

行政院及所屬各機關出國報告

(出國類別：出席國際會議)

## 參加「2017年OECD亞洲公司治理 圓桌論壇會議」報告

出國人員：

金融監督管理委員會證券期貨局 胡專門委員則華

徐研究員慶雲

派赴國家：日本

出國期間：106年10月18日至21日

報告日期：106年1月17日

## 提要表

系統識別號：	C10603726					
計畫名稱：	參加 2017 年亞洲公司治理圓桌論壇會議					
報告名稱：	參加「2017 年 OECD 亞洲公司治理圓桌論壇會議」出國報告					
計畫主辦機關：	金融監督管理委員會證券期貨局					
出國人員：	姓名	服務機關	服務單位	職稱	官職等	E-MAIL 信箱
	胡則華	金融監督管理委員會證券期貨局	證券發行組	專門委員	簡任(派)	聯絡人 dianehsu @sfb.gov.tw
徐慶雲	金融監督管理委員會證券期貨局	證券發行組	研究員			
前往地區：	日本					
參訪機關：	無					
出國類別：	其他					
出國期間：	民國 106 年 10 月 18 日至 民國 106 年 10 月 21 日					
報告日期：	民國 107 年 1 月 20 日					
關鍵詞：	公司治理，OECD					
報告書頁數：	38 頁					
報告內容摘要：	<p>本次會議討論主題包括(1)公司治理案例、(2)日本公司治理發展近況、(3) 亞洲資本市場與成長型公司資本之取得、(4)透過軟性規範實施公司治理、(5)小組討論及回饋報告、(6) 董事會績效評估、(7)以公司治理的觀點看證券交易所角色的演變。藉由本次會議，本會得以瞭解國際現行推動公司治理之重點及方向，供本會未來研議新版公司治理藍圖之參考，另目前國際上普遍以企業自願遵循或「遵循或解釋」方式推動公司治理，本次會議討論相關作法於各國之發展及影響，暨如何因應企業規模、股權型態及發展階段，採用彈性或比例性做法等，協助企業籌資與發展，有助我國取法國際公司治理經驗，對我國推動公司治理與國際接軌具有正面效益。報告最後提出三項心得與建議：(1)獨立董事的功能越來越受到重視，應強化其資訊取得管道、(2)公司治理可由形式遵循導引至實質重視、(3)機構投資人盡職治理的範圍宜擴大至整個投資鏈。</p>					
電子全文檔：	C10603726_01.pdf					
出國報告審核表：	C10603726_A.pdf					
限閱與否：	否					
專責人員姓名：						
專責人員電話：						

## 目錄

第一章 前言 .....	4
第二章 出席圓桌論壇紀要 .....	6
主題一、公司治理案例 .....	6
主題二、日本公司治理發展近況.....	10
主題三、亞洲資本市場與成長型公司資本之取得 .....	13
主題四、透過軟性規範實施公司治理 .....	15
主題五、小組討論 .....	18
主題六、小組討論回饋報告.....	24
主題七、董事會績效評估 .....	27
主題八、以公司治理的觀點看證券交易所角色的演變 .....	30
第三章 心得感想及建議.....	34
附件.....	38

## 第一章 前言

### 一、背景說明

亞洲公司治理圓桌論壇（The Asian Roundtable on Corporate Governance）創始於 1999 年，係經濟合作暨發展組織（Organization for Economic Co-operation and Development，以下簡稱 OECD）為推動公司治理基本原則之執行，邀集亞洲國家主管機關、證券交易所、私人部門、多邊組織及非政府機構之代表成立，為公司治理結構性政策對話之區域性圓桌論壇。該論壇透過相互經驗分享與交流，在 OECD 所提出之公司治理原則下，試圖找出符合亞洲國情之公司治理實務措施。

除公司治理之基本原則外，該論壇並發布「亞洲公司治理白皮書」。1997 年亞洲金融風暴重創亞洲，為協助亞洲提升競爭力、汲取教訓，該論壇於 2003 年制訂發布亞洲公司治理白皮書，提出 36 項建議，做為一般政策目標與推動亞洲公司治理之改革方案。2011 年再度更新該白皮書為「亞洲改革重點：提升公司治理至更高境界」（Reform Priorities in Asia: Taking Corporate Governance to a Higher Level）。

為進一步提升亞洲地區公司治理程度，該論壇於 2009 年發布「對抗亞洲不當關係人交易指引（Guide on Fighting Abusive Related Party Transactions in Asia）」，於 2013 年發布「亞洲董事會提名與選任之較佳政策（Better Policies for Board Nomination and Election in Asia）」，於 2014 年發布「亞洲公部門執法與公司治理指引與實務（Public Enforcement and Corporate Governance in Asia: Guidance and Good Practices）」。另為因應亞洲各國家族事業之特徵與接班議題，論壇於 2014 年組成「家族企業公司治理任務小組」，由 OECD 聘請顧問彙整各國家族企業資料，並透過圓桌論壇之



討論、經驗分享，最後製作政策建議，供各國未來制定公司治理政策或執法時之參考。本次論壇召開前，OECD 於 2017 年 9 月就亞洲各國公司治理架構進行問卷調查，並就問卷回復結果將撰擬 2017 年「亞洲公司治理架構報告」(OECD Survey of Corporate Governance Frameworks in Asia 2017) 提供各國參考。本次會議由 OECD、日本金融廳及東京證交所聯合主辦，並依往例由日本政府贊助。

## 二、出席會議代表

本次出席會議代表來自 27 個國家，包括 OECD 之專家、亞洲各國交易所、證券主管機關代表、學者及相關國際組織之代表等共約 230 人，我國參加人員除本會代表出席外，尚有臺灣證券交易所公司治理部高專員晟晉出席。此外，本會代表胡專門委員則華擔任第五場 Focus Group 討論議題「彈性、比例性與成長公司」之與談人，分享我國依公司規模大小採取分階段實施公司治理相關措施之做法，並介紹我國創櫃版、興櫃、上市櫃公司之多層次資本市場，及近期為鼓勵新創事業上市櫃而採行之措施等。

## 第二章 出席圓桌論壇紀要

本次會議由主辦國日本副首相 Mr. Taro Aso 及 OECD 副秘書長 Mr. Masamichi Kono 致詞。Kono 君致詞時表示，其任職 OECD 後發現，在經濟景氣循環之影響下，各國 IPO 及上市公司之數量減少，且由 OECD 國家移轉至非 OECD 國家；此外，機構投資人在公司治理議題上較以往變得更加積極，但包含年金、主權基金、ETF 等均有投資鏈變長變複雜的情況，因此長期投資策略更形重要。

在各場次主題部分，首先進行公司治理相關案例分享，再由日本報告其近期公司治理發展狀況，接續進行亞洲資本市場與成長企業之籌資、透過軟性規範實施公司治理、小組討論及回饋報告、董事會績效評估，及以公司治理的觀點看證券交易所角色的演變。以下分就各主題摘述論壇重點。

### 主題一、公司治理案例

**主持人：**Mr. Masato Kanda, Chair, OECD Corporate Governance Committee and Deputy Director General, Budget Bureau, Ministry of Finance, and Financial Services Agency, Japan

**與談人：**Ms. Mary Jo White, Former Chair, United States Securities and Exchange Commission, and Partner, Debevoise & Plimpton, United States

Mr. Yoshimitsu Kobayashi, Chairman, KEIZAI DOYUKAI (Japan Association of Corporate Executives) and Chairman, Member of the Board, Mitsubishi Chemical Holdings Corporation, Japan

**Mr. George Olcott, Board Member, Dai-iChi Life Holdings,  
Denso Corporation, and Board Member, Hitachi Chemical,  
Japan**

White 君表示，公司治理常被認為是商業發展的限制，而非助益，但事實並非如此。依據其擔任檢察官、美國上市公司審計委員會的成員暨法律顧問，及美國證管會主席的經驗，良好的公司治理能幫公司避免麻煩，在危機發生時帶領公司以合乎規範的措施渡過難關，並幫助公司達到更好的財務表現，如增加公司市場價值、以低成本取得資本等。另她也發現，機構投資人在公司治理上扮演相當重要的角色，已有 49% 的機構投資人曾因為不滿意投資標的之公司治理狀況而出脫其股票。

她認為目前公司治理的二項重點為強化董事會之多元化及股東投入(shareholder engagement)。其於出任納斯達克證交所第一位女性董事時發現，即使只有一位女性董事的加入，也能改變公司的運作並帶來許多新想法，幫助公司達到更高的 ROE 和淨利，故性別多樣化對良好公司治理扮演極重要角色，惟美國在性別多樣化的進展緩慢，2010 年 Fortune 500 公司中，25.5% 的董事席次為女性或少數族群擔任，至 2016 年，該比率只增加至 30%。她亦表示日本公司管理階層目前只有 5% 是女性，故呼籲日本商業機構開始重視性別多樣化相關議題，具體做法包含讓提名委員會建置合適人選的資料庫，並訓練女性員工，讓其成為女性董事。

White 君也強調，股東若能積極參與公司治理的流程與管理、或與董事、管理階層經常進行交流，能幫助公司達到財務目標。她發現有機構投資人參與公司治理的企業，約有 90% 會編製 ESG 報告書，且公司治理的表現通常比較好。此外，她亦表示提高透明化程度是公司治理的基礎，透過揭露，股東會給予公司壓力，進而讓公司改善，達成提高公司治理的目的。

Kobayashi 君則表示，其自 10 年前 Mitsubishi Holdings Corporation 發生爆炸起火意外導致嚴重損失的經驗中了解，公司經營的最低標準，即是確保安全無虞和法規遵循，化學公司若要保持永續成長，需要良好的公司治理制度配合，以達到永續性、健康及舒適三目標，其並發展出一套商業模式，將公司價值分別以 X(傳統效率與獲利)、Y(創新與科技，例如研發及智財權)、Z(ESG 或公眾利益)軸分別呈現，強調「永續」的概念不該僅限於對市值 (market capitalization) 的重視，管理階層應該也將道德與社會責任融入思考。

其於 KAITEKI COMPANY 除運用上開模式外，亦藉由公司各面向的活動表現，建立公司內部使用的指數，並將項目、計算方法以及計算結果包含於財務報告中，使股東更了解公司的商業活動，該公司應用此指數業逾 6 年，相關指數表現 (index performance) 與公司永續發展 (management sustainability) 呈現正相關。另其認為，企業參與公共事務並認知自己的公眾責任 (by acting as a public instrument of the society) 是它唯一達到永續成長目標的方法，因為長期受社會大眾的監督，公司才會不斷改善、進步以及承擔更多社會責任，這也是公司治理的關鍵目標。

此外，其表示許多人以為日本公司治理僅由政府帶動，民間無推動力道，但其實日本機構投資人盡職治理守則(Stewardship Code)與公司治理守則(Corporate Governance Code)已改善日本機構投資人的行為模式以及企業的作為，有助改善日本企業公司治理。雖然這些制度都是出於政府要求，但民間執行力道很大而且表現良好，只是其建議日本企業高階管理階層應多與股東及媒體建構建設性的溝通，對大眾對其經營理念及成果才會有正確的認識。

Olcott 君則認為，機構投資人常過於看重日本政府政策對公司治理的影響，而忽略各家企業本身性質或其過去經驗，根據他過去曾擔任 5 家不同日本公司董事的經驗，他認為並無所謂的「典型日本公司

治理」，因為每家公司的情況都不一樣，須取決於不同管理階層、執行長的風格、委員會架構、所處產業以及經濟環境。此外，其提出幾個日本企業未來可以嘗試的改善方向，包括(1)縮減董事會規模，讓董事(若兼任管理階層)能以代表股東利益的思維參與董事會運作、(2)減少董事會議案數，讓董事會著重討論最重大的議題、(3)降低董事會開會頻率(目前一年約有 15 次，較德國、英國多一倍)、(4)由提名委員會單獨審查可能的負責人繼任人選，並藉由該委員會與相關流程的輔助，選出最適任的董事會成員、(5)增加外國籍董事比例(日本公司 2001 年外國籍董事人數共有 232 人，至 2011 年只增加至 247 人，成長率僅 0.6%，相較德、法、英等國企業成長率，分別為 21%、35%、31%，差距甚大)，以因應全球化潮流。

另他提出，為提升董事會決策品質，公司應尋求有效管道將股東、大眾意見傳達給董事會，而非僅依賴 CEO 或高階管理人意見，且公司應在董事會成員正式上任前針對公司治理原則、股東期待，暨制定決策考量等，給予董事適當之訓練。

現場參與者問及日本弊案後獨立董事角色應如何強化，他表示若公司管理階層存心隱藏資訊，獨立董事很難察覺公司的弊案，但獨立董事可以常與公司人員詢問，例如透過詢問「這代表甚麼意思?」，透過問答了解公司發生之事項。

## 主題二、日本公司治理發展近況

**主持人：**Mr. John Plender, Columnist and Editorial Writer, Financial Times, United Kingdom

**報告人：**Mr. Hideki Kanda, Professor of Law, Gakushuin University, Japan

**與談人：**Mr. Tomoyuki Furusawa, Deputy Director-General of the Planning and coordination Bureau, Financial Services Agency, Japan

Mr. Akira Matsumoto, Chair of the Board & CEO, Calbee, Japan

Mr. Mark Mobius, Executive Chair, Templeton Emerging Markets Group, United States

主持人 Plender 君表示，日本企業公司治理的特色非常與眾不同，早期日本企業文化表現出「沒有資本家的資本主義」(a form of capitalism without capitalists)，員工的工作倫理意識強烈，重視社會整體利益甚於個人利益，惟現今日本經濟狀況不若以往，員工忠誠度較低，管理方式也需改變。

Kanda 君報告近年日本公司治理的發展表示，在日本傳統制度下，董事會成員之身分重疊，多是前公司員工或管理階層，其後在董監雙層架構下 (two-board structure)，成員之身分則為獨立的，此架構目前仍被 76% 的公司採用；2003 年推行一董事會三委員會架構 (one-board, three committee structure) 時，董事會下面設有審計、薪酬、提名委員會，且多數委員會成員必須來自公司外部，但此只有 2% 的上市公司使用，而 2015 年提出的一董事會一委員會架構 (one-board, one committee structure) 則被 22% 的公司採用，此架構在董事會下設有一監督委員會，成員也必須來自公司外部。Kanda 君認為，



董事會架構之改變顯示日本企業在公司治理的改革成果，速度雖然不快，但成果仍不容忽視，他也提到除架構外，資本結構、產業、董事多樣性，以及外部稽核與律師的可信賴度也是亞洲公司治理需重視的子議題。

Furusawa 君表示，公司法 (company law) 的改變並無法改變企業行為，因為只是形式上的改變而未改變公司的本質，但其強調形式上的要求仍可導引公司進步及演化。其並認為要落實公司治理尚需有 (1)基礎建設的改變(包括會計師、主管機關等)；(2)高階經營階層的改變；(3)資產擁有者的改變，因為包含股東等資產擁有者會影響公司治理的有效性，其中政府應負責確認市場機制和投資鏈的正常運作，並監督其運作的品質。

另針對與會人員詢問日本政府在企業弊案後的動向，Furusawa 君回答，這些弊案發生都有不同的特點，但多數可歸咎於內部稽核功能未彰顯，因此主管機關先處理企業內部稽核的問題。

Matsumoto 君表示，其於 2009 年加入 Calbee 公司時，引進之前在 Johnson & Johnson 工作時其重視公司治理的經驗，改變 Calbee 的董事會架構並重視資訊揭露，如董事會成員 7 位中有 5 位由外部專業人士擔任，並有 45% 為員工董事。另其認為公司治理最重要的是對利害關係人負責 (responsibility to stakeholders)，此利害關係人包括客戶、員工及其家庭、社區、社會、國家、全球市場、地球、與環境，最後才是對股東的責任。Calbee 公司上市後，股價漲了八倍，且機構投資人定期與公司對話，相信都是因為公司治理較佳的緣故。

針對與會人員詢問為何將股東排在最後部分，Matsumoto 君回答，因為先重視客戶、員工及其家庭，公司才會成長變大，股東價值也才會出來。另其強調企業的資訊揭露會增加利害關係人的信心，非常重要，因此 Calbee 均盡可能竭盡所能揭露公司資訊。

Mobius 君則認為，董事一般對公司之運作不甚熟悉，必須花費額外時間與心力去瞭解到底發生什麼事以及公司該如何被經營，因

此，企業的首要目標，應是聘請擁有相關產業經驗的獨立董事。此外，其亦表示日本企業常用退休監理官或前官員擔任董事，易產生利益衝突之疑慮，故其認為董事會應有過半數為獨立董事。

另針對與會人員詢問日本的機構投資人盡職治理守則是否是玩真的，Mobius 君回復，機構投資人之間互有競爭，也有利益衝突，因此會有人質疑機構投資人是否真的會落實盡職治理守則，但以他的觀察，機構投資人後面還有委託人(constituents)，若這些委託人重視公司治理，將促使機構投資人確實遵循盡職治理守則。此外，以日本的文化來看，客戶及員工是比較重要的，因此公司重視客戶及員工的意見，呼應到 ESG 中強調對利害關係人的重視，這點投資人均能接受。

### 主題三、亞洲資本市場與成長型公司資本之取得

**主持人：** Mr. Naoyuki Yoshino, Dean, The Asian Development Bank  
Institute and Professor Emeritus at Keio University, Japan

**報告人：** Mr. Mats Isaksson, Head, Corporate Affairs Division, OECD

**與談人：** Mr. Leonardo Porciuncula Gomes Pereira, Former President,  
Securities and Exchange Commission, Brazil

**Ms. Jiang Xinghui**, Director, Department of Listed Companies  
Supervision, China Securities Regulatory Commission, China

**Mr. David Weild**, Founder and CEO, Weild & Co. Inc., United  
States

主持人 Yoshino 君表示，公司治理是工具，而非目的，是確保家庭儲蓄透過資本市場流入實質部門並達成經濟成長的生態系統。若能善加運用 OECD/G20 公司治理原則，並因應市場變化而調整相關措施，始能因應新的挑戰，並有助落實公司治理。

Isaksson 君報告亞洲公司於資本市場募集資金的狀況，歸納有下列趨勢與現象：

#### (一)有關亞洲公司募資金額及相關比例部分

自 2000 年開始，亞洲公司已於公開市場募資超過 4 兆美元 (相當於 2016 年整個印度和韓國經濟的總體規模)，其中中國為最大的募資市場，募集金額約占整體 43%、其次依序為日本 17%、香港 11%、韓國 8%及印度 7%；另上開亞洲募集資金中有近四分之三流向非金融企業。至於透過 IPO 募集資金之企業類型，最大宗來自工業型公司；民生商品型公司則是透過 SPO 募集資金的主要企業。此外，在五大亞洲市場中，有三個市場之高科技公司募資金額自 2008 年以來有所下降。

#### (二)有關亞洲成長型公司 IPO 部分

過去 10 年來，歐盟和美國的成長型公司 IPO（定義為 IPO 金額小於 5000 萬美元以下）的情形幾乎消失，但在日本、韓國和香港等幾個亞洲國家，成長型公司的股票市場依然活絡。過去 3 年來，日本成長型公司每年平均募資近 10 億美元。此外，亞洲 IPO 大部分集中在少數的產業，例如，在過去 5 年，日本科技和醫療保健行業之 IPO 占整體的 40%；中國和韓國科技業 IPO 的占比也很高，平均而言占有所有公開發行公司的 17%。另過去 10 年間，亞洲公司選擇至本國市場以外地區上市的情形也逐漸增加，最常見的 IPO 地點是香港。

多數企業選擇至海外上市時，依然選擇在亞洲地區，因此，亞洲區域股票市場在全球公開發行市場（IPO 和 SPO）中的份額從 1997 年的 16% 穩步增長到 2016 年的 46%。而亞洲以外最受亞洲公司歡迎的他國上市地區則為美國。

### (三)有關亞洲公司股權集中程度部分

講者觀察各國的股權集中資料發現，亞洲前 12 大股票市場中，前 100 大上市公司之所有權集中程度相對其他公司較高。在 12 個市場中，有半數以上的國家，其企業前三大股東擁有公司絕大多數之資本，其中日本、臺灣企業股東所有權集中度最低，前三大股東僅分別占 24% 和 27%。另講者發現政府持股比率較高的企業伴隨著較低的業績表現及融資槓桿較高。

### (四)有關亞洲公司於公開市場以外的資金募集部分

亞洲資本市場的發展並不僅局限於公開市場。亞洲在公司債、聯貸及合併與收購方面的業務也大幅增長。亞洲在全球企業債券市場的占比從 10 年前的 10% 上升到 2016 年的近 35%，全球併購活動的份額則從 10% 上升到 30%。

#### 主題四、透過軟性規範實施公司治理

**主持人：** Ms. Gabriela Figueiredo Dias, President, Securities Market Commission, Portugal

**報告人：** Mr. Ethiopis Tafara, General Counsel and Vice President, International Finance Corporation

**與談人：** Mr Hiro Mizuno, Executive Managing Director and Chief Investment Officer, Government Pension Investment Fund (GPIF), Japan

**Mr. Jamie Allen**, Secretary-General, Asian Corporate Governance Association, Hong Kong, China

**Ms. Lee Mei Foo**, Chief Regulatory Officer, Securities Commission, Malaysia

**Mr. Dzung Vu Chi**, Director, International Cooperation Department, State Securities Commission, Viet Nam

主持人 Dias 君表示，此議題討論的重點在於，當企業因違反軟性規範而依法處罰時（enforceable by legal sanctions），軟性規範的概念、原則、與實施標準會有甚麼演化。軟性規範能利用市場及社會壓力限制公司的行為、形塑企業文化，也能在軟性規範正式成為強制性法規前，當作測試市場效果的工具，但由於它提供企業選擇的空間（例如遵循或解釋），使軟性規範無法如強制性法規一樣有顯著效果。

Tafarar 君表示，公司治理的功能在於能幫助企業達到目標，並引導企業配置財務與非財務資源，良好的公司治理能吸引資本、降低取得資本的成本、管理風險，也是投資人對公司信心的基礎。許多重要的公司治理原則來自軟性規範，像是 G20/ OECD 的 Principles of Corporate Governance。但軟性規範不似法規具有強制性，因此難以有效實施，尤其亞洲公司大部分由控股股東或家族成員掌控，他們普遍

認為僅需被動遵循公司治理，因為主動強化公司治理無法帶來利益，例如，家族企業傾向不揭露過多非財務資訊（像是非關係人交易等）。然而實際上軟性規範非常依賴完整的揭露內容，以幫助股東了解公司，且立法、司法、監察機構必須與企業合作，才能使軟性規範發揮效果，達到好的公司治理。因此他建議在協助公司遵循公司治理相關準則時，宜依據公司的規模與性質，運用彈性及比例原則，並採取漸進式引導，毋須期待他們一開始就要做到位或在特定期限內完全遵循，而是將時間拉長看能否達到目標。

Allen 君則認為亞洲國家在應用軟性規範上遭遇幾個困難。首先，公司治理守則及機構投資人盡職治理守則的內容多參考歐洲國家——尤其是英國的規範，但亞洲應該要建立適合當地情況的標準。例如，大部分亞洲市場存在家族控股的情況，在比照歐美引進獨立董事時，就應真正尋找獨立性高的董事，而非以身邊的人擔任。另外，雖然軟性規範是由公司決定是否遵循，但立法者必須讓企業感受到此事的重要性，企業才會主動遵循。Allen 君並強調，英國之所以能高度遵循公司治理守則，是因為擁有發展許久的監督機構，然而亞洲並無此種機構，社會大眾也沒有正確的公司治理觀念，所以亞洲企業遇到的問題最終仍需回歸到社會教育，證券交易所應教育企業關於公司治理的迫切與重要性，要求企業遵循或解釋時，若企業選擇「遵循」，則必須明確指出如何遵循，若企業選擇「解釋」，則應要求解釋道甚麼程度，否則對企業來說，軟性規範仍舊是「非強制」，而不是「強制」，「遵循或解釋」仍是「遵循」或「解釋」，而非遵循。

Foo 君表示，在亞洲金融風暴後的重整階段，軟性規範的應用奠定馬來西亞公司治理發展的基礎，但只有軟性規範是不夠的，須搭配法規才能有效監督企業。如果有可疑交易，該國證管會即會介入並與董事會溝通，亦即法規和軟性規範一起搭配發揮效用。另該國原本獨立董事的續任制度使每位獨董都容易續任，但現在引入新的投票制度，規定擔任獨立董事一定年數後，要被非控制股東投票確認其獨立



性後才能續任。此外，企業在實施遵循或解釋制度時，替代方法（alternative approach）的應用也很重要，若提供企業替代方案當緩衝，主管機關須注意要給企業多少緩衝時間才能讓其完全遵循該原則，並且讓公司思考及對外說明所採取的策略。此外，企業與政府每幾年都須檢討施行成果並適時調整，才能落實公司治理架構。

Dzung 君表示，越南軟性規範的遵循，由於缺乏專業機構監督，只能仰賴投資人與市場的力量來推動，但政府一方面想讓公司發展進而帶動經濟成長，另一方面又要保護投資人，較難拿捏平衡，目前越南政府係將 OECD 原則結合國內法規，但並非完全採用。另其亦強調政府要建立系統化的制度、完善的法庭程序，才能確保法規及軟性規範的遵循。

Mizuno 君表示，GPIF 是藉由管理資產管理公司而間接管理被投資公司。此間接管理的方式讓 GPIF 較難將公司治理原則直接貫徹，而是藉由要求資產管理公司在選擇投資標的時將概念融入，透過改變投資標的的方式來確保履行盡職治理責任，譬如近期盡職治理守則要求資產管理公司將 ESG 納入投資分析中，並直接參與公司重要 ESG 議題的討論。其建議投資人觀察企業選擇「解釋」時所採取的理由，究竟是為了省時間還是沒決心，進而決定是否再繼續投資該企業。其認為軟性規範是公司治理中最好的創新作法，也是完美的工具，因為軟性規範的概念跟一般商業活動進行的方式最兼容（compatible），經營商業活動有時無法立刻完全遵循法規，運作時需要彈性，此外，軟性規範讓立法者可以設立最高、最嚴格的標準，引導公司往最好的境界發展。

## 主題五、小組討論

### 第一組：彈性、比例性與成長型公司

**主持人：**Mr. Carmine Di Noia, Member, Italian Securities and Exchange Commission (Consob), Italy

**與談人：**Ms. Chen Xi, Research Fellow, Capital Market Institute, Shanghai Stock Exchange, China

**Ms. Brenda Hu**, Assistant Director, Financial Supervisory Commission, Chinese Taipei

**Ms. Ryoko Ueda**, Senior Research Fellow, Japan Investor Relations and Investor Support Inc., Japan

主持人 Noia 君表示，每個公司都有各自的規模、股權結構、發展走向等，雖然 OECD 先前已經討論過彈性和比例性(以下簡稱 F&P) 相關議題，但如何落實 F&P，使其能創造有效的法規環境以提振投資、經濟成長及金融穩定性，仍須新的想法投入。

Xi 君表示，中國政府常將 F&P 的概念納入公司治理架構，以保護股東利益。舉例來說，上海證券交易所頒布的股利分配指引要求公司若發放之股利少於盈餘(profit)之 30%，則應說明原因及未分配盈餘的用途。在資訊揭露的部分，上海證券交易所發布超過 20 個產業的產業指引，要求公司揭露更多非財務或 ESG 資訊，此規範也是採用遵循或解釋原則，能夠彈性適用於各種商業情況，如果公司不能完全遵循，也須揭露原因。

本會代表 Hu 君表示，台灣有 1,650 家掛牌公司，產值約占全國的 84%，有二個證券交易所，依據企業規模大小、所處產業、是否為既有掛牌公司或新掛牌公司，採取不同之公司治理措施或實施之時間。例如分階段要求掛牌公司設立審計委員會，先要求實收資本額 (paid in capital) 大於美金 16 億元的大公司和金融機構設立，接下來

要求實收資本額介於美金 3 億元至 16 億元的中型公司，最後才要求實收資本額約為美金 0.6 億元的小型公司設立。

另針對 ESG 報告書之編製，因台灣三年前出現食品安全、化工廠氣爆等問題，爰藉外界討論及媒體關注此議題的機會，要求食品工業及化學工業應編製 ESG 報告書，另考量金融業涉及大眾資金，而大企業也運用較多社會資源，因此要求金融機構及大型掛牌企業編製 ESG 報告書，之後第二階段，才要求規模較小的掛牌企業編製報告書。

至於強制掛牌企業採用董事提名機制部分，也係逐步推動，2006 年時為給予企業（尤其是家族企業）緩衝，只要求公司針對獨立董事採用提名制，後續於 2015 年開始要求新掛牌的公司要全面採用董事提名制，目前國內正在修正公司法，目標是要求所有的掛牌公司都採用董事提名制。

另其也以其經驗分享，在採用 F&P 的機制下，如能先向公司預告在何時將實施哪些措施及哪些公司適用，讓企業知道政府政策的推動時程、目的，並提供其足夠的時間準備因應(例如修改公司章程)，後續在推動相關措施時，將會非常順利。例如本會於推動 2013 年公司治理藍圖時，就先預告未來要針對所有掛牌公司實施公司治理評鑑，提前讓企業知道未來改革的方向，可以給企業更多彈性去調整他們的營運方式，以面對未來的挑戰。

Ueda 君則分享日本採用董監事及董事會加委員會雙軌制的歷程，並說明日本公司治理守則及機構投資人盡職治理守則都係採用 F&P 的做法，協助日本企業朝更好的公司治理邁進。

與會之東京證交所出席人員表示，其對我國 ESG 報告分階段施行的方式印象深刻。主持人 Noia 君及葡萄牙代表 Ms. Gabriela Figueiredo Dias 認為目前軟性規範如公司治理守則等多為 F&P 的最佳詮釋，Dias 君並質疑許多規範其實與市場脫節，例如投資人不會真的在乎是否一股一權，Noia 君則表示在義大利，一般公司之股東可以

一股多權，上市後仍可維持但僅限 2 年，目前已有 30 家公司係此類型。Ms. Anne Eugenie Molyneux 則認為，只要公司能合理完整揭露相關資訊，對投資人來說 F&P 是可行的。大陸證監會代表 Ms. Xinghui Jiang 則認為在相同的市場裡，不宜有不同的標準，但若是跨市場則可行。香港亞洲公司治理協會秘書長 Mr. Jamie Allen 則認為，投資人期許公司能多揭露資訊，且以目前中小型公司經營的狀況而言，應適用更多的公司治理措施。另其表示政策制定者應思考 F&P 最終的目的為何，若仍是良好的公司治理，只是依公司的種類或規模等採用不同的實施時程，應是可行的，但若最終目的不同，則不應有不同的標準。

## **第二組：提升董事會多元化**

**主持人：Ms. Nik Ramlah Mahmood, Former Deputy Executive,  
Securities Commission, Malaysia**

**與談人：Ms. Izumi Kobayashi, Director, Member of the Board, ANA  
Holdings Inc., Mitsui & Co, Ltd., and Mizuho Financial Group  
Inc., Japan**

**Mr. John Lim, Immediate Past Chair, Singapore Institute of  
Directors, Singapore**

**Ms. Karina Litvack, Non-Executive Director, United Kingdom**

**Mr. Shigeto Hiki, Head, Special Project and Outreach Unit,  
OECD**

**Ms. Veronique Bruneau Bayard, CMS Bureau Francis  
Lefebvre, France**

本會及證券交易所出席人員並未參與本小組討論，以下資料係摘自 OECD 提供之書面資料如附件。

2007 年的金融風暴讓大家了解到董事成員同質性過高時集體思考(Group Thinking)的風險，而企業為能更有效管理利害關係人議題

及資訊揭露，暨建構更好的韌性(resilience)來面對未來市場快速變動，董事會必須多元化，此種多元化不僅指性別多元化，也包含年齡、經驗、倫理、教育背景、國籍等的多元化。董事會多元化相關要求業明訂於 G20/OECD 公司治理守則第 4 章。

在性別多元化的部分，依據 Credit Suisse Research Institute 2016 年的報告，全球大公司中，女性董事席次占比約為 14.7%，而日本女性董事席次占比僅有 3.5%。另依據 OECD 調查，女性董事比例約為 20%，女性 CEO 占比約 4.8%。此外，Deloitte 2017 年調查，亞洲女性董事占比僅有 7.8%，較歐洲或美國的占比為低，另因印度 2013 年公司法要求上市公司及其他非上市的大公司至少要有一席女性董事，故印度女性董事占比業提高至 12.4%，而馬來西亞自 2011 年起要求員工人數大於 250 人的企業中，女性高階經理人及董事占比應達 30%，故 2016 年馬來西亞前 100 大上市公司中，女性董事席次占比達 16.6%，而在政府相關企業(government-linked company)中，此項比例更達 17%。目前亞洲各國(不含日本)規定須揭露女性董事占比相關資料的國家為台灣、大陸、印度、馬來西亞及巴基斯坦，大陸及馬來西亞並要求揭露女性高階經理人占比資料，此外，業設定女性董事目標席次或占比的國家包括台灣(占比為 1/3)、印度(1 位)、馬來西亞(2020 年達到 30%)及巴基斯坦(1 位)，規定須揭露女性董事占比的國家則包括大陸、馬來西亞。

至於在國籍多元化部分，OECD 分析 Forbes 全球前 500 大公司資料發現，八成以上的歐洲及拉丁美洲公司至少有一位外籍董事，其次為撒哈拉以南非洲(sub-Saharan Africa)公司 (75%)及中東與北非公司 (56%)，北美及亞太地區公司則分別只有 39%及 37%之公司有外籍董事。

董事會多元化的討論較少涉及性別及國籍以外的面向，因此，未來仍有必要制定相關公共政策，暨進行相關研究及揭露，此外，亦可利用董事會績效評估作為改善多元化的工具，惟妥適的董事會多元



化，仍涉及社會、文化及組織觀念的改變，過程較為複雜，OECD 表示仍須持續進行相關推廣活動。

### **第三組：整合投資鏈誘因**

**主持人：**Ms. Waratchya Srimachand, Assistant Secretary-General,  
Securities and Exchange Commission, Thailand

**與談人：**Ms. Yoshiko Takayama, Managing Director, J-Eurus IR, Japan  
Mr. Jhinyoung Shin, Chair, Performance Evaluation and  
Compensation Committee of National Pension Service, and  
Professor of Finance of School of Business, Yonsei University,  
Korea

**Mr. Hemant Luthra**, Chairman, Board of Mahindra CIE, India

本項議題之緣由，係因資本市場投資結構改變，投資鏈變長及複雜化，且金融中介機構在投資鏈中的誘因不同，所以扮演的角色也開始差異化，因此標的企業的業績表現與其最終受益人的收入間不再有直接關係，並對公司治理帶來新的挑戰。

亞洲各市場因為所有權集中程度的差異較大，較難找到一個適合所有情況的單一策略(one-size-fits-all strategy)以提供誘因，故各國必須依照其資本市場的特點，來整合投資鏈的誘因以強化公司治理。另一方面，針對所有權相對集中的資本市場，則應探討具有控制權的股東如何透過有效的溝通方式與機構投資人及主管機關互動，以平衡其他小股東的利益。

Shin 君表示，韓國預計於 2017 年底發布機構投資人盡職治理守則(Stewardship Code)，內容估計與最初 2014 年草擬的內容沒有太大的差異，延後發布是因為韓國的金融機構常常為集團的成員之一，而這些集團或大型企業則多反對該守則內容。其反對主因韓國企業所有權大多集中在創辦人家族(founding family)，比起公司治理，他們更在意如何將所有權移轉至下一代。不過，近



來韓國最大的退休基金 National Pension Service 已透過內部制訂相關規範來強化公司治理，後續可以觀察其他資產管理公司是否跟進。令人欣慰的是，2017 年以來韓國股市表現較韓國經濟狀況好，主因投資人意識到大型韓國企業的公司治理表現有所改善，故願意付出較高的溢酬而推升韓國股市的成長。

Luthra 君表示，印度的資產管理者因為吸收太多資金，如果因企業公司治理表現較差而不投資，股價也會因其他資產管理者買進而上漲，造成資產管理者未能有效落實公司治理職責。他建議應該透過同儕壓力(peer pressure)的力量來提升整個投資鏈的公司治理。

與會人員分享馬來西亞的經驗表示，目前該國面臨的問題是小型的機構投資人沒有那麼多資源去落實參與公司重要事務 (shareholder engagement)。另其建議追蹤指數等被動型投資的機構投資人可以試著詢問企業的高階管理階層是否了解公司的股價，以及影響公司股價最重要的原因等，來判斷公司是否確實落實公司治理。

最後主持人 Srimachand 君總結表示，改善公司治理並不是僅屬於監理機關的工作。它涉及機構投資者本身、被投資公司以及其他認為公司治理實踐是實現可持續經濟增長方式的利害關係人。對被投資公司而言，機構投資人可以幫助公司了解公司治理帶來的價值，並且提供國際最佳實務給公司參考，公司高階管理階層要真正相信公司治理能為公司帶來價值，才會願意改善。

## 主題六、小組討論回饋報告

**主持人：** Ms. Fianna Jurdant, Senior Policy Analyst, Corporate Affairs Division, OECD

**與談人：** Mr. Carmine Di Noia, Member, Italian Securities and Exchange Commission (Consob), Italy

**Ms. Nik Ramlah Mohmood**, Former Deputy Chief Executive, Securities Commission Malaysia

**Ms. Waratchya Srimachand**, Assistant Secretary-General, Securities and Exchange Commission, Thailand

主持人 Fianna 表示，小組討論的三個主題均與新修正的 G20/OECD 公司治理原則相關，其中政策制定者採用彈性與比例性原則的關鍵在於不同企業有不同規模、股權結構、發展，因此如何使公司治理原則滿足不同公司的要求是一大考驗；在董事會多元化議題部分，該議題是自全球金融海嘯後備受重視的領域，大家發現單一性質的董事會只能察覺某種特定類型的危機，而無法察覺其他種威脅，因此公司需要不同性別、國籍、經驗、年齡、教育背景的董事成員；最後有關投資鏈誘因部分，係探討不同的經濟動機是否影響投資鏈中各類投資人參與公司經營的意願或行為。

「彈性、比例性與成長型公司」的小組主持人 Noia 君表示，該組認為，公司治理原則不應被視為僵化的標準，而應讓不同階段、性質的公司適用適合其發展的方式，這也就是彈性、比例性的政策目的。另與會者多認為，良好的公司治理不只對大公司或跨國公司有利，也有利於其他公司。彈性與比例性的概念如「遵循或解釋(comply or explain)」已內建於公司治理原則內，如果企業無法遵循，監理單位須請企業明確說明為何不遵循、有什麼替代方法、何時會遵循、以及誰決定是否遵循等。又從亞洲市場的不同經驗中可發現，彈性與比例

性源自於不同的監督機構對不同公司治理原則的重視，有時監督機構重視解釋更甚於遵循，所以監督可當作比例性原則的一部分。

「強化董事會多元化」的小組主持人 Mahmood 君表示，該組認為董事會應考量的面向應該多元，才能協助公司因應競爭與發展，若具董事成員的背景相似，則集體思考（group thinking）結果將會阻礙新想法的產生，此外，在追求多樣性的同時，也需考量董事成員的經驗是否足夠，且對公司須有一定的瞭解。至於在國籍多樣性的部分，基本上該組認為國籍越多元越好，因為許多商業活動都是跨國進行，但也有小組成員認為不一定「必要」。另性別多樣性是重要議題，政府可透過將之納入法規強制、要求揭露或解釋等方式來達成，如馬來西亞政府於 2011 年設下女性董事占比 30% 的目標，雖然還沒達到，但企業每一年朝向往此目標邁進。此外，選舉董事的過程，如提名委員會的功能是否有效、徵選流程是否完善、評估是否公允、候選人名單是否涵括適當的人選等，也影響董事會的多元性。如果選舉董事的過程有效，最後選舉出來的結果自然就會符合董事會多元化的要求，故政府及企業應經常檢視企業提名委員會運作的有效性，暨選舉過程的適當性。該組最後建議 OECD 應建立衡量方法，以瞭解並監督董事會多元化是否真的能帶來有效的公司治理。

「整合投資鏈誘因」小組主持人 Srimachand 君表示，該組認為，一般而言，機構投資人擁有越多的投資股份比例，越能扮演有效的監督者，監督被投資公司之管理階層及其公司治理制度，當被投資公司表現越好，機構投資人也會有好的經營成果，最終受益人（ultimate beneficiary）的利益也會增加，使大家都有好的長期發展。然而，由於機構投資人對亞洲企業的投資，其所有權比例約只有 30%，遠低於全球平均的 70%，機構投資人可以發揮的影響力有限，若機構投資人無法發揮足夠影響力，他們就沒有動力去履行盡職治理義務，另縱使機構投資人想要落實其盡職治理義務，但可能會因為參與公司經營及投票須耗費高昂的時間與成本而卻步，再者，如果機構

投資人有足夠動機、意願去履行參與公司經營義務，如何妥善分配責任、義務也是另一個需要討論的重點，故政府應思考如何就此新議題培力（building capacity）及使其受到重視，以改善公司治理。

## 主題七、董事會績效評估

主持人：Mr. Moty Yamin, Director of Corporate Finance Department,  
Israel Securities Authority, Israel

報告人：Mr. Erik Vermeulen, Professor, Tilburg University, The  
Netherlands

與談人：Mr. Hideaki Tsukuda, Tokyo Office Leader, Egon Zehnder,  
Japan

Mr. Ricardo Nicanor Jacinto, Chief Executive Officer, Institute  
of Corporate Directors, the Republic of the Philippines

Mr. Erry Riyana Hardjapamekas, Chairman of Supervisory  
Board, Indonesia Institute of Corporate Directors, Indonesia

Mr. Juanta Josh, Chief General Manager, Securities Exchange  
Board of India (OECD Corporate Governance Committee 的成  
員)

報告人 Vermeulen 表示，公司治理不是只在勾選欄位而已（check the box，即表面上確認每個項目是否做到），更重要的是揭露或遵循的時間點、作法、次數等，企業需要更多指引，才能做到完善的公司治理。根據 Forbes Global 2000 的資料顯示，得獎的公司通常是客戶、投資人、監管機構眼中的好公司，不論是收入、淨利、資產或市場價值都表現良好，這些企業也都遵循 OECD 原則。

另其表示，根據統計只有 47% 的企業會進行自我評估（self-evaluation），而只有 39% 的企業會將評估結果揭露在年報中，由此可知，企業自我評估的比例仍不高，且多半不願意將評估結果公開。他認為，若強制要求企業揭露董事會績效評估的結果，可能導致董事會為尋求外在對其良好的印象，而使績效評估結果表面化、形式化等充滿美好結果的內容，失去董事會績效評估是要協助董事會了解本身不足處的真正意義。另他表示，只要給企業更多指引，就能看到更好的

成果，如新加坡的簡易主原則（simple main principle）、瑞士的支援原則與指引（supporting principle and guidance）等。

另外，有些管理階層仍認為董事會效益評估只是形式上的檢查，或是制式化、標準化的報告，他表示，此種想法必須改變，因為董事會評估真正能協助其成員了解董事會運作中有哪些盲點、缺漏及可以補強的地方，例如當公司成長到一定規模需要面對全球產業鏈併購的議題時，董事會會發現成員中完全沒有這方面的人才，因此可以思考是否需要在董事會中引入這方面的成員。最後他建議在導入董事會績效評估時應考慮：(1)創造良好的公司治理生態系統(eco system)，藉由更多的研究帶來更多想法，並同時確保公司治理原則仍適用於現今的商業環境、(2)加強董事會訓練，讓管理階層及董事能從過去的錯誤中學習、(3)思考數位時代對董事會成員遴選與功能的影響。

Jacinto 君則表示，根據研究，超過 2/3 的菲律賓公司每年進行董事會績效評估，但是其中 99%只進行內部評估，1%有請外部專家進行（他表示用外部促進者 external facilitator 這個詞彙很好，因為董事通常自認為是專家，不需要別人告訴他怎麼做，而促進者只是讓事情做得更好），依其個人經驗，每個公司評估的過程多會遵循公司治理守則，但品質差很多，多數菲律賓小公司很認真評估，且有實質性的討論，大公司則因為時間有限而流於形式。另其不建議由外部機構評估，亦不建議公開評估結果，且強調要避免抹煞董事會多元性。

有關印尼企業董事會績效評估的情形，Hardjapamekas 君表示，印尼約有 50%大企業會進行董事會績效評估，但大部分公司還沒意識到這樣做是有利的、重要的。此外，每個公司董事會績效評估的流程和方法相當不同，有些仰賴專業評估者，有些是自我評估。

Josh 君則表示，印度企業董事會評估係基於法規規定，提名委員會、薪酬委員會均受規定應至少一年一次進行董事會評估，另除董



事會以整體的形式被評估外、管理階層個人及委員會也會被評估。此外，其表示，如何實質評估董事會績效是重要的課題。

與會人員詢問，內部評估 (in-house evaluation) 與外部評估 (third party evaluation) 何者為佳？Vermeulen 君表示，外部評估的結果通常取決於董事會對績效評估重視的程度 (commitment)，另外，評估者的能力、董事會成員的情緒、人際關係，以及其與 CEO 的關係，都會影響評估結果。由於外部評估者較難了解企業董事相關的內部關係，故外部評估容易淪為形式上的檢視 (check the box exercise)。其針對 2000 餘家日本公司進行調查，有 300 餘家公司回復，回復企業中有 84% 的公司有進行董事會績效評估，其中 12.3% 公司 (共 48 家公司) 進行外部評估，這 48 家公司中超過 54% 沒有進行面談，只依賴問卷結果來評估，這樣評估的效果令人懷疑，故其建議 OECD 可針對有效的董事會評估程序進行調查，並進而推動相關評估。

## 主題八、以公司治理的觀點看證券交易所角色的演變

**主持人：** Mr. Carmine Di Noia, Member, Italian Securities and Exchange Commission (Consob), Italy

**報告人：** Mr. Austin Tyler, Policy Analyst, Corporate Affairs Division, OECD

**與談人：** Mr. Yasuyuki Konuma, Executive Managing Director (Listing), Tokyo Stock Exchange, Japan

Mr. Tan Boon Gin, Chief Executive Officer, Singapore Exchange Regulation, Singapore

Mr. Suprabhat Lala, Vice President (Regulatory functions), National Stock Exchange of India limited, India

Ms. Tin May Oo, Commission Member, Securities and Exchange Commission, Myanmar

報告人 Austin 首先針對全球交易所經營的現況分享其研究，與談人並補充其所觀察到全球或亞洲各國交易所的發展情形，摘述如下：

(一) 交易所商業模式改變：自 20 世紀 90 年代中期以來，許多證券交易所已經轉變為私有營利、或由非營利性公司轉變成股份有限公司，這個變化對交易所之營運造成了改變：

1. 歐美等已開發國家交易所原為會員制或政府機構，自從 1990 年代中期，大多交易所轉變為具營利性之股份有限公司，近年來多數歐美主要交易所均已在本身交易所上市。
2. 亞洲及新興市場交易所多由國有之公司型態組成，轉變為上市公司之腳步較慢，目前多為營利性質之股份有限公司。上海證券交易所及深圳交易所等大型交易所仍為直接由政府控制之會員制交易所。
3. 隨著商業模式的改變，交易所間也進行了大量的合併與併購，其中涉及電子交易平台、提供金融資訊和金融指數、

數據管理及資產管理公司等。這些合併與併購活動也改變證券交易所的收入結構。

4. 隨著證券交易所股份化和上市，為了降低成本及增加交易量，可能會降低其在支持公司治理方面所扮演的角色。
5. 為了因應交易所轉型為私有企業，有些國家取消了交易所部分制訂政策及監管的權力，亦或允許交易所在分離其監理及商業的活動的條件下，始保留其監理權力，以避免利益衝突。這也是為什麼 OECD 公司治理實務守則中增加了中介機構在資本市場中公司治理扮演的角色。

## (二) 亞洲各市場交易所現況：

全球交易所結構變化，也蔓延到亞洲，今天部分亞洲市場交易所已經私有化或是股份化，為避免利益衝突，也有部分國家改變了交易所在治理及監管方面的權利，藉由區隔交易所的監管及營利業務，讓其仍能維持其監管機能與推行公司治理。以於自身交易所上市之馬來西亞、新加坡及香港為例，分述如下：

### 1. 馬來西亞

- (1) 內部架構區分業務部門及監管部門，確保各部門之獨立性。
- (2) 建立避免利益衝突之內控制度，即時發現可能之利益衝突並加以避免。
- (3) 由董事會指定專家學者及業界代表成立法規委員會制訂相關法規。每年定期出具年度監管報告（Annual Regulatory Report）陳報主管機關，主管機關將就其監管獨立性加以查核。

### 2. 香港

香港交易所作為在本身證券市場上市的上市公司，須由證監會監管，以免出現任何利益衝突，並確保香港

交易所與受其主板及創業板的《上市規則》監管的其他上市公司均擁有平等的市場機會。

### 3. 新加坡

- (1) 交易所遵循自律組織防止利益衝突的相關規範。
- (2) 成立法規利益衝突委員會，就潛在利益衝突加以審核及監管。
- (3) 邀請專家學者成立獨立上市審議委員會。
- (4) 於 2017 年中成立獨立子公司，以執行其監管功能，除由交易所法規長擔任執行長外，其他董事成員為交易所外部人員。

### (三) 亞洲各市場交易所過去幾年的收入均呈穩步增長態勢：

觀察交易所收入結構的改變，2010~2016 年間，交易所相關收入下降 2%、上市及發行費用下降 1%。值得注意的一點是，與 OECD 2016 報告顯示之全球交易所收入結構相比，全球交易所數據服務收入約占總體收入的 19%，但是亞洲市場目前該收入占比僅 8%(2010 年與 2016 年均同)，仍有很大成長空間。

### (四) 交易所在制訂公司治理相關規範扮演角色

1. 在亞洲部分市場，由證券主管機關制訂公司治理推動大方向，再由交易所通過制定上市規則及相關指引等發揮重要作用。如：韓國交易所 KRX 上市規則。
2. 部分亞洲國家扮演著制訂公司治理守則的角色，如台灣證券交易所發布公司治理實務守則。
3. 其他少部分亞洲市場，證交所扮演的角色較輕微，僅僅透過提供相關輔助文件來協助推動公司治理。如孟加拉交易所 2012 年 8 月發布公司治理指引 (corporate governance guideline of August 2012)。

### (五) 為了提高上市公司遵循公司治理的揭露品質，部分證交所正

定期評估上市公司是否遵守公司治理實務守則，例如馬來西亞交易所和新加坡交易所已經發布了公司治理報告，用以評估揭露的品質及顯示每年揭露品質的改變，並將調查結果公布與網站上。

- (六) 馬來西亞交易所還出具了「企業揭露指引」、「公司治理指引」，以及「永續發展報告指引」等工具包，協助上市公司採用更好的公司治理和持續發展做法，提高揭露品質。
- (七) 亞洲交易所經常扮演第一線的規範者，以確保市場具公平性、有秩序且資訊充足。然而亞洲各國有不同的執行方式，有些交易所是依據自身規則進行監理，如香港、新加坡、韓國、馬來西亞、台灣、泰國和印尼；有些則是擔負著重要監督角色並提報違規者給證券主管機關，例如孟加拉、中國、印度、巴基斯坦、菲律賓和越南。

### 第三章 心得感想及建議

藉由本次會議，本會得以瞭解國際現行推動公司治理之重點及方向，供本會未來研議新版公司治理藍圖之參考，另目前國際上普遍以企業自願遵循或「遵循或解釋」方式推動公司治理，本次會議討論相關作法於各國之發展及影響，暨如何因應企業規模、股權型態及發展階段，採用彈性或比例性做法等，協助企業籌資與發展，有助我國取法國際公司治理經驗，對我國推動公司治理與國際接軌具有正面效益。

此外，本次會議 OECD 邀請許多非亞洲區域之與談人分享經驗，不僅帶來其他國家的案例，也凸顯亞洲地區許多公司治理政策上的特點，尤其亞洲資本市場之投資人以散戶居多，因此在管理上更須著重保護小額投資人的權利。另本會代表經與許多與會人員交流，發現大家都體認到，由於亞洲各國開始重視公司治理，因此投資人及媒體逐漸關心企業的誠信及治理情況，因此即便有國家傳出企業弊案，但該等案例其實彰顯或帶來企業改革的契機，整體而言亞洲企業的公司治理狀況都朝更良好的方向前進。

謹就本次會議中所討論議題及與談人分享之各國實務，提出以下心得及建議：

#### 一、獨立董事的功能越來越受到重視，應強化其資訊取得管道

日本近年來弊案頻傳，包含相機大廠奧林巴斯（Olympus）作假帳、東芝（Toshiba）爆發會計弊案、高田（Takata）安全氣囊召修、三菱（Mitsubishi）汽車油耗造假及神戶製鋼所產品品質數據造假等，打臉安倍晉三推動公司治理之決心，因此會場有些參加者質疑日本獨立董事的角色是否應該改變。日



本金融監理總署的代表說明，若管理階層存心隱藏不法，獨立董事很難察覺。

其實我國上市櫃公司亦發生獨立董事未發揮功能的情況，最為人熟悉的案例就是樂陞公司。該上櫃公司因收購人日商百尺竿頭未履約，造成股價大跌而受調查，透過其董事會及審計委員會之議事錄發現，樂陞公司的獨立董事對公司重大轉投資、私募案未深入探究，且對上開重大公開收購案的收購人背景等，係相信董事長之說詞。類似這樣的情形，很可能導致企業董事長一人獨攬公司所有決策權，如有心掏空公司，則董事會其他成員將無法發揮監督角色。

樂陞案發生後，原本已是名人的獨立董事引起軒然大波，讓上市櫃公司獨立董事有「見賢思齊，見不賢而內自省」的舉動。這些企業的獨立董事看到相關的媒體報導、檢調及主管機關的關切與調查等，紛紛感受到獨立董事的責任重大，因此後續再履行職務時如發現公司董事長或總經理有說不清楚的地方，就會再深入探究，進而在董事會中表達保留或反對意見，甚至辭任。近期就有公司之獨立董事因發現公司財務操作有無法釐清之處而於董事會表達反對意見，經公司公告後受證交所查核發現異常之情形，因此雖有樂陞案的發生，但前車之鑑讓上市櫃公司獨立董事更珍惜自己的名聲，也更專注於公司之經營。

但透過樂陞公司的案例，監理者也看到獨立董事或非執行董事對公司資訊之取得相當弱勢，如同日本金融監理官所述，企業管理階層若存心隱藏不法，獨立董事亦難發現問題。對此，筆者認為美國證券交易所實施的「召開非執行董事會議」制度或可提供做為參考。美國證券交易所如 NYSE 及 NASDAQ 規範上市公司應定期召開非執行董事會議，讓這類董事就平常觀察到的事項彼此交換意見，並集思廣益如何取得公司經營的相關資訊，嗣其有共識後再提董事會取得支持。這個機制的用意係考量執行董

事因負責公司日常營運，在資訊之取得上較非執行董事更為快速簡便，如執行董事有意阻擋相關資訊傳遞至非執行董事，亦相對容易，因此透過非執行董事會議之召開，分析渠等資訊落後或缺乏之情形及可能之改善方法，並凝聚非執行董事之共識與力量，將可強化其對上市公司監督之角色。然此措施先決條件係非執行董事平時即須與公司人員、內部稽核、公司秘書等經常性對話，透過雙方之詢答，非執行董事可了解公司業務近況、制度或人員之強項及弱點等，進而歸納公司可改善之處，再透過非執行董事會議之討論與共同行動，增加渠等在董事會的話語權及力量。

## 二、公司治理可由形式遵循導引至實質重視

近年來 OECD 及許多談及公司治理的國際會議，與談人多會論及公司治理的發展已有形式化的趨向，因此強調各主管機關應重視公司治理的實質面，而非形式面(corporate governance lies in substance, not form)。本次與會者亦談到日本公司法之改變不盡然改變公司之行為。此二說法讓人思考，形式與實質是否真的非黑即白、一分為二。

形式上的改變雖比不上實質改變，但透過形式上的改變，可以引導公司注意並慢慢進步到實質改變。以我國推動公司治理評鑑為例，該評鑑首二屆多以形式上的要求做為指標，例如是否設立審計委員會、是否增設獨立董事席次、有無編製企業社會責任報告書等等，看似單純衡量公司是否採取行動，但其實帶動企業注意這些議題並思考如何能將資源更有效利用。當然公司中不乏僅表面遵循規範者，但亦有公司透過這樣的評鑑，認識國際推動公司治理之用意、檢視自身與同儕間的差異，並努力朝良好的公司治理方向提升，這樣的改變就是從形式慢慢演進為實質改變。

但一個有效的評鑑機制，應時時觀察受評鑑者的變化，一旦受評鑑者已進入實質的改變，那麼形式化的指標即應有所調整。所謂「衡量甚麼就得到甚麼(you get what you measure)」，即是在提醒設計問卷題目者或衡量指標者注意指標的效度，因此公司治理評鑑自第三屆起，透過指標之衡量方式，提高得分之難度，亦即要求上市櫃企業必須達成某些條件，始能得到該指標分數。

隨著我國公司治理藍圖即將邁入第二個五年，公司治理評鑑的指標設計及衡量方式，亦應依據上市櫃公司的表現予以調整。除了增加質化的指標外，衡量上更宜增加多元的評估方式，例如透過實地觀察、企業利害關係人的評分及模擬情境測試等，以利引導企業將公司治理深入公司的企業文化。考量針對 1600 餘家上市櫃企業進行這樣的評估方式，須考量人力成本與時效，因此建議宜挑選政策上擬積極推動之項目，以漸進之方式辦理。

### 三、機構投資人盡職治理的範圍宜擴大至整個投資鏈

近年來 OECD 會議中開始討論投資鏈拉長的情形，亦即機構投資人背後的實際投資者與被投資標的距離越來越遠。舉例而言，某些政府年金因不能直接持有公司股票，因此全權委託證券投資信託事業投資，而證券投資信託事業對於較不熟悉的市場或區域，亦可能複委託其他管理公司投資，因此拉長了投資鏈。目前國際上重視當投資鏈拉長時，不單是政府年金這樣的機構投資人應該履行機構投資人盡職治理(stewardship)，其所委託的投資管理公司及其複委託的投資管理公司本身也應該遵循盡職治理。

再者，許多基金採取被動方式跟隨相關指數進行投資或透過電腦程式交易進行投資，為能讓機構投資人在公司治理的領域中

扮演重要領頭羊角色，也應讓指數編製公司或電腦程式在編定或挑選股票標的時，亦將標的企業的公司治理情況列為其選股之重點。

我國機構投資人盡職治理守則自 105 年發布後，目前簽署的機構投資人已有 38 家，其中政府四大基金均已簽署，證券投資信託事業則有 22 家已簽署，該守則中雖已揭示機構投資人如委託其他專業機構提供建議或投資，亦應要求該等機構注意投資標的之公司治理情形，但守則所列之五項原則中，則並無明確要求機構投資人應採取何種方式鼓勵所委託之專業機構採行與其相同之重視公司治理準則等，因此建議未來證交所及櫃檯買賣中心修正該盡職治理守則時，可納入相關建議。

## 附件





# OECD ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

## AGENDA

19-20 October 2017

Grand Prince Hotel Takanawa

Tokyo, Japan

## The OECD Asian Roundtable on Corporate Governance

Established in 1999, the Asian Roundtable on Corporate Governance has become a unique platform for engagement by senior officials, regulators, and practitioners - including international and regional institutions and academics - committed to improving corporate governance in Asia.<sup>1</sup>

The objective of the ARCG is to support decision-makers in their efforts to improve corporate governance in the region. This is achieved through Task Forces, peer review of corporate governance policy frameworks and practices in the region, benefitting from international experience. Participants share major developments and challenges, evaluate implementation and enforcement as well as discuss and analyse policy options to support viable and effective corporate governance reforms. An important reference is the new G20/OECD Principles of Corporate Governance and their implementation in the Asian context.

Topics to be addressed include:

- Recent corporate governance developments in Japan
- Asian equity markets and access to capital for growth companies
- The role of soft law in corporate governance
- Evaluating boards to improve performance
- The evolving role of stock exchanges in corporate governance

### Guidance for moderators, introductory speakers, panellists and participants

Moderators are invited to provide a brief introduction outlining the key issues for their session, to maintain the focus on the theme of their session, manage time strictly and encourage open discussion among participants to draw out specific country experiences and conclude with agreed points.

Introductory speakers are invited to present the key findings from their background reports in less than 10 minutes, to leave ample time for the debate sessions that follow.

Panellists will be invited by the moderator of each session to make a 5 minute introduction with their key messages. The moderator will then kick off the discussion with questions. There will be no presentations, so that we can facilitate an interactive discussion. The sessions will primarily be organised as debates.

Roundtable participants are invited to react, express their views and discuss the issues raised by speakers that are related to the issues provided in the agenda. They are encouraged to actively and openly participate in discussions to share their country experience.

### Acknowledgement

Since its establishment in 1999, the Asian Roundtable on Corporate Governance (ARCG) has been organised in partnership with the Government of Japan. In carrying out its work programme, the OECD has benefitted from financial support provided by the Government of Japan. The Government of Japan also provides financial support to OECD sub-regional work with Southeast Asia and country specific work in Asia.

---

<sup>1</sup> The participating Asian economies include: Bangladesh, China, Hong Kong (China), India, Indonesia, Korea, Malaysia, Mongolia, Pakistan, the Philippines, Singapore, Chinese Taipei, Thailand and Viet Nam.



## ■ Date, time and venue

19-20 October 2017, Tokyo, Japan



Join the conversation on Twitter: follow us at [@oe.cd\\_bizfin](https://twitter.com/oe.cd_bizfin)

## ■ Contact

Fianna Jurdant  
Senior Policy Analyst, Corporate Affairs Division  
OECD Directorate for Financial and Enterprise  
Affairs  
Tel. +(33-1) 45 24 79 25  
email: [fianna.jurdant@oe.cd.org](mailto:fianna.jurdant@oe.cd.org)

Akito Konagaya  
Senior Policy Analyst, Corporate Affairs Division  
OECD Directorate for Financial and Enterprise  
Affairs  
Tel. +(33-1) 45 24 96 64  
email: [akito.konagaya@oe.cd.org](mailto:akito.konagaya@oe.cd.org)

## ■ Agenda

9:00-9:30 Registration

### 9:30 – 9:45 Welcoming Remarks

- Mr. Taro Aso, Deputy Prime Minister, Japan, Minister of Finance, Minister of State for Financial Services, Minister in charge of Overcoming Deflation
- Mr. Masamichi Kono, Deputy Secretary General, OECD

### 9:45 – 10:45 Session 1: The Business Case for Corporate Governance

Moderator Mr. Masato Kanda, Chair, OECD Corporate Governance Committee and Deputy Director General, Budget Bureau, Ministry of Finance, and Financial Services Agency, Japan

- Panellists
- Ms. Mary Jo White, Former Chair, United States Securities and Exchange Commission, and Partner, Debevoise & Plimpton, United States
  - Mr. Yoshimitsu Kobayashi, Chairman, KEIZAI DOYUKAI (Japan Association of Corporate Executives) and Chairman, Member of the Board, Mitsubishi Chemical Holdings Corporation, Japan
  - Mr. George Olcott, Board Member, Dai-ichi Life Holdings, Denso Corporation, and Board Member, Hitachi Chemical, Japan

10:45-10:55 Group photo for moderators and panellists

10:45-11:10 Coffee/tea break

**11:10 – 12:10 Session 2: Recent Corporate Governance Developments in Japan**

Moderator	Mr. John Plender, Columnist and Editorial Writer, Financial Times, United Kingdom
Presentation	Mr. Hideki Kanda, Professor of Law, Gakushuin University, Japan
Panel discussion	<ul style="list-style-type: none"> <li>• Mr. Tomoyuki Furusawa, Deputy Director-General of the Planning and Coordination Bureau, Financial Services Agency, Japan</li> <li>• Mr. Akira Matsumoto, Chair of the Board &amp; CEO, Calbee, Japan</li> <li>• Mr. Mark Mobius, Executive Chair, Templeton Emerging Markets Group, United States</li> </ul>
Background	<p>There have been several developments in Japan's corporate governance framework, such as amendments to the Companies Act in 2014 as well as introduction of the Stewardship Code in 2014 and Corporate Governance Code in 2015. Yet Japan has recently suffered from a number of corporate scandals. This session will review recent corporate governance developments in Japan and focus on implementation of the new corporate governance framework.</p> <p><b>Open discussion</b></p>

**12:10 – 13:20 Session 3: Asian Equity Markets and Access to Finance for Growth Companies**

Moderator	Mr. Naoyuki Yoshino, Dean, The Asian Development Bank Institute and Professor Emeritus at Keio University, Japan
Presentation	Mr. Mats Isaksson, Head, Corporate Affairs Division, OECD
Panel discussion	<ul style="list-style-type: none"> <li>• Mr. Leonardo Porciúncula Gomes Pereira, Former President, Securities and Exchange Commission, Brazil</li> <li>• Ms. Jiang Xinghui, Director, Department of Listed Companies Supervision, China Securities Regulatory Commission, China</li> <li>• Mr. David Weild, Founder and CEO, Weild &amp; Co. Inc., United States</li> </ul>
Background	<p>This session will see the launch of the first edition of the OECD Asian Equity Markets Review - a new publication based on an original dataset on public equity markets – that focuses on the analysis of trends in public equity markets in Asian economies. This includes a summary of the trends in initial and secondary public equity offerings, industry analysis and country comparisons. It also highlights some key changes in equity market structures and market institutions as well as trends in institutional ownership of public equity.</p> <p><b>Open discussion</b></p>



13:20 – 14:30 Lunch

**14:30 – 15:45 Session 4: Implementation of Corporate Governance Framework with a Focus on the Role of Soft Law**

Moderator Ms. Gabriela Figueiredo Dias, President, Securities Market Commission, Portugal

Presentation Mr. Ethiopis Tafara, General Counsel and Vice President, International Finance Corporation

- Panel discussion
- Mr. Hiro Mizuno, Executive Managing Director and Chief Investment Officer, Government Pension Investment Fund(GPIF), Japan
  - Mr. Jamie Allen, Secretary-General, Asian Corporate Governance Association, Hong Kong, China
  - Ms. Lee Mei Foo, Chief Regulatory Officer, Securities Commission, Malaysia
  - Mr. Dzung Vu Chi, Director, International Cooperation Department, State Securities Commission, Viet Nam

Background Soft law is often used by countries to support the implementation of corporate governance policies. One widely-used tool in Asian jurisdictions are corporate governance codes, which may be voluntary or comply-or-explain documents. The role, status and impact of such soft law measures in corporate governance merits discussion. The G20/OECD Principles of Corporate Governance note that "corporate governance objectives are also formulated in voluntary codes and standards that do not have the status of law or regulation. While such codes play an important role in improving corporate governance arrangements, they might leave shareholders and other stakeholders with uncertainty concerning their status and implementation. When codes and principles are used as a national standard or as a complement to legal or regulatory provisions, market credibility requires that their status in terms of coverage, implementation, compliance and sanctions is clearly specified."

**Open discussion**

15:45-16:15 Coffee/tea break

16:15 – 17:45 **Session 5: Focus Groups**

Focus Group 1	<b>Flexibility, proportionality and growth companies</b>
Moderator	Mr. Carmine Di Noia, Member, Italian Securities and Exchange Commission (Consob), Italy
Discussants	<ul style="list-style-type: none"> <li>• Ms. Chen Xi, Research Fellow, Capital Market Institute, Shanghai Stock Exchange, China</li> <li>• Ms. Brenda Hu, Assistant Director, Financial Supervisory Commission, Chinese Taipei</li> <li>• Ms. Ryoko Ueda, Senior Research Fellow, Japan Investor Relations and Investor Support Inc., Japan</li> </ul>
Focus Group 2	<b>Enhancing board diversity</b>
Moderator	Ms. Nik Ramlah Mahmood, Former Deputy Chief Executive, Securities Commission Malaysia
Discussants	<ul style="list-style-type: none"> <li>• Ms. Izumi Kobayashi, Director, Member of the Board, ANA Holdings Inc., Mitsui &amp; Co, Ltd., and Mizuho Financial Group Inc., Japan</li> <li>• Mr. John Lim, Immediate Past Chair, Singapore Institute Directors, Singapore</li> <li>• Ms. Karina Litvack, Non-Executive Director, United Kingdom</li> <li>• Mr. Shigeto Hiki, Head, Special Project and Outreach Unit, OECD</li> <li>• Ms. Véronique Bruneau Bayard, CMS Bureau Francis Lefebvre, France</li> </ul>
Focus Group 3	<b>Aligning incentives along the investment chain</b>
Moderator	Ms. Waratchya Srimachand, Assistant Secretary-General, Securities and Exchange Commission, Thailand
Discussants	<ul style="list-style-type: none"> <li>• Ms. Yoshiko Takayama, Managing Director, J-Eurus IR, Japan</li> <li>• Mr. Jhinyoung Shin, Chair, Performance Evaluation and Compensation Committee of National Pension Service, and Professor of Finance of School of Business, Yonsei University, Korea</li> <li>• Mr. Hemant Luthra, Chairman, Board of Mahindra CIE, India</li> </ul>

19:00

*Dinner hosted by Japan Exchange Group and Tokyo Stock Exchange*

*Welcoming Remark: Mr. Yasuyuki Konuma, Executive Managing Director (Listing), Tokyo Stock Exchange*

## DAY 2

### 9:30 – 10:15 **Session 6: Feedback from the Focus Groups**

Moderator	Ms. Fianna Jurdant, Senior Policy Analyst, Corporate Affairs Division, OECD
Panel discussion	<ul style="list-style-type: none"> <li>• Mr. Carmine Di Noia, Member, Italian Securities and Exchange Commission (Consob), Italy</li> <li>• Ms. Nik Ramlah Mahmood, Former Deputy Chief Executive, Securities Commission Malaysia</li> <li>• Ms. Waratchya Srimachand, Assistant Secretary-General, Securities and Exchange Commission, Thailand</li> </ul> <p><b>Open discussion</b></p>

10:15-10:45 *Coffee/tea break*

### 10:45 – 12:00 **Session 7: Evaluating Boards to Improve Performance**

Moderator	Mr. Moty Yamin, Director of Corporate Finance Department, Israel Securities Authority, Israel
Presentation	Mr. Erik Vermeulen, Professor, Tilberg University, The Netherlands
Panel discussion	<ul style="list-style-type: none"> <li>• Mr. Hideaki Tsukuda, Tokyo Office Leader, Egon Zehnder, Japan</li> <li>• Mr. Ricardo Nicanor Jacinto, Chief Executive Officer, Institute of Corporate Directors, the Republic of the Philippines</li> <li>• Mr. Erry Riyana Hardjapamekas, The Chairman of Supervisory Board, Indonesia Institute of Corporate Directors, Indonesia</li> </ul>
Background	<p>Board evaluations are becoming widely established internationally as an important structural tool for assessing board effectiveness. The G20/OECD Principles of Corporate Governance note that "boards should regularly carry out evaluations to appraise their performance and assess whether they possess the right mix of background and competence." Board evaluations may be conducted in-house or by third parties and are useful for examining both the performance of the board as a whole as well as that of individual board members. This session will also include a discussion on the role of regulators in promoting the implementation of meaningful board evaluation.</p> <p><b>Open discussion</b></p>



12:00 – 14:00 Lunch

14:00 – 15:15 **Session 8: The Evolving Role of Stock Exchanges in Corporate Governance**

Moderator	Mr. Carmine Di Noia, Member, Italian Securities and Exchange Commission (Consob), Italy
Presentation	Mr. Austin Tyler, Policy Analyst, Corporate Affairs Division, OECD
Panel discussion	<ul style="list-style-type: none"> <li>• Mr. Yasuyuki Konuma, Executive Managing Director (Listing), Tokyo Stock Exchange, Japan</li> <li>• Mr. Tan Boon Gin, Chief Executive Officer, Singapore Exchange Regulation, Singapore</li> <li>• Mr. Suprabhat Lala , Vice President (Regulatory functions), National Stock Exchange of India limited, India</li> <li>• Ms. Tin May Oo, Commission Member, Securities and Exchange Commission, Myanmar</li> </ul>
Background	<p>Stock exchanges across the world are experiencing changing business models as a result of demutualisation, privatisation, self-listing, the emergence of alternative trading platforms and changing revenue structures. The G20/OECD Principles of Corporate Governance note that “regardless of the particular structure of the stock market, policy makers and regulators should assess the proper role of stock exchanges and trading venues in terms of standard setting, supervision and enforcement of corporate governance rules. This requires an analysis of how the particular business models of stock exchanges affect the incentives and ability to carry out these functions.” This session will explore how the role of Asian stock exchanges in corporate governance is - or should be - evolving in light of these changes.</p> <p><b>Open discussion</b></p>

15:15 – 15:45 **Closing Remarks**

- Ms. Fianna Jurdant, Senior Policy Analyst, Corporate Affairs Division, OECD
- Mr. Masato Kanda, Chair, OECD Corporate Governance Committee and Deputy Director General, Budget Bureau, Ministry of Finance, and Financial Services Agency, Japan
- Ms. Lee Mei Foo, Chief Regulatory Officer, Securities Commission, Malaysia





Follow us on Twitter @OECD\_BizFin







# OECD ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

Focus Group

Background Notes

19-20 October 2017

Grand Prince Hotel Takanawa

Tokyo, Japan

## Focus group 1 discussion Flexibility, proportionality and growth companies

### *Background*

This focus group on flexibility, proportionality and growth companies will address how flexibility and proportionality (F&P) can be a useful tool for creating an effective legal environment that supports the ultimate policy objectives of the Principles, namely to improve investment, economic growth and financial stability.<sup>1</sup>

### *Some questions that will be relevant to the discussion:*

- What are some ways in which jurisdictions have used flexibility and proportionality as an effective tool in their corporate governance frameworks?
- How might policy makers address the reduced rates of listing on stock exchanges (with the exception of Chinese companies), and in particular for SMEs?
- Should policy makers in Asia redesign standards and rules with the aim of adapting to the particular corporate governance patterns adopted by growth companies?

### **1. The public policy rationale**

Irrespective of their legal form, publicly traded companies are not a homogenous group. They differ greatly with respect to size, ownership structure, stage of development and the industries in which they operate. This is why the G20/OECD Principles of Corporate Governance state that policy makers have a responsibility to make sure that the corporate governance framework for listed companies is flexible enough to meet the needs of firms that operate under widely different circumstances. F&P is a necessary prerequisite for creating an effective legal environment that can support the ultimate policy objectives of the Principles, namely to improve investment, economic growth and financial stability.

One development that is of particular concern for long-term growth is the decrease in the listings of smaller growth companies in advanced markets. These companies rely heavily on short-term debt as a source of funding and would in general benefit from access to public equity, which could boost their risk taking, long-termism and innovation. However, since the early 2000s, the number of small company IPOs in advanced markets has declined even more than the general decline in IPOs. And there is nothing to indicate that this fall has been compensated for by an increase in various forms of private equity supply.

Between 1994 and 2000 there were 6,425 IPOs in advanced economies with a size less than USD 100 million in real terms. This fell to 4,852 in the period 2001-2007 and further to just 2,272 during the period 2008 to 2014. But small company IPOs have not only decreased in absolute numbers. They also receive a shrinking share of all the equity raised in public equity markets. In the period 1994-2000 about 20% of all public equity raised in advanced economies went to support smaller companies. In 2014 that share had decreased to only 10 percent. There are probably several explanations for this decline in small company IPOs and some of them may relate to the design of the corporate governance framework. In light of this, the

---

<sup>1</sup> The OECD Corporate Governance Committee (the "Committee") decided, at its meeting in November 2016, to conduct a thematic peer review on the use of flexibility and proportionality ("F&P") in corporate governance frameworks. This background note is adapted from a background paper prepared for the Committee's roundtable discussion on Flexibility and Proportionality of Corporate Governance Frameworks in March 2017.



G20/OECD Principles of Corporate Governance point to the need to put in place a policy framework that is flexible enough to meet the needs of companies operating under widely different circumstances. The corporate governance framework, including listing rules, should therefore allow for proportionality, particularly with respect to the size of listed companies and the company's stage of development.

## **2. Flexibility and proportionality in company regulation**

Regulatory F&P of several kinds exists among joint stock companies, i.e. companies that may turn to the public to raise capital. Here, proportionality may relate to, inter alia, the size of the company. In such cases certain provisions in the company legislation makes a distinction between companies of different sizes. In Sweden, for example, in companies of a certain size workers representation on the board is mandatory. In Chile, independent directors are only mandated if a company has market capitalisation and a free float above a certain minimum.

In the same vein, we find F&P following from corporate governance codes. In many jurisdictions all listed companies (or only companies listed on regulated markets) must adhere to a corporate governance code on a "comply or explain" basis, while typically no such codes exists for non-listed companies or companies the shares of which are traded only on alternative trading platforms.

Another important development, with potential implications for the implementation of corporate governance rules, is the fact that an increasing number of corporations today have a controlling or dominant owner. This is particularly accentuated in emerging markets, but controlling owners are also common in most advanced economies, including the US and Continental Europe. It has been argued that the focus on dispersed ownership is of limited help when addressing corporate governance issues in companies that have controlling owners. Their presence is generally assumed to provide strong incentives for informed ownership under a certain size. In Italy, for example, smaller companies may enjoy differential treatment with respect to engagement and to overcome the fundamental agency problem between shareholders and managers. There are also arguments that the incentives for controlling owners to assume the costs for this ownership engagement are weakened by restrictions on the controlling owners to exercise their rights and be properly compensated for their efforts to monitor.

## **3. Recent F&P changes to corporate governance frameworks**

Several initiatives have been taken to analyse and adjust elements of the corporate governance framework that may work against access to capital markets for smaller growth companies. These initiatives have used an F&P approach to target aspects of laws and regulations that may be of particular importance to companies of a particular size and at a certain stage of development where the funding entrepreneurs wants to maintain control of the company's strategic direction.

For example, the United States Congress passed the Jumpstart Our Business Start-ups (JOBS) Act, aiming at easing the regulatory process for passing the listing threshold and lowering the costs to remain listed. Another example is the changes in UK regulations following the Kay Review of UK Equity Markets and Long-Term Decision Making. Other initiatives include regulatory adjustments in Israel to allow for a longer transition period to implement corporate governance rules that are associated with a full IPO and scaling with respect to disclosure for companies issues such as the disclosure of major shareholdings, mandatory bid thresholds and procedures for related party transactions.

Several jurisdictions are also reconsidering their attitude toward the one-share-one-vote principle with a view to allow and/or encourage long-term investments which can be particularly relevant for growth companies and, in general, for all companies which are more dependent on intangible assets and on human capital resources. Examples in this direction are provided by France, where the Loi Florange has made the loyalty shares with double voting rights the default standards for listed companies; by Italy, where loyalty share have been made available to listed companies and the ban for multiple voting rights has been removed for IPOs, and by Singapore, whose Stock Exchange is considering the possibility to list companies with dual class shares and the introduction of possible safeguards against risks that come with such a listing structure.

In conclusion, flexibility and proportionality are at the centre of some of the significant trends shaping corporate governance frameworks and can be an effective policy tool to address some of the challenges ahead.

### **Bibliography and further reading**

Isaksson, M. and S. Çelik (2013), "Who Cares? Corporate Governance in Today's Equity Markets", OECD Corporate Governance Working Papers, No. 8, OECD Publishing, Paris.

Çelik, S. and M. Isaksson (2013), "Institutional Investors as Owners: Who Are They and What Do They Do?", OECD Corporate Governance Working Papers, No. 11, OECD Publishing.

OECD (2017), OECD Business and Finance Outlook, OECD Publishing.

OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing.

OECD (2014), Review of the OECD Principles of Corporate Governance: Issues Note, OECD Publishing.



## **Focus group 2 discussion Enhancing board diversity**

### *Background*

This focus group will discuss board diversity as a topic that has entered in the discussion of corporate governance and international business. While there is a growing consensus that diversity is necessary for effective board performance, most of the debate has focused on gender diversity. However, the diversity issue is not limited to gender and the discussion needs to be broadened to include other dimensions of board diversity: age, experience, ethnicity, educational background and nationality.

In order to conduct an enriching discussion on board diversity is important to understand the current situation, the global trends and the challenges associated with the lack of diversity as well as to reflect on what can be the impact of diversity in today's capital market structure and sound corporate governance practices. Only with a deep understanding of the role of board diversity, new tools can be developed and new policies enforced, taking into considerations the particularities of each jurisdiction and each company.

Among the lessons of the 2007 global financial crisis is that exceedingly cohesive and entrenched boards may fail to identify risk factors, detect problems, protect the interest of all stakeholders and act in consequence. "Groupthink" is more likely to occur among homogeneous groups lacking diversity in areas related to gender, nationality, age, and educational backgrounds. In this context, the discussion about board diversity becomes relevant to improve corporate governance in companies in a globalised world, particularly when boards now need to construct resilience for future challenging events. Board diversity has also been correlated with better stakeholder management and transparency. In this sense, links have been established between board diversity and sustainability initiatives, claiming in some cases that diversity is an essential building block of sustainability.

While policies have been introduced at both company and national levels to address some of the diversity dimensions, a concerted effort among stakeholders could be stepped up.

*Some questions that will be relevant to the discussion include:*

- What are policy makers, regulators, firms and investors doing to enhance board diversity?
- How is the discussion on board diversity being framed?
- Is there a connection between board diversity, sustainability and corporate social responsibility?  
Can this link boost board diversity?
- What are the obstacles to achieving diversity in corporate leadership roles?
- How can incentives be construed to engage companies in a discussion about board diversity?
- Can institutional investors lead by example and act as a key stakeholder for the diversity agenda?
- How companies can find suitable candidates with diverse backgrounds?
- What concrete actions can be taken to enhance board diversity?

### **1. The G20/OECD Principles of Corporate Governance**

Chapter IV of the G20/OECD Principles of Corporate Governance refers to the responsibilities of the board of directors, stating that the corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the

company and the shareholders. In this context, the Principles highlight that the board should be able to exercise objective independent judgement on corporate affairs and avoid groupthink. In order to avoid groupthink and bring a diversity of thought to board discussion, boards should consider in their evaluation processes if they collectively possess the right mix of background and competences (OECD, 2015a).

Regarding gender balance in the board of directors, the Principles states that countries may wish to consider measures enhance gender diversity on boards and in senior management. Among the different measures that the Principles recommend are the following: voluntary targets, disclosure requirements, boardroom quotas and private initiatives (OECD, 2015a). Further, the OECD Guidelines on Corporate Governance of State-Owned Enterprises encourages the ownership entity to consider the OECD Recommendation on Gender Equality. It recommends that jurisdictions encourage measures such as voluntary targets, disclosure requirements and private initiatives that enhance gender balance on boards and in senior management of listed companies and consider the costs and benefits of other approaches such as boardroom quotas (OECD, 2015b).

## **2. Some relevant data to start the discussion**

The question of board diversity and globalisation is crucial for the analysis of trends in corporate governance and international business, however up to now the evidence is weak. While there is extensive research on gender diversity, less attention has been devoted to other dimensions of diversity. This background note does not pretend to present extensive research on the different dimensions of board diversity, but to only highlight some relevant data to further discuss the topic.

### **2.1. Gender diversity**

All public available data highlights the gender imbalance in the corporate world and the fact that *the glass ceiling* remains intact. Women make up only about one-third of managers in OECD countries and are also far less likely than men to become CEOs, sit on boards of private companies, or hold public leadership positions, although government quotas (and, to a lesser degree, targets) have led to relatively quick changes in the share of private and public leadership positions held by women (OECD, 2017).

Globally, women only account for approximately 14.7% of board seats among the world's largest companies (Credit Suisse Research Institute, 2016). In the OECD-wide context<sup>2</sup>, the percentage of women in board seats is modestly higher, reaching a 20% in 2016, up slightly from 16.4% in 2013. On average, 4.8% of CEOs were women in 2016, double the 2.4% in 2013 (OECD, 2017).

Most OECD countries have initiated policies to promote gender balance on boards and in senior management. As of 2016, nine OECD countries had introduced gender quotas for the boards of publicly listed and/or state-owned enterprises. Other countries have taken an approach that is not legally binding, involving voluntary targets, corporate governance codes and/or disclosure rules.

The percentage of women occupying board seats in Asia is low: 7.8% (Deloitte, 2017). Despite that the percentage has improved from past years, the pace of change is still slow compared to global progress—about half the average of the US and Europe. In the region, India and Pakistan require a number of board

---

<sup>2</sup> OECD-wide includes South Africa, India, Colombia, China, Hong Kong, Brazil and Indonesia in addition to the 35 OECD member countries.



seats to be offered to woman and China and Malaysia have a target. Japan, China, Chinese Taipei, India, Malaysia and Pakistan have requirements to disclose statistics on gender.

In Japan, women hold 3.5% of the board seats (Credit Suisse Research Institute, 2016), up from 0.9% in 2010. Japanese PM Shinzo Abe announced in 2013 a 30% soft target for women in senior management to be achieved by 2020 as part of the “Abenomics” programme. In 2015 Japan issued a law to promote women’s participation in the workplace. Companies listed on the Tokyo Stock Exchange are required to disclose the number of women on boards.

In India, the revised Companies Act (2013) for the first time made it mandatory for all listed companies and other large public limited companies to appoint at least one woman director to their boards. Companies were given until 31 March 2015 to comply with this legislative provision. With this new policy, the number of women on boards in India increased by 4.7% in the past two years from 7.7% to 12.4% (Deloitte, 2017).

Malaysia holds the highest percentage of women on boards in the region. In 2011, a gender quota rule was introduced, mandating a 30% women representation in senior management and board positions in companies with more than 250 employees by 2016. Bursa Malaysia’s data indicate that as of 2016, women held 16.6% of board seats in the top 100 publicly listed companies. Other data suggest that the percentage reach 17% in government-linked companies (Deloitte, 2017).

**Table 1. Gender data in Asian countries (excluding Japan)**

Jurisdiction	Requirements to disclose statistics on gender composition		Quota/target for companies to achieve gender balance on boards	
	Of boards	Of senior management	Quota or target	Objective and Year
<b>Bangladesh</b>	No	No	No	N/A
<b>China</b>	Yes	Yes	No	N/A
<b>Chinese Taipei</b>	Yes <sup>3</sup>	No	Target	One-third
<b>Hong Kong, China</b>	No	No	No	N/A
<b>India</b>	Yes	No	Quota	1
<b>Indonesia</b>	No	No	No	N/A
<b>Korea</b>	No	No	No	N/A
<b>Malaysia</b>	Yes	Yes	Target	30% by 2020
<b>Mongolia</b>	No	No	No	N/A
<b>Pakistan</b>	Yes <sup>4</sup>	No	Quota	1

<sup>3</sup> As per information kindly provided by the jurisdiction to the last edition of the Asia Corporate Governance Survey (October 2017), according to the Regulations Governing Information to be Published in Annual Reports of Public Companies dated February 9, 2017, the contents of an annual report should include a corporate governance report that provides directors’ and managers’ information, such as names, gender, principal work experience, and so on.

<sup>4</sup> As per information kindly provided by the jurisdiction to the last edition of the Asia Corporate Governance Survey (October 2017), public interest companies are required by Companies Act 2017 to have female directors on board as specified by SECP.

<b>Philippines</b>	No	No	No	N/A
<b>Singapore</b>	No	No	No	N/A <sup>5</sup>
<b>Thailand</b>	No	No	No	N/A
<b>Viet Nam</b>	No	No	No	N/A

Source: OECD Survey of Corporate Governance Frameworks in Asia (October 2017).

## 2.2. Nationality diversity

In a globalised world board members from different countries will help a company develop a better understanding of the legal and business complexities of different regions. Foreign directors (and managers to an even greater magnitude of importance) speak foreign languages, are familiar with foreign cultures and unwritten rules, calculate in different currencies and with different financial regulations, understand the political attitudes of foreign governments, and so on. They are therefore better placed to provide the advice that is necessary when considering internationalization. Research on board diversity has found international directors and national directors with international experience to be complementary. To simplify, the former group serves a monitoring role, related to financial internationalization of the firm, whereas the latter advises on commercial internationalization.

In 2015, the OECD embarked in an internal analysis of a large sample of the world's 500 largest public-listed companies, as ranked by Forbes, to understand the challenges of board diversity. From this internal research, results showed that Europe is by far the most "globalised" region, with 82% of companies reporting at least one non-national director, followed by Latin America (83%), sub-Saharan Africa (75%) and MENA (56%). Percentages are well below 50% elsewhere: 39% in North America (excluding Mexico) and 37% in Asia-Pacific.

## 2.3. Other dimensions of board diversity

There is no consolidated data that analyses all the dimensions of board diversity in companies globally. The information is still fragmented and does not follow single criteria to show comparable results. Despite the lack of numerical information, we highlight in this section practices in the Asian region that go in the direction towards board diversity.

After a consultation period, on September 2013, the Stock Exchange of Hong Kong issued a Corporate Governance Code, which for the first time introduced a disclosure requirement on board diversity on a "comply or explain" basis. Under the new rules, companies must have policies concerning diversity in the board, which according to the Code can be achieved through consideration of a number of factors, included but not limited to gender, age, cultural and educational background, and professional experience. To comply with the Code Provision, the company should also include any measurable objectives that it had set for implementing the policy, and progress on achieving those objectives.

<sup>5</sup> As per information kindly provided by the jurisdiction to the last edition of the Asia Corporate Governance Survey (October 2017), the Diversity Action Committee (DAC) is a committee comprising corporate leaders and professionals from business, people and public sectors, was formed to encourage greater representative of women on boards of companies in Singapore. DAC has adopted a set of targets for 20% of seats in boardroom to be filled by women by 2020, 25% by 2025 and 30% by 2030.



In the Philippines, the Securities and Exchange Commission released a revised Code of Corporate Governance for publicly listed companies that entered into force on 2017. It contains recommendations of a policy on board diversity that should cover, age, ethnicity, culture, skills, competence, and knowledge. In a similar approach, the Singapore Code of Corporate Governance requires companies to consider diversity as part of the board nomination process.

Japan's corporate governance code, which took effect in 2015, expressly states the importance of ensuring the existence of diverse perspectives and values reflecting a variety of experiences, skills and characteristics within the board of directors. In August 2016, the Ministry of Economy, Trade and Industry (METI) established a Study Group for Ideal Approaches to Diversity Management as a Competitive Strategy<sup>6</sup>. The study group issued its report in March 2017 which highlights the need to implement diversity management as a competitive strategy to boost corporate growth and profitability. The group also prepared "Diversity 2.0 Action Guidelines", a compilation of actions that companies should take for diversity management.

### **3. Re-framing the diversity discussion: solution facilitator**

Reframing the diversity debate as an economic and business opportunity can facilitate solutions and the incorporation of measures in different jurisdictions. The benefits of diverse leadership relate not only to global growth, but also company performance, better risk management, company reputation, innovation and talent leverage.

Board diversity in general is a tool to avoid the group-thinking that occurs when leadership teams are homogeneous and that has been proved to be a problem for decision making in companies. Being attentive to board composition in terms of backgrounds, skills and nationalities will therefore help guard against groupthink, improve corporate governance and help to build the necessary resilience for new upcoming challenging times.

In the case of gender, current inequalities represent missed opportunities for achieving inclusive economic growth. OECD research shows that achieving parity in labour force participation rates between men and women in OECD countries could boost global GDP by 12% over the next 20 years.

### **4. Pending challenges**

#### *4.1. Public policies towards diversity*

As discussed previously, some countries have implemented public policies or disclosure policies to achieve the different dimensions of board diversity. There is not yet a consolidated study on international actions, but there is a growing international interest in the area. In France, for example, the Autorité des Marchés Financiers (AMF) invites listed companies to include nationality and international experience among their diversity goals, although, unlike gender, this is not a binding objective.

Regarding gender, most OECD countries have initiated policies that promote gender balance on boards and in senior management. Countries that adopted a quota saw a more immediate increase in the number of women on boards, while those that took a "softer" approach (disclosure rules or targets) have seen a more gradual increase over time.

---

<sup>6</sup> Information and part of report in English available in: [http://www.meti.go.jp/english/press/2017/0323\\_002.html](http://www.meti.go.jp/english/press/2017/0323_002.html)

#### 4.2. Research and transparency.

Fill-in the data gaps on minorities in corporate leadership remains a challenge. Regarding gender, research from ILO (2015) finds that, in order to better frame the issue and inform areas for action, more targeted data on women in business is needed, including surveys on what governments, companies and women themselves see as effective measures. The same conclusion can be reached in relation to the other dimensions of board diversity. Moreover, OECD has found that pay transparency is a key lever and a good tool to close the gender wage gap (OECD, 2017).

#### 4.3. Board Evaluation as an opportunity to discuss Board diversity

The introduction of new Codes and Practices in the region, including requirements to formally evaluate board offers a good opportunity to reflect upon board diversity, following the recommendations of the G20/OECD Principles. If the opportunity is seized, boards can incorporate actions to improve board diversity to match the needs of each specific jurisdiction and each specific company.

#### 4.4. Changing policies, changing minds: The persistence of stereotypes as a barrier to equality

Achieving the appropriate diversity balance requires a complex and deep cultural change at both societal and organisational levels to address the social challenges undermining minorities' access to top management. These measures include a consideration of the underlying causes of the diversity gaps such as skewed perceptions and unconscious biases, and advocating for cultural and behavioural change in company culture. Some concrete actions include developing information campaigns and creating awareness-raising programmes about stereotypes, conscious and unconscious biases and the social and economic benefits of a more diverse board and management.

Regarding gender, public attitudes towards the roles of men and women have changed slowly over time as a consequence of an intense discussion on gender equality over the past years. However, gender stereotyping at work, at home, and in society at large continues to be a serious obstacle to greater gender equality (OECD, 2017b).

### **Bibliography and further reading**

Adams, R. & Funk, P. (2010), *Beyond the Glass Ceiling: Does Gender Matter?* European Corporate Governance Institute, Working Paper 273/2010.

Barroso, Carmen, Ma Mar Villegas and Leticia Pérez-Calero (2011), *Board Influence on a Firm's Internationalization*, *Corporate Governance: An International Review*, 19(4), pages 351–367.

Bernile, Gennaro and Bhagwat, Vineet and Yonker, Scott E (2017), *Board Diversity, Firm Risk, and Corporate Policies*. Available at SSRN: <https://ssrn.com/abstract=2733394>

Carter, David A., Betty J. Simkins, and W. Gary Simpson (2003), *Corporate Governance, Board Diversity, and Firm Value*, *Financial Review*, 38(1): 33–53.

Credit Suisse Research Institute (2016), *The CS Gender 3000: The Reward for Change*

Deloitte – Global Center for Corporate Governance (2017), *Women in the Boardroom: A global perspective*



Erhardt, Niclas L. and Werbel, James D. and Shrader, Charles B. (2003), *Board of Director Diversity and Firm Financial Performance*. Corporate Governance: An International Review, Vol. 11, pp. 102-111, April 2003

Ferreira, Daniel (2010), “*Board Diversity*”, in *Corporate Governance: A Synthesis of Theory, Research, and Practice*, Anderson, R. and H.K. Baker (eds.), John Wiley & Sons, pp. 225-242.

---- (2014), *Board Diversity: Should We Trust Research to Inform Policy?* Corporate Governance: An International Review

---- and Tom Kirchmaier (2013), *Corporate boards in Europe: size, independence and gender diversity*, in *Boards and Shareholders in European Listed Companies*, M. Belcredi and G. Ferrarini (eds.), Cambridge University Press, pp. 191-224

Hong Kong Exchanges and Clearing Limited (2012), *Consultation Conclusions: Board Diversity*

International Labor Organisation (2015), *Women in Business and Management: Gaining momentum*

Lord Davies (2011), *Women on Boards*

McKinsey & Company (2016), *Women Matter: Reinventing the workplace to unlock the potential of gender diversity*, McKinsey & Company.

OECD (2017), *Closing the gender gap: an uphill battle*, OECD Publishing.

OECD (2017b), *Report on the Implementation of the OECD Gender Recommendations – Some Progress on Gender Equality But Much Left To Do*, Paris: OECD Publishing.

OECD (2016), *Background Report: Conference on improving women’s access to leadership: What Works?* March 2016 OECD Conference Centre, Paris.

OECD (2015a), *G20/OECD Principles of Corporate Governance*. Paris: OECD Publishing.

OECD (2015b), *OECD Guidelines on Corporate Governance of State-Owned Enterprises*. Paris: OECD Publishing.

Rhode, Deborah and Packel, Amanda K. (2014), *Diversity on Corporate Boards: How Much Difference Does Difference Make?* Delaware Journal of Corporate Law (DJCL), Vol. 39, No. 2 pp. 377-426

### **Focus Group 3 discussion** **Aligning incentives along the investment chain**

#### *Background*

As noted in the *G20/OECD Principles of Corporate Governance* (hereafter the *Principles*), companies across the globe are witnessing changes in their ownership structures. Today, we find a number of intermediaries that stand between companies and the ultimate beneficiaries of their shares, often forming a long and complex interconnected investment chain. As such, there is no longer a direct and uncompromised relationship between the performance of a company and the income of the ultimate beneficiaries of its shares. The different economic incentives of these layers of intermediaries affect the quality of ownership engagement and bring new corporate governance challenges.

Since the *Principles* were revised and endorsed in 2015, assets under management by institutional investors have increased considerably. As a new emerging global trend, capital markets have also seen a surge in new types of institutional investors, investment vehicles and trading techniques, such as indexing as an investment strategy and so-called high frequency trading where the investment strategy and ultra-short holding periods do not motivate any corporate specific analysis or ownership engagement. Taken together, these developments have further affected the character and quality of ownership engagement, raising concerns about a level playing field among different categories of investors with respect to market information.

While these market developments in OECD countries have not yet fully reached Asian markets, Asian policymakers may want to reflect on how these emerging challenges may affect their own economies, particularly with a view to adjusting their corporate governance frameworks in the future. This focus group will discuss to what extent global trends apply to Asian economies where ownership concentration is high. The session can also explore what countries can do to address the challenges imposed by the presence of new institutional investors into these concentrated ownership structures, particularly with regards to the alignment of incentives along the investment chain, with the aim of contributing to sound corporate governance.

#### *Some questions that will be relevant to the discussion:*

- How are global trends affecting changes in the ownership structure of Asian companies and to what extent have Asian jurisdictions encountered new corporate governance challenges as a consequence of these changes?
- How do investors in Asia engage with investee firms today? How are their different business models influencing the way in which they engage? Is there a culture of responsible and meaningful engagement in creating value over the long term?
- What has been the response of Asian regulators to align incentives along the investment chain?
- Are there ways for public policy to influence the incentives of institutions to vote without interfering with the business model of the institution?
- Should policy makers in Asia address the lack of economic incentives among institutional investors to carry the costs associated with informed ownership engagement? What would be the rationale for such policies?



## 1. Global changes in ownership and the G20/OECD Principles of Corporate Governance

Institutional investors are financial intermediaries that accept funds from clients or beneficiaries for investment on behalf of these investors, such as mutual funds, pension funds, sovereign wealth funds and insurance companies among others (Çelik and Isaksson, 2013). With the rapid growth of global financial markets, recent decades have witnessed a tremendous increase in institutional ownership of public listed companies, which in turn increases their potential role in corporate governance.

The presence of intermediaries acting as independent decision makers, especially when there is a long investment chain, influences the incentives and their ability to engage in corporate governance. The various forms of shareholder engagement include strategic voting, proxy fights, and shareholder proposals. Institutional investors' engagement in corporate governance matters will depend on a number of features and choices, that together make up the institutional investor's "business model" (Çelik and Isaksson, 2013).

Research has shown that institutional investors can act as effective monitors of management and that firms have benefited from significant improvements in corporate governance after the proportion of institutional ownership increases (Chuang and Zhang, 2011). Yet despite the positive impacts on corporate governance, a large number of institutions remain passive investors. This passive approach goes against value creation in the long-term and raises questions for all parties involved, generating an interesting discussion among institutional investors, companies and policy makers, who find it challenging to align incentives among players to improve corporate governance and ultimately contribute to economic growth.

Recognising the new reality in ownership structures, the *Principles* incorporated a new chapter on institutional investors, stock exchanges and other intermediaries in 2015, stating that corporate governance frameworks should provide sound incentives throughout the investment chain to function in a way that contributes to good corporate governance.

The *Principles* recommend focusing on disclosure of corporate governance and voting policies (including the procedures in place for deciding on the use of their voting rights), conflicts of interest, and the corporate governance framework in the case of companies that are listed in a jurisdiction other than their jurisdiction of incorporation. The *Principles* also recommend that votes should be cast by custodians or nominees in line with the directions of the beneficial owner of the shares. Finally, the *Principles* emphasise the importance of prohibiting and enforcing vigorously insider trading and market manipulation.

## 2. Aligning incentives along the investment chain in Asia

The corporate sector in Asia is generally characterised by high ownership concentration. In this context, the role of institutional investors varies and challenges differ from those of less concentrated markets. While in some countries institutional investors are starting to play an increasingly important role, in others, the majority of ownership is by the state or family groups. For example, in the People's Republic of China, the state holds 47.67% of shares of all listed companies while shares held by individual shareholders and institutional investors accounted for 28.85% and 11.37%, respectively.<sup>7</sup> In others countries in the region, ownership structures remain highly concentrated in large family-owned firms, as is the case of Indonesia, Korea and Philippines.

<sup>7</sup> The data correspond to the month of August 2017 and has been kindly provided by China Securities Regulatory Commission for our Asia Survey on Corporate Governance (October 2017), stating as a source the Capital Market Statistic & Monitoring Center Co.

The variety of ownership structures in the region makes it difficult to provide a one-size-fits-all strategy for aligning incentives along the investment chain with the aim of boosting corporate governance practices. The concentrated capital market structure also brings into question the role of the controlling shareholder in finding effective tools for engaging institutional investors and the role of policy makers in balancing incentives across different types of shareholders.

Despite the intrinsic difficulties in analysing the role of institutional investors in the region, efforts have been made both by the private and the public sector to engage institutional investors in good corporate governance. The answer to the new investment chain reality has been characterised by the dialogue amongst stakeholders and by the development of tools to address the emerging challenges with a focus on long-term value creation, investor confidence and economic growth.

**Table 1. Governance-related responsibilities of institutional investors**

Jurisdiction	Exercising voting rights			Requirement to disclose 'conflicts of interest'	
	Disclosure of voting policy	Existence of a stewardship code	Required to cast votes in line with the instructions of the beneficial owner of the shares	By institutional investors that may affect the exercise of ownership rights?	By proxy advisors, analysts, brokers, rating agencies and other
Bangladesh	No	No	N/A	No	Yes
China	No	No	N/A	N/A	No
Chinese Taipei	Yes	Yes	Yes	Yes	Yes
Hong Kong, China	No	No	N/A	N/A	Yes
India	Yes	No	Yes	Yes	Yes
Indonesia	No	No	No	Yes	Yes
Korea	Yes	Under discussion	Yes	Yes	Yes
Malaysia	No <sup>8</sup>	Yes	Yes	Yes	Yes
Mongolia	No	No	N/A <sup>9</sup>	Yes	Yes
Pakistan	Yes	No	Yes <sup>10</sup>	Yes	Yes
Philippines	No	Under discussion	Yes	Yes	No

<sup>8</sup> Although, the Malaysian Code for Institutional Investors *encourages* signatories institutional investors to publish their voting policy.

<sup>9</sup> It depends on the agreement between custodians/ nominees and beneficial owner.

<sup>10</sup> Mutual Funds Mangers (Asset Management Company) are required to disclose proxy voting policy on their web site and also has to disclose summary of actual voting in mutual fund annual account.



<b>Singapore</b>	No <sup>11</sup>	Yes	No	No	Yes
<b>Thailand</b>	Yes	Yes	Yes	Yes	Yes
<b>Viet Nam</b>	No	No	Yes	No	No

Source: OECD Survey of Corporate Governance Frameworks in Asia (October 2017).

### 2.1. Changes in the policy framework

Institutional investors have an important role to play in the corporate governance of investee firms in Asia, both to boost economic growth opportunities and to balance a highly concentrated market. Asian countries are beginning to attract significant capital from institutional investors worldwide and there is also a growing presence of local institutional investors in recent years. If the region wants to continue on this path, it is indispensable to improve corporate governance policies, particularly regarding disclosure, to boost economic performance and raise investor confidence.

As a next step, jurisdictions could reflect on how to find the right balance between creating the legal and regulatory framework to attract investment while ensuring that sound corporate governance practices are adopted along the investment chain.

One particularly difficult aspect of engaging institutional investors in long-term value creation is that measuring the return on engagement in good corporate governance practices is not easy. In this context, policymakers face the challenge of inadequate economic incentives amongst institutional investors to carry the costs associated with informed ownership engagement.

### 2.2. Stewardship codes initiatives

A stewardship code is a set of principles that aims to encourage institutional investors to take an engaged approach in the corporate governance of the company on behalf of their beneficial owners. In 2014, Japan became the first country in Asia to release a code<sup>12</sup>. The Code defines stewardship as the responsibilities of institutional investors to enhance the medium- to long-term investment returns for their clients and beneficiaries by improving and fostering investee companies' corporate value and sustainable growth through constructive engagement or purposeful dialogue.

Subsequently, Chinese Taipei, Hong Kong (China), India, Malaysia, Thailand and Singapore also launched stewardship codes to promote more engagement by institutional investors, while the Phillipines is currently developing one.

Even if the impact of voluntary or non-binding stewardship codes on institutional shareholder engagement is still being assessed, *encouraging* institutional investors to adopt disclosure and other good practices to

<sup>11</sup> However, under the Singapore Stewardship Principles, investors *are encouraged* to have clear policies on communicating information pertinent to voting, such as voting policies, votes exercised and records of votes cast.

<sup>12</sup> The Japan Stewardship Code, known as the "Principles for Responsible Institutional Investors" was published by the Financial Services Agency (FSA). The seven good practice principles in the Japan Stewardship Code are modelled on the UK Stewardship Code and are implemented on a "comply-or-explain" basis.



enhance corporate governance in investee firms in meaningful ways in practice (rather than to become a pure “box-ticking” exercise). The next step for policymakers in the region might be to call for institutional investors to apply the principles of engagement with a long-term view on value creation rather than complying merely in form.

### ***2.3. Private sector commitment***

Improving corporate governance standards is a task that does not only belong to the regulator. It involves institutional investors themselves, companies that receive institutional investments and the rest of the stakeholders who see corporate governance practices as an opportunity to reach sustainable economic growth.

In markets with concentrated ownership, institutional investors could be seen as providing an invaluable contribution by demanding transparency, accountability and long-term value creation in their investee companies. Institutional investors could be motivated by this opportunity to engage in dialogue with actors around the region, collaborating responsibly with one another where appropriate.

### **Bibliography and further reading**

Çelik, S., & Isaksson, M. (2014). Institutional investors and ownership engagement. *OECD Journal: Financial Market Trends*, 2013(2), 93-114.

Çelik, S. and M. Isaksson (2013), “Institutional Investors as Owners: Who Are They and What Do They Do?”, *OECD Corporate Governance Working Papers*, No. 11, OECD Publishing.

Chung, K. H., & Zhang, H. (2011). Corporate governance and institutional ownership. *Journal of Financial and Quantitative Analysis*, 46(01), 247-273.

IOSCO (2011), *Regulatory Issues Raised by the Impact of Technological Changes on Market Integrity and Efficiency*, IOSCO, Madrid, [www.iosco.org/library/pubdocs/pdf/IOSCOPD361.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD361.pdf).

Lowenstein, L. (1991), *Index Investment Strategies and Corporate Governance*, The University of Toledo, College of Law, March.

OECD (2017), *OECD Business and Finance Outlook*, OECD Publishing.

OECD (2015), *G20/OECD Principles of Corporate Governance*, OECD Publishing.

OECD (2014), *Review of the OECD Principles of Corporate Governance: Issues Note*, OECD Publishing.

Weild, D., E. Kim and L. Newport (2013), “Making Stock Markets Work to Support Economic Growth: Implications for Governments, Regulators, Stock Exchanges, Corporate Issuers and their Investors”, *OECD Corporate Governance Working Papers*, No. 10, OECD Publishing.





Follow us on Twitter @OECD\_BizFin



