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*Session 2: Launch "Guide on Fighting Abusive Related Party Transactions in
Asia"*

A wide banner with a green background. The left side features diagonal stripes in shades of green. The right side shows a map of Asia in a light green color. The text 'Asian Roundtable on Corporate Governance 10-year Anniversary' is written in white serif font across the banner.

Asian Roundtable
on Corporate Governance
10-year Anniversary

9-10 September 2009 - Manila, Philippines

Guide on Fighting Abusive Related Party Transactions in Asia (“the Guide”)

– An Introduction

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9 September 2009

Introduction & background to the Guide

- ❑ The Guide is an effort by the Asian Roundtable Taskforce on RPTs comprising a majority of Asian representatives
- ❑ The Guide provides options to policy makers, enforcement authorities, shareholders, other stakeholders, practitioners to monitor & curb abusive RPTs. It aims to build consensus on the direction of reforms in Asia

WHY ASIA, WHY NOW?

- ❑ Abusive RPTs erode shareholder value and damage market integrity
- ❑ In Asia, there are a significant number of companies that have concentration of shareholding either in the hands of the founding family or the state
- ❑ The informal way of doing business gives rise to significant amount of RPTs
- ❑ The legal & regulatory framework in Asian countries to address abusive RPTs varies in effectiveness



Structure of Guide

- ❑ Targeted at publicly traded companies, but useful for other agencies too
- ❑ A common guideline provides a benchmark
- ❑ 9 key recommendations
- ❑ Contains discussions or analysis of issues, challenges, examples of practices in various markets
- ❑ Addresses role of various parties such as board of directors, independent directors, external auditors, shareholders & regulators
- ❑ Deals with 2 main concerns of investors
 - Ability of investors to monitor abusive RPTs
 - Options for ex-ante actions and ex-post redress if transactions are perceived to be abusive
- ❑ Emphasises need to have a balanced regulatory approach
 - Regulatory Impact Assessment (RIA) provide useful analysis

Definition of related parties & RPTs

- ❑ The key to monitoring & curbing abusive RPTs is the **identification of RPTs**
- ❑ There must be a **strong definition of “related party”**
 - Guide had regard to ownership structures in Asian companies
- ❑ **Legal definition to refer to control and should be broad enough to capture relevant transactions that present a risk of abuse**
 - **Challenges:** What constitutes control? Control could be direct & indirect
 - Which layer of relatives or shareholding should be considered as having influence?
- ❑ **Challenge:** Inconsistent definitions of RPTs spread across various laws & regulations may cause confusion and impose unnecessary regulatory burden – **The definition should be sufficiently harmonised with respect to different bodies of law, listing rules and accounting standard**
- ❑ Approach in curbing abusive RPTs may differ depending on whether RPT is continuing or non-recurring
 - Need for aggregation clause to address breaking up of transactions to avoid obligations

Ex-ante actions

Disclosure & shareholder approval

- ❑ Disclosure of RPTs must be timely, comprehensive & accurate to be meaningful
- ❑ **Challenge:** May not be feasible to subject all RPTs to disclosure & shareholder approval. Thus, strike a balance - **Provide appropriate & effective thresholds for disclosure & shareholder approval based on materiality**
 - De minimis threshold to exempt transactions from disclosure & shareholder approval
 - Different thresholds for disclosure, shareholder approval and de minimis transactions
 - Different approaches in determining thresholds
 - Single threshold, different ratios or hybrid threshold
- ❑ **Where reliance is placed on shareholder approval, approval of RPT must be by a majority of disinterested shareholders** (interested shareholders should abstain from voting)

Ex-ante actions

Board oversight & approval

- ❑ Board must have oversight over all RPTs
- ❑ **Objective judgement in the decision-making process of the board is key**
 - Only non-conflicted directors should decide on RPTs
- ❑ **Independent directors should play a central role**
 - **Policy framework to support this – board approval procedures, power to conduct investigations & right to obtain independent advice**
 - **Challenges:**
 - Doubts about independence - **Give non-controlling shareholders sufficient influence over the nomination & election of independent directors**, enhance criteria of independence
 - Developing relevant expertise & competence - on-going training is critical
 - Excessively high compensation may impair independence
 - align incentive structures to facilitate long term interests

Disclosure & role of auditors

Disclosure of policy

- ❑ In order for non-controlling shareholders to check whether the board effectively monitors & approves RPTs - **Company should develop & make public a policy to monitor RPTs**

Role of auditors

- ❑ External auditors complement the role of the board in monitoring & curbing abusive RPTs but does not replace the board
- ❑ **Challenges:**
 - Auditors' ability to be alert to transactions that raise concern
 - Independence of auditors
- ❑ **External auditors should be independent, competent & qualified in order to provide assurance to the board and shareholders on disclosures & alert them to concerns on internal control**

Ex-post actions

Effective ways for shareholders to obtain legal redress

- ❑ Obstacles for shareholders to obtain effective legal redress must be overcome
- ❑ **Challenges:**
 - Class action suits not being permitted in some jurisdictions
 - Derivative suits unattractive
 - Cost
 - Lack of knowledge & experience within the judiciary
 - Sufficient funding for regulators
- ❑ **The legal & regulatory framework should ensure that legal action, including specialised courts and alternative dispute resolution, does not prohibit minority shareholders from seeking legal redress**
 - ensure that the judiciary is trained, independent, competent & experienced
 - regulators should be sufficiently resourced with the capacity to set priorities effectively

Implementation & Enforcement efforts

- ❑ **Coherent legal & regulatory framework dealing with RPT be established in each jurisdiction to facilitate implementation & enforcement efforts**

The way forward...

- ❑ The Guide is comprehensive & a useful **benchmark** for policy makers, regulators, practitioners and shareholders
- ❑ The Guide puts the spotlight on a key issue of concern for investors. It is hoped that the Guide will prompt governments, policy makers and regulators to enhance their legal & regulatory framework where required, for effective monitoring & curbing of abusive RPTs
- ❑ Investors can use the Guide to influence change
- ❑ It is hoped that the Guide will be followed by effective implementation efforts that will, in the longer term lead to harmonisation of investor protection safeguards and overall higher standards of corporate governance



Thank you