

A cluster of green bamboo stalks with leaves is positioned on the left side of the slide.

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*Session 4: Break out session on “Corporate governance in Asia – ten years
from now?”*

A wide banner with a green background. The left half has diagonal stripes in shades of green. The right half features 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

The opinions expressed and arguments employed herein are those of the author of this document and do not necessarily reflect the official views of the OECD member countries or its organisation.

Next Decade of Corporate Governance in Asia

Nik Ramlah Mahmood

9 September 2009

**Securities Commission
Malaysia**

Asian Corporate Governance reform agenda following the 97 crisis

- The Asian financial crisis in 1997-98 was a Corporate Governance (CG) crisis
- Factors that contributed to corporate failures during the crisis include–
 - ❑ Ineffective boards
 - ❑ Weak internal controls
 - ❑ Unreliable financial reports and inadequate disclosure
 - ❑ Abusive related-party transactions
 - ❑ Poor compliance and audit quality
 - ❑ Weak enforcement by regulators
 - ❑ Close links between government and businesses and complex and opaque corporate ownership structures
- CG Reforms undertaken by Asian countries were fast and swift and included–
 - ❑ Strengthening accountability of directors
 - ❑ Promoting better disclosure
 - ❑ Regulating RPTs
 - ❑ Issuing codes of best practices

Reforms were targeted and had the effect of putting the necessary wiring and plumbing in place

Agenda

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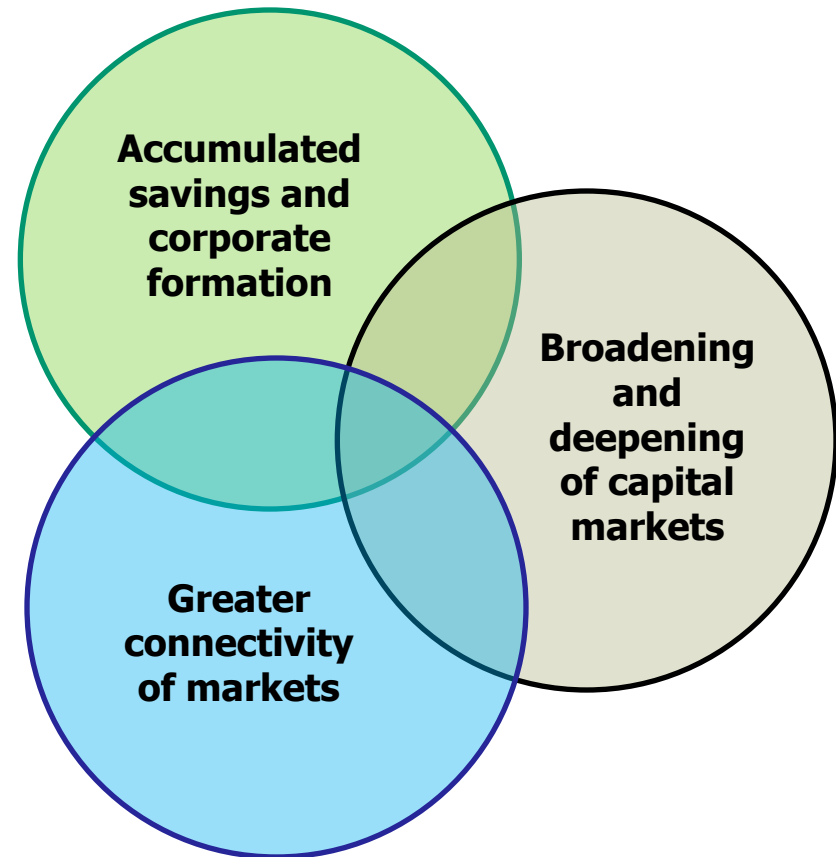
years now



The changing Asian capital market landscape

- ▶ **Asia is both a global manufacturing powerhouse & a high savings nation**
- ▶ **Asian countries accounted for bulk of global Sovereign Wealth Funds (US\$2.7 trillion)**
- ▶ **Evolution of private sector dependent on development of active Asian capital markets**
- ▶ **Capital market development propels demand for higher levels of CG**

Asia will wield greater economic and political influence



The changing Asian capital market landscape (cont.)

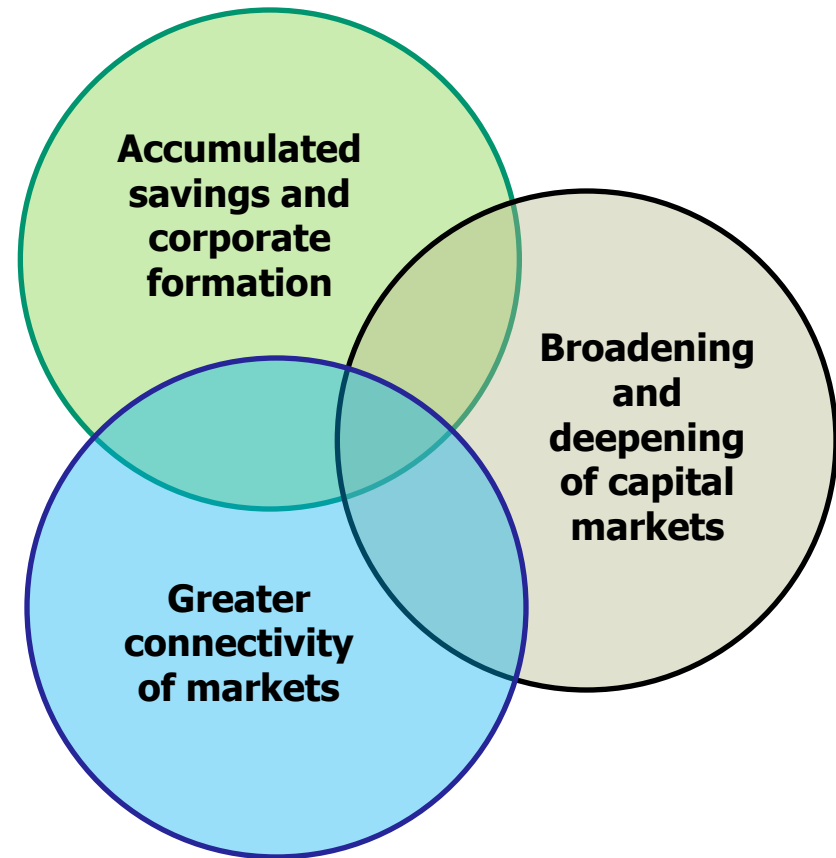
Broadening of Capital Markets

- Domestic currency bond market
- Investment management industry
- Islamic Capital Market

Through significant policy changes—

- Progressive deregulation and liberalisation
- Greater reliance on a disclosure-based regime
- Shift to principles-based supervision and to facilitate stronger oversight and more effective enforcement
- Promoting innovation & niche markets

Development of capital market is pivotal in attracting international capital flows



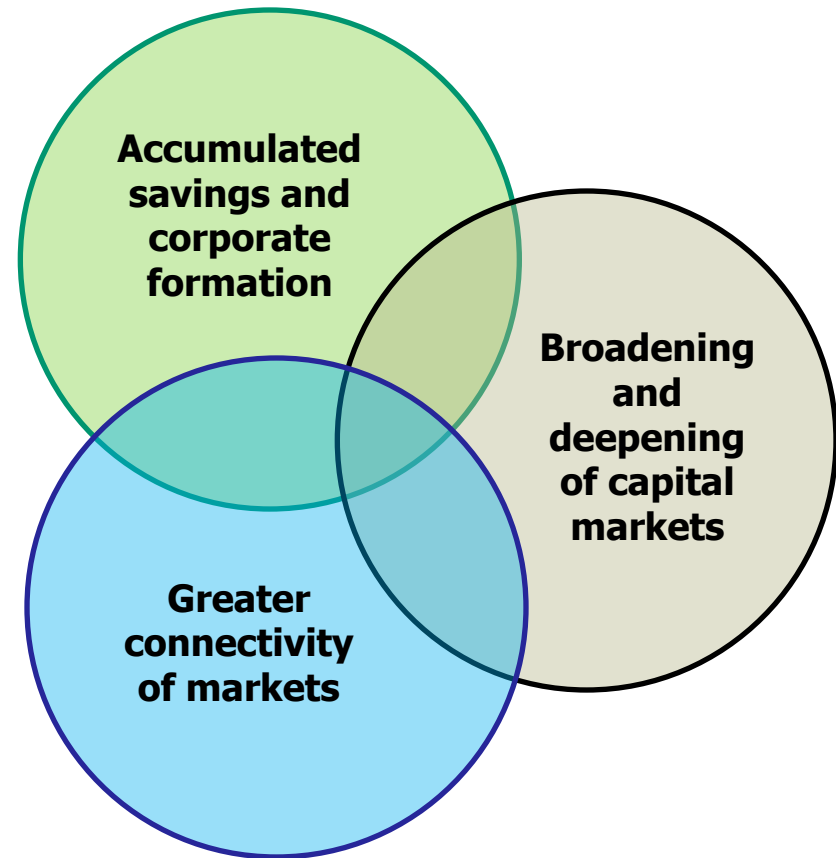
The changing Asian capital market landscape (cont.)

▶ Greater interaction between Asian countries

▶ Asian countries likely to invest a higher proportion of their savings within Asia

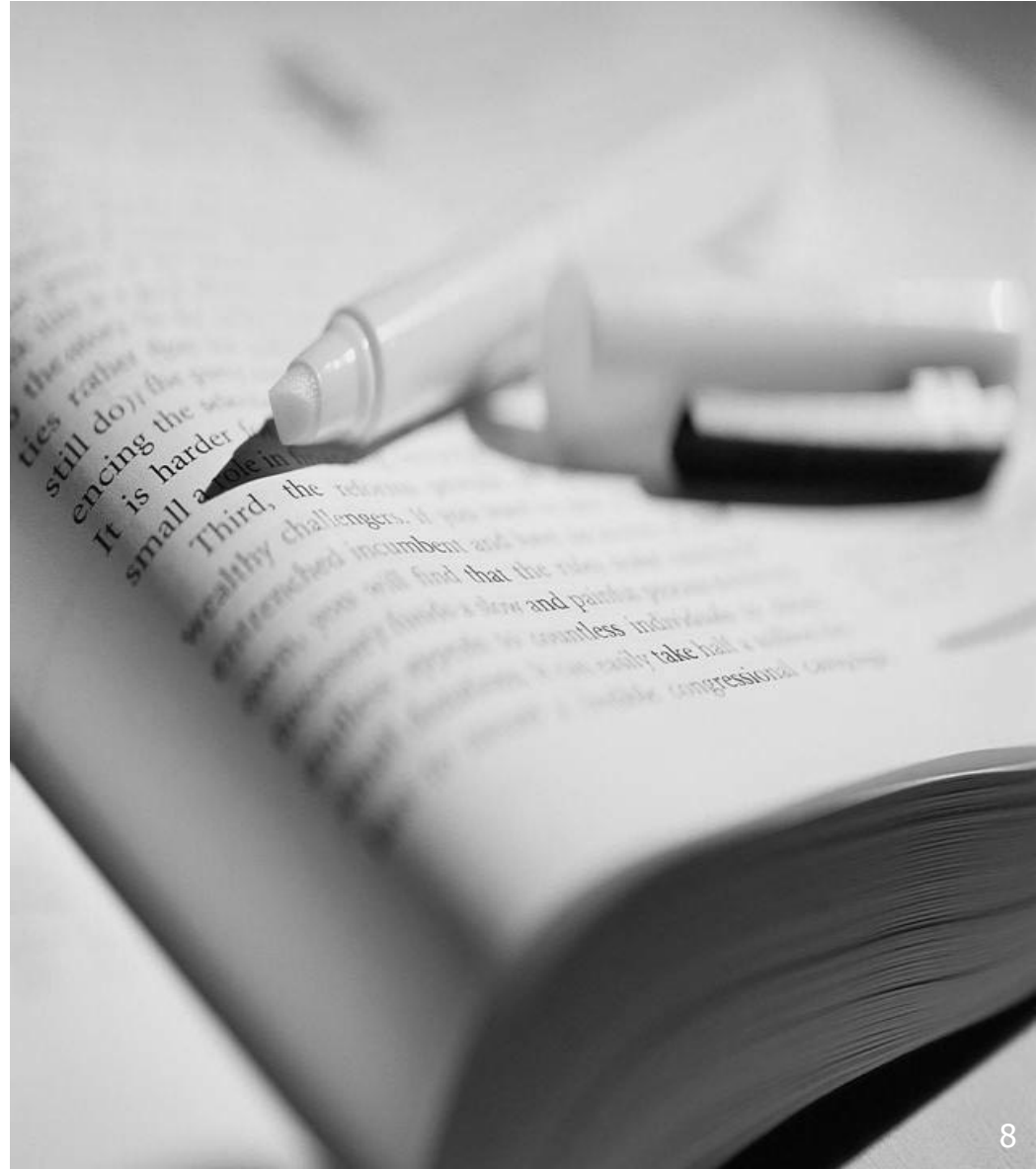
- Formulation of the ASEAN Economic Community (AEC) Blueprint 2015
- ASEAN and Plus Disclosure for Cross Border Equity and Debt Securities Offerings within ASEAN
- ASEAN capital market products as a single asset class
- Promotion of cross listings

Interconnectivity results in convergence of standards and risk of contagion effect



Agenda

Corporate Governance issues in the coming decade



Accountability for effective regulation will rest with the regulator

- ▶ **Shift in regulatory approach after specific & prescriptive measures adopted post 97 crisis**
- ▶ **Greater reliance placed on market based approach i.e. disclosure**
- ▶ **Global financial crisis require reassessment of market based approach to regulation and self regulation**
- ▶ **Light touch regulatory approach may no longer be appropriate**
- ▶ **Job of regulation rests squarely on the regulator**

Public enforcement remains vital

- ▶ Need to use the *"plumbing and wiring"*
- ▶ Rules need to be backstopped by effective and swift enforcement
- ▶ Complex enforcement processes due to overlapping/multiple agencies must be addressed
- ▶ Enforcement agencies must continue to strengthen capabilities by –
 - ❑ Clarifying powers and jurisdictions of regulators
 - ❑ Ensuring sufficiency of legal provisions
 - ❑ Undertaking capacity building programmes
 - ❑ Engaging the Judiciary to create greater awareness of the severity and consequences of white collar crimes

Private enforcement likely to remain insignificant

- ▶ **Asia has taken steps to enhance Private Actions by shareholders and investors**
- ▶ **Measures include enabling –**
 - **members and directors to take a “Statutory Derivative Action” (SDA)**
 - **members to petition the court for remedy for unfair prejudice**
 - **aggrieved persons to sue for damages suffered as a result of market misconduct offences**
- ▶ **Cost and Asian cultural norms may prevent private actions from being an effective enforcement tool**

Independence and professionalism of gatekeepers of critical importance

- ▶ **Confidence in capital market is a shared responsibility of regulators and gatekeepers**
- ▶ **External auditors, reporting accountants, credit rating agencies etc act as first line of defence in ensuring integrity of conduct**
- ▶ **Their failure in carrying out frontline defence prompts need for heavier regulation**
 - **Auditors**
 - **Credit Rating Agencies (CRAs)**

Clarifying roles and responsibilities of Board

- ▶ **Beyond providing oversight boards must be able to challenge decisions made by management**
- ▶ **Board's capabilities must be improved in areas such as –**
 - **Assessment of risks associated with business and financial products**
 - **Designing effective compensation schemes**
- ▶ **Efforts to ensure ready supply of professional independent directors should be intensified**

Empowering Shareholders

- ▶ **Active participation of shareholders critical in ensuring management and boards act in shareholders' interest**
- ▶ **Asian countries need to review laws to encourage shareholders' participation**
- ▶ **Among others laws must ensure –**
 - ❑ **Shareholders have adequate prior notice of meetings**
 - ❑ **Technology can be used to facilitate meetings (allow a company to hold a meeting at more than one venue)**
 - ❑ **Beneficial owners of shares can participate and vote in company's meeting**

Stock exchange as important frontline regulator

- ▶ **Exchange rules embody CG type rules –**
 - **Timeliness of disclosure**
 - **Adequacy of disclosure**
 - **Compliance with Corporate Governance Codes**

- ▶ **Enforcement of rules by exchange pivotal in promoting compliance culture**

- ▶ **Imperative that exchanges are properly resourced and incentivised**

- ▶ **For demutualised exchanges statutory regulator must ensure –**
 - **Conflicts of interests are addressed**
 - **Exchanges regulatory functions are not compromised**

Concluding remarks

- **Shared Responsibilities**

"Every player is an integral cog in the wheel of corporate governance that holds the market forces in balance and must fully bear their responsibility in setting and implementing CG standards within their respective spheres of influence"

- **Corporate Governance is a journey not a destination**

"Enhancing corporate governance will continue although the focus or emphasis may change according to the circumstances at a particular time"

Thank You