



ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

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

QUESTIONNAIRE

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RESPONSE FROM BANGLADESH TEAM ON

Questions for Asian Roundtable Workshop

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 sanction and enforcement powers on corporate governance issues in Bangladesh are shared between two offices supervised by two different ministries: the companies' registry and the securities regulator. The companies' registry is a wing of one government ministry, and the securities regulator, although a statutory body, does not have full autonomy and is strongly influenced by another ministry. This dichotomy results in differing standards and regulations, with the securities regulator having unconstitutional power to issue regulations overriding legislation. Both regulators have basic enforcement and sanction powers under law, but which are not pursued. Due to political influence, incompetence and corruption, the administrative review and complaint procedure is neither often pursued nor effective. Hence, recourse is often taken to judicial review by constitutional writ proceedings. Proceedings initiated by either body are often ruled to be illegal due to lack of legal basis or non-compliance with procedure. Recently, the securities regulator has begun to utilise its monitoring and penalising powers against certain companies, which reports indicate are initiated by competitors. The judicial system in Bangladesh is slow for remedy, due to backlog; legal experts laud the judicial reforms underway, but expect another generation to witness expedited hearings. The companies' registry functions beyond its statutory role and engages its legal investigative powers only at the instance of complaints by self-interested parties. A legislative committee for company law reform is expected to review the role and powers of the companies' registry, with recommendations for reform.

The existing legal system is capable of enforcing powers over a criminal, social and administrative sanctions, but the real problem lies with implementation as there is severe lack of accountability on the part of law enforcement agencies, which is again tethered by the government. Since the government is highly politicised, irrespective of which party is in power, and the civil pressure group is relatively much weaker to wield any effective resistance, enforcement of rule of law often becomes biased, if not nonchalant, thus making the legal enforcement less effective than it should be. Legal procedures are somewhat cumbersome, partly because of a long tradition of procrastination, and partly because of lack of accountability by the parties concerned. The government, irrespective of party affiliation, always finds such cumbersome system conducive to ruling the mass as the system allows the government machinery to buy time, develop loopholes to wriggle out of corruption allegations, and continue the traditional inaction and nonchalance without resistance.

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

Enforcement of legal action is slower compared to the enormous number of lawsuits and allegations lodged during any given period of time. Thus successful enforcement actions are also much less than the actions needed, compared to the high number and degree of offences. Such successful enforcement actions are less effective in deterring other potential wrongdoers, as the punishments are often too delayed to exert any impact, and much less severe than deserved, partly because of a poorly designed suit by the law enforcing agencies, and partly because of outmoded legal redress system. Thus the value of successful enforcement action in deterring other potential wrongdoers is considerably little and inadequate.

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

To my opinion, the only constraint in investigating and pursuing an enforcement action is access to such investigation. Because of a blearily wielding Official Secrecy Act law enforcing agencies find suitable excuses for not allowing any person, including journalists, to have access in any investigation of a criminal, social and administrative lawsuit or allegation, where the person is not directly involved. Besides, because of a cumbersome legal procedure, pursuing an enforcement action often appears highly discouraging.

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

The courts in Bangladesh have a number of constraints. First of all, our lower judiciary is not separate from the administration, and since the country's polity is less than desired democratic, we are yet to be in a position to force the legislative system to enforce the constitutional compulsion of making judiciary fully independent. Thus, despite having requisite expertise, our lower courts cannot be even-handed, and because of a long drawn procrastinating procedural tradition, they cannot be even timely. Despite off late efforts have been taken to deliver prompt legal redress some speedy trial courts have been developed, these could have visible impact on a huge backlogs of past suits. Continuing efforts at judicial capacity building have not proved effective, due to an outdated curriculum for legal education, political appointments to the judiciary, low remuneration prolonging corruption, no automation, and a general non-conducive working environment. The special bench for company matters has concurrent jurisdiction for other special laws, with backlog of cases in all areas. The pleas for specialised courts on securities matters have not been addressed due to the lack of creditability in proceedings initiated by the regulator.

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

Please see Annex attached.

Breakdown of investigations and enforcement actions by numbers (indicate whether data are approximate or actual):

Type of Action	Number of investigations underway	Number of investigation begun	Number of enforcement actions underway	Number of enforcement actions begun	Number of enforcement actions concluded with sanction	Number of enforcement actions concluded without
Criminal						
Civil						
Administrative						

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 investigations triggered by tip from another source
Criminal								
Civil								
Administrative								

For each 100 public companies, what is the approximate number of personnel employed by the securities regulator:

Managers	8
Investigators	10
Policy experts	02
Technical reviewers	02
Prosecutors	05
Support staff	10

Administrative Actions Taken by the Securities & Exchange Commission (SEC), Bangladesh

S1	<i>Actions against listed companies</i>	2002-03	2001-02	2000-01
01.	Lodged warnings for noncompliance of SEC rules, basically failing to send compliance reports in time	03	04	08
02.	Lodged primary warnings for failing to follow SEC directives on full disclosure regarding price sensitive information	00	23	23
03.	Lodged warnings for failing to follow SEC directives on full disclosure regarding dividend payment	00	00	04
04.	Imposed financial penalty (ranging from Tk25,000 to Tk100,000) for noncompliance of SEC laws	02	04	11
05.	Imposed financial penalty (ranging from Tk25,000 to Tk400,000) on Directors for noncompliance of SEC laws	17		08
06.	Appeals rejected	06		00
<i>Actions against brokerage houses</i>				
01.	Cancellation of registration of membership in bourses	01	02	04
02.	Lodged warnings for noncompliance of SEC rules		02	02
03.	Imposed financial penalty (Tk100,000) for noncompliance of SEC laws		01	03
04.	Appeals rejected	01	01	00

Legal Actions Taken by the Securities & Exchange Commission (SEC), Bangladesh

S1	<i>Name of courts</i>	2002-03	2001-02	2000-01
01.	Bangladesh Supreme Court:			
02.	a) Appellate Division	17	17	14
03.	b) High Court Division	46	42	27
04.	District Judge Court	00	00	01
05.	4th Assistant Judge Court, Dhaka	00	00	01
06.	5th Sub-Judge Court, Dhaka	04	04	03
07.	6th Assistant Judge Court, Dhaka	02	02	02
08.	1st Additional Assistant Judge Court, Dhaka	01	01	00
09.	Chief Metropolitan Magistrate Court, Dhaka	05	05	00
10.	2nd Additional Metropolitan Magistrate Court, Dhaka	00	03	01
11.	Metropolitan Session Judge Court, Dhaka	00	03	00
12.	General Certificate Court, Dhaka	06	06	05
	Total	81	83	54