



ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

**OFFICIAL PRESENTATION of the WHITE PAPER on
CORPORATE GOVERNANCE IN ASIA**

QUESTIONNAIRE

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Questions for Asian Roundtable Workshop - Philippines

1. Please describe how the following factors affect the decision to pursue criminal, civil or administrative sanctions:

a. Efficacy of sanction/enforcement powers and procedures under applicable law

The above is not generally considered as a factor in determining whether to pursue criminal or administrative sanctions. As will be seen, under the Manual of Operations of the Compliance and Enforcement Department, the following criteria are used to decide whether an investigation should proceed:

- a. Impact
 - Public profile
 - Value as a “message case”
 - Precedent value
- b. Cost – benefit
- c. Public vs. private interest
- d. Level of harm caused
- e. Violation on-going presently
- f. Likelihood of success
- g. Time since the acts occurred and time required to complete investigation
- h. Importance vis-à-vis current thrust of the Commission’s enforcement program
- i. Availability of alternative remedies, action by other agencies or SROs, etc.

Once an investigation has commenced, the following are the criteria in determining appropriate enforcement action, either administrative or criminal:

- a. What is the nature of the misconduct involved? Did it result from inadvertence, honest mistake, simple negligence, reckless or deliberate indifference to indicia of wrongful conduct, willful misconduct or unadorned venality? Were the company’s auditors misled?
- b. How did the misconduct arise? Is it the result of pressure placed on employees to achieve specific results, or a tone of lawlessness set by those in control of the company? What compliance procedures were in place to prevent the misconduct now uncovered? Why did those procedures fail to stop or inhibit the wrongful conduct?

- c. Where in the organization did the misconduct occur? How high up in the chain of command was knowledge of, or participation in, the misconduct? Did senior personnel participate in, or turn a blind eye toward, obvious indicia of misconduct? How systemic was the behavior? Is it symptomatic of the way the entity does business, or was it isolated?
- d. How long did the misconduct last? Was it a one-quarter, or one-time, event, or did it last several years? In the case of a public company, did the misconduct occur before the company went public? Did it facilitate the company's ability to go public?
- e. How much harm has the misconduct inflicted upon investors and other corporate constituencies? Did the share price of the company's stock drop significantly upon its discovery and disclosure?
- f. How was the misconduct detected and who uncovered it?
- g. How long after discovery of the misconduct did it take to implement an effective response?
- h. What steps did the company take upon learning of the misconduct? Did the company immediately stop the misconduct? Are persons responsible for any misconduct still with the company? If so, are they still in the same position? Did the company promptly, completely and effectively disclose the existence of the misconduct to the public, to regulators and to self regulators? Did the company cooperate completely with appropriate regulatory and law enforcement bodies? Did the company identify what additional related misconduct is likely to have occurred? Did the company take steps to identify the extent of damage to investors and other constituencies? Did the company appropriately recompense those adversely affected by the conduct?
- i. What processes did the company follow to resolve many of these issues and ferret out necessary information? Were the Board of Directors fully informed? If so, when?
- j. Did the company commit to learn the truth, fully and expeditiously? Did it do a thorough review of the nature, extent, origins and consequences of the conduct and related behavior? Did management, the Board or committees consisting solely of outside directors oversee the review? Did company employees or outside persons perform the review? If outside persons, had they done other work for the company? Where the review was conducted by outside counsel, had management previously engaged such counsel? Were scope limitations placed on the review? If so, what were they?
- k. Did the company promptly make available to our staff the results of its review and provide sufficient documentation reflecting its response to the situation? Did the company identify possible violative conduct and evidence with sufficient precision to facilitate prompt enforcement actions against those who violated the law? Did the company produce a thorough and probing written report detailing the findings of its review? Did the company voluntarily disclose information our staff did not directly request and otherwise might not have uncovered? Did the company ask its employees to cooperate with our staff and make all reasonable efforts to secure such cooperation?
- l. What assurances are there that the conduct is unlikely to recur? Did the company adopt and ensure enforcement of new and more effective internal controls and procedures designed to prevent a recurrence of the misconduct? Did the company provide our staff with sufficient information for it to evaluate the company's measures to correct the situation and ensure that the conduct does not recur?
- m. Is the company the same company in which the misconduct occurred, or has it changed through a merger or bankruptcy reorganization?

b. Value of successful enforcement action in deterring other potential wrongdoers

Under the Manual of Operations, the likelihood of success is considered before investigations is commenced. Once investigations are completed, there is a need to show the public that the Commission can protect the market and market participants. This is done primarily through bringing successful enforcement actions, whether it be a mere closing down of a firm, imposition of administrative penalties, or securing a criminal conviction. Once people realize that the Commission can effectively bring enforcement actions, though its various forms, we believe that this will act as a deterrent for future wrongdoer.

c. Your own resource constraints in investigating and pursuing an enforcement action

Not a factor in determining what sanction to pursue. However, this is a factor in determining what investigations to pursue. Due to limited resources, we would focus first on cases that would have a greater impact on stakeholders and on the market. We would also look at the cost-benefit of the enforcement action.

d. Capacity constraints (expertise, even-handedness, timelines) of courts

Not a factor.

2. Please fill in the following tables for the latest year in which data are available

Type of Action	Number of Investigations underway	Number of investigations begun	Number of enforcement actions underway	Number of enforcement actions begun	Number of enforcement actions concluded with sanction	Number of enforcement actions concluded without sanction
Criminal				41		1
Civil						
Administrative				34	17	3
		175				

Note: 1. Investigations are not divided into criminal, civil, or administrative.
2. Figures above are **actual**.

Breakdown of source of information (indicate whether data are approximate or actual)

Type of Action	% of investigations triggered by news reports	% of investigations triggered by review of regulatory filing	% of investigations triggered by tip from another governmental agency	% of investigations triggered by tip from insider	% of investigations triggered by tip from investor	% of investigations triggered by tip from supplier or customer	% of investigations triggered by tip from competitor	% of investigation triggered by tip from another source
Criminal								
Civil								
Admin								
	2%		5%	1%	90%			2%

Note: 1. Investigations are not divided into criminal, civil, or administrative.
 2. Figures are **approximate**.