



The 2008 Asian Roundtable on Corporate Governance

AGENDA

Shangri-La Hotel - Kowloon
Hong Kong, China
13-14 May 2008

In partnership with the Government of Japan

Co-hosted by:



Background and Objectives of the Asian Roundtable on Corporate Governance

Established in 1999, the Asian Roundtable on Corporate Governance (ARCG) serves as a regional hub for exchanging experiences and advancing the reform agenda on corporate governance. The ARCG gathers the most prominent, active and influential policy makers, practitioners and experts on corporate governance in the region, from OECD countries and relevant international institutions.¹ The overall goal of the ARCG is to assist decision-makers in their efforts to improve corporate governance in the region. Its' specific objectives are to:

- Encourage use of the OECD Principles of Corporate Governance and adapt them to national priorities
- Improve understanding of the benefits of sound corporate governance frameworks and practices
- Promote an on-going dialogue between the private and public sectors
- Influence policy making, by providing a forum to compare and evaluate corporate governance developments
- Support viable and effective corporate governance reforms, by discussing and analysing policy options
- Inform the international community about national and regional reform initiatives
- Provide participating countries with access to international corporate governance developments.

The ARCG has examined a number of issues that in 2003 resulted in the *White Paper on Corporate Governance in Asia*. The White Paper is a consensus document that identifies policy objectives and formulates a practical reform agenda to improve corporate governance in the region, using the *OECD Principles on Corporate Governance* as a reference.

Following broad endorsement of the White Paper, the ARCG decided to focus its work on how to translate policy objectives into practical outcomes. A recent tangible outcome is a *Policy Brief on Corporate Governance of Banks* (2006) that presents policy options for improvements in this area. Considering the importance of state ownership, the Roundtable set-up in 2006 the "Asia Network on Corporate Governance of State-Owned Enterprises" to reach the appropriate audience and to address the specific policy challenges ahead using the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* as a reference.

In 2007, the Roundtable developed some important comparative publications on key issues, such as "Enforcement of Corporate Governance in Asia: the Unfinished Agenda" and "Asia: Overview of Corporate Governance Frameworks". In 2008, the Roundtable will develop in-depth work on monitoring and controlling abusive related party transactions.

Guidance for moderators, speakers, discussants and Roundtable participants

Chairs are invited to encourage open discussion among all participants, to maintain the focus on the theme of their session and to be strict in managing time. The objective is to stimulate reflection and encourage the exchange of views and experience on these complex issues among all participants. Introductory comments should be no more than 5-7 minutes and help frame the discussion. Main speakers are invited to highlight the main challenges related to the specific theme, provide some elements to answer the related questions, and illustrate with their country experience. These initial presentations should last no more than 10 minutes each. Participants are asked to limit the use of slides to a maximum of 5 slides. Participants might also circulate descriptive documentation in advance. Discussants are then invited to comment (in 5 to 10 minutes) on the main speakers' presentations reflecting on their own country experiences. Roundtable participants are invited to react, expose their views and discuss the issues raised by speakers and related to the issues provided in the agenda. All participants are encouraged to actively and openly participate in discussions to provide the whole Roundtable with their country experience.

¹ The participating Asian economies include: Bangladesh, China, Hong Kong China, India, Indonesia, Korea, Malaysia, Pakistan, the Philippines, Singapore, Chinese Taipei, Thailand and Vietnam.

Tuesday 13 May 2008 – Day 1

8:30 – 9:00 **Registration**

- 9:00 – 9:30
- **Welcoming address** by **Mr. Kevin Ho**, JP Permanent Secretary for Financial Services and the Treasury (Financial Services), Financial Services and the Treasury Bureau, Government of the Hong Kong Special Administrative Region
 - **Opening remarks** by **Dr. Marcello Bianchi**, Chair, OECD Steering Group on Corporate Governance

9:30 -11:00 **Session 1: Corporate governance in Hong Kong, China “Beyond Box Ticking”**

Moderator: Mr. Jamie Allen, Secretary General, Asian Corporate Governance Association

Panel:

Mrs. April Chan, Vice-President, The Hong Kong Institute of Chartered Secretaries and Company Secretary of CLP Holdings Limited

Dr. Stephen Cheung, Chair Professor of Finance, Department of Economics and Finance, City University of Hong Kong

Ms. Winnie Cheung, Chief Executive & Registrar, Hong Kong Institute of Certified Public Accountants
Mr. Edward K.F. Chow, Deputy Chairman, The Hong Kong Institute of Directors

Mr. Mark Steward, Executive Director, Enforcement Division, Securities and Futures Commission, Hong Kong

Mr. Richard Williams, Head of Listing, Hong Kong Exchanges and Clearing Limited

Background/Issues for discussion: The session will address Hong Kong’s experience in measuring, monitoring and enhancing the effectiveness of the corporate governance system, going "beyond box ticking". It will discuss how various bodies in Hong Kong have sought to examine whether the corporate governance measures in place lead to effective adoption of good corporate governance practices, what drives changes in corporate governance practices and what implementation measures are essential to ensure that there is compliance in substance not just in form.

11:00– 11:30 **Coffee/Tea Break**

11:30 -13:00 **Session 2: The Corporate Governance “Myth Busters”**

Moderator: Ms. Anne Simpson, Executive Director, ICGN

- Codes, guidelines, indexes, scorecards – are they working?
- Independent directors - do they really exist and do any good?
- Institutional investors - do they really care about corporate governance?

Panel : **Mr. Jose Luis Javier**, Chairman, Governance Committee, Stock Exchange, The Philippines

Mr. John Lim, President, Singapore Institute of Directors

Dr. Mark Mobius, President, Templeton Emerging Markets Fund

Mr. Peter Dey, Chairman, Private Sector Advisory Group, Global Corporate Governance Forum

Open discussion

Background/Issues for discussion: Now that many of the “compliance boxes” have been checked, the

discussion should address underlying assumptions and how they are working in Asia, considering recent experience and key developments. This inter-active session aims to develop constructive approaches to meet new challenges and provide guidance for future work.

13:00 – 14:30 **Lunch hosted by Hong Kong Exchanges and Clearing Limited**

14:30 -16:00 **Session 3: Break out session on “Related Party Transactions”**

Introduction by Ms. Fianna Jesover, Senior Policy Manager, Corporate Affairs Division, OECD

Table 1 : Public disclosure in Asia

Table 2: Approval by boards and shareholders

Table 3: Fiduciary duties of boards and shareholder’s redress in Asia

Background: Participants will be seated around 9 smaller tables. Each table will discuss one topic, with three tables discussing the same topic. The basis for discussion will be three background country papers on related party transactions in China, India and Indonesia based on a questionnaire prepared by the OECD Secretariat. Moderators will be provided with an issues paper to help lead the discussion.

16:00 – 16:30 **Coffee/Tea Break**

16:30-18:00 **Session 4: Related party transactions : public disclosure in Asia**

Chair: Mr. Daochi Tong, Securities and Regulatory Commission, China

Brief Introduction by Mr. Xavier Tessier, Head of International Affairs, Autorité des Marchés Financiers, France

Summaries by break-out session moderators: **Mrs. Selvarany Rasiah**, Chief Regulatory Officer, Bursa Malaysia Bhd; **Mr. Jonathan Juan Moreno**, Head Corporate Governance Division, Stock Exchange, The Philippines; **Mr. Weidong Zhang**, Senior Research Fellow, Research Center, Shanghai Stock Exchange, China

Case study presentation by Dr. Stephen Cheung, Chair, Professor of Finance, Department of Economics and Finance, City University of Hong Kong

Open discussion

Background/Issues for discussion: The *OECD Principles of Corporate Governance* stress how important it is for the market to know whether the company is being run in the interests of all its investors, and not in the interest of controlling entities. To this end, it is essential for the corporate governance framework to require timely, comprehensive and public disclosure of material related party transactions. This includes whether they have been executed at arm’s length on normal market terms. In a number of Asian jurisdictions, the disclosure of related party transactions is already a legal requirement and/or part of accounting standards. Disclosure requirements can include the nature of the relationship where control exists and the nature/amount of transactions with related parties, either individually or on a grouped basis. Transactions involving the major shareholders (or their close family, relations etc.) either directly or indirectly, are potentially the most difficult types of transactions to identify. In this respect, it is vital to understand whether the definition of related party is sufficiently broad (and not exceedingly broad) to capture the kinds of transactions that present a real risk of potential abuse, if it is not easily avoided and is effectively enforced.

19:30 **Cocktail/Dinner**

Wednesday, 14 May 2008 - Day 2

9:00 – 9:30 **Key note address by Mr. Atsushi Saito**, President & CEO, Tokyo Stock Exchange, Inc., Japan

9:30-11:00 **Session 5 : Related party transactions : approval by boards and shareholders in Asia**

Chair: Mr. Charnchai Charuvastr, President and CEO Institute of Directors, Thailand

Brief Introduction by Prof. Yuko Kawamoto, Graduate School of Finance, Accounting & Law, Waseda University, Japan

Summaries by break-out session moderators: **Dr. Yuen Teen Mak**, Director, Corporate Governance and Financial Reporting Centre, National University of Singapore; **Dr. Siddharta Utama**, Chairman, Institute for Corporate Directorship, Indonesia; **Mr. Kha Loon Lee**, Head, CFA Institute Centre for Financial Market Integrity, Asia Pacific

Case study presentation by Mr. Jisoo Lee, Analyst, Center for Good Corporate Governance, Korea

Open Discussion

Background/Issues for discussion: A key challenge is how and when to determine abuse. In the *Asian White Paper on Corporate Governance*, Roundtable participants identified both disinterested director approval and minority shareholder ratification as legitimate policy options in overseeing related party transactions. However, both present their own concerns and the outcome will also affect the disclosure standard. While the ideal of independent director approval may be appealing, real-life experience in Asia reveals shortcomings. High ownership concentration means that controlling shareholders usually select the entire board, which means that independent directors can sometimes fail to demonstrate in practice the independent judgement required to make their consent an effective safeguard against abuse. In other cases, independent directors may start with an independent mindset but over time become too closely aligned with insiders or independent directors might also find making an assessment about whether a transaction is abusive extremely difficult, being under-informed. Shareholder approval is a second safeguard but presents its own challenges as all shareholders may not sufficiently informed to make their decision. Also, shareholder approval may be time-consuming and expensive, while not being necessarily the most suitable venue for reviewing and approving often complex transactions.

11:00 – 11:30 **Coffee/Tea Break**

11:30-13:00 **Session 6 : Related party transactions: fiduciary duties of boards and shareholder's redress in Asia**

Chair: Mr. Hasung Jang, Dean, Korea University

Brief Introduction by Mr. Joseph McCahery, Professor of Corporate Governance, University of Amsterdam, The Netherlands

Summaries by break-out session moderators: **Mr. Charles Canfield**, Senior Corporate Governance Officer, IFC East Asia and Pacific Department - Corporate Governance Department; **Mr. Sumant Batra**, Senior Partner, Kesar Dass B & Associates, India; **Mr. Lawrence Liu**, President, China Development Financial Holding Corporation, Chinese Taipei

Open Discussion

Background/Issues for discussion: As stated in the *Asian White Paper on Corporate Governance*, reinforcing fiduciary responsibilities of board members (so not only relying on independent directors) and managers could provide a basis for shareholders to seek remedies and serve to limit the incidence of abusive related party transactions. Asian legal systems have varying degrees of liability for directors' misdeeds. In some cases, this liability is collective and in others individual, taking into account the severity of the offence (e.g. breach of duty of care versus breach of duty of loyalty). However, understanding what these duties mean in practice is a challenge. Recourse to effective shareholder redress is an important tool to enforce fiduciary duties against directors. Whether the judicial system provides companies and shareholders with effective means to solve disputes to reinforce better protection of shareholder rights is an important consideration. An important issue for discussion is if this presupposes changes to the burden of proof or power of discovery.

13:00- 14:00 **Lunch hosted by Companies Registry**

14:00-15:00 **Session 7: Implementing the OECD Principles of Corporate Governance: New OECD work**

Chair: Dr. Marcello Bianchi, Head of Regulation Impact Analysis Office, Commissione Nazionale per le Società e la Borsa (CONSOB)

Speaker: Mr. Grant Kirkpatrick, Senior Economist, Corporate Affairs Division, OECD

Discussant: Ms. Kate Preston, Acting Manager, Governance and Insolvency Unit, Treasury, Australia

Open Discussion

Background/Issues for discussion: Following revision of the Principles, the OECD has now moved to systematically monitoring and analysing implementation issues and is also interpreting the Principles in new and perhaps unique situations. One such area concerns "alternative investors" that includes private equity, activist hedge funds and sovereign wealth funds. The OECD has analysed the evolving situation and is now examining policy issues that include: controlling conflicts of interest, declaration of shareholdings and investor intentions, ensuring a transparent takeover market and cooperation between shareholders. Complementing this policy work, the OECD has also been developing a practical guide on the use of regulatory impact assessment techniques in the area of corporate governance. The discussion will therefore cover how best to implement the Principles in a rapidly evolving market place and how policy makers might respond in the most efficient and effective manner.

15:00 -16:00 **Concluding Session and The Way Ahead**

Chair: Mr. Mats Isaksson, Head, Corporate Affairs Division, OECD

- Update on Asia SOE Network activities by **Mr. John Lim**, Chair, Asia SOE Network
- Sharing recent private corporate governance initiatives across Asia and international community
- Main highlights from the meeting
- Discussion on future steps and next meeting of the Roundtable