

行政院及所屬各機關出國報告
(出國類別：出席國際會議)

**出席亞洲公司治理協會第 15 次年會(ACGA
15th Annual Conference-Asian Business
Dialogue on Corporate Governance)報告**

出國人員：

金融監督管理委員會證券期貨局

高副組長晶萍

林科長文政

葉專員信成

派赴國家：馬來西亞

出國期間：104 年 11 月 2 日至 11 月 4 日

報告日期：105 年 1 月 7 日

提要表

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計畫名稱：	奉派參加亞洲公司治理協會ACGA第15次年會					
報告名稱：	出席亞洲公司治理協會第15次年會(ACGA 15th Annual Conference-Asian Business Dialogue on Corporate Governance)報告					
計畫主辦機關：	金融監督管理委員會證券期貨局					
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參訪機關：	亞洲公司治理協會年會					
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關鍵詞：	公司治理、亞洲					
報告書頁數：	40頁					
報告內容摘要：	<p>本次會議主題係「公司治理在東南亞興起：建立與利害關係人溝通的橋樑」，討論議題包含「亞洲公司治理綜覽」、「市場環境是否會影響公司的治理水平」、「董事會多元化趨勢」、「董事會失能跡象」、「盡責管理守則在亞洲發展」、「股東參與公司經營決策實務」、「企業永續發展」、「董事長如何稱職領導董事會」、「東協公司治理法規執法的發展與重要議題」、「亞洲家族事業治理」等。ACGA長期研究亞洲公司治理發展，本次會議分析未來公司治理發展趨勢包括：(1)機構投資人盡責管理觀念在亞洲崛起；(2)環境及社會議題將更受到公司重視；(3)公部門治理改革重要性日增；(4)ASEAN區域整合將帶動法規融合；機構投資人如何實踐盡責管理守則是本次會議討論的重點，機構投資人能利用其掌握資金與投票權影響企業公司治理，OECD與ACGA均同時強調此一趨勢。過去我國公司治理改革偏重由上而下方式進行，由主管機關發布各式法規與守則，要求公司遵循，未來推動「機構投資人盡責管理守則」與「公司治理實務守則」有助於強化企業自省及市場監督力量。建議我國未來推動盡責管理守則應注意三個重點：(1)守則推動前應加強與業界的溝通；(2)推動守則應預先考量推動守則可能面臨利益衝突、資訊揭露、濫用股東權力等潛在問題，及可能影響機構投資人簽署意願的因素，包括簽署方式與誘因、訂定相關盡責管理政策範本、揭露配套、現有法規配合守則進行修正等；(3)守則發布後應加強對機構投資人的教育宣導。另在強化我國公司治理實務守則部分，建議應配合近期國際公司治理發展趨勢及OECD公司治理原則修正方向，檢</p>					

討修正我國上市上櫃公司治理實務守則內容，就上市(櫃)公司與機構投資人溝通方式、運用資訊科技輔助股東會進行、強調董事訓練及董事會績效評估之重要性等面向再補強目前最佳實務規範，並請證交所公司治理中心研議強化揭露上市(櫃)公司履行公司治理實務守則的情形，以使公司與機構投資人瞭解守則的實務遵循情形。

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限閱與否： 否

專責人員姓名：

專責人員電話：

列印

行政院及所屬各機關出國報告提要

出國報告名稱：出席亞洲公司治理協會第 15 次年會報告

頁數 含附件：是（限紙本，不含附件計 40 頁）否

出國計畫主辦機關：金管會證券期貨局

出國人員姓名／服務機關／單位／職稱／電話：

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葉信成／金管會證券期貨局／證券發行組／專員／2774-7283

出國類別： 1 考察 2 進修 3 研究 4 實習 5 其他

出國期間：104 年 11 月 2 日至 4 日 出國地區：馬來西亞

報告日期：105 年 1 月 7 日

分類號/財政金融

關鍵詞：公司治理、亞洲

內容摘要：

本次會議主題係「公司治理在東南亞興起：建立與利害關係人溝通的橋樑」，討論議題包含「亞洲公司治理綜覽」、「市場環境是否會影響公司的治理水平」、「董事會多元化趨勢」、「董事會失能跡象」、「盡責管理守則在亞洲發展」、「股東參與公司經營決策實務」、「企業永續發展」、「董事長如何稱職領導董事會」、「東協公司治法法規執法的發展與重要議題」、「亞洲家族事業治理」等。

ACGA 長期研究亞洲公司治理發展，本次會議分析未來公司治理發展趨勢包括：(1)機構投資人盡責管理觀念在亞洲崛起；(2)環境及社會議題將更受到公司重視；(3)公部門治理改革重要性日增；(4)ASEAN 區域整合將帶動法規融合；機構投資人如何實踐盡責管理守則是本次會議討論的重點，機構投資人能利用其掌握資金與投票權影響企業公司治理，OECD 與 ACGA 均同時強調此一趨勢。

過去我國公司治理改革偏重由上而下方式進行，由主管機關發布各式法規與守則，要求公司遵循，未來推動「機構投資人盡責管理守則」與「公司治理實務守則」有助於強化企業自省及市場監督力量。建議我國未來推動盡責管理守則應注意三個重點：(1)守則推動前應加強與業界的溝通；(2)推動守則應預先考量推動守則可能面臨利益衝突、資訊揭露、濫用股東權力等潛在問題，及可能影響機構投資人簽署意願的因素，包括簽署方式與誘因、訂定相關盡責管理政策範本、揭露配套、現有法規配合守則進行修正等；(3)守則發布後應加強對機構投資人的教育宣導。

另在強化我國公司治理實務守則部分，建議應配合近期國際公司

治理發展趨勢及 OECD 公司治理原則修正方向，檢討修正我國上市上櫃公司治理實務守則內容，就上市(櫃)公司與機構投資人溝通方式、運用資訊科技輔助股東會進行、強調董事訓練及董事會績效評估之重要性等面向再補強目前最佳實務規範，並請證交所公司治理中心研議強化揭露上市(櫃)公司履行公司治理實務守則的情形，以使公司與機構投資人瞭解守則的實務遵循情形。

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第一章 前言

本次參加會議係 ACGA 第 15 次年度會議 (Asian Corporate Governance Association 15th Annual Conference) 於 11 月 3、4 日在馬來西亞吉隆坡舉行。

會議主題定調為「公司治理在東南亞興起：建立與利害關係人溝通的橋樑」，為 ACGA 首次於馬來西亞舉辦之大型活動，會議開場邀請馬來西亞證券委員會主席 (Chairman of Securities Commission) Datuk Ranjit Singh 開場致詞。隨後 ACGA 秘書長 Jamie Allen 介紹亞洲各國 2015 年公司治理改革發展情形，並展望未來公司治理發展重要趨勢，接續 9 場研討會討論議題包括「市場環境是否會影響公司的治理水平」、「董事會多元化趨勢」、「董事會失能之跡象」、「盡責管理守則在亞洲發展」、「機構投資人涉入公司經營實務與原則」、「企業永續發展」、「如何稱職領導董事會」、「東協公司治理法規執法的發展與重要議題」等。

本次年會共有來自 24 個國家代表，約 227 人出席，我國除本會代表出席外，尚有臺灣證券交易所股份有限公司公司治理部、財團法人證券投資人及期貨交易人保護中心、臺灣集中保管結算所等代表出席。

本報告共分三章，第一章為前言，說明本次會議大綱及參與情形；第二章摘述本次會議各研討議題之重點；第三章提出本次出席年會之心得與建議。

第二章 會議重點

開場致詞

主講人：馬來西亞證管會主委 Mr. Datuk Ranjit Singh

馬來西亞經歷過亞洲金融危機後，體會到公司治理的重要性，隨即進行修正與強化法律規範之架構。高等財政委員會於 1999 年發表之報告成為該國公司治理改革開端，並於 2000 年發布馬來西亞公司治理守則與成立小股東利益監管團體。自 2011 年起更進入 10 年期強化公司治理計畫，其中包含證管會於 2011 年所實施的資本市場主計畫第二版（Capital Market Masterplan 2），及公布為期 5 年的公司治理藍圖（The Corporate Governance Blueprint 2011），希望藉此強化自律及市場規範，並國際化該國的公司治理文化。

近期強化公司治理之措施包括，於 2012 年修訂最新版的公司治理守則、馬來西亞交易所於 2013 年公布馬來西亞企業資訊揭露指南（Bursa Malaysia Corporate Disclosure Guidelines）、2014 年發布馬來西亞機構投資人守則（Malaysian Code for Institutional Investors）、依東協計分卡進行公司治理評鑑，及自 2016 年強制所有上市公司採用逐案票決等。

另為了加強財務報告的審計品質及可靠性，於 2010 年成立審計監管局（Audit Oversight Board），其主要職責包括：執行政策確認審計制度之有效性、針對註冊會計師的檢查及裁處、與相關單位合作以強化財報規範、督導國內會計師公會建立及採行簽證與道德規範，及改善審計服務的品質。

馬來西亞從編製公司治理藍圖、修正公司治理守則、公布企業揭露指南、修訂交易所上市規則或成立審計監管局與成立小股東利益監管團體等，皆可看出馬來西亞政府扮演著該國公司治理進展之重要角色；此外，東協第一份針對機構投資人所發布的馬來西亞機構投資人守則（Malaysian Code for Institutional Investors）更提昇公司治理之層級，藉由更多利害關係人的參與監督能為該國的公司治理把關。



第一場次：亞洲公司治理綜覽

(Asian Corporate Governance Overview)

主講人：亞洲公司治理協會秘書長 Mr. Jamie Allen

新加坡大學管理學院教授 Mr. Mac Yuen Teen

ACGA 秘書長 Mr. Jamie Allen 首先回顧 CG Watch 2014 之主要內容，表示東南亞各國之公司治理情形已正在進步中。以政策面而言，公司治理正在東南亞崛起，主要係受到東協資本市場論壇（ASEAN Capital Market Forum）及東協公司治理計分卡（ASEAN CG Scorecard）影響，各國無不積極推動相關改革，並互相競爭。



1. 近年亞洲國家在公司治理重大進展：

- (1)新加坡：①金融局(MAS)與警察隊商業事務局(CAD)共同合作調查內線交易案件，此執法策略係新加坡2015年的亮點；②發布新的公司治理揭露指引，並與KPMG合作調查上市公司遵循最佳實務守則的情形；③新加坡交易所2015年成立三個獨立委員會，加強上市政策制訂與檢討及上市條例的執行。

- (2) 馬來西亞：①發布新的環境、社會、治理(ESG)揭露標準；②股東會揭露資訊更為透明(尤其是關係人交易必需採用逐案票決)；③退休基金管理局(KWAP)簽署同意遵循盡責管理守則。
- (3) 泰國：強化國營事業的公司治理；強化會計師行業的管理；強化中小型企業的公司治理。今年度改革的特色在於國營事業及中小企業之治理。
- (4) 印尼(2014年)與菲律賓(2015年)近二年發布公司治理藍圖計畫。
- (5) 東南亞國協(ASEAN)：定期舉辦資本論壇，持續推動ASEAN CG Scorecard，加速區域法規融合與監管合作。

2. ACGA 對臺灣的看法：

ACGA認為臺灣近期公司治政法治改善最大重點在於引進強化董事提名相關資訊揭露的規範，但應留意「廣泛的企業不法行為(Extensive corporate malfeasance)」，認為每月在媒體上可見層出不窮的企業不法行為案件被報導，反映臺灣企業的誠信受到挑戰。Jamie在年會上認為此種現象可以有兩種解讀，正面來說，媒體報導此類重要案件有助於主管機關或相關執法人員能有所做為；反面來說，因為涉及如詐欺、挪用公款、內線交易等議題，顯示企業應該開始注重公司治理及誠信問題。

3. ACGA 對公司治理未來發展趨勢看法：

Jamie 表示，執法(Enforcement)效能在區域內越來越被重視，但在公共治理(Public Governance)仍未見起色，即政府貪腐；公共治理若不能改善，對於現有公司治理之成果可能會有所傷害。Jamie 另提出公司治理未來之發展趨勢：

- (1) 盡責管理守則的觀念在崛起，更多關注將放在機構投資人

如何積極與企業管理階層對話，並影響其重要決定。

- (2) 社會對於天然資源產業的關注與壓力越來越增加，促使公司更重視 ESG 議題，並需賦予更多資源去管理相關議題。
- (3) 東協國家因為區域整合，使得公司在跨境投資變得頻繁，退休金管理與財務金融諮詢服務將逐漸變得重要。
- (4) 當外界對於公部門治理與貪腐產生不滿，外界期待公部門治理改革，認為反貪腐改革係採由下而上的方式進行應比較有效率。

接著，新加坡大學管理學院教授 Mr. Mac Yuen Teen 針對亞洲公司治理發展也分享 4 點觀察：

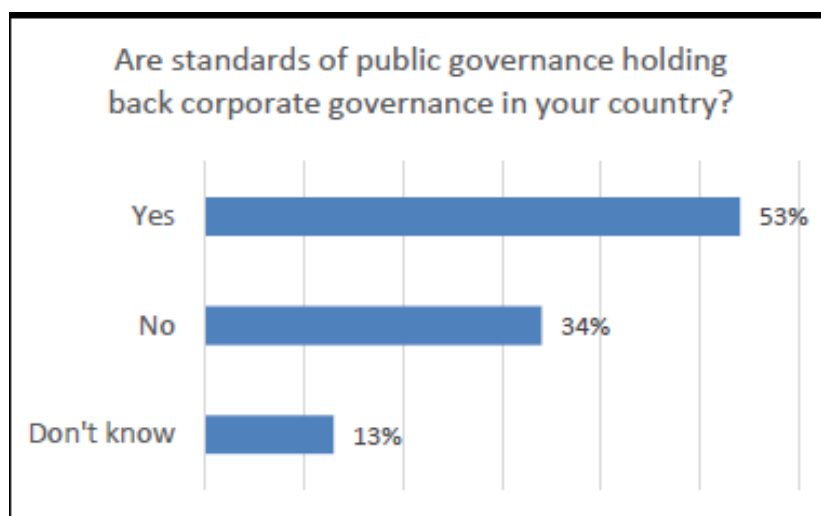
1. 東南亞國協(ASEAN)推動平衡計分卡將逐步帶動該區域國家法規調和與趨同，並提升區域內整體公司治理的表現。
2. 目前各國機構投資人參與公司治理的程度不深，許多國家因而開始推動機構投資人盡責管理守則，以強化資訊透明與公司治理發展。
3. 馬來西亞在改善公司治理環境，於 2011 年發布公司治理藍圖，被認為是最有系統性的改革方法，但即使如此，馬來西亞近期發生一馬發展有限公司(1MDB)弊案，馬國總理也可能涉入該案，這使得主管機關在說服民間企業採行高標準公司治理及道德標準缺乏說服力。
4. 新加坡近期也推動許多公司治理改革措施，主要是因為該國今年主版沒有公司申請上市，甚至去年下市的家數超過新上市公司，為挽救市場信心，除了強化執法有效性，也將思考開放允許雙層股權的公司可以上市，並吸引更多外國公司來新加坡第二上市。

另外 Mr. Mac Yuen Teen 認為面臨未來公司治理挑戰，政府應注意以下三個議題，第一是思考如何降低控制股東壟斷公司決策，並

增進對小股東的保護(例如引進獨立董事)，第二、思考如何提升董事會的職能，並改善政府執法的有效性，第三、思考如何管理公司關係人交易，並強化相關資訊揭露。



主持人並透過投票機請現場出席者進行即時投票，針對「亞洲公司治理整體表現近年來是否有改善跡象」的議題，58%之與會者認為答案是肯定的。針對「公部門治理是否會影響到公司治理發展」的議題，53%之與會者認為答案是肯定的。



綜合與談人所述，公司治理發展應該是由上而下(Top-Down)，政府透過法規建構環境，企業主與管理高層對於公司治理實踐的承諾，再從營運目標發想願景，並基於前述願景往下展開，分析與評估在經營的目標下應該進行的作業改革，在公司治理深入企業文化，員工將自發性的重視公司治理，並由下而上(Bottom-Up)發揮改革動力。機構投資人在採行投資策略，同時能考慮公司治理因素，亦可導引企業強化公司治理，創造共利的企業價值。未來推動公司治理改革可就如何強化關係人交易程序與揭露、機構投資人角色、董事會功能及防止控制股東壟斷公司決策。

第 2 場次：議題辯論—市場品質是否為企業落實公司治理的阻力

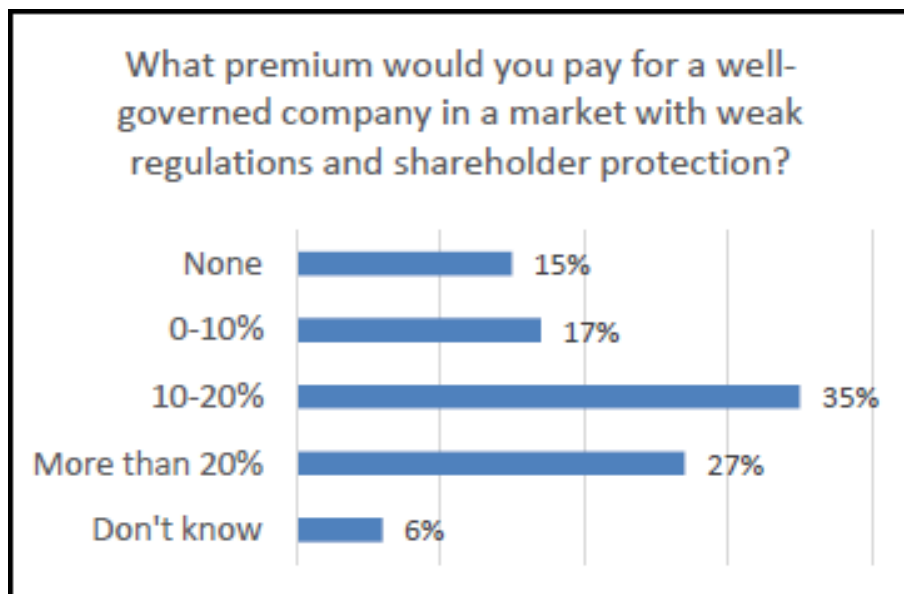
(The ACGA debate-Is market quality a drag on company governance)

主講人：香港黑石公司責任投資亞太區總部董事 Ms. Pru Bennett

新加坡富達投資管理公司董事 Mr. Jenn Hui Tan

一國法規環境與執法有效性是否會成為企業發展公司治理實務的瓶頸？在法規完善的先進國家，通常法規要求水平較高，投資人權利受到完善保護，所以企業在公司治理平均表現也較好，但另一方面在法規環境較落後的國家，可觀察到公司治理表現不錯的公司，因而企業公司治理表現是否會受到所在地法規成熟度的影響就受到廣泛的討論。

在二位與談人辯論前，主持人透過投票機請現場出席者進行即時投票，針對「法制環境是否會影響公司治理水平」的議題，70%之與會者認為答案是肯定的。針對「市場會給予公司治理較佳多少股價溢酬」的議題，35%之與會者認為股價溢酬界於10%~20%，27%之與會者認為股價溢酬超過20%。



香港黑石公司的Ms. Pru Bennett 認為個別公司治理水平的確會被法制環境影響，她分享其本身公司經驗，過去她在財務部門擔任經理，負責年報編製，她們有一個檢核表，揭露法規要求應揭露的訊息，但考量額外揭露資訊可能引發風險，可能使其降低主動揭露的意願，另外她也舉百度公司為例，百度公司在美國上市但在開曼註冊，按照美國規定，此類海外上市公司不需要遵從美國證券交易法，因而百度公司自2009年起至今甚至連股東會都沒開過，可以見得法規對於公司治理的重要性。公司資訊揭露程度、股東權利保護、董事會運作有效性均與各國公司治理法規有顯著的關係，大部分國家都是透過法規驅動公司採行治理措施，所以她主張ACGA應該積極與各國證券主管機關溝通，對可能阻礙市場發展法規提出建議，因為一國法規環境會影響個別企業公司治理的水平。

新加坡富達投資管理公司的Mr. Jenn Hui Tan認為推動公司治理初衷來自於人性，公司追求卓越及向善的文化才是改革的動力，好的公司董事會盡責進行決策，將公司治理視為公司發展策略，落實資訊透明，確保股東的權益，有助於提升公司獲利表現，進而帶來良性的循環，許多公司自願負起責任並不全為法規要求，而是出自於改善經營誘因或來自於人性的美德。在實務上，我們都知道好的市場並不能保證所有市場參與者都具備好的公司治理，壞的市場往往也會出現好的公司，Tan進一步說明壞的市場出現好的公司他觀察到原因有二，一是因為公司股東會或經營者可能來自外國，這些外國經營者會把西方公司治理模式帶進公司，另一個則是經營者具有開明自利心態(Enlightened interest)，願意與所有股東共享利益。

Pru跟 Tan在一陣討論思辨後，仍對主題持有對立的看法，一方認為好的公司治理應該是法制驅動，另一方則相信公司治理應該是靠信念與文化驅動，主持人最後透過投票機請現場出席者進行即時投票，針對「法制環境是否會影響公司治理水平」的議題再次調查，只剩47%之與會者相信答案是肯定的，顯然在聽完雙方論點

後，普遍相信法制環境(市場品質)會影響到公司治理水平，但是仍有其他因素在驅動著公司治理發展，法規只是最低要求，公司不應該把地板當天花板，只以達到法規要求即認為足夠。



第3場次：董事會多元化新趨勢

(Asian Board Dynamics: What's new on the agenda?)

主講人：印度商工總會(簡稱 FICCI) 副秘書 Ms. Jyoti Vij

印尼董事學會 Mr. Tony Silitonga

AMMB Holdings Berhad 資深董事 Mr. Johan Raslan

印度商工總會副秘書 Ms. Jyoti Vij 提到，在印度，截至2015年10月有12.6%的董事會至少有一席女性董事席次，遵循新規範要求董事會應實行性別多元的政策。相對於去年2月，只有5.1%的董事會擁有至少有一席女性董事席次，明顯有所成長。但不諱言，仍舊需要一些時間來證明性別多元政策對董事會的實質影響力。

FICCI 提供女性董事訓練課程。主要是訓練如何在企業發揮影響力，而學員通常是來自不同的專業背景，例如前政府官員、銀行家、作家、或是風險投資者等等。第一年，FICCI 讓33位女性進入100個董事會中擔任董事。這便是印度如何提供女性董事人才庫的方式。

另一個相關的議題是，相對於男性，多數女性難晉升到較高的職位。這也是為何人力資源策略應該富彈性，協助女性進入高階職位。董事提名委員會也必須與獵人頭公司合作，以確保女性可以被安排在適當的位置。獵人頭公司有助於企業超越派系問題與偏見思維。實際上，在香港，獵人頭公司尋找董事會人選時，有高達30%的候選人為女性。

印尼董事學會 Mr. Tony Silitonga 提到印尼擁有較多的女性董事。但是，講者認為通常很難讓兩個以上的女性在同一個董事會中，因

為多數女性董事在同一個董事會往往是造成董事會紛爭的來源。不論這是否為真，聘任至少一個以上的女性董事是重要的，因為可以讓不同的聲音進入往往是以男性為主的董事會中。

AMMB Holdings Berhad資深董事Mr. Johan Raslan提到董事長的角色在一個有效率的董事會中是重要的。他（多數是男性）將會形塑董事會的風格。董事可能在某個董事會中是具建設性的一員，但在另一個董事會中可能是較為消極的，這便是取決於董事長的領導風格。所以建議主管機關應該督促訓練董事長。

董事會需要有能力的董事成員，因此董事會必須不斷更新新血與想法。馬來西亞的獨立董事有九年任期的限制，但是否應該更短？印度也曾經爭論獨立董事任期限制的問題。多數印度公司認為，市場上並沒有足夠的獨立董事提供給公司，由於受限獨立董事積極與消極資格的嚴格條件，所以實務上缺乏獨立董事。所以在印度推出獨立董事任期限制或許還太早，但長遠來看還是有其優點在。

董事在馬來西亞並未被高度監管。或許是因為主管機關重視的是董事訓練或進修的用意在於其在董事會中，能對公司董事會產生何種貢獻。唯一必須被高度評價的是高階主管的薪酬。

為了獲得好的董事，公司必須支付較高的薪酬。公司董事的品質即是反映在公司所付出的薪水。但甚少被提到的是，公司其實可以透過好的公司治理以及好的獎勵機制使其更具吸引力。



第 4 場次：董事會功能失調之跡象 (Dysfunctional Board)

主講人：Deloitte 全球公司治理中心之董事 Mr. Dan Konigsburg

有些跡象顯示部分董事會功能已經失調，包括董事會議事資料不充分或提供過多資訊、獨立董事接續辭任、董事會績效差等徵兆。另霸凌（即未能容納其他董事之意見）也是常見之董事會功能失調之跡象。董事會主席對於霸凌他人之董事鮮少制止，因為該董事可能有很好的建議、可能是主席、經營階層或大股東之好朋友，甚至主席本人就是霸凌他人的主角。

外部人則可透過觀察董事異動頻繁、董事會出席率低、董事鮮少參與股東會等指標，判斷公司董事會可能有運作不彰之情形。

董事若欲從公司內部改善董事會失能之方式，經討論後提出董事會秘書或主席主導如何能改善董事會運作之討論、引進最佳實務、提供董事教育訓練，甚或對外揭露問題或直接辭去董事職務等。股東則可透過積極與公司對話、參與表決等表達其意見，甚至處分股票。



第 5 場次：股東策略-盡責管理守則在亞洲的發展

(Shareholder strategies- Investor Stewardship in Asia)

主講人：日本投資治理合夥負責任投資部門主管 Mr. Yoshikazu

Maeda

USS 投資管理公司負責任投資部門主管 Mr. David Russell

盡責管理守則係一系列原則引導機構投資人應如何行使投票權、監督公司治理與管理策略、建立可遵循制度以強化公司治理之原則，英國首先在2010年發布盡責管理守則，成為國際間效法的對象，日本與馬來西亞分別在2014年及年跟隨英國腳步發展當地的盡責管理守則，目前香港、新加坡、泰國及臺灣也積極研議發布相關指引，提供機構投資人在行使股東權方面最佳實務運作原則。

盡責管理守則的發展是否能促成公司治理，外界反應兩極，贊成的人認為盡責管理守則訂定有助於：1. 解決股東與管理階層的代理問題；2. 促使董事會達成忠實義務；3. 避免公司過於短視而忽略長期投資人的利益；4. 增強公司內部控制機制；5. 降低資訊不對稱問題；6. 發揮市場機制懲罰公司治理不佳的公司。但反對者認為1. 投資人與董事或管理階層溝通管道本來就存在，守則訂定無助於現況改善2. 教育投資人注意投資風險遠比訂定守則規範機構投資人應如何盡責管理更為重要3. 機構投資人與公司管理階層經常會面可能使部分投資人藉此能獲得內線資訊問題；4. 盡責管理守則增加公司運作的成本，並可能使公司經營階層更為短視。

USS 投資管理公司負責任投資部門主管Mr. David Russell 首先介紹英國盡則管理守則的發展歷程與進展，英國在經歷2008年金融海嘯後，參考David Walker對英國金融產業與公司治理的評論及建議(Walker Review)，由英國財務報告理事會(The Financial Reporting Council; FRC)負責訂定相關規範，於2010年7月發布英國盡責管理守

則，該守則共包含7項原則，David在介紹中特別強調守則最初沒有對「盡責管理(Stewardship)」一詞賦予定義，且適用範圍原本著重在英國機構投資人與英國上市公司股權投資，但隨著時間進展，盡責管理一詞已不僅限於公司治理，且適用範圍也不只限於英國機構投資人與英國上市公司，盡責管理守則必須搭配公司治理規則一起推動才能互相輔助共同發展。

英國在發布盡責管理守則後，每年有290個資產管理人會發布年度報告，在實務運作上，有幾個重要的議題值得注意，1.盡責管理守則係採「遵循或解釋」原則，如何能讓外界能清楚辨別簽署盡責守則的人確實有在遵守相關規範(英國國家退休基金協會NAPF定期會調查及評估)；2.機構投資人在涉入公司經營方向應該如何做及深入到甚麼程度，是否有質化或量化指標可能衡量評比；3.如何能使資產管理人願意並承諾實踐盡責管理守則。



日本投資治理合夥負責任投資部門主管Mr. Yoshikazu Maeda緊接著介紹日本的盡責管理守則，日本在2014年引入盡責管理守則，該守則共包含7項原則，大部分是參考英國盡責管理守則，但其中一個原則考量日本國情酌予調整，即第7項原則-要求機構投資人應對於所投資公司與其企業環境、技術有深度瞭解，主要也是考量盡責管理在推動之初，機構投資人對如何參與公司事務方式並不熟悉，常使公司人員為應付股東訴求疲於奔命，徒增公司運作的成本。

日本在2014年2月發布盡責管理守則，目前已經有200個機構投資人自願簽署承諾願意遵守該守則，日本最大退休基金(GPIF)也在2015年9月宣布加入，為日本推動該守則增添動能，另為瞭解實務運作狀況，日本金融廳(FSA)與證交所外聘專家成立Follow-up Council，負責檢視機構投資人履行盡責管理守則的情形，在確保金融機構與政府共同協力營造注重公司治理環境後，日本於2015年6月第一次發布日本版的公司治理實務守則，以做為上市櫃公司落實其公司治理的指引，但Yoshikazu也特別點出日本實務上運作所面臨的問題：1. 200個簽署者真正符合盡責管理精神在參與公司事務的恐怕有限；2. 在推動盡責管理守則後，日本隨即發生Toshiba假帳事件及Toyota發行具爭議新股Model AA股票，外界質疑機構投資人影響力似乎沒有甚麼改變；3. 外界質疑機構投資人是否有足夠的知識與能力適當的涉入公司的經營方向。

最後，透過現場討論，大家普遍認為盡責管理應是機構投資人的根本責任，不應被視為附加的義務，因為這連結到公司長期經營績效，攸關信託資產受益人權益，政府訂定盡責管理守則時，應給予機構投資人更多的判斷與運作空間，但實務上發展一個有效的評量系統是非常困難，機構投資人在學習妥適的與公司管理階層互動及如何涉入公司經營可能需要時間與經驗。

英國盡責管理守則	日本盡責管理守則
1. 公開揭露如何履行其管理職責的政策	1. 制訂明確履行管理職責政策，並公開揭露
2. 就利益衝突制訂積極的政策並揭露之	2. 制訂明確處理履行管理職責所產生利益衝突政策並公開揭露
3. 監督其所投資公司	3. 監督所投資公司，得以在為使公司可持續成長的方針下更妥適履行其管理職責。
4. 制訂清晰指引，說明何時及如何增加盡責管理活動的程度，以及保障及提升股東價值	4. 尋求與投資公司共識，並藉由建設性參與事務與所投資公司一同解決問題
5. 在適當時機願意與其他投資人共同行動	5. 應制定明確投票政策與揭露投票活動。投票政策不得僅是由機械式清單所組成，應設計為有助於所投資公司持續性成長。
6. 建立明確的投票政策並揭露其投票活動	6. 定期向其客戶與受益人匯報其履行管理職責狀況
7. 定期匯報盡責管理及投票活動	7. 對於所投資公司與其企業環境、技術、所需資源有深度理解，以適當地參與公司治理對於履行管理職責做出適當決斷

第 6 場次：股東參與公司經營決策原則與實務探討

(The Rules of Engagement)

主講人：香港 APG 資產管理公司永續發展與治理部門主管

Ms. Yoo-Kyung Parker

馬來西亞小股東利益監管團體(MSWG) 總經理

Ms. Lya Rahman

機構投資人應與所投資公司尋求共識，並藉由建設性參與事務與所投資公司一同解決問題，這是盡責管理守則中其中一項原則，但實務運作上，機構投資人參與公司事務出發點為何、機構投資人內部該如何形成共識、與所投資公司如何溝通、涉入議題的方向與範圍、機構投資人可採取應對策略有哪些、家族企業背景或當地企業文化是否會成為阻礙等問題，都是值得討論的議題。這次大會邀請到 APG 資產管理公司永續發展與治理部門主管 Ms. Yoo-Kyung Parker (下稱 YK) 和 MSWG 總經理 Ms. Lya Rahman 分別以基金管理公司及小股東利益監管團體的角度針對前揭議題分享其實務經驗。

在二位與談人介紹前，主持人透過投票機請現場出席者進行即時投票，針對「投資機構與公司溝通頻率」的議題，46%之與會者認為只有在被投資公司有矚目議題時在會去溝通，29%之與會者認為應該定期與公司管理階層溝通，8%之與會者認為只有在有空閒時間才會去溝通。針對「機構投資人如參與公司事務期待能達成甚麼目標」的議題，53%之與會者認為這樣有助於他們更瞭解公司，30%之與會者認為這麼做是為了要長期持有所投資公司，15%與會者認為期待可以因此提升公司股價。針對「被投資公司都依照規定進行資訊揭露，股東是否就不需要與公司進行溝通」的問題，現場 77%的人都不贊成這樣的論述，顯示多數與會人員仍認同「機構投資人與所投資公司管理階層溝通」確實有必要性。

香港APG資產管理公司永續發展與治理部門主管YK首先分享其
在香港APG資產管理公司工作的經驗，APG資產管理公司訂定明確
投資政策(包括Exclusion policy與Inclusion policy)，除了檢視標的公
司的財務資料，還會考量公司在治理、社會、環境等面向過去紀錄
與表現。在每次基金公司內部投資決策會議時，「投資部門」經理
與「永續發展治理部門」會一起參加，投資部門重點放在公司經濟
發展潛力，永續發展與治理部門則會看公司在治理或社會、環境等
方面的過去表現(例如檢視公司股利發放、重大資產交易紀錄或看公
司是否投入足夠資源和健全程序在社會與環境議題上)，若被投資公
司財務表現很好，但在ESG資訊上出現警訊，永續部門對投資部門
會做最後把關的動作。

YK 分享其在注意被投資公司的公司治理通常會注意三個面
向，第一、公司經營決策是否涉及利益衝突(亞洲有許多家族公司，
經營者可能只注重家族利益，關係人交易也可能是關注利益衝突的
另一重點)；第二、董事會追求利益是否與股東一致；第三、董事會
能力與功能。在採取策略發揮影響力部分，機構投資人如有議題會
先跟經營階層溝通，如果公司不回應機構投資人訴求，機構投資人
可以透過投票策略或提案，與其他機構投資人共同行動，發揮市場
力量影響公司決策，若公司還是沒有回應才會選擇出售被投資公司
的持股。

機構投資人在參與公司事務上也未必能完全盡如人意，YK舉例
說明，Samsung前一陣子爆發半導體工廠的員工因長期暴露在有毒
化學物質下罹患白血病及罕見疾病，YK為該事件多次與Samsung管
理階層溝通，但都沒有獲得公司回應，Samsung資本額大、籌碼分
散，單一機構投資人很難透過出售持股對公司決策發揮影響力，只
能尋求與其他機構投資人共同行動，另外一個例子也是發生在韓
國，她實際參加一個大型韓國企業股東會，發現公司員工占整個會
場出席人數的二分之一以上，常常會阻礙小股東表達意見的權利，

以鼓掌通過的方式快速表決股東會議案，這也突顯經營者的心態對企業落實公司治理的影響。

馬來西亞小股東利益監管團體 (MSWG) 總經理Ms. Lya Rahman 接著分享其在MSWG工作的經驗，MSWG類似我國的投保中心，在2001年成立，持有300家上市公司股票各100股，主要工作是針對上市公司的治理課題，進行獨立研究工作，並為散戶和機構投資人在股東會 (AGM) 進行投票提供諮詢建議，確保少數股東的利益受到保護。MSWG的財務有75%來自資本市場發展基金 (CMDI) 的資助，其餘則來自提供產品與服務所帶來的收入，因為其財務與業務的獨立性，使其在運作上比較不會因為與公司有利益衝突而受到質疑。近年在MSWG積極努力下，目前已有40家上市公司自願於股東會後發布詳細版的股東會議事錄。

Lya分享其在關注被投資公司的公司治理通常會注意三個面向，第一、獨立董事的獨立性；第二、董事薪酬給付是否合理；第三、股東會議事錄是否即時與詳實。在採取策略發揮影響力部分，MSWG 在參與公司事務時會同時注意公司財務、治理與CSR的表現，若公司發生不符合公司治理精神的行為，MSWG會先積極與董事會、執行長溝通，與獨立董事單獨會談，若仍未獲管理階層妥適回應，則會進一步寄發信函給公司、出席股東會表達意見、公開相關訊息讓投資人知道，或轉請主管機關注意，藉此影響董事會決策。

主持人最後總結會議討論結果指出，投資人實踐股東行動主義，永不放棄很重要，不管機構投資人或小股東，應該懂得在股東大會上，積極向董事局提出更貼切的問題，讓公司經營階層有所忌憚，儘管結果不盡滿意，但是仍有提醒董事會善盡忠實義務的效果，當董事會也不再欺壓小股東，並開始做出恰當的決策，當地公

司治理水準就會有所改善，贏在過程(Winning in Process)是機構投資人實踐盡責管理的精神。



第 7 場次：企業永續發展—永續棕櫚油

(Sustainability—Sustainable Palm Oil: The governance dimension)

主講人：Australian Council of Superannuation 執行長 Ms. Louise Davidson

吉隆坡 Managing Director Ms. Rikke Netterstrom

吉隆坡 Strategic Communications & Corporate Affairs 董事
Mr. Mark Wong

過去 20 年來，食品和非食品所用棕櫚油的生產增長迅速。隨著此生產需求的增加，棕櫚樹種植的可持續性以及棕櫚油生產對於環境和社會之影響越來越受到關注。由棕櫚油業界成立的可持續棕櫚油圓桌會議 (Roundtable of Sustainable Palm Oil, 簡稱 RSPO)，該組織的企業成員遍及全球 700 多間企業，包括種植商、加工商、貿易商、消費品製造商及零售商等，涵蓋整個棕櫚油產業的供應鏈。其宗旨是通過合作和公開對話，推動棕櫚油的可持續利用及行業可持續發展，執行委員會包括馬來西亞和印尼的棕櫚油協會、聯合利華(Unilever)、世界自然基金會(WWF)和美體小舖(The Body Shop)等公司。

RSPO 公布了棕櫚油可持續生產準則及標準 (Principles and Criteria for Sustainable Palm Oil Production)，包括不能破壞原始森林，不得砍伐有珍稀動物的林地，不得開墾泥炭深度超過3公尺的林地等。該會議也推動以使用肥料等方式提高產量，而不是擴大種植面積，以避免破壞森林。

棕櫚油行業一直是印尼森林大火和灰霾肆虐的罪魁禍首。今年夏天，發生在印尼蘇門答臘的森林大火，導致鄰國新加坡和馬來西亞遭受了16年來最嚴重的空氣污染，火災發生原因就是棕櫚油行業用非法燒林的方式清除雨林，以便大肆開發棕櫚油種植園。目前全球棕櫚油產量約有20%經RSPO認證，惟約有25%之比重是小規模耕種者，較無資源去取得認證。越來越多買家願意以更高價格購買RSPO認證之產品；對公司而言，積極取得RSPO認證已是取得競爭優勢之新關鍵。

以投資人角度來看，目前機構投資人多已將環境、經營風險等納入其投資考量，且非常重視ESG資訊之揭露。惟部分亞洲地區尚在推動初期，公司ESG資訊品質尚未成熟，與談人則表示ESG資訊揭露必須給予公司5至10年之適應期，ESG揭露品質才能較為提升。



第 8 場次：董事長如何稱職領導董事會

(Chairman's dialogue)

主講人：馬來西亞交易所董事長 Mr. Tan Sri Amirsham A. Aziz

菲律賓董事協會董事長 Mr. Francis G Estrada

泰國董事協會總經理 Dr. Bandid Nijathaworn

董事會在公司發展中扮演舵手的重要角色，董事長負責主持董事會運作，即使公司股東會選任好的董事進入董事會，如董事長無法稱職的發揮指揮的角色，整個董事會職能就無法有效發揮。

首先，馬來西亞交易所董事長Mr. Tan Sri Amirsham A. Aziz 指出，董事會運作應把重點放在二個面向：1、促進創新：透過科技創新改變消費者心態藉此營造新的市場，同時促進內部創新的企業文化，董事長對創新的承諾投入越強，公司才能持續創造價值，但董事會同時也需要注意可能面臨的風險，在風險與創新之間做出平衡，董事會要促進創新必須經常性的檢視經營策略與管理階層的績效表現；2、與機構投資人持續溝通：董事會應與機構投資人保持溝通管道，藉由維持良好關係，增加投資人對公司的信任，機構投資人往往可提供董事會外部對公司經營的意見，這將有助於公司導正經營方向。

接著，菲律賓董事協會董事長Mr. Francis G Estrada認為董事會運作有下列4個重點：1.董事績效評估：公司應營造環境鼓勵董事有建設性的挑戰管理階層的決策，公司在評估董事會績效時，不僅應對整個董事會作績效評估，還需要對各別董事設定績效指標；2. 設定議程：董事長應該選擇公司最重要的事務提到董事會討論，許多董事會討論議題都是例行性的事務工作，這容易使董事對重要的事務失焦；3.協助提升董事能力：董事應該非常瞭解每個公司產業趨

勢、策略、營運模式，這能使董事會在討論公司事務時，更有共識，同時董事長應該瞭解每個董事的專業能力與經驗；4.董事間互補：執行董事具有專業能力，獨立董事較能審慎客觀看待每個議題的徵點，二者在董事會扮演的功能可以互補，若獨立董事在營運模式、績效表現衡量方式、公司競爭利基徵詢執行董事意見，將能有助於獨立董事深入瞭解公司內部事務

最後，泰國董事協會總經理Dr. Bandid Nijathaworn認為董事會運作有下列3個重點：1. 董事長扮演關鍵性角色：董事長設定議程，把重要的議題浮上檯面，議題範圍不僅包括企業內部，還必需兼顧企業對外部環境與社會的影響；2. 對落實治理的承諾：高層對公司治理落實承諾會由上而下影響公司治理，許多公司把治理議題當作是公司的成本，但實際上重視董事會提名、董事會績效評估、董事教育訓練、增加女性董事在董事會比例對公司營運是能帶來實質幫助，公司不應該只注重表面符合最佳實務，更應重視實質的改革措施；3. 領導與溝通：董事長主導董事會討論方式，一個客觀和充分討論可以降低董事與經營管理嫌隙，同時Francis提到董事會成員能力與營造一個良好的討論環境對於有效運作董事會也是很重要的因素。

現場與會人員提出問題表示，若家族企業指派家族成員並非一個有能力的CEO，董事會能做些甚麼？與談人認為，董事長與CEO由不同人擔任，董事會可以更客觀的檢視CEO表現，董事會應該引導CEO思考公司經營問題，並設定一些實質性的績效衡量指標，讓公司經營者與大股東知道CEO營運的績效，但是當公司經營遇上家族情感，要客觀處理此一議題，實務上可能不是這麼容易。

最後，主持人總結，董事長對內負責監督管理階層，對外又負責與機構投資人溝通，如何強化董事會職能、確保董事會多元化、設定每次會議討論議題、重視獨立董事角色，都是能確保董事會有

效率運作的關鍵，尤其當區域經濟整合趨勢下，公司經營方向更國際化，董事長必須思考如何確保董事須具備不同背景達到互補的功能，使公司資源分配更有效率。



第 9 場次：圓桌論壇-東協公司治理法規執法的發展與重要議題

(The Regulators' Roundtable –Hot Topics in ASEAN)

主講人：泰國證管會主秘 Mr. Rapee Sucharitkul

新加坡交易所監管長 Mr. Tan Boon Gin

泰國證管會主秘Mr. Rapee Sucharitkul認為政府必須以宏觀的角度來看規範市場政策與法規，時時檢視規範與執法狀況是否達成立法目的，他分享從事監理工作三個心得，他認為管理市場首先要瞭解市場，與利害關係人建立暢通的溝通管道，注意公司治理推動方法。

1. 在瞭解市場實務：主管機關職責在維持市場秩序，確保公司資訊透明，但金融市場運作日趨複雜，應該在管理市場前，對市場運作的實務有足夠認知，他舉例說明警察在指揮交通，確保行車秩序，但如果他本身不會開車，在執行職務上產生盲點，指揮上一定衍生許多問題，另外他也認為管理市場，僅依賴法律是不夠的，還需要配合教育訓練與溝通來形成文化與共識。
2. 在有效的溝通機制方面：主管機關在制定法律，一定要盡可能與所有利害關係人進行溝通，例如泰國證管會都會給予 30 天的公眾諮詢期間，他比喻就像醫生在看病時，必須先傾聽病人，才有辦法對症下藥，若主管機關無法採用市場的建議(或該建議無法適用於當地國)時，最好也應該對外解釋無法採用的原因。
3. 在公司治理推動方法部分：通常法規只是規定最低的遵循標準，但是公司治理推廣困難是如何推動表現中庸的公司，改善其治理模式，使其成為高度公司治理水準的公司，除了仰賴法規，

教育與溝通是不可或缺的，當然東協公司治理評鑑機制促使公司自我檢視也是一個重要的因素。

新加坡交易所監管長Mr. Tan Boon Gin，曾經擔任過檢察官、新加坡警察商業事務局高級主管，並在法院工作過一段時間，他從事執法工作多年，這次會議他也分享其在新加坡交易所從事管理市場工作的心得，並對上市公司是否應該發行雙層股權¹分享他的觀察：

1. 在監理哲學方面：證券主管機關職責在維持市場信心，維持市場資訊透明，防止市場產生不法行為。為強化市場管理的有效性，新加坡採取二個措施一個是交易所最近設立三個獨立委員會（上市諮詢、紀律、訴願委員會），另一個則是 MAS 與 CAD 合作打擊金融犯罪。但以執行法律達到遏止金融犯罪者，因為調查蒐證時間較長，通常不是最好管理市場的方法，主管機關身兼執法者與教育者雙重角色，在公司一有偏差行為，就應積極介入，積極導正公司的行為。
2. 在對發行公司關注的重點部分：新加坡交易所在監管發行公司，通常會注意發行公司董事會運作的狀況、公司是否訂定完整的內部控制制度，及公司是否致力於平衡商業利益與主管機關需求，並取得投資人的信任。當上市公司證券價格波動或發生不正常表現時，通常在第一時間會先請發行公司進行揭露與說明，並強調誠實與資訊透明原則。
3. 在對雙層股權的看法部分：新加坡 2016 年修正公司法，允許非上市公司發行雙重投票權股份(Dual-class shares)，但是否應讓

¹雙層股權結構（Dual class），將普通股分為 A 類普通股（Class A common stocks）及 B 類普通股（Class B common stocks）兩種，A 類普通股由一般投資大眾所持有，B 類普通股由創業者所持有。前者每股有一表決權，後者每股有複數表決權（通常為 10 倍表決權）。且 B 類普通股須轉為 A 類普通股才能出售。阿里巴巴在 2014 年在美國上市前，曾與香港交易所商討上市問題，但是阿里巴巴提出的「雙層股權結構」方案，保留了創始人對公司的控制權，因不符合香港的上市規定，最終轉而在美國上市。

上市公司也能發行雙重投票權股份，新加坡交易所目前還在考量下列二個面向的問題，第一、雙層股權應該開放讓所有公司都可以發行，還是限定讓特定產業或大型公司方能發行，第二、為防止經理階層利用特殊性質股權掏空公司，該如何設計預防機制，並在特定條件達成狀況下，可允許雙層股權轉換成一般股權。第三、當發生該當落日條款的條件時，該如何將雙層股權轉換為普通股。

現場提問，泰國目前致力在國營事業公司治理改革，是否有將私有化納入推動改革選項之一，Rapee則回應，私有化的議題在泰國可能不是這麼容易，必須考量泰國人民的觀感，有很多指標企業不能由非泰國人持有並控制，這部分必須考量政治面的問題，所以私有化雖然有其好處，但是在泰國推展可能並不容易。

從這場與談，我們發現二位與談人一直強調資訊透明、執法有效性與溝通的重要，公司商業考量與法規遵循之間並沒有衝突，而是具有互補的角色，法規在維持市場秩序，參與市場各方若建立信任，市場更為蓬勃發展，流動性提高，更有助於公司商業經營，同時也達到法律規範目的-保護每個市場參與者的權利。



第 10 場次：亞洲家族企業治理是否為較優的經營模式

(Asian family Firms: A superior model of governance?)

主講人：瑞士信貸亞太區家族企業諮詢服務部主管 Mr. Bernard

Fung

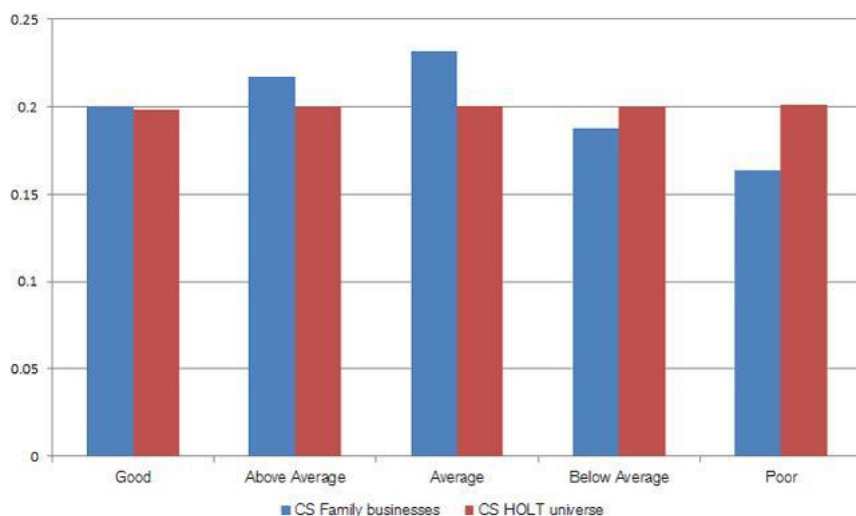
Navis Capital Partners 之合夥人 Mr. Michael Octoman

家族企業之主要議題為家族政治 (family politics)、如何處理家族政治議題，及接班問題。家族企業因股權集中，故對於少數股東權利之保障是較值得探討的地方。瑞士信貸近期以920家上市公司（約涵蓋76%之亞洲公司）研究發現，這些家族企業之平均投資報酬率、財報品質較一般企業為佳，且家族第一代的績效表現較往後幾代為優（如下圖所示）。與談人表示許多私募基金更視家族企業為未經琢磨之寶石 (unpolished jam)。

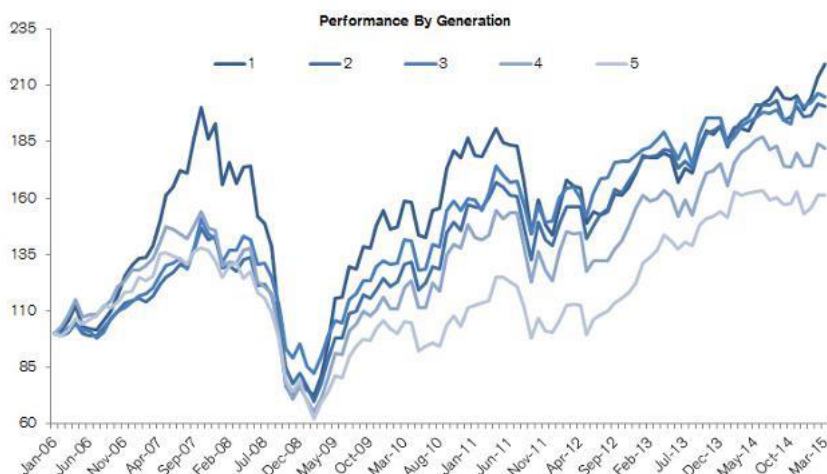
1. 自2006年起，研究之家族企業每年皆有4.2%之超額報酬



2. 財報品質普遍較一般企業為佳



3. 家族第一代的績效表現較往後幾代為優



企業管理階層之正直誠信(Integrity)，為私募基金進行投資決策時之首要考慮。私募基金多透過參與討論接班計畫及指派營運長之方式，積極促使家族大股東與其之利益一致。而家族企業之大股東對於機構投資人之期望，是能夠協助其建立制度，是合作夥伴的概念；若機構投資人參與過多，經營者會較為緊張，而不願意與其對談。

新的世代逐漸接班，雖然對於改變較為開放，惟因亟欲培養其人馬，引進許多經驗、專業度較為不足之董事成員或經營階層，反而帶進了很多不成熟之因子。



第三章 心得與建議

本次會議各出席會議代表皆積極與與會人士分享我國公司治理的推動經驗並建立人際網絡，有利於未來公司治理業務的推展及增加我國的曝光度。會議期間努力吸取各國推動公司治理經驗，並與他國代表交流，深感推動「機構投資人盡責管理守則」及強化「非強制性規範執行之有效性」是健全公司治理雙翼，過去公司治理改革偏重由上而下的方式進行，即由主管機關發布各式法規與守則，要求公司遵循，未來推動「機構投資人盡責管理守則」與「強化公司治理實務守則執行」有助於強化企業自省及市場監督力量，謹就二方面提出建議，作為未來守則規劃方向的參考：

1. 推動盡責管理守則 - 以機構投資人觀點出發設計相關配套措施

本次會議在議程安排上，大部分主題討論聚焦在機構投資人如何實踐盡責管理守則，這也呼應OECD與G20於2015年9月聯名對外發布新的公司治理原則，新增「強化機構投資人角色」原則，希望機構投資人能利用其掌握資金與投票權來影響企業的公司治理。近年來英國、日本、馬來西亞均已提出「盡責管理守則」並鼓勵機構投資人簽署，而亞洲許多先進國家也紛紛起而效尤，如香港、新加坡、泰國近期也著手研議或諮詢公眾意見，我國現行規範要促使機構投資人協助被投資公司強化公司治理似有不足，有必要推動採行臺灣版盡責管理守則，以將散見於各種規則或準則中的相關規定整合，並就如何落實盡責管理提供更具體的指引，故近期在滾動性公司治理藍圖檢討也規劃將盡責管理守則納入執行措施。

從這次參加會議，聽取專家分享各國推動盡責管理守則的經驗，瞭解守則並無範本可完全適用各國國情(one size not fit all)，各國在推動上需考量當地面臨特殊議題進而調整守則的內容，經彙整本次會議重點，歸納未來推動盡責管理守則應注意下列幾個重點：

(1) 守則推動前應加強與業界的溝通：

日本盡責管理守則雖係參酌英國盡責管理守則而來，但未完全抄襲英國版本，而是針對當地國情微調守則內容，例如：上市公司代表提出其員工時常需處理因投資人不理解公司業務性質所造成的問題，因而特別訂定第七項原則－要求機構投資人應對於所投資公司與其企業環境、技術、所需資源有深度理解。在守則施行前，日本金融廳於2014年1月2日舉辦公聽會以蒐集公眾意見，在同年2月發布時，日本除了訂定盡責管理守則的七項原則外，另外還訂定較為詳盡的配套準則，以供機構投資人參採。日本提出盡責管理守則後約有200位機構投資人參與簽署，機構投資人反應相對熱烈，而政府退休基金(GPIF)的簽署也被外界視為成功推動守則的指標。我國在研擬盡責管理守則時，應妥適考量各資產管理人（投信基金）與資產所有人（如退休基金、保險公司）是否有遵循上困難，同時也應顧慮上市公司意見，研議訂定大原則與方向同時，也應提供足夠詳盡的參考範例。

(2) 推動守則可能面臨潛在問題應預先考量：

本次會議ACGA專家顧問Ms. Melissa Brown在談論盡責管理守則利弊時，彙整列出幾個盡責管理守則可能衍生潛在問題，包括利益衝突(利益衝突可能存在機構投資人與被投資公司之間，也可能存在於機構投資人與同一集團成員之間)、涉入公司經營可能獲取內線資訊、機構投資人可能假盡責管理之名而對特定公司營運進行不恰當干預行為等問題，值得我們在訂定最佳實務守則前，思考守則設計方向。

另日本與馬來西亞均於2014年對外發布機構投資人盡責管理守則，在日本，守則簽署獲得廣大的迴響，發布之後即有200個機構投資人自願簽署承諾願意遵守守則，反觀馬來西

亞，卻僅有7個，造成此種差異可能與二國推動方式與當地業者共識不足有關，因而我國在推動盡責管理守則前應酌量下列可能影響機構投資人簽署意願的事項，並充分考量外界意見適度調整，待達成共識後再對外發布：① 研議遵循守則訂定相關規範的參考範例可降低業者的作業成本；② 設計適合我國的資訊揭露平台（包括揭露格式、頻率、時點、內容）；③ 鼓勵簽署守則之誘因與措施；④ 機構投資人若無法揭露特定事項是否有其他配套措施。

守則之制定也應考慮如何與現行法規進行整合，我國對於投信投顧業者「執行業務之利益衝突」，「投資時考量之被投資公司面向」、「股東會行使表決權之處理原則及方法」，以及「應於公開說明書中揭露之事項」均有相關規定，然而守則引進是否與現行法規有衝突，或有需要配套以補強原有法規不足之處應通盤考慮，例如：① 目前投信募集基金應編製公開說明書，目前有要求揭露股東會行使表決權方法、利害關係公司，在盡責管理守則發布後，亦可考慮增加附表揭露機構投資人履行守則情形與不遵循原因；② 在避免內線交易部分，投信投顧公司投資或交易，應依據其分析報告做成決定，然而盡責管理守則公布後，上市(櫃)公司與機構投資人互動對話機會將增加，上市(櫃)公司與機構投資人會面，如會談內容超過公司對外公開資訊揭露範圍，應要求上市櫃公司即時發布重大訊息，以確保所有投資人都能獲得對等的訊息；③ 在鼓勵機構投資人積極參與公司經營部分，目前證券投資信託事業管理規則第23條規定，投信事業行使表決權不得直接或間接參與公司經營或有不當之安排情事，若守則發布後，投信事業履行盡責管理守則時，是否有觸犯到前揭規定，原法律規定投信不得參與公司經營的範圍又該如何界定，應有明確規範與解釋。

(3) 守則發布後應加強對機構投資人的教育宣導：

日本在分享該國推動盡責管理守則時，不斷提到其境內機構投資人過去缺乏參與公司治理事務的經驗，機構投資人與公司實務上磨合存在許多紛爭與困難，例如：機構投資人應訂立書面政策及作業程序，規範其行使股東權利的行為，機構投資人依據所訂政策及程序決定是否參與股東投票，該書面政策及作業程序該如何訂定？如果決定參加投票，該如何進行投票？在決策過程中應如何避免發生利益衝突？如何公開揭露機構投資人參與公司治理實務？該等事項守則中為保留運作彈性未必訂有詳細規範，但機構投資人在運作之初仍需要經驗累積與最佳實務引導。我國國情與日本可能相似，資產管理者與資產所有者目前與管理階層討論公司治理議題的風氣並不盛行，在守則推動初期舉辦教育訓練或經驗分享就顯得重要，建議可邀請國際機構投資人分享其如何配合盡責管理守則訂定內部規範、監督公司、實施投票和訊息揭露等相關經驗，及邀請國際機構投資服務公司（如 Institutional Shareholder Service Inc.）分享其如何提供治理狀況的分析和代理投票建議，藉以縮短業者的學習曲線。

2. 研修上市(櫃)公司相關實務守則，落實公司治理：

本次會議中與會者多次討論到法規執行有效性的問題，除了強制性法規執法有效性之外，許多國家也開始重視上市公司對不具強制性規範的執行情形(如「公司治理實務守則」與「盡責管理守則」)。最佳實務守則以「遵循或解釋」原則推展，讓適用守則的上市公司秉持誠信原則自我表述，但實際上公司揭露資訊可能有偏頗的情形，若主管機關不適時加以導正，可能使市場誤解，進而產生資訊不對稱問題。

舉例來說，日本在推出盡責管理守責之後，雖然簽署願意簽署守責的公司將近有200個機構投資人，但實際有遵守者卻僅有30家左右，為此日本也成立Follow up Committee，負責追蹤守則簽署者遵循情形。另外新加坡為追蹤上市公司落實公司治理實務守則的情形，特別於2015年引進新的揭露指引(Disclosure Guidance)規定，要求上市公司必須就特定項目於年報揭露其公司治理運作情形即實務守則差異情形（範圍包括董事會組成、風險管理與內部控制，以及薪酬揭露），新加坡交易所與會計師事務所KPMG共同執行檢視工作，藉此督促公司適當揭露及解釋偏離守則理由的詳細資訊，讓投資人可以做出明智判斷。

我國自2002年由證交所頒布上市上櫃公司治理實務守則，配合國際間公司治理發展趨勢，期間歷經16次修正，因2015年9月OECD發布新的公司治理原則，相較2004年修正版本，新增「強化機構投資人角色」原則，並將「股東權利」及「平等對待股東」等二項原則予以整併，此次修正重點包括強調應重視機構投資人在公司治理角色、運用資訊科技輔助股東會進行、強調董事訓練及董事會績效評估之重要性等面向，我國目前上市上櫃公司治理實務守則內容應進一步配合國際原則進行檢討。另為瞭解上市(櫃)公司遵循實務守則的情形，建議請證交所公司治理中心研議強化揭露上市(櫃)公司履行公司治理實務守則的情形，以促成公司與機構投資人瞭解同業履行最佳實務守則的情形，具體作法應可以參考新加坡或日本做法，委託第三獨立機構或設立追蹤委員會執行調查，或是結合平時例外管理機制，對列入抽查上市(櫃)公司，加強檢視其落實公司治理情形與相關揭露是否一致。

附件



ACGA 15th Annual Conference

Asian Business Dialogue on Corporate Governance 2015: “CG Rising in Southeast Asia: Building Bridges between Stakeholders”

Grand Hyatt, Kuala Lumpur, November 3-4, 2015

Conference Schedule

Tuesday, November 3: **Conference, Day 1 (Full Day)**
Plenaries, workshops, Gala Dinner

Wednesday, November 4: **Conference, Day 2 (Half Day)**
Opening plenary, workshops, lunch.

Programme

Day 1: Tuesday, November 3, 2015

Morning MC:

Mr. Douglas Henck, Chairman and CEO, Aegon Asia, Hong Kong; Chairman, ACGA

9am – 9.15am: Conference Opening

9.15am – 9.45am: Opening Keynote Speaker

Datuk Ranjit Singh, Chairman, Securities Commission, Malaysia

9.45am – 10.45am: Plenary Session - Asia Overview

ACGA’s overview of key developments in corporate governance around the region, with a focus on corporate governance progress and challenges in Southeast Asia, followed by a contribution from a noted regional expert.

Speakers

- Mr. Jamie Allen, Secretary General, ACGA
- Dr. Mak Yuen Teen, Associate Professor of Accounting, National University of Singapore Business School

10.45am – 11.15am: Coffee Break



11.15am – 12.15pm: Plenary Session – The ACGA Debate

“Is market quality a drag on company governance?”

A debate on whether the quality of a country’s financial regulatory environment sets a limit on the governance level individual companies can achieve. Or, to put it another way, can good companies achieve world-class standards of corporate governance in poorly regulated markets? Do such markets produce as many investable companies as better markets?

Moderator

Mr. David Smith, Head of Corporate Governance, Aberdeen Asset Management Asia, Singapore

Debaters

- Ms. Pru Bennett, Director - Head of Asia Pacific Corporate Governance and Responsible Investment, BlackRock, Hong Kong
- Mr. Jenn-Hui Tan, Director of Corporate Finance, Fidelity Worldwide Investment, Singapore

12.15pm: Afternoon Introduction

Mr. Anthony Muh, CEO Asia, H.R.L Morrison & Co Capital Management (Int), Hong Kong; Vice Chairman, ACGA

12.15pm – 1.45pm: Networking Luncheon

2pm to 5.30pm: AFTERNOON WORKSHOPS

Three workshop streams will run concurrently before the coffee break at 3.30pm and two afterwards.

Stream 1: Board Culture

2pm – 3.30pm: Asian Board Dynamics: What’s new on the agenda?

How do boards manage and encourage open discussion as well as harmony? How do they marshal scarce resources, in particular the time of directors? Is it difficult to do an honest board evaluation? Are there enough “board ready” women in senior management positions in Asia? How well are companies preparing for dialogue with investors and other stakeholders in today’s increasingly complex business environment?

Moderator

Ms. Diana David, Corporate Development Director, Asia-Pacific, Financial Times, Hong Kong

Speakers

- Ms. Jyoti Vij, Deputy Secretary General, Federation of Indian Chambers of Commerce and Industry (FICCI), New Delhi
- Mr. Tony Silitonga, Board of Trustees Member, Indonesian Institute for Corporate Directorship, Jakarta



4pm – 5.30pm: The Dysfunctional Board

A facilitated workshop to help delegates ascertain if they sit on, manage or interact with a dysfunctional board. What are the tell-tale signs? What constructive measures can directors, especially non-executives and independents, undertake to improve board culture and processes? What measures can support staff, such as company secretaries and investor relations professionals, take to persuade owner-managers to run their boards better? What can shareholders do?

Facilitator

Mr. Dan Konigsburg, Managing Director, Deloitte Global Center for Corporate Governance, New York

Stream 2: Shareholder Strategies

2pm – 3.30pm: Investor Stewardship in Asia: A Progress Report

Over the past decade, asset owners (pension funds) and fund managers both from within Asia and outside have stepped up their involvement in corporate governance in the region. More recently, the concept of the “stewardship code” has taken root in certain Asian markets, namely Japan and Malaysia, following its adoption in the UK and Netherlands. What are the opportunities in Asia for stewardship and are portfolio managers repositioning their investments in response to new information about CG risk? What lessons can be learned from the experiences to date of leading Asian and foreign investors?

Moderator

Ms. Melissa Brown, Managing Director, Daobridge Capital, Hong Kong; Specialist Consultant, ACGA

Speaker

- Mr. Yoshikazu Maeda, Head of Responsible Investment, Governance for Owners Japan, Tokyo
- Mr. David Russell, Co-Head of Responsible Investment, USS Investment Management, London

4pm – 5.30pm: The Rules of Engagement

A facilitated workshop delving more deeply into the basic challenges involved in initiating and managing an engagement strategy in Asia. What is the starting point for engagement with companies? How can the content of dialogue with companies be structured to best effect? To what extent are language and cultural factors an impediment? How does one engage with state enterprises that are not their own masters? How does one engage with a hierarchical family business that appears deaf to the concerns of minority shareholders? When is collective engagement necessary and what are the most effective ways to approach it? Should investors be devoting more time to communicating with regulators?



The Rules of Engagement continued

Moderator

Mr. Steven Watson, Partner, Capital International Investors, Hong Kong; Council Member, ACGA

Speakers

- Ms. Yoo-Kyung Park, Director, Sustainability & Governance Asia, APG Asset Management Asia, Hong Kong
- Ms. Lya Rahman, General Manager, Corporate Services, Minority Shareholder Watchdog Group, Kuala Lumpur

Stream 3: Sustainability / Strategic CSR

2pm – 3.30pm: Sustainable Palm Oil – The Governance Dimension

This panel will look at the role of certification in palm oil and how this is improving governance standards across the industry. Governance benefits include enhanced transparency, better audit processes along the supply chain, improved strategic and reputation risk management, and more effective communications with stakeholders. What are the key challenges in the implementation of this model? What are the lessons for other industry certification programmes? Is certification always the answer?

Moderator

Mr. Benjamin McCarron, Managing Director, Asia Research and Engagement, Singapore; Specialist Consultant, ACGA

Speakers

- Ms. Louise Davidson, Chief Executive, Australian Council of Superannuation Investors, Melbourne
- Ms. Rikke Netterstrom, Managing Director, Helikonika, Kuala Lumpur
- Mr. Mark Wong, Director, Strategic Communications & Corporate Affairs, Sime Darby Berhad, Kuala Lumpur

6pm – 7pm: Cocktail Reception, Poolside, Grand Hyatt

7pm – 9pm: Gala Dinner, Grand Hyatt

Evening MC: Mr. Anthony Muh, CEO Asia, H.R.L Morrison & Co Capital Management (Int); Vice Chairman, ACGA

Gala Dinner Keynote Speaker

Mr. Rajeev Peshawaria, CEO and Executive Director, The Iclif Leadership and Governance Centre, Kuala Lumpur



Day 2: Wednesday, November 4, 2015

8am – 9am: START THE DAY

A discussion of the main ideas emerging from each of the three workshop streams on Day 1. Rapporteurs will present the most interesting points, followed by Q&A.

9.15am to 10.30am: Plenary Session – The Chairmen’s Dialogue

Despite being critical to the success of any board, the role of the chairman receives relatively little focus in most CG discussions and director training programmes. Even with excellent directors, a board will underperform if the chairman is ineffective. The dynamics of boards have evolved significantly in Asia in recent years, with the role of the chair becoming ever more demanding and complex. What are the attributes of an effective chairman? How can the Chair survive and thrive?

Moderator

Mr. Douglas Henck, Chairman and CEO, Aegon Asia, Hong Kong; Chairman, ACGA

Speaker

- Tan Sri Amirsham A. Aziz, Chairman, Bursa Malaysia, Kuala Lumpur
- Mr. Francis G. Estrada, Chairman, Institute of Corporate Directors, Manila
- Dr. Bandid Nijathaworn, President and CEO, Thai Institute of Directors, Bangkok

10.30am – 11.00am: Coffee break

WORKSHOPS

11am to 12.15pm

Two concurrent workshops before lunch:

1. The Regulators’ Roundtable: Hot Topics in Asean

A great deal of policy and regulatory reform has occurred over the past 10-15 years in Asian corporate governance, with the attention of regulators focussed ever more on enforcement. What are the specific enforcement challenges in each market and what innovative ideas are regulators—securities commissions and stock exchanges—using to address them? How do they balance enforcement with education and encouragement?

Moderator

Mr. Jamie Allen, Secretary General, ACGA

Speakers

- Mr. Rapee Sucharitkul, Secretary-General, Securities and Exchange Commission, Thailand
- Mr. Tan Boon Gin, Chief Regulatory Officer, SGX, Singapore



2. Asian Family Firms: A Superior Model of Governance?

A point of view has emerged in recent years, backed by some evidence, that family firms around the world offer investors a superior investment opportunity. Does this hold true in Asia as well? What does it say about the governance of such firms? This panel will examine how governance is evolving in Asian family businesses, looking at key topics such as concentrated ownership, the involvement of private equity funds in the capital structure and board, succession planning, and how well family firms align their interests with minority shareholders.

Moderator

Mr. Yuelin Yang, Managing Director, Asset Management, IMC Industrial, Singapore

Speakers

- Mr. Michael Octoman, Partner, Navis Capital Partners, Kuala Lumpur
- Mr. Bernard Fung, Director and Head of Family Office Services and Philanthropy Advisory, Asia Pacific, Credit Suisse, Singapore

12.15pm – 12.45pm: Day 2 Summary & Conference End

A summary of the main ideas emerging from the morning workshops and the conference overall. Next steps for CG development in Asia?

12.45pm – 2pm: Lunch

Conference ends for public participants. Additional events are being organised for ACGA members in the afternoon, including a “Town Hall” meeting with our Council (board of directors) and a discussion on possible revisions to the “Asean CG Scorecard” with MSWG.

Participant List

No.	First Name	Surname	Company	Position	Country
1	David	Smith	Aberdeen Asset Management Asia	Head of Corporate Governance	Singapore
2	Yuki	Qian	ACCA	Head of Policy, China	China
3	Wilashini	Ganespathy	ACCA Malaysia	Head of Policy and Members	Mali
4	Kenneth	Yap	Accounting and Corporate Regulatory Authority	Chief Executive	Singapore
5	Julia	Tay	Accounting and Corporate Regulatory Authority	Deputy Chief Executive	Singapore
6	Padma	Venkat		GUEST	Hong Kong
7	Linda Tsao	Yang	Asian Corporate Governance Association	Chairman Emeritus	United States
8	Louise	Davidson	ACSI	CEO	Australia
9	Gerard	Noonan	ACSI	President	Australia
10	Douglas	Henck	Aegon Asia	Chairman & CEO	China
11	Johan	Raslan	AMMB Holdings Berhad	Senior Advisor & Director	Kuala Lumpur
12	Martin	Jonasson	Andra AP-fonden AP2	General Counsel	Sweden
13	Yoo-Kyung	Park	APG Asset Management	Director, Sustainability & Governance Asia	Hong Kong
14	Nana	Li	Asian Corporate Governance Association	Research Analyst	China
15	Benjamin	McCarron	Asian Corporate Governance Association	Specialist Consultant	Singapore
16	Jamie	Allen	Asian Corporate Governance Association	Secretary General	Hong Kong
17	Vanessa	Chan	Asian Corporate Governance Association	Office Manager	Hong Kong
18	Charles	Lee	Asian Corporate Governance Association	Research Director, North Asia	Hong Kong
19	Sharmila	Gopinath	Asian Corporate Governance Association		Hong Kong
20	Craig	Roberts	Asian Development Bank	Director, Head of Private Sector Portfolio	Philippines
21	Jinho	Clement	Bank Negara Malaysia		Malaysia
22	Nurliida Jasmin	Bt Ismail	Bank Negara Malaysia		Malaysia
23	Stephanie	Tan	Bank Negara Malaysia		Malaysia
24	Zhi Wei	Lee	Bank Negara Malaysia		Malaysia
25	Ka Shi	Lau	BCT Group	Managing Director & CEO	Hong Kong
26	Noel	Cleahane	BDO International	Global Head of Regulatory & Public Policy Affairs	Belgium
27	Jana	Repelova	BDO International	Regulatory & Public Policy Affairs Officer	Belgium
28	Soline	Cussac	Blackpeak Group	Head of Marketing	Hong Kong
29	Ian	Roberts	Blackpeak Group	Founding Partner	Singapore
30	Pru	Bennett	BlackRock	Director - Head of Asia Pacific, Corporate Governance and Responsible Investment	Hong Kong
31	Kwai San	Wong	BMO Global Asset Management (EMEA) (Formerly F&C Investments)	Analyst	United Kingdom
32	Alex	Ng	BNP Paribas Investment Partners	Chief Investment Officer, Asia Pacific	Hong Kong
33	Tan Sri Amirsham	A. Aziz	Bursa Malaysia	Chairman	Malaysia
34	Emilia	Tee	Bursa Malaysia Berhad	Senior Executive Vice President	Malaysia
35	Zamruddah	Mahfar	Bursa Malaysia Berhad	Senior Manager, Corporate Governance	Malaysia
36	Eisa	Satknasingam	Bursa Malaysia Berhad	Vice President, Corporate Governance	Malaysia
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39	Aminuddin	Zulkifli	Bursa Malaysia Berhad	VP External Affairs & Stakeholder Management, Str	Malaysia
40	Li Lee	Ong	Bursa Malaysia Berhad	Director, Securities Market	Malaysia
41	A A	Deepa	Bursa Malaysia Berhad	VP, Product Development, Securities Market	Malaysia
42	Ai Chia	Tan	Bursa Malaysia Berhad	Senior Vice President, Regulatory Policy & Advisor	Malaysia
43	Selvarany	Rasihah	Bursa Malaysia Berhad	Chief Regulatory Officer	Malaysia
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47	Jeffrey	Williams	China Universal Asset Management Co., Ltd.	Independent Director	China
48	Wen	Li	China Universal Asset Management Co., Ltd.	Chairman of the Board	China
49	Datin Rossaya Binti	Mohd Nashir	CIMB Investment Bank Berhad	Managing Director	Malaysia
50	Hussin bin	Yusof	CIMB Investment Bank Berhad	Assistant Manager	Malaysia
51	Yuen Man, Rachel	Ng	CLP Holdings Limited	Assistant Company Secretarial Manager	Hong Kong
52	April	Chan	CLP Holdings Limited	Company Secretary	Hong Kong
53	Hazwan	Hadian	CLSA Securities Malaysia Sdn Bhd	Associate Director	Malaysia
54	Shan	Choo	CLSA Securities Malaysia Sdn Bhd	Chairman	Malaysia
55	Syed Ari	Azhar	CLSA Securities Malaysia Sdn Bhd	Country Head-Malaysia	Malaysia
56	Ravin	Gill	Companies Commission of Malaysia	Head of Unit	Malaysia
57	Ying	Ci	Computershare Hong Kong Investor Services Limited	Managing Director	Hong Kong
58	Ashley	Ding	Computershare Hong Kong Investor Services Limited	Director	Hong Kong
59	Laks	Meyyappan	Computershare Hong Kong Investor Services Limited	Managing Director	Hong Kong
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62	Stephen	Hagger	Credit Suisse Securities (Malaysia) Sdn. Bhd.	Managing Director	Malaysia
63	Bernard	Fung	Credit Suisse Singapore	Director and Head of Family Office Services and Philanthropy Advisory	Singapore
64	Melissa	Brown	Daobridge Capital	Managing Director	Hong Kong
65	Dan	Konigsburg	Deloitte Touche Tohmatsu	Managing Director, Deloitte Global Center for Corporate Governance	United States
66	Louise	Hedberg	East Capital AB	Head of Corporate Governance	Sweden
67	Sally Mason	Lockey	Edgbaston Investment Partners	Investment Manager	United Kingdom
68	Geetha	Ravindran	Employees Provident Fund	Analyst	Malaysia
69	Zuraini Akma	Mohd Nadzri	Employees Provident Fund	Deputy Manager	Malaysia
70	Shah Rani	Zakaria	Employees Provident Fund	Senior Manager	Malaysia
71	Nor Azman	Yahya	Employees Provident Fund	Head of Research	Malaysia
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73	Azhar	Abdul Latif	Employees Provident Fund	Sr Manager - Equity Research	Malaysia
74	Felice	Friedman	Ernst & Young	Deputy Global Public Policy Leader	United States
75	Tony	Smith	Ernst & Young	Partner, Asia Pacific Leader - Regulatory and Public Policy	Australia
76	Jyoti	Vij	Federation of Indian Chambers of Commerce and Industry	Deputy Secretary General	India
77	Praveen	Sanganna	Fidelity Investments	Lead Equity Research	India
78	Jude Jitesh	Jerome	Fidelity Investments	Associate Sector Specialist	India
79	Ankur Raj	Gupta	Fidelity Investments	Sector Specialist	India
80	Jenn-Hui	Tan	Fidelity Worldwide Investment	Director of Corporate Finance	Singapore
81	Diana	David	Financial Times	Regional Corporate Development Director, Asia-Pacific	Hong Kong
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83	Lisa	Lai	Genting Malaysia Berhad	Manager, Corporate Affairs	Malaysia
84	Lisa	Tay	Genting Malaysia Berhad	Manager-Corporate Affairs	Malaysia
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159	Shinya	Tsujimoto	Nippon Life Global Investors Singapore	CEO	Singapore
160	Gunter	Dufey	NTU/NBS & UofMichigan-Ross	Professor Emeritus & Consultant	Singapore
161	Akito	Konagaya	OECD	Senior Policy Analyst	France
162	Paul	Schneider	Ontario Teachers' Pension Plan	Head of Corporate Governance, Public Equities	Canada
163	Gerard	Fehrenbach	PGGM Investments	Senior Advisor Responsible Investment	Netherlands
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167	Rupert	Rucker	Schroders	Head of Product Management	Singapore
168	Rapee	Suchartakul	Securities and Exchange Commission (Thailand)	Secretary General	Thailand
169	Wen Cheng	Lin	Securities and Futures Bureau	Section Chief	Taiwan
170	Shin-Cheng	Yeh	Securities and Futures Bureau	Executive Officer	Taiwan
171	Ching-Ping	Kao	Securities and Futures Bureau	Deputy Director	Taiwan
172	Shu-Lin	Lu	Securities and Futures Investors Protection Center	President	Taiwan
173	Pi-Feng	Chuang	Securities and Futures Investors Protection Center	Clerk	Taiwan
174	Ahmad Fairuz	Zainal Abidin	Securities Commission Malaysia	Executive Director	Malaysia
175	Nor Zahrul Hayzraai	Zainal	Securities Commission Malaysia	Assistant General Manager	Malaysia
176	Nadia	Zainuddin	Securities Commission Malaysia	Senior Manager	Malaysia
177	Sheena	Babu	Securities Commission Malaysia	Senior Manager	Malaysia
178	Sara Inna	Taluddin	Securities Commission Malaysia	Graduate Management Executive	Malaysia
179	Azraia	Abdul Aziz	Securities Commission Malaysia	General Manager & Head	Malaysia
180	Fen Nee	Lim	Securities Commission Malaysia	Senior General Manager & Head	Malaysia
181	Ismet Al Bakri	Yusoff Al Bakri	Securities Commission Malaysia	Manager	Malaysia
182	Krishman Varges	PV John	Securities Commission Malaysia	Senior Executive	Malaysia
183	Hema	Thruma Lingam	Securities Commission Malaysia	Senior Manager	Malaysia
184	Leanne	Ann Susau	Securities Commission Malaysia	Senior Manager	Malaysia
185	Kok Wing	Yam	Securities Commission Malaysia	Assistant General Manager	Malaysia
186	Suresh	Krishnan	Securities Commission Malaysia	Manager	Malaysia
187	Kautsar	ABD Rahman	Securities Commission Malaysia	Senior Executive	Malaysia
188	Sreelaxya	Mienon	Securities Commission Malaysia	Senior General Manager & Head	Malaysia
189	Mohamad Lutfi Hakim	Mohamad Ariff	Securities Commission Malaysia	Senior Executive	Malaysia
190	Datuk Ranjit Ajit	Singh	Securities Commission Malaysia	Chairman	Malaysia
191	Ching Yin	Goh	Securities Commission Malaysia	Executive Director	Malaysia
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199	Wei Wei	Chan	Social Security Organisation	Investment Manager	Malaysia
200	Kim Yeet	Seet	Social Security Organisation	General Manager	Malaysia
201	Joanna	McNeill	Standard Life Investments	Governance & Stewardship Manager	United Kingdom
202	Mike	Everett	Standard Life Investments	Governance & Stewardship Director	United Kingdom
203	Kenji	Hashizume	Sumitomo Mitsui Asset Management (Hong Kong) Ltd.	Senior Fund Manager	Hong Kong
204	Hiroshi	Komori	Sumitomo Mitsui Trust Bank, Limited	Associate General Manager	Japan
205	Dominic	Chan	Sustainalytics	Responsible Investment Adviser	Singapore
206	Hui-Ting, Vivien	Chang	Taiwan Depository & Clearing Corporation	Associate	Taiwan
207	Jou-Chien, Lori	Chen	Taiwan Depository & Clearing Corporation	Associate	Taiwan
208	Wan Ting	Chang	Taiwan Stock Exchange	Senior Analyst	Taiwan
209	Tsun	Cheng	Taiwan Stock Exchange	Executive Secretary	Taiwan
210	Hsin Hui	Hsieh	Taiwan Stock Exchange	Senior Analyst	Taiwan
211	Lih Chung	Chien	Taiwan Stock Exchange	Senior Executive Vice-President	Taiwan
212	Bandit	Nijathaworn	Thai Institute of Directors	President & CEO	Thailand
213	Benyada	Kumlungsom	Thai Institute of Directors	CG Specialist	Thailand
214	Alka	Kapoor	The Institute of Company Secretaries of India	Joint Secretary	India
215	Atul	Metha	The Institute of Company Secretaries of India	President	India
216	Ryushiro	Kodaira	The Nihon Keizai Shimbun (Nikkei)	Editorial Writer	Japan
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218	Sukij	Kittiboonyanont	The Stock Exchange of Thailand	Supervisor	Thailand
219	Mohani	Maharaj	TIAA-CREF	Sr Corporate Governance Analyst	United States
220	Thiam Yong	Kuek	Universiti Tunku Abdul Rahman	Lecturer	Malaysia
221	David	Russell	USS	Co Head of Responsible Investment	United Kingdom
222	Azleen	Osman Rani	Valuecap Sdn Bhd	Head, Investment & Market Research	Malaysia
223	Sharifatu Laila	Syed Ali	Valuecap Sdn Bhd	Group CEO	Malaysia
224	Kha Loon	Lee	VCAP ASSET MANAGERS SDN BHD	DIRECTOR	Malaysia
225	Truc	Le Quang Thanh	Vinamilk	Foreign Subsidiaries Management Director	Vietnam
226	Trung	Nguyen	Vinamilk	Director of Strategic Planning Department	Vietnam
227	Li Lynn	Tan	Zinkin Ettinger Sdn Bhd	Manager	Malaysia

Asian Corporate Governance Association (ACGA)

“CG Rising in Southeast Asia?”

Presentation by:

Jamie Allen
Secretary General
Asian Corporate Governance Association

Asia Overview – Plenary Session
“Asian Business Dialogue on Corporate Governance 2015”
November 3, 2015, Kuala Lumpur

ACGA Presentation
November 3, 2015

1



Looking back: “CG Watch 2014”

“CG Watch” survey. Market scores: 2010 to 2014

(%)	2010	2012	2014	Change 2012 vs 2014 (ppt)	Trend of CG reform
1. = Hong Kong	65	66	65	(-1)	Weak leadership, tough enforcement
1. = Singapore	67	69	64	(-5)	International vs local contrast continues
3. Japan	57	55	60	(+5)	Landmark changes, can they be sustained?
4. = Thailand	55	58	58	-	Improving, but new legislation needed
4. = Malaysia	52	55	58	(+3)	Improving, but still too top-down
6. Taiwan	55	53	56	(+3)	Bold policy moves, can they be sustained?
7. India	48	51	54	(+3)	Bouncing back, Delhi more supportive
8. Korea	45	49	49	-	Indifferent leader, more active regulators
9. China	49	45	45	-	Focus on SOE reform, enforcement
10. = Philippines	37	41	40	(-1)	Slow reform, improved company reporting
10. = Indonesia	40	37	39	(+2)	Big ambitions, can they be achieved?

Source: ACGA, CLSA

The many sides of Asian CG:

Highlights from 2015

Market	Progress	Regress/stasis
China	Securities enforcement	9 th IPO moratorium (since 1994)
Hong Kong	Dual-class shares off the table	SFC enforcement leadership
India	Women on boards	SOEs ignoring CG rules
Indonesia	AGM transparency rules	Ongoing SOE AGM opacity
Japan	CG Code 2015	Toshiba accounting scandal
Korea	CG committees in two chaebol	Presidential pardons revived
Malaysia	Some voluntary poll voting	1MDB / public governance
Philippines	CG Blueprint 2015	No independent audit regulator
Singapore	MAS-CAD joint enforcement	Dividend policies not disclosed
Taiwan	Director nomination rules	Extensive corporate malfeasance
Thailand	SOE governance plan	Limited corporate dialogue

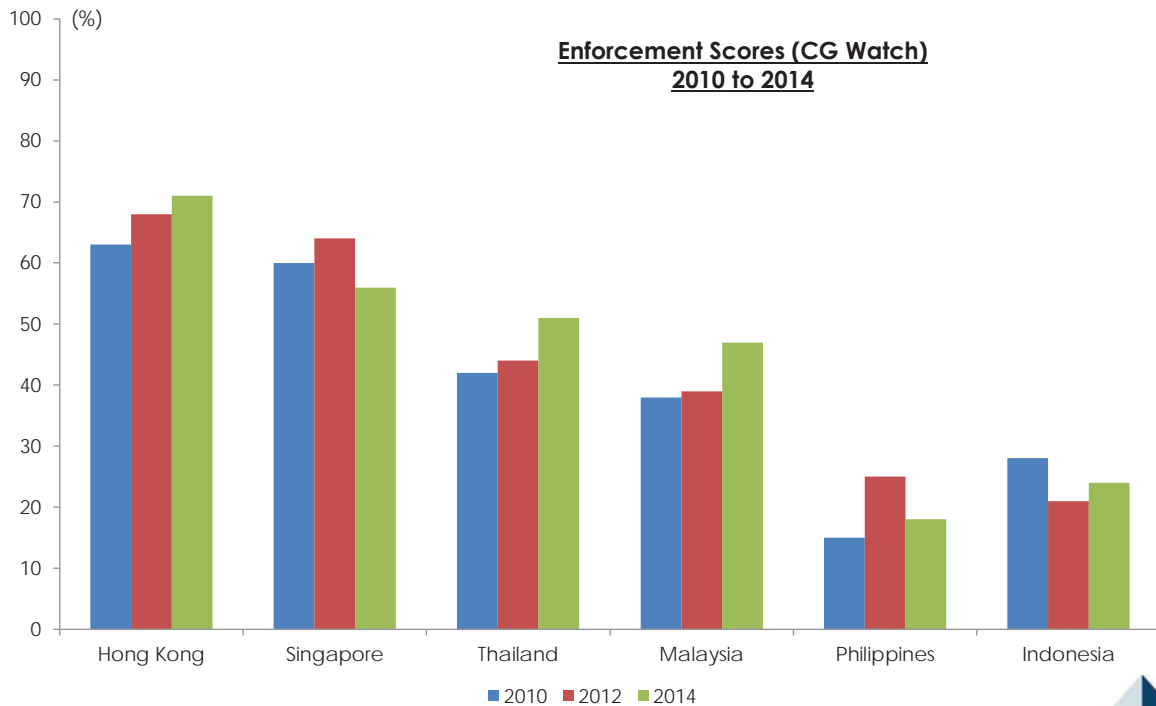


CG rising in Southeast Asia – By market

Market	Policy Developments – 2014 to 2015
ASEAN	ASEAN Capital Market Forum, CG Scorecard, AEC: leading to increasing regulatory cooperation—and competition
Indonesia	<ul style="list-style-type: none"> CG Roadmap (2014) + new rules on AGMs, board committees Financial conglomerate governance Anti-corruption drive
Malaysia	<ul style="list-style-type: none"> New ESG reporting standards AGM transparency improving: voting by poll for RPTs KWAP signs Malaysian Code for Institutional Investors
Philippines	<ul style="list-style-type: none"> Term limits for independent directors proposed SEC seeks to improve corporate disclosure CG Blueprint (2015)
Singapore	<ul style="list-style-type: none"> New CG disclosure guide Revamped MAS-CAD enforcement strategy on insider trading New SGX CRO + listing and disciplinary committees
Thailand	<ul style="list-style-type: none"> Revamped plan for SOE governance Enhanced focus on SME governance Plan to strengthen the external audit industry



CG (mostly) rising -- Enforcement



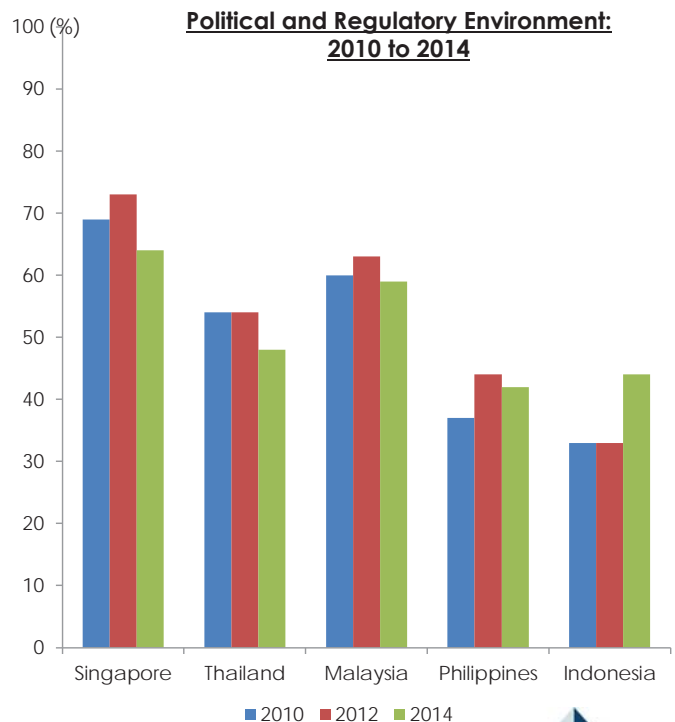
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CG (mostly not) rising – Public governance

- Scores undermined by weak or uneven leadership on corporate governance in many markets, hence the lack of a clear and consistent strategy
- Corruption and inadequate attempts to control it are also a major issue.
- A new question on public governance and civil service ethics has brought scores down for some markets.



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Why CG could and should keep rising: 7 trends

1. Financial services and pension management becoming increasingly important and complex (eg, more cross-border investing)
2. ASEAN corporates increasingly investing across borders (banks, palm oil)
3. Pressure on natural resources is intense and unlikely to weaken (palm oil, forest fires, population growth and consumer demand), leading to need for better public management of resources and governance around corporate E&S factors
4. Growing discontent with public governance and corruption: Can we drive reform through a bottom-up process?
5. The emergence of investor “stewardship” codes—a greater focus on active and engaged ownership / internal fund governance
6. Next generation corporate boards—the possibility that they will be more open than the current generation
7. “CG Watch 2016, 2018, 2020”!

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Contact details

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Asian Business Dialogue on Corporate Governance 2015:

Country Comparison

Source: Deloitte report – Women in the Boardroom: a global perspective

Jyoti Vij

Deputy Secretary General

FICCI

November 3, 2015

Percentage of Board seats held by women

Asia Pacific			
Country	Provision	Year introduced	Percentage
Australia	Comply or explain	2010	15.1%
China	No quota		8.5%
Hong Kong	Comply or explain	2013	8.4%
India	Mandatory	2013	12.6% (as on Oct 30, 2015)
Indonesia	No quota		3.7%
Japan	No quota		2.4%
Malaysia	Mandatory	2011	10.4%
Philippines	No quota		7.4%
Singapore	No quota		9%
Thailand	No quota		9.7%

Percentage of Board seats held by women



Americas			
Country	Provision	Year introduced	Percentage
Brazil	Mandatory quota to be introduced (Under discussion in Parliament)		6.3%
Canada	Mandatory	2014	13.1%
Chile	No quota		3.8%
Colombia	Mandatory for government entities; no quota for private sector	2000	7%
Mexico	No quota		6.2%
United States	No quota		12.2%



Percentage of Board seats held by women



Europe			
Country	Provision	Year introduced	Percentage
Austria	Comply or explain	2015	16.3%
Belgium	Mandatory	2011	18.3%
Denmark	No quota		21.8%
Finland	Comply or explain	2010	22.1%
France	Mandatory	2011	29.9%
Germany	Mandatory	2015	18.3%
Greece	Mandatory (for state-owned boards)	2000	9.6%
Ireland	No quota		14.4%
Italy	Mandatory	2011	22.3%
Netherlands	Mandatory	2013	17.3%
Norway	Mandatory	2005	36.7%
Spain	Self-regulatory	2007	12.5%
Sweden	Self-regulatory	2014	24.4%
Switzerland	No quota		10%
U.K.	No quota		15.6%

Thank You



Jyoti.vij@ficci.com

www.ficci-ccg.com





Stream 1: Board Culture
Asian Board Dynamics:
What's new on the agenda?



Grand Hyatt Kuala Lumpur
12, Jalan Pinang,
50450 Kuala Lumpur, Malaysia
3-4 November 2015

ACGA 15TH ANNUAL CONFERENCE

Asian Business Dialogue on Corporate Governance 2015

CG Rising in Southeast Asia:
Building Bridges between Stakeholders

IN-DEPTH ADVANCED TOTAL RECOVERY STRATEGIST (TRS) - DEPTH ADVANCED TOTAL RECOVERY STRATEGIST (TRS) Corporate Governance Board Leadership Program



22 - 24 October 2012



Asian Business Dialogue on Corporate Governance 2015:
"CG Rising in Southeast Asia: Building Bridges between Stakeholders"



Stream 1: Board Culture
Asian Board Dynamics:
What's new on the agenda?

Brief Facilitator's Resume

Ir. Tony Silitonga MBM MBA DBAcan

Tony Silitonga has been working for more than twenty five (25) years in different countries, different industries, with different multinationals, such as: IBM, Atlantic Richfield Oil & Gas Company (Indonesia), Standard Chartered Bank (The Philippines), Merrill Lynch (USA), China Development Industrial Bank (Taiwan), and Indonesian Bank Restructuring Agency (IBRA). He is the member founder of **Total Recovery Strategist (TRS)**, **Sentra Pemimpin Asia (SPA)**, and **FORESPECT**. Graduated from Bandung Institute of Technology major in Petroleum Engineering, he has got his Master in Business Management (MBM) majoring in Finance and Strategic Management from Asian Institute of Management (AIM), Makati (Philippines), and MBA from Columbia Business School (CBS), New York (USA) Finance-Exchange scholars' program. Recently, he is finalizing his Dissertation for Doctorate in Business Administration (DBA) from De LaSalle University – Manila (Philippines), major in Finance, Strategic Management, and Good Corporate Governance. He was The **Executive Director of Indonesian Institute for Corporate Directorship (IICD) from 2004 to 2010**, and recently member of IICD Board of Management. Tony Silitonga was also The **Executive Director of AAF (Asia Anti Fraud) Foundation** that was founded with the mission to increase the body of anti fraud knowledge and support anti fraud professionals within Asian region through seminars, workshops and consultation.

Tony Silitonga is the Chairman of **FORESPECT**, Board of Directors of **Total Recovery Strategist (TRS)**, and Commissioner of **SPA - Sentra Pemimpin Asia The Indonesian Exclusive License Holder of John Maxwell Company, USA** (<http://www.johnmaxwell.com/>). For over 40 years John has inspired audiences through his more than 70 books and his thousands of speaking engagements. To inspire means to urge a person on to do something. It also means to "breathe into." We want to breath new life into your leadership, urging you to dig deep and become a difference maker. We believe leadership is a privilege. It's also a responsibility. It demands risk and accountability. We're here to push you out of the box. No one said leading was easy. Let us come alongside you and push you toward the best you possible. It's why we exist, we support your success: by equipping you to take our leadership teachings and apply them to your life. To your team. And to your organization.

Tony was also working as **The WorldBank Consultant on Government Implementation Control System-GICS** implementation at **BPKP** to facilitate BPKP in Piloting SPIP based on Government Regulation PP.60/2008

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2015

What are The Recent Indonesian Issues ?

McKinsey Global Institute
September 2012

The archipelago economy: Unleashing Indonesia's potential

Raoul Oberman
Richard Dobbs
Arief Budiman
Fraser Thompson
Morten Rossé

Indonesia today ...

16th-largest economy in the world

45 million members of the consuming class

53% of the population in cities producing 74% of GDP

55 million skilled workers in the Indonesian economy

\$0.5 trillion market opportunity in consumer services, agriculture and fisheries, resources, and education



... and in 2030

7th-largest economy in the world

135 million members of the consuming class

71% of the population in cities producing 86% of GDP

113 million skilled workers needed

\$1.8 trillion market opportunity in consumer services, agriculture and fisheries, resources, and education

Asian Business Dialogue on Corporate Governance 2015:
"CG Rising in Southeast Asia: Building Bridges between Stakeholders"

2015

Session Objectives



Discussion, on:

- How Do Boards Manage And Encourage Open Discussion As Well As Harmony?
- How Do They Marshal Scarce Resources, In Particular The Time Of Directors?
- Is It Difficult To Do An Honest Board Evaluation?
- Are There Enough "Board Ready" Women In Senior Management Positions
- In Asia? How Well Are Companies Preparing For Dialogue With Investors And Other Stakeholders In Today's Increasingly Complex Business Environment?

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The Expectation VS "The Practices"

How Do Boards Manage And Encourage Open Discussion As Well As Harmony?

1. The Obsession With **Shareholder Value** began In 1976, When Michael Jensen And William Meckling, Two Economists, Published An Article, "Theory Of The Firm: Managerial Behaviour, Agency Costs And Ownership Structure"
2. American And British Value-maximisers Reserved Particular Disdain For The "Stakeholder Capitalism" Practiced In Continental Europe.
3. Shareholder Value Should Give Way To "Customer-driven Capitalism" In Which Firms "Should Instead Aim To Maximise Customer Satisfaction."
4. "Increased Shareholder Value Is One Of The By-products Of A Focus On Customer/Stakeholder Satisfaction."



Stream 1: Board Culture
Asian Board Dynamics:
What's new on the agenda?

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"CG Rising in Southeast Asia: Building Bridges between Stakeholders"

2015

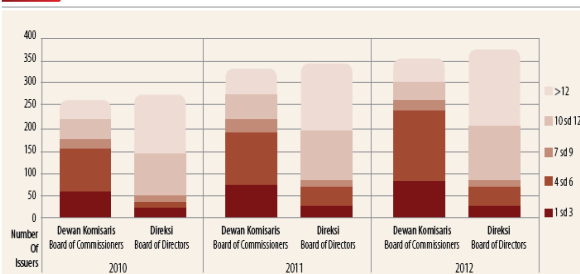


The Expectation VS "The Practices"

How Do They Marshal Scarce Resources, In Particular The Time Of Directors?

Stream 1: Board Culture
Asian Board Dynamics:
What's new on the agenda?

Grafik graph Pengungkapan Frekuensi Rapat Dewan Komisaris dan Direksi
Disclosure of Frequency of Meetings of the Board of Commissioners and Board of Directors



Frekuensi Rapat Frequency of Meeting	2010		2011		2012	
	Dewan Komisaris Board of Commissioners	Direksi Board of Directors	Dewan Komisaris Board of Commissioners	Direksi Board of Directors	Dewan Komisaris Board of Commissioners	Direksi Board of Directors
1 s.d 3	60	11	74	19	79	18
4 s.d 6	112	30	130	46	153	46
7 s.d 9	16	16	24	15	26	17
10 s.d 12	37	92	50	112	43	118
>12	31	113	54	146	43	164
Tidak Mengungkapkan Not Disclosed	186	180	121	115	150	131

Sumber/Source: OJK, 2013

E.2.E. MEETING OF BOARD OF COMMISSIONERS AND BOARD OF DIRECTORS

Coordinating the implementation of the tasks of board of commissioners and directors can be realized in the form of separate meetings and joint meetings, such as Board of Commissioners meetings that invite the Directors. A well-planned meeting with complete materials will very much support the realization of optimal meeting results along with decision making that is efficient and effective. In Indonesia, Issuers and Public Companies are required to disclose the number of meetings and attendance of the members of Board of Commissioners and Board of Directors²⁶.

RAPAT DIREKSI TAHUN 2015 **CIMB NIAGA**

BOARD OF DIRECTORS ("BOD") MEETING 2015

BOD meeting will be convened every Tuesday / week.

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2015

E.2.1. PERFORMANCE EVALUATION OF THE BOARD OF COMMISSIONERS AND ITS MEMBERS

Performance of the Board of Commissioners and its members needs to be evaluated on a regular basis as a form of accountability and reference for future improvements. In addition, performance evaluation of the Board of Commissioners and its members has also an important role in planning the re-nomination and re-election of members of the Board of Commissioners and which needs to be associated with remuneration. The Indonesia's Code of GCG recommend for the Board of Commissioners to submit accountability reports, but have not specifically explained regarding performance evaluation of individual members of the Board (among others through self-assessment).

In Indonesia, the obligations of the Issuer or Public Company are based on prevailing regulations to evaluate the performance of the Board of Directors³⁰. Graph 10 shows approximately 75% (372 of 494) Issuers and Public Companies disclosed the relationship of performance and remuneration of the Board of Directors in the 2012 annual report.

The Expectation VS "The Practices"

Is It Difficult To Do An Honest Board Evaluation?

OECD Principle Vi (D)

(2). Monitoring The Effectiveness Of The Company's Governance Practices And Making Changes As Needed.

Monitoring Of Governance By The Board Also Includes Continuous Review Of The Internal Structure Of The Company To Ensure That There Are Clear Lines Of Accountability For Management Throughout The Organisation. In Addition To Requiring The Monitoring And Disclosure Of Corporate Governance Practices On A Regular Basis, A Number Of Countries Have Moved To Recommend Or Indeed Mandate Self-assessment By Boards Of Their Performance As Well As Performance Reviews Of Individual Board Members And The CEO/Chairman.

Lingkup Perbaikan Scope of Improvement	Rekomendasi Recommendation	Implementasi Implementation	Waktu Time
10 Evaluasi Kinerja Dewan Komisaris dan anggotanya Performance Evaluation of the Board of Commissioners and its members	Diperlukan ketentuan yang mewajibkan Emiten dan Perusahaan Publik untuk melakukan penilaian kinerja Dewan Komisaris dan anggotanya yang dikaitkan dengan remunerasi, dan pengungkapannya. There needs to be a regulation requiring Issuers and Public Companies to assess the performance of the Board of Commissioners and its members associated with remuneration, and disclosure.	Peraturan OJK OJK Regulations	Desember 2014 December 2014

Ownership Concentrations

OWNERSHIP CONCENTRATION (%)	COUNTRY	OWNERSHIP CONCENTRATION (%)	COUNTRY
4.1	Japan	49.0	Venezuela
5.0	China	51.5	Belgium
15.0	US	51.9	Thailand
20.0	Netherlands	52.0	South Africa
23.6	UK	52.8	Austria
24.6	Ireland	55.0	Israel
27.0	New Zealand	55.8	Spain
27.5	Australia	58.0	Turkey
27.5	Canada	59.6	Italy
31.8	South Korea	60.3	Portugal
37.5	Denmark	63.0	Brazil
38.6	Norway	64.6	Germany
42.6	Malaysia	64.8	France
43.0	India	66.0	Mexico
44.8	Singapore	67.3	Indonesia
45.5	Taiwan	71.5	Hong Kong
46.4	Philippines	72.5	Argentina
46.9	Sweden	75.0	Greece
48.1	Switzerland	90.0	Chile
48.8	Finland		

SOURCE: Peter Gourevitch and James Shinn, *Political Power and Corporate Control: The New Global Politics of Corporate Governance* (Princeton, NJ: Princeton University Press, 2005).

The Expectation VS "The Practices"

Is It Difficult To Do An Honest Board Evaluation?

Board Performance Evaluation's

333

WHO

SHAREHOLDERS
STAKEHOLDERS
3rd PARTY

WHAT

BOD as PERSONAL
BOD as TEAM
MIXED

HOW

SELF ASSESSMENT
360 DEGREES
3rd PARTY

High Share concentration – the percentage of companies with a single block shareowner holding at least 20 percent of the shares

The Expectation VS "The Practices"

Are There Enough "Board Ready" Women In Senior Management Positions

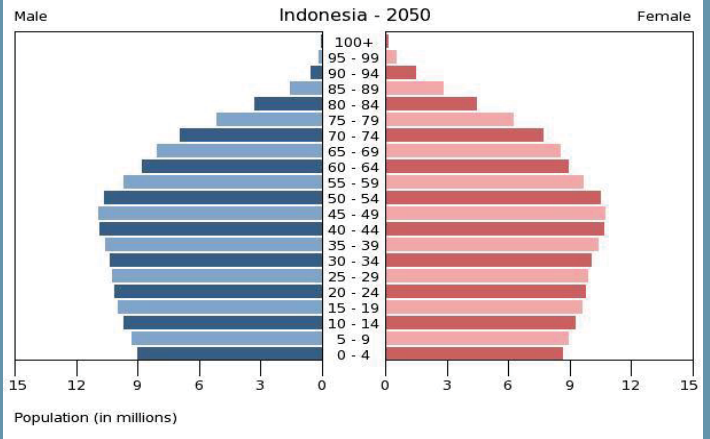
One of The "ASEAN CG SCORECARD" variables that were in "Bonus and Penalty" Section :

The Company Have At Least One Female Independent Directors / Commissioners

E.2. I. DIVERSITY FOR THE COMPOSITION OF THE BOARD OF COMMISSIONERS AND THE BOARD OF DIRECTORS

Business globalization increases expectations of investors and requires expertise of Board of Commissioners and Board of Directors of the company that are increasing and complex to be able to meet these expectations. The diversity of the composition of Board of Commissioners and Board of Directors will encourage more objective and comprehensive decision-making because decisions are taken by considering various viewpoints and interests.

The diversity of the composition of Board of Commissioners and Board of Directors include academic qualifications, expertise, age, and gender. In line with the above the company should be encouraged to have policies that motivate participation of all stakeholders and are not discriminatory. One of the policy options proposed by OECD to improve the nomination and selection process of Board of Commissioners and Board of Directors of the company is to expand the scope of qualified candidates through increased diversity in the candidate search process (OECD, 2013).



The Expectation VS "The Practices"

Are There Enough "Board Ready" Women In Senior Management Positions

One of The "ASEAN CG SCORECARD" variables that were in "Bonus and Penalty" Section :

The Company Have At Least One Female Independent Directors / Commissioners



D RESPONSIBILITY of THE BOARD			
D.1.1 Board Competencies and Diversity			
D.1.1(B)	ICGN 2.4.1 Skills and experience	YES	2
Does the company have at least one female independent director/commissioner?	The board should consist of directors with the requisite range of skills, competence, knowledge, experience and approach, as well as a diversity of perspectives, to set the context for appropriate board behaviours and to enable it to discharge its duties and responsibilities effectively.	YES	2



Responding to stakeholder power

	High level of interest	Low level of interest
High level of power	Key players Take notice of them	Keep them satisfied
Low level of power	Communicate regularly with them	Can usually be ignored

Key Stakeholders

Shareowners

Parties with contractual relationships

- Employees
- Contractors and suppliers
- Providers of capital

Business partners, regulators, accountants, auditors, etc.

- Other Parties Not Having Contractual Relationship
- Communities
- Ngos
- Analysts, Investor Associations, Pressure Groups
- Media And Other "Reputational" Agents, etc

The Expectation VS "The Practices"

In Asia? How Well Are Companies Preparing For Dialogue With Investors And Other Stakeholders In Today's Increasingly Complex Business Environment?



Asian Business Dialogue on Corporate Governance 2015:
"CG Rising in Southeast Asia: Building Bridges between Stakeholders"

2015



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"Session 1: Board Culture"

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WEBSITES

- **Hermes** www.hermes.co.uk/corporate_governance/corporate_governance_in_practice.htm. Hermes is a company based in the UK that actively engages with companies that are underperforming. Its Website contains a number of interesting case studies of successful interactions with companies that have led to significant rises in share value.
- **United Nations** www.unctad.org. In 2006, the United Nations developed *Guidance on Good Practices in Corporate Governance*, which is available on its Website.
 - www.unglobalcompact.org
In 2000, the United Nations developed the Global Compact with business, which is available on its Website.
 - www.unpri.org
In 2006, the United Nations developed the *Principles of Responsible Investors*, which is available on its Website.

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2015

Deloitte.

The Dysfunctional Board

How can you tell? What can shareholders do?

Dan Konigsburg, Managing Director,
Deloitte Global Center for Corporate Governance
October 2015
ACGA Annual Conference, Kuala Lumpur, Malaysia



1





Garage band or band of directors?

PHOTO: BEN BAKER/REDUX © Touche Tohmatsu Limited.



Bullies are not just from the schoolyard



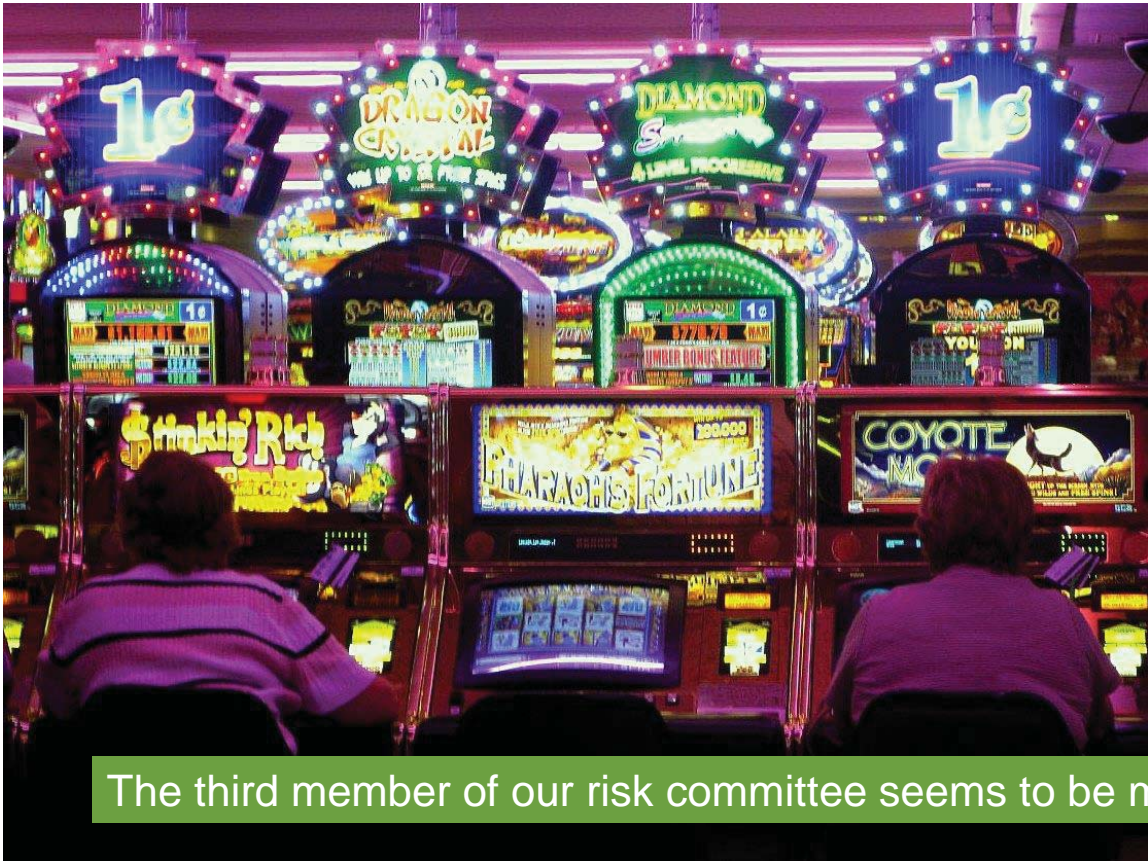
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Every effective board is alike...

...every dysfunctional board is dysfunctional in its own way...

- Distracted
- Disabled/ paralyzed
- Dismissed
- Destruction, of value
- Undeveloped
- Dysfunction

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1. CHILDREN UNDER 41 YEARS ARE NOT ALLOWED TO USE THE ELEVATOR EXCEPT IN THE COMPANY OF ADULTS.
2. THE LOAD INDICATED MUST NOT BE EXCEEDED.
3. IF FOR ANY REASON IT IS IMPOSSIBLE TO LEAVE THE ELEVATOR, PLEASE OPERATE THE ALARM BUTTON.
4. IN CASE OF FIRE USE OF THE ELEVATOR IS FORBIDDEN. IN CASE OF ELEVATOR MALFUNCTION CALL:
1-800-434343
08-6378117

Sometimes it's hard to let go



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Our last non-exec was a bit in over his head

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Over to you!

Please divide into three groups:

How can you tell?

- What are the tell-tale signs, either from the inside or, as an investor, from the outside?
- What are the types of dysfunction – is there a taxonomy of dysfunction? – and which are the most damaging?

What can be done from inside the company?

- Is there a role for the company secretary?
- The chair?
- Non-executive directors themselves?

What can shareholders do?

- Can shareholders really engage on board dysfunction?
- Is there a role for activist holders?

Thoughts on the UK Stewardship Code

ACGA Kuala Lumpur
3 November 2015

David Russell, Co-Head of Responsible Investment

UK Stewardship Code

- 2008 financial crises
 - Walker Review (banking / financial services) / EU risk?
 - Investors “asleep at the wheel”
- FRC 2010 – Stewardship Code (a governance code for investors?)

7 Principles:

1. Publicly disclose their policy on how they will discharge stewardship responsibilities
2. Have a robust policy on managing conflicts of interest in relation to stewardship and this policy should be publicly disclosed
3. Monitor their investee companies
4. Establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value
5. Be willing to act collectively with other investors where appropriate
6. Have a clear policy on voting and disclosure of voting activity
7. Report periodically on their stewardship and voting activities

Stewardship Code 2



- What is stewardship?
 - Not defined in original code
 - USS view is its more the just Governance
 - Entrusted to manage the assets...
- Initial Focus is public equities only
 - More than just public equities / more than just the UK
 - FRC recognize increasingly other assets / markets ... but still UK focus
 - UK institutional ownership of UK companies decreasing
- Strong base CG Code / company law framework essential
 - UK History of CG failures....
 - Good company law framework – tools to hold to account
 - History of engagement

Stewardship Code 3



- Annual Statements - ~ 200 managers & ~ 90 owners
 - Comply or explain
 - Signatories vs adherents: How does the user differentiate?
 - NAPF survey / assessment
- What has changed / what have we learned?
 - More / better engagement?
 - “More needs to be done to ensure AO and AM follow through on their commitments”FRC Jan 2015
 - Quality vs quantity of engagement?
 - Corporate governance is more than remuneration!

UK Stewardship Code is Work in Progress!

Stewardship Codes



	Year Implemented	Asset Owners	Fund Managers and Service Providers	Status
Codes Enacted				
UK	2010	✓	✓	Comply/Explain
Japan	2014	✓	✓	Comply/Explain
Malaysia	2014	✓	✓	Comply/Explain
Stewardship Norms				
Australia	2009		✓	Voluntary
Codes Pending				
Hong Kong				Consulting
Singapore				Considering
Taiwan				Considering
Thailand				Voting guidelines

The Framing Concepts



- **Principle – Agent Problem** “The most profound shortcoming which we need to address ... is the hidden cost of public ownership that results in inadequate stewardship.” -- Paul Myners
- **Fiduciary Duty** Stock markets cannot meet society’s needs when investors act as “absentee landlords” that fail by being “too reliant and unchallenging”
- **Short-termism** Investor passivity has reinforced market short-termism and failed to reflect the needs of long-term investors
- **Control** Engaged regulators and minority investors provide crucial checks and balances for insider-and management-controlled companies and boards
- **Information Gaps** Investors also need to take more transparent steps to demonstrate alignment with their clients, to articulate policies, and to address conflicts of interest
- **Market Structure** The heterogeneity of the investment community and the challenge of multiple jurisdictions will also play a role in how effective policy measures are structured

An Opponent's Critique



Hong Kong's leading old line business group, the Chamber of Hong Kong Listed Companies opposes Hong Kong's proposed Principles for Responsible Ownership:

- **Unnecessary** “**Channels for investors** to engage with company directors and senior management and to exercise their rights as shareholders **exist and are fully utilised**”
- **Investor Education Needed** “Rather than adding more stifling regulations or making further regulatory interventions, the **government should educate investors** on how to analyse the abundant company information and become more knowledgeable about the **risks involved when investing...**”
- **Inside Information** “It would be possible that ‘**selective or inside information dissemination**’ might be inadvertently passed on to aggressive fund managers or analysts”
- **Short-termism** “The proposal would place **pressure on company directors to take a very short-term approach** to running the business...”
- **Costly** “Peer pressure to be ‘seen as doing something’” ... “**Requests by investors for meetings and information would increase significantly**” ... “This strains not only companies resources in responding but also those of investors, thereby increasing costs for both.”

Stewardship Codes – The Owner's Manual



Structure

- The **voluntary versus mandatory** decision reflects market structure but also has implications for potential impact in the early stage of implementation
- **Asset owners** are critical to the process; they set a natural context for the work of asset managers and give weight to the dialogue with companies
- **Proxy advisors** are not seen as a problem in Asia, but their role in stewardship should be framed by their clients

Practice

- In the early stage, governance experts often feel there is too much **form over substance engagement**
- **Remuneration** has emerged as the initial “systemic” issue for engagement in the UK, but other issues appear to be more material in Asia
- **Transparency** by AOs, AMs, and other product providers is still a work in progress and will have important implications for regulators and the development of a stewardship ecosystem

Stewardship in Japan

~ 2 years post the introduction of the Stewardship Code and hereafter~

Macro picture: Developing favourable environment

- ❑ **Stewardship Code** introduced in February 2014 and nearly **200 investors** signing up for the Code (incl. **146 asset managers** and **23 asset owners**)
- ❑ **GPIF** joining **PRI** in September 2015, highlighting stewardship responsibilities
- ❑ **Corporate Governance Code** (in place in June 2015) and **Ito Report** (released in August 2014)



Governance
for Owners

Adding value through constructive engagement

Stewardship in Japan

~ 2 years post the introduction of the Stewardship Code and hereafter~

Micro picture: Indicating challenges ahead

- ❑ **200 signatories, realistic number?**
 - **Resource** of experienced personnel
 - **Complaints by companies**
- ❑ **Litmus tests, no colour change?**
 - **TOYOTA**: Model AA shares
 - **TOSHIBA**: Accounting scandal
- ❑ **Follow-up Council** by FSA
 - Doubts the **ability** of domestic investors **to engage in high-quality dialogues**
 - Highlights the **role of asset owners** as important



Governance
for Owners

Adding value through constructive engagement

Family Business – some recent papers

Research Institute

Thought leadership from Credit Suisse Research and the world's foremost experts



Research Institute

Thought leadership from Credit Suisse Research and the world's foremost experts



2015

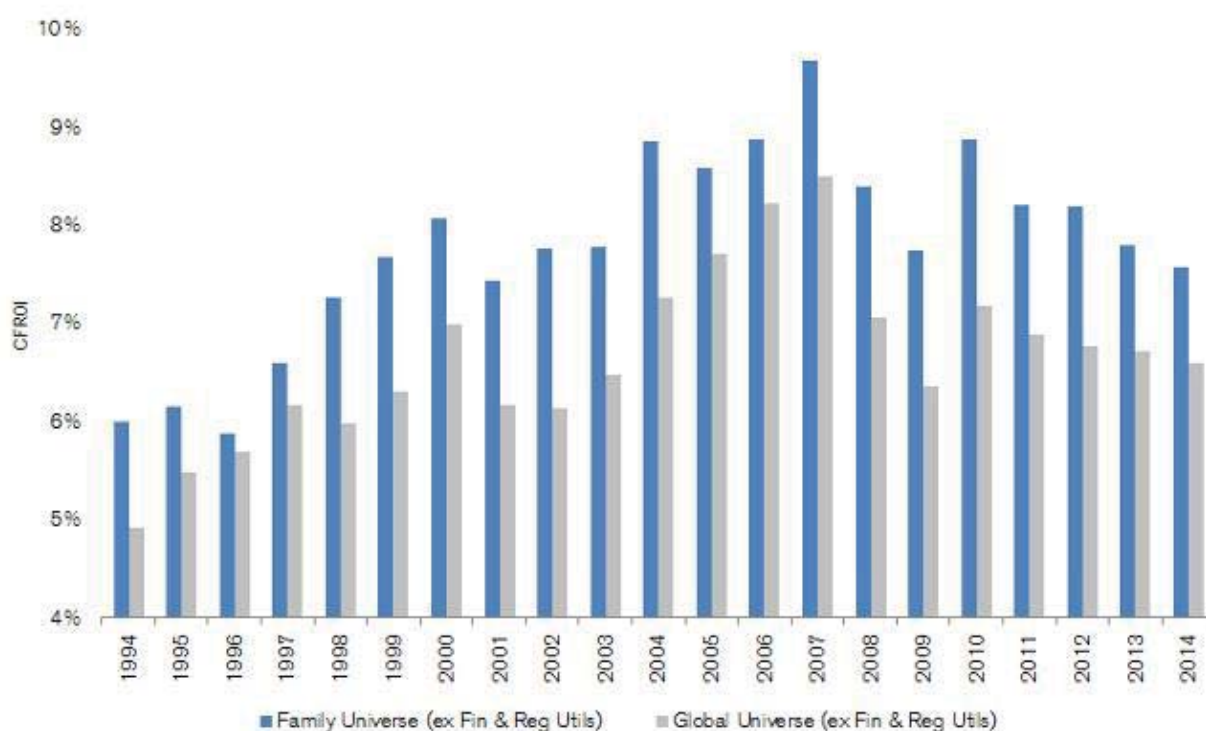
CS Global Family 900 universe

The **CS Global Family 900 universe** is composed of 920 publicly listed companies from 35 countries that have a market capitalization of at least 1 billion US dollar and where families own at least 20 percent of the outstanding shares. Joint ventures and assets previously owned by the state, consequently sold to private investors have been excluded. The 920 firms account for 25 percent of the MSCI World market capitalization. They are skewed toward technology, financials and consumer-related businesses. (See adjacent figure) The US unsurprisingly has the greatest representation in the CS Global Family 900 universe, tracked by China!

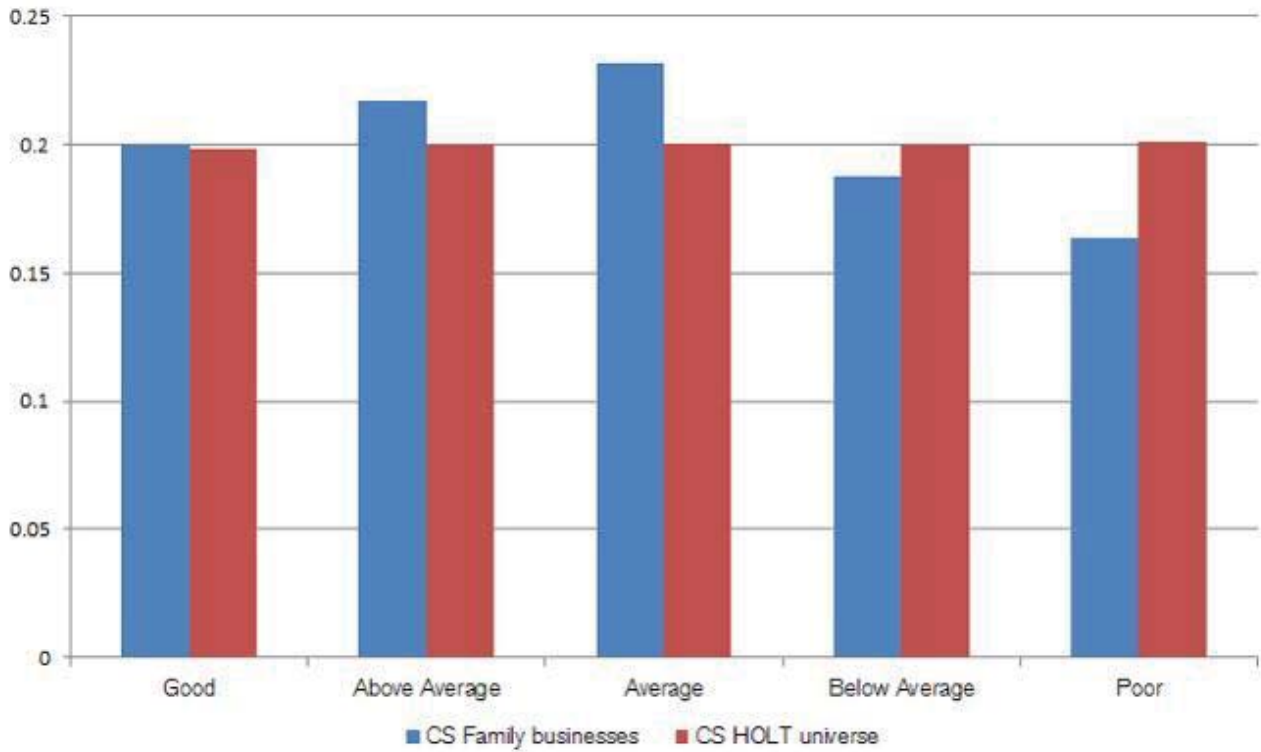
Excess returns of 4.5% p.a. since 2006



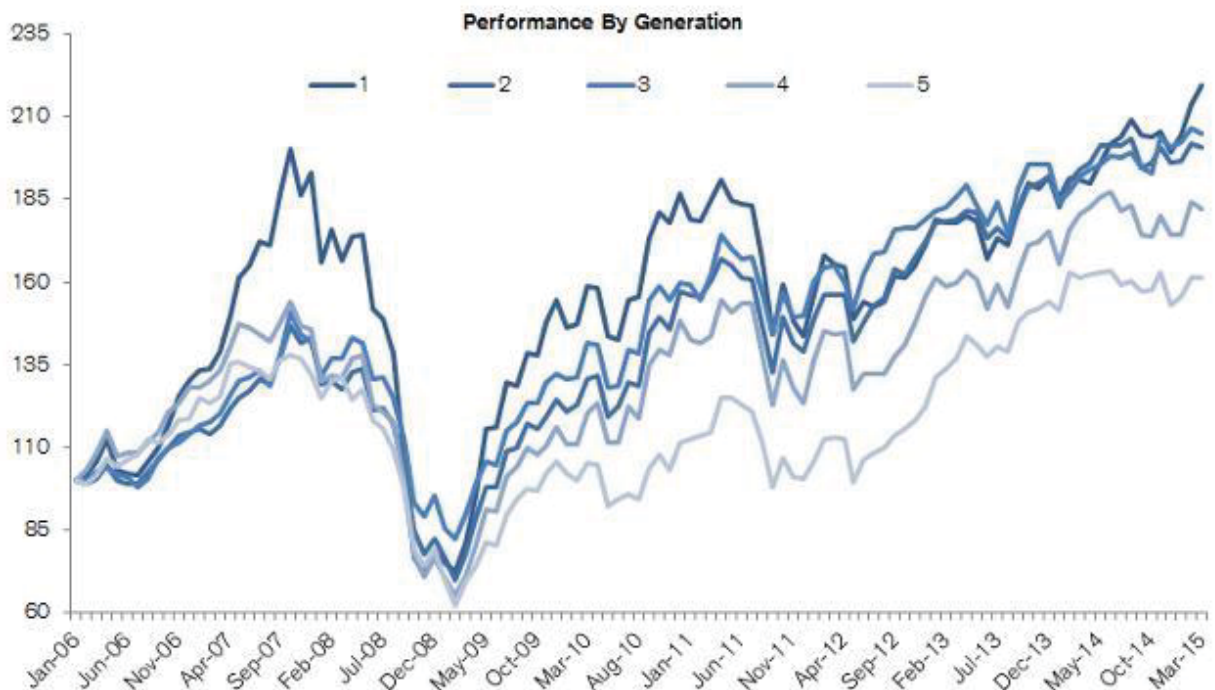
Excess CFROI of 130bps



Better than average accounting quality



Since 2006, G1 have performed better than nextgens



ACGA 15th ANNUAL CONFERENCE

Asian Business Dialogue on Corporate Governance 2015

Asian Family Firms : A Superior Model of Governance?

(November 3-4, 2015 at Grand Hyatt KL)

By **Yuelin T. Yang**

Managing Director (Asset Management & Corporate Services)

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Email: yuelin@imcindustrialgroup.com

Outside Director or
Non-Family Manager or
Minority Shareholder

Up to 5 "Hats"

- 1) Chariman
- 2) Director
- 3) Family Head
- 4) Owner
- 5) CEO

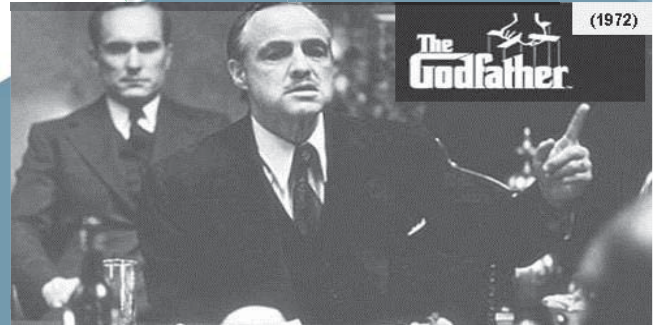
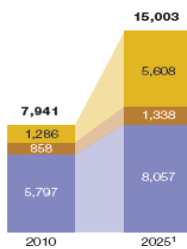


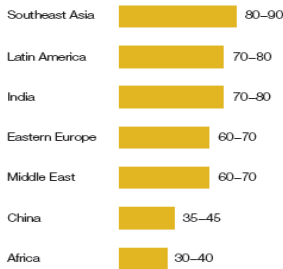
Exhibit 1 A growing number of family-owned businesses in emerging markets could hit \$1 billion in sales in the years from 2010 to 2025.

Companies with >\$1 billion in revenue, number of companies

- Emerging-market family-owned businesses
- Other emerging-market companies
- All developed-market companies



Share of large companies that are family owned,² %

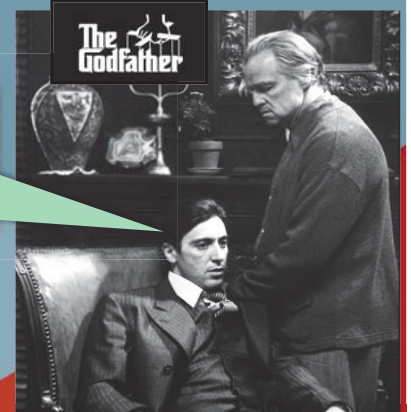


¹ Projection based on city GDP forecasts.

² As of 2013 or closest available year, captured at headquarters location.

Sources: Bloomberg; EXAME magazine's 2013 Melhores & Maiores list; Jeune Afrique magazine's Top 500 African companies; Kisumu; Mexico's Secretariat of Finance and Public Credit; PRIME news agency's rating of Russian family-owned businesses; Frowise; Zawya; company websites; McKinsey Global Institute analysis

Next Generation
Happily married
(to Diane Keaton),
but felt obligated
to join the family
business



KEY UNIQUE ISSUES OF FAMILY BUSINESSES:

- (1) Family Politics : (a) Earned v. Entitled, Emotions v. Economics
(b) Family Active v. Inactive Shareholders in Business

- (2) Succession Planning
(Oldest? Most capable? Divide equally?)

International New York Times | <http://nyti.ms/1lqylyb>

BUSINESS DAY

Succession Feud Mars Legacy of Lotte Group Founder

By REUTERS AUG. 7, 2015, 6:43 A.M. E.D.T.

THE WALL STREET JOURNAL. Tuesday, March 31, 2015 | 21

CORPORATE NEWS

Suit Shows Media Clan Tensions

BY ALISTAIR MACDONALD

A lawsuit aimed at a member of Canada's Thomson family alleges serious governance lapses involving the company through which the country's richest family controls media giant Thomson Reuters Corp.

The lawsuit and subsequent court filings describe years of inheritance squabbles and tensions over safeguards on the family's wealth, offering a rare glimpse of its business.

Succession Planning with King Lear and his three children

Successor waiting, as Patriarch hangs on

Prince Charles

Forbes / Media & Entertainment

CBS And Viacom's Sumner Redstone Denies Succession Plans, Says He Will Never Retire

Companies & Markets

Succession pace quickens at Fox

Rupert Murdoch moves sons into senior positions as Carey relinquishes operational role

BUSINESS & FINANCE


Samsung Further Leadership Transition

KEY ADVANTAGE -- FAMILY AS LONG TERM SHARHOLDER
(1)Committed (2)Patient (3)Resilient (4)Engaged (5)Identifiable

Cargill set to keep it in the family 150 years on
 Sixth-generation trading house remains committed to the private ownership structure that has defined it

Companies & Markets
Walton exit marks Walmart milestone
 LINDSAY WHIPP -- LONDON
 For the first time in its 53-year history, there will no longer be a chairman with the Walton name at Walmart.
 The world's largest retailer said yesterday that Rob Walton, son of founder Sam, was to step down after 23 years as chairman of the board to be replaced by Greg Penner.
 However, the family ties at the top remain strong. Mr Penner is Rob Walton's son-in-law, married to his daughter Carrie, with whom he has four children.
 "This transition demonstrates Walmart's commitment to long-term succession planning and keeping high calibre, capable leaders at the head of our company," said Mr Walton in a statement.
 There are three Walton family members on the board -- Rob Walton, Jim Walton, the youngest son of the founder, and Mr Penner.
 Bentonville, Arkansas-based Walmart has grown from a one-store company founded by the late Sam Walton in 1962 to become the world's largest retailer, with operations spreading from China through Europe to Mexico.

Johanna Quandt, a force on BMW board, dies at 89
 FRANKFURT
 BY JACK EWING
 Johanna Quandt, the matriarch of the family that controls the automaker BMW and one of the wealthiest people in Germany, died on Monday in Bad Homburg, Germany. She was 89.
 BMW confirmed her death on Thursday.
OBITUARY
 Ms. Quandt was the third wife of Herbert Quandt, a German businessman whose financial backing allowed BMW to resist a takeover bid in 1959 from Daimler, helping to set the stage for BMW to become one of the world's best-known car brands and a symbol of German engineering.
 Ms. Quandt, who ranked 77th on Forbes magazine's 2015 list of the world's richest people, with an estimated net worth today of \$11.6 billion, took over Mr. Quandt's seat on the BMW supervisory board after he died in 1982. She established the family as a powerful, if discreet, force in the company, which is based in Munich.
 At her death, Ms. Quandt owned a 16.7 percent stake in BMW. Her two children with Mr. Quandt also own significant stakes: Susanne Klatten, 12.6 percent, and Stefan Quandt, 17.4 percent. Ms. Klatten and Mr. Quandt are both members of the BMW supervisory board. Ms. Klatten is the richest woman in Germany, according to Forbes, just ahead of her mother.
 Detailed information on Ms. Quandt's survivors was not immediately available.
 Though BMW stock is publicly traded, the Quandt family stake has provided the company with a degree of independence from outside shareholders and allowed it to pursue initiatives that were not immediately profitable, like a push into battery-powered vehicles.
 Johanna Bruhn was born in Berlin on June 21, 1926.
 The daughter of an art historian, she trained as a medical assistant, but in the 1950s began working in the office of Mr. Quandt.
 Ms. Quandt took over her husband's seat on BMW's supervisory board after his death.
 Quandt, the scion of a German industrial family whose holdings included Varta, a maker of batteries. They married in 1960.
 Ms. Quandt was a member of the BMW supervisory board from 1982 to 1997, most of that time as a deputy chairwoman.



Johanna Quandt in 2012. One of the wealthiest people in Germany, she ranked 77th on Forbes' 2015 list of the world's richest people, with an estimated net worth of \$11.6 billion.

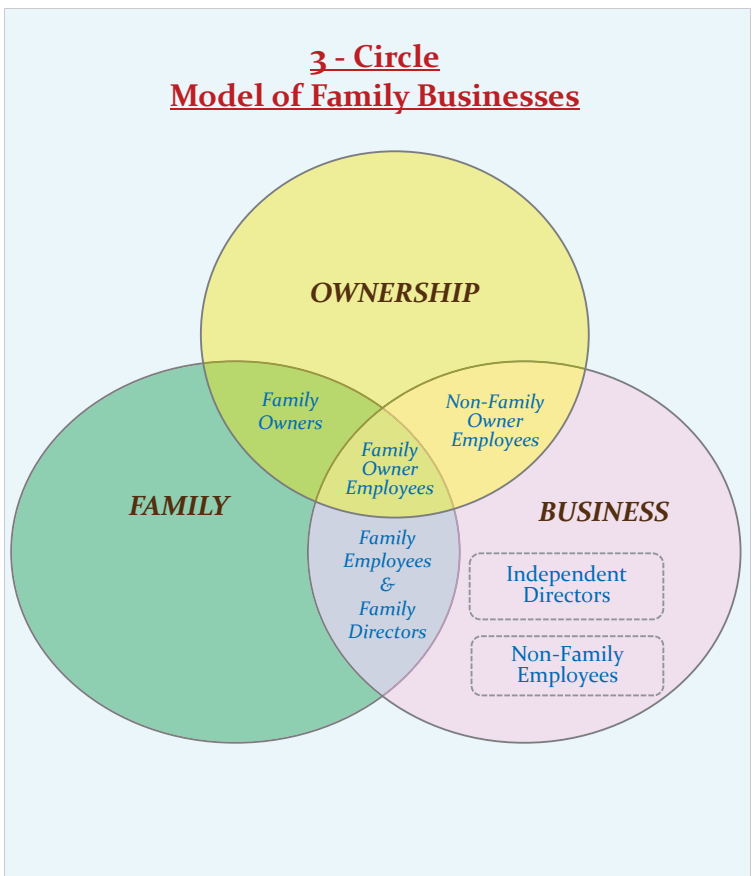
Financial Services	Berkshire Hathaway	Fidelity	Franklin Resources
Information Services	Bloomberg Business	Thomson Reuters	McGraw Hill
Chemicals	Reliance	Huntsman	Boehringer Ingelheim
Construction	Bechtel	Bouygues	Kumagai
Beer	AB InBev	Heineken	Coors
Drinks/spirits	Fernod Ricard	Suntory	Bacardi
Candies	Mars	Ferrero	Lotte
Cosmetics	L'Oréal	Estee Lauder	Coty
Food products	Danone	Tyson foods	Tchibo (Herz family)
Household	Ikea	SC Johnson	Lego

Family, as Majority Shareholders with Own Money At Stake, Can Be Effective Monitors of Management, But Complex Mix of Family, Business And Ownership

Adam Smith (in Wealth of Nations):
 The directors of such [joint-stock] companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private co-partnery frequently watch over their own.

Corporate Governance: Effects on Firm Performance and Economic Growth (OECD, 2009)

- One of the issues that arises in this context is how do policy makers develop reforms that do not disenfranchise majority shareholders while at the same time protect the interests of minority shareholders
- The challenging task facing policy makers is to design corporate governance frameworks that secure the benefits of large shareholders as effective monitors of management whilst preventing them from extracting excessive private benefits control.



BLACKROCK

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Chairman and
Chief Executive Officer

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New York, NY 10055
Tel 212-810-5300
www.blackrock.com

March 31, 2015

Text of letter sent to Chairmen/CEOs asking them to focus on delivering long-term value

Over the past several years at BlackRock, we have engaged extensively with companies, clients, regulators and others on the importance of taking a long-term approach to creating value. We have done so in response to the acute pressure, growing with every quarter, for companies to meet short-term financial goals at the expense of building long-term value. This pressure originates from a number of sources—the proliferation of activist shareholders seeking immediate returns, the ever-increasing velocity of capital, a media landscape defined by the 24/7 news cycle and a shrinking attention span, and public policy that fails to encourage truly long-term investment.

[some text are being omitted]

It is critical, however, to understand that corporate leaders' duty of care and loyalty is not to every investor or trader who owns their companies' shares at any moment in time, but to the company and its long-term owners. Successfully fulfilling that duty requires that corporate leaders engage with a company's long-term providers of capital, that they resist the pressure of short-term shareholders to extract value from the company if it would compromise value creation for long-term owners; and, most importantly, that they clearly and effectively articulate their strategy for sustainable long-term growth. Corporate leaders and their companies who follow this model can expect our support.

[some text are being omitted]

Yours sincerely,

Laurence D. Fink
Chairman & CEO

CREDIT SUISSE REPORT ON FAMILY BUSINESSES (JULY 2015)

Trends and Challenges” September 2007, we highlighted a number of strengths that characterize family businesses:

- 1) Long-term commitment of owners
- 2) Visible and identifiable ownership, in contrast to ownership by numerous institutional investors
- 3) Track record of standing by their companies during hard times
- 4) Trademark names that continue to open doors in the business community
- 5) Consistency in decision-making and business practice, thereby lowering the business risks for external providers of capital
- 6) Better alignment of owner and management interests

To this, we would now add a number of characteristics that help to elucidate why family businesses stand apart and why the return profile is different to that of the broader corporate universe:

- 1) Desire to maintain control leads to more cautious and more efficient management and strategies
- 2) Focus on value-added products and brand development, the corollary of which is the negatives for family owners from public failure
- 3) Focus on core activities means they are less acquisitive and growth is organic
- 4) Investment intensity, be it R&D or broader capex, is lower but the more limited compression to ROE suggests that investment and R&D is more efficient.
- 5) Lower volatility in more broadly held companies
- 6) Value creation through superior cash flow return spreads and asset growth

GOVERNANCE ISSUES : Widely Held v. Concentrated Ownership

GOVERNANCE ISSUES	WIDELY HELD COMPANIES	FAMILY AS CONCENTRATED SHAREHOLDER	ISSUES – IF INDEPENDENT DIRECTOR OR MINORITY SHAREHOLDER
Stakeholders	Shareholder value + ESG	Stakeholder, community roots, values driven	Risk of family protecting its social status & jobs? Family wants control (no dilution) over growth?
Time horizon	Short term (quarterly)	Longer term but (can be sentimental)	Who is more likely to reinvest for the long term?
Strategy	Focused but M&A & debt	Conglomerate structure. Fiscally conservative	Family companies often more prudent – a plus? All family aligned? (eg., dividend v. re-invent)
(Mis) alignment with shareholders	Not as committed/ perverse incentive plans. Other people's money.	Family shareholder aligned with own money and reputation at stake	How to avoid family having conflict of interest or comingle between family and business? Better if family is owner but not owner-manager?
Succession Planning	Standard practices	Nepotism, family politics, & 3 transitions (ownership, generational, and management).	What is the family governance? Is next generation interested, capable and ready? Family open to outsiders (professionalize)?
Potential value leakage from:	Principal -agent. Excessive Executive Pay	Principal-principal. related party transactions, tunneling, business = family's ATM or social security	Principal-principal problems are different from principal-agent problems? Better if family is owner but not owner-manager?
Board independence & nomination	Loyal to management, proxy access issues	Loyal to family, family nominates family and friends	Is this less of an issue for family companies if family is aligned as a shareholder?
Shareholder engagement (who, free rider, collective action)	Often disengaged. Who is shareholder (proxy service, investment chain, index funds).	Family are identifiable owners with incentive to be steward and monitor (family shareholder has no free rider or collective action issues)	While dispersed is disengaged, family shareholder is about appropriate engagement with the business? Easier and better for management to engage with identifiable owners, ie family shareholders? How about for minority investors?
Control v share %'s	Dual class (eg Alibaba)	Pyramid structure, cross shareholding, dual class	Is entrenched owner-manager worse than manager?
Table agenda items	Management controls	Family controls	Which is worse, mgmt or family controls?