Key Corporate Governance Issues in Emerging Markets:

Theory and Practical Execution

International Conference
HHL Leipzig Graduate School of Management
Leipzig/Germany

June 11 and 12, 2012
Conference Sponsors

HHL and the Center for Corporate Governance

The Handelshochschule Leipzig (HHL) founded 1898, is Germany's oldest business administration university. The private university awards doctorates and post-doctoral lecture qualifications and is accredited by the renowned American organization AACSB. HHL offers the following: MSc, MBA and doctoral degrees as well as executive education.

The Center for Corporate Governance was established at the HHL in 2010. Apart from teaching, research and conference projects, the Center also promotes professional exchange between research and practice. Its research activities are focused on questions relating to the performance relevance of good governance and its measurement, the development of corporate governance in emerging countries as well as diversity. The Center is directed by an academic board consisting of Prof. Dr. Marc Steffen Rapp, Christian Strenger and Prof. Dr. Michael Wolff.

Global Corporate Governance Forum / PSAG

The Global Corporate Governance Forum is a multi-donor trust fund facility located within the International Finance Corporation, co-founded in 1999 by the World Bank and the Organisation for Economic Co-operation and Development (OECD). The Forum is part of the IFC Corporate Governance Group, located in the Environment, Social and Governance Department. It is the leading knowledge and capacity building platform dedicated to corporate governance reform in emerging markets and developing countries. The Forum offers a unique collection of expertise, experience, and solutions to key corporate governance issues from developed and developing countries. The work program of the Forum is governed by the Steering Committee of Donors and Founders. Ist execution takes place through a professional team headed by Phil Armstrong.

The Forum has at its disposal a ‘Private Sector Advisory Group’ (PSAG) of some 75 international leaders with long experience in the private sector. Through the PSAG, the Forum brings practical experience to deal with issues and challenges facing corporate governance in developing countries. Its Chairman is Peter Dey from Canada and Christian Strenger is Deputy Chairman.

Fritz Thyssen Foundation

The Fritz Thyssen Foundation has for more than fifty years supported science and research. It was founded in 1959 in memory of the industrialists August and Fritz Thyssen. The Foundation was the first major private German foundation supporting science and research following the Second World War. The purpose of the foundation is to support research at scholarly schools of higher learning and research centres. Since ist interception the Fritz Thyssen Foundation has apportioned a total of approximately EUR 400 million to support science and research.
Key Corporate Governance Issues in Emerging Markets:

Theory and Practical Execution

International Conference
HHL Leipzig Graduate School of Management
Leipzig/Germany

June 11 and 12, 2012

Conference Book

by

Christian Strenger
Alexander Kleindiek
Liudmila Schmelzle
Alexey Volynets

HHL Leipzig Graduate School of Management
Center for Corporate Governance
Jahnallee 59
04109 Leipzig/Germany
Phone: +49 (0)341 9851 - 875
Fax: +49 (0)341 9851 - 876
Mail: ccg@hhl.de
http://www.hhl.de/en/faculty-research/centers/center-for-corporate-governance-ccg/

Important Notice: The opinions and commentary in the book are the presenters only and do not necessarily reflect the opinions of the organisers of the conference or the authors of the book.
Content

1 Conference Introduction

Welcome (Summaries)  
Christian Strenger  
Director, HHL Leipzig Graduate School of Management, Center for Corporate Governance

Prof. Dr. Andreas Pinkwart  
Dean, HHL Leipzig Graduate School of Management

Opening Address (Summary)  
Hans-Jürgen Beerfeltz  
State Secretary of the German Federal Ministry for Economic Cooperation and Development

Setting the Scene: The Global View  
Corporate Governance in Emerging Markets – the Real Issues  
Philip Armstrong  
Head Global Corporate Governance Forum

2 Regional Sessions - Africa, South East Europe, Asia

2.1 1st Regional Session: Corporate Governance Development in Africa

Key Issues and Challenges for CG Reforms in Nigeria  
Perspectives and Key Considerations of the Corporate Governance Development in Africa  
Panel Discussion  
Future: How can Governance Improvements in Africa be sustained?

2.2 2nd Regional Session: Corporate Governance Development in Key Emerging Markets: South East Europe

Key Issues and Challenges for CG Reform in Croatia  
Perspectives and Key Considerations of the Corporate Governance Development in Southern Europe  
CG and SEE Developments: the national and regional Perspectives: CG contribution to the competitiveness  
Panel Discussion  
Future: How can Governance Improvements in Southern Europe be sustained?
Content

2.3 3rd Regional Session: Corporate Governance Development in Key Emerging Markets: Asia
   Key Issues and Challenges for CG Reform in Indonesia 73
   Perspectives and Key Considerations of the Corporate Governance Development in Asia 96
   Panel Discussion
   Future: How can Governance Improvements in Asia be sustained?

3 Focus Sessions - The Value Question / Corruption Handling

3.1 1st Focus Session: The Value Question: Does good Governance help Performance of Investors in Emerging Markets?
   Corporate Governance in Emerging Markets: why it matters to investors and what they can do about it 111
   How Does Corporate Governance Affect Firm Value in Emerging Markets? Evidence on Channels 124
   Panel Discussion
   The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

3.2 2nd Focus Session: Handling Corruption - the Company Experience
   The Siemens Experience 142
   Panel Discussion: Handling Corruption - the Company Experience 150

4 References
   Curriculum Vita of Presenters and Discussants 155
   List of Participants 173
   Conference Evaluation 176
1 Conference Introduction

Welcome (Summaries)

Christian Strenger  
Director, HHL Leipzig Graduate School of Management, 
Center for Corporate Governance

Prof. Dr. Andreas Pinkwart

Opening Address (Summary)

Hans-Jürgen Beerfeltz  
State Secretary of the German Federal Ministry for Economic Coop-eration and Development

Setting the Scene: The Global View

Corporate Governance in Emerging Markets – the Real Issues

Philip Armstrong  
Head Global Corporate Governance Forum
1 Conference Introduction

Welcome

Christian Strenger, Director, Center for Corporate Governance, HHL Leipzig Graduate School of Management

This event brings together a highly qualified group of governance experts in the three regions of South-East Asia, Africa and South-East Europe. It also benefits from the presence of senior experts in investment management and compliance/corruption.

The goal of the conference is to present focused academic research and put this to the practical test as even premier academic research must stand the test of high application value in the real economy.

While there is intensive debate about the particular values of corporate governance, there is unilateral agreement that it creates better companies through improved access to and lower cost of capital as well as better risk management. Both points are of particular relevance for the emerging markets to become winners of tomorrow even faster. Over the last ten years many fast growing countries have increasingly employed corporate governance to improve the quality of their companies and thereby the wealth of all their people.

In contrast to the abundance of legal prescriptions, corporate governance offers the chance of self-regulation. With that, companies have their own opportunity to benefit from good governance. To embrace the concept of self-regulation for their own sake, companies and their stakeholders have to be convinced that this is to their meaningful and lasting advantage. While this conviction was initially slow in coming, it has steadily grown. This is clearly attributable to the work of international institutions like the 'Global Corporate Governance Forum', the IFC and the OECD.

By picking three important regions of the world with quite different backgrounds, the conference offers an excellent chance to discuss better solutions for the way forward, but also to learn from deficits that still exist. The key experts that have travelled from far away will give us a first-hand view of the actual situation and the opportunities that exist in their regions.

The Conference will also put the focus on over-arching topics of 'Performance Effects' and 'Corruption' as pre-eminent issues in the governance development:

- Only if it can be demonstrated that good governance does matter in performance and valuation terms, there will be sufficient self-interest to energize the responsible persons;
- only if the ill effects of open and increasingly hidden corruption can be overcome, the people involved will not vote for an easy approach to fulfil their duties.

Emerging markets offer an even higher opportunity to achieve better results through improvements in governance quality. The conference aspires to provide new avenues in conceptual but also practical terms to increase the desire to improve the governance situation, not only out of self-interest but also for the betterment of societies. If the many reserves to improve profitability can be unlocked and risks are therefore reduced, winners in the challenge for long-term well-being of all stakeholders will emerge.
Welcome (Summary)

Prof. Dr. Andreas Pinkwart, Dean, HHL Leipzig Graduate School of Management

As we will hear much more on corporate governance especially in emerging markets let me focus my remarks on this Business School in the heart of Europe: Since 1900, and despite the interruptions by periods of dictatorship, HHL is driven by our strong desire to conduct economic research with a clear scientific foundation but at the same time with a high relevance for business practice and locational competition.

Based on this it is our aim to educate effective, responsible and entrepreneurial business leaders. And we do this by the excellence in teaching and research we are able to offer to our students but also by a very balanced system of chairs, groups and centers. One of these centers, the Center for Corporate Governance.

Within these centers we bring together leading experts from the field of academics as well as from the field of practice. With this combination you’ll always not only get the state-of-the-art know-how but also the insights into practices. And it is the combination that makes the difference. The scientific guiding principle for us is “Rigor and Relevance”.

A few remarks on HHL in general: after re-unification in 1991, HHL was re-established as a private, state-recognized university with PhD and habilitation degrees. Today HHL ranks amongst the leading International Business Schools. We put our emphasis on a General Management approach with special focus on entrepreneurship and business ethics. Our academic quality is underscored by our global outlook and a lifelong service and support network.

Just recently the Financial Times ranked Entrepreneurship, Finance and Marketing in our Masters in Management-program amongst the Top 10 worldwide. And if you put this together with the New York Times ranking with Leipzig as one of the top 10 places to go to in the world: there is no better place to study than right here in Leipzig, right here at HHL Leipzig Graduate School of Management.
Opening Address (Summary)

Hans-Jürgen Beerfeltz, State Secretary of the German Federal Ministry for Economic Cooperation and Development

State Secretary Beerfeltz emphasized during his speech that development and responsible economic activity have to go together as there is no sustainable progress without sustainable economic development. His ministry’s new development policy strategy is entitled “minds for change” and clearly states that development policy is about more than just charity. It is about investment in better opportunities for people in the partner countries and for the people in Germany as well.

“Future-developers” – that is the paramount slogan that the ministry and its implementing organisations like GIZ and KfW have adopted for this year. We want to enable our partners to solve their development problems by their own means in the long-term. We create opportunities and we help people to take responsibility for their own lives – lives lived in peace and freedom. That is why we are fighting against the causes of poverty rather than simply treating the symptoms. Only feeding the world keeps people in dependence. We want to free them from the classical poverty trap, we want to help them to become independent.

That is also why human rights are the guiding principle of German development cooperation, as laid down in the coalition agreement of the German government. In 2011, I presented the first binding “BMZ Human Rights Strategy”, which includes the “human rights check” for all projects in government negotiations and discussions with our partner countries.

The respect of human rights is the central criteria for our cooperation. To quote James D. Wolfensohn, the former World Bank president who once said: “We have to put our partner countries into the driver’s seat.” That sounds nice, but not with any kind of driver’s license. Human rights are a fundamental part of ownership and even the most reluctant regimes in our world must respect the fact, that they have themselves signed the UN Human Rights Declarations hundreds of times. Providing assistance, yet also calling on others to play their part - that is the new balance that we are fighting for in our development cooperation. We are convinced that we can put the right incentives in place with this new balance. And that balance has to include a sustainable way to more democracy, more rule of law, more market economy and more domestic mobilization of resources. German development cooperation supports our partner’s efforts, to enhance good governance. Sustainable development requires suitable conditions and a proper administrative and legal framework lays the foundations. Only then others can play their part in development. We need to get both, the public and the private sector on board. We need action from the “middle of the road citizens” and action from medium-sized enterprises. Good Corporate
Governance is a goal and a precondition for positive development results as well. A responsible private sector is an absolute precondition for economic growth and for poverty reduction. Our ambitious development goals cannot be achieved by the state or the government alone.

In 2011, the donor countries worldwide mobilized official development assistance roughly around 130bn USD, enough to fund another Euro rescue package. But private foreign direct investments in developing and emerging economies were about 600bn USD, almost five-times that amount. That shows an enormous leveraging effect. If we were able to make ten or twenty percent of this private investment a little bit more development-friendly, we could double our money.

Good CG is the key to that. CG describes the relationship and the rules that govern the relationship between the companies' management, its shareholders, regulators and other stakeholders. It characterizes the structures, the framework and the processes of all economic measures. Policy makers are now more aware to the contribution good CG can have to the financial markets stability, to the economic growth and to a sustainable development.

CG lies at the heart of the global corporate social responsibility discussion. Businesses all over the world have begun to engage in activities to enhance their positive impact on societies and good CG is the foundation for everything that comes after. CG and CSR are both value-driven. They foster the democratic values of fairness, accountability, responsibility and transparency in corporations and companies. While good CG serves as the basis, CSR builds upon this basis to foster sustainable development. German companies are already making good progress in that respect, in particular the many small- and medium-sized businesses. Often, German enterprises are actually already exceeding legal and international requirements for labor standards for instance as well as social and ecological standards worldwide.

That potential must be tapped in order to compete with China in the development field. Chinas development aid for Africa does not always reflect responsible social and environmental standards well enough. It does not always create enough jobs in Africa itself; it is not what could be called development co-operation. The same also applies to international calls for tender. Why do ecological and social standards not feature more prominently in calls for tender? Just like the question of jobs or the lifecycle of buildings for example. The price alone should not be the deciding factor. The deciding factor should be the entire value of a project, both, in the monetary and in the ethical sense. If you invest in human rights and in socially and ecologically sound conditions in our partner countries, the companies will profit twice. They can earn money but they can also earn respect for all their activities. Only if companies are operating responsible, they will also end up with a healthy balance sheet which leads to the desired broad impact in our partner countries.

Businesses are important partners for development; in particular a new class of emerging market multinationals is becoming more and more important in the global markets. They need to be responsible and reliable partners. We need them as partners that can serve as examples of good CG:

1. The ministry is supporting the Global Compact, the business network of the UN, with its ten principles for human rights, for fair labor standards, for environmental protection and for anti-corruption. In Germany we also support the German Global Compact Network and
ensure that it is an active and interactive learning platform also with regard to CG issues, such as anti-corruption. Transparency and anti-corruption have been a focal issue of the German Global Compact Network in the past two years and 184 German companies have already signed up.

2. We support the CSR of our partner companies. We do this by coordinating local and international stakeholders and supporting international policy processes. For instance in India, we are supporting responsible finance trends and voluntary standards of Corporate Sustainability.

3. We have a clear cut strategy on anti-corruption. We advise businesses and national governments on how to apply such anti-corruption measures successfully. A good example of this is business action against corruption in Africa. Through funding capacity building we have lead businesses the way in the fight against corruption in Malawi. One success in between has been the establishment of a new nation-wide whistle-blowing system in the private sector.

4. We encourage oil, gas and mining companies in particular in the extractive industry sector, to disclose the payments they make to the governments of the countries in which they operate, by getting them to participate in the extractive industry´s transparency initiative – EITI. Sixty of the world’s largest resources extracting companies already support this initiative and greater transparency in the resource sector will lead to improved accountability and will help to fight against corruption.

In Mongolia, we work with companies within the framework of our integrated mineral resources initiative. We are addressing issues of CG, since low standards in Mongolian enterprises make it difficult for foreign companies to establish partnerships. We are working together with the Mongolian Financial Regulatory Commission in order to advance standards of CG and train CG executives. A cooperation of this kind, with the private sector in resource exporting countries, creates a win-win situation. It improves the quality of CG standards while at the same time offering opportunities for more and better business between local and international companies. Only if the conditions of co-operation are transparent and fair, can local and international companies benefit from the opportunities from resource extraction.

CG rules need to encourage and not burden businesses. Corporate Governance is of crucial importance for economic development in partner countries. Not only companies but regulators as well, need to drive forward improvements in CG and collaborate with others in order to provide the right incentives. Sustainable development policy and CSR are natural allies. We support companies that take their responsibilities seriously; companies that are interested in more than just making a fast buck at all cost; companies for whom CSR is not a cryptic abbreviation but part of their corporate philosophy. The private sector can greatly contribute to sustainable development worldwide. The modern business cooperation is a powerful motor and not a brake for creating wealth and prosperity and we are convinced that without sustainable economic development, sustainable development will remain an illusion.
1 Conference Introduction - Setting the Scene: The Global View
Phil Armstrong, Head, Global Corporate Governance Forum
EMs: Engine of Global Economic Growth...

- EMs will drive 70% of global growth in near term (China and India will account for 40%)
- By 2020, BRICS estimated to account for 50% of global GDP growth
- IMF estimates total GDP of EMs will overtake that of developed economies by 2014

Guiding Principles of Corporate Governance

...OECD core but saddled by perplexing multitude of competing principles & escalating complexity of issues

King Code of Governance for South Africa 2009

Dodd-Frank Bill (2010): 2,319 pages
Gramm-Leach-Bliley Act (1999): 145 pages
Interstate Banking Efficiency Act (1994): 61 pages
The Glass-Steagall Act (1933): 37 pages
Federal Reserve Act (1913): 31 pages

The UK Corporate Governance Code
Global Regulatory Framework

Significant progress…….but implementation????

G20 Regulatory Reform Agenda: Key Elements and Status

- Agreed (international guidelines) and Accomplished (national implementation)
- Work in progress
- Insufficient progress
- Nothing available to implement

<table>
<thead>
<tr>
<th>International guidelines</th>
<th>National implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank capital and liquidity</td>
<td></td>
</tr>
<tr>
<td>SIFI framework</td>
<td></td>
</tr>
<tr>
<td>Shadow banking</td>
<td></td>
</tr>
<tr>
<td>OTC derivatives</td>
<td></td>
</tr>
<tr>
<td>Credit ratings</td>
<td></td>
</tr>
<tr>
<td>Data initiatives</td>
<td></td>
</tr>
</tbody>
</table>

Note: OTC = over-the-counter; SFI = systemically important financial institutions


Job Completed…
…or Job Just Starting

- OECD CG principles remain valid and relevant
- Commitment and implementation to agreed principles and standards remains key challenge, e.g. Global standards, Local application
- Capacity to enforce and supervise an even bigger challenge (not to mention resource constraints)
- A yellow-brick road of rules-based or principles-based approach?
- Credibility of “western model” given financial crises
- Does strong emergence of BRICS change the game in any way?
Variations on a Theme
......depends which shoe fits

<table>
<thead>
<tr>
<th>OECD Countries</th>
<th>Emerging Markets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homogenous CG Rules</td>
<td>Heterogeneous CG Landscape</td>
</tr>
<tr>
<td>Listed Companies</td>
<td>Predominance of SOEs and FOBs</td>
</tr>
<tr>
<td>Dispersed Ownership</td>
<td>Power of Dominant Shareholder/s</td>
</tr>
<tr>
<td>Power of Institutional Investors</td>
<td>Limited Disclosure/Transparency</td>
</tr>
<tr>
<td>Role of Media</td>
<td>Lack of strong/competent institutions</td>
</tr>
</tbody>
</table>

...Differing Focus & Priority Issues

<table>
<thead>
<tr>
<th>OECD Countries</th>
<th>Emerging Markets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Homogenous CG Rules</td>
<td>Heterogeneous CG Landscape</td>
</tr>
<tr>
<td>Listed Companies</td>
<td>Private Ownership</td>
</tr>
<tr>
<td>Dispersed Ownership</td>
<td>Predominance of SOEs and FOBs</td>
</tr>
<tr>
<td>Power of institutional investors</td>
<td>Power of Dominant Shareholder</td>
</tr>
<tr>
<td>Role of Media</td>
<td>Limited Disclosure/Transparency</td>
</tr>
</tbody>
</table>

Focus Point

- Executive compensation vs. Regulation of RPTs
- Board composition vs. Competence of directors
- Investor activism vs. State activism
- Market-driven incentives vs. Non-market mechanisms
- Fiduciary duty to shareholders vs. Subpar disclosure and internal controls
- Board-management relations vs. Independence from controlling shareholder
- Regulating increasingly sophisticated issues vs. Capacity gaps for rigorous enforcement
- Cycles of scandals, corruption and collapse vs. More of same (nepotism, self-dealing, market abuse)
Our work in the three topic areas...

**Africa**
- Follow-up on WB CG ROSCs: Zambia, Malawi, Senegal, South Africa
- Work with IoDs: Senegal, Kenya, Zambia, Mauritius, South Africa, Mozambique, Malawi, Zimbabwe
- CG Codes: Senegal, Malawi
- SADC DFR: Kenya, Burundi, Tanzania, Malawi, Zambia, Mozambique, Zimbabwe, Botswana, Swaziland, Lesotho, South Africa, Mauritius
- Board Leadership Training: Mauritius, Nigeria, Kenya, Ghana, Zambia, Zimbabwe, South Africa, Mozambique, Malawi, Uganda
- CG Dispute Resolution Training: Mauritius
- Media Training: Botswana, Uganda, Kenya, Rwanda, Tanzania, Malawi, Zambia

**Southern and Eastern Europe**
- Follow-up on WB CG ROSCs: Azerbaijan, Bulgaria, Ukraine, Armenia, FY Macedonia
- Work with IoDs: Azerbaijan, Georgia, Albania, FY Macedonia, Turkey
- CG Codes: Azerbaijan, Armenia, Georgia, Bulgaria, FY Macedonia, Montenegro, Serbia, Albania, Bosnia & Herzegovina, Ukraine
- Board Leadership Training: Azerbaijan, Georgia, Kyrgyz Republic, Kazakhstan, Turkey, Tajikistan, Ukraine
- Media Training: Azerbaijan, Bulgaria, Macedonia, Serbia, Albania, Bosnia & Herzegovina, Georgia, Kazakhstan, Kyrgyz Republic, Tajikistan

**East Asia**
- Follow-up on WB CG ROSCs: Vietnam, Philippines, Indonesia
- Work with IoDs: Vietnam, Thailand, Indonesia, Singapore, Philippines, Mongolia
- CG Codes: Cambodia, China (Shanghai Stockex)
- Board Leadership Training: Vietnam, Thailand, Indonesia, Singapore, Philippines, Mongolia
- Media Training: Vietnam, Indonesia

---

**Quo Vadis Corporate Governance?**

- **CG is Integral to Growth**
- **Informed by contextual politics, business culture**
- **Stage of market development, incentives**
- **Capability, capacity of market intermediaries**
- **Effectiveness of market enforcement, regulation**
- **CSR-type issues more apparent to civil society**
- **Challenges in many cases still fairly rudimentary**
- **Bottom line: it is all about Leadership**
...Galloping at Unbridled Speed

- IMF estimates total GDP of EMs will overtake that of developed economies by 2014
- EMs already attract 50% of FDI global inflows.
- Purchasing power of global middle class estimated to double by 2030: to US$56 trillion (80% of demand to come from Asia)
- E2E trade reached US$2.9 trillion in 2009

Forum’s Global Reach and Impact.....

Global Corporate Governance Forum

- Over 75 world class experts
- 17 new capacity building tools
- 6,000 network subscribers (inc. 1,000 academics)

Market gap analysis from country teams
Lessons learned from project implementation

- 145 trainers trained in FY12
- 50,000 publications disseminated in FY12
- Over 80,000 web visitors in FY12

- Over 4,100 directors trained
- CG Codes adopted in 32 countries

24 IFC country & regional projects supported
Knowledge transfer to 47 institutions
2 Regional Sessions: Corporate Governance in Key Emerging Markets

2.1 1st Regional Session: Corporate Governance Development in Africa

2.2 2nd Regional Session: Corporate Governance Development in Key Emerging Markets: South East Europe

2.3 3rd Regional Session: Corporate Governance Development in Key Emerging Markets: Asia
Key Issues and Challenges for Corporate Governance Reform in Nigeria

Isimkah Ibuakah, Corporate Governance Officer, IFC, Nigeria

**Background**: In Nigeria, the corporate governance enabling environment started to develop in 2002, with the inauguration of a committee with a mandate from Nigeria's Securities and Exchange Commission, to develop a corporate governance guideline for public companies.

Following the introduction of the Code of Best Practices for Public companies in 2003, the improvements in corporate governance realized over the past 10 years, have been gradual but consistent. As with most change processes, there are issues and challenges in implementation which impact upon achieving global best practice in corporate governance. In considering these issues arising from implementing corporate governance in Nigeria, they have been grouped into 3 broad categories for analysis – operators\(^1\), regulators and stakeholders.

**The Operators** – Improving corporate governance practices in companies has been at varied levels of implementation, with the banking sector at the fore of the leader chart. The different regulators have made attempts, through the different codes in existence\(^2\), to try to prescribe appropriate levels of best practice for the companies which they oversee. However, the ability for companies to imbibe corporate governance seems to be linked to the following questions: (a) From a macro perspective, to what extent can we use regulation as a means of legislating appropriate levels of best practice, duty and care amongst the management and directors of companies?; and (b) On the micro level, how do you convince a historically performing manager or director, without

---

\(^1\) This term is used to refer to the companies and its leadership.

any incident to the contrary, that there are great financial benefits and advantages to be derived if they change the way they operate – as concerns transparency, disclosures, conflict of interests, board independence, to mention a few?

**The Regulators** – the issues and challenges which arise in this category are not much different from those experienced by regulators in other emerging markets. In Nigeria, the regulators primarily struggle with the scope of regulation, capacity and ability to effectively monitor levels of compliance and enforcement mechanisms in relation to corporate governance.

The individual efforts of regulators in Nigeria’s financial sector, to address the current gap in legislation relating to corporate governance led to 3 sector codes being developed for the banking, insurance and pensions sectors. The impact of enforcement of the requirements of these Codes, has been uneven across these sectors due to capacity constraints and costs.

The regulators recognizing the benefit of an integrated approach sought to develop a single unified code for corporate governance in 2009 but this has not been implemented in Nigeria. We have considered whether there is a potential benefit to a unified code on corporate governance and if so, what level of impact this could have on improving enforcement?

**The Stakeholders** - The financial benefit of implementing appropriate corporate governance structures and processes, which results in increased investments and share valuation is of great significance in considering this third category. This issue assumed heightened importance when the Nigerian capital market was impacted late 2008 which saw most international institutional shareholders unwinding and exiting their investments.

The Securities and Exchange Commission in Nigeria recognizes the link between corporate governance and share value from the emphasis it plays in attracting foreign direct investment. Investor protection is essential in order to increase investment because it requires both law and effective enforcement of law to assure investors that their investment is protected.

However, is improving corporate governance practices within companies adequate to assure investors that long term discipline within managers and directors and increased share value? Is there still not a need to consider the role and effectiveness of the judicial arm, the strength of the securities and company law as well as the ability of regulators to identify non-compliance of corporate governance principles?

The importance of stakeholder vigilance and commitment to ensuring compliance with regulation cannot be over-emphasized but in like vein, the regulators are also tasked with the challenge of implementing sustainable and effective enforcement mechanisms that ensure operators adhere to and comply with over time.

---

3 The Financial Sector Regulatory Committee (FSRC) which includes the Central Bank of Nigeria, the Securities & Exchange Commission, the Pension Commission, the National Insurance Commission initiated a public review process of the draft Harmonized Code of Corporate Governance in 2010.
2.1 Corporate Governance Development in Africa

Key Issues & Challenges in Corporate Governance Reform in Nigeria

Presented by:
Isimkah Ibuakah
Corporate Governance Officer, IFC

Outline

- Country Context
- Enabling environment - laws and regulations
- Background to current CG landscape in Nigeria
- IFC’s role and intervention in the banking sector
- Overview of Issues & Challenges
- The future - What we generally hope to see in Nigeria and the banking sector
2.1 Corporate Governance Development in Africa

Country Context

- **2nd largest economy** in Sub-Saharan Africa after South Africa: GDP by ppp (2011 est.): approx US$411.5 billion, US$2,600 per capita
- FDI (2010) $6.1 billion; (2011) $7.9bn
- **Largest population** in Africa at 183.3 million people
  - One out of every 5 Africans is Nigerian
- Measuring 910,768 sq km, its population is split 50/50 between rural and urban dwellers; about 65% of the population depends on agriculture for its livelihood.
- **Urbanization** is increasing rapidly, from 26% of the population in 1975 to 50% in 2010, and is projected to reach 57% in 2020
- Oil continues to dominate the economy. In 2011, crude oil exports accounted for:
  - ...40% of GDP;
  - ...93% of goods & services exports; and
  - ...80% of total government revenues
- **Governance** improving but remains challenging
- Ibrahim Index score on Nigeria’s governance has barely improved in 10yrs: 41/100 in 2011 (cf. 41/100 in 2001

Laws, Codes & Regulations

- **Companies & Allied Matters Act, 1990** – only covering specific acts of companies such as insider dealing, fiduciary duties of directors, etc.
- **Code of Corporate Governance for Public Companies 2003** – issued by Securities & Exchange Commission (SEC). This code was revised & launched in 2011

Including other sector specific codes namely:

- **Code of Corporate Governance for Banks in Nigeria** – issued by Central Bank of Nigeria (CBN) in 2006
- **Code of Corporate Governance for Insurance companies** – issued by the insurance regulator (NAICOM) in 2008
- **Code of Corporate Governance for Pension Operators** – issued by the Nigerian Pension Commission (PENCOM) 2011
Corporate Governance in Nigeria

- 1st Corporate Governance Code introduced in Nigeria – 2002; barely 10 years of CG implementation;
- Awareness and Implementation improving but remains challenging – sectored approach to regulation;

Turning Point:
- Financial crisis resulted in distressed banks;
- Stock Market slump – massive decline in value of listed shares

- Introduction of reforms in 2009 by Central Bank of Nigeria placed the banking sector ahead of other sectors;
- Reforms and re-regulation increased market confidence under CBN leadership;

IFC Role in Corp Gov in Nigeria since 2007

Nigeria Corporate Governance Program (NCGP)

- A 5 - 6 year Technical Assistance/Advisory Services program designed to enhance the transparency and efficiency of the financial sector by improving corporate governance policies and practices in the banks.
- The program was initiated after a survey of corporate governance practices of Nigerian banks was conducted in 2007. The results showed that it was necessary to provide for a focused institutional building program with banks.
- First corporate governance advisory services program in Africa, and piloted in a market where IFC had significant investment exposure to banks
- The objectives of the NCGP are:
  I. technical assistance/support to regulators
  II. Direct CG improvement assistance to banks
  III. developing/enhancing educational content in CG
  IV. institutional capacity building
  V. public awareness
2.1 Corporate Governance Development in Africa

Overview of Banking Sector Reforms

**Crisis**

- 2008-2009 stock market decline triggered the banking crisis
- Excessive equity market margin lending left banks exposed to margin calls
- NPLs also rose from financing of refined oil imports and impact of oil price drop
- Capital reserves declined and interbank lending dried up, with systemic crisis looming

**Reform and re-regulation of banking sector**

- In-depth audits of all banks undertaken, and common financial year end instituted
- Repeal of universal bank licenses
- Establishment of a comprehensive supervisory framework to address weak consolidated financial sector oversight
- Full adoption of IFRS mandated by 2012
- New detailed minimum reporting requirement for banks
- Restricted tenure of bank CEOs and board members to a maximum of 10 years
- Other CG requirements – independence, external auditors, training
- Bankers’ Committee reinvigorated for advocacy of economic development
- US$3.5 billion CBN long-term concessionary facility provided through banks for power, manufacturing, agriculture, and aviation sectors
- Sales process of distressed banks complicated by conflicts of CBN Tier II investment, interim outside management, and existing shareholders

Issues & Challenges 1

**Companies/Operators**

- **Concentration of board power**
- ‘Tone at the Top’ – commitment to establishing best practices
- Competence: Inexperienced/unskilled members on the board
- Inadequacy of relevant information
- Inadequate Succession: “Key Man” Risk
- Resistance to change: culture & practices
- Conflicts of Interest: S. 280 (5) CAMA
- Reporting: levels of delegation
- Poor Risk Management policies – NPLs, RPT’s
- Role of Company secretary
- Inadequate Minority Shareholder protection
- Lack of Enthusiasm & Mistrust – ‘whistle-blowing’
- Independence
2.1 Corporate Governance Development in Africa

Issues & Challenges 2

Regulators

- Capacity of Staff – competence and number
- Compliance vs. Best practice – capacity and costs
- Monitoring – methodology & tools
- Scope of Powers – laws, regulations or judicial precedents?
- Inadequacy of Existing regulatory/legislative framework
- Conflicting provisions in codes
- Adequacy of information provided by companies
- Enforcement mechanisms
- Time constraints

Issues & Challenges 3

Stakeholders – shareholders, media, depositors, etc

- Ignorance and Lack of awareness of rights
- Social culture – complacency, “herd mentality”
- Level of knowledge of corporate governance
- Availability/Scope of information provided by companies
- Insufficient shareholder activism – institutional and individual
- Medium for redress – courts, arbitration
- Ignorance of company’s practices

- General – the overall challenge of aligning all interests in the CG framework
2.1 Corporate Governance Development in Africa

The Future

Change agent: Banking sector as demonstration to other sectors

Commitment to best practice – substance over form

Improved Stakeholder engagement – to ensure best practice

Cohesive monitoring methodology – no silos with regulators!

Increased Institutional CG capacity

Increase capital market value & access to financing

Impact on corporate governance of SME’s

Thank you for listening....
2.1 Corporate Governance Development in Africa

Corporate Governance Reform In Africa: Key Considerations

Evelynne Change, LL.M (Columbia), Programme Management Specialist, UNDP Regional Service Centre for Eastern and Southern Africa, Johannesburg, South Africa

Africa is the world’s second largest and second most populous continent. Occupying about 6% of the world’s surface area and home to a great bulk of natural resources, the region has the highest proportion of people living below the poverty line. Although mostly at peace with itself in recent times, the continent harbors lingering flashpoints of conflict - Côte d’Ivoire, Democratic Republic of Congo, Sudan and Somalia to name a few. Moreover, Africa is witnessing a resurgence of military coups and unconstitutional changes in government. The region has also not escaped the adverse effects of the global economic crisis due to the importance of international trade, foreign capital inflows, development assistance and Diaspora contributions to national economies. The question must therefore be asked of how corporate governance is bound to thrive within this backdrop of low economic, social and infrastructural indicia, a weak political fabric and systemic governance challenges including economic and corporate mismanagement, capacity and managerial deficits.

On the whole, corporate governance issues are yet to be of regular concern on the continent which is characterised by a weak private sector and embryonic capital markets. Relevant codes (where they exist) have been promulgated fairly recently with the necessary sensitization and training programmes yet to be undertaken Corporations continue to be perceived in terms of big
conglomerates and multinationals while the more prevalent Small and Medium Enterprises (SMEs) are ignored. Corporate social responsibility (CSR) is not well understood and is widely viewed as a philanthropic gesture of goodwill rather than an attribute of good corporate citizenship. Other challenges include poor and inadequate legislation coupled with inadequate regulation, oversight and enforcement, resistance to privatization programmes and lack of clear strategies for the efficiency of state owned enterprises. High youth unemployment, gender disparities, an overworked commercial justice system and endemic corruption are further impediments to corporate governance reform in countries. Despite realization that good economic and corporate governance including transparency in financial management are essential prerequisites for promoting economic growth and reducing poverty translating this vision into reality has been an elusive goal.

On a more positive note, Africa has yet to witness the level of corporate failure that has been experienced elsewhere in the world. In many countries, corporate governance has been elevated to a higher level. It is no longer just a voluntary private sector practice but a major regional and national policy objective. Significant measures to improve corporate governance including: elaboration of corporate governance codes such as the King Reports in South Africa; amendment of the companies legislation to ease business registration and improve corporate reporting; enacting laws that target economic and financial crimes; strengthening banking and financial regulation and supervision; fostering entrepreneurial and SME development; increasing the pool of qualified directors through training programmes; widening the representation of women on corporate Boards; and implementing measures to improve the efficiency of SOEs including divestiture of state interest and corporatization.

Some key conclusions drawn and lessons learnt can inform future corporate governance reform work in Africa:

- The tapestry of the continent is a diverse one. Regional and national differences must be taken into account when designing any corporate governance programme;
- The relative small size of the capital markets in most countries implies that greater emphasis should be given to small and medium sized enterprise (SME) and other forms of enterprise prevalent on the continent;
- There is a rethinking of the role and value of State Owned Enterprises (SOEs). Attention is now shifting towards the need to enhance performance of the sector through improved governance;
- There are linkages between corporate governance and wider macro and systemic governance. As a result, there is need for more public-private sector consultations for effective reform;
- The role of civil society to enhance the upholding of norms, particularly in the extractive industry is of critical importance. This calls for adequate sensitization and capacity building programmes.
2.1 Corporate Governance Development in Africa

CORPORATE GOVERNANCE REFORM IN AFRICA: KEY CONSIDERATIONS

Evelynne CHANGE, Programme Management Specialist
UNDP Regional Service Centre for Eastern and Southern Africa

June 11-12 2012, Leipzig, Germany

Presentation Outline

- Introduction
- Recognition of the Importance of Corporate Governance
- Development of Codes (the King Reports)
- Other Measures to Improve Corporate Governance
- Governance of State Owned Enterprises
- Anti-Corruption Efforts
- Main Challenges to Corporate Governance Reform in Africa
- Conclusion
2.1 Corporate Governance Development in Africa

Introduction

- The Corporate Governance Challenges of Africa, the world's second largest and second most populous continent must be situated within the broader political and macro-economic governance landscape.
- Occupying about 6% of the world surface area and home to a great bulk of natural resources, Africa still has the highest proportion of poor people in the world.
- Although mostly at peace with itself in recent times, the continent harbours lingering flashpoints of conflict - Côte d'Ivoire, Democratic Republic of Congo, Sudan and Somalia to name a few.
- The region has also not escaped the adverse effects of the global economic crisis due to the importance of international trade, foreign capital inflows, development assistance and Diaspora contributions to national economies.
- The question must therefore be asked of how corporate governance is bound to thrive within this backdrop of low economic, social and infrastructural indicia, a weak political fabric and systemic governance challenges including economic and corporate mismanagement, capacity and managerial deficits.

Recognition of the Importance of Corporate Governance

- The Heads of State and Government of the African Union have taken cognizance of the fact that good economic and corporate governance including transparency in financial management are essential prerequisites for promoting economic growth and reducing poverty.
- They have subsequently adopted several codes and standards which have the potential to: promote market efficiency, control wasteful spending, consolidate democracy and encourage private financial flows - all of which are critical aspects for the quest to reduce poverty.
  - Principles of Corporate Governance (OECD, Cadbury, King Report);
  - International Accounting Standards (IFRS);
  - International Standards on Auditing;
  - Core Principles for Effective Banking Supervision
  - Several Anti-Corruption Conventions including the UNCAC and the African Union Convention on Preventing and Combating Corruption and Related Offences
  - Code of Good Practices on Transparency in Monetary and Financial Policies;
  - Recommendations on Anti-money laundering
Many African countries have adopted the various international standards on Economic and Corporate Governance.

Efforts have also been made to elaborate national codes.

Notable of these are South Africa’s King I, II and III Reports which have been at the forefront of improving Corporate Governance nationally, regionally and globally. The reports have:

- Played a pivotal role in promoting corporate integrity in South Africa through positive influence on legislative reforms and regulatory measures, JSE listing requirements and banking sector regulations;
- Influenced the update of the Protocol on Corporate Governance in the Public Sector;
- Been instrumental in guiding South African Corporations address transformation issues and implement Black Economic Empowerment;
- Credited in making South Africa a leading player in sustainability reporting.

The first King report was published in 1994 and aimed at boosting the competitiveness in South Africa’s private sector following the country’s re-integration into the global economy. It made a significant contribution to corporate governance reform by introducing basic corporate governance values including discipline, transparency, independence, accountability, responsibility, fairness and social responsibility.

The King II Report (2002) had great impact in making sustainability reporting a widely accepted practice with South Africa becoming an emerging leader in the field. This report introduced the Triple Bottom Line concept (TBL) that requires companies to report on social transformation, ethics, environment and socially responsible investment.
2.1 Corporate Governance Development in Africa

The King III Report

- The King III Report released on 1 September 2009 became necessary because of the anticipated new Companies Act (2008) which constitutes a revision of the Companies Act 1973) and changing trends in international Governance.
- King III has broadened the scope of Corporate Governance in South Africa with its core philosophy revolving around leadership, sustainability and corporate citizenship.
- It focuses on the importance of reporting annually on how a company has affected the economic life of a community (both positively and negatively) during the year of operation and the measures the company intends to take to reinforce the positive and remedy the negative.
- The King III report further recognizes that Information Technology has become an integral part of doing business today as it is fundamental to the support, sustainability and growth of organizations. King III stipulates that in exercising their duty of care, directors should ensure that prudent and reasonable steps have been taken with respect of IT Governance to stave off any related risks for the Company.

Other Measures to Improve Corporate Governance in Africa

- Amendment of the companies legislation to ease business registration and improve corporate reporting;
- Strengthening banking and financial regulation and supervision
  - In 2006 Nigeria took the decisive step of consolidating and restricting the number of banks in the country in response to massive failures of undercapitalised, ill-supervised and poorly managed banks and numerous companies in the financial sector.
- Increasing the pool of qualified directors through training programmes;
- Widening the representation of women on corporate Boards;
- Fostering entrepreneurial and SME development
- Relevant Skills Development
- Implementing measures to improve the efficiency of SOEs
- Tackling Corruption
2.1 Corporate Governance Development in Africa

Governance of State Owned Enterprises

- Most SOEs in Africa have historically been plagued by a myriad of governance challenges
  - Corruption and its antecedents of over-staffing, bribery, nepotism and godfatherism and free rider problems;
  - Decision-making being at times paralysed by excessive bureaucracy;
  - Laissez-faire attitude towards state business;
  - Politicisation of SOEs in terms of preferential service delivery to favoured constituencies as well as in the choice of board and management;
  - Problems of disclosure and transparency reporting.
  - Managerial deficits and capacity short-falls
  - Undefined strategy for operation and governance.

Key Reforms in Governance of SOEs

- Key SOE governance reforms that have been made by African countries include
  - Enactment of legislation on the Governance of SOEs
  - Development of codes of conduct and protocol for SOE Governance
  - New rules for Board Selection and relevant training programmes
  - Clearer accounting and transparency requirements
  - Introduction of performance contracts for SOEs and their managers
  - Shareholder compacts
  - Restructuring to; improve efficiency and effectiveness of the entity; access competitive global technologies; and mobilize private sector capital and expertise.
  - Privatization, corporatization and divestiture of state interest
  - Disposal of non-performing entities
2.1 Corporate Governance Development in Africa

Anti-corruption Efforts

- Corruption is still at the centre of any governance debate in Africa. Measures to combat include:
  - Adoption of relevant convention such as UNCAC and the AU Anti-Bribery Convention
  - Amending existing legislation or adopting new legislation on corruption, money laundering, freedom of information and whistle blower protections.
  - Preventive measures at public administration level to curb bribery e.g. public procurement laws and guidelines and asset declaration.
  - Legislation and enforcement to ensure that foreign companies do not get away with poor corporate governance practices on African soil (Lesotho Highlands Water Case).
  - Improving the quality of financial and investigative journalism.
  - Involvement of media and civil society.

Challenges to Corporate Governance Reform

- On the whole, corporate governance issues are yet to be of regular concern on the continent which is characterised by a weak private sector and embryonic capital markets.
- Relevant codes (where they exist) have been promulgated fairly recently with the necessary sensitization and training programmes yet to be undertaken.
- Most of the domestic legislations such as the Companies Act and the Accounting Act have not been amended to reflect these international standards. Resultantly, there is lack of clarity concerning statutory requirements on issues such as disclosures by companies, shareholder protections, conflicts of interest, insider trading.
- Institutions created for enforcement and monitoring, with some notable exceptions, are generally weak. Capacity and resource constraints, poor coordination among key actors in financial and company regulation often affects effective enforcement.
2.1 Corporate Governance Development in Africa

*Challenges Cont’d*

- With the exception of a few countries, there is a shortage of trained corporate experts, lawyers, accountants to meet the needs of domestic enterprises, especially in the regions.
  - South Africa is one of the countries with highly skilled accountants and auditors. The major issue, however, is the chronic shortage of black chartered accountants (CAs). For example, in June 2006, only 717 of a total of 25,113 CAs were black (about 2.8%). As a result, the SAICA has introduced the Thuthuka Education Upliftment Project (TEUP). *Thuthuka* (a Zulu verb meaning “to develop”) is a response to the need to transform the CA profession and make its membership reflect the country’s demography in terms of both race and gender. It does this by promoting chartered accountancy as a first-choice career among individuals from previously disadvantaged backgrounds and supporting them through its holistic bursary schemes and learning experience.

- Limited pool of qualified and truly independent Directors

*Challenges cont’d*

- Corporations continue to be perceived in terms of big conglomerates and multinationals. Few countries have taken the appropriate legal and institutional steps to cater for the reporting requirements of SMEs. As a result, SMEs often cannot access capital for growth as Banks often request compliance from companies seeking finance.

- Some reluctance on the part of SMEs to list due to: a general reluctance to attract closer scrutiny from tax and capital market regulators; what is deemed costly listing requirements for SMEs and the reluctance to lose control of a firm.

- The concepts of Corporate Social Responsibility, environmental and sustainability reporting are still nascent and need to be further promoted as Africa is a continent predominantly reliant on mineral, agricultural and other resources with impact on the environment and facing many social challenges including HIV and AIDS.

- High youth unemployment, gender disparities, an overworked commercial justice system and endemic corruption are further impediments to corporate governance reform in countries.
2.1 Corporate Governance Development in Africa

The tapestry of the continent is a diverse one. Regional and national differences must be taken into account when designing any corporate governance programme;

The relative small size of the capital markets in most countries implies that greater emphasis should be given to small and medium sized enterprise (SME) and other forms of enterprise prevalent on the continent;

SOEs are a critical part of any corporate governance reform programme

There are linkages between corporate governance and wider macro and systemic governance. As a result, there is need for more public-private sector consultations for effective reform.

The role of civil society to enhance the upholding of norms, particularly in the extractive industry is of critical importance. This calls for adequate sensitization and capacity building programmes.

Although Africa has not witnessed the level of corporate failures experienced elsewhere it should be able to draw lessons and draw lessons from these experiences.
Corporate Governance Development in Key Emerging Markets: Africa - Discussion

**Moderator:** Patrick D. Chisanga

**Discussants:** Isimkah Ibuakah, Evelynne Change, Hubertus Graf von Plettenberg, and Prof. Sidharta Utama

**Initial statements from Graf von Plettenberg:**

- Corporate Governance (CG) should be part of the entrepreneurial culture in a country. It should encompass every entrepreneur who is starting a business, and not only growing or large companies.
- Corporate Social Responsibility (CSR) should be an integral part of the CG culture.
- We need to take into account the most important motivations of the entrepreneurs: to improve the performance of their business and to address preconditions to run a business. People will do their very best to improve performance of their businesses, but they will not do the same just to fulfill the legal or regulatory requirements. Businessmen need to be educated that CG is good for their business.
- The added value of CG is especially clear for entrepreneurs who think long-term.
- Poor CG practices are often the very “ground reason” for bad business performance.
- Being motivated to adopt good CG practices is not enough. Entrepreneurs need practical know how and for that, some training and assistance should be offered.

**Comment of Mrs. Ibuaka:**

- From IFC investment perspective, companies break the rules often because they lack the necessary awareness and knowledge.
- IFC is increasing CG advisory assistance to its client companies to improve their processes, policies and structures. This is a significant step forward from what previously has largely been the compliance-driven effort.

**Statement by Mrs. Change:**

- Instead of promoting full-fledged CG codes, it is often more effective to start with CG guidelines or building blocks that are relevant and urgent for a particular environment, for example, for post-conflict countries.
- We need to work with countries alongside their priorities such as the development of extractive industry, capital markets, or the state-owned enterprises.
- Support for rule of law and the tackling of corruption are very important as well, and these issues need more involvement of civil society and the media.

**Statement by Prof. Utama:**

- The CG reform needs to be sustainable in the long run, and the environment has to be continuously improved.
2.1 Corporate Governance Development in Africa

- We have to change the perception of many African companies that CG is a regulation imposed by someone from the top, and thus is a burden to their business. Practicing good CG is something that companies should engage in voluntarily.
- To be effective, CG education and training have to include not only the directors and senior-management, but also the controlling shareholders and regulators.
- Finally, CG values should be instilled into the society from the early stages of education. Starting with the primary school level, we need to promote concepts such as transparency, accountability, responsibility, independency and fairness.

**Question from the audience:**
Do we need some special rules to handle anti-corruption in Emerging Markets, or “one size fits all”?

**Response by Mrs. Change:**
- In terms of corruption, the one size that fits all is zero tolerance for it at all levels. However, the strategies for various countries are different.
- Leading by example might be easier for certain countries to achieve than for others, but on the whole there is determination on the part of the African continent to tackle corruption.

**Comments from the audience:**
The key word for trying to solve the problem of corruption in Africa is RRPC:
- The first R stands for the Reason why we have corruption in African companies
- The second R is for Reform, because we have to make reforms on this situation
- Then we go for P, which means how to Prevent such a kind of situation and, lastly, the C for Control, because we have to create committees which will take care about this issue.

**Question from the audience:**
Have there been any efforts made in Africa to get CG “change champions”?

**Response by Mrs. Change:**
- “Change champions” are slowly coming. For example, the African Peer Review Mechanism (APRM) is a group of countries that have decided that governance, including corporate governance, is critical to achieving development. APRM helps to promote best practices. For example, when South Africa is doing well compared to other African countries in some areas of CG, other member states can benefit from its experience. Therefore advances such as the King Report have importance for the entire continent.
- On the corporate level, countries have implemented awards and recognitions for best practices.

**Graf von Plettenberg adds:**
- We had two companies - one in Tunisia and one in Egypt - which had an exceptionally good performance in CG and CSR. Both survived the “Arabic Spring” very well because not only their employees, but also their shareholders, banks and we at DEG trusted these companies.
2.1 Corporate Governance Development in Africa

and helped them by giving money. They also built good rapport with the local community.

- Adopting a long-term perspective and having a good CG and CSR is very important for such companies to keep being successful and others can learn from these examples.

**Question from the audience:**
- How much progress have you seen in terms of the oversight of the governments and fund managers to create the right kind of alignment with investors, especially as it relates to the unlisted companies and private equity?

**Response by Mrs. Ibuakah:**
- The Securities and Exchange Commission aims to promote investor confidence when it comes to the public companies, especially in the banking sector. When it comes to private companies, very little is being done. It is totally self-regulated.

**Question from the audience:**
Do private investors in Africa really care about things like the board composition?

**Response by Mrs. Ibuakah:**
- The domestic retail investors are not asking the right questions. They are mostly going for the shares they could trade very quickly for a profit. But at least now there are more individual investors starting to attend annual meetings and ask hard questions.
- For the foreign direct investors, the high institutional network investors are still investing through private equity firms. These firms have become a key player in the African market. They are looking for investment opportunities where they can have at least some level of transparency. IFRS has helped quite a bit in this regard, but more needs to be done.

**Question from the audience to Graf von Plettenberg:**
Project managers, even very professional ones, are often not trained in CG and therefore have very complicated issues with stakeholders, for example, in terms of transparency. Even more so in big public-private partnership projects where the state and foreign companies and financial institutions are involved. How could we improve CG in project companies?

**Response by Graf von Plettenberg:**
- With some of our customers, we agree on a CG development plan within the loan documentation. The companies have to reach certain CG milestones within certain timeframe and if they are not complying with this plan, there is the possibility to accelerate the loan.
- The improvements take time, so we finance only at least “half-good” companies.
- In bigger infrastructure projects, there is also room for negotiation with the governments in the starting phase.
2.1 Corporate Governance Development in Africa

Main Takeaways:

- Corporate governance, including Corporate Social Responsibility should be integral part of the entrepreneurial culture in a country. It should encompass every entrepreneur who is starting a business, and not only growing or large companies.

- CG values should be instilled into the society from the early stages of education. Starting with the primary school level, we need to promote concepts such as transparency, accountability, responsibility, independency and fairness.

- New rules and regulations will have limited impact until the companies see CG as beneficial for their performance and growth.

- Foreign investors can play an important role by promoting CG-related conditionalities and improvement plans. Local investors have to play a more prominent role and engage with companies on CG issues.

- Being motivated to adopt good CG practices is just a start - entrepreneurs need training and advisory. Growing technical assistance programs of IFC and similar organizations is very important in this regard.

- To be effective, CG education and training have to include not only the directors and senior-management, but also the controlling shareholders and regulators.

- We need to work with countries alongside their priorities such as the development of extractive industry, capital markets, or the state-owned enterprises.

- Instead of promoting full-fledged CG codes, it is often more effective to start with CG guidelines or building blocks that are relevant and urgent for a particular environment, for example, for post-conflict countries.
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Legal Aspects of Corporate Governance in Croatia

Prof. Dr. sc. Hana Horak, Professor at the Department of Law, Faculty of Economics, Jean Monnet Chair, University of Zagreb, Croatia

Introduction:
Corporate governance in Croatia is in continuous process of development and improvement. Numerous changes in Croatian company law and corporate governance have been done in past decade mainly as a result of compliance with *acquis communautaire* of the EU. That process raised the importance of corporate governance and the idea of implementation of good corporate governance have become more and more important.

The provisions of the Companies Act in Croatia provide comprehensive legal regulation of the scope of the activities of the joint stock companies’ body. Above mentioned harmonisation process with EU legislative and regulatory practice has revealed a need to adopt a corporate governance Code, to regulate where the act stops.

Recent corporate scandals in Croatia have shown that numerous problems persist beyond the fact that regulatory framework exist (both hard law and soft law instruments). In Croatian legislation has been perceived the importance of soft law instruments but some important real implications in practice doesn’t exist.

Implementation of the Code of corporate governance should be the top of corporate governance culture but it should be borne in mind that without real willingness to apply non-binding rules there cannot be development of real corporate culture.
Focus of the Presentation:
- Question of sustainability of corporate governance practice/regulation in Croatia.
- Question of ineffective enforcement of existing laws and regulations, lack of sanctioning powers and proper enforcement mechanism.
- Focus on how to raise corporate governance culture bearing in mind maturity of corporate governance tradition in Croatia.

Research:
Analysis of corporate governance report (questionnaires in 2009 and 2010) based on the data of the Zagreb Stock exchange.

Conclusion:
In Croatia corporate governance needs further support of public policy because good corporate governance cannot develop without appropriate public policy which means adequate legal and regulatory framework. The Company Law as the core of the corporate framework developed in Croatia through last twenty years (trying to overcome the gap between the developed countries where the corporate governance systems has been developed of the centuries in transitional countries the system has been developed in a vacuum, without adequate institutional support in past twenty years). But, we should bear in mind that the law in many cases neither provide sufficiently clear and efficient set of rules nor well implemented rules due the lack of proper enforcement mechanism. According to the data it seems that the level of CG culture is currently raising. It is obvious that this achievement is outcome of high level of Croatian legislative and regulatory framework alignment with the EU legal framework but still greater transparency should be achieved through the implementation of the corporate governance instruments.
Real willingness of applying CG instruments in practice is important because corporate governance should have important spillover effect on society as a whole. Unaccountable and opaque corporations are more than likely to undermine the rule of law and the effectiveness of government, creating and sustaining a vicious circle of corruption, bribery and mismanagement not only in the private sector but also in the public sector.

2.2 Corporate Governance Development in Key Emerging Markets: South East Europe
Key Issues and Challenges for CG Reform in Croatia

Prof.dr.sc. Hana Horak
Jean Monnet Chair
Faculty of Economics and Business, University of Zagreb

- “It is a paramount importance that European business demonstrate the utmost responsibility not only towards their employees and shareholders but also towards society at large” (Communication from the Commission to the EP Towards a Single Market Act – for a highly competitive social market economy, COM (2010) 608 final/ 2)
IN CROATIA:

- CG need support of public policy
- Corporate strategy formation is made within a framework provided by a set of rules
- These rules may include private self-regulation, but consist mainly of public laws and regulations such as company law, securities regulation, listing requirements and insolvency legislation

- Good CG practices cannot develop without appropriate public policy, without an adequate legal and regulatory framework

- This is mainly why governments all around the world pay due attention to CG

- Does the government in Croatia?
In transitional economies the development for good CG practice is more about creating the key institution that will drive successful economy transformation to market based economy.

Such a cultural shift takes time and slowly becomes evident in most transition economies (OECD).

The most significant improvements in SEE could come from effective enforcement of existing laws and regulations.

Major obstacles: lack of sanctioning powers and independence of regulators, limited cooperation and trust between authorities and private sector, etc.

Beside the existing legal and regulatory framework it should be upgraded in terms of coherence and force ability.
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

- Company law - core of the corporate framework / in many cases the law doesn’t provide sufficiently clear and efficient set of rules, not well implemented – lack of proper enforcement mechanism/

Achievements in Croatia

- numerous changes in Croatian company law and corporate governance have been done in past decade mainly as a result of compliance with acquis communautaire of the EU

- In that process the importance of CG and the idea of implementation of good corporate governance standards have become more and more important

- The provisions of the Companies Act in Croatia provide comprehensive legal regulation of the scope of the activities of the joint stock companies’ body

- Above mentioned harmonisation process with EU legislative and regulatory practice has revealed a need to adopt a CG Code, to regulate where the act stops
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Regulatory and legal framework

- Companies Act (Official Gazette N.N. 137/09)
- Court Register Act (N.N. 90/11)
- Accounting Act (N.N. 109/07)
- Auditing Act (N.N. 139/08)
- Implementing Ordinances
- Capital Market Act (N.N. 74/09)
- for capital market participants in Croatia, for issuers whose securities are admitted to a regulated market (Zagreb stock exchange 2009)
- ZSE rules (2011)
- HANFA’s ordinances and instructions
- CG Code 2010

- Companies Act contains in Art. 272p “comply or explain” principle / as introduced in the Directive 2006/46/EC/ – requirement for listed companies to include CG statement in their annual report containing description of the main features of the companies internal control and risk management systems in relation to the financial reporting process.

- It mandates the application of CG codes by way of “comply or explain” / alternatively it allows the application of companies specifics extra legal principles/
The provisions of the Companies Act in the Republic of Croatia provides comprehensive legal regulation of the scope of activities of the joint stock company’s bodies.

Harmonisation process with the EU legislative and regulatory practice has revealed a need to adopt a Corporate Governance Code, to regulate where the act stops.

The Corporate Governance Code was first created in 2007 by the Croatian Financial Services Supervisory Agency /HANFA/ and Zagreb Stock Exchange (amended in 2010).

Some authors believe that the German code should be used as a model, given the fact that the Croatian Companies Act is closest to the German Akt- G.

Although this idea is in principle correct, Croatian particularities, especially those of the Croatian financial market as well as the maturity of corporate governance tradition in the Republic of Croatia should not be overlooked.

Numerous companies in the Republic of Croatia have their own corporate governance codes that can also be included in the annual report within the meaning of Article 272p.
Croatian financial services supervisory agency (HANFA) in 2011 have started with issuing Annual report on CG in Croatia for 2010 in comparison with the data from 2009 /www.hanfa.hr/

this comprehensive report is of outmost importance and shows the achievements and development of CG culture in Croatia

Total number of issuers on regulated market in 2009 was 237 and in 2010 was 216 (8 of them are closed investment founds that are not obliged to apply Code of corporate governance (number of issuers obliged to apply the code in 2009 was 229 and in 2010 was 208 issuers*).

*HANFA report, p. 21 and 59

Application of CG Code in Croatia*

According to the data of Zagreb Stock exchange

- in 2009:
  - 91 issuers delivered fulfilled questionnaire on Code of CG – 39, 74% of the total number of the persons obliged for the data delivery (229)
- in 2010:
  - the same questionnaire was delivered from 148 issuers (31.7.2011) – 71,15% of the total number of the persons obliged for the data delivery (208)
  - the number has increased for 31,41%

* 19 issuers have not delivered fulfilled questionnaire

*data from HANFA Report, p. 60 (see next slide)
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Comply or explain

- According to the questionnaire 28 issuers additionally applies some other CG code and 9 of them use their companies specific code

- 95 issuers publish data on their web site, 90 don’t publish, and others didn’t answered the question

- only 125 issuers who are applying the CG codes answered that 66% of them fully comply with the CG code *

Source: HANFA, p.61
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Remuneration

Remuneration policy for the members of the management board in 2009 and 2010 (data available for total of 186 issuers)*

*HANFA report 2008

<table>
<thead>
<tr>
<th>YEAR</th>
<th>YES</th>
<th>NO</th>
<th>NO ANSWER</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuer had a remuneration policy for management board</td>
<td>40</td>
<td>137</td>
<td>9</td>
</tr>
<tr>
<td>Remuneration policy was publicly disclosed</td>
<td>14</td>
<td>26</td>
<td>0</td>
</tr>
<tr>
<td>Detailed disclosure of all compensations and bonuses for every member of the management board</td>
<td>17</td>
<td>144</td>
<td>25</td>
</tr>
<tr>
<td>2010</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Issuer had a remuneration policy for management board</td>
<td>41</td>
<td>135</td>
<td>10</td>
</tr>
<tr>
<td>Remuneration policy was publicly disclosed</td>
<td>14</td>
<td>27</td>
<td>0</td>
</tr>
<tr>
<td>Detailed disclosure of all compensations and bonuses for every member of the management board</td>
<td>16</td>
<td>150</td>
<td>20</td>
</tr>
</tbody>
</table>

- 92 issuers in 2010 and 93 issuers in 2009 indicated that they have fixed remuneration for members of the management board (fixed remuneration is between 10.000 and 12.000.000 kn, aprox. 1.300 and 1.600.000 EUR)
- Only 16 issuers indicated that they have variable remuneration in both years (variable remuneration is between 8.000 and 17.000.000 kn, aprox. 1.066 and 2.266.666 EUR)
- 6 issuers indicated that they have total amount of options (market value of the shares on which options apply) for the management board members between 2.000.000 and 17.000.000 kn, aprox. 266.000 and 2.266.666 EUR)
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Remuneration for the Supervisory board members*

*HANFA Report, p. 49

<table>
<thead>
<tr>
<th>YEAR</th>
<th>YES</th>
<th>NO</th>
<th>NO ANSWER</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>Remuneration policy disclosed</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Members of the supervisory board got compensation</td>
<td>117</td>
<td>69</td>
</tr>
<tr>
<td>2010</td>
<td>Remuneration policy disclosed</td>
<td>57</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Members of the supervisory board got compensation</td>
<td>114</td>
<td>72</td>
</tr>
</tbody>
</table>

- 117 issuer in 2009 and 122 issuers in 2010 indicated that general meeting determinated compensation for the supervisory board members.
- 32 issuers in both years indicated that compensation for the supervisory board members was determinated in companies statute.
- 113 issuers in both years indicated total fixed amount payed to the members of the supervisory board between 500 and 2,500,000 kn (aprox. 66 and 333,333 EUR).
- 5 issuers in both years indicated total variable amount payed to the members of the supervisory board between 2,000 and 1,500,000 kn (aprox. 266 and 200,000 EUR)*

*HANFA Report, p. 49
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Gender diversity in management board*
*HanFA Report, p. 19

Gender diversity in supervisory board*
*HanFA Report, p. 44
According to the shown data in Annual report on CG in Croatia, it seems that the level of CG culture is currently raising, but still in some areas transparency is not achieved / remuneration, gender diversity, independence of Supervisory board members / this achievement is outcome of high level of Croatian legislative and regulatory framework alignment with the EU legal framework.

However recent business practice shows that CG experiences have not been really implemented.

This gap between legal and business practice has only recently resulted in numerous corporate abuses, presently awaiting resolution in court proceedings.

Only time will tell whether the court epilogue could influence the development of the CG culture or raise the awareness of CG and management to the benefit of the company itself and thus its shareholders as well.
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Special question – state owned companies!

- 69 companies of special state interest, in 21 100% owner, cca 23 on ZSE

- Revenue cca 10 billion eur, expenditure cca. 10 billion. net. loss 500.000.000 mil. eur. after taxation

- Energy, agriculture, tourism, shipbuilding, financial sector..

Issuers ownership (31.12.2010)*

*HANFA Report. p.32

- Public 21.66%
- Republic of Croatia 13.81%
- Financial institutions 5.16%
- own shares 1.54%
- custodial accounts 5.73%
- supervisory board 4.21%
- EBRD 0.04%
- ESOP 0.43%
- Others 41.57%
- founds 3.01%
- management board 2.80%
- DEG 0.04%
Domestic and foreign capital (31.12.2010)*

*HANFA Report, p. 38

Regulatory framework

- Definition of companies of special state interest (2006, 2009 and 2010) -
  Decision on the list of legal entities of special state interest (N.N. 144/2010)
- Law on the management of state assets (N.N. 145/10)
- Founding the Agency for the Management of State Assets (2010)
- Ordinance on the sale of shares and equity in companies owned by the Republic of Croatia, institutes and other legal entities owned by the Republic of Croatia (N.N. 64/11)
- Ordinance on the terms for tendering the members of supervisory and management boards of companies in which Republic of Croatia has shares (N.N. 95/10)
- Corporate Governance code for state owned companies (N.N. 112/10)
What remains is obligation to draw up proposals for:
- Strategy for the Privatisation of Companies Owned by the State
- Plan of privatisation of Companies owned by the state

Deadlines, publically available information, value of assets-liabilities of SO, strategic plans of companies, structural problems...

Greater public attention must be devoted to the management of government financial and nonfinancial assets because of poor financial effect on the budget and poor cg

By joining the EU Croatia – part of larger market and management of SO assets crucial for the stabilisation and long term financial sustainability of public sector

Greater transparency, independence and accountability should be achieved through the implementation of the CG instruments

All stakeholders should be involved in this process
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

- CG should have important spill over effect on society as a whole

- Unaccountable and opaque corporations are more than likely to undermine the rule of law and the effectiveness of government, creating and sustaining a vicious circle of corruption, bribery and mismanagement not only in the private sector but also in the public sector

- The development of good CG can be seen as key public institution-building ingredient for a transparent and accountable society

Problems in practice

- Undisclosed data on remuneration
- Gender diversity
- Independence of board members
- Risk management
- Market playing field for public and private companies
Southern Europe: Regional Perspectives and Key Considerations

How are companies directed and controlled in South-eastern Europe?

Companies in South-eastern Europe can be organised under a one-tier or two-tier system. In the one-tier system, the board of directors entrusts the key functions of management and direction of the company and oversight of management (this is the case of Montenegro).

In the two-tier system the function of management of the company is separate from the one of direction/oversight. The first belongs to the executive board, the second to the supervisory board (this is the case of Bosnia and Herzegovina).

Under the EU stimulus, few jurisdictions have introduced the option for companies (and in some limited cases also for banks) the options to choose between the one-tier system and the two tier system (this is the case for Albania, Croatia FYR Macedonia, and Serbia. In Bulgaria and Romania this option is also extended to banks).

Unfortunately, in practice, the distinction is not that net. There are many hybrid systems, where components of one system have been combined with the other. This is a challenging exercise that risk breaking the delicate system of check and balances necessary for ensuring the effective of the framework.

In Albania, for instance, the law requires banks to be organised under a two-tier system, with the steering council in charge of oversight of management. Under this framework, executives are allowed to sit in the steering council which creates a potential for conflicts of interests.
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

To mitigate this risk, the law requires that 1/3 of the members of the council are “not connected through private interests with the bank, shareholders that control the bank or its executive directors”, but it fails to clearly define their role.

In practice, this requirement does not seem to be well understood or implemented, as some banks are reporting that they have no “independent” directors. Further, these “non-connected” directors are not required to sit in board committees, where the potential for conflicts of interests is higher. Instead, outsiders can sit in the audit committee and committee’s members are not subject to duty of loyalty and care as other directors.

**What does it mean “direction of companies”?**

The company’s life needs to be structured according to few guiding lines, which should be developed by the board. These are:

(i) the **strategy**, which outlines the business plan of the company in the next few years. It is the thinking behind business actions. It answers the question: what is the company’s plan for growing the business and attracting customers, operating, and achieving the company’s financial and strategic objectives?

(ii) the **budget**, which outlines the necessary resources for achieving the strategy;

(iii) the **risk appetite**, which is the amount of risk that the company is ready to face for achieving the strategy.

In practice, the assignment of these key functions to the board is not always clearly assigned. In Serbian banking regulation, for instance, the responsibility for approving the budget rests with the annual general meeting. This is a requirement that might undermine the board’s strategic responsibility of having the final say on the way resources are deployed to achieve strategic objectives. Accountability and responsibility might be weakened in this context.

In Bulgaria, the banking law does not clearly assign the strategic role for approving the strategy, the budget and key policies to the supervisory board in two-tier system banks. Instead, these responsibilities appear to be delegated to the general meeting of shareholders or senior management. Along the same lines, the law does not emphasize the role of non-executive directors in one-tier system and in particular via board committees, with regard to such issues as risk governance, internal control and other strategic issues.

Because banking is essentially the business of taking risk, the definition of risk appetite has a paramount importance in banks.

**What are the key issues that need to be regulated for the establishment of a well functioning corporate governance framework?**

The major challenges related to direction and control of businesses are the prevention of conflicts of interests and the protection of the weakest parties (i.e., minority shareholders in companies and depositors in banks).
Companies opening to the market need to insure investors they are governed in a sound manner and that investors’ interests are protected (so-called, lines of defence: internal control; internal audit and risk management and audit committee). The particular interests of directors should not conflict with the interest of the company and those of all shareholders and stakeholders.

This concept is at the basis of the requirement to have independent (and qualified) directors in charge of those issues which are more likely to be potential for conflicts of interests (e.g., audit, remuneration and nomination).

The large majority of jurisdictions in South-eastern Europe have incorporated the concept of board committees and independent directors in their legislation, but often the concepts are misplaced.

In Croatia, for instance, In line with the requirements of the Audit Act, all banks set up audit committees; however committees appear to include executives and outsiders, which weaken the committee’s objectivity. The Croatian National Bank (CNB) does not seem to monitor the quality of the supervisory board members upon their appointment and the law does not require candidates to be morally fit, financially sound, have banking/financial experience or risk management expertise and - for at least one member - to have audit/accounting experience. The banking law requires all banks to include at least one independent director on the board but it does not provide guidance on its role on board and on committees. As a result, bank practice varies.

**How to prevent these conflicts of interests?**

The development of concept as the duty of care and the role of independent directors in the board aim at insuring that directors perform their function in a proper manner and under proper oversight.

**How to protect minority shareholders and investors?**

All shareholders should be treated equally. This is a key pillar of good corporate governance. Further, all shareholders have defined voting and ownership rights. The legislation should pose the basis for ensuring these rights to shareholders and for redress in case these rights are breached.

**Should the law regulate all aspects of corporate governance?**

The legislation should limit to the establishment of the framework so to create a level playing field. Improving corporate governance is an expensive exercise and touches the mind and the soul of companies. The law should not overburden companies with unnecessary requirements.

Once the key issues are regulated, company should then be free in deciding how to structure their internal mechanism so to attract investors and operate in an effective manner. Flexibility is the key.

**How to reach this flexibility?**

In a number of jurisdictions, the market has developed corporate governance codes, including a set of voluntary recommendations in order to guide companies on how to structure their internal mechanisms in an efficient manner. Companies are not required to implement all recommendations, but they should report on whether they comply or, in case of non-compliance,
explain the reasons for such non-compliance. This is the case in Bulgaria, Croatia, FYR Macedonia, Montenegro, Romania and Serbia, but only in Croatia and Romania the practice is well developed. In all other jurisdictions the reporting on the companies’ and banks’ compliance with the code is minimal.

**Comply or explain: What is more important?**

Ideally, in a “comply or explain” framework, the key word is “explanation”, not “compliance”. If we want full compliance, we should better regulate a given sector in the law, not in a voluntary code. Instead, explanations should serve a twofold role: (i) convince the market that a given practice is sound, even if not in line with a code’s recommendations; and (ii) make sure the board takes the governance of its company into full consideration.

Further, the *compliance statement* serves the essential scope of informing the market on a number of non-financial issues, which are key in understanding how a company is directed and on how controls are implemented.

Non-financial disclosure is essential for posing trust in financial disclosure.

**What are the key challenges in corporate governance in South-eastern Europe?**

Southeast Europe is a region that has grown very fast in the last decade. Few countries are already part of the EU, other will be entering soon. This has brought a number of changes in the legal framework and in the practices of companies and banks.

Many of these changes have been driven by the market, other by the Acquis Communautaire.

Unfortunately not all mechanisms promoted by the market and by the EU have been completely understood.

The major challenge is to make sure the framework for direction and control of business work in an effective manner with little potential for conflicts of interests so to ensure profitability for companies and protection for investors and stakeholders.
Corporate Governance in Southeast Europe

Regional Perspective and Key Considerations

Gian Piero Cigna
Legal Transition Team, EBRD

11 June 2012, Leipzig

• What is Corporate Governance
• Corporate Governance of Banks
• “Comply or explain” in Southeast Europe
• Key challenges
What is corporate governance?

“It is the system by which businesses are directed and controls are implemented”

(Cadbury Report, 1992)

Why do we care?

- Bad corporate governance is a risk
- Are companies with better corporate governance more profitable?
- Recent crises linked to corporate governance issues
- Transparency and disclosure: key to protect investors
How companies (and banks) are directed and controlled in SEE?

- One tier system (Montenegro)
- Two tier system (Bosnia Herzegovina)
- Option to choose (Albania, Bulgaria (b), Croatia, FYR Macedonia, Romania (b), Serbia)
- Which one is better?
- Pros and cons of hybrid systems

Corporate Governance in Southeast Europe

- What is Corporate Governance
- Corporate Governance of Banks
- “Comply or explain” in Southeast Europe
- Key challenges
Corporate Governance of Banks

- Critical role in the economy and high cost of bank failures
- Different business (dealing with money)
- Who is to protect?
- Sensitivity to liquidity crises
- Increasing complexity of bank activities
- Focus on “Internal Governance”

Internal Governance

- “Strategic” role of the board
- How to avoid “conflicts of interests”
- Need for “objectivity” and independent (and qualified?) directors
- “Board” committees
- Internal control, risk management and internal/external audit: the “lines of defense”
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Policy Brief on Corporate Governance of Banks

- Well developed banking industry
- Less developed and liquid stock exchanges
- Specific set of guidelines for banks
- Banks as vehicle for improving corporate governance of investee companies

Albania

- GSM appoints both the Steering Council and Directorate.
- Executives in the Steering Council
- “Non connected” directors
- Audit committee made of “outsiders”
- Banks' compensation and prudent risk management
- The value of “non financial” disclosure
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Bosnia and Herzegovina

- The “strategic” role of the board
- “Fit and proper” board members
- “Fit and proper” audit board
- No need for independent directors?

Bulgaria, Croatia and Romania

- Systemically important subsidiaries
- The role of independent directors
- “Fit and proper” audit committee
- Comply or explain?
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Corporate Governance in Southeast Europe

- What is Corporate Governance
- Corporate Governance of Banks
- “Comply or explain” in Southeast Europe
- Key challenges

Corporate Governance Codes

- Why a “voluntary” code?
- The value of “non-financial” disclosure
- All countries in SEE have a code
- “Comply or explain” in Bulgaria, Croatia, FYR Macedonia, Montenegro, Romania and Serbia
- Voluntary recommendations in Albania
- “Mandatory” recommendations in FiBH
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Corporate Governance in Southeast Europe

- What is Corporate Governance
- Corporate Governance of Banks
- “Comply or explain” in Southeast Europe
- Key challenges

Key challenges

- Understanding (the value of) corporate governance
- Is good quality legislation enough?
- “Acquis Communautaire” as corporate governance standard?
- Understanding (the value of) non-financial disclosure
- Focus on corporate governance of banks
CG and SEE developments: the national and regional perspectives: CG contribution to the competitiveness

Prof. Bistra Boeva, University Sofia, Bulgaria

The background of the research:
How and when the problem was defined: The transition from a planned to a market economy is a transition of ownership, management and of the mentality of the people. From this perspective we have to discuss and to evaluate the current state of CG in the region. In Southern Europe two methods of privatization helped to transform the economy: voucher privatization and strategic owner or cash privatization. The melting pot of the new owners (local and foreign), new market phenomena as well stock exchanges and new regulations led to a new configuration of the economies in the region. CG was and is considered one of the prerequisites for the good performance of the economies in transition and the good performance of the new established economic agents. In the late 90s and in the very beginning of the 21st century CG was considered as one of the top down imposed sets of rules that the new economies had to accept and to employ to bridge the vacuum in a new business environment. It was the international community that promoted the good practices of CG. From this perspective the enormous role of the OECD, World Bank and various donors has to be mentioned.

For the newcomers to the land of CG in SEE it is necessary to be familiarized with the OECD Roundtables that facilitated the process of the penetration of the CG in the countries in the region. The Roundtables (2001 - 2006 incl.) set the agenda, which contained the topical CG issues for the region and drew the attention of the business community, NGOs, academia and the Governments to CG.
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

The progress on the road of the establishment CG framework in the region

For more than a decade the countries in the region established new economic entities, new governance rules and achieved different economic and socio-political results. What one could point out as a common characteristic for the region is the established practice of CG: CG Codes (soft law), a legal system that requires compliance with basic CG principles (hard law), privately owned companies that are traded on the stock exchanges, IoD and problems with the human factor. International Statistics revealed the existence of problematic non-efficient corporate boards and a still existing lack of understanding about the strengths and weaknesses of CG. With regard to the main developments in the domain of CG in Bulgaria and in the region research was initiated that aimed to analyze the contribution of CG and its key elements to the competitiveness of the companies and the countries. The main thesis of the research is to prove that good CG impacts not only the SHV but has a broader impact on country developments. It is noteworthy to point out the link between the topics of the competitiveness and the agenda that we are working on: Key CG Issues in Emerging Markets.

Key findings about the relationship CG- national competitiveness and the problems that need improvement

The central thesis of the research - that CG impacts national competitiveness and companies’ performances - was proved via theoretical observance and some desk and field research. Attention was given to a number of data sources: annual publications of WB-Doing Business, WEF-GCR and IMD-WCY. Field research was conducted among listed Bulgarian companies.

The survey’s results revealed several important trends:

- CG ranks among the key drivers that determine the countries’ developments and achievements or in other words these studies mirrored the findings that CG impacts country growth.

- Although the surveyed countries demonstrate good results in the domain of CG (i.e. legislation; CG codes; IoD; CG Scorecard implementation) further steps for improvement must be put on the agenda (or have to be initiated).

- Among the key conclusions from the above research is that it is the human factor that needs to be given more attention in future upgrading activities.

Conclusion and the next steps

Corporate Governance implementation in Southeast Europe is a key element of the total socio-economic framework of the countries in the region. The countries, which were surveyed indicate differences as well commonalities in the use of CG principles. Starting from scratch, they succeeded in their efforts to establish the practical framework of CG. The next steps have to be directed towards upgrading the most important factor for the better CG practice - the human factor. The legal framework and CG Codes principles have to be supported by effective boards and directors.
Future: How can Governance improvements in Southern Europe be sustained

Prof Bistra Boeva

Topics to discuss (1)

- how to decode: the role of CG in the sustainable development of the region (broader perspective)
- The role of CG for the sustainability of the respective company
- how to benefit from the sustained improvements of the future good practices in CG in the region

CG developments in the region (2)

A few examples: EBRD Transition indicators scores (3)

How to continue the improvement process: new domains of implementation or improvement of the implementation of the basic principles of CG (4)

CG developments in the region

Milestones on the way to CG in SEE

- Transformation of ownership: privatization and market democracy
- OECD CG principles and SEE Roundtables
- Legal framework and CG Codes
  - CG Scorecards
  - IoD
-
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

**EBRD: Transition indicators scores:**

: Governance & enterprise restructuring

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2+</td>
</tr>
<tr>
<td>B&amp;H</td>
<td>2-</td>
<td>2-</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>2+</td>
<td>2+</td>
<td>3-</td>
<td>3-</td>
</tr>
<tr>
<td>Croatia</td>
<td>3-</td>
<td>3-</td>
<td>3</td>
<td>3+</td>
</tr>
<tr>
<td>FYROM</td>
<td>2</td>
<td>2+</td>
<td>3-</td>
<td>3-</td>
</tr>
<tr>
<td>Montenegro</td>
<td>2</td>
<td>2+</td>
<td>3-</td>
<td>3+</td>
</tr>
<tr>
<td>Romania</td>
<td>2</td>
<td>2</td>
<td>3-</td>
<td>3-</td>
</tr>
<tr>
<td>Serbia</td>
<td></td>
<td>2+</td>
<td></td>
<td>2+</td>
</tr>
</tbody>
</table>

**Governance and enterprise restructuring:**

classification system for transition indicators

<table>
<thead>
<tr>
<th>scores</th>
<th>Levels of achievements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Soft budget constraints; few other reforms to promote CG</td>
</tr>
<tr>
<td>2</td>
<td>Little action taken to strengthen competition and CG</td>
</tr>
<tr>
<td>3</td>
<td>Significant and sustain actions to promote CG effectively</td>
</tr>
<tr>
<td>4</td>
<td>Substantial improvement in CG- active corporate control market, significant new investments</td>
</tr>
<tr>
<td>4+</td>
<td>Standards and performance typical for advanced industrial economies</td>
</tr>
</tbody>
</table>
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Corporate Governance Development in Key Emerging Markets: Southern Europe - Discussion

Moderator: Prof. Bistra Boeva
Discussants: Prof. Hana Horak, Gian Pierro Cigna, Dr. Nick Mahmood

Initial statement of Prof. Boeva:
Common problems that affect the efforts of regulators and companies working on the implementation of Corporate Governance practice across South Eastern Europe are:

- The gap between the legal infrastructure and the corporate governance practice.
- The specifics of the region regarding its transitional history, social milieu and cultural environment.
- The variety of regimes in the different countries (e.g. one and/or two tier systems of boards).

Boeva emphasized the meaning of the “human factor”. Besides independence the qualification of the board members is a key consideration missing in the CG practice of these countries. She opened the discussion by stating four questions:

- How to bridge the gap between theory and practice?
- How to work in order to have better leaders, better boards?
- How to overcome the problems of the related party transactions?
- What are the main considerations regarding the directors independence?

Initial statement of Dr. Mahmood
Ms Mahmood referred to her experience from the Asian region on how CG-initiatives could be successfully sustained:

- Pursuing the agenda for implementing corporate governance continuously and not only focusing on it during crisis times.
- Enforcing CG implementations, especially if private, civil action is not very developed as it is in Asia, where the society is not litigious at all.
- Ensuring the correct “tone from the top” in terms of the support of the country government when it comes to taking suggestions about CG improvements to the parliament and changing laws. In addition the government linked companies should be leaders in raising their own CG standards and the government as big investor in employees and other related funds should demand high CG standards from its partners.

The most important thing is the sustainable commitment of the government to CG, concluded Mahmood. The contribution of the Secretary of State Berfeltz was a good example how policymakers engage themselves and support the development of the CG agenda.
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

Initial statement of Prof. Horak
Policy makers in South Eastern Europe should pay more attention to the gap between CG theory and practice. Prof Horak explained that:

- The efforts of the governments to overcome the problem could be described as “One step forward, one step back”-action.
- The lack of sanctioning power is one of the reasons why the practical implementation of CG developments is difficult.
- The pressure coming from outside the countries could improve the CG practice in the region.
- The introduction of the business judgment rule could be one important mechanism to implement good CG in South Eastern Europe.

Initial Statement of Mr. Cigna

- In South Eastern Europe the gap between CG theory and practice is derived from the lack of understanding for the legislation the countries are adopting in order to fulfill the requirements of powerful third parties (EU, OECD, Development Bank etc.). This hinders the enforcement and implementation of the CG standards.
- A missing consideration in the region is that company directors do not only need to be independent but qualified as well. The mix of skills of the board members needs to be benchmarked with the mix of skills necessary to pursue the company’s strategy. The lack of qualification is as problematic as the lack of director independency.
- Related party transactions are characterized by potential conflicts of interest. Because they are easy to hide, they are very difficult to deal with. A maximum disclosure and fair prices are the two concepts that need to be defended as a “compromise-solution” for this problem.

General question from the audience:
Is the comply-or-explain regime as good for the countries with concentrated ownership as for countries with dispersed shareholdings?

Responses by Dr. Mahmood and Mr. Cigna:

- In countries with controlling shareholders or without powerful institutional investors it is much more difficult to have a functioning comply-or-explain mechanism.
- The reporting often ends up in “box ticking exercise and is misleading. Thus it is better to require explanations from the companies even if they are complying with the code.
- The role of the comply-or-explain mechanism to establish dialogue is often misunderstood by companies, regulators and institutional investors.
- Smaller stock exchanges oversee the lack of compliance reporting, as they would not like to lose listed companies. This hinders the practical implementation of the comply-or-explain regime.
2.2 Corporate Governance Development in Key Emerging Markets: South East Europe

General question from the audience:
Which are the key impact factors for the CG improvements in South Eastern Europe?

Responses by Prof. Horak, Mr. Cigna and Prof. Boeva:
- In Croatia the establishment of the Croatian Financial Regulatory agency in 2005 and the comply-or-explain amendments of the company’s act made in 2007.
- The improvement of the legal systems and institutional infrastructures in many countries of the region during the 1990s.
- The implementation of the OECD principles and the positive impact of the round table discussions involving government, business and academia representatives.
- The adoption of the CG- codes and the establishment of Institutes of Directors.
- The introduction of Scorecards assessing and measuring the levels of implementation of CG best practice in listed companies.

Main Take Aways:
- Regulators and companies should continuously develop best practice of CG and not only focus on it during difficult times.
- The right “tone from the top”, the ongoing commitment of the government to the CG is critical for making CG improvements sustainable.
- The lack of understanding of legislation acts and rules hinders the enforcement and implementation of the CG standards.
- In order to achieve better boards it is important for company directors to be qualified and independent.
- Maximum disclosure and fair pricing are the two concepts that need to be the “compromise-solution” for the problem of related party transactions.
- Comply- or- explain may not be sufficient to disclose code deviations, so it is important to explain even though a company is compliant.
- Companies, regulators and institutional investors should use the comply-or-explain regime to establish an ongoing dialogue.
- The support of the international community is a key impact factor for the CG improvement in South Eastern Europe as the various milestones in the CG development (such as the implementation of the OECD principles or the adoption of the CG- codes) has been co-initiated by international partners.
Key Issues and Challenges for CG Reform in Indonesia

Prof. Sidharta Utama, Chairman of Management Board, Indonesian Institute for Corporate Directorship

The objectives of the presentation are to: 1. provide an overview of corporate governance (CG) reform in Indonesia in the past ten years, 2. provide evidence of CG practice of Indonesian listed companies, 3. identify key issues and challenges for CG reform in Indonesia, and 4. recommend possible remedies to overcome the issues and challenges. The focus of the presentation is on publicly listed companies at the Indonesian Stock Exchange.

In 1997-1998, Indonesia suffered the worst economic crisis it has ever had and poor CG practice was one factor causing the crisis. The crisis triggered the awareness for the need to practice good CG and since then CG reform has been continuously conducted by the regulator, companies, and the public. In the past ten years, the reform primarily has focused on public companies (i.e., companies that issues equity shares and bonds at the stock exchange), banks, other financial institutions and state owned enterprises.

In year 2000, the National Code for Corporate Governance developed based international best practice was launched while in year 2007, the new company law was enacted. One distinctive feature stipulated by the law is that members of the Board of Commissioners (BOC) and the Board of Directors (BOD) may be personally liable for the company's loss if they neglect their duties. Other significant CG reforms among others are as follow. To empower the BOC in performing its oversight duty, companies are required to have an independent commissioner(s) at least 30% of members of the BOC, to form audit committee with all members independent of controlling shareholders and members of the boards, and to establish an internal audit unit with the appointment and termination of the head of the unit to be approved by the BOC. To protect shareholders’ rights, material transactions have to be approved by shareholders and conflict of interest transactions need to be approved only by independent shareholders. To enhance

1 Indonesia follows a dual board structure, i.e., the Board of Commissioners which is in charge of providing oversight and advice to the Board of Directors (BOD). The BOD is in charge of managing the company.
disclosure and transparency, extensive disclosure requirements in the annual report are imposed and accounting standards will substantially converge with the International Financial Reporting Standards in year 2012. To encourage companies perform corporate social and environmental responsibility (CSR), the company law mandates companies whose businesses are related to natural resources to initiate programs related to the CSR and report the programs in the annual report.

Efforts to improve CG practice also involve the public, including Non-Governmental Organizations (NGOs) and the media. For example, director trainings are regularly conducted by IICD and the media freely monitors and covers corporate governance practices in Indonesia.

As a result of these numerous initiatives, empirical evidences document improvement in CG practices of listed companies in recent years. The World Bank (2010) conducted a CG assessment on Indonesia based on six CG principles of OECD. The primary focus of the assessment is on the prevailing rules and regulation in the country. It found that the scores for all CG principles in year 2009 were much better than those in year 2004, with the average CG score for 2009 and 2004 were 71.2% and 59.2% respectively. The score in year 2009 is comparable with the average scores of neighboring countries.

In the past five years IICD has directly assessed CG practices of almost all listed companies in Indonesia based on publicly available information. The results also showed improvement of the average CG score, i.e., from 61% in year 2005 to 66% in year 2009.

The studies identify good CG practices that are not yet implemented. Among these are disclosure on disproportionate control/ownership structure and transparent board nomination/election process (World Bank, 2010). IICD (2010) finds the following areas are poorly implemented: transparent general meeting of shareholders, adequate disclosure of attendance and remuneration policy/level of board members, and performance evaluation of the boards and board members. In addition, IICD (2010) finds that CG practices mandated by the securities law/rules in general receive much higher scores than those voluntarily practiced. However, the scores of these mandated items are well below 100%, indicating the the rules are not fully enforced.

While World Bank (2010) and IICD (2010) focused on one country (i.e., Indonesia), CLSA (2010) evaluated CG practices across 11 countries in East Asia based on a perception survey of institutional investors in the region. One measure employed is the CG Watch Market Score which looks at the overall CG environment consisting of five components: CG Rules & Practices, Enforcement, Political & Regulatory, Accounting and Auditing, and CG Culture. Based on the score in year 2010, Indonesia moved up ahead the Philippines, which now ranks at the bottom. The score, however, was still fairly low (40%) and components that contribute to the low score are Enforcement (28%), CG Culture (32%), and Political & Regulatory (33%).

---

2.3 Corporate Governance Development in Key Emerging Markets: Asia

---

2 The first principle (Corporate Governance Framework) was conducted only in year 2009, thus there was no comparison with year 2004.

3 To be classify as ‘Not Implemented’ the score has to be less than 35%.

4 Bapepam-LK stands for Badan Pengawas Pasar Modal dan Lembaga Keuangan, or the Capital Market and Financial Institutions Oversight Body.
2.3 Corporate Governance Development in Key Emerging Markets: Asia

The empirical evidences explained above can indicate key issues and challenges for sustainable CG reform in Indonesia. The first issue is that there is a close interdependence between public governance and corporate governance. If the judicial system is inefficient, unfair and weak and if corruptive behavior remains prevalent, then under this environment, it will be difficult to sustain CG reform. While in recent years there has been some efforts to reduce corruption and to enhance the rule of law in Indonesia, evidences indicate that relative to other countries Indonesia still ranks low in term of the Corruption Perception Index (Transparency International, 2011) and governance related components of the Rule of Law Index (The World Justice Project, 2011).

The next issue is the need to enhance effective enforcement of rules and regulation in the capital market. Although in term of CG rules and regulation Indonesia has exhibited significant progress in the past ten years, however, as documented by IICD (2010) and confirmed by CLSA (2010), enforcing the rules remains a challenge.

Thus, as recommended by World Bank (2010), the capital market regulator, Bapepam-LK⁴, needs to build its capacity to oversee its enforcement of corporate governance rules. This may entail increasing the independence of Bapepam-LK in performing its tasks so that political or other types of counter-productive intervention can be minimized.

Currently the ownership structure of majority of listed companies in Indonesia is highly concentrated with controlling shareholders able to obtain control disproportionate to their share of ownership. This gap between control and ownership increases the incentive of controlling shareholders to expropriate the wealth of non-controlling shareholders (Claessens et al., 2000). The key issue then is ensuring that the expropriation risk is adequately controlled. One of the controls is by improving disclosure of ownership structure. As mentioned earlier, the existing rule does not require disclosure this disproportionate control ownership and as a result, stakeholders have difficulty to identify the ultimate owners of listed companies and to assess the risk of expropriation by the controlling shareholders.

Given the concentrated ownership structure of most listed companies, to ensure sustainability of CG reform, it is imperative that controlling owners have positive attitudes toward CG. However, since most CG initiatives are imposed by the regulator and are mandated to all listed companies irrespective of their size and need, these controlling owners may view the initiatives as a burden and thus reluctantly adopt them. Thus, the challenge is to ensure that controlling owners have positive perception toward CG and voluntarily adopt GCG practices suitable to the context of the companies.

Another key issue is the rather limited role of the BOC in providing oversight and strategic guidance to the BOD and the lack of BOC’s accountability disclosure requirement. The existing company law does not elaborate the oversight duties of the BOC as well as its accountability and let the companies to elaborate them in the articles of association. Furthermore, Bapepam-LK also does not translate these rather broad duties into more operational GCG-consistent duties and does not require disclosure of the BOC’s accountability. As a result, disclosures of the BOC’s duties and how they are discharged are relatively minimal.
Key Issues and Challenges for Corporate Governance Reform in Indonesia

Conference on Key Corporate Governance Issues in Emerging Markets: Theories and Practical Execution
HHL Center for Corporate Governance in Cooperation with Global Corporate Governance Forum
Leipzig, June 11 – 12 2012

PROF. SIDHARTA UTAMA PHD CFA
CHAIRMAN OF MANAGEMENT BOARD
INDONESIAN INSTITUTE FOR CORPORATE DIRECTORSHIP

Objectives

- To provide an overview of corporate governance (CG) reform in Indonesia in recent years,
- To provide evidence of CG practice of Indonesian listed companies,
- To identify key issues and challenges for CG reform in Indonesia, and
- To suggest possible remedies to overcome the issues and challenges
- Focus on publicly listed companies
2.3 Corporate Governance Development in Key Emerging Markets: Asia

**Indonesia: Dual Board Structure**

- Consists of the Board of Commissioners and the Board of Directors
- Both are appointed by shareholders
- Board of Commissioners: Provide oversight and advice to BOD and in some cases ratify some decisions (e.g., appointment of audit committee and head of internal audit unit).
- Board of Directors:
  - Strategic and operational decisions
  - Implementing strategies and policies

**CG Reform Initiatives**
2.3 Corporate Governance Development in Key Emerging Markets: Asia

CG Reform in Recent Years

- National Code for Corporate Governance established in year 2000
- Numerous good governance related rules issued
  - Company Law revised in year 2007
  - SEC (Bapepam-LK) and listing rules
- NGOs promoting good governance practices established

Protecting Shareholders’ Rights

- Materials transactions approved by shareholders (Bapepam-LK rule)
- Cross-holding not allowed (Company Law/CL)
- Conflict of interest transaction approved by independent shareholders (Bapepam-LK rule)
- Extensive disclosure requirement on related party transactions (Bapepam-LK rule)
- Allowing tele/video conference at AGM of shareholders (CL)
Disclosure and Transparency

- Mandatory audit partner (every 3 years) and audit firm (every 6 years) rotation (MoF)
- Strict rule on non-audit service (Bapepam-LK)
- Extensive corporate governance disclosure requirement in the annual report (Bapepam-LK)
- Convergence to International Financial Reporting Standards in year 2012

Responsibility of the Board

- Recognition of independent commissioner (CL)
- Minimum 30% of members of the Board of Commissioners (BOC) are independent commissioners (Listing rule)
- Audit committee with all members independent (Bapepam-LK)
- Internal audit unit with the head appointed and terminated with the approval of the BOC (Bapepam-LK)
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Respecting rights of stakeholders

- Corporate responsibility for companies whose business related to natural resources (CL)
- Report corporate responsibility’s activities in the annual report (CL and Bapepam-LK)

Evidences on CG Practice
2.3 Corporate Governance Development in Key Emerging Markets: Asia

### World Bank: 2010 CG ROSC Assessment of Indonesia

- Benchmarks law and practice in Indonesia against the OECD Principles of Corporate Governance
- By the end of June 2010, 75 assessments had been completed in 59 countries around the world.

### Summary of Results

<table>
<thead>
<tr>
<th>CG Principles</th>
<th>2009</th>
<th>2004</th>
<th>Asia Pacific Region</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement &amp; Institutional Framework</td>
<td>72</td>
<td>-</td>
<td>68</td>
</tr>
<tr>
<td>Shareholder Rights</td>
<td>72</td>
<td>56</td>
<td>73</td>
</tr>
<tr>
<td>Equitable Treatment of Shareholders</td>
<td>75</td>
<td>60</td>
<td>62</td>
</tr>
<tr>
<td>Role of Stakeholders</td>
<td>70</td>
<td>60</td>
<td>71</td>
</tr>
<tr>
<td>Disclosure &amp; Transparency</td>
<td>73</td>
<td>60</td>
<td>72</td>
</tr>
<tr>
<td>Responsibility of the Board</td>
<td>66</td>
<td>60</td>
<td>68</td>
</tr>
</tbody>
</table>
Achievements

- New regulations/codes to enhance CG practices
- Basic shareholders rights in place (e.g., approval of affiliated transaction, right to redress)
- Plan to fully adopt International Accounting and Auditing Standards
- More timely and better disclosure report
- More professional and independent BOC

Indonesia
Corporate Governance Scorecard Results

THE RESEARCH TEAM

INDONESIAN INSTITUTE FOR CORPORATE DIRECTORSHIP
Research Framework

- OECD- CG Principle
- SEC & JSX Requirements
- NCCG - Code for GCG

Publicly Available Information
List of Questions
Data Analysis
Score card
LQ 45 Companies

Assessment Methods

- **Research Instrument:**
  - A questionnaire consisting of 117 items was developed by Thai IOD
  - Modification was done to fit two-tier system of Indonesian Board structure

- **Data Collection:**
  - Based on publicly available information, such as annual report, financial report, notice to call AGMs and AGM results, Companies’ websites, BAPEPAM’s website, IDX’s website, and other relevant information
2.3 Corporate Governance Development in Key Emerging Markets: Asia

2009 Corporate Governance Results:
Overall Corporate Governance Performance

Corporate Governance Performance

Corporate Governance Comparison

<table>
<thead>
<tr>
<th>GCG PRINCIPLES</th>
<th>CURRENT STUDY</th>
<th>PREVIOUS STUDY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rights of Shareholder</td>
<td>50.60%</td>
<td>50.37%</td>
</tr>
<tr>
<td>Equitable Treatment of Shareholders</td>
<td>87.76%</td>
<td>86.35%</td>
</tr>
<tr>
<td>Role of Stakeholders</td>
<td>65.73%</td>
<td>63.64%</td>
</tr>
<tr>
<td>Disclosure &amp; Transparency</td>
<td>72.76%</td>
<td>70.01%</td>
</tr>
<tr>
<td>Responsibility of the Boards</td>
<td>60.68%</td>
<td>59.09%</td>
</tr>
<tr>
<td>Overall Performance</td>
<td>66.50%</td>
<td>64.96%</td>
</tr>
</tbody>
</table>
Corporate Governance Development in Key Emerging Markets: Asia


- GCG practices by Indonesian publicly-listed firms continuously improved:

<table>
<thead>
<tr>
<th>GCG Performance</th>
<th>First Study (329 firms)</th>
<th>Second Study (314 Firms)</th>
<th>Third Study (340 firms)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Mean Score</td>
<td>61.26%</td>
<td>64.96%</td>
<td>66.50%</td>
</tr>
</tbody>
</table>

ACGA – CLSA:
CG Watch market scores: 2007 vs 2010
(%) 2007 2010 Change Trend of CG reform
1. Singapore 65 67 (+2) Improving slowly, negatives cancel positives
2. Hong Kong 67 65 (-2) Some regression, static overall
3. Japan 52 57 (+5) Improving, but will reform be sustained?
= 4. Taiwan 54 55 (+1) Static overall, loss of focus
= 4. Thailand 47 55 (+8) Improving, but political uncertainties remain
6. Malaysia 49 52 (+3) Improving, but held back by "CG culture"
= 7. India 56 49 (-7) Over-rated last time, but slow improvements
= 7. China 45 49 (+4) Improving, but held back by "CG culture"
9. Korea 49 45 (-4) Regressing, turning inward
10. Indonesia 37 40 (+3) Improving, but weak political system
11. Philippines 41 37 (-4) Regressing, but new government may help

Source: Asian Corporate Governance Association
### 2.3 Corporate Governance Development in Key Emerging Markets: Asia

<table>
<thead>
<tr>
<th>Market category scores (%)</th>
<th>Total</th>
<th>CG rls &amp; Enfrmt Practcs</th>
<th>Poltel &amp; IGAAP</th>
<th>CGCultr Reg</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Singapore</td>
<td>67</td>
<td>65</td>
<td>60</td>
<td>69</td>
</tr>
<tr>
<td>2. Hong Kong</td>
<td>65</td>
<td>59</td>
<td>63</td>
<td>67</td>
</tr>
<tr>
<td>3. Japan</td>
<td>57</td>
<td>45</td>
<td>63</td>
<td>53</td>
</tr>
<tr>
<td>= 4. Taiwan</td>
<td>55</td>
<td>50</td>
<td>47</td>
<td>56</td>
</tr>
<tr>
<td>= 4. Thailand</td>
<td>55</td>
<td>50</td>
<td>42</td>
<td>54</td>
</tr>
<tr>
<td>6. Malaysia</td>
<td>52</td>
<td>49</td>
<td>38</td>
<td>60</td>
</tr>
<tr>
<td>= 7. India</td>
<td>49</td>
<td>46</td>
<td>36</td>
<td>54</td>
</tr>
<tr>
<td>= 7. China</td>
<td>49</td>
<td>47</td>
<td>36</td>
<td>56</td>
</tr>
<tr>
<td>9. Korea</td>
<td>45</td>
<td>43</td>
<td>28</td>
<td>44</td>
</tr>
<tr>
<td>10. Indonesia</td>
<td>40</td>
<td>39</td>
<td>28</td>
<td>33</td>
</tr>
<tr>
<td>11. Philippines</td>
<td>37</td>
<td>35</td>
<td>15</td>
<td>37</td>
</tr>
</tbody>
</table>

Source: Asian Corporate Governance Association

---

### Key Issues and Challenges for CG Reform in Indonesia
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Condition for GCG: Good Public Governance

- Condusive environment for GCG practice if:
  - Absence of corruption
    - Executive branch, judicial branch, the police
  - Access to civil justice
  - Effective regulatory enforcement
- For emerging countries (including Indonesia), achieving good public governance is quite a challenge.

Evidence on Corruption (CPI), Enforcement of Regulation (ERE), and Access to Civil Justice (ACJ)

CPI from Transparency International, ERE and ACJ from the World Justice Project

<table>
<thead>
<tr>
<th>Country</th>
<th>Rank CPI</th>
<th>Rank ERE</th>
<th>Rank ACJ</th>
<th>CPI</th>
<th>ERE</th>
<th>ACJ</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>7</td>
<td>9</td>
<td>6</td>
<td>3.6</td>
<td>0.50</td>
<td>0.52</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>8.4</td>
<td>0.66</td>
<td>0.68</td>
</tr>
<tr>
<td>India</td>
<td>9</td>
<td>10</td>
<td>8</td>
<td>3.1</td>
<td>0.45</td>
<td>0.50</td>
</tr>
<tr>
<td>Indonesia</td>
<td>10</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>0.54</td>
<td>0.54</td>
</tr>
<tr>
<td>Japan</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>8</td>
<td>0.80</td>
<td>0.73</td>
</tr>
<tr>
<td>Korea</td>
<td>5</td>
<td>3</td>
<td>4</td>
<td>5.4</td>
<td>0.69</td>
<td>0.66</td>
</tr>
<tr>
<td>Malaysia</td>
<td>6</td>
<td>8</td>
<td>6</td>
<td>4.3</td>
<td>0.51</td>
<td>0.52</td>
</tr>
<tr>
<td>Phillipines</td>
<td>11</td>
<td>6</td>
<td>10</td>
<td>2.6</td>
<td>0.53</td>
<td>0.46</td>
</tr>
<tr>
<td>Singapore</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>9.2</td>
<td>0.74</td>
<td>0.67</td>
</tr>
<tr>
<td>Taiwan</td>
<td>4</td>
<td>-</td>
<td>-</td>
<td>6.1</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Thailand</td>
<td>8</td>
<td>6</td>
<td>9</td>
<td>3.4</td>
<td>0.53</td>
<td>0.48</td>
</tr>
</tbody>
</table>
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Need to Enhance Regulatory Enforcement and Authority of in the Capital Market

- CLSA: Low score on enforcement of regulation
- IICD:
  - Mandated CG practices receive much higher scores than voluntary CG practices
  - However, compliance to mandated CG practices is well below 100%
- World Bank:
  - Regulatory authority, integrity, resources 67% (partially implemented)
  - Legal framework enforceable/transparent 69% (partially implemented)
- Currently Bapepam-LK is under the Ministry of Finance
  - May reduce its authority and independence
  - Coordination with the Central Bank (that conducts bank oversight) needs to be enhanced.

National Code of CG: No “Comply or Explain” requirement

- Bapepam-LK:
  - Some are adopted into mandated rules
- But, not all CG practices can be translated into rules
- As a result, majority of listed companies do not refer to the National Code of CG
- In addition, governance structures and policies are inadequately disclosed.
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Concentrated and Complex Ownership Structure

- The three largest shareholders control an average of 61% of listed companies (World Bank, 2010)
- Pyramid capital structure is common (65% of listed companies (Diyanti, 2012), resulting in control right exceeding cash-flow right
  - High incentive to expropriate the wealth of non-controlling shareholders
- Inadequate disclosure of ownership structure
  - Only direct ownership exceeding 5% required to be publicly disclosed

Limited exercise of shareholders rights

- Enhancing the effectiveness of General Meeting of Shareholders (GMS):
  - Most meetings are only for formal purpose.
  - Resolutions determined by controlling shareholders
  - Disclosures of the agenda of the meeting and results of the meeting are minimal.
  - Engagement of institutional investors to provide check and balance is not yet optimal.
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Limited Exercise of Shareholders Rights

- Limited access on some relevant information (e.g., minutes of shareholder meeting, article of association, company website is not yet mandated)
- Cumulative voting is not practiced.
- The threshold for shareholder action is relatively high (i.e., 10%).
- Lenient requirement for insiders to report trading of shares (10 days and no black-out period)
- No disclosure requirement on the following policies: conflict of interest, related party transaction, and insider trading
- The use of English is still limited.

Inadequate Accountability of the BOC

- Duties are not clearly elaborated and adequately disclosed.
- The nomination process, including for independent commissioners in general is not formal and is not publicly disclosed.
- Minority shareholders play no role in board member selection
- How the BOC is discharging its duties is not adequately disclosed.
Inadequate Accountability of the BOC

- Performance evaluation on the BOC and on members of BOC are not conducted and/or adequately disclosed.
- Remuneration package for each member of the BOC is rarely disclosed.
- Remuneration package for independent commissioner is not different from other commissioners.

Overcoming Key Issues
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Enhancing public governance

- Ensuring the independence, authority, and resources of Komisi Pemberantasan Korupsi (the Corruption Eradication Committee)
- Continuous reform in the justice and law enforcement system
  - Fair merit based remuneration system
- Maintaining freedom in the media coverage
- Empowering civil society

Build Regulatory Capacity in the Capital Market

- Improving the authority and independence of capital market regulator (ie Bapepam-LK)
  - This year, capital oversight will be conducted by Otoritas Jasa Keuangan (Financial Services Authority)
- Develop a set of guidelines, an operations manual, and a training program for the oversight of disclosure and other key corporate governance topics (World Bank, 2010)
- Recruit other staff from the private sector; and its policies on remuneration and training should be reviewed to facilitate this (World Bank, 2010)
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Requiring ‘Comply or Explain’ to National Code of CG

- Aligning the National Code of CG with Bapepam-LK’s and listing rules as well as with international best practices
- Extensive training on the National Code of CG
- Comply or Explain annually disclosed in the Annual Report

Improve Disclosure of Ownership Structure

- Requiring disclosure of:
  - the identity of controlling owners and other beneficial owners having more than 5% ownership,
  - direct and indirect ownership of members of the BOC, BOD and senior management,
  - trading of equity shares by insiders within 2 days after the trading takes place,
- Introduce black-out period (i.e., forbidding insiders to trade) during corporate announcements.
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Promoting society’s engagement in advocating GCG

- Encouraging or even mandating board training
  - Compulsory orientation program for board (BOC and BOD) members of newly listed companies
  - Requiring disclosure of trainings attended by members of BOC
- Encouraging shareholders activism, through among others establishing minority shareholders watchdog group with the support from the government

Internalizing GCG practice

To improve CG practice, it is necessary to ensure that all shareholders, board members, employees, and other stakeholders understand that practicing GCG benefits not only shareholders and the company but also the society at large.
Thank you

Overcoming Other Key Issues

- Improving the exercise of shareholders’ rights
- Enhancing the accountability of the BOC
- By:
  - removing the obstacles/barriers identified earlier,
  - introducing relevant GCG practices
Regional Perspectives and Key Considerations (Asia)

Dr. Nik Ramlah Mahmood, Deputy Chief Executive, Securities Commission, Malaysia

Introduction
The 1997/98 Asian Financial Crisis was a watershed for corporate governance reforms in many parts of Asia. Crisis affected countries pursued holistic and multi-pronged initiatives to strengthen their corporate governance regulatory and institutional frameworks. As these efforts were in response to the crisis, they were as a matter of necessity, top-down, government-led initiatives. While this was key in ensuring the success of these early efforts which were mainly focused on strengthening existing regulatory infrastructure, institutions and enforcement, it had resulted in the continued expectation that the government and its institutions are primarily responsible for ensuring good corporate governance.

The challenge for most Asian jurisdictions now is therefore to promote market and self-discipline to complement the strong regulatory discipline. Thus more recent reform initiatives have focused on nurturing a culture of corporate governance through among others, promoting shareholder activism, strengthening boards, emphasising the role of gatekeepers and reputational agents, encouraging institutional shareholders to take a leadership role, and promoting independent and active financial journalism.

The Corporate Landscape in Asia
While the Asian Financial Crisis drove the initial reform agenda, current and future corporate governance reforms in Asia are being shaped by the fast changing corporate landscape in the
region. With the regulatory and institutional structures mostly in place, Asia’s financial system is much stronger and deeper and is playing an increasingly more significant role in the global economy. The broadening and deepening of capital markets is happening throughout the region, albeit at different stages of development.

The presence of family-owned companies, even among PLCs, is a common feature in Asian countries. These companies are in fact the backbone of Asian economies with some of the region’s most successful PLCs still being controlled by the founding families. For example, in the Philippines, family businesses account for 83% of its total market capitalization and in Indonesia, 49%.

In many Asian countries, there is also a strong presence of Government Linked Companies (GLCs) on the national exchanges. GLCs in Malaysia account for approximately 36% of the market capitalisation of Bursa Malaysia. In Singapore, Temasek portfolio companies is said to account for 10 per cent of Singapore GDP and Temasek is the biggest shareholder in some of the country’s largest companies, including SingTel and DBS Group.

Government presence can also be seen on the demand side in the form of large institutional funds linked to the government. In Malaysia, the largest unit trust funds are those managed by the National Equity Corporation with more than USD 60 billion under management, while the Employees’ Provided Fund alone has assets totaling about USD 150 billion. The Central Provident Fund of Singapore meanwhile has USD 167 billion under management.

Another uniquely Asian feature is the presence of a high percentage of retail investors investing directly in the stock market. In Hong Kong 36% of its adult population participate directly in the securities and derivatives markets while the figures for Malaysia and Taiwan are 26% and 50% respectively.

Retail investors typically take a very short term view of their investments and are rarely interested in exercising their rights as shareholders. Shareholder activism is therefore at a nascent stage and few shareholders participate actively at general meetings. While institutional investors are now engaging more with companies on issues of concerns, this is usually conducted behind closed doors, consistent with the Asian preference to avoid public confrontation and prevent “loss of face”.

At the same time most countries in the region are actively pursuing foreign investments - both foreign direct investments and foreign portfolio investments - to their shores. The pursuit of foreign capital requires not merely the liberalisation of national rules and policies, foreign investors expect local corporations to be governed by internationally accepted rules and practices. Intra-regional investments are also growing - many Asian companies are expanding within the region and have aspirations to become regional champions in their respective fields of business. As companies from more developed countries in the region spread their footprint to less developed neighbours, they bring with them the higher corporate governance standards and practices from their home country.
2.3 Corporate Governance Development in Key Emerging Markets:
Asia

Reform Priorities
The top down approach adopted in corporate governance reform efforts immediately after the 97/98 Asian Financial Crisis has led to a dependence on regulators to police corporate behavior and to put in place the necessary institutional and regulatory framework for good corporate governance. While these efforts have served the region well and enabled it to withstand the onslaught of the Global Financial Crisis a decade later, this has to a certain extent resulted in the need for more recent efforts to be focused on ensuring that companies, their boards and shareholders, external auditors, rating agencies, advisers, financial journalists and other stakeholders recognize that ensuring good corporate governance is a shared responsibility and each must do their part to foster better market and self-discipline. In other words there is a need to shift from “building the hardware to building the software”.

Building corporate governance culture
Initiatives to promote a culture of good governance where boards and shareholders expand their focus beyond business outcomes and ensure that businesses are conducted in a manner which promotes sustainability, is in progress in many parts of the region. Many countries in Asia including Singapore, Hong Kong, Malaysia and India have recently revised their corporate governance codes giving companies the flexibility to determine the best approach to meeting the spirit of the codes, catalysing change in attitudes and mindsets. Emphasis has shifted away from mere compliance towards promoting the internalisation of the values, spirit and purpose of rules.

Promoting self and market discipline
Efforts are being pursued towards making all stakeholders assume responsibility for their decisions and actions. Increasingly, greater focus is given to developing proactive and responsible actions by gatekeepers and influencers who are crucial to ensure market discipline. Efforts include the establishment of independent audit oversight authorities such as the Accounting and Corporate Regulatory Authority (ACRA) in Singapore and the Audit Oversight Board (AOB) in Malaysia and enhancing whistleblowing requirements for certain gatekeepers. Additionally, initiatives are being pursued to empower gatekeepers through enhancing the role of company secretaries and encouraging training programs for financial journalists.

Advocating shareholder activism
Recent regulatory reform efforts in certain jurisdictions are geared towards improving shareholder participation at general meetings such as in facilitating proxy voting and mandating poll voting for substantive resolutions.

Institutional investors in Asia are moving towards a culture of responsible ownership; rethinking their approaches to amongst others, engagements with boards and their portfolio composition. Given their growing size and presence, Asian SWFs are now increasingly taking a leadership role and exercising influence on corporate governance practices.

Strengthening boards
Efforts in Asia are now also focused on strengthening boards through their composition,
commitment, independence and responsibilities. Changes have been introduced to the corporate governance codes in some jurisdictions placing greater importance on board independence. Singapore and Malaysia have introduced measures to promote the independence of the chairman and term limits for independent directors. Reform in the region also focus on the selection of suitably qualified directors through a formalised board nomination process, better disclosure of directors’ remuneration, restriction on the number of directorships and increasing the capacities of board members through directors’ training and evaluations. The topic of boardroom diversity has also been widely discussed and countries like Malaysia have articulated the goal of having 30% women in boards by 2016.

**Encouraging private enforcement to complement public enforcement**

To balance the over-reliance on public enforcement to deter corporate transgressions, some countries are moving towards promoting and facilitating private enforcement action. Corporate and securities laws have been amended to provide shareholders with the ability to take private actions in making managers accountable for their actions.

**Driving Sustainability**

Companies are gradually looking into longer term considerations and the interests of a wider range of constituents to cope with the rapidly growing nature of businesses and their impact on the environment and the community in which they operate. The focus on sustainability also necessitates the emergence of non-financial disclosure. In Asia, sustainability reporting is mostly voluntary however there are efforts made in some jurisdictions to promote such reporting. In jurisdictions such as China, Singapore and Malaysia, guidelines for corporate responsibility / sustainability reporting have been issued by the regulators. Asia however still has some way to go for integrated reporting to take hold.

**Regional Convergence**

In order to facilitate cross listings and promote ASEAN as an asset class, a number of ASEAN countries under the ASEAN Corporate Governance Initiative are working together to raise corporate governance standards and practices of ASEAN public listed companies (PLCs) to showcase and enhance the visibility and investibility of well governed ASEAN PLCs internationally. A universal scorecard that encompasses key elements of good corporate governance and benchmarked against international best practices is used as a basis for ranking and showcasing ASEAN PLCs.
Regional Perspectives and Key Considerations
- Asia -

Nik Ramlah Mahmood
Deputy Chief Executive
Securities Commission Malaysia

The Asian Financial Crisis provided the impetus for CG reform in many parts of Asia.
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Corporate governance reform efforts after the 1997/98 Asian financial crisis

Characteristics

- Top-down, government driven initiatives
- Targeted on weaknesses exposed by crisis, hence prescriptive in nature
- Focussed on hardware, strengthening laws, building institutions
- Formation of high-level national committees on corporate governance
- Followed by longer term multi-pronged initiatives to strengthen regulatory and institutional frameworks

Areas of focus

- Strengthening legal framework
- Reinforcing accountability of directors
- Promoting better disclosures
- Addressing related party transactions
- Strengthening enforcement

Asia’s changing corporate landscape: Broadening and deepening of capital markets

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>244.33</td>
<td>46 999</td>
<td>47%</td>
<td>302</td>
</tr>
<tr>
<td>China</td>
<td>10 085.71</td>
<td>4 762 836</td>
<td>41%</td>
<td>2063</td>
</tr>
<tr>
<td>Chinese Taipei</td>
<td>821.78</td>
<td>818 490</td>
<td>90%</td>
<td>784</td>
</tr>
<tr>
<td>Hong Kong, China</td>
<td>326.23</td>
<td>2 711 333</td>
<td>108%</td>
<td>1413</td>
</tr>
<tr>
<td>India</td>
<td>4198.60</td>
<td>3 228 455</td>
<td>80%</td>
<td>6586</td>
</tr>
<tr>
<td>Indonesia</td>
<td>1029.79</td>
<td>360 388</td>
<td>51%</td>
<td>420</td>
</tr>
<tr>
<td>Korea</td>
<td>1417.54</td>
<td>1 089 216</td>
<td>108%</td>
<td>1798</td>
</tr>
<tr>
<td>Malaysia</td>
<td>414.43</td>
<td>410 534</td>
<td>172%</td>
<td>956</td>
</tr>
<tr>
<td>Pakistan</td>
<td>464.20</td>
<td>38 168</td>
<td>21.8%</td>
<td>644</td>
</tr>
<tr>
<td>Philippines</td>
<td>367.43</td>
<td>157 320</td>
<td>8%</td>
<td>253</td>
</tr>
<tr>
<td>Singapore</td>
<td>291.94</td>
<td>647 226</td>
<td>29.1%</td>
<td>778</td>
</tr>
<tr>
<td>Thailand</td>
<td>586.82</td>
<td>277 731</td>
<td>87%</td>
<td>541</td>
</tr>
<tr>
<td>Vietnam</td>
<td>276.57</td>
<td>20 385</td>
<td>19.7%</td>
<td>164</td>
</tr>
</tbody>
</table>

## 2.2 Corporate Governance Development in Key Emerging Markets: Asia

### Asia’s changing corporate landscape: Dominance of family-owned companies

<table>
<thead>
<tr>
<th>Country</th>
<th>Asian family business market capitalization % of total market capitalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philippines</td>
<td>83.2%</td>
</tr>
<tr>
<td>Singapore</td>
<td>54.0%</td>
</tr>
<tr>
<td>Indonesia</td>
<td>49.1%</td>
</tr>
<tr>
<td>Thailand</td>
<td>48.4%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>49.3%</td>
</tr>
<tr>
<td>India</td>
<td>46.8%</td>
</tr>
<tr>
<td>Malaysia</td>
<td>39.0%</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>26.2%</td>
</tr>
</tbody>
</table>

Source: Credit Suisse Emerging Market Research Institute, Asian Family Businesses Report 2011; Asian family business market capitalization as % of total market capitalisation

### Asia’s changing corporate landscape: Growth of Institutional Funds and Sovereign Wealth Funds

#### Institutional Funds and Sovereign Wealth Funds (assets in USD billion)

<table>
<thead>
<tr>
<th>Institutional Funds and Sovereign Wealth Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Provident Fund (Singapore)</td>
</tr>
<tr>
<td>Employees’ Provident Fund (Malaysia)</td>
</tr>
<tr>
<td>National Equity Corporation (Malaysia)</td>
</tr>
<tr>
<td>Khazanah Nasional Berhad (Malaysia)</td>
</tr>
<tr>
<td>China Investment Corporation</td>
</tr>
<tr>
<td>Temasek Holdings (Singapore)</td>
</tr>
<tr>
<td>Hong Kong Monetary Authority Investment Portfolio</td>
</tr>
</tbody>
</table>

Source: Sovereign Wealth Fund Institute, Annual Reports
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Asia’s changing corporate landscape: *High retail participation and nascent shareholder activism*

- High percentage of retail investors
  - Hong Kong - 36%
  - Malaysia - 26%
  - Taiwan - 50%
- Generally passive institutional investors
- Emergence of independent shareholder activist groups/champions
  - Hong Kong
  - Singapore
  - Korea
  - Malaysia

Asia’s changing corporate landscape: *More intense competition for capital*

- Increased foreign direct investments and foreign portfolio investments
- Growing intra-regional investments
- Liberalisation of national rules and policies
- Adoption of internationally accepted rules and practices
- Demand for higher levels of corporate governance
2.3 Corporate Governance Development in Key Emerging Markets: Asia

With regulatory and institutional infrastructure in place, a different approach to corporate governance reform is necessary.

There is a need to nurture a culture of corporate governance:

- Promoting self and market discipline
- Advocating shareholder activism
- Strengthening boards
- Encouraging private enforcement to complement public enforcement
- Driving sustainability
- Pursuing regional initiatives/convergence

A shift from "building the hardware to building the software"
2.3 Corporate Governance Development in Key Emerging Markets:
Asia

Priorities for Reform in Asia

Priority 1 – Public- and private-sector institutions should continue to make the business case for the value of good corporate governance among companies, board members, gatekeepers, shareholders and other interested parties, such as professional associations.

Priority 2 – All jurisdictions should strive for active, visible and effective enforcement of corporate-governance laws and regulations. Regulatory, investigative and enforcement institutions should be adequately resourced, credible and accountable, and work closely and effectively with other domestic and external institutions. They should be supported by a credible and efficient judicial system.

Priority 3 – The quality of disclosure should be enhanced and made in a timely and transparent manner. Jurisdictions should promote the adoption of emerging good practices for non-financial disclosure. Asian Roundtable jurisdictions should continue to process of full convergence with international standards and practices for accounting and audit. The implementation and monitoring of audit and accounting standards should be overseen by bodies independent of the profession.

Priority 4 – Board performance needs to be improved by appropriate further training and board evaluations. The board nomination process should be transparent and include full disclosure about prospective board members, including their qualifications, with emphasis on the selection of qualified candidates. Boards of directors must improve their participation in strategic planning, monitoring of internal control and risk oversight systems. Boards should ensure independent reviews of transactions involving managers, directors, controlling shareholders and other insiders.

Priority 5 – The legal and regulatory framework should ensure that non-controlling shareholders are adequately protected from expropriation by insiders and controlling shareholders. Gatekeepers such as external auditors, rating agencies, advisors, and intermediaries should be able to inform and advise shareholders free of conflicts of interest.

Priority 6 – Shareholder engagement should be encouraged and facilitated, in particular by institutional investors.

Reform Priorities in Asia: Taking Corporate Governance to a Higher Level - OECD 2011

Thank You
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Future: How can Governance Improvements in Asia be sustained? - Discussion

Moderator: John Lim Kok Min
Discussants: George Dallas, Dr. Nik Ramlah Mahmood, Prof. Sidharta Utama

Initial statement of John Lim Kok Min:
The recent OECD studies are documenting a shifting in the Asian regulatory environment from “hardware” to “software” promoting market and self-discipline aspects and involving all stakeholders and not just the regulators.

Initial statement of George Dallas:
- Asia is a place very difficult to generalize not only regarding its cultural, geographical but also regarding its governmental aspects.
- The financial crisis has been a big catalyst for the Corporate Governance development in the region. The implementations of Corporate Governance regulations following the crisis state one central part of the regional efforts to overcome the shortcomings of the micro-part of the economy as main impact factors for the economic problems in Asia.
- The right macro-environment in terms of laws and codes is necessary and important but not sufficient. The key factor for promoting Corporate Governance improvements is the translation of the regulation adoptions into a changing of mindsets and mentalities.
- Enforcement is another solution to overcome the gap between theory and practice as fear could be an efficient motivator.
- The notion of fiduciary responsibility is critical as it hides potential for abuse.
- Engagement in non-financial issues particularly related to social and environmental responsibility and ethical performance as well as strong support for anti-corruption initiatives are critical for the judgment of western investors on any Emerging Market.

Statement of John Lim Kok Min:
- There has been an increasing level of activism from the investors in the Asian region.
- Investors expect a greater level of performance from the company directors and directors are made accountable for the firm performance.
- Boards put greater emphasis on directors’ competency and consider not only their independence.
- More transparency regarding nomination, election and reappointment of directors is still required in the region.

Question from the Audience:
“What has been the role and what continues to be the role of the Institutes of Directors in the Asian region?”
Responses by Prof. Sidharta Utama, John Lim Kok Min:
Since the crisis 1997/98 Institutes of Directors have been established in almost all countries of the
Asian region. The institutes:

- Train directors with focus on the Corporate Governance Code regulations.
- Educate regulators in Corporate Governance issues and keep a dialogue with the society in
general.
- Participate in various regulatory committees, charged with the formulation of codes and
provide feedback if Corporate Governance mechanisms are applicable in the practice.
- Enable an effective cross-country communication and coordination through the established
network of Institutes of Directors, the so called ‘Institute of Directors in East-Asia Network’.
- Keep submitting a ranking of the 50 companies with the highest CG Levels in the Asian region
according to the results of the newly introduced CG-Scorecard.

Question from the Audience:
Which “western world used” best-practices do not work in the eastern part of the world?

Responses by John Lim Kok Min, Dr. Mahmood, Prof. Utama, Dallas:
- Private litigation is not a solution in Asia. Although there are mandates in the countries’ laws,
it is very difficult for shareholders to take action against companies’ majority owners or
directors.
- The predominance of controlling shareholders in Asia makes the OECD-principle of protecting
shareholders rights through corporate control difficult and inefficient.
- The newly introduced whistle-blower mechanism is important but still an ineffective tool
because it requires further adjustments to the Asian mentality.
- It is difficult to have a functioning comply-or-explain mechanism as controlling shareholders
predominate the ownership structures in the region.
- In Asia best CG practice regarding executive remuneration is not that important as it is in
Western Europe or USA. More critical for the region is the abuse by controlling shareholders
that enriching themselves through illegitimate transactions.

Question from the Audience:
Does the soft enforcement through “name-and-shame” work in Asia and what are the better ways
of doing it?

Responses by John Lim Kok Min, Dr. Mahmood:
- Naming-and-shaming is an effective mechanism, because it is something directors are very
concerned about and names of directors who have not complied with the fiduciary duty or with
the listing rule requirements have been published.
- Disclosure and transparency is another effective weapon. “Could you imagine directors
standing up for reelection having put everything down there and that have been questioned by
shareholders?”
Training is critical, but companies have to sort out and be conscious what training they send their directors to.

The generally known Corporate Governance offences like corruption, criminal breach of trust, breaches of companies act, insider trading, etc. are under the purview of different regulators, which makes civil actions difficult.

Taking action against companies’ majority owners or directors is a costly exercise as one is challenged on every stage of the wheel by the resistance of a powerful and rich business lobby. In addition judges often do not fully understand the corporate structures and the difficulties in gathering direct evidence.

Questions from the Audience:
To Mr. Dallas: When you are engaging in an Emerging Market, in what form does it take place with domestic investors?

Response by George Dallas:
- A lot of the engagements in the Emerging Market are done collectively with other western or local investors. Foreign investors in the region play predominantly a supporting role; the main and challenging part goes to the local investors.
- The Asian Corporate Governance association is an important partner for western investors in the region as it brings advantages of language, culture and intimacy.

Questions from the Audience:
How about companies that are under the radar screen and are not on the capital market? Does that gap exist in the Asian market?

Response by Dr. Mahmood:
- The most Corporate Governance rules have been introduced through the channels of the stock exchange regulations and as public sector companies are not subject to the rules of the stock exchange there is obviously a certain gap regarding their accountability in the field of Corporate Governance practice.
- Critical is also the attitude of shareholders that take public sector companies private.
2.3 Corporate Governance Development in Key Emerging Markets: Asia

Main Take Aways:

- Foreign investors should consider the regional specifics and avoid addressing governance in the same way as they do in their home countries as well as be supportive for the local efforts to create long-term value in the capital markets.

- The Institutes of Directors are among Asians major players when it comes to promoting excellence in Corporate Governance through creating more effective boards.

- The key factor for promoting Corporate Governance improvements is the changing of mindsets and mentalities.

- Many “western” Corporate Governance best practices are not efficient in Asia or need to be adjusted to the specific of the region such as the cultural environment, the laws or the predominant concentrated ownership structures.

- Legislative regulation is necessary but self and market discipline are important in order to ensure that the system is in balance and workable and not rigid.

- Soft enforcement mechanisms such as “name-and-shame” are increasingly effective and recognized in the region.
3 Focus Sessions

3.1 1st Focus Session: The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

3.2 2nd Focus Session: Handling Corruption - the Company Experience
Corporate Governance in Emerging Markets: Why it matters to Investors - and what they can do about it

George Dallas, Director of Corporate Governance, F&C Investments

Introduction
This presentation draws from key themes identified in the 2011 paper co-authored by Melsa Ararat and George Dallas entitled “Corporate Governance in Emerging Markets: Why it Matters to Investors—and What They Can Do About It”, published by the Global Corporate Governance Forum. The paper examines academic literature relating to corporate governance in emerging markets and discusses how investors can respond to the governance risks in emerging markets through both voting and engagement with emerging market companies. This conference presentation focuses in particular on the risks investors face in these markets and what investors can do in practical terms when scholarly research on corporate governance in emerging markets does not provide conclusive evidence on which aspects of governance matter most and affect firm performance.

Focus of the Presentation
Emerging markets play an increasingly important role in the global economy given their high economic growth prospects and their improving physical and legal infrastructures. They can offer an attractive opportunity for investors. At the same time, investors face multifaceted risks in emerging markets, at both country and individual-company levels, and require a much better understanding of the firm-level governance factors.

What are the specific risks that investors encounter in emerging markets relative to developed markets? While it is difficult to generalize given the heterogeneous nature of many emerging markets, some of the key concerns are as follows:

- Rule of law
- Regulatory quality
- Corruption
- Influence of controlling shareholders

The first three factors noted above can be substantiated through recognized country indicators, such as those published by the World Bank/Brookings Institution and the Transparency International Corruption Protection Index. The fourth factor, controlling shareholders, is a reality...
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

in both developed and emerging markets. But the combination of legal, regulatory and corruption concerns in emerging markets, together with the norm of controlling shareholders, suggests a potentially dangerous “perfect storm” of ingredients that can create a macro environment in which emerging market companies and/or their controlling shareholders can act in ways to pursue private benefits of control that conflict with the interests of minority shareholders and creditors—whether they are domestic investors or overseas investors.

While the Ararat/Dallas paper of 2011 suggests that traditional econometric evidence on the relationship between corporate governance and firm performance in emerging markets is largely inconclusive, there exist many individual cases that illustrate these risks in practice. For example, Satyam Computer Services in India demonstrates how a controlling owner can perpetrate fraud and serve the owner’s interests at the expense of minority shareholders. Sibir Energy in Russia agreed to engage in uneconomic property transactions to accommodate one of the company’s largest shareholders. In the case of Gome Electrical Appliances in China, the company’s chairman and controlling shareholder was convicted of manipulating the company’s stock—and has attempted to control the company from prison. While not supported with cross-sectional regressions and robust t-statistics, these cases also constitute empirical evidence of a very real nature.

What can investors do? Even though many investors assign some form of discount in their valuation for firms in countries with relatively poor corporate governance, a further option for active investors is to work with companies to improve their governance. The longer-term endgame should be to realize value by reducing, or possibly eliminating, the governance discount in individual companies. Notwithstanding the constraints they face, investors can and should play a role in shaping governance practices in emerging markets. This role should involve informed voting and, perhaps more importantly, ongoing engagement with companies and regulators.

Voting: In practical terms, voting by institutional investors tends to have a minimal near-term effect on the outcome of general assembly resolutions. With the current prevailing ownership structures, the outcome typically is determined by the way the controlling shareholder votes. However, voting does deliver a message to management about specific investor concerns. Particularly for those companies that want to cultivate international investors for longer-term capital-raising purposes, expressions of minority investor confidence—or concerns—through the voting process provide important feedback and can be an influential agent for change.

Engagement: Many forms of engagement are possible, such as face-to-face meetings, letters, and e-mail, and it can occur unilaterally by individual investors or collectively by a group of investors. Unlike voting, engagement allows investors to focus on specific issues for in-depth dialogue with company management, and the nature of feedback is not limited to ballot items. What themes should be the focus of investor engagement with companies in emerging markets? The answer inevitably is case-specific, and the Ararat/Dallas paper focuses on issues relating to board independence and business affiliations. But in a broader context some of the main areas of risk and related remedies are as follows:
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

- **Ownership structure**
  - Clarity about beneficial owners and ownership stakes
  - Independent director review of related party transaction involving controlling shareholders

- **Relationships to governments or other third parties**
  - Development of business ethics/anti-corruption systems and public disclosures on business ethics management

- **Shareholder rights**
  - Granting pre-emption rights and tag-along rights

- **Transparency and disclosure**
  - Adopt internationally recognised accounting standards (eg IFRS)
  - Continuous and fair disclosure to all shareholders
  - Robust financial and operational disclosure
  - Improved timing of proxy disclosure

- **Board independence and effectiveness**
  - Bolster independence: minimum 1/3 independence as aspirational goal
  - Succession planning: particularly in family and state owned companies
  - Focus on fiduciary responsibility of directors to the firm as a whole, not its controlling shareholder

- **Audit, control and risk management**
  - Fully independent board audit committee; minimum majority independent
  - Strengthen internal controls and board oversight of risk management
  - Introduce processes for independent review of transfer pricing, related-party transactions and corruption/ethics violations

**Conclusion**

Even through corporate governance in many emerging markets has improved in recent years, it remains a concern for investors in emerging markets – even if its impact can be difficult to quantify econometrically. Investors should exhibit the patience necessary to take a long-term view and to work with firms to help them improve their governance standards—and ultimately their valuations. This process of engagement has the potential to add value to firms and to investors. Pressure from both foreign and local investors is key: engagement and informed voting is needed to keep the momentum in a positive direction.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Corporate Governance in Emerging Markets: why it matters to investors and what they can do about it
George Dallas
Director of Corporate Governance
F&C Investments
Leipzig
June 2012

F&C Investments – responsible investment overview

Overview
- European asset manager with €120 billion under management
- Listed on London Stock Exchange
- 28 year track record in ethical and sustainable investment funds
- Over £2.7bn* of ethical & thematic funds
- Responsible engagement overlay (reo®) applied to an additional €72 billion of assets

A History of Innovation in Responsible Investment...

1984
- Launch of Stewardship Growth – first ethical fund in UK

1987
- Launch of Stewardship Income & Stewardship North American funds

1997
- Stewardship North America becomes Stewardship International fund

2000
- Launch of Responsible Engagement Overlay (reo®)

2006
- F&C founding signatory to Principles for Responsible Investment (PRI)

2007
- Launch of Global Climate Opportunities and Ethical Bond funds

2010
- Launch of Emerging Markets ESG Strategy

2011
- Launch of Sustainable Sharia Opportunities

*As at 31.12.2011. **Strategic partners
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

**Key ESG engagement themes**

**Environment**
- Environmental management
  - Environmental standards
  - Supply chain environmental standards
  - Pollution control
  - Waste & recycling
  - Product opportunities
- Ecosystem services
  - Biodiversity management
  - Water
  - Access to land
- Climate change
  - Emissions management & reporting
  - Climate change strategy
  - Access to land
  - Biofuels

**Social**
- Human rights
  - Security
  - Privacy & free expression
  - Community relations
  - Weak governance zones
- Labour standards
  - Health & safety
  - ILO core conventions
  - Diversity
  - Supply chain labour standards
- Public health
  - Nutrition
  - Access to medicines
  - Product safety
  - HIV/AIDS

**Governance**
- Corporate Governance
  - Remuneration
  - Board structure
  - Shareholder rights
  - Audit & control
- Sustainability Management
  - Disclosure & reporting
  - Governance of sustainability issues
  - UNGC compliance
  - Stakeholder engagement
- Business Ethics
  - Bribery & corruption
  - Political influence
  - Whistleblowing systems
  - Responsible marketing

---

www.fandc.com
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Key Corporate Governance Risks and Themes

Macro/Country risks

Financial solvency
Rule of law
Regulatory quality
Corruption
Social cohesion

Global indicators indicate that emerging markets lag developed markets in these macro governance areas

How do emerging markets differ from developed markets?

<table>
<thead>
<tr>
<th>Financial Strength</th>
<th>Sovereign Credit Rating</th>
<th>Law and Regulation</th>
<th>Law and regulation</th>
<th>Corruption/Human Rights</th>
<th>Corruption/Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>AAA</td>
<td>Sweden</td>
<td>87</td>
<td>Sweden</td>
<td>91</td>
</tr>
<tr>
<td>Germany</td>
<td>AAA</td>
<td>Netherlands</td>
<td>86</td>
<td>Netherlands</td>
<td>89</td>
</tr>
<tr>
<td>Netherlands</td>
<td>AAA</td>
<td>United Kingdom</td>
<td>85</td>
<td>Australia</td>
<td>89</td>
</tr>
<tr>
<td>Sweden</td>
<td>AAA</td>
<td>Australia</td>
<td>84</td>
<td>Germany</td>
<td>85</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>AAA</td>
<td>Germany</td>
<td>82</td>
<td>United Kingdom</td>
<td>84</td>
</tr>
<tr>
<td>France</td>
<td>AA+</td>
<td>United States</td>
<td>80</td>
<td>United States</td>
<td>81</td>
</tr>
<tr>
<td>United States</td>
<td>AA+</td>
<td>France</td>
<td>79</td>
<td>United States</td>
<td>81</td>
</tr>
<tr>
<td>China</td>
<td>AA-</td>
<td>Spain</td>
<td>74</td>
<td>France</td>
<td>80</td>
</tr>
<tr>
<td>Japan</td>
<td>AA-</td>
<td>Japan</td>
<td>73</td>
<td>Spain</td>
<td>76</td>
</tr>
<tr>
<td>Taiwan</td>
<td>AA-</td>
<td>Taiwan</td>
<td>72</td>
<td>Japan</td>
<td>73</td>
</tr>
<tr>
<td>South Korea</td>
<td>A</td>
<td>South Korea</td>
<td>69</td>
<td>Taiwan</td>
<td>73</td>
</tr>
<tr>
<td>Spain</td>
<td>A</td>
<td>Poland</td>
<td>67</td>
<td>South Korea</td>
<td>69</td>
</tr>
<tr>
<td>Poland</td>
<td>A</td>
<td>Italy</td>
<td>62</td>
<td>Poland</td>
<td>65</td>
</tr>
<tr>
<td>Italy</td>
<td>BBB+</td>
<td>South Africa</td>
<td>55</td>
<td>Italy</td>
<td>65</td>
</tr>
<tr>
<td>South Africa</td>
<td>BBB+</td>
<td>Turkey</td>
<td>55</td>
<td>South Africa</td>
<td>60</td>
</tr>
<tr>
<td>Brazil</td>
<td>BBB</td>
<td>Brazil</td>
<td>52</td>
<td>Brazil</td>
<td>59</td>
</tr>
<tr>
<td>Mexico</td>
<td>BBB</td>
<td>Mexico</td>
<td>47</td>
<td>Mexico</td>
<td>56</td>
</tr>
<tr>
<td>Russia</td>
<td>BBB-</td>
<td>India</td>
<td>45</td>
<td>China</td>
<td>53</td>
</tr>
<tr>
<td>India</td>
<td>BBB-</td>
<td>Indonesia</td>
<td>40</td>
<td>Indonesia</td>
<td>53</td>
</tr>
<tr>
<td>Indonesia</td>
<td>BB+</td>
<td>Russia</td>
<td>38</td>
<td>Indonesia</td>
<td>36</td>
</tr>
<tr>
<td>Turkey</td>
<td>BB</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Quantifying Country ESG risk

**F&C ESG Country Risk Index**

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>ENVIRONMENTAL</th>
<th>SOCIAL</th>
<th>GOVERNANCE</th>
<th>ESG SCORE</th>
<th>S&amp;P CREDIT RATING</th>
<th>CW/Outlook</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>3.29</td>
<td>2.61</td>
<td>2.39</td>
<td>2.75</td>
<td>B+</td>
<td>Stable</td>
</tr>
<tr>
<td>Algeria</td>
<td>2.43</td>
<td>1.95</td>
<td>1.55</td>
<td>1.94</td>
<td>Stable</td>
<td></td>
</tr>
<tr>
<td>Angola</td>
<td>2.39</td>
<td>1.92</td>
<td>1.35</td>
<td>1.79</td>
<td>BB</td>
<td>Stable</td>
</tr>
<tr>
<td>Argentina</td>
<td>2.62</td>
<td>2.75</td>
<td>2.87</td>
<td>2.65</td>
<td>B</td>
<td>Stable</td>
</tr>
<tr>
<td>Armenia</td>
<td>2.37</td>
<td>1.91</td>
<td>2.40</td>
<td>2.23</td>
<td>AA</td>
<td>Stable</td>
</tr>
<tr>
<td>Australia</td>
<td>2.83</td>
<td>4.46</td>
<td>4.21</td>
<td>3.83</td>
<td>AAA</td>
<td>Stable</td>
</tr>
<tr>
<td>Austria</td>
<td>3.45</td>
<td>4.20</td>
<td>4.16</td>
<td>3.93</td>
<td>AA+</td>
<td>Negative</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>2.96</td>
<td>1.72</td>
<td>1.84</td>
<td>1.90</td>
<td>BBB</td>
<td>Stable</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>2.13</td>
<td>2.92</td>
<td>1.69</td>
<td>2.05</td>
<td>BB</td>
<td>Stable</td>
</tr>
<tr>
<td>Belarus</td>
<td>2.69</td>
<td>1.40</td>
<td>1.39</td>
<td>1.96</td>
<td>Stable</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>3.15</td>
<td>4.12</td>
<td>3.85</td>
<td>3.71</td>
<td>AA</td>
<td>Negative</td>
</tr>
<tr>
<td>Bolivia</td>
<td>2.73</td>
<td>9.44</td>
<td>1.56</td>
<td>2.24</td>
<td>B</td>
<td>Stable</td>
</tr>
<tr>
<td>Bosnia</td>
<td>2.89</td>
<td>3.39</td>
<td>3.07</td>
<td>3.05</td>
<td>A</td>
<td>Stable</td>
</tr>
<tr>
<td>Brazil</td>
<td>3.05</td>
<td>2.94</td>
<td>2.60</td>
<td>2.86</td>
<td>BBB</td>
<td>Stable</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>2.92</td>
<td>2.45</td>
<td>2.46</td>
<td>3.00</td>
<td>BB</td>
<td>Stable</td>
</tr>
<tr>
<td>Cameroon</td>
<td>2.92</td>
<td>1.61</td>
<td>1.62</td>
<td>1.79</td>
<td>B</td>
<td>Stable</td>
</tr>
<tr>
<td>Canada</td>
<td>2.92</td>
<td>4.42</td>
<td>4.24</td>
<td>3.86</td>
<td>AAA</td>
<td>Stable</td>
</tr>
<tr>
<td>China</td>
<td>2.77</td>
<td>4.05</td>
<td>3.87</td>
<td>3.56</td>
<td>A+</td>
<td>Positive</td>
</tr>
<tr>
<td>Chile</td>
<td>2.21</td>
<td>1.79</td>
<td>2.11</td>
<td>2.24</td>
<td>AA</td>
<td>Stable</td>
</tr>
<tr>
<td>Colombia</td>
<td>3.10</td>
<td>2.49</td>
<td>2.49</td>
<td>2.60</td>
<td>BBB</td>
<td>Stable</td>
</tr>
<tr>
<td>Congo, Dem.</td>
<td>2.36</td>
<td>1.96</td>
<td>1.29</td>
<td>1.74</td>
<td>BB</td>
<td>Stable</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>3.45</td>
<td>3.45</td>
<td>3.59</td>
<td>3.30</td>
<td>BB</td>
<td>Stable</td>
</tr>
<tr>
<td>Croatia</td>
<td>3.27</td>
<td>3.13</td>
<td>2.87</td>
<td>3.07</td>
<td>BB</td>
<td>Negative</td>
</tr>
<tr>
<td>Cuba</td>
<td>2.62</td>
<td>1.92</td>
<td>1.44</td>
<td>2.06</td>
<td>BB</td>
<td>Stable</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>2.95</td>
<td>3.62</td>
<td>3.79</td>
<td>3.45</td>
<td>BB</td>
<td>Negative</td>
</tr>
<tr>
<td>Denmark</td>
<td>3.15</td>
<td>4.60</td>
<td>4.39</td>
<td>4.06</td>
<td>AAA</td>
<td>Stable</td>
</tr>
<tr>
<td>Dominican Republic</td>
<td>2.92</td>
<td>2.05</td>
<td>2.00</td>
<td>2.42</td>
<td>B</td>
<td>Positive</td>
</tr>
<tr>
<td>Ecuador</td>
<td>3.03</td>
<td>2.41</td>
<td>1.34</td>
<td>2.28</td>
<td>B</td>
<td>Positive</td>
</tr>
</tbody>
</table>

www.fandc.com

ESG vs Sovereign rating disparity

Analyzing the gap in analysis between ESG and Sovereign ratings

![ESG risk vs Credit Ratings](www.fandc.com)
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Key Corporate Governance Risks and Themes

Micro/Company risks

Influence of controlling shareholders/business group affiliations
- Pursuing private benefits of control at expense of minority investors and creditors

Relationships to governments
- Government influence that might put national interests over shareholder concerns

Shareholder rights
- Unwanted dilution and capital/strategic transactions that are inequitable to strategic investors

Transparency and Disclosure
- Incomplete understanding of company finances, operations and management and information asymmetry relative to controlling shareholders

Board independence and effectiveness
- Weak or ineffective boards that do not hold executive management to account or provide constructive challenge to controlling shareholders

Audit control and risk management
- Inadequate control systems and board oversight, particularly with regard to related party transactions or corrupt practices

Scope for active investor engagement and use of voting rights to address these risks

Guidance framework for improving corporate governance in emerging markets

Ownership structure: controlling owners and business group affiliations

Key Risks:
Controlling shareholders that pursue private benefits of control at the expense of minority shareholders or creditors.
Mild or extreme forms of expropriation through asset transfers and self-dealing.
Related-party transactions involving transfers of wealth on uneconomic terms that deprive minority shareholders of value. (Some related-party transactions are beneficial to both parties.)

Red Flags (Indicators):
Opaque ownership structures.
Mismatch between economic stake and voting rights—a system of different share classes that grants voting influence to the controlling shareholder in excess of its ownership stake.
Weak regulatory environment for shareholder protections, compounded by a corrupt or ineffective judiciary.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Ownership structure: controlling owners and business group affiliations

What investors should ask for:

- **Disclosures on ownership.** Clarify the ownership structure (particularly ultimate beneficial ownership), relationships with third-party affiliates, and the relationship between economic stake and voting control.

- **Ensure that voting rights match economic ownership:** eliminate voting-rights differentials between different share classes

- **Related-party transactions:** scrutinized and approved by independent board members, who should, in turn, ensure that they are conducted on the basis of independently vetted arms-length valuations.

- **A relationship agreement.** This is an arrangement whereby the controlling shareholder undertakes through a contractual agreement to promote the interests of the firm as a whole, and therefore to respect in full the rights of its minority shareholders and creditors.

Board independence and effectiveness

Key Risks:

Weak or ineffective boards—crowded by family members—that do not provide a constructive challenge to controlling shareholders. This, in turn, can lead to poor strategic decisions or to controlling shareholders pursuing an agenda that benefits neither the company nor minority shareholders.

Entrenchment of weak executive management. This is a particular risk factor in family companies, where attracting and retaining high-calibre professional staff can prove difficult if top jobs are reserved for family members.

Incentive systems that do not align the interests of executive management with those of long-term shareholders.

Red Flags (Indicators):

Lack of board independence—lack of independent members of significant number and relevant expertise, or lack of information concerning board members’ qualifications and skills.

No evidence of effective succession planning.

Lack of disclosure on board practices, poor shareholder access to board members, or disclosure that suggests poor attendance or a lack of rigor in board deliberations.

Poor disclosure on executive remuneration, or remuneration policies that focus on short-term performance.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Guidance framework for improving corporate governance in emerging markets

Board independence and effectiveness

What investors should ask for:

- **Independent directors.** Even where there are controlling or majority shareholders, there should be enough quality independent directors to staff key committees, particularly the audit committee. At a minimum, this implies at least two or three independent directors—constituting at least one-third of the board.

- **Succession planning.** The company should have clear and transparent succession-planning processes to guide the selection of new executive managers. The board should establish explicit policies to prioritize professional management standards and insulate executive appointments from political interference or inappropriate influence from controlling shareholders.

- **Remuneration.** The company should develop a remuneration strategy—approved by independent directors—that aligns executive management with minority shareholders through a focus on long-term value creation.

- **Best practices to enhance board effectiveness and independent oversight.**
  - identification of a specific director contact for investor outreach
  - Board access to timely information flows, including financial statements and risk-management reports
  - private meetings of independent directors without the presence of executive management and controlling shareholders;
  - an independent board audit committee, whose members have relevant financial experience

Shareholder rights

**Key Risks:**

Unwanted dilution of minority shareholders’ ownership stakes

Capital and strategic transactions that are inequitable to minority shareholders

Inability of shareholders to replace entrenched executive managers or directors that are ineffective or show disregard for minority shareholder interests

**Red Flags (Indicators):**

Weak shareholder rights that provide limited recourse against inequitable transactions

Takeover barriers that deprive minority shareholders of their ability to influence the composition of the senior management team and board

What investors should ask for:

- Pre-emption rights
- Tag along rights/minority offer provisions
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

**Guidance framework for improving corporate governance in emerging markets**

**Audit, Control and Risk Management**

*Key Risks:*

- Executive management and board directors lack information and control systems to manage key operational, financial and reputational risks
- Vulnerability to self-dealing or other conflicted transactions (including RPTs) that favour executive management and controlling shareholders
- Vulnerability to fraud and corruption

*Red Flags (Indicators):*

- Little or no disclosure on financial controls and risk management systems
- Lack of independent oversight of the audit and risk management function
- Lack of controls or oversight over ESG risks

*What investors should ask for:*

- Fully independent board audit committee
- Develop and provide disclosure regarding internal controls and risk management systems – particularly for transactions involving executive management and controlling owners
- Risk management system that incorporates key ESG risks
- Business ethics management – public disclosure of policies and procedures to address corruption and ethics related issues

**Transparency and disclosure**

*Key risks:*

- Incomplete understanding of company finances, operations and governance that limits the ability of minority shareholders to take informed investment decisions.
- Minority investors who are at an informational disadvantage as compared with controlling shareholders.
- Foreign investors who are at an informational disadvantage as compared with domestic shareholders.

*Indicators/Red flags:*

- Information asymmetry between minority shareholders and controlling shareholder.
- Use of non-internationally recognised accounting standards.
- Disclosure to foreign shareholders (English language) less complete than domestic market disclosures.
- Minimal reporting on operational performance, corporate governance and sustainability.
- Delayed disclosure of key corporate actions and shareholder meeting information.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Guidance framework for improving corporate governance in emerging markets

Transparency and disclosure

What investors should ask for:

- A policy of continuous and fair disclosure. The announcement of company actions should be made to all shareholders on a timely basis, and should not provide controlling shareholders with an unfair advance notice of material company events.

- Use of IFRS or other internationally-recognised financial accounting standards. Financial accounts that are in line with international accounting standards and audited by a reputable accounting firm are an important step for companies wishing to appeal to international investors.

- Language and access to disclosure. Key disclosures for internationally-listed companies should be in English and accessible over the internet.

- Robust operational disclosure, including disclosure of Environmental, Social and Governance (ESG) performance. It is important for investors to understand a company’s key performance indicators (KPIs) through better operational disclosure.

- Statement of the company’s compliance with the governance standards of its domestic corporate governance regime – or a statement of adherence to another internationally-recognised set of governance standards, where the former lacks international recognition.

- Timing of proxy disclosure and information regarding director candidates should be sufficiently in advance of shareholder meetings to allow foreign investors the time to make informed voting decisions. This should normally be at least 20 working days, and is particularly important with regard to strategic and financial transactions.

Key Corporate Governance Risks and Themes

Key Conclusions

Emerging market corporate governance generally improving, but remains a risk factor for investors

- Also a risk in developed markets!

Governance risks at country level and individual company level

- Weak rule of law creates risks of controlling shareholders extracting value at the expense of minority shareholders

Scope for more active investor engagement

Focus on corporate governance should broaden to encourage emerging market companies to bolster strategic management of sustainability issues and enhance public disclosure on sustainability performance
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

How Does CG Affect Form Value in Emerging Markets? Evidence on Channels

Prof. Dr. B. Burcin Yurtoglu, WHU - Otto Beisheim School of Management

Introduction
The presentation is based on a synthesis of the results from two recent large scale studies, both authored by B. Burcin Yurtoglu and Stijn Claessens (IMF, University of Amsterdam).

- Corporate Governance and Development – An Update, 2012, Focus 10, GCGF.

Focus of the Presentation
The objective is to give an organized overview of the literature on how and through what channels Corporate Governance (CG) impacts value creation at the corporate and country level. The key findings are summarized below:

1. The first is the increased access to external financing by firms. This in turn can lead to greater investment, higher growth, and greater employment creation.

2. The second is a lowering of the cost of capital and associated higher firm valuation. This makes firms more attractive to investors, leading to growth and more employment.

3. The third channel is better operational performance through better allocation of resources and better management. This creates wealth more generally.

4. Fourth, good CG can be associated with less financial crises, important, as highlighted recently again, given the large economic and social costs of crises.
5. Fifth channel is that good CG can mean generally better relationships with all stakeholders. This helps improve social and labor relationships and aspects such as environmental protection, and can help further reduce poverty and inequality.

We document that all these channels matter for growth, employment, poverty, and well-being more generally. Empirical evidence using various techniques has documented these relationships at the level of the country, the sector, and the individual firm and from the investor perspectives.

It is important to note that some of the studies, which form the basis of these conclusions, suffer from endogeneity problems. In other words, while firms, markets, or countries may adopt better CG and perform better, the relationship is not necessarily from better CG to improved performance; rather it is either the other way around or because some other factors drive both better CG and better performance. While some studies are careful in addressing the endogeneity problem with appropriate statistical tools, some others are not able to do so, due to the nature of the data they use. Our assessment of the literature puts a much heavier weight on those results which are to a large degree free from endogeneity problems.

The following sections briefly highlight the evidence on these five channels.

**(1) Evidence on the increased access to financing**

The role of legal foundations for financial and general development is well understood and documented. Legal foundations matter crucially for a variety of factors that lead to higher growth, financial market development, external financing, and the quality of investment. A good legal and judicial system is also important for assuring the benefits of economic development are shared by many. Legal foundations include property rights that are clearly defined and enforced and other key rules (disclosure, accounting, regulation and supervision).

The literature emphasizes the importance of law and legal enforcement for the governance of firms, development of markets, and economic growth. Numerous studies have documented institutional differences relevant for financial markets and other aspects. Many other papers have since shown the link between legal institutions and financial development and importantly that these institutional characteristics have a direct effect on growth.

In countries with better property rights, firms thus have a greater supply of financing available, and firms invest more and grow faster. These effects can be large: for example, evidence suggests that countries in the third quartile of financial development enjoy between 1 and 1.5 extra percentage points of GDP growth per year, compared with countries in the first quartile.

There is also evidence on the importance of the cost of capital channel, both for equity and debt financing. For East Asia the cost of equity capital decreases in the presence of large shareholders different than the controlling owner, suggesting that second large shareholders help curb the private benefits of the controlling shareholder and reduce information asymmetries. Firm-level CG significantly lowers the cost of equity capital in 17 emerging markets. This effect is more pronounced in countries that provide relatively poor legal protection. Thus, in emerging markets, firm-level CG and country-level shareholder protection seem to be substitutes for each other in

---

3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?
The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

reducing the cost of equity.

(2) Evidence on higher firm valuation and better operational performance

The quality of the CG framework affects not only the access to and amount of external financing, but also the cost of capital and firm valuation. Outsiders are less willing to provide financing and are more likely to charge higher rates if they are less assured that they will get an adequate rate of return. Conflicts between small and large controlling shareholders — arising from a divergence between cash-flow and voting rights — are greater in weaker CG settings, implying that smaller investors are receiving too little of the returns the firm makes. Better CG can also add value by improving firm performance, through more efficient management, better asset allocation, better labor policies, and other efficiency improvements.

There is convincing empirical evidence for these effects. Firm value, typically measured by Tobin’s $q$, the ratio of market to book value of assets, is higher when the largest owner’s equity stake is larger, but lower when the wedge between the largest owner’s control and equity stake is larger. Large non-management control rights, blockholdings, are also positively related to firm value. These effects are more pronounced in countries with low legal shareholder protection. Much evidence from individual countries such as Korea, Hong Kong, Brazil, Chile, Colombia, Peru and Venezuela confirms that less deviation between cash flow and voting rights is positively associated with relative firm valuation. This effect is substantial: a one standard deviation decrease in the degree of divergence is associated with an increase in Tobin’s $q$ of 28% (an increase in stock price of 58%) in Chile.

The country and firm level studies suggest that better CG improves market valuations. Two forces are at work here. First, better governance practices can be expected to improve the efficiency of firms’ investment decisions, thus improve the companies’ future cash flows which can be distributed to shareholders. The second channel works through a reduction of the cost of capital which is used to discount the expected cash flows. Better CG reduces agency risk and the likelihood of minority shareholders’ expropriation and possibly leads to higher dividends, making minority rights shareholders more willing to provide external financing.

While fewer studies analyze operating performance than valuation, the ones that do, report in general positive effects when agency issues are less. Other studies show the general beneficial role well developed financial markets play in the allocation of capital.

Besides financial and capital markets, other factor markets need to function well to prevent CG problems. These real factor markets include all output and input markets, including labor, raw materials, intermediate products, energy, and distribution services. Firms subject to more discipline in the real factor markets are more likely to adjust their operations and management to maximize value added. CG problems are therefore less severe when competition is already high in real factor markets. Surprisingly, while well accepted and generally acknowledged (see Khemani and Leechor, 2001), there is less empirical evidence on the role of competition in relationship to CG.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

(3) Evidence on less volatile stock prices
The quality of CG can also affect firms’ behavior in times of economic shocks and actually contribute to the occurrence of financial distress, with economy-wide impacts. During the East Asian financial crisis, cumulative stock returns of firms in which managers had high levels of control rights, but little direct ownership, were 10 to 20 percentage points lower than those of other firms. This shows that CG can play an important role in determining individual firms’ behavior, in particular the incentives of insiders to expropriate minority shareholders during times of distress. Other studies emphasize that performance is better in firms with higher accounting disclosure quality and higher outside ownership concentration. This provides firm-level evidence consistent with the view that CG helps explain firm performance during a crisis.

Related work shows that hedging by firms is less common in countries with weak CG, and to the extent that it happens, it adds very little value. The latter evidence suggests that in these environments, hedging is not necessarily for the benefit of outsiders, but more for the insiders.

(4) Evidence on better functioning financial markets and greater cross-border investments
More generally, poor CG can affect the functioning of a country’s financial markets and the volume of cross-border financing. One channel is that poor CG can increase financial volatility. When information is poorly protected—due to a lack of transparency and insiders having an edge on firms’ doing and prospects—investors and analysts may have neither the ability to analyze firms (because it is very costly to collect information) nor the incentive (because insiders benefit regardless). In such a weak property rights environment, inside investors with private information, including analysts, may, for example, trade on information before it is disclosed to the public.

There is evidence that the worse transparency associated with weaker CG leads to more synchronous stock price movements, limiting the price discovery role of stock markets.

Another area where CG affects firms and their valuation is mergers and acquisitions (M&A). Indeed, during the last two decades, the volume of M&A activity and the premium paid were significantly larger in countries with better investor protection. This indicates that an active market for mergers and acquisitions—an important component of a CG regime—arises only in countries with better investor protection. Also, in cross-border deals, the acquirers are typically from countries with better investor protection than the targets, suggesting cross-border transactions play a governance role by improving the degree of investor protection within target firms and aiding in the convergence of CG systems.

(5) Evidence on better relations with other stakeholders
Besides the principal owner and management, public and private corporations must deal with many other stakeholders, including banks, bondholders, labor, and local and national governments. Each of these monitor, discipline, motivate, and affect the management and the firm in various ways. They do so in exchange for some control and cash flow rights, which relate to each stakeholders’ own comparative advantage, legal forms of influence, and form of contracts.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

It is hard to give a definitive answer as to whether and which forms of stakeholders’ involvement are good for a corporation as a whole, let alone whether they are socially and economically optimal. There are many aspects of stakeholders’ involvement, with various consequences – for firm performance, value added, risk taking, environmental performance, etc. – and the overall net benefits are often unclear given current state of research. While, like for other aspects of corporate governance, some studies increasingly often imply causality (as they use specific econometric techniques or study some event that exogenously changes the institutional environment), some papers report only associations. What can be distinguished are two forms of behavior related to other stakeholders’ role in CG issues: stakeholder management and social issue participation.

Summary

While the general importance of CG in emerging markets has been established, knowledge on specific issues or channels is still weak. An important general caveat to the literature is that it has some way to go to address causality. This also applies to the following three areas: ownership structures and the relationship with performance and governance mechanisms; corporate governance and stakeholders’ roles; and enforcement, both public and private, and related changes in the CG environment.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

How Does Corporate Governance Affect Firm Value in Emerging Markets? Evidence on Channels

Key Corporate Governance Issues in Emerging Markets - Theory and Practical Execution
Conference, June 11 - 12, 2012
Leipzig, Germany

Burcin Yurtoglu
WHU – Otto Beisheim School of Management
Chair of Corporate Finance
Burgplatz 2, 56179 Vallendar
Tel.: +49 261 6509-710
Fax: +49 261 6509-729
mailto: burcin.yurtoglu@whu.edu
URL: www.whu.edu

Background

- Based on two recent papers with Stijn Claessens (IMF, University of Amsterdam)
  - Corporate Governance and Development – An Update, 2012, Focus 10, GCGF.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Outline

- Prior work in emerging markets provides evidence that better corporate governance predicts higher firm market value, but little evidence on the channels through which governance affects market value.
- This presentation organizes the literature according to how and through what channels identified corporate governance impacts corporations and countries.

All of these channels matter for

- Growth
- Employment
- Poverty
- General well-being

These relationships are documented at the level of the country, industry, and the individual firm and from the investor perspectives.

Endogeneity: Sources

- Some of these studies suffer from endogeneity problems which may stem from various sources.

  - Reverse causation: Governance may predict firm-level economic factors, rather than vice-versa.
    - For example, more profitable firms may choose weaker governance because they have less need for outside capital, but at the same time, better governance could improve profitability.

  - Omitted variable bias: In equilibrium, corporate governance likely correlates with various economic variables, which also correlate with each other.
    - For example, a study that omits important variables could conclude that an included variable is significant when it would not be with a richer set of other control variables; or that a variable is insignificant when it would be significant with a richer set of control variables.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Endogeneity: Consequences

Relation between a specific firm attribute and firm financial performance

The real decisions faced by the firms

Source: Adams, Hermalin, and Weisbach (2010), Figure 1 & 2, pp. 60-61.

Five Channels

**Increased access to external financing by firms**
- This can lead to greater investment, higher growth, and greater employment creation.

**Lower cost of capital**
- This makes firms more attractive to investors, leading to growth and more employment.

**Better operational performance**
- Through better allocation of resources and better management.

**Financial crises less likely**
- Important, as highlighted recently again, given the large economic and social costs of crises.

**Better relationships with all stakeholders**
- Improves social and labor relationships and aspects such as environmental protection, and can help further reduce poverty and inequality.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

(1) Increased access to financing

Deeper and more developed financial markets

Legal foundations:
• Creditor and shareholder rights
• Enforcement
• Regulation

Greater supply of funding
Firms invest more and grow faster

Lower cost of equity and debt
more pronounced in countries with poor legal protection

How important are these effects?

- These effects of can be large
  - For example, evidence suggests that countries in the third quartile of financial development enjoy between 1 and 1.5 extra percentage points of GDP growth per year, compared with countries in the first quartile.

- There is also evidence that under conditions of poor corporate governance (and underdeveloped financial and legal systems and higher corruption), the growth rate of the smallest firms is the most adversely affected, and fewer new firms start up—particularly small firms (Beck et al., 2005).
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

(2) Lower Cost of Capital

- The quality of the corporate governance framework affects not only the access to and amount of external financing, but also the cost of capital and firm valuation.
- Outsiders are less willing to provide financing and are more likely to charge higher rates if they are less assured that they will get an adequate rate of return.
- Conflicts between small and large controlling shareholders — arising from a divergence between cash-flow and voting rights — are greater in weaker corporate governance settings, implying that smaller investors are receiving too little of the returns the firm makes.
  - Attig et al. (2008) report for eight East Asian emerging markets that the cost of equity capital decreases in the presence of large shareholders different than the controlling owner, suggesting that second large shareholders help curb the private benefits of the controlling shareholder and reduce information asymmetries.
  - Chen et al. (2009 and 2011) find that firm-level corporate governance significantly lowers the cost of equity capital in 17 emerging markets. This effect is more pronounced in countries that provide relatively poor legal protection.
  - Byun et al. (2008) show that in Korea better corporate governance practices relate negatively to estimates of implied cost of equity capital, with better shareholder rights protection having the most significant effect, followed by independent board of directors and disclosure policy.

(3) Higher firm value and better operational performance

- Better corporate governance can also add value by improving firm performance, through more efficient management, better asset allocation, better labor policies, and other efficiency improvements.
- There is convincing empirical evidence for these effects.

- Firm value, in these studies is typically measured by Tobin's q, the ratio of market to book value of assets.

- Other measures of performance are less frequently used

- Other outcome measures and types of behavior of firms are less frequently analyzed:
  - How is competition linked to governance?
  - Restructuring
  - R&D
  - Strategic change, etc.
3.1 The Value Question: Does Good Governance Help Performance of Investors in Emerging Markets?

(3) Higher firm value and better operational performance (Cont’d)

**Tobin’s q ↑**
- When the wedge between the largest owner’s control and equity stake is lower
- When there are large non-management control rights, and blockholdings
- Less evidence on ROA or similar operational measures

**Importance of Findings**
- These effects are more pronounced in countries with low legal shareholder protection
- Much evidence from individual countries such as Korea, Hong Kong, Brazil, Chile, Colombia, Peru and Venezuela, Turkey.
- This effect is substantial: a one standard deviation decrease in the degree of divergence is associated with an increase in Tobin’s q of 28% (an increase in stock price of 58%) in Chile. Similar effects are reported for Korea and Turkey.

(4) Less volatile stock prices / Link to financial crisis

- The quality of corporate governance can also affect firms’ behavior in times of economic shocks and actually contribute to the occurrence of financial distress, with economy-wide impacts.
- During the East Asian financial crisis, cumulative stock returns of firms in which managers had high levels of control rights, but little direct ownership, were 10 to 20 percentage points lower than those of other firms (Lemmon and Lins, 2003).
  - This shows that corporate governance can play an important role in determining individual firms’ behavior, in particular the incentives of insiders to expropriate minority shareholders during times of distress.
- Similarly, a study of the stock performance of listed companies from Indonesia, Korea, Malaysia, the Philippines, and Thailand found that performance is better in firms with higher accounting disclosure quality (proxied by the use of Big Six auditors) and higher outside ownership concentration (Mitton, 2002).
  - This provides firm-level evidence consistent with the view that corporate governance helps explain firm performance during a crisis.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

**Related evidence**

- **Hedging** by firms is less common in countries with weak corporate governance frameworks (Lel, 2012), and to the extent that it happens, it adds very little value (Alayannis, Lel, and Miller, 2009).
  - The latter evidence suggests that in these environments, hedging is not necessarily for the benefit of outsiders, but more for the insiders.
- There is also evidence that **stock returns in emerging markets** tend to be more **positively skewed** than in industrial countries (Bae et al., 2006).
  - This can be attributed to managers having more discretion in emerging markets to release information, disclosing good news immediately, while releasing bad news slowly, or that firms share risks in these markets among each other, rather than through financial markets.
- There is also country-level evidence that **weak legal institutions** for corporate governance were key factors in exacerbating the **stock market declines** during the 1997 East Asian crisis (Johnson et al, 2000).
  - In countries with weaker investor protection, net capital inflows were more sensitive to negative events that adversely affect investors’ confidence. In such countries, the risk of expropriation increases during bad times, as the expected return of investment is lower, and collapses in currency and stock prices are more likely.

**Better relations with stakeholders**

- It is hard to give a definitive answer as to whether and which forms of stakeholders’ involvement are good for a corporation as a whole, let alone whether they are socially and economically optimal. There are many aspects of stakeholders’ involvement, with various consequences – for firm performance, value added, risk taking, environmental performance, etc. – and the overall net benefits are often unclear given current state of research.
- What can be distinguished are two forms of behavior related to other stakeholders’ role in corporate governance issues: **stakeholder management** and **social issue participation**.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

**Stakeholder management**

- The firm has no choice but to behave “responsibly” to stakeholders: they are input factors without which the firm cannot operate; and these stakeholders face alternative opportunities if the firm does not treat them well (typically, for example, labor can work elsewhere).
- Better employment protection can then improve the incentive structure and relative bargaining power of employees, and lead to more output. Acting responsibly toward each of these stakeholders is thus necessary. Acting responsibly is also most likely to be beneficial to the firm, financially and otherwise.
- Acting responsibly towards other stakeholders might in turn also be beneficial for the firm’s shareholders and other financial claimants. A firm with a good relationship with its workers, for example, will probably find it easier to attract external financing (Bae et al., 2011).
- Collectively, a high degree of corporate responsibility can ensure good relationships with all the firm’s stakeholders and thereby improve the firm’s overall performance. Of course, the effects depend importantly on information and reputation because knowing which firms are more responsible to stakeholders will not always be easy.

**Social issue participation**

- Recent years have witnessed a growing interest in corporate social responsibility (CSR) both from academia (McWilliams and Siegel, 2001; Margolis and Walsh, 2003; Orlitzky et al., 2003) and from businesses (see Accenture, 2010).
- This greater emphasis placed by firms on CSR activities can be interpreted as a shift in the interaction between firms, their institutional environment, and important stakeholders, such as communities, employees, suppliers, national governments and broader societal issues (Ioannou and Serafeim, 2010).
- In spite of this greater involvement, whether participation in social issues also relates to good firm performance is less clear.
  - Involvement in some social issues carries costs. These can be direct, as when expenditures for charitable donations or environmental protection increase, and so lower profits. Costs can also be indirect, as when the firm becomes less flexible and operates at lower efficiency. As such, socially responsible behavior could be considered “bad” corporate governance, as it negatively affects performance.
- So far, there have been few formal empirical studies at the firm level to document these effects.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Conclusions and Areas for Future Research

- At the level of the firm, the importance of corporate governance for access to financing, cost of capital, valuation, and performance has been documented for many countries and using various methodologies.
  - Better corporate governance leads to higher returns on equity and greater efficiency.
- Across countries, the important role of institutions aimed at contractual and legal enforcement, including corporate governance, has been underscored by the law and finance literature.
  - At the country level, papers have documented differences in institutional features.
  - Across countries, relationships between institutional features and development of financial markets, relative corporate sector valuations, efficiency of investment allocation, and economic growth have been shown.
- Using firm-level data, relationships have been documented between countries’ corporate governance frameworks on the one hand, and performance, valuation, cost of capital, and access to external financing on the other.

Conclusions and Areas for Future Research (Cont’d)

- While the general importance of corporate governance has been established, knowledge on specific issues or channels is still weak.
- An important general caveat to the literature is that it has some way to go to address causality.
- This also applies to the following three areas:
  - ownership structures and the relationship with performance and governance mechanisms;
  - corporate governance and stakeholders’ roles; and
  - enforcement, both public and private, and related changes in the corporate governance environment.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

- All references mentioned in this presentation are listed in the bibliography sections of the following two papers which form the basis of this presentation:


3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

Discussion Moderator (right): Christian Strenger
Discussants (from left to right): Claudia Kruse, George Dallas, Dr. Andreas Roemer, Prof. Dr. B. Burcin Yurtoglu

Introduction by Mr. Strenger

Does it matter? Is there sufficient incentive to pursue good governance? Do the big investors recognize that pursuing good Corporate Governance at their portfolio companies is good for not only the companies but also for them?

One of the key ways for institutions to get ahead in the competition is to use Corporate Governance as a differentiation tool. This is particularly relevant in emerging markets.

Initial Statement of Mrs. Kruse:

- Custody and settlement risk are big and often overlooked risks in emerging markets.
- APG has developed Corporate Governance standards that every investment has to adhere to: Contractual and Structural standards

Initial statement of Dr. Roemer:

- The next ten years will see a shift from the Developed Markets to the Emerging Markets
- A good example for differentiation of Corporate Governance is Brazil, where they sliced the new market ten years ago in levels one, two and three:
  - Level one: companies which have no Corporate Governance;
  - Level two and level three for companies with better Corporate Governance which serves as incentive.
- It is particularly important to know the ownership of a company in China
- For the fiduciary task, it is important to engage with the boards of the companies. If Corporate Governance is not on an appropriate level, we have to guide them.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

**Question from the audience:**
What do you think about joint investor engagement and has this been successful? What ways of engagement have proven most helpful?

**Responses by Mr. Dallas, Mrs. Kruse and Dr. Roemer:**
- A successful engagement strategy has to be focused primarily on the financial success of the company.
- In Asia some companies have highly concentrated ownership and are not very willing to accept engagement of an asset manager or other minority stakeholders. This is where the investor collaboration has to come in.
- Collective engagement has proven very effective if you can represent 5 to 10 percent of the company’s equity around the table of the CEO.

**Question to Prof. Yurtoglu:**
Looking at your research - is it necessary to improve the regulatory level first and to then adopt optimal firm-wide mechanisms or should firm-level governance be improved first?

**Response by Prof. Yurtoglu:**
- The regulatory framework is an infrastructure that everybody needs. Firm-level Corporate Governance will develop along the following lines:
  - Contractual governance: firms that have an incentive to show that they are the good type. They will even undertake activities like cross-listing nominating independent directors or any observable firm-level activity that will indicate to the direction of good governance.
  - Bad-type firms will not have an incentive to do that, so you have to force the second type of firms by regulation.

**Questions by Mr. Cigna:**
What are the causes of negative correlation between independent directors and profitability in Turkey?
Are there any deal breakers in the red-flag on Corporate Governance?

**Responses by Prof. Yurtoglu, Mr. Dallas and Mrs. Kruse:**
- Independent directors decrease Tobin’s q, in which no one is interested.
- More than 90 percent of Turkish independent directors were in the boards since the mid-nineties. When the code came up, the controlling owners looked at the nominal definition of independence of the code and appointed an old friend as the independent director.
- What are the deal breakers? It depends:
  - In economies with a weak rule of law and where you have dominating shareholders how interesting the company’s business is or its operations might be.
  - If controlling owners are effectively looking to disadvantage you or operating with an entirely different agenda.
3.1 The Value Question: Does good Governance help Performance of Investors in Emerging Markets?

- Any sense of clearly fluid business action, corruption or absolutely diverging agenda between the minority and the controlling shareholders would be a red flag.
- If there is no way a company will ever listen or do anything, it would be a deal breaker.

- Other factors like board structure, composition, risk audit or sort of disclosure are engageable items where even if it’s not ideal on the day you invest in it, we can engage on it, so that over time hopefully it improves these things.

**Question of Prof. Boeva:**

What is your type of measurement on competitiveness and corporate governance?

**Response by Prof. Yurtoglu:**

- The word competitiveness relates to industrial structure (product-market level of competition). The World Economic Forum’s competitiveness indicators are relating to competitiveness of countries. I related it to the competitiveness of firms within industries.

**Concluding Remarks by Mr. Dallas and Mr. Strenger:**

- It can be dangerous in the extreme and just not a good idea in the less-extreme to get bonus-type rewards to the non-executive directors.
- Non-executive directors should not just get fixed pay because they will simply avoid making mistakes but not contribute properly to the business development.
- In Germany, non-executive directors are meant to do strategy work and sign off on important developments. For this you need to have a long-term view and business experience.

**Main Take Aways**

- Is independence overrated? Yes, if it is just formal independence. It may be better to have a formally not fully independent non-executive director that however understands the business very well.
- Poor Corporate Governance takes away chances for the company to perform and to give investors the returns they require.
- Effectively there are two layers of Corporate Governance:
  - Within the firm
  - The regulatory environment
- The bigger the company, the lesser is the possible impact.
Handling Corruption – the Company Experience

Josef Winter, Chief Compliance Officer, Siemens AG

Introduction

In November 2006 Siemens was facing a devastating scenario with potential consequences covering exclusion from public tenders, fines of up to 10 billion euro as well as severe damages to our business and our company reputation. Extensive fact finding revealed that company leadership had substantially failed: We had rules in place but they were not followed. The values management talked about were not lived. Furthermore, control mechanisms were inadequate, decision making processes lacked clarity, and there was a strong determination to cling to myths about corruption.

Based upon the findings of extensive internal investigations Siemens started to develop and implement a comprehensive set of measures to remediate the identified weaknesses structured into the three pillars “Prevent – Detect – Respond” of the Siemens Compliance Program. The overarching element is a clear and strong tone from the top for integrity and the commitment to clean business: We strictly expect our business people to walk away from a business opportunity if we cannot win in a clean way.

Policies, together with the related processes and tools support the implementation of leadership commitment and company values into operational practices including dealing with intermediaries who act on behalf of the company which poses one of the greatest corruption risks. Siemens has developed guidelines and a strict monitoring process for dealing with all our business partners: A standardized risk analysis and due diligence process must be conducted before concluding or renewing contracts with business partners. This solution is meanwhile considered as an international benchmark.

However, controls need to be supplemented by a culture of clear personal responsibility and value orientation. Business managers must understand that Compliance is their personal responsibility and that a Compliance organization will support them to fulfil their due diligence obligations. Compliance needs to be brought closer to the business whilst at the same time, driving a culture of integrity.

We are no longer in a crisis management mode; Siemens has made substantial progress to establish Compliance as an integral part of business processes within the entire company. Compliance is not a program but our way of doing business – based upon a comprehensive Compliance management system.

To contribute to sustainable business success, Leadership commitment and Compliance management need to go beyond internal processes and managing the relationships with suppliers and other business partners. The aspiration should also include efforts to combat corruption and to
strengthen clean business practices through engagement with other business actors, governments and civil society (Collective Action). This forms an element of the Siemens Compliance System in the “Prevent” pillar. Ultimately, Collective Action helps to increase the market share of clean business – for the benefits of all stakeholders.

The Siemens Compliance System will be further developed to enable it to respond to the insights gained from Compliance and business processes. For this reason the Siemens Compliance System will never be completed “once and for all”, but will continue to exist as part of an ongoing process of change and improvement.

Focus of the Presentation
Based upon the experiences Siemens has made with overcoming a substantial crisis rooted in bribery practices, the presentation aims to share experiences with learning how to change the “rules of the game” as well as the company culture in the field of clean business practices.

The “Siemens Case” has substantially contributed to increasing the awareness of stakeholders to the importance of Compliance with some of the solutions Siemens has developed e. g. in the area of due diligence regarding business partners have been perceived as international best practice.

Ongoing challenges include the issues of
- how to foster the understanding of corruption as a severe threat to companies, markets and societies among employees and our business partners,
- how to cascade a clear tone from the top message down into middle management levels,
- how to ensure sustainability of Compliance when entering into a regular business process mode after a program.

The overall focus of the presentation is the question of how to create a self-sustaining practice of business integrity and compliance within a complex multinational enterprise like Siemens and how to utilize the powers of such an organization to positively influence the external environment for clean business practices.

Conclusions
- Corruption can become an addiction that’s hard to break
- A commitment to integrity and ethical business has to come from the top
- Controls are not enough –minds and hearts of employees must be reached
- Personal responsibility: You see it, you own it
- Leadership commitment should cover the engagement with external stakeholders for clean business practices and fair market conditions
- Only clean business is sustainable business
3.2 Handling Corruption - the Company Experience

Handling Corruption – the Company Experience


Leipzig, June 12, 2012

Josef Winter,
Chief Compliance Officer

A proud company with a proud history

1847 Werner von Siemens invents the pointer telegraph and founds Siemens & Halske in Berlin
1870 Siemens completes the Indo-European telegraph line
1879 Siemens presents world's first electric railway
1899 Siemens builds first streetcar system in China
1903 Siemens-Schuckertwerke becomes the leader in both communications and power technology
1951 Resurgence of overseas business with the construction of large-scale projects in Argentina, India and Egypt
1983 Siemens develops megabit memory chips
2001 Siemens AG is listed on the New York Stock Exchange
2008 New corporate structure and alignment of portfolio with megatrends
3.2 Handling Corruption - the Company Experience

Then disaster struck – November 2006

Fact finding through internal investigations

First, the facts had to be found

- An independent investigation unprecedented in scope and depth
- More than 5000 consulting agreements reviewed
- Review of 40 million account statements, 100 million documents, 127 million transactions
- One in five employees pitched in at some point

Failure of leadership

- We had rules, but they were not followed
- The values we talked about were not lived

Issues to remediate

- ‘Wink & nod’ culture
- Unclear decision-making processes
- Inadequate internal control mechanisms
- Complex company structures
- ‘Good old boys’ network
- Determination to cling to myths
3.2 Handling Corruption - the Company Experience

The Siemens Compliance System: Prevent – Detect – Respond

We constantly strive to further develop and improve the Compliance System.

Prevent

- Compliance risk management
- Policies and procedures
- Training and communication
- Advice and support
- Integration in personnel processes
- Collective Action

Detect

- Whistle blowing channels “Tell us” and Ombudsman
- Compliance controls
- Monitoring and Compliance reviews
- Compliance audits
- Compliance investigations

Respond

- Consequences for misconduct
- Remediation
- Global case tracking

Controls are not enough. We continue fostering an integrity culture

Questions to guide Siemens employees towards compliant and responsible behavior

1. Is it the right thing for Siemens?
2. Is it consistent with Siemens core values and mine?
3. Is it legal?
4. Is it something I am willing to be held accountable for?

If the answer is YES to all of those questions, DON’T WORRY, BE CONFIDENT
3.2 Handling Corruption - the Company Experience

Compliance in practice:
Business Partner Compliance Due Diligence (BP CDD)

**Internal**

1. **System**: Integration of policy, process and tool

2. **Culture**: User Manual addresses the four integrity questions

3. **System**: Support through trainings and intranet website

**External**

4. **Communicating Siemens Compliance to our Business Partners**

5. **Sharing our knowledge with other companies (Collective Action)**

Collective Action fosters high compliance standards for all market players

- Fight corruption in concert with competitors and other players
- Create high compliance standards via a concept of prevention
- Integrate an independent institution for promotion and monitoring
- Define sanctions in case of violations

1) Non-governmental organizations such as Transparency International
3.2 Handling Corruption - the Company Experience

Siemens Integrity Initiative: Launch on December 9, 2009

World Bank Siemens Settlement, July 2, 2009*
As part of the settlement, Siemens agreed
- to pay USD100 million over the next 15 years to support organizations and projects combating corruption and fraud through collective action, training, education
- that the World Bank Group will have audit rights over the use of these funds and veto rights over the selection of anti-corruption groups or programs receiving funds

- Launch of Siemens Integrity Initiative ([www.siemens.com/integrity-initiative](http://www.siemens.com/integrity-initiative)) on December 9, 2009
- Transparent allocation of funds based on public selection criteria
- Focus on projects with business impact and relevance for Siemens markets
- Focus on Collective Action projects in growth markets


Siemens Integrity Initiative: Instituto Ethos, Brazil

Clean games for the Olympics 2016 and the World Soccer Championship 2014

- Launch: December 2010
- Funded by the Siemens Integrity Initiative
- Funding volume: US$ 3.11 M over 5 years
- Brazil

Instituto Ethos lança projeto Jogos Limpos para a Copa de 2014 e a Chimpádade 2016

*Com a presença dos três, a iniciativa, que possui como objetivo o combate à corrupção, faz parte do compromisso da empresa de participar de ações que auxiliem na efetivação da transparência, transparência e eficiência na gestão da empresa através do grupo Siemens. O Instituto Ethos lança o projeto Jogos Limpos para a Copa de 2014 e a Chimpádade 2016.*

Activities Year 1:
- 3 multi-stakeholder national committees and 12 local committees on Collective Action in 12 host cities
- Thematic national committees on legal aspects and whistleblowing and Corporate Social Responsibility (CSR)
- developed local administration transparency indicators
- raise awareness through two publications and a website containing news about the project and information about planned investments was launched ([http://www.jogoslimentos.org.br/](http://www.jogoslimentos.org.br/))
- Government, private sector and civil society cooperated to improve the regulatory framework: e.g. the Law on Access to Public Information
3.2 Handling Corruption - the Company Experience

Status of Compliance Monitorship – Feedback Year 3

Year Three Report

- On October 7, 2011, the Company received the Year Three Report from the Compliance Monitor Dr. Theo Waigel, whom Siemens had engaged as part of the settlement reached with U.S. authorities in December 2008.
- During Year Three, the Monitor evaluated
  - the long-term sustainability of Siemens’ compliance program and its compliance risk assessment and compliance program evaluation processes,
  - in addition to risk based themes
  - and the implementation of Year One and Year Two recommendations.

Contents of the Year Three Report*

(1) An evaluation of the open recommendations from the Year One and Year Two Reports
(2) Some new recommendations reasonably designed to improve the effectiveness of Siemens’ program for ensuring compliance with anti-corruption laws
(3) Again a certification by the Compliance Monitor that the compliance program of Siemens, including its policies and procedures, is reasonably designed and implemented to detect and prevent violations within Siemens of anti-corruption laws.

* = as set forth in the Settlement Agreement with the U.S. Securities and Exchange Commission (SEC) and the U.S. Department of Justice (DOJ)

Compliance Priorities – Only clean business is sustainable business

Mid term target dimensions for the further development of Siemens Compliance introduced in FY 2011
3.2 Handling Corruption - the Company Experience

Handling Corruption - Discussion

**Moderator:** Philip Armstrong

**Discussants:** Patrick D. Chisanga, John Lim Kok Min, Josef Winter

**Initial statement by Mr. Armstrong:**
Can good Corporate Governance exist in an environment of poor Public Governance? Often the common mindset is that corruption is an issue that really sits in the public sector and is something that doesn’t concern the private sector. Chisanga and Kok Min shared some of their regional observations with reflection to the company’s perspective presented by Josef Winter:

**Initial statement by Mr. Chisanga:**
The latest anti-corruption index observed that corruption around the world remains deeply entrenched. With the latest CPI figures confirming the clear difference between developing/emerging and first world countries two underlying causes for corruption were suggested:

- Poverty and low sources of legitimate income and inadequate social security.
- Simply greed, because even those who are well off want more and more wealth. This is prevalent in the First World, but in the Third World as well.

Four points are important in the fight against corruption:

- Cascade Public Governance systems to the company level to eradicate corruption.
- Code of ethics are an effective instrument if the code is fully understood and compliance is trained and efficiently monitored.
- Risk Management and Compliance Systems are very useful tools. Companies also need to be on the serious lookout for “invisible corruption” which is a bit more difficult to detect.
- Stiff consequences for misconduct without leniency and with zero tolerance should be introduced to enhance investor confidence and improve the basis of foreign direct investments.

**Initial statement by Mr. Kok Min:**

- Also in Asia corruption very often starts because the reward is much higher than the risk. The response has to be: prevent, detect and respond. Prevention is obviously the key.
- The tone at the top is very important: The management has to underline the values and it has to take the appropriate action. Otherwise the morale will suffer throughout the company.
- Usually corruption and bribery takes place if people think that one is willing to pay or willing to receive, so when corruption becomes sort of normal. Hence, it is important for a company to clarify that it believes in clean business: it will not accept and it will not pay.

**General questions from the audience:**

- Do smaller companies have to pay bribery as otherwise they won’t be in business? So are we naive in trying to pitch this in emerging markets only?
- Without good institutions and good governance, can we succeed only with corporate governance instruments and measures?
3.2 Handling Corruption - the Company Experience

Responses by Mr. Chisanga, Mr. Kok Min, Mr. Strenger and Mr. Winter:

- Handling corruption has to start from the top. The ruling classes in a country have to say no to corruption and they have to take the consequences.

- Smaller companies probably do not have the same options as Siemens. If in fact a large percentage of the business is secured through some form of bribery it is very difficult to stop.

- Two arguments against corruption:
  - Corruption will deter foreign investors. They want to feel that their investments are secure in an accountable process.
  - Corruption increases the cost of doing business.

- One of the reasons that drive people to corruption is low income. Corporates should pay their people well to minimize their temptation to be corrupt and to seek bribes. Similarly, this must also take place at the government level.

General questions regarding Siemens:

1) How much did it cost Siemens to repair the open wounds after the corruption scandal?
2) How much does it now cost Siemens to be compliant?
3) Does Siemens have a different definition of corruption from country to country or is there a universal definition for corruption?
4) Who is joining collective action among Siemens partners in Asia and are there any competitors who follow Siemens’ example and when did the acceptance of collective action started within those competitors?

Answers:

- Overall Siemens paid roughly EUR 2 billion. Fifty percent of that on lawyers for support in the process and fifty percent on charges it had to pay to the Department of Justice as well as to the Munich state authorities.

- The business that Siemens may have lost probably would pale in comparison to the effort, the time and the resources that Siemens had to put in to restore its standing.

- But because of the learning process, for Siemens, being compliant was not at all a bad influence on its figures. The devastating situation was a huge problem but at the same time also a chance.

- The most problems with paying bribes occurred in the area of communication, because Siemens had not been competitive any more but stayed in the market by paying bribes.

- There are two principles within Siemens:
  Corruption takes place in dark rooms – switch on the light and it will disappear.
  Nobody wants to have corruption below him, even if he also acts corrupt.

- If a smaller company is facing a problem with corruption/bribery, the local (German) ambassador can address this.
3.2 Handling Corruption - the Company Experience

- Siemens has the same standards in all of the countries where it is acting in. It would have been impossible and much too complicated for Siemens to accept a small amount of bribe payment in one country and forbid it in another one. Either in or out - there is no in between.

- Collective action: The Siemens case uttered a huge change among the whole market. With Siemens’ collective actions now, it is much easier to stop bribery in Europe or America, but there are still some problems on that in Asia.

- Until 1998 in Germany bribes were called “useful expenses” and were tax deductible. It is difficult for an organization like Siemens to adjust, because at the same time Siemens was told, that it was underperforming against its peers. That may have been one of the reasons why there was reluctance to implement quickly the new regime.

- The so called “useful expenses” were only paid in countries where it was not forbidden to bribe. When the law changed it was very difficult for a company like Siemens to move in a different direction but Siemens did not change at the end of 2006 either and this was really difficult to explain. The regional heads in different countries were simply left alone by the board, which simply said: “I don´t see it”.

Main Take Aways:

- Corruption exists both in the public sector as well as in the private sector.

- Corruption is facilitated by weak or non-existent Corporate Governance systems: In many African countries institutions have been established by governments to fight against corruption (e.g. the Anti-corruption-commission in Zambia).

- Not one of the best students wants to work for a corrupt company.

- A “don’t talk, don’t communicate culture” is setting the wrong signals. Ensure to provide support for saying no and implement an appropriate corporate culture.

- Companies that pay bribes to stay competitive, get the wrong feedback from the market. Managements have the risk to focus on wrong signals.

- There is no good corporate governance without good institutions.
  - The success of the enforcement of rules and policies for good governance depends on the willingness to take the consequences.
  - Important is that employees are not left alone for difficult decisions.
  - In the Third World the fundamental issue is the political will. Stopping corruption must start at the top. In Emerging markets the top means first of all the political top.
4 References

Curriculum Vita of Presenters and Discussants  155
List of Participants  173
Conference Evaluation  176
Philip Armstrong
Head of the Global Corporate Governance Forum

Philip Armstrong heads the Global Corporate Governance Forum, based in Washington DC, United States. The Forum was co-founded by the World Bank Group and the OECD to promote global, regional and local initiatives to improve the institutional framework and practices of corporate governance in developing countries and emerging markets. The Forum is currently located in the Sustainable Business Advisory Department of the International Finance Corporation.

Philip is a widely acknowledged expert on corporate governance and was closely involved with the internationally-acclaimed 2002 King Report on Corporate Governance for South Africa. He was also instrumental in producing the Commonwealth Guidelines on corporate governance and served as an expert resource on corporate governance for the NEPAD initiative in Africa. He has been conferred with an honorary doctorate in business administration from the Oxford Brookes University in the UK in recognition of his contributions to corporate governance.

Philip Armstrong has had a distinguished and varied career in executive and senior management in a number of South Africa’s prominent listed companies and has served with distinction on a number of boards of companies, governing bodies of professional institutions, and policy initiatives in South Africa and internationally. He continues to serve on a number of advisory bodies of prominent institutions around the world and is regularly cited in leading journals and publications for his work on corporate governance around the world.
Hans-Jürgen Beerfeltz
State Secretary of the German Federal Ministry for Economic Cooperation and Development

Hans-Jürgen Beerfeltz learned the fundamentals of development policy when working for the Friedrich Naumann Foundation, his first job after graduating from Hamburg University. He conducted visiting and training programmes in Central and South America as part of international civic education within the remit of the Federal Ministry of the Interior. As Vice-President of the Federal Agency for Civic Education, Mr. Beerfeltz was responsible for, amongst other things, reconciliation with the Jewish people and, in particular, programs for journalists visiting Israel. During his time as federal party manager of the Free Democratic Party (FDP), he accepted additional assignments as a development consultant in the fields of local government, NGO professionalization and promotion of democracy. In addition, Mr. Beerfeltz undertook more than 100 international assignments for a wide variety of agencies, with the main focus on Central and South America and Southeast Asia. In the academic field, he has focused on the development of values and communication, also authoring publications and taking on assignments as a guest lecturer in Germany and the US.
Prof. Bistra Boeva
Department International Economic Relations and Business,
University for National and World Economic Studies, Sofia/Bulgaria

Prof. Bistra Boeva co–chaired the Task Force for Bulgarian National Code on Corporate Governance (2006-2007). At present is a member of Bulgarian National Corporate Governance Commission.

She is a professor at the Department International Economic Relations and Business at the University for National and World Economic Studies, Sofia Bulgaria. Prof Bistra Boeva teaches courses on Corporate Governance at master degree level in Bulgaria and other European Countries. Prof. Boeva is doing an extensive research and consulting in the field of corporate governance and international management. In her portfolio of activities are a lot of consultancy projects. She worked on the first World Bank ROSC on corporate governance for Bulgaria. Prof. Bistra Boeva was a regular participant in OECD Round Tables on Corporate Governance in South Eastern Europe (2000-2006). She chaired the Supervisory Board of the Privatization Fund Kaliman (1996-1997) and was a member of Board of Directors of a few Bulgarian companies. Four years (1997-2001) she was a Commissioner at Bulgarian National Securities and Stock exchange Commission. Prof. Bistra Boeva holds postdoctoral degree in international business from the University for National and World Economic Studies (Bulgaria) and master degree in law. She is an author of articles, books and text books on corporate governance and international management.

Prof. Boeva is a member of Private Sector Advisory Group (Global Forum for Corporate Governance - World Bank/OEDC). Four years (2008-2011) she was a member of European Forum for Corporate Governance
Evelynne Change
LL.M (Columbia), Programme Management Specialist, UNDP Regional Service Centre for Eastern and Southern Africa, Johannesburg, South Africa

Evelynne Change is currently the Programme Management Specialist for the Regional Governance Programme at the United Nations Development Programme Regional Service Center for Eastern and Southern Africa based in Johannesburg, South Africa. A Kenyan national, She holds a Master of Laws degree from Columbia Law School in New York, USA in addition to a Bachelor of Laws degree from the University of Nairobi, Kenya. She is called to the Bar in the Republic of Kenya and the State of New York.

Prior to joining UNDP Evelynne served as the Coordinator for Corporate Governance under the African Peer Review Mechanism - a mutually agreed self-assessment instrument voluntarily acceded to by the Member States of the African Union for the promotion of good governance in a number of focus areas including Corporate Governance.

She began her career in private legal practice in Kenya and has also worked with the Economics and Trade Branch of the United Nations Environment Programme (UNEP) in Geneva Switzerland.

In 2006/7 Evelynne was a Fellow of the Emerging Leaders Programme run jointly by the Centers of Public Values University of Cape Town, South Africa and Duke University, USA. She has also been named Rising Star Corporate Governance (2009) by the Millstein Center for Corporate Governance, Yale School of Management, USA.
Patrick D. Chisanga
Executive Chairman of Muchanga Investments Ltd., PSAG Member

Patrick D. Chisanga is a Fellow of the Institute of Chartered Secretaries and Administrators (UK), from the London School of Accountancy. He is a Licentiate member of the Zambia Institute of Certified Accountants, ZICA. He is also a member of the Institute of Directors of Southern Africa.

He spent nearly 20 years in the Public and Corporate sectors of Zambia, serving as Chief Executive and as Chairman of many Organisations and Companies before he took early retirement in 1994, to focus on running his own family held Group of Companies, under Muchanga Investments Limited, which he had founded in 1987 and in which he serves as Executive Chairman.

He is also Managing Consultant of Dynamic Concepts Limited, Consultancy firm which undertakes Corporate Governance Consulting and Personal Motivational Development, in Zambia and the Southern African Region as a whole.

He has made many presentations on Corporate Governance in countries of the Southern African Region, including Mozambique, South Africa, Malawi, Zimbabwe and his home country, Zambia.

He currently serves on the Boards of several local and International Companies and Corporate Organisations either as Chairman or non-Executive Director.

He is current Chairman of Air Namibia (Zambia Ltd).

Currently, he also serves as Advisor to Konkola Copper Mines Ltd, KCM, Zambia’s largest Copper Mining Company, as well as advisor to Skorpion Zinc mines of Namibia.

He is a Fellow of the Institute of Directors of Zambia where he served as President for three years from 2002 to 2005. He is a Past Chairman of the Institute of Chartered Secretaries and Administrators in Zambia. He is Past Vice Chairman of the Economics Association of Zambia.

He is a Past Governor of Rotary International District 9210, comprising: Zambia, Zimbabwe, Malawi and Northern Mozambique.

He served as International Training Leader of Rotary International from 2006 to 2008.

He is a former member of the Board of Directors of The Commonwealth Association of Corporate Governance (CACG).

He is currently, a member of the Global Corporate Governance Forum Private Sector Advisory Group, PSAG; of the World Bank.

He served as President of the Lusaka Golf Club, for a period of three years.
Gian Piero Cigna

Senior Counsel, European Bank for Reconstruction and Development, London/UK

Gian Piero, who is an Italian qualified attorney, is the corporate governance specialist in the Legal Transition and Knowledge Management Team. Prior to joining the EBRD, he worked on corporate governance and capital markets at the European Commission and at the Italian Ministry of Economy. He practiced law in an international law firm in Italy, Albania and Romania and acted as consultant to international organisations and various state institutions and ministries in Eastern Europe. In Albania he was advisor to the Ministry of Economy for the privatization of state owned enterprises in strategic sectors. In the Czech Republic he worked as “Pre Accession Advisor” to the Ministry of Justice and the Czech Securities Commission for the approximation of the Czech legislation with EU standards. He graduated in law in Italy and attended postgraduate studies in the Netherlands and US focusing on European and International business law. Publications include several essays on corporate governance, capital markets and banking law most recently with a focus on emerging markets in eastern Europe and central Asia.
George S. Dallas is Director of Corporate Governance at F&C Investments in London. He is a member of F&C’s Governance and Sustainable Investment team, where he leads all aspects of F&C’s global policies relating to corporate governance, including proxy voting, remuneration and engagement matters. George is also active engaging companies in the area of business ethics, and has a sectoral focus in financial institutions. He also leads F&C’s engagement activities in the area of corporate bonds. He joined F&C in January 2008, prior to which he was a Managing Director at Standard & Poor’s.

In his 24 years at S&P Mr. Dallas served in a range of managerial and analytical roles, including head of Governance Services, head of Global Emerging Markets, and regional head for S&P’s Ratings Services in Europe. As global practice leader for corporate governance at S&P, he led the development of S&P’s approach to governance analysis and built a multinational team of governance analysts. Mr. Dallas began his career as a corporate lending officer at Wells Fargo Bank in 1981, before joining S&P in 1983.

Mr. Dallas is a member of the Investment Committee of the Association of British Insurers, the Corporate Governance Committee of the Institute of Chartered Accountants of England and Wales, the Global Corporate Governance Forum’s Private Sector Advisory Group, and the European Corporate Governance Institute. He is also a member of International Corporate Governance Network, where he is Chairman of its Business Ethics Committee. Mr. Dallas has written extensively on corporate governance and international finance and edited the book Governance and Risk (McGraw-Hill, 2004).

Mr. Dallas holds a BA degree, with distinction, from Stanford University and an MBA from the Haas School of the University of California at Berkeley.
Prof. Dr. sc. Hana Horak

Professor at Jean Monnet Chair, Department of Law, Faculty of Economics and business, University of Zagreb, Croatia

Prof. Dr. sc. Hana Horak, Professor at Jean Monnet Chair, Department of Law, Faculty of Economics and business, University of Zagreb, Croatia.

Since 1992 she has been working at the Faculty of Economics and business, University of Zagreb, Department of law giving lectures, seminars and practical training in Commercial Law, Law of International Trade, European Market Law and European Company Law at undergraduate studies. Also conducts postgraduate study „Legal and economic framework of doing business in Europe“ and gives lectures at different postgraduate studies in the area of company, commercial, European and international Law.

Prof. Hana Horak is actively researching in the area of corporate governance. She has an active role in different national and international organizations. She is a president of the Court of Honour of Croatian association of the members of supervisory and management boards (HUCNO), member of Policy and Benchmark Committee of European confederation of directors (EcoDa) and academic member of ECGI.

In 2011 she organized the 1st International scientific conference „Corporate Governance – new experiences: Implementation in South Eastern Europe“ in Zagreb, Croatia that gathered many international experts in the area of corporate governance.

Prof. Hana Horak has written and published number of scientific and expert papers and participated as a speaker on number of conferences in the area of company law and corporate governance. She is the author of the only book in Croatian language in the area of European company law and corporate governance “Introduction to European company law”, published by Školska knjiga, Zagreb in 2010.

www.efzg.hr/hhorak
Isimkah Ibuakah

Corporate Governance Officer, IFC

Isimkah Ibuakah is a Nigerian lawyer qualified to practice law in Nigeria. She obtained a Masters degree in International Economic Law from the University of Warwick and has obtained over 12 years experience advising clients in areas such as intellectual property law, corporate law and banking & financial law with particular emphasis on corporate finance transactions, corporate restructurings, domestic and cross-border mergers and acquisitions, domestic and international securities transactions, as well as regulation and compliance.

Isimkah was one of counsel-in-chambers for 5 years at a law firm in Nigeria, Olaniwun Ajayi LP, with responsibility for leading the firm’s Banking and Finance Practice. In this capacity, Isimkah advised various companies in the telecommunications, oil and gas, banking and finance and manufacturing sectors in Nigeria. She was also a representative of the firm at the Capital Market Committee of the Nigerian Securities and Exchange Commission. Prior to joining Olaniwun Ajayi, she worked at George Ikoli & Okagbue, a law practice in Nigeria where she had company secretarial responsibilities for the firm and its local and foreign clients.

She joined the International Finance Corporation almost four years ago, as Legal Adviser to the corporate governance program for the banking sector in Nigeria. In this role, Isimkah, amongst other things, has advised banks in Nigeria, Togo, Kenya and Ghana on appropriate policies and procedures for implementing international standards of corporate governance and provides technical support to local institutions in Nigeria to develop capacity to enhance corporate governance awareness in the banking sector. She has also worked with regulators such as the Securities and Exchange Commission Nigeria, to develop initiatives for monitoring and enforcing corporate governance. She is also the Country Advisory Services Team Leader for Nigeria working on initiatives to increase SME development, capital market diversification and corporate governance monitoring in IFC’s investment portfolio.

Her work history also includes Barclay’s Private Banking, United Kingdom focused on audit and compliance in 2002 as well as Solix Technologies Limited.
He is the Chairman of the Singapore Institute of Directors and of Gas Supply Pte Ltd, Singapore’s largest piped natural gas importer, and Vice-Chairman of the Singapore Institute of Management. He was Deputy Chairman of NTUC FairPrice Co-operative, Singapore’s largest supermarket chain, until the end of September 2011 and Executive Deputy Chairman of LMA International NV, a global medical device company until the end of 2010. He is also the immediate past Chairman of Building & Construction Authority and of Senoko Power Limited and was a former Deputy Chairman of the Agri-foods and Veterinary Authority of Singapore. He was previously Group Managing Director of Pan-United Corporation Limited, MPH Ltd and Chief Executive Officer of Cold Storage Holdings Ltd. He now sits on the Boards, Audit, Remuneration and Nominating Committees of several listed and non-listed companies. He is a member of the Singapore Corporate Governance Council, Company’s Act Review Steering Committee, CFO Institute Advisory Council, Management Committee of Singapore Compact for Corporate Social Responsibility, Senate Member of the Marketing Institute of Singapore, a former director/Council Member of both the Singapore International Chamber of Commerce and the Singapore Confederation of Industries. He was also a member of the Audit Committee Guidance Committee, the Disclosure and Accounting Standards Committee and also a former member of the Securities Industry Council. He is a past President of Sentosa Golf Club.

He is the Chairman for the “OECD Asian network on Corporate Governance for State Owned Enterprises” and a core member of the OECD Asian Roundtable.

He has extensive private and public sector experience in South East Asia, UK and Australia/New Zealand.
Claudia Kruse

Head of Corporate Governance, APG Investment, Netherlands

Claudia Kruse is Head of Sustainability & Corporate Governance at APG and joined APG in April 2009. APG manages pension assets of ca 300 billion Euros (April 2012). Ms Kruse has been working in Responsible Investment since 2000, mainly in London (until 2009) on both the sell-side (JP Morgan Securities) and the buy-side (F&C). She has published on topics such as the Governance of Sustainability and the integration of sustainability within executive remuneration among others. Ms Kruse chairs the Integrated Business Reporting Committee of the International Corporate Governance Network (ICGN) and is a member of the International Integrated Reporting Committee (IIRC) Working Group. She is a member of the Board of Eumedion, the Dutch Corporate Governance Investor Organisation. Ms Kruse has lived and worked in Germany, China, the United Kingdom and now the Netherlands.
Dr. Nik Ramlah Mahmood  
**Deputy Chief Executive, Securities Commission, Malaysia**

NIK RAMLAH MAHMOOD is Deputy Chief Executive of Securities Commission Malaysia (SC). She is also Executive Director of the SC’s Enforcement Division and a member of the Board of Directors of the Securities Industry Development Corporation (SIDC), the training and education arm of SC.

Nik Ramlah has been involved in many of the SC’s regulatory and developmental initiatives for the Malaysian capital market such as the development of the Islamic capital market, bond market, venture capital industry, fund management and rationalisation of the regulatory framework.

In the area of corporate governance, Nik Ramlah was actively involved in the preparation of Malaysian High Level Finance Committee Report on Corporate Governance which was released in 2001. She chaired the Finance Committee’s Working Group on Legal and Regulatory Reform which was one of the two working groups established by the Finance Committee. Nik Ramlah played a key role in the preparation of a 5-year Corporate Governance Blueprint for Malaysia which was released in the first quarter of 2011 and the new Malaysian Code on Corporate Governance which released in March 2012. She is also an active member of the OECD Asian Roundtable on Corporate Governance. Between 2004-2007 Nik Ramlah was a member of Malaysia’s Corporate Law Reform Committee and chaired the Working Group on Corporate Governance and Shareholder Rights.

Nik Ramlah is a member of the EXCO of Asian Institute of Finance (AIF) and sits on the Professional Development Panel of the International Centre for Education in Islamic Finance (INCEIF) the global university for Islamic Finance.

Nik Ramlah obtained a First Class Honours in Law from the University of Malaya and LLM and PhD from the University of London. For her PhD, she was a recipient of a scholarship from the Association of Commonwealth Universities.

Prior to joining the Securities Commission in 1993, Nik Ramlah was an Associate Professor in the Faculty of Law, University of Malaya.
Hubertus Graf von Plettenberg, MA  
Senior Vice President, Corporate Management, DEG-Deutsche Investitions- und Entwicklungsgesellschaft mbH

Since 2010 Graf Plettenberg, born 1958, works as Senior Vice President Corporate Management with DEG-Deutsche Investitions- und Entwicklungsgesellschaft mbH. DEG member of KfW banking group, finances investments of private companies in developing and transition countries. As one of Europe's largest development finance institutions, it promotes private business structures to contribute to sustainable economic growth and improved living conditions.

Graf Plettenberg joined DEG in 1996 as spokesman of the Company until 11/2001. Afterwards he worked as Director Organization and from 05/2003 to 09/2010 he was heading the Manufacturing Industries and Services Department.

From 1992 to 1995 he was working in Slovenia as an adviser to a Slovene bank for a Slovene-German SME Loan scheme.

Before 1992 Graf Plettenberg was personal assistant to vice minister with the Federal Ministry for Economic Cooperation and Development. After serving voluntarily as an officer with the German paratroops he studied medieval philosophy and history. He is married and father of 6 children.
Dr. Andreas Roemer
Managing Director, Global Head of Emerging Markets, Equity & Fixed Income Portfolio Management, DWS Investment GmbH, Frankfurt

Dr. Roemer is Global Head of Emerging Markets, Equity & Fixed Income Portfolio Management, Frankfurt.

He joined DWS in 1999 as an analyst for US corporate bonds, became head of the DWS Credit team in 2003. Since 2006 he has been in charge of the credit platform Investment Grade of Deutsche Asset Management in Europe; implemented a sustainable investment process and the use of credit derivatives. Roemer established the convertible team on the fixed income platform in 2007; in 2009 his responsibilities were extended to Fixed Income High Yield as well as Micro research for Europe/Asia. Since 2010 he has been in charge of the fixed income platform in India and he successfully established the emerging markets credit team. As of 2011 he took over as Head of Emerging Markets to form a globally integrated platform across all classes. Prior to DWS he worked as an assistant professor at the University of Dortmund.

He graduated from the University of Dortmund with a degree in Business Mathematics. He joined the PhD programm of the Universities of Dortmund and Bochum; Holds a PhD in economics (Dr.rer.pol.).
Christian Strenger

Director, DWS Investment GmbH, Frankfurt/Germany; Member of the 'German Government Commission on Corporate Governance'; Director, Center for Corporate Governance, HHL Leipzig Graduate School of Management

Christian Strenger is a member of the 'German Government Commission on Corporate Governance' as well as Director/'Center for Corporate Governance' at the HHL Leipzig Graduate School of Management.

Furthermore he is a member of several Supervisory Boards [('DWS Investment GmbH', Frankfurt, a leading international mutual fund manager; 'Evonik Industries AG' (Essen), 'Fraport AG' (Frankfurt), 'The Germany Funds' (New York/Chairman), 'TUI AG' (Hannover) and 'Hermes Equity Ownership Services Limited' (London)]. He is also an advisor for capital markets, corporate finance and asset management matters.

Internationally, he is Past Chairman (2005/06) of the 'International Corporate Governance Network' (ICGN) and a member of the 'Private Sector Advisory Group' of the World Bank's/IFC's Global Corporate Governance Forum.

Mr. Strenger received his Masters of Business Administration (Banking, Finance, Taxation) from the University of Cologne. After bank training and traineeships in Corporate Finance and Asset Management in Germany, London and New York, he assumed investment banking responsibilities at Deutsche Bank Head Office Frankfurt in 1972. In 1982 he became General Manager (incl. Asset Management) at Deutsche Bank, London Branch. From 1986 to 1991 he was Chief Executive of the Investment Banking activities of Deutsche Bank in New York. From 1991 to 1999 Mr. Strenger was CEO of DWS Investment GmbH in Frankfurt/Main.
Sidharta Utama currently is a full-professor at the Faculty of Economics University of Indonesia (FEUI) and is the chairman of the management board of the Indonesian Institute for Corporate Directorship. He obtained his undergraduate degree majoring in accounting from FEUI in 1987, MBA degree majoring in finance and information system from Indiana University in 1990, and PhD degree majoring in accounting from Texas A&M university in 1996. He earned a professional certification of Chartered Financial Analyst (CFA) in 1999. At present, he also serves as a member of Tax Oversight Committee Ministry of Finance, a member of the National Management Board of the Indonesian Institute of Accountants, an independent commissioner at PT Axa Mandiri Financial Service and a member of audit committee in three publicly listed Indonesian companies. He currently serves as a member of the Board of Trustee at the University of Indonesia. In the past, he has served in various positions at FEUI, including the head of the Department of Accounting and the vice dean on academics. He also was a member of the Indonesian Financial Accounting Standard Board. He has published his research work in international journals as well as national journals. His research interests currently is in the area of corporate governance.
Josef Winter
Chief Compliance Officer, Siemens AG

Josef Winter has been Chief Compliance Officer of Siemens AG since July 1, 2010. In this role he manages operations and sales-related topics within the framework of the Siemens Compliance Program. This also includes further increasing its efficiency and practicability.

Compliance is not just a program but the way in which Siemens does business.

After completing his studies in electrical engineering and electronics at the Rheinisch-Westfälische Technische Hochschule Aachen (RWTH), Josef Winter began his career in 1984 in Erlangen as an engineer in the development and project planning section of the rail vehicles business. From there, he switched to the European sales outfit covering long distance trains until finally in 1993, he assumed responsibility for Siemens’ entire rail engineering business in China. After a number of other postings, November 2002 saw him take over as head of the Siemens Regional Company in Korea. In March 2004, he was elected Chairperson of the German-Korean Chamber of Commerce and Industry and he held this position until he left Korea. From November 2004, Winter headed up Siemens’ sales and service organization in Germany.
Burcin Yurtoglu (Ph.D. University of Vienna, Austria; Habilitation, University of Vienna, Austria) is Professor at WHU – Otto Beisheim School of Management, where he holds the Chair of Corporate Finance. Before joining the WHU, Prof. Yurtoglu served on the faculty of the University of Vienna, Department of Economics. During his academic career, he was a visiting scholar at the Cambridge University (Judge Business School), Science Center Berlin (WZB), Central European University (Budapest), Sabanci University (Istanbul) and Fudan University (Shanghai).

He has conducted research and consulting projects with major companies, regulatory agencies, research centers in Austria, Turkey and at the IFC, the World Bank.

His research interests include corporate governance, corporate finance and competition policy with a focus on emerging markets. He has published in international journals including the Economic Journal, European Economic Review, Journal of Corporate Finance, Journal of Law and Economics and many others.
### List of Participants

<table>
<thead>
<tr>
<th>Title</th>
<th>First Name</th>
<th>Last Name</th>
<th>University/Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prof. Dr.</td>
<td>Burcin</td>
<td>Yurtoglu</td>
<td>WHU - Otto Beisheim School of Management</td>
</tr>
<tr>
<td></td>
<td>Philip</td>
<td>Armstrong</td>
<td>Global Corporate Governance Forum</td>
</tr>
<tr>
<td>State Secretary</td>
<td>Hans-Jürgen</td>
<td>Beerfeltz</td>
<td>German Federal Ministry for Economic Cooperation and Development</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Bistra</td>
<td>Boeva</td>
<td>University of Sofia</td>
</tr>
<tr>
<td>Evelynne</td>
<td></td>
<td></td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>Patrick Daniel</td>
<td></td>
<td>Chisanga</td>
<td>Muchanga Investments Ltd.</td>
</tr>
<tr>
<td>Gian Piero</td>
<td></td>
<td>Cigna</td>
<td>European Bank for Reconstruction and Development</td>
</tr>
<tr>
<td>George</td>
<td></td>
<td>Dallas</td>
<td>Corporate Governance at F&amp;C Investments</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Hana</td>
<td>Horak</td>
<td>University of Zagreb</td>
</tr>
<tr>
<td>Isimkah</td>
<td></td>
<td>Ibuakah</td>
<td>International Finance Corporation</td>
</tr>
<tr>
<td>Claudia</td>
<td></td>
<td>Kruse</td>
<td>APG Investment</td>
</tr>
<tr>
<td>John Lim</td>
<td></td>
<td>Kok Min</td>
<td>Singapore Institute of Directors</td>
</tr>
<tr>
<td>Nik Ramlah</td>
<td></td>
<td>Mahmood</td>
<td>Securities Commission Malaysia</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Andreas</td>
<td>Pinkwart</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
<tr>
<td>Graf</td>
<td></td>
<td></td>
<td>KfW Group</td>
</tr>
<tr>
<td>Christian</td>
<td></td>
<td></td>
<td>HHL - Center for Corporate Governance</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Sidharta</td>
<td>Utama</td>
<td>Indonesian Institute for Corporate Directorship</td>
</tr>
<tr>
<td>Dr.</td>
<td>Andreas</td>
<td>Roemer</td>
<td>DWS Investments GmbH</td>
</tr>
<tr>
<td>Josef</td>
<td></td>
<td>Winter</td>
<td>Siemens AG</td>
</tr>
<tr>
<td>Jürgen Christian</td>
<td></td>
<td>Regge</td>
<td>Fritz Thyssen Stiftung</td>
</tr>
<tr>
<td>Marjory</td>
<td></td>
<td>Pavia</td>
<td>Global Corporate Governance Forum</td>
</tr>
<tr>
<td>Alexey</td>
<td></td>
<td>Volynets</td>
<td>Global Corporate Governance Forum</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Marc-Steffen</td>
<td>Rapp</td>
<td>HHL - Center for Corporate Governance</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Michael</td>
<td>Wolff</td>
<td>HHL - Center for Corporate Governance</td>
</tr>
<tr>
<td>Christian</td>
<td></td>
<td>Kohl</td>
<td>HHL - Center for Corporate Governance</td>
</tr>
<tr>
<td>Lucy</td>
<td></td>
<td>Schmelzle</td>
<td>HHL - Center for Corporate Governance</td>
</tr>
<tr>
<td>Anthony</td>
<td></td>
<td>Pizarro</td>
<td>TireStamp Inc.</td>
</tr>
<tr>
<td>Dr.</td>
<td>Dave Guarin</td>
<td>Saceda</td>
<td>Saceda Youth Lead</td>
</tr>
<tr>
<td>Franklin</td>
<td></td>
<td>Nakpodia</td>
<td>Northumbria University</td>
</tr>
<tr>
<td>Sergii</td>
<td></td>
<td>Tryputen</td>
<td>International Finance Corporation</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Cynthia Afriani</td>
<td>Utama</td>
<td>University of Indonesia</td>
</tr>
<tr>
<td>Carlo</td>
<td></td>
<td>Funtanilla</td>
<td>Glass Lewis &amp; Co.</td>
</tr>
<tr>
<td>Dr.</td>
<td>Erick</td>
<td>Outa</td>
<td>Strathmore Business School</td>
</tr>
<tr>
<td>Sandra</td>
<td></td>
<td>Mottoh</td>
<td>Bank of America Merrill Lynch</td>
</tr>
<tr>
<td>Sidney Custodio</td>
<td></td>
<td>Pereira</td>
<td>Securities and Exchange Commission of Pakistan</td>
</tr>
</tbody>
</table>
### List of Participants

<table>
<thead>
<tr>
<th>Title</th>
<th>First Name</th>
<th>Last Name</th>
<th>University/Company</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Adrian</td>
<td>Ogun</td>
<td>Jonah Capital Nigeria - Private Equity</td>
</tr>
<tr>
<td></td>
<td>Dr. Henning</td>
<td>Stein</td>
<td>DWS Global Financial Institute</td>
</tr>
<tr>
<td></td>
<td>Loty</td>
<td>Salazar</td>
<td>International Finance Corporation</td>
</tr>
<tr>
<td></td>
<td>Djimmer</td>
<td>Yetsenga</td>
<td>Syntrus Achmea Asset Management</td>
</tr>
<tr>
<td></td>
<td>Christian Bachmann</td>
<td>Bachmann</td>
<td>Klima ohne Grenzen gemeinnützige GmbH</td>
</tr>
<tr>
<td></td>
<td>Jennifer Omobolaji-Epoyun</td>
<td>Omobolaji-Epoyun</td>
<td>University of Huddersfield</td>
</tr>
<tr>
<td></td>
<td>Boubacar</td>
<td>Younoussa Siddo</td>
<td>Hamburg School of Business Administration</td>
</tr>
<tr>
<td></td>
<td>Catherine</td>
<td>Lawton</td>
<td>Financial Reporting Council</td>
</tr>
<tr>
<td></td>
<td>Sisay</td>
<td>Zenebe</td>
<td>Ethiopian Institute of Architecture, Building Construction and City Development</td>
</tr>
<tr>
<td></td>
<td>Volkan</td>
<td>Bayram</td>
<td>Capital Markets Board of Turkey</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Junghee</td>
<td>Lee</td>
<td>Kwansei Gakuin University</td>
</tr>
<tr>
<td></td>
<td>Suna</td>
<td>Erden</td>
<td>Capital Markets Board Of Turkey</td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Ayse Karaevli Yurtoglu</td>
<td>Erulas</td>
<td>Sabanci University</td>
</tr>
<tr>
<td></td>
<td>Batchuluun</td>
<td>Nyambuu</td>
<td>State Property Committee, Mongolia</td>
</tr>
<tr>
<td></td>
<td>Vandan</td>
<td>Darkhanbaatar</td>
<td>State Property Committee, Mongolia</td>
</tr>
<tr>
<td></td>
<td>Dorj</td>
<td>Erevgiilkham</td>
<td>State Property Committee, Mongolia</td>
</tr>
<tr>
<td></td>
<td>Enkhtuul</td>
<td>Buyanjargal</td>
<td>State Property Committee, Mongolia</td>
</tr>
<tr>
<td></td>
<td>Andrei George</td>
<td>Costin</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
<tr>
<td></td>
<td>Peter</td>
<td>Luknar</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
<tr>
<td></td>
<td>Manish Malladi</td>
<td>Costin</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
<tr>
<td></td>
<td>Martin Kempgen</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sascha Meissner</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Luis Manuel Villarreal</td>
<td>AMEC GmbH</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
<tr>
<td></td>
<td>Holger Weth</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sangmin Jun</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Kyle Wilson</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Abdul Hameed Tutakhail</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td>Prof. Dr.</td>
<td>Bernhard Schwetzler</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hyung Sik Kim</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Enrique Figueroa Navarro</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ashutosh Garg</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Jan Schulz</td>
<td>HHL Leipzig Graduate School of Management</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Josphine Ndambuki</td>
<td>Egerton University</td>
<td></td>
</tr>
</tbody>
</table>
### 4 List of Participants

<table>
<thead>
<tr>
<th>Title</th>
<th>First Name</th>
<th>Last Name</th>
<th>University/Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prof. Dr.</td>
<td>Henning</td>
<td>Zülch</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
<tr>
<td></td>
<td>Eunhye</td>
<td>Song</td>
<td>Martin Luther University Halle-Wittenberg</td>
</tr>
<tr>
<td></td>
<td>Magdalena</td>
<td>Janus</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
<tr>
<td></td>
<td>Surya Wirawan</td>
<td>Widiyanto</td>
<td>Ma Chung University</td>
</tr>
<tr>
<td></td>
<td>Abdulai</td>
<td>Kassim</td>
<td>Universität Leipzig</td>
</tr>
<tr>
<td></td>
<td>Álvaro</td>
<td>Díaz Bustamante</td>
<td>Universität Leipzig</td>
</tr>
<tr>
<td></td>
<td>Vy Lan</td>
<td>Ha</td>
<td>Universität Leipzig</td>
</tr>
<tr>
<td></td>
<td>Anja Miorasoa</td>
<td>Randriamiarina</td>
<td>Universität Leipzig</td>
</tr>
<tr>
<td></td>
<td>Christian</td>
<td>Jelev</td>
<td>University of Sofia</td>
</tr>
<tr>
<td></td>
<td>Philipp</td>
<td>Gmehling</td>
<td>HHL Leipzig Graduate School of Management</td>
</tr>
</tbody>
</table>
### Evaluation (from 37 participants)

<table>
<thead>
<tr>
<th>Evaluation</th>
<th>Average</th>
<th>Min.</th>
<th>Max.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Presenters knowledge dissemination</td>
<td>4.8</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>2. Quality of discussions</td>
<td>4.3</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>3. Participant interaction with presenters and in discussions</td>
<td>4.0</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>4. Conference leadership</td>
<td>4.6</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>5. Material and handouts</td>
<td>4.4</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>6. Overall quality of the handouts</td>
<td>4.7</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>7. Did the conference meet its stated objectives?</td>
<td>4.7</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>8. Did the conference meet your needs?</td>
<td>4.4</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>9. Were you satisfied with the conference arrangements and organization?</td>
<td>4.8</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>10. What did you like best about the conference?</td>
<td></td>
<td></td>
<td>4.5</td>
</tr>
<tr>
<td>Quality of participants and speakers</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interaction of academics with participants</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The &quot;Performance Session&quot;</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exchange of news and knowledge</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Good organization and hospitality</td>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Presentation on corruption</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality of material and handouts</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversity of participants</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. What did not work so well in your opinion?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>More academic work, integrated into practice</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>More discussion time</td>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Some topics to complicated for extern listeners</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Session on South Eastern Europe</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. Should this conference be repeated in two or three years?</td>
<td>Yes, in 2yrs</td>
<td>Yes, in 3yrs</td>
<td>yes(no yrs statement)</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>1</td>
<td>23</td>
</tr>
<tr>
<td>13. Any other comments?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Great time-keeping, structure and speakers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Increase the number of presentations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Please send us the presentations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Glad to be participant in the conference</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Very efficient and friendly local organization team</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>