

CORPORATE GOVERNANCE: CHALLENGES AND OPPORTUNITIES IN ASIA

20 – 21 November 2017

ADB Headquarters, Manila

Day 2 Opening Remarks November 21, 2017 (9 am)

Manila, Philippines

Good morning **honorable judges, distinguished guests**. Ladies and gentlemen, welcome to the second day of our conference.

In my opening remarks, I would like to do three things:

first, synthesize yesterday's discussion and link it to today's topics;

second, highlight the importance of corporate governance in the 21st century;

and *third*, call for action by all stakeholders.

1. Conference Synthesis and Link with Today's Discussion

Yesterday we first talked about the **principles of corporate governance** moderated by Chris Razook from IFC. After a keynote interview with Stephen Groff, ADB Vice President, a panel discussion zeroed in on the perspective of the private sector, **international financial institutions such as IFC and ADB**, and government regulators such as the Philippine Securities and Exchange Commission. **Mohd. Sani Ismail** then introduced the participants to **the ASEAN Corporate Governance Scorecard** and its importance and impact on the private sector.

Our second technical session, **moderated by Diana David from Financial Times**, featured the role of corporate principals and the board of directors. Jane Fuller, also of Financial Times, then walked us through

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the trends in **shareholders' part in determining corporate strategies and decisions.**

Day 1 ended with the **reaffirmation of ADB's push for the corporate governance agenda**, both in the private and public sectors, and particularly in state-owned enterprises. Through its knowledge and skills development program, ADB will continue to be an active partner of all stakeholders in the further development of corporate governance in Asia and the Pacific.

We saw how **the private and public sectors** can, and must, work together to **promote common corporate governance principles**. We've also seen how **effective management within the corporation** can lead to better relationship with shareholders and reduce the risks brought about by activists.

As I see from the agenda, today promises equally, if not **more exciting**, sessions on how we can hold corporations responsible for their actions. **From reportorial requirements and periodic audits to actual litigation**, corporations are now more exposed to **the vigilant eyes of their investors and other stakeholders.**

Mandating the composition of the board of directors is another way to influence corporate governance. Renée Adams will later present the rising trend **of imposing boardroom diversity policies** based on the "business case" argument that firms with more female board members perform better. Dan Puchniak will discuss the varieties of independent directors in Asia.

It is now up to us to use these broad measures to push for greater corporate accountability.

2. Importance of Corporate Governance in the 21st Century

The theme of **this two-day workshop**—Corporate Governance: Challenges and Opportunities in Asia—is very timely, wouldn't you agree?

More and more companies are facing stiff penalties not just from government regulators but also from activist investors and the concerned public.

In 2002, WorldCom **with assets then valued at \$104 billion** declared the third, world largest corporate bankruptcy to date. The company announced the retirement of **cofounder, president and CEO Bernard Ebbers** on 30 April 2002.¹ Two months later, WorldCom admitted its nearly \$3.9 billion accounting fraud, misrepresenting expenses as capital investments,² followed by another admission that they cooked an additional \$3.3 billion.³

In March 2005, a federal jury convicted Ebbers for conspiracy, securities fraud, and filing false statements with securities regulators in relation to an \$11 billion accounting fraud.⁴ Ebbers got 25 years in prison.⁵ Fired CFO Scott Sullivan pleaded guilty to these same charges⁶ and faced 5 years in prison.⁷ Controller David Myers also pleaded guilty and got 1 year and 1 day in prison.⁸ Other former company executives,

¹ R. Blumenstein and J. Sandberg. 2017. WorldCom's CEO Ebbers Resigns Amid Board Pressure Over Probe. *The Wall Street Journal*. 30 April. <https://www.wsj.com/articles/SB1020119459695576640>

² ABC News. 2002. WorldCom Admits \$3.8 Billion Accounting Trick. 26 June.

<http://abcnews.go.com/Business/worldcom-admits-38-billion-accounting-trick/story?id=87084>, S. Romero and R. Atlas. 2002. WorldCom's Collapse: The Overview; WorldCom Files for Bankruptcy; Largest U.S. Case. *The New York Times*. 22 July. <http://www.nytimes.com/2002/07/22/us/worldcom-s-collapse-the-overview-worldcom-files-for-bankruptcy-largest-us-case.html>

³ M. Tran. 2002. WorldCom accounting scandal. *The Guardian*. 9 August.

<https://www.theguardian.com/business/2002/aug/09/corporatefraud.worldcom2>

⁴ K. Crawford. 2005. Ex-WorldCom CEO Ebbers guilty. *CNN Money*. 15 March.

<http://money.cnn.com/2005/03/15/news/newsmakers/ebbers/>

⁵ The New York Times. 2005. Ex-WorldCom Controller Sentenced to One Year. 11 August.

<http://www.nytimes.com/2005/08/11/business/exworldcom-controller-sentenced-to-one-year.html>

⁶ *Ibid*

⁷ C. Johnson. 2005. Ex-WorldCom CFO Gets 5-Year Term. *Washington Post*. 12 August.

<http://www.washingtonpost.com/wp-dyn/content/article/2005/08/11/AR2005081100788.html>

⁸ B. Cosgrove-Mather. 2005. Former WorldCom Exec Gets Prison. *CBS News*. 10 August. <https://www.cbsnews.com/news/former-worldcom-exec-gets-prison/>

such as former accounting chief Buford Yates Jr. and accountant Betty L. Vinson, likewise pleaded guilty to charges of securities fraud.⁹ Yates got 1 year and 1 day in prison, while Vinson got 5 months in jail and 5 months of home detention.¹⁰ Accountant Troy Normand was sentenced to 3 years of probation.¹¹

Jumping to 2017 - just a few months ago, the US Department of Justice raided Perrigo for alleged price-fixing in the pharmaceutical industry. The incident drove Perrigo stock prices 4.2% down¹² and CEO John Hendrickson announced his retirement just 14 months after assuming position.¹³

Closer to home, Ezubao allegedly swindled over 900,000 investors of \$7.6 billion.¹⁴ A Beijing court sentenced Ding Ning, head of Ezubao's parent company, Yucheng Holdings, and another top corporate officer, Ding Dian, with life imprisonment, handed prison sentences of 3 to 15 years to 24 other defendants, and imposed fines, including a \$290 million penalty on Yucheng.¹⁵

Despite the increasing number of huge corporations being penalized for corporate misdeeds, many continue to commit fraud against their investors, consumers and government regulators. It would appear that the penalties being imposed on errant corporations do not

⁹ *Ibid*

¹⁰ The New York Times. 2005. Ex-WorldCom Controller Sentenced to One Year. 11 August. <http://www.nytimes.com/2005/08/11/business/exworldcom-controller-sentenced-to-one-year.html>

¹¹ NBC News. 2005. Sullivan gets five years for WorldCom fraud. 11 August. http://www.nbcnews.com/id/8907976/ns/business-corporate_scandals/t/sullivan-gets-five-years-worldcom-fraud/#.WfwQD1ok

¹² N. Bomey. 2017. Justice Department raids generics maker Perrigo in drug price-fixing probe. *USA Today*. 3 May. <https://www.usatoday.com/story/money/2017/05/03/justice-department-perrigo-drug-raid/101234832/>

¹³ V. Monga. 2017. Perrigo CEO to Leave After 14 Months. *Fox Business*. 5 June. <http://www.foxbusiness.com/features/2017/06/05/perrigo-ceo-to-leave-after-14-months.html>

¹⁴ Asia One. 2017. China jails 26 over \$10.2 billion Ponzi scheme. <http://www.asiaone.com/china/china-jails-26-over-102-billion-ponzi-scheme>

¹⁵ *Ibid*

serve as effective deterrents. In fact, this year alone, 59 Ponzi schemes with total losses reaching \$2.4 billion were discovered in the US.¹⁶

At the same time, we are seeing an increasing number of activist investors that force changes in corporate strategies and actions, albeit with lower prevalence of shareholder activism in Asia than in US and Europe.¹⁷ One positive consequence of shareholder activism is that more and more boards and executives engage their shareholders in making corporate decisions, thereby promoting management transparency.¹⁸

Activist investors can even be good news since research shows that overcoming activist campaigns can significantly boost share prices.¹⁹

3. Call for Action

In 1995, ADB became **the first multilateral development bank** to adopt a Governance Policy. Its **Anticorruption Policy** followed in 1998. Both policies now steer ADB's governance and anticorruption work.

ADB has supported several projects that **strengthen our client's corporate governance**. Our assistance in **developing and broadening the scope of corporate governance rules** range from SOEs to **Securities and Exchange Commissions**.

With this conference, we are strengthening the capacity of relevant stakeholders regulatory and governance skills and we plan to include this

¹⁶ B. Love. 2017. Investors beware: the Ponzi scheme is thriving. *Financial Times*. 30 March. <https://www.ft.com/content/000a2dc6-e322-11e6-9645-c9357a75844a?mhq5j=e6>

¹⁷ J. Adebisi. 2016. Recent Shareholder Activism in Asia Could Signal Changing Attitudes. *Skadden*. January. <https://www.skadden.com/insights/publications/2016/01/recent-shareholder-activism-in-asia-could-signal-c>

¹⁸ D. Beatty. 2017. How activist investors are transforming the role of public-company boards. *McKinsey & Company*. January. <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/how-activist-investors-are-transforming-the-role-of-public-company-boards>

¹⁹ R. Derosseau. 2017. Do Shareholders Win When Activists Win? *Fortune*. 14 October. <http://fortune.com/2017/09/25/peltz-icahn-ackman-clx-hlf-stock/>

in our regular “Knowledge and Skills Development Program” on Corporate Governance.

Together with you, we want to expand our knowledge products, including case briefs, reports, blogs, and a corporate governance webpage as part of the ADB website.

I will close with a quote from a former president of the Philippines
“With proper governance life will improve for all”