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CORPORATE GOVERNANCE AND TRANSPARENCY SCENARIO IN ASIA

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ABSTARCT

CG in Asia have assumed greater limelight with the series of corporate failings and scandals, following which the markets, investors and society at large have begun to loose faith in the infallibility of these systems. It provides an overview of the CG practices and transparency scenario prevalent in the Asia region, duly supported by empirical data. No doubt, several initiatives have been undertaken by various national and international agencies, and CG scenario have considerably improved, but much work still remains to be done, and the ethos of CG culture has yet to sink in fully. We highly appreciate the timely and bold initiative taken by the Council of the ICAI to agree to fully converge with IFRS standards on or after 1 April 2011.
This article seeks to present a series of suggestions aimed to improve CG practices in India. Most notably, India must reform how its boards of directors function, improve its enforcement mechanisms, redefine its corporate laws, and embrace CG as a philosophy. The country should be proud of what it has achieved in CG practices but, of course, much more needs to be done. Thus, CG in India and Asia remains a work-in-progress requiring some rethinking.

Introduction

The term 'governance' has been derived from the word '*gubernare*', which means "to rule or steer". Governance is the general exercise of authority, and the process by which a society or an organization 'steers' itself. However, over the years it has found significant relevance in the corporate-sector on account of growing number and size of corporations, the widening base of their shareholders, increasing linkages with the physical environment, and overall impact on the society's well-being. Corporate Governance (CG) is the system of structural, procedural and cultural safeguards designed to ensure that a company is run in the 'best' long-term interests of its shareholders, as well as, other stakeholders. This alignment requires a 'commitment' to sustained interactions between a company and its principal stakeholders.
The separation of ownership (the shareholder) and control (the management) in corporate enterprises brings about "agency" problem in which management may take actions that compromise the interests of its shareholders. The primary CG mechanism, in fact, is the board of directors, and its primary purpose is to combat the familiar 'agency' problem—the

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tendency and ability of senior managers to put their personal interests above those of the company's shareholders and stakeholders. It is the responsibility of the board of directors, in fact, to ensure 'good' CG. This involves a set of relationships between the management of a corporation, its board, its shareholders and other relevant stakeholders. Accordingly, the board must agree on the corporation's purpose (what it is for), its ethical values (what it stands for), and the strategy to achieve its purpose. In the practical sense, CG involves the "nuts and bolts" of how corporations should fulfill their responsibilities to their shareholders and other stakeholders.

"Good" CG requires that the board must govern the corporation with integrity and enterprise in a manner, which entrenches and enhances the 'license' it has to operate. This license is not only regulatory but embraces the corporation's interaction with its shareholders and other stakeholders, such as, the communities in which it operates, bankers, other suppliers of finance and credit, customers, the media and public opinion makers and pressure groups. While the board is accountable to the owners of the corporation for achieving the corporate objective, its conduct in regard to factors, such as business ethics and the environment, for example, may have an impact on legitimate societal interests (stakeholders) and thereby influence the reputation and long-term interests of the business enterprise. However, an ideal governance structure should give management sufficient room to exercise their talent, while simultaneously controlling their behavior.

During the 1990s, a number of high-profile corporate scandals (viz., Enron, WorldCom, Tyco, etc.) in the US and elsewhere (viz., Parmalat, Ahold, Alstom, etc.) triggered an in-depth reflection on the 'regulatory' role of the government in protecting the interests of shareholders. The Enron scandal, for example, has sparked numerous debates on issues relating to transparency, accountability and disclosure. For the US—a strong proponent of transparency and good CG—a scandal like Enron is certainly an embarrassment. The energy giant surprised the market by announcing that it was forced to recognize losses of US$ 1.01 billion. These losses were related to the unwinding of partnerships controlled by Enron's CFO. As a result the company would eliminate more than US$1 billion in shareholder equity. This led to a securities class-action lawsuit on behalf of all persons who acquired Enron's stock during 2000-01. "The lawsuit alleges that Enron's management: (a) misled investors by failing to disclose material information about the company's risk position, (b) issued false and misleading information to potential investors, and (c) disposed of over US$73 million of their stock to unsuspecting investors." What transpired next was a corporate soap-opera: bankruptcy, suicide, political patronage, cronyism, more allegations and even more denials? Ferris et al., (2007) concludes as: "We find that the incidence of 'derivative' lawsuits is higher for firms with a greater likelihood of "agency conflicts". Derivative lawsuits are associated with significant improvements in the board of directors: the proportion of outside representation on the board increases." To redress the problem of corporate misconduct, ensuring sound CG is believed to be essential to maintaining investor confidence and good performance.

A growing number of empirical studies have demonstrated that good CG contributes to better investor protection (la Porta et al., 2000), lower costs of capital (Ashbaugh-Skaife et

al., 2004), reduced earnings manipulations (Xie et al., 2001), increased company market value (Black et al., 2004; Brown and Caylor, 2004), improved stock returns (Gompers et al., 2003; Bauer et al., 2003) and even economic growth (Maher and Anderson, 1999). "Well-governed companies with actively traded shares should be able to raise funds from non-controlling investors at significantly lower cost than poorly governed companies because of the premium potential investors can be expected to demand for taking the risk to invest in less well-governed companies. CG continues to be seen by some as relatively unimportant in developing countries, in large part because of the small number of firms there with widely traded shares," (Charles Oman, 2005). The purpose of CG, in nutshell, is to build and strengthen accountability, credibility, transparency, integrity and trust. Under CG system, effective checks and balances are exercised by the followings: shareholders voting system; appointment of independent directors; establishment of nomination, audit, ethics, CG and remuneration committees; using internal audit; and appointment of an effective and powerful chairman and CEO. In the practical sense, CG involves the nuts & bolts of how corporations should fulfill their responsibilities to their shareholders and other stakeholders.

CG practiced by some corporations, unfortunately, have turned out to be an annual 'ritual,' involving "check-box" of items around legislative requirements (e.g., provisions for board composition in terms of executive and non-executive directors, setting up independent audit and CG committees, CEO/CFO certification of financial statements, legal compliance monitoring, internal controls, etc.). Realizing the need for 'good' governance, corporations from all over the world must attempt to 'evolve' gradually from the traditional "compliance" approach to a "conscience" one. There has been recognition of the need to 'balance' interests of not just shareholders but different stakeholders, who are equally important for the health of a company. Undoubtedly, CG has assumed greater limelight with the series of corporate failings, across the globe, following which the markets, the investors and the society at large, have begun to lose faith in the infallibility of these systems. For instance, Badawi (2005) portrays the situation as: "The recent wave of corporate fraudulent financial reporting has prompted global actions for reforms in CG and financial reporting, by governments and the accounting & auditing standard-setting bodies in the U.S. and internationally (including the European Union, the International Federation of Accountants, the OECD, and others) in order to restore investor confidence in financial reporting, the accounting profession and global financial markets."

CG refers to that blend of law, regulation, and appropriate 'voluntary' private-sector practices, which enables the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate it by generating long-term economic value for its shareholders, while respecting the interests of other stakeholders and society as a whole. The principal characteristics of effective CG are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and directors capable of independently approving the corporation's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary. Similarly, the Asian Development

Bank (1999) defines ‘good governance’ as based on four pillars: transparency, accountability, predictability and participation, recognizing that “their application must be country-specific and solidly grounded in the economic, social and administrative capacity realities of the country”.

“CG comprehends that structure of relationships and corresponding responsibilities among a core group consisting of shareholders, board members, corporate managers designed to ‘best’ foster the competitive performance required to achieve the corporation’s primary objective,” observes Organization for Economic Cooperation and Development (OECD). It is concerned with wider accountability and responsibility of the directors towards ‘key’ stakeholders of the corporations, viz., employees, consumers, suppliers, creditors and the wider community. Oman and Blume (2005) have aptly pointed out, “Corporations around the world are realizing that better CG adds considerable value to their operational performance. The poor quality of local systems of CG lies at the heart of one of the greatest challenges facing most countries in the developing world.”

In developing nations, both ‘voluntary’ guidelines and more ‘coercive’ codes of best practice have already been issued. For example, both “the Code of Best Practices” issued by the Brazilian Institute of Corporate Directors and the “Code of Corporate Governance” issued by the Corporate Governance Committee of the Mexican Business Coordinating Counsel are wholly ‘aspirational’ and not linked to any ‘listing’ requirements. Similarly, the Confederation of the Indian Industry (CII’s Code) and the Stock Exchange of Thailand Code are designed to build awareness within the corporate sector of governance best practice, but are not, at this time, linked to stock exchange listing requirements. In sharp contrast to these, Malaysia’s Code on Corporate Governance, the Code of Best Practice issued by the Hong Kong Exchange, and South Africa’s King Commission Report on CG, all contemplate mandatory disclosures concerning compliance with their recommendations. Many companies are now thinking of governance as something more than just an area reporting to the Corporate Secretary or Legal Counsel. Recently, the rise of the “Chief Governance Officer” mirrors the appointment of the Chief Ethics Officer by many companies that have been plagued by scandal or crisis (e.g. MCI). As these roles become institutionalized, they will emerge as the engines of the next generation of governance ‘best’ practices designed to add value, instead of simply complying with external regulations and codes.

Many aspects of a company’s structure, behavior, ethical standards and culture, and the legal, regulatory, community and media environments in which it operates, impacts the governance structure of a company. ‘Good’ governance is not simply a matter of adopting a set of rules, but a continuous process of implementing tailored strategic initiatives to maximize long-term value. The rules does matter, of course, but rules have changed significantly in recent years, with the introduction of many national, international regulations and codes defining ‘best practice’. While some of the country ‘specific’ recommendations may vary, most best-practices prescriptions focus on improving practices and disclosure in five ‘core’ areas as outlined in **Box-1**. “The Combined Code, 2003 (of the UK) is a practical implementation of this idea comprising two parts: principles of good governance and a code of best practice,” (Chang et al., 2006).

Box-1: Good Governance Best Practices—Key Areas

Core Areas	Recommendations
Board Structure	• Establish at least a majority of independent non-executive directors • Install a non-executive chairman, rather than a Chairman-CEO • Hold non-executive director meetings without management present • Install a non-executive chairman on all major board committees • Establish a unitary board structure where all directors represent all shareholders, rather than a two-tiered structure
Audit and Financial Controls	• Establish procedures to ensure clear, accurate and timely financial disclosure, including the valuation of intangible assets • Require independent outside auditors, free from potential conflicts of interest • Establish an audit committee 100% comprised of independent directors with the resources to ensure proper financial oversight • Strengthen ethical guidelines and internal control mechanisms
Executive Compensation	• Link compensation to long-run improvements in operating performance relative to specific benchmarks • Require 'clawback' provisions for recouping compensation paid based on false results
Shareholder Rights	• Ensure that all shareholders have one vote per share • Eliminate multiple class of stock with divergent rights • Provide shareholders with the ability to nominate potential directors
Market for Control	• Remove excessive anti-takeover mechanisms such as poison pills, classified boards, golden shares and preference shares.

It is a matter of great satisfaction that moves are afoot globally to promote 'convergence' of good CG practices. "Codes on Corporate Governance" issued internationally by the OECD, World Bank, Australia, South Africa, France, Common Wealth Secretariat, etc. are all promoting a "convergence of CG practices". The International Accounting Standards, with linkages to the International Organization of Securities Commission (IOSCO), which represents most of the world's regulating stock exchanges, are pulling towards a 'harmonization' of desirable CG practices. Yet the sober truth is that CG practices in various

countries still remain divergent, despite all these major initiatives for convergence. Despite some incidences of abuse in the UK, controls on CG are better developed than in other European countries. This is because companies listed in Britain are subject to the "Combined Code on Corporate Governance," and also the Directors' Remuneration Report Regulations, passed in 2002. No equivalent level of disclosure, however, is required in Germany, Spain, Austria or Belgium, and it seems that the British regime has formed a blueprint for new European Commission recommendations. The Commission is keen to increase standards of CG across all member states and its recent recommendations focus on directors' remuneration and the role of non-executive directors.

The Commonwealth Association for Corporate Governance (CACG), assisted by the Commonwealth Secretariat and the Commonwealth Fund for Technical Co-operation, has undertaken a pioneering role in the field of CG. In fact, extensive work has already been undertaken by the OECD, of which a number of commonwealth countries are also members. In preparing the CACG Guidelines, however, reference was made to the OECD "Principles of Corporate Governance". Moreover, the G-7 countries also endorsed it as an acceptable level of CG standards with universal application, and which has formed the basis of the joint World Bank/OECD initiative to form the 'Global Corporate Governance Forum.' The Commonwealth is a participant in this initiative too.

There have been several leading CG initiatives launched in India since the mid-1990s. The first was by the Confederation of Indian Industry (CII), which came up with the first voluntary code of CG in 1998. The second was by the Securities and Exchange Board of India (SEBI), now enshrined as Clause 49 of the listing agreement. The Naresh Chandra Committee and Narayana Murthy Committee reports followed it in 2002. Based on some of the recommendation of these committees, SEBI revised Clause 49 of the listing agreement in August 2003. The Department of Company Affairs had set up "National Foundation for Corporate Governance" (www.nfcgindia.org) in partnership with CII, ICAI, and ICSI. In CG practices, India can be proud of what it has achieved so far, initially voluntarily and later under guidance of various regulators, while recognizing that obviously much more needs to be done.

Ultimately, CG in any country can be improved by making corporate operations more transparent, without sacrificing business strategy and secrets, which are absolutely necessary for success in the 'competitive' market place (Greer et. al., 2006). More and more Indian corporations (for example, Hero Honda, Hindustan Lever, Tata group, Larsen & Toubro, Infosys, Wipro, etc.) are being tested on 'minimum' ethical standards laid down by '*shastras'* and by several regulatory agencies. They have to meet both ethical and legal norms in the conduct of their day-to-day operations. The objectives of the present paper are two-fold: (a) can we look to Indian *Shastras* for ethical concepts and values, which may prove to be the cornerstone of CG? (b) Why improving transparency in the CG, especially in the Asia, is labelled as the 'biggest' problem? An attempt will be made here to search for answers to both these issues.

Corporate Governance Scenario in the Asian Countries

CG has received much attention in recent years, partly due to the "financial crisis" in the Asia. In fact, Asia is a very 'diverse' region in terms of levels of economic development and institutional regimes. There are commonalities across the economies; however, most importantly the prevalence of family ownership and relationship-based transactions. The CG work on Asia so far shows that the combination of ownership structure and property rights system (law and enforcement) fundamentally delineates the incentive, policy and performance of managers and their firms. While Asia has some 'specific' CG issues, there are many CG issues in Asia 'generic' to other countries, most importantly the role of family ownership concentration and the degree of minority rights protection. Conventional CG mechanisms (takeovers and board of directors) are not strong enough to relieve the agency problems in Asia. Firms do employ other mechanisms to mitigate their agency problems (such as, employing reputable auditors), but even these have only limited effectiveness. The overall low transparency of Asian corporations relates to these agency problems, with the prevalence of connection-based transactions, increasing desires among all owners and investors to protect rents (with rents often arising from government actions) including a large safety net provided to the financial sector. Resulting forms of crony capitalism, i.e., combinations of weak CG and government interference, not only lead to poor performance and risky financing patterns, but also are conducive to macro-economic crises. Another lesson is that group and diversification structures are associated with agency problems that may more than offset any beneficial effects from transactions in internal markets and learning by doing within the same organization. While work on Asia has clarified some CG issues, many important issues are still unknown.

No doubt, CG guidelines and codes of best practice arise in the context of, and are affected by, differing national frameworks of law, regulation and stock exchange listing rules, and differing societal values. Although boards of directors provide an important internal mechanism for holding management accountable, effective CG is supported by and dependent on the market for corporate control, securities regulation, company law, accounting and auditing standards, bankruptcy laws, and judicial enforcements. Therefore, to understand one nation's CG practices in relation to another's, one must understand not only the "best practice" documents but also the underlying legal and enforcement framework. An attempt will be made here to survey the CG scenario in the Asian countries.

The financial crisis that overran much of Asia in the late 1990s prompted most of the countries to give improved CG a priority. "CG Watch," an annual collaborative study of the CG landscape of the Asian markets undertaken by independent stockbroker CLSA Asia Pacific Markets and the Asian Corporate Governance Association (ACGA) offers the most comprehensive assessment of CG standards, and progress for both regulators and companies within the Asia region. They introduced a detailed survey and scoring methodology in 2004, made the methodology more rigorous in 2005 and enhanced the methodology further in 2007. However, no survey was done in 2006. The CG scores for companies is based on "seven" key categories. Six of the key categories—discipline, transparency, independence

accountability, responsibility and fairness—are unchanged from our previous year's scores, with the seventh category this year being the score for the "clean & green" survey that replaced the previous social responsibility category. Under each of these categories, we assess the companies on issues that are 'key' to constituting good CG. Our CG score is based on how we rate a company on 54 issues under six main aspects, each with a 15% weighting, that we take to constitute the concept of CG, to which we add the C&G score with a 10% weighting. The CG scores for Asian markets during 2003 to 2007 are shown in **Table-1.**

Table-1: Corporate Governance Watch Scores

Market	2003	2004	2005	2007
1. Hong Kong	73	67	69	67
2. Singapore	77	75	70	65
3. India	66	62	61	56
4. Taiwan	58	55	52	54
5. Japan	--	--	--	51
6. South Korea	55	58	50	49
7. Malaysia	55	60	56	49
8. Thailand	46	53	50	47
9. China	43	48	44	45
10. Philippines	37	50	48	41
11. Indonesia	32	40	37	37

In 2007, the ACGA team has taken a bigger role in the scoring, building up the country criteria to 87 issues under five categories: CG rules and practices, enforcement, political and regulatory environment, accounting and auditing standards, as well as overall CG culture. As in our last survey, absolute scores have fallen for most markets primarily because of the following changes made to the methodology: (a) *New questions*: Our last survey had 76 questions across the five categories. This year, we have scored against 87 questions. First category not just CG rules, but also practices; and (b) *Scoring system*: The scores are now based on the following gradations: Yes (1 point); Largely (0.75 points); Somewhat (0.5 points); Marginally (0.25 points); and No (zero point). Wording of some questions are also made more precise.

The ACGA has tightened its ranking criteria. "The more one looks the less one finds: country scores have generally declined. Hong Kong and Singapore top the 11 markets we surveyed; Indonesia and the Philippines at the bottom". Country ratings are trending downwards not because of any decline in their CG standards or less efforts on the part of regulators. Jamie Allen (2005) observes: "Substantial improvements on the basis of key determinants of CG had taken place in the Asian countries markets rankings for CG. Countries in Asia were scored against these issues and a weighting to each category applied to arrive at an overall country score." It is encouraging that most markets in 2007 scored

higher for "CG Culture," indicating that the level of CG-related activity among companies, investors, CG associations, academics, director institutes and other professional bodies is increasing. This should provide a foundation for continued improvements in the years to come.

Table-2 shows that in Singapore, Malaysia, Indonesia and Thailand regulators require companies to report their annual results within two months of the fiscal year-end. Similarly, quarterly reporting is mandatory in most Asian markets (except Hong Kong) where strong resistance to change appears to persist among many of the territory's large companies. All markets (except Taiwan and the Philippines) require the disclosure of stakes (5% or more) in companies, and some markets also require the disclosure of individual directors' compensation. Most markets also insist on the disclosure of audit and non-audit fees paid to external auditors. Other areas of improvement include enforcement, where there is evidence in most markets of increased resources being applied in this area. However, most markets have improved their accounting and auditing standards largely in line with international standards, although there are discrepancies in Taiwan, China and Indonesia. Auditing standards are pretty much inline with international standards, other than in China. Singapore has already taken the big lead in its efforts to regulate the accounting profession. Matthias, Lawrence and Wilson (2005) have portrayed pessimistic scenario: "Securities regulation in many markets has been updated and strengthened, especially in the area of dealings in securities by directors and related-party transactions. However, we do not see the legal system allowing minority shareholders cost-effective access to courts in Hong Kong, India, Malaysia, the Philippines, Thailand or Indonesia." Nowadays, agreement is growing at least in principle on what 'good' governance entails, and most countries in the region have adopted 'explicit' governance codes.

Table-2: Asian Governance Regimes

Country* Ranking Criteria	**China**	**Hong Kong**	**India**	**Indonesia**	**Korea**	**Malaysia**	**Philippines**	**Singapore**	**Taiwan**	**Thailand**
RULES AND REGULATIONS										
Most companies report their annual results within 2 months?	N	N	N	Y	N	Y	N	Y	N	Y
Have reporting deadlines been shortened in the past 3 years?	N	N	Y	Y	N	Y	N	Y	N	S
Is quarterly reporting mandatory?	S	N	Y	Y	Y	Y	Y	Y	S	Y
Do securities laws require disclosure of ownership stakes above 5%?	Y	Y	Y	S	Y	Y	N	Y	N	Y
Do securities laws require prompt disclosure of	Y	Y	Y	N	Y	Y	Y	Y	S	Y

share transactions by directors and controlling shareholders?										
Are class-action lawsuits permitted?	S	N	N	N	Y	N	N	N	S	N
Is voting by poll mandatory for resolutions at AGMs?	N	S	N	N	N	N	N	N	S	N
Can shareholders easily remove a director who has been convicted of fraud or other serious corporate crimes?	S	S	N	S	N	S	S	Y	Y	N
Will share option expensing become mandatory over the next 10 month?	N	Y	S	S	N	N	Y	Y	S	N
ENFORCEMENT										
Is there an independent commission against corruption (or its equivalent) that is seen to be effective in taking public and private sector companies?	N	Y	S	N	S	S	N	Y	N	N
POLITICAL AND REGULATORY ENVIRONMENT										
Is the statutory regulator (i. e., securities commission) autonomous of government (not part of the Finance Ministry)?	S	Y	S	N	S	S	S	S	S	S
ACCOUNTING AND AUDITING										
Do the rules require disclosure of consolidated accounts?	Y	Y	Y	Y	Y	Y	Y	Y	S	Y
Do the rules require segment reporting?	Y	Y	Y	S	Y	Y	Y	Y	S	Y
Do the rules require disclosure of audit and non-audit fees paid to the external auditor?	Y	Y	Y	N	Y	Y	S	S	Y	Y
Do the rules require disclosure of connected transactions?	Y	Y	Y	Y	Y	Y	S	Y	Y	Y
Does the government or the accounting regulator have a policy of following international standards on auditing?	Y	Y	S	S	S	Y	Y	Y	S	Y
INSTITUTIONAL MECHANISMS AND CORPORATE CULTURE										
Are institutional investors engaged in promoting better corporate governance practices?	N	S	S	N	S	S	N	S	S	S
Are any retail investors engaged in promoting better corporate governance practices?	N	Y	S	N	Y	S	N	Y	N	N
Have retail investors formed their own shareholder activist organization?	N	N	Y	S	Y	S	N	Y	N	N

[*Japan was not covered in this survey. Keys: Y = Yes, N = No, S = Somewhat]

So far so much for what is good in Asian CG regulation. There is continued reluctance among many Asian markets not to shorten their annual reporting deadlines, especially in Hong Kong, Korea, Taiwan and Indonesia. Only South Korea has introduced comprehensive

class-action litigation to assist investors to fight securities violations. China and Taiwan already have systems that allow a degree of class action, and Thailand is having a bill under consideration. Unfortunately, no market has yet introduced mandatory "voting by poll," rather than a simple "show of hands," for all resolutions at shareholders meetings. Hong Kong and Taiwan, however, are rare examples of markets that require voting by poll for some major resolutions. Still, very few Asian markets require directors' remuneration to be disclosed on a named, individual basis. Most markets permits disclosure to be made in aggregate (or by way of bands). Similarly, independent board committees (except audit committees) have not found strong support among regulators and no market makes it easy for minority shareholders to nominate independent directors. As Wong and So (2005) states, "Worryingly, only Singapore, Taiwan and, to a lesser degree, South Korea, have regulations that make it easy to remove directors convicted of fraud or other serious corporate crimes." South Korea now requires the largest conglomerates (or *chaebols*) to issue "combined statements", including all companies under their control, regardless of whether they have a direct equity interest. The independence of external auditors is being boosted too. In 2002, South Korea's Securities and Futures Commission took the unprecedented step of punishing the local affiliate of a global accounting firm for negligence by reducing the number of companies, it could serve as external auditor.

According to Panjwani (2005), "The country CG score for India for 2005 is 6.2, or third in the region after Singapore (7.5) and Hong Kong (6.7), as shown in **Table-3.** While India scores over most other Asian markets in areas of rules & regulations, and their enforcement, it scores lower than most on adoption of international auditing standards." Malaysia improved its ranking by two places as a result of improved accounting standards, better enforcement, and higher score for its political and regulatory environment, while Philippines marginally leapfrogged China due mainly to its higher score for accounting and auditing. Indonesia remains firmly rooted at the foot of the table. Leahy (2004) concludes, "Securities laws and listing requirements of stock exchanges have been strengthened, regulatory authorities have enhanced powers, and the media are becoming inquisitive and probing. However, the institutions needed to ensure good governance (viz., judicial systems, capital markets, long-term institutional investors that can push for better governance) continues to be underdeveloped in most of these countries."

Table-3: Markets Ranked by Corporate Governance in Asia

Markets	**Rules & Regulations (15%)**	**Enforce-ment (25%)**	**Political & Regulatory (20%)**	**IGAAP (20%)**	**CG Culture (20%)**	**Country Score (2005)**	**Country Score (2004)**
Singapore	7.9	6.5	8.1	9.5	5.8	7.5	7.7
HongKong	6.6	5.8	7.5	9.0	4.6	6.7	7.3
India	6.6	5.8	6.3	7.5	5.0	6.2	6.6
Malaysia	7.1	5.0	5.0	9.0	4.6	6.0	5.5
Korea	6.1	5.0	5.0	8.0	5.0	5.8	5.5

Taiwan	6.3	4.6	6.3	7.0	3.5	5.5	5.8
Thailand	6.1	3.8	5.0	8.5	3.5	5.3	4.6
Philippines	5.8	3.1	5.0	8.5	3.1	5.0	3.7
China	5.3	4.2	5.0	7.5	2.3	4.8	4.3
Indonesia	5.3	2.7	3.8	6.0	2.7	4.0	3.2

New forms of CG behavior will undoubtedly take considerable time to become ingrained in the thinking and culture of more and more companies. Governments, corporate leaders, investors, and regulators in most of the Asian countries do realize that CG practices would not change overnight, so patience is needed. Getting companies to comply with CG rules across Asia is a daunting task requiring greater transparency and better enforcement, not to mention a cultural upheaval in boardrooms. But given the vast amount of differences in ownership structures, business practices and enforcement capabilities, merely adopting CG requirements *en masse* from the U.S. or Europe would be a foolish mistake. Asian governments should rank their reforms, from time to time, in order of priority and tailor them to the country's specific needs. Ensuring that local laws and CG codes are consistent with the OECD "Principles of CG," we personally feel would be a good starting point. In this context, Witherell (2004) very appropriately pointed out: "Policy makers, investors, corporations and stakeholders, worldwide have used these principles to tackle a broad set of relevant issues common to all, such as, the need for transparent reporting, having informed shareholders, and accountable boards of directors." However, we are of the firm opinion that it is better to enforce 'basic' reforms vigorously rather than to adopt requirements that would go totally unheeded.

Since CG is an evolving concept in most parts of Asia, raising awareness is vital to any reform efforts to succeed. Region-wide organizations, such as the Asian Corporate Governance Association, have been formed to promote understanding, sharing country-specific experiences & problems, and stimulating corporate reforms in the right direction. As Barton and Coombers (2005) observed: "Several regional groups, including CLSA Emerging Markets (a regional brokerage firm), Thai Rating and Information Services, and India's ICRA, to name a few, publicly rate the governance practices of listed companies." In addition, we have several national and international organizations (viz., World Council for Corporate Governance, Global Corporate Governance Forum, World Bank's Corporate Governance and International Finance Corporation, OECD's Corporate Governance, National Foundation For Corporate Governance, Commonwealth Association for Corporate Governance, etc.) which are sharing their country-specific rich experiences, and providing guidance and impetus for improvements in the sphere of CG. The CACG Guidelines have been structured on a basis complimentary to the OECD Principles of Corporate Governance.

Over the past few years, a range of initiatives—public and private—have been launched with a view to improving CG and ethics in Asia. But it is clear that CFOs consider many of these measures to be works in progress, requiring further development to be truly effective. For example, the Malaysian Code of Corporate Governance, first introduced in March 2000, has

been a success in ensuring a high level of compliance with the CG principles and best practices (CG Survey Report 2004). In 2004, the government established the Malaysian Institute of Integrity, whose role is to facilitate and execute the National Integrity Plan in both the private and public sectors. Whistle-blowing laws have also been introduced across every sector. The Securities Laws were amended in 2005 to include whistle-blowing provisions for both offices of the companies and external auditors. The Companies Commission of Malaysia is also looking at such provisions.

Not to be outdone, Singapore's government launched its Council on Corporate Disclosure and Governance in 2002, to prescribe accounting standards and strengthen the existing framework for reporting practices. And in November 2004 the Hong Kong stock exchange published a final report on its new Code on CG Practices, along with a new set of rules requiring issuers to include a 'CG Report' in their annual reports. Private efforts include the KPMG-backed HK Audit Committee Institute, which opened at the end of 2002 to serve as a resource for audit committees and senior management, and groups such as the Minority Shareholders Watchdog Group in Malaysia. Published guidance and standards, such as those issued by COSO, are influential too. COSO is a voluntary private sector organization, founded in 1985 by professional bodies in the US that promotes better financial reporting through business ethics, effective internal controls, and corporate governance.

Transparency Scenario in the Asian Countries

Long renowned for their opaque business practices, Asia's corporations are undergoing a dramatic transformation on the CG front. One of the major pillar of 'good' CG is "transparency" (projected through a code of governance), which incorporates a system of checks and balances between key players—board of directors, senior level of management, auditors and other stakeholders. As Islam (2006) rightfully observes: "Transparency requires enforcement of "right to information"—nature, timeliness, and integrity of the information produced at each level of interface." All this can succeed when the responsibilities of each segment of the corporate entity, and their interface is clearly defined and understood by all. If CG is concerned with better ethics and principles, it is only natural that the focus should be on 'increasing' transparency. In fact, transparency is measured by the ability of outsiders to assess true position of a company—availability of firm specific information to those outside publicly traded firms. We conceptualize corporate transparency within a country as the joint output of a multifaceted system whose components collectively produce, gather, validate, and disseminate information to market participants outside the firm. The framework categorizes country-level measures of information mechanisms under three headings: (a) the corporate reporting regime, including measures of intensity, measurement principles, timeliness, and audit quality of financial disclosures, and the intensity of governance disclosures (i.e., identity, remuneration, and shareholdings of officers and directors, and identity and holdings of other major shareholders); (b) the intensity of private information acquisition, including measures of analyst following, and the prevalence of pooled investment schemes and insider trading activities; and (c) information dissemination,

including a measure of the extent of media penetration in an economy. To sum up, key components of transparency on the CG front comprises of the followings:

- Timely release of Annual Report
- Timely release of semi-annual financial announcements
- Timely release of quarterly results
- Prompt disclosure of results with no leakage ahead of announcement.
- Clear and informative results disclosure
- Accounts presented according to international GAAP
- Prompt disclosure of market-sensitive information
- Accessibility of investors/analysts to senior management
- Websites where announcements updated promptly
- Sufficient disclosure of any dilutive instruments
- Waivers applied on disclosure rules for the market

It is encouraging that most Asian markets have scored higher for "CG Culture and IGAAP", indicating that the level of CG-related activities among companies, investors, corporate governance associations, academics, director institutes, accounting bodies and other professional bodies is increasing. This should provide a foundation for continued, albeit gradual, improvements in the years to come. To sum up, "Generally, high standards of financial and non-financial reporting, frequency and timeliness of financial reporting is world class, with high quality quarterly reporting, and audited results within 60 days. Accounting and auditing standards, more or less, in line with international norms, plus regulation of the auditing profession is being strengthened." **Table-4** highlights the transparency scenario (accounting and auditing framework) prevalent in the Asian countries.

Table-4: Transparency Scenario in Asia: Accounting and Auditing Frameworks

	International Generally Accepted Accounting Principles (IGAAP)	**China**	**Hong Kong**	**India**	**Indonesia**	**Japan**	**Korea**	**Malaysia**	**Philippines**	**Singapore**	**Thailand**	**Taiwan**
1	Does the government or the accounting regulator have a policy of following IAS/IFRS accounting standards?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2	Are local accounting rules largely in line with the international standards?	L	Y	L	S	L	S	L	Y	Y	L	L
3	Are accounting practices among large listed companies in line with international best practices?	S	Y	L	S	Y	L	L	S	Y	L	L
4	Are accounting practices among small and medium sized listed companies in line with	M	S	M	M	S	M	M	M	L	S	S

	international best practices?											
5	Do the rules require disclosure of consolidated accounts?	Y	Y	Y	Y	Y	M	Y	Y	Y	Y	L
6	Do the rules require segment reporting?	Y	Y	Y	L	S	L	Y	Y	Y	Y	Y
7	Is disclosure of audit and non-audit fess paid to the external auditor required?	Y	Y	Y	N	N	Y	Y	S	S	Y	S
8	Does the government or the accounting regulator have a policy of following international standards on auditing?	Y	Y	Y	Y	Y	L	Y	Y	Y	Y	Y
9	Are local auditing rules in line with international standards?	L	Y	L	S	L	L	Y	Y	Y	L	L
10	Are auditing practices among large listed companies in line with international best practices?	L	Y	L	L	L	L	L	L	Y	L	Y
11	Are auditing practices among small and medium sized listed companies in line with international best practices?	M	L	M	S	S	M	M	S	S	M	S
12	Is the government or the accounting regulator actively implementing new international best practices on the independence of external auditors? (e.g., by introducing limits on the non-audit work that external auditors can do; requiring for audit-partner rotation; whistleblower protection for auditors; etc.)	S	M	S	S	S	Y	Y	S	Y	S	Y
13	Must the CEO, CFO or directors sign and certify a company's annual accounts?	Y	L	Y	Y	Y	Y	Y	Y	L	Y	Y
14	Is the government strengthening the regulation of the accounting profession? (e.g., by setting up an independent oversight board)	M	M	M	S	S	M	N	M	L	M	N
15	Is the expensing of share-based payments mandatory?	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N

[**Keys**: Y = Yes (+ 1 point); L= Largely (+ 0.75 points); N = No (+ 0 points); S = Somewhat (+ 0.5 points); M = Marginally (+ 0.25 points); X = Data unavailable (+ 0 point)].

Another research study undertaken by JP Morgan (2005) highlights just how varied Asian markets are in timeliness of their financial reporting. They analysed 172 large and liquid Asian companies in order to calculate 'average' number of days taken between close of books and reporting variety of data, including quarterly, semi-annual, and consolidated annual results (see **Table-5**). "Surprisingly, Hong Kong companies faired worse than their Asian counterparts in the reporting of 'interim' results—they took an average of 66 days between book close and reporting. For consolidated annual reports, Hong Kong companies were fourth slowest with an average of 97 days (only Indonesian, Korean and Taiwanese firms taking more time 132, 100, 114 days, respectively)." While Hong Kong companies did

score extremely well in quarterly reporting (18 days against international average of 35 days), the sample size was extremely small (only 3 companies) because quarterly reporting is not mandatory. It is a matter of great pride that some Indian companies (like Infosys Technologies and Hughes Software Systems) stand out for being much faster (25 days) at quarterly reporting, while those in Taiwan (30 days) and Thailand (31 days) also do well. But when it comes to 'consolidated' annual reports, only one country (Australia with 63 days) comes close to the international average of 59 days. Thai companies lead the Asian pack at just 71 days, while Singapore and Indian firms report after an average of 83 and 84 days, respectively. Unfortunately, Indonesian companies give investors the longest wait—132 days. Further, Morgan study singled out certain Asian companies (viz., Infosys Technologies and Hughes Software from India, TSMC from Taiwan, and ST Engineering from Singapore) for exceeding required regulatory standards and taking CG very seriously. Looking ahead, reporting deadlines are likely to shorten in Asia. Ramaswamy (2005) adds here: "Under the US Sarbanes-Oxley Act, 2002 the SEC will cut filing periods in phases over 2003-06. The deadline for annual reports, for example, will be cut from the original 90 days to just 60 days for fiscal years ending on or after December 15, 2006. It can be easily anticipated that these new requirements will raise the bar on reporting standards and will put pressures on regulators in Asia to force improvements soon."

Table-5: Average Days between Close of Books and Reporting

Country	Quarterly	Semi-annual	Annual report (consolidated)
Australia	20*	51	63
China	32*	60	90
Hong Kong	18*	66	97
India	25	25	84
Indonesia	48	58	132
Korea	37	37	100
Malaysia	57	57	87
Philippines	49*	49	86
Singapore	42	40	83
Taiwan	30	52	114
Thailand	31	31	71
International Average #	**35**	**N/a**	**59**

* Only 7 or fewer companies report quarterly in firms sampled.

Comprises 8 selected US & European blue-chips.

Melendy and Huefner (2007) have recently advocated the constitution of "Compliance Committees" to improve CG transparency scenario. Without greater transparency in CG, laws and governance codes will do little to build investors' confidence in the long-run. Notwithstanding recent reforms, accounting standards in many Asian countries remain weak—enough trained professionals are not available (with an in-depth understanding of

local & international accounting standards), and accounting self-regulatory organizations are lax in enforcements (Parker, 2007). As Choi (et al., 2007) remarks: "Disclosure requirements and auditing practices, however, are improving slowly since national financial reporting standards are gradually being "harmonized" with international standards. The sober truth is that CG practices in various countries still remain divergent despite major initiatives for convergence." Although most Asian countries are strengthening their accounting standards and adopting minimum CG rules, many are still lagging behind in their effective enforcements: lack investigative powers and political will, enforcement staffs, or big budgets to conduct rigorous investigations. Most governments are augmenting their resources to monitor companies and enhancing the authority of their regulators, some of which are now getting tougher. **Box-2** summarizes the Regional CG Disclosure Strengths and Weaknesses.

Box-2: Regional CG Disclosure Strengths and Weaknesses

Strengths:

- Improving financial reporting: frequency, speed, substance, consolidation of accounts, director pay, stock-option expensing.
- Quality of auditing and investor communications among large issuers is generally good and improving.
- Regulators seem to have got the message on enforcement.
- Regulatory and stock exchange information communication (e.g., in use of websites) is improving rapidly in many markets.
- Professional and director training strong/growing.

Weaknesses:

- The quality of financial and non-financial reporting among small- and mid-cap listed firms is lagging.
- Late reporting deadlines in certain markets.
- Continuous disclosure of price-sensitive information needs to improve.
- Blatant misuse of the "personal reasons" explanation when a director resigns.
- Inadequate rules on disclosure of takeover bids.
- Draft IPO prospectuses provided only to certain investors and analysts in some markets.
- Some regulators still vet company announcements.
- AGM agendas and circulars often lack sufficient detail.
- Publication of detailed AGM vote results often non-existent.

In response to recent CG scandals, governments have already responded by adopting a number of regulatory changes. One component of these changes has been increased disclosure requirements. For example, Sarbanes-Oxley (SOX), adopted in response to Enron, WorldCom, and other public governance failures, required detailed reporting of off-balance sheet financing and special purpose entities. Additionally, SOX increased the penalties to executives for misreporting. The link between governance and transparency is clear in the

public's (and regulator's) perceptions; transparency was increased for the purpose of improving CG. The 'new' regulations put in place through the "Sarbanes-Oxley Act" in the USA and the "Combined Codes" in the UK have helped to introduce much-needed reforms, particularly with regard to CG transparency. **Table-6** pinpoints some of the implications of SOX for Asia.

Table-6: Sarbanes-Oxley's Echoes in Asia

Question	China	Hong Kong	India	Indonesia	Korea	Malaysia	Philippines	Singapore	Taiwan	Thailand
Disclosure of audit and non-audit fees to external auditor?	Y	Y	Y	N	Y	Y	S	Y	Y	Y
Following international standards on the independence of external auditors?	S	Y	Y	S	S	S	Y	Y	Y	Y
Must CEO, CFO, or directors certify the annual accounts?	Y	S	Y	Y	Y	M	Y	S	S	Y
Strengthening regulation of the accounting and auditing profession?	S	S	M	S	S	S	S	Y	S	S

[Keys: Y = Yes; S = Somewhat; M = Marginally; N = No]

Massive governance failures at a few companies have destroyed the "reputation" capital of the corporate sector as a whole, and made governance as a topic of growing interest to academics and practitioners alike. Nonetheless, weaknesses still remains, which continue to tarnish the reputation of many companies and put downward pressure on their share prices. Beyond simply complying with these "new" regulations, companies that care about their reputation must also care about how their governance structures and policies are perceived by the investors and the wider stakeholder community that continuously monitors their activities. As Fombrun (2006) asserts: "The fact that only eight of GMI's 33 top-rated companies have high visibility and that of these only four (Eastman Kodak, Home Depot, Procter & Gamble, and Xerox) receive high reputation quotient (RQ) scores indicates that strong governance policies alone do not necessarily translate to high visibility and perception." Not only must they implement policies that align with the 'best practice' models proposed nationally and internationally, but they must ensure that the internal practices they put in place are strictly adhered to and communicated to their many interested and concerned stakeholders. Companies that do are increasingly finding that adopting "best-in-class" governance not only helps them avoid regulatory scrutiny and risk, but also provides a springboard for the implementation of value-adding strategies. Having a senior 'governance officer' responsible for consistency in putting these practices in place is crucial.

Having a senior ‘reputation officer’ in charge of orchestrating communications and initiatives that convey transparency about these practices is also vital.
There has been a resurgence of interest in ethics in reaction to the CG scandals at the beginning of the decade. The accounting profession globally has taken steps to enhance the importance of ethical behavior and decision making. The International Federation of Accountants (IFAC) has launched a revised code of ethics based on a set of fundamental principles to be adopted by individual accountancy bodies. Accountants in business, particularly at board or at top management level, are often regarded as the keepers of the ethical conscience of their organizations. As well as following their own professional codes of ethics, accountants set an ethical example to others. According to a research report (2006) prepared by CFO Asia in collaboration with ACCA: “Good ethics are vital to good corporate governance. Company boards too are now becoming much more aware of the need to have the right ethical culture. The culture of an organization is probably the most important aspect of its system of internal control, and it is the foundation for other internal controls. Management may set out the policies and procedures which it wants followed, but it is the corporate culture which determines when they are followed, amended or ignored.”

No doubt, CG has improved to some extent in the Asia region and some countries (Singapore in particular) have made significant progress in this direction. The next step is to instil “new governance” behavior, and it will take considerable time in the near future. Many corporate leaders, investors, and regulators in Asia articulate the benefits of effective CG. They judiciously understand that enduring reforms would not be achieved overnight, and that, in the short term, many practical impediments and disincentives may block or slow down the necessary changes. Thus, to move ahead in the right direction with consistent pace, across the Asian region, both governments and companies must play their respective roles. In this context, Leahy (2004) once remarked: “Governments should provide a strong legal and regulatory framework to underpin the reforms. Companies, on the other hand, should create stronger and more purposeful boards; enhance the scope, accuracy, and timeliness of financial reporting; and pay more regard to the rights and interests of minority shareholders.” While country-specific provisions will differ from one country to the next, any reform effort must include following core elements: robust corporate and securities laws, tough accounting standards, strong regulators, efficient judicial systems, and determined efforts to clamp down on ‘corruption’. Without sustained progress in the foundations of CG, any improvement focused at individual companies level will fall far short of its potential.

CG in the Asian Countries—Strengths and Weaknesses

An attempt will be made in this section to examine the CG scenario in 2007, and summarize the major strengths and weaknesses of the Asian markets. The CLSA and ACGA’s report titled as “*The CG Watch 2007*” scores show slightly better average CG improvement for companies in India, China and Indonesia, while a slight deterioration in the average score in Taiwan. Japan, a new entrant, has a higher average CG score for its firms than the rest of the

sample. Of the larger-cap companies, CG commitment appears highest, reflected in scores at over 80% for HSBC, Sharp, HK Exchanges, TSMC, Infosys and CLP Holdings. Although the absolute CG scores in 2007 may not be high, the survey does highlight that each country has some genuine strengths on which it can build, if it chooses to do so and can muster the necessary political support. **Table-6(a)** gives a breakdown of the average scores of the companies in each country by scores for each of the seven categories in the CG score.

Table-6(a): Average CG Category Scores by Asian Countries in 2007

(%)	Disci-pline	Trans-parency	Indepen-Dence	Account-Ability	Respon-Sibility	Fairness	Clean & Green	Overall CG
Japan	55.3	89.3	42.3	27.7	76.0	72.1	45.0	58.9
Thailand	51.3	92.9	62.5	51.1	32.6	66.9	31.8	56.7
Hong Kong	56.3	79.7	47.3	56.8	57.2	69.2	12.0	56.2
Taiwan	68.4	57.2	42.6	51.9	62.6	59.9	28.9	54.3
India	65.4	83.8	43.1	43.1	41.2	49.2	27.5	51.6
Malaysia	63.4	85.3	57.6	37.1	44.4	46.4	13.2	51.4
Singapore	57.6	84.2	72.7	27.2	50.6	36.3	10.6	50.3
Korea	50.3	71.9	42.8	49.2	42.3	59.4	23.4	49.7
Philippines	39.1	65.1	63.1	35.7	26.7	60.4	20.5	45.5
China	45.5	66.6	45.8	44.6	28.6	45.7	7.9	42.3
Indonesia	59.6	44.9	49.1	38.8	21.0	39.6	9.8	38.9
Average	**55.7**	**74.6**	**51.7**	**42.1**	**43.9**	**55.0**	**21.0**	**50.5**

Japan, with a relatively small sample of 40 companies, had higher average scores in particular for transparency, responsibility, fairness and on clean & green (C&G). Thai companies score well on transparency, fairness and accountability, and also had the highest average score for C&G in the Asia ex-Japan sample. This is mainly because there is a large representation of petrochemical companies in its sample, which are already aware and addressing issues of emissions. Hong Kong companies score better on fairness, responsibility and accountability, while Malaysian companies have higher average scores against the overall sample for transparency and discipline. Singapore companies also score well on transparency and independence but are dragged by lower than average scores for accountability and fairness. Taiwanese firm's average scores are pulled down on accountability, fairness and independence. The somewhat unexpected result of mainland China companies having higher average CG scores is mainly because Taiwanese companies are exceedingly poor on accountability on average 32ppt lower for this category than for Chinese companies. Indonesian companies have lower than average scores for C&G, responsibility and transparency.

It is a matter of great pride that some exemplary companies can be found in Asia also. For instance, CLP (Hong Kong), Posco (South Korea), Public Bank (Malaysia), Siam Cement (Thailand) and Singapore Telecommunications (Singapore), to name a few, have been

recognized by several publications and organizations in the past for their good CG practices. Three Hong Kong companies (i.e., HSBC, HK Exchanges and CLP) dominate at the very top of the list of companies with the highest CG scores in 2007. Of the top-30 CG scores, 10 are Japanese companies (see **Table-7**). However, of the top five companies in the high CG large cap list (which score above 80%) only one company (Sharp) is from Japan. Other Japanese companies CG scores are below 80%. In all, seven of the top-30 CG companies are from HK. The other two companies in this list at the top for CG are TSMC and Infosys. For instance, Infosys Technologies from India discloses the extent of its compliance with 10 CG codes, reconciles its financial statements with eight accounting standards (including the US and UK GAAP), and has a board with a majority of independent directors, as well as, wholly independent audit, nominations, corporate governance, ethics and compensation committees. In this list of top-30, South Korea has six companies (viz., Hynix Semiconductor, LG Philips LCD, Kookmin Bank, Hana Financials, Posco, and Shinhan Financial) but unfortunately none of them scored above 80%--top companies have ‘good’ but not ‘excellent’ CG scores.

Table-7: Top-CG companies among large-caps (sorted by CG ranking in 2007)

Company	Country	Sector
HSBC	Hong Kong	Financial services
Sharp	Japan	Technology
HK Exchanges	Hong Kong	Financial services
Taiwan Semiconductor	Taiwan	Technology
Infosys	India	Technology
CLP	Hong Kong	Power and gas
MSI	Japan	Financial services
Nintendo	Japan	Technology
Hynix Semiconductor	Korea	Technology
LG Philips LCD	Korea	Technology
Esprit	Hong Kong	Consumer
Inpex	Japan	Petroleum & Chemicals
Bharti	India	Telecoms
Kookmin Bank	Korea	Financial services
Mitsubishi Estate	Japan	Property
China Steel	Taiwan	Materials
Li & Fung	Hong Kong	Consumer
Swire	Hong Kong	Property
Toyota Motor	Japan	Automotive
United Microelectronics	Taiwan	Technology
Standard Chartered	Hong Kong	Financial services
Hana Financial	Korea	Financial services
Posco	Korea	Materials
Shinhan Financial	Korea	Financial services

Nine Dragons Paper	Hong Kong	Miscellaneous
Mitsubishi Electric	Japan	Technology
Resona	Japan	Financial services
Wipro	India	Technology
Hindustan Lever	India	Consumer
Honda Motor	Japan	Automotive

[Source: CLSA Asia-Pacific Markets, CG Watch 2007, page 43]

No doubt, some Asian countries have a higher ratio of strengths to weaknesses than others. **Appendix-1** highlights the major strengths and weaknesses regarding CG scenario prevalent in the Asian Countries. But certainly all the Asian countries are in a much better shape now, from a CG perspective, than they were at the start of this decade. The challenge, at present, is to keep going and avoid the temptation to sit back and relax.

A Time for Rethinking

Ethics is an 'inspirational' objective, and should represent the 'intrinsic' cultural values of the society in which a corporation operates, as well as, the behavior expected of the corporation in all its dealings with shareholders and other stakeholders generally. Where a corporation sees fit to codify ethical conduct, such guidelines should be succinct but sufficiently detailed to give a clear direction to the behavior of those to whom it is directed. Ethical practices and issues are both complex and vexed; no single or universal model can be defined or prescribed. It should be clearly noted that the notion of having "one size fits all" type of universal CG code is not only inappropriate but undesirable also. In any event, a number of countries, where the private enterprise sectors are relatively developed, have individually established national codes to address their own special requirements—namely, United Kingdom (Cadbury, Greenbury and Hampel Reports), Australia (Borsch Report), South Africa (King Report), Canada (Dey Report), India (CII) and Malaysia.

Modern society is afflicted by "moral pollution," which is not confined to the corporate sector alone, but is all pervasive. In such a climate, mere gimmicks of reforming the corporate sector would not automatically guarantee good CG. What is required is an evolution of a culture of social consciousness. As per Indian *Shastras,* "improvement in the quality of governance can improve only if each and every individual starts culturing human values in the inner world of himself. Search for effectiveness by culturing human values is a journey within the individual, within the self." The global debate is gradually 'converging' very much in favor of having "Code of Ethics and Values," but the challenge is how to successfully implement it. The Indian *Vedas* had stated long back, how to do it with the help of an example: "A business should benefit from business like a honey bee, which suckles honey from the flower without affecting its charm and beauty," thereby indicating that adopting ethical values and principles are the only solutions to prosperity and welfare of the society in the long-run.

Undoubtedly, the starting point for reform in Asia is very different from the starting point in Europe or North America. Asian governments, corporate leaders, investors and regulators

realize that “CG practices would not change overnight, so lot of patience is needed.” Getting companies in Asia to comply with new rules is a challenging task requiring greater transparency and better enforcement, not to mention a cultural upheaval in boardrooms. Agreement is growing, at least in principle, on what good CG entails, and most countries in the region have adopted CG Codes. “Securities laws and the listing requirements of stock exchanges have been strengthened, regulatory authorities have enhanced powers, and the media is more inquisitive.” Since the Asian crisis, all the countries in the region have seen an overhaul in their auditing/accounting standards. Consequently, there has been a convergence of local auditing standards with international best practices. Not only does this mean that there is standardization across the region, which facilitates comparisons, it also shows a heartening dedication to transparency and openness. Yet the progress is uneven. Across Asia, too many companies remain unconvinced of the value of good CG. Moreover, the institutions needed to ensure good governance—judicial systems, capital markets, long-term institutional investors that can push for better governance—continue to be underdeveloped in most of the region. Laws and regulations are not enforced rigorously. The years following the Asian financial crisis have seen the implementation of more rigorous CG standards but it is questionable whether the new rules have actually permeated corporate practices.

Now, the challenge is to move away from the ‘philosophical’ debate on CG to dealing with the “hard” issues of practical implementation, and the application of good CG practices throughout the world. It will be necessary to analyze the particular circumstances of each country, their legal and regulatory systems, structures of business enterprise, inherent cultural characteristics and heritage, before defining any specific approaches to addressing issues of CG. Naturally, each country must define for itself what its special circumstances and priorities are within this context. The next phase of activities will include establishment of “Centres of Excellence” in collaboration with the World Bank to provide training at regional and country level in the various elements constituting a suitable CG framework.

Maintaining the momentum for CG reforms in Asian countries, thus, will require some rethinking on ‘basic’ questions. First, what major rule changes or changes to the legal system are needed to allow market participants to fully engage in CG reform and to complement the efforts of regulators? If we want robust and effective CG, we need robust and well-crafted rules, and vigorously enforcing them. Secondly, do any existing procedural rules inhibit investors from exercising their most basic rights, such as, voting and participating in annual general meetings? The answers in many parts of the region are amply clear, that they do. Thirdly, are any existing rules inherently self-defeating and incapable of producing the intended outcomes? Weak definitions of “independent director” are a good example. Fourth, are we creating potential conflicts or managerial inefficiencies within companies by grading new global best practices onto traditional company law structures without reforming them? A good example here is the introduction of independent directors into the quasi two-tier or dual-board system of China, Indonesia, Japan and Taiwan.

Benz and Frey (2007) conclude: “We proposed that CG can learn from four cornerstones of public governance. First, we argue that CG can gain from realigning managers’ compensation with the practice prevalent in the public sector—namely, fixed compensation

not dependent on pay-for-performance. Second, we consider the advantages of relying on the basic democratic idea of division of power in CG. Third, we can learn from how rules of succession prevalent in the political sphere can be applied so as to devise better governance rules. And, fourth, we propose that CG can be improved by relying on institutionalised competition in core areas of the firm.

CG is not just “compliance” but goes further, as we sometimes describe it as “beyond compliance towards building a good governance culture, instilling an environment of trust and confidence.” CG stems from the culture and mindset of management and cannot be regulated by legislation alone; too many legal provisions and their intricacies would make the real objective worthless. Perhaps the most important challenge we face, at present, is the mindset of the people and the organizational culture. This change should come from within, not by force. The government or the regulatory agencies, at best, can provide certain environment which will be conducive for such a mindset taking place but the primary responsibility is of the ‘managerial people’ (the elite and more powerful class) especially the members of the board of directors and the top management. Further, the spirit of CG is more important than the form—substance is more important than style. Ethical values are the essence of CG and these will have to be clearly articulated, and systems and procedures devised so that these values are practiced ‘willingly’ by the corporate world. Inevitably, the question of CG boils down to “morality and respect for the shareholders’ right”. We are of the firm opinion that some initiatives have been taken by various national agencies in Asia, but much work still remains to be done (see **Table-8**), and the ethos of CG culture has yet to sink in. Full convergence with international accounting and audit standards, better protection of minority investors, stronger enforcement of existing laws & regulations, actual independence of the supposedly independent, non-executive directors, etc., are some of the grey areas requiring improvements in CG scenario in the Asian countries. In nutshell, we can say that CG scenario in Asia remains at best a gradual work-in-progress, and how soon it will attain perfection only future will tell us.

Table-8: Shareholder Rights--a Work-in-progress in Asia

Question	**China**	**Hong Kong**	**India**	**Indonesia**	**Japan**	**Korea**	**Malaysia**	**Philippines**	**Singapore**	**Taiwan**	**Thailand**
Can minority shareholders easily elect an independent executive director?	N	M	M	N	N	N	N	N	M	M	N
Are pre-emption rights for minority shareholders family protected?	N	M	M	L	N	M	M	N	M	M	S
Is there a trend of large listed companies voting by poll?	S	Y	M	N	N	N	N	N	N	N	S

[Keys: Y = Yes; S = Somewhat; M = Marginally; N = No]

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Appendix-1
CG Scenario in the Asian Countries: Strengths and Weaknesses

Hong Kong

Strengths

- Relatively high standards of financial and non-financial reporting. Accounting and auditing standards in line with international norms.
- Good disclosure of director share transactions, individual director remuneration, and reasonably good disclosure of material transactions.
- Voting by poll is mandatory for certain resolutions at EGMs and is now regularly carried out for all resolutions at AGMs by most large caps.
- Protection of minority shareholders in takeovers and privatizations is strong.
- Regulatory and stock exchange Web sites are good source of information on laws, regulations, public enforcement activities, and company announcements/reports.

Weaknesses

- Frequency of financial reports remains limited to annual and interims, while reporting deadlines (120 days for audited annuals) is well below international best practice.
- Legal remedies available to investors are extremely limited and costly.
- Definition of "independent director" is artificially designed and weak, which undermines the value of this role.
- Enforcement powers of both the main securities commission and the stock exchange are insufficient. Enforcement and disciplinary proceedings drag on for years.
- Most institutional investors are not voting their shares or taking an active interest in CG issues. Almost none attend AGMs.
- No organized retail shareholder association.

Singapore

Strengths

- Accounting and auditing standards in line with international norms, plus regulation of the auditing profession is being strengthened.
- Generally high standards of financial and non-financial reporting. Frequency and timeliness of financial reporting is world class, including high quality quarterly reporting and audited annual results within 60 days.
- Companies provide reasonably good disclosure of material transactions.
- Regulatory deterrence against insider trading is improving.
- Scope of information on regulatory Web sites, especially as regards public enforcement activities by the Monetary Authority, has grown.
- A small group of institutional investors are actively voting their shares, attending AGMs and asking questions.
- Singapore has an organized retail shareholder association.

Weaknesses

- There is limited disclosure of individual-director remuneration in Singapore.
- Independent directors in most listed companies need not be independent of the controlling shareholder.
- Legal remedies available to investors are extremely limited.
- Voting by poll is not mandatory and rarely practiced, even by major listed companies.
- Rules governing takeovers and privatizations are quite strong, except that the approval process for voluntary de-listings does not adequately protect minority shareholders (since all shareholders, including the controlling shareholder and directors, may vote).
- The deadline for releasing AGM notices and detailed agendas is still only 14 days, which is well below global best practice.
- Finding data on enforcement activities on the stock exchange Web site is not

easy, while the organization of company announcements could be greatly improved.

India

Strengths

- Financial and non-financial reporting standards among the largest companies are high (in some cases, truly world class).
- Release of audited annual results by these companies is quick (within 60 days).
- Disclosure of individual director remuneration is required and companies release their detailed AGM agendas relatively early (at least 21 days).
- The main securities commission (SEBI) is independent of government (more so than in most Asian markets).
- Regulatory Web sites contain large amount of information on laws and regulations.
- The media is extremely free to report on and debate CG issues.
- India has some excellent examples of well-governed firms and a national industry body (CII), which spreads the word via reports, conferences and training courses.

Weaknesses

- Huge disparity between the high standards of many large caps and the rest of the market (made up of thousands of small listed firms).
- Despite the good reputation of Infosys, HDFC Bank and some others, the true level of commitment to good governance among India's large caps is less than advertised.
- Various disclosure rules have weaknesses (e. g, those relating to quarterly reporting, material transactions, and share transactions by directors).
- Legal remedies for shareholders are in theory quite strong, but in practice extremely weak due to an inefficient court system.
- Public corruption and disorganization is rife.
- There is virtually no voting by poll at AGMs, even among the large caps, and meetings are often held in remote locations.
- Regulatory enforcement is improving, but resources and results still limited.
- Minimal involvement of institutional investors in CG issues. Greater involvement by retail groups, but their efforts are piecemeal, fragmented and localized (no real national shareholder association).

Taiwan

Strengths

- Financial reporting standards are reasonably close to international norms and are improving (e. g, quarterly reports will be consolidated from 2008). The same for accounting and auditing standards.
- Major improvements have been made to company and securities laws, as well as ancillary regulations, over the past two years.
- Regulatory enforcement has taken a step forward, especially with regard to

corporate fraud and insider trading.

- Taiwan is one of the few places in Asia that requires directors convicted of fraud to resign their positions on boards.
- The scope of regulatory and corporate information on regulatory Web sites is wide and improving. Finding English translations of major laws and rules is easy.
- The judiciary is fairly independent and generally clean, while media freedom is strong. There is active involvement of academics and certain non-profit organizations in CG reform.
- There is a quasi-government agency, the Securities and Futures Investor Protection Centre, undertaking law suits on behalf of minority shareholders.

Weaknesses

- Non-financial reporting standards could improve, as could disclosure of substantial shareholding stakes and share transactions by directors.
- Voting by poll is normally carried out for the election of directors at AGMs, but not for all resolutions, and voting results are not made public.
- Indeed, the entire apparatus of annual meetings in Taiwan—from sending out notices, to finalizing agendas, to voting and publishing results—needs an overhaul.
- Institutional investors routinely cite Taiwan as one of the most difficult markets in Asia to vote in.
- Regulatory enforcement has improved, regulatory agencies are under-resourced and there is a lack of cross-fertilization between the market and certain agencies (such as the Securities and Futures Bureau) in terms of recruitment.
- The main statutory regulator, the Financial Supervisory Commission, is not independent from the Taiwanese government and often exposed to strong parliamentary and political pressure.
- The judiciary is improving, but lacks the depth of skill needed to deal with complex securities cases.

Japan

Strengths

- Global standards of CG, financial and non-financial reporting practices are quite high, especially among the larger companies. Quarterly reports are fairly robust and detailed, while rules on disclosure of substantial shareholding stakes and share transactions by controlling shareholders have recently been improved.
- Past two years have witnessed major legislative changes—new and modernized Company Law, Securities law, Financial Instruments and Exchange Law.
- Regulatory enforcement has become more vigorous in recent years, but is not

always consistent or fairly applied.

- Disclosure of public enforcement activities is relatively good, while private enforcement by the market is on the rise (e. g, through the voting of shares at AGMs and investor engagement with companies).
- Japan has an active Pension Fund Association and is the only country in Asia to have a working electronic voting system.

Weaknesses

- While listed companies have been willing to improve their disclosure practices and enhance communication with shareholders, they have felt less compelled to change their organizational structures and open themselves to outside scrutiny by, for example, independent directors and minority shareholders.
- Japan has no real concept of "independent director", nor does it have a proper national code on CG (unlike other Asian markets).
- It promotes modern CG ideas in a rather fragmented way through various parts of its company and securities laws, regulations and listing rules. This may be a necessary compromise, but it creates a fair degree of ambiguity around government policy.
- There are many areas where standards could be improved, but which appear to be neglected at present, including: cutting the deadline for releasing audited annual results from the current 90 days to 60 days; requiring all listed companies to publish their AGM agendas earlier (the rule is still 14 days); requiring the results of poll votes to be published; and so on.

South Korea

Strengths

- Financial and non-financial reporting practices among the larger listed companies have improved. Government has been taking notice of new international best practices on auditor independence and whistle blowing protections.
- Public enforcement, most noticeably in the activities of public prosecutors and the judiciary, has also improved.
- Korea is unusual in having had a vigorous retail activist movement and minority shareholders willing to take companies to court.
- One of the few countries to pass a law permitting class-action lawsuits for accounting fraud.
- Media is quite free to report on CG issues, although not always impartial.
- Korea now has a corporate governance focus fund.

Weaknesses

- Financial reporting and accounting standards still some way from international norms (e. g, lack of consolidation for interims and quarterly reports; deadline for audited annual results is still 90 days; valuation still based on cost rather than fair value).

- Rules on disclosure of share transactions by directors and individual director remuneration are well below global best practice.
- Class-action lawsuits may be permitted, but a range of restrictions have nullified the impact of this law. Directors convicted of fraud are not required to resign from boards, except in banking and financial firms.
- There is virtually no voting by poll at the AGMs of listed companies (even among the large ones).
- The position of independent directors remains weak (as in most markets).
- In light of the above, it is not surprising that the government's policy on CG comes across as highly inconsistent.

Malaysia

Strengths

- Financial reporting and accounting standards have improved in recent years and the reporting practices of large caps are close to international best practices.
- Quarterly reporting is fairly sound.
- Regulatory bodies are well-staffed and have strong powers of investigation and enforcement.
- Disclosure of public enforcement activities is good, while regulatory and stock exchange web sites are informative and provide access to all major laws, regulations, corporate announcements, and so on.
- The Malaysian government has been taking account of, and implementing, new international best practices on auditor independence and whistle blowing protections.
- Professional bodies are quite actively promoting CG and related training, while the Minority Shareholder Watchdog Group, which is still government-funded, has been revamped and given a sharper focus.

Weaknesses

- The quality of financial reporting among small listed companies is poor, while the standards of non-financial reporting among all companies leaves a lot to be desired.
- Few companies report their audited annual results within 60 days.
- Securities laws do not appear to provide a credible deterrent against insider trading. Legal remedies for shareholders are limited.
- There is virtually no voting by poll at AGMs.
- There is little confidence in the market that independent directors are genuinely independent in Malaysia.
- While public enforcement efforts have improved, regulators do not have a reputation for treating all companies and individuals equally.
- Private enforcement by the market is limited (at both the institutional and retail level), with many investors having a low opinion of the ethical standard of the

average listed company.

Thailand

Strengths

- Financial and Non-financial reporting rules are in line with international norms and reporting practices among large companies are largely in line with global standards.
- Companies report audited annual results within 60 days, and quarterly reporting is quite robust.
- Regulators have made greater efforts to improve enforcement in recent years (and disclose what they are doing) and have undertaken some quite innovative measures (e.g., a director "white list"; an AGM assessment program).
- Companies are starting to vote by poll voluntarily at their annual meetings (although in a slightly strange hybrid way: votes are not counted confidentially, but anyone who wants to vote against raises their hand and his/her vote is deducted from the total).
- There is an active director training program organized by the Thai Institute of Directors.

Weaknesses

- The current military government has not taken a big interest in the equity market or CG reforms.
- Major legislative amendments to both the Public Companies Act and the Securities and Exchange Act continue to languish in the system, and hold back the introduction of improvements to Thailand's CG regime.
- Regulatory enforcement may be improving, but some of the innovative efforts (such as the "white list") are proving harder to implement than expected—since neither the securities commission nor the stock exchange has the power to remove a director not on the white list.
- Meanwhile, investor confidence in its corporate-governance regime seems to be at its lowest point for more than five years.

China

Strengths

- One of China's main strengths is an ability to make bold moves when you least expect it. Witness the announcement in early 2006 that it would bring its accounting and auditing standards rapidly into line with international norms.
- Although there are countless practical problems associated with this move—lack of trained accountants and experienced auditors, difficulties over measuring fair value, and so on—it should help to build confidence in the quality of listed company accounts in China over the long term.
- Major legislative amendments to both the Company Law and the Securities Law in 2005 should also lay a stronger foundation for CG.
- Large listed companies in China often do vote by poll (although are not

required to by law) and they release their detailed AGM agendas earlier than most companies in the region (20 days).

- Surprisingly, while few large A-shares report their audited annual results within 60 days, some of the mid caps do.
- Meanwhile, regulatory websites have improved hugely over the past two years, especially in the quantity and timeliness of English-language material.

Weaknesses

- The quality of financial reporting among large caps is quite high, especially among those listed overseas, the value of non-financial reporting is much lower (e.g., disclosure of director remuneration is often quite vague and misleading, not to mention inconsistent from company to company).
- Quarterly reports are more limited in scope than in many other markets.
- Rules governing disclosure of share transactions by directors and material transactions are not up to international standard, securities laws appear to provide little deterrent effect against insider trading and market manipulation.
- Access to the legal system is restricted and the competence of the judiciary to adjudicate difficult securities cases is an issue.
- Little scope for minority shareholders to organize themselves into an independent association to protect their interests.

Philippines

Strengths

- Financial-reporting practices among large caps are common, including the quality of quarterly reports.
- Listed Philippine companies produce some of the most detailed AGM circulars in the region, with some of the better ones releasing them quite early.
- Regulatory web sites are informative and media has considerable freedom to report on CG issues.
- Focus on bringing its accounting and auditing rules into line with international standards.
- Providing for director's training.

Weaknesses

- The quality of non-financial reporting is not high, even among larger firms. They take 105 days to report audited annual results.
- Disclosure rules relating to material transactions could be improved.
- The regulatory system does not deter insider trading.
- Class-action lawsuits are permitted, but rarely initiated.
- Voting by poll is non-existent and is seen by companies as difficult and time-consuming.
- After a strong start early this decade, the Securities Commission seems to have lost its focus regarding CG policy.
- Enforcement is seen as woeful and regulators lack resources to do a proper job.

- The influence of the market (i.e., investors) is extremely limited.

Indonesia

Strengths

- Given the poor to uneven state of financial reporting in Indonesia, the quality of many quarterly reports is actually good.
- Indonesia offers some of strictest protection for minority shareholder pre-emption rights in the region (indeed, its rules are probably too restrictive).
- The present government's anti-corruption drive is yielding some results.
- Indonesia continues to try to improve its CG regime through, for example, revising its national code of best practice and bringing in a new CG code for banks.

Weaknesses

- While the government may be amending its CG codes few believe it is truly serious in its efforts.
- The anti-corruption drive aside, the Indonesian government has a deeply entrenched credibility problem.
- This malaise is echoed in market: in the low quality overall of financial reporting; weak disclosure of material events and share transactions by directors; the scope for insider trading; the lack of investor involvement; and the antipathy showed by many companies to CG.
- Extremely weak enforcement record of regulators and the lack of independence of the main securities regulator.