



ASIAN ROUNDTABLE

TASK FORCE ON

RELATED PARTY TRANSACTIONS

MANILA, PHILIPPINES, 5 – 6 FEBRUARY 2009

*Renaissance Makati City Hotel Manila
Esperanza Street Corner Makati Avenue
Makati City, 1228 Philippines*

DRAFT AGENDA

Meeting Co-hosted by:



**INSTITUTE of
CORPORATE
DIRECTORS**

Organised In partnership with:

the Government of Japan

Background and Objectives of the Asian Roundtable Task Force on Related Party Transactions

Established in 1999, the Asian Roundtable on Corporate Governance (ARCG) serves as a regional hub for exchanging experiences and advancing the reform agenda on corporate governance. The ARCG gathers the most prominent, active and influential policy makers, practitioners and experts on corporate governance in the region, from OECD countries and relevant international institutions.¹ The overall goal of the ARCG is to assist decision-makers in their efforts to improve corporate governance in the region.

The ARCG has examined a number of issues that in 2003 resulted in the *White Paper on Corporate Governance in Asia*. The White Paper is a consensus document that identifies policy objectives and formulates a practical reform agenda to improve corporate governance in the region, using the *OECD Principles on Corporate Governance* as a reference.

Following broad endorsement of the White Paper, the ARCG decided to focus its work on how to translate policy objectives into practical outcomes. A recent tangible outcome is a *Policy Brief on Corporate Governance of Banks* (2006) that presents policy options for improvements in this area. Considering the importance of state ownership, the Roundtable set-up in 2006 the “Asia Network on Corporate Governance of State-Owned Enterprises” to reach the appropriate audience and to address the specific policy challenges ahead using the *OECD Guidelines on Corporate Governance of State-Owned Enterprises* as a reference.

In 2007, the Roundtable developed some important comparative publications on key issues, such as “Enforcement of Corporate Governance in Asia: the Unfinished Agenda” and “Asia: Overview of Corporate Governance Frameworks”. In 2008, the Roundtable will develop in-depth work on monitoring and controlling abusive related party transactions.

Guidance for moderators, rapporteurs, speakers and participants

Moderators are invited to encourage open discussion among all participants and help maintain the focus on the questions presented in their respective sessions. The objective is to stimulate reflection, encourage the exchange of views and experience on these complex issues among all participants. Ultimately, we need to come up with concrete conclusions. The rapporteurs are expected to take notes and write a summary of the key outcomes of their respective sessions. They are also welcome to contribute to the discussion itself, when appropriate. Introductory comments by speakers should be about 20 minutes and help frame the discussion with illustrations from their own country experience with references to specific policies/practices/behavior/cases, when possible. If you choose to use power point, participants are asked to limit the use of slides to a maximum of 10. Participants might also circulate descriptive documentation in advance, upon agreement. All participants are invited to react, expose their views and discuss the issues raised by speakers.

¹ The participating Asian economies include: Bangladesh, China, Hong Kong China, India, Indonesia, Korea, Malaysia, Pakistan, the Philippines, Singapore, Chinese Taipei, Thailand and Vietnam.

Thursday, 05 February 2009

08:30 **Registration of participants**

09:00 **Welcoming remarks**

Mr. Nestor Espenilla Jr., Deputy Governor of the Central Bank of the Philippines

09:30 **Introduction: what is the context?**

Moderator: Mr. JJ Moreno, Philippines Stock Exchange

- Overview, objective and scope of the meeting by *Ms. Fianna Jesover, Senior Policy Analyst, OECD*
- Highlights of key issues, from perspective of the European Union and the French experience by *Mr. Patrice Aguesse, Direction de la Régulation et des Affaires Internationales, Autorité des marchés financiers (AMF)*
- Definitions: what does related parties, related party transactions, control, and materiality mean in Asia? What are the thresholds for disclosure and the decision-making process? By *Ms. Jennifer Lee, Associate Director, Corporate Finance, Securities and Futures Commission, Hong Kong*

10:15 **Session 1: Public disclosure - Is sunshine sufficient?**

Moderator: Professor Stephen Cheung, Chair, Professor of Finance, Department of Economics and Finance, City University of Hong Kong, China

Rapporteur: Mr. Arif Baharudin, Head Accounting & Disclosure Standard Bureau, Indonesian Capital Market and Financial Institutions Supervisory Agency

Introduction by: Mr. Lixin Zhao, Deputy Director General of the Department of Listed Company Supervision, China Securities Regulatory Commission (CSRC), China

Issues for discussion:

- How to ensure accurate disclosure of related parties and their transactions?

- How to evaluate the costs and benefits of disclosure requirements? Who checks?
- How can the auditor's effectiveness be improved? And the Board's audit committee? And external bodies, such as regulators?
- Timing and method of disclosure?

11:15 Coffee/Tea Break

11:30 Session 2: Decision-making process: Responsibility of the Board

Moderator: Mr. Leo Goldschmidt, Director, European Corporate Governance Institute (ECGI) Belgium

Rapporteur: Dr Piman Limpaphayom, Assistant Director - Academic Development Sasin Graduate Institute of Business Administration of Chulalongkorn University

Introduction by Dr. Sidharta Utama, Chairman, Indonesian Institute for Corporate Directorship

Issues for discussion:

- Which RPTs are to be prohibited or monitored with particular vigilance?
- What is the main role of independent directors? Is there a record of independent directors in Asia? Would it work or is it false hope?
- Would a stronger role of independent directors, with higher remuneration, create an incentive or a problem?
- How to ensure independent judgment during the decision-making process?

12:30 Lunch

14:00 Session 3: Decision-making process: Role of the Shareholders Meeting

Moderator: Mr. Hasung Jang, Dean and Professor of Finance Korea University, Business School, Korea

Rapporteur: Mr. Kenji Hoki, Outreach Advisor, OECD

Introduction by Mr. Lee Kha Loon, Head, Chartered Financial Analyst Institute for Financial Market Integrity, Asia Pacific

Issues for discussion:

- What information should be provided to shareholders and how can the fairness of this information be ensured?
- How to ensure that only disinterested shareholders vote?
- Can shareholders exercise their power of discovery?

15:00 Session 4: Fiduciary duties: A precondition for enforcement

Moderator: Mr. Charles Travis Canfield, Senior Corporate Governance Officer, International Finance Corporation

Rapporteur: Professor Stephen Cheung, Chair, Professor of Finance, Department of Economics and Finance, City University of Hong Kong, China

Introduction by Mr. Weidong Zhang, Senior Research Fellow, Research Centre, Shanghai Stock Exchange, China

Issues for discussion:

- How to enhance, in practical terms, understanding of fiduciary duties?
- How should intra-group transactions be handled? Should some be exempt?
- How can the cost and length of court cases be minimised? What role can Alternative Dispute Resolution play? What is the experience to-date?

16:00 Coffee/Tea Break

16:30 Session 5: Enhancing enforcement and implementation

Moderator: Mr. Héctor Lehuedé, Advisor to the Minister, Ministry of Finance of Chile

Introduction by Mr. Anil Joshi HARI CHAND, Securities Commission Malaysia

Issues for discussion:

- What are the implications for regulators and policy-makers? What should they be doing? How can resources be more effectively channelled to allow them to properly enforce? What penalties or sanctions should be implemented?
- How can the legal and regulatory framework on RPTs be harmonised? How can regulatory impact assessments be used most effectively to assist this process, to get the costs and benefits right?
- How can the relevant institutions work more effectively together, sharing responsibilities, to improve enforcement?

18:00 End of Session

19:00 Dinner

Friday, 06 February 2009

9:30 Session 6: Proposed policy recommendations for the “ Practical Guide to Monitoring RPT’s”

Moderator: Ms. Fianna Jesover, Senior Policy Analyst, OECD

Comments by Mr. David Smith, Director, RiskMetrics Group, Singapore

Rapporteur : Mrs. Selvarany Rasiah, Chief Regulatory Officer, Bursa Malaysia Bhd

- The concepts of “control” and “threshold” should be introduced in the definition of “related parties” to capture abusive RPTs and to reduce the regulatory burden.
- The concepts of “materiality” and “threshold” should be introduced in the definition of “related party transactions” to capture abusive RPTs and to reduce the regulatory burden.
- The legal/regulatory definition covering “related parties” and “related party transactions” should be harmonised in each jurisdiction in order to facilitate implementation and enforcement.
- The auditor, as verifier of material information, should be sceptical of material non-related party transaction. The legal/regulatory framework should support this role.
- RPTs causing material conflicts of interest for directors should go through an effective system of checks and balances as well as a disclosure process.
- The company should develop and make public a policy to monitor related party transactions, including the possibility for non controlling shareholders to review the independence of directors in a timely manner.
- Independent directors should play a central role to monitor RPTs such as designing approval procedures for RPTs. Independent, conducting investigations, and allowing for the possibility of obtaining advice from independent experts. Their role should be supported by the legal/regulatory framework.
- A voting system should be established with a majority of disinterested shareholders for the approval of RPTs. Independent judgement on the election and removal of independent directors should be ensured.
- The legal/regulatory framework should ensure that legal action, including specialized courts and alternative dispute resolution, does not prohibit minority shareholders from seeking legal redress quickly and cost-effectively.
- Disclosure requirements for RPTs should be determined based on a regulatory impact assessment (RIA), weighing the costs and benefits. The Asian Roundtable can develop a concept paper and procedure for use by Asian jurisdictions.
- A unified regulatory system dealing with related party transactions should be established in each jurisdiction in order to facilitate implementation and enforcement efforts

11:30 **Coffee/Tea Break**

12:00 **Concluding Session**

Moderator: Dr. Jesus P. Estanislao, Chairman, Institute of Corporate Directors

I. Next steps to finalising the Report

Introduction by: Ms. Fianna Jesover, Senior Policy Analyst, OECD

- Finalising the draft, process and timing
- Discussion of the draft in Manila Roundtable and follow-up by the Task Force

Publishing the Report, dissemination

II. Brainstorming on the 2009 Agenda of the Asian Roundtable on Corporate Governance

Introduction by Mr. Kenji Hoki, Outreach Advisor, OECD

Open discussion

Closing Remarks: Atty. Francis Ed. Lim, President & CEO, Philippine Stock Exchange

13.00 **Lunch**

14:30 **End of Seminar**