The Role of Stock Exchanges in Corporate Governance in Asia

Draft Background Report

By Shanthy Rachagan, Associate Professor, School of Business, Monash University

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1. About this Report

This report presents the results of a survey questionnaire that was circulated to Asian stock exchange and other institutions in mid-2016 with the aim of determining the key roles of stock exchanges in promoting sound corporate governance in Asia. This report seeks to illustrate how stock exchanges participating in OECD-Asian Roundtable on Corporate Governance have been promoting good corporate governance outcomes.

About the methodology:

- 12 Asian economies responded to the questionnaire, including Bangladesh, Chinese Taipei, China, Hong Kong (China), India, Indonesia, Korea, Malaysia, Philippines, Singapore, Thailand and Vietnam.
- The survey covers 14 stock exchanges (including two in India and two in Vietnam).
- The combined market capitalisation of the stock exchanges was approximately USD 13 trillion as at September 2016.

The Task Force on the Role of Stock Exchanges in Corporate Governance in Asia was formed under the umbrella of the OECD Asian Roundtable on Corporate Governance in 2016. Its objective is to engage Asian stock exchanges in a discussion on the ways in which they can play a meaningful role in advancing corporate governance frameworks and practices. The Task Force intends to serve as a unique platform to examine these corporate governance issues, using the *G20/OECD Principles of Corporate Governance* ("the *Principles*"), revised in 2015, as a benchmark. The launch meeting of the Task Force on the Roles of Stock Exchanges in Corporate Governance will take place after the OECD Asian Roundtable on Corporate Governance in Seoul, Korea on 25 October 2016. The objective of the meeting is to identify key priority issues for Asian stock exchanges. Preliminary results will be presented from a survey based on questionnaire responses by Asian stock exchanges in mid-2016. Participants will engage in discussions on the following areas pertaining to the role of stock exchanges in promoting corporate governance: (i) the regulatory framework, (ii) ensuring timely and quality disclosure and market transparency, (iii) supervision and monitoring, (iv) enforcement powers and (v) the corporate governance ecosystem.

Table 1. Stock exchanges in Asia, as of 14 September 2016

Stock Exchanges	Market Capitalisation (USD)	No. of Listed Companies
Dhaka Stock Exchange	40	750
Shanghai Stock Exchange	3986	1122
Hong Kong Stock Exchange	3325	1682
Bombay Stock Exchange	1682	5749
National Stock Exchange of India	1642	1696
Indonesian Stock Exchange	345	518
Korean Stock Exchange	1294	1910
Bursa Malaysia	437	904
Singapore Stock Exchange	663	769
Chinese Taipei Stock Exchange	861	758
Thailand Stock Exchange	379	634
Philippines Stock Exchange	245	263
Hanoi Stock Exchange	70	378
Ho Chi Minh Stock Exchange	50	307

Source: Author’s research

2. Introduction

Corporate governance frameworks in Asia have gone through a major transformation since the Asian financial crisis. The Asian financial crisis, which was perceived as having been significantly exacerbated by poor corporate governance practices, set off a first wave of reform of corporate governance frameworks in tandem with the initial development of the *OECD Principles of Corporate Governance* in 1999. During this period, policymakers, regulators and stock exchanges in Asia introduced new laws, codes and listing requirements, as well as established new institutions, such as institutes of directors and capital markets supervisory authorities to enhance corporate governance practices. During this period, national corporate governance codes in Asia were largely modelled upon the *Principles*.

According to a 2009 OECD report on the role of stock exchanges in corporate governance, the primary direct contribution of stock exchanges to ensuring sound corporate governance has traditionally been the issuance of listing and disclosure standards and the monitoring of compliance with these standards (Christiansen et al., 2009).Other roles performed by stock exchanges have included promoting corporate governance recommendations for listed companies, clarifying existing aspects of the corporate governance framework, monitoring compliance with legislation and subsidiary securities regulation and collaborating with other regulatory bodies, most often securities regulators, in promoting good governance outcomes. On the enforcement side, stock exchanges typically enforce on breaches of their rules. Sanctions imposed are generally limited to administrative sanctions such as reprimands, fines, suspension and delisting. Stock exchanges have also complemented the regulatory role by providing training to directors, conducting corporate governance studies and supporting national initiatives.

Yet recent global trends have led to changes in the ownership structure of stock exchanges, which in turn affect the scope of their enforcement responsibilities. In many countries stock exchanges were initially established as member-owned organisations or government institutions, yet since the mid-1990s, many stock exchanges have been transformed into privately-owned for-profit corporations. This trend towards demutualisation, privatisation and self-listing has raised some concerns regarding the appropriateness of some regulatory functions of stock exchanges (OECD, 2016). Policymakers in a number of countries have reacted to the transformation of domestic exchanges into private companies, at times removing some regulatory powers from stock exchanges, and at times allowing stock exchanges to retain their regulatory powers on the condition that they separate their regulatory and commercial functions.

In the midst of these developments, there have also been a large number of mergers and acquisitions in the stock exchange industry, involving companies from sectors such as electronic trading platforms, financial information providers, financial index providers, data management and asset management. The structural changes that have followed from these mergers and acquisitions activities have been accompanied by a shift in the revenue structure

of stock exchanges. The share of revenues from listing new companies and issuer services, for example, has dropped globally, meanwhile, the share of revenues from derivatives trading and over-the counter markets has increased, making income from trading (cash, capital markets, derivatives and over-the-counter) a larger source of revenue for stock exchanges (OECD, 2016).

Finally, another important global trend relates to the emergence of new categories of competitors in the stock exchange industry and the movement away from the trading of specific stock in a single venue. Firstly, there is an emerging fragmentation between stock exchanges (on-exchange) and a number of other trading venues (off-exchange); and secondly, there is fragmentation between transactions where investors have access to pre-trade information about buying and selling interests (lit or displayed trading) and transactions where pre-trade information is not made available (non-displayed trading, often referred to as dark trading). These developments have led to a move away from the economies of scale and network externalities that had made stock exchanges considered as natural monopolies sustained by regulatory advantages. (Shorter et al., 2014)

Since the initial promulgation of the *Principles* in 1999, Asian stock exchanges have enlarged their regulatory role to embrace a wider palette of corporate governance concerns. They have contributed to the development of corporate governance standards and encouraged their application to listed companies while collaborating with supervisory, regulatory and enforcement agencies. As the emphasis of policymakers in the region has shifted towards implementation and enforcement of these standards, one trend has been the move to make corporate governance codes or guidelines applicable on a "comply-or explain basis". However, changes in the stock exchange industry, including demutualisation, industry consolidation and off-exchange trading are leading to changes in the role of Asian stock exchanges in carrying out certain regulatory functions.

These developments are recognised in the *Principles*, which were revised in 2015 to include a new chapter on "institutional investors, stock markets and other intermediaries". The revised *Principles* note that, "regardless of the particular structure of the stock market, policy makers and regulators should assess the proper role of stock exchanges and trading venues in terms of standard setting, supervision and enforcement of corporate governance rules. This requires an analysis of how the particular business models of stock exchanges affect the incentives and ability to carry out these functions" (OECD, 2015).

This report is focused on the following five themes:

1. Regulatory framework of stock exchanges
2. Disclosure and transparency
3. Supervision and monitoring
4. Enforcement powers
5. The corporate governance ecosystem

3. The Regulatory Framework of Stock Exchanges

Questions for discussion

1. **Is the interaction between the Exchanges and the securities regulators conducive to an efficient evolution of a corporate governance framework?**
2. **Does the regulatory framework provide clear demarcation of responsibilities and powers of authority?**
3. **Are there overlaps and duplications between the areas of purview of the Exchanges and the Securities Regulators, and if so what is being done to overcome these duplications?**
4. **Is the hybrid approach (i.e. requirements which are key are mandated in the laws or listing rules while good standards or best practices of corporate governance are set out in the codes as recommendations) effective or does it merely encourage a compliance mindset?**
5. **How can Stock Exchanges balance between the challenges of setting rules with acknowledged costs for compliance and the difficulty of simultaneously quantifying the "benefits" to the market?**
6. **When the securities regulators issue the listing rules, how can the different interpretations of these rules between the Securities Regulators and Exchanges be mitigated?**
7. **What role should Exchanges play in the development of the CG Code?**
8. **If Exchanges do not play a role in the introduction of the Codes, how do they ensure that the Code is reviewed overtime to ensure relevancy and effectiveness in the current dynamic environment?**
9. **What are the ways to ensure continuous flow of funds for Exchanges?**
10. **How can budgetary independence be ensured?**
11. **In the case of demutualised exchanges, how can they ensure that enough focus is placed on corporate governance? Are these measures effective?**

In Asia, corporate governance has come a long way, particularly with regard to improvement in the legal and regulatory framework, such as updates to company and securities laws, regulations, listing rules and corporate governance codes. However, a strong legal and regulatory framework accompanied by effective monitoring, supervision and enforcement of the forerunner regulators, the Stock Exchanges, is imperative to further enhance corporate governance in the region.

The relationship between various regulatory authorities (the Securities and Exchange Commission or its equivalent, the Stock Exchange, Company Registrar, Central Bank and police) is an important element of effective enforcement of capital market laws. Investor-led surveys and corporate governance scorecards show that as a whole, regulators have stepped up their efforts to achieve better corporate governance though almost all jurisdictions in Asia show a state-driven, top-down style of corporate governance reform (CLSA et al., 2014 and

ACGA 2016). This overlapping jurisdiction between the authorities poses certain challenges. Table 2 depicts the supervisory and enforcement authorities in participating jurisdictions.

The division of regulatory responsibilities between the exchanges and the securities regulators, though shared, is slanted toward the securities regulators. Listing rules are either introduced or approved by the securities regulators. Stock Exchanges in Hong Kong, Singapore, Korea, Malaysia, Chinese Taipei and Thailand and Indonesia enact listing rules which they subsequently supervise, monitor and enforce. These Exchanges share the regulatory functions with the securities regulators. In Bangladesh, China, India, Pakistan, Philippines and Vietnam the securities regulators enact the listing requirements. In these emerging economies, the standard setting is the primary responsibility of the securities regulators who issues listing rules and Codes.

Table 2. Regulators and role of Stock Exchanges

Securities Regulators	Stock Exchanges	Other Enforcement Authorities	SE input in standard setting	SE enacts LR
Bangladesh Securities and Exchange Commission (BSEC)	Dhaka SE	Bangladesh Bank	No	No
China Securities Regulatory Commission (CSRC)	Shanghai SE	China Securities Regulatory Committee (CSRC) State-owned Assets Supervision and Administrative Commission (SASAC)	No	No
Securities and Futures Commission (SFC) of Hong Kong	SE of Hong Kong	Hong Kong Exchange and Clearing Limited (the Listing Department and the Listing Committee) The Companies Registry	Yes	Yes
Securities and Exchange Board of India (SEBI)	Bombay SE	Serious Fraud Investigations Office (SFIO) Ministry of Corporate Affairs (MCA)	No	No
Securities and Exchange Board of India (SEBI)	National SE of India	SFIO and MCA	No	No
Financial Services Authority of Indonesia	Indonesia SE	Otoritas Jasa Keuangan (OJK)	Yes	Yes

Securities Regulators	**Stock Exchanges**	**Other Enforcement Authorities**	**SE input in standard setting**	**SE enacts LR**
Financial Services Commission	Korea SE	Ministry of Justice Fair Trade Commission	Yes	Yes
Securities Commission Malaysia	Bursa Malaysia	Companies Commission of Malaysia and Central Bank of Malaysia	Yes	Yes
Securities and Exchange Commission of Pakistan (SECP)	Pakistan SE	State Bank of Pakistan (SBP)	No	No
Securities and Exchange Commission of Philippines	Philippines SE	Bangko Sentral and Insurance Commission	No	No
Monetary Authority of Singapore	Singapore SE	Accounting and Corporate Regulatory Authority (ACRA) Commercial Affairs Department (CAD)	Yes	Yes
Securities and Futures Bureau Chinese Taipei	Chinese Taipei SE	Financial Supervisory Commission	Yes	Yes
Securities and Exchange Commission, Thailand	SE of Thailand	Bank of Thailand	Yes	Yes
State Securities Commission, Vietnam	Hanoi SE	Ministry of Finance	No	No
State Securities Commission, Vietnam	HCM SE	Ministry of Finance	No	No

In participating countries where the securities regulators enact listing requirements and Codes, the challenge is maintaining a suitable balance in the division of regulatory responsibilities between the Exchanges and the securities regulators. If the Exchange has to report to the securities regulator, it might be less aggressive in attracting listings. In addition, the effectiveness of such an arrangement rests on the independence of the securities regulator. The concern here is that if the securities regulator is not entirely independent from political influence, its decisions might be biased. Regardless of the division of regulatory responsibilities, to minimise potential conflicts of interest, exchanges are encouraged to issue listing rules and enforce them. Steps in this direction have been taken in mainly advanced and emerging markets.

Due to the ownership and control structures in Asia, legal and regulatory frameworks should continue to develop effective protection to minority shareholders. There are two structures commonly observed in listed companies in Asia:

- Simple majority ownership commonly found in family or state-owned companies; and
- Complicated network ownership comprising a nexus of shareholder agreements or interlinked boards that grant control to a family. These two ownership structure may lead to a subservient board which has been appointed by the controlling shareholder without debate.[1]

Given the above, the legal and regulatory frameworks should reinforce measures to improve disclosure and transparency of beneficial ownership and control structures as well as related party transactions. More effective disclosure and transparency regimes will require better use of technology and international co-operation among relevant authorities. Further, managers, board members, and controlling shareholders should disclose structures that give insiders control disproportionate to their equity ownership. The corporate governance framework should ensure that disclosure is made in a timely, accurate and equitable manner on all material matters regarding the corporation, including the financial situation, ownership and governance of the company. Exchanges should continue to use the opportunities created by new technologies to enhance the fairness and efficiency of the disclosure process, including submission and dissemination of financial and non-financial information by electronic means. From the survey it can be seen that India has introduced new technologies to enhance the disclosure process for their listed companies.

Further to the above, to ensure an effective and robust disclosure framework under the listing rules, the securities laws in both Singapore and Malaysia impose statutory obligation on companies to comply with continuing disclosure obligations under the listing rules. With such statutory backing, the securities regulators are empowered to take action for breaches of the listing rules (in addition to the Exchanges). The potential legal liability under the law certainly serves as a strong deterrent for breach of disclosure obligations by listed corporation.

[1] OECD (2014), Public Enforcement and Corporate Governance in Asia: Guidance and Good Practices, OECD Publishing. http://dx.doi.org/10.1787/9789264217409-en

It is also important that Exchanges have an independent budget. The source of funding is important as it may give rise to conflict of interest or lack of independence and accountability. These issues are pertinent to the effectiveness of the Exchanges exercising their function. Also, a number of governments in the region, such as Indonesia, Malaysia, Philippines and Thailand are involved in business through state investment funds, giving rise to the potential risk of political influence. Exchanges may not want to or are slow in taking action against government owned or government linked listed companies. The benefits associated with budgetary independence are also important to address going forward, including during market downturns when the Exchange may not be able to function on internally generated revenues. The main source of funding for Exchanges in participating countries can be seen in Table 3.

In the process of demutualisation, the regulatory functions of Exchanges were intensively debated with regards to the extent of conflict of interest. The issue with demutualisation focuses on whether the effectiveness and performance of a stock Exchange increases after it changes its ownership from mutual to for-profit and also how the Exchanges balance their regulatory and commercial functions.

In the Asian region, some Exchanges have been demutualised for some time with advanced and emerging economies having been demutualised for more than ten years. Research by the London and Hong Kong stock exchanges show that after undergoing demutualisation both of the institutions showed a positive change in their performance. Also, looking at the results for post listing stock price performance the cumulative return was positive and significant, even in crisis times. Alongside with the high increase in market capitalization for both analysed stock exchanges after demutualization are signs of an increased commercial efficiency (Altaf, Saadia et al., 2009).

To ensure this increased commercial efficiency in demutualised Exchanges, regulatory and profit making functions were separated in a number of markets like that of Hong Kong, Malaysia and Singapore. Through this separation, Exchanges which had been demutualised were able to maintain their regulatory responsibilities and hence play a role in corporate governance.

For example, Bursa Malaysia is a demutualised Exchange subject to oversight by the Securities Commission of Malaysia and has an internal framework for managing conflicts of interest. The measures that have been put in place to address conflicts of interest include the following:

- Separation of the regulatory functions from the commercial functions to ensure that these functions operate independently; and that business units within Bursa Malaysia are not in a position to influence any supervisory or regulatory decisions made by Regulation;
- Establishment of the conflicts of interest guidelines which stipulate the framework and appropriate controls and measures to ensure systematic identification and management of conflicts of interest in an effective and timely manner;

- Establishment of Regulatory Committees to make significant regulatory decisions; the members of which are appointed by the Board and consist of individuals from various professional and industry participants; and
- External oversight by the Securities Commission where the Securities Commission shall take all actions and make all decisions in relation to Bursa Malaysia as a listed issuer which includes monitoring compliance and taking enforcement action involving Bursa Malaysia.

As part of the Securities Commission monitoring activities, Bursa is required to submit an Annual Regulatory Report (ARR) to the Securities Commission with details of the extent and scope of its compliance with its statutory duties and obligations. The Securities Commission conducts a regulatory audit upon submission of the ARR. There are also discussions between the Securities Commission and Bursa Malaysia from time to time on operational and strategic supervisory matters. The Securities Commission's approval and concurrence is also required for changes to the rules and for new or enhancement of products provided by Bursa Malaysia.

In the questionnaire, the Singapore Exchange states that there is a perception that SGX may face a conflict of interest as it is both a listed company and a regulator. However, the Exchange believes that these two roles are complementary and that high quality regulations sustain an enduring marketplace, which is in the interests of shareholders. To ensure that any perceived or actual conflict of interest between SGX group's regulatory responsibilities and commercial interests is addressed, the Exchange has implemented self-regulatory organisation conflict guidelines. Further, SGX also actively mitigates the risks through the following:

- An independent Regulatory Conflicts Committee that reviews potential conflicts;
- A new independent Listings Advisory Committee comprising individuals who are at the top of their profession and well equipped with legal, corporate finance and other relevant knowledge, to review upcoming IPOs; and
- Regular training and assessment of regulatory staff on potential conflict risks.

SGX is also in the process to set up a subsidiary to carry out its regulatory role. This is aimed at strengthening the safeguards to manage potential conflicts of interest between its commercial and regulatory roles. The new subsidiary will be governed by a separate board of directors and its chairman. The majority of directors will be independent of SGX, though SGX's chief regulatory officer will be the chief executive of the subsidiary and will report to the subsidiary's board. This is expected to be set up by the second half of 2017.

However, conflict may exist in some countries like Bangladesh where more than 40% of the stock exchange board members are themselves investors while playing the dominant role in decision making for the Exchange (Khondkar Ibrahim Khaled, former deputy governor of Bangladesh Bank). This may require Exchanges to be insulated from their regulatory function and tighter reporting to the securities regulators.

Today many stock exchanges in Asia operate as listed companies but some like Shanghai SE, Chinese Taipei SE, Thailand SE, Hanoi SE and Ho Chih Minh SE are still run as state-owned enterprises. Furthermore, the largest emerging market stock exchanges in China operate as semi-public institutions and are membership institutions directly governed by the China Securities Regulatory Commission (CSRC).

Table 3. The Funding of Stock Exchanges

Stock Exchanges	Model of Stock Exchange	Main funding
Dhaka SE	Demutualised for profit	Self-funding
Shanghai SE	Association not for profit	Public funding
SE of Hong Kong	Demutualised for profit	Self-funding
Bombay SE	Demutualised for profit	Self-funding
National SE of India	Demutualised for profit	Self-funding
Indonesia SE	Demutualised for profit	Self-funding
Korea SE	Demutualised for profit	Self-funding
Bursa Malaysia	Demutualised for profit	Self-funding
Pakistan SE	Demutualised for profit	Self-funding
Philippines SE	Demutualised for profit	Self-funding
Singapore SE	Demutualised for profit	Self-funding
Chinese Taipei SE	Governmental not for profit	Self-funding
SE of Thailand	Governmental not for profit	Self-funding
Hanoi SE	Governmental not for profit	Public funding
HCM SE	Governmental not for profit	Public funding

In all participating countries the Exchanges have not played a leading role in the introduction of the Codes but in some cases, they have been consulted and have provided input such as in Hong Kong, Singapore and Malaysia. However, whilst not initially in the driving seat, stock exchanges, in most cases alongside with capital market regulators and investor organisations

soon become key players in developing corporate governance codes and recommendations for these purposes. This is because though the Code is in itself not developed by the Exchange, disclosures of compliance with the Code is set out in the Listing requirements. Within the participating countries, all countries have a corporate governance code except for Vietnam which plans to introduce one in 2017. These codes are predominantly based on the OECD Principles of Corporate Governance. This is shown in Table 4.

It is evident from Table 4, that in most markets the Code is reviewed over time. This will seek to ensure relevancy and the effectiveness of the Code. Given that exchanges operate in a dynamic environment, it is imperative for exchanges to monitor and seek to ensure appropriate revisions to the Code.

Table 4. Corporate Governance Codes in Asia

Stock Exchanges	Corporate Governance code	Year of Code	Amendment	Comply or Explain	Does the Exchange implement or enforce the Code	Monitoring and supervision of listed companies
Dhaka SE	Yes	2004	2006	Yes	No	Yes
Shanghai SE	Yes	2002	No	No (mandatory)	Yes	Yes
SE of Hong Kong	Yes	2004	2012	Yes	Yes	Yes
Bombay SE	Yes	1999	2014	Yes	Yes	Yes
National SE of India	Yes	1999	2014	Yes	Yes	Yes
Indonesia SE	Yes	2001	2006, 2016	No	Yes	Yes
Korea SE	Yes	1999	2003, 2016	No (voluntary)	Yes	Yes
Bursa Malaysia	Yes	2000	2007, 2012, 2016	Yes	Yes	Yes
Pakistan SE	Yes	2002	2012	Yes	No	No
Philippines SE	Yes	2002	2009	No (mandatory)	Yes	Yes

Singapore SE	Yes	2001	2005, 2012	Yes	Yes	Yes
Chinese Taipei SE	Yes	2002	2011, 2015	Yes	Yes	Yes
SE of Thailand	Yes	1999	2002, 2006, 2012	Yes	Yes	Yes
Hanoi SE	No	No	No	No	No	Yes
HCM SE	No	No	No	No	No	Yes

4. Transparency and Disclosure

Questions for discussion

1. **Should the Exchanges be the primary party to monitor the application of disclosure requirements?**
2. **What other efforts can Exchanges take to improve quality of disclosures and change the compliance mindset?**
3. **How do Exchanges address the issue of regulatory burden especially for smaller listed corporations?**
4. **How do Exchanges incentivise better disclosure?**
5. **It has been noted that template disclosures provided by Exchanges have given rise to boilerplate disclosures. Is there a better alternative to providing template disclosures?**
6. **Are there any mechanisms or methods to ensure that disclosure of corporate governance practices reflects the actual practices of companies?**
7. **Is it desirable for the continuous disclosure requirements in the listing rule to have statutory backing?**
8. **Do the Asian Exchanges have the technical infra-structure to detect in a timely manner potential market manipulation caused by non-disclosure?**
9. **What can Exchanges do if they have insufficient resources for implementation of their rules as highlighted by the Exchanges in Bangladesh, China, India, Indonesia, Pakistan, Philippines & Vietnam?**
10. **Besides facilitating corporate disclosure, should Exchanges be responsible to support the broader integrity and anti-corruption agenda?**

To ensure market integrity, one of the key roles of Exchanges is the promotion of transparency and disclosure. The transparency and disclosure requirements are usually encompassed in the companies and securities regulations as well as the listing rules. The key objective of a disclosure framework is aimed primarily to maintain market integrity and investor protection. Generally, most markets in Asia have a strong focus on ensuring the provision of timely, adequate and accurate information. However, it is noted that the comprehensiveness of the disclosure framework and quality of disclosures vary significantly between the markets in Asia. It is found that advanced and advanced emerging markets such as Hong Kong, Singapore, Malaysia and Thailand, tend to have a comprehensive framework and better quality disclosures compared with the other markets.

Therefore, the challenge in this area is to ensure the provision of a comprehensive framework coupled with strong culture for disclosure on the part of the listed companies. In emerging markets in Asia, interpretation of disclosure practices has been rather liberal and have fallen significantly short of national and international standards as can be seen in the Indonesia questionnaire. They have provided that based on the assessment of ASEAN Corporate Governance Scorecard, one of their major issues is disclosure of share ownership, inadequate

disclosure of related party transaction, material information and insider trading, directors' remuneration and audit fees. Hence, in markets where the framework is less developed, the first step is to develop the framework. Following that, there is a need to ensure that listed companies understand and are able to comply with the requirements. For this purpose, a certain degree of capacity building is required.

In the more developed markets, stock exchanges have to place more attention on improving the quality of disclosures made by the listed issuers in tandem with investors' expectations. Advanced economies like Hong Kong and Singapore have cited challenges in the quality of disclosure. Hong Kong's response on the OECD questionnaire stated:

> *In our regular reviews of issuers' corporate governance disclosures based on the CG Code, we noted varied quality of explanations given by issuers for non-compliance. Some issuers gave informative reports that set out why they departed from a particular CP, what they would do to rectify the deviation, and whether the departure was temporary. In general, however, there is room for improvement. We observed a certain degree of "boilerplate" style explanations which were vague and had been repeated year after year.*

It is noted that the culture and behaviour of listed issuers, the mindset of "the less said the better" often stand in the way of quality disclosures. Exchanges can consider addressing this mindsetby issuing guides to assist listed issuers in understanding and applying listing requirements and the Code as well as frequently asked questions to provide clarification to listed corporations on the listing requirements.

From the questionnaires, it can be seen that there are issues with the quality of disclosure in Bangladesh, China, India, Indonesia Pakistan, Philippines and Vietnam.

Generally, the disclosure requirements can be broadly categorised into 3 types – periodic disclosures, continuous disclosure of material information and disclosure of corporate governance statements.

Periodic disclosure

Periodic disclosure refers to the interim (whether quarterly or semi-annually) and annual financial statements as well as annual reports issued by listed companies. Typically, the contents of the financial statements are prescribed in national legislations or accounting standards, and these do not fall within the purview of the stock exchanges. The role of stock exchanges in this regard relates to only the non-audited financial statements, particularly the notes to the financial statements, as well as the annual reports, where the contents or additional information are prescribed in the listing rules. The exchanges will be responsible for monitoring compliance with the disclosure requirements prescribed.

Continuous disclosure of material information

Immediate announcement of material information or specific prescribed events by the listed companies is now becoming increasing common in the listing rules across the markets. Whilst listed companies generally comply with the obligation, it has been noted that the quality of disclosure remains an issue, especially in terms of prospective information which is often inadequate. In addition, while the application of the definition of materiality avoids a one-size-fits-all approach, it may also lend itself to differing interpretations. To address these issues, some Exchanges in Hong Kong Singapore and Malaysia have issued guidance to supplement the mandatory requirements on disclosure. The guidance should, among others, aid listed companies to better understand and comply with disclosure obligations by providing clarification and illustrations on how the disclosure requirements should be applied in practice (as is the case in Malaysia and Thailand). In some instances where the market is less mature, more prescription in the listing rules may be necessary.

In monitoring compliance with the listing requirements in this area, Bursa Malaysia, SGX and Hong Kong Exchanges:

- review corporate announcements to ensure that the announcements are clear and contain adequate information to aid informed investment decisions
- peruse circulars for clarity and adequacy of information
- reviews media articles on corporate information to ensure that all material information is disclosed to the market

Disclosure of corporate governance statements

Apart from material information, disclosure of corporate governance practices with reference to corporate governance codes provides an effective communication tool for shareholders and investing public to understand the corporate governance practices of companies. In this regard, most exchanges currently require their listed companies to disclose compliance in annual reports on a "comply or explain" basis, that is, listed companies are required to state whether or not the company (and its management) have complied and, if not, the extent of, and reasons for, non-compliance, with the code or guidelines. Whilst this approach has been successful in promoting good corporate governance processes and structure, it has also lead to a compliance mindset among the listed companies. Commonly across the markets, disclosures have been found to be boilerplate and generic in nature with little explanation on how governance is being addressed in the listed companies. It has been noted that in some Asian countries like Hong Kong and Singapore, the Exchanges have introduced sample reporting templates as guidance for companies. This has made supervision easier.

In the region, most companies do not disclose adequate details about board members and their contributions to the board particularly the independent directors. For example, the survey results of China, India, Indonesia, and Vietnam show that companies could do more to disclose the board and board committee(s) evaluation process, nomination committee composition and process to identify and select nominees as well as use of an external search

firm. Other key areas where disclosures are found to be lacking include disclosure of share ownership, inadequate disclosure of related party transaction, material information and insider trading, directors' remuneration, role of the audit committee and their activities during the year and audit fees.

The challenge faced in a number of jurisdictions like Bangladesh, China, India, Indonesia Pakistan, Philippines and Vietnam is that disclosure is still seen as a heavy burden by the corporates. The Philippines Stock Exchange stated in the survey that though their CG standards are highest among the large companies and conglomerates, as evidenced by the local and regional recognition earned by some of these companies for their corporate governance practices, however this is not the case for small listed companies and there needs to be more done to promote corporate governance among these companies to ensure that the whole market is fair, transparent and attractive to investors.

From the survey, some of the challenges faced are monitoring quality (Hong Kong), trying to find the balance between reducing burden for listed companies on information and providing relevant information to investors (Korea), encouraging good corporate governance practices among listed companies as fundamental and vital to their business operations (Thailand) and having different interpretation of the regulations, corporations not being familiar with electronic filing system, limitations of Public Enterprises in implementing certain elements of governance requirements and time lapse between formulation of enforcement code and emergence of non-compliances in the corporate world (India).

In efforts to improve quality of disclosures, the Hong Kong Exchange conducts regular reviews of issuers' corporate governance disclosures based on the corporate governance Code. The latest review findings are contained in the "Analysis of Corporate Governance Practice Disclosure in March Year-end 2015 Annual Reports". Furthermore, the Exchange conducts regular spot-checks on the issuers' compliance with the Code. Bursa Malaysia and more recently, the Singapore Exchange, have also undertaken similar assessments and publicise their findings on the website. Bursa Malaysia also provides the individual listed companies with reports on their specific findings to enable them to improve their corporate governance practices and disclosures.

5. Supervision and Monitoring

Questions for discussion

1. **What is the role of the stock exchanges in the supervision and monitoring of the compliance of the CG Code?**
2. **Having highlighted the importance of close monitoring of listed companies to enhance CG practices, should Exchanges introduce a corporate surveillance framework which involves detecting possible irregularities or corporate misconduct through the regular monitoring of financial and non-financial red flags and corporate developments? If yes, what other initiatives should be developed under the surveillance framework?**
3. **Immediate disclosures are required for Exchanges to detect market manipulation and insider trading. This has to be done in real-time so that they can be instantaneously detected. Do Exchanges have the updated technical infrastructure to ensure instantaneous detection of market manipulation?**
4. **Do Exchanges have to have in place a robust supervisory framework to ensure investors are provided with timely, adequate and accurate information to make informed investment decisions?**
5. **The challenge of fighting abusive related party transactions is as much about implementation and enforcement as the policy framework itself. Do the Exchanges in Asia have adequacy of the framework, supervision and monitoring to combat related party transactions?**
6. **Should Asian markets introduce cumulative or dual voting approach system for the appointment and re-appointment of independent directors?**

Exchanges in Asia often play the role as frontline regulators in ensuring that the market is fair, orderly and informed. In undertaking this, Exchanges enforce their own rules through monitoring activities such as reviewing disclosures required under the rules, monitoring market activities and taking action when there is a breach of the rules.

As discussed above, the capital market is generally governed by company and securities laws, listing rules and Codes that apply on a ‘comply or explain’ basis. In some instances in Asia as stated earlier, the Exchanges role is in supervision and monitoring of its own listing rules (Hong Kong, Singapore, Korea, Malaysia, Chinese Taipei, Thailand and Indonesia) and sometimes in countries with a single regulator, to monitor and report breaches to the securities regulators (Bangladesh, China, India, Pakistan, Philippines and Vietnam).

Stock exchanges generally supervise and monitor compliance which typically deal with disclosure of material information, periodic disclosures and CG disclosures. It is noted from the survey that in Korea the CG Code is adopted on a voluntary basis whereas in China and

Philippines it is mandatory. In some participating countries like Bangladesh and Pakistan, it is unclear as to who looks into the implementation and enforcement of the Code as neither the securities regulators nor the Exchanges monitor companies' compliance with the Code. However, as the Codes in the region are increasingly being introduced on a "comply or explain" basis, the monitoring aspects become correspondingly more important. As such all Exchanges must ensure that they have proper monitoring mechanisms to carry out this role. From the survey it would appear that most Exchanges have a listing division or equivalent which carries out monitoring and supervision. In some instances where the Exchange detects a breach that does not fall within its purview, it will forward the information to the Securities Regulator.

Monitoring of ongoing disclosure requirements is typically a matter falling within the sole purview of Exchanges given the obligations under the listing rules. However there are some aspects of disclosures such as those in the area of takeovers or accounting standards which falls under the purview of other regulators such as the securities regulators. All Exchanges of the participating countries performed the role in monitoring disclosure requirements as shown in Table 4.

Given their role as the information gateway for the investor community, Exchanges are in the position to ensure the requisite information is disseminated to the investors through announcements and company filings which are made available through sites operated by the Exchanges. Therefore, the Exchanges have to have in place a robust supervisory framework to ensure investors are provided with timely, adequate and accurate information to make informed investment decisions.

Exchanges should leverage on technology and facilitate efficient dissemination of information via technical platforms. India has recently upgraded their technical infra-structure. From February 2012, BSE has launched a state-of-the-art filing portal called "Listing Centre" which enables all listed companies to file their disclosures, submissions and filing of applications for listing various instruments (along with supporting documents), electronically. The portal allows companies to also register their Digital Signatures and then file digitally signed documents/submissions for added safety and establishing authenticity. With effect from March 21, 2016, BSE has made it mandatory for all listed companies to file their important compliances (list provided) through the Listing Centre portal only and no physical filings are accepted or recognized. BSE has adopted the international best practice of using XBRL based reporting for filing compliances with the regulations under SEBI Listing Regulations, 2015, making it the only Exchange in India to do so. To facilitate the reporting in XBRL format, BSE is providing a free Excel Utility to the entities listed on BSE. Users are required to fill in data in the Excel utility and the system automatically generates XBRL based reports while giving an acknowledgement of successful filing to the user.

In monitoring compliance with the listing requirements, there has to be in place a robust corporate surveillance framework which involves detecting possible irregularities or corporate misconduct through the regular monitoring of financial and non-financial red flags

and corporate developments as can be seen in Hong Kong, Singapore, Korea, Malaysia and Thailand. This is done through various methods including looking through announcements and disclosures by listed issuers, scanning other publicly available information and looking into tips from whistleblowers complemented through the use of technologies and tools. The Exchange also reviews financial statements in annual reports of listed issuers to assess if there has been compliance with the LR.

The corporate surveillance framework also involves engaging with directors and auditors of listed issuers and other stakeholders where there is a possible breach of the LR or poor CG practices. In addition the Exchange undertakes thematic studies to detect emerging trends and issues, and conducts in-depth analyses on ways to address these trends or mitigate the issues. This may at times involve amending the LR or issuing directives to listed issuers.

The prevalence of concentrated shareholding in the form of family or state does lend to issues of related party transactions. Many Asian enterprises are part of a large business group, or owned by a controlling shareholder as explained above, with a large network of personal interests. Listed companies are typically controlled by a shareholder owning the majority of the company's shares, either state-related or conglomerate/business group-related often family owned. In both, interlocking corporate forms can serve to entrench control. State-ownership is prevalent in Asian economies. A number of them have established entities to oversee state-owned enterprises (SOEs) (for example, Temasek Holdings in Singapore, Khazanah Nasional in Malaysia, and the State-owned Assets Supervision and Administration Commission of the State Council in China) (OECD, 2011). State-ownership is perhaps one of the defining traits of the economic landscape of China. However in many markets, individuals and their families are dominant shareholders (for example, in Hong Kong, China). These individuals or families may control a large group of companies, with relatives and their advisers typically sitting as directors on group company boards. As with some other Asian markets, families remain large owners of Indian companies. Many of these families have focused on improving corporate governance as a means of attracting investment, with large Indian companies now known globally to fund managers. Finally, the conglomerate ownership structure, as seen in Korean chaebols, sees a large grouping of companies, with in many cases a large dominant entity retaining a disproportionate interest in cash flow when compared to ownership interest. Through the utilisation of a pyramid structure, control can be exerted via a network of controlled companies.

Related party transactions in themselves may not be to the detriment of the companies. The shareholding landscape however does give rise to the potential for abusive related party transactions. Hence, even though some related party transactions are not abusive, under certain conditions the transactions can allow controlling shareholders or executives of a company to benefit personally at the expense of non-controlling shareholders of the company. Abusive related party transactions are therefore a challenge to the integrity of Asian capital markets.

In reality, minority shareholders in Asian jurisdictions, often lack suitable ways of obtaining effective redress. Therefore Exchanges should play an important role in curbing abusive related party transaction.

In most of the Exchanges, effective monitoring and curbing of abusive related party transactions remains high on the agenda of corporate governance reform in Asia. While much progress has been achieved over the past decade in developing an effective legal and regulatory framework in Asia, remaining challenges to enforcement and inadequate board oversight have facilitated abusive related party transactions. The challenge of fighting abusive related party transactions is as much about implementation and enforcement as the policy framework itself. This is where the adequacy of the framework, supervision and monitoring vary across markets in Asia. (OECD, 2014)

In their capacity to monitor market conduct, Exchanges can make an important contribution to the prevention of fraud and other abusive practices. Exchanges are usually committed to report breaches of market integrity or disclosure rules by virtue of memorandums of understanding with market regulators or subject to similar statutory or regulatory obligations. One of the key challenges of Exchanges in the area of related party transactions is access to information. Common problems faced by Exchanges is that information and records are not kept properly or destroyed. Another frequent problem is that information is kept in other jurisdictions and hence not available to the investigating Exchange due to lack of assistance from the foreign authorities. At times, the information required by the Exchange is in the hands of third parties and hence the authorities should work with the Exchange to procure the information expeditiously. (OECD, 2014)

Another area which exchanges tend to focus on is board effectiveness. It is now even more important than ever for Exchanges to monitor, given the global economic slowdown and high profile corporate governance failures. Boards are operating in an increasingly complex environment that demands new levels of commitment and engagement. Therefore, how directors are nominated and elected, the role of the board and shareholder participation in this process are important to optimizing the opportunities to have an effective board that adds real value to companies, shareholders and stakeholders. While the legal and regulatory framework as well as 'comply or explain' recommendations in codes can contribute to facilitating good board practices, the effectiveness of actual board behaviour cannot be mandated and hence has to be monitored by Exchanges.

Further, the board serves as a fulcrum balancing the ownership rights enjoyed by shareholders with the discretion granted to managers to run the business. In this regard, the board should exercise strategic guidance of the company, effective monitoring of management and be accountable to the company and its shareholders. Moreover, the board is also required to balance the different interests and classes of shareholders, and others. The board's responsibilities inherently demand the exercise of objective, independent judgement. However, given the ownership structure in Asia, directors often remain appointees of controlling shareholders. There remains little that minority shareholders can do to influence

the outcome of director elections. Independent directors, charged with the task of ensuring the objective judgment of the board are neither strong nor independent-minded enough in most cases to substantially influence decision making by the board. In the UK for instance, to address concerns by the investment community about the governance of premium listed companies with a controlling shareholder and the protection of the interests of minority shareholders, the UK Listing Authority had introduced the listing rules relating to the dual-voting system for the election or re-election of independent directors on 2 May 2014. The rules take effect on 16 May 2014. Under the said system, directors proposed for election or re-election as independent directors will be subject to approval by the shareholders as a whole and the independent shareholders. If the approval is not obtained, the listed company may propose a further resolution 90-120 days after the first resolution, and the resolution must be approved by the shareholders of the listed company (no distinction between controlling or non-controlling shareholders). This will be applicable in the case of a listed company having controlling shareholders.

The issue then is whether shareholders should be given an express right to appoint independent directors. Should the Asian markets consider adopting this dual voting system or cumulative voting for the appointment and re-appointment of independent directors?

In Hong Kong, in addition to enacting the Rules, the Exchange monitors the issuers' continuous obligations to comply with the Rules and where there are found to be breaches of the Rules, the Exchange is empowered to impose public and/or private sanctions against the issuer and/or its directors for the relevant breaches.

6. Enforcement

Questions for discussion

1. **As resources, competence and independence remain challenges for enforcement actors in Asia, should Exchanges be promoting more self-regulation? If not, what are the other possible measures or alternatives?**
2. **What steps can Exchanges take to enforce proper implementation of the Code?**
3. **How should Exchanges enforce disclosures?**
4. **Should Exchanges have broad sanctioning powers, including deterrent powers?**
5. **Should Exchanges have broad powers to act immediately and take pre-emptive actions?**
6. **Should Exchanges be empowered to take pre-emptive actions such as injunctions, freezing of assets or suspensions?**
7. **Should Exchanges be allowed to delist companies without having to refer to their securities regulators?**

Most of the Exchanges in participating countries have enforcement powers except for Bangladesh, Pakistan and Vietnam as seen in Table 5. The power of these stock exchanges as frontline regulators, is limited to enforcing breaches of listing rules.

In this regard, SGX have also in September 2015 set up a Listings Disciplinary Committee ("LDC") and a Listings Appeals Committee ("LApC") to strengthen the enforcement powers. The LDC will handle serious breaches of listing rules and LApC will offer an avenue for parties to appeal against disciplinary actions.

Enforcement however, remains the most challenging aspect of the Exchange's role as it often takes place in an environment where the damage is already done and the Exchange's credibility is affected by the perception it is slow.

Further, though most stock exchanges have the power to compel listed companies to surrender documents and information related to an investigation, they do not have the power to enter the premises of these companies to ensure compliance or conduct investigations without prior notice. Where companies or their officers do not comply with directives from the stock exchange, there is little it can do to enforce compliance other than take disciplinary action and impose sanctions for non-compliance, or to refer the case to the statutory regulator or the courts of law to compel performance where relevant.

Most stock exchanges do not have power over unregulated persons and cannot compel them to give evidence, which may impede investigations into breaches of listing rules. In cases of related-party transactions, for example, there are significant challenges in monitoring compliance with disclosure of indirect shareholdings and nominee structures. It is difficult to link the parties involved, even when the regulator has strong suspicions of a related-party

transaction. In cases where the stock exchange's powers are curtailed or there is a limitation to address or enforce the breach, it is beneficial to have a system in place for referral of cases to the statutory regulator. The system should also incorporate an arrangement where the stock exchange is kept informed of the outcome of the referral.

Further, as enforcement actions are always only taken after non-compliance has occurred and investigations normally take a long time to complete, it is important for Exchanges to be able to act immediately to prevent damages to shareholders. As such the issue is if Exchanges should be empowered to take pre-emptive actions such as injunctions, freezing of assets or suspensions.

The Shanghai Stock Exchange, National Stock Exchange of India and Ho Chi Minh Stock Exchange all responded to the OECD questionnaire and said that one of their biggest challenge was enforcement. One of the main challenges cited by the OECD and the survey responses from participating countries is insufficient resources for enforcement. Vietnam has further added that their challenge is that they do not enact listing rules and Codes and also do not enforce them.

The challenges with enforcement still persist even after these issues were highlighted and recommendations made in *Public Enforcement and Corporate Governance in Asia: Guidance and Good Practices* (OECD, 2014). This report highlighted various weaknesses with enforcement and the main reasons being budget, competence of enforcement staff and. independence of enforcement officers.

Further, the sanctioning power of the participating stock exchanges vary widely. Most Exchanges have the power to impose fines, suspend or de-list but some Exchanges like the Dhaka stock Exchange and the Pakistan Stock Exchange do not have any such powers. Earlier surveys have addressed the gaps of enforcement in Asia so this report will look at the powers of delisting.

Though most Exchanges fine and suspend trading, forced de-listing has been relatively rare. The question of de-listing has to be viewed not only from the perspective of companies for which it is punitive but also from the perspective of shareholders which may be differentially affected by delisting. From the perspective of shareholders, delisting may not help address abuses and may further disadvantage them unless adequate protection is in place in the applicable legislation or the constitution of the company. Due to the infrequency of delisting in Asia, this issue has not been addressed. It is further an important issue in this region which has mainly concentrated ownership structure which raised particular minority shareholder protection risks.

Table 5. Enforcement Powers of Stock Exchanges

Stock Exchanges	Enforcement powers
Dhaka SE	No
Shanghai SE	Yes
SE of Hong Kong	Yes
Bombay SE	Yes
National SE of India	Yes
Indonesia SE	Yes
Korea SE	Yes
Bursa Malaysia	Yes
Pakistan SE	No
Philippines SE	Yes
Singapore SE	Yes
Chinese Taipei SE	Yes
SE of Thailand	Yes
Hanoi SE	No
HCM SE	No

Enforcement is the most visible element and has a considerable impact on market perception of the Exchange. When enforcement is weak or delayed, it fails in its role as a sufficient deterrent. It is imperative that enforcement authorities act swiftly to penalise breaches, using their powers to decide the mode of proceedings and the nature of the actions taken, whether criminal or administrative, and using a wide range of sanctions, from warnings or caution letters to imprisonment. Exchanges should be allowed to act swiftly, independently and without fear or favour. Also, the penalties imposed by regulators and the courts should be proportionate to the severity of the violation and sufficiently deterrent.

7. The Corporate Governance Ecosystem

The Training of Directors

Questions for discussion

1. **Should Directors be compelled to attend continuous training and education?**
2. **Should Stock Exchanges be responsible for the continued education of directors?**
3. **Should Stock Exchanges outsource education to other parties?**
4. **What other methods can be used to ensure that directors are kept informed?**

Promotion of good CG practices and strengthening of CG culture cannot be achieved by the Exchanges alone. In this respect, it is necessary for Exchanges to be supported by strong corporate governance ecosystem.. This means Exchanges need to work collaboratively with key players in the ecosystem to improve corporate governance culture in their markets.

Directors of large corporations have had plenty to say about the demands and costs of meeting new corporate governance and disclosure requirements. Many directors feel their responsibilities are expanding and the liability they are subject to increasing, so it is important that board members receive the best preparation available to help them handle a tough job that is only getting tougher.

Director education programs are one way which can help board members enhance their abilities to deal with today's more complex business challenges. It is essential that directors update their knowledge routinely as an integral element of continuing education. This responsibility frequently falls within the purview of the corporate secretary but, it is increasingly also the role of Exchanges. An out of date director is not only useless, it is most likely a legal liability. They will require continuing education, and also when new laws and regulations are issued.

The Hong Kong Exchange provides annual as well as topical Listing Rule training to issuers' representatives including directors. Most of the training seminars have been recorded and posted on HKEX's website as webcasts. The most recent topical training seminars were on the Environmental, Social and Governance Reporting Guide. In order to further support issuers and their directors, the Exchange provides guidance to issuers by way of Guidance Letters and Letters to Issuers, amongst other guidance materials on the Exchange's website.

The Indonesian and Vietnam stock exchanges also conduct workshops and training events to cover a variety of topics such as AGM procedures. In some instances they collaborate with other regulators or key stakeholders to provide training to cover accounting standards and even the role of the media in enhancing corporate governance. Some Exchanges like in India and Chinese Taipei also provide training for their directors but it is done through their subsidiaries. Only Bangladesh does not provide continuous education to directors.

Singapore has developed a disclosure guide for companies in complying with key aspects of governance and for investors in assessing information provided by companies. Investors can use these

disclosure guides to review and compare companies' governance practices, and better assess the companies they invest in. The disclosure guide is part of SGX's ongoing efforts to raise awareness of corporate governance and improve the overall quality of corporate governance. SGX also conducts educational seminars and courses periodically and actively promotes corporate governance and transparency.

Bursa Malaysia conducts advocacy programmes for directors and practitioners in its listed issuers. These programmes are conducted after extensive research on corporate governance trends and issues in the Malaysian market. The Exchange also seeks feedback from listed issuers and gatekeepers on topics that should be covered in these programmes. In addition, it reviews the annual reports of listed issuers and any perceived gaps in disclosures are addressed through various measures including conducting targeted advocacy programmes which address these gaps. These programmes are made available to all listed companies without any cost to them. The programmes are financed through the Capital Market Education and Integrity Fund. For intermediaries, the Exchange has conducted advocacy programs to educate the market participants on issues such as governance, management of conflicts of interest and maintaining high standards of business conduct. These programs are either carried out by industry subject-matter experts or in collaboration with industry associations such as Malaysian Investment Banks Association (MIBA) and Association of Stockbroking Companies Malaysia (ASCM).

The interaction of stock exchanges with the ecosystem

Questions for discussion

1. **Is interaction with the ecosystem important for Exchanges? If yes, what are the good practices in engaging with other players?**
2. **How do exchanges encourage or incentivise the relevant key players in their markets to play their role?**
3. **Directors are the primary stewards of a company. How should shareholders exercise their "stewardship" function most effectively? What is the right relationship between the two groups?**
4. **Investor stewardship comprises two parts: stewardship of the capital with which they have been entrusted (the "fiduciary duty" concept); and stewardship over the companies in which they invest (the "ownership concept"). Both are critical. How do institutions manage and disclose the conflicts of interest they face?**
5. **The role of institutional investors in actively engaging with companies in an informed way remain both a source of concern and a source of tension with regulators in some markets. How can this be resolved?**
6. **How do state pension/investment institutions manage the political interference they face?**
7. **Should pension funds ("asset owners") drive stewardship, with investment funds ("asset managers") playing a secondary role?**
8. **Are national and international awards important to promote good corporate governance?**

In Asia with a concentrated shareholding structure, non-controlling shareholders have to be 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. Differences among shareholders interests, goals and investment horizons represent an inevitable feature of companies. Differences of another sort, however, can arise where a single family or group enjoys effective control of an enterprise or where the state owns a significant stake in the company. In such cases, shareholders may ask themselves not what basic strategic decisions will best guide the company, but whether company assets and/or cash flows are being: (i) diverted by management or by the controller for their own benefit; or (ii) sacrificed in the interest of social or political objectives set by the state. This can lead to inequitable treatment of shareholders through insider trading, abusive self-dealing or other abuse of non-controlling shareholders" rights. Although all Asian jurisdictions have introduced measures, or have enhanced existing ones, to provide non-controlling shareholders with protection from expropriation by controlling shareholders, they have had mixed success.

Therefore, additional measures may have to be adopted by Exchanges as the frontline regulators. These should include: (i) ensuring that regulators have the capacity to monitor companies in fulfilling transparency requirements and to impose substantial sanctions for wrongdoing; (ii) clarifying and strengthening the duty of board members to act in the interest of the company and all of its shareholders; (iii) prohibiting indemnification of board members by companies for breaches of their duties; and (iv) providing shareholders who suffer financial losses, relative to controlling shareholders, with more effective private and collective rights of action against guilty controlling shareholders or directors. However, this cannot be achieved by the Exchanges alone. They will have to rely on the ecosystem.

It has been argued around the world that gatekeepers have not lived up to expectations. This is also true in Asia. Steps need to be taken to ensure that they do their jobs professionally, and manage and disclose, or take steps to avoid, conflicts of interest. Although auditors work for issuers and report to boards, investors rely on them to objectively assess a company's financial statements. Similarly, securities analysts need to provide disinterested assessments of a company's prospects not unduly influenced by their firms' investment banking activities. It is critical that credit rating companies, though compensated by the issuers they rate, ensure that they are free of conflicts of interest that could affect their ratings' independence. When the independence of gatekeepers and their integrity become compromised, market confidence suffers. Codes of conduct or ethics for each group of gatekeepers could be helpful.

Other than Bangladesh, Pakistan and Vietnam, all Exchanges interact with other players in different levels such as institutes of directors, shareholder watchdog group and professional gatekeeper associations. Advanced markets like Hong Kong and Singapore have a progressive ecosystem.

The Hong Kong Exchange collaborate with a number of professional bodies and industry associations that promote corporate governance of listed companies. They include Asian

Corporate Governance Association, Hong Kong Institute of Directors, The Chamber of Hong Kong Listed Companies and The Hong Kong Institute of Chartered Secretaries. The Hong Kong Exchange speaks with interested stakeholders including the Hong Kong Institute of Directors, investor and professional groups on a regular basis when formulating their listing policies. Further, they conduct preliminary discussions with these organisations to gauge the extent of support for the policy proposals. As an ongoing effort, the Exchange also takes part in a number of corporate governance training events organised by professional bodies and industry groups.

However, the Hong Kong Exchange believe that there should be more investor interest and involvement in the debate of corporate governance issues. For instance, they only had few responses from investors to their corporate governance consultation a few years ago but they believe this situation is improving as can be seen in their more recent consultations.

Singapore and Malaysia have an extensive ecosystem. Besides the securities regulators, SGX collaborates with the Securities Investors Association of Singapore ("SIAS"), Singapore Institute of Directors ("SID"), Chartered Secretaries Institute of Singapore (CSIS), Institute of Singapore Chartered Accountants ("ISCA"), Investment Management Association of Singapore and CFA Society Singapore.

Bursa Malaysia engages with regulators and other professional bodies and institutions to promote corporate governance. They include the Audit Oversight Board which exercises effective audit oversight in order to promote confidence in the quality and reliability of audited financial statements in Malaysia. They also engage with the commercial crimes division within the police force which assists to investigate commercial crimes. This commercial crimes division also has an intelligence and research department which involves intelligence collection and analysis of commercial crime patterns to improve the effectiveness of investigations and an international cooperation department which is responsible for establishing communication and cooperation with the police force in other jurisdictions. There is a commercial division in the High Court that adjudicates on commercial cases. These judges are trained in commercial law and the Exchange and Securities Commission Malaysia works closely with the judiciary through the Judicial and Legal Training Institute to enhance judges' knowledge on securities laws and related issues. Bursa also engages with various professional gatekeeper associations comprising the Malaysian Institute of Accountants (MIA), Institute of Internal Audit Malaysia (IIAM) and the Malaysian Chartered Secretaries Association (MAICSA) play a role in upholding good governance among practitioners. The Exchange collaborates with MIA through its participation in various accounting and auditing committees such as the Financial Reporting Standards Implementation Committee, Financial Statements Review Committee, Capital Market Advisory Committee, Audit and Assurance Standards Committee and the Ethics Standards Board. The Exchange's role on these Committees focuses on impacts to listed issuers from changes to the Financial Reporting Standards, International Accounting and Auditing Standards and MIA by-laws. It also collaborates with MIA by issuing briefing notes to listed issuers and conducting advocacy programmes to raise awareness on key audit matters.

In addition to industry associations, the Minority Shareholder Watchdog Group ("MSWG") actively protects the interests of minority shareholders by encouraging good CG among listed issuers. It acts as a platform and collective voice to minority shareholders and advises on voting at general meetings of our listed issuers.

The information provided by gatekeepers is taken on board where relevant to amend the LR, to be addressed in the CG or CD Guide or conveyed to listed issuers through advocacy programmes which will also advise listed issuers on how to improve their CG practices and disclosures. The Exchange also invites gatekeepers to address directors of listed issuers through advocacy sessions on topical issues pertaining to their areas of expertise.

Malaysia however has not had an active institute of directors as in advanced market like Singapore. This is one of the gaps in the ecosystem that needs to be improved upon. However, MINDA was launched as the Institute of Directors in May 2016. MINDA plans to conduct continuous education programmes for directors which is accredited by the Australian Institute of Company Directors and will also provide a registry of directors for board placements.

In China, the ecosystem is mainly directed by government institutions, under the framework of existing legal system. The strength of this is that there is minimization of differences in regulation conception, higher efficiency of supervision practice, more cooperation and higher information transparency. However, the weakness is the participation of listed firms is weak, and voluntary practices of improving corporate governance are insufficient

Most other participating countries like India, Indonesia and Chinese Taipei collaborate with professional bodies and other institutions but mainly to provide training. Countries like Vietnam and Bangladesh have very weak or no ecosystem. Most participating countries collaborate informally, without an MOU.

Another important aspect of the ecosystem is engaging institutional investors to participate in enhancing corporate governance. In this aspect, Hong Kong, Malaysia and Chinese Taipei have introduced the stewardship code. Institutional investors (pension funds and investment managers) are under increasing pressure to act as "stewards" of the capital they invest and of the assets they invest in (through holding the board to account). The OECD Principles of Corporate Governance note the role investors, in particular institutional investors, play in promoting good corporate governance practices. They discuss the need to facilitate shareholders to exercise their ownership rights. In particular, the OECD Principles expect institutional investors acting in a fiduciary capacity to disclose their overall corporate governance and voting policies and how they manage their conflicts of interests. Malaysia launched its Code for Institutional Investors in 2014, the second code in emerging markets after South Africa. However, Bursa has stated that there has been a lack of commitment by local funds to the code and as a result, its uptake and implementation to date have been poor. The lesson learned from the Malaysian Stewardship Code is that prior to the launch of any stewardship code or principles, the code needs to have the support and commitment of local

funds. This was done by Chinese Taipei before the implementation of their Stewardship Code in 2016. Malaysia has since set up an Institutional Investor Council (IIC) to promote the code and its implementation, as well as overall corporate governance in the country.

Though all Exchanges have been implementing governance and disclosure requirements, not all have it evidenced from its position in local/internal ranking such as Bangladesh, China, India, Pakistan and Vietnam. Hong Kong, Korea, Singapore, Chinese Taipei and Thailand have it also evidenced from international awards.

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