



# Good Policies and Practices for Corporate Governance of Company Groups in Asia





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# Preface

Holding companies and private corporations are the largest owner of listed companies in a large number of Asian jurisdictions. While group structures can have advantages for company operations, they also raise important challenges with respect to corporate governance including how to protect minority shareholders' interest against controlling shareholders and how to effectively oversee various risks arising from group structures. Furthermore, Asian company groups often expand to other markets, especially in Asia. Considering these characteristics, Asian regulators face similar regulatory challenges, pointing to a need for sharing of how policy measures and practices can be adopted to remain effective. This report analyses developments in twelve jurisdictions and identifies seven areas of recommendations for corporate governance of company groups, keeping in mind that Asian economies can be characterised by their heterogeneity for institutional developments, business practices, and regulatory environment. These recommendations focus on issues related to risk management, governance policies, access to key information about activities of group companies, independent directors, permissible group structures, disclosure and controlling persons.

Regional efforts to enhance corporate governance frameworks are instrumental to well-functioning capital markets. The importance is particularly acute in today's world, where the COVID-19 crisis and other emerging challenges shed new light on weaknesses in corporate governance and capital markets. The current review of the *G20/OECD Principles of Corporate Governance* aims to address these challenges and offer guidance to policy makers on how to strengthen corporate sector resilience and sustainability and how to improve access to capital market-based financing. This report may serve as a useful reference for the review of the Principles and draw a key lesson on addressing the rise in ownership concentration, thereby contributing to better corporate governance and access to capital markets.



Masato Kanda  
Chair, OECD Corporate Governance Committee

# Foreword

In Asia, company groups typically operate not only domestically but also beyond borders. While there are many good reasons for the formation of company groups, they also raise regulatory challenges for corporate governance.

To identify good practices and policies in the region, the OECD-Asia Roundtable on Corporate Governance launched a project on company groups in October 2020. Twelve jurisdictions participated, namely: Australia, People's Republic of China (hereafter "China"), Hong Kong (China), India, Indonesia, Japan, Korea, Malaysia, Singapore, Chinese Taipei, Thailand, and Viet Nam. Based on the findings from survey responses and discussion among the participating jurisdictions, this report identifies good policies and practices for the corporate governance of company groups in the region in seven areas.

This report was prepared by Kenta Fukami, Senior Policy Analyst in the Corporate Governance and Corporate Finance Division of the OECD Directorate for Financial and Enterprise Affairs with inputs from Asian jurisdictions participating in the OECD-Asia Roundtable on Corporate Governance. The author received valuable comments from OECD colleagues, in particular Serdar Celik, Acting Head, Daniel Blume, Senior Policy Analyst, and Alejandra Medina, Economist, all in the Corporate Governance and Corporate Finance Division. Mike Lubrano, Managing Director at Valoris Stewardship Catalysts, and Naoki Haraguchi, Policy Analyst in the OECD Financial Markets Division, also provided valuable support. The opinions expressed and arguments employed herein are those of the author and do not necessarily reflect the official views of the Member countries of the OECD.

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# Key policy recommendations

1. **Risk management** - Authorities should set out requirements or guidance stating that a listed company should have internal controls and risk management systems to effectively oversee and monitor various risks arising from its subsidiaries and, if necessary, other companies within the group.
2. **Governance policies** - Authorities should set out requirements or guidance stating that a listed company should have sound group governance policies/framework that ensure clear responsibilities and accountabilities are in place.
3. **Access to key information about activities of group companies** - Authorities should ensure that the regulatory framework is in place to enable a listed company to access key information about activities of its subsidiaries and, if necessary, other group companies to manage group-wide risks and implement group-wide objectives while clarifying whether and in what circumstances the listed company can access material non-public information.
4. **Independent directors** - Authorities should set out criteria and qualifications for independent directors to ensure that they are free from undue influence and discharge their responsibilities to act in the interest of all shareholders while also ensuring the protection of minority shareholders' interest.
5. **Permissible group structure** - Authorities should consider setting out requirements that limit certain structures of company groups including cross-shareholdings, layering, and parent-subsiary listings, or having safeguards to protect minority-shareholders' interest against risks arising from certain group structures.
6. **Disclosure** - Authorities should set out disclosure provisions relating to ownership and company group structures that include: i) major shareholders; ii) beneficial ownership; iii) corporate group structures; iv) cross-shareholdings; and v) shareholding of directors.
7. **Controlling persons** - Authorities could clearly define a role that controlling persons, including a founder and their family members, should play in the corporate governance and ensure that appropriate disclosure frameworks are in place to give visibility to their roles.

# Introduction

Company groups are common in Asia. As shown by Panel A of Figure 1, the largest 100 listed companies by market capitalisation have over 60 subsidiaries on average in several jurisdictions including **Australia, China, Japan, Malaysia, and Singapore**. In addition, a corporation/holding company is the dominant category of shareholders in most Asian jurisdictions. For example, in **Indonesia**, in the largest 500 listed companies by market capitalisation, approximately 440 listed companies have a corporation/holding company as the largest shareholder and their average shareholding is 54.2%. On the other hand, in **Australia** and **Japan**, the largest shareholders are institutional investors. However, in both countries, listed companies have more subsidiaries than in other Asian jurisdictions.

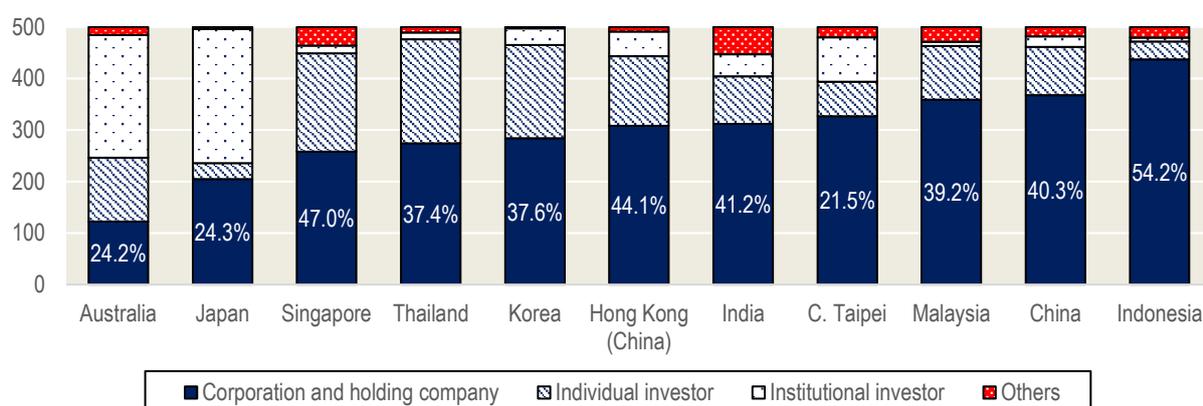
**Figure 1. Average number of subsidiaries and distribution of categories of the largest shareholders in selected jurisdictions**

Panel A shows the average number of subsidiaries for the largest 100 listed companies by market capitalisation in selected jurisdictions, as of March 2020. Panel B shows distribution of the largest shareholders for the top 500 listed companies as well as the average shareholding by a corporation as the largest shareholders (numbers in coloured in white).

(Panel A)

Average number of subsidiaries		Average number of subsidiaries	
<b>Australia</b>	83	<b>Japan</b>	146
<b>China (People's Republic of)</b>	69	<b>Malaysia</b>	63
<b>Hong Kong (China)</b>	83	<b>Singapore</b>	63
<b>India</b>	48	<b>Chinese Taipei</b>	41
<b>Indonesia</b>	22	<b>Thailand</b>	30

(Panel B)



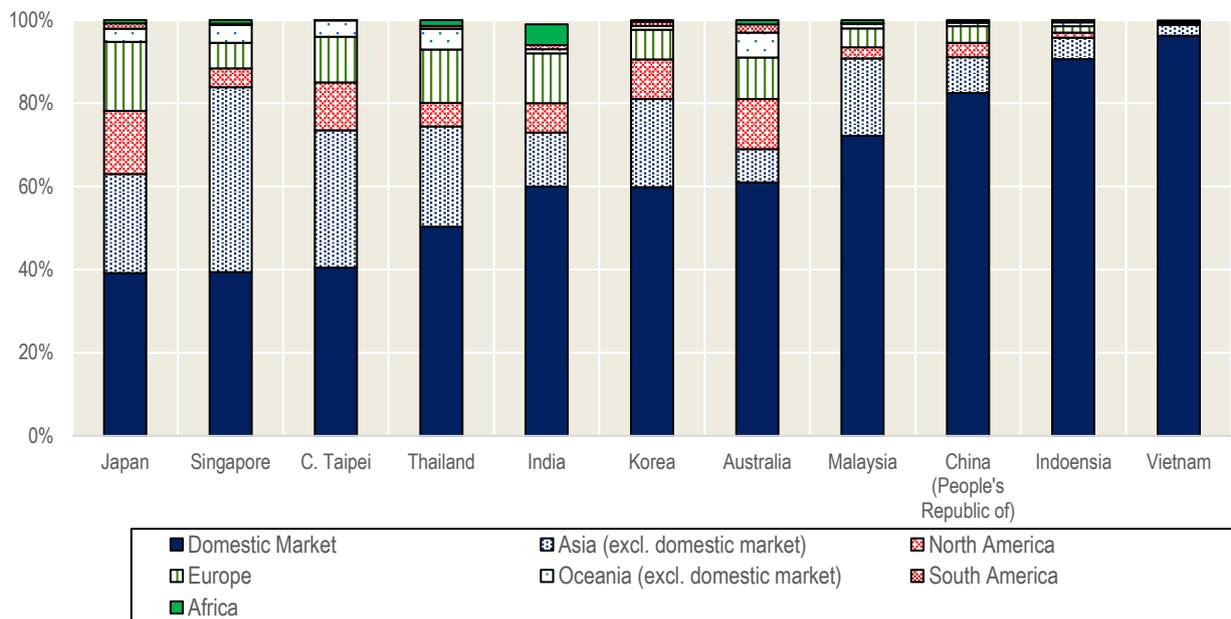
Note: This analysis does not cover indirect shareholdings. While there is a variance with respect to the definition of parent company among jurisdictions, in Panel A "subsidiary" means a company in which another company holds 50% or more share.

Source: Refinitiv (Accessed from 10 October to 23 October 2021).

Furthermore, company groups operate internationally. As illustrated by Figure 2, company group subsidiaries and affiliates commonly operate beyond national borders. For example, in **Korea**, on average, 21% of subsidiaries/affiliates are located in Asian jurisdictions outside of Korea, while 12% of subsidiaries/affiliates are located in North America. On the other hand, in **Thailand**, more group subsidiaries/affiliates are located in Europe rather than North America. Notably, in most jurisdictions, the majority of group subsidiaries/affiliates are located in the domestic market and other Asian jurisdictions.

**Figure 2. Geographic distribution of subsidiaries/affiliates in selected jurisdictions**

This figure shows geographic distribution of subsidiaries and affiliates at an individual company's level for the largest 100 listed companies by market capitalisation in selected jurisdictions. Except for Australia, the number of subsidiaries located in the domestic market is excluded from the number of subsidiaries in "Asia", while for Australia the number of subsidiaries located in Australia is excluded from the number in "Oceania".



Note: This analysis does not cover indirect shareholdings. While there is a variance with respect to the definition of affiliate company among jurisdictions, "affiliate" means a company in which another company holds between 1% and 50% of the company's shares.

Source: Refinitiv (Accessed from 10 October to 23 October 2021)

There are several advantages to operating in a company group. Those advantages include economies of scale, diversification of risks, efficiencies in resource allocation, less reliance on contract enforcement, reduced dependence on external finance, fewer informational asymmetries, lower transaction costs, and tax benefits. Protection of intellectual property rights and facilitation of cross-border activity are additional common rationales (OECD, 2020<sub>[1]</sub>). Furthermore, in some jurisdictions, where the life-time employment system is prevalent, parent companies often use their subsidiaries as an important means to developing employees and, for example, send their managerial candidates to the management of subsidiaries so that they can hone managerial skills. Moreover, by setting up a subsidiary as a separate legal entity, a parent company may give autonomy and authority to the subsidiary and simultaneously insulate the parent company's management from certain business and legal risks.

On the other hand, company groups may create economic inefficiencies and risks. The activities of individual companies within groups have a potential to overlap. Conglomerate company groups may face a difficulty to allocate resources efficiently and create synergies from diversified businesses. In addition, complicated group structures tend to increase the opaqueness inherent in capital relationships and related

party transactions. Furthermore, large company groups may exert market dominance and an undue influence over business sectors, suppliers, and politics (OECD, 2020<sup>[1]</sup>).

Asian authorities have taken policy measures to address corporate governance issues relating to company groups. To give further consideration to the promotion of good practices, the OECD-Asia Roundtable on Corporate Governance agreed to launch a project on company groups in Asia in October 2020, building on the OECD Corporate Governance Committee peer review on duties and responsibilities of the board in company groups. In March 2021, a survey was conducted through a questionnaire that was distributed to Asian/Pacific regulators. Twelve jurisdictions (Australia, China, Hong Kong (China), India, Indonesia, Japan, Korea, Malaysia, Singapore, Chinese Taipei, Thailand, and Viet Nam) participated in the survey. The questionnaire focused on disclosure, permissible group structures, independent directors, duties of the board, and controlling persons but did not directly address related party transactions that were extensively covered by the OECD Corporate Governance Factbook 2021.

The analysis was made based on the information provided by each jurisdiction and, where relevant, source documents. The report was consulted with participating authorities from December 2021 to January 2022, followed by discussion among them in February 2022.<sup>1</sup> Based on findings from the survey results and discussion, this report aims to serve as guidance and provide good practices, while being mindful of different levels of institutional development, business practices, and regulatory environment in Asian jurisdictions. It should be noted that the report presents some thresholds for certain requirements including qualifications and criteria for independent directors, but thresholds are only one of a number of factors and criteria that should be considered and should not be interpreted in isolation.

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<sup>1</sup> The participant list is annexed to this report.

# Good policies and practices

## Risk management

**Good Practice 1: Authorities should set out requirements or guidance stating that a listed company should have internal controls and risk management systems to effectively oversee and monitor various risks arising from its subsidiaries and, if necessary, other companies within the group.**

Sound group-wide risk management allows the board to understand and mitigate risks facing the company group. While there are good reasons for formation of a company group, company group structures may create economic inefficiencies and pose risks to shareholders and other stakeholders. For example, cash flow generated by profitable group companies may be invested in unprofitable businesses within the same group. Some group firms may be used as conduits to siphon off funds to other unprofitable group entities that may in turn use the funds for board/executive remuneration and dividends. Intra-group financing and multiple gearing within the group may make it possible for a company group to exponentially leverage and accumulate excessive risks. Group entities at the bottom of the layered group structure may squeeze local suppliers by using the brand name of the company group but they may not be monitored.

Whether non-financial or financial, company groups face various risks. The board of a parent company should ensure that group-wide risk management is in place and have a good understanding of the extent and nature of risks facing the company and its group companies. In this regard, the G20/OECD Principles of Corporate Governance VI.7 states the board should ensure appropriate systems of control are in place, in particular systems for risk management, financial and operational control, and compliance with the law and relevant standards. The annotation to this Principle elaborates that “(c)ompliance programmes should also extend to subsidiaries”. Several jurisdictions reported that they have an explicit requirement for the board of a parent/holding company to oversee risks arising from group companies. In **Thailand**, a listed holding company is required by regulation to have oversight systems to oversee and monitor the course of business their subsidiaries and affiliated companies.<sup>2</sup> In line with this requirement, **Thailand’s** Corporate Governance Code recommends that in assessing the effectiveness of the company’s internal controls and risk management, the board should consider the results of internal controls and risk management at its subsidiaries and affiliated companies. **Japan’s** and **Chinese Taipei’s** regulations are also explicit in requiring a listed company to oversee risks of its subsidiaries.<sup>3</sup> In **Hong Kong (China)**, **India**, and **Malaysia**, corporate governance codes or guidelines explicitly lay responsibility for oversight of risk management of subsidiaries at the listed company.<sup>4</sup> Notably, Malaysian Guidelines highlight that the board of a listed corporation must ensure there is an adequate group wide framework for co-operation and communication to enable the board to discharge their responsibilities including oversight of group financial

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<sup>2</sup> Clause 23(4) of Tor Jor. 39/2559

<sup>3</sup> For Chinese Taipei, Article 39 of the Regulations Governing Establishment of Internal Control Systems by Public Companies and Article 4 of Sample Template for XXX Co., Ltd. Rules Governing Financial and Business Matters Between this Corporation and its Affiliated Enterprises.

<sup>4</sup> For Hong Kong (China), Listing Rules Appendix 14 Corporate Governance Code – D.2.1. In India, SEBI’s circular directed all listed companies (SEBI/HO/CFD/CMD/CIR/P/2018/79) recommends that a listed entity with a large number of unlisted subsidiaries establish a strong and effective group governance policy.

and non-financial performance, risk management, and adoption of good corporate governance practices (Securities Commission Malaysia, 2020<sup>[2]</sup>).<sup>5</sup> In **Korea**, a listed company with total assets equal to or greater than 500 billion Won is required by law to establish guidelines and procedures with respect to compliance, which may cover internal controls for group companies, and have a person responsible for duties related to abiding with compliance guidelines.<sup>6</sup>

Some jurisdictions referred to disclosure provisions that require or recommend a listed entity to provide information about certain aspects of risks associated with group companies. For example, in **Singapore**, the board is required to comment on the adequacy and effectiveness of the company's internal controls.<sup>7</sup> Where either the board or the Audit Committee comments that a group to which the listed company belongs has weaknesses in its internal controls and risk management systems, the listed company must provide clear disclosure on the weakness and the steps to address them.<sup>8</sup> In **Korea**, a listed company is required to disclose financial conditions and key business operations concerning its subsidiaries.<sup>9</sup> In a similar vein, a listed company is required to disclose the business and financial profile of its subsidiaries in **Indonesia**.<sup>10</sup> **Australia's** Modern Slavery Act 2018, which specifies an obligation to disclose risks of modern slavery in supply chains, extends to a listed parent entity with annual revenue of over 100 million AUD. In **Malaysia**, a listed company is required to disclose in the annual report a statement on any identified, anticipated or known risks that the group is exposed to which may have a material effect on the group's operations, performance, financial condition, and liquidity together with a discussion of the plans or strategies to mitigate such risks.<sup>11</sup>

While disclosure of internal controls and risk management is an essential component, authorities should consider addressing directly the need to develop a group-wide risk management framework. Effective group-wide risk management is not about eliminating risk taking, which is closely related to group strategy. Given the company group's objectives and the environment in which group companies operates, the risk management system should help the company group to set a risk tolerance and risk appetite. In some instances, group-wide risk identification and assessment may necessitate the group to establish a group risk management unit that is composed of either or some of the board, the management, or the internal auditor or similar functions. Sound risk management systems may also identify how to respond to risks and monitor them.

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<sup>5</sup> Appendix A.

<sup>6</sup> Article 542-13, paragraph 1-2 of Korea's Commercial Act.

<sup>7</sup> Rule 210(5)(e) of the SGX Listing Rules (Mainboard) / Rule 406(3)(e) of the SGX Listing Rules (Catalist). Catalist is one of the two boards of the Singapore Exchange and caters to the need for fast-growing enterprises. A Catalist listing does not have quantitative requirements but companies seeking a primary listing on the Catalist must be brought to list by authorised Full Sponsors, who will assess its suitability to list and will guide the company through the listing process.

<sup>8</sup> Mainboard Practice Note 12.2 and Catalist Practice Note 12.B. Principle 10 of Code of Corporate Governance.

<sup>9</sup> Article 168, paragraph 4 of Korea's Enforcement Decree of the Financial Investment Services and Capital Markets Act, and Article 8, paragraph 1 of the Securities Listing Rules.

<sup>10</sup> OJK Regulation No.29/POJK.04/2016 and OJK Circular No.16/SEOJK.04/2021 regarding Annual Report of Issuer and Public Company.

<sup>11</sup> Paragraph 7(d) Appendix 9C Bursa Malaysia Listing Requirements.

## Governance policies

**Good Practice 2: Authorities should set out requirements or guidance stating that a listed company should have sound group governance policies/framework that ensure clear responsibilities and accountabilities are in place.**

Whether a group structure is centralised or decentralised, a certain degree of group-wide coordination is required to achieve group-wide objectives and manage risks at the group level. Group policies for corporate governance help ensure that clear responsibilities and accountabilities are in place. Such a group policy may cover how to provide a group-wide direction, how to allocate responsibilities and accountabilities of the management body of the companies within the group vis-à-vis group management, and how to ensure oversight functions in place at entity level and group level. Especially, the importance of group policies for corporate governance is significant for large company groups, where responsibilities for group-wide issues are often vague. In some company groups, more autonomy rests with the board at the entity level to quickly adapt to changes in local conditions, while in other company groups, there is more comprehensive authority at the group level to secure more consistent procedures across the group.

A few jurisdictions reported that they have recently introduced an explicit guidance or a requirement relating to governance policies for company groups. In 2020, **Malaysia** issued “Guidelines on Conduct of Directors of Listed Corporations and their Subsidiaries”, which set out requirements in relation to the duties and responsibilities of boards in company groups including the need to establish a group-wide framework to enable oversight of group performance and the implementation of corporate governance policies across the group. Importantly, Malaysian Guidelines highlighted that the establishment of a group governance framework is not intended to advocate listed companies micromanaging their subsidiaries but should serve to identify the authority and decision limits within the group (Securities Commission Malaysia, 2020<sup>[2]</sup>).

In **India**, SEBI’s circular, released in 2018, recommends that a listed entity with a large number of unlisted subsidiaries 1) monitor their governance through a dedicated group governance unit comprising the members of its board of directors; and 2) establish a strong and effective group governance policy (Securities and Exchange Board of India, 2018<sup>[3]</sup>). In 2019, **Japan** published Group Guidelines that provide practical recommendations for what factors could be considered in managing a company group, presenting case studies of both Japanese and foreign firms. The Group Guidelines cover comprehensive topics including a) how to structure company groups; b) how to develop an internal control system; c) how to select the management of subsidiaries and determine their compensation; and d) how to address corporate governance issues arising from dual listings of parents and subsidiaries. With respect to internal control systems, the Group Guidelines clarify that it is the parent company board’s responsibility to develop the policy for a group-wide internal control system and to oversee and monitor its implementation.

## Access to key information about activities of group companies

**Good Practice 3: Authorities should ensure that the regulatory framework is in place to enable a listed company to access key information about activities of its subsidiaries and, if any, other group companies to manage group-wide risks and implement group-wide objectives while clarifying whether and in what circumstances it can access material non-public information.**

Access to key information about activities of group companies is important and often even necessary for parent company boards to discharge their fiduciary duties and make an informed decision about group-wide issues including risk management and disclosure. Another key consideration is, however, how to ensure equal treatment of shareholders. Regulatory frameworks should address these two potentially conflicting purposes. Especially in case that the parent company board is given access to sensitive information about group companies, the exception to the legal parity of parent companies and other shareholders should be justifiable and some safeguards to prevent their misuse should be considered.

Such safeguards include clarification of whether and in what circumstances the parent company board can access material non-public information about group companies. In this regard, Principle VI.F states that “(i)n order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information, while the annotation to Principle V states that “(the Principles) also support simultaneous reporting of material or required information to all shareholders in order to ensure their equitable treatment. In maintaining close relations with investors and market participants, companies must be careful not to violate this fundamental principle of equitable treatment.”

All surveyed jurisdictions except for **China** reported that their regulatory frameworks contain provisions that permit the board or management of a parent company to examine the books and records of their subsidiaries. This result is a corollary to the parent company’s general obligation to prepare the consolidated financial statements.

Such rights to access information about activities of group companies extend to other issues in **Thailand’s**, **Hong Kong (China)’s**, and **Chinese Taipei’s** regulatory frameworks, with some variance. In **Thailand**, a listed holding company (whose primary business is to hold a controlling interest of other companies) is required to have in place sufficient measures to supervise the course of business of their subsidiaries and affiliated companies and oversee the accuracy and completeness of the disclosure for such subsidiaries and affiliated companies.<sup>12</sup> Any non-public information that is necessary for fulfilling such requirement must be shared with the listed holding company. It should be noted that when the non-public information is price-sensitive information, the insiders (including directors of the listed holding company in this case) have a legal obligation not to use the information for the personal gain of themselves or others. In **Chinese Taipei**, a public company shall obtain, analyse and review, at least on a quarterly basis, each subsidiary’s monthly management reports, including business report, monthly statement of production and sales value, and other financial information. In **Hong Kong (China)**, it is regarded as good practice that directors are provided with appropriate information so that they can make an informed decision and perform their duties and responsibilities and the information may include activities of group companies.<sup>13</sup>

## Independent directors

**Good Practice 4: Authorities should set out criteria and qualifications for independent directors to ensure that they are free from undue influence and discharge their responsibilities to act in the interest of all shareholders while also ensuring the protection of minority shareholders’ interest.**

Many jurisdictions’ regulatory frameworks establish requirements related to independent directors. The function and role that independent directors should fulfill, however, varies among jurisdictions. What they should be independent from is to a large extent dependent upon the board structure, ownership patterns, and the legal status of controlling shareholders. In general, independent directors are expected to exercise a judgment independent from either or some of the management, dominant shareholders, group companies, a founder/founder family, or a corporation with a business relationship.

In the context of company groups, particular attention should be given to dominant shareholders and individual entities within the group. In many Asian jurisdictions, concentrated ownership by a corporation is the dominant pattern for listed companies. Even in case there is a controlling shareholder, the board still has the fiduciary duty to the company and all shareholders and some mechanisms to protect minority shareholders’ interest should be considered. The risk of abuse of power by controlling shareholders may

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<sup>12</sup> Clause 23(4) of Tor Jor. 39/2559 (Thailand)

<sup>13</sup> C.5 of the Listing Rules Appendix 14 Corporate Governance Code

be addressed by imposition of fiduciary duties on controlling shareholders.<sup>14</sup> However, in most Asia jurisdictions with the notable exception of **China**, controlling shareholders do not owe fiduciary duties to other shareholders, and independent directors are often expected to play an important role in protecting minority shareholders' interests against controlling shareholders. Furthermore, the potential abuse of related party transactions is another key consideration given the prevalence of company groups in Asian jurisdictions. While abusive related party transactions harm minority shareholders' interest, intra-group transactions can contribute to economic development as long as oversight functions are in place. In this respect, special emphasis is put on independent directors to address conflicts of interest arising from related party transactions.

As shown in Table 1, all surveyed jurisdictions reported that their legal/regulatory requirements exclude significant shareholders from qualifications of independent directors. The threshold for determining which shareholders are excluded varies among jurisdictions. **China, Viet Nam and Thailand** adopt 1% as the threshold. In **Hong Kong (China)**, the criteria for determining the independence of a non-executive director includes among other factors consideration of whether they hold more than 1% of the number of issued shares of the listed issuer. In this case, the listed issuer must demonstrate prior to appointment that the candidate is independent, and a candidate holding an interest of 5% or more will normally not be considered independent.<sup>15</sup> In **Singapore**, the Mainboard Rules do not provide for the definitive threshold of shareholding that is considered non-independence. However, the Code of Corporate Governance recommends that a substantial shareholder with 5% or more stake should be deemed non-independent.<sup>16</sup> In **Japan**, the Companies Act excludes from qualifications of independent directors a controlling shareholder who in principle means a person who: a) owns more than 50% of the voting rights; or b) owns 40% of the voting rights and controls the direction of the business. Importantly, Japan's listing regulations provide for an overarching requirement that independent directors should be free from any potential conflicts of interests with minority shareholders, with supplementary criteria.<sup>17</sup> In addition, the recent revision of Japan's Corporate Governance Code includes a recommendation that a controlling shareholder be mindful of the company's and shareholders' common interests and a listed company with the controlling shareholder should develop a governance system to protect minority shareholders.<sup>18</sup> In **Korea**, the largest shareholder is not considered independent, irrespective of their shareholdings.<sup>19</sup> Notably, in **India** and **Thailand**, their regulatory framework contains an explicit provision that excludes from qualifications for independent directors a controlling person or promoter who includes a founder/their family group.

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<sup>14</sup> For example, under Delaware Law of the United States, fiduciary duties require a controlling shareholder to act in the best interests of the company and its shareholders, not in the controlling shareholder's self-interest to the detriment of the company or other shareholders. See (Harvard Law Review, 2020<sup>[6]</sup>)

<sup>15</sup> LR 3.13(1)

<sup>16</sup> Provision 2.1 of the Code of Corporate Governance

<sup>17</sup> Article 436-2 (i) of Tokyo Stock Exchange (TSE) Securities Listing Regulations

<sup>18</sup> Annotation to Principle 4 of the Corporate Governance Code

<sup>19</sup> Article 382, paragraph 3 of the Commercial Act

**Table 1. Qualifications of independent directors**

This table shows whether the legal/regulatory framework excludes from qualifications of independent directors i) significant shareholders; ii) the incumbent management of the company; iii) the management/directors of its parent company; and iv) the management/directors of its subsidiary.

	Significant shareholders (threshold)	Management of the company	Management/ directors of the parent company	Management/ directors of the subsidiary
Australia	◆ (5%)	◆	◆	◆ ID is not excluded
China (People's Republic of)	● (1%)	●	● ID is excluded	● ID is excluded
Hong Kong (China)	● (5%)	●	● ID is excluded	● ID is excluded
India	● (2%)	●	■ ● ID is not excluded	■ ● ID is not excluded
Indonesia <sup>1)</sup>	● (Any shareholding) <sup>1)</sup>	● <sup>1)</sup>	● ID is not excluded <sup>1)</sup>	● ID is not excluded <sup>1)</sup>
Japan	● (40% or 50%) <sup>2)</sup>	●	● ID is excluded	● ID is excluded
Malaysia	● (10% or 5%) <sup>3)</sup>	●	● ID is not excluded	● ID is not excluded
Singapore	◆ (5%)	●	◆ Only management is excluded	◆ Only management is excluded
Korea	● <sup>4)</sup>	●	● ID is excluded	● ID is excluded
Chinese Taipei	● <sup>5)</sup> (1%, 5%)	●	● ID is excluded	● ID is excluded
Thailand	● <sup>6)</sup> (1%)	●	● ID is not excluded	● ID is not excluded
Viet Nam	● (1%)	●	-	-
●	Fully mandatory			
◆	Voluntary (corporate governance code or guidance note)			
■	Partially mandatory			
ID	Independent director			
ID is excluded	The independent director of the parent/subsidiary company cannot be independent director of the company.			

Notes:

1. **Indonesia** adopts a two-tier board system. The requirement with respect to independence is only applicable to the supervisory board (the Board of Commissioner).
2. In **Japan**, under Article 3 (3) of Ordinance for Enforcement of the Companies Act, a controlling shareholder means in principle a person who:a) owns more than 50% of the voting rights; or b) owns 40% of the voting rights and controls the direction of the business.
3. In **Malaysia**, a major shareholder is considered as non-independent. A major shareholder means a person who has an interest or interests in one or more voting shares in a corporation and the number or aggregate number of those shares, is (a) 10% or more of the total number of voting shares in the corporation; or (b) 5% or more of the total number of voting shares in the corporation where such person is the largest shareholder of the corporation.
4. In **Korea**, the largest shareholder is disqualified as an outside director.
5. In **Chinese Taipei**, a natural-person shareholder who holds one percent or more of the shares or ranks in the largest 10 shareholders may not be an independent director. To calculate their shareholdings, shareholding by the person's spouse, minor children, or the person under others' names are counted. In addition, a director, supervisor, or employee of a corporate shareholder that directly holds five percent or more of the shares or ranks in the largest 5 shareholders may not be an independent director.
6. Clause 17\*2 ( of Tor Jor.39/2559)

Source: OECD Survey on Company Groups in Asia.

While Principles V.A.5 and VI.E do not take a position on whether an independent director on the board of a subsidiary must have no affiliation on the board of a parent or other group company, the annotation to Principle VI.E elaborates that “(i)n many instances objectivity requires that a sufficient number of board members not be employed by the company or its affiliates and not be closely related to the company or its management through significant economic, family or other ties.” With respect to the management of the company, all surveyed jurisdictions reported that the incumbent management of the company is not deemed independent. In a similar vein, all responding jurisdictions except **Singapore** reported that their regulatory provisions clearly state that the management/executive director of the subsidiaries and parent company is generally considered non-independent. In **Singapore**, the listing rules do not exclude the board of the subsidiary/parent company from being an independent director of said listed company.<sup>20</sup> In **Australia**, ASX Corporate Governance Principles and Recommendations provide examples of interests, positions and relationships that might raise issues about the independence of a director, and factors relevant to assessing the independence includes if the director is the management/director of a substantial holder which includes the parent company.<sup>21</sup> Even among jurisdictions where the management/executive director of the subsidiaries and parent company is deemed non-independent, there is a variance with respect to independent directors of the subsidiary/parent company. **India, Indonesia, Malaysia, and Thailand** reported that an independent director of the subsidiary/parent company may be deemed independent, while in **China, Hong Kong (China), Japan, Korea, and Chinese Taipei**, they may be deemed non-independent. This difference may reflect what role independent directors are expected to play in group companies. For example, in **Thailand**, a holding company is required to designate a director or executive of its subsidiaries and affiliates. While the designated person is not necessarily a director of the holding company, they can serve as an independent director for both the holding company and the subsidiary/affiliate.

## Permissible group structure

**Good Practice 5: Authorities should consider setting out requirements that limit certain structures of company groups including cross-shareholdings, layering, and parent-subsidiary listings, or having safeguards to protect minority shareholders’ interest against risks arising from certain group structures.**

A company group can be structured in several ways, including layering, pyramidal structures, cross-shareholdings, circular-shareholding, and block holdings. The group structure can be further complicated by combinations of these ownership relations, which may make control of the listed company very opaque and may increase the risk of abusive use of the group structure. The annotation to Principle II. E. 3 recognises risks associated with complex group structures: “Pyramid structures, cross shareholdings and shares with limited or multiple voting rights can be used to diminish the capability of non-controlling shareholders to influence corporate policy.”

Most company groups in Asia involve a pyramidal structure with layering of companies under an ultimate parent/ holding company. One problem that may concern investors is the difference between voting and cash flow rights that allows a group company at an upper level to control another group firm at a lower level. This may provide incentives for the upstream company to tunnel resources from downstream companies in which it has a low cash flow stake. The most direct way to prevent the misuse of pyramidal structures is limitation on layering which may, however, entail a disproportionate restriction on the expansion of businesses. Within Asia, only **India** limits layering.<sup>22</sup> In 2017, the India government introduced a limit on layering with an aim to prevent misuse of a complicated group structure including for diversion

<sup>20</sup> 210 (5) (d) of the Main Board Rules, Practice Guidance 2(Board Composition and Guidance).

<sup>21</sup> Box 2.3, ASX Corporate Governance Principles and Recommendations.

<sup>22</sup> Israel has also introduced limitation on layering (OECD, 2020<sub>[11]</sub>).

of funds and money laundering. In principle, no company is allowed to have more than two layers of subsidiaries in India. Recognising that limitation could substantially affect the business activity of company groups, however, the India government introduced a grandfathering provision that allows the existing companies to continue with the existing structure, provided that they will not have any additional layer of subsidiaries. Furthermore, certain business sectors, such as banks, insurance, systemically important non-banking non-finance companies, and government-owned enterprises, are exempt from this restriction on layering. Nor does this restriction apply in the case of acquisition of a foreign entity having two or more layers.

Another possible structure is cross-shareholding, where companies own each other's shares.<sup>23</sup> Cross-shareholding arrangements typically fall into three types: a) cross-shareholding between group companies; b) cross-shareholding between a supplier and buyer; and c) cross-shareholding between a bank and borrower, all of which aim at maintaining "strategic" relationships. In the context of company groups, it is argued that the first type of cross-shareholding involves tacit agreements to protect the incumbent management of both sides and insulate them from market pressures including hostile takeovers. This may help stabilize the group management. However, cross-shareholding often concerns investors, as it may reinforce the status quo and suppress changes in the management and possibly business model. Furthermore, the cross-shareholding may reduce incentives for the management to respect minority shareholders' interests and fulfill their accountability with respect to corporate governance. In all participating jurisdictions, cross-shareholding between the parent company and subsidiary is restricted. In **Viet Nam**, any subsidiary companies under the same parent company must not contribute capital to or purchase shares of each other to establish cross-ownership. **Indonesia** has adopted the strictest approach to prohibit a company, whether listed or not, from engaging in cross-shareholdings.<sup>24</sup> **Australia** has provisions that provide constraints on the acquisition of the company's own shares or shares in its subsidiary, the transfer of shares to a controlled entity and restrictions in circumstances where a controlled entity holds shares in the parent entity.<sup>25</sup>

Parent-subsidiary listing is also a key issue. It is argued that dual listings of parents and subsidiaries may allow subsidiaries to have direct and independent access to the stock market and provide more investment options to investors. Moreover, listed subsidiaries may maintain stable management and attract capable workers under the umbrella of their parent company reputations. However, it often raises a concern that subsidiaries may be captured by interests of a parent company and be forced to undertake activities or transactions that are unfavorable to the subsidiary but beneficial to the parent company.

Figure 3 shows the number of parent-subsidiary listings in selected Asian jurisdictions. Of those jurisdictions, **China, Hong Kong (China), Thailand, and Chinese Taipei** reported that they have special provisions applicable to listed companies that spin off its subsidiary for separate listing. In **Hong Kong (China)**, no parent company is allowed to spin off its subsidiary for separate listing within three years of the parent's original listing.<sup>26</sup> This lock-up period can serve to prevent an opportunity to obtain duplicate IPO profits from the same business. Furthermore, in **Hong Kong (China)**, a listed parent company is required to retain a sufficient level of operations and sufficient assets to support its separate listing status.<sup>27</sup> In **Thailand**, a listed holding company (whose primary business is holding a controlling interest of other companies) shall not spin off for listing its subsidiary that has its own main business operation and

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<sup>23</sup> This relation can be expanded to circular shareholding, where Company A owns Company B's shares, which owns Company C's shares, which in turn owns Company A's share, making circular-shaped ownership relations.

<sup>24</sup> Article 36, Law of the Republic of Indonesia No.40 of 2007 concerning Limited Liability Company.

<sup>25</sup> Sections 259B to 259D of the Corporations Act 2001.

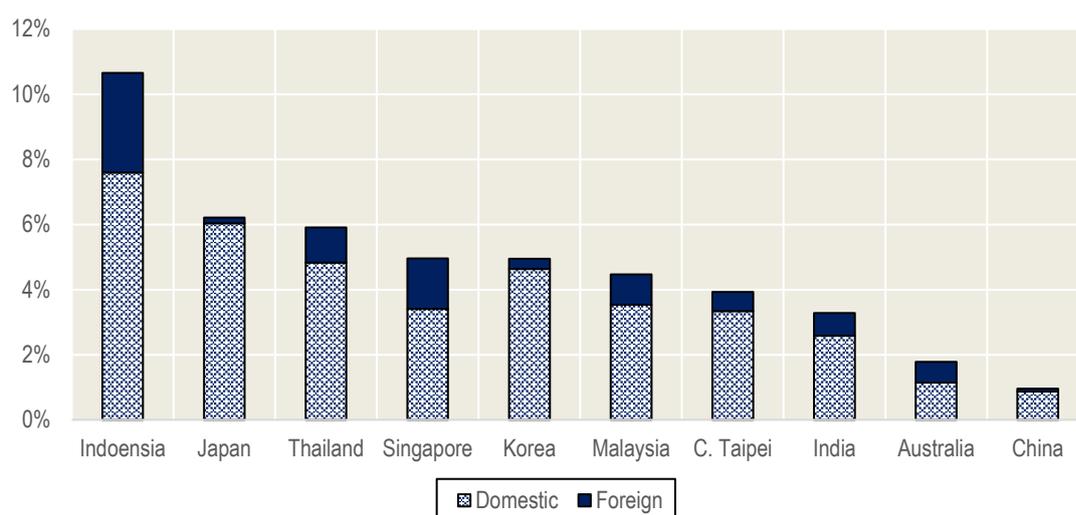
<sup>26</sup> Article 3(b) of Listing Rule Practice Note 15.

<sup>27</sup> Id, 3(c).

produces main profits for the listed holding company.<sup>28</sup> In **Chinese Taipei**, a listing applicant with a listed parent company is required to ensure independence of its business operation and management. Taiwan Stock Exchange reviews not only the listing applicant's business operation but also its listed parent company's financial performance and group governance policy.<sup>29</sup> In **Singapore**, neither a subsidiary nor parent company of an existing listed issuer will be in principle considered suitable for listing if the assets and operations of the applicant are substantially the same as those of the existing issuer. In arriving at a decision, the stock exchange will consider the applicant's business or commercial reasons for listing. While these are ex-ante regulations that control at the point of entry into the stock market, **Japan** has also strengthened disclosure requirements as ex-post measures to address conflicts of interest arising from the parent-subsidary listing, and to monitor a listed company that will end up having a parent company with a controlling stake. These include a requirement that a listed company with a listed subsidiary disclose group governance policy and provide justification for maintaining the parent-subsidary listing and how the listed parent ensures effective implementation of the group governance policy.<sup>30</sup>

### Figure 3. Parent-subsidary listing

This figure shows the proportion of parent-subsidary listings by jurisdictions. "Foreign" means the subsidiary is listed on the domestic market but its parent company is listed in a foreign jurisdiction, while "domestic" means both the parent company and its subsidiary are listed on the domestic stock exchange.



Note: Listed companies which were analysed account for approximately 90% of the total market capitalisation for each jurisdiction. This analysis does not cover indirect shareholdings by the company. While there is a variance with respect to the definition of parent company among jurisdictions, in this figure "subsidiary" means a company in which another company holds 50% or more shares.

Source: Refinitiv (accessed from 10 October to 23 October 2021).

<sup>28</sup> Clause 66(4) of Regulation of the Stock Exchange of Thailand Re: Listing of Ordinary Shares or Preferred Shares as Listed Securities B.E. 2558 (2015) dated 11 May 2015.

<sup>29</sup> Article 9, 18 and 19 of the Taiwan Stock Exchange Corporation Rules Governing Review of Securities Listings

<sup>30</sup> Forms of "Corporate Governance Report", Tokyo Stock Exchange.

## Disclosure

**Good Practice 6: Authorities should set out disclosure provisions relating to ownership and company group structures that include: major shareholders; beneficial ownership; corporate group structures; cross-shareholdings; and, shareholding of directors.**

The ownership structure is one of the most important factors that determine corporate governance issues facing the company. Especially, information about controlling shareholders as well as beneficial owners is increasingly important in both advanced and emerging markets as the concentration of ownership is a global phenomenon for listed companies. It is no longer unusual that a few shareholders as well as beneficial owners have a significant influence over the direction of a listed company including selection of board members and senior management, their compensation, and acquisition and disposition of corporate assets. Principle V.A.3 recognises that investors have the basic right to be informed about the ownership structure of the company, and the right to such information should extend to information about the structure of a group of companies and intra-group relations. While investors hold direct equity only in the listed company, they value the whole business structure (Securities and Exchange Board of India, 2017<sup>[4]</sup>). Lack of transparency around group structures may make it harder for investors to make proper investment and voting decisions.

All responding jurisdictions require a listed company to disclose major shareholders. Out of 12 jurisdictions, ten jurisdictions set the threshold for determining mandatory disclosure of major shareholders at 5%. In **Thailand**, a listed company is required to disclose its 10 largest shareholders. In **India**, a listed company is required to disclose shareholding of all promoters (which refer to “controlling” shareholders and/or founders) and non-promoters holding more than 1% of the shares.

Together with information about major shareholders, disclosure of beneficial ownership (in some jurisdictions also termed ultimate owner) provides a clearer picture of what affects the direction of a listed company. Especially in jurisdictions where a private corporation and/or a holding company is the largest category of owners, a listed company often stands at a middle layer of the pyramidal group structure. In this case, information about ultimate owners helps make it clear who stands behind the listed company’s shareholders and how the company is directed and controlled. In 5 out of 12 jurisdictions, information about beneficial ownership is publicly available while some jurisdictions allow certain shareholders who hold deemed interests to access the information. In **Australia**, there are general provisions applicable to listed companies which require disclosure of ‘relevant interests’ in securities in the listed company that amount to a substantial holding and provide that the listed company or ASIC may direct a person to disclose if they have a ‘relevant interest’ in securities of the listed company. In both cases, a ‘relevant interest’ is broadly defined and is centered around whether a person holds or has power to control voting or disposal of the securities, so will often capture beneficial ownership. In **India**, a listed company is required to disclose details of significant beneficial owners including the name, nationality, unique identifier, and number of shares as part of the company’s shareholding pattern every quarter.<sup>31</sup>

Disclosure of corporate group structures is also useful to understand the control mechanisms of the listed company. As discussed, a corporate group can be structured in several ways including layering, pyramiding, cross-shareholdings, circular-shareholdings, and block holdings. The group structure can be further complicated by combinations of these ownership relations, which may make control of a listed company very opaque. A graphical diagram that shows intra-group relations is a useful way to illustrate the group structure. In **Thailand**, a group shareholding diagram shall be illustrated in the annual report (Form 56-1). In **Indonesia**, a listed company is required to disclose its corporate group structure that includes beneficial owners and subsidiaries. Three jurisdictions require a listed company to disclose the particulars of group companies, rather than diagrams. In **Hong Kong (China)** a listed company is required

<sup>31</sup> SEBI/HO/CFD/CMD1/CIR/P/2018/0000000149.

to disclose in the financial statement the particulars of every subsidiary including its name, principal country of operation, and country of incorporation. **Japan**, **India**, and **Chinese Taipei** have a disclosure requirement similar to Hong Kong's, but Japan's disclosure includes associates, and India's and Chinese Taipei's disclosures include associates and joint ventures.

Furthermore, transparency around cross-shareholdings is also required in several jurisdictions. **Japan** and **Korea** have an explicit disclosure requirement with respect to cross-shareholdings. In Japan, all listed companies except JASDAQ companies are required to 1) disclose detailed information including policies for cross-shareholdings and an annual assessment of the costs and benefits and how it impacts a company's cost of capital, 2) provide justification for maintaining each stock, and 3) offer plans for unwinding them. In **Thailand**, a corporate group diagram may cover cross-shareholdings to the extent that cross-shareholdings are relevant for intra-group relations. In **Indonesia**, cross-shareholding is prohibited by the Company Law.

Disclosure of shareholding of directors and/or key executives is mandated in all surveyed jurisdictions. While shareholding by directors may help reduce the agency conflicts arising from separation of ownership and management/control, considerable shareholding of directors may also hamper the ability of shareholders to monitor the board and/or management and give directors incentives to extract private benefits at the expense of minority shareholders. Information about directors' shareholdings may assist in understanding what incentive mechanisms come into play for the board. It is also regarded as good practice to disclose shareholding of family members of directors and/or key executives. In **Chinese Taipei** and **Thailand**, information about shareholding of directors and/or key executives is extended to their family members. In **Malaysia**, a listed company is required to disclose each director's shareholding for the listed company and its related corporations.<sup>32</sup> In **Australia**, a listed company is required to notify the relevant market operator of interests held by its directors, which includes relevant interests in securities of the company or a related body corporate.

**Table 2. Disclosure on company groups**

	Major share ownership (threshold)	Beneficial owners	Corporate group structures	Special voting rights	Cross share-holdings	Share-holdings of directors
Australia	● (5%)	● <sup>2)</sup> ■	●	◆	■ <sup>8)</sup>	● ■
China (People's Republic of)	● (5%)	■	●	●	-	●
Hong Kong (China)	● (5%)	● ■ <sup>3)</sup>	●	●	-	●
India	● <sup>1)</sup>	● ■	●	●	-	●
Indonesia	● (5%)	●	●	-	- <sup>9)</sup>	●
Japan	● (5%)	◆ ■	●	●	●	●
Malaysia	● (5%)	■ <sup>4)</sup>	●	●	-	●
Singapore	● (5%)	● ■ <sup>5)</sup>	-	●	-	●
Korea	● (5%)	●	●	●	●	●
Chinese Taipei	● (5%)	■ <sup>6)</sup>	●	●	- <sup>10)</sup>	●
Thailand	● (10 largest shareholders)	● <sup>7)</sup>	●	●	●	●
Viet Nam	● (5%)	●	●	-	-	●

<sup>32</sup> Paragraph 23(b) Appendix 9c Bursa Malaysia Listing Requirements

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- Mandatory disclosure to public
  - ◆ Voluntary disclosure to public
  - Mandatory reporting to the regulator/authorities
  - No explicit requirement/recommendation
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## Notes:

1. In **India**, all listed entities are required to disclose each promoter/promoter group's shareholding, irrespective of how much they hold, and public (non-promoter's) shareholding that exceeds 1% or more of shares of listed company. (SEBI Circular CIR/CFD/CMD/13/2015)
2. In **Australia**, there are general provisions applicable to listed companies in Chapter 6C of the Corporations Act. These provisions require disclosure to the market by persons who have a 'relevant interest' in securities of the listed company amounting to a 'substantial holding'. They also enable listed companies or ASIC (either of its own volition or on request of a shareholder) to direct a person to disclose if they have a 'relevant interest' in securities of the listed company (the 'tracing provisions'). A 'relevant interest' is broadly defined in the Corporations Act and is centred around whether a person holds or has power to control voting or disposal of the securities, so will often capture beneficial ownership. Under the tracing provisions there is no minimum holding required before the direction can be issued. Once this information is obtained from a direction by ASIC it may be provided to the listed company. The listed company must record the information about the relevant interest in a register within two business days of receipt. This register is available for inspection by any person.
3. In **Hong Kong (China)**, Section 653H of the Companies Ordinance requires every company to keep a significant controllers register ("SCR") containing the particulars of all individuals and legal entities that have significant control over the company. A person has significant control over a company if, for example, the person directly or indirectly holds more than 25% of the issued shares or voting rights of the company, or the person has the right to exercise or actually exercises significant influence or control over the company. The SCR is open for inspection by law enforcement officers upon demand.
4. In **Malaysia**, under section 56 of Companies Act 2016, any company may require its shareholders to indicate the persons for whom the shareholder holds the voting share by names and other particulars if the shareholder holds the voting shares as trustee.
5. In **Singapore**, the disclosure to public is mandatory only to the extent of deemed interests held by directors and substantial shareholders.
6. In **Chinese Taipei**, financial institutions and banks are required to report their beneficial owner or ultimate controlling party to the authority in accordance with "Instructions for Reporting Voting Shares in Accordance with Paragraph 2, Article 16 of Financial Holding Company Act" and the "Instructions for Reporting Voting Shares in Accordance with Paragraph 2, Article 25 of Banking Act."
7. In **Thailand**, as of February 2022, the Anti-Money Laundering Office (AMLO) of Thailand has prepared the draft Beneficial Owner Information Act in accordance with relevant FATF recommendations and is currently in the process of conducting public hearing on the draft Act. Under the draft Act, legal entities (i.e., companies, partnerships, cooperatives, non-profit organisations and groups of persons) and legal arrangements (i.e., foreign private trust) will be required to inform AMLO of their beneficial owners. Listed companies, however, are exempted from the draft Act as they are required to make such disclosure in report forms issued under the Securities and Exchange Act B.E. 2535 (1992).
8. In **Australia**, cross-shareholding may be disclosable under the substantial holding disclosure provisions in Section 671B, of the Corporation Act, where a subsidiary has a 'relevant interest' in securities representing more than 5% in its parent.
9. In **Indonesia**, cross-shareholding is prohibited.
10. In **Chinese Taipei**, a financial holding company is required to disclose cross-shareholdings for the financial holding company itself and its subsidiaries.

Source: OECD Survey on Company Groups in Asia.

## Controlling persons

**Good Practice 7: Authorities could clearly define a role that controlling persons, including a founder family and their family members, should play in the corporate governance and ensure that appropriate disclosure frameworks are in place to give visibility to their roles.**

Family businesses play an important role in Asian jurisdictions. As a founder and their family members may have a long-standing relationship with and commitment to the company, they may be well positioned to guide the company and its entire company group from a long-term perspective, monitor their business activities closely, and overcome the agency problem arising from the separation of ownership and management. Family-controlled companies may however raise corporate governance issues. Especially

when a founder and their family members control the company with smaller/no shareholding, they may have access to sensitive information, disproportionately influence the direction of the company, or extract financial benefits from it without a legitimate authority. Indeed, it is a regulatory challenge how to integrate them into the regulatory system. In many instances, some forms of proportionality are applied to shareholders according to how much they own the equity of the company. However, this approach cannot capture well those who exert a de-facto control with smaller/no shareholding. In the context of company groups, these dominant “owners” may take advantage of complex group structures and exacerbate the misallocation of human, financial, and management resources.

Seven jurisdictions (**China, Hong Kong (China), India, Indonesia, Singapore, Chinese Taipei, Thailand**) reported that the definition of controlling persons or promoters contains a founder or a person who has a significant, de facto control over the direction of a listed company even with smaller/no shareholdings, and that these jurisdictions have disclosure provisions about the controlling person or promoters. However, the regulatory challenge rests with the ambiguity and invisibility of de facto control that may impede enforcement. Notably, in **India**, its regulatory perimeter extends to a founder or controlling person, and disclosure by listed companies provides a clearer picture of their ownership patterns, directorship, and related party transactions in which they engage. In **India**, all listed companies are required to disclose shareholding patterns of each promoter (and promoter group), where the ‘promoter’ means a founder or controlling shareholders without any threshold. The importance and relevance of this regulation in **India** is demonstrated by the fact that as of March 2020, in the largest 500 listed companies by market capitalisation, 485 companies disclose detailed ownership patterns by promoters and approximately 210 companies disclose a promoter’s shareholding which is less than 0.05%.<sup>33</sup> Notably, in the 2017 report on Corporate Governance of the Kotak Committee set up by SEBI, it is noted that “(t)here are instances of promoters carrying out actions that are favourable to them but detrimental to the interests of minority shareholders. This has affected confidence in India Inc” but under the custodian model, “promoters, boards and management wear the hat of “trustees” and act in the interest of all stakeholders – shareholders, investors, employees, customers et al, keeping stakeholder interests before self-interest. Corporate India needs to move in this direction. (Securities and Exchange Board of India, 2017<sub>[4]</sub>)”

In a different context, **Singapore** released the Stewardship Principles for Family Business in 2018 (and updated in 2020). Recognising that family businesses remain the mainstay of business ownership and families continue to be influential players in the business landscape as owners and/or managers, the Principles provide seven key principles with complementary guidance to help family business act as a good steward (Stewardship Asia, 2020<sub>[5]</sub>). While stewardship codes are directed to institutional investors in many jurisdictions and **Singapore** also has a stewardship code for institutional investors, the Stewardship Principles for Family Business provides a good example of how to integrate family business into corporate governance framework in Asia.

Further, in **Australia**, while the Corporation Act’s provisions do not specifically mention founders, Australia’s definition of a shadow director includes a person who is not validly appointed but whose instructions or wishes actual directors are “accustomed to act in accordance with”, which could include a founder or a member of their family. In addition, a de facto director is defined as a director that is not validly appointed but acts in the position of a director. This could also apply to a founder or their family. A person who is a shadow director or a de facto director has the same obligations and liabilities as a director. Whether or not a person is a director or de facto director under Australian Corporations law depends on their role in the management of the company. A founder or family member would only be captured if they are, for example, involved in the management of the company and have the capacity to influence the board’s decisions.

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<sup>33</sup> The remaining 15 companies do not have an identified promoter (OECD, 2022<sub>[7]</sub>).

## Annex A. Participant's list for the closed session on 17 February 2022

Australian Securities and Investments Commission (Australia)	Mr. Kim Demarte, Ms. Camille Mascarenas
Securities and Exchange Board of India (India)	Ms. Surabhi Gupta, Ms. Ishita Sharma, Ms. Sonal Sambhaji Pednekar
Financial Services Authority (Indonesia)	Ms. Agus Saptarina, Ms. Evie Sulistyani, Mr. Aryo Yoga Pratama, Ms. Dena Aksina
Financial Services Agency (Japan)	Mr. Hiroaki Otsuki
Securities Commission Malaysia (Malaysia)	Ms. Nadia Zainuddin, Mr. Ismet Al Bakri Yusoff Al Bakri
Monetary Authority of Singapore (Singapore) Singapore Exchange (Singapore)	Mr. Jia Yao Chow, Mr. Ho Wan Leong Mr. Michael Tang, Ms. Beverly Wee
Securities and Futures Bureau (Chinese Taipei)	Ms. Jessica Lin, Mr. Diane Hsu, Ms. Shannon Cheng, Mr. Luke Wang
Securities and Exchange Commission (Thailand)	Ms. Areewan Aimdilokwong, Ms. Ketsaraporn Kitbunnadaj, Ms. Esa Tamsakul, Mr. Paiboon Dumrongwaree, Ms. Apichaya Follet, Ms. Krissana Kampanatkosol, Ms. Sucha Boonyanate, Ms. Woraboon Luanratana, Ms. Winita Kultangwatana, Ms. Sasanee Lovisuth, Ms. Phatcharada Tramod
State Securities Commission (Viet Nam)	Ms. Hoa Nguen, Mr. An Quoc Khanh Hung
OECD Secretariat	Mr. Kenta Fukami, Ms. Alejandra Medina

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