Session 4
Corporate Governance: an IOSCO perspective

OECD-ADBI 8th Round Table
Capital Market Reform in Asia
ADB Institute, Tokyo

ASIC

Australian Securities & Investments Commission

11-12 October 2006

OECD Corporate Governance Principles

- Principles originally developed 1999
- Revised Principles released 2004
- Financial Stability Forum designated Principles as one of the 12 key standards for sound financial systems

IOSCO's interest

- OECD Principles drafted at high level
- Following Parmalat and other financial frauds, IOSCO became increasingly interested in corporate governance
- IOSCO formed Securities Fraud Task Force to assess how securities regulators could combat financial fraud

Securities Fraud Task Force’s findings

- 7 factors identified as behind major collapses:
  - corporate governance
  - auditors and audit standards
  - issuer disclosure requirements
  - bond market regulation and transparency
  - role & obligations of market intermediaries
  - use of complex structures
  - role of private sector information analysts

Strong governance and markets

- Task Force confirmed link between strong corporate governance, as espoused by the OECD Principles, and strong financial markets
- IOSCO saw certain aspects of corporate governance as critical:
  - the ability of the board to exercise independent judgement
  - the importance of protection for minority shareholders

IOSCO Corporate Governance Task Force

- Formed in October 2005 with participation of all IOSCO Technical Committee jurisdictions plus Brazil, India, Portugal, Thailand and Turkey
- Task Force co-chaired by Manual Conthe - Spanish Securities Commission and Jeremy Cooper – ASIC
- Working closely with OECD

Task Force's mandate

- **Mapping exercise – to study how members have implemented OECD Principle VI. E on the exercise by boards of "independent judgement" about corporate affairs**

The Survey

- **Task Force surveyed 18 Technical Committee member jurisdictions on:**
  - **their general corporate governance framework**
  - **how “independent judgement” has been implemented in practice in their jurisdiction**

About the survey

- Survey is a purely factual exercise
- IOSCO is summarising various practices rather than looking at developing or recommending best practices
- Survey is yet to be published

Some statistics

- 18 major jurisdictions (but only Japan, Hong Kong & Thailand in Asia)
- Covered approx 27,500 companies in most of the major world share markets
- Market cap of approx US$35 trillion as at March 2006

Ownership patterns

- 3 countries had diffuse ownership of major listed entities (US, UK and Aust)
- 9 countries had predominately block ownership (Canada, HK, Turkey, Mexico, Germany, Portugal, Spain, Italy & Brazil)
- Remaining 6 did not have sufficient data to identify a pattern

Board structures

- Single-tier structure used in 11 jurisdictions
- Two-tier structure as used in Germany and the Netherlands is another common structure. Brazil uses this model with the added requirement of a fiscal board

Board oversight structures continued

- **Two types of corporate governance systems are offered in Japan: one with a board of corporate auditors (the most common), the other with a board of directors with specialised sub-committees (introduced 2003)**
- **In Italy, companies can choose from the single-tiered model, the two-tiered and the ‘traditional’ model where the board co-exists with a board of statutory auditors elected by shareholders (most common)**

“Objective independent judgement”

- **All jurisdictions have standards setting out the basic duties of a company’s management body. These duties fall under 3 main categories:**
  - **duty of loyalty**
  - **duty of care**
  - **duty of confidentiality**

Mix of mandatory/voluntary standards

- Most jurisdictions have both mandatory and voluntary standards (except US)
- Voluntary corporate governance codes rely heavily on disclosure
- Nearly all jurisdictions have criteria for independence; generally negative eg – no business relationships with the company, no family connection etc

Voluntary codes and enforcement

- **Voluntary codes/guidelines mean that traditional enforcement tools don't automatically apply, but:**
  - **Italy: corporation can choose to be bound by the Stock Exchange's Code**
  - **Netherlands: Corporate Governance Code can be enforced if compliance is approved by shareholders**

Disclosure of personal information

- In all jurisdictions (except Germany) info on candidates is submitted to shareholders prior to election
- In Aust, Canada, HK, Mexico, Netherlands, Portugal, Spain, Switzerland, Thailand, Turkey, USA there are rules on disclosure of information about board members

Determining independence

- Who determines whether a board member is “independent”?
  - UK & France: board has the final say
  - HK, India & Thailand: stock exchange can re-classify directors incorrectly labelled as “independent”
  - Italy & Spain: the securities regulator has the final say

Voting by special shareholders

- Voting by “special” shareholders:
  - Portugal: if minority shareholders holding more than 10% of the capital vote against the majority when appointing board members, they’re entitled to appoint one board member
  - Mexico: shareholders with more than 10% of the capital are entitled to appoint one board member

Outcome of the mapping process

- It will be illustrative, not normative
- Aiming to be easy to read and digest
- Will be very useful for LDCs
- Can identify both common and unique approaches
- Allows for comparisons between jurisdictions

Australian corporate governance

- Australia is unusual – ASIC is a securities market regulator and a corporate regulator
- Mix of mandatory vs voluntary requirements
- ASX's "if not, why not" Guidelines
- Our system is working well in practice

The end

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12 October 2006