

APEC EC2—「金融風暴對公司治理與法制啟示」研討會 會議實錄(含中文摘錄)

時間：2013 年 6 月 28 日(星期五)上午 9 時

地點：印尼棉蘭 Santika Premiere Dyandra Hotel & Convention

主持人：金融監督管理委員會證券期貨局黃前局長天牧

報告人：鍾惠民教授

與談人：

Mr. Winfrid Blaschke (Senior Economist of OECD)

Mr. Mohamed Nasser (Head of Issuer Regulation, Singapore Exchange)

Mr. Lee Jisoo (Analyst of Center for Good Corporate Governance, Korea)

Pr. Sidharta Utama (Faculty of Economics, University of Indonesia)

Mr. Phan Duc Hieu (Policy Analyst, Central Institute for Economic Management, Vietnam)

Mr. Stephen Po (Senior Director, Securities & Futures Commission, Hong Kong)

上半場(9:00-10:30)

● 主持人歡迎詞

非常歡迎各位參與本研討會。此次主題是「金融風暴對公司治理與法制啟示」。此議題源於美國，從 1970 年開始受到學術關注，這是一個政治中立的主題。然而，在公司治理組織的領域，只有少部分調查 APEC 區域的相關議題。因此，中華臺北提出本計畫，對 APEC 經濟體在公司治理實施上的差異進行

全面觀察。接下來將由鍾惠民教授，報告大家可能會關注的重要議題。在鍾教授演講前，我介紹一下我們的與會人士。Mr. Mohamed Nasser，他是新加坡交易所資深的副總裁和發行部門主管。Mr. Winfrid Blaschke，是 OECD 資深經濟學家，主要在公司治理委員會中擔任監督的工作。我們知道 OECD 是公司治理國際準則的制定者，特別是 Mr. Blaschke 有在許多的全球性機構工作的經驗，如：EU、EC 與 IMF。來自韓國的 Mr. Lee Jisoo，具有法律、商業經濟領域的跨領域學位，是公司治理中心的分析師和諮詢專家，他將會提供韓國公司治理發展的經驗分享。Pr. Sidharta Utama 是印尼大學經濟系的教授。曾經在印尼大學及其他專業性的機構服務過，現在是國際經濟顧問的會員。Mr. Phan 的研究興趣在公司治理，他在 Central Institute for Economic Management 中的 Business Planning 部門工作，他擔任過許多機構顧問，去提昇公司治理及公司法令遵循。Stephen Po 是香港證監會資深總監，主要負責 Intermediaries Supervision Department，也是 International Organization of Securities Commissions (“IOSCO”) Committee 3 on the Regulation of Market Intermediaries 的主席，對監督金融業的風險管理有豐富的經驗。吳壽山教授是證基會的董事長，也是櫃買中心的董事長。先邀請鍾惠民教授為我們簡報。

- 鍾惠民教授簡報

本研究之目的為：了解 APEC 21 個會員國在 2008 年金融海嘯後提出哪些公司治理相關措施外，並嘗試分析其政策實施前、後對整體資本市場的影響，研究結果將凸顯各國在制定政策規劃時所面臨的公司治理特定問題，及各國如何針對公司治理相關挑戰與定位排定優先順序，以利進行改革。

本研究對照 OECD 於 2004 年公布之公司治理準則，及 2011 年公布之亞洲公司治理白皮書建議之 6 大優先重點，設計問卷發送各會員國請其提供相關資料，分析研究後提供各國公司治理政策擬訂之參考。截至 2013 年 5 月 29 日共有紐西蘭、加拿大、日本、香港、智利、臺灣、澳洲、印尼、汶萊、越南與秘魯共 11 國回覆問卷。填答機構為各該國公司治理主管機關，主要為金融或證券主管機關、財政部，與證券交易所等半官方機構。為更深入瞭解會員國公司治理現況，另行赴韓國、紐西蘭、澳洲與泰國等四國進行深度訪談，取得相關資料與案例。

本簡報大綱如下：

1. 強化董事會與功能性委員會職能
2. 關係人交易
3. 增進董監報酬之合理性
4. 資訊揭露透明化與評鑑制度
5. 建立機制以強化投資人保護
6. 民間或自律機構 SRO 在執行公司治理時所扮演之角色
7. 強化股東行動主義

8. 亞太各國社會、法律制度、經濟情況及投資人結構對公司治理政策之影響

首先有關強化董事會與功能性委員會職能方面，我們發現各國逐漸改善董事會獨立性，特別是智利與泰國都訂有強有力政策與規範，如：要求獨立董事應占董事會成員三分之一以上。在法制基礎上，許多會員國也降低股東提名權的持股比例，如日本與中華台北股東僅需持股 1%即可提名獨立董事。澳洲更訂有強力政策要求董事會成員多元化，2011 年澳洲交易所訂定董事會成員多樣化規則，並訂立清楚的揭露政策。其次，有關係人交易方面，大部分會員國均嚴格規範關係人交易，尤其在定義上辨明何謂關係人交易，並要求公司應為資訊揭露，更是相關規範重點。此外，設計公平的投票程序，使關係人交易透過一定審查與通過程序，進一步則是由審計委員會通過，故獨立董事與獨立財務分析人員，甚至是相關法制與證管會執法行動均為重要一環。大部分 APEC 會員國均要求關係人交易應予揭露，部分會員國如：澳洲、加拿大、香港與紐西蘭更進一步要求應經股東會通過。

金融海嘯發生後，薪酬管理成為改革重點，會員國都朝向國際組織建議要求進行改革，特別是董事會成員責任與薪酬比例，建立薪酬委員會，亦需要股東會投入。金融海嘯後如智利、中華台北與香港均要求上市公司建立薪酬委員會，部分會員國則要求薪酬委員會應確保公司薪酬策略、政策與安排應符合風

險適當性。如：加拿大遵循金融穩定委員會（Financial Stability Board）公布之準則，強烈要求金融機構除依法規遵循程序外，應提供額外資訊。澳洲則發展出所謂的「兩好球規則」（two strike rules），若股東大會上出席持有股權達 25% 股東投票反對公司之薪酬報告，董事應即注意，重新審視薪酬政策。若下一年度股東大會出席股東持有 25% 以上股權投票反對公司薪酬報告，則經至少出席股東持有 50% 以上股權者投票通過，董事會應於 90 日內改選。

財務報告透明度方面，APEC 會員國均要求公司應提供財務報告，大部分回覆問卷國家更要求提供季報。2008 年金融海嘯發生後，紐西蘭訂定審計人員資格最低標準，希望幫助金融機構與上市公司改善資訊揭露與審計品質。研究除顯示會員國主管機關持續強化資訊透明化法規執行，另外也發現如中華台北、紐西蘭與泰國等會員國之證券交易所在此一議題上扮演重要角色。

會員國也建立特殊目的機構與紛爭解決組織，以改善投資人保護，例如：中華台北設有投資人保護中心與金融爭議評議機構；紐西蘭則由政府設置儲備基金（Government-established reserve scheme）協助投資人訴訟；而秘魯也設有投資評議人辦公室（The Office of the Investment Ombudsman）。

為強化股東行動主義，許多 APEC 會員國改善股東會議案程序，如：韓國與泰國即為範例。而中華台北與日本分別在建

立電子投票、逐案票決與分割投票制度方面頗有進展。在此提供 APEC 會員國部分基本數據供大家參考，由資本市場發展狀況來看，2011 年香港上市公司市場資金一枝獨秀。我們也發現 2008 年金融海嘯發生後，APEC 經濟體在初次公開發行均受到打擊，但之後各國復甦狀況不一，另外就是上市公司股東權類型比較。我們發現金融海嘯對各國公司治理政策的確造成衝擊，如：中華台北於 2010 年訂定企業社會責任守則，要求上市公司遵行；澳洲董事協會（The Australian Institute of Company Directors）則強化董事訓練與教育課程；日本則由證券交易所擔任相關法制改革的重要角色。儘管 APEC 各會員國法源不盡相同，但在公司治法規制度上的架構卻趨於一致，同樣是由法律、行政機關規則、自律機構規範等由上而下架構而成。法律則以公司法為主要強化股東權保障之機制，配合證券法保護投資人。澳洲則提供由下而上的反饋機制（bottom-up feedback mechanism），以取得公司治法規與經濟發展之平衡；另外如智利、中華台北與香港則發展強勢公司治理政策。因此公司治理改革可能分為全球驅動與地域驅動兩方面，研究發現並非所有會員國公司治理改革均循著全球趨勢發展，全球驅動源自於金融海嘯，但許多會員國依據其地域特性發展出自己的公司治理政策。

● 主持人

謝謝鍾教授的簡報，清楚彙總說明了 2008 年金融風暴後，

各國在公司治理的改革。我們有二個研討的主題，一個是「董事會功能性委員會制在公司治理之執行」；另一個是「關係人交易的決策過程」，例如：關係人交易在一些國家需要股東會核准程序。首先，我邀請Mr. Nasser提供意見來探討此主題。

● Mr. Mohamed Nasser

功能性委員會在公司治理上扮演重要角色，新加坡上市公司主要功能性委員會有三：審計委員會、薪酬委員會與提名委員會。新加坡金融主管機關（the Monetary Authority of Singapore，下稱MAS）於2008年1月15日制訂審計委員會指引，建議上市公司設置審計委員會，但採取方式非強制性，而是「依法遵循，否則解釋」（compliance or explain）政策。因此，獨立董事的獨立性在維持好的公司治理政策下，就顯得相當重要。2009年起，新加坡遭到金融海嘯襲擊，為此MAS發布關係人交易注意事項，要求所有銀行應建立關係人交易相關政策，訂定適當程序並執行，新加坡交易所也為此修改相關規則。

● Mr. Winfrid Blaschke

OECD從2004年起宣告公司治理準則，由於初始準則是在金融海嘯發生前，所以OECD也多次修改公司治理準則，並重視如何配合環境變化進行後續修改。目前OECD有三個研究報告正在進行，其中一個是研究金融海嘯帶來的教訓。我們調查OECD會員國在公司治理領域之強制性要求，特別是：公司治

理的風險管理如何執行?預計第一階段調查將會在今天(6月28日)公布，接下來在第二階段將分析3個國家:新加坡、挪威，與瑞士。

至於功能性委員會此一議題，特別是如如何執行風險管理政策?我們在2010年有一個研究發現除財務部門外，甚少公司設置風險管理委員會。相關文件研究指出，國家的公司治理政策若能伴隨社會規範，將能維持股票交易的穩定性。許多國家將風險管理設定為審計委員會的責任，但避免舞弊和控制財務風險之職能，可能已超過審計委員會的職責範圍。而有些公司將風險控管授權由財務部門執行，由獨立董事或董事長所負責，有一些國家如印度和新加坡強制要求公司建立風險控制部門。另外義大利則要求設立風險管理委員會，土耳其也訂有風險控制評估和調查過程，並搭配懲罰和制裁。雖然風險管理委員會可維持穩定營運，但董事會的支持相當重要。

● 主持人

非常感謝 Mr. Blaschke 的分享，特別提到有關功能性風險管理委員會，2008年金融海嘯後一些國際性的保險公司，如：AIG，特別著重風險管理的議題。我想要分享的是，雖然我們有風險管理委員會，但董事會仍應該為其制定的決策負責。接下來，我們請韓國的 Mr. Lee Jisoo 為我們演說實際的個案。

● Mr. Lee Jisoo

我要報告韓國的現代汽車集團案例，該公司屬於世界規模非常大的產業，大家應該都聽過韓國經濟部門主要係由企業財閥（Chaebol）所控制，現代集團是韓國第二大的財閥。本案的重要爭議是：掌控集團的家族如何透過法律安排，使其家族股東權利，從一個世代轉移到下一個世代時，不需要支付過多的稅。若父親轉由兒子繼承遺產，稅率達到 35%，為支付此遺產稅，可能使兒子無足夠股權掌控集團，現代集團的案例正是此一背景下的產物。

現代集團總裁 Mong-koo Chung 只有一個兒子 Eui-sun Chung，同時他也是起亞(Kia)汽車的總裁。現代集團下有 36 個子公司，專注在製造產業。2006 年的總收入約美金\$740 億元，總淨利約美金\$ 30 億元。

複雜持股狀況可以從我簡報中的網狀結構了解，現代汽車於 2000 年成為現代集團分支中的一群，並成為關聯企業:Hyundai Motor Co., KIA Motors, Hyundai Mobis, Glovis, Bontech，與 AMCO 中的關鍵性企業。Glovis Co. Ltd.於 2001 年 2 月成立，40%的股權由 Chung 總裁掌握，餘 60%由他兒子掌握。他們利用關聯企業去做關係人交易，Glovis 進行 IPO 之前 4 年間，Chung 總裁和他的兒子從投資中認列 6,400%的報酬。並獲得現金股利 130 億韓圓，且透過賣掉 25% Glovis 的在外流通股份給 Norwegian 公司(KRW 10,746 /share)獲利約 806 億韓圓。在一

系列的交易之後，他們仍然持有 75% Glovis 的股權。Glovis 是在 2005 年於 KRX 上市，Chung 和他的兒子透過公開發行來認列他們的獲利，且他們 2 個累積財富達到 1.3 trillion 韓圓 (approx. US \$1.3 billion)。Chung 總裁和他的兒子仍然持有 60% 的股份。2006 年 4 月 28 日檢察官拘提 Chung 總裁，並控告其罪狀：侵吞、盜用公款。法院認為 Chung 總裁取得資金之行為有罪，宣判 3 年有期徒刑併科罰金。上訴法院支持下級法院的決策，但延緩經理人刑期，但最高法院將此個案發回上訴法院再審，本案目前仍懸而未決。

除公平交易委員會對現代集團課加重罰金，市場監理者對 Chung 家族在 6 年間獲利 US\$1.3 billions 感到震驚，我沒有太多時間解釋細節，但你們仍可發現 Chung 總裁透過此設計不需要支付稅金，且仍可轉移股份給兒子，而他兒子在他身後仍可繼承整個企業王國。

在討論董事會的利益衝突方面，經營管理者是相當容易被忽略的一環。董事會許多決策並未尋求股東會的核准。在一系列的案例發生後，我們發現公司治理對韓國來說是非常重要的。公司治理在美國及英國已經推動多年，但韓國一直未推動。公司法沒有提供規則去規範公司控制損失，且公司的利潤也被經營者以不法管道偷走。政府已試著去改善此狀況，也試著去針對某些交易課徵稅收，以避免再重複發生不法交易的情況。韓國新政府要求監理機構應緊盯這些特殊交易，在此我無法詳

述相關的法令，因為相關的法令韓國政府仍在建構討論中，或許下次有其他機會可以分享韓國的發展。

● 主持人

謝謝 Mr. Lee 圖解現代汽車集團實例，及韓國如何對關係人交易去訂定罰則及規則。Mr. Blaschke 之前也提到在金融危機後，OECD 研究了公司治理的初始準則。社會因素驅動金融海嘯發生，韓國發生的那些狀況，未來是否也可能發生在其他國家？接下來邀請 Professor Utama 來分享其經驗。

● Pr. Sidharta Utama

我將分享我對 Mr. Lee 解說而生的想法，主要關注在相關個體交易的議題。濫用關係人交易，將會導致控制股東，如家族企業或董事長，有較多的機會剝削少數股東的利益。我們必須要禁止某些交易，但並非每個交易都是不好的，像一些經專家鑑定的交易對公司來說是好的。所以我們在設定禁止關係人交易的規範時要特別小心，希望規範對公司的投資人有益。

首先，公司治理透明度的規範非常重要，公司治理確保公司持續的成長，有許多的方法能確認交易透明度。第一步是規範程序，了解哪些法律是重要的。在現代集團的例子中，董事必須決定是否要核准交易，則 Chung 總裁不應該加入任何相關交易的討論。另一方面是「職務」問題，在這個案中有許多內

部人會干涉公司的交易，不應該只是單純規範交易，重點是要發展核准交易的程序。

我分享有關對印尼關係人交易的研究結果，我的研究結果顯示這些股票交易會拉抬價格，股票交易影響股份和價值。而我們發現降低家族企業決策，可以減少關係人交易，但也減少相關交易的機會。我們發現若決策來自於家族成員，會降低公司治理實務的效率。我們要求公司建立良好公司治理，例如，確認關係人交易資訊的公布、交易行為，與監督，股權流動方向和揭露等規定都非常重要。

投資人應該學習了解，這些交易對公司是否有幫助，故揭露是非常重要的。例如：印尼的資本市場要求許多金融商品的揭露，公司必須揭露交易的價值、說明交易是有好的目的及理由等資訊，以及其流動是基於一般的交易，或在真實的財報敘述的標準下。我們也依法律規範去建立獨立委員會，例如，設置審計委員會，以滿足全面的法規要求。

● 主持人

感謝 Pr. Utama，我想印尼已經漸進式的增加關係人交易規範，下一位將邀請 Mr. Phan 來提供越南公司治理的改革經驗。

● Mr. Phan Duc Hieu

我想要分享越南關係人交易揭露相關的資訊，越南自 2000 年起引進公司治理觀念，根據公司治理揭露原則，我們與印尼

都禁止關係人交易，除非該交易是獲得過半數股權（股東會）的核准。雖然我們有法律去規範交易，但許多公司會來問我如何進行核准程序，我知道印尼要求財報敘述要揭露這些種類的交易，越南同樣也要求公司必須要完全揭露所有的交易。

● Mr. Stephen Po

我目前在 IOSCO 的職務即是積極發展證券市場的公司治理準則，或許你不了解 IOSCO，但你可能聽過 Basel。Basel 有所謂的七層體系（7 tiers system）而 IOSCO 是 7-7 原則 (Principle)，在此提供大家有關資本市場相關的國際規範和香港經驗作為參考。特別針對薪酬委員會、公司治理委員會與風險委員會進行討論。首先，2010 年英國研究報告發現英國薪水前 100 高的人，在金融風暴後，他們每 2 年薪水增加 5%。然而同時，公司股份的發放則是每年減少 1%。觀察市場支付給 S&P 500 的金融企業的董事薪資，發現有趣的數據：平均支付給董事的薪資大約每年 US\$19,000，但 2 年後（2012 年）平均薪資為 US\$50,000。儘管美國政府有支付薪酬的法律規定，董事領取的薪酬仍然持續增加的。此現象顯示，薪酬委員會並沒有適當的表現其功能及效率。金融海嘯後，金融穩定委員會（Financial Stability Board）要求確保所有的想法能完全被執行，並要求公司層級能共同努力。無論歐洲或美國，薪酬規範

被列為重要關注項目之一。美國也提出所謂的 say on pay 制度，提供股東對經營管理階層之薪酬擁有不具約束力之建議權。

第二是公司治理委員會，這在亞洲是很新的想法，但在美國和歐洲則很普遍。香港交易所於 2011 年要求所有的上市公司必須要有公司治理委員會。公司治理委員會有 5 種角色：

1. 發展公司治理政策和制定組織架構；
2. 訓練董事和資深經理人去執行此要求；
3. 要求所有上市公司監督和服從所有的規範；
4. 要求員工能遵行此規範；
5. 在年報中揭露公司治理達成的情況。

香港證券期貨法對此也有一些特別的規範，例如：要求公司設定公司治理政策、說明董事會的薪酬考量可能引發的問題、公司設有幾個委員會？委員會成員為何？有多少審計人員？以及薪酬計畫，與控制性股東等揭露事項，以提升香港的公司治理。

第三、有關風險管理委員會，OECD 很早就討論過風險管理委員會的好處。在全球金融風暴後，更要求金融機構應設置風險管理委員會。風險監控是所有的董事會成員的責任，事實上有些董事會成員也具備此類專長。最新的計畫是要求金融機構應設置風險委員會，所有的成員需具有風險管理領域的專長。特別是針對財務工程的架構，金融市場新且複雜的財務工程領域，特別關注新金融產品。在金融海嘯期間，許多銀行在

倫敦交易所都遭受了非常大的損失，整體市場損失超過 20 億美元。在金融危機發生時，這些風險管理委員會的董事在哪裡？又做了甚麼？應鼓勵金融機構股東參與風險管理委員會，以提升公司治理。

● 吳壽山董事長

金融海嘯對所有公司的董事長是一大考驗，特別是對公司經營者信心與信賴感的衝擊。海嘯後呈現部分會員國復甦較快，部分卻復甦緩慢的現象，故本研究計畫試圖瞭解其原因。對中華台北而言，我們在資訊透明度方面有多年發展經驗，證券暨期貨市場發展基金會受託建置的資訊揭露評鑑系統，已有 10 年以上的歷史。海嘯發生後為進一步促進上市公司治理，我們正在籌備新的公司治理評鑑系統，特別針對上市公司的治理狀況進行評鑑。地域性公司治理成果若能迎合全球標準，亦有助於向外國募集資金。我相信地域性與全球性文化的協調是非常重要的，特別是對今年大會主軸「重返亞太地區，全球成長引擎」深感佩服。

Q&A

● 香港代表毛小姐

我有幾個問題或建議想要分享給大家：一，我非常讚賞此主題，有關如何轉變和持續提升公司治理規則，去確保好的治

理系統和建議去建立透明度。我特別對 OECD 所提的 6 個優先改革的內容感興趣。當我們討論到公司治理，總是專注在董事會，但我想教育股東對強化公司治理有很大的幫助。特別著重在考慮如何教育股東，讓他們知道承受多少風險？瞭解其是否已準備好承擔風險？他們對金融市場經營有何期待？

第二個是鼓勵股東投入公司治理事務，我們只考慮到如何讓風險管理委員會有其功能，但我們應該提供不同的投資人選擇可以投資的公司，哪些事項應該充分的揭露，提昇公司透明度，投資人就可以選擇標的。第三個問題是，如何幫助投資人分辨混合性產品的風險？如果能提供金融商品種類的分辨，也有助於市場監理。

● 鍾惠民教授回答香港代表提問

有關您提到如何教育股東的問題，股東可大分為機構投資人與散戶投資人兩類，所謂的股東教育應特別指對散戶投資人的教育。以中華台北為例，我們有「證券投資人及期貨交易人保護中心」與「證券暨期貨市場發展基金會」分別依其職責，協同其他執法部門共同推動股東教育宣導活動與課程。但教育散戶投資人確實是相當艱難的工作，尤其是 OECD 在公司治理的 6 大優先課題中，僅強調對公司董事的教育，並未提及對一般投資人的教育宣導，主要原因也在於董事為公司內部人，涉

及較多的利益衝突。非常感謝您提及散戶投資人的教育問題，的確是應該多加關注。

● **Mr. Mohamed Nasser 回答香港代表提問**

以新加坡為例，主要關注重點為投資與金融商品的風險管理，很少討論股東如何行使股東權或管理公司等問題。金融海嘯發生後一連串的金融機構失控事件，對散戶投資人影響很大，主因也在於他們不熟悉公司或金融機構可能存在的風險，導致他們面臨很大的損失。如果能事先讓他們理解投資公司或金融商品隱藏的風險，或事先辨識這些風險，進而讓他們自己判斷是否可承受這些風險，應可以降低未來可能承受的損失。原則上他們可以尋求金融專業人士或財務顧問協助，利用一些測試瞭解自己所能承受的風險。

● **Mr. Lee Jisoo 回答香港代表提問**

也許提倡股東教育有助於股東權保護，但更為基本的問題是，股東在市場上力量微弱分散，但改善公司治理卻需耗費相當成本，一般股東可能無法承擔。由於公司須依主管機關規定負責，因此監理者及市場參與者對公司治理負有較大的責任，反而很難期待公司股東在改善公司治理方面可以有較多的貢獻。也許期待退休基金扮演重要角色也是一種方式，因為退休基金多具經驗之專業人士管理，且部位龐大，可發揮較大的影

響力。也許可以朝著教育散戶投資人的方向努力，但我承認，我不認為一般散戶投資人會對公司治理投注較多心力。

- **智利代表 Ms. Jennifer Arias**

最後一個問題我想問 Mr. Mohamed Nasser，有關新加坡的個案。請問你們對公司提供什麼樣形式的制裁？以智利的個案，在去年 11 月，我們的證券監理機構(the Superintendence of Securities and Insurance, SVS) 公布 Rule N°341（註：其建立一系列的資訊揭露要求，以辨認上市公司是否有實施好的公司治理實務）要求所有的公司採用以報告各該公司資訊，使大眾得以了解，公司是否有執行公司治理政策，及為什麼沒有執行相關政策。

- **Mr. Mohamed Nasser**

在新加坡，如果有公司沒有遵循揭露要求，我們有民事處罰的制裁規則，如果公司對大眾造成權益的傷害的話，公司可能有被提起民事訴訟的風險。

下半場(10:50-12:30)

- **吳壽山董事長**

以中華台北為例，投資人結構中機構投資人占 30%，散戶投資人占 70%，但實際上 70%流動性由散戶投資人所提供，因

此教育投資人為非常重要的工作。我們也發現大部分的 APEC 會員國市場參與者主要為散戶投資人，因此，在公司治理的驅動因素中，地域因素非常重要。為強化公司治理，中華台北制訂一些策略，包括：承銷費收入 30% 作為投資人教育宣導經費，由證券暨期貨市場發展基金會配合各執法機構於社區、中小學，以及大學舉辦投資人教育課程與活動。另外資訊揭露評鑑系統更可提供一般投資人瞭解各公司資訊揭露透明度的狀況，透過每年更新的七種分級制度，投資人可以迅速瞭解公司是否遵循法規或自願揭露其資訊，其透明程度為何？2009 年金融海嘯發生後，中華台北原有之投資人保護中心協助投資人對不法公司進行團體訴訟，2011 年更設立金融爭議評議機構，提供迅速解決投資人與公司間紛爭之管道。我們盡全力符合國際一般標準，在此也提供我們在地投資人行為的文化特色供大家參考，我國投資人熱中買進股票以分配現金股利，此一行為也導致退休基金管理難以進一步發展，此現象可以說明，地域因素與國際機構如 OECD 或 IOSCO 所建議之公司治理標準或指引，仍有相當大的落差，希望透過會員國間討論與努力，可以解決此一問題。

● Mr. Stephen Po

分享一些在新興市場中國際化的發展：

1. 研究數據統計 2007 年至 2010 年間，推動公司治理評比，

給分為 1~10 分，並比較開發中及已開發國家的公司治理表現。發現美國、英國、德國、加拿大等已開發國家，都有好的公司治理規範，因此這些國家的公司治理評分都達到 7 分以上；而新興市場的平均分數則是落在 4~5 分。另依據香港的亞洲公司治理協會（ACGA）研究報告分析多數亞洲市場的公司治理準則規範，發現亞洲市場擅長於規範財務報告的揭露義務，例如：揭露董事的交易及真實的統計數值等。然而亞洲市場在公司治理規範中有關非量化交易資訊的揭露則相對較弱。

2. 亞洲市場開始考量增定多項強制性要求

（enforcement-actions）來強化公司治理，有些部分未必適用所有亞洲市場，但有些強制性要求與執法行為的確是亞洲市場必須要補強的。

3. 亞洲文化是亞洲市場在落實公司治理的一大缺點，較少亞洲國家致力改善公司治理的文化層面。

進一步思考我們能做什麼？我想分享一些 IOSCO 的觀點。IOSCO 很久以前就開始關注如何教育投資人，以及哪些可以豁免法規要求的議題，也提供四個方向，期望強化公司治理和保護股東權益。

1. 正確的揭露公司資訊，特別是重要的交易，關鍵的評估方法是擴大資訊的揭露。
2. 儘管公司有揭露資訊，如果股東或投資人不能取得這些資

訊，他們該如何知道和使用這些資訊？故如何提升並促使所有的投資人和股東能有管道獲得這些資訊，是第二個需要去辨認的方向。

3. 即使股東知道他們會使用到這些資訊，但他們能做什麼？有什麼權力是能給股東的，特別是少數股東，尤其是針對公司重大交易的議題？故是否有足夠的股東保護，使股東能有權力去核准大股東所決定的重大交易，涉及公司治理交易層面。
4. 透過市場監理者對公司治理的干預及法規強制性要求，避免任何可疑的行為，如內部人交易、高頻交易、法規的濫用、揭露有其他意圖的資訊。這些要求對監理者來說，都是強而有力的行動。

● Mr. Phan Duc Hieu

在此分享越南在股東及投資人保護的情形。由世界銀行所創設的 Ease of doing business index 指標，指標越高代表該國對企業有較好的經營規章及較強的財產權保護。以此指標而言，越南得分相當低。所以我們應該怎麼做？為了鼓勵投資人，我們強力要求股東和投資人檢查公司揭露事項和資產價值。最重要的是如何評量各企業公司治理，以建立我們最佳的公司治理方針。越南為此修訂公司法，要求董事揭露所有詳細的關係人交易資訊，並須獲得股東會的核准。若關係人交易價值低於股

權 50%，可由董事會核准。但若是類似的交易太多，很難去揭露資訊給股東，也很難去發現這些有意義的資訊，故我們要求董事應揭露其持股，並要求公司去關注少數股東的利益。

● Pr. Sidharta Utama

1. 針對資訊揭露及透明度，分享最近東協的發展。印尼亞洲董事協會，已配合 ASEAN Capital Market Forum 多年，自 2000 年起東協科技委員會（ASEAN Technology Committee）啟動 ASEAN Exhibition plan，並提供政策和規範。Capital Market Forum 特別關注公司治理，並發展 ASEAN 公司治理計分卡，目的係提供東協國家作為公司治理實務評量。此計分卡可提供評估結果給監理者或執法部門，去驗證並提升相關規範。也可以提供給企業經營者、功能性委員會正確執行公司治理實務。經過 2 年的發展，東協國家如印尼、馬來西亞、泰國、菲律賓等國已開始使用，透過記分卡來發展屬於東協國家的公司治理準則，並用來評估所有的企業報告書。
2. ASEAN 正發展公司治理準則，以計分卡作為治理架構，配合 OECD 白皮書。東協國家投資人以散戶居多，所以增加他們的參與非常重要。至少在印尼，計分卡的結果及反應相當好，去年法規的揭露及要求都已修訂得更加嚴謹；如企業經營者修訂規則應考量增設審計委員會，

並要求委員會核准交易。

3. 印尼目前正試著將 ASEAN 的公司治理準則，建構為印尼當地的公司治理要求，我們可以推論公司治理有利於東協地區的企業經營者，以提高自願性治理。

● Mr. Lee Jisoo

為什麼韓國不能像其他已開發國家，如美國、英國、加拿大，係由機構投資者或基金管理者挑戰政府，要求政府強化或改善規範去建立公司治理？或像是香港、新加坡、和臺灣由主管機關主動實施改革，強化規範來保護投資人。韓國公司治理的改革實際上是由非政府組織所領導，而不是由公司或政府或機構投資者。而韓國非政府組織如何強化公司治理？其源頭為 1997 年的金融危機，我們發現如果沒有人扮演監督公司交易的角色，很難維持投資體系的健全。1997 年有 58 個董事被股東提起訴訟，而這 58 個訴訟個案都是由非政府組織所提起的。過去幾年，我們引進公司治理結構改變，有些改革是非常成功的，也有失敗的。非政府組織需要投資人、律師、會計師的投入，我們也將成功模式分享給其他組織，並建議經營者與投資人合作進行公司治理，並使公司治理融入公司文化中。

● Mr. Winfrid Blaschke

感謝以上講者分享 2 個議題：1. 公司治理計分卡；2. 非政府組織的角色。第一、有關公司治理評等計分卡，我認為是非常

有用，也非常認同。有公司認為計分卡是有幫助的，但可能引發公司揭露資訊是否會影響公司績效的疑慮？若證券交易所給予公司治理好的公司，提供上市費折扣的優惠，是否對公司治理的評等有幫助？當我們專注在如何提升治理，我們不能忘記績效對公司是非常重要的。第二，有關強化公司治理規範及落實執法，以及什麼作為可以幫助股東行動主義，這是非常複雜的問題。像歐洲的股東行動主義，是由投資者、市場、管理者、大型的退休基金、媒體所架構出來的，由他們監督公司。這些專家必須學習公司治理去提升投資環境，而股東權益應透過法規，使其避免犯錯，增加股東會出席率與效率，如：少數股東的提案權。最後是，財務上的支持可幫助股東去保護他們的權利，或要求公司提供強制性的公司治理資訊。

● Mr. Mohamed Nasser

有關少數股東權益保護議題，首先要做的是，提升資訊揭露環境，這需要公司保證資訊揭露的品質。我們要求公司提供有意義的資訊，幫助股東了解他們所投資的公司，這些法令的要求均由主管機關訂定。股東需要公司提供他們資訊，股東需要了解潛在的風險和損失，特別是當公司掌握資訊而未公開時，但在新加坡，外資股東占大多數，所以由個別股東去影響公司是很困難的。新加坡遵循 OECD 原則和要求上市公司服從交易所的規則，而身為 ASEAN 會員國，或許我們的改變會為

ASEAN 區域帶來一些影響。

Q&A

● 臺灣公司治理協會劉文正理事提問

以下提出 2 個問題：

1. 請問 Mr. Lee，您提及有關韓國的經驗，是否分享更多有關您成功的過程，如：有何驅動公司治理執行的管道？
2. 請問 Mr. Utama，您提及計分卡與執法行動，是否為公開資訊，能提供給其他國家嗎？

● Mr. Lee Jisoo 回答

我們時常受到政策及媒體的壓力，但仍然做了很多努力，希望能把保護股東的工作做到最好。在修訂公司法期間，我們連絡媒體、管理當局，讓他們了解情況，以及我們目前正在著手的工作。我們也克服了資金短缺的情形，而外部財務的支援和大學教育計畫是非常有幫助的。

● Pr. Sidharta Utama 回答

計分卡可以透過印尼中央銀行（Indonesia Bank）的網站取得，也可以從東協 ASEAN 的網頁計分卡主題、OECD 公司治理原則、ICG 報告等獲得相關資訊。我認為公司必須了解公司治理，才能夠去提升實務效能，進而提升公司績效。我們有功能性委員會，但若無法達到任何績效，這些委員會也不能做任

何事。公司治理對公司績效表現，可能不是最佳解藥，但經營者和監理人員可以藉由公司治理實務來監督。公司治理必須付出成本，故公司有良好績效就可以改善公司治理，而計分卡當然也適用於其他亞洲國家。另一方面，我們也發現推動公司治理，起源於市場中的外國投資人，他們運用委員會來提升公司，藉此確保公司的專業性。總而言之，公司治理成本可能會影響公司的績效，但因為外資關注治理，經營者必須進行公司治理實際改革。

● 印尼代表 Ms Huda Bahweres 提問

首先，針對 Mr. Lee 提到韓國的公司治理，以及 ASEAN 的公司治理改革，有幾個問題關於國家組織的角色與如何溝通。在印尼，公司治理方面有 4 個監督機構，包含 Committee of Good Corporate Governance、國營事業委員會（SOE Committee）、財政部與印尼證券交易所（Indonesia Stock Exchange）。四個管理單位如何協調一起工作是個問題？您提及韓國當局，沒有辦法執行很好的公司治理，所以由非政府組織擔任這個角色，若沒有人能承擔非政府組織的責任，誰能監督？還有誰能作為印尼在公司治理執行的代表人？

● Mr. Lee Jisoo 回答

我們沒有從政府獲得任何的資金來源。我們是獨立的，沒

有收受來自公司或政府的酬金。如何推展我們的工作？首先，我們像公司收取會員費，提供公司許多的分析與建議，並對任何想了解韓國公司的外資提供諮詢。目前主要資助者為公司治理股票基金，因為他們每年宣布韓國公司治理指數前，我們會提供建議給他們。我們執行許多的工作策略，以及合法的諮詢，這些都是我們的主要收入來源。

● Pr. Sidharta Utama 回答

印尼也有一些評估公司治理的單位，像是 ACG Indonesia，除了直接實施公司治理外，政府亦需要提升公司治理政策。我們有一些非政府組織，例如 IACD；另外也有外國機構，像是 OECD、ASEAN 計分卡，這些對印尼來說都是好的方法。以韓國為例，非政府組織是一個自給自足的機構，必須維持自有的資金，透過他們的專家去創造非常差異化的方法及研究的數據，並將這些資訊賣給公司，以獲得財源。對印尼來說，公司管理上仍有許多項目需要股東會的核准，而這些核准項目是建立在公司治理基礎上的。但因為許多公司受家族控制，因此印尼的相關治理文件、績效表現是相當不好的。下一個問題是，誰去執行計分卡？目前計分卡適用上市公司，其目的是維持公司的穩定，公司必須要透過計分卡來評估公司的治理狀況。現在我國的金融主管單位已開始執行公司治理計畫，實際上就是去實施 ASEAN 計分卡。透過計分卡來檢視印尼的公司狀況，

進而了解他們能針對國家和治理系統哪些層面的做努力，可以提升公司治理狀況。我認為好的公司治理和規範將可以從新加坡的實務中學習，如他們的財報敘述、揭露實務等。

● 印尼證券交易所代表 Mr. Adikin Basirun 回答

我目前與相關同仁在印尼雅加達的工作小組，著手進行公司治理藍圖，想分享我們印尼交易所，實際執行公司治理的狀況。首先，我們該要求政府政策做什麼？除了訂定、結合、執行公司治理規則，也包括提供公司營運狀況給委員（commissioner）及董事做判斷。因為印尼的董事會採雙軌制，一個是董事會的委員，另一個是董事。另一個執行面挑戰是語言，英文對印尼來說是外國語言，我們的主要語言是"Bahasa"和"dialect"。所以很多文件，包括很多規範都不是用英文寫的，在這部份的計分卡的評分系統中，我們是被扣分的。今年印尼資本市場和非銀行的金融機構監理轉由 FFC 負責。明年中央銀行的顧問將會納入資本市場和非銀行金融機構，我認為此舉可提升公司治理的層級。最重要的一點，我想溝通是很重要的，我們實際上設置了工作委員會，有 6 個工作小組，除了專注在小組討論外，為了提升公司治理，我們還對相關個體公司的利害關係人做了教育訓練。剛剛 Mrs. Huda 提到有關決策的問題，印尼有許多非政府組織推動公司治理有關，包括 IICD, IICG 和 NCG，但我們沒有衡量公司治理的標準決策，或許有些雜誌

舉辦相關獎項，但並無官方主導。目前證券交易所主辦年報獎（Annual report award），得獎的公司在執行公司治理的提升上是表現最好的。我相信參考 ASEAN 公司治理計分卡是一個很好的標準衡量，因為在印尼執行公司治理時，雖然對相關個體加以衡量，即使他們得到 88 分，但這分數代表什麼意義？也許僅是表示公司治理還好的狀態；或者雖然低於 100 分，但 88 分算是正常且不錯的分數。所以最重要的是建立標準化衡量指標，重點不在於分數，而在於學習。印尼將在 2015 年完成公司治理評鑑，而 ASEAN 的整合預計在 2020 年完成。所以我們對公司治理提出 3 大議題：

1. 應該建立區域性協商機制，討論相關任務與專業化。例如：我們可以如何互相合作？以及有什麼專業性組織？
2. 關於機構組織，因為各區域、各國交易所之間，有很多不同的上市規則，在設定準則上，這會是一個很大的挑戰。
3. 有關一致性與信賴度，大家都知道公司治理不會導向公司績效，但為了去吸引和建立全球投資者的信賴度，公司治理仍須執行，績效實際上是一個底線。事實上，很多國營企業的績效比一般上市公司來的好，主要原因在於國營企業於交易所上市，必須遵循許多直接或間接有關公司治理的規定。

APEC EC 2

Workshop on “Lessons from the Financial Crisis for Corporate Governance and Law: Roles and Duties of the Enforcement Bodies on Corporate Governance Implementation”

Conference Minutes

Date : June 28, 2013 (9:00-12:30 a.m.)

Place : Santika dyandra Hotel & Convention, Medan, Indonesia

Moderator :

Director Tien-Mu Thomas Huang (Securities & Futures Bureau, Financial Supervisory Commission, Chinese Taipei)

Presenter:

Pr. Hui-Min Chung (Graduate Institute of Finance, National Chiao Tung University, Chinese Taipei)

Panelists :

Mr. Winfrid Blaschke (Senior Economist of OECD)

Mr. Mohamed Nasser (Head of Issuer Regulation, Singapore Exchange)

Mr. Lee Jisoo (Analyst of Center for Good Corporate Governance, Korea)

Pr. Sidharta Utama (Faculty of Economics, University of Indonesia)

Mr. Phan Duc Hieu (Policy Analyst, Central Institute for Economic Management, Vietnam)

Mr. Stephen Po (Senior Director, Securities & Futures Commission, Hong Kong)

Mr. Sou-Shan Wu (Chairman of Gre-Tai Securities Market, Chinese Taipei)

Section I (9:00-10:30)

- **Moderator welcome speech**

Chairman Green, Chairman Nguyen, Distinguish participants, ladies and gentlemen, good morning. I'd like to welcome you to join the Workshop. First of all, it's very delightful to come back Indonesia again. I remember last time I visited Indonesia was back to 20 years ago, a meeting in Jakarta in 1993. I think the main thing for this workshop "Lessons from the Financial Crisis for Corporate Governance and Law: Roles and Duties of the Enforcement Bodies on Corporate Governance Implementation". I think the topic of the issues of policy neutralization in the academic focus initiated back to 1970 in US. However, in the area for corporate governance organization, it seldom be touched in the survey regards the APEC arena, so this time, Chinese Taipei acknowledge project to have a overall review on the implementation of corporate governance in different APEC economics. So we have 15 minutes presentation by Professor Chung who will make up every issue for your attention. And before Professor Chung makes presentation, I'd like to draw the mention to our panelists. We have very strong experienced panelists to join this discussion. On my left hand side, first is Mr. Mohamed Nasser. He is a senior vice president and head of Issuer Regulation in Singapore Exchange. And second is Senior Economist of OECD, Mr. Winfrid Blaschke. He is supervising the OECD Secretary work for the corporate governance committee. And of course, we all know OECD is the international rules and standards maker for corporate governance. Specifically, Mr. Blaschke has distinctive experiences in working different geographic regional institutions like EU, EC and IMF. On my left hand side is Mr. Lee Jisoo form Korea. He has several degrees on the Law, Business and Economics. He is analyst and

consultant of Center for Good Corporate Governance like CECG. And then he will bring his experienced opinion from Korea's development of corporate governance. Second from my left hand side is Pr. Sidharta Utama. He is currently full-time professor of the faculty of Economics in University of Indonesia. He has served different positions in University of Indonesia and some professional institutions. He is currently a member of international economic counselor, and his special interest is in the area of corporate governance. And the other one on my left hand side is Mr. Phan. His research interest is also on the area of corporate governance. He is working in the Department of the Business Planning, and the Central Institute for Economic Management. He has various advisory roles to promote corporate governance and company law with full experience. The other one is Stephen Po. Stephen is senior director of Securities & Futures Commission in Hong Kong. And he is in charge of Intermediaries Supervision Department, also the Chairman of the International Organisation of Securities Commissions ("IOSCO") Committee 3 on the Regulation of Market Intermediaries. He has very extensive experiences oversees the financial corporations for purpose of identify managing risk. The last one is Pr. Sou-Shan Wu. He is the chairman of the Taiwan Securities & Futures Institute, Also is the chairman of Gre-Tai Securities Market which is similar to the NASDAQ Market in Taiwan. So I introduced our very strong panelists in this workshop. Next I invite Professor Chung to make you presentation. Thank you.

- **Presentation of Pr. Chung**

Thank you, Chairman Hunag, APEC distinguished guests, good morning. My outline of presentation has been shown as page two; the purpose of this research is to analyze the post-crisis reforms on corporate governance practices and policies in APEC economies after financial crisis. Thanks for the help form the 11 AEPC member economies and also their authorities, such as SEC or Stock Exchanges for collecting data and information. The OECD corporate governance 2004 principles and 2011 report also the base of this study. In order to come out the result, we also conducted interviews with several countries, such as Korea, New

Zealand, Australia, and Thailand, and to provide the data and very interesting cases.

The first issue of this study is the responsibility of Board committees. We found gradual improvement in independency of the Board, particularly Chile and Thailand have very strong policies and regulations. The proportion of independent directors on the board should be larger than one-third. Regarding the foundation of legislation, many economies reduce percentage of shares to eligible for nominating independent directors to 1% include Japan and Chinese Taipei. Australia has very strong policy to improve board members diversity. In 2011, the Australia Exchange has established board diversity regulation and set up clear disclosure policy.

The second issue of this research is related party transactions. Most of member economies provide strict regulations on related party transactions. Information disclosure and identification of related parties is the first rule of regulating related party transaction. The second rule is design fair voting process, and the third is Fairness opinion of audit committee. Then, Independent directors, and independent financial analysts, and Legal and SEC actions are also the elements. Almost APEC economies require the disclosure of related party transactions, however, some APEC economies such as Australia, Canada, Hong Kong, and New Zealand, require shareholders approved.

The key issue after financial crisis is remuneration of management. Main bodies responsible for improving the remuneration are board members, remuneration committee, and shareholder meeting. A very significant development in board committee after financial crisis is to establish the remuneration committee. Chile, Chinese Taipei and Hong Kong require the listed companies to establish the remuneration committee. As you can see there are few economies establish remuneration committee to ensure

adequate risk in remuneration strategy, policy and arrangements. Next, we provide some examples in developing remuneration committee, Canada requires financial institutions to follow Financial Stability Board's principles on compensation, and also strongly recommend them to provide additional information on the regulation process. Australia has very developed rules which they call it "two strike rules". If 25 percent of shareholders at a company's annual general meeting (AGM) vote against the company's remuneration report the first time, directors are put on notice to review their remuneration policies. The second and final strike is delivered if at the following year's AGM 25 percent of shareholders again vote against the remuneration report. If at least 50 percent of shareholders present at the meeting vote for a board spill, directors must face re-election within 90 days.

Regarding the transparency of financial report, we also find interesting result. All APEC economies require financial reports; particularly most of response countries require quarterly report. After the 2008 Financial Crisis, The minimum standards for licensed auditors in New Zealand had been largely improved. The increased standards can help the financial institutions and listed companies largely improve the disclosure transparency and quality of auditing. The authorities of member countries continue to enhance the enforcement of information transparency. The study shows the stock exchanges of Chinese Taipei, New Zealand, and Thailand play important role on this issue. There are many special purpose institutes and disputes resolution organizations try to enhance the investor protection, for example, Chinese Taipei has Securities and Futures Investors Protection Center and Financial Ombudsman Institution, New Zealand has Government-established reserve scheme, and Peru has The Office of the Investment Ombudsman.

In order to facilitate better shareholder activism, many APEC economies try to improve proposal Submission procedure in shareholder meetings, Korean and Thailand are two good examples for this improvement. Regarding the voting cast, Chinese Taipei and Japan have many interesting progress in e-voting and voting by poll, or spilt voting of voting procedure. Regarding the foreigner investors, Hong Kong and Chinese Taipei are two important APEC economies show important progress in this area.

Finally, let me provide some basic information of APEC member economies stock market development. It is very interesting that Hong Kong has the finest market capitalization of listed companies in 2011. Here is the IPO change after 2008 financial crisis, as you can see 2009 shows global impact on IPO numbers around APEC economies, and IPO increase after financial crisis show very different results among members. Here is the percentage of shareholdings of all listed companies by types of ownership. The impact on corporate governance policies, APEC members have very interesting development, for example, Chinese Taipei has established “Corporate Social Responsibility Best Practice Principles” for listed companies in 2010. The Australian Institute of Company Directors has strengthened their director training and education programs. Japan is a significant example which initiated their corporate governance reform by stock exchange. Although APEC economies have different legal origins, in this research we find they share common structures in laws and rules. Company law is main mechanism for enhancing shareholder right and securities law for investor protection. Australia provides bottom-up feedback mechanism to find balance between corporate governance regulation and economy growth. Chile, Chinese Taipei and Hong Kong have very strong development in corporate governance policies. Let me briefly conclude my presentation.

APEC economies learned from the financial crisis and identified crucial criteria of governance mechanisms are important. We find legal origin doesn't matter on corporate governance regulation framework, and they are developing some kind of bottom up feed-back mechanism. However, corporate governance reform could be driven by both global and local factors. Global factor I means is 2008 financial crisis. This survey reveals that each APEC member's corporate governance reform does not fully follow the global trend. Many economies develop their own policies by their local factors. This is my contribution for the presentation. Thank you for your attention.

- **Moderator**

Thank you, Pr. Chung, for your wonderful presentation, and basically is a summary of corporate governance reform after 2008 financial Crisis. We have two topics of this session, one is “Discharging the responsibilities of board functional committees to implement corporate governance”, and the other is “Related party transaction decision-making procedures”. Those two topics have been touched by Pr. Chung in his presentation, for example, related party transaction in some countries need shareholders' meeting to get approval process. First, I invite Mr. Nasser to provide his opinion regards these topics.

- **Mr. Mohamed Nasser**

There are three major committees of listed companies in Singapore: audit committee, remuneration committee, and nomination Committee. The Audit Committee Guidance Committee was formed on January 15, 2008 by the MAS, ACRA and SGX, to develop practical guidance for audit committees of listed companies. Functional committees are key elements for good corporate governance, however, not mandatory in Singapore,

but adopted “compliance or explain” policy. That’s why the independency of Independent directors is very crucial for maintaining good corporate governance. In 2009, Singapore was attacked by the financial crisis, the Monetary Authority of Singapore (MAS) issued a new Notice 643 “Transactions with Related Parties”, requires every bank in Singapore to establish a policy on Related Party Transactions, and put in place adequate procedures to implement, therefore, Singapore Stock Exchange modifies rules as well.

- **Moderator**

Thank you, and next Mr. Blaschke?

- **Mr. Winfrid Blaschke**

Maybe the first before we go into functional committees, I would like to quickly share our philosophy of corporate governance. The OECD has revised the principles of corporate governance, and these principles originally announced in 2004 which before the financial crisis, so it’s time to raise the question that how we revise them. Because the principles are adapted to some financial system, and has changed many financial systems before, so the last announcement was made in 2004, after this, they decided to first analyze on how they have been implemented. The first study on the lessons from the financial crisis used so called the theory and topics, and we survey the enforcement expectation in the area of corporate governance, and the six principles, especially the last one –how the risk management corporate governance performs? We are on the first stage right now of this survey and will be published in this year, then following with the second stage of analysis of three countries, Singapore, Norway and Switzerland. So let’s start to discuss the functional committees. Because one of these topics is how we

execute the risk management? We did a survey in 2010, and our survey found there are very few risk committees outside the financial sector, and their functions are considered very important, of course. The study found that risk management is mentioned in most documents with, for example, so called the national corporate governance with social rules which also maintain stock exchange stable. In many countries, risk management is one responsibility of audit committee, but the prevention of fraud and financial risk control may make the audit committee overcharged. So in the financial sector, risk control is in charge of the independent directors or chair of the board in some companies. Some nations like India and Singapore provide the requirement to establish risk control department, In Italy they require have risk control committee, and Turkey have some kind of risk controlled evaluation and investigation procedure, with penalties or sanction. In some sector, for example, the energy sector, although we have risk committee to maintain stable operation, the board is still important in this matter.

- **Moderator**

Thank you very much, Mr. Blaschke. He mentioned about the progress of corporate governance principles of OECD and the origin of the rules is to develop corporate governance in the regions. He specifically mentioned about the functional risk committee, emphasis on the 2008 financial crisis for some international insurance companies. Like the AIG raised the issues after crisis. Although the company actually has functional committees, their survey shows that many international companies failure to rating assets, but their performance are moderate and inadequate. My point of view to share with you is that although we have risk committee, the board should be responsible for the decision making for all benefit.

Next we have Mr. Lee Jisoo from Korea who brought us excellent presentation of real cases.

- **Mr. Lee Jisoo**

Good morning and thanks for the APEC provide me an opportunity to present a real case of Korea. The case I present is Hyundai Motor Group. It's a very big industry of the world, and you might know Korea is some kind of under control by the large group called Chaebol, and Hyundai is the second largest Chaebol Group in Korea. The important issue of the Group is how to pass their shareholder right to one generation to the next generation without paying too much tax. The inherit tax percentage of transferring property from father to son is 35%, and certainly could not be fully controlled by the family. So many controlling families worry about how to control a company without paying too much tax. Here I provide the solution of this kind of group companies. Hyundai Motor Co. is the fifth largest auto-maker in the world, Mong-koo Chung is the Chairman of the Group, and he has only one son Eui-sun Chung who is the president of KIA Motors. Hyundai Motor Group has thirty-six (36) affiliates in the group mostly focus on the manufactory. The total Revenue (2006): KRW 74 trillion (approx. US \$74 billion), and total Net Profits (2006): KRW 3.1 trillion (approx. US \$ 3 billion)

Next page show very complicated relationship, and it's impossible to follow the root.

You can consider the shares holding is a circle in this web. Hyundai Motor Group became a separate group from the former Hyundai Group in 2000, and became some key affiliates: Hyundai Motor Co., KIA Motors, Hyundai Mobis, Glovis, Bontech, AMCO and etc.

Glovis Co. Ltd. was established in February of 2001, and the 40% holding by the Chairman Chung and 60% holding by his only son. Once

they establish this entity, they used affiliates to do related transactions, and the result is huge values transfer from the companies to Glovis which was controlled by Chung's family.

Prior to I.P.O., Chairman Chung and his son were able to realize 6,400% return for their investment within four years since its establishment. The cash income of KRW 13 billion through dividend payout, and approximately KRW 80.6 billion by selling 25% of Glovis outstanding shares to a Norwegian company (KRW 10,746 /share), however, even after these series of transactions, they still hold a 75% stake in Glovis. Glovis was listed in KRX in December 2005 after issuing 20% additional stocks, and Chung and his son could realize their profit through going public and their wealth accumulated by Chairman Chung and his son reached KRW 1.3 trillion (approx. US \$1.3 billion), but Chairman Chung and his son still hold 60% of the outstanding shares of this Company.

How could Glovis realize such startling performance? On April 28, 2006, the Prosecutors' Office arrested and indicted Chairman Chung: misappropriation, embezzlement, and maintaining slush funds. The trial court found Chairman Chung guilty of all charges; sentenced three-year prison term and imposed hefty fines. Then., the Appellate Court upheld the lower court's decision but ordered 'postponed execution of the prison terms, and the Supreme Court remanded the case back to the Appellate Court for retrial and the case is still pending. Finally, the Fair Trade Commission imposed hefty fines. This is why I involved in this campaign. Regulator was shock to see the figure when they found Chung's family can generate US\$1.3 billions after 6-year process. We don't have much time to explain the details, but still you could find Chairman Chung had no need to pay any tax, but still passed his shares to his own son, and later was used as the seed money to inherit the entire empire.

After analyzing the board minutes, we noticed that these issues were not even discussed as the agenda at the board meeting. “Conflict of interests” existed but the management was negligent, and the board did not seek for the shareholder meeting approval. After a series cases happened, we found corporate governance is very importance in Korea. Corporate governance has been promoted many years in U.S and U.K. but it was never heard in Korea at that time. The company law provided no rule for the control loss of the company, and the profit of the company was stolen. Then the government tried to improve the situation, and that’s why we have some corporate governance provision. They also tried to impose half of heir tax on this kind of transactions to avoid this kind of transactions happened again. The new government of Korea has asked institutes to keep an eye on this kind of transactions. I cannot provide the provision of law, because it is still under discuss in the Korea government. May be we can find some other chance to share the development. Thank you very much.

- **Moderator**

Thank you, Mr. Lee for his illustrated a real case of Hyundai Motor Group and how they try to make sanction and rules for related party transaction. In fact I think Mr. Blaschke has just mentioned that after the financial crisis, OECD had studied and initiated operation of corporate governance rules. In fact, social factors trigger financial crisis. What happened in Korea will happen in other Economies. Next we invite Professor Utama to share his experience in Indonesia.

- **Pr. Sidharta Utama**

Thank you, Mr. Chairman Huang, and good morning, distinguished ladies and gentlemen. I would like to focus on the related party

transactions to share my physical feel like Mr. Lee. In his presentation he gives a very good example of abusive related party transaction. The abusive related party transaction will result in damage to the minority shareholder by the controlling holders, like families or chairman of the corporation. Of course, we have to prohibit this kind of transactions, but not all transactions are abusive, some expertise transactions are beneficial and good for the companies. So it is we have to really be careful when setting our rules for prohibiting related party transactions. We hope the rules will eventually be beneficial to the investors of the companies and should not be forbidden. First of all, the rules of CG transparency is very important, CG assure the continuous growth of economy. There are many ways can be done to make sure transparency of transaction. The first step is to make rule of process which is important for modern law. So in the case of Hyundai, the board have to make decision to approve the transactions or not. Chairman Chung should not involve in the discussion regards the transaction, and the other one is the “career”, because in the case will have many insiders leading the transaction of the companies. So the rules (shall be) not involved in transactions and develop the process of approving the transactions will be benefited on the matter.

And I will share some results or some research of mine regard related party transactions in Indonesia. And in general, my result shows in some cases these equity transaction increase price. The equity transaction impact shares and prevail the value at some prices, but in equity transactions which called the corporate governance practice to these families are very working. So we find that in general, the more corporate governance practice, the lower decision of families, so the chance of related party transactions decreased and also reduce the movement and abusive equity transaction. The left over is only the un-efficiency because these practices decrease the performance and also cost prices. So we find

the corporate governance practice lower the decision from families and the efficiency. So these are our results, despite these, we conclude that it is very important to regulator has some policies and regulations for abusing activities. First of all, I think we should ask the employee of the companies to practice good corporate governance, for example, to assure the issuing, trading and monitoring of related party transaction. The direction of liquidity and equity disclosure is very important. The investors should learn about the transaction whether its benefit for company or for beneficial holders. The disclosure of transaction is very important, for example, in Indonesia, the capital market requires disclosure in most of financial equipments, so companies have to disclose all the information that are significant in values and they are in good purposes and reasons, whether the liquidity are base on normal transactions or under the true standard of financial statement. So I think disclosure is very important. And of course, we have to put our regulations to establish independent committees, for example, audit committee to satisfy the full requirements, and fix the corporate governance to the companies. This is my presentation, thank you.

- **Moderator**

Thank you, Pr. Utama, and I think Indonesia has been gradually made some progress in related party transactions. Next I would like to invite Mr. Phan to provide their experience of corporate governance reform in Vietnam.

- **Mr. Phan Duc Hieu**

Good morning, I'd like to share our experience regarding the issues of Indonesia, particularly in the disclosure of related party transactions. You

may know that the concept of corporate governance has been existed may be in 15-20 years, and the issue of whether to regulate transactions in Vietnam since 2000. According to corporate governance disclosure rules, we are similar to Indonesia that the related party transaction are forbidden. However, we provide the approval of shareholder meeting if the transaction get enough shares approval, maxim 50% of board directors and occupies shareholders meeting. Although we have laws to regulate the transaction, many companies come to me and ask for how to find the approval. And I know Indonesia require financial statement to disclose these kinds of transactions. The companies have to disclose all the transactions fully.

- **Moderator**

Thank you, Mr. Phan. Next I would like to invite Stephen to share their experience in Hong Kong.

- **Mr. Stephen Po**

Thank you, Chairman. Good morning everyone. As chairman mention, I am executive director of Hong Kong, and also I am active in developing standards in securities are. Probably you have never ever known about IOSCO, but you might have heard about Basel. Basel is 7 tiers system and the IOSCO is 7-7 principles on securities and capital market. So what I want to do is try to give you reference regards international regulations and experiences, and also my experience in Hong Kong in few minutes presentation. And honestly I understand we have coffee break, so just ask you to give me 5 minutes, so that I am able to share with you and try to make my presentation as inside statement as possible. As suggestion, we are asked to talk about board committee, I will also talk about the functional committees of Taiwan because I've just comeback from

Taiwan. The few committees I want to talk about are remuneration committee, corporate governance committee and the risk committee just mention about. On the remuneration committee, I just want to give you some statistic stuff. Back to 2010, one of UK newspapers, they passed say on pay in UK. It finds interesting that it looks like the tall 100 height pay at salary of UK, and found that they spent of time of 2 years to increase salary 5% after the global financial crisis. While the same time, developing of shares for all these companies drop by 1% per year. So they simply pay minors against law. I look at the reason of the statistic. We look at the market of the money paid for the directors in the financial companies of the S &P 500 (these are top American companies). And the statistic comes very interesting; the average remuneration paid the directors for all this S&P 500 financial companies were around US\$19,000 per year. But two years after this, 2012, the average remuneration paid the directors increase to 50,000. So despite the U.S. government has passed the pay law, the salaries or the remuneration received by the directors still increased. It seems that the remuneration committee has not stopped these major financial companies and probably will not be functioning and effective. If this is not functional and effective, a lot of people are very interesting in what it should be. So there are a lot of new ideas provided by all relative parties, such as Financial Stability Board, they are all G20's Ministers who meeting twice a year, and they came out with a lot of good ideas to improve corporate governance. After Financial Stability Board ask to make sure all this ideas to be fully equipment, and establish the efforts of the corporate sectors. On top of that, no matter EU or US, remuneration regulations are put on US probably the famous one. Governing the payment of the remuneration of the directors, and let me just call few of them to share with you, for some of your financial institutions, the law has major

portion of salary, paid, and seniors sector must be paid, and more senior you are, the high portion of your paid will be variable session, also high portion of paid will be concern as a benchmark. After fixed some value, you can only receive money after 5 years, and in American call it as an arrangement, so few years later when you count the revenue and it may be reduced by the money market payment, so a lot of faces of revenue worldwide. We look at such cases in U.S., the shareholders may say no in turn of the proposal and put on by the risk committees. There are some famous examples, like the English company made some rules to ask for risk committee approval and propose to shareholders for say on pay. So this is some of the latest improvement in regulation areas. The second is the corporate governance committee. This is something new in Asia but quite in common in U.S. and EU. In Hong Kong, back to 2011, Stock Exchange of Hong Kong put out the requirement say that all listed companies must either have corporate governance committee in base of have these functions. So as tradition, corporate regulation is the reason of the growth of the corporate governance committee. Basically, there are five major roles, the first is developing policies on corporate governance and made the organizations aboard. Second, it's trained the directors and senior management on all these requirements. Third, it's monitor and compliance of all these regulations followed by the listed companies. And fourth, to develop all cases in common for employees to follow all these requirements, and finally, disclosures of all this corporate governance achievements in the annual report. In the stock exchange guide law, there are quiet specific requirement on the areas disclosed in the corporate governance section in annual report. And let me just call few of them to you, for example, it is required to set out corporate governance policies of a firm, say the number of facts regarding commission of the board of directors, such as how many committees?

Who is the attendee? And such as the law and the functions of listed companies, and how many of the auditors, remuneration, shareholders, are asked for AGM, and finally, also about the shareholders control. So regards that the information of the corporation corporate governance committee is the major step to improve the corporate governance of the business companies in Hong Kong. And now I come to the final committee which is the risk committee's benefit as mention earlier is discussion about OECD. Risk committee is something new and basically setup in major financial institutions after the global financial crisis. Risk functions or risk monitoring is something for all the board of members, but the reality is some of board members involved expertise, because of they excuse from that, after the financial crisis, they probably have become members of board to avoid their responsibilities. So after the financial crisis, the last proposal is to ask they set up the risk committee with all the members have expertise in the risk management areas. To oversee the risk functions of all the major financial institutions and particular, look at the structure of all the financial engineering, because recently a lot of new, a lot of complex financial areas are engineering setup, so the idea is to let this risk committee look at all these financial products. So the question is, let me call you some examples, you probably hear about the name JPMorgan Chase, very famous US bank and probably you have many banks suffered substantial losses in this London trading activities. The nickname is called the Whale cause by one of the market trader traded and quick event of losses more than 2 billion. So the question is where are the risk committee directors? What have they done? I am short of answers. When we look at the latest voltage of board members by the shareholders of JP Morgan Chase. We look at the support of the directors sitting on the risk committee get very low support on the shareholders. They have been elected, but the numbers of the

board got was very low. So the shareholders do what they like, shareholders involves effect the risk committee. I hope the risk committee will improve and the corporate governance will do the whole financial solutions. This is what I want to share in this session, thank you.

- **Moderator**

Thank you, Stephen for sharing your experience in Hong Kong. How about Mr. Wu, any comment?

- **Mr. Sou-Shan Wu**

After the financial crisis, chairman of the companies met great challenge, especially on trust and reliance, however, some region economies recovered faster than the other economies. The research tries to investigate the reasons. For Chinese Taipei, we do allow the information of transparency. We have established the “Information Disclosure Transparency Ranking System (IDTRS) for ten years, and after financial crisis, we made full of steps to establish a whole new corporate governance ranking system to evaluated listed companies. In order to help regional corporate governance to meet global standards and gather more fund from foreigner investors, I do believe the harmonization of regional and global culture is very crucial issue of this workshop. I was very impressed by the goal of the subject of “Resilient Asia-pacific, engine of global growth”, and I think it would be the goal we have to achieve. Thank you.

- **Moderator**

Thank you, Mr. Wu. Since we have few minutes before close this session, we could take two more questions from participants. Any question from the forum?

- **Ms Mo (Delegate of Hong Kong)**

Thank you chair, I am Morgan Mo from Hong Kong, China. Thanks you Chinese Taipei for organizing the Workshop, and also all the speakers this morning from all your inside views. I have few questions or comments I would like to share with our participants here. First of all, I appreciate very much on this subject of how to transit and constantly improving corporate governance rules to ensure that it into a good system and suggestion to govern and ensure the transparency. I particularly interest in 6 priorities in first presentation which is in respect of 6 priorities reform identified by OECD. I am interesting about the involvement of shareholders. When we talk about corporate governance, it always concentrating on board of conference (same as “company”), but I think the education of shareholders can be more and more in helping enforcement of government in the financial market would be useful as well. And for particular anxious to take care to help educating shareholders, so they knew what they are in domestic, and how much risk they are taking, and whether they are prepared to do to the risk, what they expect to govern the operations in the financial market are able to feedback. The second question I will like to ask is apart from shareholder involvement. We are talking about the risk committee. We try to be useful. When in the same time, what we stand above to provide problems of different sphere, to provide alternative investors to choose, and also what we can encourage sufficient disclosure and transparency, so that investors in the market will be well in the difference involved indifferent investing products, so they can have choice. And then the third question I have is what was that we can help to distinguish in all the risk of conference as such as against the mix of products offered by conference. Maybe I guess

I didn't make it clear, can we provide a sort of distinguish so we can help the players in the market well and well on.

- **Mr. Winfrid Blaschke**

I think the question is more about the financial sector, regarding the shareholders and the company products. This is a main problem of many countries, and it need a special program or a organization to help shareholders. We have several programs about corporate governance, some regard financial industries, and I suggest you can check up our website to get the information particularly about this.

- **Pr. Hui-Min Chung**

The first question is education of shareholders, actually we classified two kinds of shareholders: institutional and individuals. I think you mention especially on the education of individual shareholders. For Chinese Taipei we have Securities Investor Protection Center and Securities and Futures Institute, with other institutes, we forms a line of enforcement bodies and try to reach the goal of educating shareholders. It is a difficult task to educate individual investors. I remember OECD 6 priorities of corporate governance reform only emphasize the education of corporate directors, because they are corporate insiders and related to many conflicts. Thank you for your question mention about the individual investor education.

- **Mr. Lee Jisoo**

Regarding to shareholder protection, may be education would be a good method to improve it, but the fundamental problem is shareholders are weaker in the market, and improve corporate governance always cost money, and corporate always take responsibility to government. It's a

huge task for regulator and market players, because shareholders they don't do much on the improvement. If we hope shareholders to take more responsibilities, may be we can expect pension fund to take the role, because they are so large and with influence. Most of them are managed by educated professional persons. It's true we can try to educate individual investors, but I have to confess I don't believe they will put efforts on corporate governance.

- **Mr. Mohamed Nasser**

We really talk a lot of managing risk of investment or financial products of capital market, and hardly talk about how shareholder managing the companies. After financial crisis, the out of control of financial institutions really impact people, especially the retailer investors. They are not familiar to the risk of the companies or financial products they purchased. Consequently, they faced big loss. If they understand the risk of financial product or the companies, they can identify their need to the products or might avoid the unexpected loss in the future. They can consult the financial professionals or take some kind of test to understand if they can undertake the risk of the product. Financial companies could take the lead and perform their function to substitute the investors.

- **APEC delegate of Indonesia**

Thank you Chair, the Korea case is very interesting, and we are curious about how to help investors against the Chaebols, and do you get any reward or compensation? Because we know the lawsuits cost a lot, and how do you really get the benefit, and disclose the information of corporation? The second question is, although you accept the concept of corporate governance, how many committees can be helpful? Because

establish more committees would consequently cost highly, so how many committee could be most useful to help the director of the board.

- **Mr. Mohamed Nasser**

The compliance procedure is actually one of useful tool to help management of the Board. It' a good question regards how many committees does a company need? The requirements are originally form the regulators whose intention is to maintain industries stable. In turns of how functional committee could justify all the inputs of a company? For example, companies establish so many control committees instead of providing good corporate governance would not do any good to the board.

- **Mr. Lee Jisoo**

If I understand your question correctly, the polices are mostly up to down form the government, and I also agree with the functional committees increase the cost of companies. I also provide an example of UK, how much value could functional committee help shareholders. In this survey, the UK University found that shareholders will not be active when the board tries to get their approval in some transactions if we provide no mechanism for discussion. So why would we just provide the opportunity to the society. And yes, it might be a lot of opposite opinions such as why we try to interfere private sector with such requirements just because for the regulatory convenience, but the corporate governance requirement also reduce the regulatory cost.

- **Moderator**

Thank you for the good questions and very good comment to these questions. We have finished this session. If you have any question? We

have 10 minutes coffee break and comeback before 11:00, .I am sorry, Chile?

- **Ms. Jennifer Arias, APEC Delegate of Chile**

Thank you for all the speakers and the participation. I just want to follow the last question to Mr. Mohamed Nasser, about in case of Singapore; you guys provide what kind of sanction for the companies. In case of Chile, in November last year, our securities supervisor (the Superintendence of Securities and Insurance, SVS) pass Rule N°341 (which established a set of information requirements in order to acknowledge precise information about the implementation of good practices of corporate governance in listed companies) is adopted by all companies to report their information for responding the questions to the public, and conduct if yes or why not policy.

- **Mr. Mohamed Nasser**

In Singapore, we have civil penalty sanctions for not following the disclosure requirements and the company will also face the civil compensation lawsuit if it causes any damage to the public.

Section II (10:50-12:30)

- **Mr. Sou-Shan Wu**

In Chinese Taipei we have investor structure about 30% institutional investors and 70% individual investors, but about 70% liquidity created by institutional investors. It is very important to educate individual investors through KYT or KYC. We also know there are 80% of APEC economies who major participants of local market are individual investors. It means that the local factor driving to higher level of corporate governance is crucial important for Chinese Taipei. We do have several strategies to enhance this issue, firstly, about 30% underwriting fee is donated to Securities and Futures Institute for educating individual investors. We put a lot effort to educate individuals in communities, schools, and also Universities with association of most enforcement bodies in Chinese Taipei. I also would like to say IDTRS help individual investors to understand the information disclosure plays important part of good corporate governance. Starting from 2004, all listed companies in Chinese Taipei are classified into 7 categories, and we update the result every year to help investors to find how transparency of a company, and what else a company can do for more transparency. After 2009, I mean after the financial crisis, Chinese Taipei, we set up Investor Protection Center to protect and execute group lawsuits for investors who against to companies. In 2011, like Pr Chung mentioned, we establish Financial Ombudsman Institution to further enhance the disputes resolution between the investors and companies. We do our all possibilities of region factors to meet general standards.

Besides this, I would like to share one more culture character or difference of investor behaviors in Chinese Taipei. Our investors

appreciate the dividend pay out so much; we found it's hard to ask them to accept another channel, such as Pension fund. This phenomenon gives us highlight to drive our steps to harmonize region factors with corporate standards of OECD or IOSCO guidelines. I believe this kind of situation still need a lot of efforts from the member economies.

- **Moderator**

Thank Chairman Wu for sharing the experience of Chinese Taipei to the audience. Next We have Stephen to share his comment.

- **Mr. Stephen Po**

Ok! Thank you Chairman. Good to see you back, and today I would like to share introduce some of international development in this area. The first, I would like to talk about is some of the comparison of corporate governance among the developed market which is in emerging market. I got certification of ten. Basically, the certified comparison corporate governance of first country in year 2007 and whether until to 2010. It was found that developed market, no matter U.S, UK, Germany, Canada, etc. Their corporate governance standards behind and set them to be good standard. In the ten point scale, most of developed markets were verified and get their score about 7 point and above. But what is the report in emerging market. The average score in emerging market about 4 to 5 points. So, based on this studies and aggregate to compare the activities between the developed market and emerging market, now back to our Asian market, again I just want to recall some of studies by one of industry report by one of our Asian corporate governance associations. They look at the corporate governance standards of the most of Asian

market, and come up with some findings, and this is a very recent finding. On this report, the association raised some points, but I would like to share point of view to all of you. Very interesting, the association finds that in most of Asian market, we are very good at regulate financial reporting obligations, such as the reporting on the directors' transaction, disclosure of substantial statistic etc. So very famous on qualified and reporting, but also the Asia market are very weak in non-quantify transactions, and particular in the area of corporate governance codes. So this is something interesting to share with you.

Second point is, the association raised some issue regarding enforcement-actions taken by most of our markets. It is false in few parts at the use of the markets. By the enforcement and corporate governance requirements still remain very Asian point that also an Asian market need to catch up. Finally, it point out something generally in weakness among the Asian market, that is, about our corporate governance culture. Culture of corporate governance is pretty strong and few efforts required in this area. So this is three keys to take away that I would like to share with you base on leading points.

So probably, we are asking natural questions. What we could do? I would like to share with you some of the IOSCO opinion. IOSCO focus on these issues long time ago, but some of timing and verified questions still remain, about how to educate investors and who is exception. Basically IOSCO came up with four ranging area, and hopefully to raise corporate governance and protect shareholder rights. The first area is that there must be accurate disclosure of information of listed companies, in particular to those important transactions. So to valuate the key method is

that there must be extended disclosure of information.

Second, even though the disclosure of information, if shareholder or investors are not able to access these information, how do they know they can use it? So the second question is that how to improve and enable all the investors and shareholders to get the access of these information. So the access to the corporate information is the second point to identify.

Now come to the third point. Shareholders know the information they need, but what can they do? What would be the right could be given to the shareholders, particularly minority shareholders, in some of major transactions. So the third question is whether would be enough safe for them, so the shareholders could be able to approve all of the major transactions put on particularly by major shareholders. So this would be the third point of the corporate governance structure transaction face.

Then we come to the forth point. In case of all we do, what would be the last state guard? The last state guard would be the intervention and enforcement by the regulators on the governance of the market, so the force actions taken by regulators in case of any suspicious: no matter insider dealing, high frequency trading, any abusing regulation, and disclosure for leading information. All these require very forceful actions by the regulators. The IOSCO report provides key actions base on the market share and to improve their actions as weight to set up the interest of shareholders. I hope you are interesting about these discussions. Thank you!

- **Moderator**

Thank you, Stephen for sharing IOSCO project to say about the shareholders' right. Next I invite Mr. Phan to provide his presentation about protection of minority shareholders in Vietnam.

- **Mr. Phan Duc Hieu**

Thank you Chair, for I have the opportunity to share our protection of shareholders and investors in Vietnam. The reason why I disguise it in this committee is for our Vietnam's profit. In the first page you can see that in the "ease of doing business", our country rating is pretty low, so in this reality what can we do? In order to encourage investors, the measures we used are very strong, shareholder and investors look at the disclosure and value of assets. I think we have a better resolution. We amended regulation very quickly, and especially deregulation of our market participants. The most important measure of improving corporate governance is to establish our best international corporate governance guidelines, so we amend the Corporate Law and ask directors to disclosure all related parties in details, and get approval of shareholder meeting. I haven't seen any case contains that the shareholders act not actively regards this issue. Because the law provide the right to shareholders, and also the directions for them to follow, but there are still some shareholder act quietly. As I said before, related-party transaction must be approved by: board of directors if such a transaction value is less than 50% asset value: or meeting of Shareholders for others. Related persons pays damages for the harm caused to the company & repay profits made from transactions. I think the information disclosure is important, but if the information processed

by the directors, then the regulation of disclosure will be no meaning. It's very difficult to disclose information to shareholders because there are too many. It's hard to find the meaningful information. At least we ask directors to disclose equities and holding shares. We need company to focus on the interest of minority shareholders. So I think that is a new issue in Vietnam. And actually we think that this time must strengthen the information disclosure on related-party transaction to protect minority shareholders is very important. This is our main issue for protecting shareholder right, and I think we still have to try how to change the regulation to force shareholder actively. So it's the idea of ours and you are welcome to share your idea of this.

- **Moderator**

Thank you, Mr. Phan for introducing their recent regulation to improve information transparency, especially the efforts for beneficial holders. Next, we have Pr. Utama to share some experience.

- **Pr. Sidharta Utama**

Particular the general of this section mention the information disclosure and transparency. I would like to share the recent development in Asia region. Asian Board Association of Indonesia consists with ASEAN Capital Market Forum for years. In recent years, ASEAN Capital Forum especially in ASEAN exhibition plan start from year 2000, and ASEAN Technology Committee started the projecting and providing the policies and regulations. Capital Market Forum exclusively focus on the corporate governance, and the Forum developed the "ASEAN Corporate Governance Scorecard" which apply to the corporate governance practice

of the region. These scorecard having the results and assessment and provide to the regulators or the legal department to verify and improve the regulation. So the result can use to assess the regulators and help good compliance. The scorecard is not only for regulators, but also the functional committee, because of the committees could use the scorecard to do for literally their corporate governance practice. So that's the development of past two years, and ASEAN use it to assess the business companies from Indonesia, Malaysia, Thailand, and Philippine. So the first thing is the scorecard which we can develop our principles together, and all our CG expos, and the scorecard can be used to assess the all the business statements. The second one is ASEAN is developing the CG principles based on international CD bank. Use scorecard as structure, and OECD whitepaper principles, the companies' announcement could base on that, and to vary these companies with the result of scores to change the companies to be a perfect one. So it is our vision. The investors of this region are retail investors, so the increase their participant is important. At least in Indonesia, result and response are pretty good, so for example, last year the regulations regarding disclosure and require were amended. The structure of companies and information disclosure should directly disclose to the supervisor. The regulators also amended the rules regards Audit Committee, and ask the committee to approve the transactions. The last thing of Indonesia is we are trying to make CG rules as local corporate governance requirement, so we assume the corporate governance will be beneficial to regulators, this region of ASEAN, too, and improve the voluntary governance. Since these improvements have been followed by the international standards, the APEC may be considered to be another channel to promote the scorecard except ASEAN, and improve the corporate governance of the region. Thank you.

- **Moderator**

Thank you Pr. Utama and the information is very useful, and prospect to use the scorecard to improve corporate governance. So next we have Jisoo Lee from Korea to provide their down-up experience regards how NGO help to improve corporate governance.

- **Mr. Lee Jisoo**

Because I work for Korea NGO, I may provide some of my experience of how NGO can enhance the governance. There is some kind of criticism why investors cannot initiate the corporate governance reform such as US, UK, Canada, and other developed countries, which institutional funding management could challenge the government to enforce or make amendment to the regulation for built new kind system. The second model like governments of Hong Kong, Singapore, and also Chinese Taipei initiate their reform and improving the regulations for protecting investors. The last category like Korea is that corporate governance reform was actually lead by the non-government organization, not by corporations, not by government or institutional investors. The financial crisis back to 1997, people realized we should not just lead everything on the end of crash, people realized if not people role the monitor of corporation transactions, it's hard to maintain the investment integrity. Also at same time we do persuade the regulators if we could keep consistency. Korea is the only successful NGO model we known via the research of scholars. Since 1997 there have been 58 director suits against corporation raised by shareholders, 58 cases almost initiated and commenced by NGO. So NGO by now actually take the entire conversation and resolve the questions either on private sector. For past few years, we introduce major change of corporate governance structure.

Sometime we have been very successful, but sometimes we do fail. NGO is a normally professional prototype, and we need investors, lawyers, and we also have some accountants, we probably need more accountants for we have to assess the financial statement of these corporation. It's quite challenge when we try to find out from day to day regular transactions, the pricing seeking transaction, and we also have professors, scholars to provide models to wage the enhancement. We have assisted and shared with other organizations. We catch up with the regulators for cooperating with investors to deal with corporate governance. And create the corporate culture we can participating in the corporate governance system. Thank you.

- **Moderator**

Thanks Mr. Lee for sharing excellent experience regards NGO, then, we invite OECD representative, Mr. Blascheke?

- **Mr. Winfrid Blaschke**

Thanks the other speakers talk about some issues: one is the corporate governance scorecard, and the other is the role of NGO issue. First, about the corporate governance rating scorecard, I think it is useful and appreciated. It can get the relationship between companies and ASEAN corporate governance system. The opposite is will the companies think that scorecard helpful, and will the companies' announcement will effect companies' performance? Another question is if the stock exchange offer discount of listing fees for good governance companies, will it be helpful for companies rating? When we look at the improvement, we cannot easily forget the performance is very important to companies.

The second point regards a project we are working on now, the implementation of regulation and law, and what can help the shareholder activism. This is a very complicated problem. Some examples like Europe, shareholders activism is structured by the investors, the market, the regulators, large pension funds, and media. They monitor the companies. We talk about some fundamentals, such as proxy advisors, the solution is providing investor weapons, especially on certain issues. And, about the financial system, public enforcement is an important issue for OECD and ASEAN, too. There are two issues involved: one is the professional specialists must learn corporate governance to improve the investment environment, the other is shareholder right, regulation should have sanction to prevent wrongdoing, and increase the efficiency of shareholder meeting, like regulation about the minority shareholder proposal. The professional also could help the shareholders to get their compensation efficiently. The last issue is the financial support will help the shareholders to protect their right, or require companies to provide the information they hold and enforce corporate governance.

- **Moderator**

Thank you! Next, Mr. Nasser will suggest the minority shareholders.

- **Mr. Mohamed Nasser**

What I would like to share is protection of minority shareholder right. The first thing we have to do is to improve information disclosure environment. This depends on the quality of information they disclosed. We are not encouraging to provide any information, but we do require companies provide the meaningful information to help shareholders

understand the companies they invest. Information disclosure requirements based on the regulator required. In turns of reform of regulator enforcement, we believe that education will help the regulators to enforce. Major shareholders in Singapore are foreigner investors, so it is quite difficult for an individual shareholder to affect the companies. Shareholder need companies provide their information. Shareholders need to know the potential risk and loss, especially when the companies hold the information. Singapore follows the OECD principles and requires listed companies comply with the rules of the Exchange. We are also the member of ASEAN. It seems that there are some changes in the ASEAN region.

- **Moderator**

Thank you, Mr. Nasser. So we have some brief comment on last and recently revise of corporate governance principles by related organizations. The second vision is that different social factor and legal system will be considered to be affected factor on corporate governance, includes issues suggest that culture, no matter from NGOs or government agencies can be the approaches when we try to meet OECD principles. Then we have time for participants making some questions. Any question?

- **Benson Liu (Taiwan Corporate Governance Association)**

First of all, I would like to thanks panelists to share your opinions and sights about the information of corporate governance which are very inspirational. I said NGO/Association in Taiwan we try very hard to make progress in helping good corporate governance. So two questions I would like to ask, first question is for Mr. Lee, you mentioned about the experience of Korea, would you share more about your success, about

your toll free drive access? The second question is for Mr. Utama. You talked about the scorecard and actions. Is public information maybe share with other countries, like Taiwan? Thank you.

- **Mr. Lee Jisoo**

Yes, we sometimes are threatened by the policy or the media, but we put so much effort to maintain our people. We always want to stand behind the investors and do our best to protect shareholders. During the process of amending corporate law, we are able to contact with the media, and eventually the regulators and make them figure out that the facts and what's going on. We also overcome the short of funding. The outside financial support and college education programs are also helpful.

- **Pr. Sidharta Utama**

About the question of share, yes, the scorecard can be accessed by Indonesia Bank Website, or you may find it at ASEAN website by topics, also the OECD principles and ICG Reporting. The other question you ask about the cost of CG. I think the companies have to understand CG will help them to improve their exercise and practice, and eventually improve their performance. Yes, we have functional committees, but actually these committees can't do anything if there is no performance. CG may not the best solutions for performance, but regulators and investigators may use the CG practice to monitor. CG cost performance, also performance cost CG. But best performance will improve their CG. You can find some examples in the region that CG improves performance, too. I think that scorecard is suitable for other Asia countries. On the other hand, you may find CG start from the foreigner investors. They make sure the expertise of companies use committees to improve the company. In general, CG

cost may affect company's performance, but again, you have to make sure CG has been reform because the foreigners will focus on CG.

- **Moderator**

Thank you for your comment regards CG practice. Does anyone has comments or questions?

- **Ms Huda Bahweres (Delegate of Indonesia)**

First of all, I would like to comment on Mr. Lee's presentation from your point of view of the Korean corporate governance. I would like to mention the ASEAN reform about corporate governance, and also I have a question on the role of National organizations and their communication. In Indonesia, as my understanding, we have 4 supervisors for corporate governance, including Committee of Good Corporate Governance, SOE Committee, Ministry of Finance, and also the Indonesia Stock Exchange. How do 4 authorities work together? As you mention, Korea national corporate governance authority perform not very well, so how do you provide good corporate governance from the center? Who will monitor these implications if no one committed on the center? Also who will represent Indonesia in the scope of process on the corporate governance issue, that's my question to Mr. Utama.

- **Moderator**

Thank you! Your questions are very important. So I would like to invite Mr. Lee Jisoo to answer.

- **Mr. Lee Jisoo**

Yes, regarding the funding, first of all, we do not receive any funding from our government. We are very independent, and happened to be

receive no compensation from corporations or the government. So how we promote our agenda? First of all, we collect member fees, and we provide many analyses, and consulting to foreigner investors, for instance, they want to have some consult for Korean corporations. The main inquiry actually comes from the corporate governance equity fund, because once a year they announce corporate governance of Korea, we provide our advices to them. We work on many strategies, also legal consultation, that is our main income.

- **Pr. Sidharta Utama**

Indonesia has some booths regarding corporate governance like ACG Indonesia. But I think non of the NGO like the good performing in Korea. Except implementing CG to the corporation directly, the government still needs to improve the CG policies. We do have some NGO like IACD, and the influence from the foreign institution like OECD, or I think the ASEAN scorecard is a good method for Indonesia. And like Korea, NGO is self-funding, so they have to maintain their own funding and their expertise to create very diversify methods and profiles of researches, and sold their to the companies. So the shareholder approval is very important for Indonesia to have NGO on that. It indicates that they can learn from the experiences in the Indonesia from the ASEAN reporting. I understand the Indonesia still have many items need shareholder's approval, and these approval actually are based on corporate governance. But its initial that is part from the document and I think in case of Indonesia is very poor and the performance of shareholders is not so good, because lots of companies are controlled by the families. The next question is who implement the scorecard? The scorecard is initiated by the capital market, so the scorecard is used on the listed companies. The purpose of scorecard is to maintain the stable of the companies, so the companies

have to be assessed by the ASEAN scorecard. Now our financial Authority starts a CG program, and it's actually trying to implement this scorecard. I believe our regulator based on the scorecard to identify our state in Indonesia, and then consider that they can do something to the nation and system to improve the results. For example, I think that good CG companies and regulation will be found from Singapore, such as their financial statement, disclosure and practice.

- **Moderator**

Thank you. So, any comment on this? Please.

- **Adikin Basirun (Indonesia Stock Exchange)**

Thank you, the chairman. Let me introduce myself. I'm Adikin Basirun from Indonesia Stock Exchange. I would like to share selected perspectives that I would talk it today., and also we work with our colleagues in Jakarta in the working group for the corporate governance blue print. I will share my experience that our real implement corporate governance in the Indonesia Stock Exchange First of all, what we do is to ask polices, and the combination, and .also the code of conduct of good corporate governance, including profile that send operating coincident for both commissioner and director committee. Indonesia is to be unique because applies two-tiers of board. One is board of commissioner, and the other one is directors. So, this becomes a lot of mix-complication in our two-tier board system. I think that if talking about the implementation, the most challenging issues in our case first of all is language, English. English is foreign speaking language in Indonesia. Not even a second language. Our national language is

"Bahasa" Indonesian, and the other is "dialect". So, a lot of documentations including more regulations has been written not in English, and that of course become minus in our scoring system. In addition, Pr. Utama comments on the ASEAN corporate governance scorecard. We are really thankful to our financial service authority. In this year, to the capital market and non-bank financial institution, the supervisory has been transferred to the FFC. By next year, the central bank advisory will also married in to the capital market, non-bank financial institutions, supervisory to the financial service authority. And this can bring a lot of improvement, especially to do the humanization of the rules. The main point I want to say is the communication is very important. We actually have been set up working committee and do a lot of working. Actually there are 6 working groups. We have been going to focus group discussion, and we also do the association education, and do the party related to the stakeholders, in order to promote corporate governance. The second thing is we would like to share of course regarding the standard decision, so like the question from Mrs. Huda. There a lot of NGOs actually related to the corporate governance in Indonesia, including IICD, IICG, and also the NCG. But we don't have standards decision of the measurement of corporate governance. Because there is the number of awards that has been initiated by like magazines. But in our case of stock exchange, we have what we called of annual report award, which we put the corporate governance is the highest weighted on how we improve corporate governance of the listed company in the stock exchange. We do review yearly, but still we sometime have misplaced of the weighted. So it really depends on the

focus what we put weight on each of particular year. So, I understand and I believe that start from the ASEAN corporate governance scorecard as a standard of measurement of the ASEAN. It could be standardized our measurement and each of ASEAN can beat among the regions on the corporate governance. Like our case, the implement of corporate governance, we ask the related-party to do the measurement. And it score 88. But what are the scores mean to everybody? Because this scores is maybe only understood like OK. Our score is 88 out of 100, but it really got nice recently or even normally. So, the most important thing is to standard this situation of the measurement, and let's working together to make it work and implemented. It's not about the scoring, and it's not about the learning, but it more about the corporation for all of us. And another thing is a little bit my last comments and sharing is about initiative of ASEAN economic committee. So, in the capital market, that is the deadline of 2015. So the integration of ASEAN and that would be 2020 for including the banking integration. This initiative actually we have three big issues maybe on the government level. First of all, it is usually the negotiation among the region, and about the directly mission and about professionals for example, that a bit in the region, whereby and we can cooperate with each other and also the organization of the profession and low standard. So, we move to the cooperation. And another thing is group association, because among the regions and among the exchanges, we have different kind of listing rules, for example. so I believe that this is part of the challenge that we need to settle down. And last but not least, is to distribute last vision among us, among the Asian, to promote the ASEAN. in this case of course

promote Asian basically. The last thing I would like to comment about the consistency and confidence. A lot of people understand that the corporate governance does not lead the performance. But, in order to attract and do bring up the confidence from the investors globally. The performance as actually a bottom line, a basic issue. As matter of the fact, most of the state-owned listed companies have performed better than those who have not yet been listed in the stock exchange. Why? Because in the stock exchange have to comply a lot of things that directly or indirectly will be also related to the corporate governance implementation. Thank you very much.

- **Moderator**

Thank you for sharing so much information with us about Indonesia corporate governance. We have finished the workshop, and your participation and attendance are very encouraging. The suggestions and comments we collected from this workshop will be included in the final report. The most important thing is by sharing our experience and the difference may improve corporate governance in our countries. Thank you.