



**The Fifth Asian Roundtable  
on Corporate Governance**

***SYNTHESIS NOTE***

**Kuala Lumpur, Malaysia**

**26-28 March 2003**

## - Synthesis Note -

### **1. General**

The 5<sup>th</sup> Asian Roundtable on Corporate Governance was held in Kuala Lumpur, Malaysia, on 26-28 March 2003. The meeting was co-hosted by the Securities Commission, Malaysia, the Kuala Lumpur Stock Exchange and the Malaysian Institute of Corporate Governance. The Roundtable brought together 28 regulators from 13 Asian countries, plus 35 regional and international policy makers, experts and business leaders. Also represented at the meeting were experts from the OECD Secretariat, the World Bank, the Asian Development Bank Institute and the Global Corporate Governance Forum.

The meeting was opened by Mr. Mats Isaksson, Head of the OECD Corporate Affairs Division and Mr. Datuk Ali Abdul Kadir, Chairman of the Securities Commission, Malaysia. The first session of the Roundtable focused on recent developments in Malaysian Corporate Governance practices. During the following drafting session, Roundtable participants examined and discussed observations on the submitted White Paper draft on Corporate Governance in Asia. The meeting closed with a half-day workshop on investigatory and enforcement issues.

### **2. Discussions and Main Conclusions**

#### 2.1. Developments in Malaysian Corporate Governance practices

Roundtable participants pointed out the significant progress made in Malaysian corporate governance rules. Before the 1997 financial crisis, Malaysia already had established a notable legal and regulatory framework related to good corporate governance practices. After the crisis, additional steps have been taken, especially in the areas of disclosure requirements, self-dealing provisions, audit and training of company directors. The institutional framework has been enhanced through the creation of new institutions, such as the Malaysian Institute of Corporate Governance or the Minority Shareholders Watchdog Group. However, most Roundtable participants agreed that further progresses can be accomplished in the fields of monitoring and enforcement and with regard to the adoption of a veritable corporate governance culture by all market participants.

#### 2.2. White Paper Drafting Session

The Roundtable identified six areas for priority reform in Asian corporate governance: The protection of minority shareholders, the effective implementation and enforcement of corporate governance laws and regulations, the full convergence with international standards and practices for accounting, audit and non-financial disclosure, the participation of directors in strategic planning and review, the improvement of bank regulations and the creation of a real corporate governance culture through awareness rising and training.

Using the OECD Principles of Corporate Governance, the discussions focused on ways to improve Asian corporate governance practices and to fill in existing gaps in different Asian legal and regulatory frameworks:

*a) Shareholders rights and the equitable treatment of shareholders*

There was a broad consensus from Roundtable participants that the participation of shareholders and institutional investors in company meetings should be enhanced. For this purpose, rules governing shareholder meetings should be liberalized and clarified, especially with regard to proxy and *in absentia* voting and the notification of shareholder meetings.

The Roundtable noted that the protection of minority shareholders was particularly important in Asian corporate landscapes, which are often characterized by concentrated ownership structures. Means to protect minority shareholders from abuses and exploitation include effective shareholder redress mechanisms, rules and doctrines with regard to insider trading and related party transactions, measures to identify beneficial ownership structures and the participation of all shareholders in major corporate decisions.

As a safeguard against abusive self-dealing, it was discussed whether the prohibition of certain related party transactions would prevail on more complex measures, such as the ratification of the transactions during shareholder meetings. With regard to shareholder redress mechanisms, Roundtable participants noticed recent developments in Chinese, Korean and Malaysian laws towards facilitation of shareholders' class or derivative actions.

*b) The role of stakeholders in corporate governance*

In the discussion on the role of stakeholders, Roundtable participants discussed different approaches towards protection and participation of employees through corporate governance frameworks and practices. Regarding creditor rights, discussants emphasized the need for effective insolvent-trading and fraudulent conveyance laws, as well as the importance of an accurate and rigorous definition of "insolvency".

*c) Disclosure and Transparency*

Roundtable participants pointed out the need for full, accurate and timely disclosure of material corporate information. Regional systems for consolidated corporate reporting, as well as the convergence with international standards for audit and accounting should strengthen the reliability and comparability of corporate information at an international level. In this respect, the Roundtable believes that regional standard setters should focus on influencing international standards while they are being formulated, rather than justifying deviation from such standards after they have been issued.

According to the Roundtable, the quality and independence of auditors and accountants should be

improved through training, strict ethical standards, effective sanctions and a strengthened oversight of self-regulatory bodies. Roundtable participants also discussed the introduction of whistle-blower statutes in existing legislations and the role of the press, including issues related to defamation and libel laws.

#### *d) The responsibilities of the board*

The Roundtable agreed that the participation of board directors in strategic planning, review and monitoring processes can be enhanced through training, the development of voluntary codes of conducts and the strengthening of directors' duties and liabilities. According to the majority of the Roundtable participants, the norms and practices of "independent" directors should also be refined. The Roundtable further discussed pros and cons of separating the functions of CEO and Chairman and ways of establishing a relationship of mutual trust and oversight between the board and management. Finally, Roundtable participants agreed that cumulative voting should be recommended as the default rule for the elections of board members in cases where administrative and judicial enforcement mechanisms are still developing.

#### 2.3. Workshop on investigatory and enforcement issues

During a half-day workshop, Roundtable participants discussed issues of investigation and enforcement in the field of corporate governance. Chaired by Mr. Barry Metzger, Coudert Brothers, USA, the workshop comprised three successive sessions on the allocation of resources to investigation and enforcement, investigation issues and the choice between various types of sanctions. The three successive facilitators were: Mr. Thomas Jezek, Association of Investment Services Intermediaries, Czech Republic; Mr. Olivier Frémond, World Bank Public Service Advisory Group, USA; Professor Hideki Kanda, University of Tokyo, Japan.

As implementation and enforcement requires a high degree of human and monetary resources, Roundtable participants noted that policy makers sometimes needed to balance the sophistication of enforcement rules and procedures with their ease and costs of implementation. Nevertheless, the effective implementation and enforcement of corporate governance rules was recognized as being the essential challenge for most of the Asian jurisdictions.

### **3. Next Steps**

The Roundtable discussions and remarks have been integrated into the draft White Paper by the OECD Secretariat. A consolidated version has been sent out to the Roundtable participants for final comments. The White Paper on Corporate Governance in Asia is scheduled for release in Tokyo, Japan on June 11<sup>th</sup>. Further work will focus especially on implementation and enforcement issues, as well as on bank governance in Asia.