



The Fourth Asian Roundtable on Corporate Governance

Shareholder Rights and the Equitable Treatment of Shareholders

FINAL AGENDA

**Hotel Oberoi Towers, Mumbai (India)
11-13 November 2002**

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



Hosted by:



Department of Company Affairs
Ministry of Law, Justice and
Company Affairs



Day 1 – Monday 11 November 2002 - Morning Session

9:00 – 9:30

Registration

9:30 – 10:00

Welcoming remarks

- ◆ **Mr Tarun Das**, Director General, Confederation of Indian Industry, India
- ◆ **Mr William Witherell**, Director, Financial, Fiscal and Enterprise Affairs, OECD
- ◆ **Mr Michael Klein**, Acting Vice President, Private Sector Development and Infrastructure; Director, Private Sector Advisory Services, World Bank
- ◆ **Mr Myoung-Ho Shin**, Vice-President, Asian Development Bank

10:00 – 10:30

Overview of Regional Developments

Chairperson: Mr Mats Isaksson, Head, Corporate Affairs Division, OECD

- ◆ *Overview of South Asia:* **Dr Omkar Goswami**, Chief Economist, Confederation of Indian Industry, India
- ◆ *Overview of China/Honk Kong China/Chinese Taipei:* **Prof Ruyin Hu**, Director, Research Centre, Shanghai Stock Exchange, China

10:30 – 10:45

Coffee/tea break

10:45 – 11:45

Theme I: Promoting Shareholder Participation Session 1: Creating Shareholder Value in Asia

Chairperson: Mr G.N. Bajpai, Chairman, Stock Exchange Board of India

- ◆ Large, Family-Run Companies: the OECD Experience. Presentation by **Mr Robert Zafft**, Senior Corporate-Governance Specialist, OECD
- ◆ Creating Value for All Shareholders in Emerging Asian Markets. Presentation by **Mr Stilpon Nestor**, Principal, Nestor Advisors, United Kingdom

- ◆ Discussant: **Dr Omkar Goswami**, Chief Economist, Confederation of Indian Industry, India

11:45 – 1:00

Theme I: Promoting Shareholder Participation
Session 2: The General Meeting of Shareholders

Chairperson: Mr Olivier Frémond, Program Manager, Private Sector Advisory Services, World Bank

- ◆ Ensuring Meaningful Participation in Shareholders Meetings. Presentation by **Mr Richard Roque**, Principal, William E. Simon & Sons (Asia) Ltd, Hong-Kong China
- ◆ Other Peoples' Money: Custodial Shares, ADRs, and Proxies. Presentation by **Mr Vincent Duhamel**, Principal & Chief Executive, State Street Global Advisors, Hong Kong China
- ◆ Discussant: **Prof Judy Tsui**, Dean, Faculty of Business & Information Systems, The Hong Kong Polytechnic University, Hong Kong China

1:00 – 14:30

Lunch hosted by CII

Speaker: **Mr N R Narayana Murthy**, Chairman and Chief Mentor, Infosys, India

Day 1 – Monday 11 November 2002 - Afternoon Session

14:30 – 16:00

Theme I: Promoting Shareholder Participation
Session 3: The State as Shareholder

Introductory Remarks: Mr Pradip Baijal, Secretary, Ministry of Disinvestment, Government of India

Panel Moderator: Mr Andrew Betting, Head of Privatisation & Participation Department, Ministry of Finance, The Netherlands

- ◆ **Dr Shawn Xu**, General Manager, Research Department, China International Capital Corporation, China
- ◆ **Mr Yusof Abu-Othman**, CEO, Minority Shareholder Watchdog Group, Malaysia
- ◆ **Ms Kim-Chi Trinh**, Researcher, Fuqua School of Business, Duke University, former Country Manager (Vietnam), Aetna International, Vietnam

- ◆ **Dr Areepong Bhoocha-oom**, Director of Privatisation, Office of State Enterprise and Government Securities, Ministry of Finance, Thailand
- ◆ **Mr I. Nyoman Tjager**, Special Assistant to the Minister of State Owned Enterprises, Ministry of State Owned Enterprises, Indonesia
- ◆ **Mr Patrick Smith**, Global Affairs Columnist, United States

16:00 – 16:30

Coffee/tea break

16:30 – 18:00

Theme II: Preventing Insider Abuse

Session 1: The Case for “Rough Justice”

Chairperson: Mr Michael Gillibrand, Director and Special Adviser, Management and Training Services Division, Commonwealth Secretariat

- ◆ Trade-offs between the Sophistication of Rules/Remedies and Their Ease of Implementation. Presentation by **Prof Eric Talley**, Director, Center for Law, Economics and Organization, University of Southern California Law School, United States.
- ◆ Applying Corporate-Governance Principles to Financial Institutions Collective Investment Institutions and Insolvent Companies. Presentation by **Prof Nara Srinivasan**, Dean, Murdoch Business School, Murdoch University, Western Australia
- ◆ Discussant(s): **Mr Yezdi H. Malegan**, Managing Partner, S.B. Billimoria & Co, India
Ms Nik Ramlah Mahmood, Director, Market Policy and Development, Securities Commission, Malaysia

19:30 –

Cocktail and Dinner hosted by CII

Speaker: **Mr Pradip Baijal**, Secretary, Ministry of Disinvestment, Government of India

Day 2 – Tuesday 12 November 2002 - Morning Session

9:30. – 11:00

Theme II: Preventing Insider Abuse **Session 2: Related-Party Transactions**

Chairperson: Mr Masaaki Kaizuka, Principal Administrator, Directorate for Financial, Fiscal and Enterprise Affairs, OECD

- ◆ Defining, Disclosing and Discouraging Related-Party Transactions. Presentation by **Mr John Lim**, Counsel Member, Singapore Institute of Directors (SID), Singapore
- ◆ Tools and Rules to Combat Fraud. Presentation by **Mr Deepankar Sanwalka**, Executive Director, KPMG, India
- ◆ Discussant: **Mr Vipul Prakash**, Regional Manager, South Asia, IFC

11:00 – 11:30

Coffee/tea break

11:30. – 13:00

Theme II: Preventing Insider Abuse **Session 3:– Corporate-Control Structures and Transactions**

Chairperson: Dr Sheela Bhide, Joint Secretary, Department of Company Affairs, Ministry of Finance & Company Affairs, India

- ◆ Protecting Minority Shareholders During Shifts in Corporate Control. Presentation by **Prof Kenichi Osugi**, Tokyo Metropolitan University, Japan
- ◆ Protecting Minority Shareholders from Improper Dilution. Presentation by **Mr Manish Singhai**, Vice President & Portfolio Manager, Alliance Capital Management, Singapore
- ◆ Moving Towards Transparency of Ownership and Control. Case study presented by **Mr Pulak Prasad**, Managing Director, Warburg Pincus Singapore LLC
- ◆ Discussant(s):**Ms Sucheta Dalal**, Consulting Editor, Financial Express, India
Mr Peter Dey, Partner, Osler, Hoskin & Harcourt, Barristers & Solicitors, Canada

13:00 – 14:30

Lunch hosted by CII

Speaker: **Mr G.N. Bajpai**, Chairman, Stock Exchange Board of India

Day 2 – Tuesday 12 November 2002 - Afternoon Session

14:30 – 16:00

Theme III: Enforcing Shareholders Rights
Session 1: Empowering Shareholders

Chairperson: Mr Robert Strahota, Assistant Director, Office of International Affairs, United States Securities and Exchange Commission (SEC), United States

- ◆ Derivative and Class-Action Lawsuits. Presentation by **Prof Jang Hasung**, Center for Finance and Banking Research, Korea University
- ◆ Dissenters' Rights. Presentation by **Mr Barry Metzger**, Coudert Brothers, United States
- ◆ Discussant(s): **Dato Megat Najmuddin Megat Khas**, President, Malaysian Institute of Corporate Governance
Mr Ruyin Hu, Director, Research Centre, Shanghai Stock Exchange, China

16:00 – 16:30

Coffee/tea break

16:30 – 17:30

Theme III: Enforcing Shareholder Rights
Session 2: Private-Sector Initiatives

Chairperson: Mrs Veronique Ingram, Chief Advisor, International, Australian Treasury

- ◆ Using the Stock Exchange to Speed Reform: Lessons from Brazil's *Novo Mercado*. Presentation by **Ms Maria Elena Santana**, Listing and Issuer Relations Superintendent, Sao Paulo Stock Exchange (BOVESPA), Brazil.
- ◆ Panel Discussion: Private-Sector Initiatives.

Moderator: Mrs Veronique Ingram, Chief Advisor, International, Australian Treasury

Mr Jamie Allen, Secretary General, Asian Corporate Governance Association, Hong Kong China

Mr Johathan Juan Moreno, Program Director, Institute of Corporate Directors, Philippines

Mr Ravimohan, Managing Director & CEO, CRISIL, India

Mr Cheah Foo Seong Council Member, Institute of Company Secretaries, Malaysia

17:30 – 18:30

Conclusions and Policy Implications

Chairperson: Mr William Witherell, Director, Financial, Fiscal and Enterprise Affairs, OECD

- ◆ Summary of discussions by Chairpersons
- ◆ Future work of the Roundtable

Day 3 – Wednesday 13 November 2002 - Working Session (Restricted to invited core participants of the Asian Roundtable)

9:00 – 9:30

Registration

9:30 - 13:00

Discussion of the White Paper and future work

Moderator: Mr William Witherell, Director, Fiscal, Financial and Enterprise Affairs, OECD

Presenter: Mr Robert Zafft, Senior Corporate Governance Specialist, OECD

13:00 – 14:30

Lunch hosted by CII

End of Roundtable

THE FOURTH ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

Mumbai, India, 11 – 13 November 2002

Notes to the agenda and issues for discussion

The Fourth Asian Roundtable on Corporate Governance will take place in Mumbai, India, on 11-13 November 2002 and will focus on “*Shareholder Rights and the Equitable Treatment of Shareholders*”.

The Roundtable will start on 11th November at 9:00 and finish on 12nd at 18:30 for the Adhoc participants and on 13th June at lunchtime for the Core group.

The presentations and discussions by the participants will be made in the context of three different themes. Each theme is divided into sessions in which one or two speakers will make a presentation of about 20 minutes each, followed by two or three discussants who will have a slot of about 10 minutes. General discussion will follow. During the last session, a panel composed of session chairs will offer brief conclusions (about 5 minutes). The future work of the Roundtable will also be discussed following a short introduction by the OECD Secretariat.

THEME I: Promoting Shareholder Participation

This theme will describe the link between involving shareholders as owners and attracting them as investors. It will consider the financial stakes in Asia and set the stage for subsequent topics like transparency of control and insider abuse. Promoting Shareholder Participation will also explore the theory and practice surrounding the principal vehicle for shareholder participation – the general meeting of shareholders. The theme will then consider the issues that arise when the state or an international organisation (such as the Asian Development Bank or International Finance Corporation) owns shares.

Issues for discussion

- How have investors in OECD countries valued the family-run, listed company or the company dominated by a powerful Chairman/CEO? Where should Asian governments and companies focus their reform and value-building efforts?
- What concrete steps can governments, institutions and companies take to increase shareholder participation and confidence? How can these steps be communicated to the investment community to create value?
- Across the region, how meaningful is participation in shareholders meetings? To what extent does lack of meaningful participation arise from faulty rules, ineffective enforcement, and/or shareholder indifference? In addressing shortcomings in participation, how should one think about the various levers – company laws, securities regulations, stock-exchange rules, voluntary codes of conduct – that are available to policy makers?

- What special issues arise when nominal and beneficial share ownership are separated? If agency law is inadequate to address custodial and ADR shares, whither should one look for norms and enforcement of these norms? What opportunities and risks do proxy rules offer for concerted action by minority shareholders and for leadership by institutional investors?
- Asian governments hold substantial stakes in commercial enterprises, while international organisations formed to promote development can become a emerging country's largest foreign investor. Where the state or such an international organisation holds shares, how does it balance its interest in maximising share value with its obligations to stakeholders, to national development and to society at large? How should politicians and civil servants approach their roles as officers and directors when loyalties conflict? Where partially privatised assets are a risk, how should governments weigh the policy options of granting the state special "internal" privileges as a shareholder v. establishing greater "external" regulatory oversight?

THEME II

Theme II will analyse approaches to preventing or curbing insider abuse, taking into account both disclosed transactions and those masked by fraud. In addition, Theme II will review prototypical cases of insider abuse, discuss the "classic" responses to such abuse developed in OECD countries and ask whether investors in Asia would be better served by responses that are less sophisticated but easier to implement than the classic ones.

Issues for discussion

- Do the "classic" responses to insider abuse make sense in the Asian context? Would shareholders be better served by less sophisticated but easier to implement responses such as bans on related-party transactions? Do financial institutions deserve heightened protection and, if so, what kind? How does or should insolvency effect the "rules" of corporate governance?
- What is an "insider"? Where should the line be drawn between bright-line definitions that are easy to apply and general standards that are hard to circumvent? What constitutes sufficient disclosure and to whom should it be made? Should related-party transactions be discouraged and, if so, how?
- As improved corporate governance reduces overt self-dealing, the temptation to commit fraud increases. What tools and rules are needed to discover and punish fraud? How should audit committees understand their role and their responsibility for putting into place monitoring systems? What international co-operation is needed to combat cross-border fraud through devices such as offshore shell companies?
- What does a "proper" ownership/control structure look like? Where does abuse occur in control shifts and secondary share issuances and what are the "classic" responses to such abuse?

THEME III

Theme III will focus on enforcing shareholder rights, looking at shareholder-initiated actions and the appropriate fora for resolving disputes. Theme III will also consider private-sector initiatives to infuse substance into corporate-governance protections.

Issues for discussion

- What role do/should Stock Exchange Listing rules, and their associated enforcement mechanisms, play in protecting shareholders' interests?
- What role do codes of practice/conduct play in promoting good corporate governance and protecting shareholders' interests? Are they worth the paper they are written on? What can be done to bolster them and to give them more teeth in the interests of shareholders? What are the necessary preconditions for their effectiveness?
- What role can/should a free press play in keeping the corporate sector honest? What role can/should ratings agencies play in providing incentives to good governance?
- What role do/should institutional investors and fund managers play in keeping company boards focussed and honest? How can their active participation be encouraged?
- What role do/should professional bodies such as Institutes of Company Directors or Accountants play in promoting and enforcing good governance practices? Do/can disciplinary procedures run by the accounting profession ensure the integrity of financial reports?
- Should shareholder representative groups be able to act as proxies for individual shareholders?