

CORPORATE GOVERNANCE: CHALLENGES AND OPPORTUNITIES IN ASIA

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Introduction

Honorable judges, distinguished guests, ladies and gentlemen, good morning. My name is Christopher Stephens, and

I am pleased to welcome you all to this conference on Corporate Governance: Challenges and Opportunities in Asia.

Over the next few minutes, I would like

1. to tell you a little bit about a program that we run in our legal department called the Law and Policy Reform – LPR;
2. to identify some corporate governance challenges in Asia; and
3. finally, to emphasize how promoting good corporate governance strengthens the rule of law, facilitates further domestic and foreign investment, and facilitates sustainable and inclusive development.

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OGC's Law and Policy Reform Program

Our legal department initiated the LPR– Program in 1995 to support the region's economic development through reforms in law and policy. Since that time, the program has expanded and reoriented its focus to be more responsive to the needs of our Development Member Countries.

The central premise of the LPR Program is that a properly functioning legal system is essential to sustainable development.

Such a system must be

1. anchored on the Rule of Law and
2. comprise a comprehensive legal framework with effective
 - a. legislative,
 - b. regulatory,
 - c. administrative and
 - d. judicial institutions

that establish, implement, and enforce laws and regulations

1. fairly,
2. consistently,
3. ethically and
4. predictably.

An economy with such a legal framework (1) respects **property rights** and contracts, (2) engenders confidence of businesses and investors, and (3) attracts domestic and foreign investment

It also encourages growth, thereby creating jobs and rising incomes, and contributes to the alleviation of poverty.

If such a framework also operates in an environment of inclusiveness with respect to gender and all segments of society, then it will maximize potential and effectiveness, and growth will be

1. faster,
2. broader,
3. more stable, and
4. more sustainable.

Private and financial sector development are among the key priority areas of our LPR Program.

Through these discussions over the next 2 days, we aim to highlight the link between corporate governance best practices and better corporate results and higher returns, and more successful and more impactful investments.

We hope that this gathering will contribute to a discussion of the need for legal and regulatory reforms in corporate governance and help address some of the challenges hampering our developing member countries' (DMCs) growth.

Corporate Governance Challenges in Asia

Corporate governance in Asia has taken great strides in the last few decades. The **1997 Asian financial crisis**, and the **2008 global financial meltdown** have served as wake-up calls for governments, investors, and corporate executives to put measures in place that ensure a healthy and stable market that mitigates risks and improves performance. But challenges remain

A study by the CFA Institute has identified three predominant models of ownership in Asia in particular need of reform:

1. state-owned enterprises (SOEs);
2. the vertical holding company ruled by a family dynasty; and
3. the circular or cross ownership model as where family-controlled conglomerates oversee subsidiaries that own shares in each other.¹

These models of ownership impact not only on how these firms are managed, but more importantly affect the quality of disclosure,

¹ <http://www.accaglobal.com/ca/en/member/member/accounting-business/2016/05/insights/asia-governance.html>

transparency and accountability and the management of national resources.

Ownership and management structures and rules on financial reporting, disclosure and minority shareholder rights also impact the public's trust in corporate enterprises.

Reforms in SOEs in particular is a priority area for ADB. We recognize that when SOEs are inefficient, they drain limited public resources and act as a drag on business growth and ultimately economic growth.² Reforming SOEs is critical to allow the market a greater role in the economy and to eliminate market distortions.³

As cited by an OECD study, several important regional developments in the ownership and governance of SOEs have already taken place here in Asia in recent years, reflecting the importance given to SOE reforms:

- a) In Pakistan: The establishment of the “Cabinet Committee on Restructuring of Public Sector Enterprises”; and the first Public Sector Companies (Corporate Governance) Rules, came into force in 2013;
- b) In India: The creation of a new category of Central Public Sector Enterprises (CPSE) or **MA-HA-RAT-NA**

² <https://www.adb.org/sites/default/files/publication/223806/reforming-state-owned-enterprises.pdf>

³ <https://www.adb.org/news/speeches/reforming-public-finance-sustain-inclusive-growth-takehiko-nakao>

“Maharatna” as well as the establishment of governmentally approved “Guidelines on Corporate Governance” for Maharatna;

- c) In the Philippines: The passage of the Government-Owned and Controlled Corporations Governance Act of 2011. And the creation of the Governance Commission for those SOEs;
- d) And in Malaysia: The comprehensive 10-year Government Linked Companies Transformation Programme contributed to those companies becoming the highest ranked companies in Malaysia.

Another issue of growing concern that we will discuss is **diversity on boards of directors**. Our legal department has made gender equality one of the LPR program’s central priorities. We see diversity on boards as a continuing challenge for corporate governance. In a 2016 Harvard Law survey of corporate directors, 96% of all directors surveyed said that diversity is important.⁴

There are also credible studies⁵ showing that:

- On return on sales basis, companies with the most women board of directors members outperform those with the least by 16%; and

⁴ <https://corpgov.law.harvard.edu/2016/10/27/2016-annual-corporate-directors-survey/>

⁵ <http://www.catalyst.org/knowledge/bottom-line-corporate-performance-and-womens-representation-boards-20042008>

- On return on investment capital, companies with the most women board members outperform those with the least by 26%.

Opportunities to Strengthen the Rule of Law

The corporate governance challenges I highlighted above – and there are many more – can serve as catalysts for real and significant change. We must transform them into opportunities for collaboration and cooperation among all stakeholders.

The diversity of participants we have here today – judges, corporate regulators, policy makers, SOE and private company executives, academics, and legal practitioners – reflects the multi-faceted nature of corporate governance. At the same time, it also reflects the many avenues for corporate governance reforms that we can undertake.

Initiating and implementing these reforms helps strengthen the rule of law by ensuring adequate legal and regulatory rules for the proper management and operation of business enterprises. This also helps institutionalize standards and accountability, ensuring a level and fair playing field for all stakeholders, as well as the efficient and ethical management of public resources.

Conclusion

I wish everyone many productive discussions over the next 2 days.

Thank you again and best wishes for the success of the conference.