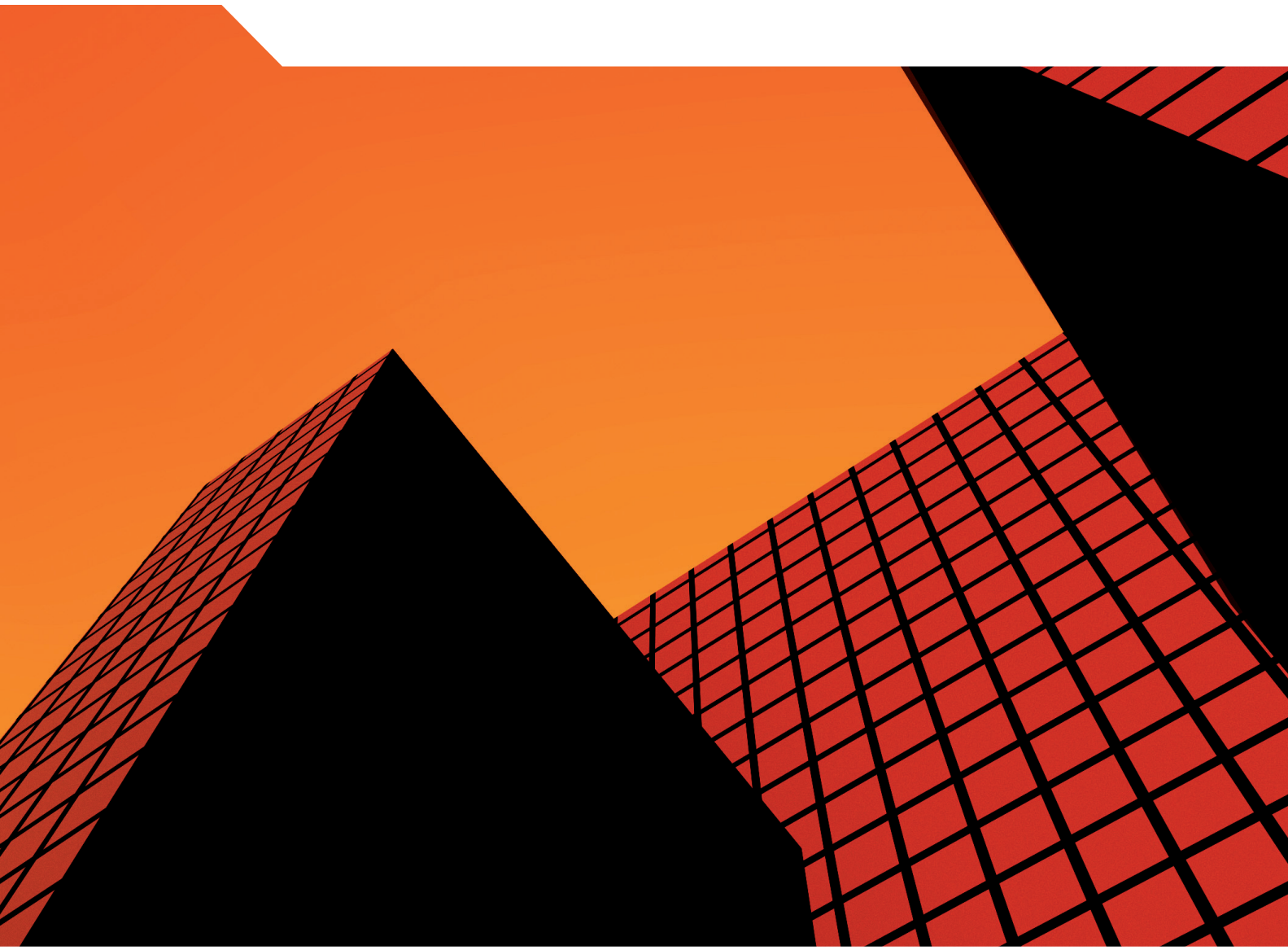
Corporate Governance

Corporate Governance in Asia

PROGRESS AND CHALLENGES



OECD

Corporate Governance in Asia 2011

PROGRESS AND CHALLENGES

This work is published on the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

Please cite this publication as:
OECD (2011), *Corporate Governance in Asia: Progress and Challenges*, Corporate Governance, OECD Publishing.
http://dx.doi.org/10.1787/9789264096790-en

ISBN 978-92-64-09678-3 (print)
ISBN 978-92-64-09679-0 (PDF)

Series: Corporate Governance
ISSN 2077-6527 (print)
ISSN 2077-6535 (online)

Corrigenda to OECD publications may be found on line at: *www.oecd.org/publishing/corrigenda*.

© OECD 2011

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to *rights@oecd.org*. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at *info@copyright.com* or the Centre français d'exploitation du droit de copie (CFC) at *contact@cfcopies.com*.

Foreword

In 2003, the Asian Roundtable on Corporate Governance ("Asian Roundtable") agreed on a White Paper on Corporate Governance in Asia ("2003 White Paper"), using the OECD Principles of Corporate Governance as a reference. The 2003 White Paper includes six priorities for corporate governance reform and 36 specific recommendations to improve corporate governance.

The Roundtable subsequently undertook more extensive work to support the implementation of the six priorities: "Policy Brief on Corporate Governance of Banks in Asia" (2006); "Implementing the White Paper on Corporate Governance in Asia" (2006) that addressed the 6 priorities; "Asia: Overview of Corporate Governance Frameworks" (2007); "Enforcement of Corporate Governance in Asia" (2007); and "Guide on Fighting Abusive Related Party Transactions in Asia" (2009).

In order to assess progress in implementing the 36 White Paper recommendations, and to update and revise the 2003 White Paper, in 2009 Asian Roundtable participants agreed to undertake a stock-take of developments and remaining challenges in Asian corporate governance. Nineteen respondents representing the public and private sectors, from all 13 Asian Roundtable economies, devoted their time and resources to answer an exhaustive questionnaire. In the text, reference is sometimes made to responses by jurisdictions. This should be read as shorthand for respondents from the jurisdiction and in no way implies an official position.

This stock-taking exercise identifies progress made and challenges remaining in the implementation of the 2003 White Paper recommendations. It notes developments since 2005. It is meant neither to be an analysis of the existing frameworks of specific jurisdictions, nor include all developments. In no way does it rate or rank jurisdictions. Examples illustrate the policy developments and challenges in the region, and contribute to a better understanding. Developments and obstacles are cited as reported by respondents. Extensive fact checking was not performed.

ACKNOWLEDGEMENTS

The OECD wishes to thank the numerous individuals from the institutions that devoted a great deal of time to providing responses to the stock-taking questionnaires. Special thanks go to Andreas Grimminger of eStandardsForum/Financial Standards Foundation and his team, Carolina Azar, Anuja Pande and Ranita Ragunathan, for preparing the report based on the participating jurisdictions' responses. For the OECD, Fianna Jesover, OECD Senior Policy Manager, supervised the report, assisted by Kenji Hoki, OECD Outreach Advisor. Finally, the OECD is grateful to the government of Japan for its financial support.

Table of contents

Abbreviations

ACRA	Accounting and Corporate Regulatory Authority (Singapore)
AGM	Annual General Meeting
AOB	Audit Oversight Board
BI	Bank Indonesia (Indonesian Central Bank)
BNM	Bank Negara Malaysia (Malaysian Central Bank)
BoT	Bank of Thailand
CIEM	Central Institute for Economic Management (Viet Nam)
CSRC	China Securities Regulatory Commission
CSR	Corporate Social Responsibility
FRC	Financial Reporting Council (Hong Kong, China)
FSC	Financial Supervisory Commission (Chinese Taipei)
GAAP	Generally Accepted Accounting Principles
GAAS	Generally Accepted Auditing Standards
GLCs	Government-Linked Companies (Malaysia)
HKMA	Hong Kong, China Monetary Authority
HKSE	Hong Kong, China Stock Exchange
Bapepam-LK	Indonesia Capital and Financial Institution Supervisory Agency
IICD	Indonesian Institute for Corporate Directorship
CAB	Institute of Chartered Accountants in Bangladesh
ICPAS	Institute of Certified Public Accountants of Singapore
IASB	International Accounting Standards Board
IFAC	International Federation of Accountants
IFC	International Finance Corporation
IFRSs	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commissions
ISAs	International Standards on Auditing
MAS	Monetary Authority of Singapore

NFCPAA	National Federation of Certified Public Accountants Association (Chinese Taipei)
RPTs	Related Party Transactions
SC	Securities Commission
SEBI	Securities and Exchange Board of India
SEC	Securities and Exchange Commission
SECP	Securities and Exchange Commission of Pakistan
SFB	Securities and Futures Bureau (Chinese Taipei)
SROs	Self-Regulatory Organisations
SGX	Singapore Exchange Ltd
SSE	Shanghai Stock Exchange
SZSE	Shenzhen Stock Exchange
SOEs	State-Own Enterprises
SSC	State Securities Commission (Viet Nam)
XBRL	eXtensible Business Reporting Language

I. Summary

The summary presents the key findings of the report in three sections. First, it summarizes the overall progress achieved by the Asian Roundtable participating economies in implementing the 2003 White Paper recommendations. The second section addresses remaining obstacles, while the third section is raising critical, outstanding issues to be incorporated into updating the White Paper. Each section is structured by topics focusing on the legal and regulatory framework, implementation and enforcement issues, shareholder rights, stakeholders, disclosure and boards.

1. Overall progress since 2005

Legal framework

- All jurisdictions surveyed reported **updates to laws, regulations, and guidelines, listing requirements and corporate governance codes** in the period surveyed. The developments were too numerous to be listed, and are highlighted in the respective recommendations.
- Progress in addressing and **defining issues of conflict of interest** (such as related-party transactions) was reported across the region.
- Similarly, protection of employees or their representative bodies to freely communicate their concerns about illegal or unethical practices has been introduced in most jurisdictions.
- Regulation might not always have been efficient: a respondent from Hong Kong, China noted the **planned relaxation of some rules** (particularly in the area of conflict of interests) to make them less burdensome.

Implementation/Enforcement

- Strengthening of Institutional Capacity:
  - **Specialised courts** to deal with capital market matters are being established in a number of jurisdictions.
  - In addition, new bodies have been created separately or within institutions aimed at **increasing enforcement capacity**. Examples include the Financial Reporting Council in Hong Kong, China, a Corporate Governance Office at the Philippines Stock Exchange, an Enforcement Division at the Bursa Malaysia and Audit Oversight Boards in Korea and Malaysia.
- The **use of civil litigation** is increasingly considered (such as in Thailand) to offset 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 in the recent past. They range from manuals, checklists, and scorecards to surveys, assessment projects, and indices.

Shareholder rights

- Redress for breaches of board member duties (i.e. the duty of care and the duty of loyalty), via **derivative and class action law suits**, are taking hold across the region.
- **Technology is being utilised more extensively**. Practices such as electronic voting in AGMs or even the attendance at the AGM via remote technology are becoming more widespread. Technology also plays a key role in disseminating information.
- In order to help **foster shareholder activism**, institutions such as the Malaysian Minority Shareholder Watchdog Group are beginning to play a pivotal role in providing a platform to initiate collective shareholder activism on issues such as unethical or questionable practices by management of publicly listed companies.

Stakeholder issues

- **Corporate social responsibility concepts** are being included in corporate governance recommendations.

Disclosure

- **Convergence of local** Generally Accepted Accounting Principles (**GAAP)** with International Financial Reporting Standards (**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. For example, under SGX Listing Rules, an issuer can request a trading halt for up to three days to disseminate material price sensitive information or to clarify rumours during trading hours.
- **Technological progress** can also be noted in the **dissemination of information**. Extensible Business Reporting language (XBRL) is set to become the standard way of recording, storing and transmitting company financial information in numerous participating jurisdictions.
- **Initiatives to disclose information beyond legal requirements** in a number of jurisdictions were reported, ranging from incentives such as waiving tax inspection for the company that wins the Annual Report Award in Indonesia, to rankings and scorecards in other jurisdictions, rewarding transparent companies with good ratings.

Boards

- The **size and functioning of the board has been addressed in laws and regulations**. Some jurisdictions have set lower and upper limits for the number of board members, while others refrain from prescribing the maximum number of board members. To assure that board members can devote sufficient time and diligence to their duties, a number of jurisdictions set limits on the number of directorships that can be held, and prescribe a minimum number of board meetings to be held by a company per year.
- Corporate Governance codes and listing rules have established **definitions of "independent board member"**, 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. Most require the Audit Committee to comprise a majority of independent board members, while nomination and remuneration committees should consist entirely of independent board members.
- **Risk management provisions** have been introduced into corporate governance codes, giving the board a special role in maintaining internal controls.
- **Board members' access to information** is regulated in a number of jurisdictions to a varying degree of detail.
- **Education and training programmes** are offered by various local and international organisations and institutions. Attendance at such programmes has been made mandatory in some jurisdictions.

2. Obstacles to implementation

Legal and regulatory framework

- The **lack of understanding of a number of concepts** such as "material transactions", "independent board member", "fiduciary duty" and "related parties" was noted as a major obstacle for the effective implementation of these concepts.

Implementation/Enforcement

- Regulators often have only **limited capacity** to enforce existing regulations due to **resource constraints**.
- Other times difficulties are not resource-related but stem from **generic difficulties of monitoring and obtaining proof** on a number of issues, such as related party transactions, beneficial owners and material transactions.

- The **inefficiency of the judicial systems** in dealing with corporate governance matters contributes to problems in enforcement which is relevant for nearly all recommendations.
- The **passive nature of shareholders** paired with a habitual reliance on government bodies to detect wrong-doing and initiate investigations puts the burden of enforcement solely on governmental bodies.

Shareholder rights

- **Limited awareness by shareholders** of their capacity to intervene in company affairs, results in an insufficiently active role played by shareholders.
- This problem is compounded by the fact that **Institutional Investors are reported to not have been able or willing to play an active role** for a number of reasons, and to achieve the requisite level of shareholder activism for a functioning corporate governance framework.

Disclosure

- The **merits of greater transparency**, i.e. how greater disclosure enhances the value of the corporation, **are poorly understood** by many companies.
- The **high costs of adopting a new accounting regime**, as well as inadequate numbers of skilled professionals were two of the resource constraints reported that jurisdictions face in the implementation of international accounting standards. In addition, difficulties in attracting highly skilled and senior people into auditor oversight positions were highlighted.
- Respondents noted **limited institutional sanctioning power** for not complying with disclosure rules, especially on the side of stock exchanges.
- **Weak internal controls** and a general lack of governance mechanisms are an issue in some jurisdictions.

Boards

- **Lack of transparency in nominating board members** was reported. This is especially true for the boards of SOEs, where the often political nature of appointments was highlighted.
- Most respondents acknowledged a **shortage of qualified candidates for board positions**. The small pool of candidates not only for the position of independent board members but also for senior managers was attributed to a lack of qualifications, inadequate fee structures and the small number of candidates in some smaller Asian jurisdictions fitting the definition of "true" independence.
- **Verifying and ensuring the independence** of board members is considered a challenge throughout the region. The role of controlling shareholders in the nomination process for independent board members adds to the problem, as do inadequate requirements to disclose business relationships by board candidates.

- Introducing **appropriate internal control structures** such as risk management requires a change in corporate culture going beyond mere compliance with rules. This change is reportedly slow to happen.
- Various obstacles impeding the **effective functioning of special committees** were reported, such as resource constraints, particularly severe for smaller companies, and in some instance the lack of expertise on how to set up such committees.
- 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. Some respondents pointed towards market concerns that the practice might violate the "one share-one vote" policy. The alleged benefits of cumulative voting can also be offset by strategic voting by majority shareholders.
- Guaranteeing **board members' access to information** is still not part of legal provisions in a number of respondents' jurisdictions. In addition, controlling shareholders' are reported to play an obstructive role, impeding the flow of information to board members.

3. Outstanding issues

General

- Respondents brought up the issue of how to **strike the right balance** between having a system incorporating key aspects of good governance practices into legislation, while also maintaining flexibility and not being overly prescriptive. This is in essence addressing the basic question whether a system of governance should be based on either rules – mandated standards – or principles – general guidelines. A system of principles-backed rules might be emerging, thereby merging the two approaches.
- The **role of government and the state as owner** poses the question whether state-appointed board members in SOEs should be focusing on company interests or particular interests of the state as shareholder.
- **Market characteristics deriving from the nature of ownership structures** play an important role. It was noted that corporate governance mechanisms devised for dispersed markets may not be applicable to the mostly concentrated ownership structures in Asia. One respondent encouraged a regulatory analysis of family ownership structures in advanced markets like Hong Kong, China and Korea to gain insights.

Implementation/Enforcement

- A generic issue addressed was **how to make corporate governance initiatives legally enforceable**. A respondent from the Philippines noted that companies are reluctant to adopt practices that go beyond the law, as many consider the costs of compliance as already high enough.

- Some **key judicial issues** raised by respondents in relation to enforcement concern the time taken by court hearings and courts' reluctance to impose custodial sentences on corporate governance offenders.
- At the same time, given the difficulty of obtaining proof on a number of issues, **close and efficient dialogue between regulators and market participants** is encouraged in order to better foster market forces for surveillance purposes.
- The majority of issues above relate to cases of criminal enforcement. An **increased usage of civil penalties** could be beneficial to increase the effectiveness of enforcement.
- A respondent from Malaysia raised the concern that the **demutualisation of exchanges** and the pressure for exchanges to generate profits could **affect the extent of their enforcement** of listing requirements.

Shareholder rights

- One of the main issues, raised throughout the survey is how to **raise awareness among shareholders** or to create better incentives for shareholder activism.
- More specifically, a key issue is how to achieve a **more active role for Institutional Investors**. A respondent from Malaysia called for more effective education programs for retail shareholders.
- While the use of technology can help strengthening the process of the Annual General Meeting (AGM), more needs to be done. One suggestion put forward is to provide more training for company secretaries to **enhance their understanding of sound procedures for AGMs.**

Disclosure

- While some respondents noted that better standards of disclosure might be needed, the main issue in this area concerns how to **effectively enforce standards**.

Role of the board

- Respondents called for **broadening the role of audit committees** by i.e. requiring the committee to analyse related party transactions, while, at the same time, increasing its legal expertise.
- The **role of boards with respect to remuneration** is a topic of debate. A respondent from India suggested the mandatory establishment of remuneration committees.
- While the number of qualified candidates for board members can be a problem, the fact that they are usually recruited, nominated and elected by the controlling shareholder may be a bigger issue. Allowing **major shareholders other than substantial shareholders to play a greater role in the recruitment of candidates** could help address this problem.
- Many respondents addressed issues of how to **enhance the effectiveness and quality of the board**, especially of non-executive and independent board

members. Specific topics that were raised in this context concerned the need for board members to possess the appropriate skills to oversee the operations of companies, as well being able to commit the necessary time needed to perform their oversight roles.

- The **role of the board in risk management** is also subject to debate, as well as what mechanisms are needed to strengthen its oversight of the **internal control function**.

II. Taking stock of corporate governance in Asia

The report reviews all 36 Recommendations of the 2003 White Paper. The results are presented in the following manner: The recommendation itself, together with the paragraph number refers to the original White Paper, is followed by a section providing the background to the recommendation from the White Paper. The ensuing summary section is offering a concise, one-paragraph snapshot of the main progress made toward implementing the recommendation as well as the remaining impediments, both of which are subsequently elaborated on in greater detail. The final section is reflecting comments by questionnaire respondents on the continued relevance of the respective recommendation, for incorporation into an updated White Paper in 2011.

1. Shareholders' rights and the equitable treatment of shareholders

Recommendation 1

Legislators and securities and exchange regulators should promote effective shareholder participation in shareholder meetings. In particular, rules on proxy and in absentia voting should be liberalised, and the integrity of the voting process should be strengthened. (#85)

Background

The recommendation was issued with practices such as coordinated shareholder meetings on the same day; short notice periods for Annual General Meetings; and generally inadequate information policy leading up to meetings in mind. In addition, the use of company officers to ensure the integrity of meetings as well as facilitating the use of proxy and absentia voting was encouraged.

Summary

Progress on a number of aspects of the recommendation can be noted, facilitating shareholder participation, but various impediments still exist. The Internet and other information technologies can provide an opportunity for improving information dissemination.

Developments

In order to give shareholders more time to prepare for Annual General Meetings (AGM), **notice periods have been increased** in a number of countries. While Chinese

Taipei and Malaysia amended relevant laws and regulations to increase the notice period to 21 days, a new provision was added to the Corporate Governance Code in Hong Kong, China to increase the period to 20 business days. Thailand follows a voluntary approach in recommending a 30 day period in its AGM assessment project, while the law only requires 7 days (for general agenda items) and 14 days (for substantial agenda items).

Provisions addressing the **nomination and use of proxies** have been put forward in some jurisdictions. China's 2005 Company Law provides shareholders with the possibility of nominating an agent to act as their proxy. Similarly, the 2009 Commercial Act in Korea stipulates that shareholders may exercise their voting rights via proxy or written ballot. The Malaysian Corporate Law Reform Committee has put forward various recommendations to ease the use of proxy voting, such as removing the stipulation that only certain qualified persons can be nominated.

Electronic voting has been introduced in China and Korea, and is pending approval under the Indian Company Bill. Recent reforms to the corporate law in Indonesia allow not only electronic voting but the virtual attendance of the meeting via electronic communication. Similarly, company law reform in Malaysia now enables the use of technology to conduct meetings in more than one venue. However, the Corporate Law Reform Committee in its review of the Companies Act in 2007 has recommended that electronic voting should not be made mandatory and is best addressed by way of guidelines and best practices. In Chinese Taipei, the Taiwan Depository & Clearing Corporation has been requested to establish an electronic voting platform and has already provided electronic voting services to some companies since 2009.

The Thailand Securities Depository is providing a range of services such as preparing shareholder databases and recording attendee registration in order to **strengthen the integrity of meetings**. The AGM assessment project, which includes a checklist of good practices to be followed by companies, has contributed to significant progress in AGMs in the country over the last four years, according to published assessments. Additionally, the AGM project also recommends listed companies to disclose the voting results and vote counts of each agenda item in the minutes of the meeting. In 2009, 99.2% of listed companies complied with the recommendation. In Hong Kong, China, listed companies are required to publish the detailed results of the shareholder poll.

Impediments

A respondent from Thailand raised the issue of **concentration of AGMs around key dates**, thus making it difficult, especially for institutional investors, to attend the meetings.

Impediments on proxy voting, where the practice is available, include company bylaws stipulating that only another shareholder can be appointed as a proxy, as is the case in some companies in Bangladesh.

With respect to the **integrity of voting**, a study by the Indonesian Institute for Corporate Directorship found that since disclosure of the voting process is not required in the minutes of the AGM, the vast majority of listed companies elect not to disclose voting results and vote tabulation procedures.

The importance of institutional investors was acknowledged throughout the responses, but various issues were raised that need to be taken into account to **strengthen**

the role of institutional investors. These include that they often do not take the opinion of beneficial owners into account and too often only follow their own interests.

Recommendation

All respondents suggested keeping this recommendation. A greater focus could be put on encouraging institutional investors to exercise their voting rights, and on the utilisation of technology to facilitate shareholder participation such as electronic voting.

Recommendation 2

The state should exercise its rights as a shareholder actively and in the best interests of the company. (#93)

Background

Where the state retains partial ownership in companies, the following practices were identified as key elements for success: (i) choosing as board members only persons having sufficient authority, knowledge and experience to make informed commercial decisions; (ii) insulating these representatives from political pressures; and (iii) establishing evaluation criteria for these persons in ways that motivate them to assess and take appropriate business risks. In addition, the 2003 White Paper raised the issue of the state's lack of resources and capacity for arm's length regulation of companies.

Summary

Corporate governance codes have been formulated for State-Owned Enterprises (SOEs) and efforts have been made to clarify the role of the state as an investor and shareholder. The perception of government interference still looms large over the role of the state as a shareholder though.

Developments

Recent years have seen progress in the **extension of corporate governance regulations and codes to SOEs** in the region. In Thailand, the State Enterprise Policy Office issued new Principles on Corporate Governance of State-Owned Enterprises in 2009, requiring the state, among other things, to declare a clear ownership policy. Pakistan is in the process of applying its Corporate Governance Code to SOEs via regulations. Government-linked companies (GLCs) in Malaysia are subject to the reviews of the Putrajaya Committee on GLC High Performance, which, in April 2006, released the Green Book-Enhancing Board Effectiveness focusing on board performance to guide GLCs in their transformation into high-performing entities.

Other developments focused on **clarifying the role of the state as a shareholder**[1]. The Chinese Enterprise State-Owned Assets Law of 2009 includes a provision stating that the State Council, in acting as the investor for enterprises of national significance, and local governments, in taking on the role of investor for other enterprises, should not interfere in the self-operating status of companies they invest in. In Viet Nam, the State

Capital Investment Corporation was created, with the mission to institutionalise and strengthen state investment while respecting market rules.

Government agencies influence the governance of Korean firms in a different manner. The **pension funds**, which are operated by government agencies, **actively exercise their shareholder rights**, with a particular focus on improving the governance system of companies they invest in. For this purpose a pool of independent board members was created to assure the availability of qualified professionals.[2] In Thailand, the Government Pension Fund has – since 2005 – issued proxy voting guidelines intended to be a catalyst for fortifying good corporate governance practices among listed companies.

Impediments

A number of responses pointed towards the fine line between commendable active shareholding by the state and the **perception of government interference**, where government institutions pursue objectives that are not in the interest of shareholders, often acting as public officials rather than shareholders. In order to alleviate this problem, it was suggested that government agencies should restrict their role to providing strategic direction rather than being involved in the day-to-day management.

With respect to the **nomination of board members or commissioners** serving on the board of SOEs, a number of respondents pointed towards the lack of transparency in the nomination process and the often political nature of appointments.

Respondents from China and Viet Nam pointed out that there is often a lack of clarity in regards to the **institutional responsibility over the management of state-owned assets**. To address these shortcomings, China issued the Enterprises' State-owned Assets Law in 2009 in regards to the institutional responsibility over the management of state-owned assets.

Recommendation

The recommendation is still relevant and should include the issue of how to; actively exercise shareholder rights while balancing commercial and state interests; successful steps taken by the state as majority shareholder to make boards more accountable; and guidance to increase corporate governance related training for state employees. [3]

Recommendation 3

Governments should intensify their efforts to improve financial-institution regulation, supervision and corporate governance (#100)

Background

The 2003 White Paper emphasised the importance of financial institutions for promoting corporate governance by acting as catalysts in monitoring and valuing good corporate governance of clients. This function is in addition to the need for effective governance structures at the financial institutions themselves. A particular focus in the

recommendations had been put on the need for functioning risk-management structures to be established by board members and managers as well as for timely and accurate disclosure and transparency in financial reporting.

Summary

Key developments include a focus on giving the Board a stronger role in the oversight of risk management as well as implementing best practices in remuneration. The main impediments relate to the capacity for monitoring and enforcement. [4]

Developments

Unsurprisingly, given the focus on financial firms in the recent crisis, a number of **regulatory developments addressing risk management and remuneration practices** can be noted. Hong Kong, China and Singapore, owing to their status as regional financial centers, have put forward a large number of regulations and proposals. Guidelines issued in Hong Kong, China and a consultation paper released by the Monetary Authority of Singapore (MAS) in March 2010 focus on the role of the Board in the promotion of sound risk management and remuneration practices. The financial regulators in both jurisdictions use the "Principles and Standards on Sound Compensation Practices" of the Financial Stability Board as guidance for their own financial institutions guidelines. The 2009 revision of the guidelines for securities firms in Chinese Taipei also include a particular focus on remuneration, and the Bank of Thailand (BoT) has put forward many regulations addressing credit risk management. Bank Negara Malaysia (BNM) has been issuing guidelines on a wide range of issues such as Corporate Governance for Licensed Institutions and Credit Transactions and Exposures with Connected Parties.

Reforms addressing the **importance of the composition of the Boards** of Financial Institutions have occurred in a variety of countries. The Financial Institutions Business Act of 2008 gives the BoT the authority to establish the structure of the Board to ensure appropriate checks and balances. In addition, appointments need the approval of the BoT. In Korea, in order to strengthen the role of independent board members, financial institutions have published a code of conduct for independent board members in January 2010. It recommends that the majority of board members should be independent, rather than the 50% legally required. Pakistan has introduced fit and proper criteria for key executives, board members and CEOs of asset management companies and Modarabas[5]. Similarly, Thailand has introduced fit and proper criteria for board members and executives of asset management and securities companies.

The regulator in Hong Kong, China, the Hong Kong, China Monetary Authority (HKMA), has been at the forefront of reforms aimed at **increasing the disclosure of exposures** by financial institutions. These include semi-annual surveys on off-balance sheet exposures and debt securities portfolios and a requirement by the HKMA that all supervised institutions have to disclose their positions in structured products.

Impediments

The primary obstacle raised by respondents concerned the **capacity for enforcement** of rules. This includes the lack of effective external oversight, adequate monitoring and judicial capacity and the fact that action by the regulators is often not timely.

Another key concern raised is the **human capital challenge**. A general lack of qualified board members and senior managers poses a challenge especially for smaller and family-owned banks and in filling the board positions for independent board members. Internal and external auditor skills also pose a concern.

Lastly, the HKMA emphasised that **stress testing** for financial institutions **faces implementation challenges** as current practices and methodologies are still evolving.

Recommendation

Respondents encouraged the revision of this recommendation to include the governance of state-owned financial institutions, and focus on internal control systems for risk management as well as remuneration practices.

Recommendation 4

Asian jurisdictions should develop or enhance rules that prohibit officers, directors, controlling shareholders and other insiders from taking business opportunities that might otherwise be available to the company. At a minimum, prior to taking such an opportunity, such persons should disclose to, and receive approval from, the company's board or shareholder meeting. (#106)

Background

This recommendation in a broader sense discourages managers and insiders from putting themselves in a position where their loyalty might be questioned or tested. Family-run firms are prevalent in the Asian corporate world. Ownership can therefore be effected through extensive interlocking networks of subsidiaries and sister companies, which can create the risk of abusive self dealing. Asian jurisdictions are encouraged to develop and enhance doctrines prohibiting the taking of corporate opportunities in order to protect minority shareholders from inequitable treatment, caused by the shifting of business opportunities by self-interested controlling insiders.

Summary

A number of efforts to help curb the taking of business opportunities by self-interested insiders can be observed in terms of the adoption of laws and regulations. Enforcement, however, remains a major impediment to the implementation of this recommendation.

Developments

Several jurisdictions have **introduced codes of conduct** related to the duties and responsibilities of board members, controlling shareholders and related parties. In China for example, the China Securities Regulatory Commission (CSRC) issued the Rules for the General Assemblies of Shareholders of Listed Companies, while both the Shanghai and Shenzen Stock Exchanges set up guidelines on the conduct of companies' controlling parties. Similarly, the Philippines, in 2009, revised its Corporate Governance Code to further elaborate on the specific duties and responsibilities of board members.

Numerous countries have also introduced provisions into their legal framework addressing the **issue of taking corporate opportunities**. Malaysia introduced amendments to its Companies Act in 2007, prohibiting improper use of a company's property, information and corporate opportunity, as well as provisions against engaging in business that comes into competition with the company.

A few jurisdictions also reported legislative amendments that **provide or enhance legal** definitions related to this recommendation. Thailand's Securities and Exchange Act defines conflicts of interest as including related party transactions that do not comply with the SEC's requirements, the use of inside information, and using of assets or business opportunities of the company. A 2008 amendment to Pakistan's Securities and Exchange Ordinance has expanded the definition of insider trading as well as increased the applicable penalties.

In 2009 the Indonesian Capital Market and Financial Institution Supervisory Agency, Bapepam-LK, issued a rule requiring extensive **disclosure of related party transactions**. Chinese Taipei's Regulations Governing the Acquisition and Disposal of Assets by Public Companies (2007) as well as Viet Nam's Enterprise (2005) and Securities (2007) Laws also contain provisions regarding the disclosure of related party transactions (RPTs). The Singapore Exchange's Listing Rules require detailed disclosure of conflicts of interest if issuers are unable to resolve the said conflicts prior to listing. In Thailand, regulation concerning RPTs contains requirements for the approval by the board or shareholders, depending on type and size of the transaction and subsequent disclosure.

In certain circumstances when a related party transaction is considered "reasonable", prior approval is still required from the board and/or shareholders. **Approval mechanisms for related party transactions have been introduced** throughout the region. In Pakistan, the Board of Directors has been made responsible - via amendments to the Code of Corporate Governance - for the assessment, including whether price determination is on an arm's length basis, and approval of RPTs. The Company Law in China requires shareholders' meeting or AGM approval if a board member or senior management wants to enter into a contract or engage in transactions with the company. The Vietnamese Code stipulates the approval of RPTs by the AGM or the Board, but bars interested parties from participating in the process of approving such transactions. In Indonesia's Bapepam-LK issued a revision of rules in 2008. It now differentiates between affiliated transaction and conflict of interest transaction. In case of an affiliated transaction, the company must disclose to the regulator and make a public announcement within 2 days after such a transaction occurs, Conflict of interest transactions must still be approved by non-interested shareholders in the AGM.[6] The Singapore Exchange Ltd (SGX) Listing Rule 906 requires shareholders' approval to be obtained for an interested person transaction, as does the Securities Act in Thailand.

Going one step further, in Korea, under the 2009 Commercial Act, minority shareholders can hold the board member involved in an abusive related party transaction accountable and can protect the company's assets through **actions such as a derivative suit**.

Impediments

Impediments in implementation, owing to the **difficulties of monitoring and obtaining proof,** were reported to be one of the more significant obstacles to the implementation of this recommendation. Participants from Indonesia, Bangladesh and Malaysia cited the insufficient monitoring abilities of the regulatory bodies. Malaysia in particular reported that enforcement is solely dependent upon complaints submitted to the regulator, however, it was also pointed out that since Bursa Malaysia can submit such complaints, it contributes to effective enforcement through its proactive surveillance efforts. The SGX noted that the disclosure of conflicts of interests is left up to the interested party. Thailand's SEC also highlighted that the complexity of such transactions often makes it difficult to prove offenses beyond a reasonable doubt.

Respondents from China and Viet Nam cited the **need for stronger internal control structures** as a form of prevention. As reported by India, there is also a lack of guidance to help define business opportunities and the approval procedures for those opportunities not utilised by the company.

A respondent from Viet Nam addressed the **lack of clearly defined rules and guidelines** governing related party transactions, while Pakistan emphasised the lack of disclosure requirements. The lack of understanding of these regulations or perhaps their objectives, as reported by answers from Korea and Viet Nam, also serves as an obstacle to the implementation of this recommendation.

Recommendation

Respondents from all jurisdictions stated that this recommendation should be maintained. It was highlighted that clarification and reinforcement were needed on the types of prohibited transactions, the approval of such transactions, disclosure standards, regulatory intervention and enforcement, as well as the transparency of transactions. The response from Malaysia's SC noted that while its laws have been reformed to address this recommendation, compliance could be enhanced by educating shareholders about their rights and by encouraging the reporting of non-compliance.[7]

Recommendation 5

Asian legal frameworks should employ effective measures – particularly ownership attribution rules – to improve identification of beneficial owners. Improved identification will also require better international co-operation among regulators. (#112)

Background

The timely and accurate disclosure of beneficial owners is pertinent to enforcing rules governing the market for corporate control, insider trading and related-party transactions. Legal requirements concerning ownership disclosure should therefore explicitly cover cases of parties acting in concert, or controlled de facto or de jure, by other interested parties. Courts and regulators should have sufficient powers to ascertain beneficial ownership, and disclosure requirements should be reinforced by substantial sanctions.

Summary

Jurisdictions have made a number of efforts to comply with this recommendation, predominantly in terms of the enactment of related laws and regulations. A number of countries have also taken steps towards increasing international co-operation in this area. However certain systemic obstacles to identifying ultimate beneficial owners still persist, along with several weaknesses in the legal and regulatory frameworks.

Developments

The provisions of several **laws and regulations related to the identification of beneficial owners** have been amended and enacted across several jurisdictions. Developments in China's Company Law (2005), are reported to provide for the definition of "actual controller," while regulations enacted in India (2010) and Pakistan (2009) set out due-diligence requirements for intermediaries in order to establish beneficial ownership of shares or accounts. Indian regulations now also require disclosure of changes in shareholdings. Proposed regulations in Hong Kong, China aim to provide for more efficient and expedited disclosure.

Effective disclosure of ultimate beneficial ownership is also dependent upon **regional and international co-operation**. Malaysia and Thailand are signatories of the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding (IOSCO MMoU), designed to facilitate cross-border enforcement and exchange of information among the international community of securities regulators. Developments in regulations in Chinese Taipei and proposed regulations in Pakistan require foreign holders of local companies to disclose beneficial ownership. India's regulator has also implemented simplified registration processes for foreign institutional investors.

With the exception of Malaysia and Hong Kong, China, the jurisdictions surveyed did not explicitly report new developments directly related to the **powers of the courts and regulators to identify and trace ultimate beneficial ownership**. Malaysia's 2007 Capital Markets and Services Act do provide the Securities Commission with the authority to require the disclosure of beneficial ownership. Regulators in Hong Kong, China are also considering a proposal which would require the electronic submission of beneficial ownership disclosure to the Hong Kong, China Stock Exchange (HKSE).

Amongst some of the developments highlighted with regard to **monitoring compliance** with this recommendation are China's Shanghai Stock Exchange (SSE) and Shenzhen Stock Exchange (SZSE) guidelines and Chinese Taipei's regulations governing information to be published in annual reports of public companies. A respondent from Pakistan also highlighted that on and off-site inspections are regularly conducted by its

Securities and Exchange Commission to ensure compliance, and that strict penalties have been proposed to sanction non-compliance. A respondent from Malaysia detailed various applicable sanctions, including those prohibiting wrongdoers from further maintaining securities accounts.

Impediments

Several obstacles to obtaining beneficial ownership information were highlighted by the respondents. Input from Bangladesh and Indonesia noted **difficulties in obtaining ownership information** on securities held by foreign investors, and those held in omnibus accounts. Malaysia's SC cited difficulties in establishing "ultimate" beneficial owners of securities if the securities are held through various nominees in different jurisdictions. However, this impediment should be in part mitigated by the IOSCO MMoU to which Malaysia is already a signatory. In addition, similar to the response from Thailand, the SC also declared banking secrecy laws in other countries to be an impediment. The response from Indonesia's Bapepam-LK reported difficulties in establishing the beneficial ownership of unregistered shares traded via OTC transactions.

In terms of **shortcomings of the legal and regulatory framework**, respondents from China, and Pakistan stated that there are inadequate civil and/or criminal liabilities sanctioning the failure to disclose beneficial ownership. The Korean respondent noted a lack of clarity of the roles of respective regulatory bodies, while responses from Indonesia and Viet Nam cited the lack of sufficient disclosure requirements as an impediment. It is worth noting that in the case of Viet Nam, no rules and practices for identifying and disclosing beneficial owners currently exist. There are also no tools, institutions or capacity for the enforcement of such rules.

Recommendation

All respondents stated that this recommendation should be maintained. It was highlighted by respondents from Malaysia, India and Chinese Taipei that international co-operation amongst regulators needed to be strengthened.

Recommendation 6

Asian policy-makers should consider prohibiting listed companies from engaging in certain types of related-party transactions, such as personal loans to directors and officers, as well as controlling shareholders and other insiders. (#117)

Background

While Asian legal regimes had already uniformly prohibited abusive self-dealing at the time of the 2003 White Paper, two challenges were identified. The first related to the effective disclosure that an insider is a party to a transaction, and the second to ensuring that self-dealing/related-party transactions take place only when they are fair to the company. With respect to approving related-party transactions, both disinterested board member approval and shareholder ratification were considered legitimate policy options.

Summary

Significant progress can be observed in clarifying definitions of RPTs and introducing appropriate approval mechanisms. However, enforcement and implementation remain issues as key actors in the decision making process, e.g. shareholders and board members still need to be better equipped with the means to fulfill their roles in this context.

Developments

Amendments to the Company Acts in Malaysia and Korea respectively **clarified the scope of what constitutes a related-party transaction**. In Malaysia, the 2007 amendments to the Company Act addressed shortcomings of provisions regulating substantial property transactions with board members or connected persons. It also added a provision that specifies that board members need to disclose their interest in any contract they enter into with the company. In addition, since 2005, amendments to the Bursa Malaysia Listing Rules have extended the definition of RPTs, by including, amongst many others, transactions involving the interests of board members or major shareholders (above 5%) of listed companies. In Korea, a 2008 amendment to the Commercial Act broadened the parties subject to restrictions to include family members and companies owned by them. The Indian 2009 Companies Draft Bill also stipulates numerous requirements.

Most jurisdictions have been active in setting up **approval mechanisms for related party transactions**. Details are provided under Recommendation 4.

Loans cannot be provided either directly or indirectly to board members, supervisors or senior management in China, following the revisions of the Company Law. The Vietnamese corporate governance code of 2007 stipulates similar provisions, adding controlling shareholders to the group prohibited from receiving loans. Bangladesh's SEC also issued a notification prohibiting loan taking by board members from their respective companies.

Significant developments can also be noted with respect to the **disclosure of related party transactions**. In Indonesia, under Bapepam-LK rules on related party transactions revised in 2008, companies must disclose such transactions within 2 days. The SEC in Thailand requires a listed company intending to enter into any transaction with a connected person to disclose the details of such a transaction to the public (in case of small transactions) and obtain shareholders approval (in case of substantial transactions). SGX Listing Rule 905 requires an issuer to make an immediate announcement of any interested person transaction of a value equal to, or more than, 3% of the group's latest audited net tangible assets; if it is more than 5%, shareholders' approval is required. It is also noteworthy that the circular to shareholders must include an opinion from an independent financial adviser stating whether the transaction is on normal commercial terms and whether it is prejudicial to the interests of the issuer and its minority shareholders.

Interestingly, and contrary to reforms described above, developments in Hong Kong, China point towards the **relaxation of some rules to better achieve their intended purpose**. The draft Companies Bill contains proposals to relax the prohibition for private companies associated with listed or public companies, which currently prevents them from granting loans, quasi-loans and credit transactions in favour of board members and connected persons of the holding companies. In addition, the Hong Kong, China Stock

Exchange received market comments that certain Listing Rules on related party transactions may be unduly burdensome or restrictive. It consulted the market in October 2009 on proposed rule changes in this area to ensure that the Listing Rules meet their purpose and intent in a balanced and cost-effective manner.

Impediments

A wide range of **enforcement related obstacles** could be observed from the responses. Multiple responses cited the primary problem of practical difficulties in obtaining proof of abusive transactions. Other responses pointed to the challenge of enforcement in general, and the lack of capacity, while the answer from the Malaysian Securities Commission raised the question whether demutualised exchanges place as much emphasis on their supervisory function as on carrying out their own business.

Limited awareness of shareholders of their capacity to intervene, in essence limited awareness of their rights, was brought up in the responses from Malaysia and Viet Nam. Increased shareholder activism, such as requesting more details on transactions is therefore a necessary precondition for RPT provisions to be effective.

This is of course in addition to the **importance of the role of the board and independent board members**. Issues with respect to the role the board in relation to RPTs include doubt about the proper due diligence by the Board, particularly if the independent board members/commissioners are chosen by controlling shareholders. In this context, the response from Bursa Malaysia emphasised the key role of independent board members in RPTs, and consequently singled out the lack of caliber and ability of independent board members to make effective decisions as a major obstacle. Thailand's SEC made an important point in adding that financial advisors should be involved in substantial transactions but should be of high, professional standard.

Responses from Korea and the Philippines consider the **appropriate disclosure of transactions as well as decisions** made in Board meetings to remain an obstacle.

Recommendation

This recommendation remains relevant. Even when the legal framework is in place, enforcement is still critical. The key recommendations from the 2009 *Guide on Fighting Abusive Related Party Transactions in Asia,* developed by the Asian Roundtable Taskforce should be incorporated. The recommendations include – *inter alia* – the need for companies to make their policy on RPTs public, an emphasis on the role of external auditors and independent directors and – if applicable – the establishment of a voting system with a majority of disinterested shareholders. In addition, input from Singapore's stock exchange advocates a less prescriptive and more disclosure-based approach. The SGX does not prohibit specific types of interested person transactions as there may be legitimate commercial reasons and leaves the decision to the independent shareholder, given that they have access to all the relevant information.

Recommendation 7

Individual (or at least aggregate) director- and senior-executive-compensation arrangements should be fully and accurately disclosed. Accounting for executive compensation should reflect the economic impact of the compensation on the income statement and balance sheet, as well as the fact such compensation is incurred for the performance of services. (#118)

Background

For this recommendation, approval of executive compensation arrangements by independent, non-executive board members was considered the most effective policy option, one that needs to be complemented with the maximum degree of disclosure, however. Disclosure of individual compensation, whenever possible, is to be preferred over aggregate compensation, though where such disclosure is onerous or dangerous to board members and senior officers, aggregate compensation may be disclosed. To aid board members in setting appropriate compensation structures, regulators and other institutions should disseminate information on executive compensation across companies and sectors.

Summary

Although there has been progress regarding the disclosure of board member- and senior-executive compensation, the level of detail still varies widely. Remuneration committees are making their way into best practice recommendations, but so far are of mandatory nature only for financial firms in some jurisdictions.

Developments

Almost all bodies surveyed reported legal or regulatory developments requiring **disclosure of remuneration of board members and executives**, where it had not existed prior to 2005. Vehicles of disclosure range from Annual Reports (Bursa Malaysia Listing Requirements, Viet Nam 2006 Securities Law, Bapepam-LK rules), to the AGM (Indonesia Company Law, Viet Nam Securities Law), shareholder Information Statements (Philippines) or to more general, unspecified requirements such as in China, regulations require companies to disclose the amount and process of determining compensation regularly. In Thailand, the SEC requires companies to disclose board members and executive compensation in annual reports and shareholders' notices. In 2008, the Chinese Taipei's Financial Supervisory Commission (FSC) amended regulations introducing a form of conditional disclosure, requiring companies that had two consecutive after-tax deficits to disclose remuneration paid to individual board members and supervisors.

Progress in requiring **an increased level of detail in disclosures** was noted in some responses. The revised Code in the Philippines calls for disclosure in the Annual Report and proxy statement of all fixed and variable compensation that may be paid to the board members and top four executives. In its first phase consultation in December 2009 for a Draft Companies Bill, the Hong Kong, China Government proposed to require all listed

companies incorporated in Hong Kong, China to prepare a remuneration report which should cover various types of benefits given to individual board members' by name, including basic salary, fees, housing and other allowances, benefits in kind, pension contributions, bonuses, payment for loss of office and long term incentive schemes including share options. In Chinese Taipei, the Corporate Governance Best Practice Principles of the Securities Investment Trust and Consulting Association were amended in 2009 to include a requirement to disclose remuneration structure and policy for board members, supervisors, general manager and vice general manager, and the correlation with the company's operating performance.

Details about **procedures for the approval of remuneration** of board members and executives were provided in some answers. The Thai Public Companies Act requires that board members' remuneration must be approved by the shareholders. Bursa Malaysia Listing Requirements require that increases of board member fees be approved at the AGM. Remuneration committees are finding their way into more best practices , (Malaysia, Thailand, and India's Clause 49) but none of the responses indicated it being a mandatory requirement, with the exception of financial firms in some jurisdictions. The Corporate Governance Code in the Philippines recommends that no board member should participate in decisions on their salary.

Impediments

A number of respondents noted popular **arguments brought forward against disclosure of compensation structures**. These include cultural issues, as remuneration is considered a private matter, and security concerns which have to be factored into the release of information on remuneration. The answer from Singapore raised practical considerations in a highly competitive environment, where companies face the risk of poaching if compensation is disclosed.

Incomplete or aggregate disclosed information was identified as an obstacle by various jurisdictions. Often, individual compensation is only disclosed for the chairman. Board members, supervisors and senior management are reported only in aggregate; or, for matters other than direct monetary compensation (such as stock options), no disclosure is required.

Concerns were raised in relation to the **approval of remuneration by the AGM and the prevalence of concentrated ownership** in Asia. It was noted that concentrated ownership makes AGM approval of remuneration a mere formality, and as such is not an effective check on excessive compensation. This is particularly true when the majority or controlling shareholder also holds an executive position.

Recommendation

According to respondents from all the jurisdictions, this recommendation should be kept. It should be considered to make disclosure of the remuneration structure and compensation policy of the company a requirement.

Recommendation 8

Asian legal systems should continue to improve regulatory and judicial enforcement capacity and even-handedness. (#135)

Background

While much progress had been achieved in terms of providing regulators and courts with the necessary capacity to implement and enforce shareholder rights, great challenges remained in this area according to the 2003 White Paper. The formation of specialised company law courts as well as investigatory and prosecutorial teams was encouraged.

Summary

Courts specialising in capital market matters are being established in some jurisdictions, and are being supplemented by other attempts to strengthen enforcement capacity. Nevertheless, judicial expertise is still perceived to be the major obstacle in the effective enforcement of corporate governance regulations.

Developments

Specialised courts or chambers of courts have been established in a number of jurisdictions. Since September 2009, the High Court in Malaysia has established two new commercial courts which are dedicated to dealing with commercial, including capital market cases. In China, the first financial court was established in the Pudong District in Shanghai in 2008 and several since in other cities. The Judicial Yuan established three professional financial courts at the Taipei District Court to improve judicial enforcement capacity. In addition, the Ministry of Justice in Chinese Taipei established a three level finance certificate license system to improve the qualities of prosecution lawyers. Similarly, training for new judges on capital market matters has been introduced in Thailand. In a related matter, Indonesia has established a special court to try corruption cases, as well as a Corruption Eradication Commission, which have both proven to be effective, according to the respondent.

The revised Code in the Philippines requests the company boards to establish and maintain an **alternative dispute resolution system** that can settle conflicts between the corporation and its stockholders, or the corporation and third parties, including the regulator. The formal establishment by the Philippine SEC of a body with statutory powers to solve conflicts has been suggested.

A number of jurisdictions have **created new bodies** within the institutions regulating securities markets **focusing on strengthening enforcement capacity**. The CSRC in China has set up an inspection division to deal with the major, cross-regional cases in the securities and futures market. In India, the Securities Fraud Investigation Office, a multi-disciplinary organisation under the Ministry of Corporate Affairs, was established to take on complex and systemically important cases. The Enforcement Division of Bursa Malaysia was set up on April 1, 2008 as a separate division with the primary objective of ensuring that there is a clear separation of functions between investigation and

enforcement. In Pakistan on the other hand, the existing regulator's powers were strengthened as the Securities and Exchange Commission of Pakistan (SECP) gained the authority to issue regulations, directives, codes, guidelines, circulars and notifications via the amendment of the Companies Ordinance of 1984 in 2007. In addition, the SECP has constituted a Committee on Corporate Governance with the mandate to improve enforcement mechanisms for listed companies and prescribe frameworks for unlisted ones.

Rather than creating a new institution, the SC in Malaysia has focused on **utilising existing resources optimally**. The strategic enforcement initiative by the SC in Malaysia has, according to the SC, resulted in the use of a range of enforcement tools to ensure that breaches involving corporate governance result in effective and efficient enforcement action, such as prosecution, civil action and restitution. The SC repeated that the initiative enabled it to efficiently use both criminal and civil powers granted to it by the securities laws.

In the question of criminal versus civil penalties, Thailand plans to **introduce civil penalties** in the next amendment of the Securities and Exchange Act. It is envisioned that since criminal enforcement is lengthy and necessitates considerable resources, the use of civil penalties will help to speed up the enforcement process.

Impediments

Most responses raised issues of **judicial competency**. The main problem identified was the lack of specialisation of judges on capital market matters. An interesting point was put forward by the Malaysian SC in this context, which noted that judges are often transferred between courts in Malaysia, not allowing them enough time to develop expertise.

The other main issue concerns the general problem of **resource constraints for regulators**. Again, the answer from Malaysia's SC pointed to this being a major impediment in attracting and retaining highly skilled individuals to work for the regulator with competitive salaries.

The 2003 White Paper pointed out that **political influence and corruption** permitted wrongdoers to escape punishment with respect to corporate governance failures. These issues still persist and respondents point out political interference leading to pressure from interest groups such as big corporations.

Recommendation

All participants agreed on keeping the recommendation. The answer from Korea suggested particularities resulting from national judicial systems to be taken into consideration. A respondent from the Philippines pointed out that the recommendation is only relevant if corporate governance is clearly defined and understood in the jurisdiction, as otherwise enforcement is difficult.

Recommendation 9

Local law should permit shareholders to initiate class-action or derivative suits against directors and other fiduciaries of the company for breach of fiduciary duty, for failure to comply with disclosure requirements or for securities fraud. Mechanisms to discourage excessive or frivolous litigation should not prevent or frustrate collective action by shareholders with meritorious claims. (#139)

Background

Shareholders' rights and equitable treatment depend on the availability of effective redress mechanisms for shareholders. Where the availability and fairness of these proceedings can be trusted, shareholders are more likely to take a minority position. While the Asian business culture might often prefer quiet and informal dispute resolution, the 2003 White Paper had noted a clear trend towards broader use of collective action shareholder suits in Asia. No preference between the derivative lawsuits (where one or more shareholder files suit on behalf of the company against the board members to recover losses) or the shareholder class-action lawsuit (where a group of shareholders sues board members directly for damages suffered by all shareholders) was apparent.

Summary

Both redress mechanisms highlighted in the 2003 White Paper have been introduced or are in the process of being introduced in a number of jurisdictions, along with initiatives to facilitate the introduction of lawsuits by shareholders. These practices have not yet taken hold, as conveyed by the obstacles cited, such as lack of incentives and passive reliance on the regulator to initiate actions. Procedural hurdles and the inefficiency of the judicial process add to the difficulties in implementing this recommendation.

Developments

Derivative law suits have been introduced in a number of jurisdictions. In Malaysia, the 2007 amendment to the Companies Act introduced statutory derivative action[8], as did the 2005 Company Law revision in China. The government of Hong Kong, China in 2009 issued a consultation paper on the draft Companies Bill with a view to expanding existing statutory derivative action to "multiple" derivative actions. The amended Securities and Exchange Act in Thailand provides shareholders with at least 5% of voting shares with the power to bring a derivative suit against the board members/executives. While this right had been provided in the Public Companies Act since 1992, the amended Securities and Exchange Act empowers the court to order the company to compensate the shareholders for actual expense of the suit.

At the same time, legal **developments enabling class action law suits** took place. The 2007 Company Law in Indonesia emphasises older provisions of the Company Law that shareholders representing at least 10% of voting shares can file a complaint in a District Court against the Board for negligence causing a loss to the company. Class action legislation is in the pipeline in a number of other jurisdictions. In Hong Kong,

China, the consultation paper issued by the Law Reform Commission Class Actions Subcommittee proposes multi-party litigation. It also proposes that litigants would need to obtain court approval to proceed with class action. The 2009 draft Indian Company Bill includes a provision to include class action suits. Thailand's SEC has drafted a class action law as part of the Civil Procedure Law, intended to help retail investors to pool their resources. It is expected to be submitted to the cabinet by the end of 2010.

Chinese Taipei and India have passed regulations or established institutions to **facilitate the initiation of legal proceedings in the interest of investors**. In Chinese Taipei, the Securities Investor and Futures Trader Protection Act establishes the Securities Investor and Futures Trader Protection Centre, which may file derivative action against board members or supervisors for redress in the case of violations of shareholder rights. In India, the SEBI Investor Protection and Education Fund Regulations were passed in 2009. The regulation allows usage of the fund in aiding investors' associations, recognised by the Board, to undertake legal proceedings in the interest of investors in securities that are listed or proposed to be listed. In addition, the 2009 SEBI Aid for Legal Proceedings Guidelines enable the reimbursement of expenses incurred in connection to legal proceedings.

Impediments

In part, the lack of shareholders' activity can certainly be attributed to **procedural and financial hurdles** associated with initiating litigation. Multiple responses cited the high initial cost outlays as a major obstacle. In the case of Indonesia, a respondent pointed to the significant barrier of having to gather 10% of voting shares to launch a class action suit.

Most answers raised the issue of a general **lack of awareness of shareholders** of their right to initiate any form of litigation. The lack of awareness might be compounded by the general attitude of preferring to resolve disputes through informal means, which was attributed to the Asian business culture by a number of responses.

In addition, a number of answers lamented the passive nature of shareholders in their jurisdictions, paired with the **mentality of relying on the regulator to take action**. Institutional investors and investor associations could play a key role in this context.

Lastly, the **length and inefficiency of the judicial process** was identified as an impediment to the fulfillment of this recommendation. The lack of alternatives to class action suits or judicial procedures, such as administrative hearing, mediation or arbitration procedures certainly contribute to this problem.

Recommendation

The Recommendation should be kept. Respondents noted that the need for institutional investors and investors associations to be active in this area should be added to the recommendation.

2. The role of stakeholders in corporate governance

Recommendation 10

Company, commercial and insolvency laws and the judicial system should help creditors enforce their claims in an equitable manner, in accordance with principles of effective insolvency and creditor rights systems. (#158)

Background

While adopting some of the more advanced aspects of developed market insolvency regimes, a number of Asian economies still face challenges to put in place the fundamentals to actually implement them. The main task of public officials in protecting creditors' rights includes enforcing the law. Improved enforcement requires strengthened institutional capabilities, which in turn require training, knowledge transfer, and leadership to eradicate corruption. To deal meaningfully with creditors' rights, Asian regimes should also continue to work on the fundamentals of insolvency laws and procedures.

Summary

Progress to enforce creditors' rights has been achieved through the adoption of more advanced insolvency provisions in some jurisdictions, often focusing on introducing corporate reorganisation frameworks. The main challenges identified related less to the regulatory regimes *per se*, but highlighted a lack of enforcement and inefficient judicial processes, not allowing laws to have the desired effect on protecting creditors' rights and also balancing interests.

Developments

Several jurisdictions reported the adoption or planned adoption of provisions regarding insolvency procedures in general, including rehabilitation, winding up, and liquidation of companies. China's 2006 Enterprise Bankruptcy Law stipulated company bankruptcy proceedings and related issues. The 2004 Insolvency Law in Indonesia, while intended to facilitate voluntary restructuring of liabilities and formalise the liquidation process, does not allow for formal restructuring of companies to avoid liquidation. **Most insolvency legislation in the pipeline incorporates restructuring mechanisms**. India's draft 2009 Companies Bill incorporates international best practices based on the model law suggested by the United Nations Commission on International Trade Law (UNCITRAL). Similarly, proposals to reform the existing insolvency law are underway in Malaysia, in order to enable an efficient liquidation process, introduce a corporate rehabilitation framework, and improve the scheme of arrangements and the receivership process. A corporate rescue procedure to turn around viable companies has been proposed in Hong Kong, China. In Pakistan, the draft Corporate Rehabilitation Act, which provides a balance between creditors and debtors rights, has been sent to the government for approval.

Other countries have regulated or proposed reforms to deal with **specific issues such as limited liability, processing of claims, capital reduction, and insolvent trading**. According to the 2007 revised Company Law, Chinese shareholders may not abuse the independent corporate status and limited liability, and through the Enterprise Bankruptcy Law, the issue of processing of claims and liabilities has been addressed. A proposal to make board members personally liable for the company's debt, if they cause the company to trade while it is insolvent and a test for insolvent trading have been proposed in Hong Kong, China, while in Korea the civil and criminal liability of board members can be investigated under the Commercial and Criminal Acts.

Impediments

While most responses indicated that corporate and bankruptcy laws and regulations are in place, a **lack of institutions and capacity to enforce** them was noted. An example cited by a respondent from Pakistan noted the missing coordination between official agencies when joint teams are involved in the inquiry process.

Inefficiencies in the judicial process were cited as a main impediment by the answers from Bangladesh, Indonesia, Pakistan, and Viet Nam. The answer from Thailand indicates a capacity problem at the overloaded Bankruptcy Court with a vast volume of cases against public companies. Inefficient judicial systems can lead to unintended consequences as pointed out in the Chinese response, where bankruptcy procedures are misused in order to avoid paying debt.

Recommendation

All respondents suggested keeping this recommendation. The respondent from the Philippines raised the need for practical assistance on how to structure such laws, whereas a respondent from China addressed the need for more effective measures to enforce creditors' claims, such as reforming the courts and administrative processes.

Recommendation 11

Companies should develop policies and procedures that promote awareness and observance of stakeholders' rights. To this end, governments should also introduce protections against retaliation for employees who report problems and abuses (i.e. "whistleblowers"). (#164)

Background

Companies should raise awareness of stakeholders' legal rights and should translate this awareness into everyday compliance. Companies should also put in place procedures to investigate complaints and information on wrongdoing coming from employees and other stakeholders. Such procedures should be backed by legal protection against retaliation for employees who report problems and abuses. Developing and publishing such procedures enable the company to improve compliance, to professionalise behaviour and to insulate the company from the unauthorised and illegal behaviour of rogue employees and supervisors.

Summary

Progress in promoting awareness and observance of stakeholders' rights has materialised differently across the jurisdictions surveyed. Some developed policies and procedures to address and disclose stakeholders' rights regarding the society and the environment, while also addressing the need to maintain channels of communications with other stakeholder groups. Other jurisdictions have focused their efforts on provisions protecting people from retribution. However, cultural, regulatory, and legal impediments continue to exist across jurisdictions, affecting awareness and implementation of this recommendation.

Developments

A number of jurisdictions have **integrated the concept of corporate social responsibility (CSR) into their corporate governance codes and regulations** in order to protect and extend stakeholders' rights. The 2006 Guidelines on CSR, and the 2008 Notice on strengthening social responsibility of listed companies were issued in China by the Shenzhen Stock Exchange and Shanghai Stock Exchange respectively to encourage listed companies to make CSR reports together with their annual reports. The two exchanges have also developed social responsibility indices. In the case of Chinese Taipei, these practices are reflected in its 2010 "CSR Best-Practice Principles". In late 2006, Thailand appointed the CSR Working Group to establish guidelines and encourage listed companies to increase their awareness of issues related to society and the environment. In 2008, the working group launched CSR Guidelines. The Hong Kong, China Exchange has proposed the need for a corporate social responsibility requirement under the Listing Rules.

Provisions to protect whistleblowers have been introduced across the region. In 2008, the "Good Governance and Internal Control Guide" was issued in Hong Kong, China, which includes provisions on whistle blowing policies**.** Indonesia issued the Law on Victim and Witness Protection in 2006 and the Code of Whistle-blowing System in 2008. In Malaysia, the 2007 amendments of the Companies Act incorporates provisions to protect whistleblowers, while the 2007 Capital Markets and Services Act and the Bursa Malaysia Corporate Governance Guide provide statutory protection to employees who convey information about wrongdoing. The Financial Investment Services and Capital Market Act, enacted in 2009 in Korea, include a provision to convey illegal activities, including unfair trading practices, to the competent authority. Chinese Taipei's Moral Standard Best-Practice Guidance for Listed Companies encourages employees to report illegal behaviour to supervisors, managers, auditors, or other suitable persons, and introduces protection against retaliation for employees who report problems and abuses. Similarly, Thailand's 2008 amendment to the Securities and Exchange Act prohibits securities companies or listed firms from persecuting or engaging in unfair practices against whistleblowers. Reforms are ongoing in Hong Kong, China via proposals made in 2009 to give protection to persons who volunteered information to facilitate an investigation. Whistle-blowing policy proposals for SOEs have been included in the draft Public Sector Companies (Corporate Governance) Regulations in Pakistan, while Malaysia announced that it will formulate a Whistleblower Act to fight fraud and corruption.

Developments concerning an **increase in the dialogue with stakeholders groups** have been reported by two jurisdictions. The response from the Philippines cites formal

and regular consultations with key stakeholder groups. Similarly, Chinese Taipei's Corporate Governance Best Practices Principles state that listed companies shall maintain channels of communications with its banks, other creditors, employees, consumers, suppliers, community or other stakeholders and shall respect and safeguard their legal rights.

Impediments

The **lack of legal protection for people from retribution** was cited as an obstacle in the answers from Bangladesh, China, India, and Pakistan. **Institutional impediments**, contributing to the difficulty of enforcing laws were addressed in the answers from Indonesia and Thailand. In the Philippines, the lack of an established system to handle such cases, and **fear of reprisal** were addressed as major obstacles.

Introducing the concept of employees reporting problems and abuses also has to **overcome cultural factors** such as the emphasis put on loyalty and general problems of awareness of legal protection for employees, as observed by respondents from Viet Nam and Malaysia. For instance, employees reporting problems and abuses are generally not perceived to be a familiar concept in Indonesia. Negative views about 'the inside informer' persist in Korea. In general, family ties in family-owned businesses may act as an additional factor inhibiting the reporting of wrong-doings.

Recommendation

All respondents suggested keeping the recommendation. A respondent from China stated that revisions should encourage listed companies to fulfill social responsibility practices and protect whistleblowers. Moreover, raising stakeholders' awareness should be a priority according to the answers from Viet Nam and Malaysia. Although there are laws in place for the protection of whistleblowers, there is still a need to create greater awareness and to change the cultural mindset of stakeholders regarding the concept.

Recommendation 12

To preserve and promote reputational goodwill, directors (and policy-makers) should not only take into account the interests of stakeholders but communicate to the public how these interests are being taken into account. (#169)

Background

Reputational goodwill refers to a company's capacity to generate additional returns due to the positive public perception of a company and its products. The 2003 White Paper cited cases showing the relevance of reputational goodwill to company profits in Asia which included incidences of consumer boycotts and protests targeting working conditions and pay in Asian factories.

Summary

The progress in the understanding and implementation of the concept of reputational goodwill is best reflected in observing activities of companies. Anecdotal evidence presented by respondents seems to indicate an increase in community engagement activities. The concept of Corporate Social Responsibility (CSR) is certainly gaining momentum in the region and may provide a viable communication channel to stakeholders.

Developments

Progress can be noted not only in establishing the concept of CSR but also in the **release of information on issues of CSR**. As noted under Recommendation 11, in order to promote reputational goodwill more companies in China have begun to release annual reports on corporate social responsibility, according to a requirement by the Shanghai Stock Exchange for companies listed under their Corporate Governance Board. Listed issuers in Malaysia are required to disclose a description of their CSR activities or practices undertaken in their annual reports, in accordance with the CSR Framework for Listed Companies, released in 2006 by the Bursa Malaysia.[9] Bursa Malaysia also commissioned a CSR survey of 200 listed companies in 2007, which resulted in the 2007 CSR Status Report. In Chinese Taipei, listed companies release Sustainability Reporting voluntarily to promote reputational goodwill. By the end of 2009, 46 listed companies released such reports. Recently, Singapore's listed companies have started highlighting their CSR efforts in their annual reports as well. In addition, some companies have prepared CSR reports in accordance with the Global Reporting Initiative Guidelines. In the Philippines, listed companies conduct reputation surveys and quarterly and annual briefings for investors. In Indonesia, under the 2007 Company Law, companies doing business in the field of natural resources should fulfil their environmental and social responsibility. Further information regarding CSR activities is required to be disclosed in the annual report for listed companies. Lastly, in Thailand, while some listed companies already prepare CSR reports in conjunction with their annual reports, the SEC is drafting guidelines, to be issued by the end of 2010, to encourage compliance with the Global Reporting Initiative.

New institutions to promote stakeholder relationships have been created in Malaysia and Thailand. In Malaysia, the Investor Relations Association and the Institute of Corporate Responsibility have been established in 2007 and 2006 respectively to provide educational programs, guidelines, and promote responsible business conduct. A Corporate Social Responsibility Club was founded in Thailand in 2009.

Recommendation

All respondents suggested keeping this recommendation. Corporations should continue to be made aware of the advantages and benefits in developing practices that promote reputational goodwill. Also, the need for company participation in promoting sustainable development has been recommended. The Philippine respondent suggested to include a stakeholder section in annual reports. Revisions could also include encouraging companies to adopt the Global Reporting Initiative Guidelines for their CSR reporting in annual reports, which would enhance comparability between reports. A respondent from

Hong Kong, China considered this issue to have little relevance for good corporate governance practices.

Recommendation 13

Companies should establish internal redress procedures for employees' rights. Governments and private-sector bodies should also promote the use of mediation and arbitration in providing redress. (#172)

Background

Early intervention by a company can build confidence and goodwill among employees and avoid lawsuits that can damage the company's finances and reputation. A company's use of non-governmental redress mechanisms, such as mediation and arbitration, can vindicate stakeholders' rights while furthering the company's interests. Such mechanisms can also offer the advantages of privacy and confidentiality, generally highly valued in Asian business culture. While institutionalised consultation mechanisms represent a useful means for enhancing employee relations, such mechanisms were found to be rare in Asia per the 2003 White Paper.

Summary

Sporadic progress to establish internal redress procedures and governmental or non-governmental redress mechanisms has been achieved through the enactment of legislation and the creation of specific bodies to address these issues. Practical guidance on how such internal redress procedures should be structured and developed could be beneficial in overcoming obstacles.

Developments

The issue of **internal redress procedures has been addressed in laws and codes** in a number of jurisdictions. In China, relevant provisions are included in the Law on Labour Disputes, Mediation and Arbitration, which came into force in May 2008. Thailand's 2006 Principles of Good Corporate Governance for Listed Companies address the issue of internal redress procedures in passing. In the case of Viet Nam, although companies rarely have internal redress procedures for employees, employees' rights are heavily regulated by the Labour Law. Chinese Taipei's 2010 Corporate Social Responsibility Best Practice Principles require listed companies to provide relevant comprehensive information for its employees on their labour rights.

Some **institutional developments** with respect to this recommendation were reported. In the Philippines, a council to address employee-employer concerns and company-initiated redress mechanisms has been established. In Thailand, labour conflicts are first dealt with by the Conciliation Officer of the Labour Department and then sent to the Labour Court, which provides conciliation process for disputing parties free of cost.

Impediments

Some reported shortcomings in the implementation of employee rights and redress mechanisms can be attributed to a **lack of awareness and the particularities of Asian corporate culture.** Respondents from Bangladesh and Viet Nam noted the lack of awareness and understanding of employees' rights, labour unions and redress mechanisms. A respondent from Pakistan raised the issue of a general lack of a merit-based culture in family-dominated businesses, which should be established by the board and the CEO. This can partially be explained by the dominance of family-owned companies. In this context the respondent also noted the problem of discrimination between family and non-family employees in family owned companies.

The other main category of shortcomings for this recommendation concerns **institutional capacity constraints**. One of the Indonesian answers noted that responsible bodies have been ineffective in performing their roles. An example of this is the Labour court system in Thailand, which is clogged by the number of pending cases.

A respondent from the Philippines cited **operational obstacles** such as the selective investigation of employee issues and the involvement or intervention of the board as impediments for providing employees with effective internal redress procedures.

Recommendation

All respondents suggested keeping this recommendation. However, the respondent from Hong Kong, China considers this recommendation to have little relevance for good corporate governance practices. A respondent from the Philippines expressed interest in practical guidance on how such internal redress procedures should be structured and developed. The focus in the future should be more on the compliance function and internal control of companies.

Recommendation 14

The public and private sectors should continue to develop performance-enhancing mechanisms that encourage active co-operation between companies and employees. (#176)

Background

Common performance-enhancing mechanisms provide incentive compensation for individual or collective performance. Cash and equity bonuses, either in the form of options or shares are the most wide spread practices. Equity-participation mechanisms can include employee stock ownership plans and contributions to individual pension plans.

Summary

Progress to develop performance-enhancing mechanisms has been achieved in one way or another for almost all the jurisdictions, through the use of management and remuneration measures, programs, or systems.

Developments

A number of **performance management programs, including compensation and benefits systems,** have been developed across the region. The Chinese Measures for the Management of Equity Incentive of Listed Companies, released in 2006 allow for board members, senior management, and other personnel to be part of equity incentive schemes. In Indonesia, the issue of incentive compensation was established in the 2007 Company Law and the 2006 Bank Indonesia's regulation. Listing requirements also provide a share scheme for employees in Malaysia. In addition, in the context of the transformation of Government Linked Corporations,, a number of other incentive schemes have been introduced. Similarly, the Philippines have implemented a new performance management system which includes an Employee Share Purchase Plan and a variable pay and benefits scheme. Another example is Thailand's Employee Joint Investment Programme. In Chinese Taipei, the Corporate Governance Best-Practice Principles require listed companies to establish a coherent performance based remuneration system. In the past, companies in Viet Nam used cash bonuses as the only performance-enhancing mechanism, but recently many listed companies have set up Employee Stock Ownership Plans to attract high-quality employees. A respondent from India stated that its private sector is increasingly adopting performance incentive mechanisms.

Impediments

Unfamiliarity with the concept, legal and policy barriers and **market concerns** were brought up as obstacles to the development of performance-enhancing mechanisms by the respondents. In China, equity-based incentives are not yet widely recognised, and the Bangladeshi response indicated a reluctance of private sector entrepreneurs to introduce the concept. The fact that the Chinese Company Law does not allow share or bond buy-backs prevents some forms of incentive schemes. The response from the Philippines sees re-organisations, mergers or acquisitions, together with changes in management leadership as obstacles to introduce performance-enhancing mechanisms. Lastly, the abundance of labour, and the fact that most labour is unskilled constitute an obstacle for introducing employment schemes, according to the Vietnamese answer.

Recommendation

All respondents suggested keeping the recommendation. A respondent from Thailand raised a concern on how it leads to better corporate governance. Similarly, these issues are considered to have little relevance to good corporate governance practices by the respondent from Hong Kong, China.

3. Disclosure and transparency

Recommendation 15

Asian Roundtable countries should work towards full convergence with international standards and practices for accounting, audit and non-financial disclosure. Where, for the time being, full convergence is not possible, divergences from international standards and practices (and the reasons for these divergences) should be disclosed by standards setters; company financial statements should repeat or reference these disclosures where relevant. (#202)

Background

The 1997 Asian financial crisis proved to be a watershed event adding to the urgency for strengthening disclosure rules and enforcement of accounting, auditing and non-financial disclosure standards. While jurisdictions varied widely in terms of accounting and auditing practices, the 2003 White Paper recommended full convergence with international standards as a goal to be achieved over time while recognising the practical challenges imposed by local conditions.

Summary

Progress on convergence with Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISA) can be noted across the region, facilitating partial and full adoption in many participating jurisdictions. However, high costs related to converging local financial reporting framework with international standards and an overall lack of skilled professionals were observed as impediments.

Developments

Following the global financial crisis, improving the **institutional framework for financial reporting** and modernising accounting standards became a global imperative. This urgency can be observed across the region with most participants reporting progress in harmonisation of accounting and auditing practices. Convergence of accounting practices is ongoing in several jurisdictions, except for the Philippines, which already adopted IFRS in 2006. Most respondents indicated that they were in the process of **converging local GAAP with IFRS or adopting IFRS** as national standards. The adoption dates vary, with India and Korea potentially adopting IFRS by 2011. Other jurisdictions are likely to adopt by 2012 or later.

Though most jurisdictions are focused on convergence of local GAAP with IFRS, **ISA adoption** is ongoing as well, with Indonesia set to adopt by 2011. A respondent from Hong Kong, China indicated that ISA have been adopted as national auditing standards, while Chinese Taipei is working towards aligning local Generally Accepted Auditing Standards (GAAS) with the recently issued clarified ISA.

As for the **audit process**, a respondent from Thailand stated that since 2005 companies must change their auditor at least once in every five fiscal years. The Thai securities regulator also requires disclosure of audit fees and related issues in the annual report.

Impediments

While none of the respondents pointed out impediments in the adoption/convergence process, hindrances with respect to implementation were discussed. **High costs** associated with adopting a new accounting regime and subsequent changes it entails in the internal systems were seen as major obstacles in the implementation process.

With the harmonisation of accounting and auditing practices and the related adoption of international standards, many of the jurisdictions find it difficult keeping pace with **providing the requisite number of skilled professionals.** For instance, providing timely education and training with regards to IFRS and ISA is likely to be a significant challenge in the implementation of international standards.

Recommendation

A large majority of respondents suggested keeping the recommendation. While a respondent from Pakistan indicated that the relevance of this recommendation was conditional on the success of the convergence/implementation process, a respondent from Malaysia suggested that - notwithstanding that Malaysia is converging with IFRS in 2012 - keeping the recommendation can serve as a guide for Asian jurisdictions to work towards convergence.

Recommendation 16

All Asian countries should continue to strengthen regulatory institutions that: (i) establish high standards for disclosure and transparency; (ii) have the capacity, authority and integrity to enforce these standards actively and even-handedly; and (iii) oversee the effectiveness of self-regulatory organisations. (#208)

Background

The 1997 crisis exposed severe capacity building constraints and enforcement challenges for securities regulators and stock exchanges. Overall, it was observed that most Asian regimes lacked institutional capacity and authority to ensure compliance. Other issues entailed poor performance of self-regulatory organisations (SROs) with respect to accounting and auditing practices. For effective supervision, the White Paper recommended that regulators have an adequate number of highly-trained personnel to monitor company compliance and ensure that accounting and auditing related SROs fulfill their responsibilities.

Summary

Improvements aimed at enhancing regulatory efficiency and disclosure standards were observed in several jurisdictions. However, impediments such as capacity constraints and political influence still persist across the region.

Developments

In order to **enhance the efficiency and effectiveness of regulatory institutions** participants reported reforms at various levels. Malaysia indicated that since May 1, 2008, Bursa Malaysia has restructured its Regulation Division putting in place a new organisational structure. This move has led to the adoption of a more proactive approach in the way the market is regulated. As explained by a respondent, Bursa Malaysia now undertakes a more risk-based approach to regulation. Korea also amended its Disclosure Regulation in this sense. In Indonesia, the Ministry of Finance and Bapepam-LK are currently undergoing organisational reforms to enhance their capacity, authority and integrity.

Ongoing initiatives with respect to **strengthening disclosure and transparency** can be observed in several jurisdictions. China introduced administrative Measures for the Disclosure of Information of Listed Companies in January 2007. A 2008 Bapepam-LK rule makes it a requirement to announce a related party transaction to the public within 2 days. Disclosure of price sensitive information was also discussed by certain participants. China and Hong Kong, China are looking into a proposal on making disclosure of price-sensitive information mandatory for listed companies. In Pakistan, new laws have been drafted setting higher standards of disclosure and transparency that also give the SECP the authority and power to enforce these standards. Furthermore, in order to ensure enforcement of required standards, the Thai SEC also regularly examines financial statements of listed companies. As an SRO, the Philippines Stock Exchange (PSE) launched Corporate Governance Guidelines in 2010 requiring listed companies to disclose their governance practices on a comply or explain basis; this will be uploaded on the PSE website.

As for strengthening enforcement and implementation of financial reporting standards, surveyed jurisdictions have put in place **sanctions and penalties**, ranging from administrative penalties to criminal investigations. As indicated by a respondent from Hong Kong, China, sanctions in the form of private reprimands, public censure and ultimately delisting are available to help achieve compliance. However, a respondent from Hong Kong, China pointed out that the available options are inadequate. Although sanctions are not listed as the main impediment, a respondent from Indonesia also suggested weaknesses with respect to the enforcement of disclosure requirements. A respondent from China indicated that monetary fines for violations are set too low, rendering them ineffective as an enforcement tool.

Impediments

Overall, regulatory **capacity constraints** were observed as a main impediment to effective monitoring and enforcement of standards. As indicated by a respondent from Thailand, due to the large number of listed companies, full scale monitoring of

transactions is not possible. A general lack of resources particularly with respect to skilled personnel was also observed.

A **lack of awareness** among those in-charge at public companies was considered to be another impediment in effective enforcement. A respondent from Malaysia points out impediments with respect to this recommendation include competing with the private sector to attract and retain qualified personnel and the constant need to train personnel to ensure they can keep pace with changes.

SROs play a significant role with respect to enforcement of corporate governance principles and the monitoring process. Participants recommended **strengthening the role and independence of SROs in Asia**. A respondent from China, for instance, indicated a need to strengthen the independence of SROs while a respondent from Viet Nam pointed out the lack of well developed SROs and investor groups.

Recommendation

Almost all respondents agreed that this recommendation is still relevant. A respondent from China suggests emphasising the role of SROs, while respondents from Viet Nam and Malaysia recommend focusing on enhancing the supervisory capacity of regulators.

Recommendation 17

Securities regulators, stock exchanges, self-regulatory organisations and investor groups should continue to educate companies and the public regarding the value and uses of full, accurate and timely disclosure of material information. Asian regimes and all stakeholders within them should strive for a corporate culture in which managers and directors internalise the need for good disclosure practices. (#213)

Background

The 2003 White Paper emphasised the importance of good disclosure with a particular focus on the concept of materiality in developing disclosure requirements. Since the definition of materiality is subject to differing interpretations, a number of Asian economies had fallen significantly short of national and international standards.

Summary

Overall, improvements have been made with respect to disclosure requirements at various levels; however, some respondents have suggested the need for further clarification on how to interpret "materiality" in their own jurisdictions, given that it is defined in IFRS and IOSCO standards.

Developments

Respondents reported ongoing efforts aimed at improving **financial literacy and dissemination of information** for this recommendation. The SGX promotes investor education through regular seminars and events. It also recently published two reference

guides to equip retail investors with the skills to obtain important information in annual reports and ask relevant questions during AGMs. Similarly, Bursa Malaysia collaborates with other institutions and associations putting together conferences, dialogues and road shows in order to disseminate regulatory objectives and concerns while the Philippines Stock Exchange conducts annual seminars on disclosure rules. The Thai SEC, in coordination with the Thai Listed Companies Association also provides several seminars on disclosure requirement for all listed Companies annually.

In order to achieve better, more detailed disclosure some of the respondents reported innovative means to reach out to public companies. For example, Indonesia provides special **incentives to disclose additional information** including a guarantee to waive tax inspection for the rewarded company that year. The Institute of Chartered Accountants in Bangladesh gives awards in various categories for the best published annual report. Viet Nam, on the other hand, requires public companies to assign an information disclosure official. These officials are required to attend training provided by the State Securities Commission in order to keep them updated with changes and developments in the regulatory framework every year.

Other jurisdictions are **amending their legal frameworks** to improve disclosure of financial information. China revised its Securities Act in 2005, which now includes examples of material events. A respondent from Hong Kong, China reveals a pending proposal on changing the status of "non-statutory" Exchange Listing Rules on disclosure of material information to "statutory" requirements under the Securities and Futures Ordinance.

Impediments

Some respondents declared that the lack of clarity in the **definition of "materiality"** is a significant impediment in assessing adequate disclosure. As explained by a respondent from Singapore, while guidelines and engagement efforts are in place, there could be differences in the interpretation of what constitutes material information among issuers. A respondent from India raised the issue of differing size, scale and structure of various listed entities and therefore, stressing that one-size does not fit-all when it comes to disclosure of material information for these companies. In this context, the respondent also indicated a risk of "micromanaging" listed companies.

Other related issues brought forth by some responses highlighted the **limited sanctioning powers** of the stock exchanges. A respondent from Hong Kong, China conveys limited available options (such as private reprimands, public censures and in certain cases delisting) for non-compliance with relevant requirements. Although sanctions are not listed as the main impediment, a respondent from Indonesia also suggested weaknesses with respect to the enforcement of disclosure requirements by the regulator. A respondent from China indicates that sanctions for violations, such as monetary fines, are set too low, rendering them ineffective as an enforcement tool.

SROs play a significant role with respect to the monitoring process. The Vietnamese respondent pointed out the lack of well developed SROs and investor groups.

Recommendation

All participants agreed that this recommendation is still relevant, with a respondent from Indonesia suggesting that the scope and definition of material information be further clarified and a respondent from India suggesting that a one-size-fits-all approach with respect to disclosure of material information is not effective.

Recommendation 18

To promote free and vigorous investigation and reporting by news organisations, local defamation and libel laws should be narrowly tailored. (#219)

Background

The 2003 Roundtable participants pointed out that enforcement actions have often been initiated because of close press coverage and media reports promoting enforcement of the law. However, the 2003 White Paper noted that in some Asian jurisdictions, defamation and libel laws have been used to stifle reporting on corporate or state-enterprise malpractices. In this regard, the Roundtable encouraged Asian jurisdictions to enact defamation and libel laws that are tailored to reign in threatening or censoring of responsible news organisations.

Summary

By and large, no major developments were reported in this area, however, most jurisdictions except for India and Hong Kong, China, agreed that this recommendation is still relevant.

Developments

No major developments were reported by the respondents.

Impediments

A respondent from India, contrary to other jurisdictions surveyed, noted that there is ongoing debate on whether **restrictions/guidelines need to be put in place to keep the media in check**. Although in the past, media coverage of unprofessional business conduct or financial misdemeanor has sometimes resulted in an audit of the concerned company, publishing unconfirmed information posed a significant challenge, according to a respondent from India.

A respondent from Malaysia indicated progress made by various online news publications in promoting investigative journalism; however, the **low number of financial journalists** remained an impediment.

Recommendation

As noted earlier, most jurisdictions except for Hong Kong, China and India agreed in their response that this recommendation is still relevant. In the case of Hong Kong, China, the answer indicated that there existed no local laws that stifle the work of the media and, therefore, this recommendation was deemed irrelevant. Other participants suggested an increased focus on media training and responsible journalism.

Recommendation 19

Managers and insiders (including directors and substantial shareholders) should have obligations to disclose structures that give insiders control disproportionate to their equity ownership. Similar disclosure obligations should apply to material self-dealing/related-party transactions. (#223)

Background

As pointed out in the 2003 White Paper, there have been instances where controlling shareholders have exploited their positions to engage in abusive self-dealing. Also, in some economies, cross-shareholding is often used to obtain control of companies without having to acquire significant equity stakes.

Summary

A majority of participants reported progress with respect to disclosure of related party transactions. Numerous respondents also made note of new requirements dealing with insider trading. However, impediments persist, particularly in identifying related party transactions and also with respect to disclosing disproportionate control structures.

Developments

Most respondents reported progress in **strengthening legal requirements concerning insider trading and cross shareholding**. For example, India amended its Prohibition of Insider Trading Regulation in 2009 while Indonesia put a ban on cross-shareholding under the 2007 Company Law. As noted in Recommendation 6, the 2007 amendments to the Malaysian Company Act addressed shortcomings on provisions regulating substantial property transactions with board members or connected persons. It also clarified a provision that board members need to disclose interest in any contract they enter into with the company. In addition, since 2005, amendments to the Bursa Malaysia Listing Rules have extended the definition of RPTs, by including, amongst many others, transactions involving the interests of board members or major shareholders (above 5%) of listed companies. Per a respondent from Chinese Taipei, the FSC promulgated new rules requiring companies to list in annual reports all shareholders with a stake of 5% or more.

Disclosure with respect to related party transactions is required in most of the jurisdictions covered by the questionnaire. For instance, Pakistan amended its securities ordinance in order to enhance related party transactions disclosure. In July 2009, the Taipei Stock Exchange set up the related-party transactions column on the Market

Observation Post System to strengthen the **transparency of information on related-party transactions**. And in Indonesia, in 2008, Bapepam-LK issued a rule mandating public companies engaging in related-party transactions to publicly announce the transaction at most two days after the transaction occurs. In the Philippines and Thailand, as conveyed in their responses, related party transactions are closely monitored by the respective SEC.

Impediments

Overall, **identification of related party transactions** posed the biggest challenge in several of these jurisdictions. As explained by a respondent from Bangladesh, unraveling "camouflaged" related party transactions can be difficult and auditors often act in favour of the clients' interest by concealing information. A respondent from Pakistan pointed out weak internal controls and lack of governance as the main impediments.

Recommendation

Participants agreed unanimously on keeping this recommendation. Most jurisdictions agreed that further emphasis is required on disclosure of structures/arrangements that give insiders disproportionate control over their equity ownership. A respondent from Malaysia suggested that, as the market continues to evolve, more complex and complicated transactions are becoming the norm which could lead to abuse and, therefore, this recommendation needs to be reviewed frequently.

Recommendation 20

All Asian jurisdictions should strive to develop disclosure regimes in which companies disclose material information on a continuous, timely and equitable basis. (#227)

Background

The 2003 White Paper pointed out that timeliness in disclosure requires information to be provided when it is still relevant to the market. It was, therefore, recommended that companies disclose: (i) routine company information on a periodic basis (quarterly, semi-annually or annually); and (ii) price-sensitive information on a continuous basis. The White Paper suggested dissemination of information through various channels such as press releases, filings with authorities and posting information on company websites.

Summary

A majority of respondents reported technical progress with respect to timely transmission and dissemination of financial information. A few responses also indicated initiatives specifically on dissemination of price sensitive information. However, weak internal controls and lack of understanding about the benefits of disclosure still pose a significant challenge.

Developments

Almost all respondents indicated addressing this recommendation in either listing rules or other **requirements encouraging accurate and timely disclosure**. For example, the Chinese government, in 2007, issued Administrative Measures for the Disclosure of Information of Listed Companies mandating disclosure of accurate information in a timely fashion. In Viet Nam, all listed companies are required to maintain a company website, where they are expected to disclose material information. Public companies can also use the information systems of securities exchanges and the State Securities Commission to disseminate material information to the public.

As for **disclosure of price sensitive information**, under the SGX Listing Rules an issuer can request a trading halt for up to 3 days to disseminate material price sensitive information or to clarify rumours during trading hours. Similarly, a listed company in Thailand can request a trading halt if the listed company is pending disclosure of material information and the Exchange can halt trading if material information has not been provided. In order to aid investors in making informed decisions, Hong Kong, China has proposed to legally mandate listed companies to disclose price sensitive information as soon as possible. In Pakistan, the Code of Corporate Governance requires that listed companies disseminate to the SECP and the stock exchange all material information that might impact the market price of its shares.

Numerous respondents reported **technical progress** in **storing and transmitting financial information**. For instance, eXtensible Business Reporting language (XBRL) is set to become the standard way of recording, storing and transmitting company financial information in numerous participating jurisdictions. Per a respondent from India, SEBI now offers an XBRL-enabled common platform for listed companies to file their returns with stock exchanges and also a common place for investors to view information related to listed companies. Since 2007, Singapore and Korea have implemented the XBRL system for filing of financial statements with the Accounting and Corporate Regulatory Authority (ACRA) of Singapore. China also implemented submission of annual reports and half-yearly reports via the XBRL platform. A respondent from the Philippines indicates that the Online Disclosure System has been a major improvement to ensure timeliness of disclosure by listed companies.

Impediments

In general, the **merits of greater disclosure are poorly understood by companies** in the region. As indicated by a respondent from Malaysia, by and large, listed issuers were not convinced that greater disclosure enhances the value of the corporation, suggesting that there is a need for the regulators and the exchanges to work together and find ways to incentivise publicly listed companies to go beyond minimum reporting requirements. This reluctance along with poor understanding of the rules and requirements in some jurisdictions as indicated by a respondent from Viet Nam, poses a challenge. This is especially true if the disclosure obligation is viewed only as an additional burden. In the case of Korea, it was noted that extensive disclosure requirements can act as a deterrent in attracting companies for listing on the stock exchange.

Lags in implementation of technological advances inhibit speed and timeliness of disclosure. According to a respondent from Indonesia, Bapepam-LK does not mandate public entities to maintain a company website and there are therefore no rules with

respect to publishing material information on the website. In a 2007 study conducted by the Indonesian Institute for Corporate Directorship (IICD) it was observed that only 40% of Indonesian listed companies provide downloadable financial statements on their websites. Furthermore, only 15% of the companies published notices to call for shareholders meeting.

Recommendation

By and large, all participants agreed on keeping the recommendation. A respondent from China suggested an increased focus on supervision of listed companies and strengthening the sanctioning regime.

Recommendation 21

Regulators should explore the opportunities created by new technologies to enhance the fairness and efficiency of the disclosure process, including submission and dissemination of financial and non-financial information by electronic means. (#234)

Background

The 2003 White Paper noted that with the evolution of new technologies, including electronic filing of disclosure documents to regulators, real-time reporting of company performance, web casting of analysts' meetings, and rapid and widespread dissemination of company goals and policies, companies should adopt and integrate innovative new methods into reporting and disclosure systems. Where necessary, the White Paper explained, jurisdictions should amend company laws and stock exchange rules to facilitate the use of new technologies.

Summary

See Recommendation 20.

Developments

Several respondents reported the usage of **new technologies and disclosure systems**. Initiatives ranged from providing basic services such as forms and applications online in the case of Pakistan, to above mentioned submission of annual reports and half-year reports via the XBRL platform in the case of China. The SGX has established a web-based SGXNET platform accessible to issuers for timely disclosure. As described in the previous recommendation, several other jurisdictions have introduced the XBRL system for recording, storing and transmitting financial statements of listed companies. A respondent from the Philippines indicates that the Online Disclosure System has been a major improvement to ensure timeliness of disclosure from listed companies.

Impediments

None of the respondents reported any impediments in adopting this recommendation.

Recommendation

Nearly all jurisdictions indicated that this recommendation should be retained.

Recommendation 22

Companies should be encouraged to disclose information that goes beyond the requirements of law or regulation. Where stock exchanges require listed companies to comply with corporate-governance practices or codes, annual reports should state whether or not the company (and its management) have complied and, if not, the extent of, and reasons for, noncompliance.(#236)

Background

The 2003 White Paper noted that reforms in many Asian economies had improved nonfinancial disclosure. Examples of improved practices ranged from disclosure of corporate-governance structures and practices to revealing remuneration and audit and non audit fees paid to independent board members and auditors, respectively. Furthermore, it was observed that the stock exchanges in some Asian markets, such as Hong Kong, China, Malaysia, Singapore, Thailand and Chinese Taipei, require disclosure of whether a listed company had complied with a code of conduct. In Pakistan, there is an additional requirement that such disclosure be reviewed by an external auditor, whose report is included in the annual report. The White Paper recommended that practices such as these should be adopted more widely in the region.

Summary

Respondents across the region reported adopting rules on disclosure of information that go beyond the requirements of law and regulation. For instance, the Codes of Corporate Governance in most participating jurisdictions are applied on a comply-or-explain basis.

Developments

The **Codes of Corporate Governance** in most participating jurisdictions are applied on a comply-or-explain basis. In certain jurisdictions more detailed and mandatory requirements prevail. For instance, a respondent from Pakistan reveals that a statement of compliance with the Code of Corporate Governance is required to be included in the annual financial statements of listed companies, which in turn gets reviewed by a statutory auditor. Malaysian and Singaporean Listing Rules also mandate similar requirements.

Some jurisdictions provide **incentives and awards for disclosing information beyond the legal requirements**. As stated earlier, Bapepam-LK encourages additional

disclosures by rewarding the company which wins the Annual Report Award[10] with waiving tax inspection for a year. Other jurisdictions reported a system of rankings and scorecards to promote corporate transparency. For example, in 2003, the Chinese Taipei Securities and Futures Institute introduced the "Information Disclosure and Transparency Ranking System." Also, for the last five years, the Philippines has utilised a Corporate Governance Scorecard system to encourage companies to disclose additional information.

Impediments

None of the jurisdictions reported any impediments to implementing this recommendation

Recommendation

Most respondents agreed that this recommendation is still relevant. A respondent from China indicated that greater emphasis should be required on developing a mechanism for encouraging voluntary disclosures.

Recommendation 23

Securities commissions, stock exchanges and professional organisations should exercise oversight and enforcement of standards for accounting, audit, and non-financial disclosure.

These bodies should have authority to impose appropriate sanctions for non-compliance. (#238)

Background

As noted in the 2003 White Paper, prior to the Asian crisis, many companies in the region failed to follow the prescribed national or international accounting standards when preparing their financial statements. The strength of the monitoring and enforcement capacity enjoyed by self-regulatory accounting and auditing bodies over their members plays a significant part in determining compliance. However, how effective these bodies are in executing their role in this capacity can, in turn, depend on the degree to which they are subject to monitoring and supervision by governmental regulators themselves.

Summary

Various bodies aiming to achieve implementation of accounting and auditing standards have been established across the region, often within existing institutions, but also as stand-alone statutory bodies.

Developments

Legal and institutional changes in order to achieve greater compliance with financial reporting standards were introduced in a number of jurisdictions. For example, in 2006, Chinese Taipei amended the Securities and Exchange Act in order to impose stricter standards of liability upon those preparing financial reports. In 2009, the

Thai SEC appointed an Audit Advisory Committee to serve in an expert advisory capacity in areas of auditing quality control and to investigate suspicions of non-compliance with auditing standards and codes of conduct. Malaysia amended its Securities Commission Act in order to set up an Audit Oversight Board, and the Malaysian Institute of Accountants established two new boards, the Audit and Assurance Standards Board and the Ethics Standards Board in June 2009. The Financial Reporting Council (FRC) in Hong Kong, China was set up as an independent statutory body in July 2006. The FRC may initiate investigations or enquiries upon receipt of complaints or on its own initiative. Any auditing or reporting irregularities identified by the FRC will be referred to the Hong Kong, China Institute of Certified Public Accountants for follow-up action.

Almost all jurisdictions reported **empowering securities commissions, stock exchanges and professional organisations** so as to perform the oversight function and enforce financial reporting standards. The Hong Kong, China stock exchange and the FRC conduct their own financial statements review programs. In Singapore, the SGX can require an issuer to replace its auditor if the Exchange finds it in the best interest of the shareholders. The Thai SEC, in corporation with the Federation of Accounting Professions extensively monitors auditors' performance, and in case of doubt, will review their work to ensure that the financial statements are reliable and comply with accounting standards.

Most respondents report that their jurisdictions have established **codes of professional ethics for auditors**. For instance, Chinese Taipei sets out standards of professional ethics in a code issued by the National Federation of Certified Public Accountants Association. In 2008, the Indonesian Auditing Standards Board promulgated new ethics rules based on the International Federation of Accountants' Code of Ethics. The new Code defines the criteria for an independent auditor in greater detail.

Many jurisdictions reported that stock exchanges have a range of tools such as **sanctions and fines to discipline non-complying entities**. For instance, the Korean Exchange is able to impose a fine on the listed company that has failed to comply with the timely disclosure obligation.

Seminars and training sessions are also offered in order to provide continuing education to those in charge of disclosure, preparation of financial reports and senior management. A respondent from the Philippines reveals that analysts regularly attend seminars and training sessions on accounting standards.

Impediments

A respondent from China emphasised the **ineffective sanctioning regime** suggesting that greater attention should be given to introducing credible and effective sanctions.

Impediments with respect to **inadequate human resources** were observed by a respondent from the Philippines. On the same theme, a respondent from Singapore indicated that major impediments on the competency side are attraction and retention of talent, as well as sufficient dedication of resources to training.

Recommendation

All respondents agreed on keeping this recommendation with a respondent from China emphasising the importance of focusing on a more effective sanctioning regime.

Recommendation 24

International accounting and auditing firms should apply the same high professional and ethical standards across different markets. (#242)

Background

As pointed out in the 2003 White Paper, accounting requires the exercise of judgment in interpreting and in applying rules and standards. As a consequence, such discretionary judgments create the potential for manipulation. In Asia and other regions, companies often employ strained reasoning to "manage" their reported earnings. Therefore, the 2003 White Paper recommended continuous application of high professional standards by international accounting and auditing firms.

Summary

By and large, respondents reported good progress in the area of auditor independence and establishing standards on professional ethics. However, enforcement still remains a major impediment.

Developments

To facilitate **independence of auditors,** jurisdictions have put in place mechanisms such as auditor rotation. Thailand for instance, in 2005, issued regulations requiring listed companies to change their audit partner at least once every five years. A respondent from India indicated that SEBI is considering mandating rotation of audit firms/audit partners of listed companies.

Other improvements were made with regards to **implementation of ethical standards for accountants**. For example, per the revised rules of 2008 issued by Bapepam-LK in Indonesia, accountants must comply with the code of ethics established by the Indonesian Public Accountant Institute. In Singapore, the national accountancy body, the Institute of Certified Public Accountants of Singapore (ICPAS) is also developing a web-based Virtual Ethics Centre to provide assistance to the profession. In Thailand, the Federation of Accounting Professions has proposed an amended code of ethics for accountants, which includes a definition of accountants' independence.

Other initiatives to strengthen enforcement of standards include **training and seminars** provided in various jurisdictions. The ICPAS has rolled out training programs and publications to create awareness among the profession.

As indicated by a respondent from Korea, when fair auditing is deemed absolutely necessary, the Securities and Futures Commission directly appoints an **external auditor**

to the concerned company. Korea is also preparing for regulatory reform which will introduce a registration system for auditors of listed companies.

Impediments

The difficulty in **ensuring auditor independence** was seen as one of the main impediments for most participants. For instance, a respondent from Indonesia indicated that the voluntary peer review process to enforce auditing standards is not effective in ensuring high quality audits. Also, the Ministry of Finance has a specific body for monitoring the quality of services provided by public accountants; however, very few inspections are performed.

One of the impediments highlighted by a respondent from Singapore is the **retention of talented and skilled professionals** who understand the complexities of financial.

Recommendation

All respondents agreed on keeping this recommendation.

Recommendation 25

Governments in each country should adopt measures to ensure the independence of standards setters and the transparency of their activities. (#249)

Background

The independence of standard-setting bodies is pertinent to the protection of markets and corporate integrity. It has been observed that standard-setters in some Asian jurisdictions are especially susceptible to outside influence and intensive lobbying. Measures protecting such bodies from undue external pressures, such as the adoption of international standards, should be put into place. Securities commissions and stock exchanges should also require that companies disclose reasons for changes in auditors.

Summary

Most respondents have stated that the lack of independence of their standard-setting bodies is not an issue, and that these bodies typically consult with a variety of stakeholders before issuing new regulations. While six out of the thirteen jurisdictions surveyed reported no major impediments, other jurisdictions reported obstacles to effective monitoring and enforcement.

Developments

Most of the bodies surveyed, namely those from India, Singapore, Indonesia, Hong Kong, China, Chinese Taipei, Malaysia and Bangladesh, stated that the independence of their respective standard-setting bodies was not an issue. Standard-setting bodies from Singapore, Hong Kong, China and Malaysia were also reported to be undertaking an

ongoing process in **adopting the international standards** issued by the International Accounting Standards Board (IASB).

Standard-setting bodies from China, India, Chinese Taipei, Singapore and Indonesia were reported to undertake **consultative processes with a variety of stakeholders** prior to issuing new regulations. Singapore's Accounting Standards Council, which took on the task of issuing standards in 2007 for example, engages working groups in reviewing and identifying core issues in accordance with IASB requests for consultation.

Malaysia's Securities Commission Amendment Act of 2010 will establish an **Audit Oversight Board** (AOB) under Malaysia's Securities Commission. The AOB will function as an independent body to oversee auditors of public interest entities. The respondent from Korea reported having a similar body, the Market Oversight Commission, which is responsible for overall market surveillance and monitoring.

Other developments reported were aimed at **strengthening the independence** of institutions involved in the standard-setting process. Thailand's Securities and Exchange Act recently underwent amendments that were reported to strengthen the independence of its SEC's board.

Impediments

Respondents from China, **Hong Kong, China, India, M**alaysia, Korea and Chinese Taipei, identified no major impediments with regard to this recommendation. Other responses, from Pakistan for instance, cited challenges with regards to the **monitoring and enforcement** of accounting and financial reporting requirements.

A number of factors **impeding the independence and capacity of standard-setting bodies** were highlighted. The Financial Accounting Standards Board in Indonesia was reported to face issues such as inadequate funding and staffing, while the respondent from Bangladesh cites administrative impediments, such as the standard setting bodies' dependence on the government for budget approval. The Indonesian respondent also acknowledged potential external influences from both the public and private sector.

Recommendation

All respondents, with the exception of a respondent from China, state that this recommendation is still relevant and should be maintained. A point to emphasise is that securities commissions and stock exchanges should also require that companies disclose, in a timely manner, reasons for changes in auditors.

4. The responsibilities of the board

Recommendation 26

Efforts by private-sector institutes, organisations and associations to train directors should be encouraged. Such training should focus on both discharge of fiduciary duties and value-enhancing board activities. International technical-assistance organisations should facilitate these efforts as appropriate. (#275)

Background

The OECD Principles provide that "board members should act on a fully-informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders." Board members require experience, competence and knowledge in order to be "fully informed." Several Asian organisations and associations have developed or are developing voluntary board member education programmes. Education and training should cover board members' basic legal and governance duties, along with areas such as financial literacy, the monitoring of internal control systems, business strategy development, risk policies and budgets.

Summary

Most of the Asian jurisdictions surveyed reported having board member education and training programmes in place. These programmes have also either been recommended, or in some cases required, by various bodies. However, the voluntary nature of these programmes, coupled with the lack of board member awareness on the benefits of training and the quality of the programmes, serve as impediments to the effective implementation of this recommendation.

Developments

The majority of the respondents reported that **board member education and training programmes are offered** by various local and international organisations and institutions. The bodies offering such courses range from regulators and stock exchanges, to professional and corporate governance associations. The International Finance Corporation (IFC) is involved in initiatives in China, India and Viet Nam. The Singapore Institute of Directors intends to develop a diploma programme for board members, as well as engage other local and international institutes. The Pakistan Institute of Corporate Governance has launched the "Board Development Series" for certification of board members of listed companies, and the SECP has made it mandatory for listed companies to have at least one board member on the Board who is certified under the Board Development Series program starting in June 2011. Thereafter every year a minimum of one board member on the Board has to acquire the above mentioned certification.

Board member education and training programmes have also been either **recommended, or under specific circumstances, made mandatory** in a number of jurisdictions. Regulations in the Philippines for instance, require mandatory corporate

governance training for board members of certain types of entities. The Hong Kong, China Stock Exchange on the other hand, requires that company board members found in breach of its Listing Rules undergo training on compliance and corporate governance matters. Bursa Malaysia's Corporate Governance Guide, launched in 2009, contains recommendations pertaining to continuing education for board members. Indonesia's Central Bank requires the board members, senior managers and employees of entities under its supervision to undertake a risk management certification. In Thailand, the Corporate Governance Code also recommends that the board should encourage and facilitate corporate governance related training for all relevant parties.

In the case of Indonesia, a 2006 Bapepam-LK rule requires companies to disclose board member training in their annual reports, but does not require the actual training itself. Similarly, Thailand's SEC requires all listed companies to disclose board member training in their annual report.

Impediments

One of the main factors impeding the implementation of this recommendation is the **lack of awareness amongst board members** on the importance and benefits of continuous training. Respondents from Indonesia and Thailand for instance, stated that the non-mandatory nature of these training programmes do not motivate board members to participate in them. In addition, both the Chinese and Korean respondents highlighted the need for training schedules to be made more flexible in order to accommodate board members' needs.

The **quality and scope of programmes** offered was also observed to be an issue. Most programmes in China were reported to be insufficient to meet company needs, while the respondents from Pakistan and Singapore cited high monetary costs of the programmes resulting in limited outreach. The lack of local case studies and data was reported to pose challenges to developing "responsive and relevant" programmes in the Philippines.

A respondent from Indonesia highlighted that the **necessity of board member training** itself was still under debate. Malaysia's Securities Commission also reports that there had been similar debates on whether or not to reinstate continuous education programmes as a mandatory requirement. It was decided, however, that the imposition of such requirements was not necessarily the best way to address related shortcomings.

Recommendation

All respondents stated that this recommendation should be maintained.

Recommendation 27

Voluntary or "comply or explain" codes of conduct for directors should be developed and disseminated by private-sector organisations, with appropriate support from international technical-assistance providers. (#283)

Background

Codes of conduct can improve board member performance by publicly articulating the minimum procedures and effort that constitute "due diligence and care." While most Asian jurisdictions have promulgated codes, further refinement and adoption of codes of conduct should be encouraged, with support from international technical-assistance providers when appropriate. All companies at the very least should issue annual corporate governance reports which provide details on items such as related-party transactions and the involvement of independent board members. In order to ensure credibility of the system, it is also essential that both shareholders and regulators must have means of verifying compliance and disclosure.

Summary

The jurisdictions surveyed, with the exception of Viet Nam, each report having various codes and guidelines in place. Companies in certain jurisdictions are either able or expected to draft their own codes and guidelines. One of the impediments highlighted was the fact that the voluntary nature of compliance with the codes does not incentivise their application and implementation.

Developments

All respondent jurisdictions, with the exception of Viet Nam, report having **codes or guidelines** in place, promulgated by either private sector organisations or regulatory bodies. These codes and guidelines include corporate governance codes, codes of ethics as well as guidelines for the conduct of boards. The bodies issuing these codes and guidelines range from stock exchanges and securities commissions to professional associations and corporate governance institutes.

A respondent from India on the other hand illustrates a system whereby **individual companies are in charge of issuing and disclosing their own codes of conduct**. Companies in Chinese Taipei, Indonesia, Pakistan, the Philippines, Korea and Thailand are also allowed to develop their own codes. In Pakistan and India, compliance statements with these codes have to be presented in a company's annual report.

A key issue currently under debate in India considers two **opposing views on the issuance of codes**. One view suggests that SEBI should frame a standardised code, while the other opposing view asserts that market regulators "should not get into micro-management."

Impediments

With the exception of Bangladesh, China, Indonesia and the Philippines, none of the jurisdictions explicitly highlighted any impediments pertaining to this recommendation. The respondent from Bangladesh stated that the **application of the codes** can be an obstacle, while poor enforcement was cited as an impediment by a respondent from the Philippines. Respondents from China and Indonesia state that compliance is impeded by the non-mandatory nature of codes, which in Indonesia's case lacks even "comply-or-explain" requirements.

Recommendation

All respondents stated that this recommendation should be maintained.

Recommendation 28

Attribution rules should impose fiduciary duties and liabilities on "shadow" directors as a way to discourage their existence. (#290)

Background

In Asia, board appointees can frequently include persons who clearly lack the experience or capacity to be fully informed, such as lower-level employees or inexperienced relatives of controlling shareholders who serve as a cover-up for the "shadow board members". These shadow board members do not occupy board positions themselves, but are the real decision makers behind their appointed "representatives." In order to curb this practice, it has been recommended that board members' qualifications, as well as relationships with managers and shareholders be disclosed. Alongside this, companies should also disclose the process employed for the nomination and selection of board members.

Summary

Several jurisdictions report having developed legislation imposing liabilities on shadow board members, as well as introduced guidelines on the appointment of qualified board members. However, there still remain jurisdictions that do not recognise the concept of shadow board members. Obstacles involving transparency and the burden of proof were also reported.

Developments

The respondents from Korea, Chinese Taipei, Thailand, Malaysia and Pakistan reported having introduced **provisions imposing liabilities on shadow board members** into their legal framework. These provisions have been introduced into securities and company laws, as well as the Commercial Act in the case of Korea. Other respondent jurisdictions, such as Indonesia, China and Bangladesh reported having guidelines issued

by regulatory bodies and stock exchanges, detailing provisions related to the appropriate conduct of board members.

Several jurisdictions, including China, Hong Kong, China, and Chinese Taipei have codes, guidelines and/or regulations in place, outlining **procedures for the appointment of qualified board members**. Amendments made to the Malaysia's Corporate Governance Code in 2007 further clarified appropriate nomination processes for company board members.

Impediments

A number of **impediments in the legal process** were highlighted in relation to imposing liabilities on shadow board members. The concept of shadow board members is not recognised within the legal frameworks of China, Viet Nam and Bangladesh, while respondents from Korea, Malaysia and Thailand reveal that obtaining proof and identifying the controlling person can be an obstacle to complying with this recommendation.

One of the respondents from Indonesia stated that the **lack of regulation and disclosure of nomination processes** allows the shadow board member system to function. A respondent from Pakistan also cites the lack of disclosure as a setback, alongside insufficient shareholder will as an obstacle in enforcing this recommendation.

Recommendation

All respondents stated that this recommendation should be maintained.

Recommendation 29

Sanctions for violations of fiduciary duty should be sufficiently severe and likely to deter wrongdoing. (#294)

Background

Board members are obliged by good faith to honour the substance and form of their duties. Asian legal systems provide for various degrees of liability for board members' misdeeds, on both a collective and individual basis. Liabilities should take into account the severity of the offence as well as the extent that a company should be held accountable for the misdeeds of its board members.

Summary

Developments reported include both the imposition of sanctions and enhancements to the regulatory and oversight framework. Impediments include shortcomings in the legal and enforcement system, such as slow judicial processes, difficulties in obtaining proof, and in some cases, inadequate sanctions.

Developments

Jurisdictions reported several legal developments in terms of **enhanced criminal, civil and administrative sanctions**. Detailed criminal sanctions for instance, were introduced by recent amendments to the legal frameworks of China and Malaysia, which in the case of China, now provide criminal liabilities for insider trading. The Philippines provides criminal sanctions, fines, and imprisonment and Thailand also imposes administrative sanctions for insider trading. Thailand's Ministry of Finance was also reported to be in the process of reviewing the final draft civil penalties law. Similarly, the respondent from India states that pending amendments to the company law will introduce provisions addressing this recommendation.

Viet Nam's State Securities Commission (SSC) in 2007 established a Supervisory Department to enhance the oversight capacity of the SSC and **deter violation of directors' duties**. Indonesia's 2008 Bapepam-LK Rules require issuers to establish internal audit units and disclose affiliated transactions. Bangladesh's SEC now imposes penalties on board members for certain violations to securities laws, while an amendment to Korea's Commercial Act introduced the executive office system, which establishes a corporate governance system that "meets global standards."

Impediments

Multiple respondents highlighted the shortcomings in the **enforcement of their legal framework** to be a significant obstacle in complying with this recommendation. Slow judicial processes were cited as an impediment in Bangladesh and Thailand. Thailand's SEC, however, suggests that civil, as opposed to criminal penalties, could be less time consuming to enforce. In Malaysia, there appears to be some reluctance on the part of courts to impose reasonable custodial sentences for corporate governance type of offences. Indonesia's Bapepam-LK and Pakistan's SEC highlight that the process of gaining evidence for proving fiduciary violations can be problematic. Hong Kong, China is also presented with inadequacies in its enforcement framework since a substantial portion of its listed companies are incorporated outside the jurisdiction.

Other respondents reported having **weaknesses in their legislative frameworks**. The laws in China and Pakistan were reported to not provide for adequate penal sanctions, while respondents from Pakistan, Viet Nam and the Philippines emphasise that the concept of directors' duties is not sufficiently defined within their respective legal frameworks.

Recommendation

All respondents stated that this recommendation should be maintained. The respondent from China suggested that revisions to the recommendation should detail "sufficient sanctions," and the Indonesian respondent stated that efficient executive sanctions and more stringent penalties should be stressed.

Recommendation 30

Boards should put in place procedures that will regularise and professionalise the performance of board functions and clarify decision-making. Such procedures should include evaluation of individual director performance based on criteria established at the beginning of the evaluation period. (#301)

Background

The OECD Principles identify key functions of the board. Proper board functioning should provide for the human dimension of interaction between the board and management. This is important in order to be able to strike the right balance between the boards' oversight role and its role in collaborating with management. Effective practices should also establish appropriate ex-ante measures for evaluating board members

Summary

Several legal and regulatory developments related to the roles and responsibilities of the board were reported. Codes and guidelines were released in a number of jurisdictions, outlining various aspects of risk management practices. On the other hand, a number of jurisdictions reported the lack of rules or procedures for boards, and that enforcement remains an issue.

Developments

The jurisdictions surveyed reported both legal and regulatory developments pertaining to this recommendation. Provisions and amendments within the legal frameworks of China, Chinese Taipei, Malaysia and Indonesia were reported to, amongst other things; **define the scope of the authority of the board**. The Corporate Governance Codes in Singapore, Thailand, Viet Nam and Korea were reported to contain provisions that provide guidance on a boards' conduct. Korea's Federation of Banks in 2010 issued a code of practice specifically for independent board members, covering areas including the functions, responsibilities and appointment of independent board members.

The Corporate Governance Codes and Guidelines of Singapore, Malaysia, India, the Philippines, Thailand and Chinese Taipei, were reported to contain **provisions detailing certain aspects of risk management** and the role of the board. Singapore's and Thailand's Code of Corporate Governance for example states that management should maintain a sound system of internal controls, while Malaysia's Corporate Governance Guide sets out how effective risk management frameworks can be embedded into a company's culture, processes and structures.

Impediments

In relation to **appropriate board conduct and practices**, Chinese Taipei's respondent stated that board practices should be improved through the implementation of voluntary standards, in addition to laws and regulations. The lack of awareness, capacity and experience of board members were cited as obstacles in Bangladesh and Viet Nam.

Even when a legal framework is in place, it is critical that **internal structures and corporate culture** evolve. India's SEBI placed emphasis on the efficiency of internal controls, suggesting the need for parameters that allow the comparison of such mechanisms between entities. A respondent from Malaysia states that listed companies needed to move beyond "mere compliance with rules" and "go deeper into embracing the spirit of such rules and regulations" in order to enable smooth implementation of processes and functions. The respondent from Indonesia for instance, reports that despite the mandatory provisions in the Company Law and Bapepam-LK Rules, reporting of board meeting attendance, as well as meeting attendance itself, remains low.

Recommendation

All respondents state that this recommendation should be maintained. The Chinese respondent added that revisions to this recommendation should include procedures for, as well as effective risk management mechanisms. A respondent from the Philippines suggested focusing on the role of the Chairman in improving board functions, while Viet Nam's SSC suggested placing emphasis on board member and management training.

Recommendation 31

Directors should enjoy direct access to company employees and to professionals advising the company in accordance with procedures established by the board or its committees. (#308)

Background

Board members should ensure that company employees are aware of their duties to the company and that they have the means for reporting suspected wrongdoings by supervisors and peers. There should also be direct board member access to employees at all levels as an independent check on the information reported by senior management. In the case of employing professional advisers, boards should have direct access to these professionals, as well as be aware of any restrictions, considerations and judgments underpinning their presented conclusions.

Summary

Many of the jurisdictions surveyed reported having provisions pertaining to this recommendation encoded within local legislation and/or their respective Corporate Governance Codes. These laws and rules contain provisions detailing procedures for employees or their representative bodies who express concerns about illegal or unethical company practices. Still, several jurisdictions noted that awareness of this concept and the lack of legal protection available to employees became an impediment.

Developments

Bangladesh's Corporate Governance Guidelines, enacted in 2006, state that an audit committee has **access to company employees** and is legally empowered to report to the board of directors**,** any conflict of interest, suspected fraud or infringement of laws.

Failure to act on the board's part should result in the report being forwarded to the SEC. Singapore's Code of Corporate Governance states that the board should have procedures in place for **employing independent advice** in the promulgation of their duties.

With regard to local developments addressing the protection of whistleblowers, please see Recommendation 11.

Impediments

Regarding the ability for employees to report wrongdoings, respondents from Bangladesh, China, Indonesia and Viet Nam highlight impediments related to the **lack of awareness** on the concept of "whistle blowing", as well as the **lack of legal protection** for whistleblowers. Both the Philippines and Korea also reported that employees can be reluctant to report suspected wrongdoings for **fear of reprisal** or creating a negative perception amongst fellow co-workers.

Respondent jurisdictions provided no explicit response directly addressing impediments related to outside professionals being enabled to report major non-compliance issues to the board of directors.

Recommendation

All jurisdictions surveyed stated that this recommendation should be maintained. Viet Nam's SSC suggests that revisions should focus on board member training and sanctions for failing to comply with directors' duties.

Recommendation 32

Boards should be of a size that permits effective deliberation and collaboration and have adequate resources to perform their work. Directors should devote sufficient time and energy to their duties. (#313)

Background

Board members' contracts should detail minimum commitments, taking into account thorough preparation for committee and full-board meetings, along with interaction with employees and professionals involved with monitoring systems. In addition to this, board members should also have allowances for, or access to support staff in order to make the most of their time.

Summary

There has been a clear trend in Asia towards smaller company boards, with some jurisdictions establishing caps on the number of directorships any one person can hold. Restrictions on board sizes vary slightly across jurisdictions, with the required minimum number of members ranging from 2 to 5 and the maximum number ranging from 10 to an unrestricted size. Guidelines and codes have also been issued in several jurisdictions with the intention of ensuring sufficient material commitment from board members to their duties. Obstacles identified with regard to compliance with this recommendation, include the issue of concentrated ownership and the lack of awareness as to the role of the board.

Developments

With regard to **adequate and effective board size**, China's 2005 Companies Law stipulates that the boards of publicly listed companies should have a minimum of 5 members and a maximum of 19. Bangladesh's 2006 Corporate Governance Guidelines similarly states a minimum of 5 and a maximum of 20 members of publicly listed company boards. Indonesia's 2007 Companies Law, however, sets a minimum of 2 members, with no upper bound on the possible number of board members. Malaysia's Company Law adheres to the same upper and lower limits as Indonesia's. A 2008 study conducted by the Securities Commission found that 89% of publicly listed companies' boards in Malaysia comprised of 9 members or less.

Several requirements for **ensuring board members devoting sufficient time and energy to their duties** have been introduced. Thailand's Corporate Governance Code, Malaysia's Listing Requirements of the Main Market and Chinese Taipei's Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies for example, set limits on the number of directorship positions that can be held by a given individual. Respondents also stated that issues such as a minimum number of meetings per year are covered by various laws, regulations and guidelines.

Impediments

Some of the impediments to **board members' effective deliberation and collaboration** cited by respondents include the lack of awareness, reluctance to ensure compliance, concentrated ownership as well as the lack of qualified board members. Viet Nam's CIEM in particular highlighted that there was an inaccurate perception prevalent on the role of the board, as board members tended to focus on managerial roles rather than their governance functions. The Philippine Stock Exchange identified a general lack of desire to improve set and entrenched practices, while Chinese Taipei's SFB reported a lack of standardised guidelines, which it attributes to the differing internal conditions between companies. The respondent from Indonesia for instance, reports that despite the enforcement of the mandatory provisions in the Company Law and Bapepam-LK Rules, reporting of meeting attendance, as well as meeting attendance itself, remains low.

A respondent from China highlighted that board members who take "excessive positions" outside the company and when their attendance rate is too low, as **impediments to the devotion of sufficient time and energy** to their board member duties. The respondent from Korea also reported inadequate support provided to the operations of board members. Malaysia's SC stated that shareholders should not hesitate to use their statutory rights in ensuring board members do not neglect their duties.

Recommendation

All respondent jurisdictions stated that this recommendation should be maintained.

Recommendation 33

Asian countries should continue to refine the norms and practices of "independent" directors. (#318)

Background

While many Asian corporate governance frameworks already provide for the appointment of independent board members, the objectivity and actual independence of these board members can be undermined by the fact that controlling shareholders often nominate entire boards. The fact that no legal norm for independence will ever be perfect should not deter continuous efforts to obtain better and more precise definitions of independence, as well as better disclosure of relationships.

Summary

Most respondents report that the term "independent board member" has been defined in their respective jurisdictions by laws, codes or guidelines. Several jurisdictions also report having provisions on disclosing board member relationships with controlling shareholders and imposing liabilities on board members. Despite this, impediments still exist in developing mechanisms to verify and ensure the actual independence of board members. The roles of controlling shareholders, and the general shortage of qualified candidates, were identified as the main obstacles.

Developments

Bangladesh, Indonesia, Malaysia, Pakistan, the Philippines, Singapore, Thailand and Chinese Taipei are amongst the jurisdictions reported to have developed provisions in their corporate governance codes and listing rules that provide for **the definition of "independent board member."** These provisions outline the criteria for when a board member qualifies as independent, as well as provide for "tests" of independence. Malaysia's Listing Requirements for instance, stipulate that board members fulfill a "subjective" and "objective" test of independence. The subjective test takes into consideration a board member's "judgment and ability" in acting in the best interests of the company, while the objective test considers more material characteristics such as shareholdings and family ties to controlling shareholders and other board members. In the case of Thailand, its AGM best practice guidelines recommend that the listed company should outline its own definition of "independent board member", which should be stricter than the minimum requirements imposed by the SEC.

A number of respondents also reported developments in provisions concerning the **disclosure of a board member's relationships**. According to the respondent from Thailand's SEC, in the event of an election of independent board members, it is recommended that a company disclose candidate relationships that hold potential conflicts of interest. Similarly, Malaysia's Listing Rules require company annual reports to disclose familial relationships between board members and controlling shareholders. Several respondents also reported requirements for independent board members to submit statements declaring their independence. India's 2009 Companies Bill for instance, which

has been placed before the Indian Parliament, will impose this requirement on independent board members at the time of appointment.

In imposing of **liabilities on board members**, respondents from both Bangladesh and Malaysia state that no distinction is made between independent and non-independent board members. A respondent from India states that while imposing liabilities on independent board members has been difficult, intense scrutiny from the media has helped disincentivise deviant behavior.

Impediments

Verifying and ensuring the independence of board members was identified to be a predominant impediment. The respondent from Malaysia's Securities Commission cites being able to truly ensure the independence of independent board members, "in mind and spirit, character and judgment," as a major challenge. Respondents from Chinese Taipei, Thailand and Viet Nam also highlight implementation of the concept of independent board members to be an issue, referring to the rather general problem that the absolute independence of board members is never guaranteed, regardless of definitions put forward.

Of course, the **role of controlling shareholders in nominating independent board members** is of particular importance and it was noted to be a significant obstacle by respondents from Indonesia, India and China. Indonesia's respondent details the potential for abuse in its system, as Bapepam-LK Rules do not require the disclosure of relationships between independent board members and controlling shareholders.

In contrast to the legal and systemic obstacles raised above, finding qualified candidates to fill the position of independent board member is a more practical problem. A number of respondents raise as an obstacle the **insufficient number of qualified and competent candidates** to serve as independent board members. The answers from the Securities and Exchange Commission of Bangladesh cited poor fee structure as one of the reasons for this shortage, while the answer from the Korean respondent pointed to a lack of understanding of the role of independent board member.

Recommendation

All respondent jurisdictions stated that this recommendation should be maintained. According to the Malaysian SC, this recommendation "brings to mind the need to constantly review the definition of independent board members."

Recommendation 34

Independent directors should control matters likely to involve conflicts of interest. Committees are a common mechanism for delegating such control. (#322)

Background

The OECD Principles state that the board should be able to exercise objective independent judgment on corporate affairs. Effective practices in this area include the

creation of special committees of the board for matters where management or controlling shareholder groups are likely to have conflicts of interest (i.e. audit, remuneration and board-nomination).

Summary

All respondents, with the exception of the two from Viet Nam, reported the existence of codes or legal provisions addressing the formation of special committees, with varying composition of independent board members. Still, in order to meet this recommendation, clearer and more refined rules and regulations, as well as mechanisms ensuring the true independence of board members are needed to overcome reported obstacles.

Developments

With the exception of Viet Nam, all respondents surveyed reported having provisions in their codes, listing rules or legislation, stipulating the **formation of special committees**. Requirements concerning the number of independent board members on the **audit committees** differ slightly from jurisdiction to jurisdiction. Respondents from Hong Kong, China, Indonesia, Malaysia and Korea report having requirements stating that audit committees of listed companies have to consist of at least a majority of independent board members. Respondents from Thailand and Chinese Taipei on the other hand, state that an audit committee is required to comprise at least three independent board members.

Some jurisdictions require or at least recommend that listed companies set up **nomination and remuneration committees** consisting of independent board members. Malaysia's and Thailand's Corporate Governance Code recommends that listed companies set up these committees, while Korea's Commercial Act requires listed companies worth more than KRW 2 trillion to set up nomination committees. Indonesia's central bank requires all banks to have nomination and remuneration committees, but there are no legal or regulatory provisions requiring the same of listed companies. India's Companies Bill requires the formation of an audit committee, remuneration committee and stakeholders' relationship committee.

Impediments

A number of **shortcomings in legal and regulatory provisions** were highlighted by multiple jurisdictions as an impediment. Pakistan reports that its Corporate Governance Code contains no specific provision on accountability. Bapepam-LK Rules in Indonesia do not require audit committees to oversee potential conflict of interest transactions, despite them being reportedly common in Indonesia. Companies in Indonesia are also not required to disclose their procedures for nominating audit committee members. A respondent from Viet Nam pointed out that the concept of independent board members should be strengthened via laws and codes, as it is still a relatively new concept in Viet Nam.

Several factors were raised regarding impediments to the **effective functioning of special committees.** Thailand's SEC pointed out that smaller companies tend to not have special committees. BAPEPAM- LK reiterates this observation with respect to the Indonesian market, attributing it to cost constraints. The Philippine Stock Exchange stated

that influences from controlling shareholders can be an obstruction to the activities of a special committee. Per the respondent from Chinese Taipei, some listed companies "do not know how" to set up special committees. In order to help overcome this impediment, the same respondent reported that the stock exchange has drafted guidelines on how to set up nomination committees, and is considering doing the same for other types of committees.

Recommendation

All respondents stated that this recommendation should be maintained. A respondent from China suggested revisions seeking to refine the procedures of the special committee as well as clarify the role of independent board members.

Recommendation 35

The process of electing directors should facilitate a board that represents the interests of all shareholders. The process for achieving such representation may include, inter alia, the ability of shareholders to requisition a vote for directors by way of cumulative voting. Where cumulative voting has been selected as the method for electing directors, staggered board terms, and other mechanisms that frustrate cumulative voting, should be prohibited. (#328)

Background

One of the accepted methods for achieving a balance of interests amongst board members is through cumulative voting. In order to be effective, cumulative voting requires that an adequate number of minority votes come together in favour of a candidate. This can be impaired by factors such as the uneven distribution of shareholdings and certain types of shareholder relations. Cumulative voting can also be further obstructed by restrictive nomination procedures, as well as staggered board terms, which reduce the number of board members to be elected at any one time.

Summary

Cumulative voting is reported to be practiced in varying degrees in some jurisdictions. While the practice has been made mandatory in some jurisdictions, it is either optional or entirely not recognised in others. Concentrated ownership structures and the lack of awareness of the importance of voting procedures, were highlighted as obstacles.

Developments

The **practice of cumulative voting** was reported to be mandatory in Pakistan and Viet Nam. Chinese Taipei's Company Law will be undergoing amendments that will make it mandatory for all companies to adopt cumulative voting as a method for electing board members. The legal frameworks of China, India, Korea and Thailand also support cumulative voting, but do not enforce mandatory implementation. Hong Kong, China and Malaysia on the other hand, have not adopted the practice of cumulative voting.

Impediments

Concentrated ownership structures were reported to be an impediment to fulfil this recommendation in Indonesia, and elsewhere. The Philippine Stock Exchange also stated that ownership structures are still defined by controlling groups and individuals, making the protection of other shareholders' interests markedly more challenging.

A **lack of consensus on the benefits of cumulative voting** seems to persist across the region. The respondents from Bangladesh and Korea highlighted the need to create awareness on the importance of minority shareholders exercising their rights. Thailand's SEC stated that while its framework does allow for cumulative voting, it is not mandatory and remains a fairly unpopular option. Based on the two Malaysian respondents, the benefits of cumulative voting are still subject to debate. The respondent from Bursa Malaysia implied that some market participants might be of the view that cumulative voting goes against the one-share one-vote policy.

Recommendation

All respondent jurisdictions stated that this recommendation should be maintained. The respondent from China suggested that revisions should clarify how the board can better represent the interests of all shareholders.

Recommendation 36

Local law should give directors power to obtain accurate, relevant and timely information from the company. (#336)

Background

Boards and members of board committees should have clear and broad authority to gather information believed to be relevant to their work. Internal procedures should ensure that such information is supplied well in advance of board committee meetings.

Summary

Laws and guidelines intended to facilitate a board member's access to information were reported to have been introduced in a number of jurisdictions. Despite these positive developments, inadequacies in existing provisions persist across the region and are compounded by the reluctance of certain parties, such as controlling shareholders, to allow easy access to information.

Developments

India, Pakistan, the Philippines, Thailand and Chinese Taipei highlighted developments related to newly enacted provisions in codes and guidelines pertaining to **board members' access to information**. The Philippines' revised Code of Corporate Governance for instance, stipulates the duties of management in providing information

and board members' access to it, as well as the different types of information that may be provided. Korea's Commercial Act and Viet Nam's Enterprises Law also provide for board members' access to information, with Korean law detailing the authority of the audit committee.

Impediments

Several shortcomings pertaining to this recommendation included issues raised with regard to the **legal and regulatory framework** of Bangladesh, China and Korea. The respondent from Bangladesh stated that obtaining legal redress can be a time consuming process. While China's Corporate Governance Code states that adequate information should be provided to board members, there are no specific provisions clarifying how a board can gain access to accurate, relevant and timely information. On a similar note, the Korean respondent highlighted the lack of a system facilitating an independent board member's access to company information.

Respondents from Bangladesh, Thailand, Viet Nam and the Philippines pointed out the **obstructive role of controlling shareholders** in impeding the flow of information to board members. The Philippines states that there can be hesitation to provide certain types of information without clearance from "controlling groups or individuals." The Stock Exchange of Thailand placed emphasis on ownership structures and control, stating the potential these factors had in preventing independent board members from carrying out their duties.

Recommendation

All respondents stated that this recommendation should be maintained.

Notes

1. See also: *OECD Policy Brief on Corporate Governance of State-Owned Enterprises in Asia* (2010)
2. In Recommendation 33, the answer from the Korean respondent indicates, however, that the available pool of independent board members is too small.
3. See also: *OECD Policy Brief on Corporate Governance of State-Owned Enterprises in Asia* (2010)
4. See also: *OECD Policy Brief on Corporate Governance of Banks in Asia* (2006)
5. Modarabas are a form of Islamic financing arrangement. Under tax law, they signify a business in which one person participates with his money and the other one with his efforts or skills or both. All mutual funds and unit trusts by whatever name are included in the definition of a modaraba.
6. The rule is considered a setback by one respondent since it reduces the number of conflict-of-interest transactions needing approval.
7. See also *OECD Guide to Fighting Abusive Related Party Transactions in Asia* (2009).
8. So far, there has been only one reported case where section 181A of the Companies Act of 1965 was used. In Mohd Shuaib Ishak v. CELCOM
9. The CSR Framework covers four areas, namely the environment, marketplace, community and workplace.
10. The Annual Report Award (ARA) is held by Bapepam-LK and six other institutions which are the Bank of Indonesia, Ministry of State Owned Enterprises, Tax Office, Indonesian Stock Exchange, National Committee on Governance and Indonesian Institute of Accountant.

Annex A.

Responses to a Questionnaire on Implementing the Asian Roundtable's Recommendations on Corporate Governance, as contained in the White Paper

1. Shareholders' rights and the equitable treatment of shareholders

Developments	Impediments	Recommendations by respondents
R1: Legislators and securities and exchange regulators should promote effective shareholder participation in shareholder meetings. In particular, rules on proxy and in absentia voting should be liberalised, and the integrity of the voting process should be strengthened. (#85)		
• Increase of notice period of AGMs • Possibility of nominating proxy • Introduction of electronic voting • Initiatives to strengthen the integrity of meetings	• Concentration of AGMs around key dates • Impediments on proxy voting via company bylaws • Concerns about integrity of voting • Limited role of Institutional Investors	• Emphasise role of Institutional Investors • Utilise technology to facilitate shareholder participation
R2: The state should exercise its rights as a shareholder actively and in the best interests of the company. (#93)		
• Extension of corporate governance regulations and codes to SOEs • Clarification of the role of the state as a shareholder • Pension funds actively exercising shareholder rights	• Perception of government interference • Lack of transparency in nominating board members or commissioners • Lack of clarity in institutional responsibility for state-owned assets	• How to achieve active shareholding while balancing company and state interests • Include steps taken by state to make board more accountable • Increase corporate governance training for state employees

Developments	Impediments	Recommendations by respondents
R3: Governments should intensify their efforts to improve financial-institution regulation, supervision and corporate governance (#100)		
• Regulatory developments addressing risk management and remuneration practices • Reforms addressing the importance of the composition of the Boards of Financial Institutions • Increased disclosure of exposures by financial institutions	• Limited capacity for enforcement • Human capital challenge, i.e. lack of qualified senior board members and managers • Practices such as stress testing face implementation challenges	• Include governance of state-owned financial institutions • Focus on internal control systems including risk management and remuneration.
R4: Asian jurisdictions should develop or enhance rules that prohibit officers, board members, controlling shareholders and other insiders from taking business opportunities that might otherwise be available to the company. At a minimum, prior to taking such an opportunity, such persons should disclose to, and receive approval from, the company's board or shareholder meeting. (#106)		
• Introduction of Codes of Conduct • Provisions addressing the issue of taking corporate opportunities • Provision or enhancement of legal definitions • Rules requiring extensive disclosure of RPTs • Reform/clarification of approval mechanism for RPTs	• Difficulties of monitoring and obtaining proof • Need for stronger internal control structures • Lack of clearly defined rules and guidelines governing RPTs	• Clarification and reinforcement needed on: • Types of prohibited transactions • Approval of such transactions; disclosure standards and transparency issues • Regulatory intervention and enforcement
R5: Asian legal frameworks should employ effective measures – particularly ownership attribution rules – to improve identification of beneficial owners. Improved identification will also require better international co-operation among regulators. (#112)		
• Laws and regulations related to the identification of beneficial owners have been amended and enacted • Regional and international co-operation is being strengthened • Some developments to strengthen the powers of the courts and regulators to identify and trace ultimate beneficial ownership	• Difficulties in obtaining ownership information on securities • Shortcomings of the legal and regulatory framework	• International co-operation amongst regulators needs to be strengthened

Developments	Impediments	Recommendations by respondents
R6: Asian policy-makers should consider prohibiting listed companies from engaging in certain types of related-party transactions, such as personal loans to board members and officers, as well as controlling shareholders and other insiders. (#117)		
• Clarification of scope what constitutes a related-party transaction • Reform/clarification of approval mechanism for RPTs • Prohibition of loans • Progress on disclosure of related party transactions • Relaxation of some rules in order for them to better achieve their intended purpose	• Wide range of enforcement related obstacles • Limited awareness of shareholders of their capacity to intervene • Insufficient fulfilment by board and independent board members of their role • Appropriate disclosure of transactions as well as decisions	• Incorporate key recommendations from the 2009 *Guide on Fighting Abusive* Related *Party Transactions in Asia* • Consider less prescriptive and more disclosure-based approach
R7: Individual (or at least aggregate) board member- and senior-executive-compensation arrangements should be fully and accurately disclosed. Accounting for executive compensation should reflect the economic impact of the compensation on the income statement and balance sheet, as well as the fact such compensation is incurred for the performance of services. (#118)		
• Legal or regulatory developments requiring disclosure of remuneration of board members and executives • Introduction of requirements for greater level of detail of disclosure • Procedures for the approval of remuneration established	• Popular arguments brought forward against disclosure of compensation structures • Incomplete or aggregate disclosed information • Problem of prevalence of concentrated ownership and approval of remuneration by the AGM	• Make disclosure of the remuneration structure and compensation policy a requirement
R8: Asian legal systems should continue to improve regulatory and judicial enforcement capacity and even-handedness. (#135)		
• Specialised courts or chambers of courts have been established • Development of alternative dispute resolution systems • Creation of new bodies within institutions focusing on strengthening enforcement capacity	• Judicial competency • Resource constraints for regulators.	• Particularities resulting from national judicial systems to be taken into consideration

Developments	Impediments	Recommendations by respondents
R9: Local law should permit shareholders to initiate class-action or derivative suits against board members and other fiduciaries of the company for breach of fiduciary duty, for failure to comply with disclosure requirements or for securities fraud. Mechanisms to discourage excessive or frivolous litigation should not prevent or frustrate collective action by shareholders with meritorious claims. (#139)		
• Derivative and class action law suits enacted or in legislative pipeline • Initiatives to facilitate the initiation of legal proceedings in the interest of investors	• Procedural and financial hurdles associated with initiating litigation • Length and inefficiency of the judicial process • General lack of awareness of shareholders of their right to initiate any form of litigation. • Mentality of relying on the regulator to take action	• Need for institutional investors to be active in this area

2. The role of stakeholders in corporate governance

R10: Company, commercial and insolvency laws and the judicial system should help creditors enforce their claims in an equitable manner, in accordance with principles of effective insolvency and creditor rights systems. (#158)		
• Most insolvency legislation in the pipeline incorporates restructuring mechanisms • Other legal developments address specific issues such as limited liability, processing of claims, capital reduction, and insolvent trading	• Lack of institutions and capacity to enforce corporate and bankruptcy laws and regulations • Inefficiencies in the judicial process	• Need for practical assistance on how to structure such laws • Need for more effective measures to enforce creditors' claims, such as reforming the courts and administrative processes
R11: Companies should develop policies and procedures that promote awareness and observance of stakeholders' rights. To this end, governments should also introduce protections against retaliation for employees who report problems and abuses (i.e. "whistleblowers"). (#164)		
• Jurisdictions have integrated the concept of corporate social responsibility into their corporate governance codes and regulations • Provisions to protect whistleblowers have been introduced across the region	• Lack of legal protection for people from retribution • Institutional impediments • Concept of whistle blowing has to overcome cultural factors such as the emphasis put on loyalty	• Revisions should encourage listed companies to fulfil social responsibility practices • Raising stakeholders' awareness should be a priority

R12: To preserve and promote reputational goodwill, board members (and policy-makers) should not only take into account the interests of stakeholders but communicate to the public how these interests are being taken into account. (#169)		
• Increase in the release of information on issues of CSR • New institutions to promote stakeholder relationships have been created • Increase in community engagement activities	• None	• Company participation in promoting sustainable development • Include a stakeholder section in annual reports • Encourage companies to adopt the Global Reporting Initiative Guidelines for their CSR reporting
R13: Companies should establish internal redress procedures for employees' rights. Governments and private-sector bodies should also promote the use of mediation and arbitration in providing redress. (#172)		
• Internal redress procedures have been addressed in laws and codes • Some institutional developments such as a council to address employee-employer concerns	• Lack of awareness and the particularities of Asian corporate culture • Concerns regarding institutional capacity constraints	• Practical guidance on how such internal redress procedures should be structured • Focus in the future should be more on the compliance function and internal control of companies
R14: The public and private sectors should continue to develop performance-enhancing mechanisms that encourage active co-operation between companies and employees. (#176)		
• Performance management programs including remuneration and benefits systems have been developed	• Unfamiliarity with the concept, legal and policy barriers and market concerns	• Need to develop employee stock ownership plans or other profit sharing mechanisms • Recommendation's relevance for good corporate governance questioned

3. Disclosure and transparency

Developments	Impediments	Recommendation
R15: Asian Roundtable countries should work towards full convergence with international standards and practices for accounting, audit and non-financial disclosure. Where, for the time being, full convergence is not possible, divergences from international standards and practices (and the reasons for these divergences) should be disclosed by standards setters; company financial statements should repeat or reference these disclosures where relevant. (#202)		
• Convergence of local GAAP with IFRSs ongoing • Adoption of ISAs ongoing	• High costs associated with the new accounting regime • Inadequate number of skilled professionals to help transitioning to the new accounting framework	• Focus on full convergence with accounting standards
R16: All Asian countries should continue to strengthen regulatory institutions that: (i) establish high standards for disclosure and transparency; (ii) have the capacity, authority and integrity to enforce these standards actively and even-handedly; and (iii) oversee the effectiveness of self-regulatory organisations. (#208)		
• Efficiency and effectiveness of regulatory institutions enhanced • Strengthening of financial disclosures and transparency initiatives • Tightening of the sanctions and penalties regime	• Regulatory capacity constraints • Lack of competent officers and poor understanding of the rules and requirements • Lack of capacity of SROs to participate in enforcement	• Emphasising the role of SROs • Focus on the supervisory capacity of regulators
R17: Securities regulators, stock exchanges, self-regulatory organisations and investor groups should continue to educate companies and the public regarding the value and uses of full, accurate and timely disclosure of material information. Asian regimes and all stakeholders within them should strive for a corporate culture in which managers and board members internalise the need for good disclosure practices. (#213)		
• Ongoing efforts to improve financial literacy and dissemination of information • Special incentives like awards etc. to disclose additional information • Amendments to legal framework to improve disclosure of financial information	• Lack of clarity in the definition of "materiality" • Limited sanctioning powers of the stock exchanges	• Scope and definition of material information should be further clarified.

Developments	Impediments	Recommendation
R18: To promote free and vigorous investigation and reporting by news organisations, local defamation and libel laws should be narrowly tailored. (#219)		
• No major developments.	• Restrictions/guidelines need to be put in place to keep the media in check so as to ensure responsible reporting (India) • Low number of financial journalists.	• Increased focus on media training and responsible journalism.
R19: Managers and insiders (including board members and substantial shareholders) should have obligations to disclose structures that give insiders control disproportionate to their equity ownership. Similar disclosure obligations should apply to material self-dealing/related-party transactions. (#223)		
• Progress in strengthening legal requirements concerning insider trading and cross shareholding • Increase of information on related-party transactions	• Difficulties in identification of related party transactions	• Further emphasis is required on disclosure of structures/arrangements that give insiders control disproportionate to their equity ownership.
R20: All Asian jurisdictions should strive to develop disclosure regimes in which companies disclose material information on a continuous, timely and equitable basis. (#227)		
• Progress in strengthening listing rules or other requirements encouraging accurate and timely disclosure including price sensitive information • Technical progress with respect to storing and transmitting financial information	• Merits of greater disclosure are poorly understood by companies • Lags in implementation of technological advances	• Increased focus on supervision of listed companies • Greater emphasis on strengthening the sanction regime
R21: Regulators should explore the opportunities created by new technologies to enhance the fairness and efficiency of the disclosure process, including submission and dissemination of financial and non-financial information by electronic means. (#234)		
• Usage of new technologies and disclosure systems	• None	• No additional suggestions
R22: Companies should be encouraged to disclose information that goes beyond the requirements of law or regulation. Where stock exchanges require listed companies to comply with corporate-governance practices or codes, annual reports should state whether or not the company (and its management) have complied and, if not, the extent of, and reasons for, noncompliance.(#236)		

Developments	Impediments	Recommendation
• Codes of Corporate Governance applied on a comply-or-explain basis • More detailed and mandatory requirements in some jurisdictions • Introduction of incentives and awards for disclosing information beyond the legal requirements	• None	• Greater emphasis is required on developing a mechanism for encouraging voluntary disclosures
R23: Securities commissions, stock exchanges and professional organisations should exercise oversight and enforcement of standards for accounting, audit, and non-financial disclosure. These bodies should have authority to impose appropriate sanctions for non-compliance. (#238)		
• Legal and institutional changes in order to achieve greater compliance with financial reporting standards. • Increased capacity of securities commissions, stock exchanges and professional organisations • Establishment of codes of professional ethics • Strengthening of sanctions and fines to discipline non complying entities	• Ineffective sanctions regime • Inadequate resources and difficulties in attracting highly skilled and senior people into auditor oversight positions	• Further emphasis on a more effective sanctions regimes
R24: International accounting and auditing firms should apply the same high professional and ethical standards across different markets. (#242)		
• Progress in strengthening legal requirements concerning insider trading and cross shareholding • Increased information on related-party transactions	• Mechanisms to facilitate independence of auditors • Improvements were made with regards to implementation of ethical standards	• Ensuring independence of auditors • Retention of talented and skilled professionals
R25: Governments in each country should adopt measures to ensure the independence of standards setters and the transparency of their activities. (#249)		
• Adoption of international standards • Consultative processes with a variety of stakeholders • Establishment of Audit Oversight Boards	• Monitoring and enforcement of accounting and financial reporting requirements • Factors impeding the independence and	• No additional comments

Developments	Impediments	Recommendation
• Strengthening of the independence of institutions involved in the standard-setting process	capacity of standard-setters	

4. The responsibilities of the board

R26: Efforts by private-sector institutes, organisations and associations to train board members should be encouraged. Such training should focus on both discharge of fiduciary duties and value-enhancing board activities. International technical-assistance organisations should facilitate these efforts as appropriate. (#275)		
• Board member education and training programmes are offered by various local and international organisations and institutions • Programmes have been either recommended, or under specific circumstances, made mandatory	• Lack of awareness amongst board members on the importance of continuous training • Quality and scope of programmes offered • Necessity of board member training still under debate	• No additional comments
R27: Voluntary or "comply or explain" codes of conduct for board members should be developed and disseminated by private-sector organisations, with appropriate support from international technical-assistance providers. (#283)		
• All respondent jurisdictions, with the exception of Viet Nam, report having codes or guidelines in place • Individual companies are in charge of issuing and disclosing their own codes of conduct	• Application of the codes can be an obstacle	• No additional comments
R28: Attribution rules should impose fiduciary duties and liabilities on "shadow" board members as a way to discourage their existence. (#290)		

• Introduction of provisions imposing liabilities on shadow board members • Procedures for the appointment of qualified board members	• Impediments in the legal process were highlighted in relation to imposing liabilities on shadow board members • Lack of regulation and disclosure of nomination processes	• No additional comments
R29: Sanctions for violations of fiduciary duty should be sufficiently severe and likely to deter wrongdoing. (#294)		
• Criminal, civil and administrative sanctions have been enhanced • Capacity building to deter violation of fiduciary duty	• Enforcement of legal framework due to judiciary weaknesses and burden of proof • Weaknesses in legislative frameworks due to lack of clear definition of fiduciary duty	• Revisions to the recommendation should detail "sufficient sanctions" • Efficient executive sanctions and more stringent penalties should be stressed
R30: Boards should put in place procedures that will regularise and professionalise the performance of board functions and clarify decision-making. Such procedures should include evaluation of individual board member performance based on criteria established at the beginning of the evaluation period. (#301)		
• Definition of the scope of the authority of the board • Provisions detailing certain aspects of risk management	• Appropriate board conduct and practices • Need for change of internal structures and corporate culture	• Revisions to this recommendation should include procedures for boards, as well as effective risk management mechanisms • Place emphasis on board member and management training
R31: Board members should enjoy direct access to company employees and to professionals advising the company in accordance with procedures established by the board or its committees. (#308)		
• Securing access to company employees • Procedures in place for employing independent advice • Developments addressing the protection of whistleblowers	• Lack of awareness on the concept of whistleblowing • Lack of legal protection for whistleblowers • Fear of reprisal of employees	• Revisions should focus on board member training and sanctions for failing to comply with fiduciary duties
R32: Boards should be of a size that permits effective deliberation and collaboration and have adequate resources to perform their work. Board members should devote sufficient time and energy to their duties. (#313)		
• Adequate and effective board sizes addressed • provisions ensuring board members devote sufficient time and energy to	• Factors inhibiting effective deliberation such as concentrated ownership and lack of understanding of role • Shortage of qualified board members	• No additional comments

their duties	• Board members taking "excessive positions" outside the company • Inadequate support provided to the operations of boards	
R33: Asian countries should continue to refine the norms and practices of "independent" board members. (#318)		
• Corporate governance codes and listing rules providing for the definition of "independent board member" • Disclosure of a board member's relationships • Imposing of liabilities on board members	• Verifying and ensuring the independence of independent board members • Role of controlling shareholders in nominating independent board members • Insufficient number of qualified and competent candidates	• No additional comments
R34: Independent board members should control matters likely to involve conflicts of interest. Committees are a common mechanism for delegating such control. (#322)		
• Provisions in codes, listing rules or legislation, stipulating the formation of special committees • Requirement or at least recommendations that listed companies set up nomination and remuneration committees	• Shortcomings in legal and regulatory provisions • Factors impeding the effective functioning of special committees such as lack of know-how	• Revisions should seek to refine the procedures of the special committee as well as clarify the role of independent board members.
R35: The process of electing board members should facilitate a board that represents the interests of all shareholders. The process for achieving such representation may include, inter alia, the ability of shareholders to requisition a vote for board members by way of cumulative voting. Where cumulative voting has been selected as the method for electing board members, staggered board terms, and other mechanisms that frustrate cumulative voting, should be prohibited. (#328)		
• Optional or mandatory cumulative voting introduced	• Concentrated ownership structures • Lack of consensus on the benefits of cumulative voting	• Revisions should clarify how the board can better represent the interests of all shareholders.
R36: Local law should give board members power to obtain accurate, relevant and timely information from the company. (#336)		
• Newly enacted provisions in codes and guidelines pertaining to board members' access to information	• Issues raised with regard to the legal and regulatory framework • Obstructive role of controlling shareholders	• No additional comments

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Commission takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD PUBLISHING, 2, rue André-Pascal, 75775 PARIS CEDEX 16
(26 2011 01 1 P) ISSN 2077-6527 – No. 57805 2010-01

Corporate Governance

Corporate Governance in Asia

PROGRESS AND CHALLENGES

In 2003, the Asian Roundtable on Corporate Governance produced recommendations to improve corporate governance in Asia, based on the OECD Principles of Corporate Governance. This report summarises the results of a stocktaking exercise to determine progress made to date and the challenges remaining in the implementation of these recommendations. Included in this book are valuable insights into corporate governance rules and practices of listed companies in Asia, notably: shareholder rights, the protection of non-controlling owners, transparency and disclosure, as well as the role of company boards.

Please cite this publication as:

OECD (2011), *Corporate Governance in Asia 2011: Progress and Challenges,* Corporate Governance, OECD Publishing.

http://dx.doi.org/10.1787/9789264096790-en

This work is published on the *OECD iLibrary,* which gathers all OECD books, periodicals and statistical databases. Visit ***www.oecd-ilibrary.org***, and do not hesitate to contact us for more information.

OECD*publishing*
www.oecd.org/publishing

ISBN 978-92-64-09678-3
26 2011 01 1 P