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Asian Corporate Governance Association (ACGA)

“International Trends in Corporate Governance: How India Compares”

Presentation by:

Jamie Allen, Secretary General, ACGA

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ACGA Briefing
India, February 2014

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Topics

1. Board independence – convergence of paper standards since the Asian Financial Crisis
2. International CG trends after the Global Financial Crisis
3. How India fits into this framework

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1. Before the Asian Financial Crisis, 1997-98:

“Modern” CG standards in Asia largely non-existent

Country	Official CG Code on board governance?	Independent directors mandatory?	Audit committees mandatory?
China	No	No	No
Hong Kong	Minuscule	No	No
India	No, but CII started work on its Code in 1996. Finalised 1998.		
Indonesia	No	No	No
Japan	No, but the Japan CG Forum produced a Code in 1996-97.		
Korea	No	No	No
Malaysia	No	No	No
Philippines	No	No	No
Singapore	No	No	No
Taiwan	No	No	No
Thailand	No	No	No

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Source: ACGA research



After the Asian Financial Crisis: Convergence on paper around board independence standards

Country	Official CG Code(s) on board governance?	Independent directors mandatory?	Minimum # of INEDs	Audit committees mandatory?
China	2002 / ?	Yes	One-third	Yes
Hong Kong	1993/2004/2012	Yes	One-third	Yes
India	1999 / 2009	Yes	33-50%	Yes
Indonesia	2001	Yes	30%	Yes
Japan	Still no consensus	Optional. Now comply / explain.	One INED or ISA ^a	No. Very few.
Korea	1999/2003 / ?	Yes	25-50%	Yes (large firms).
Malaysia	2000/2007/2012	Yes	Majority*	Yes
Philippines	2002/2009	Yes	Two/20%	Yes
Singapore	2001/2005/2012	Yes	One third to majority*	Yes
Taiwan	2002/2011	Yes. Phased in.	Two or 20%.	Yes (from 2014).
Thailand	1999/2006	Yes	Three/one-third	Yes

*Majority suggested only if the chairman is non-independent. Not a mandatory rule.

^a "ISA" refers to an independent statutory auditor (kansayaku).

Source: ACGA research

2. International trends post-GFC

Board governance

1. Strengthening of board committees and independence
2. Particular focus on the audit committee and its oversight of external auditors
3. "Say on pay" – allowing investors to vote on remuneration
4. Election of directors – giving minority shareholders more voice in nomination as well as election
5. Board diversity – women on boards, focus on skills, linking board composition to corporate strategy
6. Recognition of need for serious director training and development



International trends – 2

Regulatory

1. More emphasis on disclosure of material events (PSI)
 2. Priority given to enforcement, especially insider trading and market manipulation
 3. Creation or strengthening of independent audit regulators
 4. Increasing focus on related-party transaction regulation
 5. Revision of CG Codes
 6. Adoption of ESG / CSR reporting guidelines
 7. Tighter (or looser) rules or guidelines on capital raisings
- But regulators constantly under pressure from competing lobby groups. Some market participants would like to hold or roll back regulation and standards.



International trends – 3

Shareholders

1. Increased emphasis on the fiduciary responsibilities of institutional investors to their beneficiaries
2. Strengthening of the "responsible investor" movement (ie, institutions with CG / ESG at the heart of their investment philosophy and process)
3. Increased voting of shares and AGM attendance
4. Attempts to engage with companies individually or collectively on "G", "E" and "S" issues
5. CG increasingly seen by portfolio managers as a practical risk-management tool. Investment managers are becoming less "silo-ed"



3. How India fits in

The macro picture

- India has always been aware of international CG trends: numerous official committees formed over past 15 years.
- Like most markets, political enthusiasm for CG has waxed and waned. Corporate and economic crises the usual catalyst for reform.
- Appreciation that long-term financial sector and economic development requires ongoing reform, hence the new Companies Act and SEBI revisions to Clause 49.



Indian CG standards

Some rules are advanced in international/regional terms

- Regulatory support for class actions (MCA)
- Mandating at least one woman director (MCA)
- Promotion of electronic voting (but not implementation)

Advanced, but somewhat controversial

- Mandatory CSR spending for larger companies: 2% of average net PBT for last three years (MCA)
- Mandatory rotation of auditors and audit firms (MCA)
- Limiting the number of directorships (SEBI) – 7 is a lot

In line with developed markets

- Mutual fund disclosure of voting policies and practices
- New rules on public float (25%)



Indian CG standards – 2

Behind leading international/regional markets

- Degree of corruption / quality of public governance
- Boards dominated by controlling shareholders ("promoters") -- gap between standards and reality
- Weak regulation of related-party transactions (rules are being tightened, but still unclear how well they will work)
- Shareholder (postal) voting on significant transactions
- Regulatory enforcement, especially on insider trading (rules being tightened here too)
- Regulation of auditors / lack of independence
- Fragmented audit industry / small CPAs auditing big firms
- Limited voting against by domestic mutual funds



Contact details

Jamie Allen
Secretary General
Asian Corporate Governance Association Ltd

Room 1801, 18th Floor, Wilson House
19-27 Wyndham Street, Central, Hong Kong

Tel: (852) 2160 1789 (D)
Fax: (852) 2147 3818
Email: jamie@acga-asia.org
Website: www.acga-asia.org

