



# Corporate Governance in Asia: Progress and Challenges

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## Purpose and scope

- Exercise to assess progress in implementing the 36 Recommendations issued by the 2003 White Paper
- 19 respondents from all 13 Roundtable jurisdictions from the public and private sector
- Analysis of answers and reporting of developments is strictly meant to highlight trends and identify priorities in the region, not as comparison of different countries.
- Overview of Presentation
  - Progress since 2005
  - Obstacles & Key Issues

## Legal Framework

- **Numerous updates** to laws, regulations, and guidelines, listing requirements or corporate governance codes in the period surveyed. CG codes have now been issued in all RT economies.
- **Whistleblower protection provisions** have been introduced in most jurisdictions
- Progress in addressing and defining issues **of conflict of interest** (such as related-party transactions)
- Regulation might not always be the most efficient path. **Relaxation of some rules** (particularly in the area of conflict of interests) are considered to make them less burdensome and more effective.

### Implementation and Enforcement

- **Strengthening of institutional** capacity via specialized courts and new bodies focus on increasing enforcement capacity
- **Criminal, civil and administrative sanctions** have been enhanced to deter violations of fiduciary duty
- The **use of civil litigation** is increasingly considered to make up for the lengthy criminal enforcement procedures.
- A number of mechanisms to **provide benchmarks for good practices** as well as evaluate corporate governance practices have been developed in the region. These include manuals, checklist, and scorecards to surveys, assessment projects, and indices.

### Shareholder rights

- **Technology** is being better utilised. Practices such as electronic voting in AGMs or even the actual attendance of the AGM via remote technology are becoming more widespread.
- In order to help **foster shareholder activism**, shareholder institutions are beginning to play a crucial role in providing a platform to initiate collective shareholder activism.
- Mechanisms to seek redress for breaches of board member duty, via **derivative and class action law suits**, are taking hold across the region.
- **Corporate social responsibility** practices are finding their way into CG recommendations.

## Disclosure

- **Convergence** of local GAAP with IFRSs is ongoing in various jurisdictions.
- Rules or other requirements to **strengthen accurate and timely disclosure of information**, in particular price sensitive information, have been introduced.
- **Technological progress** can also be noted for the dissemination of information. eXtensible Business Reporting language (XBRL) is set to become the standard way of recording, storing and transmitting company financial information.
- Initiatives to disclose **information beyond legal requirements** range from incentives to rankings and scorecards.

### Board of Directors

- The **size and function of the board** as well as limits on the number of directorships has been addressed in law and regulation
- CG codes and listing rules have put forward **definitions of “independent director”**, outlining qualifying criteria and providing “tests”.
- The practice of **cumulative voting** has been introduced in a number of jurisdictions in both mandatory and voluntary fashion.
- The **formation of special committees**, such as audit, nomination and remuneration committees has been addressed in almost all jurisdictions.
- **Education and training programmes** are offered by various local and international organisations and institutions. They have been made mandatory in some countries.

## General

- Key **concepts in CG need to be clarified** and the applicability of international CG good practices addressed. Many crucial concepts such as "material transactions" and "fiduciary duty" are still not sufficiently defined or understood.
- How do **CG mechanisms devised for dispersed markets** have to be adapted to Asian market characteristics like ownership structure?
- Striking the right balance between **rules versus flexibility**

## Implementation/Enforcement

- Regulators often have only **limited capacity** due to resource constraints to enforce existing regulations. Non-resource related obstacles stem from generic **difficulties of monitoring and obtaining proof** on a number of issues.
- **Inefficiency of the judicial systems** in dealing with CG matters contributes to problems in enforcement which is relevant for nearly all recommendations.
- The **increased usage of civil penalties** could be beneficial to increase the effectiveness of enforcement.
- How to make **CG initiatives legally enforceable**, as companies are reluctant to adopt practices going beyond the law, considering the costs of compliance as already high enough.
- **Passive nature of shareholders** and reliance on government bodies puts the burden of enforcement solely on state institutions. Close and efficient dialogue between regulators and market participants is encouraged.

## Shareholder Rights

- How to promote greater **shareholder activism**? How to increase **awareness of shareholders** of their capacity to intervene in company affairs?
- Especially important the **role of Institutional Investors** in this context which are reported to play an insignificant role on CG in Asia
- **Role of the state** as a shareholder: Should directors in SOEs be maximising company interests or state shareholder interests.

## Disclosure

- The **merits of greater transparency**, i.e. how greater disclosure enhances the value of the corporation, are poorly understood by companies.
- **Resource constraints in implementation** of international standards, including difficulties in attracting highly skilled and senior people into auditor oversight positions
- How to enhance the quality and how to **effectively enforce disclosure?**

## Role of the Board

- **Shortage of qualified candidates** for board positions
- **Verifying and ensuring the independence** of directors a challenge throughout the region. The role of controlling shareholders adds to the problem.
- In making **cumulative voting a more widespread practice**, concentrated ownership structures as well as a lack of consensus on the benefits of cumulative voting remain obstacles.
- **Guaranteeing directors' access to information** is still not part of legal provisions in a number of respondents' jurisdictions.
- Introducing appropriate internal control structures such as risk management requires a **change in corporate culture** going beyond mere compliance with rules.
- Obstacles such as resource constraints, particularly for smaller companies impede the **effective functioning of special committees**.



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**Thank you!**