (effective as of 16 March 2006, revised in 2006)
• Rules for the General Meeting of Shareholders of Listed Companies (effective as of 16 March 2006)
• Guidance on Establishing the Mechanism of Independent Directors in Listed Companies (effective as of 21 August 2001)
• Measures for the Administration of the Takeover of Listed Companies (2008)
• Regulations on Major Asset Re-organization of Listed Companies (2008)
• Regulations on Equity Incentives of Listed Companies (Trial) (2005)
• Securities Depository and Clearing Rules (2006)
• Basic Standard for Enterprise Internal Control (2008)

Self-disciplinary
• Rules Governing the Listing of Stocks on the Shanghai Stock Exchange (2008)
• Rules Governing the Listing of Stocks on the Shenzhen Stock Exchange (2008)
• Trading Rules of the Shanghai Stock Exchange (2006)

(a) For related party transactions, relevant laws and rules include:
  – Company Law 2005;
  – Criminal Law 2006;
  – The Accounting Standards for Enterprises No. 36 – Disclosure of Related Parties;
  – Rules Governing the Listing of Stocks on the Shanghai Stock Exchange (2008); and

(b) For disclosure of beneficial ownership and financial information, relevant laws and rules include:
  – Securities Law (2005);
  – Company Law (2005);
– Administrative Measures on Information Disclosure by Listed Companies;
– Standards on the Contents and Formats for Information Disclosure by Companies Offering Securities to the Public; and
– Measures for the Administration of Initial Public Offering and Listing of Stocks.

(c) Regarding directors’ fiduciary duties, relevant laws and rules include:

– Company Law;
– Listed Company Director Selection and Conduction Guidance by the Shanghai Stock Exchange; and
– SME Board Listed Company Director Conduct Guidance by the Shenzhen Stock Exchange.

**Hong Kong, China**

Corporate governance practices in Hong Kong, China are governed by a legal and regulatory framework which includes common law, statute law, stock exchange rules and codes of practices. The Securities and Futures Ordinance (SFO) is the major statute law regulating the securities market in Hong Kong, China. Exchange rules include the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Ltd, which apply to listed issuers in Hong Kong, China. The Companies Ordinance (CO) regulates all Hong Kong, China incorporated companies, whether listed or unlisted. A Financial Reporting Council (FRC), an independent statutory body which was established under the Financial Reporting Council Ordinance (FRCO) in 2006, will among other things investigate auditing and reporting irregularities associated with listed companies.

Securities and Futures Ordinance: The SFO applies to all listed companies irrespective of their place of incorporation. One of the SFC’s primary roles is to enforce the laws governing Hong Kong, China’s securities and futures markets.

Listing Rules: The Listing Rules provide detailed requirements on corporate governance matters of listed issuers, including board practices, protection of shareholders’ rights in material or connected transactions, and proper and timely disclosure of information to the public. They are mandatory for issuers, and breaches may lead to sanctions.

Companies Ordinance: The CO applies to all incorporated companies. It contains provisions on corporate governance by regulating the calling of meetings, related party transactions and requiring disclosure of material interest in contracts and the financial information of a company. There are also provisions on the protection of shareholders’ rights and disclosure of information in financial statements of a company. A breach of the CO requirements may result in prosecution and civil claims.
(a) Related party transactions:

- Listing Rule requirements: The Listing Rules refer to related parties as “connected persons”. Chapter 14A of the Listing Rules governs connected transactions, which include issuers’ transactions with connected persons or with third parties that may confer benefits on connected persons. It lists the specific categories of persons that are defined as connected persons, including directors, chief executive and substantial shareholders of the issuer (or any of its subsidiaries), and any persons closely associated with them.

Under the Listing Rules, an issuer must disclose in an announcement details of any connected transaction as soon as practicable after its terms have been agreed, and report the transaction in its annual report. The connected transaction is conditional on independent shareholder approval taken on a poll. The issuer must send a circular to its shareholders containing details of the transaction and the opinion of the independent board committee and the independent financial adviser on the terms of the transaction. Conflicted shareholders must abstain from voting at the general meeting. A resolution is passed by a simple majority of votes present in the meeting.

The Listing Rules provide exemptions from the disclosure and/or shareholder approval requirements for specific types of connected transactions where the risk of abuse by connected persons is low. Failure by an issuer to comply with the connected transaction rules may result in the Exchange taking disciplinary actions against the issuer and/or its directors. See our answers to Questions 3.2 and 3.5 for details.

- FRC: Under the FRCO, the FRC has the statutory power to carry out enquiry into possible non-compliance with accounting requirements in relation to listed entities’ relevant financial report, and to give written notice to the listed entity to remove such non-compliance, if any. This includes the disclosure of related party transactions and other financial information as required by the specific accounting standards and the Listing Rules.

(b) Disclosure of beneficial ownership and financial information:

- SFO and other statutory requirements: For detailed requirements on disclosure of direct and indirect shareholding, please see 1.2 (b).

In terms of enforcement in this area, the SFC has comprehensive powers to require production of any record, document or information which it deems relevant to an investigation under the SFO.

Further, the SFO empowers the SFC to obtain the identity details of the person who placed the order, the ultimate beneficial owner of the trade and other particulars of the order. The SFC may also ask the market intermediaries to provide the background information of the clients involved.

All companies incorporated in Hong Kong, China under the CO are required to be registered with the Registrar of Companies. Every company must keep a register of its members including the name, address and occupations of the members, the shares held by each member, and the date at which each person was entered in the register as a member or ceased to be a member. The company is required to keep the register of members at its registered office and make the register available for the inspection by the public. Every company must notify the Registrar of Companies of the place where its register of members is kept.
Disclosure of interests of directors, chief executive and substantial shareholders in issuers is primarily governed by Part XV of the SFO. The Listing Rules require issuers to include this information in financial reports and certain types of listing documents and transaction circulars for shareholders’ information.

- Listing Rule requirements: Issuers listed on the Main Board of the Exchange are required to comply with the periodic financial reporting requirements in the Listing Rules. They must publish:

  Their annual results announcements and annual reports no later than three months and four months after the end of the financial year; and

  Their half-year results announcements and the interim reports no later than two months and three months after the end of the financial period.

Quarterly reporting is a recommended best practice for Main Board issuers under the Corporate Governance Code, and a Listing Rule requirement for Growth Enterprise Market (GEM) issuers. The Listing Rules also sets out the minimum financial information that issuers must include in its results announcements and financial reports.

Under Clause 20 of Appendix II of the Memorandum of Understanding entered between the SFC and the Exchange, the Exchange is required to provide details of the notifications received from directors, chief executives and substantial shareholders to the SFC not later than three working days after the receipt of the notifications by the Exchange.

(c) Directors’ fiduciary duties:

- Listing Rule requirements: An issuer’s board of directors is collectively responsible for its management and operations under the Listing Rules. The Exchange expects the directors, both collectively and individually, to fulfil their fiduciary duties, and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong, China law.

- CO requirements: The CO contains provisions on corporate governance regulating related party transactions and requiring disclosure of material interest in contracts and the financial information of a company. The provisions in the CO which govern transactions entered into by a company with its directors or persons connected with directors, and disclosure of information.

The CO also clarifies the standard of directors’ duty of care, skill and diligence by setting out a test of dual objective and subjective standard. The statutory duty has an effect in place of the common law rules and equitable principles as regards the duty to exercise reasonable care, skill and diligence by a company director.

There is a Guide on Directors’ Duties, issued in 2004 by the Companies Registry and the latest update was in 2009. The objective of the Guide is to outline the general principles of duties of directors (including fiduciary duties and duty of care) with respect to a director’s performance of functions and exercise of powers.

- SFO requirements: If there is evidence showing that the listed company concerned or its management has conducted its business or affairs in a manner unfairly prejudicial or
oppressive to other members, the SFC may apply to the Court of First Instance under the SFO:

For orders restraining the unfair act concerned;

To order a company to bring proceedings in its own name against any person specified in the order;

For orders disqualifying a person from being a company director or being involved in the management of any company for up to 15 years; and

For any other order as the court considers appropriate.

India

Yes. The Companies Act, 1956 is the primary law governing corporate governance in India. Additionally, the Securities and Exchange Board of India (SEBI) has also mandated compliance relating to corporate governance for listed companies. The various laws/regulations/rules/guides that govern the enforcement of corporate governance in India are:

- The Companies Act, 1956 wherein the fundamental principles of corporate governance relating to shareholder rights, disclosure and transparency, and Board responsibility have been enshrined;

  - Regulations/guidelines issued by SEBI, the securities market regulator in India;

  - Clause 49 of the Listing Agreement executed between the stock exchanges and those entities seeking listings;

  - Regulators, such as the Reserve Bank of India and the Insurance Regulatory Development Authority, also prescribe corporate governance guidelines applicable for banking and insurance companies, respectively;

  - The Ministry of Corporate Affairs (MCA) introduced the Voluntary Guidelines on Corporate Governance in 2009, a set of best practices to develop ethical and responsible standards in the Indian industry;

  - The Serious Fraud Investigation Office was set up with the backdrop of stock market scams, failure of non-financial banking companies, and phenomena of vanishing companies and plantation companies to alleviate lapses in good corporate governance; and

  - The National Foundation for Corporate Governance, the top national body on corporate governance issues, was established in 2003 by the MCA to act as a platform for deliberation on issues relating to corporate governance and sensitise corporate leaders on the importance of “good corporate governance, self-regulation and directorial responsibilities”.
(a) Related party transactions:

The Companies Act, 1956 imposes certain conditions through various sections for transactions in which directors have an interest.

Section 297 requires board approval for directors entering into any contract or arrangement with the related parties. However this section will cover only transactions relating to the sale, purchase or supply of any goods, materials and services, or for underwriting the subscription of any shares in, or debentures of, the company.

Further, there is a requirement to obtain central government approval if the company has more than INR 1 crore (1 crore = 10 m) paid-in capital.

At the same time, section 297 (2) provides exemption from obtaining approvals if (a) the purchase/sale is for cash and at prevailing market prices, (b) the contract relates to goods, materials and services regularly traded or the contract is worth less than INR 5 000, and (c) in the case of a banking or insurance company, any transaction in the ordinary course of business of such a company.

Section 299 imposes duty on directors to disclose their interest in other concerns to the board of directors before entering into any contract with related parties. Section 299 is much wider than section 297 since it covers any contract or arrangement with entities in which a director is concerned or interested. The only exception is where directors of one company taken together have less than 2% of paid-in capital of another company.

Section 299 (1) requires that notice of such interest be disclosed by the directors. Section 299 (3) allows for a general notice of interest, which shall be valid for one year and can be renewed for a further period of one year in the last month of the financial year. Such general notice and renewal should also be given in the board meeting.

Section 300 disallows the director to participate in voting when a board resolution is passed relating to any business in which he/she is interested. The main intentions behind these sections are to prevent personal gain by the interested director.

The Companies (Accounting Standards) Rules, 2006 governs Accounting Standard 18 on “related party disclosures”, with attention focused on transactions with the directors or similar key management personnel of an enterprise, especially their remuneration and borrowings, because of the fiduciary nature of their relationship with the enterprise.

The following disclosures are required:

- The name of the related party and nature of the related party relationship where control exists should be disclosed irrespective of whether or not there have been transactions between the related parties; and

- If there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following:

  (i) The name of the transacting related party;
  (ii) A description of the relationship between the parties;
  (iii) A description of the nature of transactions;
(iv) The volume of the transactions either as an amount or as an appropriate proportion;
(v) Any other elements of the related party transactions necessary for an understanding of the financial statements;
(vi) The amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and
(vii) Amounts written off or written back in the period with respect to debts due from or to related parties.

(b) Disclosure of beneficial ownership and financial information:

The Revised Schedule VI to the Companies Act, 1956 became applicable to all companies for the preparation of financial statements from April 2011. The Revised Schedule VI seeks to provide increased disclosure of beneficial ownership and financial information by requiring the following:

– A company shall disclose details with respect to shares of each class (both within equity and preference shares) in the company held by:

   (i) Its holding company;
   (ii) Its ultimate holding company;
   (iii) Subsidiaries of its holding company;
   (iv) Subsidiaries of its ultimate holding company;
   (v) Associates of its holding company; and
   (vi) Associates of its ultimate holding company.

– Further, the company shall also disclose the details with respect to shares in the company held by each shareholder holding more than 5% shares at the balance sheet date specifying the number of shares held. Companies should disclose the shareholding for each class of shares, both within equity and preference shares. Accordingly, such percentage should be computed separately for each class of shares outstanding within equity and preference shares. This information should also be given for the comparative previous period.

The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 also require disclosures. Clause D (2) (o) of Part A of Schedule VIII requires the following disclosures in the red herring prospectus, shelf prospectus and prospectus with respect to major shareholders:

(i) The names of the ten largest shareholders of the issuer as of the date of registering the offer document with the Registrar of Companies;
(ii) The number of equity shares held by the shareholders specified in clause (i), including the number of equity shares which they would be entitled to upon exercise of warrant, option or right to convert a debenture, loan or other instruments;
(iii) The particulars specified in items (i) and (ii) as of a date two years prior to the date of registering the offer document with the Registrar of Companies;
(iv) The particulars specified in items (i) and (ii) as of a date ten days prior to the date of registering the offer document with the Registrar of Companies; and
(v) If the issuer has made an initial public offer of specified securities within the immediately preceding two years prior to filing draft offer document with the board, the particulars specified in items (i), (ii), (iii) and (iv) shall be disclosed to indicate separately the names of the persons who acquired equity shares by subscription to the public issue and those who acquired the equity shares by allotment on a firm basis or by private placement.

Clause 35 of the Listing Agreement also provide for quarterly disclosure of shareholding patterns of listed companies to be submitted within 21 days from the end of the quarter. The shareholding details are to be segregated into ‘promoter and promoter group holding’ and ‘public holding’, with detailed disclosures to be made with respect to shareholders holding more than 1% of the total number of shares in the company.

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 provides for the following disclosures to be made with respect to acquisition and disposal of shares. The disclosure requirements are enumerated as follows:

(i) Regulation 29 (1): Any acquirer who acquires shares or voting rights in a target company which, taken together with shares or voting rights, if any, held by him/her and by persons acting in concert with him/her in such a target company, aggregating to 5% or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such a target company in such form as may be specified;

(ii) Regulation 29 (2): Any acquirer, who together with persons acting in concert with him/her, holds shares or voting rights entitling them to 5% or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such a target company representing 2% or more of the shares or voting rights in such a target company in such form as may be specified;

(iii) Regulation 29 (3): The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office;

(iv) Regulation 30 (1): Every person, who together with persons acting in concert with him/her, holds shares or voting rights entitling him/her to exercise 25% or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the 31 of March, in such a target company in such form as may be specified;

(v) Regulation 30 (2): The promoter of every target company shall together with persons acting in concert with him/her, disclose their aggregate shareholding and voting rights as of the 31 day of March, in such a target company in such form as may be specified; and

(vi) Regulation 30 (3): The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,
(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

(c) Directors’ fiduciary duties:

The Companies Act, 1956 provided in spirit that the directors are expected to carry out their fiduciary duties in a fair and transparent manner. However, such duties were not codified in the Act. However, the Companies Bill, 2012 which replaced the existing Companies Act, 1956 in August 2013 explicitly lays down duties of directors. Clause 166 of the Companies Bill, 2012 provides that:

A director of a company shall:

- Act in accordance with the articles of the company;

- Act in good faith in order to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment; and

- Exercise his/her duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

A director of a company shall not:

- Involve in a situation in which he/she may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;

- Achieve or attempt to achieve any undue gain or advantage either to himself/herself or to his/her relatives, partners, or associates and if such a director is found guilty of making any undue gain, he/she shall be liable to pay an amount equal to that gain to the company; and

- Assign his/her office and any assignment so made shall be void.

The Bill also includes a code for independent directors which, among others, lays down guidelines for professional conduct, roles and functions and duties of independent directors. Clause 149 (8) of the Bill mandates company and independent directors to abide by provisions specified in the said code for independent directors.

**Indonesia**

(a) In the Indonesian capital market, the basic framework to strengthen good corporate governance is Law Number 8 Year 1995 regarding Capital Market (UUPM). Based on that
Law, transactions that contain affiliated parties are further regulated by Rule Number IX.E.1 regarding Affiliated Party Transaction and Conflict of Interest on a Certain Transaction.

(b) In the Indonesian capital market, disclosure of information concerning substantial and controlling shareholders of issuers and public companies, either directly or indirectly, down to their individual shareholders is regulated by Rule Number X.K.6 regarding Obligation to Submit Annual Report for Issuers or Public Companies. Disclosure of financial information of issuers and public companies is regulated by Rule Number X.K.2 regarding Obligation to Submit Periodic Financial Statements (Rule No. X.K.2) and rule Number VIII.G.7 regarding Guideline for the Preparation of Financial Statement.

In addition, during the IPO process, the Financial Services Authority (OJK), requires issuers to disclose ultimate shareholders in the prospectus.

(c) Directors’ fiduciary duties are regulated by:

- Rule Number X.K.6 regarding Obligation to Submit Annual Report for Issuers or Public Companies (Rule No. X.K.6);
- Rule Number VIII.G.11 regarding the Responsibility of Board of Director on Financial Statement (Rule No. VIII.G.11);
- Rule Number IX.J.1 regarding the Main Substances of Articles of Association of Company Performing a Public Offering and Public Company (Rule No. IX.J.1); and
- Rule Number IX.I.6 regarding Director and Commissioner of Issuers and Public Companies (Rule No. IX.I.6).

Korea

(a) In the Commercial Act, it is stipulated that transactions between a company and its directors and their related parties must be approved by the board of directors.

In addition, as a special case in the Commercial Act, no listed company shall grant credit (leasing a property with economic value, guaranteeing the performance of obligations or purchasing securities intended for supporting funds) to or for its principal shareholders, directors and auditors.

When a company belonging to a large business conglomerate transacts with related parties for no less than KRW 5 billion, the transaction must be approved by the board of directors ex ante, according to the Monopoly Regulation and Fair Trade Act.

(b) According to the Commercial Act, beneficial owners should have a responsibility as shareholders.

When corporations close the shareholder roster, decide the closing date to exercise shareholder rights or determine the deputy who exercises shareholder rights for dividend
beneficiaries, the Korea Securities Depository (KSD) should notify the corporations the related contents about beneficial owners within the closing period of the shareholder roster. Contents to notify include the name and address of the beneficial owner, and the stock type and amount held by the beneficial owner, according to the Capital Market and Financial Services Act (“Capital Market Act”).

The Capital Market Act stipulates that listed companies should disclose the financial information in the quarterly, semi-annual and annual reports, and large non-listed companies are requested to disclose it in the audit report.

(c) Directors of a company are charged with fiduciary duties and the duty of loyalty to the company. The Civil Act stipulates that a delegate should deal with authorised work with the care of an honest manager. Directors have fiduciary duties to the company in line with the provisions of the Civil Act regarding delegation, according to the Commercial Act.

The Commercial Act provides that directors should faithfully perform their work for companies according to the related laws and bylaws.

Malaysia

The Companies Commission Malaysia (CCM), Securities Commission Malaysia (SC), Bank Negara Malaysia (BNM) and Bursa Malaysia Berhad have clear areas of authority in enforcement of corporate governance. The major laws, regulations, rules and guides which form the framework for enforcement of corporate governance in Malaysia are:

The Companies Act 1965 and amendments in 2007 (CA 1965);

- Banking and Financial Institution Act of 1989;
- Development Financial Institutions Act 2002;
- The Financial Reporting Act of 1997;
- Capital Markets and Services Act 2007 (CMSA 2007);
- Bursa Malaysia Listing Requirements;
- Securities Commission Act 1993 (SCA 1993); and
- Malaysian Code on Corporate Governance 2012.

(a) Related party transactions:

Listing Requirements (LR): Related party transactions (RPTs) are covered under the LR.

- The LR defines related parties to include directors, shareholders with 10% or more of shares and persons or companies connected with them; and
They also set threshold requirements for transactions involving related parties. The requirements on disclosure become stricter with a higher percentage ratio:

(i) If the percentage ratio is more than 0.25%, the RPT is required to be announced as soon as possible after the terms have been agreed;

(ii) An RPT with a percentage ratio of more than 5% requires issuance of a circular containing the prescribed information to the shareholders and shareholders’ approval must be obtained at a general meeting, and an independent adviser should be appointed to comment on the fairness and reasonableness of the transaction and whether the transaction is to the detriment of minority shareholders; and

(iii) For an RPT with a percentage ratio of more than 25%, a principal adviser must be appointed to ensure that the transaction is fair and reasonable and not to the detriment of minority shareholders.

In all RPT cases, interested parties must abstain from voting at the general meeting and the audit committee’s views on whether the transaction is in the best interest of the listed issuer, is fair and reasonable, and not detrimental to the interest of minority shareholders, must be included in the announcement and circular.

Companies Act 1965 (CA 1965): The provisions relating to RPTs under the CA are as follows:

- Every director who is directly or indirectly interested in a contract or proposed contract with the company must disclose the nature of his interest at a meeting of the directors and shall not participate in any discussion or vote on the matter at the board meeting;

- A director or officer of the company shall not, without the consent of a general meeting, use the company’s property, any information acquired by virtue of his/her position as director or officer of the company, any opportunity of the company, or engage in business which benefits himself/herself or is detrimental to the company;

- A director or substantial shareholder (5% or more) shall not acquire or dispose shares or non-cash assets or the requisite value, from or to the company unless prior approval in a general meeting has been obtained; and

- A company shall not make a loan to a director or person connected to such director, or enter into any guarantee or provide any security in connection with a loan made to such director or person connected, by any other person.

Malaysian Financial Reporting Standards (MFRS): The MFRS requires RPTs to be disclosed in the annual report.

(b.1) Disclosure of beneficial ownership:

Listing Requirements

- A listed issuer must immediately announce any notice relating to substantial shareholding or directors’ shareholding and any change of control in the listed issuer;

- A listed issuer must disclose the detailed information in its annual report which includes:
(i) Names of substantial shareholders and directors, and their direct and deemed interests;
(ii) Number of holders of each class of equity securities and any convertible securities and the voting rights attaching to each class;
(iii) Distribution schedule of each class of equity securities and any convertible securities; and
(iv) Names of the top 30 shareholders from each class of equity securities and convertible securities according to the Record of Depositors.

− The listed issuer must furnish information on direct and indirect holdings of directors, and details of distribution of shareholdings in its submission of semi-annual returns to Bursa Malaysia;

− The listed issuer must disclose, among others, the following in the circular on RPTs to shareholders:

   (i) The effects of the RPT on the share capital and substantial shareholders’ shareholdings based on the latest practicable date;
   (ii) Where the RPT is an acquisition, the name and principal activity of the vendor (if the vendor is a corporation), and the names of its directors and substantial shareholders together with their respective shareholdings;
   (iii) Whether the directors and/or major shareholders and/or persons connected with a director or major shareholder, have any interest, direct or indirect, in the transaction and the nature and extent of their interests; and
   (iv) Where the RPT is an acquisition of another corporation, details of the other corporation, including particulars of the directors and substantial shareholders such as their direct and indirect shareholdings; and

− Before a director or principal officer (of a listed issuer or its major subsidiary can deal in listed securities during or outside the closed period, the affected company must announce the affected person’s current holdings of securities in the affected company and the number of securities involved in the dealing, both in absolute terms and as a percentage of all issued securities.

Capital Markets and Services Act 2007 (CMSA 2007)

− The CMSA imposes an obligation on the chief executive or director of a listed corporation who has an interest in the securities of such listed corporation or any of its associated corporations to notify the listed corporation of the subsistence and extent of his/her interest in the listed corporation or associated corporation at that time; and

− The triggering of certain events affecting extent of ownership requires notification by the chief executive or director. This include events when he/she becomes or ceases to be interested in securities of the listed corporation or its associated corporation, enters into a contract to purchase or sell any securities in the listed corporation or associated corporation, assigning rights to subscribe for securities in the listed corporation to any other person and exercising rights to subscribe for securities in associated corporation, etc.
The Malaysian Code on Take-Overs and Mergers (TOM Code)

- The TOM Code requires an offeror of a takeover offer to disclose the following information in the offer document:
  
  (i) The identity of the ultimate offeror;
  
  (ii) The names of the ultimate beneficial shareholders;
  
  (iii) The names of the persons acting in concert with the offeror;
  
  (iv) Information regarding the offeror and the extent of his/her holding; and
  
  (v) Details of any purchase of the offeror’s own voting shares, voting rights or convertible securities, including dates and prices, during six months prior to the beginning of the offer period and ending with the latest practicable date.

Securities Industry (Central Depositories) Act 1991 (SICDA) and the Rules of Bursa Malaysia Depository (Depository Rules)

- The SICDA requires that every securities account opened with the central depository be in the name of the beneficial owner of the deposited securities or in the name of an authorised nominee;

- The Depository Rules further provide that the authorised nominee must:
  
  (i) Stipulate the name of the beneficial owner in the prescribed application form for account opening; and
  
  (ii) Furnish to the central depository the name and other particulars of the beneficial owner of the securities opened in the name of the authorised nominee;

- If an authorised nominee fails to provide the information required by the central depository, the securities account held by the authorised nominee may be suspended for such period as may be specified by the central depository, or issue any instruction or directive or impose any condition on the authorised nominee as the central depository deems fit; and

- Thus, even though custodians and nominee companies are allowed to operate omnibus accounts, they are under an obligation to disclose the beneficial owner of the securities upon request of the regulator. They will be subject to sanctions if they fail to comply with this duty.

Companies Act 1965

Disclosure of shareholdings:

- Every company must maintain a register of its members which is open for inspection by any member free of charge. The register must contain detailed information, such as the personal particulars, the number of shares held by each member and the amount paid or agreed to be considered as paid on the shares of each member; the date at which the
person became a member or ceased to be a member; and the date of every allotment of shares to members and the number of shares comprised in each allotment.

Disclosure of substantial shareholdings:

– The CA 1965 also requires that every company maintain a register of its substantial shareholders containing the following information:

(i) Names, nationality, addresses and full particulars of the voting shares in the company in which the substantial shareholder has interests and circumstances by reason of which he/she has that interest;

(ii) Full particulars of the change in the interests, including the date and the circumstances by reason of which the change occurred; or

(iii) The date on which he/she ceased to be a substantial shareholder and full particulars of the circumstances by reason of which he/she ceased to be a substantial shareholder;

– The substantial shareholder has a duty to ensure that a notice is sent to the company on his/her substantial interest and any change in his/her substantial interest, including if he/she ceases to be a substantial shareholder; and

– Listed company has the power to require disclosure of beneficial interest in its voting shares. It may require any of its member to disclose:

(i) Whether the member holds any voting shares in the company as beneficial owner or trustee;

(ii) If the member holds as trustee, to indicate so far as reasonably possible, the beneficiaries by particulars sufficient to enable them to be identified and the nature of their interest; and

(iii) Require any member to disclose whether any of the voting rights carried by any voting shares in the company held by the member are the subject of any agreement or arrangement under which another person is entitled to control his/her exercise of those rights and, if so, to give particulars of the agreement or arrangement and the parties.

Disclosure of directors’ interest:

– The Companies Act requires that every company must maintain a register of directors’ shareholdings containing particulars of the following:

(i) Shares, debentures or participatory interests of the company or its related corporation held by the director;

(ii) Interests that the director has in such shares, debentures or participatory interests of the company or its related corporations;
(iii) Rights or options of the director and other person in respect of the acquisition or disposal of shares in, debentures of or participatory interests made available by the company or a related corporation; and

(iv) Contracts to which the director is a party or under which he/she is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in, debentures of or participatory interests made available by the company or related corporation.

(b.2) Disclosure of financial information:

– The LR imposes an obligation on listed issuers to announce their quarterly reports to Bursa Malaysia. The report must include, among others, a detailed analysis of the performance of all operating segments of the group, material factors affecting the earnings and/or revenue of each segment for the current quarter and financial year-to-date, and a commentary on the prospects, including the factors that are likely to influence the listed issuer’s prospects for the remaining period to the end of the financial year, status of corporate proposal announced but not completed and status of on-going and pending material litigations; and

– A listed issuer must issue its annual reports that include annual audited financial statements together with the auditors’ and directors’ reports of the listed issuer. The contents of an annual report must include, among others, remuneration of directors within certain bands. The chairman’s statement representing the board of directors’ collective discussion and analysis of the listed issuer’s performance during the year and material factors underlying its results and financial position, with emphasis on trends and identifying significant events or transactions during the year under review, particulars of related party transactions, and sanctions imposed by regulatory bodies, must also be disclosed. The periodic reports will be posted on the Bursa Malaysia’s website for public information.

(c) Directors’ fiduciary duties:

– Under the CA 1965, a director of a company shall at all times exercise his/her powers for a proper purpose and in good faith in the best interest of the company. The duty to act “in good faith” is a subjective duty, and there is no breach where the directors act in what they honestly believe to be in the interest of the company. Acting for the benefit of the company means that directors must act in the interests of the shareholders as a collective group; and

– Section 132 (5) makes it clear that the statutory duty to act honestly and with diligence is in addition to any other written law or rule of law relating to the duties or liabilities of directors as officers of a company. As such, the formulation of the scope of directors’ fiduciary duties currently required by the law that finds expression in section 132 (1) operates in parallel with the existing common law. In addition to statutory laws, precedents set out by case laws are also binding/persuasive in certain instances. Typically, the law will set out the principle while case law provides the interpretation.
Mongolia

Corporate governance practices in Mongolia are governed by a legal and regulatory framework which includes the Company Law, Banking Law (for banking institutions), Securities Market Law, Mongolian Corporate Governance Code and various rules issued by regulators, such as Mongolbank and the Financial Regulatory Commission (FRC). The newly adopted Securities Market Law is a major law regulating securities market in Mongolia. Based on this law, the FRC has also adopted new listing rules for listed companies. The Company Law regulates all Mongolian incorporated companies, whether listed or unlisted. The FRC is the primary agency responsible for enforcement of laws and regulations for listed companies.

(a) Related party transactions are governed by articles 89-93 of the Company Law, which specify who this person shall be, how a guilty person should compensate for losses arising from conflict-of-interest transactions, what should be the requirements for a person to conclude related party transactions as well as procedures to conclude such transactions, and what would be the consequences of breaching the procedures.

(b) Currently, Mongolia does not have regulations on disclosure of beneficial ownership and financial information. But according to the Securities Market Law, the name of the beneficial owner shall be maintained by the issuer of depository receipts.

(c) Directors’ fiduciary duties are governed by the Banking Law and article 84 of the Company Law. In particular, the Company Law states that directors are obliged to execute the powers within the scope of their authority as specified in the law, the company’s charter and regulations to respect the interests of the company in their activities, and to completely execute their duties specified in this law and the company’s charter to make decisions in compliance with the interests of the company. They must also avoid conflicts of interest when making decisions and disclose any conflicts of interest, must not receive any gift or remuneration when implementing their duties/function, must not disclose confidential information of the company to others, or use such information for their personal interests.

Pakistan

Legal framework for enforcement of corporate governance in Pakistan: Pakistan has a multifaceted corporate governance regime in shape of statutes approved by the parliament, rules approved by the federal government, regulations made by the Securities and Exchange Commission of Pakistan (SECP) and listing regulations of the exchanges as approved by the SECP. The legal framework for enforcement of corporate governance encompasses the following:

Companies: The Companies Ordinance, 1984 (CO 1984) is the primary corporate law that sets out the framework for corporate governance, i.e. structure of the legal entity, requirements for framing and amending constitutive documents, role and responsibilities of the board of directors and management, financial disclosure, approval, recording and disclosure of related party transactions, issuance and recording of share capital, the definition of statutory positions within a company, i.e. chairman, director, CEO, CFO and company secretary, matters requiring and procedure to be followed
for shareholder approval, reporting of shareholding pattern, etc. The CO 1984 also provides for enforcement powers with respect to inquiry or investigation into affairs of a company along with penal provisions.

Banks also have to follow all the requirements of the CO 1984 and listing framework in case they are listed on a stock exchange. In addition, being the banking sector regulator, the State Bank of Pakistan (SBP) has prescribed either higher or additional corporate governance requirements on the banks. These requirements are solely monitored by the SBP as, generally, these are peculiar to banking activity/business such as risk management, internal controls, etc.

Capital markets: The Securities and Exchange Ordinance (SEO), 1969 is the primary law for the capital market. It not only lays down the structure of the market, i.e. conditions for registration of exchanges, brokers and their roles, responsibilities, reporting requirements, etc., but also provides the framework for investor protection, prevention of fraud and insider trading, listing of securities on exchanges and penal provisions in case of violation. All regulations of the exchanges, including listing regulations and the Code of Corporate Governance are approved by the SECP under this law.

The Takeover Ordinance 2002: This is also a primary law that establishes additional disclosure and takeover-related requirements on persons with respect to listed companies. Any shareholder (includes both natural and legal) crossing a 10% threshold either directly or indirectly has to make a public announcement through the stock exchange where the company is listed. Similarly, on crossing the 25% threshold, other takeover requirements are triggered, including public offer to buy shares.

Listing regulations: These are framed under the SEO 1969 and provide for the listing of companies on the exchanges. In addition to establishing listing requirements, these lay down trading requirements for directors, CEO and other statutory employees such as reporting of trading to the exchanges, etc. In addition to trading requirements, these regulations mandate a listed company to make all announcements of material information, including financials and corporate affairs, immediately through the stock exchange before any other medium.

Code of Corporate Governance: The Code of Corporate Governance was introduced by the SECP in early 2002 through inclusion in the listing regulations. The Code has undergone a major revision in 2012, and compliance by all public listed companies has been made mandatory. The stock exchanges are responsible for enforcing the Code and can delist or suspend non-compliant companies or impose fines for each default. It is applicable to all listed banks as well. However, the SBP as the banking regulator has made it mandatory even for non-listed banks.

The Code provides guidelines on the principles and best practices in corporate governance, and addresses the complexities of the corporate sector in Pakistan. It ensures the implementation of effective corporate strategies, embedding the basic principles of fairness, transparency and accountability which safeguard the interest of all stakeholders, and especially minority shareholders.

The Code 2012 includes many recommendations in line with international best practices. Major areas of focus include (i) a mandatory requirement to have at least one independent director on the board of directors; (ii) the maximum number of executive directors on the board decreased to one-third of elected directors, including the CEO; (iii) a requirement on the board to perform self-evaluation; (iv) separation of the offices of the chairman and the CEO; and (v) mandatory training of directors on the board.
Rules for SOCs: The SECP has very recently introduced, with the approval of federal government, rules on corporate governance for state-owned companies (SOCs). These are applicable to listed, as well as non-listed SOCs.

(a) Related Party Transactions (RPTs):

A regime for related party transactions has been developed in the law, including the CO 1984 and the Code.

The company law requires shareholder approval of certain related-company investments (CO 1984, section 208). Companies cannot make any investment in any of their “associated companies or associated undertakings” without a special 75% super majority resolution at the shareholders meeting. By law, the board and the audit committee must approve any departure from arms-length pricing (prescribed in the Code).

Pakistan follows IAS 24, which ensures that financial statements disclose the existence of related party transactions. The law requires the audit committee to concur with any departures from arms-length pricing and approval by a supermajority of shareholders in the case of investment in “associated companies or associated undertakings.” Auditors are expected to certify that the firm has followed certain valuation practices to determine transfer prices and that those valuation processes were used properly. However, in practice, auditors do not certify and consider this to be out of the audit scope.

The Code requires the concurrence of the audit committee on all related party transactions before the board’s review and approval of RPTs. Management must explain any RPT which are not executed at arm’s length pricing while seeking board approval of RPTs. The board will approve the pricing methods for RPTs that were made on the terms equivalent to those that prevail at arm's length transaction only if such terms can be substantiated. Listed companies are required to maintain a list of RPTs, which must be presented to the audit committee, the board and the auditor.

(b) Disclosure of beneficial ownership and financial information:

Companies Ordinance: The shareholders/beneficial owners of companies are required to disclose personal shareholding information to the SECP under the CO 1984. This becomes a part of company records with the SECP and is public information. It is also ensured that adequate information on the ownership (beneficial) and control of legal persons is submitted by every company through the filing of the annual list of members (section 156 of the CO 1984) as prescribed (Form A, Third Schedule to the CO1984) by the SECP.

The CO 1984 under section 222 and Form 31 stipulates specific requirements for disclosure of “beneficial ownership” holdings of listed companies (whether held directly or indirectly) where the holding represents 10% or more of the equity securities in that company. The information that is to be disclosed includes the number, amount and description of any shares in the listed company which are held by, or in trust for him/her, or of which he/she has a right to become a holder, whether on payment or not.

Section 224 expands the disclosure requirements of section 222 by providing that the beneficial ownership of securities of a person shall be deemed to include the securities beneficially owned, held or controlled by him/her or his/her spouse or by any of his/her dependents, lineal ascendants or descendants. For these purposes, “control” in relation to
securities means the power to exercise a controlling influence over the voting power attached to the shares. Beneficial owners required to disclose their interest under section 222 are also required to notify the SECP of any changes in their beneficial interest.

The Takeover Ordinance requires public disclosure of aggregate shareholding of beneficial owners of more than 10% voting shares in a listed company to the stock exchanges.

The Listing Regulations require a company to furnish a complete list of all its security holders as of 31 December in each calendar year, duly affirmed to be correct as and up to that date, within 30 days thereof. Failure to comply shall be deemed a violation of the regulations and, in addition, such company shall be liable to pay a sum of PKR 1 000 per day for each day of default.

Financial disclosure: The CO 1984 specifies financial reporting requirements. The financial statements must include a balance sheet, income and cash flow statements, changes in equity and explanatory notes, and must be accompanied by an auditor’s report and a directors’ report. The CO 1984 also requires the publication and circulation of quarterly unaudited financial statements along with a directors’ report (section 245). Banks are also separately required to produce quarterly reports.

The Code requires additional disclosure, including corporate plans and decisions, investments, director attendance at board meetings, pattern of shareholding, and trading in shares of the company by directors, the chief executive, other executives and their spouses and minor children. Further, the Code requires second-quarter financial statements, which are subject to limited scope review by the statutory auditor and also requires the immediate dissemination to the stock exchanges of all material information that will affect the market price of the firm.

(c) Directors’ fiduciary duties:

Existing fiduciary duties are based primarily on the provisions of the CO 1984 which specify some fiduciary duties. Directors may be declared to lack “fiduciary behaviour” if they fail to disclose conflicts of interest with company transactions or, if when conflicted, they vote at board meetings (CO 1984, section 214-217). The CO 1984 provisions on conflicts of interest implicitly require that the affairs of the company must not be conducted in an unlawful or fraudulent manner, or in a manner not provided for in the articles, or in a manner oppressive to shareholders or creditors or prejudicial to the public interest.

Further, the chief executive cannot engage, directly or indirectly, in a business competing with the company’s business (CO 1984, section 203). Directors and officers must disclose “direct or indirect concerns or interests in any contract or arrangement entered into or to be entered into by or on behalf of the company” (CO 1984, sections 214 and 215). Directors who have an interest in a certain transaction are not allowed to discuss or vote on the matter in board meetings (CO 1984, section 216). Violations of these rules could result in (small) financial penalties or in a court declaring a director as “lacking fiduciary behaviour”.

The Code provides that directors of listed companies must exercise their powers and carry out their fiduciary duties with a sense of objective judgment and independence in the best interests of the listed company. The Code also requires directors to confirm at the time of election that they are aware of their duties under the law, company bylaws and listing rules.
In addition to this, the Code has made it mandatory for directors of listed companies to undertake directors training programmes from institutions approved by the SECP.

Banks/Development Finance Institutions cannot (without prior approval of the SBP) enter into any kind of transaction with their directors, officers, employees or persons who either individually or in concert with family members beneficially own 5% or more of the equity of the bank (Prudential Regulation G2).

Philippines

The Securities Exchange Commission approved the promulgation of the Revised Code of Corporate Governance on 18 June 2009. This provides a framework of rules, systems and processes in a corporation to govern the performance of the board of directors and management in their respective duties and responsibilities to stockholders. The Code applies to registered corporations and to branches or subsidiaries of foreign corporations operating in the Philippines that (a) sell equity and/or debt securities to the public that are required to be registered with the Commission, (b) have assets in excess of PHP 50 million and at least 200 stockholders who own at least 100 shares each of equity securities, (c) whose equity securities are listed on an exchange; or (d) are grantees of secondary licences from the Commission.

(a) Related party transactions:

Relationships between a parent and its subsidiaries shall be disclosed irrespective of whether there have been transactions between them. An entity shall disclose the name of its parent and, if different, the ultimate controlling party. If neither the entity’s parent nor the ultimate controlling party produces consolidated financial statements available for public use, the name of the next most senior parent that does so shall be disclosed. (Philippine Accounting Standard (PAS) 24, par. 13)

If an entity has had related party transactions during the periods covered by the financial statements, it shall disclose the nature of the related party relationship as well as information about those transactions and outstanding balances, including commitments, which are necessary for users to understand the potential effect of the relationship on the financial statements. These disclosure requirements are in addition to those in paragraph 17 of PAS 24. At a minimum, disclosures shall include:

- Amount of the transactions;
- Amount of outstanding balances and;
  
  (i) Their terms and conditions, including whether they are secured and the nature of the consideration to be provided in settlement; and
  
  (ii) Details of any guarantees given or received;
- Provisions for doubtful debts related to the amount of outstanding balances; and
– The expense recognised during the period with respect to bad or doubtful debts due from related parties (PAS 24, par. 18).

(b) Disclosure of beneficial ownership and financial information:

Securities Regulation Code Section 18.1:

Reports by 5% holders of equity securities. In every case in which an issuer satisfies the requirements of Subsection 17.2 hereof, any person who acquires directly or indirectly a beneficial ownership of more than 5% of such class or in excess of such lesser per centum as the Commission by rule may prescribe, shall, within ten days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the security, to the exchange where the security is traded and to the Commission a sworn statement containing the following information and such other information as the Commission may require in the public interest or for the protection of investors:

– The personal background, identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases are effected; in the event the beneficial owner is a juridical person, the lines of business of the beneficial owner shall also be reported;

– If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such person may have that will effect a major change in its business or corporate structure;

– The number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by: (i) such person, and (ii) each associate of such person, giving the background, identity, residence and citizenship of each such associate; and

– Information as to any contracts, arrangements, or understanding with any person with respect to any securities of the issuer, including but not limited to transfer, joint ventures, loan or option arrangements, puts or calls, guarantees or division of losses or profits, or proxies naming the persons with whom such contracts, arrangements, or understanding have been entered into, and giving the details thereof.

Section 18.2: If any change occurs in the facts set forth in the statements, an amendment shall be transmitted to the issuer, the exchange and the Commission.

Section 18.3: The Commission, may permit any person to file in lieu of the statement required by Subsection 17.1 hereof, a notice stating the name of such person, the shares of any equity securities subject to Subsection 17.1 which are owned by him/her, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his/her business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with any transaction having such purpose or effect.

Section 23.1: Transactions of directors, officers and principal stockholders. Every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security shall file a statement with the Commission and, if such security is listed for
trading on an exchange, also with the exchange, of the amount of all equity securities of such issuer of which h/she is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission and, if such security is listed for trading on an exchange, shall also file with the exchange, a statement indicating his/her ownership at the close of the calendar month and such changes in his/her ownership as have occurred during such calendar month.

Section 23.2: For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his/her relationship to the issuer, any profit realised by him/her from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted before the regional trial court by the issuer, or by the owner of any security of the issuer in the name and on behalf of the issuer, if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

Section 23.3: It shall be unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such issuer if the person selling the security or his principal: (a) does not own the security sold; or (b) if owning the security, does not deliver it against such sale within 20 days thereafter, or does not within five days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he/she proves that, notwithstanding the exercise of good faith, he/she was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

(c) Directors’ fiduciary duties:

The board of directors is primarily responsible for the governance of the corporation. Corollary to setting the policies for the accomplishment of the corporate objectives, it shall provide an independent check on management. The SEC Memorandum Circular No. 6, Series of 2009 provides that a director should observe the following norms of conduct:

− Conduct fair business transactions with the corporation, and ensure that his/her personal interest does not conflict with the interests of the corporation;

− Devote the time and attention necessary to properly and effectively perform his/her duties and responsibilities;

− Act judiciously;

− Exercise independent judgment;
– Have a working knowledge of the statutory and regulatory requirements that affect the corporation, including its articles of incorporation and by-laws, the rules and regulations of the Commission and, where applicable, the requirements of relevant regulatory agencies; and

– Observe confidentiality.

**Singapore**

Companies Act (CA): The CA is the primary legislation that governs the companies incorporated in Singapore

Securities and Futures Act (SFA): The SFA is the primary legislation that governs the regulation of activities and institutions in the securities and futures industry

SGX Listing Rules (LR): The LR applies to all listed companies in Singapore

Code of Corporate Governance for Listed Companies: The Code is a guide and applies to listed companies in Singapore on a “comply or explain” basis

Laws/regulations/rules/guides governing the Specific CG Areas:

(a) Related party transactions: The LR and CA.

(b) Disclosure of beneficial ownership and financial information: The Code, CA, LR and SFA.

(c) Directors’ fiduciary duties: The CA.
Chinese Taipei

Yes. The Company Act, the Securities and Exchange Act, the rules and regulations promulgated by the Financial Supervisory Commission (FSC or regulator), the listing rules of the Taiwan Stock Exchange (TWSE) and the GreTai Securities Market (GTSM) and their codes of corporate governance best practice are guides which form the framework for CG enforcement in Chinese Taipei. The Company Act is the primary law applying to all public and non-public companies, while the Securities and Exchange Act and the regulator’s rules and regulations supplement the Company Act, regulating all public companies. Public companies applying to be listed on the TWSE or GTSM need to follow the listing rules, including higher CG standards required by the two exchanges.

(a) Related party transactions are governed by:

- The Company Act;
- The Securities and Exchange Act;
- Regulations Governing the Acquisition and Disposal of Assets by Public Companies;
- Regulations Governing Loaning of Funds and Making of Endorsements/Guarantees by Public Companies;
- Regulations Governing the Preparation of Financial Reports by Securities Issuers;
- Regulations Governing Information to be Published in Annual Reports of Public Companies;
- Regulations Governing Information to be Published in Public Offering and Issuance Prospectuses; and
- The information disclosure rules of the TWSE and GTSM.

(b) Disclosure of beneficial ownership and financial information is governed by:

- The Securities and Exchange Act;
- Regulations Governing Information to be Published in Annual Reports of Public Companies;
- Regulations Governing Information to be Published in Public Offering and Issuance Prospectuses; and
- Regulations Governing the Preparation of Financial Reports by Securities Issuers.

(c) The Company Act governs directors’ fiduciary duties.
The laws, regulations, rules and guides which form the framework for enforcement of CG in Thailand are:

- The Public Limited Company Act (PCA) 1992;
- The Securities and Exchange Act (SEA), the main enforcement tool for listed companies which covers issues on disclosure, fiduciary duties, fraud, and takeover provisions;
- The Stock Exchange of Thailand’s Listing and Disclosure Rules;
- The Accounting Law 2000;
- Regulations on Corporate Governance in Financial Institutions 2009, which apply to banks under the Financial Institutions Act; and
- The Principles of Good Corporate Governance for Listed Companies, which provides the basis for the comply-or-explain regime under the Securities and Exchange Commission’s disclosure requirement on CG.

In general, the PCA is the fundamental framework for CG in Thailand. It applies to all public companies, regardless of whether their shares are listed on the securities exchange. The authority which administers and enforces the PCA is the Department of Business Development, Ministry of Commerce. The SEA, in particular, applies to all public companies which are publicly traded by offering shares to the public, and all public companies whose shares are listed on the exchange. The provisions of the SEA stem from the same principles as those provided in the PCA. The SEA, however, places more emphasis on corporate disclosure. The SEA also provides guidelines on how directors and officers of publicly traded companies can properly discharge their fiduciary duties. The SEC is the agency which is vested with the power to administer and enforce the SEA. The exchange, in addition, issues and enforces its own listing and disclosure rules which apply to every listed company.

(a) Related party transactions:

Section 89/12 of the SEA and the rules issued thereunder stipulate the requirements that every publicly traded company must comply with when dealing in related party transactions, unless they are conducted at an arm’s length basis or are normal business transactions. Under the SEA, the company has a duty to disclose them to the public and an obligation to obtain approval from the board of directors or in a shareholder meeting, depending on the significance of the transaction. The SEA also gives the SEC the power to promulgate rules to govern the manner of conducting shareholder meetings and the number of votes required for the approval of related party transactions, as well as instances when the interested party will not be allowed to vote in the meeting.

The exchange’s listing rules apply concurrently and elaborate the criteria under which the transaction would need not only approval from the board of directors but also from shareholders. The thresholds of the connected transactions are separated into three types of transactions as follows:
### Type 1

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Listed Company’s Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>The threshold is $&gt; \text{THB } 1 \text{ million but } &lt; \text{THB 20 million, or } &gt; 0.03% \text{ but } &lt; 3% \text{ of the net tangible asset value, whichever is higher.}$</td>
<td>Disclose to the exchange.</td>
</tr>
<tr>
<td>Threshold is $\geq \text{THB 20 million or } \geq 3% \text{ of net tangible asset value, whichever is higher.}$</td>
<td>Disclose to the exchange + seek the board of directors’ approval.</td>
</tr>
</tbody>
</table>

**Transaction that falls under this threshold:**
Transaction regarding rental or lease of immovable property with a period not exceeding three years without any indication that it is based on general trading conditions.

### Type 2

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Listed Company’s Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>The threshold is $&gt; \text{THB 1 million but } &lt; \text{THB 20 million, or } &gt; 0.03% \text{ but } &lt; 3% \text{ of the net tangible asset value, whichever is higher.}$</td>
<td>Disclose to the exchange + seek the board of directors’ approval.</td>
</tr>
<tr>
<td>Threshold is $\geq \text{THB 20 million or } \geq 3% \text{ of net tangible asset value, whichever is higher.}$</td>
<td>Disclose to the exchange + seek the board of directors’ approval + seek approval in the shareholder meeting.</td>
</tr>
</tbody>
</table>

**Transaction that falls under this threshold:**
(2.1) Normal business transaction or supporting normal business transaction without general trading conditions.
(2.2) Transaction relating to assets or services.
(2.3) Receipt of financial assistance.

### Type 3

<table>
<thead>
<tr>
<th>Threshold</th>
<th>Listed Company’s Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>The threshold is $&lt; \text{THB 100 million or } &lt; 3% \text{ of net asset tangible value, whichever is lower.}$</td>
<td>Disclose to the exchange + seek the board of directors’ approval.</td>
</tr>
<tr>
<td>Threshold is $\geq \text{THB 100 million or } \geq 3% \text{ of net tangible asset value, whichever is lower.}$</td>
<td>Disclose to the exchange + seek the board of directors’ approval + seek approval in the shareholder meeting.</td>
</tr>
</tbody>
</table>

**Transaction that falls under this threshold:**
Listed company or subsidiary offering financial assistance to connected persons as follows:
(3.1) Connected persons being natural person; and
(3.2) Connected persons being juristic entity which listed company or subsidiary, holding shares at a lower ratio than those held by other connected persons.

**Note:**
1. For a normal business transaction or supporting normal business transaction with general trading conditions, the listed company should seek the board of directors’ consideration of an unlimited transaction value.

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3 In case it is a transaction where a listed company or a subsidiary and connected persons jointly offer financial assistance to a juristic entity of which the shares are held by such listed company or subsidiary and connected persons, based on the ratio they have an interest therein, based on general trading conditions or even with better conditions, the listed company will be exempted from requesting approval from the shareholder meeting for that transaction.
2. For grants of financial assistance other than those stated in (3.1) and (3.2), the Threshold Type 2 applies.

(b) Disclosure of beneficial ownership and financial information:

Under sections 65, 69 and 56 of the SEA, every publicly traded company is required to disclose the top ten major shareholders of the company in its securities offering document and update the information on a yearly basis. Moreover, if the major shareholder is an entity and the name of the ultimate shareholder of such shareholder is made known to the company, then the company is required to disclose the name of the ultimate shareholder in its annual statement as well. Every publicly traded company must file the financial statement to the SEC on a quarterly and yearly basis. The financial statements must be reviewed or audited by an auditor registered with the SEC. The exchange’s listing rules impose similar requirements on every listed company. In addition, section 246 of the SEA requires every person who holds shares of any listed company equal to 5% or more or every 5% incremental thereof to file an acquisition or disposition report to the SEC within three business days.

(c) Directors’ fiduciary duties:

The fundamental provisions of directors’ fiduciary duties are stated in the PCA. The principles include duty of care and loyalty. Sections 89/7 to 89/13 of the SEA, however, describe in more detail certain areas of CG for publicly traded companies. For example, the SEA provides that if the directors and officers make decisions on good faith for the best interest of the company on an informed basis and without any personal interest in the matter, then it shall be deemed that the directors or officers have lawfully discharged their duty of care. The SEA, in addition, provides implied factors related to duty of loyalty, which require directors and officers of publicly traded companies to act with honesty and in the best interest of the company with a proper purpose and not undertake any action which is in conflict or against the interest of the company.

Viet Nam

In Vietnam, laws, regulations, rules or guidelines which form the framework for enforcement are the Enterprise Law, Securities Law, Accounting Law and Independent Audit Law.

Related party transactions, disclosure of beneficial ownership and financial information, and directors’ fiduciary duties are addressed in the Enterprise Law, Securities Law 2006 and Government Decree No. 58/2012/ND-CP (a legal guideline for the Securities Law 2006), Accounting Law and Vietnam Accounting Standards. Under the Enterprise Law, Securities Law 2006 and Government Decree No. 58/2012/ND-CP, the Ministry of Finance provides guidance on disclosure and corporate governance (Circular 52/2012/TT-BTC on disclosure, and Circular 121/2012/TT-BTC on corporate governance applied to public companies).

Regarding related party transactions, under the Enterprise Law, such transactions are required to be approved by the board of directors or at the general meetings. Under the Securities Law, related
party transactions must be disclosed *ex-ante* (after getting approval from the board or at the general meetings) and *ex-post* in the annual report and the notes to financial statements. Circular 121/2012/TB-BTC and Circular 52/2012/TB-BTC are applicable to all public companies; however, listed companies and large-scale public companies are required to comply with more stringent provisions on information disclosure and corporate governance. Under Circular 121/2012/TB-BTC, loans and guarantees to board members, supervisory board members, and directors and related people are prohibited.

Are these laws, regulations, rules or guides clear and comprehensive in terms of their coverage or reach in providing investor protection and facilitating public enforcement, particularly in the Specific CG Areas? If not, please highlight the key areas that should be included in the legal framework.
Question 1.2 – Effectiveness of Legal Framework

In this regard, please also indicate

(a) whether there are adequate provisions defining related party(ies), setting out the obligations for a related party transaction and the consequences for any breach of such provisions?

(b) whether the laws, regulations, rules or guides require the disclosure of (i) direct and indirect shareholdings; and/or (ii) arrangements in place between parties which give rise to control (e.g. terms in the shareholders’ agreement)?

(c) how effective are the disclosures on beneficial ownership (including indirect shareholdings), and what are the impediments or loopholes for accurate disclosure of beneficial ownership, particularly information on indirect shareholdings?
Bangladesh

(a) Yes.

(b) Yes.

(c) In our jurisdiction, when mutual fund and portfolio managers cast their votes in an election, they are not required by law to obtain consent from the unit holders or the beneficial owner of the fund.

China

(a) Yes, there are adequate provisions defining related parties, as well as related party transactions.

Related party transactions are a key issue for the corporate governance and supervision of China’s listed companies. The Company Law stipulates that the related party relationship refers to the relationship between a company’s controlling shareholders, actual controllers, directors, executives and the enterprises it controls directly or indirectly, as well as other relationships which may influence the company’s current shareholding structure. However, state-owned holding enterprises are not considered to be in a related party relationship merely because they are controlled by the state.

The affirmation of related party relationships has been stipulated in detail in the Listing Rules of the stock exchanges: the connected persons of the listed companies shall include the connected legal personalities or entities and natural persons or individuals.

The Accounting Standards for Enterprises No. 36 – Disclosure of Related Parties also requires the affirmation of the connected parties when a party controls, jointly controls or exercises significant influence over another party, or when two or more parties are under the control, joint control or significant influence of the same party. In such cases, related party relationships are constituted.

In the regulations in the Listing Rules of the stock exchanges, related party transactions of a listed company refer to matters concerning transferring of resources or obligations between the company, its subsidiary and the connected person(s).

The Administrative Measures on Information Disclosure by Listed Companies stipulates that the term related party transaction refers to an event in which a transfer of resources, labour services or obligations takes place between related parties, irrespective of whether a fee is charged.

There are also provisions setting out obligations for related party transactions, and the consequences for breach.
Disclosure requirements: The Administrative Measures on Information Disclosure by Listed Companies stipulates that directors, supervisors, executives, and shareholders with 5% or more of shares and persons acting in concert with such shareholders and de facto controllers of a listed company shall submit, on a timely basis, a list of the listed company’s related parties and an explanation of the relationships to the board of directors of the listed company. The listed company shall perform review procedures for interested-party transactions and strictly enforce a system of vote abstention in interested-party transactions.

In accordance with the regulations of the Listing Rules stipulated by the stock exchanges, the Report on Disclosure of Related Party Transactions by Listed Companies shall be fixed with the official seal of, and issued by, the company’s board of directors.

The Standards of Related Party Transactions, which are required to be submitted to the board of directors for review, shall be formulated in accordance with the company’s articles of association.

Other requirements: Shareholder voting avoidance system: Article 16 of the Company Law provides that where the company provides guarantees to its shareholders or actual controller, the shareholders or shareholders controlled by the actual controller shall not vote on the matter.

Prohibition of lending to related parties: Article 116 of the Company Law provides that a joint-stock limited company must not lend money to its directors, supervisors or executives either directly, or through its affiliate companies.

Director voting avoidance system: According to article 125 of the Company Law, the director of a listed company related to the enterprise involved in the matters discussed by the board of directors shall not exercise his/her own voting rights, or represent other directors to exercise voting rights on such matters. The meeting of the board of directors may be held when more than half of the unrelated directors are present. The resolution made by the board shall be adopted by more than half of all such directors. Where there are not more than three unrelated directors, the relevant matters shall be forwarded to the general meeting of shareholders for deliberation.

General prohibition of related party transactions by directors and executives: Article 149 of the Company Law provides that the director and executive may not execute any contract or engage in any transaction with the company in violation of the articles of association or without the approval of the general shareholders’ meeting.

Damage compensation liability: Article 21 of the Company Law provides that the controlling shareholders, actual controllers, directors, supervisors or executives of a company shall not take advantage of their affiliations with others in an attempt to harm the company’s interests and, where any losses are incurred in related violations, shall be liable for compensation.

Article 48 of the Administrative Measures on Information Disclosure by Listed Companies promulgated by the China Securities Regulatory Commission (CSRC) provides that the directors, supervisors, executives shareholders with 5% or more of shares, and persons acting in concert with such shareholders and de facto controllers of a listed company shall submit a list of the listed company’s interested parties and an explanation of the interested-party relationships to the board of directors of the listed company. The listed company shall perform review procedures for interested-party transactions and strictly implement a system.
of vote abstention in interested-party transactions. The parties involved in an interested-party transaction must not circumvent the listed company’s interested-party transaction review procedures and information disclosure obligations either by concealing the interested-party relationship or by any other means.

(b) Yes, there are such laws and rules.

For initial public offerings (IPO), in accordance with the Securities Law and relevant CSRC regulations and, before making an IPO and going public, a company shall provide detailed information in its prospectus on the founder, the major shareholders holding 5% or more of the shares, the actual controllers, the controlling shareholders, and other enterprises controlled by the controlling shareholders and actual controllers, and changes to stock ownership since the establishment of the company. The Company Law defines an actual controller as anyone who is not a shareholder but is able to hold actual control over a company’s acts by means of investment relations, agreements or other methods.

In Opinion No. 1 in the Application of Securities and Futures Laws: the Interpretation and Application of No Alteration of the Actual Controller in article 12 of the Measures for the Administration of Initial Public Offering and Listing of Stocks, the control of a company refers to the power to exert an influence on the resolutions of shareholders meetings or to control the company as a result of direct or indirect equity investment in the company. In this connection, in order to determine the control of a company, corresponding equity investments should be reviewed and analysis should be made concerning the substantive influence by the relevant persons on the decisions of shareholders and board meetings and on the nomination and appointment of directors and senior executives according to specific situations. Any information disclosure concerning a company’s actual controllers shall be extended to the persons, state-owned asset management bodies or other organisations, or persons who have reached certain agreements or assented to certain arrangements among the shareholders, including a situation where actual control is realised by means of trust.

For periodic reports, in line with relevant CSRC regulations, all listed companies shall disclose information on the ownership and voting rights of its major shareholders in annual reports and half-yearly reports. This information should include: the total number of shareholders by the end of the reporting period; basic information and shareholding information for shareholders holding 5% or more of the company’s stock; and changes in shares within the reporting period. Any listed company, when disclosing its annual report, shall disclose the information on the actual controllers, and the property and control relationships between the company and its actual controllers.

For major equity changes, all listed companies in China shall disclose information when certain thresholds of ownership are passed. In accordance with the Administration Measures on the Takeover of Listed Companies, a change-in-equity report should be compiled when the equity of an investor and persons acting in concert with that investor reaches 5% or more of a listed company’s total issued shares by trading on the stock exchanges, within three days after the fact. Moreover, a written report shall be submitted to the CSRC and the stock exchanges, and a copy filed to the CSRC branch(es) in the place where the listed company’s headquarters are located. The listed company shall also be informed, and a change-in-equity announcement made.

(c) All listed firms disclose beneficial ownership. There are seldom questions on systematically false disclosure of beneficial ownership in China, the major reason being that all such
disclosure requirements are mandatory and can be checked in the Company Registration Authority by any regulators.

**Hong Kong, China**

Yes, the laws, regulations, rules or guides are clear and comprehensive.

(a) Please see the answer to Question 1.1 (a) for provisions under the Listing Rules.

The CO contains provisions relating to fair dealing by directors and introduces provisions to define the categories of persons regarded as entities connected with a director, including a trustee for the director, for the purpose of regulating related party transactions. The consequences of breach of the provisions which govern situations in which a director is perceived to have a conflict of interest are also set out in the new CO.

(b) Securities and Futures Ordinance requirements:

Substantial shareholders: The SFO requires that all persons who are interested in 5% or more of any class of voting shares in a listed corporation must disclose their interests, and short positions, in voting shares of the listed corporation. Substantial shareholders must file a notice of their interests (commonly called a “DI Form”) when they first become interested in 5% or more of a listed corporation’s shares. They must also include all their interests held through equity derivatives, that is, their interests in the underlying shares of equity derivatives by virtue of the holding, writing or issuing of, the exercising of rights under, or the assignment or non-exercise of any rights under these equity derivatives.

A substantial shareholder must disclose changes to his/her interest when:

- There is an increase or decrease in the percentage figure of his interest that results in his/her interest crossing over a whole percentage number which is above 5% (e.g. his/her interest increases from 6.8% to 7.2%);

- When the nature of his/her interest in the shares changes (e.g. on the exercise of an option);

- When he/she comes or ceases to have a short position of more than 1% (e.g. he/she takes a short position of 1.9%); and

- When there is an increase or decrease in the percentage figure of his/her short position that results in his/her short position crossing over a whole percentage number which is above 1% (e.g. an increase in his/her short position from 1.9% to 2.5%).

However, when the substantial shareholder acquires an interest in shares, or ceases to be interested in shares, and as a result his/her interest crosses over a percentage level, he/she will still not be required to disclose changes to his/her interest if:
– The percentage level of his/her interest is the same as or less than the percentage level of his/her last DI Form; and

– The difference between the percentage figure of his/her interest disclosed in his/her last DI Form and the percentage figure of his/her interest at all times thereafter is less than 0.5% of the issued share capital of the same class of the listed company.

Directors and chief executives: The SFO requires directors and chief executives of a listed corporation to disclose their interests, and short positions in any shares and any debentures in the listed company and its associated companies (being the listed company’s holding company, subsidiary and subsidiary of its holding company, and companies in which the listed company has 20% or more interest).

There is no disclosure threshold as directors have to disclose all dealings even if they have an interest, or a short position, in a small number of shares or debentures.

The SFC has published a practical guide to the situations when a person needs to file a DI Form under the disclosure of interest requirements in Part XV of the SFO.

(c) Hong Kong, China’s disclosure of interest regime is effective and extensive. The SFC has statutory powers to obtain beneficial ownership information, and there are also comprehensive rules and regulations governing this.

**India**

(a) These laws, regulations, rules or guides provide for a clear and comprehensive coverage or reach in providing investor protection and facilitating public enforcement, in the Specific CG Areas.

(b) Yes, the laws, regulations, rules or guides require the disclosure of the above-mentioned. For example, the Trustees (Declaration of Holdings of Shares and Debentures) Rules 1964 provide that where any shares/debentures in a company are held in trust by any person (hereinafter referred to as the trustee), the trustee shall make a declaration to the public trustee in Form No. 1.

According to the SEBI (ICDR) Regulations Part A of Schedule VIII, i.e. disclosures in the red herring prospectus, shelf prospectus and prospectus, the issuer has to disclose the following with respect to shareholders’ agreements (VIII) (D) (4):

– Key terms of subsisting shareholders’ agreements, if any (to be provided even if the issuer is not a party to such an agreement, but is aware of such an agreement);

– Guarantees, if any, given to third parties by the promoters offering their shares in the proposed offer for sale, stating reasons, amount, obligations on the issuer, period of guarantee, financial implications in case of default, security available, consideration etc.; and
All such agreements shall be included in the list of material contracts required under sub-item (A) of Item 164[(XVI)].

(c) The disclosures provide a useful insight into the beneficial shareholding to the public and are an effective means of public disclosure.

**Indonesia**

(a) Regulations referred to in the answer to Question 1.1 have clearly and comprehensively protected investors, as well as the public.

With regard to investor protection, affiliated party transaction is regulated by Article 1 Number 1 of Law Number 8 Year 1995 regarding Capital Market (UUPM), which defines the definition of affiliation, and Number 1 Letter Rule IX.E.1, which regulates Affiliated Party Transaction. Rule No. IX.E.1 also regulates the obligations for an issuer or Public Company that is conducting affiliated party transaction to announce information of its transaction to public and/or the Financial Services Authority (OJK).

(b) Rule No. X.K.6 requires issuers and public companies to disclose information concerning substantial and controlling shareholders, either directly or indirectly, down to their individual shareholders. The information should be presented in the form of scheme or diagram.

Article 87 of UUPM Rule Number X.M.1 regarding Disclosure Requirements for Certain Shareholders, regulates the obligation of shareholders of an issuer or public company to disclose information about their 5% or more of paid share ownership.

In addition, Rule No. IX.H.1 regarding the acquisition of public company(ies) also requires acquirers to disclose their direct or indirect ultimate shareholders.

Regarding any acquisition of a public company, Rule no. IX.H.1 requires an acquirer to disclose any persons, including any association or organised group, who are their shareholders.

(c) Rule No. X.K.6, requires issuers and public companies to disclose information concerning substantial and controlling shareholders, either directly or indirectly, down to their individual shareholders. Shareholders other than substantial and controlling shareholders are not required yet to do so. The problem arises when the ultimate shareholders are companies established in countries that do not have information sharing agreement with Indonesia.
Korea

The Commercial Act, Fair Trade Act, Capital Market Act and the listing rules of the Korea Exchange provide legal coverage to support public enforcement of corporate governance and to protect investors.

Related parties and related party transaction are clearly defined and regulated in the Commercial Act and Fair Trade Act. If a transaction with the principal shareholders or related parties is necessary for business, it is required to be approved by the board of directors and the relevant information should be disclosed.

In the case of listed companies, the status of shares owned by board members, principal (large) shareholders and their related parties, and changes in their shareholdings should be disclosed according to the Capital Market Act and the listing rules of the Korea Exchange.

Malaysia

Yes, the laws and regulations pertaining to the Specific CG Areas are clear and comprehensive.

(a) The definitions of related parties and related party transactions are set out in chapter 10 of the Listing Requirements (LR). The obligations are also adequately covered in the chapter. See the answer to Question 1.1 (a).

In the event of any breach of the LR by an applicant, Bursa Malaysia Securities may impose such actions or penalties as it considers appropriate. The types of action that Bursa Malaysia may take include:

- Issuance of a caution letter, private reprimand and public reprimand;

- Imposition of a fine not exceeding MYR 1 million;

- Issuance of a letter directing the listed issuer, management company or trustee to rectify the non-compliance, with the direction remaining in force until it is revoked;

- Imposition of one or more condition(s) for compliance;

- Non-acceptance of applications or submissions, with or without conditions imposed (after consultation with the Securities Commission Malaysia);

- Imposition of condition(s) on the delivery or settlement of trades entered into in respect of the listed issuer’s securities;

- Suspension of trading of the listed securities; and
– De-listing of any listed securities, de-listing of a listed issuer or any class of its listed securities.

Bursa Malaysia may impose additional actions or penalties for failure to comply with a direction or fine. Such additional actions or penalties may include, without limitation, the imposition of additional fines in such manner as Bursa Malaysia deems fit, or suspension of trading or de-listing of securities in the case of a listed issuer.

Generally, the penalty imposed for any breach of the relevant provisions in the Companies Act 1965 (CA 1965) as discussed in the answer to Question 1.1 (a)(II) is either imprisonment or monetary penalty, or both.

(b) As discussed in the answer to Question 1.1 (b), there are laws, regulations and rules in place which require disclosure of shareholdings, and this includes both direct and indirect (deemed) interest. For example, a contract to purchase shares, a right to acquire a share or an interest in a share under an option are considered deemed interest under section 6A of the CA 1965 and any changes to these must be disclosed. Similar requirements are imposed on directors and their shareholdings as well.

Therefore, where there is a shareholder agreement which relates to substantial shareholding or directors interest, the interest or change in interest must be disclosed. As to whether disclosure of the shareholder agreement itself is required, such disclosure must be made under the LR, if the information is material.

(c) Indirect shareholding, for example, through a company or when the holder of a custodian or nominee account itself is a nominee or custodian are not disclosed to shareholders. There may also be instances where opaque structures are used which result in the inability to go down to the beneficial owners, particularly where the holding of interest is via a company incorporated in an off-shore tax haven jurisdiction, which do not facilitate such disclosures. There is also inconsistent reporting on the terms of shareholder agreements. Under the CA 1965, companies may request additional information on shareholdings and control. Regulators also have the means to get ownership information, including making requests to other countries for offshore entities.

**Mongolia**

A general point is that regulations in the Specific CG Areas are fairly new and need to be tested. In other words, implementation or enforcement is the key. That would not prohibit developing some further legislation consistent with others. For example, the definition of related parties in the Banking Law is too broad and needs to be clarified.

In our Company Law, a guilty person shall compensate, with personal property, losses arising from a conflict-of-interest transaction caused to a company or its controlled or subsidiary companies. Also, a person who holds alone or in conjunction with affiliated persons a controlling stake in a company’s shares must notify the company, in written form, information about the securities under his/her possession within three business days following the date when such person becomes affiliates, or following the date he/she holds five or more blocks or a controlling block of the company’s shares.
As this legislation is quite new, it needs to be tested in order to judge the effectiveness of the disclosure requirements.

**Pakistan**

The overall corporate governance framework in Pakistan is considered adequate in terms of coverage and outreach both for investor protection and public enforcement. Over the years, some case law has been developed which has brought further clarity to the framework.

(a) Yes, since International Accounting Standard 24 has been adopted by the Securities and Exchange Commission of Pakistan (SECP) which comprehensively caters to the requirement of disclosure.

(b) The Companies Ordinance 1984 along with the Takeover Ordinance 2002 clearly defines control and obligation of the shareholder to disclose both direct and indirect shareholdings. The latter has recently been further strengthened through the listing regulations as now directors, CEO and executives have to disclose all their trading at the stock exchanges.

(c) Existing disclosures of beneficial ownership are explained in the answer to (b) above.

In Pakistan, all trading at stock exchanges is mapped through a unique identification number (UIN). Using this, the SECP has developed an in-house surveillance system which generates special reports whenever persons mentioned in the law (i.e. directors, CEO, company secretary, CFO or shareholders holding more than 10%) trade. This, apart from any enforcement action where required, enables tracking of timely disclosures. However, the overall effectiveness of disclosure depends on whether a shareholder makes public his/her indirect interest/shareholding in a listed company. In the case of benami shareholding (shares held in undisclosed third-party name or undisclosed indirect shareholding), the identification of beneficial ownership is an impediment. However, at times these come to light, though rarely, through market intelligence (whistleblowers) or pattern of voting at corporate actions.

**Philippines**

Related party transactions, beneficial ownership and financial information are required to be disclosed by Article 8 of the Revised Code of Corporate Governance which provides that “the essence of corporate governance is transparency. It is therefore essential that all material information about the corporation which could adversely affect its viability of the interests of the stockholders should be publicly and timely disclosed. Such information should include, among others, earnings results, acquisition or disposition of assets, off-balance sheet transactions of members of the board and management. All such information should be disclosed through the appropriate exchange mechanisms and submissions to the Commission.”
(a) Related party transactions are disclosed in the Annual Report (SEC Form 17-A) and Information Statements (SEC Form 20-IS).

Their non/late filing is penalised under SEC Memorandum Circular No. 6 Series of 2005 or the Consolidated Scale of Fines.

(b) Directors’ fiduciary duties are provided under article 3G of the Code, which lays down specific norms of conduct. The article states: “A director’s office is one of trust and confidence. A director should act in the best interest of the corporation in a manner characterized leadership, prudence and integrity in directing the corporation towards sustained progress.”

Beneficial ownerships are disclosed in the following reports: Reports of 5% Beneficial Ownership (SEC Form 18-A), Reports of 5% Institutional Buyers (SEC Form 18-AS), Initial Statements of Beneficial Ownership of Securities (SEC Form 23-A) and Statements of Changes of Beneficial Ownership of Securities (SEC Form 23-B)

Their non/late filing is also penalised by SEC Memorandum Circular No. 6 Series of 2005 or the Consolidated Scale of Fines.

For any transaction that will result in ownership control of a corporation, the Commission requires that the corporation undergo a mandatory tender offer under the provisions of Securities Regulation Code Rule 19.1 (2) as follows:

– Any person or group of persons acting in concert, who intends to acquire 35% or more of equity shares in a public company shall disclose such intention and contemporaneously make a tender offer for the percent sought to all holders of such class, subject to paragraph (9) (E) of this rule. In the event that the tender offer is oversubscribed, the aggregate amount of securities to be acquired at the close of such tender offer shall be proportionately distributed across both selling shareholder with whom the acquirer may have been in private negotiations and minority shareholders;

– Any person or group of persons acting in concert, who intends to acquire 35% or more of equity shares in a public company in one or more transactions within a period of 12 months, shall be required to make a tender offer to all holders of such class for the number of shares so acquired within the said period; and

– If any acquisition of even less than 35% would result in ownership of over 51% of the total outstanding equity securities of a public company, the acquirer shall be required to make a tender offer under this rule for all the outstanding equity securities to all remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial advisor or equivalent third party. The acquirer in such a tender offer shall be required to accept any and all securities thus tendered.

(c) The Code is comprehensive in terms of coverage. Article 10 provides that the Commission may require corporations to produce a scorecard annually on the scope, nature and extent of the actions they have taken to meet the objectives of the Code. Under article 11, a fine of not more than PHP 200 000 shall, after due notice and hearing, be imposed for every year that a covered corporation violates the provisions of the Code.
Public Enforcement Practices of Corporate Governance in Asia: Survey Results from 14 Asian Jurisdictions

Singapore

(a) Yes. The disclosure of interested person transactions is governed under the Companies Act (CA), Securities and Futures Act (SFA) and SGX Listing Rules (LR).

Companies Act: Section 162 of the Companies Act (CA) provides that, subject to certain exceptions, a company (other than an exempt private company) shall not make a loan to a director of the company or of a company which is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person.

Breach of this provision is a criminal offence punishable with a fine not exceeding SGD 20,000 or imprisonment for a term not exceeding two years. Section 163 prohibits similar transactions as section 162 but in relation to situations where the directors of the lending company are interested in 20% or more of the total number of equity shares (excluding treasury shares) of the borrowing company.

Further, section 156 (1) of the CA states that every director of a company who is in any way, whether directly or indirectly, interested in a transaction or proposed transaction with the company shall, as soon as practicable after the relevant facts have come to his/her knowledge, declare the nature of his/her interest at a meeting of the directors of the company.

Other provisions in the CA which may be relevant are: (i) section 156 (5), which states that every director of a company who holds any office or possesses any property whereby whether directly or indirectly duties or interests might be created in conflict with his/her duties or interest as directors shall declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict; (ii) the general duty of a director to act honestly stated at section 157 (1); and (iii) the duty stated at section 157 (2) not to make improper use of information acquired by virtue of his/her position as an officer or agent of the company to gain, directly or indirectly, an advantage for himself/herself or for any other person or to cause detriment to the company.

Breach of any of the above quoted provisions is a criminal offence punishable with a fine not exceeding SGD 5,000 or with imprisonment for a term not exceeding 12 months.

Listing Manual Chapter 9: Listing Rule 905 requires an issuer to make an immediate announcement of any interested person transaction of a value equal to, or more than, 3% of the group’s latest audited net tangible assets. If the value is equal to, or more than 5% of the group’s latest audited net tangible assets, Listing Rule 906 requires shareholders’ approval to be obtained for the interested person transaction.

An announcement under Listing Rule 905 must contain, among other things, a statement whether or not the audit committee of the issuer is of the view that the transaction is on normal commercial terms, and is not prejudicial to the interests of the issuer and its minority.

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4 An exempt private company is defined in section 4 of the CA. A private company in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 20 members is a private exempt company.
shareholders; or that the audit committee is obtaining an opinion from an independent financial adviser before forming its view.

On an annual basis, an issuer is further required under Listing Rule 917 to disclose the aggregate value of interested person transactions entered into during the financial year under review in the annual report. The name of the interested person and the corresponding aggregate value of the interested person transactions entered into with the same interested person must be presented.

Breaches of SGX Listing Rules may also constitute offences under section 203 of the Securities and Futures Act (SFA). A breach under section 203 of the SFA, if intentional or reckless, is a criminal offence punishable with a fine not exceeding SGD 250,000 or imprisonment for a term not exceeding seven years or both. Alternatively, a civil penalty can be sought against the contravening entity.

(b) Companies Act: Section 82 of the CA requires a substantial shareholder to notify the company in writing of the particulars of the voting shares in the company in which he/she has an interest and of the circumstances by reason of which he/she has that interest. Section 83 of the CA also requires that the substantial shareholder notify the company of any change in interests and the circumstances leading to the change. Failure to comply may liable the individual upon conviction to a fine not exceeding SGD 5,000 and, in the case of a continuing offence, to a further fine of SGD 500 for every day during which the offence continues after conviction.

Section 165 of the CA provides that a director of a company has a duty to disclose, by giving notice in writing to the company, of his/her interest or any change in his/her interest in the company’s shares. Any director who fails to comply shall be liable on conviction to a fine not exceeding SGD 15,000 or to imprisonment for a term not exceeding three years and, in the case of a continuing offence, to a further fine of SGD 1,000 for every day during which the offence continues after conviction.

Directors are also required to disclose their interests in shares or debentures of the company or other body corporate in its annual directors’ report (section 201), and a company is required to keep a register of director’s shareholdings showing details of shares, debentures, participatory interests, rights, options or contracts to shares of the director in the company or related corporation made under the relevant conditions (section 164).

Further details of relevant provisions are provided in the answers to Questions 1.2 (a), 1.2 (c) and 3.4.

Securities and Futures Act: Section 133 of the SFA outlines the duty of every director and chief executive officer of a listed issuer to notify the corporation in writing of any change in his/her interest in the corporation’s shares. Interest, as defined in section 4 of the SFA and in the above provision, includes direct and indirect shareholdings, and shareholdings by family members.

Section 135 of the SFA states that a person who is or (if he/she has ceased to be one) had been a substantial shareholder in a listed issuer shall give notice in writing to the company of particulars of the voting shares in the company in which he/she has or had an interest or interests and the nature and extent of that interest or those interests. Likewise, sections 136
and 137 of the SFA also mandate the substantial shareholder to notify the company of any change in interest and cessation to be substantial shareholder of the company, respectively.

Any breach of the aforesaid SFA offences may liable the individual upon conviction to a fine not exceeding SGD 250 000 or to imprisonment for a term not exceeding two years, or to both. In the case of a continuing offence, the individual is also liable to a further fine not exceeding SGD 25 000 for every day or part thereof during which the offence continues after conviction. Alternatively, a civil penalty can be sought against the contravening entity.

(c) Companies Act: Currently, under the CA, if existing shares are transferred, the company is not obliged but may (at its option) lodge a notice of that transfer of shares with the Registrar. If reporting is not done, such changes shall be at yearly intervals through the filing of the company’s annual return. Shareholders may also report indirect shareholdings to the company, and the finance minister has the power to appoint inspectors to investigate ownership of companies. The CA is also currently being amended, and there are some upcoming changes in this respect as detailed in answer to Question 3.4.

Securities and Futures Act: Section 4 of the SFA sets out the circumstances under which a person is deemed to have an interest in shares, and these extend beyond direct shareholdings. There have not been any significant difficulties in administering such substantial shareholdings disclosure requirements thus far.

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**Chinese Taipei**

Yes. We have clear and comprehensive provisions regulating the Specific CG Areas, providing adequate investor protection and facilitating public enforcement.

(a) IAS 24 Related Party Disclosures defines related party(ies).

Public companies are required to follow the regulator’s regulations to enact bylaws to govern related party transactions (RPTs). In meeting the regulator’s disclosure requirements, public companies shall disclose the details of the RPTs in two days, and listed companies shall disclose them before the next trading hour. On top of that, listed companies shall disclose all RPTs on a monthly basis.

In accordance with the Securities and Exchange Act, any breach of such provisions will incur penalties until the obligations have been fulfilled. If necessary, in addition to penalties, listed companies breaching such provisions will be changed to full delivery securities or suspended from trading.

(b) Article 25 of the Securities and Exchange Act stipulates that, upon registering the public issuance of its shares, a company shall file with the Financial Supervisory Commission (FSC) and announce to the public the class and numbers of the shares held by its directors, supervisors, managerial officers, and shareholders holding more than 10% of the total shares of the company. The stockholders shall file, by the fifth day of each month, a report with the issuer of the changes in the number of shares they held during the preceding month. The issuer shall compile and file such a report of changes with the FSC by the 15th day of each
month. The FSC may order an issuer to make public announcement of such information should it deem the measure necessary. The calculation of shares held by shareholders aforementioned shall include shares held by their spouses and minor children and those held under the names of other parties.

In addition, the regulator’s Regulations Governing Information to be Published in Annual Reports of Public Companies and Regulations Governing Information to be Published in Public Offering and Issuance Prospectuses require disclosure of direct shareholdings and indirect shareholdings through other persons, whether legal persons or individuals to the third layer.

The Regulations Governing Information to be published in Public Offering and Issuance Prospectuses requires the disclosure of shareholders’ agreement.

The regulator has designed a form for disclosure of shareholdings in the annual report and prospectus. This makes the disclosures easy to be followed by public companies and understood by investors. However, now only three layers of disclosures on beneficial ownership are available. For some public companies, the third layer of shareholdings belongs to a legal person. They are not required to disclose the next layer of shareholdings.

**Thailand**

The existing regulations and their related rules are generally clear and comprehensive in providing investor protection and facilitating public enforcement.

(a) Yes. Section 89/1 of the Securities and Exchange Act (SEA) and rules promulgated thereunder provide a clear definition of a related party as the person who controls the business operation of the company, close family members and entities which are under the control of such person. Sections 89/8-12 of the SEA and the stock exchange’s listing rules set out obligations for a related party transaction. Any breach of such provisions may lead to administrative sanction against the company or its directors or officers, or criminal sanction.

(b) Yes. For the company, it is required to disclose in its securities offering document and annual filing statement the following items:

- List of top ten major shareholders, grouped with ultimate shareholders; and
- Disclosure of shareholders agreement between major shareholders that affect the securities issuance or operation, and which listed company is a party to such agreement. However, this requirement is difficult to enforce as the agreement is the information of the relevant shareholders, whereas the duty to disclose is on the company.

For shareholders, they are required to disclose the change of control under section 246 (report the crossing of every 5% threshold). Such section 246 reports include the change of control/acquisition of shares through related persons (defined in section 258) and the act in concert under shareholders’ agreements. These are mainly self-declared.
For directors, executives and auditors, they are required to submit additional reports under section 59 of the SEA for every acquisition or disposition of the equity securities issued by the company to the SEC within three business days after such acquisition or disposition. The acquisitions or dispositions of the equity securities by their spouse or minor child are subject to the same obligation.

(c) In general, the rules relating to disclosure on beneficial ownership are based on a self-reporting basis, which imposes liability to the offender. The Securities and Exchange Commission (SEC) also re-checks the information reported by reporting persons (e.g. shareholders, management and others). If there are unclear/suspicious issues, the SEC may request further disclosure.

There is one impediment to accurate disclosure of beneficial ownership in the case of shares being held through a custodian which, most of the time, makes it difficult to identify the ultimate shareholders. However, it is plausible to investigate on a case-by-case basis, should there be any suspicious or potential breach of regulations.

**Viet Nam**

(a) The Enterprises Law and Securities Law define obligations for related party transactions. The provisions mostly concentrate on information disclosure obligations. The government also enacted a decree (Decree 85/2010/ND-CP on administrative sanctions in the securities market), which includes sanctions for violations of regulations on related parties transactions.

(b) Laws and regulation in Viet Nam require the disclosure of direct and indirect shareholding. The arrangements in place between parties which give rise to control (e.g. terms in the shareholders’ agreement) are addressed in the Enterprises Law; however, the disclosures of these arrangements are not clearly regulated.

(c) The enforcement of regulations on disclosures of beneficial ownership is still ineffective. Sanctions and penalties are low and, in many cases, not clearly defined.
CHAPTER 2 - STRUCTURE OF ENFORCEMENT FRAMEWORK

Question 2.1 – Structure of The Enforcement Framework

How is the enforcement framework structured in your country?

(a) Is it a single/centralised regulatory structure or fragmented?

(b) If the fragmented approach is adopted involving multiple/several enforcement authorities in your country:

   (i) does the legal framework clearly provide the responsibilities and powers of the enforcement authorities?

   (ii) is there duplication in the areas coming within the purview of the various enforcement authorities and, if so, are there any arrangements among these enforcement authorities in addressing the duplication and what are these arrangements?

   (iii) how do the enforcement authorities ensure that they co-operate and co-ordinate efficiently (i.e. sharing of information)?

   (iv) what are the challenges and legal impediments faced, if any, in establishing a mechanism for co-ordination & co-operation to ensure effective utilisation of resources and comprehensive and consistent enforcement actions among the enforcement authorities, including alignment of interests and information sharing among authorities?
**Bangladesh**

(a) It is fragmented, with separate regulatory authorities for capital markets, banks & financial institutions, insurance firms and companies.

(b) (i) Yes.

(ii) & (iii) Yes, there is duplication in some areas, but we have a co-ordination committee comprising all the regulators and, if there are any problems with any common issues, they are discussed in the committee for settlement.

(iv) So far, we have not faced any problems.

**China**

(a) If we refer to listed firms, then the Chinese regulatory structure is centralised. The China Securities Regulatory Commission (CSRC) is the major regulator on the corporate governance of listed firms, while other government departments such as the Ministry of Finance (MOF) and State-owned Assets Supervision and Administrative Commission (SASAC) are involved in their relevant areas. Stock exchanges in Shanghai and Shenzhen also have certain power to enforce CG rules.

The institutional framework of China’s corporate governance is composed of three parts: the CSRC, the agency in charge of securities and futures markets; corporate governance-related government agencies, such as the MOF, SASAC, General Administration of Industry and Commerce, China Banking Regulatory Commission (CBRC) and China Insurance Regulatory Commission (CIRC); and stock exchanges and companies registering and settling securities.

If a certain behaviour is regarded as a criminal behaviour, then the courts system is involved in enforcement.

(b)

(i) Yes, generally the legal framework is quite clear on the responsibilities and powers of different authorities.

The law enforcement structure of the CSRC comprises four aspects. First, the enforcement bureau, whose main responsibilities include: organising, co-ordinating, guiding and supervising the investigation of cases; case filing and review; enforcing administrative punishment; cross-border law enforcement co-operation; and anti-money laundering. Second, the enforcement contingent’s major responsibilities include investigating major cases of insider trading, market manipulation and false statements, and other important, urgent or sensitive cases affecting a wide range of sectors and areas. Third, local enforcement bureaus and their officials, whose major
responsibilities include investigating cases within their jurisdictions, informal investigations and all sorts of co-operative investigations. Fourth, the administrative disciplinary bureau, which takes care of the trial of all cases.

The Ministry of Finance’s responsibilities related to corporate governance mainly include:

- Drafting laws and regulations pertaining to financial and accounting management, and devising and executing regulations and rules of financial and accounting management;

- Drafting distribution policies between the state and enterprises, managing central government budget that is allocated to support enterprises, drafting and organising the implementation of the General Rules of Finance for Enterprises, supervising the financial affairs of enterprises reporting directly to the central government, managing the returns on state-owned assets, and administration over the asset-appraisal industry; and

- Drafting and supervising the implementation of accounting rules and regulations and the Accounting Standards for Business Enterprises, drafting and supervising the implementation of the general government budget and the accounting system governing administrative institutions and industries, guiding and managing the work of certified public accountants and accounting firms, guiding and managing social auditing, and examining and approving the establishment of branches of foreign accounting firms in China.

SASAC’s responsibilities related to corporate governance mainly include:

- Authorised by the State Council, it performs shareholders’ responsibilities according to the Company Law and other laws and administrative regulations, supervises and manages the state-owned assets of the enterprises under the supervision of the central government (excluding financial enterprises), and enhances the management of state-owned assets;

- It supervises the preservation and enhancement of the value of supervised enterprises’ state-owned assets, including through statistics and auditing, introducing a system that establishes targets/objectives and enhances the value of state-owned assets. It also devises assessment criteria, is responsible for the management of wages and remuneration of supervised enterprises, and drafts and implements policies regulating the income distribution of their senior executives;

- It guides and drives forward the reform and restructuring of state-owned enterprises (SOEs), advances the establishment of a modern SOE enterprise system, improves corporate governance, and promotes the strategic adjustment of the layout and structure of the national economy;

- It names directors and supervisors to state-controlled companies and companies with state-owned assets according to the relevant regulations and the respective companies’ articles of association; and
• It is responsible for seeing to it that supervised enterprises turn state-owned capital gains over to the state, participates in devising management systems and methods for the state-owned capital operational budget, which it calculates and implements along with the final accounts, in accordance with related regulations.

Both the Shanghai and Shenzhen Stock Exchanges are independent legal entities directly governed by the CSRC. They provide venues and facilities for centralised securities trading, organise and supervise securities trading and exercise self-regulatory management. Their functions include: providing a marketplace and facilities for securities trading; drawing up business rules; accepting and arranging listings; organising and monitoring securities trading; regulating members and listed companies; and managing and disseminating market information.

Founded in 2001, the China Securities Depository and Clearing Corporation Ltd is a non-profit legal entity directly governed by the CSRC, providing centralised registration, depository and settlement service for securities trading. Its main functions include: establishing and managing securities and settlement accounts; providing a venue for the depository and transfer of securities; registering securities holders’ names and rights; managing securities and financial clearing and settlement; distributing warrants on behalf of issuers; providing securities registration and settlement of business-related queries, information, advisory and training services according to laws.

(ii) For those state-controlled listed companies, the CSRC and SASAC have the responsibility to improve CG. SASAC plays a role mainly as a state owner, while the CSRC is a market regulator.

For setting listing rules, corporate governance monitoring, and disclosure, the CSRC and the stock exchanges have duplication in their power and duties. However, these are handled with different authorities. The CSRC is the ultimate monitor, provision explainer and approver.

(iii) The CSRC is the ultimate explainer with higher authority in the securities regulatory system, which comprises the CSRC, the stock exchanges and China Securities Depository and Clearing Corporation Ltd. The co-operation and co-ordination among the CSRC, SASAC and MOF are based on co-ordination mechanism among government departments.

(iv) To improve efficiency in information exchange and measures related to enforcement of CG.

Hong Kong, China

(a) Fragmented. The Securities and Futures Commission (SFC) is the statutory regulator of the securities and futures market of Hong Kong, China under the Securities and Futures Ordinance (SFO). The Stock Exchange of Hong Kong is the frontline regulator of listing matters and listed issuers in Hong Kong, China. Under the section 21 of the SFO, the
The Exchange has the duty to ensure as far as reasonably practicable, a fair, informed and orderly market in Hong Kong, China. The Exchange achieves the regulatory objective through the making and enforcement of the Listing Rules.

Within the Exchange, the Listing Division will investigate possible breaches of the Listing Rules. If, following an investigation, disciplinary action is deemed necessary, the Listing Division will present the case to the Listing Committee which will act as the decision maker.

The Financial Reporting Council (FRC) is only responsible for investigating auditing and reporting irregularities associated with listed companies. It has no power to take disciplinary actions.

The Companies Registry has a role to ensure compliance by companies and their officers with their obligations under relevant provisions of the Companies Ordinance (CO). The Companies Registry is delegated with the authority to prosecute cases of non-compliance and will take prosecution action for offences under the CO and, if appropriate, will refer suspected breaches of the provisions of the CO to the relevant authorities for investigation and prosecution.

(b)

(i) Yes, see answers to Questions 1.1 and 2.1 (a). The Exchange’s making of and amendments to the Listing Rules are subject to public consultation and the SFC’s consent under section 24 of the SFO. The Companies Registry is the statutory regulator under the CO.

(ii) No, where the subjects of the SFC’s enforcement of the SFO concerns listed issuers, their management and their conduct that can have, on a particular set of facts, implications under the Listing Rules, there are arrangements in place to co-ordinate the work of the SFC and the Exchange:

- The SFC and the Exchange signed a memorandum of understanding dated 28 January 2003 which deals with matters including the sharing of information, handling of complaints received by both organisations concerning listed issuers;
- Regular written and oral communications and liaison meetings between the two organisations;
- Communications regarding specific cases in which both have regulatory interest; and
- Where investigations are launched by both organisations, normally to co-ordinate the regulatory efforts, the general understanding is that the SFC, the principal/statutory regulator, will take the lead and the Exchange will normally suspend any investigation already commenced, or will refrain from commencing an investigation pending outcome of the SFC investigation and any action taken.

The FRC may initiate investigations into possible auditing and reporting irregularities in relation to listed entities or enquiries into possible non-compliance with accounting requirements on the part of listed entities upon receipt of complaints or on its own initiative. The FRC has entered into memorandums of understanding which set out cooperation arrangements with various regulators in Hong Kong, China, including the Hong Kong Institute of Certified Public Accountants, Hong Kong Monetary...
Authority, Insurance Authority, SFC and the Exchange. The memorandum of understanding between the SFC and the FRC was executed on 12 November 2007. The FRC refers cases or findings to other enforcement bodies for necessary actions. It also receives referral of complaints from relevant regulatory bodies.

(iii) There are regular communications (including liaison meetings) between the SFC and the Exchange to share information and co-ordinate investigations/regulatory actions being undertaken by the organisations. These include both high-level communications (between heads of the relevant divisions in the SFC and the Exchange) and communications at working levels (e.g. case officers dealing with particular cases). Also see answer to (ii) on co-operative arrangements in place between the SFC and the Exchange.

(iv) There is no major issue in the existing co-ordination and co-operative arrangements among various authorities.

**India**

(a) The enforcement structure in our country is not a centralised regulatory structure. A fragmented approach is adopted whereby multiple enforcement authorities carry out their administrative and regulatory functions.

(b)

(i) Yes, the legal framework provides clearly the responsibilities and powers of the enforcement authorities.

(ii) There is no duplication in the areas coming within the purview of the various enforcement authorities. The underlying statutes have clearly laid down the jurisdiction of various agencies entrusted with the enforcement of statutory provisions. For example, the administration of certain provisions in the Companies Act, 1956 are entrusted to the Securities and Exchange Board of India through a clear mandate provided in section 55A of the Companies Act, 1956. However, if some cases of duplication do surface, then it is resolved amicably among enforcement authorities through recourse to judicial remedies or harmonious interpretation of the existing laws.

(iii) The government in consultation with the financial sector regulators has set up the Financial Stability and Development Council. The main objective behind setting up of the Council was to institutionalise and strengthen the mechanism for maintaining financial stability, financial-sector development and inter-regulatory co-ordination among the enforcement authorities. The Council deals with, among others, issues relating to inter-regulatory co-ordination and macro-prudential supervision of the economy, including the functioning of large financial conglomerates. It also aims to co-ordinate India’s international interface with financial-sector bodies such as the Financial Action Task Force, Financial Stability Board and any similar bodies as may be decided by the finance minister from time to time.
India is a large country and has a large number of entrepreneurs who have access to the capital market. Such a large number puts pressure on the limited number of manpower in these enforcement agencies. There is also a need to have specialised courts to deal with violations and non-compliance.

Indonesia

In general, the enforcement function structure in Indonesia is fragmented.

The legal framework clearly provides the responsibilities and power of the enforcement authorities. The co-operation and the co-ordination among the enforcement authorities have been formalised in the form of a memorandum of understanding which may cover the mechanism of sharing information and avoiding duplication areas, etc.

Korea

The enforcement function is fragmented in Korea. The Ministry of Justice (MOJ) takes the role of providing and enforcing corporate governance policy on the whole. As far as listed financial companies are concerned, the Financial Supervisory Service takes the role of supervising and regulating them. The regulation of the corporate governance of large business conglomerates is also dealt with by the Fair Trade Commission (FTC).

For corporate governance policy, the MOJ mainly deals with the Commercial Act, the Financial Services Commission with the Capital Market Act, the FTC with the Fair Trade Act, and the Korea Exchange with the listing and disclosure rules for listed companies. Enforcement agencies share information to facilitate efficiency of regulation, if needed.

Malaysia

(a) There are multiple enforcement authorities undertaking enforcement of CG breaches. The authorities and respective scope are as follows:
Companies Commission of Malaysia (CCM)  
- Regulates all Malaysian companies  
- Administers and reviews company laws (i.e. the Companies Act 1965 (CA 1965)), including corporate governance requirements

Securities Commission Malaysia (SC)  
- Authority and enforcement power over all listed issuers  
- Administers and reviews securities laws such as the Capital Markets Services Act 2007 (CMSA)  
- Custodian of the Malaysian Code on Corporate Governance 2012 (MCCG 2012)

Bursa Malaysia  
- Frontline regulator monitoring compliance by listed issuers with their obligations under the Listing Requirements (LR), such as disclosure of compliance with the MCCG 2012

Bank Negara Malaysia (BNM, the central bank)  
- Responsible for the prudential regulation of financial institutions  
- Administers, among others, the Banking and Financial Institution Act of 1989

(b)  
(i) Yes, the legal framework is clear with regards to responsibilities and power of the enforcement authorities.  
(ii) The CCM, SC, BNM and Bursa Malaysia all have clear areas of authority, and no notable gaps in the enforcement framework. There are areas of overlap, but the authorities seek to co-operate by having various memorandums of understanding (MOUs) or arrangements, such as internal working committees and dialogues, and regular inter-agency meetings to discuss operational issues and sharing of information. In cases where criminal investigation is required, the police would also be involved.  
(iii) In general, the regulatory bodies work in tandem with and complement each other. There are mechanisms in place for exchange of information or joint enforcement, where required. For example, the SC and BNM may carry joint inspection on companies and banks and sharing information with respect to any investigative proceedings.  
(iv) The high level of co-ordination required could be very difficult to achieve. The other challenges could also be resources constraint and lack of skill sets to investigate breaches of CG rules and regulations.
Mongolia

(a) Mongolia has a fragmented CG regulatory structure.

(i) While listed companies, insurance companies, non-bank financial institutions and securities brokers fall within the regulatory ambit of the Financial Regulatory Commission (FRC), banks are usually regulated by Mongolbank (the central bank). The listing rules of the Mongolian Stock Exchange (MSE) are important for the corporate governance of listed companies. The State Property Committee is responsible for the implementation of CG requirements stated in the company law for state-owned enterprises.

(ii) In our opinion, the legal framework clearly provides the responsibilities and powers of the enforcement authorities. But as the Company Law was enacted recently, issues with enforcement and especially in the area of duplication of efforts, co-ordination, co-operation, and information-sharing activities need to be tested.

(iii) The co-operation between the enforcement authorities is stated in the tripartite memorandum of understanding between the Ministry of Finance, central bank and Financial Regulatory Commission. Also, the central bank and FRC are about to adopt the “Consolidated Supervision Regulation of Financial Institutions”.

(iv) Co-operation and information sharing are improving with the establishment and function of the Financial Stability Board headed by Mongolbank.

Pakistan

(b)

(i) The legal mandate to regulate and the power to administer laws pertaining to the corporate sector and the non-bank financial sector rests with the Securities and Exchange Commission of Pakistan (SECP). Stock exchanges have an active role in enforcing corporate governance provisions under their respective listed regulations and the Code of Corporate Governance. However, the law provides overarching powers to the SECP to take action in cases where exchanges fail to or are unable to take enforcement action. The State Bank of Pakistan (SBP) has stipulated additional corporate governance requirements under its legal framework for banks, which are monitored and administered solely by the SBP.

(ii) Corporate governance provisions are primarily provided in the Companies Ordinance 1984, Takeover Ordinance 2002, listing regulations and the Code. The Code for listed companies also forms part of the listing regulations of the stock exchanges. These are administered by the SECP in conjunction with the stock exchanges. Generally, the framework is clear with respect to the role and responsibility of both the regulatory authorities, i.e. the SECP and the stock exchanges. However where a situation requires
clarity, it is handled through co-ordination through formal communication. As such, no formal arrangement is in place between the SECP and the stock exchanges; however, post-demutualisation of the stock exchanges, work is underway to develop a formal memorandum of understanding (MOU) between the two to clearly spell out their roles and responsibilities.

Regarding the banking sector, provisions of the above frameworks are applicable to banks and are administered by the SECP and stock exchanges. In cases where the SBP has prescribed higher or stringent requirements for the banks, these provisions are solely administered by the SBP.

(iii) No formal arrangement is in place between the SECP and the stock exchanges. However, post-demutualisation of the stock exchanges, work is underway to put in place a formal MOU to spell out their roles and responsibilities. A formal arrangement between the SECP and SBP has existed in the form of an MOU since 2003. A co-ordination committee has been formed under the MOU which meets on a quarterly basis to discuss financial sector issues. The MOU also provides the framework for formal information sharing.

(iv) In the context of stock exchanges, regulatory and commercial roles have only been recently segregated after the promulgation of the demutualization law. Building regulatory capacity at the stock exchange is one of the major challenges. A framework for a regulatory structure at the stock exchanges has been put in place, and dedicated regulatory officers have been hired to head the regulatory divisions. A formal MOU between the SECP and stock exchanges will follow to clearly define their roles and responsibilities.

In Pakistan, the financial sector regulatory structure is primarily entity-based whereas considerable overlap exists at the activity or product level. To address this issue, an MOU between the SECP and SBP was revisited in 2009, and a joint task force was established to look at conglomerates operating in the financial sector. The taskforce is working satisfactorily. At the same time, a dialogue is underway to review legal amendments to strengthen co-ordination.

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<td>(a) Fragmented.</td>
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<td>(i) Yes.</td>
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<td>(ii) There is no duplication considering that the scope and limit of the responsibilities and authority of the enforcement authorities are clearly defined under the law.</td>
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(iii) The Philippines has an existing association of law enforcement authorities, i.e. the National Law Enforcement Co-ordinating Committee, of which the Securities and Exchange Commission (SEC) is a member. The member agencies regularly meet to discuss issues and matters on enforcement. One of the Committee’s objectives is to maintain close co-ordination and co-operation among the member agencies on enforcement matters.

The SEC also has existing memorandum of agreements (MOAs) with the Bangko Sentral ng Pilipinas (BSP). One of which governs the jurisdictional responsibility of each agency on corporations under their joint regulation, while the other concerns co-ordination of the two agencies’ investigative efforts on financial institutions suspected of engaging in pseudo-investment activities.

There is also an MOA between the SEC and the Department of Trade and Industry providing the areas of jurisdiction of the two agencies in the investigation of pyramid/investment scams.

(iv) One common challenge encountered by law enforcement authorities in the Philippines is the slow pace of certain legal processes. For example, a law enforcement agency would conduct entrapment operations and apprehend violators. The violators would then face criminal charges. But this process could take time. If no criminal charges are filed in court as soon as possible and the violators are not detained in prison, they could go into hiding or flee the country.

Another obstacle faced by law enforcement authorities is the lack of a central information database and/or inability of agencies to supply timely information to other agencies. For instance, when a law enforcement agency apprehends foreign citizens who have violated domestic laws, they will inform the Bureau of Immigration about the identity of the apprehended individuals. For one reason or another, apprehended foreign citizens are still able to flee the country.

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**Singapore**

(a) The regulatory structure in relation to corporate governance in Singapore involves multiple enforcement authorities.

(b)

(i) Yes. The legal framework clearly provides the powers of the enforcement authorities under the relevant legislation.

(ii) Duplication of work among various enforcement authorities is minimised, as the areas of responsibilities are either clearly defined in the law or are subject to protocol arrangements among the agencies.

(iii) A working arrangement among the various agencies has been established, and there are also frequent communications among agencies about industry developments.
(iv) The mechanism for co-ordination and co-operation among the enforcement authorities was established through years of close co-operation and a clear delineation of responsibilities among them.

For example, the Commercial Affairs Department (CAD)\(^5\) and Monetary Authority of Singapore (MAS) have a working protocol arrangement to ensure that breaches of the law are dealt with according to their severity. Legal impediments to the transfer of evidence were also removed with the introduction of provisions in the Securities and Futures Act that allow evidence to be transferred from CAD to MAS and vice versa, as required.

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**Chinese Taipei**

(a) The enforcement structure in Chinese Taipei is fragmented. For public companies, the enforcement actions of corporate governance are mainly undertaken by the Financial Supervisory Commission (FSC), which is responsible for development, oversight, management, and examinations in the financial markets and the financial services industry. The listed companies, which are required to meet higher CG standards, are supervised not only by the FSC but also by the stock exchanges (the Taiwan Stock Exchange and GreTai Securities Market). The FSC is empowered to enforce laws and any secondary legislation adopted thereunder. To regulate securities-related activities, the FSC has three main enforcement methods: administrative sanctions; criminal prosecutions; and civil litigation. The FSC itself is responsible for imposing administrative sanctions, which take effect once they are served on the violator. Criminal matters and civil litigation are referred to a prosecutor or other authority for final adjudication by the courts.

(b)  

(i) Yes. The FSC shall be responsible for the following matters:

- Financial systems and supervisory policies;
- Prescription, amendment, and repeal of financial laws and regulations;
- Oversight and management of the establishment, voidance, revocation, changes in, mergers, suspension of business, dissolution and scope of business of financial institutions;
- Development, oversight, and regulation of financial markets;
- Examination of financial institutions;
- Examination of matters relating to public companies and securities markets;

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\(^5\) The Commercial Affairs Department, under the Singapore Police Force, is the principal white-collar investigation agency in Singapore.
• International financial matters;
• Protection of financial consumers;
• Enforcement of financial laws and regulations, punishment of violators and handling of related matters;
• Collection, processing and analysis of statistical information relating to financial oversight, regulation and examination; and
• Other matters relating to financial oversight, regulation and examination.

The stock exchanges conduct supplementary examinations and inspections required by the FSC. They carry out examinations that focus on the content of their self-regulatory rules and, if they find violations of their self-regulatory rules, they will handle the matter to the extent that they have the authority to do so, and they will also report it to the FSC. If the circumstances are serious, they will ask the FSC to handle the matter.

Any violation involving criminal charges goes to prosecutors for investigation, and then will be brought to court. The FSC and stock exchanges do not have the same investigative powers as the judiciary.

(ii) No. There is no duplication because all the authorities of any government agencies are clearly specified in law. The stock exchanges perform their functions in different areas following instructions from the FSC.

(iii) After an irregularity has been confirmed, any administrative infractions will be handled by the FSC through the imposition of administrative sanctions. If criminal acts have occurred, the FSC will discuss the case with the prosecutor stationed on-site at the FSC and then refer it to the judiciary for further action. Where a criminal prosecution is called for, the FSC will refer the matter to a prosecutor, and will provide the prosecutor with information on the violation.

As for co-operation and co-ordination among the FSC and the stock exchanges, they regularly share information by electronic transmission, official letters and telephone. If necessary, the enforcement authorities meet together and discuss specific cases.

(iv) We face no such challenges and impediments currently.

Thailand

(a) Thailand has a fragmented structure.

For administrative sanction, the Securities and Exchange Commission (SEC) has the power to disqualify directors or officers of any publicly traded company who breach their fiduciary duty. The stock exchange has the power to delist a company which fails to fulfill its disclosure obligations.
Under the criminal sanction regime, the SEC can present a case to a quasi-judicial body which has the power to fine a company or directors who fail to submit the company’s financial statements in a timely manner. However, for other serious crimes such as fraudulent disclosure or dishonest conduct by a director or officer, the SEC must refer the case to criminal authorities, i.e. the Department of Special Investigation (DSI), or the police and public prosecutor.

(b)

(i) Yes. Regarding administrative sanctions, both the SEC and the exchange have clearly separated responsibilities, and the sanctions available to them are designed to serve different purposes.

For criminal sanctions, the responsibilities of the police or DSI investigators and SEC officers are defined in the Criminal Procedure Code, the Special Investigation Act, and the Securities and Exchange Act, respectively.

(ii) Yes, there are duplications in the area of criminal sanction, particularly in the fact-finding or investigation process. SEC officers have investigative powers but are not formal investigators under the Criminal Procedure Code. Therefore, the SEC must file investigated cases with the DSI/police who will normally restart the inquiry process. The SEC is proposing some amendments to the law to reduce such duplication.

(iii) There is a memorandum of understanding (MOU) between the SEC and the exchange and the SEC and the DSI to facilitate information sharing, but the MOU has no legally binding status.

(iv) In general, the police and DSI treat the SEC like a normal entity rather than a public agency with similar missions. Co-operation, co-ordination, sharing of information, or alignment of priorities and opinion from the DSI/police cannot be ensured.

Viet Nam

The enforcement function in Viet Nam is centralised in the State Securities Commission. The Commission is responsible for supervising and enforcing regulation on the securities market. The exchange is responsible for supervising the centralised market and report to the State Securities Commission on any violations of laws and regulations.
Question 2.2 – Assessment of Current Structure

What are the advantages/benefits and disadvantages/challenges of the current enforcement structure available in your country?
Bangladesh

Under the securities act, the Bangladesh Securities and Exchange Commission (BSEC) has quasi-judicial power. Using this power, the BSEC has taken different penal measures against offenders. This has proven to be very effective. On the other hand, it is time-consuming to get a verdict on violations which attract criminal sanction.

China

We need to improve the effectiveness of discussions on laws and rules before they are issued. We also need to increase the revision frequency of laws and rules. Lastly, we need to improve the efficiency of both legislation and the court system.

Hong Kong, China

On the one hand, there is a clear division of labour and specialisation among different authorities. On the other hand, there are existing co-operation arrangements between them in relation to information sharing and enforcement co-ordination. Overall, there are no apparent disadvantages of the current structure.

India

The major advantages of the current enforcement structure available in our country can be enumerated as follows:

- The current enforcement structure provides a cost-effective mechanism to handle cases pertaining to the enforcement authorities;
- The current enforcement structure also has a deterrent effect on potential defaulters; and
- It helps in boosting investor confidence and promoting capital raising in the securities market.

However, due to the fact that the courts are overburdened, it takes a significant amount of time to resolve cases. Hence, setting up of specialised courts may generate positive results in this aspect. Clause 435 of the Companies Bill, 2012 seeks to address this concern by providing for the establishment of special courts for speedy trials of offences under the Companies Act.
Similarly, the enforcement agencies also need to strengthen their manpower and ensure that they are adequately trained.

### Indonesia

The advantage of the current structure is the establishment of a check-and-balance mechanism. However, due to bureaucratic procedures and technical matters, it takes more time and resources to complete the enforcement process.

### Korea

The strength of the Korean enforcement structure is enhanced expertise and efficiency in the enforcement of corporate governance rules and regulations from clearly stated roles and responsibilities of the different enforcement agencies. However, when their remits overlap (e.g. listed companies belonging to large business conglomerates), determining and resolving the ambiguity in the roles and responsibilities of the enforcement agencies are time-consuming and can lead to inefficiency.

### Malaysia

Multiple regulatory authorities would ensure proper checks and balances in efforts to enforce the CG framework. It also fosters specialisation and allows for a more focused enforcement.

However, it may also lead to overlap in certain areas, high regulatory costs and burden to listed issuers and intermediaries. This, however, is being addressed through regulatory co-operation and co-ordination among the authorities.

### Mongolia

The advantages are that the involvement and enforcement efforts of various regulatory agencies give rise to a widespread awareness on the importance of CG.

The disadvantages could be a lack of co-operation, duplication of efforts and information sharing. But they remain to be seen. One thing is clear, and this is the lack of human and financial resources to enforce regulations.
Pakistan

The present structure clearly defines the roles at the macro level as far as enforcement of corporate governance is concerned. However, clarity through a formal arrangement is required between the Securities and Exchange Commission of Pakistan (SECP) and the stock exchanges, both for overall enforcement and corporate governance. Also, the setting-up of specialised courts is necessary to take speedy and immediate action against non-compliance of the regulatory framework.

Similarly, a formal arrangement backed by law is needed to spell out the regulatory roles and responsibilities between the SECP and State Bank of Pakistan, in particular in relation to financial conglomerates.

Philippines

The advantage of having the National Law Enforcement Co-ordinating Committee (NALECC) in the Philippines is that enforcement agencies have a venue to share best practices, exchange information and point out areas for improvement. The conduct of regular NALECC meetings also ensures that the enforcement agencies in the country have a venue to regularly discuss their experiences in carrying out enforcement activities and request the assistance of other agencies in future activities.

Another advantage of the current set-up of enforcement of laws in the Philippines is that each agency has clearly defined roles and responsibilities.

One disadvantage of the ad hoc set-up of the NALECC is that there are really no dedicated personnel who oversee, direct and/or co-ordinate the enforcement activities of all the agencies.

Singapore

As each enforcement agency builds up its expertise over specialised areas, investigation can be handled more efficiently.
Chinese Taipei

According to the Detailed Assessment of the Level of Implementation of the Objectives and Principles of Securities Regulation of the International Organization of Securities Commissions (IOSCO) prepared by IOSCO-appointed experts, except for the compulsory execution of an unpaid fine, the present laws and regulations of the Financial Supervisory Commission (FSC) in relation to securities and futures trading do not provide for the FSC to ask for a court order or other court actions.

With the exception of enforcement of administrative fines, there are very few areas in which our laws grant an administrative agency the power to demand that a court approve and issue an order (such as injunctions, orders for restitution, or orders for winding up a business or bankruptcy). If we are to consider amending laws to allow the adoption of such procedures, we must first seek to understand the circumstances which allow foreign competent authorities to demand issuance of such orders by courts, as well as the procedures and timetables for co-operation by the judiciary. In addition, an analysis would have to be undertaken regarding the division of powers and responsibilities between the FSC and the judiciary, if the FSC were to be granted such powers, as well as the issue of whether other laws and regulations would have to be amended in addition to those falling under the purview of FSC authority.

Thailand

The current structure is generic to all criminal offenses and does not take into account the investigative powers of some agencies like the Securities and Exchange Commission. The impediments stemming from this structure result in a less-than-effective outcome in criminal enforcement actions.

Viet Nam

The centralised structure is relevant for Vietnam, because the securities market is still small, and it helps to avoid conflicts between different authorities. The disadvantage of the enforcement structure in Vietnam is the power of the State Securities Commission. The State Securities Commission is not independent from the Ministry of Finance, and has no power to investigate and prosecute.
CHAPTER 3 - AUTHORITY TO MONITOR, SUPERVISE, INVESTIGATE, ENFORCE AND IMPOSE SANCTIONS

Question 3.1 – The Authorities

Which authority(ies) in your country is authorised to

(a) monitor and supervise compliance with the laws, regulations, rules or guides in relation to corporate governance and, in particular, the Specific CG Areas?

(b) investigate and undertake public enforcement of corporate governance and, in particular, in the Specific CG Areas?

Please describe their areas of responsibilities (e.g. breach of directors’ fiduciary duties is monitored and enforced by the companies’ commission, breach of disclosure requirements is monitored and enforced by the securities commission and the stock exchange, etc.)
Bangladesh

(a) & (b) The Bangladesh Securities and Exchange Commission (BSEC).

China

(a) The China Securities Regulatory Commission (CSRC) for all listed firms, the State-owned Assets Supervision and Administrative Commission (SASAC) for listed state-owned companies.

(b) The CSRC and stock exchanges, and the police and court system in suspected criminal cases.

Please see the answer to Chapter 2 (b).

Hong Kong, China

Securities and Futures Commission (SFC): The SFC has statutory investigation and enforcement powers in a number of circumstances, including where it has reason to believe that the management of a listed issuer is involved in defalcation, fraud, misfeasance or other misconduct against its shareholders, or the documents filed by a listed issuer contains information that is false or misleading in material respects. The Stock Exchange of Hong Kong, China will refer cases that involve suspected breaches of the laws to the SFC for further investigation.

Stock Exchange of Hong Kong: The Exchange is the frontline regulator of listed issuers in Hong Kong, China and is responsible under statute for ensuring, so far as reasonably practicable, that the Hong Kong, China markets are fair, orderly and informed.

One of the ways in which the Exchange addresses its statutory duty is to seek to ensure compliance by issuers and their directors/management with the provisions of the Listing Rules. The Listing Rules are interpreted, administered and enforced by the Exchange, whose decision shall be conclusive. The Listing Rules are reinforced by contractual agreement between each issuer and the Exchange. Directors of the issuer also give undertakings to the Exchange to ensure compliance with the Listing Rules and procure the issuer’s compliance with the Listing Rules.

The Exchange has responsibility for investigating suspected cases of non-compliance with the Listing Rules and, where appropriate, initiating formal disciplinary action. It may impose sanctions and make directions against issuers that violate the Listing Rules and/or their directors/management (see also answer to Question 3.5 (b)).

Where a case involves suspected breaches of criminal or civil laws, the Exchange will refer the matter to an appropriate law enforcement agency and provide co-operation as requested.
Companies Registry: The Companies Registry has a role to ensure compliance by companies and their officers with their obligations under relevant provisions of the Companies Ordinance (CO).

The civil remedies for breach of directors’ statutory duty of care, skill and diligence under the CO are the same as those available following a breach of the common law rules or equitable principles that the statutory duty replaces. The courts’ intervention in this respect is a key element in enforcing the protection.

Financial Reporting Council: The FRC has authority to conduct independent investigations into possible auditing and reporting irregularities in relation to listed entities and to enquire into possible non-compliance with accounting requirements on the part of listed entities.

Any auditing or reporting irregularities identified by the FRC will be referred to the Hong Kong Institute of Certified Public Accountants for follow-up action. Any non-compliance relevant to the Listing Rules will be referred to the SFC or the Exchange for follow-up action. The FRC is not empowered to discipline or prosecute.

India

(a) The authorities which are authorised to monitor and supervise compliance with the laws, regulations, rules or guides in relation to corporate governance, and in particular, the Specific CG Areas, in our country are as follows:

- The Ministry of Corporate Affairs;
- The Securities and Exchange Board of India (SEBI); and
- The stock exchanges, which have been set up as self-regulating organisations.

(b) Same as (a).

The stock exchanges carry out the primary monitoring and ensure supervision of compliance with the laws, regulations, rules or guides in relation to corporate governance. They deal with breaches with respect to the same and are empowered to take disciplinary actions, namely, delisting, suspension of trading, levying of penalty, etc. SEBI, on its own and on the basis of reports forwarded to it by other external agencies, also performs the monitoring and compliance function.

The ambit of the Ministry of Corporate Affairs in this area is even wider, as it covers both listed and unlisted companies, unlike in the cases of SEBI and the stock exchanges which deal with listed entities only.
Indonesia

(a) The Financial Services Authority (OJK) is authorised to monitor and supervise compliance of CG in the capital market sector, and it is regulated by OJK Law articles 6 and Law Number 8 Year 1995 regarding Capital Market articles 5.

(b) In terms of the enforcement in the areas of corporate governance in the capital market, the OJK has the power to inspect and investigate any persons with respect to suspected violations of capital market laws and their implementing regulations, and publish findings of the investigation.

Korea

The enforcement function is fragmented in Korea. The Ministry of Justice (MOJ) takes the role of providing and enforcing corporate governance policy on the whole. As far as listed financial companies are concerned, the Financial Supervisory Service takes the role of supervising and regulating them. The regulation of the corporate governance of large business conglomerates is also dealt with by the Fair Trade Commission (FTC).

For corporate governance policy, the MOJ mainly deals with the Commercial Act, the Financial Services Commission with the Capital Market Act, the FTC with the Fair Trade Act, and the Korea Exchange with the listing and disclosure rules for listed companies.

Malaysia

(a) See the answer to Question 2.1 (a).

(b) The same authorities specified in the answer to Question 2.1 (a) are authorised to investigate and undertake public enforcement for breaches of laws/regulation/guideline, which are under their purview.

In this regard, Bursa Malaysia, as the frontline regulator, administers and enforces its rules, including the provisions of the Listing Requirements (LR). The Securities Commission Malaysia, on the other hand, administers and enforces securities laws, while the Companies Commission Malaysia (CCM), is responsible for the administration and enforcement of the Companies Act 1965 (CA 1965) and legislations relating to company law. Hence, for example, breaches of the related party transactions and disclosure provisions in the LR will be enforced by Bursa Malaysia, while breaches of directors’ fiduciary duties as codified under the CA 1965 are enforced by the CCM.
Mongolia

(a) The Financial Regulatory Commission (FRC), Mongolian Stock Exchange (MSE) and Mongolbank.

(b) The FRC and Mongolbank.

Breach of directors’ fiduciary duties is monitored and enforced by the companies themselves, state inspectors of the FRC and lastly, the judge. Breach of disclosure requirements is monitored and enforced by the FRC and MSE.

Pakistan

Being a unified regulator for the corporate sector (includes the corporate registry and enforcement of listed companies) and the non-bank financial sector (includes capital markets) the Securities and Exchange Commission of Pakistan (SECP) has the authority to monitor and supervise compliance with the laws, investigate violations and impose sanctions in relation to corporate governance, in particular in the Specific CG Areas. In case of the banking sector, the State Bank of Pakistan (SBP) has the authority to supervise compliance with corporate governance laws and regulations to the extent prescribed by the SBP, while enforcement of provisions falling under corporate law and listing regulations for the banks rests with the SECP. The stock exchanges as the frontline regulators are responsible for ensuring companies’ compliance with the Code of Corporate Governance which forms part of their listing regulations, and can impose fines on/suspend/delist companies upon violations.

Philippines

(a) The Securities and Exchange Commission (SEC) monitors and supervises compliance on corporate governance and the Specific CG Areas. Within the SEC, this responsibility is being undertaken by the following departments on corporations under their respective jurisdiction:

– Corporation Finance Department: listed and public companies, and registered issuers of securities;

– Investor Protection and Surveillance Department: lending and financing companies, foundations and registered issuers of proprietary and non-proprietary shares; and

– Market Regulation Department: Market/trading participants like broker/dealers, investment houses, etc.
(b) The SEC, through its Enforcement and Prosecution Department investigates and undertakes public enforcement on corporate governance and the Specific CG Areas.

**Singapore**

(a) The Accounting and Corporate Regulatory Authority (ACRA), Commercial Affairs Department (CAD), Monetary Authority of Singapore (MAS) and Singapore Exchange (SGX).

(b) The authorities have been empowered to investigate and undertake public enforcement under the relevant acts.

The authorities are empowered to conduct investigations on the areas cited above based on the relevant acts, and there may also be inter-agency work involved on specific issues. For example, although the Companies Act (CA) and Securities and Futures Act (SFA) come under the purview of ACRA and MAS, respectively, CAD is empowered to investigate all offences under the CA, as well as all breaches of the SFA.

**Chinese Taipei**

(a) The Financial Supervisory Commission (FSC), the stock exchanges and the judiciary (including prosecutors and courts).

(b) The FSC, the stock exchanges and the judiciary.

Breach of directors’ fiduciary duties is monitored by the FSC and the stock exchanges and enforced by the judiciary.

Breach of disclosure requirements is monitored and enforced by the FSC and the stock exchanges. However, if the disclosure involves misrepresentations, fraud, or any other acts which are sufficient to mislead other persons, then the breach is enforced by the judiciary.

Breach of related party transaction-related regulations is monitored and enforced by the FSC and the stock exchanges.

**Thailand**

(a) The Stock Exchange of Thailand monitors news and incidental disclosure of listed companies.
The Securities and Exchange Commission (SEC) monitors periodic disclosure of listed companies and all other reports, and takes appropriate enforcement action.

(b) The SEC, and the police or Department of Special Investigation.

**Viet Nam**

(a) The Securities Exchanges and the State Securities Commission of Viet Nam.

(b) The State Securities Commission has the power to supervise and undertake administrative enforcement. The exchanges also have responsibility to supervise corporate governance. In case the exchanges find breaches, they will refer them to the State Securities Commission to take administrative action.
Question 3.2 – Enforcement Actions

What are the common areas of corporate governance in which enforcement actions are taken in your country (e.g. related party transaction breaches, disclosure breaches, etc.)? In particular, is there enforcement of these breaches by the enforcement authorities? If so, what are the types of actions taken with respect to breaches of the Specific CG Areas and, in your view, are these actions imposed adequate/deterrent? Please provide publicly available information pertaining to these enforcement actions (including with respect to Specific CG Areas) for the last two years (i.e. statistics as to the types of breaches, types of sanctions or enforcement actions taken, and particulars/details of such actions).
The CG Code is issued under the power of the Securities and Exchange Ordinance. Any violation of the Code is a civil offence, and the Bangladesh Securities and Exchange Commission (BSEC) has the legal authority to impose unlimited penalty subject to a minimum BDT 1 lac (Bangladeshi taka, approximately USD 1200). Enforcement actions can be taken against disclosure breaches and also against related party transaction breaches. In our opinion, legal authority of the BSEC is sufficient to prosecute against breaches of the CG Code. In the financial year 2010/11, out of 145 enforcement actions, 38 cases were related to disclosure breaches. In the financial year 2011/12, out of 184 enforcement actions, 70 cases were related to disclosure breaches.

China

- Related party transaction breaches
- Insiders trading
- Disclosure breaches
- Board of directors composition
- Annual report on CG operation
- Accounting standard

Yes, there is enforcement of these breaches by the enforcement authorities. They are mainly monitoring and investigation actions.

According to the information disclosed by the China Securities Regulatory Commission (CSRC), from January 2010 to the June 2012, the regulator had investigated and taken action in 122 cases, of which 36 involved the Police Bureau.

Hong Kong, China

Securities and Futures Commission’s power to apply for remedies: Section 213 of the Securities and Futures Ordinance (SFO) provides that, where there has been a contravention of the SFO or where it appears that a contravention has occurred, the SFC can apply to the Court of First Instance for a number of orders.

A recent example of the SFC’s exercise of powers under section 213 is the action against Hontex International Holdings Company Ltd. On 20 June 2012, the Court of First Instance, in proceedings
brought by the SFC, ordered Hontex, a listed company, to make a repurchase offer to about 7,700 investors who had subscribed to Hontex shares in its initial public offering in December 2009 or purchased them in the secondary market during the three months after its shares were listed.

Hontex acknowledged that certain information in the prospectus was materially false and misleading.

As a result of the SFC’s action, the court ordered Hontex to pay a total sum of up to HKD 1.03 billion to investors by repurchase of shares. The repurchase price was set at HKD 2.06 per share, which was the closing price of the shares on 30 March 2010, when the SFC directed that trading on the Exchange be suspended. The repurchase was managed by court-appointed administrators.

Section 214 of the SFO provides that, where it appears to the SFC that the business or affairs of a listed company have been conducted in a manner:

- Oppressive to its members or any part of its members;
- Involving defalcation, fraud, misfeasance, or other misconduct towards it or its members or any part of its members;
- Resulting in its members or any part of its members not having been given all the information with respect to its business or affairs that they might reasonably expect; or
- Unfairly prejudicial to its members or any part of its members,

The SFC has the power to apply to court for civil orders, including injunction orders, disqualification orders, order to pay compensation to the company, share-repurchase orders, prohibition orders, order to the listed company to bring action against persons.

Set out below are examples of recent enforcement outcomes in this area:

- Order to pay compensation to the company: On 7 March 2012, the Court of First Instance ordered the founder and former chairman and former executive director of Styland Holdings Ltd to pay compensation totalling over HKD 85 million to the company for their misconduct. The SFC alleged that Styland entered into a number of transactions which were not in the company’s interests but directly or indirectly benefitted the directors to the tune of HKD 86 million. The directors flouted their responsibilities, abused shareholders’ funds and then sought to prevent steps being taken to make them accountable;

- Disqualification of directors: In March 2010, the SFC obtained court orders to disqualify two directors of a listed company, Warderly International Holdings Ltd, for five years for failing to ensure that the company disclosed its substantially depleted financial position to the market, as required under the Listing Rules, and to give shareholders all the information they might reasonably expect; and

- Order to direct a listed company to commence proceedings against former directors: In March 2010, the SFC obtained an order from the Court of First Instance directing Rontex International Holdings Ltd to bring legal proceedings against three of its former executive directors to seek the recovery of the compensation for the loss and damage suffered by the company as a result of the directors’ misconduct.
SFC’s power to intervene in proceedings: The SFC has the power to apply to intervene in proceedings between private litigants under the SFO. This power is introduced so that the SFC could provide its regulatory perspective and expert opinion to private disputes which have an impact on the financial markets and which affect the public interest.

Where an application is allowed by the court, the SFC (a) may intervene and be heard in the proceedings to which the application relates, and (b) shall be regarded as a party to the proceedings and shall have the rights, duties and liabilities of such a party.

In early 2009, PCCW Ltd, a listed company in Hong Kong, China, proposed a privatisation and delisting scheme under section 166 of the Companies Ordinance (CO).

The SFC presented evidence to the court which questioned the way in which the PCCW scheme of arrangement meeting achieved the required majority of shareholder voting in favour of the privatisation scheme.

The SFC argued that the evidence suggested the number of those who voted in favour was influenced significantly by the splitting of larger parcels of shares into single board lots, which were then distributed to persons who became registered shareholders with the attached votes cast in favour of the PCCW scheme. The share splitting and artificial arrangements had resulted in over 800 out of 1,404 shareholders, either in person or by proxy, voting in favour of the privatisation scheme. If these votes had not been cast, the required majority of persons voting in favour of the proposal would not have been met.

The extent of the share splitting meant the court could not be satisfied that the result of the meeting was a fair representation of the interests of those attending the meeting.

The Court of Appeal ruled in the SFC’s favour and decided not to approve the proposed privatisation, stating in its judgment that there was clear manipulation of the vote. The court made it clear that share splitting for the purpose of manipulating the outcome in a scheme of arrangement is a form of abuse and the results of shareholders meetings achieved by manipulative devices may be struck down by the court.

Stock Exchange of Hong Kong: The Exchange brings disciplinary action before the Listing Committee* for egregious breaches of the Listing Rules assessed by reference to public criteria, including where breaches give rise to significant adverse market impact, prejudice or loss occasioned to shareholders of listed issuers/investors and damage to the integrity and reputation of the market. To enhance transparency, a revised statement describing the Exchange’s enforcement objectives has been published in September 2013.

In 2011 and 2012, Listing Rule breaches subject to disciplinary actions concerned primarily (a) failure to disclose what is now defined as inside information by the SFO, (b) failure to obtain shareholders’ approval for connected transactions or notifiable transactions, (c) inaccurate disclosure in regulatory announcements/listing documents, and (d) directors’ securities dealings. Three of these cases also involved directors’ breach of duty under the Listing Rules of one or both of (a) failure to exercise reasonable care, skill and diligence in considering and approving the connected transactions, and (b) failure to avoid conflict of interest.

For cases involving breaches of these categories which the Exchange concluded were not egregious, and therefore do not warrant disciplinary actions, they were disposed in one of the following manners: no further action; warning letter; or caution letter.
The “Listing Committee” is the listing sub-committee of the Board of the Exchange. Under the Listing Rules, the Board of the Exchange has arranged all its power and functions with respect to all listing matters to be discharged by the Listing Committee and/or its delegates, subject to the review procedures set out in the Listing Rules.

<table>
<thead>
<tr>
<th>Formal Actions:</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misstatement or misleading disclosure in announcements or listing documents</td>
<td>Public censure 1</td>
<td>Public censure 1</td>
</tr>
<tr>
<td></td>
<td>Public criticism 2</td>
<td>Public criticism 2</td>
</tr>
<tr>
<td></td>
<td>Private reprimand 2</td>
<td>Private reprimand 1</td>
</tr>
<tr>
<td>Failure to disclose inside information</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Failure to obtain shareholder approval for connected transactions, or notifiable transactions</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td><strong>Total (note 1)</strong></td>
<td>3</td>
<td>7</td>
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Non-Formal Action:

<table>
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<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warning letters +Caution letters 42</td>
<td>Warning letters +Caution letters 20</td>
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</table>

**Total (note 2)**

Notes:

1. These are the number of cases (restricted to specific corporate governance areas) where formal action (i.e. disciplinary or settlement action) was taken.

2. This includes all cases (not restricted to specific corporate governance areas) where formal action was not taken.

Our experience shows that listed issuers and their directors are concerned with the reputational damage that may be occasioned by the public sanctions imposed by the Exchange, and some are keen to ensure rule compliance to avoid facing sanction. The publicity attached to the sanctions imposed may also be translated into higher costs in raising capital on the part of the listed issuers. They also require disclosure to other regulators and impact the ability of directors to obtain insurance cover. To this extent, the enforcement actions taken by the Exchange for Listing Rule breaches are adequate and have deterrent effect.

India

The Ministry of Corporate Affairs conducts periodic inspections of companies and takes actions for non-compliance. However, the details of actions taken by it are not publicly available. The Securities and Exchange Board of India (SEBI) has taken several actions against listed companies and other market intermediaries for non-compliance. The details of actions taken by SEBI for the last two years are as follows:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>U/S 11, 11B and 11D of SEBI ACT</th>
<th>Enquiry Proceedings</th>
<th>Adjudication Proceedings</th>
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<tbody>
<tr>
<td>2010-11</td>
<td>346</td>
<td>24</td>
<td>571</td>
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<tr>
<td>2011-12</td>
<td>348</td>
<td>8</td>
<td>609</td>
</tr>
</tbody>
</table>

*Source: Annual Report of SEBI for the Financial Year 2011-12.*

Indonesia

The common areas of corporate governance which enforcement actions are taken are those regarding financial statements (Rule No. VIII.G.7) and affiliated party transactions (Rule No IX.E.1).

Korea

According to statistics published by the Fair Trade Commission (FTC), as of 2011, unfair business practices were exposed most frequently (279 times), followed by prohibited acts of enterprise organisations (85 times) and concentration of economic power (77 times).

Malaysia

Securities Commission Malaysia: The common areas involving CG breaches are disclosure of false or misleading financial information to the stock exchange and market relating to the affairs of a public listed company. Others involve misuse/misappropriation of company funds in connection with the purchase of securities (securities fraud) and other breaches involving fund raising by public companies. Below are statistics on the types and number of actions taken by the SC with respect to breaches of the Specific CG Areas:
Bursa Malaysia: Generally, the common areas of breaches where enforcement actions were taken against the listed issuers and/or directors were with respect to: delay in submission of financial statements; delay in making material/requisite announcements, including defaults in payments; and breaches in relation to making inaccurate/incomplete announcements (including issuance of misleading financial statements and responses to the media’s unusual market activity query) to Bursa Malaysia, resulting in reprimands (both private and public) against the listed issuers, coupled with fines imposed on the culpable directors. Warnings or caution would be issued for less serious breaches. Besides imposing penalties, errant parties are given the opportunity to institute/undertake remedial or corrective actions (where possible).

Briefly,

- For the year 2011, the total enforcement actions for various breaches of the LR amounted to 105, involving 26 listed issuers, and 57 directors (of 11 listed issuers; and
- For the year 2012, the total enforcement actions for various breaches of the LR amounted to 117, involving 25 listed issuers, and 50 directors (of 10 listed issuers).

Details of the enforcement actions taken in the past two years are set out below:

<table>
<thead>
<tr>
<th>Sanctions Imposed*</th>
<th>Listed Issuers</th>
<th>Directors</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Reprimand &amp; Fine</td>
<td>-</td>
<td>-</td>
<td>59</td>
</tr>
<tr>
<td>Public Reprimand</td>
<td>27</td>
<td>31</td>
<td>6</td>
</tr>
<tr>
<td>Private Reprimand</td>
<td>10</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>37</td>
<td>40</td>
<td>68</td>
</tr>
<tr>
<td>Total Fines Imposed (MYR)</td>
<td>-</td>
<td>-</td>
<td>3 430 000</td>
</tr>
</tbody>
</table>

*More than one sanction may have been imposed on a director, public limited company or other market participants, and the total number of sanctions reported is greater than the number of persons or entities against whom the action was taken.
Mongolia

Related party transaction breaches: If a person specified in the Company Law breaches the requirements and procedures specified in certain provisions of that law, such person shall be liable for the amount of the loss caused to a company or its controlled or subsidiary companies as the result of such breach or for the amount of income raised by such person as a result of the transaction.

Disclosure breaches: If a listed company failed to fulfil the obligation to present, report, submit and inform the public, authorised organisations or shareholders, such listed company is subject to a fine equal to 30 to 40 times the minimum wage, and the relevant person is subject to a fine equal to ten to 15 times the minimum wage.

As these sanctions are fairly new, publicly available information on enforcement actions may not indicate if any of those sanctions were related to above-mentioned breaches.

Pakistan

As a unified regulator for the corporate and non-bank financial sectors, the Securities and Exchange Commission of Pakistan (SECP) takes enforcement under primary statutes and, rules and regulations made thereunder. Generally, these cover all aspects of corporate governance. However, the focus is on the Specific CG Areas in particular.

Compliance with these provisions is monitored and enforced primarily by the SECP; penal provisions for a violation range from censure, and direction to civil or criminal penalty. However, criminal proceedings are initiated in extreme cases. Compliance with listing regulations, including the Code of Corporate Governance, is monitored by stock exchanges, while enforcement powers are in the form of censure, direction, delisting and civil penalties. Some penal provisions in the primary statutes were enhanced in 2008; however, quite a few still exist where the penalty provided is not commensurate with the nature and gravity of the violation. Additionally, delays within the judicial system hamper desired impact.

Disclosures: Extensive financial disclosures are required under the Companies Ordinance 1984 (CO 1984), which also requires listed companies to prepare their accounts in compliance with International Accounting Standards (IAS). Detailed disclosure requirements about financial and non-financial affairs of a company are mandated under 4th Schedule and section 236 of the CO 1984. Disclosure with respect to beneficial ownership apart from the CO 1984 and listing regulations are stipulated in the Takeover Ordinance 2002. This is a focused enforcement area, and until recently disclosures were limited to filing with the SECP. However, now it has been expanded, and these are made to stock exchanges also for public dissemination.

Related parties: Related party disclosures required by IAS-24 are mandatory under section 234 of the CO 1984. Some related party transactions require the specific approval of the board of directors/shareholders (sections 195, 196, 208). Directors and officers of the companies are also required to disclose their conflicts of interest in any arrangements being entered into by the company. Directors are also prohibited to participate in approval of such arrangements.
Executive compensation: The CO 1984 requires approval of executive compensation by board/shareholders in accordance with company’s articles of association. In case of approval by the board, timely disclosure to shareholders is required while in case of approval by shareholders, all relevant facts are required to be disclosed to the shareholders through a notice of a general meeting to enable them to make an informed decision (sections 218 and 160).

The SECP has taken several actions against listed companies and other market intermediaries for non-compliance. The details of actions taken by the SECP in the past two years are as follows:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>2011-2012 - Enforcement Actions taken under Different Statutes</th>
<th>2010-2011 - Enforcement Actions taken under Different Statutes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Companies Ordinance 1984 Section 224(4) (late filings of returns of beneficial ownership)</td>
<td>Takeover Ordinance</td>
</tr>
<tr>
<td>Cases initiated</td>
<td>6</td>
<td>484</td>
</tr>
<tr>
<td>Cases concluded</td>
<td>6</td>
<td>414</td>
</tr>
<tr>
<td>Penalty Imposed</td>
<td>1</td>
<td>263</td>
</tr>
<tr>
<td>Warnings/Directions issued/Orders issued</td>
<td>169</td>
<td>5</td>
</tr>
</tbody>
</table>


The Code of Corporate Governance was introduced in 2002 by making it part of the listing regulations of the stock exchanges. It was based on a comply-and-explain approach with very little monitoring and enforcement by the stock exchanges. In 2012, the Code was revised and a majority of the voluntary provisions were made mandatory along with insertion of penal provisions in case of violation. The stock exchanges are putting in place a compliance and enforcement mechanism. Thus far, no enforcement action has been reported.

Philippines

The enforcement actions taken by the Securities and Exchange Commission (SEC) are commonly on financial statement disclosures and directors’ fiduciary duties. The SEC filed criminal cases against
directors of two broker companies for breaches of their fiduciary duties and another company for misstatement in its financial statements. In other cases involving mis-statement in financial statements, monetary penalties were imposed.

**Singapore**

Before 19 November 2012, the requirements for disclosure of substantial shareholdings were found in the Companies Act and the Securities and Futures Act (SFA). Regulatory actions (such as warnings or offers of composition) were taken by the Accounting and Corporate Regulatory Authority and Monetary Authority of Singapore (MAS) against substantial shareholders who failed to notify the company and the Singapore Exchange (SGX) of their changes in their shareholdings within the stipulated timeframe. In 2011 and 2012, MAS published a total of 14 and 17 composition cases on its website.

On 19 November 2012, the disclosure requirements were streamlined and consolidated under part VII of the SFA and are now administered by MAS (as described in the answer to Question 1.2 (b)).

Most of the disciplinary actions taken by SGX in the past two years related to disclosure breaches, and the sanctions included written warnings and public reprimands. Public reprimands against listed companies, directors and management are published under the “Past Disciplinary Actions” page on SGX’s website.

**Chinese Taipei**

Disclosure breaches, including breach of material information disclosure, related party transaction information disclosure and other periodical information disclosure, are the common areas of CG in which enforcement actions are taken in Chinese Taipei.

Disclosure breaches are enforced by the Financial Supervisory Commission (FSC) and the stock exchanges.

Administrative fines, ranging from USD 8 000 to 80 000, will be imposed by the FSC for each act of disclosure breach and breach of related party transactions. The stock exchanges may also impose monetary penalties, ranging from USD 1 000 to 170 000, until the obligations have been fulfilled. If necessary, in addition to penalties, listed companies breaching disclosure provisions will be changed to full delivery securities or suspended from trading.

Disclosure offenses involving misrepresentations, frauds or any other acts which are sufficient to mislead other persons shall be punished with imprisonment of not less than three years and not more than ten years and, in addition to that, a fine of not less than USD 333 333 and not more than USD 6.7 million may be imposed, depending on the verdict by the courts.
As for breach of directors’ fiduciary duties, the judiciary will investigate and bring a case to court. Depending on the type of the breach, the court may impose civil/criminal sanctions, if necessary.

In our view, these actions imposed are quite adequate. The FSC imposed 61 administrative sanctions in 2011 and 65 in 2012. The Taiwan Stock Exchange, since 2011, has imposed penalties on listed companies for 155 disclosure breaches.

Thailand

The common areas of corporate governance in which enforcement actions are taken in Thailand are related party transaction breaches, disclosure breaches and directors’ fiduciary duties breaches. However, the majority of the cases involve the failure of companies to file financial statements in a timely manner.

<table>
<thead>
<tr>
<th>Type of offense</th>
<th>2012</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Criminal Sanction Statistics</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>No. of persons</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>No. of persons</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Fines (THB)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>No. of persons</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Fines (THB)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Securities issuance and offering</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Issuing companies failed to duly disclose their periodic financial statements as specified by the SEC</td>
<td>18</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>8,375,267.50</td>
<td>3,761,422.50</td>
</tr>
<tr>
<td>- Executives of issuing companies failed to properly discharge their duties, causing the companies to violate financial statements disclosure requirement</td>
<td>17</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>4,195,560.00</td>
<td>764,220.00</td>
</tr>
<tr>
<td>- Executives of issuing companies failed to report acquisition and disposal of securities</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>347,750.00</td>
<td>988,181.25</td>
</tr>
<tr>
<td>- Public offering of securities</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>500,000.00</td>
<td></td>
</tr>
<tr>
<td><strong>Corporate frauds</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Corporate fraud committed by issuing company executive</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Others</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Executives’ breach of duty (section 89)</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td><strong>Grand total</strong></td>
<td>45</td>
<td>31</td>
</tr>
<tr>
<td></td>
<td>12,918,577.50</td>
<td>6,013,823.75</td>
</tr>
</tbody>
</table>
### Administrative sanction statistics on capital market independent professionals

<table>
<thead>
<tr>
<th>Types of approved persons</th>
<th>Misconduct</th>
<th>Sanctions in 2012</th>
<th>Sanctions in 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Public reprimand</td>
<td>Suspension</td>
</tr>
<tr>
<td>Financial advisor supervisor</td>
<td>Improper performance of duty</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Auditors</td>
<td>Improper performance of duty</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Grand total</td>
<td></td>
<td>-</td>
<td>1</td>
</tr>
</tbody>
</table>

- **Viet Nam**

The common areas of corporate governance enforcement are related party transaction breaches and information disclosure breaches. Decree 85/2010/ND-CP regulates sanctions for these breaches. The level of a sanction is from VND 250 to VND 4500. In some specific situations, the subjects of sanction must return all profits they made through breaches. With serious breaches of information disclosure, offending companies will be delisted. In 2011, the State Securities Commission sanctioned 47 cases for violations of information disclosure on transactions of insiders of listed companies, and 63 public companies for breach of information disclosure regulations.
Question 3.3 – Obstacles and Challenges

What are the obstacles, challenges or impediments faced in:

(a) monitoring and supervising compliance with the laws, regulations, rules or guides in relation to corporate governance and, in particular, the Specific CG Areas (e.g. what are the obstacles faced in monitoring compliance with disclosure of indirect shareholdings, issue of nominee structures to circumvent obligations pertaining to related party transactions, etc.)?

(b) investigating and undertaking public enforcement in the areas of corporate governance and, in particular, the Specific CG Areas (e.g. burden of proof, access to information, legal challenges in courts, etc.)?
**Bangladesh**

(a) Monitoring and supervision of CG Code compliance is relatively easy in our jurisdiction because the issuer has to disclose in its annual report the compliance status of every CG Code. Therefore, even an independent person can monitor compliance of the CG Code by listed companies by reading their annual reports. The real challenge is to ensure qualitative compliance.

(b) Violation of the CG Code in our country is a civil offence and punishable under the quasi-judicial authority of the Bangladesh Securities and Exchange Commission (BSEC). Therefore, prosecution is not difficult.

**China**

(a) The obstacles include: the efficiency of the China Securities Regulatory Commission (CSRC) in monitoring and investigation; the limited role of minority shareholders in CG monitoring (for example, class action is not permitted in China yet); and the efficiency of the court system in CG cases.

(b) The obstacles include: burden of proof which belongs to the suitor; and the access to accurate information for individuals.

**Hong Kong, China**

(a) The Listing Rules adopt a self-compliant regime and primarily rely on issuers’ directors and management to ensure compliance with the Listing Rules requirements. The Stock Exchange of Hong Kong, China does not have the power to conduct audit or on-site reviews of issuers’ affairs to supervise their compliance with the Listing Rules. Un-reported compliance issues may not be discovered by the Exchange. Further, issuers’ independent directors and auditors may resign when there are material issues relating to the issuers.

(b) The Exchange does not have a statutory power of investigation. It does not have the power to compel supply of information/documents (or otherwise facing consequences of non-compliance) and power to seize documents. While the Listing Rules, Directors Undertakings to the Exchange and Undertakings by Sponsors and Compliance Advisers to the Exchange contain stipulations that listed issuers, directors, sponsors and compliance advisers will be expected to co-operate in the Exchange’s investigation and provide information and documents as required for investigation of possible rule breaches, failure to comply can only lead to separate disciplinary actions being taken and sanctions imposed for non-compliance or referral to the Securities and Futures Commission, if appropriate. As to other targets of
investigation, the Exchange relies on their voluntary co-operation to provide information/documents in response to the Exchange’s enquiries.

One common problem the Exchange has encountered arises when former directors of a listed issuer who are likely to have information and documents required by the Exchange’s investigation cannot be located and contacted. This poses problems at the investigation stage, as well as in relation to service of disciplinary papers on the relevant directors.

**India**

In terms of clause 49 of the listing agreement, all the listed companies are required to submit their compliance with the corporate governance norms to the stock exchanges on a quarterly and annual basis. Stock exchanges publish these reports on compliance/non-compliance on their websites. The majority of the companies which are most frequently traded reveal compliance with the corporate governance norms.

The bigger challenge is whether these companies which disclose compliance are really complying in spirit or in letter only. There is a need to develop a mechanism for ensuring genuine compliance. The Securities and Exchange Board of India (SEBI) is in the process of developing a system where compliance can be verified, as well as working on enforcement actions for non-compliance of the listing agreement.

There are concerns about lengthy court proceedings and subsequent delays. It is, however, expected that with the introduction of the new Companies Bill 2012 and revised corporate governance norms, which SEBI is working on, will to some extent resolve the issue of enforcement for non-compliance of corporate governance norms.

**Indonesia**

(a) Obstacles, challenges, or impediments faced in monitoring and supervising compliance with the regulations in relation to corporate governance are:

- The difference in interpretation of regulations between the regulator and the supervised parties;
- Lack of co-operation from the supervised parties in complying with the regulations; and
- Lack of awareness from the supervised parties in complying with the regulations, such as a failure to submit regular reports in a timely manner.

(b) In investigating and undertaking public enforcement in the areas of corporate governance in the capital market sector, the obstacle lies primarily in the burden of proof. In addition, we find it difficult to trace the flow of money due to bank confidentiality. However, we are
moving to unify the banking and capital market authorities in the Financial Services Authority (OJK).

**Korea**

Through the continuous implementation of disclosure policy, unfair stock trading and related party transactions are being properly supervised. However, as it is difficult to access internal corporate information, it is very difficult to expose and take preventive measures against specific issues such as price-fixing. Sometimes, generous decisions of the courts towards economic crimes are a problem in Korean society.

**Malaysia**

(a) Listed companies are required by the Listing Requirements to disclose their compliance/non-compliance to the Malaysian Code on Corporate Governance. Monitoring the ‘actual’ implementation of these practices can be difficult, since it relies on the quality of disclosure.

The inherent lack of transparency in related party transactions (RPTs) also poses significant challenges in monitoring compliance with disclosure of indirect shareholdings and the issue of nominee structures. In most instances, it is very difficult to ‘link’ the parties involved as related/connected with each other despite suspicion by the regulator that there is an RPT.

(b) In mounting a criminal action, the Securities Commission Malaysia/prosecution is required to prove the case beyond reasonable doubt. This is a relatively high standard of proof.

Also in an adversarial system of justice, various challenges can be mounted by the defence at any stage of a case. The preparation, response and follow-up to such challenges require intensive resources. As these legal challenges must be concluded before the trial can proceed, a case may take years to conclude. There is a need to also manage the public perception when these challenges are faced, as the time taken to conclude a case may be a matter outside the control of the regulator.

One of the main challenges faced by Bursa Malaysia in undertaking its investigation activities relates to the limitation of its power to obtain information, particularly from third parties who are not within the regulatory ambit of the LR⁶ – there is no reach over these unregulated persons.

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⁶ Under paragraph 16.16 of the LR, Bursa has the following power for investigation purposes:

(a) By notice in writing require an applicant, a listed issuer, management company, trustee, trustee-manager or their directors, officers, employees or advisers, or any other person to whom these requirements are directed, to produce for inspection any documents, books, papers, registers, records or accounts (whether recorded in
One example is the inability to obtain concrete evidence to prove an RPT where the related party undertakes the transaction with the listed issuer through its nominees to circumvent the requirements. As the information or documents are limited to those provided by the listed issuer and Bursa Malaysia does not have reach over the third parties involved who are unregulated persons, this does hamper the investigation of the matter. In addition, Bursa Malaysia does not have power to undertake ‘money trail’ of the transactions by the parties which are relevant to ascertain linkage that it is an RPT. In these instances, Bursa Malaysia will refer the matters to the relevant enforcement authorities for their further action, if there are reasonable suspicions of an offence being committed.

**Mongolia**

(a) New regulations and evolving enforcement capacity.

(b) Burden of proof and the lack of similar practices.

**Pakistan**

(a) There are some violations for which penal provisions are not proportionate and adequate. This, coupled with delays in the judicial system, undermines authority of the regulator and also investor confidence due to a long gap between initiation and conclusion of an investigation. In some cases, investigations are stopped through judicial stay orders.

In Pakistan, nominee and group accounts do not exist. However, the existence of *benami* (shares held in undisclosed third-party name or undisclosed indirect shareholding) accounts is a major obstacle to monitor compliance with corporate governance laws. All directors, statutory executives and shareholders holding more than 10% shares of a listed company are required to disclose their direct and indirect shareholdings. However, the completeness of the disclosure depends on the person. If shares held in a *benami* account are not disclosed, it is difficult to ascertain a complete and true picture.

Non-reporting effectively conceals the true identity of the person controlling the corporate structure, and hampers compliance of laws relating to corporate governance, in particular, related party transactions through acquisitions and control of controlling/associate/related companies, which can be a high-risk area for listed companies. In addition, this poses a threat with regards to takeover law.

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documentary or electronic form) that are held by the person concerned or to which the person concerned has control or access over;

(b) Inspect and make copies of, or take notes from, such information;

(c) Retain such information for such periods as the exchange deems fit; or

(d) Disclose or forward such Information to such authorities as the exchange deems fit.
Also, listed companies are required to publish a Statement of Compliance with the Code of Corporate Governance in their Annual Reports, exhibiting their compliance or otherwise with the provisions of the Code. However, since corporate governance is more about intent than forced compliance, it cannot be ascertained from the said Statement if companies are complying with the Code in true letter and spirit.

The non-reporting of beneficial ownership under section 222 of the Companies Ordinance, 1984 entails only penalty and does not bar the claim of the beneficial owner to the title of shares.

(b) Investigations of various corporate violations could be hampered by the non-availability of information on the control or beneficial ownership structure. At times, these are discovered through a whistleblower or voting patterns at the time of corporate actions. However, such instances are very rare. The information that is obtained from other regulatory bodies, including the State Bank of Pakistan or foreign jurisdictions, for the purpose of identifying control over the assets and corporate structures can be used in a preliminary assessment/probe and at times may not be presented in the court of law.

**Philippines**

(a) The Securities and Exchange Commission (SEC) is understaffed and does not have enough personnel to monitor real time compliance with all the laws and regulations. Most of the time, the SEC is alerted to potential violations of laws only when there is a complaint from the public or referral from another government agency. Except for listed companies, the SEC can only do a random examination of the audited financial statements of ordinary corporations.

(b) In conducting investigations, the SEC is faced with the lack of sufficient number of staff to handle the numerous complaints received on a daily basis. Aside from this, there are legal impediments that obstruct the investigation process. For instance, the secrecy of bank deposits prohibits disclosure or inquiry into bank deposits of corporations being investigated.

With regard to court cases, the slow pace of the criminal judicial proceedings in general is a major obstacle to speedy resolution of cases. Most often, the witnesses cannot be located/contacted at the time they are scheduled to testify. This makes the burden of proving our cases beyond reasonable doubt more burdensome.

**Singapore**

(a) Working arrangements are made to ensure co-operation and co-ordination among authorities. However, for some issues, the onus is on the insiders to make timely and full disclosures of arrangements or transactions.
(b) Generally, the authorities have the necessary mechanism to undertake investigation and public enforcement. However, when investigations involve a substantial overseas component, including companies which are based overseas but listed in Singapore, authorities may be faced with some obstacles, such as access to documents and witnesses located in foreign jurisdictions, funds tracing, etc.

**Chinese Taipei**

(a) As mentioned, now only three layers of disclosure on beneficial ownership are available. For some public companies, the third layer of shareholdings belongs to a legal person. It is not required to disclose the next layer of shareholdings.

(b) In Chinese Taipei, the enforcement authorities/plaintiffs have the burden of proof. They need to collect evidence to prove regulated parties’ breaches. For minor violations subject to administrative punishment, the process does not cause any challenges. For major violations subject to criminal punishment, however, the enforcement efficiency can be further improved. The FSC does not have the authority to directly search regulated parties or parties related to securities trading. Therefore, it has to ask prosecutors to obtain a search warrant and accompany them to investigate. Since prosecutors and courts have a heavy workload, the process may affect the efficiency of case handling.

**Thailand**

(a) The Securities and Exchange Commission (SEC) has no power to conduct routine inspection of any publicly traded company, unless the company is doing business under the regulation of the SEC, such as the securities or derivatives business. The current mechanisms available are self-reporting, public complaint or auditor’s report, which provide credible information on potential violation of the securities law. Without reasonable cause, however, the SEC cannot exercise its investigative power in this matter.

(b) The information that is self-declared is very difficult to verify to ensure that it is correct. The use of nominees and cash transactions can make it difficult to prove ownership.

For shareholding or trading from a foreign jurisdiction, access to information can be even more difficult. Although the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU) is very helpful at the stage of investigation, it may not be efficient for daily surveillance work. Moreover, for our jurisdiction, there is still some uncertainty as to whether the information obtained from the MMOU is admissible in the courts.
Viet Nam

The State Securities Commission has not yet been given enough authority to investigate, verify evidence of fraud, speculation and market manipulation in securities investment activities (although a proposal to amend the Securities Act of 2011 has been made, but did not get through Congress). The absence of this authority poses a significant limitation to perform its duties effectively in market surveillance. Criminal sanctions are taken by the Investigating Agency.

The information that the State Securities Commission gets is limited. It only has access to information from listed companies. It is difficult for the Commission to have direct information from persons or entities that have transactions with listed companies. The Commission also does not have access to information from the banking system.

The securities market has been in operation only about ten years in Viet Nam, and the court system also lacks experience in these areas.
Question 3.4 – Measures to Address the Obstacles and Challenges

What are the measures that have or can be put in place to address the obstacles, challenges or impediments highlighted above?
Bangladesh

Realisation of the business community that corporate governance is not an issue for the regulator. Having good corporate governance will ensure the long-term growth prospect of every business entity. In our part of the world, ensuring good state governance is a challenge. Until and unless we can ensure good state governance, ensuring corporate governance will always remain a big challenge.

China

(No answer).

Hong Kong, China

To promote issuers’ self-compliance with the Listing Rules, the Stock Exchange of Hong Kong, China gives specific guidance on rule interpretation and related matters to individual issuers. It also publishes guidance materials and runs seminars to help issuers understand and comply with the Listing Rules, particularly in areas not explicitly set out in the Listing Rules or where there is a higher incidence of non-compliance.

The Exchange reviews the Listing Rules from time to time to promote good corporate governance practices and enhance investor protection. In 2012, it amended the Corporate Governance Code and the associated Listing Rules to stress that directors should ensure that they are fully aware of their duties under the law and the Listing Rules, take an active interest in the issuer’s affairs and obtain a general understanding of its business. There are also code provisions relating to directors’ training and the board’s responsibility for performing corporate governance duties, including reviewing and monitoring the issuer’s policies and practices on compliance with legal and regulatory requirements. The Exchange publishes on its website Request for Assistance Announcements, identifying those directors or former directors the Exchange wishes to contact and requests that they contact the Exchange.

Directors of listed companies are required to provide to the Exchange on appointment to office includes provisions that they acknowledge: (a) their obligation to notify the Exchange of updated contact details for three years after resignation; and (b) if they fail to do so, they may face consequence of not receiving notice of disciplinary action the Exchange may bring against them.
India

Clause 435 of the Companies Bill, 2012 seeks to address this concern by establishing special courts to provide speedy trials of offences under the Companies Act. Secondly, for related party transactions, the introduction of strict approval procedures, namely, shareholder approval and providing a justification for entering into a contract with related parties, etc. is incorporated into the Companies Bill, 2012.

The Securities and Exchange Board of India (SEBI) is also working on enforcement norms for non-compliance with the listing agreement, which are expected to be released soon.

Indonesia

Measures that have or can be put in place to address the obstacles, challenges or impediment highlighted are providing interpretations of regulations, and regular and ad-hoc inspections, as well as imposing sanctions.

Korea

Enforcement agencies continuously try to improve corporate governance policy and investor protection, in particular, disclosure policy. Recently, the courts are handing down heavier judicial punishments for economic crimes.

Malaysia

The Securities Commission Malaysia (SC) invests in staff training to ensure that they possess the expertise to deal with complex cases. It actively manages the case at every level to ensure that legal challenges are dealt with and that compelling and persuasive arguments are made in court. It also places relevant information relating to its cases on its website and through publications such as the Reporter to ensure that the public is kept up to date on the actions it takes.

Bursa Malaysia works closely with the SC, particularly where the SC may assist in cases involving persons who come within the SC’s purview but not Bursa Malaysia’s.
Mongolia

Capacity-building in investigation and enforcement of CG areas.

Pakistan

The Securities and Exchange Commission of Pakistan (SECP) has established the Corporate Law Review Commission to review and revamp the entire corporate legal framework so as to address any challenges or impediments in effective enforcement of the corporate sector laws. It is a long-term project as, once finalised, it would go through a parliamentary approval process. However, once in place, it would provide technology-based solutions to monitor ownership structure.

Further, the SECP is in the process of establishing an Audit Oversight Board for accreditation of independent external auditors for the purpose of their being eligible to be appointed as statutory auditors of listed and economically significant companies as defined in the Companies Ordinance, 1984 and such other companies as may be notified. This will require the auditors to be subject to the discipline of an audit oversight body that is independent of the audit profession. This should improve the quality of financial reporting leading to better investor protection.

Also, awareness needs to be created among the business community and corporations to embrace corporate governance as a tool that would ultimately benefit themselves and have a positive impact on their images and share prices.

Philippines

There are initiatives to increase the staffing of the Securities and Exchange Commission. With respect to the slow pace of criminal justice proceedings, the Supreme Court recently implemented the Judicial Affidavit Rule in order to minimise delays in court proceedings. The rule requires party litigants to submit judicial affidavits of their witnesses in lieu of direct oral testimony.

Singapore

The Companies Act will be amended to abolish the requirement for private companies to maintain the registrar of members. Instead, the Accounting and Corporate Regulatory Authority (ACRA) will maintain the registrar for private companies, and such information will be easily available on the Internet. With this initiative, prompt reporting of any changes in shareholdings, including transfer, will be imposed.
In the upcoming reforms, ACRA will also regulate company service providers and impose a duty on such providers to obtain and maintain records of beneficial ownership information from their customers.

A greater harmonisation of laws and greater international co-operation among law enforcement agencies/regulators may also help to address the various cross-border obstacles/challenges.

### Chinese Taipei

We noticed that some securities regulators in other countries have the power to conduct investigations (including search for evidence) of criminal violations and may bring criminal charges against violators. In addition, the UK’s laws grant an administrative agency the power to demand that a court approve and issue an order (such as injunctions, orders for restitution, or orders for winding up a business or bankruptcy). We are studying whether those powers can be granted to the Financial Supervisory Commission under our current legal system.

### Thailand

In 2008, the Securities and Exchange Act was amended by adding section 89/25 to impose a duty on the auditor of publicly traded companies to report to the audit committees of the companies any irregularities found during the course of its review or audit of their financial statements. The audit committee then has a duty to conduct an internal inspection and report its findings to the Securities and Exchange Commission (SEC) within 30 days of being informed by the auditor. The 2008 amendment also contains a whistle-blower provision in section 89/3 to prevent any unfair treatment of employees of a securities firm or publicly traded company who notify the SEC or co-operate with the SEC on disclosing any wrongdoing in the firm or company.

For further improvement, the SEC has submitted another bill to amend the law (e.g. imposing penalties to nominees whose account has been used to facilitate a violation of the securities law, authorising the SEC to impose civil sanctions, shortening the process to investigate breaches and shifting the burden of proof in certain areas to the defendant). The bill, however, can take some years before being enacted.

### Viet Nam

The legal framework, especially on enforcement, must be streamlined. The court system should also be more active. More importantly, public education should be emphasised to raise awareness of investors and shareholders.
Question 3.5 – Enforcement Powers and Tools

Do the enforcement authorities have at their disposal

(a) sufficient powers to investigate (e.g. powers to enter the premises of regulated parties without prior notice and seize and copy documentation)?

(b) a wide range of enforcement powers (i.e. sanctions and remedies, including monetary penalties)? What are these sanctions/remedies, and are they sufficiently deterrent?

(c) authority to access information, including from unregulated persons?
Bangladesh

(a) Yes.

(b) Yes.

(c) Yes.

China

(a) Yes, they have.

(b) Yes, they have. Sanctions that the China Securities Regulatory Commission (CSRC) could raise include: ordering to stop issuing securities; ordering to stop business for internal rectification; suspending or repealing securities and futures business permission; revoking qualifications; and fining or confiscating illegal income on individuals and legal entities.

(c) Largely, yes, because the CSRC can ask the police to jointly carry out investigations.

Hong Kong, China

(a) The Securities and Futures Commission (SFC) is the organisation with primary responsibility for enforcement of the relevant laws and regulations relating to securities activities. The SFC has comprehensive investigatory powers. The SFC has the power to investigate into matters related to a corporation which is or was listed, and all other matters related to securities activities under the Securities and Futures Ordinance (SFO).

Once an investigation has been started, the SFC has the power to compel both unregulated and regulated natural and non-natural persons to (i) produce information and documents relevant to the investigation and (ii) attend interviews and provide statements under the SFO. This power applies to both persons under investigation or whom the SFC has reasonable cause to believe has information relevant to the investigation.

Investigatory powers under the Companies Ordinance (CO) and the new CO: The CO empowers the Financial Secretary to appoint independent inspectors to investigate a company’s affairs.

The CO empowers the Registrar of Companies to require production of records or documents, to make copies of the records or documents and to require information or explanations with respect to the records or documents, for the purposes of ascertaining
whether any conduct that would constitute an offence relating to the giving of false or misleading information in documents delivered to the Registrar has taken place.

(b) Securities and Futures Commission: The SFC has a full range of enforcement powers to take criminal, civil, administrative and other actions:

Criminal prosecutions: The SFC has the power to initiate criminal prosecutions at the Magistrates’ Court for less serious offences. For more serious offences, the SFC refers the cases to the Department of Justice for prosecution.

The maximum sanction for market misconduct under the criminal regime in the SFO is a fine of HKD 10 million and an imprisonment term of 10 years for each offence. Market misconduct includes insider dealing, false trading, price rigging, disclosure of information about prohibited transactions, disclosure of false or misleading information inducing transaction, and stock market manipulation.

Apart from imposing fines, the court may also: (a) ban the person convicted from being a director or manager of any listed corporation or from taking part in the management of any listed corporation for a maximum period of five years; (b) ban the person convicted from dealing in securities in Hong Kong, China for a maximum period of five years; and (c) issue an order recommending that any professional body of which the convicted person is a member to discipline him.

Market Misconduct Tribunal (MMT) proceedings: For breaches of market misconduct provisions under the SFO, the SFC can institute proceedings in the MMT. The MMT is an administrative tribunal established under the SFO. It deals with six types of market misconduct, including insider dealing, market manipulation, and disclosure of false or misleading information to the investing public, and is empowered to make various orders on the basis of civil burden of proof. The SFC can also institute proceedings in the MMT for listed corporations’ breaches of the requirements to disclose inside information.

The MMT can make various prohibitions, and cease and desist orders. Failure to comply with these orders is an offence and the maximum sanction is a fine of HKD 1 million and an imprisonment term for two years.

The MMT can also make a disgorgement order for an amount not exceeding the amount of any profit gained or loss avoided as a result of the market misconduct. Further, the MMT may also give a copy of the report of its proceedings to anybody (such as the SFC) which may take disciplinary action against that person.

Civil orders: Moreover, the SFC has the power to initiate civil proceedings by applying to the civil court for injunctive or other remedial civil orders.

Such orders include injunction and remedial orders, and any ancillary order which the court considers necessary (including freezing of assets or the appointment of an administrator or receiver). The powers under section 213 apply to both regulated and unregulated persons.

Moreover, the SFC has the power to apply for orders to remedy unfair prejudice in a listed company, including injunction orders, disqualification orders, order to pay compensation to the company, and order to the listed company to bring action against directors of the listed company under the SFO.
The SFC may also (a) present a petition to court for a bankruptcy order against a licensed or registered person, or (b) apply to the Court of First Instance for a company to be wound up under the SFO.

Administrative powers: Furthermore, the SFC has administrative power to impose disciplinary sanctions against persons licensed or registered with the SFC.

The SFC also has a number of other important administrative enforcement powers, such as the power to issue restriction notices to licensed/registered persons, the power to suspend trading of listed shares, the power to direct the exchange to be closed for the transaction of dealings and power to publish investigation reports (see answer to Question 11.2 (b)).

Takeovers panel inquiry: Under the Hong Kong, China Codes on Takeovers and Mergers or Share Repurchases, the SFC, acting as the “Executive”, may refer suspected breaches of these Codes to the Takeovers Panel (a committee of the SFC made up of independent persons), which may inquisitorially inquire into the breach and impose various penalties. The SFC also has the power to impose cold shoulder orders which denies any person who has failed to comply with Codes access to the securities markets.

Resolution by consent: Furthermore, the SFO gives formal power to the SFC to enter into an agreement with a subject of administrative/disciplinary proceedings. This allows the SFC to seek undertakings from regulated entities to achieve outcomes it could not have achieved under its statutory powers (e.g. the payment of compensation and the appointment of auditors to conduct an internal control review).

Referral to domestic or overseas law enforcement and regulatory bodies: Where suspected violations outside the SFC’s regulatory ambit are found, the SFC refers the case to other law enforcement and regulatory bodies in Hong Kong, China, such as the Hong Kong Police, Independent Commission Against Corruption, Hong Kong Monetary Authority, Insurance Authority and Mandatory Provident Fund Schemes Authority, or overseas.

Intervention in third-party court proceedings: Additionally, the SFC has the power to intervene in proceedings between private litigants under the SFO. This power enables the SFC to provide its regulatory perspective in private disputes which have an impact on the financial markets and which affect the wider public interest.

Stock Exchange of Hong Kong, China: The Exchange does not have the power to impose fines or monetary penalties. The Exchange can impose a range of sanctions and remedies for listing rule breaches under the Listing Rules, including issuing a private remand, a public statement which involves criticism, and a public censure.

The Exchange can also direct that remedial actions be taken by listed issuers and directors. Directions in this regard made in past disciplinary decisions include that the directors undergo training, and that the listed issuer engages an independent professional adviser to review its internal controls and/or for consultation on listing rule compliance.

Companies Registry: Legal officers of the Companies Registry have delegated authority from the Director of Public Prosecutions on behalf of the Secretary for Justice to lay information and prosecute summary offences under the CO before magistrates. For the sanctions and remedies in respect of breach of the relevant CO or new CO provisions, please see responses to Questions 1.1 (a), (b) and (c) and 3.2.
(c) Yes, the SFC has the power under the SFO to compel both unregulated and regulated natural and non-natural persons to produce information and documents relevant to the investigation. This power applies to both persons under investigation or whom the SFC has reasonable cause to believe has information relevant to the investigation.

The authority to access information pursuant to the provisions of the CO or the new CO outlined in the response to Question 3.5(a) apply to the relevant companies, as well as to those other persons who are in possession of the requested information.

India

(a) The investigative powers conferred upon the enforcement authorities are vast and sufficient. Section 209A of the Companies Act, 1956 empowers the Registrar or such other officer authorised by the central government or the Securities and Exchange Board of India (SEBI) to inspect the books of accounts and other papers of a company, which may be made without giving prior notice to the company.

(b) The sanctions/remedies (including monetary penalties) which can be enforced are listed below.

Securities and Exchange Board of India: The Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, with respect to the following matters:

- The discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

- Summoning and enforcing the attendance of persons and examining them on oath;

- Inspection of any books, registers and other documents of any person referred to in section 12, at any place;

- Inspection of any book, or register, or other document or record of the company referred to in sub-section (2A); and

- Issuing commissions for the examination of witnesses or documents. Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, the Board may, by an order, for reasons to be recorded in writing, in the interests of investors or the securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:

  (i) Suspend the trading of any security in a recognised stock exchange;

  (ii) Restrain persons from accessing the securities market and prohibit any person associated with the securities market to buy, sell or deal in securities;
(iii) Suspend any office-bearer of any stock exchange or self-regulatory organisation from holding such a position;

(iv) Impound and retain the proceeds or securities with respect to any transaction which is under investigation;

(v) After passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, attach one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder provided that only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached; and

(vi) Direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

The Board shall have powers to provide for penalties as follows:

Penalty for failure to furnish information, return, etc.: If any person, who is required under this Act or any rules or regulations made thereunder:

- To furnish any document, return or report to the Board, fails to furnish the same, he/she shall be liable to a penalty of INR 1 lakh (1 lakh = 100,000) for each day during which such failure continues or INR 1 crore (1 crore = 10m), whichever is less;

- To file any return or furnish any information, books or other documents within the time specified in the regulations, fails to file return or furnish the same within the time specified in the regulations, he/she shall be liable to a penalty of INR 1 lakh for each day during which such failure continues or INR 1 crore, whichever is less; and

- To maintain books of accounts or records, fails to maintain the same, he/she shall be liable to a penalty of INR 1 lakh for each day during which such failure continues or INR 1 crore, whichever is less.

Penalty for failure to redress investors' grievances: If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board, such a company or intermediary shall be liable to a penalty of INR 1 lakh for each day during which such failure continues or INR 1 crore, whichever is less.

Penalty for insider trading: If any insider who:

- Either on his/her own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information;
Communicates any unpublished price-sensitive information to any person, with or without his/her request for such information except as required in the ordinary course of business or under any law; or

Counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of INR 15 crore or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for non-disclosure of acquisition of shares and takeovers: If any person, who is required under this Act or any rules or regulations made thereunder, fails to:

- Disclose the aggregate of his shareholding in the body corporate before he/she acquires any shares of that body corporate;
- Make a public announcement to acquire shares at a minimum price;
- Make a public offer by sending letter of offer to the shareholders of the concerned company; or
- Make payment of consideration to the shareholders who sold their shares pursuant to letter of offer shall be liable to a penalty of INR 25 crore or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices: If any person indulges in fraudulent and unfair trade practices relating to securities, he/she shall be liable to a penalty of INR 25 crore or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention where no separate penalty has been provided: Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to INR 1 crore.

The Securities Contracts (Regulation) Act, 1956 as amended also provide for the following enforcement powers:

Power to issue directions: If, after making or causing to be made an inquiry, SEBI is satisfied that it is necessary:

- In the interest of investors, or orderly development of securities market;
- To prevent the affairs of any recognised stock exchange or clearing corporation, or such other
- Agency or person, providing trading or clearing or settlement facility with respect to securities, being conducted in a manner detrimental to the interests of investors or securities market; and
- To secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b), it may issue such directions:
(i) To any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or

(ii) To any company whose securities are listed or proposed to be listed in a recognised stock exchange, as may be appropriate in the interests of investors in securities and the securities market.

Further, the Securities Contracts (Regulation) Act, 1956 also provides for the following penalties (related to the specific CG area):

Penalty for failure to redress investors’ grievances: If any stock broker, sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by SEBI or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by SEBI or recognised stock exchange, he/she or it shall be liable to a penalty of INR 1 lakh for each day during which such failure continues or INR 1 crore, whichever is less.

Penalty for failure to segregate securities or moneys of client or clients: If any person, who is registered under section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992) as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he/she shall be liable to a penalty not exceeding INR 1 crore.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds: If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he/she shall be liable to a penalty not exceeding INR 25 crore.

(c) The Securities and Exchange Board of India has powers to call for information from any person who is associated with the securities market who may or may not be a registered intermediary.

**Indonesia**

(a) The Financial Services Authority (OJK) has sufficient powers.

(b) The OJK has power to inspect and investigate any persons with respect to suspected violations of financial sector-related laws and its implementing regulations, as well as to impose administrative sanctions. These sanctions/remedies are sufficiently deterrent.

Article 9, letter g of the Financial Service Authority Law Number 21 of 2011 (OJK Law) states that the “Indonesian Financial Services Authority (OJK) has the authority to impose administrative sanctions against those who violate the laws and regulations in the financial services sector.”
Further, based on article 102 of the Capital Market Law Number 8 of 1995, the OJK may impose administrative sanctions for any violation of the Capital Market Law and its implementing regulations done by any person and or entity that is licensed, approved or registered with the OJK.

Types of administrative sanctions which may be imposed by the OJK consist of:

- Written admonition;
- Fines;
- Restriction on business activity;
- Suspension of business activity;
- Revocation of business licence;
- Cancellation of approvals; and
- Cancellation of registration.

In addition, articles 62-63 of the Government Regulation Number 45 of 1995 concerning Capital Market Organization set out more details about the parties and amount limit of financial penalties that are imposed against the violating parties.

Meanwhile, there are criminal acts in the Capital Market Law that can lead to criminal sanctions, such as capital market business activities without a licence, approval, or registration; fraud; market manipulation; insider trading, etc. Articles 103–110 of the Capital Market Law contain the provisions of criminal penalties of imprisonment or confinement, and fines.

(c) Based on articles 100 of Law Number 8 Year 1995 regarding Capital Market concerning enforcement, the Financial Services Authority (OJK) can obtain data, information, and other evidence of violation of financial sector-related laws and their implementing regulations from any persons.

### Korea

(a) The Fair Trade Commission (FTC) can call in a person concerned and hear his/her opinions or require document submission.

In addition, FTC officers can visit company offices and examine the business and related documents, including electronic documents, voice recording and video recording.

The Securities & Futures Commission (SFC) of the Financial Services Commission (FSC) can authorise SFC officers to hear from suspicious persons, seize related materials and launch an investigation.
(b) The FTC can issue remedial orders such as to cease the act of violation, dispose shares or levy a correctional fine, while the FSC can levy a correctional fine for disclosure violations.

(c) (No answer.)

**Malaysia**

(a) Investigation powers are provided for in part V of the Securities Commission Act 1993 (SCA 1993). This includes the power to inspect, search for and seize documents, books, etc., when there is a reason to believe that a securities offence has been carried out.

As highlighted in the answer to Question 3.3 (b), Bursa Malaysia has express powers under the Listing Requirements (LR) to obtain information or documents from the persons whom it regulates. It is also empowered to request regulated persons to attend personally before Bursa Malaysia to provide any document, information and/or explanation for any purpose deemed appropriate where Bursa Malaysia may record statements from such regulated persons.

Bursa Malaysia, however, does not have the power to enter premises of regulated persons and seize and copy documentation, without prior notice.

(b) The Securities Commission Malaysia (SC) may undertake a wide range of actions for breaches of the securities laws. These actions are provided for in the Capital Markets and Services Act 2007, (CMSA 2007), which include criminal actions, civil actions and administrative sanctions. The SC’s administrative and civil powers are provided for under part XI of the CMSA 2007. The type of actions that the SC may take for breaches committed are provided under section 360. These remedies, which must be obtained from the High Court, include directing a person in breach to comply with the SC’s guidelines, imposing a penalty not exceeding MYR 500,000, reprimanding the person in breach and directing the person in breach to remedy the breach, including making restitution to any person aggrieved by the breach.

The LR expressly provides for the types of action or penalty that Bursa Malaysia may take or impose for a breach. They include, among others, the issuance of private/public reprimands, the imposition of fines not exceeding MYR 1 million, remedial actions, suspension or delisting.

(c) Yes. Under section 152 of the SCA 1993, the SC may, by notice in writing, require any person to disclose to the SC such information as the SC may specify in the notice as it deems expedient for the due administration of the securities laws.

The power to obtain information as set out under the LR is only extended to the parties regulated by Bursa Malaysia. While there have been instances where unregulated persons co-operated and provided information or documents upon request, this is not mandatory and Bursa Malaysia does not have power to go after these unregulated persons for inaccurate/misleading information. In such instances, Bursa Malaysia will refer the matter to
the relevant enforcement authorities for their further action, if there are reasonable suspicions of an offence being committed.

**Mongolia**

(a) Yes, but only with authorisation of the chairman of the Financial Regulatory Commission (FRC) during work hours.

(b) Generally, the two basic sanctions are monetary penalty and revocation of licences.

(c) In the Securities Market Law, there is a provision that enables access to information from unregulated parties. In order to perform its functions in an appropriate manner and carry out its operations in a timely fashion or in accordance with requests from competent regulatory bodies of foreign jurisdictions or international organisations, the FRC has the authority to demand such information that it considers necessary from individuals or legal entities other than those specified in the Securities Market Law.

**Pakistan**

(a) The Securities and Exchange Commission of Pakistan (SECP) possesses extensive powers to investigate, enforce laws and access information.

The SECP’s powers to conduct inspections and investigations: Section 29 of the SECP Act enables the SECP to conduct investigations with respect to any matter that is an offence under a law administered by the SECP, including the Companies Ordinance 1984 (CO 1984), Securities and Exchange Ordinance 1969 (SEO 1969) and Takeover Ordinance 2002. This power is in addition to the powers provided in these statutes.

The investigative powers available to the SECP are extensive and include entry into any place to inspect and make copies from any book, minute book, register or document. The SECP is also empowered to require any person to produce such books, registers or documents as are in the custody or under the control of that person (section 30 (1)-(2) of the SECP Act). Any person who fails to produce such a document is guilty of an offence and shall be liable on conviction to a fine of up to PKR 1 million or imprisonment of up to one month or both (section 30 (3) of the SECP Act).

The SECP also has the power to call for examination any person acquainted with the facts and circumstances of the case. Moreover, according to chapter 10 of the Pakistan Penal Code 1860, failure to provide information to a public servant is punishable with imprisonment for a term which may extend to one month, or with a fine which may extend to PKR 1 500, or with both. According to section 42 of the SECP Act 1997, all the officers of the SECP are public servants.
Specific investigations power in relation to companies: In case of corporate bodies, the SECP can call for information under section 261 of the CO 1984 and failure thereof is punishable under section 261 (4) of the CO 1984. The company shall be punishable with a fine which may extend to PKR 20,000 and to further a fine which may extend to PKR 500 for every day after the first during which the default continues. In addition, every officer of the company who is party to the default shall be punishable with imprisonment which may extend to one year.

The SECP can conduct inspection (section 231 of the CO 1984) and get copies of the books of accounts and books and papers of every company, for which it uses the powers available of registrar of companies under this ordinance. The SECP is empowered to investigate the affairs of any company on application by its members or a report by the registrar (section 263 of the CO 1984). The SECP can also investigate the affairs of a company (section 265 of the CO 1984) if the company (by resolution) or a court by order so declares or if in the opinion of the Commission there are circumstances suggesting that:

- The business of the company is being or has been conducted with intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose;

- The persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members or have been carrying on unauthorised business;

- The affairs of the company have been so conducted or managed as to deprive the members thereof of a reasonable return;

- The member of the company have not been given all the information with respect to its affairs which they might reasonably expect;

- Any shares of the company have been allotted for inadequate consideration;

- The affairs or the company are not being managed in accordance with sound business principles or prudent commercial practices; or

- That the financial position of the company is such as to endanger its solvency.

(b) Enforcement power

The preamble of the SECP Act, 1997 states that the SECP is established for “the beneficial regulation of the capital markets and the superintendence and control of the corporate sector”, and ancillary matters. This reflects the SECP’s powers to supervise and enforce the laws on sectors identified in the Act, including the SEO 1969, CO 1984, and Takeover Ordinance 2002. Broadly speaking, under section 20 (4) of the SECP Act, 1997 the SECP is responsible for:

- Registering and/or licensing regulated sector entities where required by law;
Regulating the corporate sector, capital market, insurance sector and non-banking financial companies (NBFC) sector;

Granting approvals as and where required by law;

Ensuring compliance of the relevant laws by the regulated sectors;

Supervising and monitoring the activities of the regulated sectors; and

Identifying regulatory violations, whether civil or criminal, and proceeding accordingly.

In case of the corporate sector, the SECP regulates all entities irrespective of the business being undertaken under the CO 1984 and regulates the business of entities operating in insurance, capital markets and NBFCs sectors by issuing licences, supervising their business and taking enforcement actions where required.

The SECP’s enforcement powers involve monitoring compliance with statutory filing requirements (both legal and operational), financial and non-financial disclosures, examination of audited accounts, off-site monitoring of regulated entities, on-site inspection of regulated entities, conduct of investigations and surveillance of trading activity at stock exchanges, etc. Based on the findings to initiate civil and criminal proceeding, in case of the former, the SECP is both the adjudicating and first-level appeal authority. In addition, the SECP Act and other statutes empower the SECP to issue directives, circulars and guidelines. Any violation of these is liable to carry an imposition of a fine.

These are extensive enforcement powers that have proved sufficient to create deterrence with appropriate sanctions and remedies in case of violations.

(c) Access to information

The SECP has general powers to directly obtain information and call records as it deems expedient for due administration of laws. Specific provisions are provided for in the federal statutes administered by the SECP that allows it to obtain information using the information gathering powers it has with respect to:

Companies, including NBFCs, insurance companies and the modarabas (closed-end funds operating on the basis of Islamic shariah principles); and

Regulated entities, such as market intermediaries and NBFCs.

Companies: In relation to obtaining information from companies, the SECP has the power to require companies to prepare and send such periodic statements of accounts, information or other reports in such from and manner and within such time as specified by the SECP (section 246 (1) of the Ordinance 1984).

Failure to provide this information makes the company liable for a fine not exceeding PKR 1 million as well as a fine of up to PKR 10 000 for each day the default continues (section 246 (2) of the Ordinance 1984).

The SECP can also call for the company, any present or past directors, officers or auditors to furnish such information or explanation or documents within 14 days (section 261 of the
Ordinance 1984). Failure to comply with this requirement renders the company liable for a fine of up to PKR 20,000, and may extend to a fine of PKR 500 for each day during which the default continues. Every officer of the company who is involved in the default shall be punishable by imprisonment of up to one year and a fine (section 261 (4) of the Ordinance 1984).

Non-regulated persons: Section 20 of the SECP Act while announcing the powers and functions of the SECP, empowers the SECP to require anyone to furnish such information and documents in their possession relating to any matter as may be necessary for the purposes of a proceeding or enquiry (section 20 (7) of the SECP Act). The Commission under section 32 (1) is empowered to call for examination any person who is acquainted with the facts and circumstances of the case. Where a person does not comply with this requirement he/she may be subject to any penalty as provided under section 32 (5) of the SECP Act (that is a fine not exceeding PKR 100,000 or to imprisonment for a term not exceeding one year, or to both).

The SECP under section 22 of the SEO 1969 in furtherance of inquiry into any security transaction, is also able to impose a penalty, for wilful provision or non-provision of information by any person (both regulated and non-regulated) related to such securities transactions. The penalty is not to exceed PKR 50 million. In the event of a continued default the penalty is PKR 200,000 rupees for every day during which the contravention continues.

**Philippines**

(a) The Securities and Exchange Commission (SEC) has the authority to examine books and records of regulated entities as well as subpoena power. But the conduct of any search and seizure has to be approved by the court.

(b) There are administrative and criminal remedies available to the SEC. Administrative remedies include cease and desist orders, suspension/revocation of licence/registration, a ban from being director or officer of public and listed companies/registered issuers, and monetary penalties. Criminal remedies include imprisonment of not less than seven years nor more than 21 years or a fine of not less than PHP 50,000 nor more than PHP 5,000,000, or both at the discretion of the court.

(c) The SEC uses its subpoena power to access information from unregulated persons.

**Singapore**

(a) Yes. Investigators from the Commercial Affairs Department (CAD) can exercise their powers under the Criminal Procedure Code to order the production of any document from any persons, to record a statement from any witness and to search premises and seize any document relevant to the investigation.
The Accounting and Corporate Regulatory Authority (ACRA) also has powers to carry out the necessary investigation, but they are not as extensive as the provisions for CAD.

(b) Yes. Enforcement powers to impose civil penalty, fines and/or imprisonment are provided for specific enforcement authorities.

Sanctions such as issuance of private warnings, public statements and public reprimands against listed companies can also be carried out. Listed companies that are unable or unwilling to comply with the listing rules may also face the prospect of being delisted.

(c) Yes. Authorities like CAD and ACRA have powers to conduct investigations and seek information from any persons.

**Chinese Taipei**

(a) The Financial Supervisory Commission (FSC) can compel information enabling it to reconstruct all securities transactions, including bank information on fund transfers. Details of transactions such as the time, amounts involved and information on beneficial owner of natural person related to the transactions are accessible. However, the FSC and the stock exchanges do not have the powers to enter the premises of regulated parties without prior notice and seize and copy documentation. The judiciary has sufficient powers to investigate.

(b) We have a wide range of enforcement powers, including monetary penalties, correction requirements, suspension of trading, alteration of trading method (full delivery securities) and other administrative, civil and criminal sanctions. These are sufficiently deterrent.

(c) The courts have the full authority to access information from unregulated persons. The FSC can compel information enabling it to reconstruct all securities transactions, including bank information on fund transfers. Details of transactions such as the time, amounts involved and information on beneficial owner of natural person related to the transactions are accessible.

**Thailand**

(a) Yes. But certain investigative tools such as phone tapping are available only to officers of the Department of Special Investigation.

(b) For regulated entities, the current enforcement power is quite sufficient, both on administrative and criminal bases.

For directors and executives of listed companies, the power to disqualify them under section 89/3-4, 89/6 of the Securities and Exchange Act (SEA) can be used as an administrative sanction to enhance the effectiveness of criminal enforcement.
In general, some criminal offenses can be monetarily settled under section 317 of the SEA. Serious offenses, however, have to go through the formal criminal procedure.

The power of civil enforcement is still being proposed. There is currently no such concept under the SEA or the general legal system.

(c) Yes, under section 264 of the SEA.

Viet Nam

(a) No, the State Securities Commission does not have this power. These actions belong to investigating agencies of the police.

(b) Yes, the enforcement authorities have the authority to impose sanctions as monetary penalties or remedies. However, the amounts of these penalties are still small compared to the market size. Therefore, their deterrence effect is limited.

(c) No, they do not have this power.
Question 3.6 – Pre-Emptive Powers

Pending completion of enforcement process and actions, does the enforcement authority(ies) have the pre-emptive powers which allow the authority(ies) to act immediately to prevent damage to investors and the marketplace (e.g. freezing of assets, injunctions suspension of trading)? What are the challenges faced by the enforcement authority(ies) in enforcing/implementing these powers, including where unregulated entities are involved?
Bangladesh

Yes. Under the Companies Act and Securities and Exchange Ordinance, the Bangladesh Securities and Exchange Commission (BSEC) has the directive power which will prevail over other laws. A challenge is that sometimes we do not have the information related to unregulated entities. Therefore, giving any direction sometimes takes time.

China

Yes, the enforcement authorities have such pre-emptive powers, including freezing of assets and injunctions suspending trading. There are no obstacles related to these powers.

Hong Kong, China

Yes, the Securities and Futures Commission (SFC) has the power to initiate civil proceedings by applying to the civil court for injunctive or other remedial civil orders.

Under the Listing Rules, the Stock Exchange of Hong Kong, China may suspend trading in a listed issuer’s securities if it is necessary for the protection of investors or the maintenance of an orderly market.

From a disciplinary angle, serious breaches of the Listing Rules give rise to the need for enforcement actions. Any decision to suspend in such circumstances can be the subject of review by the Listing Committee.

India

Yes. The Securities and Exchange Board of India (SEBI) has been vested with pre-emptive powers to pass interim orders to immediately prevent damage to investors and the market. These orders may, among others, provide for debarring entities from accessing the capital market, restraining companies from raising funds, freezing transactions in specified securities held by entities, etc. These powers are exercised in the interest of investors and/or the capital market and are derived from section 11 of the SEBI Act, 1992.

SEBI has passed several interim orders for debarring a large number of entities and also freezing their shares kept in dematerialised form with the depositories. However, SEBI has rarely used the power of freezing bank accounts. As for search or seizure, SEBI requires the magistrates’ approval.
Convincing the magistrate and getting his/her approval is a big hurdle. SEBI has made a request to the government to dispense with this requirement of magistrates’ approval.

**Indonesia**

This authority is stated in the Capital Market Law, article 3 subsection 1, article 4 and article 5 (n). Based on that law, the Financial Services Authority (OJK) has the authority to perform investor protection.

In case where unregulated entities are involved, the OJK does not have direct authority to carry out enforcement actions. To handle this issue, the OJK has established the Investment Awareness Task Force consisting of several law enforcement institutions. In some cases, the OJK may ask for assistance from other institutions with regard to activities of unregulated entities.

**Korea**

The Korea Exchange suspends stock trading for public benefit and investor protection in case the stock price becomes heavily influenced by unfaithful disclosure, breach of trust, defalcation, etc. This measure, however, can damage minority shareholders who are at a relative disadvantage in obtaining information.

The Fair Trade Commission can also issue orders to cease acts of violation.

**Malaysia**

The powers of the Securities Commission Malaysia (SC) under the Capital Markets and Services Act 2007, (CMSA 2007), including section 360, as well as other provisions, such as section 125 of the CMSA 2007, allow the SC to take pre-emptive measures necessary to protect the interests of investors.

Bursa Malaysia, however, has limited pre-emptive powers, such as in the form of directing a listed issuer to appoint an independent special/investigative auditor to investigate into the affairs of the listed issuer where Bursa Malaysia has concern over the management of the listed issuer’s business and affairs in relation to compliance of the Listing Requirements. In exercising this power, the limitation faced is the need to go to the court to compel the listed issuer where it refused to comply with the said directive, resulting in delay and diluting the effectiveness of the directive imposed.
Mongolia

Yes: a suspension of activities which are in violation of the law and remedy of any loss or damage arising; prohibition on entering into certain transactions; prohibition or restriction on the carrying out of certain activities; prohibition or restriction on the disposal of certain assets; demand that assets are not being used other than for approved purposes; demand that a certain amount of funds be deposited in an Financial Regulatory Commission-designated account to protect the interests of investors or for the taking measures so as to ensure that the regulated entity complies with its obligations, or such other demands that the FRC may consider necessary to reduce market risks.

Pakistan

Currently, the Securities and Exchange Commission of Pakistan (SECP) has the pre-emptive power to suspend trading but does not have the power to freeze assets. However, with the promulgation of the draft SECP (Regulation and enforcement) Bill, currently placed before the parliament for approval, the power to freeze assets would also be given to the SECP.

The SECP can exercise freezing of financial flows appearing to be crimes proceeds emanating from severe violation of laws, through issuing of directions as an interim order.

However, these powers can be used in a limited domain, such as freezing funds flows in the entities that are regulated by the SECP who have compliance obligations to the SECP under various laws administered by it.

Philippines

The Securities and Exchange Commission issues cease and desist orders as a pre-emptive action to prevent further injury or damage to investors. The Philippine Stock Exchange, on the other hand, has the authority to order trading suspension.

Singapore

Yes. Section 35 of the Criminal Procedure Code gives officers of the Commercial Affairs Department the power to seize, or prohibit the disposal of or dealing in, any property in respect of which an offence is suspected to have been committed. The powers of seizure can also be used in cases involving unregulated entities.
The Singapore Exchange may also suspend trading of the listed securities of a listed company where the company is unable or unwilling to comply with, or contravenes, a listing rule; or where, in the opinion of the exchange, it is necessary or expedient in the interest of maintaining a fair, orderly and transparent market.

### Chinese Taipei

The courts have the power to freeze assets, issue orders such as injunctions, restitutions, or wind up a business or bankruptcy. The Financial Supervisory Commission may ask regulated parties to make corrections or take actions to prevent damage to investors and marketplace. The stock exchanges have the power to suspend trading and change the trading method to full delivery securities.

A major challenge faced by the enforcement authorities in enforcing these powers is timeliness in exercising pre-emptive powers.

### Thailand

Under section 267 of the Securities and Exchange Act, the Securities and Exchange Commission (SEC) can order the freezing of assets and seek court orders to prohibit a suspect from leaving the country. However, the law requires sufficient evidence to prove that the violation has actually occurred, not merely probable cause. By the time the SEC has obtained sufficient evidence to prove the case, the asset may have been transferred outside its jurisdiction. Though the order to freeze the assets of a suspect can be issued by the SEC with the authorisation from the Board of Commissioners, it is effective for only 180 days. The extension of this asset-freeze order can be made by the court. However, the court is allowed to extend the order only for another 180 days. If the public prosecutor is unable to file a criminal action against the defendant before the end of the 360 days, the frozen assets must be returned to the owner.

There is no clear power to seek an injunction for trading suspension of a person. This measure will be included in the proposed civil enforcement power.

### Viet Nam

The State Securities Commission may freeze assets or suspend trading in co-ordination with the investigating agency (the Ministry of Police).
CHAPTER 4 - DISCLOSURE OF ENFORCEMENT ACTIONS/PRACTICES

Question 4.1 – Disclosure by Enforcement Authorities

Do the enforcement authorities in your country make disclosures of its enforcement actions or practices to the market?
Bangladesh

Yes.

China

In many cases, enforcement authorities seldom make disclosures at the beginning and during the process of enforcement actions. If a case takes years of investigation, then the relevant disclosure is usually very seldom made.

Hong Kong, China

Yes.

Securities and Futures Commission: All enforcement outcomes are publicised in SFC press releases. These press releases are also published in SFC’s website.

Stock Exchange of Hong Kong, China: The Exchange’s disciplinary procedures and actions can be accessed at the website of Hong Kong Exchanges and Clearing Ltd. See the answer to Question 4.2.

Companies Registry: The Companies Registry’s prosecution policy and other information relating to prosecution including prosecution cases highlights can be accessed at its website.

Financial Reporting Council: At the end of each month, the FRC publishes its operational statistics and updates the summary of closed complaint cases, which can be accessed at its website.

India

Yes, the Securities and Exchange Board of India (SEBI) makes disclosures of its enforcement actions to the market on its website.
Indonesia

Yes, based on article 5, letter i of the Capital Market Law, which stipulates that the Financial Services Authority (OJK) “has authority to publish the findings/results of the inspection.”

Further, article 65, item 2 of Government Regulation Number 45 of 1995 states that the imposition of administrative sanctions may be announced in the mass media by the OJK.

Korea

Enforcement agencies such as the Ministry of Justice, Financial Services Commission, Fair Trade Commission, Financial Supervisory Service, and Korea Exchange disclose the grounds, decision, and decision-making process for their enforcement actions or practices.

Malaysia

Yes, both the Securities Commission Malaysia and Bursa Malaysia disclose their respective enforcement actions/practices.

Mongolia

Disclosures of enforcement actions or practices to the market are required by the Securities Market Law, and the Financial Regulatory Commission (FRC) is obliged to inform the public in a timely manner. Currently, the FRC does this through its website and annual reports.

Pakistan

The Securities and Exchange Commission of Pakistan (SECP) as a matter of practice discloses its enforcement actions. In case of companies, the Companies Ordinance 1984 stipulates that a listed company must disclose all adverse judgments against it in the next audited accounts.
Yes.

**Singapore**

Yes. Actions taken by the Accounting and Corporate Regulatory Authority are disseminated through press releases or information published on its corporate website. Such information may include its policies on the type of offences which were the result of the enforcement action.

The Commercial Affairs Department posts the results of its prosecution for significant cases and its organisational structure on its website and annual reports. If the Attorney-General’s Chambers decide to prosecute the offenders, the case will be heard publicly. When the judge decides on the case, he/she will disclose the factors considered before deriving at his/her decisions.

The Singapore Exchange (SGX) sets out its approach to enforcement, the disciplinary framework and past disciplinary actions (including grounds of decision) it has taken on the SGX website. Public reprimands and public statements are published on SGXNET, a web-based platform which is accessible to the public, as and when they are issued. In addition, SGX has a dedicated webpage that sets out all public reprimands against listed companies, directors and management.

The Monetary Authority of Singapore (MAS) also published details of market conduct regulatory actions on the MAS website where it is in the public interest to do so.

**Chinese Taipei**

Yes. The administrative sanctions imposed by the Financial Supervisory Commission (FSC) and the stock exchanges are posted on their websites. Sentences handed down by the courts are disclosed on the judiciary’s website.

Article 96 of the Administrative Procedure Act provides that the written reasons for any material administrative disposition by the FSC must include the subject matter, facts, reasons and legal basis of the disposition.
**Thailand**

Yes, all enforcement actions of the Securities and Exchange Commission (SEC), and administrative or criminal sanctions are disclosed on the SEC’s website. In serious cases, such as market misconduct, or dishonest conduct of directors or officers of a publicly traded company, the SEC will, in addition, issue a press release and actively circulate it to the public.

**Viet Nam**

Yes, the State Securities Commission always discloses its enforcement actions on its official website.
Question 4.2 – Scope of Disclosure

If yes, does it include:

(a) organisation/internal structures of the enforcement authority and decision-making process;
(b) regulatory (including enforcement) policies, procedures and processes; and
(c) actions/decisions, and grounds/basis for the actions/decisions?
Bangladesh

(a) Yes.
(b) No.
(c) Yes.

China

(a) Yes.
(b) Partly.
(c) Yes.

Hong Kong, China

Securities and Futures Commission: The organisation and structure of the SFC is posted on the SFC website. The SFC also posts its enforcement philosophy, objectives and strategic approach on its website.

In relation to criminal and civil proceedings, there is clear appeal process in the laws of Hong Kong, China stated in ordinances (such as sections 266 to 268 of the Securities and Futures Ordinance, and details in the Criminal Procedure Ordinance) and court procedures.

For disciplinary proceedings, the SFC has published the “Disciplinary Proceedings at a Glance”, which outlines the disciplinary measures available to the SFC, the investigation process, appeal process and resolutions etc. Regulated persons who are not satisfied with the SFC’s disciplinary decisions can appeal to the Securities and Futures Appeal Tribunal, which is an independent tribunal chaired by former and current High Court judges and assisted by panel members from the legal, accounting and financial industries.

Furthermore, the Disciplinary Fining Guideline indicates the manner in which the SFC will perform its function of imposing a fine on a regulated person under sections 194 (2) or 196 (2) of SFO. The Guideline sets out some factors that the SFC will take into account in exercising its fining power among other factors that the SFC may consider.

Stock Exchange of Hong Kong, China: The Exchange has published a revised statement describing its enforcement objectives in September 2013. Disciplinary procedures are published on the Exchange’s website. New procedures have been adopted with effect from September 2013.
Disciplinary sanctions and directions with publicity attached as imposed in disciplinary actions are published on the Exchange’s website (by way of news releases). The published disciplinary decisions normally contain reasons for the decision (as to the findings of breaches and the sanction/directions imposed) by the Listing Committee.

In June 2007, the Exchange published “Statement on Settlement of Cases Involving Listing Rule Breaches” outlining its approach towards and criteria for settlement as well as the settlement procedures.

A summary of the actions taken by the Listing Committee is the subject of publication in its annual report, which is publicly available. Further disclosure of enforcement activity can also be found in the Exchange’s annual reports.

Companies Registry: Information on the role of the Companies Registry and its organisation and distribution of business can be found at the Companies Registry’s website. The Companies Registry’s prosecution policy and other information relating to prosecution including prosecution cases highlights can be accessed at its website.

Financial Reporting Council: The FRC published an organisation structure on its webpage and in its annual report.

**India**

(a) Generally, the Securities and Exchange Board of India (SEBI) publishes enforcement orders, such as orders of the adjudicating authority, whole time member/chairman, etc. on its website. These orders contain the details of the decision-making process involved in the enforcement action.

(b) The organisation structure of SEBI is also made available on the website. The policies, procedure and processes of enforcement as laid down in various statutes are also made available on SEBI’s website.

(c) The enforcement orders are well-reasoned orders wherein actions/decisions and grounds/basis for the actions/decisions taken are disclosed.

**Indonesia**

(a) Yes.

(b) The standard operating procedures for the sanction proceeding are not disclosed to the public. The standard operating procedures are merely for internal guidance of the Financial Services Authority (OJK).
Korea

All information above is publicly announced on each agency’s website or in its own disclosure system.

Malaysia

(a) Securities Commission Malaysia (SC): Yes. This is disclosed as part of the entire structure of the regulatory authority.

Bursa Malaysia: There is a specific regulation web-section on the website where it makes its regulatory approaches, philosophy and processes transparent. This is to help capital market participants understand better the underlying motivation for its decisions and actions.

The regulation web-section sets out, among others, Bursa Malaysia’s regulatory structure and organisation chart, its regulatory approaches/philosophy, as well as a specific section for the Enforcement Division, which highlights Bursa Malaysia’s general enforcement approach, statistics and news.

(b) SC: Yes. The provisions in relation to enforcement powers and policies, contained in the law are publicly available.

Bursa Malaysia: Yes. Please see the answer to Question 4.2 (a).

(c) SC: Yes.

Bursa Malaysia: Yes. Where the enforcement actions are coupled with public reprimand, the details of the action, including the grounds/basis for the finding of breach and sanctions imposed, are set out. In addition, in line with the objective to enhance transparency of its enforcement actions, Bursa Malaysia posts the enforcement news on its website.

The LR enforcement news sets out the information about the breaches and circumstances of the breaches, the decision as well as the key factors considered by Bursa Malaysia in dealing with these cases. Broadly, the cases disclosed are categorised as follows:

- Delay in issuing financial statements;
- Misleading statements: material deviation of the figures reported between the announced unaudited financial figures and audited financial figures for the same financial period by the listed issuer;
Other disclosure breaches: delay in announcing default in payments;
Inaccurate disclosures/announcements;
Provision of financial assistance;
Related party transactions: failure to announce/appoint adviser/procure shareholders’ approval;
Enforcement for non-compliance of dealing in quoted securities by directors; and
Failure to comply with Bursa Malaysia’s directives.

The LR enforcement news is updated as and when there are key updates on the enforcement front.

Mongolia

There is no specific format. Actions/decisions and grounds are normally explained but may not include organisation/internal structures of the enforcement authority, its decision-making process, and the basis for decision/action.

Pakistan

(a) All enforcement actions of the Securities and Exchange Commission of Pakistan are announced through a written and self-explanatory order which contains issuing internal department’s name, officer’s name and designation along with complete details about the proceeding, i.e. issuing of a show cause notice, hearing, person present, responses submitted, etc.

(b) Only relevant provisions of the regulatory framework are mentioned in the order.

(c) Yes.

Philippines

(a) Yes.

(b) Yes.
(c) Yes.

**Singapore**

(a) Please refer to the answer to Question 4.1.

(b) Please refer to the answer to Question 4.1.

(c) Please refer to the answer to Question 4.1.

**Chinese Taipei**

(a) Organisation/internal structures of the courts, Financial Supervisory Commission and stock exchanges are disclosed on their websites. The decision-making process of government organisations is regulated by the Administrative Procedure Act.

(b) Yes. Enforcement authorities not only disclose related laws and regulations governing enforcement but also disclose information (e.g. policies, procedures and decision-making processes) that is not specified in laws and regulations on their websites.

(c) Yes. Administrative sanctions should include the subject matter, facts, reasons and legal basis of the disposition. Criminal or civil verdicts also include aforementioned items, together with an explanation of the evidence.

**Thailand**

The Securities and Exchange Commission (SEC) provides a flowchart on its website describing the structure and procedures involved in enforcement, though the reasons for decisions may not be explained as sometimes a case is not pursued due to lack of evidence. It would likely reserve the right to pursue the case before the statute of limitation applies. Disclosing the reasons for not enforcing cases may send the wrong message to the market or offender. Where cases are pending, only basic information should be disclosed so as not to jeopardise the case. However, for every case which the public prosecutor brings to court, the SEC will update the outcome on its website and issue a press release when it deems appropriate.
Viet Nam

(a) Yes.

(b) Yes.

(c) Yes.
Question 4.3 – Other Types of Disclosure

*Other than paragraph 4.2 (a)-(c) above, what other types of disclosures are made by the enforcement authorities?*
Bangladesh

When an enforcement action is taken by the Bangladesh Securities and Exchange Commission (BSEC), the main text of the action is immediately released to the media as a press release and posted on the website of the BSEC.

China

(No answer).

Hong Kong, China

The Securities and Futures Commission (SFC) posts a calendar on its website, which gives an overview of upcoming hearings that arise from its enforcement investigations. These include prosecutions of criminal offences in various courts, disciplinary hearings before the Securities and Futures Tribunal and civil applications before the Court of First Instance.

The public can find in the calendar dates and venues of hearings, names of parties and status of hearings. Final outcomes of the hearings are published as news releases in the enforcement news section at the SFC website.

Furthermore, the SFC posts enforcement statistics on its website, which shows measurable aspects of its enforcement work, including, investigations by nature of misconduct, prosecutions, civil versus criminal proceedings, and disciplinary actions.

India

Major enforcement orders (especially interim orders) are given in press releases with a view to protecting the interest of investors.
Indonesia

For the purpose of disclosure, in addition to publishing the sanction letter, the Financial Services Authority (OJK) also forwards a copy of the sanction letter to the related professional association or self-regulating organisation in which such parties are a member.

Korea

(No answer).

Malaysia

The authorities also disclose the outcome of actions taken, i.e. court decisions and appeals. Information to educate/alert investors is also provided, such as notices on scams, etc.

Mongolia

(No answer).

Pakistan

Besides the enforcement actions, the disclosure of regulatory actions is also being made. Regulatory actions include but are not limited to:

- Amendments in the legal framework;
- Draft of a new framework;
- Company incorporation and registration data;
- New licensing or registration;
- Product development and amendments;
• Investor facilitation activities;
• Investor education;
• Key achievements; and
• Any other information deemed important.

**Philippines**

In so far as the Securities and Exchange Commission is concerned, no other information is being disclosed to the public.

**Singapore**

All the various types of disclosures made by enforcement authorities are indicated in the answer to Question 4.1.

**Chinese Taipei**

Article 7 of the Freedom of Government Information Act provides that the following government information shall be automatically disclosed, except for information which shall be restricted or not provided pursuant to article 18:

• Treaties, memorandums of understanding, laws, emergency decrees, and orders, regulations, and local self-government ordinances and regulations as defined in the Act Governing the Standards of Central Laws and Regulations;

• Provisions of an interpretative nature and guidelines on the exercise of discretionary authority issued to assist lower units or subordinate officers in a unified interpretation of laws and regulations, finding of facts and exercise of the power of discretion;

• The organisation, scope of responsibilities, address, telephone number, fax number, web address, and email address of government agencies;

• Documents in relation to administrative guidance;

• Policy initiatives, operational statistics and research reports;
• Budgets and final accounting reports;
• Action on petitions and decisions on administrative appeals;
• Written contracts relating to public works and procurements;
• Payment or receipt of subsidies; and
• Meeting minutes of collective decision-making agencies.

<table>
<thead>
<tr>
<th>Thailand</th>
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<td>(No answer).</td>
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<th>Viet Nam</th>
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<td>(No answer).</td>
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</table>
**Question 4.4 – Additional Recommended Disclosure**

Are there any other types/areas of disclosures that should be made by the enforcement authorities (which are not made currently)?
<table>
<thead>
<tr>
<th>Country</th>
<th>Response</th>
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<tbody>
<tr>
<td>Bangladesh</td>
<td>Not sure.</td>
</tr>
<tr>
<td>China</td>
<td>(No answer).</td>
</tr>
<tr>
<td>Hong Kong, China</td>
<td>None that we are presently aware of.</td>
</tr>
<tr>
<td>India</td>
<td>It would be useful to provide at a glance a database of the actions taken with the details of name of the entity, nature of violations, penalty imposed, etc. This would also be useful information for other enforcement agencies.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>Korea</td>
<td>(No answer.)</td>
</tr>
</tbody>
</table>
Malaysia

No.

Mongolia

(No answer).

Pakistan

No.

Philippines

(No answer).

Singapore

In our view, the current disclosures made by enforcement authorities are sufficient.

Chinese Taipei

None at the moment. Enforcement authorities regularly review disclosure policies.
Thailand

Disclosure could be enhanced with the details of the grounds for enforcement, enforcement policies and some other facts.

Viet Nam

(No answer).
Question 4.5 – Method of Disclosure

How are the disclosures made by the enforcement authorities in your country (i.e. posting on websites, issuance of industry letters, media releases)?
**Bangladesh**

Same-day posting on the Bangladesh Securities and Exchange Commission (BSEC) website as a press release. In our country, enforcement actions are always published by both print and electronic media. Subsequently, the full order is also published on the website with a copy sent to the relevant industry.

**China**

All of these channels.

**Hong Kong, China**

Securities and Futures Commission: Posting on the SFC website, and issuance of press releases.

Stock Exchange of Hong Kong, China: Posting on the Exchange’s website and press releases.

Companies Registry: Posting on the Companies Registry’s website and press releases.

**India**

The Securities and Exchange Board of India (SEBI) makes the disclosures through postings on its website, as well as through media releases.

**Indonesia**

Currently, the Financial Services Authority (OJK) imposes sanctions and discloses such action to the public through the OJK website, media conferences, press releases, and annual reports.
Each enforcement agency publicly announces its enforcements on its website, in disclosure systems such as the DART (Data Access Retrieval Transfer) or KIND (Korea Integrated News Database) platform, or through press releases.

The enforcement authorities disclose their enforcement actions through the issuance of press releases, publication of enforcement-related information on the website and in the annual reports.

Through websites and periodical reports.

Web placements and media releases.

The Securities and Exchange Commission uses the following methods for disclosure: posting on the website, media releases, issuance/publication of circulars, orders, letters and sending out copies of enforcement action taken to other enforcement authorities.

Please refer to the answer to Question 4.1.
Chinese Taipei

The Financial Supervisory Commission and the stock exchanges disclose information to the public through news releases, newsletters and postings on their websites.

Thailand

Other enforcement authorities do not make regular posting of their enforcement actions on their websites. Press releases typically are issued in specific cases.

Viet Nam

(No answer).
Question 4.6 – Other Recommended Disclosure Methods

How should the enforcement authority undertake a better dissemination/disclosure of this information (including enforcement actions)?
Bangladesh

Not sure.

China

By making disclosure in a timely fashion and periodically.

Hong Kong, China

Not applicable.

India

See the answer to Question 4.4.

Indonesia

Through the Internet and media conferences, as they are better ways to publish information.

Korea

It needs to provide more systematically categorised statistical data for disclosed information of the enforcement agencies.
Malaysia

Authorities could provide periodic bulletins highlighting their enforcement actions, and any other relevant issues, including measures undertaken to ensure better compliance, etc. This could be done semi-annually or quarterly.

Information disclosed on the websites should be provided with easy navigation and indicators should be provided for new uploaded information.

Mongolia

The issuance of industry letters and media releases may be considered.

Pakistan

Following additional measures can be undertaken to disclose enforcement actions:

- Dissemination of success stories of corporate governance through regulator’s website and media releases;
- Development of corporate governance scorecard and its application through an independent body or the exchanges;
- Sessions with relevant stakeholders to create awareness on enforcement being undertaken by the regulator; and
- Awareness programme on regulatory compliance requirements within the corporate and regulated entities.

Philippines

For the Securities and Exchange Commission, the current methods for disclosure are sufficient.
Singapore

We are of the view that the current dissemination/disclosure of information is relatively comprehensive and sufficient.

Chinese Taipei

In Chinese Taipei, government information disclosure is regulated. It is governed by the Freedom of Government Information Act. It provides what kinds of information should be automatically disclosed and what kinds should be restricted from disclosure. We consider this mechanism to be effective and efficient. In addition, demand by market participants for better information disclosure also facilitates government information disclosure.

Thailand

Simplify language and provide more information on the grounds for actions against the wrongdoers and on the basis for the authority’s decision making to encourage co-operation and deter potential wrongdoing.

Viet Nam

(No answer).
CHAPTER 5 - CAPACITY OF THE ENFORCEMENT AUTHORITIES

Question 5.1 – Adequacy of Resources

Are the enforcement authorities equipped with the necessary resources, including expertise and capacity to carry out investigations and enforcement functions effectively? Is there a programme in place to assess adequacy of staffing and expertise required, as well as to remedy any inadequacies?
Bangladesh

The Bangladesh Securities and Exchange Commission (BSEC) is an understaffed organisation. Since its pay scale is equivalent to the national pay-scale of the government, it fails to attract qualified people. Recently, the BSEC has undertaken a staff assessment for the next ten years, and law has also been amended to make pay and packages of the BSEC on a par with the central bank. Hopefully, this move will make careers at the BSEC more attractive.

China

Yes.

Hong Kong, China

Securities and Futures Commission: The SFC dedicates ample resources to the enforcement programme. The Enforcement Division at SFC has teams of staff specialising in surveillance, investigation, disciplinary and policy/international area. Enforcement staff come from multidisciplinary backgrounds with legal, accounting, finance and forensic and investigative skills.

The SFC offers regular internal and external training and secondment opportunities to staff to keep their skills and knowledge current. In relation to practical support to enforcement staff members, various internal and external legal, IT and other support are available.

Stock Exchange of Hong Kong, China: The Listing Enforcement team investigates rule breaches and, where appropriate, will take disciplinary actions before the Listing Committee, recommending the imposition of sanctions and the making of directions (including those on remedial actions to be taken) as prescribed by Rule 2A.09 of the Listing Rules.

The Exchange’s MOU with the SFC requires the Exchange to maintain adequate levels of staff with the appropriate qualifications and experience. Listing Enforcement is staffed by experienced lawyers with a litigation background, with the support of accountants.

Companies Registry: The Companies Registry’s prosecution team is mainly responsible for institution of prosecution actions against companies and officers for breaching the provisions of the Companies Ordinance in the form of summary criminal proceedings in the Magistrates’ Court. The prosecution team comprises legal officers, companies registration officers and clerical staff in support. The adequacy of staffing of the team is reviewed on a regular basis.

Financial Reporting Council: The FRC is governed by members of the FRC who operate as a Council. Currently, there are 11 members, the majority of whom, including the chairman, are non-accounting professionals as required by the FRC Ordinance. Two subsidiary organs, the Audit
Investigation Board and the Financial Reporting Review Panel have been set up to assist the FRC in discharging its key functions. Currently, the FRC has 16 full-time positions in the Secretariat, who have adequate experience to carry out the functions of the FRC. The FRC prepares strategic plan every three years to set its objectives and goals, and annual operational plan to assess its performance and adequacy of resources.

**India**

Yes, the enforcement authorities are well-equipped with the necessary resources, including expertise and capacity to carry out investigations and enforcement functions effectively. While the Ministry of Corporate Affairs has a specialised and dedicated enforcement agency, namely, the Serious Fraud Investigation Office, the Securities and Exchange Board of India (SEBI) has specialised departments focusing on investigation, enforcement and adjudication.

However, compared to the size of the market, there is a need to strengthen manpower of the enforcement agencies. SEBI has recently started the Forensic Accounting Cell, which is expected to examine financial irregularities which influence the share price of a company. This cell needs to be strengthened and needs training in advance techniques which will help in conducting forensic investigations.

**Indonesia**

Yes, in the field of capital market sectors, the Financial Services Authority (OJK) has a development programme related to the adequacy of staffing and expertise required, as well as to remedy any inadequacy.

**Korea**

Most agencies have a training programme for corporate governance, and private professionals can participate in the decision-making process to enhance the expertise of related officers.

**Malaysia**

Yes, the enforcement authorities are equipped with necessary resources to carry out investigations and enforcement functions effectively. For example, the Companies Commission
Malaysia has about 400 personnel in the enforcement department, including 15 prosecution officers attached to the headquarters and two prosecution officers in each state. The senior director in the enforcement department is a deputy public prosecutor.

The Securities Commission Malaysia (SC) also has its own staff prosecutors and, with approval of the attorney general, may launch criminal proceedings.

The SC constantly monitors its resources and actively recruits the right talent. It invests in training its staff, in particular, in relation to prosecuting and investigating capital market breaches. In-house training is also undertaken for its staff using experienced prosecutors, private practitioners and former judges on a wide range of areas, including criminal procedures, advocacy and evidence. The SC has also taken part in study trips to obtain more insights on how foreign regulators deal with similar issues. It maintains good relations with its counterparts and frequently speak to them about the issues it faces in taking enforcement action against corporate crimes, leveraging off their experiences and sharing of knowledge. The SC also sends its investigators for specially tailored investigative training programmes focused on capital market offences organised by its foreign counterparts.

The stock exchange operated by Bursa Malaysia is required to at all times have sufficient financial, human and other resources: to ensure the provision of an orderly and fair market; to have adequate and properly equipped premises for the conduct of its business; to have competent personnel for the conduct of its business; and to have automated systems with adequate capacity, security arrangements and facilities to meet emergencies. In this regard, Bursa Malaysia had, as of 31 December 2012, a total of 148 staff in its regulation unit.

Technological resources: Bursa Malaysia is also mindful of the fact that one of its core focus areas in maintaining its competitiveness as a marketplace is in having systems that are efficient, capable and reliable. As technology advances, there is a need to ensure that it has systems that are not obsolete and are capable of meeting the needs of investors and other stakeholders. Given that, it has embarked on several initiatives to improve efficiency and to enhance capability of its systems, one of which is the procurement of a new surveillance system called, the NSS. The NSS enhances Bursa Malaysia’s surveillance capabilities as it comes with the following features:

- A robust monitoring and warning mechanism designed to detect market manipulation and abusive practices;
- Availability of functionalities and features to cater for a changing market landscape;
- Faster access to historical information and high availability of data;
- Higher degree of automation, and high performance and capacity in handling huge amounts of data (real time and historical);
- Enhanced transparency and visibility of details in detecting market participants who may have caused market irregularities;
- End-to-end workflow from market surveillance to investigation to enforcement. Using the case manager function, users are able to promptly deliver/introduce any changes/enhancements to alerts and reports required;
- Cost savings for in-house development of alerts and reports;
• Detection and analysis of trading concerns; and

• Increased functionalities for better monitoring of market.

Continuous review: The relevant divisions within the regulation unit in Bursa Malaysia (e.g. investigation and enforcement divisions) also perform yearly reviews of their respective processes, policies and approaches with a view to enhancing effectiveness and addressing gaps identified. Appropriate measures will be implemented to address the issues identified.

Mongolia

Not sure. On the one hand, the enforcement authorities are equipped with some necessary resources, including expertise and capacity to carry out investigations and enforcement functions. But on the other hand, given the current development of the capital market, there is a need to strengthen the skills and manpower of the enforcement agencies. The Financial Regulatory Commission and Mongolian Stock Exchange are conducting various training exercises on their basic functions, but still need training in advance techniques which will help in conducting investigations.

Pakistan

The Securities and Exchange Commission of Pakistan (SECP) workforce consists of graduates with various professional qualifications. The SECP revamped the employment terms and remuneration packages in 2006 to bring them in line with the market to attract and retain the requisite talent pool. The compensation structure is reviewed at periodic intervals to assess alignment with the market. To incentivise and retain good quality officers, the SECP has implemented a performance-based annual appraisal system. Due to these measures, almost 65% of the current employee strength of the SECP consists of those employed for five or more years.

The SECP has a policy to build its human resource capacity through continuous training of its officers to keep them in touch with international best practices and the latest developments in the global securities regulatory landscape. The capacity building measures encompass trainings both at the international and national level. The SECP accepted a World Bank IDF grant specifically focused on the SECP’s capacity building. Under this facility, many officers were trained locally and abroad.

The SECP is also a member of various international forums such as the International Organization of Securities Commissions (IOSCO), IOPS and International Association of Insurance Supervisors, and avails many learning and training opportunities through them to update the skills of its staff in line with international best practices. Each year, the SECP allocates specific funds in its budget for training and capacity building.

In addition to this, a comprehensive set of manuals covering investigation, adjudication and litigation has recently been prepared. All enforcement employees have been trained for effective implementation.
Philippines

The staffing level and internal procedure of the enforcement department is currently under study. The re-alignment of functions and responsibilities of the different departments in the Securities and Exchange Commission is also under study.

Singapore

Yes. The various enforcement authorities are equipped with the necessary resources to carry out effectively investigations and enforcement functions within their scope. With regard to the adequacy of staffing and expertise, the various agencies addresses the needs from as early as the recruiting of officers with the relevant expertise and educational qualifications to progressive training, such as on the job training, external and internal courses as well as attachments to other agencies. These aim to equip officers with the necessary skills to handle their work.

Chinese Taipei

The Financial Supervisory Commission (FSC) fills vacated positions primarily by placements through the senior level civil service examination and through the transfer of outstanding employees of other public agencies. The aptitude and academic qualifications of the former have been rigorously screened through the intensely competitive senior civil service exam process, while employees who have been assigned from other agencies to serve at the FSC are outstanding personnel who must first pass an initial review by the FSC screening committee, as well as approval by the human resources screening committee of the FSC and its subordinate agencies. The provisions of the Public Functionaries Remuneration Act also allow compensation through salaries and substantial additional allowances and bonuses that make it possible to attract high quality staff.

Assessments of adequacy of staffing and expertise and remedy of inadequacy are made every year. Each year, the FSC provides systematic training and advanced education to its employees pursuant to the Civil Service Training and Education Act and the FSC’s own training and education plan. The training consists primarily of on-site and off-site training for new employees, general job-skills training and professional-skills training.
Thailand

Yes with on-going programmes for revising priorities, building capacity and enhancing case management efficiency.

Viet Nam

The State Securities Commission is now installing a modern computer system that is capable of providing real-time information. The Supervisory and Enforcement Departments of the Commission also recruit adequate and highly experienced staff.
Question 5.2 – Source of Funding

What is the source of funding of the enforcement authorities (e.g. fees charged to the regulated industries, government budget, etc.)?
### Bangladesh

Own sources (e.g. fee charged from the regulated industry and financial penalty). For the last four years, the Bangladesh Securities and Exchange Commission (BSEC) has been operating on its own earnings. The BSEC has taken a move recently to delete its name from the government budget book. The aim is to establish financial autonomy and gradually to become free from government intervention.

### China

Both fees charged to the regulated industries and the government budget.

### Hong Kong, China

Securities and Futures Commission: The major sources of the SFC’s funding include:

- Levies collected by the Stock Exchange of Hong Kong, China and Hong Kong Futures Exchange Ltd on transactions recorded on the Exchanges; and

- Fees and charges in relation to its functions and services according to the provision of subsidiary legislation.

Additionally, under section 14 of the Securities and Futures Ordinance, the SFC may request the Hong Kong government to provide funding. So far, the SFC has not requested funding from the government, as sufficient funds have been raised through transaction levies.

Stock Exchange of Hong Kong, China: The Exchange is a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd (HKEx), which is listed on the Exchange. The Listing Division discharges the regulatory function of the Exchange. Funding of the Listing Division (including Listing Enforcement Department) is provided by HKEx which generates incomes from its business activities, listing fees (for listing of securities on the Exchange) and investment income.

Companies Registry: The Companies Registry was established as a trading fund by resolution of the Legislative Council passed pursuant to the Trading Funds Ordinance. The Trading Funds Ordinance requires the Companies Registry to operate in accordance with commercial principles and on a self-financing basis.

Financial Reporting Council: The FRC is funded by four parties – the Companies Registry Trading Fund, the SFC, HKEx and the Hong Kong Institute of Certified Public Accountants. The four parties have signed a memorandum of understanding under which they have agreed to contribute HKD 5 million each (a one-off total of HKD 20 million) to establish a Reserve Fund, and
HKD 4 million each (a total of HKD 16 million) for the recurring expenses of the FRC in 2010. Annual contributions for the recurring expenses were increased by a fixed percentage of 5% to cater for inflation from 2011 to 2014.

### India

The sources of funding of the enforcement authorities are as follows:

**Ministry of Corporate Affairs:** It is funded through a budgetary allocation from the Union Budget.

**Securities and Exchange Board of India (SEBI):** Regulation 13 of Chapter VI, Finance, Accounts and Audit of the SEBI Act, 1992 provides that the central government may, after due appropriation made by Parliament by law, make to the Board grants of such sums of money as that government may think fit for being utilised for the purposes of this Act.

Apart from this appropriation, the chief sources of funds comprise of the fees charged on issuer companies for raising capital from the market, and registration and renewal charges collected from various market intermediaries, namely, brokers, sub-brokers, mutual funds, etc. SEBI also earns interest income from investments which it makes.

**Stock exchanges:** The source of funding comes mainly from the listing fees charged on the companies listed on the stock exchanges and the annual renewal charges to stay listed. In addition, the exchanges also collect annual fees and turnover fees from member brokers.

### Indonesia

The activities of the Financial Services Authority (OJK) are funded by the government budget and/or fees collected from financial industries.

### Korea

All agencies except the Korea Exchange (KRX) operate with the government budget as they are part of government. The KRX operates on its own budget.
Malaysia

The Securities Commission Malaysia is well resourced with a 2010 budget of MYR 136 million. It is funded by fees paid by market participants.

Bursa Malaysia is a listed company with a sufficient budget to undertake effective enforcement. In addition, fines collected from its disciplinary or enforcement actions will be applied to education and training, as well as legal fees and expenses related to implementation of regulatory (including enforcement) actions/decisions.

The Companies Commission Malaysia is self-financed with fees, which it splits with the national budget.

Mongolia

As far as the Financial Regulatory Commission is concerned, the main source of funding is the government budget, partly topped up by fees levied on some regulated entities. Mongolbank is a self-funding institution.

Pakistan

The Securities and Exchange Commission of Pakistan (SECP) was established pursuant to the SECP Act, as an independent and autonomous regulatory body, in line with international best practices. In order to ensure its autonomous status and to make available to it the requisite financial resources, the SECP was allowed to establish a fund in terms of section 23 of the Act, to be administered and controlled by the Commission.

The fund consists of federal government grant money (one-time grant was given at the time of establishment), sums raised or borrowed by the SECP, fees, penalties or other charges levied by the SECP under statutory power, and miscellaneous other sums or property.

The fees and charges levied by the Commission under the laws administered by it become part of the fund. The SECP is a self-funded organisation and generates revenue from the registration of companies, licensing of regulated entities such as non-banking financial companies, Collective Investment Schemes, brokers, credit rating companies, etc., transaction and other fees on the securities market, annual monitoring fees for various market intermediaries, and fees charged for approvals and other processing functions. This ensures a stable and continuous source of funding and adequate financial resources for the SECP to exercise its powers and responsibilities in supervising the markets and to keep up with international best practices.
The penalties imposed on violations of the provisions of the laws, however, are deposited with the government treasury. Any surplus revenue after meeting expenses from 2013 onward will go to a federal consolidated fund.

**Philippines**

The Securities and Exchange Commission gets annual government funding and a small portion (not more than 5%) from its earned income.

**Singapore**

The Accounting and Corporate Regulatory Authority is self-funded through fees received from its operations, such as the incorporation of companies, registration of businesses, lodgement of documents and purchase of information by the public.

The Commercial Affairs Department is funded by a budget allocated by the government.

The Monetary Authority of Singapore is a self-financing entity.

The Singapore Exchange is a publicly listed entity that is responsible for its own funding.

**Chinese Taipei**

The Financial Supervisory Commission (FSC) and the judiciary’s major funding source comes from the central government budget that is formulated according to the needs of their official business each year. Concession fees, annual fees, licence fees, and administrative fines are also collected by the FSC from the entities under its supervision to meet funding needs for purposes of management and official business.

The stock exchanges charge listing review fees and listing maintenance fees on listed companies, and information connecting/exchange fees on securities firms. The funding of self-regulatory organisations is primarily from their members.
Thailand

The Securities and Exchange Commission (SEC) was initially given an endowment to develop the capital market, but it is now self-funded through fees paid by brokers and dealers, as well as fees paid by the exchange. There is no conflict of interest where the exchange is concerned, as it is not demutualised and the SEC nominates half of the board of the exchange.

Viet Nam

The government budget.
Question 5.3 - Independence

Do enforcement authorities have adequate independence to carry out their functions (i.e. freedom from political and commercial influence/conflict of interest)?
By law, the Bangladesh Securities and Exchange Commission (BSEC) has full independence to carry out its functions. Independence has improved a lot but still needs more improvement.

Yes. The Securities and Exchange Board of India (SEBI) is constituted as an autonomous body under an Act of the Parliament and, hence, enjoys operational and financial autonomy. This helps in ensuring adequate independence of enforcement actions initiated by SEBI.

Yes, the Financial Services Authority (OJK) has adequate independence to carry out its functions.

(No answer).
Malaysia

Yes, enforcement authorities have adequate independence to carry out its functions.

Mongolia

Yes.

Pakistan

Yes.

Philippines

Yes.

Singapore

Yes. The Accounting and Corporate Regulatory Authority (ACRA) carries out its functions with adequate independence. Sensitive cases will be referred to the Attorney-General’s Chambers (AGC) for concurrence on the course of action to be taken.

Similar to ACRA, the Commercial Affairs Department submits its recommendations to the AGC upon completion of its investigations. The AGC then conducts an independent review of the investigation findings and decides on the further course of action. According to article 35 (6) of the constitution, the attorney-general (AG) is empowered under the constitution to institute, conduct or discontinue proceedings for any offence. The AG is independent in this role, and not subject to the control of the government.

In managing potential conflict of interest, between officers assigned to handle a particular investigation or regulated entity, officers are required to declare them upfront and management will decide if the investigation is to be handled by another officer.
The Singapore Exchange (SGX) plays a dual role as both a frontline regulator and a commercial entity. In view of the potential conflicts between its regulatory responsibilities and commercial objectives, the Securities and Futures Act places a legal obligation on the board and management of SGX to maintain effective governance arrangements for managing such conflicts. These include a regulatory conflicts committee of the board which ensures the adequacy and quality of resources for SGX’s regulatory functions, the robustness of decision-making structure and the supervision of processes for identifying and managing regulatory conflicts.

**Chinese Taipei**

Yes.

**Thailand**

Yes, for the Securities and Exchange Commission (SEC) through financial independence, independent staff rules (staff are non-government officials and cannot be removed from by politicians) and internal procedures. Further, the SEC has checks and balances within its own organization, and the government and other authorities do not influence its enforcement decisions. The decision to pursue a case does not lie with a single individual or division but with an internal committee comprising persons from its enforcement division and other divisions.

Other enforcement authorities such as the Department of Special Investigation and public prosecutors are, however, funded by the government. And the appropriation bill of the government must be submitted to parliament for approval.

**Viet Nam**

Yes.
Question 5.4 – Mechanisms to Ensure Independence

If yes, are there any:

(a) provisions and, if so, what are these provisions to ensure that the enforcement authorities are independent and are obliged to ensure their independence from political and commercial influence?; and

(b) formal mechanisms to prevent/manage conflicts of interest with the regulated industries? (e.g. regulated person who may have a material commercial relationship with the enforcement authority); and

(c) formal mechanisms to prevent/manage/reduce undue political intervention?
Bangladesh

(a) According to provisions of the Securities and Exchange Commission Act 1993, even the government cannot dictate functional matters of the Bangladesh Securities and Exchange Commission (BSEC). The government has the right to give direction on policy matters, but this type of order cannot be issued without taking the opinion of the BSEC.

(b) If there is any conflict of interest, the concerned person is dropped from that case.

(c) To ensure rule of law in the country.

China

(a) The Securities Law and the authorisation by the State Council to ensure such independence with clearly outlined powers and responsibilities of the China Securities Regulatory Commission.

(b) None.

(c) None.

Hong Kong, China

Securities and Futures Commission: The SFC is an independent statutory body established by the Securities and Futures Ordinance (SFO). The SFC has a comprehensive range of statutory investigation and enforcement powers.

Stock Exchange of Hong Kong, China: An information barrier exists between the Listing Division (which discharges the regulatory function) of the Exchange and the trading/business units of the Exchange, as well as other companies within Hong Kong Exchanges and Clearing Ltd.

The Listing Committee has the power to hear and determine disciplinary actions, brought by the Listing Division, make findings of breach and impose sanction/make directions after making findings of breaches. Committee members who have a potential conflict of interest are required to declare that conflict and unless agreed by the parties to the disciplinary actions, they must refrain from participating in the disciplinary hearing.

Companies Registry: The Department of Justice (DoJ) is responsible for the conduct of criminal proceedings in Hong Kong, China. In the discharge of that function, the DoJ enjoys an independence which is constitutionally guaranteed (article 63 of the Basic Law of Hong Kong, China). Legal officers of the Companies Registry have delegated authority from the Director of Public Prosecutions on
behalf of the Secretary for Justice to lay information and prosecute summary offences under the Companies Ordinance before magistrates.

Financial Reporting Council: Section 53 of the FRC Ordinance provides the procedures for avoiding conflicts of interest.

India

(a) Chapter II of the SEBI Act, 1992 provides for the following:

Management of the Board

(1) The Board shall consist of the following members, namely:

(a) A chairman;

(b) Two members from among the officials of the ministry of the central government dealing with finance and administration of the Companies Act, 1956;

(c) One member from among the officials of the Reserve Bank; and

(d) Five other members of whom at least three shall be the whole-time members, to be appointed by the central government.

(2) The general superintendence, direction and management of the affairs of the Board shall vest in a Board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Board;

(3) Save as otherwise determined by regulations, the chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by that Board;

(4) The chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the central government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the central government and the Reserve Bank, respectively; and

(5) The chairman and the other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the central government, shall be useful to the Board.

The above provisions in the Act seeks to ensure that the enforcement authorities are independent and are obliged to ensure their independence from political and commercial influence by laying down clear principles regarding the constitution of the Board and the criteria for the selection of the members of the Board.
(b) Chapter II of the SEBI Act, 1992 provides for the following:

In order to prevent/manage conflicts of interest with the regulated industries, the relevant provision has been incorporated in the Act:

Members are not to participate in meetings in certain cases. Any member, who is a director of a company and who as such a director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his/her interest at such a meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.

(c) Yes, there are formal mechanisms to prevent/manage/reduce undue political intervention. Further, the operational and financial autonomy enjoyed by the Securities and Exchange Board of India helps in preventing undue political intervention in its operations.

### Indonesia

(a) Yes. Based on OJK Law articles 1 and 2, the Financial Services Authority (OJK) is an independent body and free of intervention from other parties, and has the functions, duties and authority to regulate, supervise, inspect and investigate.

(b) Yes, there are formal mechanisms to prevent/manage conflicts of interest with the regulated industries, such as a code of ethics, standard operational procedure and the establishment of an internal audit function.

(c) Yes, there are formal mechanisms to prevent/manage/reduce undue political intervention, such as a code of ethics, standard operational procedure and the establishment of an internal audit function.

### Korea

In case of the Financial Services Commission and Fair Trade Commission, they guarantee the independence of their committee members by providing policies of exception and refraining for members, and political independence by prohibiting political activities by members.
Malaysia

(a) The Securities Commission Malaysia (SC) is self-funded with its primary source of income derived from levies, fees and charges imposed on market activities and licensed persons. This constitutes a statutory fund and is administered and controlled by the SC exclusively. It sets its own annual budget and manages its own expenses through a rigorous process, which includes audited financial statements which the audit committee will review.

The chairman of the SC is appointed by the minister of finance. While the SC reports to the Finance Minister, it does not require the minister’s consent to exercise any of its administrative, supervisory, investigatory or enforcement powers, save in specific cases where the consent of or consultation with the minister is required by law (for example, the grant or renewal of a licence). In those instances, the minister makes the decision, usually in consultation or on the recommendation of the SC. In each instance, the process is clearly set out in the law.

Major regulatory and policy decisions are made by the head and the governing board of the SC, known as commission members. The Securities Commission Act 1993 (SCA 1993) explicitly provides mechanisms to protect the independence of these commission members. For instance, section 6 of the SCA 1993 provides that the tenure of a commission member shall not exceed three years, although he/she is eligible for reappointment.

The Bank Negara Malaysia (BNM) is also self-funded, and the law allows it to set aside reserve funds. The governor of the BNM is appointed by the Yang di-Pertuan Agong (the King) and reports to the BNM board of directors. The Ministry of Finance gives final approval to the BNM’s regulations and licences, advises on the choice of the BNM’s board members and can remove board members with cause.

Bursa Malaysia is an approved exchange holding company, and is the frontline regulator of the Malaysian capital market, with the duty to maintain fair and orderly securities and derivatives markets that are traded through its facilities. It operates a fully integrated exchange via its subsidiary, Bursa Malaysia Securities (the exchange), which is an approved stock exchange under the Capital Markets and Services Act 2007.

There is in place a clear framework and checks and balances to ensure the integrity (including independence) of actions/decisions and that these actions/decisions are not tainted by conflicts of interest or undue external pressures/influence.

Separation of regulatory functions and commercial activities:

- The regulatory functions of Bursa Malaysia are performed and managed by the regulation unit helmed by the chief regulatory officer. As a measure to ensure independence of the regulatory function, the chief regulatory officer provides the board of directors with a regulatory report on a regular basis and the regulatory plan which includes the regulatory budget approved by the board; and

- The regulatory activities are independent of its commercial activities so as to limit potential or perceived conflicts of interest; business units within Bursa Malaysia are not in a position to influence any supervisory or regulatory decisions made by the regulation
unit. Bursa Malaysia has also established regulatory committees to make significant regulatory decisions. The compositions of these regulatory committees comprise a majority of external industry experts in addition to independent directors and public interest directors of Bursa Malaysia. The tenure is for one year, and the appointment is recommended by the nomination and remuneration committee and approved by the board of Bursa Malaysia.

**Regulatory oversight body:**

- The SC being the regulatory oversight body supervises and monitors Bursa Malaysia with regards to its listing, trading, clearing, settlement and depository operations to ensure Bursa Malaysia performs its regulatory duties and obligations in an effective manner. However, Bursa Malaysia remains independent in discharging its regulatory functions; and

- As part of SC’s monitoring activities, Bursa Malaysia is required to submit an annual regulatory report to the SC which details the extent and scope of its compliance with its statutory duties and obligations. The SC conducts regulatory audit on Bursa Malaysia upon submission of the annual regulatory report. There are also discussions between the SC and Bursa Malaysia from time to time on operational and strategic supervisory matters. The SC’s approval and concurrence are required for changes to the rules and for new or enhancement of products provided by Bursa Malaysia.

Bursa Malaysia has a regulation section on its website to promote transparency on its regulatory approach, philosophy and actions. This helps capital market participants understand better the underlying motivation for its decisions and actions.

As decisions by Bursa Malaysia are also subject to judicial review, there is the inherent requirement for its actions/decisions to comply strictly with natural justice principles. This essentially means that Bursa Malaysia has to accord the right of hearing to regulated persons, ensure reasonableness of its actions or decisions, and ensure that there is no bias in its decision making and decisions/actions as, otherwise, the decision by Bursa Malaysia can be set aside by the courts.

(b) To maintain objectivity and isolate commission members of the SC from any commercial interest, section 5 of the SCA 1993 prohibits a commission member or a potential commission member from being an executive or salary director of a public listed company or having an employment contract with a public listed company while holding office. To ensure transparency, the SCA 1993 requires a commission member to disclose all direct and indirect interests he/she may have on any matters under discussion by the SC.

In addition to these statutory safeguards, there are internal policy guidelines for commission members, which serve as a code of conduct for commission members. Under these guidelines, commission members are required to avoid any conflict of interest whether actual or that could be perceived to be existent, and to identify and fully disclose any situation that may give rise to conflicts of interest. These guidelines also stipulate the processes and procedures for disclosure of interest, abstention from deliberation, as well as the recording of such interest.

As for the BNM, the Central Bank of Malaysia Act 2009 provide for various instances in which a director, the governor, or deputy governor may be removed, and this may include
conviction, personal bankruptcy, unsound mind and conflicts of interest. Thus far, there have been no known cases of conflicts of interest involving senior staff of the BNM.

For Bursa Malaysia, please see the answer to Question 5.4 (a).

(c) As a statutory body established pursuant to federal law, the SC is accountable to parliament on an ongoing basis. Members of parliament are at liberty to question the SC with regards to the exercise of its regulatory powers.

The SCA requires the SC to table its audited statement of account and annual reports to the minister of finance on a yearly basis, setting out the activities undertaken by the SC during that financial year.

As for Bursa Malaysia, it is accountable to its oversight regulator, the SC. Please see the answer to Question 5.4 (a).

**Mongolia**

(a) In article 5 of the Statutory Law on the Financial Regulatory Commission (FRC), principles governing the Commission’s activities state that the “Commission shall conduct its activities based on such principles as independence, transparency…”

(b) There is a specific provision in the FRC Law that regulates conflicts of interest with regulated institutions (for example, if there is a connected person at the FRC, he/she shall inform regarding his/her relationship before the meeting and abstain from participating in decision-making activities).

(c) First of all, appointments of heads of regulatory agencies are formally based on certain qualifications and experiences, not political affiliation. Second, the tenure of their appointments is different from that of government agencies.

**Pakistan**

The Securities and Exchange Commission of Pakistan (SECP) is operationally independent in the exercise of its functions and powers. All decisions are required to be taken free from any external political or commercial interference. This is provided for in the law; section 20 of the SECP Act clearly defines the responsibilities, powers and functions of the SECP that it can exercise for routine and technical matters with complete operational independence, financial autonomy and without the requirement to report to the federal government.

The SECP is a collegiate body, made up of commissioners not fewer than five in number with a collective responsibility. In terms of section 5 of the SECP Act, the federal government appoints the commissioners, including the chairman who is the chief executive of the Commission.
The position of a commissioner is tenure-based, and he/she cannot be removed other than for circumstances outlined in the SECP Act. Each commissioner is appointed for a term of three years and can be re-appointed for another term of three years. The majority of the commissioners are from the private sector and are persons known for their integrity, expertise, experience and eminence in any relevant field, including the securities market, law, accountancy, economics, finance, insurance and industry.

The SECP Act contains detailed provisions with respect to conflicts of interest and is applicable to all employees and commissioners. Under the law, every employee must disclose all his/her assets, including those of the spouse, to the commission, while business interests of commissioners are required to be disclosed through the annual report of the SECP.

The conduct of the SECP’s day-to-day functions, such as corporate submissions approvals, licensing reviews and recommendations, monitoring and surveillance of markets and intermediaries, and prudential oversight and inspections are all determined by the Commission through established procedures. It can independently take enforcement action and file prosecutions without seeking the approval from the federal government.

The SECP Policy Board is a policy making advisory body that comprises nine members appointed by the federal government, five of whom are ex-officio from the public sector (one being the chairman of the SECP) while four are from the private sector and are well-known for their integrity, expertise and experience in relevant areas (section 12 of the SECP Act).

The Policy Board is responsible (section 21 of the SECP Act) for oversight of the SECP’s performance to the extent that the purposes of the SECP Act, i.e. the establishment of the SECP for the beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith, are achieved. Under the law, the Policy Board is required to meet at least four times a year.

The Policy Board makes all policy decisions, including any changes in previously established policy, with respect to any matter within the jurisdiction of the Commission. The Policy Board may make policy decisions _suo moto_ or adopt such policy recommendations of the Commission, with or without modification, as the Board may deem fit in its sole discretion. The Policy Board also approves any regulations made by the Commission for implementation of policy decisions under the SECP Act, and the SECP budget and the fees, penalties and other charges chargeable by the Commission for the purpose of the SECP Act.

The SECP has a stable and continuous source of funding through the imposition of levies on securities transactions and the corporate registry, as well as the fees and charges for approvals and other processing functions. The SECP fund provides sufficient financial autonomy to the Commission.

The structure of the Commission and the Policy Board, the roles assigned to each of them under the law and the financial autonomy of the SECP fund clearly insulates the Commission from any external interference.

The Commission, commissioners, officers, Policy Board members or any employee of the Commission are indemnified under section 42 of the SECP Act from suits, prosecutions or other legal proceedings with respect to anything done in good faith or intended to be done in pursuance of the SECP Act 1997 or any administered legislation or any rule or regulation made thereunder.
Further, section 30 of the Securities and Exchange Ordinance (SEO 1969) protects the Commission or an officer or authority subordinate to it or especially appointed for the purpose of the SEO 1969, from any liability such as suit, prosecution or other legal proceedings, for anything which is done in good faith under the SEO 1969 or rules or orders made pursuant to it.

**Philippines**

(a) The Securities and Exchange Commission (SEC) as an organisation adheres to the values of integrity, professionalism, accountability, independence and initiative in the performance of its duties and responsibilities.

(b) SEC officials and employees are required to adhere to the Code of Conduct provided under the Implementing Rules and Regulations of the Securities Regulation Code. This Code of Conduct explains the situations that are considered conflicts of interest.

There are also rules prohibiting separated SEC employees from working with any regulated entity within one year following their resignation or separation from the SEC.

A resident ombudsman (the office created by the Constitution to look into the activities/omissions/violations of government personnel) is also assigned to the SEC, as is the case in all government agencies in the Philippines.

Complaint and feedback forms are available to the public in the offices of the SEC.

(c) The SEC’s mandate is expressly provided in the Securities Regulation Code and other laws enforced by it. These laws guide the SEC’s actions. These laws reduce or prevent political intervention.

**Singapore**

(a) Please refer to the answer to Question 5.3.

(b) Please refer to the answer to Question 5.3.

(c) Please refer to the answer to Question 5.3.
Chinese Taipei

(a) The Financial Supervisory Commission (FSC) operates in accordance with the law, and relies on the law as a mechanism to protect it from political interference. Article 10 of the Financial Supervisory Commission Organic Act provides that “the FSC shall exercise its authorities of office independently in accordance with the law.” Paragraph 1, Article 86 of the Judges Act provides that “the prosecutor serves as the representative of public interest to pursue and penalise against crimes in accordance with the law and to maintain social order. A prosecutor shall act beyond political partisanship, uphold the public interests protected under the Constitution and the law, and to carry out the prosecutorial duties fairly, objectively, diligently and prudently.” Paragraph 1, Article 2 of the Code of Criminal Procedure provides that “a public official who conducts proceedings in a criminal case shall give equal attention to circumstances both favourable and unfavourable to an accused.” Therefore, when dealing with criminal cases, public officials should maintain their independent position and objective responsibility, and review in detail of any favourable and unfavourable evidence to an accused. When pursuing and penalising against crimes, public officials should also prudentially identify truth and applicable laws to protect civil rights.

(b) FSC employees are civil servants, and civil servant have to comply with the Civil Servant Service Act, which provides that a civil servant shall exercise recusal with respect to cases where the interests of such civil servant or his/her family members are involved. It also provides that a civil servant may not give or receive gifts from subordinates regardless of whether occupational duties are involved; may not accept gifts with respect to matters they handle; may not use inspection or investigation opportunities to accept entertainment or gifts from local officials or citizens; and shall exercise recusal when, in the course of discharging their duties, they encounter any matter involving their own interests or the interests of their family.

In addition, when new employees of the Securities and Futures Bureau (SFB) of the FSC report for duty, they are asked to sign a conflict-of-interest recusal document, and are informed of the provisions which stipulates that the employees of the SFB (including contract-based personnel, technical workers and other staff) shall not buy stocks or beneficial interest certificates. Violators are subject to penalty and disciplinary actions.

(c) In Chinese Taipei, civil servant should exercise their authority based on rule of law, in that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedure. Therefore, enforcement authorities rely on the law as a mechanism to protect it from political interference.
Thailand

(a) Section 19 of the Securities and Exchange Act vested enforcement power with the permanent officers, not board members, of the Securities and Exchange Commission. Section 20-24/1 provides for appointment, qualification and disclosure power of the secretary-general.

(b) Internal rules require that enforcement decisions have to go through an Enforcement Committee whose members include those not in the enforcement line of supervision. The Enforcement Committee was designed not to include the secretary-general in order to serve as a check-and-balance mechanism within the agency. If any officer should have any conflict of interest, he/she has to declare it and be absent from the meeting.

(c) The formal mechanisms to prevent/manage/reduce undue political intervention are as follows:

- Matters proposed for approval need to be in written form and must contain supporting facts and opinions. Each officer has to be accountable for his/her opinion. They are subject to all the internal control mechanisms;

- Appointments and performance evaluations are mostly done internally through committees (only the secretary-general is appointed by the Cabinet. All other staff are permanent employees); and

- Once the start of an investigation case is approved, the power to investigate what, when, who, whom, how depends on the investigation team. Findings have to be presented to the Enforcement Committee. No one has the ultimate control over the case.

Enforcement agencies such as the Department of Special Investigation and public prosecutors have their own codes of conducts and procedures.

Viet Nam

There are adequate laws and regulations that force authorities to act independently from political and commercial intervention.
Question 5.5 – Checks and Controls

Does the organisational/legal structure support a fair and transparent process in relation to the public and the regulated industry, including an adequate mechanism of checks and controls to ensure that the decisions/actions by the enforcement authorities are independent, fair and proper? If yes, what are the checks and controls, including:

(a) is the commencement of enforcement proceedings and/or decision subject to consultation/review by a separate body (other than the said enforcement authority)?

(b) is the right of appeal accorded?

(c) what is the role played by the courts, including the availability of judicial review process? In this respect, have there been any judicial review applications against decisions of the enforcement authority and, if yes, what was the outcome?
Bangladesh

Yes.

(a) No.

(b) Yes.

(c) Most of the judicial review against enforcement authority of the Bangladesh Securities and Exchange Commission (BSEC) comes within the writ jurisdiction of the Supreme Court and, if it goes to court, outcome is dependent on the court decision.

China

(a) None.

(b) Yes.

(c) Usually, there are no such obvious judicial review applications against the enforcement authority.

Hong Kong, China

Yes.

Securities and Futures Commission: See the answer to Question 4.2.

All enforcement outcomes are publicised in SFC press releases. These press releases are also published on the SFC’s website.

The Process Review Panel was established to review the internal procedures and operational guidelines regarding SFC’s regulatory functions, including licensing applications, inspections, product authorisation, handling of complaints, investigation, disciplinary actions and processing of listing applications under the Dual Filing regime.

(a)

− Securities and Futures Commission: Yes. The SFC has the power to initiate criminal prosecutions at the Magistrates’ Court for less serious offences (section 388 of the
Securities and Futures Ordinance). For more serious offences, the SFC refers the cases to the Department of Justice (DoJ) for prosecution (article 63 of the Basic Law of Hong Kong, China).

The Process Review Panel was established to review the internal procedures and operational guidelines regarding SFC’s regulatory functions, including licensing applications, inspections, product authorisation, handling of complaints, investigation, disciplinary actions and processing of listing applications under the Dual Filing regime.

The Securities and Futures Appeal Tribunal was set up to hear appeals against decisions made by the SFC relating to matters, including the registration of intermediaries and those of the Investor Compensation Co, Ltd regarding determination of compensation claims. The Tribunal is an independent tribunal chaired by former and current High Court judges and assisted by panel members from the legal, accounting and financial industries.

- Stock Exchange of Hong Kong, China: Within the Listing Division of the Exchange, the decision to commence disciplinary actions is made and approved at internal meetings of the Disciplinary Co-Ordination Meeting attended by Head of Listing, Head of Listing Enforcement, members of the Listing Enforcement and representative(s) of Compliance and Monitoring Department of the Listing Division (which monitors on a daily basis post listing rule compliance of listed issuers). Other senior staff members of the Listing Division also attend. This procedure is documented in the Operating Manual of Listing Enforcement.

The SFC supervises the Exchange’s discharge of its regulatory functions. Disciplinary actions from commencement to conclusion are reported in the monthly reports from the Listing Division of the Exchange to the SFC.

- Companies Registry: Yes. The Companies Registry has the power to initiate summary criminal proceedings in the Magistrates’ Court. For more serious offences, the Companies Registry refers the cases to DoJ for prosecution. See the answer to Question 5.3.

- Financial Reporting Council: A Process Review Panel was established to review cases handled by the FRC and consider whether the actions taken by the FRC are fair and consistent with its internal procedures.

(b)

- Securities and Futures Commission: Yes. In relation to criminal and civil proceedings, there is clear appeal process in the laws of Hong Kong, China stated in ordinances (such as sections 266 to 268 of the Securities and Futures Ordinance, and details in the Criminal Procedure Ordinance) and court procedures.

For disciplinary proceedings, the SFC has published the “Disciplinary Proceedings at a Glance”, which outlines the disciplinary measures available to the SFC, the investigation process, appeal process and settlement, etc. Regulated persons who are not satisfied with SFC’s disciplinary decisions can appeal to the Securities and Futures Appeal Tribunal, which is an independent tribunal chaired by former and current High Court judges and assisted by panel members from the legal, accounting and financial industries.
Stock Exchange of Hong Kong, China: After proceedings have begun, the Listing Committee is the primary decision maker concerning possible breaches of the rules, sanctions to be imposed and directions to be made under Rule 2A.11 of the Listing Rules, (a) a first review before the same body, although constituted of different members, is available; and (b) if public sanctions are imposed, a second or further review is available before the Listing Appeals Committee. This body is composed of the chairman of Hong Kong Exchanges and Clearing Ltd and two other members of its board of directors.

Companies Registry: Yes. There is a clear appeal process in the laws of Hong Kong, China stated in ordinances (such as Criminal Procedure Ordinance).

Enforcement actions, the directions made in the course of those actions and as to the conduct of the disciplinary hearings, as well as decisions made in the actions following disciplinary hearings, are susceptible to judicial review (by the Courts).

The Exchange’s disciplinary function has been the subject of judicial review on three occasions, and on each occasion the Court ruled in favour of the Exchange. For example, in 2003, New World Development Company Ltd against whom the Exchange brought disciplinary action for listing rule breaches disputed the decision made by the chairman of the Listing Committee disallowing its application that its counsel might cross examine witnesses at the hearing (to take place on the date to be scheduled). Following hearing at the Court of first instance, an appeal to Court of Appeal and the final appeal to the Court of Final Appeal, the Court of Final Appeal in April 2006 ruled against the party (decision of the Court of Final Appeal being final, holding that the Listing Committee was not a “Court” within the meaning of the Hong Kong Basic Law).

The Companies Registry’s administrative decisions are subject to judicial review.

India

Yes.

(a) Yes. The whole time member of the Securities and Exchange Board of India (SEBI), who is regarded as a quasi-judicial authority, appoints investigation/adjudication/enforcement officers.

(b) Yes, in matters relating to SEBI, the Securities Appellate Tribunal (SAT) is the next higher authority where application can be made against the decisions of SEBI.

(c) The orders of SEBI are appealable before SAT. The orders of SAT are further appealable before the Supreme Court. Parties can also approach High Courts by way of writ petitions, the right of which is guaranteed by the Constitution. Many of the decisions of SEBI have been challenged before SAT and the Supreme Court, and there have been instances where they have set aside the orders of SEBI.
**Indonesia**

Yes, the Financial Services Authority (OJK) support a fair and transparent process in relation to the public and regulated industry, including an adequate mechanism of checks and controls to ensure that the decisions/actions by the enforcement authorities are independent, fair and proper.

(a) Yes.

(b) Yes.

(c) The courts may accept or reject an appeal. There were some judicial reviews against decision of the enforcement authority, and most of the outcomes have benefited the Financial Services Authority (OJK).

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**Korea**

A lawsuit challenging the Fair Trade Commission's punishment can be filed, while for the Financial Services Commission’s punishment, an administrative appeal can be pursued.

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**Malaysia**

(a) The Securities Commission Malaysia (SC) refers its recommendations on criminal cases to the attorney-general’s chambers for approval, because the power to institute criminal proceedings under law is vested in the attorney-general.

Enforcement actions by Bursa Malaysia are taken based on referrals made by the relevant divisions within the regulation unit. Bursa Malaysia also established regulatory committees to make significant regulatory decisions. The listing committee, for instance, decides on all major enforcement actions undertaken under the Listing Requirements (LR), withdrawal of listing and other major listing-related regulatory decisions. Its specific responsibilities include:

- To preside over matters relating to alleged breaches under the LR and decide on breaches and appropriate sanctions or such other actions;

- To decide on such matters (including applications and policies) in relation to the LR referred to by the management; and

- To consider and decide on cases of appeal from parties against decisions by the management.
There is also the appeals committee, which is responsible for hearing and deciding on appeals against first instance decisions of the listing committee made under the LR. Any decision(s) made by the appeals committee is final.

The SC is also notified by Bursa Malaysia of the enforcement decisions against the errant party under the LR when the decision is communicated to the errant party consistent with the requirements under the Capital Markets and Services Act 2007. In addition, monthly reports are submitted to the SC on the enforcement actions taken under the LR.

Further, Bursa Malaysia’s enforcement decisions are subject to judicial review by the courts. Please refer to the answer to Question 5.4 (a).

(b) The Malaysian system of justice provides for two tiers of appeal as prescribed by the Courts of Judicature Act 1964 and other relevant codes. Persons who are dissatisfied with the decision, judgment or order of the court may file an appeal on the condition that such decision, judgment or order is final in nature, that is, it finally disposes of the right of the said person.

With regards to Bursa Malaysia, please refer to the answer to Question 5.5 (a).

(c)

Securities Commission Malaysia: As a public body, the exercise of the SC’s administrative decisions is subject to judicial review and other legal avenues by which challenges can be mounted. Since its inception in 1993 until 2012, there have been 12 cases of judicial review filed against the SC. None of the cases have been successful in overturning the SC’s decisions.

Bursa Malaysia: Decisions by Bursa Malaysia are subject and have been subjected to judicial review by the courts. As at 2012, Bursa Malaysia achieved a 100% success rate with respect to the judicial review applications made to challenge its enforcement decisions, whereby the courts have affirmed the finding of breach and the sanctions imposed. The sole exception was one case whereby the said court, while affirming the finding of breach and the public reprimand and fines imposed, set aside the directive issued against the errant directors to compensate the listed company for authorising monies issued by the listed issuer to a third party in breach of the LR.

Mongolia

Yes.

(a) Yes, there is the Supervisory Board of the Financial Regulatory Commission (FRC) that monitors the legality of FRC decisions with regard to enforcement.

(b) Yes, if a party does not agree with a decision of the Supervisory Board of the FRC, it can appeal to administrative courts.
(c) Yes, in fact many, outcomes of these judicial review processes have been generally in favour of the FRC.

**Pakistan**

(a) Both commencement of enforcement proceedings and decisions are not subject to consultation with a separate body.

(b) Yes.

(c) The enforcement process is transparent and addresses the possible situations of abuse of discretion. All policy decisions must be published in the official gazette (section 22 of the SECP Act). While adjudicating the rights of any person, the opportunity of hearing is provided and the orders are placed on the website of the Securities and Exchange Commission of Pakistan (no formal policy is in place for this).

The orders issued by the SECP provide written arguments along with sufficient reasoning on the merit of the case to substantiate that compliance with the relevant law has not been made. Before issuing an order, the law requires the issuance of a show cause notice and an opportunity of hearing.

A person aggrieved by any order passed may prefer a revision application with the Commission. Right of revision and review has been given to the person against whom an order has been issued that is subject to review by a senior officer to the person issuing the original order, or the aggrieved party can approach the SECP Appellate Bench, which consists of two commissioners.

The SECP’s enforcement authority is at all times under the review and check of the courts. A person aggrieved by the SECP’s decision can file an appeal with the High Court. Further, as a control measure, the SECP has prepared manuals for all monitoring and enforcement activities, including inspection, investigation, adjudication and litigation.

**Philippines**

(a) The commencement of enforcement proceedings against errant corporations or individuals is subject to the sound discretion of the Securities and Exchange Commission (SEC). However, the decision/order of the SEC is subject to review by the appellate court. With regard to decisions of the Philippine Stock Exchange and other self-regulating organisations, they are subject to review by the SEC.

(b) Yes. The Securities Regulation Code expressly grants aggrieved parties the right of appeal.
The courts have the power to review decisions/orders of the SEC brought on appeal. Most of the cases brought on appeal were, however, decided in favour of the SEC.

### Singapore

(a) Yes. As mentioned in the answer to Question 5.3, some of the enforcement proceedings and/or decision will be referred to the Attorney-General’s Chambers (AGC) for advice or concurrence.

(b) If a person is prosecuted in court but before he/she is convicted, he/she may write representations to persuade the authority to reconsider their decision. In the event a person is convicted in court after a trial, he/she has the right to appeal to a higher court against the decision.

(c) If the AGC or the relevant authority decides to prosecute the accused, the accused will be formally charged in court. If the accused claims trial, the court will then decide if he/she is guilty of the offence.

In early 2012, a former independent director of China Sky Chemical Fibre applied to the court for a judicial review to quash the public reprimand issued against him by the Singapore Exchange (SGX). The court dismissed his application, on the basis that SGX had fully and substantively accorded him a fair hearing by giving him notice of its intention to reprimand, particulars of the case against him and full opportunities to be heard.

### Chinese Taipei

Yes. Article 42 of the Administrative Penalty Act provides that “prior to imposing any penalty, an administrative agency shall provide the party subject to the penalty an opportunity to make representations.” Article 102 of the Administrative Procedure Act provides that “an administrative authority, before rendering an administrative disposition to impose restraint on or to deprive a person of a freedom or a right, shall give the person subject to the disposition an opportunity to make representations, unless notice has been given to the person subject to the disposition under article 39 hereof to enable him to make representations or it has been decided that a hearing will be held. Where laws or regulations provide otherwise, the provisions of those laws or regulations shall apply.”

(a) Sanctions against material violations of financial regulations should be reviewed by the Financial Supervisory Commission committee, which is comprised by ministers of the Ministry of Finance, Ministry of Economic Affairs, Ministry of Energy, Ministry of Justice and persons with financial-related profession and experiences.

(b) The Administrative Procedure Act, the Administrative Appeal Act, and the Code of Administrative Procedure provide remedial procedures to any person who does not accept the disposition of an administrative authority. Such person may institute an appeal with the
superior authority of the body originally issuing the disposition, or may institute an administrative suit at an administrative court in opposition to an appeal decision. These measures provide sufficient protection to the rights and interests of such person.

(c) Judicial reviews of decisions are handled pursuant to articles 4 through 8 of the Code of Administrative Procedure. Interested parties are afforded remedial procedures through administrative suit at administrative courts, and during such remedial administrative procedures, requests for award of damages or payment by means of other property interests may be consolidated in a single proceeding in order to guarantee the rights and interests of interested parties.

In 2012, administrative cases handled by the supreme administrative court (all cases, including cases arising from different ministries) amounted to 4,858. Among them, 4,356 cases were closed and 502 cases were still pending. The average number of days to close a case from filing to final closing was about 80 days.

Cases handled by the high administrative courts (all cases, including cases arising from different ministries) amounted to 7,697. Among them, 6,065 cases were closed and 1,632 cases were still pending. The average number of days to close a case from filing to final closing was about 145 days.

**Thailand**

(a) Commencement of an investigation case has to be screened by a working committee, and enforcement decision has to be approved by the Enforcement Committee of the Securities and Exchange Commission (SEC) before they are proposed for approval at the secretary-general level.

(b) Administrative sanctions can be appealed to SEC and, if still unsettled, can be petitioned to the administrative court.

For criminal enforcement, it can be settled only if both parties agree or go through the normal criminal proceeding which has lots of built-in checks and balances.

(c) For appeal to the administrative court, the court will review whether the decision has gone through due process with legitimate power. All court decisions have been in the SEC’s favour (with some minor variations in the detailed legal explanation).

For criminal enforcement cases that go through the normal criminal procedure but are still not settled, they can go through the investigators and the public prosecutors but most court rulings have been in our favour.
Viet Nam

The inspection departments (the government inspectorate of Viet Nam or the Ministry of Finance Inspectorate) organise the periodic or impromptu inspections of all activities of the State Securities Commission, including monitoring its administrative sanctions. One of the objectives of these inspections is to ensure that the actions by the Commission are legal and follow appropriate procedures, as well as fair and proper.

According to the Law on Complaints No. 64/2010/QH12, subjects of Commission’s administrative sanctions have the right to appeal to the Minister of Finance or take proceedings to a civil court against sanction decisions.

Until now, there has not been any judicial review application against the decision of the enforcement authority.
Question 5.6 – Effectiveness of Enforcement

Generally, are there concerns (perception or otherwise) with regards to the effectiveness of enforcement in your country and, in particular, to:

(a) timeliness of prosecution/initiation of enforcement? If yes, why? Generally, what is the time frame taken for prosecution/initiation of enforcement by enforcement authorities?

(b) adequacy of sanctions imposed/meted out? Are the sanctions imposed sufficiently deterrent/punitive?

(c) comprehensiveness of prosecution and enforcement? Is there an issue with regards to selective enforcement in your country?
Bangladesh

(a) Generally, it takes two to three months to complete an enforcement action (excluding enquiry time) with respect to civil matters. With respect to criminal matters, it is up to the respective court.

(b) Yes.

(c) No.

China

(a) There are no such rules on timeliness, and there are such concerns.

(b) In recent years, several cases have shown that sanctions imposed have had a greater deterrent/punitive effect. So concerns about the adequacy of sanctions are declining.

(c) Yes, there are.

Hong Kong, China

(a)

- Securities and Futures Commission: The SFC publishes its enforcement statistics, including time to complete investigation in annual reports. The SFC also updates the market of commencement of proceedings, the progress and the outcome of their enforcement actions. Generally there is no concern about the timeliness of SFC’s enforcement actions.

- Stock Exchange of Hong Kong, China: Hong Kong Exchanges and Clearing Ltd (HKEx) publishes statistics as to the Exchange’s Enforcement activities in both the HKEx annual report and the Listing Committee annual report. This includes details of the time taken to complete investigations. Based on occasional comments from the financial media in the past, there may have been a perception in the market that the Exchange enforcement actions were not timely, this has since been addressed by the revision of the disciplinary process in September 2013 and other measures to expedite the decision making process.

- Companies Registry: All prosecutions of the Companies Registry are subject to the limitation period prescribed under the Companies Ordinance (CO), which provides that a summons must be issued within three years after the commission of the offence and
within 12 months after the date on which sufficient evidence in the opinion of the Secretary for Justice to justify the proceedings comes to his knowledge. The Companies Registry prosecution team will adhere to the limitation period set out in the CO.

(b)

- Securities and Futures Commission: The fines and costs recovered from defendants resulted from enforcement actions (criminal, civil and disciplinary proceedings) showed that fines imposed are credible, robust and deterrent.

Apart from punishing wrongdoers for their misconduct, and deterring them and others from repeating the misconduct, the SFC also aims to ensure that the consequences of wrongdoing are remedied by wrongdoers and their accomplices.

In relation to listed companies, set out below is a table showing some of the major remedial outcomes achieved through our enforcement actions in the recent years. At least HKD 1.1 billion has been repaid to the investors since 2010.

- Stock Exchange of Hong Kong, China: The Exchange does not have statutory powers of enforcement as they reside with the statutory regulator, and the sanctions available to the Listing Committee reflect that. The extent of the powers available to the Listing Committee, primarily shaming sanctions is described in the answer to Question 3.2.

- Companies Registry: See those parts relating to the Companies Registry in the answer to Question 3.2.

(c)

- Securities and Futures Commission: There is no issue of selective enforcement in Hong Kong, China.

- Stock Exchange of Hong Kong, China: The Exchange agrees with the SFC. There is no issue of selective enforcement in Hong Kong, China.

India

(a) Generally, there are no concerns with regard to timeliness of prosecution/initiation of enforcement. However, due to courts being overburdened, a significant amount of time is taken to resolve cases. Hence, the establishment of specialised courts may generate positive results. Clause 435 of the Companies Bill, 2012 seeks to address this concern by providing for the establishment of special courts to provide speedy trials of offences under the Companies Act.

(b) There are no concerns with respect to the adequacy of sanctions imposed. The sanctions imposed are sufficiently deterrent/punitive. The SEBI Act provides for penalty ranging from INR 25 crores (approximately USD 5 million), which may go up to three times the amount involved in the violation, and imprisonment for a period up to ten years.
(c) There are no concerns with respect to the comprehensiveness of prosecution and enforcement. However, inadequacy of manpower in the enforcement agencies sometimes delays the procedure. There is no issue with regards to selective enforcement in our country. Enforcement actions are taken uniformly once the entity is captured in the alert system and proven guilty.

### Indonesia

(a) In the Indonesian capital market, an administrative sanction that is driven from an administrative investigation is more effective and efficient than criminal sanctions in term of timeliness and use of organisation resources.

(b) In general, the types of existing administrative sanctions set out in our law and regulations are considered quite adequate and sufficient to deter market players from wrongdoing. However, in the case of administrative sanctions in the form of fines, there is a discourse to increase the amount of fines that may be imposed, since the amount determined in the existing government regulations was based on conditions in 1995. So, it is necessary to adjust the amount based on current conditions.

(c) Sanctions imposed are based on a penal policy principle that the nature of sanctions tends to be restorative. Sanctions imposed are usually decided by considering all aspects and impacts to the financial industry. Not all violations in the financial sector, especially in the capital market, must be followed by a criminal investigation, since such actions could hamper the general business of the financial industry.

### Korea

Regarding enforcement implementation, some wonder whether it has a deterrent effect. Enforcement procedures and implementation of enforcement agencies are clearly stipulated in related laws. In general, enforcement has an inhibitory effect.

### Malaysia

(a) The timeframe for the prosecution or initiation of enforcement will vary from case to case, depending on the complexity of the matter (including how contentious it is), availability of evidence, and other factors.

In addition, where the matter is brought to court, delays in enforcement remain a challenge. It is common for cases to take years to resolve and often go on appeal. This is also
compounded by the fact that judges may not have the expertise in securities or corporate
governance laws.

(b) The Securities Commission Malaysia (SC) continuously endeavours to urge the courts to
impose sentences that are commensurate with the seriousness of the breach.

For breaches of the Listing Requirements (LR), Bursa Malaysia endeavours to ensure that
sanctions/penalties imposed are commensurate with the seriousness of the breaches.

Where Bursa Malaysia detects certain offences which involve potential breaches of the LR
and the relevant laws, it will refer such matters to the relevant enforcement authorities for
them to pursue the matter further.

(c) Both the SC and Bursa Malaysia undertake to ensure that all breaches of the law are
adequately dealt with.

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<th><strong>Mongolia</strong></th>
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| (a) It depends on the type of prosecution and enforcement. If it is initiated by the state
inspectors, it could take at least 14 days. If matters go to the Financial Regulatory
Commission (FRC), it will take even longer, because of hearing/resolution/enforcement.
When it goes to the Supervisory Board of the FRC or to the court, the time frame cannot be
estimated. |
| (b) According to the Securities Market Law, fines imposed on a securities issuer that has not
complied with its general obligations of securities issuers will be an amount equal to 50-70
times the minimum monthly wage while, on a governing person of the offending entity, fines
will be an amount equal to 20-40 times the minimum monthly wage. |
| (c) No. |

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| (a) With the development of specialised manuals for off-site surveillance, inspection/investigation, and adjudication and litigation, specific timelines have been
defined. These have to be complied with and any deviation has to be recorded by the relevant
authorised officer responsible for his part of the exercise of authority. There are certain
relaxations available in compliance of such timelines that mostly are attributable to the
external factors, such as a delayed response from the respondents of enforcement actions,
delays in seeking information and court intervention. Generally, other than conditions which warrant immediate action, it takes four months from
observing a potential violation to issuing show cause notices and issuing orders while |
extending a hearing opportunity/written submission from the respondent. The delay caused is normally due to the delayed submission of responses from the regulated entity and collection of information from different external sources.

Prior to the standardisation of the processes, there were instances of inconsistent enforcement approaches across divisions. However, these have been catered for by the implementation of enforcement manuals.

(b) The sanctions/penalties/fines are imposed according to the severity of the violations committed by the regulated entity, and the basis justifying the nature and severity of the violations are also discussed in the enforcement order as required by the law. The past compliance history and the recurrence of violations, along with the nature of violations, i.e. procedural or causing damage to stakeholders in substance, are also considered by the authorised office passing the judgment.

Generally, the penalties imposed with the mindset of improving compliance by the regulated sectors create sufficient deterrence against a recurrence of such non-compliance, except where the fraudulent practices are observed.

Under most of penal provisions, the amount of the penalty prescribed is sufficient to create deterrence. However, there are few areas where the amount of the penalty prescribed is considered less effective, and will be revised under the new companies act being studied by the Corporate Law Review Commission.

(c) The pace of enforcement actions generally slows down at the court level due to the inherent restraints associated with the judicial system. An enormous backlog of general cases is observed by the general courts which have to listen to these specialised appeals.

Unlike specialised banking courts/tribunals, there are no such judicial forums available to hear the case of the corporate sector equipped with judicial officers well-versed in the nature and understanding of the corporate and financial systems and sensitivities involved in the regulation and enforcement of the corporate sector.

Moreover, at times, the absence of a required number of appellate benches at the Securities and Exchange Commission of Pakistan (SECP), a forum for appeals available to the respondents of enforcement actions, also hampers the enforcement process.

Disclosure of the procedure for application of the SECP’s powers is made under the law. This ensures that functions are discharged transparently and consistently according to the requirements of the relevant statutes, and that there is no selective enforcement by the SECP.

The SECP is an independent regulatory body with broad enforcement powers for day-to-day enforcement matters with complete operational independence and without the requirement to report to the federal government. In addition, a strict adherence in the exercise of authority to approved policies, operational manuals and codes of conduct for employees ensure the integrity of the Commission’s enforcement and other actions/decisions.
Philippines

(a) For simple and difficult cases, the enforcement department has 20-25 days from termination of proceedings to initiate an enforcement action. For complex cases, it has 25-30 days within which to commence an enforcement action.

(b) The scale of monetary penalties currently being used by the Securities and Exchange Commission (SEC) is being revised in order to achieve an appropriate level of deterrence.

(c) No. The only concern on enforcement with the SEC, which is common in all other enforcement authorities is the enforcement department’s prosecutorial discretion on whether to pursue an administrative or criminal action in each case it handles.

Singapore

(a) The Accounting and Corporate Regulatory Authority (ACRA) takes a risk-based approach to prosecution whereby higher risk entities are placed for priority in prosecution. The risk-based approach distinguishes defaulters through the type of information that they are required to provide to the registrar.

Most of the investigations undertaken by the Commercial Affairs Department are completed within six months. An investigation would commence if there is a reason to suspect that an offence has been committed. Following the completion of an investigation, criminal proceedings may be initiated if there is sufficient evidence of an offence.

(b) ACRA assesses the adequacy of sanctions to some extent, from the compliance rate. The present punishments provided under the acts are of sufficient deterrence and no increase in the amount of fines is being implemented in the amendments of the acts.

(c) There is always a degree of prosecutorial discretion and whether a summons is issued against a defendant or otherwise depends on the facts and circumstances including the severity of the breach, whether there is an element of public interest, the presence or absence of past criminal records, mitigating factors and other such matters.

Chinese Taipei

(a) For cases handled by the Financial Supervisory Commission, the timeliness of enforcement is not a concern if the violation is clear, definite and precisely stipulated in the regulations. Generally, such cases take about two weeks from discovery of irregularity to the announcement of the disposition. The timeframe varies if evidence is insufficient and more information needs to be gathered, not only from violators but also from related parties. As
for enforcement actions taken by the stock exchanges and self-regulatory organisations, one week to one month may be required, depending on the complexity of the cases. As for cases handled by courts, a survey showed that 47.3% of persons who were surveyed did not feel satisfied with the timeliness of court reviews. The average number of days to close a case is summarised as follows:

<table>
<thead>
<tr>
<th></th>
<th>Supreme Court</th>
<th>High Courts</th>
<th>District Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil cases</td>
<td>26.07</td>
<td>172.45</td>
<td>31.51</td>
</tr>
<tr>
<td>Criminal cases</td>
<td>28.95</td>
<td>73.58</td>
<td>62.42</td>
</tr>
</tbody>
</table>


(b) Generally speaking, for law-abiding companies, sanctions imposed are sufficiently deterrent; for a small minority of companies which do not usually abide by laws and regulations, sanctions imposed on them have a limited effect.

(c) No. There is not an issue with regards to selective enforcement in Chinese Taipei.

**Thailand**

(a) The overall enforcement is perceived to be slow. For settlement cases, they will be finished in three to six months. However, cases that must go through normal criminal procedures can take several years before they can be filed to the court.

(b) Most offenses carry a penalty of imprisonment which can be a deterrent for potential wrongdoing. But after a long prosecution time and process, the offenders usually receive suspension instead of the actual jail term, which very much reduces its effectiveness. For monetary fines, it is normally two times the amount of benefits obtained from the offence. However, if the offender pleads guilty, it will be reduced to half which, *de facto*, is just the return of the benefit without the additional monetary penalty. Amendments to the law to increase the level of penalty are being proposed. In addition, starting from 2013, some offences under the Securities and Exchange Act, i.e. unfair trading, are considered a money laundering offence. As a result, money used in the manipulation or insider trading can be seized.

(c) Lack of civil penalty (and the selection of measures) or other effective private-class enforcement to be used for deterrence is an issue.
Viet Nam

(a) According to Decree No 85/2010/ND-CP, as soon as the State Securities Commission finds a breach, the record of administrative violation will be made. After ten days, the sanction decision will be imposed. The fined subjects can appeal against the decisions within ten days.

(b) No, normally the value of monetary sanctions is small, so they do not have a sufficiently deterrent effect for violators.

(c) No.
Question 5.7 – Concerns on Effectiveness of Enforcement

*How are these concerns being addressed?*
Bangladesh

Not applicable.

China

They are mainly being raised in research/academic papers.

Hong Kong, China

Stock Exchange of Hong Kong, China: The Exchange has introduced new disciplinary procedures in September 2013 which will promote the expeditious disposal of disciplinary business while adhering to the requirements of due process and natural justice.

India

Both the government and the Securities and Exchange Board of India are in the process of bringing continuous improvements to the enforcement machinery. Many of the existing gaps in enforcement due to overburdened courts, etc. are deemed to be addressed by the establishment of specialised courts for trying offences under the Companies Act, 1956. Further, enforcement agencies need to strengthen their manpower and frequently train staff with the latest technology.

Indonesia

The Financial Services Authority (OJK) prefers to conduct effective and efficient enforcement through administrative sanctions. To improve administrative sanctions, it is essential to amend Government Regulation Number 45 of 1995 related to the amount of financial penalties.
Korea

(No answer).

Malaysia

We consistently ensure that cases on which the Securities Commission Malaysia takes action have met the required threshold of evidence and public interest necessary to maintain the integrity of market and investor confidence.

With respect to Bursa Malaysia, please refer to the answers to Question 5.4 (a) and 5.5 (a) on the checks and balances put in place to address these concerns.

Mongolia

The government has adopted a new Securities Market Law and implementation is being tested.

Pakistan

The Securities and Exchange Commission of Pakistan (SECP) has recently signed a memorandum of understanding with the Karachi Centre for Dispute Resolution to encourage alternate dispute resolution. The idea is to create awareness about a low-cost and efficient option which is available to investors and companies. This would also reduce the burden on the already-stretched courts. In addition, the SECP has recently started training programmes at two judicial academies for the training of both lower court judges in financial matters and employees of the SECP in legal matters.

The draft SECP (Regulation and Enforcement) Bill currently with the parliament for approval outlines the structure of specialised tribunals which would exclusively work on corporate and capital market matters. Once in place, these would bring more efficiency to the enforcement process.
**Philippines**

The enforcement department submits for approval of the Commission en banc any recommendation to pursue a criminal action or accept a settlement offer against errant companies and individuals.

**Singapore**

Please refer to the answer to Question 5.6 (a)-(c).

**Chinese Taipei**

To increase the timeliness of judicial reviews with regards to cases involving financial institutions and listed companies, the Financial Supervisory Commission has adopted the following measures:

- Holding training seminars for judges every year to enhance their understanding of regulatory developments and practical issues;
- Offering consulting assistance to courts, prosecutors and investigation bureaus when they need to know the background, transaction records and other matters arising from the cases being dealt with;
- Jointly holding meetings with the Ministry of Justice to remove possible obstacles and improve effectiveness when collectively handling criminal cases; and
- Having prosecutors in the FSC office so that illegal or criminal cases can be dealt in a timely fashion.

**Thailand**

The Securities and Exchange Commission (SEC) has already proposed a bill to amend the Securities and Exchange Act to provide the SEC with civil sanctioning power. In the meantime, the SEC makes use of other formal/informal administrative powers available as preventive measures.
Viet Nam

(No answer).
CHAPTER 6 – COURTS AND JUDICIAL SYSTEM

Question 6.1 – Expertise of Courts and Judges

Do the courts and judges in your country have adequate expertise to hear and deal with prosecution/enforcement of matters relating to corporate governance and, in particular, the Specific CG Areas?
**Bangladesh**

Violations of the CG Code are a civil offence and are dealt with under the enforcement authority of the Bangladesh Securities and Exchange Commission (BSEC).

**China**

They need to improve on knowledge and expertise.

**Hong Kong, China**

In general, it is the responsibility of the litigating parties to adduce evidence before the court for adjudication of the case in question. Expert evidence will be sought to assist the court where necessary.

**India**

Yes. Appeals against Securities and Exchange Board of India orders go to the Securities Appellate Tribunal, which is a specialised tribunal trying offences under the securities laws. Further, the establishment of specialised courts will address concerns about judges having adequate knowledge/expertise.

**Indonesia**

No.
Korea

(No answer).

Malaysia

There are five dedicated sessions courts, which are currently assigned to hear cases brought before them by the Securities Commission Malaysia, Bank Negara Malaysia and the Companies Commission, as well as corruption cases brought by the Anti-Corruption Commission.

The high court has three new commercial courts dedicated to deal with commercial cases, such as banking, finance, insurance, admiralty and sale of goods. Cases in Malaysia take fewer days and procedures than in either the East Asia region or in OECD countries, and the cost as a percentage of claim is lower than in East Asia but higher than in OECD countries.

Mongolia

A comprehensive reform in the judicial sector is ongoing. But judges still need expertise in enforcement, particularly in CG areas.

Pakistan

Company benches do exist. However, their effectiveness is not established because of the lack of expertise and resources available. The Securities and Exchange Commission of Pakistan has started work to redress the situation.

Philippines

Since 2000, several trial courts in our country were designated as commercial courts. They exercise exclusive jurisdiction to hear and decide private enforcement actions arising from corporate disputes. The judges in these courts may have already acquired expertise in dealing with these types of cases.
**Singapore**

(No answer).

**Chinese Taipei**

Yes. Although in some cases their verdicts are thought inconsistent, the adequacy of their expertise is not challenged. In addition, Article 181-1 of the Securities and Exchange Act, Article 120 of the Securities Investment Trust and Consulting Act and Article 68-1 of the Financial Holding Company Act provide that a court may establish a specialised division or designate a specific person(s) to deal with major criminal cases involving violation of these acts.

**Thailand**

There is no special CG court and not much CG expertise in the field of securities law due to a limited number of cases being filed to the court each year. However, the Judges Training Institute in Thailand provides education at entry and higher levels for its personnel. Securities law is one of the subjects in the curriculum. The Securities and Exchange Commission also holds seminars annually for judges from various courts to disseminate knowledge on developments in securities laws.

**Viet Nam**

The courts do not have adequate expertise related to corporate governance.
Question 6.2 – Training for Judges

*Is there adequate training given to the judges in your country on areas relating to corporate governance and, in particular, in the Specific CG Areas?*
Bangladesh

To the best of our knowledge, no.

China

There are such training and qualification examinations.

Hong Kong, China

The Chief Justice accords high priority to judicial education, and judicial education activities on various fronts are provided for judges and judicial officers.

India

Yes, there are special training or orientation courses conduced for judges, and Securities and Exchange Board of India officials and other market participants are also invited to share their experiences in such orientation courses. Nevertheless, this can be further improved.

Indonesia

No.

Korea

(No answer).
Malaysia

The Judicial and Legal Training Institute (ILKAP) was established on 23 December 1993. Its mission is to enhance the competency, effectiveness and professionalism of judicial, legal and law enforcement officers by providing systematic, relevant and progressive training.

Mongolia

Yes, there is training given to judges. It should be repeated to deepen the knowledge of judges.

Pakistan

No.

Philippines

With regard to public enforcement (criminal) actions brought by the Securities and Exchange Commission relating to corporate governance and the Specific CG Areas, no specific court is designated to hear and decide these actions. It is in this area that judges in our country should be given adequate training.

Singapore

(No answer).
**Chinese Taipei**

Yes. Judges regularly attend training programmes held by educational institutes and the Financial Supervisory Commission. In addition, judges who deal with professional cases are required by regulations to obtain at least 12 hours of related professional training annually.

**Thailand**

The Securities and Exchange Commission provides training to judges on the overall securities law every year. CG issues are also included.

**Viet Nam**

We do not have information regarding this question.
Question 6.3 – Mandatory Training for Judges

In your opinion, should judges undergo mandatory training in areas relating to corporate governance and, in particular, in the Specific CG Areas?
<table>
<thead>
<tr>
<th>Country</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>Yes.</td>
</tr>
<tr>
<td>China</td>
<td>(No answer).</td>
</tr>
<tr>
<td>Hong Kong, China</td>
<td>The judiciary in Hong Kong, China is independent from the executive branch and legislative branch. It is for the judiciary to decide what training courses are appropriate for judges. We observe that, at court hearings, judges are also assisted by counsel acting for both sides as well as market experts in many of the Securities and Futures Commission cases. Judges’ participation in judicial educational activities depends on the availability of such activities, and judges’ availability as permitted by their court diaries.</td>
</tr>
<tr>
<td>India</td>
<td>Mandatory training may not be required but, yes, frequent orientation courses could be conducted for judges in CG areas.</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Yes.</td>
</tr>
</tbody>
</table>
Korea

In case a judge feels he/she lacks knowledge of corporate governance, the judge can receive advice from experts inside or outside the court. If a judge has concerns about corporate governance, he/she can pursue education at the graduate school level with monetary support from the government. In the longer-term, judges who deal with corporate governance should be educated systematically.

Malaysia

Ongoing training for all judges to be kept abreast of developments in the Specific CG Areas as well as other areas involving capital markets would be beneficial.

Mongolia

Yes.

Pakistan

Yes.

Philippines

Yes. Mandatory training for judges on corporate governance and the Specific CG Areas will improve the credibility, independence and effectiveness of our judges in deciding cases relating to these areas.

Singapore

(No answer).
In Chinese Taipei, judges have adequate knowledge of laws covering areas that help them make judgments. What they may need are knowledge of actual practices, tricks and gimmicks carried out by companies. That knowledge sometimes cannot be obtained directly from training and requires experience and exchange of views with regulators.

Judges can be rotated. Expertise, however, cannot be built simply by attending a training course. Alternatives include the use of expert witnesses in CG cases.

Yes, we do.
CHAPTER 7 – CROSS-BORDER ENFORCEMENT

Question 7.1 – Power of the Enforcement Authorities

Are the enforcement authorities in your country able to procure information from and share information with counterparts in foreign jurisdictions?
Yes.

Yes.

Yes, the Securities and Futures Commission (SFC) has the power to exchange information and provide assistance with overseas regulators under the Securities and Futures Ordinance. The SFC is a signatory to the IOSCO MMOU and also has entered into a significant number of bilateral MOUs with overseas counterparts concerning the sharing of confidential information and investigatory assistance.

Yes. The Securities and Exchange Board of India (SEBI) is a member of IOSCO, and a signatory to the IOSCO MMOU. Under the framework of the said MMOU, the securities regulators can, provide information and assistance to their foreign counterparts on enforcement related issues.

Apart from this, SEBI has entered into bilateral MOUs with securities regulators in a number of jurisdictions. This further enhances the scope of co-operation and mutual assistance between signatories. SEBI has entered into 18 such bilateral MOUs to date.

(No answer).
Korea

(No answer).

Malaysia

The Securities Commission Malaysia (SC) is able to procure information from and share it with foreign counterparts.

As a signatory of the IOSCO MMOU, the SC is part of a global information-sharing arrangement among securities regulators. The MMOU specifies that each authority will make reasonable efforts to provide, without prior request, to the other authorities with any information that it considers is likely to be of assistance to those other authorities in securing compliance with laws and regulations applicable in their jurisdiction.

In addition, Section 150 of the Securities Commission Act 1993 provides the SC with specific authority to provide assistance to a foreign supervisory authority to investigate an alleged breach of a legal or regulatory requirement that the foreign supervisory authority enforces or administers. The SC may, when carrying out an investigation into the alleged breach, provide such other assistance as the SC thinks fit.

In conducting money laundering investigations, section 29 (3) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 further provides that the competent authority and the relevant enforcement agency shall co-ordinate and co-operate with any other enforcement agency in and outside Malaysia, with respect to an investigation into any serious offence or foreign serious offence.

Mongolia

Mongolia had information-sharing arrangement with counterparts in foreign jurisdictions through memorandums of understanding (MOUs) with only a few countries. But with the adoption of the new Securities Market Law, the Financial Regulatory Commission (FRC) now may officially enter into MOUs and contracts with regulatory bodies of foreign jurisdictions and international organisations for the purpose of exchanging information and providing reciprocal assistance. The FRC also takes into account the following issues when providing assistance to regulatory bodies of foreign jurisdictions or international organisations: whether or not memorandums or contracts have been made with the applicant body; whether or not reciprocal assistance has been previously provided on matters similar to the relevant matter, or whether or not it is possible to provide such reciprocal assistance; and whether or not it is able to keep the disclosed information confidential.

A regulatory body of a foreign jurisdiction or international organisation must, when requesting assistance from the FRC, state the purpose for which the information will be used, and whether the
information will be kept confidential. The FRC may request further information or clarification with respect to the information requested from a regulatory body of a foreign jurisdiction or international organisation. If a response has not been provided to a request specified in this law, the FRC may refuse to provide assistance. Information given by the FRC shall only be used for the purpose specified in the request, and it is prohibited to use such information for any other purpose, or to transfer or release it to another person without the permission of the FRC.

**Pakistan**

Under section 35 (6) of the SECP Act, the Commission has powers to share and disclose information in its possession with domestic and foreign counterparts, if the chairman of the Securities and Exchange Commission of Pakistan (SECP) is satisfied that the particular information will enable or assist the government or an agency of the government of a foreign country to perform a function or exercise a power conferred by a law in force in that foreign country.

Further, section 35 (4) and section 36 (d) of the SECP Act allows disclosure of information as required or permitted by any law for the time being in force in Pakistan or any other jurisdiction as authorised disclosure of information. Also, section 35 (6)(c), section 35 (4) and section 36 (d) of the SECP Act stipulate that disclosure of information is permissible to facilitate foreign authority to perform the functions under the law in force in that foreign country.

Section 35 (7) of the SECP Act gives discretion to the chairman of the SECP to impose conditions to be complied with in relation to the information disclosed under section 35 (6) that allows the chairman to disclose the information to foreign authorities.

**Philippines**

Yes. In some of the cases investigated by the Securities and Exchange Commission (SEC), we were able to obtain relevant information from our counterparts in Hong Kong, China, Malaysia and Australia. The SEC was also able to procure and provide documents and information requested by the same foreign counterparts.

**Singapore**

Yes. The Commercial Affairs Department can procure information with counterparts in foreign jurisdictions and share information with counterparts in foreign jurisdictions.
Yes. The regulator’s authority to share information with foreign counterparts is addressed in Article 21-1 of the Securities and Exchange Act, which provides that the Financial Supervisory Commission (FSC) may enter into co-operation agreements with foreign government agencies, institutions, or international organisations to facilitate matters such as information exchange, technical co-operation and investigation assistance. Unless it conflicts with the interests of the state or the rights of the investing public, the competent authority may request the provision of the necessary information and records from related regulatory authorities, institutions, groups or natural persons, and provide them to the requesting foreign government agency, institution, or international organisation which has executed co-operation agreements based on the principles of reciprocity and confidentiality. In cases where a foreign government has undertaken investigation, prosecution, or judicial procedure in connection with any suspected violation of foreign financial regulatory legislation, when the foreign government requests assistance with investigation in accordance with the aforementioned treaty or agreement, the FSC may require agencies (institutions), juristic persons, associations, or natural persons related to the securities trading to present relevant account books or documents or to appear at its offices to give explanations. When necessary, the FSC may request the foreign government to send representatives to participate in its investigations. The FSC is signatory to the IOSCO’s Multilateral Memorandum of Understanding (MMOU) under which it is authorised to engage in supervisory co-operation and information sharing with 101 other signatories to the MMOU.

The Taiwan Stock Exchange (TWSE) has signed several MOUs with foreign stock exchanges for information sharing. For companies dually listed on the TWSE and foreign stock exchanges, information on enforcement, such as trading suspension/halt and delisting, will be shared.

Thailand

The Securities and Exchange Commission, in general, can provide information to the requesting authorities under the IOSCO MMOU. So far, requests have been in the investigation process.

Viet Nam

Viet Nam has signed an MMOU with nine jurisdictions, which include information sharing between counterparts, and plans to sign the IOSCO MMOU soon.

International Organization of Securities Commissions (IOSCO), the global standard setting body for the securities sector.
Question 7.2 – Information Sharing Mechanism

If yes, what is the information sharing mechanism between your country and the foreign counterpart? Is the mechanism sufficient? If not, what else can be done for greater effectiveness of cross-border enforcement?
Bangladesh

On a mutual assistance basis. The Bangladesh Securities and Exchange Commission (BSEC) is in the process of applying to IOSCO to be a signatory of the IOSCO MMOU. Recently, the Companies Act and Securities and Exchange Ordinance have been amended to meet the requirements of IOSCO.

China

- Signing bilateral co-operation memorandums of understanding with many countries.
- Being a member of IOSCO and participating in IOSCO activities.
- Co-operating with securities regulators of other countries in investigations.

Hong Kong, China

See the answer to Question 7.1. The Securities and Futures Commission (SFC) is able to provide confidential information to IOSCO MMOU members and also securities regulators in other countries that have signed bilateral MOUs with us. The SFC is also able to provide investigatory assistance to overseas securities regulators, such as obtaining trade records, bank records, telephone records and beneficial owner information, and conducting compulsory interviews and taking statements.

India

The scope of assistance available to IOSCO MMOU signatories is broadly set out under Paragraph 7 of the MMOU. The securities regulators can, in terms of the MMOU, provide information and assistance, including records:

- To enable reconstruction all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to these transactions;
- That identify the beneficial owner and controller of an account;
- For transactions: the amount purchased or sold; the time of the transaction; the price of the transaction; and the individual and the bank or broker and brokerage house that handled the transaction; and
- Providing information identifying persons who beneficially own or control companies.

In addition to the above, as stated in the answer to Question 7.1, bilateral MOUs have been entered into with several jurisdictions to enlarge the ambit of co-operation on matters of technical assistance, consultation and information sharing.

At present, the above mechanism for international co-operation is working well.

**Indonesia**

(No answer).

**Korea**

The Ministry of Justice shares related information with foreign ministries of justice. As international lawsuits are very rare, it is very difficult to estimate the effect of global enforcement.

**Malaysia**

The Securities Commission Act 1993 (SCA 1993) allows the Securities Commission Malaysia (SC) to enter into information-sharing agreements with foreign counterparts. In addition to being a signatory to the IOSCO MMOU, the SC has entered into 32 bilateral memorandums of understanding (MOUs) with its foreign regulatory counterparts to facilitate the discharge of licensing, surveillance and enforcement responsibilities. The bilateral MOUs cover aspects to ensure fit and properness of capital market intermediaries, supervising and monitoring the trading, clearing and settlement activities, detecting market manipulation, insider trading and fraudulent practices in securities dealings, and providing technical assistance and co-operation.

To facilitate the cross-border offering of collective investment schemes, the SC’s MOUs with the Central Bank of Ireland and the Commission de Surveillance du Secteur Financier of Luxembourg provide for the exchange of information and co-operation on the regulation and supervision of entities and persons that are authorised or licensed by both the SC and the relevant foreign regulator. All information shared with foreign counterpart is subject to rules and statutory provisions of confidentiality.

Bursa Malaysia also has in place arrangements (through MOUs) with recognised stock exchanges for exchange of information.
Malaysia is also a member of the ASEAN Capital Markets Forum (ACMF), which comprises capital market regulators from ten ASEAN jurisdictions, namely Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. The ACMF initially focused on harmonisation of rules and regulations before shifting towards more strategic issues to achieve greater integration of the region’s capital markets. Some of the key components under the Implementation Plan 2015 include:

- Implementing a mutual recognition framework while continuing to strengthen and harmonise national laws, regulations and supervision practices within ASEAN countries in line with global standards. Work programmes to strengthen cross-border investor protection include:
  
  (i) Developing guidelines for dispute resolution mechanisms;
  
  (ii) Building bilateral relationships for mutual recognition arrangements for cross-border provisions of products/services and enhancing information-sharing and co-operation mechanisms; and
  
  (iii) Ensuring the existence of a home country liability regime for compensating investors.

- In supporting the exchange alliance initiatives by ASEAN stock exchanges, member countries continue to strengthen and harmonise listing rules and corporate governance, and enhancing stock exchange self-regulatory functions, including market surveillance, broker supervision, and compliance with listing rules. For information sharing and co-operation among ASEAN stock exchanges, ACMF members have endeavoured to enter into multilateral MOUs.

**Mongolia**

With the adoption of the Securities Market Law, the information sharing mechanism between Mongolia and other foreign counterparts is going through MOUs. The mechanism is now considered sufficient.

**Pakistan**

The Securities and Exchange Commission of Pakistan (SECP) being a regulator of capital markets is a member of IOSCO and International Association of Insurance Supervisors (IAIS). In 2011, the SECP successfully became an Appendix A signatory of the IOSCO MMOU. Further, the SECP has recently applied for accession to the IAIS MMOU.

The SECP has also signed bilateral information sharing MOUs with the securities authorities of India, Maldives, Australia, Bhutan, Sri Lanka, Iran, Turkey, Oman, Morocco and Jordan.
The Securities and Exchange Commission has existing bilateral and multilateral agreements with its foreign counterparts. The mechanism is sufficient, except that sometimes there are legal impediments in the different jurisdictions that impinge on cross-border co-operation.

The Commercial Affairs Department (CAD) has a mechanism in place for obtaining intelligence from foreign counterparts either though INTERPOL, or by contacting the counterparts directly. If the information is required for court proceedings, CAD may request for the information under the mutual legal assistance framework.

The current information-sharing mechanism is sufficient, but we look forward to greater harmonisation of laws and greater international co-operation between law enforcement agencies/regulators.

The information sharing mechanism between Chinese Taipei and other foreign counterparts is through MOUs. The mechanism is now considered sufficient.

The IOSCO MMOU is sufficient for information sharing and assistance in the investigation process but may not be sufficient for the surveillance duty and other enforcement actions, e.g. seizure/freezing of assets, expatriation and disgorgement of benefits. These will require the involvement of other agencies which are not MMOU signatories.

Most of the MMOUs have been recently signed between the State Securities Commission of Viet Nam with foreign parties, so co-operation is still limited.