



The 2004 Asian Roundtable on Corporate Governance

Implementation and Enforcement in Corporate Governance

FINAL AGENDA

**Seoul, Korea
2-3 November 2004**



**Korea
Development
Institute**



In partnership with:
The Government of Japan
The Global Corporate Governance Forum



Hosted by:
Korea Development Institute

Cooperated by :
Korea Corporate Governance Services
and
Asian Institute of Corporate Governance

Day 1 – Tuesday 2 November 2004 - Morning Session

9:00 – 9:30

Registration

9:30 – 10:00

Welcoming remarks

- ◆ **Dr. Kwang Suon Chung**, President, Korea Corporate Governance Services
- ◆ **Mr. Robert Ley**, Deputy Director, OECD
- ◆ **Dr. Tae-Hee Yoon**, Senior Advisor, International Finance Corporation (IFC), World Bank Group

10:00 – 11:45

Theme I: Quality of Regulatory Framework

- ◆ Implication of the revised OECD Principles: **Mr. Mats Isaksson**, Head, Corporate Affairs Division, OECD
- ◆ Various experiences to ensure effective implementation - allocation of responsibilities and institutional frameworks - Presentations by:
 - **Mr. Roberto Ulissi**, General Director, Ministry of Finance, Italy
 - **Mr. Paul Chow**, CEO Hong Kong Stock Exchange, Hong Kong
 - **Mr. Youngjae Lim**, KDI, Korea

11:45 – 12:00

Coffee/tea break

12:00 – 13:00

Theme II: Supervision and Regulatory Enforcement
Session 1: Investigatory Powers and Sanctions

Moderator: Professor Kwang S. Chung, President, Korea Corporate Governance Services

- ◆ Agency Enforcement: Presentation by **Mrs Nik Ramlah Mahmood**, Director, Market Policy and Development, Market Policy & Development Division, Securities Commission, Malaysia
- ◆ Stock Exchange Enforcement: Presentation by **Mrs Louise Macaulay**, Director of Enforcement Law and Policy, Australian Securities and Investments Commission (ASIC), Australia

13:00 – 14:00

Lunch hosted by Korea Corporate Governance Service

Speaker: **Professor Kwang S. Chung**, President, Korea Corporate Governance Services

Day 1 – Tuesday 2 November 2004 - Afternoon Session

14:00 – 15:30

Theme II: Supervision and Regulatory Enforcement

Session 2: Ensuring Capacity, Integrity and Accountability of Regulators and Supervisors

Moderator: Professor Hideki Kanda, University of Tokyo, Japan

- ◆ Presentation by **Mrs Jaweria Ather**, Director, Chairman's Secretariat, Securities and Exchange Commission, Pakistan
- ◆ Presentation by **Ms Chung-Fern Wu**, Commissioner, Financial Supervisory Commission, Chinese Taipei

Coffee / tea will be served

15:30 – 17:30

Theme III: Judicial Enforcement

Session 1: Civil Enforcement

Moderator: Professor Hasung Jang, Korea University

- ◆ The role of shareholders initiated actions in Asia: Presentation by **Mr. Barry Metzger**, Senior Partner, Coudert Brothers LLP, United States
- ◆ The merit of shareholders collective actions (class action suits): Presentation by **Mr. Lawrence Liu**, China Development Financial Holding Corporation, Chinese Taipei
- ◆ The prospect for Arbitration and Alternative Dispute Resolution: Presentation by **Mr. Michael Hwang**, ICC arbitrator, Singapore

19:00 –

Cocktail and Dinner hosted by Korea Development Institute

Day 2 – Wednesday 3 November 2004 - Morning Session

9:15 – 10:30

Theme III: Judicial Enforcement **Session 2: Criminal Enforcement**

Moderator: Mr. Jungho Yoo, Senior Research Fellow, Korea

Relations between Regulators and Prosecutors (and the Use of Specialised Teams to Handle Complex Cases): Presentation by **Mr. Yong-Jin Jung**, Prosecutor, Seoul Northern District Prosecutor's office, Korea

10:30 – 10:45

Coffee/tea break

10:45 – 12:45

Theme IV: Ensuring Judicial Infrastructure

Moderator: Professor Kon Sik Kim, Seoul National University

- ◆ The Theory and Practice of Specialised Courts: Presentation by **Professor Maarten Kroeze**, Erasmus Universiteit Rotterdam, Netherlands
- ◆ Selection and Training of Judges: Presentation by **Mr. John Cooke**, Director of Education, Federal Judicial Center, United States

12:45 – 14:30

Lunch hosted by the Asian Institute of Corporate Governance

Day 2 – Wednesday 3 November 2004 - Afternoon Session

14:30 – 17:00

Discussion of the Asian Roundtable Policy Brief on Implementation and Enforcement and future work of the roundtable

Moderator: Mr. Mats Isaksson, Head, Corporate Affairs Division, OECD

Presenter: Mr. Louis Bouchez, Senior Corporate Governance Specialist, OECD

End of Roundtable

THE 2004 ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

Seoul, Korea, 2-3 November 2004

Notes to the agenda and issues for discussion

The 2004 Asian Roundtable on Corporate Governance will take place in Seoul, Korea, on 2-3 November 2004, and will focus on “Implementation and Enforcement in Corporate Governance.” The Korea Development Institute will organise a separate conference focusing on “Corporate Governance of Group Companies” on 1st November.

The Roundtable will start on 2nd November at 9:30 and finish on 3rd at 17:00. The last half day is allocated for the discussion on a draft Policy Brief, which lays out detailed and concrete policy options based on the policy recommendation suggested in the Asian White Paper.

THEME I: Framework for Effective Implementation of Principles and Policy Recommendations

In most countries, there have been established Corporate Governance Principles or Codes and the real challenge now is how to effectively implement those. As Corporate Governance is covering wide area, wide ranged parties should be involved for the better implementation. There is no single model of institutional framework or arrangement that ensures the effective implementation. It varies from country to country according to its historical and social background. The revised OECD Principles state, “The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.” (Principle I. C) Under this Theme, the participants will be invited to discuss the possible implication of the Principles. A few specific country examples will be introduced to facilitate the discussion.

THEME II: Supervision and Regulatory Enforcement

Section 1: Investigatory Powers and Sanctions

This Section will focus on how effective enforcement can be secured, maintained and strengthened. Especially in Asia, regulatory or supervisory enforcement have been the most preferred enforcement tool.

Issues for discussion

- What resources and mandates should be allocated among various regulators and supervisors? How can they be equipped with relevant information?
- What considerations come into play when deciding whether to pursue criminal, administrative sanctions?

- What mix of investigatory power and sanctions is required for effective administrative action?

Section 2: Ensuring Capacity, Integrity and Accountability of Regulators and Supervisors

For the effective enforcement by regulators and supervisors, their capability and accountability should be a key. The revised OECD Principles state, “Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their ruling should be timely, transparent and fully explained.” (Principle I. D) This section will discuss how capacity, integrity and accountability can be ensured, examining the current situation of the region.

- How will the ability to attract, maintain and strengthen qualified staff on competitive terms be secured for regulators and supervisors?
- Have regulations and supervisions been fully explained and objectively implemented to market players? What is a room for the improvement of accountability of regulators and supervisors?

THEME III: Judicial Enforcement

Section 1: Civil Enforcement

Civil enforcement is little utilized compared to criminal and administrative enforcement. This section will discuss some of the pre-requisites for effective civil enforcement and explore the extent to which liberalized rules on collective action have resulted in greater or more effective shareholder redress. All regions of the world have seen increased activity by shareholder associations, watchdog groups, investor associations and grass-roots activists. In some cases these groups seek redress on behalf of shareholders.

Issues for discussion

- What accounts for the relatively lesser position of civil enforcement in Asian corporate-governance frameworks? Does this mean weaker implementation or enforcement or is this a rational adjustment to different circumstances?
- What is actually happening in Asia with regard to derivative, class-action and common-action claims? What is the most commonly used tool? How can trend of more frequent use of collective action be interpreted and how can it contribute to better enforcement in the region?
- What are the lessons learned from shareholder activism? Where has litigation succeeded and where has it failed and why?
- Can arbitration, arbitration courts and alternative dispute resolution enhance enforcement either in the OECD member countries or non-members? Are there any useful models for Asian countries?

Section 2: Criminal Enforcement

Criminal sanctions represent an essential element of corporate governance. For wealthy business leaders, jail time is often the only sanction that meaningfully deters or punishes illegal behaviour. Criminal prosecutions also signal the government's commitment to cleaning up insider abuse and to establishing the rule of law

Issues for discussion

- How should regulators and prosecutors interact to investigate and prosecute cases? Should specialised prosecutorial teams be formed to handle complex or high-profile cases?
- How should prosecutors think about pursuing criminal investigations? What tools and strategies can prosecutors use to encourage lower-level wrongdoers to co-operate with proceedings against their superiors? How can leverage generated by criminal proceedings be used to facilitate administrative and civil actions?

THEME IV: Ensuring Judicial Infrastructure

Implementation and enforcement cannot succeed without competent, capable and impartial judges and courts. Yet, judges, court officials and policy makers responsible for selecting judges have had less visibility in corporate-governance debates than others. This theme will consider steps to improve the performance of judges and courts.

Issues for discussion

- Are specialised courts a good idea? Where have they been used and with what lessons?
- What are the backgrounds of Asia's judges? How are they selected? How is their impartiality reviewed and protected?
- What can be done to raise the expertise and competence of current judges with the demands of complex financial and regulatory prosecutions and litigation?