

Organisation for Economic Co-operation and Development



Organisation de Coopération et de Développement Économiques

in co-operation with

the Korea Development Institute

**and with the co-sponsorship of the Government of Japan
and the World Bank**

Conference on

**“CORPORATE GOVERNANCE IN ASIA: A
COMPARATIVE PERSPECTIVE”**

AGENDA

Seoul, 3-5 March 1999

Day 1

THEME A: THE CORPORATE GOVERNANCE ENVIRONMENT AND ITS IMPACT ON CORPORATE PERFORMANCE AND FINANCE

March 3, morning

8:30 - 9:00 *Registration*

9:00 - 9:30 *Welcoming remarks:*

Mr Duck-Koo Chung, Vice Minister of Finance and Economy, Korea

H. E. Mr Ogura, Ambassador of Japan to Korea

Mr Magdi R. Iskander, Director, Private Sector Development, the World Bank

9:30 - 9:45 **Keynote address: The importance of corporate governance in OECD and non-OECD economies and the proposed OECD principles**

Ms Joanna Shelton, Deputy Secretary General, OECD

SESSION I ***OWNERSHIP AND FINANCING OF INDUSTRY: THE MAIN MODELS OF CORPORATE GOVERNANCE IN OECD COUNTRIES***

Chairman: *H.E. Mr Soogil Young*, Ambassador of Korea to the OECD

Rapporteur: *Mr Yutaka Imai*, Head of Division, Economics Department, OECD

9:45 - 11:00 ***Presentation on Corporate Governance patterns in OECD countries: Is convergence under way?***

- **Mr John Thompson**, Financial Counsellor, Directorate for Financial, Fiscal and Enterprise Affairs, OECD
- **Mr Stilpon Nestor**, Head of the Privatisation and Enterprise Reform Unit, DAF, OECD

General discussion

Coffee break

11:15 - 13:00 **Panel Discussion: *Trends in selected OECD economies***

- **Prof. Mitsuhiro Fukao**, Keio University, Japan
- **Dr Laurence Loulmet**, University of Toulouse, France
- **Mr Oh Seok Hyun**, Director General of Economic Policy, Ministry of Finance and Economy, Korea

General discussion

Lunch

March 3, afternoon

SESSION II CORPORATE GOVERNANCE IN ASIA AND THE ASIAN FINANCIAL CRISIS: EVIDENCE OF THE IMPACT AND CURRENT TRENDS

Chair: *Ms Veronique Ingram*, Assistant Secretary, The Treasury, Australia

Rapporteur: *Mr Constantijn Claessens*, Manager, the World Bank

14:15 - 15:45 ***Comparative corporate governance trends in Asia***

Mr Il Chong Nam, Korea Development Institute, Korea

Discussants:

- **Mr R. Shyam Khemani**, Group Manager, Private Sector Development, the World Bank
- **Ms Cally Jordan**, Special Counsel, General Counsel's Office, Asian Development Bank
- **Mr Herbert V. Morais**, Assistant General Counsel, International Monetary Fund

Coffee break

16:00 - 18:00

Panel Discussion: *Trends in selected Asian countries*

- **Ms Patareeya Benjapolchai**, Senior Vice President of the Stock Exchange, Thailand
- **Mr Ding Kung-Wha**, Vice Chairman, Securities and Exchange Commission, Chinese Taipei
- **Dr Nik Ramlah Mahmood**, Director, Policy and Development, Securities Commission, Malaysia
- **Mr Lim Choo Peng**, President of the Stock Exchange, Singapore

General discussion

18:30

Cocktail

19:00

Dinner hosted by **Mr Jin Soon Lee**, Chairman of the Korea Development Institute
Keynote address: **Mr Hun-Jai Lee**, Chairman of the Financial Supervisory Commission, Korea

Day 2

THEME B: THE REGULATORY FRAMEWORK AND THE ROLE OF POLICY

March 4, morning

SESSION III ENSURING EQUITABLE TREATMENT OF SHARE- HOLDERS AND OTHER STAKEHOLDERS

Chair: *Mr Nigel Peace*, Director, Department of Trade and Industry, Company Law Reform, United Kingdom

Rapporteur: *Dr Peter Watts*, Senior Lecturer, Research Centre for Business Law, Auckland University, New Zealand

9:00 - 10:45 *The main tools for the protection of “outside” shareholders from “insider” abuse*

- *Prof. Bernard Black*, Professor of Law, Stanford University, United States

Discussants:

- *Mr Eugenio Reyes*, Executive Director, Securities and Exchange Commission, Philippines
- *Dr R. Thillainathan*, Director of Finance, Genting Berhad, Malaysia

General discussion

Coffee break

11:00 - 13:00 **Panel Discussion:** *The role and responsibilities of the Board of Directors*

- *Mr Kenneth Rushton*, Company Secretary, Imperial Chemical Industries, United Kingdom
- *Mr Lawrence Fok*, Senior Executive Director, the Stock Exchange, Hong Kong China
- *Dr Manfred Balz*, General Counsel, Deutsche Telecom AG, Germany

- *Dr Omkar Goswani*, Senior Consultant, Confederation of Indian Industries, India
- *Mr Ian Dunlop*, Chief Executive Officer, Institute of Company Directors, Australia

General discussion

Lunch

March 4, afternoon

SESSION IV THE IMPORTANCE OF TRANSPARENCY AND DISCLOSURE

Chair: *Mr Edward Chow*, Chairman, Corporate Governance Committee, Hong Kong Society of Accountants, Hong Kong China

Rapporteur: *Mr Prasarn Trairatvorakul*, Deputy Secretary-General, Securities & Exchange Commission, Thailand

14:15 - 15:45 *The main ingredients of an effective disclosure system for the purposes of corporate governance: the experience of OECD countries*

- *Mr Brian Brown*, Price Waterhouse Coopers, Singapore

Discussants:

- *Prof. Hideki Kanda*, Professor of Law, University of Tokyo, Japan
- *Prof. Chen-en Ko*, Department of Accounting, National Taiwan University, Chinese Taipei

General discussion

Coffee break

16:00 - 18:00 *Panel Discussion: Introducing Transparency in Corporate Groups: the importance from a corporate governance perspective*

- *H. E. Mr James Riady*, Ambassador, Special Envoy of the President, Indonesia
- *Mr Il Sup Kim*, Vice Chairman, Samil Accounting Corporation, Korea
- *Mr Mark Mobius*, Templeton International, Singapore
- *Ms Barbara Shiu*, Senior Director, Corporate Finance, Securities & Futures Commission, Hong Kong China

General Discussion

Day 3

March 5, morning

SESSION V THE IMPACT OF CORPORATE RESTRUCTURING EFFORTS ON CORPORATE GOVERNANCE PATTERNS

Chair: *Mr Lawrence Liu*, Attorney-at-Law, Lee and Li, Chinese Taipei

Rapporteur: *Mr Takahiro Yasui*, Principal Administrator, Directorate for Financial, Fiscal and Enterprise Affairs, OECD

9:00 - 10:45 **Presentation on *Corporate Restructuring in Asia following the financial crisis***

- *Mr William Mako*, Senior Analyst, Private Sector Development, the World Bank

Discussants:

- *Mr Edward R. Gustely*, Senior Advisor, Capital Market Supervisory Agency, Ministry of Finance, Indonesia
- *Mr Yoon Young Mo*, Korean Confederation of Trade Unions (KCTU), TUAC

General discussion

Coffee break

SESSION VI CONCLUDING SESSION: ROUND TABLE ON THE EMERGENCE OF A NEW INSTITUTIONAL STRUCTURE FOR CORPORATE GOVERNANCE IN ASIA

Chair: *Mr William Witherell*, Director, Directorate for Financial, Fiscal and Enterprise Affairs, OECD

11:00 - 11:20 **Keynote address on *Promoting good corporate governance: perspective of the Asian Development Bank***

- *Mr Myoung-Ho Shin*, Vice President, Asian Development Bank

11:20 - 12:00 **Reports by the five Rapporteurs of the Sessions**

12:00 - 12:30 **Concluding remarks and discussion**

Deepening policy dialogue on corporate governance: the task ahead

- *Ms Joanna Shelton*, Deputy Secretary General, OECD

End of meeting

Notes to the Agenda

1. The meeting will start at 9:00 on March 3 and finish at 12:00 on March 5. The main presentations will take approximately 20 minutes. Each panel presentation will take no more than 15 minutes. Discussants will speak for approximately 10 minutes. These relatively stringent time limits are required in order to have ample time for general discussion.

2. There will be background papers available on main corporate governance trends in the major Asian economies, in addition to the presentations.

3. One of the primary objectives of this meeting is to deepen the dialogue as part of the on-going development of the draft OECD Corporate Governance Principles, expected to be finalised in May 1999. The OECD Deputy Secretary General will introduce the objective and main thrust of these principles in her opening remarks. Copies of the draft OECD Corporate Governance Principles will be available and participants from non-member countries are encouraged to input on their formulation, by sending comments to the OECD Secretariat after the meeting. It should be noted that, as the agenda reflects the main substantive areas of the Principles, discussion is in itself expected to provide a useful insight to their relevance in their region and suggest avenues for further improvement.

4. *Session I* will provide an overview of corporate governance systems and main current issues in OECD countries. Patterns of equity ownership and governance in OECD countries can be divided into two broad categories: 1) "Outsider" systems, as found in the United States and the United Kingdom, where most equity is owned by widely dispersed groups of individual and institutional investors, with the latter gaining in importance and 2) "Insider" systems in most other OECD countries where ownership and control are relatively closely held by identifiable groups (e.g. family interests, banks, other companies) who have longer term relationships to the company.

All systems are evolving considerably, in order to address their main shortcomings. In the "outsider" systems, the dispersion of ownership traditionally made it difficult for shareholders to influence management; meanwhile companies dominated by "insiders" who have longer term stable relationships to the company may pursue objectives other than financial return and often have little accountability to non-controlling shareholders.

Despite these differing starting points, some common trends can be observed. Institutional investors are gaining importance as equity owners in virtually all countries, and the investor community is now international in outlook. Either through active portfolio selection or through "investor activism", institutional investors are seeking means to require management to give greater concern to shareholder financial return when formulating corporate strategy. Institutional investors tend to apply uniform performance standards in all markets. Increasing recourse to capital markets puts great pressure on management to produce competitive returns and to adhere to international standards concerning the rights of non-controlling investors.

Main issues for discussion

- What are the advantages and disadvantages of the major models of corporate ownership and governance?

- What is the impact of corporate governance arrangements on the performance of enterprises?
- What is the evidence on the convergence of different models? What is the impact of vast increases in international private capital flows? Do differences in perceptions of the rights of “stakeholders” other than shareholders still divide systems of governance? Is the concept of “shareholder value” becoming more widely accepted?
- How has the role of banks as corporate owners and governance agents been evolving? What are the perceived benefits and dangers from such an active role for the banks?
- What is the role of institutional investors and the equity markets? Is there any evidence that investor activism yields positive results?
- How important are stable shareholder groups in the corporate governance structure? Are such groups encouraged by the regulatory framework? What is the role and costs/benefits of cross-ownership?
- What is the role of state as owner or agent of (indirect) corporate control? How has this role changed with privatisation?

5. The objective of *Session II* is to obtain an overview of corporate governance systems and main current issues in Asian countries. One of the fundamental causes of the crisis that has swept through Asian and emerging markets last year is perceived to be the lack of effective corporate governance mechanisms. On one hand, there is weak monitoring by stakeholders in firms, including outside shareholders and credit institutions. On the other, there is a concentration of control in small groups of interests (usually powerful families) that are very often closely connected to the state and the financial sector. The lack of transparency and accountability of these arrangements, combined with the increasing, direct or indirect corporate exposure to international capital markets in most of the countries concerned have put the corporate governance issue at the centre of investor concerns.

It has been argued that the corporate governance systems under scrutiny had enabled Asian countries to have excellent economic records in 1960-1990. The aim of this session is to provide insights into whether and how these governance patterns became ineffective in the 1990s. Turning to the future, the current reforms and changes of governance patterns will also come under the focus of the discussion: the ways through which companies are growing more responsive to the demands of “outside” investors; the pressures on banks to play an effective monitoring role and even actively engage in corporate re-organisation; the patterns of corporate restructuring that is currently taking place on a large scale; and, last but not least, the increasing role for foreign investors in the economies of the region.

Main issues for discussion

- What are the major patterns in and differences among Asian economies in terms of corporate ownership and governance, both before and after the 1997 crisis?
- To what degree did inadequate standards of corporate governance contribute to the crisis? Did any systems prove to be more robust than others?
- What was the role of major (usually family based) shareholders in these systems? What was the role of the banks and the state? How did these agents interact?

- What features of Asian governance allowed companies and banks to become highly leveraged and diversified and to incur excessive risk?
- What is the thrust of the main reforms undertaken to address the current crisis? What is there expected impact in the medium and long term?
- What are the main forces driving corporate restructuring? Is the latter affecting ownership and governance patterns?
- How have foreign investors responded to corporate governance related reforms? Has the climate for FDI substantially improved?
- Has exit through insolvency proceedings become a more plausible option for failing firms?
- Is the market for take- overs expected to play a larger role in corporate governance in the medium term?

6. *Session III* will focus on the regulatory requirements that are needed to ensure an equitable treatment of shareholders. With the likelihood of greater recourse to international equity markets, the importance of protecting the rights of non-controlling shareholders increases. Management, often in alliance with controlling shareholders, has superior access to information and may be able to manipulate the decision making processes of the company to achieve its own particular goals.

One way for shareholders to influence the company is through the exercise of their voting rights at the Annual General Meeting (AGM). This presupposes a system which allows the effective participation of shareholder and the accurate representation of their views through the proxy mechanism. Sometimes management will attempt to change the profile of a firm, its capital structure or the balance of powers among existing owners by effectuating some major strategic moves (such as mergers or increases of capital) without the consent of the shareholders. It is also common in some countries to put the interests of major shareholders before those of the company as a whole, for example by guaranteeing the debt of their affiliates or entering into unprofitable transactions with the latter. All of these practices are perceived as pernicious to the development of the corporation and the attraction of outside, including foreign, investment.

The first part of Session III will focus on the different tools that are available in company law or securities regulation for the protection of shareholders. Here are some of the main issues for discussion:

- How should the need to protect shareholder rights be balanced against the need to ensure the smooth and efficient running of the every-day business of the firm?
- What are considered to be the most efficient voting right structures in modern publicly held corporations? What are the main prerequisites for their effective implementation?
- What are the major challenges in making the Annual General Meeting an effective instrument of governance?
- What is the most effective mechanism for consulting with and associating shareholders with major decisions of the corporation, such as mergers, substantial asset sales?

- How can non-controlling shareholders be protected against transactions that are based on conflicts of interests between the corporation and its major shareholders/management (such as shareholder loans or guarantees, or transfer without adequate consideration)? What have been the trends in Asian countries and OECD countries?
- Are there substantial regulatory barriers to corporate control transactions (i.e. take overs, substantial new equity issues)? Are shareholder provided with adequate protection where such transactions are set to take place(i.e. obligations to buy outstanding equity, pre-emption and appraisal rights).

The second part of this session will focus on a central corporate governance issue: the role of the board of directors. Considerable attention has been given to this area by the various industry/stock exchange Codes adopted in several OECD jurisdictions. In principle, the board should be accountable to all of the company's shareholders and should not favour the interests of controlling or domestic shareholders, or other specific shareholders or shareholder groups. While primarily acting in the long-term interests of the shareholders, the board should also be responsible for ensuring the fair treatment of the other stakeholders in the corporation (such as creditors and employees) and ensuring corporate compliance with applicable laws and regulations in the jurisdictions in which the corporation operates. There is often considerable tension between these different objectives.

Concerning the composition and organisation, it is often accepted as best practice that the board should include a sufficient number of members who are not employed by the company and (except for share ownership) are not closely related to the company or its management through significant economic, family or other ties. Certain key responsibilities of the board such as audit, nomination and executive remuneration require the attention of independent, non-executive directors. The establishment of committees containing a sufficient number of independent non-executive board members in the areas where there is a potential for conflict of interest or where independent business judgement is advisable should be encouraged. Another important issue is the nature and level of responsibility of board members for breaching their duties.

- What is the importance of the board of directors in the modern corporation? How can effective monitoring of managers be effectuated and capture by management resisted? What have been the most important trends as regards the duties and organisation of boards in Asian countries and OECD countries?
- How should boards balance the interest of non-controlling shareholders against those of controlling ones? How should boards balance the issues of “stakeholders” against those of shareholders?
- How has thinking been evolving on the need for independent directors? What should be the role and their duties?
- What are the most efficient approaches regarding the responsibility of board members?
- How should remuneration of board members be linked to corporate performance?

7. *Session IV* will focus on transparency and disclosure requirements for corporations. A strong disclosure regime is a pivotal feature of market-based monitoring of companies and is central to shareholders' ability to exercise their voting rights. Experience in countries with large and active equity markets shows that disclosure can also be a powerful tool for influencing the behaviour of companies and

for protecting investors. It also helps improve public understanding of the structure, activities and policies of enterprises. Ultimately, enhanced transparency and disclosure can be expected to improve the credibility of financial markets and encourages efficient use of capital.

Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to make informed decisions about the acquisition, ownership and sale of shares. In most OECD countries a large amount of information, both mandatory and voluntary, is compiled on publicly traded and large unlisted enterprises, and disseminated to a broad range of users including market participants, boards, other stakeholders, regulators and the general public. A frequent complaint in many Asian markets prior to the crisis was the relative opacity of financial, ownership and corporate governance arrangements; increasing transparency has thus been at the centre of current reform efforts.

The first part of this session will identify the main areas of disclosure of relevance to corporate governance and identify ways in which transparency is of essence to raising efficiency in governance arrangements. Issues that will be discussed include:

- What are the central elements of an effective disclosure regime? What areas require further development in the Asian context? To what degree do existing disclosure channels provide users with timely, accurate and relevant information? Are financial accounting standards adequate for market participants and for the purposes of governance? What should be the approach with accounting for intangibles?
- To what extent is disclosure of non-financial information relevant to the governance of enterprises? To what extent should items relevant to stakeholders other than shareholders, such as employees and consumers be included in the regular disclosure statements of companies?
- Should a company's corporate governance policies, in particular, boardroom procedures be an item for disclosure?
- What should be the role of the auditor? How should its independence be preserved and the veracity of the accounts strengthened? How can the implementation of independent auditing provisions be enhanced?

The second part of this session will focus on issues related to the transparency of corporate groups and other inter-corporate linkages. These are especially relevant in the Asian context, where corporations have often adopted intricate patterns of inter-company affiliation. These arrangements are perceived as impediments to a more effective governance regime when they are combined with a substantial reliance on outside investors to finance the groups growth. The latter often assume a big part of the risk without being aware of parallel flows between affiliates that very often divert a substantial part of the returns.

In some countries, corporate groups develop important inroads into the financial system. Another set of issues arises when this is the case: transparency and effective firewalls become necessary in order to maintain the systemic integrity of the financial system. More rigorous transparency and monitoring on direct or indirect affiliated lending may need to be put in place. Some of the main issues to be discussed in this part of Session IV include:

- Are standards for consolidated accounting and business combinations developed?

- Is there appropriate disclosure of ownership links? In general, is there legislation that addresses the issue of monitoring corporate groups? Are there any sanctions attached to misleading or incomplete reporting? Is the lifting of limited liability between affiliates, i.e. piercing the corporate veil an option under certain circumstances?
- Do current standards allow for appropriate disclosure of off- balance sheet transactions, cross-guarantees of credits, contingent liabilities and other risks?
- Does prudential regulation of financial institutions focus on the issue of affiliated lending?

8. *Session V* will concentrate on the current efforts to solve the problem of accumulated bad debt in the corporate sector through special corporate restructuring schemes, usually by bringing debtors and creditors together in an out-of-court re-organisation procedure. These issues are central to the recovery of the worst- hit Asian economies; they might lower the stock of bad debts accumulated and thus help the financial and corporate sectors get back on their feet. Most important for corporate governance purposes though, is the impact of these schemes on the future flows of corporate debt and, in general, on the behaviour of corporations and banks related to risk as well as the changes in the ownership and control structures of large debtors that it will generate. Some the main issues to be discussed here include:

- When are special policies that address the interface between the corporate and financial sector (mainly in the area of non-performing loans) needed? What is the role (or weaknesses) of traditional exit mechanisms for failed firms? What should be the relationship between the two procedures?
- What are the major characteristics of special restructuring programmes? To what extent should they use debt /equity conversions as a major restructuring tool?
- Who should be the major actors in corporate restructuring (the banks, the state, other)? What are their respective advantages and disadvantages? What are the proper incentives that need to be put in place in order to force conflicting interests (creditor/debtor) to converge?
- What are the results of corporate restructuring? Is there evidence of significant re-alignment of ownership structures, through de-mergers and M&As by outside investors (including foreign), floatations or other devises? Is there evidence of more independent behaviour in hitherto members of groups or loosely affiliated control structures?

9. In the *final Session VI*, the main presenter will present his/her overview of the discussion and evidence from the different corporate governance systems and attempt to draw a preliminary set of conclusions. Five rapporters will present a summary of discussions in their respective sessions. As mentioned above, these conclusions are important because they will also serve as an input to the ongoing drafting of the OECD Corporate Governance Principles. In his/her closing remarks, the OECD representative will discuss issues that should be treated in the future, including the further development of the policy dialogue on corporate governance between the OECD and Asian non-member economies, in view of the adoption of the OECD principles and the need for their implementation.