



**The Fifth Asian Roundtable on Corporate
Governance**

WORKSHOP

QUESTIONS FOR TOPIC 1

Allocating Resources to Investigations and Enforcement

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Questions for TOPIC 1

1. What do you think is a more efficient way how to maintain (restore) the credibility of the CG framework - to empower regulators or courts to challenge transactions or relationships which are fictive or sham or to continue insisting that regulators and courts are to tolerate them as they nominally satisfy the requirements of law ? In other words, what is better for the credibility of the CG framework - regulators and judges led by the spirit or by the letter of law ?
2. When relying on the spirit of law - is not the risk of regulators' and courts' discretion too high or is it especially from the long term perspective worth undergoing ?
3. Is not the preference given to the letter of law by some market participants simply a kind of their sophistication when maximizing their chance not to be penalized for doing bad things ?
4. Do you agree that a good regulator should discriminate among "his" market participants according their adherence to CG values and then differentiate its regulatory approach ranging from a strict (and costly) policing to a loose (and cheap) benchmarking ?
5. Do you agree that the only feasible way how to monitor market participants for compliance with CG requirements is a risk based approach ? Do you agree that a non-discriminatory regulatory approach is bound to be extremely costly and therefore inefficient ? Do you agree that a non-discriminatory regulatory approach is bound to require a never ending case for increased resources which in case the regulator is financed out of fees paid by market participants ends by stifling the market and in case the regulator is financed out of state budget ends by hostility between regulator and government / political parties ?
6. Have you developed a risk assessment of market participants under your regulation ? How many investigators, inspectors, prosecutors etc. are required for a fixed number of market participants provided that a non-discriminatory regulatory approach would be applied ?
7. The enforcement instruments range usually from remedial measures, penalties, withdrawals of license, forced administration to criminal prosecution. What do you think is the most suitable instrument from the investor protection standpoint ?
8. What do you think is the optimum proportion of in-site and off-site inspections ? What do you think is the optimum composition of an enforcement team provided a off-site inspection is applied?
9. Do you agree that a good and reliable regulatory system is to be based on a cooperation between the statutory regulator and self-regulatory organizations (stock exchanges, associations of investment services providers etc) ? Should the cooperation be voluntary only or statutory ? Do you agree that a statutory cooperation is a possible way how to increase the capacity and efficiency of enforcement ?