



Asian Roundtable on Corporate Governance

**Fighting Abusive Related Party Transactions
in Asia
Workshop on Implementation**

AGENDA

**New Delhi, India
25-26 October 2010**

**In partnership with:
The Government of Japan**

Co-hosted by:



With the participation of:

**The Ministry of Corporate Affairs, and
The Securities & Exchange Board of India**

Background and Meeting Objectives

The OECD-Asian Roundtable on Corporate Governance developed on a consensus basis a “Guide on Fighting Abusive Related Party Transactions in Asia”, launched in September 2009 in Manila. Most jurisdictions in Asia aspire to meet the Guide’s recommendations, but some countries are finding implementation a challenge. Investors remain concerned as to whether RPTs are fully reported so oversight of disclosure is essential.

The Guide has already had some impact thanks to awareness raising efforts by members of the Asian Roundtable Task Force. This workshop seeks to gain maximum policy impact by targeting professional bodies and gatekeepers who are responsible for implementing the Guide’s recommendations. The discussion will be based on specific case studies, going deeper into implementation than was previously done, thereby reviewing what is actually happening in practice. **The workshop will focus on how various key players such as financial controllers, internal and external auditors, company secretaries, and directors amongst others identify and monitor RPTs, especially the recurring RPTs, review the terms of RPTs, report to Exchanges and obtain shareholder approval when required.**

It is expected that this meeting will further raise awareness and understanding, to help participants put the recommendations into practice. The impact could be measured by how actively the participants make further use of the Guide in their respective jurisdiction’s reform efforts. Technical assistance agencies can then further develop capacity building tools to support implementation of the Guide’s recommendations.

The Asian Roundtable on Corporate Governance

Established in 1999, the Asian Roundtable on Corporate Governance serves as a regional forum for exchanging experiences and advancing the reform agenda on corporate governance while promoting awareness and use of the OECD Principles of 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 support decision-makers in their efforts to improve corporate governance in the region. This is achieved through informal peer review of corporate governance policy frameworks and practices in the region, benefitting from international experience. Participants seek to raise awareness of major developments and challenges, evaluate implementation and enforcement as well as discuss and analyse policy options to support viable and effective corporate governance reforms.

Guidance for chairs, speakers 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. Speakers should help frame the discussion, highlighting 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 15 minutes each. Please limit the use of slides to a reasonable number and circulate descriptive documentation in advance. Discussants are expected to touch upon key issues raised by speakers and provide experiences from their economies. Workshop participants are invited to react, explain their views and discuss the issues raised by speakers related to the issues provided in the agenda. All participants are encouraged to actively and openly participate in discussions to provide 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.

Monday 25 October 2010 - Morning Session

8.30 – 9:00 **Registration**

9:00 – 10:00 Introductory session

Welcoming Remarks

- Vinayak S. Khanvalkar, President, The Institute of Company Secretaries of India (ICSI)
- Grant Kirkpatrick, Head of Division, Corporate Affairs, OECD
- J.N. Gupta, Executive Director, Securities & Exchange Board of India (SEBI)

Inaugural Address

- R. Bandyopadhyay, Secretary, Ministry of Corporate Affairs, India

Introduction to the Guide

- Fianna Jesover, Senior Policy Analyst, Corporate Affairs Division, OECD

10:00– 10:30 **Coffee/Tea Break**

10:30 – 12:00 **Defining RPTs : Case studies and key implementation impediments**

RPTs are common, especially for firms affiliated to business groups. But it is not easy to identify and collect information on such transactions taking place within business groups making it challenging to ascertain if a RPT is value enhancing or destroying for outside shareholders. That is why getting the definitions right and a clear understanding of those definitions amongst all the relevant key players is crucial.

Chair: Grant Kirkpatrick, Head, Corporate Affairs Division, OECD

Speaker: Lee Kha Loon, Head, Asia Pacific, CFA Institute

Discussants: Krisnaraga Syarfuan, Board Member, Forum for Corporate Governance in Indonesia.

Lawrence Liu, Executive Vice President, China Development Financial Holding Corporation, Chinese Taipei

12:00 – 13:00 **Discovering RPTs: Internal control processes**

Internal control processes play an important role in revealing RPTs. However, internal auditors, compliance officers, company secretaries and others involved often face potential conflicts while serving different constituents like controlling owners, senior management, operational management and the board and its committees. Accordingly, the question is how to establish an operational independence of the internal control and ensure appropriate lines of reporting?

Chair: NK Jain, Secretary and CEO, The Institute of Company Secretaries of India

Speaker: Gerry Cox, Head of Internal Audit Partnership at the South West Audit Partnership, UK

Discussants: Jonathan Juan Moreno, President and CEO, Institute of Corporate Directors, Philippines.
David Smith, Head, Asia (ex Japan) Research, ISS

13:00 – 14:30 **Lunch, hosted by the Institute of Company Secretaries of India**

Monday 25 October 2010 - Afternoon Session

14:30 – 16:00 **Role of intermediaries and third parties: Is external audit an effective control? What role can external auditors and financial analysts play?** Under most accounting standards, some form of RPTs disclosure is necessary in the financial accounts. However they are considered difficult for third parties and intermediaries to audit and detect. External auditors and financial analysts play a key role in ascertaining the business purpose of a certain RPT by identification and adequate examination of the transaction.

Chair: Lee Kha Loon, CFA Institute

Speaker: Pratip Kar, Advisory Council Member and Consultant, Global Corporate Governance Forum, International Finance Corporation.

Discussion

16:00 – 16:30 **Coffee/Tea Break**

16:30 – 18:00 **Board Oversight and Approval: How should boards consider RPTs? Do they have sufficient information?** RPTs represent potential conflicts of interest that can compromise a director's duties. Boards should make sure that all RPTs are fully and carefully reviewed and approved by the board. Some companies have set up specialised board committees with responsibility for establishing, administering and interpreting this policy.

Chair: Joongi Kim, Professor of Law, Yonsei University, Korea

Speaker: John Lim, Chairman, Singapore Institute of Directors

Discussants: Fuad Hashimi, President and CEO, Pakistan Institute of Corporate Governance.
Grant Kirkpatrick, Head, Corporate Affairs Division, OECD

19:00 **Dinner at Le Meriden Hotel, hosted by the Institute of Company Secretaries of India**

Tuesday 26 October 2010 - Morning Session

9:00 – 10:30 **Legislative and regulatory approaches: What is the role of the regulator and stock exchanges? Defining what needs approval? How could regulators review RPTs?** The regulatory role in preventing abusive RPTs includes legal mechanisms that provide minority shareholders with greater protection, requiring shareholder or board approval when RPTs reach a particular threshold, making it mandatory for companies to comply with international standard of accounting, and strengthen transparency and disclosure requirements. In order to fight abusive RPTs, disclosure and transparency practices are crucial, while auditors, directors, regulatory authorities need to play an important mutually-supportive role.

Chair: Selvarany Rasiah, Chief Regulatory Officer, Bursa Malaysia Berhad

Speaker: Pradnya Saravade, Executive Director, SEBI, India

Discussants: Anil Joshi Hari Chand, Assistant General Manager, Regulatory Services (Advisory & Reform) Securities Commission Malaysia.
Flor Ofilada, Corporate Governance Officer, Philippine Stock Exchange

10:30 – 11:00 **Coffee/Tea Break**

11:00 – 12:30 **Shareholder Approval: what do shareholders get to vote on, how much information is needed? Case studies.** Related party transactions that exceed a certain threshold can be subject to shareholder approval. This is not the case in most countries. It would also be beneficial for shareholders to request independent (*i.e.* non-conflicted) directors for their opinion on the transaction. Directors with a conflict of interest in the transaction would abstain from making a recommendation to shareholders.

Chair: David Smith, Head, Asia (ex Japan) Research, ISS

Speaker: Rakhi Kumar, Senior Research Analyst, PROXY Governance, Inc.

Discussants: Jisoo Lee, Lawyer/Consultant, Centre for Good Corporate Governance, Korea.
Rita Benoy-Bushon, Chief Executive Officer, Malaysia Minority Shareholder Watchdog Group

12:30 – 13:00 **Conclusion and next steps**

- Fianna Jesover, Senior Policy Analyst, Corporate Affairs Division, OECD

Closing Remarks

- C.B. Bhave, Chairman, SEBI
- Grant Kirkpatrick, Head of Division, OECD
- Vinayak S. Khanvalkar, President, ICSI
- M.K. Jain, Secretary & CEO, ICSI

13:00 – 14:30 **Lunch, hosted by the Institute of Company Secretaries of India**