Corporate Governance in Asia: Progress and Challenges

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Purpose and scope

• Exercise to assess progress in implementing the 36 Recommendations issued by the 2003 White Paper
• 19 respondents from all 13 Roundtable jurisdictions from the public and private sector
• Analysis of answers and reporting of developments is strictly meant to highlight trends and identify priorities in the region, not as comparison of different countries.
• Overview of Presentation
  – Progress since 2005
  – Obstacles & Key Issues
Progress since 2005

Legal Framework

• **Numerous updates** to laws, regulations, and guidelines, listing requirements or corporate governance codes in the period surveyed. CG codes have now been issued in all RT economies.

• **Whistleblower protection provisions** have been introduced in most jurisdictions

• Progress in addressing and defining issues of **conflict of interest** (such as related-party transactions)

• Regulation might not always be the most efficient path. **Relaxation of some rules** (particularly in the area of conflict of interests) are considered to make them less burdensome and more effective.
Progress since 2005

Implementation and Enforcement

- **Strengthening of institutional** capacity via specialized courts and new bodies focus on increasing enforcement capacity.

- **Criminal, civil and administrative sanctions** have been enhanced to deter violations of fiduciary duty.

- The **use of civil litigation** is increasingly considered to make up for the lengthy criminal enforcement procedures.

- A number of mechanisms to **provide benchmarks for good practices** as well as evaluate corporate governance practices have been developed in the region. These include manuals, checklist, and scorecards to surveys, assessment projects, and indices.
Shareholder rights

- **Technology** is being better utilised. Practices such as electronic voting in AGMs or even the actual attendance of the AGM via remote technology are becoming more widespread.
- In order to help **foster shareholder activism**, shareholder institutions are beginning to play a crucial role in providing a platform to initiate collective shareholder activism.
- Mechanisms to seek redress for breaches of board member duty, via **derivative and class action law suits**, are taking hold across the region.
- **Corporate social responsibility** practices are finding their way into CG recommendations.
Convergence of local GAAP with IFRSs is ongoing in various jurisdictions.

Rules or other requirements to strengthen accurate and timely disclosure of information, in particular price sensitive information, have been introduced.

Technological progress can also be noted for the dissemination of information. eXtensible Business Reporting language (XBRL) is set to become the standard way of recording, storing and transmitting company financial information.

Initiatives to disclose information beyond legal requirements range from incentives to rankings and scorecards.
Board of Directors

- The **size and function of the board** as well as limits on the number of directorships has been addressed in law and regulation.
- CG codes and listing rules have put forward **definitions of “independent director”**, outlining qualifying criteria and providing “tests”.
- The practice of **cumulative voting** has been introduced in a number of jurisdictions in both mandatory and voluntary fashion.
- The **formation of special committees**, such as audit, nomination and remuneration committees has been addressed in almost all jurisdictions.
- **Education and training programmes** are offered by various local and international organisations and institutions. They have been made mandatory in some countries.
Obstacles & Key Issues

General

• Key **concepts in CG need to be clarified** and the applicability of international CG good practices addressed. Many crucial concepts such as "material transactions" and "fiduciary duty" are still not sufficiently defined or understood.

• How do CG **mechanisms devised for dispersed markets** have to be adapted to Asian market characteristics like ownership structure?

• Striking the right balance between **rules versus flexibility**
Implementation/Enforcement

• Regulators often have only limited capacity due to resource constraints to enforce existing regulations. Non-resource related obstacles stem from generic difficulties of monitoring and obtaining proof on a number of issues.

• Inefficiency of the judicial systems in dealing with CG matters contributes to problems in enforcement which is relevant for nearly all recommendations.

• The increased usage of civil penalties could be beneficial to increase the effectiveness of enforcement.

• How to make CG initiatives legally enforceable, as companies are reluctant to adopt practices going beyond the law, considering the costs of compliance as already high enough.

• Passive nature of shareholders and reliance on government bodies puts the burden of enforcement solely on state institutions. Close and efficient dialogue between regulators and market participants is encouraged.
Obstacles & Key Issues

Shareholder Rights

• How to promote greater **shareholder activism**? How to increase **awareness of shareholders** of their capacity to intervene in company affairs?

• Especially important the **role of Institutional Investors** in this context which are reported to play an insignificant role on CG in Asia

• **Role of the state** as a shareholder: Should directors in SOEs be maximising company interests or state shareholder interests.
Obstacles & Key Issues

Disclosure

- The **merits of greater transparency**, i.e. how greater disclosure enhances the value of the corporation, are poorly understood by companies.
- **Resource constraints in implementation** of international standards, including difficulties in attracting highly skilled and senior people into auditor oversight positions
- How to enhance the quality and how to **effectively enforce disclosure**?
Role of the Board

- **Shortage of qualified candidates** for board positions.
- **Verifying and ensuring the independence** of directors a challenge throughout the region. The role of controlling shareholders adds to the problem.
- In making **cumulative voting a more widespread practice**, concentrated ownership structures as well as a lack of consensus on the benefits of cumulative voting remain obstacles.
- **Guaranteeing directors’ access to information** is still not part of legal provisions in a number of respondents’ jurisdictions.
- Introducing appropriate internal control structures such as risk management requires a **change in corporate culture** going beyond mere compliance with rules.
- Obstacles such as resource constraints, particularly for smaller companies impede the **effective functioning of special committees**.
Thank you!