



ASEAN CORPORATE GOVERNANCE SCORECARD

Country Reports and Assessments 2012–2013

Joint Initiative of the ASEAN Capital Markets Forum
and the Asian Development Bank



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The terms “publicly listed companies,” “listed companies,” and “companies” are used interchangeably in this report.



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ABBREVIATIONS

| | |
|------------|---|
| ACMF | ASEAN Capital Markets Forum |
| ADB | Asian Development Bank |
| AGM | annual general meeting |
| ASEAN | Association of Southeast Asian Nations |
| BAPEPAM-LK | Badan Pengawas Pasaran Modal dan Lembaga Keuangan (Indonesian capital market and financial institutions supervisory agency) |
| BOC | board of commissioners (Indonesia) |
| CEO | chief executive officer |
| HNX | Hanoi Stock Exchange (Viet Nam) |
| HSX | Ho Chi Minh Stock Exchange (Viet Nam) |
| ICD | Institute of Corporate Directors (Philippines) |
| OECD | Organisation for Economic Co-operation and Development |
| PLC | publicly listed company |
| PSE | Philippine Stock Exchange |
| RPT | related-party transaction |
| SEC | Securities and Exchange Commission (Philippines) |
| SOE | state-owned enterprise |
| TA | technical assistance |



FOREWORD

Good corporate governance is central to sustaining the growth of Asia and the Pacific and to the poverty reduction mandate of the Asian Development Bank (ADB). It is key to a well-functioning finance sector, in particular the capital market. Recognizing its importance, significant time, money, and effort have been put into promoting good corporate governance. Despite this, we see weaknesses and failures in adopting and sustaining good corporate governance everyday; some of which have resulted in disruptions detrimental to the global economy, as we have seen in the recent past. Clearly, our efforts to promote good corporate governance and sound financial markets must move beyond national boundaries. While national governments develop corporate governance frameworks through national blueprints and strategies, these actions require complimentary coordination at the regional level for the region to be branded as an asset class based on corporate governance. Members of the Association of Southeast Asian Nations (ASEAN), aspiring to and understanding the need for such cooperation on a more macro level, have encapsulated this agenda in the grand vision of the ASEAN Economic Community, which includes regional capital market integration.

ADB's development agenda accords regional integration the same importance. ADB's Long-Term Strategic Framework (Strategy 2020) includes regional integration as one of its three critical strategic agendas. This is because we believe that regional integration not only provides countries with the ability to respond more effectively to unexpected changes in economic circumstances, but also helps raise productivity, accelerate economic growth, and reduce economic disparity. Similarly, ADB's Financial Sector Operational Plan identifies financial cooperation and integration as a specific focus area. The plan includes the promotion of common standards for financial transactions and the establishment of financial infrastructure that supports cross-border transactions.

ADB has been supporting ASEAN regional capital market integration since 2005 through a series of regional technical assistance projects. The outcome of freer flow of funds through cross-border investments promotes economic growth in ASEAN, and countries also benefit from the process of integration, such as having the opportunity to exchange information and adopt international best practices, upgrading standards through harmonization, and building trust in the region. In this regard, we are honored to have been involved in the endorsement of the Implementation Plan for Regional Integration of Capital Markets in ASEAN (implementation plan) by the ASEAN Finance Ministers in 2009, which provides a comprehensive approach for

building an integrated regional capital market. The latest ADB technical assistance approved in 2010 continues to support the ASEAN Capital Markets Forum (ACMF) in implementing specific initiatives and milestones of the implementation plan.

The ASEAN Corporate Governance Scorecard (Scorecard) is a landmark joint initiative between the ACMF and ADB that started with the development of the methodology that underpins the Scorecard, culminating in the publication of country reports and assessments that you now have in your hands. This would not have been possible without the effort and hard work of ACMF members—national regulators with a vision for the region. I would like to take this opportunity to congratulate and thank all parties, especially members of the working group led by Securities Commission Malaysia that has brought this initiative to this concrete and meaningful output. Without doubt, there is more work ahead of us; improving corporate governance standards in the region is not a sprint but a marathon. It is ADB's sincere hope and wish that the ASEAN Corporate Governance Taskforce that has now been entrusted to take this initiative forward will keep this momentum going and collectively bring the regional corporate governance standards and practices to greater heights.



Shigeko Hattori

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Asian Development Bank

1

INTRODUCTION

The corporate governance initiative of the Association of Southeast Asian Nations (ASEAN) is one of several regional capital market integration initiatives of the ASEAN Capital Markets Forum (ACMF). It is led by the Securities Commission Malaysia and is supported by the Asian Development Bank (ADB) through its regional technical assistance (TA). ADB has supported ASEAN regional capital market integration through a series of regional TA projects since 2005, and has supported this initiative through the regional TA “Promoting an Interlinked ASEAN Capital Market” since 2011.

The initiative’s objectives are:

- to raise the corporate governance standards and practices of ASEAN publicly listed companies (PLCs),
- to give greater international visibility to well-governed ASEAN PLCs and showcase them as investable companies, and
- to complement other ACMF initiatives and promote ASEAN as an asset class.

Six ASEAN countries—Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Viet Nam—agreed to participate in this initiative. Subsequently, six international corporate governance experts, one from each participating country, were engaged to develop the Scorecard on the basis of their national experience, validate it against international best practices, and finally implement it by assessing the PLCs in their respective countries.

The next section of this report traces the process and the thinking that went into the development of the Scorecard. The section after that contains the country reports and the assessment of the PLCs in the six participating countries. The assessment covers the five areas of the Organisation for Economic Co-operation and Development (OECD) principles of corporate governance: (i) rights of shareholders, (ii) equitable treatment of shareholders, (iii) role of stakeholders, (iv) disclosure and transparency, and (v) responsibilities of the board.

Each country report concludes by recommending steps that PLCs and capital market regulators can take to improve corporate governance standards in the country, and provides a summary of the assessment results for the PLCs in the country, arranged in alphabetical order (Tables 1, 3, 4, 6, 7, and 8).

The publication ends with concluding remarks and recommendations based on the experience gained in implementing the initiative since 2011.

2

BACKGROUND AND METHODOLOGY

In 2009, finance ministers of the Association of Southeast Asian Nations (ASEAN) endorsed the ASEAN Capital Markets Forum (ACMF) Implementation Plan for the development of an integrated capital market. This initiative is being undertaken in parallel with efforts to achieve convergence in ASEAN as an economic community by 2015. Broadly speaking, the ACMF Implementation Plan seeks to achieve the objectives of the ASEAN Economic Community by

- creating an enabling environment for regional integration;
- creating market infrastructure and regionally focused products and intermediaries;
- strengthening implementation; and
- improving the visibility, integrity, and branding of ASEAN as an asset class.

The ACMF Corporate Governance Initiative

The ASEAN corporate governance initiative, comprising the ASEAN Corporate Governance Scorecard and the ranking of corporate governance of ASEAN publicly listed companies (PLCs), is among several regional initiatives of the ACMF. Since it started in early 2011, the initiative has been supported by ADB through the technical assistance (TA) for Promoting an Interlinked ASEAN Capital Market.

The ACMF Working Group D is responsible for this initiative. The working group is led by the Securities Commission Malaysia and its members include capital market regulators and corporate governance proponents from the region. Working Group D has been working to enhance a corporate governance ranking methodology, leveraging methodologies already implemented in ASEAN countries, as well as those applied by multilateral agencies such as the Organisation for Economic Co-operation and Development (OECD). From the components and methodologies gathered, assessment criteria and a corporate governance template in the form of a scorecard have been developed.

To keep the methodology objective and independent, the ACMF has enlisted corporate governance experts in the region to develop the Scorecard and the assessment criteria. The experts for the initiative were chosen for their experience in corporate governance-ranking

initiatives in their own countries and the recognition accorded to them as authorities in the area of corporate governance. They were recommended by the capital market regulators in the individual countries. The experts, approved by the ACMF, have no vested interest in PLCs and are not linked to securities regulators.

The ASEAN Corporate Governance Scorecard was created by the following corporate governance experts:

- Mak Yuen Teen, Former Co-director of the Corporate Governance and Financial Reporting Centre and Associate Professor of Accounting, National University of Singapore;
- Rongruja Saicheua, Executive Vice President, Thai Institute of Directors;
- Salleh Hassan, Director, Securities Industry Development Corporation, Malaysia;
- Sidharta Utama, Professor, Faculty of Economics, University of Indonesia;
- Jesus Estanislao, Chair, Institute of Corporate Directors, Philippines; and
- Hien Thu Nguyen, PhD, Vice Dean, Finance Department, School of Industrial Management, University of Technology, Vietnam National University of Ho Chi Minh City.

The following bodies in each country have been appointed as domestic ranking bodies to work with the experts in applying the Scorecard to rank companies in each country:

- Indonesian Institute for Corporate Directorship;
- Minority Shareholders Watchdog Group in Malaysia;
- Institute of Corporate Directors in the Philippines; and
- Thai Institute of Directors.

In countries where a similar body has not been appointed, the use of the Scorecard may be granted to specific persons authorized by the ACMF. The use of the Scorecard by any other party requires authorization and permission from the ACMF.

Principles behind the ASEAN Corporate Governance Scorecard

The development of the Scorecard was guided by the following principles:

- The Scorecard should reflect global principles and internationally recognized good practices in corporate governance applicable to PLCs and, in some instances, may exceed the requirement and standards recommended in national legislation.
- The Scorecard should not be based on the lowest common denominator, but should aim to encourage PLCs to adopt higher standards and aspirations.
- The Scorecard should be comprehensive in coverage, capturing the salient elements of corporate governance.
- The Scorecard should enable gaps in corporate governance practices among ASEAN PLCs to be identified and should draw attention to good corporate governance practices.
- The Scorecard should be universal and applicable to different markets in ASEAN.
- The methodology should be robust to allow the accurate assessment of the corporate governance of PLCs beyond minimum compliance and box ticking.
- There should be extensive and robust quality assurance processes to ensure the independence and reliability of the assessment.

Initial Development

The OECD Principles of Corporate Governance, given their global acceptance by policy makers, investors, and other stakeholders, were used as the main benchmark for the Scorecard. Consequently, many of the items in the Scorecard may be best practices that go beyond the requirements of national legislation.

The experts also drew from the existing body of work and ranking initiatives in the region, including those of institutes of directors, shareholder associations, and universities, to guide the initial inclusion of items in the Scorecard.

The Scorecard covers the following five areas of the OECD principles:

- rights of shareholders;
- equitable treatment of shareholders;
- role of stakeholders;
- disclosure and transparency; and
- responsibilities of the board.

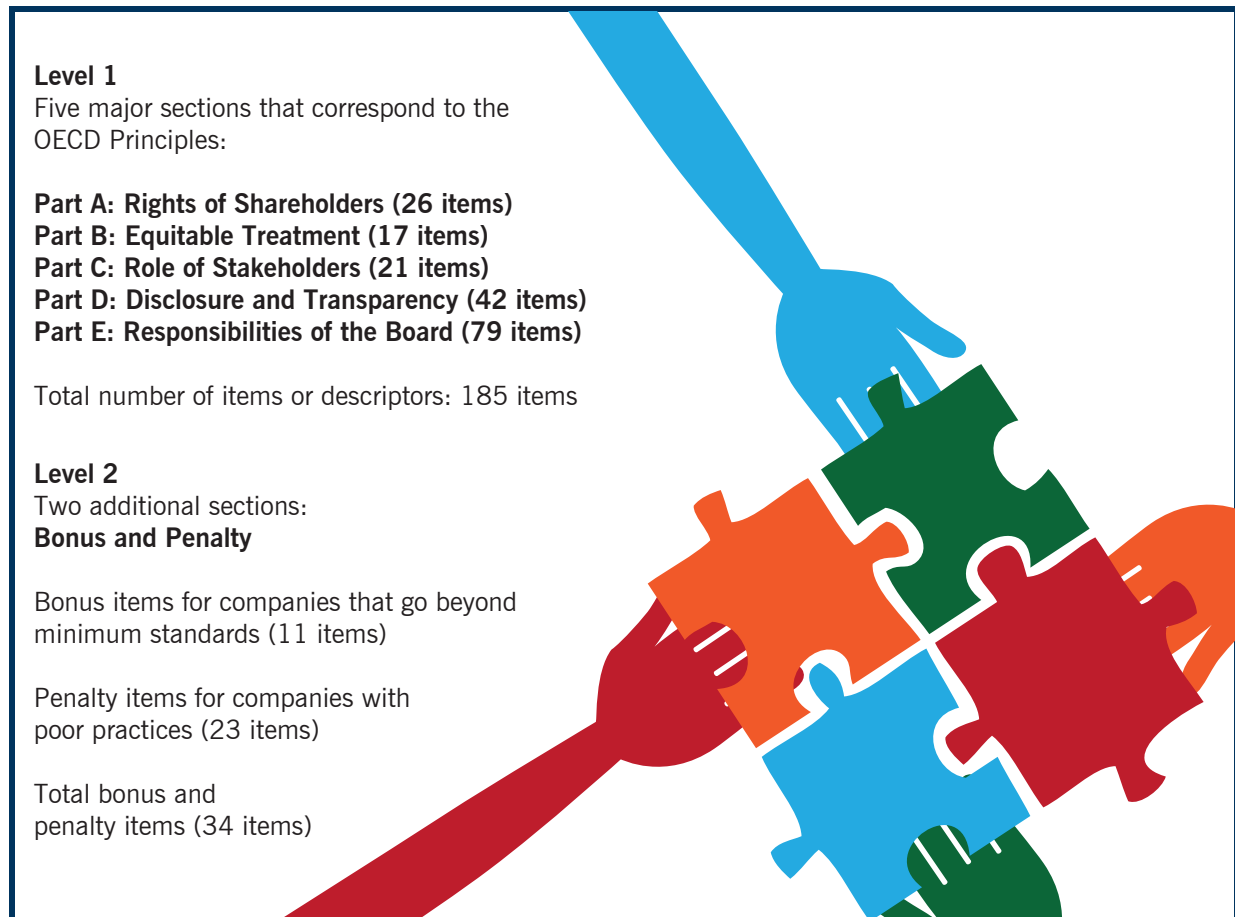
The weight allocated to each of the five areas is as follows:

- Rights of shareholders 10%
- Equitable treatment of shareholders 15%
- Role of stakeholders 10%
- Disclosure and transparency 25%
- Responsibilities of the board 40%

Total weight 100%

The use of two levels of scoring is designed to better capture the implementation of the substance of good corporate governance (Box). Level 1 comprises descriptors or items that are in essence indicative of (i) the laws, rules, regulations, and requirements of each ASEAN member; and (ii) basic expectations of the OECD principles. Level 2 consists of (i) bonus items reflecting other emerging good practices, and (ii) penalty items reflecting actions and events that are indicative of poor governance.

Box The Two Levels of the ASEAN Corporate Governance Scorecard



Refinement and Validation

The Scorecard was reviewed item by item against the OECD principles; other international corporate governance principles and practices recommended by bodies such as the World Bank, the International Corporate Governance Network, and the Asian Corporate Governance Association; and selected codes of corporate governance. Each item in the Scorecard was cross-referenced to at least one of these benchmarks.

The Scorecard was put through a validation process (beta testing). It was applied to a sample of companies in each country to ensure that the wording of the items on the Scorecard was widely comprehensible and universally applicable. The validation process also sought to identify the sources of information for the Scorecard items and any laws, regulations, and listing rules applicable to each item in each country. The Scorecard was also subjected to peer review to minimize discrepancies in the standards of assessment applied by the experts.

The corporate governance experts met with a senior representative from the OECD in August 2011, and this engagement resulted in the endorsement of the Scorecard and the methodology by the OECD. The second round of engagement was held with the OECD and the International Corporate Governance Network in July 2012, when senior representatives from both organizations provided constructive feedback to strengthen the Scorecard.

Development of Detailed Guidance for Assessors

To ensure the consistent application of the Scorecard by all assessors, in this and future assessments, detailed guidance notes have been developed for individual items, especially where the item is not self-explanatory.

Guidance for Publicly Listed Companies and Stakeholders on the Use of the Scorecard

PLCs and stakeholders using the scorecard and its results should note the following points:

Accessibility of Information

The assessment of PLCs through the Scorecard relies primarily on information contained from annual reports and company websites. Other sources of information are company announcements, circulars, articles of association, minutes of shareholders' meetings, corporate governance policies, codes of conduct, and sustainability reports. Only information that is publicly available and easily accessible and understood is used in the assessment. To be given

points on the Scorecard, disclosure must be unambiguous and sufficiently complete. To be assessed, most of this information should be in English.

Scorecard Methodology

Level 1

Level 1 consists of 185 items and is divided into five parts corresponding to the OECD principles. Each part carries a different weight based on the relative importance of the area.

Each item in level 1 carries one point. Some items may also provide for a “not applicable” option. Where a practice is mandated by laws, regulations, or listing rules in a country, the company is assumed to have adopted the practice unless there is evidence to the contrary. To be awarded points, the company must make sufficiently clear and complete disclosure.

The overall score in each part of level 1 is then computed by adding all the points in that part, adjusting for items that are not applicable to the company. The total score for a company is computed by weighting the scores for each part according to relative importance and totaling the weighted scores.

Level 2

Level 2 contains 34 bonus and penalty items collectively, each with a different number of points. The purpose of the bonus items is to recognize companies that go beyond the items in level 1 by adopting other emerging good practices. The penalty items are designed to downgrade companies with poor governance practices that are not reflected in their scores for level 1, such as being sanctioned by regulators for breaches of listing rules. The bonus and penalty items are meant to enhance the robustness of the Scorecard in assessing the extent to which companies apply the spirit of good corporate governance.

The total bonus and penalty points are added to or subtracted from the total score in level 1 to give the final score for the company.

Desired Outcomes

The Scorecard and the assessment are intended to raise corporate governance standards and practices of ASEAN PLCs, and to showcase well-governed ASEAN PLCs and make them more visible and investable to global investors, thereby improving their liquidity and valuation. ASEAN PLCs are encouraged to use the Scorecard as a tool in their ongoing journey to improve their corporate governance practices.

The Scorecard and its results can also be used by regulators as a reference in reviewing corporate governance rules and guidelines in order to enhance corporate governance practices among PLCs. It is also hoped that the Scorecard will facilitate convergence in methodologies for assessing the corporate governance of PLCs.

Future Refinement of the Scorecard and the Methodology

The Scorecard and the methodology will be reviewed periodically and, if necessary, revised to reflect new developments in corporate governance.

Caveats

As with any corporate governance assessment based on publicly available information, there are inherent limitations in the Scorecard and the domestic assessments of PLCs. First, as the methodology relies on public information, only corporate governance policies and practices that are publicly disclosed are captured in the assessment.

Second, PLCs that disclose certain corporate governance practices may not be applying those practices or may be applying them only in form rather than in substance. While penalty items are used to downgrade companies that demonstrate poor corporate governance practices, these are applied only where there is clear evidence of such practices.

Third, although there are items dealing with the conduct of directors, management, and employees of companies, the Scorecard is not specifically designed to assess the ethical behavior of those responsible for the stewardship of the companies.

Fourth, although good corporate governance should improve the long-term value of PLCs, no assertion is made about links between the corporate governance assessments of the PLCs with their financial performance.



3

COUNTRY REPORTS AND ASSESSMENTS





INDONESIA

Corporate Governance Framework

The Indonesian law on limited-liability companies (Undang-Undang No. 40 2007 Perseroan Terbatas) provides the legal framework for the governance of corporations, including publicly listed companies (PLCs). In addition, PLCs must comply with the listing rules of the Indonesian Stock Exchange and the capital market and financial institutions supervisory body (BAPEPAM-LK). PLCs in banking have to comply with governance standards set by the central bank and state-owned enterprises (SOEs) must comply with those set by the Ministry of SOEs.

PLCs may voluntarily adopt, fully or partially, the General Guidance on Good Corporate Governance developed by the National Committee on Governance Policy in 2001. The guidance was revised in 2006 and is considered to be the national corporate governance code for Indonesia.

Overall Results and Analysis

The Indonesian Institute for Corporate Directorship assessed the country's 100 largest PLCs based on market capitalization as of 30 June 2012. Three PLCs that could not provide annual reports in English were dropped.

The average total corporate governance score is 43.4%; the maximum score is 75.4% and the minimum score is 20.8%. The relatively low average score indicates that the majority of the PLCs in Indonesia do not yet practice internationally based corporate governance principles. There are several reasons for the low score:

- The majority of the corporate governance practices covered in the ASEAN Corporate Governance Scorecard are voluntary, while Indonesian PLCs tend to practice only items that are mandated. Since there is no “comply or explain” requirement in the national corporate governance code, some PLCs may not refer at all to the code and thus are not aware of corporate governance practices that can be voluntarily adopted.
- Some corporate governance practices are mandated but not all PLCs follow the requirements.¹ Thus, PLCs need to improve their compliance with the rules.

¹ For example, BAPEPAM-LK requires PLCs to disclose the attendance of board members in board meetings. However, a large number of PLCs fail to do so.

A further analysis of the results reveals that the average corporate governance scores of banks (58.9) and SOEs (62.2), are significantly higher than the scores for nonbanks (40.5) and private companies (39.9). Banks and SOEs are closely supervised by the Central Bank and the Ministry of SOEs, in addition to BAPEPAM-LK. Thus, monitoring by regulators plays a crucial role in enhancing corporate governance practice in Indonesia.

Part A: Rights of Shareholders

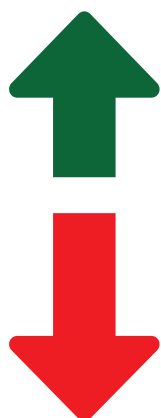
Strengths and Areas for Improvement

The principle stipulates that companies should protect and facilitate the exercise of shareholders' rights. These rights include the right to participate in and be sufficiently informed on decisions concerning fundamental corporate changes and the right to participate effectively and vote in general shareholders' meetings.

The average score in this category is the lowest relative to the average scores in other categories, with a maximum score of only 46.1 and a minimum score of 23.1. The scores are low mainly because it is uncommon for PLCs in Indonesia to publish the minutes of the annual general meetings (AGMs), which provide valuable information for investors to evaluate the process and substance of the meeting. In addition, most PLCs announce the results of the AGM more than 1 day after the date of the meeting and do not disclose the existence of a policy that allows shareholders to elect directors and commissioners individually. Most PLCs also pay dividends more than 30 days after they are declared.

One strength of Indonesia in the *Rights of Shareholders* category is the requirement in the company law to have the remuneration of board members approved by shareholders at the AGM. Fundamental corporate changes must also be approved by shareholders.

Figure 1 Strengths and Areas for Improvement in *Rights of Shareholders*



STRENGTHS

- Shareholder approval of remuneration of board members
- Shareholder approval of fundamental corporate changes

AREAS FOR IMPROVEMENT

- Lack of published minutes of annual general meetings
- Publication of annual general meeting results more than 1 day after the meeting
- Payment of dividends more than 30 days after declaration

Part B: Equitable Treatment of Shareholders

Strengths and Areas for Improvement

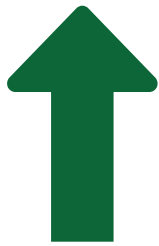
According to the principle, companies must ensure equitable treatment of shareholders, including noncontrolling and foreign shareholders. In addition, shareholders should be able to obtain effective redress for violations of their rights. Under this principle, insider trading and abusive related-party transactions (RPTs) should be prohibited and procedures for AGMs should ensure equitable treatment of shareholders.

The average score for this category is also low, with a maximum score of 68.8 and a minimum score of 6.3. Some factors that explain the low score are as follows:

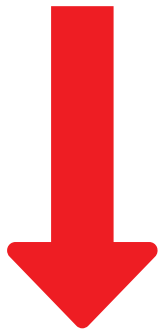
- AGM notices, which provide information for shareholders and investors on the agenda of the meeting, are rarely in English.
- Supplementary information that elaborates the agenda of the AGM is not provided or is not easily accessible. This information includes profiles of board candidates, the possible appointment or reappointment of auditors, dividend policy, and the target date of the dividend payment.
- Most companies do not have or do not disclose the existence of a policy requiring board members to report their dealings in company shares within 3 business days after the transaction.
- Most companies do not have or do not disclose the existence of a policy requiring an independent committee to review material RPTs to determine if they are in the best interest of the company.

The strengths of Indonesian PLCs in *Equitable Treatment of Shareholders* are:

- The company law requires board members (directors and commissioners) to abstain from participating in board discussions on a particular agenda where they have a conflict of interest.
- Only a few RPTs can be classified as financial assistance by PLCs to entities other than wholly owned subsidiary companies.

Figure 2 Strengths and Areas for Improvement in *Equitable Treatment of Shareholders***STRENGTHS**

- Abstention of board members from decisions on matters where they have a conflict of interest
- Infrequency of financial assistance to entities other than wholly owned subsidiaries

**AREAS FOR IMPROVEMENT**

- General unavailability of annual general meeting notices in English
- General noninclusion of required supplementary information in annual general meeting notices
- Lack of timely reporting of trading by insiders in company shares
- Lack of a policy requiring an independent committee to review material related-party transactions

Part C: Role of Stakeholders

Strengths and Areas for Improvement

According to the principle, companies must respect the rights of stakeholders and encourage cooperation between companies and stakeholders in creating wealth and promoting the companies' long-term sustainability. Companies are expected to establish policies and programs that recognize stakeholders' rights and provide opportunities for them to obtain effective redress for violations of their rights. The average score for this category is 52.2, with a maximum score of 100 and a minimum score of 4.8. Relative to other categories, the *Role of Stakeholders* has the largest divergence of scores across companies: some companies extensively disclose their stakeholder policies and programs, while others barely disclose their corporate responsibility in annual reports and on company websites. This finding is quite intriguing, given that both the company law and BAPEPAM-LK mandate companies to disclose their corporate responsibility in annual reports.

Some corporate responsibilities that are widely practiced by PLCs are:

- policy and activities related to interaction with communities;
- policy on the health, safety, and welfare of employees;
- policy on training and development programs for employees; and
- the inclusion of a separate section on corporate responsibility in the annual report.

On the other hand, the following corporate responsibilities are not yet commonly practiced:

- policy and activities on supplier selection,
- anticorruption policy and activities, and
- whistle-blowing mechanism.

Figure 3 Strengths and Areas for Improvement in *Role of Stakeholders*



Part D: Disclosure and Transparency

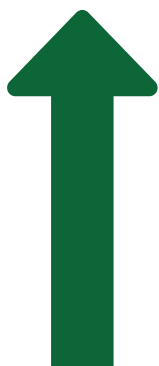
Strengths and Areas for Improvement

This category stipulates that companies must disclose accurately and on time all material information regarding the companies, including the financial condition, ownership structure, RPTs, and governance of the company. Financial statements should be audited by independent and competent external auditors, and channels of communication should provide equal, timely, and cost-efficient access to relevant information for stakeholders. The average score for *Disclosure and Transparency* is 53.7, with a maximum score of 85.0 and a minimum score of 19.5. The average score is the highest relative to the scores in other categories because some disclosure practices are mandated by BAPEPAM-LK or the listing rule. The mandated disclosure covers, among others, financial performance indicators and RPTs (name of related parties, nature and value of RPTs); quarterly financial reports; and audited financial statements. The audited financial statements should be published within 90 days after the close of the financial year. Even though not required to do so, some companies publish downloadable financial statements and annual reports, as well as reports on business operations, on their company websites.

The following are some areas for improvement in *Disclosure and Transparency*:

- PLCs disclose only direct ownership of company shares by substantial shareholders, board members, and key executives. They fail to disclose indirect ownership by these parties.
- Because PLCs are not required to disclose their compliance with the corporate governance code, very few make this disclosure in their annual reports.
- While PLCs disclose the profiles of board members, many of them do not disclose the board members' directorships in other listed companies.
- Most PLCs also do not disclose the audit and non-audit fees of their audit firms.
- Finally, although mandated to do so by BAPEPAM-LK, the majority of Indonesian PLCs do not provide information about the remuneration of board members. This is probably because the information is considered too sensitive to be disclosed publicly.

Figure 4 Strengths and Areas for Improvement in *Disclosure and Transparency*



STRENGTHS

- Disclosure of financial performance indicators
- Disclosure of names of related parties, and the nature and value of related-party transactions
- Publication of quarterly financial reports and audited financial statements within 90 days after the end of the financial year
- Publication of downloadable financial statements and annual reports, as well as reports on business operations, on company websites



AREAS FOR IMPROVEMENT

- Failure to disclose indirect ownership by insiders
- Lack of disclosure in annual reports of the extent of the company's compliance with the corporate governance code
- Failure to disclose board members' directorships in other listed companies
- Failure to disclose audit fees and non-audit fees
- Inadequacy of information provided on the remuneration of each member of the board

Part E: Responsibility of the Board

Strengths and Areas for Improvement

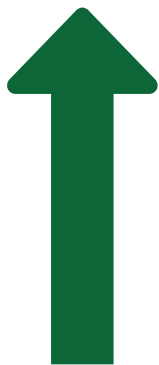
According to this principle, the board of commissioners (BOC) should effectively monitor management, provide strategic guidance to the company, and be accountable to the company and its shareholders. The board should treat all shareholders fairly, apply high ethical standards, and take the interests of stakeholders into account in all board decisions. It should exercise objective and independent judgment in corporate affairs, and its members should be committed to fulfilling their responsibilities and have access to accurate, timely, and relevant information. The average score in this category is 44.1, with a minimum score of 19.2 and a maximum score of 77.2.

Some good practices in this regard among Indonesian PLCs are as follows:

- In most PLCs, there is at least one commissioner with prior work experience in the major industry in which the company is operating.
- The members of the audit committee are entirely independent.
- Disclosure of audit committee tasks, composition, number of meetings, and attendance is common.
- Internal control procedures and risk management systems are in place and adequately disclosed.

Some factors contributing to the low score are:

- lack of disclosure of the nomination process for board members, including key executives;
- inadequate disclosure of the performance appraisal of the board, its committees, and the members of the board;
- lack of rules on the term limit of independent commissioners, as well as the limit on the number of board seats in PLCs that a commissioner may hold at the same time; and
- further, some PLCs do not disclose the frequency of BOC meetings and the attendance of each member of the BOC, even though disclosure is mandated by BAPEPAM-LK.

Figure 5 Strengths and Areas for Improvement in *Responsibility of the Board***STRENGTHS**

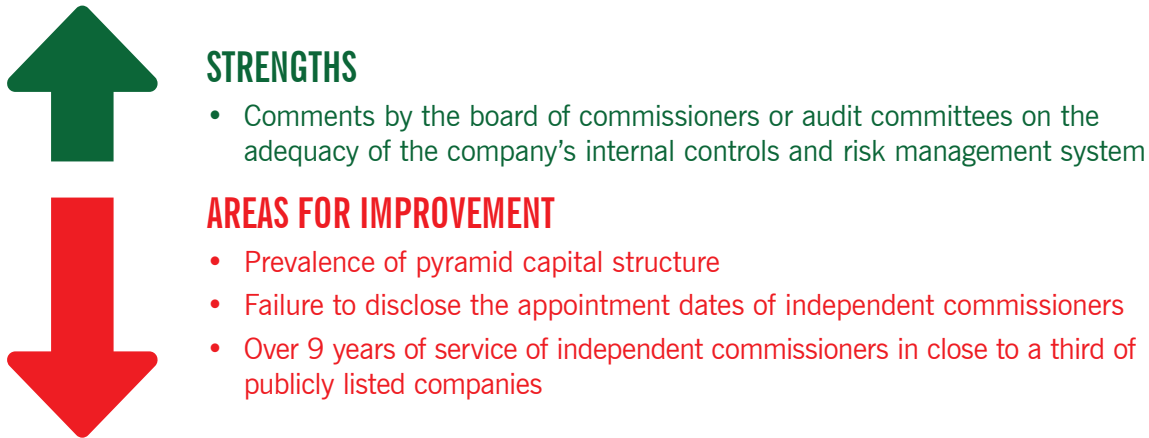
- Inclusion of at least one commissioner with prior work experience in the major industry in which the company is operating
- Full independence of audit committee members
- Adequate disclosure of audit committee tasks, composition, number of meetings, and attendance
- Adequate disclosure of internal control procedures and risk management systems

**AREAS FOR IMPROVEMENT**

- Lack of disclosure of the nomination process for board members, including key executives
- Lack of performance appraisal of the board, its committees, and members of the board
- Lack of rules on the term limit of independent commissioners, as well as the limit on the number of board seats in publicly listed companies that a commissioner may hold at the same time
- Failure to disclose the frequency of board of commissioners meetings and the rate of attendance of each member at the meetings

Bonus and Penalty

The ASEAN Corporate Governance Scorecard awards bonus points to companies that practice corporate governance beyond minimum standards, and deducts penalty points for companies that have poor corporate governance practices or that violate prevailing rules or laws. Most companies do not earn bonus or penalty points. Few companies earn bonus points for having the BOC or audit committee comment on the adequacy of the company's internal controls and risk management system. In the *Penalty* category, about one-third of Indonesian PLCs have a pyramid capital structure, although this type of ownership structure increases the risk of wealth expropriation from noncontrolling shareholders. Further, almost 20% of Indonesian PLCs fail to disclose the appointment dates of independent commissioners and almost 30% of PLCs have independent commissioners who have served more than 9 years. Serving too long as an independent commissioner raises concerns about the ability of the commissioner to maintain his or her independent judgment.

Figure 6 Strengths and Areas of Improvement in the *Bonus and Penalty* Area

Conclusion and Recommendations

Overall, corporate governance practices in most PLCs in Indonesia need to be significantly improved to bring them in line with international best practices. The improvements have to be made in all corporate governance categories. To ensure the sustainability of financially sound enterprises, companies need to develop and implement corporate governance policies and enhance their compliance with prevailing rules and the code of corporate governance. In addition, the role of the regulator is crucial. Efforts to improve corporate governance should be the responsibility not only of the PLCs and the regulator, but also of other relevant parties, such as investors, creditors, and equity analysts.

The following are some key recommendations aimed at improving the corporate governance practices of PLCs in Indonesia:

- A gap analysis of existing regulations on corporate governance should be conducted to identify new corporate governance rules or existing rules that need to be revised.
- Compliance with rules should be increased through stricter enforcement.
- The national code of corporate governance was last revised in 2006 and therefore needs to be updated to reflect the latest international best practices and fit them to the Indonesian context.
- After the code is revised and disseminated to the PLCs, the “comply or explain” rule should become mandatory for all PLCs.
- Controlling shareholders, board members, and key executives should be educated in the benefits of practicing good corporate governance and incorporating the practices in the business operations of companies.
- Public monitoring of corporate governance practices can be strengthened if investors, creditors, and other stakeholders are educated in the importance of practicing good corporate governance.

The Indonesian Institute for Corporate Directorship is determined to support the regulators in promoting a conducive regulatory atmosphere for good corporate governance practices and to help Indonesian PLCs internalize best corporate governance practices.

Table 1 Corporate Governance: Top 50 Publicly Listed Companies – Indonesia

| No. | Publicly Listed Company Name | No. | Publicly Listed Company Name |
|-----|----------------------------------|-----|------------------------------|
| 1 | ABM Investama | 26 | Indo Tambangraya Megah |
| 2 | Adaro Energy | 27 | Indocement Tunggul Prakarsa |
| 3 | AKR Corporindo | 28 | Indosat |
| 4 | Astra Otoparts | 29 | Jasa Marga |
| 5 | Bakrie Telecom | 30 | Kalbe Farma |
| 6 | Bank BPD Jawabarat | 31 | Krakatau Steel |
| 7 | Bank BTN | 32 | Lippo Karawaci |
| 8 | Bank CIMB Niaga | 33 | Perusahaan Gas Negara |
| 9 | Bank Danamon | 34 | Aneka Tambang |
| 10 | Bank Internasional Indonesia | 35 | Astra International |
| 11 | Bank Mandiri | 36 | Bank Central Asia |
| 12 | Bank Mega | 37 | Bank Permata |
| 13 | Bank Negara Indonesia | 38 | Dian Swastika |
| 14 | Bank OCBC NISP | 39 | Medco Energi International |
| 15 | Bank Panin | 40 | Telekomunikasi Indonesia |
| 16 | Bank Rakyat Indonesia | 41 | Timah |
| 17 | Bank Tabungan Pensiunan Nasional | 42 | Vale Indonesia |
| 18 | Bayan Resources | 43 | Adira Dinamika Multi Finance |
| 19 | Bukit Asam | 44 | Salim Ivomas |
| 20 | Bumi Resources | 45 | Semen Gresik (Persero) |
| 21 | BW Plantation | 46 | Summarecon |
| 22 | Energy Mega Persada | 47 | Unilever Indonesia |
| 23 | Garuda Indonesia | 48 | United Tractors |
| 24 | Harum Energy | 49 | Wijaya Karya |
| 25 | Indika Energy | 50 | XL Axiata |

Note: The publicly listed companies are arranged alphabetically.

Corporate Governance Framework

The 1997 Asian financial crisis led many Asian countries to reform their financial and corporate institutions. The event was a catalyst for the beginning of progressive and collaborative efforts, led by the government and regulators with close consultation with the industry, to promote sound corporate governance. Over the years, these efforts have resulted in a more coherent and consistent regulatory framework that now underpins Malaysian corporate governance.

Table 2 below highlights some major laws and regulations that make up and influence the corporate governance framework and shape corporate governance practices in Malaysia. Various other measures have also been undertaken by regulators to enhance Malaysia's corporate governance framework. These measures should lead to improvements in the economic value-added of companies, higher productivity, and a lower risk of systemic financial failure.

Table 2 Major Laws and Regulations Affecting Corporate Governance in Malaysia

| |
|---|
| Companies Act of 1965 and amendments in 2007 |
| Banking and Financial Institutions Act of 1989 |
| Development Financial Institutions Act of 2002 |
| Financial Reporting Act of 1997 |
| Bursa Malaysia Listing Requirements |
| Securities Commission Act 1993 and amendments in 2011 |
| Capital Markets and Services Act of 2007 |
| Malaysian Code on Corporate Governance of 2012 |

In July 2011, the Securities Commission Malaysia launched the Corporate Governance Blueprint 2011. With the theme Towards Excellence in Corporate Governance, the blueprint provides a 5-year action plan for raising corporate governance standards in Malaysia by strengthening self-discipline and market discipline and promoting greater internalization of the culture of good governance. One of the key outputs of the blueprint, the new Malaysian Code on Corporate Governance, was released in March 2012, superseding its predecessor, which was released in 2007 (Figure 7). The code sets out broad principles and specific recommendations on structures and processes that companies should adopt in making good

corporate governance an integral part of their business dealings and culture. Publicly listed companies (PLCs) should explain how they have complied with the recommendations in the code; and those that have not complied with the recommendations should explain why.

Figure 7 Recent Corporate Governance Journey in Malaysia



The top 100 PLCs among those listed on Bursa Malaysia, ranked according to market capitalization at the end of June 2012, were identified for inclusion in the second-year assessment. However, six of the 100 PLCs that were originally identified had to be excluded. Three of these were newly listed companies in 2012 and the other three were undergoing privatization in the first quarter of 2013.² These six companies were subsequently replaced with six other companies from the ranked list of companies.

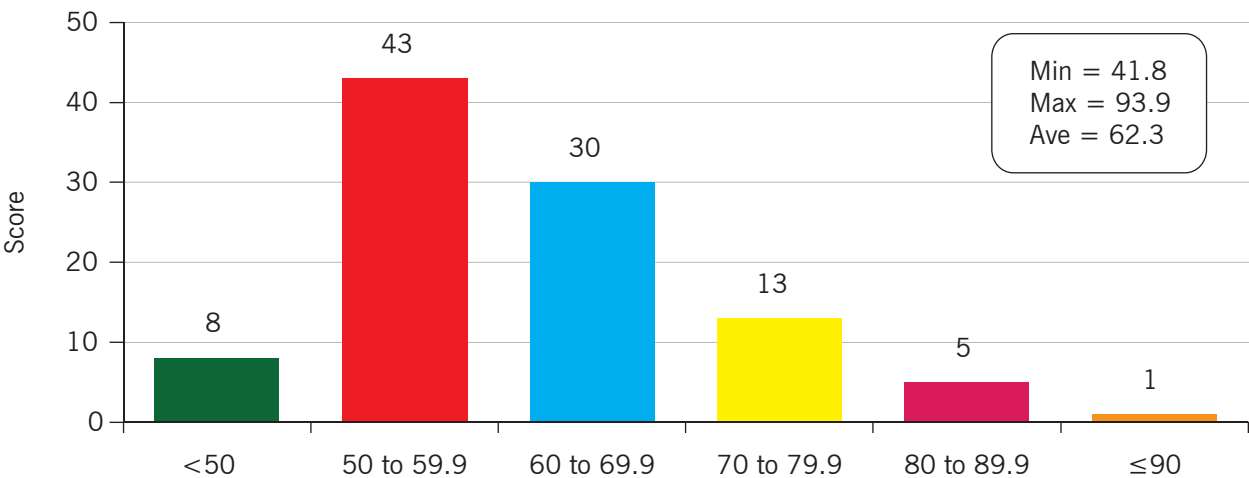
Overall Performance

Malaysia appears to have the highest number of default responses compared with the other ASEAN members.³ These can be found in the *Rights of Shareholders* (8 of 26 items) and *Equitable Treatment of Shareholders* (7 of 17 items) categories of the Scorecard. Figure 8 shows the overall performance of the 100 assessed companies and the distribution of their total composite scores. The average composite score for Malaysia is 62.3 points; eight companies scored less than 50 points and one company achieved a composite score of more than 90 points.

² The three newly listed companies were Felda Global Ventures Holdings, SapuraKencana Petroleum, and Gas Malaysia, and the three companies undergoing privatization in the first quarter of 2013 were KFC Holdings, QSR Brands, and Tradewinds.

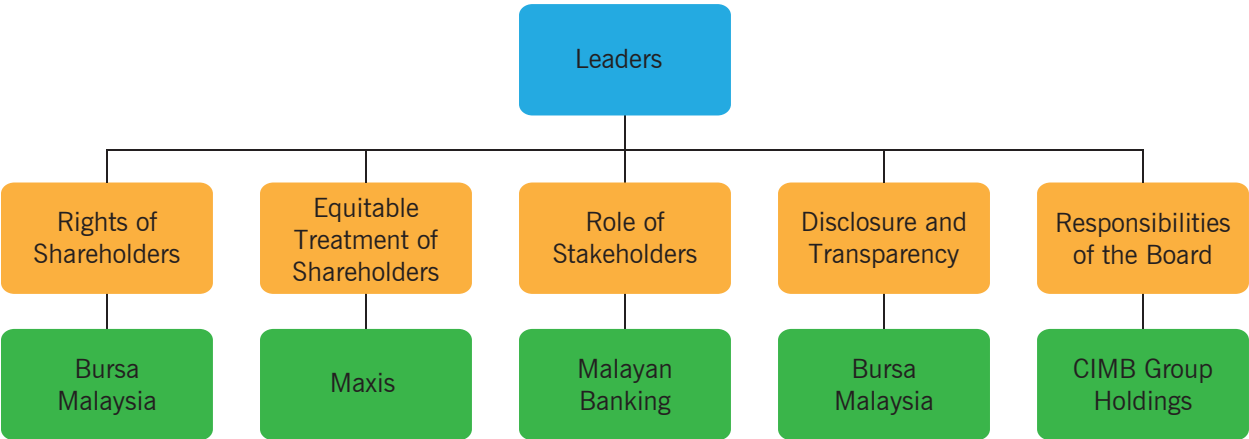
³ Default response items are practices currently mandated by laws, regulations, or listing rules in a country. A company is assumed to have adopted the practices unless there is evidence to the contrary.

Figure 8 Overall Performance of Assessed Companies in Malaysia



One of the aims of this initiative is to raise the standards of corporate governance in ASEAN PLCs. This, in effect, creates a race to the top. In such a competition, it would be helpful to know who the leaders of the race are so that the rest could be challenged and motivated. The results of the assessment in the second year revealed that there are indeed exemplary companies in each of the sections of the Scorecard. The exemplary companies are those that have scored in the 80th percentile or higher. These companies serve as motivation to other companies in the race to the top.

Figure 9 Exemplary Publicly Listed Companies in Malaysia



The results also show that 6 of the top 20 companies are government-linked companies.⁴ This, coupled with the fact that a number of government-linked companies are leaders in corporate governance, augurs well in the context of the Government of Malaysia's initiative to transform these companies.

A major area for improvement observed in this year's assessment is the prevalence of companies adhering only to the minimum requirements of the laws, rules, and regulations. In addition, the use of boilerplate disclosure is evident. Companies that can break away from these practices and demonstrate a strong commitment to high levels of transparency will be able to differentiate themselves from other companies. Companies should identify "low-hanging fruit" (for example, the various items in the *Rights of Shareholders* category) that could be implemented without much additional investment.

Part A: Rights of Shareholders

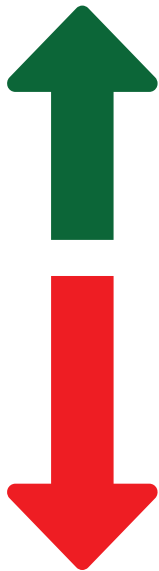
Strengths and Areas for Improvement

Of the 26 items in this category, 8 are default response items as there are prevailing laws, rules, and regulations for dealing with these items. The assessment revealed two notable observations. First, almost all of the companies appear to have substantial or major institutional investors other than the controlling shareholder(s) as shareholders. This type of shareholder is believed to be capable of playing the leading role in protecting the rights of minority shareholders. Second, all of the assessed companies are able to execute timely (within 24 hours) disclosure of the outcome of the AGM.

The main areas for improvement observed in relation to this category pertain to the lack of disclosure of policies, processes, and insights on the conduct of AGMs or to the absence of evidence of effective conduct of AGMs. In addition, many companies do not appear to have a policy to encourage the participation of institutional investors in AGMs.

In relation to the timely payment of dividends, almost none of the companies adopt the recommended best practice of paying within 30 days after the declaration or approval of the dividend. While the Scorecard recommends that the companies seek shareholders' approval for the remuneration of directors, it is common practice for Malaysian companies to define remuneration as directors' fees only, without including other elements of the remuneration package (for example, bonuses, options, and fringe benefits).

⁴ Government-linked companies are the equivalent of state-owned enterprises (SOEs).

Figure 10 Strengths and Areas for Improvement in *Rights of Shareholders***STRENGTHS**

- Substantial or major institutional investors other than the controlling shareholder(s), who can take the lead in protecting the rights of minority shareholders
- Timely disclosure of annual general meeting (AGM) results

AREAS FOR IMPROVEMENT

- Nondisclosure of AGM policies and procedures
- No evidence of effective conduct of AGMs
- No policy to encourage institutional investors to participate in AGMs
- Late payment of dividends
- No shareholder approval of remuneration package for directors

Part B: Equitable Treatment of Shareholders

Strengths and Areas for Improvement

In this category, 7 of the 17 items are default response items. Other than the default items, three practices that are prevalent in all Malaysian PLCs that were assessed and that are considered strengths are shown in Figure 11.

The areas for improvement by Malaysian companies include providing details in the notices of AGMs on the profiles of directors seeking election or reelection, and on the dividend policy and final dividend (if any). A few companies also give financial assistance to entities other than wholly owned subsidiaries. This practice of financial assistance should not be encouraged because wealth could be expropriated from minority shareholders to benefit controlling shareholders.

Figure 11 Strengths and Areas for Improvement in *Equitable Treatment of Shareholders***STRENGTHS**

- No bundling of resolutions in the annual general meeting (AGM)
- Availability of AGM materials in English
- Declaration that related-party transactions are fair and at arm's length

**AREAS FOR IMPROVEMENT**

- Lack of information in AGM notices about directors seeking election or reelection
- Lack of information in AGM notices about dividend policy and the final dividend
- Financial assistance to entities other than wholly owned subsidiaries, which could lead to expropriation of wealth from minority shareholders to benefit controlling shareholders

Part C: Role of Stakeholders

Strengths and Areas for Improvement

This category examines a company's role in safeguarding the interests of the broader stakeholders, including customers, employees, and the society at large. All of the companies provide separate corporate social responsibility or sustainability disclosures of varying depth and breadth, either in the annual report, or in a stand-alone report, or both. Most companies disclose their policies on employees' health and safety, and training and development. Many companies also provide alternative or multiple channels for stakeholders to raise concerns or lodge complaints and grievances.

Companies' disclosure of aspects of policies and practices that deal with customers' health and safety, supplier selection, anticorruption efforts, and whistle-blowing is a key area for improvement. In addition, companies should report relevant measures implemented for employees' health and safety, and training and development.

Figure 12 Strengths and Areas for Improvement in *Role of Stakeholders*

Part D: Disclosure and Transparency

Strengths and Areas for Improvement

This part of the Scorecard assesses a company's level of transparency in relation to the disclosure of relevant information. The top companies were found to be strong in several aspects. All of them disclose the identity of the beneficial owners of substantial or major shareholders. Further, nearly all of the top companies disclose the direct and indirect shareholdings of major or substantial shareholders and directors, respectively. None of the top companies has failed to disclose the amount of audit and non-audit (if applicable) fees. A significant majority disclose the relevant details of RPTs and contact details for investor relations.

In terms of possible areas for improvement, none of the PLCs assessed disclose the shareholdings (direct and indirect) and share dealings of senior management. In addition, only a few release the audited annual financial statements in less than 90 days from the financial year-end. Many companies do not fully use the capabilities of the internet for reporting purposes. For example, only a few companies disclose their constitution documents (articles or memorandums of association). Another area for improvement is the quality of the annual report content.

Figure 13 Strengths and Areas for Improvement in *Disclosure and Transparency***STRENGTHS**

- Disclosure of the identity of the beneficial owners and substantial or major shareholders
- Disclosure of the direct and indirect shareholdings of major or substantial shareholders and directors
- Disclosure of audit and non-audit fees
- Disclosure of relevant details of related-party transactions and contact details for investor relations

**AREAS FOR IMPROVEMENT**

- Nondisclosure of the shareholdings and share dealings of senior management
- Late release of audited financial statements
- Insufficient use of the internet for company reporting
- Insufficiently informative annual reports
- Lack of disclosure of key risks (other than financial risks), nonfinancial performance indicators, dividend policy, whistle-blowing policy, remuneration of individual directors and the chief executive officer, and training or continuing education programs attended by each director

Part E: Responsibilities of the Board

Strengths and Areas for Improvement

This category has the largest number of items for assessment. It deals with various issues pertaining to the responsibilities of the board. All of the PLCs that were assessed disclose the board's duties and responsibilities. Many of these companies also disclose the types of decisions requiring board approval. Nearly all companies have boards with between 5 and 12 directors. None have a board size that is too small, but a few have more than 12 directors on their board. Although almost all of the companies have different individuals holding the positions of chair of the board and chief executive officer, there are chairs who are not independent directors. In relation to directors' remuneration, very few of the PLCs that were assessed award share options, performance shares, or bonuses to independent directors.

Many PLCs were also found to have vested in the audit committee the responsibility for (i) making recommendations on the appointment, reappointment, or removal of the external auditor; and (ii) approving the appointment or removal of the head of internal audit. Disclosure by companies of internal control procedures and risk management systems in place appears to be the norm.

Regarding areas for improvement in this category, many PLCs do not disclose details of their code of ethics, including the content and processes for dealing with the implementation and monitoring of the code. A number of companies need to strengthen several aspects of the board, including the structure, process, independence, diversity, and appraisal of individual directors; the board as a whole; and board committees. Only a few companies have established board charters.

Except for the audit committee, which is a mandatory requirement, very few PLCs have instituted the relevant terms of reference and the workings of the nominating committee or the remuneration committee, if such committees have been established. In matters related to remuneration, companies normally do not (i) disclose the details of remuneration of executive directors and the chief executive officer, and the fee structure for nonexecutive directors, or (ii) adopt the practice of having either the shareholders or the board approve the remuneration of executive directors and senior executives.

Figure 14 Strengths and Areas for Improvement in *Responsibilities of the Board*

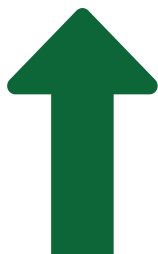


Bonus and Penalty

A few of the PLCs assessed demonstrate exemplary practices (Figure 15).

The *Penalty* section of the Scorecard reflects items that are considered poor corporate governance practices. Very few companies practice poor corporate governance. However, there have been cases of pyramiding or crossholding; and a few companies, besides having one or more independent directors serving more than 9 years, have also failed to obtain shareholders' approval for the retention of these independent directors.

Figure 15 Strengths and Areas for Improvement in the *Bonus and Penalty* Area



STRENGTHS

- Extended notice period (at least 28 days) for the annual general meeting
- Appointment of at least one female independent director
- Disclosure of comments by the board of directors (or the audit committee) on the adequacy of the company's system of internal controls



AREAS FOR IMPROVEMENT

- Cases of pyramiding or crossholding
- Independent directors serving more than 9 years, without shareholders' approval of their retention

Conclusion and Recommendations

Although the assessment was limited to the top 100 PLCs, the performance of Malaysian companies, in terms of conformity to recommended corporate governance principles and practices, is commendable and at the same time presents opportunities for more improvement. Many, if not most, of the improvements could be addressed by the companies and their boards of directors. The pressing challenge is to encourage companies to improve further. This could be supported by introducing mechanisms or other initiatives to provide incentives to, reward, and recognize exemplary companies.

Table 3 Corporate Governance: Top 50 Publicly Listed Companies – Malaysia

| No. | Publicly Listed Company Name | No. | Publicly Listed Company Name |
|-----|-------------------------------------|-----|---|
| 1 | AirAsia | 26 | Malayan Banking |
| 2 | Alliance Financial Group | 27 | Malaysia Airport Holdings |
| 3 | AMMB Holdings | 28 | Malaysia Building Society |
| 4 | Amway (M) Holdings | 29 | Malaysia Marine and Heavy Engineering |
| 5 | Axiata Group | 30 | Malaysian Airline System |
| 6 | BIMB Holdings | 31 | Malaysian Resources |
| 7 | Boustead Holdings | 32 | Maxis |
| 8 | British American Tobacco (Malaysia) | 33 | Media Prima |
| 9 | Bumi Armada | 34 | MSM Malaysia Holdings |
| 10 | Bursa Malaysia | 35 | Nestle (Malaysia) |
| 11 | Carlsberg Brewery Malaysia | 36 | Petronas Chemicals Group |
| 12 | CIMB Group Holdings | 37 | Petronas Dagangan |
| 13 | DiGi.Com | 38 | Public Bank |
| 14 | DRB-HICOM | 39 | RHB Capital |
| 15 | Fraser & Neave Holdings | 40 | Shell Refining Company (Federation of Malaya) |
| 16 | Gamuda | 41 | Sime Darby |
| 17 | Guinness Anchor | 42 | Star Publications (Malaysia) |
| 18 | Hong Leong Bank | 43 | Sunway |
| 19 | IJM Corporation | 44 | Telekom Malaysia |
| 20 | IJM Land | 45 | Tenaga Nasional |
| 21 | IJM Plantations | 46 | Time Dotcom |
| 22 | Jaya Tiasa Holdings | 47 | Top Glove Corporation |
| 23 | KLCC Property Holdings | 48 | UEM Land Holdings |
| 24 | Kulim (Malaysia) | 49 | UMW Holdings |
| 25 | LPI Capital | 50 | United Plantations |

Note: The publicly listed companies are arranged alphabetically.

PHILIPPINES

Background

The Philippines officially launched its participation in the ASEAN Corporate Governance Scorecard on 11 September 2012. Orientation sessions on the Scorecard were held for evaluators and compliance officers to prepare both stakeholders for the new challenges ahead. The assessment involved selecting and validating the top 100 publicly listed companies (PLCs), based on market capitalization, and submitting their scores to the ASEAN Capital Markets Forum (ACMF).

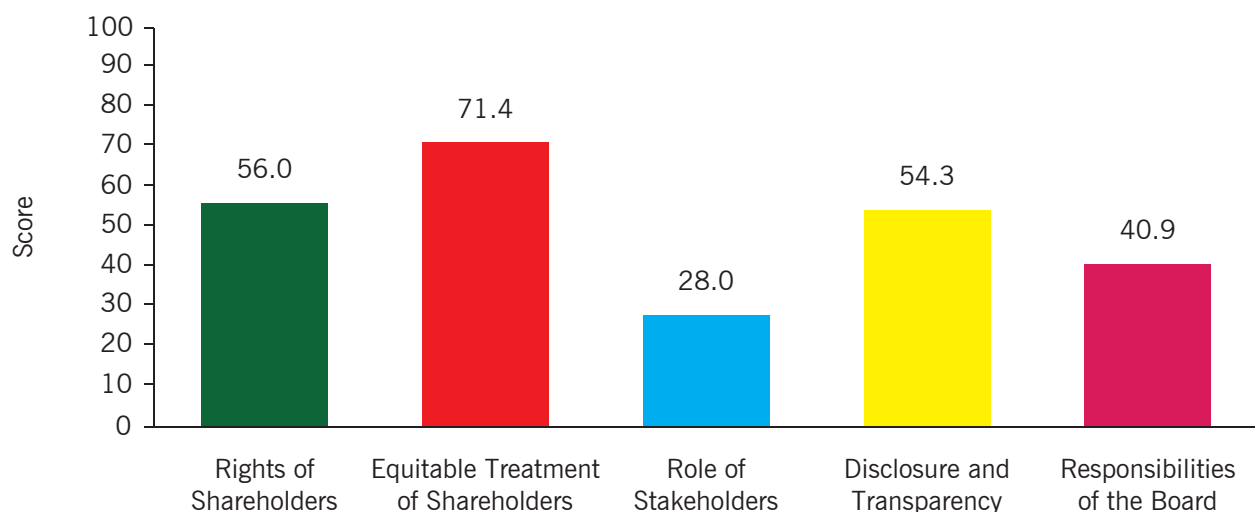
Overall Analysis

The average corporate governance score of Philippine PLCs is 48.9%. This is essentially a “trial score” resulting from the application of the Scorecard questionnaire to Philippine PLCs without much opportunity for intense education in the content of the Scorecard. Engagements with the PLCs are ongoing.

Among the five corporate governance categories, Philippine PLCs score highest in *Equitable Treatment of Shareholders* (71.4%), followed by *Rights of Shareholders* (56.0%), and *Disclosure and Transparency* (54.3%).

The categories in which Philippine PLCs score below 50% are *Role of Stakeholders* (28.0%) and *Responsibilities of the Board* (40.9%).

Figure 16 Scores in the Various Corporate Governance Categories



Part A: Rights of Shareholders

Strengths and Areas for Improvement

The *Rights of Shareholders* category aims to assess how a company recognizes all shareholders' rights in conducting its business. Shareholders should be able to exercise their ownership rights—have access to and knowledge of issues that affect the corporation as a whole; receive dividends; participate in the annual general meeting (AGM); elect directors; subscribe to new securities offerings; buy, sell, or transfer assets of the company; and inspect the records and books of the company. A well-governed company must recognize and respect shareholders' rights.

Figure 17 Strengths and Areas for Improvement in *Rights of Shareholders*

Average: **56.0%**



STRENGTHS

- Shareholders can participate in amending the company's articles of incorporation.
- Shareholders are allowed to participate in the transfer of all or substantially all assets, effectively resulting in the sale of the company.
- Shareholders are allowed to elect directors individually.



AREAS FOR IMPROVEMENT

- The minutes of the most recent annual general meetings (AGMs) do not record questions and answers.
- There is a lack of policies to encourage shareholders, including institutional shareholders, to attend the AGM.
- There is insufficient disclosure of the attendance of the board at the AGM.

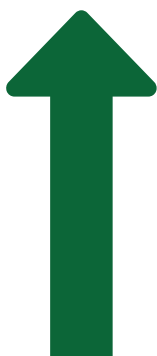
Part B: Equitable Treatment of Shareholders

Strengths and Areas for Improvement

Equitable Treatment of Shareholders ensures fair treatment of controlling and minority shareholders. AGMs, for example, should facilitate the participation of all shareholders without undue complexity. Shareholders should be protected from possible tunneling actions by controlling shareholders, acting either directly or indirectly through the use of material nonpublic information and related-party transactions (RPTs).

Figure 18 Strengths and Areas for Improvement in *Equitable Treatment of Shareholders*

Average: **71.4%**



STRENGTHS

- Annual general meeting notices remain in the English language.
- Companies disclose having a policy requiring board members (directors and commissioners) to abstain from participating in board discussions of matters where they have a conflict of interest.
- Companies have policies that either forbid the granting of loans to directors and commissioners or ensure that such transactions are conducted at arm's length and at market rates.



AREAS FOR IMPROVEMENT

- Directors and commissioners are to report their dealings in company shares within 3 business days, instead of the 5 business days required under Philippine law.
- The annual general meeting notice does not explain the dividend policy.
- Voting rights attached to each class of shares ought to be published if the company has more than one class of shares.

Part C: Role of Stakeholders

Strengths and Areas for Improvement

Companies should act as responsible citizens of society. While a company operates on a for-profit business model, it should also keep the well-being of its stakeholders in mind. This includes taking care of its employees, going the extra mile in serving customers, and even contributing to community projects. Philippine companies score the lowest in this category.

Figure 19 Strengths and Areas for Improvement in *Role of Stakeholders*

Average: **28.0%**



STRENGTHS

- An increasing number of Philippine publicly listed companies (PLCs) now recognize the need to report, as part of their governance compliance program, on their long-term sustainability by including specific references to care for employees, service to customers, respect for rights of creditors, and contribution to the overall environment. This is a change: previously, references to these sustainability issues were excluded from their governance reporting.
- More Philippine PLCs have signed the integrity pledge and now include their anticorruption policies in their annual report.
- Philippine PLCs that are part of Philippine Business for Social Progress include their corporate social responsibility programs in their annual report.



AREAS FOR IMPROVEMENT

- Most companies fail to provide contact details via the company's website or annual report for stakeholders (e.g., customers, suppliers, and the general public) to use to voice their concerns and complaints about possible violations of their rights.
- Data on training and development programs for employees are rarely published.
- There is no company policy or procedures to protect an employee or other person who reveals illegal or unethical behavior.
- There are no company procedures for dealing with complaints by employees concerning illegal (including corrupt) or unethical behavior.
- Data relating to the health, safety, and welfare of employees are not published.

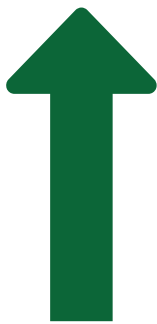
Part D: Disclosure and Transparency

Strengths and Areas for Improvement

Companies should disclose material corporate information in a timely and cost-effective manner. RPTs, firm ownership structure, financial information, and other information about company performance are all significant items to disclose. An independent assessment from an external auditor about the financial health of the company is also an important part of disclosure and transparency practices.

Figure 20 Strengths and Areas for Improvement in *Disclosure and Transparency*

Average: **54.3%**



STRENGTHS

- Publicly listed companies (PLCs) are able to faithfully disclose financial performance indicators in the annual report.
- PLCs are also able to provide up-to-date information about their business operations on their websites.
- The majority of PLCs disclose details of the parent or holding company, subsidiaries, associates, joint ventures, and special-purpose enterprises.



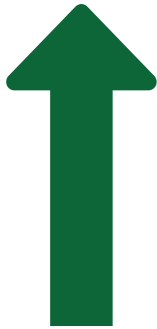
AREAS FOR IMPROVEMENT

- PLCs seldom give details of their whistle-blower policies in their annual reports.
- Training and continuing education programs for directors of the company are usually not indicated in the annual report even if Philippine law requires training for company directors.
- Audited annual reports are usually not disclosed within 60 days from the financial year-end.

Part E: Responsibilities of the Board

Strengths and Areas for Improvement

This category examines whether the board operates within an effective corporate governance framework. The directors must exercise their duties and obligations. Basic board responsibilities include creating and reviewing the company charter with the company's vision and mission, and even hiring and firing the company's chief executive.

Figure 21 Strengths and Areas for Improvement in *Responsibilities of the Board*Average: **40.9%****STRENGTHS**

- Publicly listed companies (PLCs) take having an audit committee seriously and, along with that, having an independent director as chair of the committee.
- PLCs do not neglect to compose a nomination committee in the board.
- All the directors or commissioners are subject to reelection at least once every 3 years.
- Most corporate secretaries have legal or accountancy training.

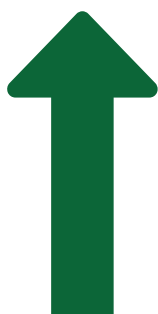
**AREAS FOR IMPROVEMENT**

- PLC chairs are usually not independent directors.
- PLCs do not disclose whether nonexecutive directors meet at least once a year without any executive directors present.
- Remuneration committees usually do not comprise a majority of the independent directors.
- Most often, PLCs do not disclose their succession plans for the chief executive officer, managing director, or president, and key management.
- PLCs seldom disclose how many times the remuneration committee meets during the year.

Bonus and Penalty

Bonus items indicate best practices among companies. They include “preferred” practices such as a secure electronic voting system at the AGM to facilitate voting even in absentia, and a policy requiring directors, officers, and employees to disclose deals in company shares 1 business day in advance. A bonus point is awarded for having a female independent director on the board.

Penalty items are company actions and decisions that indicate poor governance. Some examples are the additional, unannounced items introduced into the agenda of the AGM; proven violations of laws concerning stakeholders; and revisions in the financial statements for reasons other than changes in accounting practices.

Figure 22 Strengths and Areas for Improvement in the *Bonus and Penalty* Area**STRENGTHS**

- Publicly listed companies (PLCs) usually release their notice of annual general meeting (including a detailed agenda and explanatory circulars) at least 28 days before the date of the meeting.
- Annual reports also contain a statement from the board of directors or the audit committee highlighting the adequacy of the PLC's internal controls and risk management systems.

**AREAS FOR IMPROVEMENT**

- PLCs fail to provide justifications and obtain shareholders' approval for retaining independent directors beyond 9 years.
- Some PLCs have violated Philippine laws pertaining to labor and employment, consumer protection, insolvency, commercial operations, competition, and environmental issues.
- Some PLCs face sanctions by regulators for failure to make announcements within the requisite time period for material events.

Conclusion and Recommendations

The trial scores for Philippine PLCs are the result of initial attempts to use the Scorecard. The Scorecard calls for an ASEAN peer review process.

The trial scores gathered enable a comparison only of scores of Philippine PLCs. They cannot be compared with the scores of listed companies from other participating ASEAN economies or the scores of Philippine PLCs based on the old corporate governance compliance scorecard used in the Philippines, through the Institute of Corporate Directors (ICD), for almost a decade. To work toward much greater convergence with other ASEAN economies using the Scorecard, it is recommended that the following steps be undertaken.

An intensive and extensive education and information campaign, preferably in partnership with the Securities and Exchange Commission (SEC) and the Philippine Stock Exchange (PSE), on the use and application of the Scorecard should be implemented. This was done between February and April of 2013 and will continue throughout 2013. While doing so, the ICD should be ready to provide the concerned PLCs with their trial scores using the Scorecard and specific guidelines on what they need to do to improve their scores significantly.

From May 2013 to the end of June 2013, the ICD will undertake a second trial initiative, by applying the Scorecard to company websites, company annual reports, and Annual Corporate Governance Report presented to the SEC and the PSE. The reference year will be 2012. This will enable the Philippines to catch up with other ASEAN economies that have already applied the Scorecard. The results of this second trial initiative will be used by the ICD to give recognition to companies with high scores. The recognition ceremony will take place in July 2013.

Immediately after the July ceremony, a second intensive and extensive information and education campaign will be launched to align PLC disclosure practices more fully with the standards set in the Scorecard. Philippine PLCs will be given further instructions on how to improve their practices, including their disclosure format, wording, and other public information practices, which should be more readily accessible and investor friendly.

Since the ASEAN scoring process can be undertaken anytime and relies mainly (although not exclusively) on company websites and company annual reports, the ICD should undertake a third trial initiative in November and December 2013. This would provide companies with a third trial score indicating the extent to which they may improve their scores, mainly by aligning their corporate governance and related disclosure practices with the standards and expectations set in the Scorecard.

2014 should be the last year of the intensive and extensive information and education campaign designed to assist Philippine PLCs in complying with the corporate governance rules and regulations set by the SEC and the PSE. This is because 2015 will be the first year that the ASEAN community will be fully established.

The 2015 scoring should be undertaken with much fuller convergence with the scoring undertaken in other participating ASEAN economies. The results for Philippine companies should be made directly comparable with the results for PLCs from other ASEAN economies.

Table 4 Corporate Governance: Top 50 Publicly Listed Companies – Philippines

| No. | Publicly Listed Company Name | No. | Publicly Listed Company Name |
|-----|---|-----|--|
| 1 | Aboitiz Equity Ventures | 26 | Manila Electric Company |
| 2 | Aboitiz Power Corporation | 27 | Manila Water |
| 3 | ABS CBN Corporation | 28 | Metro Pacific Investments Corporation |
| 4 | Alaska Milk Corporation | 29 | Metropolitan Bank & Trust Company |
| 5 | Atok Big Wedge Company | 30 | Nickel Asia Corporation |
| 6 | Ayala Corporation | 31 | Petron Corporation |
| 7 | Ayala Land | 32 | Philippine Long Distance Telephone Company |
| 8 | Bank of the Philippine Islands | 33 | Philippine National Bank |
| 9 | BDO Unibank | 34 | Philippine Savings Bank |
| 10 | Cebu Holdings | 35 | Philippine Stock Exchange |
| 11 | China Banking Corporation | 36 | RFM Corporation |
| 12 | COL Financial Group | 37 | Rizal Commercial Banking |
| 13 | DMCI Holdings | 38 | Robinsons Land Corporation |
| 14 | EEL Corporation | 39 | San Miguel Brewery |
| 15 | Energy Development Corporation | 40 | San Miguel Corporation |
| 16 | Euro-Med Laboratories Philippines | 41 | San Miguel Properties |
| 17 | Filinvest Development Corporation | 42 | San Miguel Purefoods Company |
| 18 | First Gen Corporation | 43 | Security Bank Corporation |
| 19 | First Philippine Holdings Corporation | 44 | Semirara Mining Corporation |
| 20 | Globe Telecom | 45 | SM Development Corporation |
| 21 | Holcim Philippines | 46 | SM Investments Corporation |
| 22 | International Container Terminal Services | 47 | SM Prime Holdings |
| 23 | JG Summit Holdings | 48 | Union Bank of the Philippines |
| 24 | Leisure & Resorts World Corporation | 49 | Universal Robina Corporation |
| 25 | Lopez Holdings Corporation | 50 | Vista Land & Lifescapes |

Note: The publicly listed companies are arranged alphabetically.



SINGAPORE

Corporate Governance Framework

The regulatory framework of corporate governance for publicly listed companies (PLCs) in Singapore comprises a number of sources of corporate governance rules, principles, and recommended practices, administered by several regulatory bodies. The primary sources are the:

- Companies Act of 1967 (and subsequent amendments),
- Securities and Futures Act of 2001 (and subsequent amendments),
- Listing Requirements (Rulebook), and
- Singapore Code of Corporate Governance of 2001 (and subsequent revisions).

The primary regulatory bodies involved are the Accounting and Corporate Regulatory Authority, the Monetary Authority of Singapore, and the Singapore Exchange.

Most of the principles and recommended practices for good corporate governance for PLCs are in the Singapore Code of Corporate Governance, which operates on a “comply or explain” basis.

The Singapore Code of Corporate Governance was most recently revised in May 2012, and a number of major changes in corporate governance requirements were introduced into the listing rules by the Singapore Exchange in September 2011. A committee reviewing the Companies Act has also submitted its recommendations to the Ministry of Finance, and most of its recommendations have been accepted.

Overall Analysis

The average overall score received by the largest 100 Singapore PLCs (by market capitalization) selected for the assessment is 56.1. Six companies received a score of more than 75 points. The minimum score received is 37.4, while the maximum score is 81.4. Thirty-one percent of the companies received a score of less than 50 points. For the 50 highest-ranked PLCs, the average score is 64.1.

Singapore PLCs scored best in the *Equitable Treatment of Shareholders*, with an average score of 78%, and worst in *Role of Stakeholders*, with an average score of 37%. The relatively low scores for *Role of Stakeholders* reflect the fact that Singapore has historically adopted a “shareholder model” of corporate governance. It is only recently that regulators have started to encourage companies to pay more attention to other stakeholders and to sustainability reporting;

for example, through the recent revisions made in the Singapore Code of Corporate Governance by the Monetary Authority of Singapore and the introduction of a guide to sustainability reporting by the Singapore Exchange.

Table 5 shows the distribution of scores for the 100 PLCs for each part of the Scorecard.

Table 5 Distribution of Scores for the Assessed Publicly Listed Companies in Singapore

| Item | Right of Shareholders | Equitable Treatment of Shareholders | Role of Stakeholders | Disclosure and Transparency | Responsibilities of the Board | Level 1 Score |
|-------------|-----------------------|-------------------------------------|----------------------|-----------------------------|-------------------------------|---------------|
| Mean | 5.1 | 11.7 | 3.8 | 14.1 | 21.8 | 56.4 |
| Median | 5.0 | 11.7 | 3.3 | 14.2 | 21.3 | 56.2 |
| Minimum | 3.8 | 9.4 | 0.0 | 8.8 | 12.2 | 41.8 |
| Maximum | 9.6 | 14.1 | 9.5 | 18.9 | 31.9 | 75.3 |
| % Weighting | 10.0 | 15.0 | 10.0 | 25.0 | 40.0 | 100.0 |

Part A: Rights of Shareholders

Strengths and Areas for Improvement

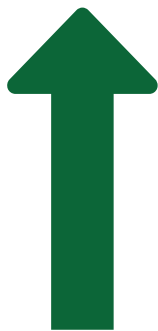
The Singapore PLCs have generally done well in giving shareholders the right to approve the total remuneration of nonexecutive directors in accordance with the Singapore Companies Act. Most of them disclose the individual resolutions that were passed when they disclose the outcome of the annual general meeting (AGM), and the results of the AGM are generally announced by the next working day. Some PLCs also release the notice of AGM (with detailed agendas and explanatory circulars) at least 28 days before the date of the meeting, well beyond the minimum period of 14 days prescribed by the Companies Act and Singapore Exchange listing rules for meetings that do not include special resolutions or require special notice. Shareholders, especially those based overseas, are thus better able to participate effectively in these meetings.

However, few PLCs disclose detailed minutes, which record questions raised by shareholders and answers provided by the board and management at the AGM. The failure to disclose detailed minutes has also led companies to score poorly in a number of areas that are generally covered in such minutes, such as whether they declared the voting and vote tabulation procedures before proceeding with the meeting, whether shareholders had an opportunity to ask questions, and whether and to what extent directors (especially the board chair and the audit committee

chair) and the chief executive officer (CEO) attended the meeting. PLCs also generally do not provide the rationale and explanation for each agenda item that requires shareholders' approval, to allow shareholders to make an informed decision. There should be better transparency as well in the disclosure of a detailed breakdown of approving, dissenting, and abstaining votes for each resolution, and the use of an independent party to count and validate the votes. Currently, PLCs generally do not allow the use of secure electronic voting in absentia at the general meetings of shareholders, i.e., they require a proxy to be present at the general meeting.

Some PLCs have a pyramid ownership structure or cross-shareholdings that enable major shareholders to obtain a degree of control disproportionate to their beneficial ownership in the company.

Figure 23 Strengths and Areas for Improvement in *Rights of Shareholders*



STRENGTHS

- Shareholders allowed to approve remuneration of nonexecutive directors.
- Individual resolutions disclosed when annual general meeting (AGM) outcome is announced.
- Outcome of AGMs disclosed by the next working day.
- Notice of AGM and supporting documents published at least 28 days before the meeting.



AREAS FOR IMPROVEMENT

- Disclosure of detailed minutes of the AGM
- Disclosure of rationale and explanations for each agenda item in the AGM
- Disclosure of breakdown of approving, dissenting, and abstaining votes for each resolution
- Disclosure of whether an independent party was used to count and validate the votes
- Use of secure electronic voting in absentia at AGM

Part B: Equitable Treatment of Shareholders

Strengths and Areas for Improvement

Currently, PLCs are not permitted to have more than one class of ordinary shares, and each ordinary share must have one vote. This ensures that all ordinary shareholders are treated equitably. Most PLCs disclose the voting rights attached to their shares. They also generally do not bundle their resolutions: each resolution deals with only one item. Notices of AGMs and circulars are in English, and contain details such as the name of the auditors to be appointed or reappointed and the amount of final dividend to be approved by shareholders, and the necessary documents for appointing a proxy are easily available.

However, few PLCs provide an explanation of their dividend policy—something which the revised Singapore Code of Corporate Governance now recommends. Although Singapore has strict rules governing related-party (interested-person) transactions (RPTs), and the law requires directors to disclose their interests in transactions and to abstain from voting in order to avoid conflict of interest, few PLCs disclose that they have a policy that requires directors to follow a higher standard of conduct and to abstain from participating in board discussions of transactions where they have a conflict of interest. It is also rare for PLCs to have a policy requiring directors and key officers to notify the board or its delegate at least 1 day before they deal in the company shares.

Figure 24 Strengths and Areas of Improvement in *Equitable Treatment of Shareholders*



STRENGTHS

- Disclosure of voting rights attached to shares
- Separate resolution for each item on the agenda
- Publication of notice of annual general meeting and circulars in English
- Disclosure in the notice of annual general meeting of information, such as the name of the auditor to be appointed or reappointed and the amount of final dividends to be approved
- Easy accessibility of proxy forms



AREAS FOR IMPROVEMENT

- Explanation of dividend policy
- Disclosure of policy requiring directors to abstain from participating in board discussions of transactions in which they have a conflict of interest
- Policy requiring directors and key officers to notify the board or a delegate 1 day before dealing in company shares

Part C: Role of Stakeholders

Strengths and Areas for Improvement

Although Singapore PLCs are starting to report on sustainability and discuss practices relating to other stakeholders, there is room for improvement in this area.

Most PLCs disclose how creditors' rights are safeguarded and have procedures allowing employees to raise concerns about illegal or unethical behavior. However, very few PLCs disclose policies and activities relating to customers' health and safety, supplier and contractor selection, and anticorruption programs and procedures. Further, few PLCs provide contact details to enable stakeholders (such as customers, suppliers, and the general public) to raise concerns about violations of their rights. PLCs also rarely disclose data relating to the health, safety, welfare, and training and development of their employees.

Some companies have failed to comply with certain laws relating to the protection of stakeholders (e.g., employment, consumer, or competition laws) or have been sanctioned by regulators for failure to make announcements within the requisite time period for material events, thereby failing to keep stakeholders sufficiently informed in a timely manner.

Figure 25 Strengths and Areas for Improvement in *Role of Stakeholders*



Part D: Disclosure and Transparency

Strengths and Areas for Improvement

Most PLCs have a transparent ownership structure through good disclosure of the identity of substantial shareholders; direct and deemed ownership of substantial shareholders and directors; and details of the parent or holding company, subsidiaries, associates, joint ventures, and special-purpose entities. Good disclosure has also been made by most PLCs in relation to key financial performance indicators, the number of meetings of the board of directors and attendance at the meetings, and audit and non-audit fees. All the PLCs assessed practice quarterly reporting and release the audited annual report within 120 days of the financial year-end because of applicable listing rules or legal requirements. Nearly all the PLCs have websites and these websites generally disclose up-to-date information about the business operations, current and prior years' financial statements and reports, and notice of annual and extraordinary general meetings; and allow the public to download annual reports.

However, annual reports of Singapore PLCs generally do not disclose information about corporate objectives, nonfinancial performance indicators, dividend policy, details of the whistle-blower policy, training and continuing education programs attended by each director, the direct and deemed shareholdings of senior members of management who are not directors or substantial shareholders, and the exact remuneration of the CEO and individual board members. Nor do they provide confirmation that the company has fully complied with the Code of Corporate Governance (or, where there is noncompliance, identify and explain the noncompliance). The disclosure of relationship for parties involved in RPTs and trading in the company's shares by insiders (beyond directors and substantial shareholders) is also often lacking. PLCs rarely disclose the identity of advisers or consultants to the remuneration committee appointed by the board, and they rarely state whether these advisers or consultants are deemed independent or have declared any conflicts of interest.

Few PLCs go beyond the regulatory requirements in relation to the timeliness of release of the audited annual report, for example, by releasing them within 60 or 90 days. Few PLC websites provide information about the group corporate structure and the company's constitutive documents, such as the memorandum and articles of association.

Figure 26 Strengths and Areas for Improvement in *Disclosure and Transparency*

STRENGTHS

- Disclosure of information in the annual report:
 - ownership and group corporate structure of the company
 - financial performance indicators
 - board meetings and attendance of individual directors
 - audit and non-audit fees
- Release of audited annual report within 120 days from financial year-end
- Disclosure of information on company website:
 - business operations
 - current and prior years' financial statements and reports
 - notice of annual general meeting or extraordinary general meeting
 - downloadable annual report



AREAS FOR IMPROVEMENT

- Disclosure of information in the annual report:
 - corporate objectives and nonfinancial performance indicators
 - whistle-blower policy
 - training programs attended by each director
 - exact remuneration of the chief executive officer and individual board members
 - confirmation of compliance with the corporate governance code
 - relationship of parties involved in related-party transactions
 - trading in company's shares by insiders (other than directors and substantial shareholders)
- Release of audited annual report within 60 or 90 days from financial year-end
- Disclosure of information on the company website:
 - group corporate structure
 - constitutive documents such as articles and memorandums of association

Part E: Responsibilities of the Board

Strengths and Areas for Improvement

Most companies disclose the roles and responsibilities of the board of directors, the types of decisions requiring board approval, and the roles and responsibilities of the board chair. Boards of directors generally consist of a reasonable number of directors (between 5 and 12) and have at least one nonexecutive director with prior working experience in the major industry of the company. In almost all the PLCs that were assessed, at least one-third of the board comprises independent directors, and in some of these companies independent directors constitute the majority. Boards are generally supported by a company secretary in discharging their responsibilities. Directors generally go up for reelection once every 3 years, but there are some PLCs where the CEO or managing director is not required to do so.

Most PLCs have established audit, nominating, and remuneration committees with an independent chair and a majority of independent members, and disclose the terms of reference and details of the number of meetings and attendance at these meetings. Most audit committees have at least one independent director with accounting expertise (defined as accounting qualification or experience) and meet at least four times during the year. Most of the PLCs assessed have also disclosed the existence of a separate internal audit function.

New Singapore Exchange rules that first took effect in the financial year ending on 31 December 2011 now require a statement from the board of directors, with the concurrence of the audit committee, commenting on the adequacy of the company's internal controls in addressing key risks. Some PLCs have already included such a statement in their annual report.

Some PLCs have taken steps to further enhance their structure and processes by having at least one female independent director, having totally independent committees, compiling a board profile as part of their board appointment process, and using an external party periodically to facilitate the board assessment.

However, few PLCs have disclosed that they have a corporate governance policy or board charter; most rely on the Code of Corporate Governance to guide their corporate governance practices. Companies generally do not disclose details of their code of ethics or conduct; the extent of compliance with the code that is required of all directors, senior management, and employees; or the manner in which the code is implemented and compliance is monitored. Few PLCs disclose how regularly they review and approve the vision and mission of the company.

Most PLCs have not addressed the key issues that have surfaced with regard to independent directors, including the independence of directors from both management and substantial shareholders, the term limit of 9 years for independent directors, and the limit on the number of directorships in PLCs that a director can hold at the same time. These issues are now covered in the revised Code of Corporate Governance, and more companies are expected to address these issues in the future. It is quite common for companies to have independent directors

who have served for more than 9 years. There is no existing practice among Singapore PLCs of providing justification and seeking shareholders' approval to retain such directors beyond 9 years. Companies rarely have a diversity policy for their board of directors. Most chairs are not independent directors.

Disclosures relating to the conduct of board meetings are generally poor. Most companies do not disclose (i) that they schedule board meetings well ahead of time (before or at the beginning of the year); (ii) that they provide board meeting papers well ahead of the board meeting (at least 5 business days before the meeting); and (iii) that the nonexecutive directors meet separately at least once a year without management present. They also do not disclose their quorum requirements.

Disclosure relating to other key board practices and responsibilities, including the director appointment process, succession planning for key management, performance assessment of the CEO, and the process of director and committee appraisal, is generally lacking.

There is also room for improvement in the disclosure of remuneration policies for the CEO and executive directors, and in the approval of the remuneration of executive directors and senior executives by the entire board or by a wholly independent remuneration committee (especially as the remuneration of these key officers is currently not subject to approval by shareholders).

Few companies disclose that the appointment or removal of the internal auditor requires the approval of the audit committee. Most companies do not disclose that the board of directors has conducted a review of the company's material controls (including operational, financial, and compliance controls) and risk management systems. Disclosure of how key risks (other than financial risks) are managed is also generally lacking.

Figure 27 Strengths and Areas for Improvement in *Responsibilities of the Board*

STRENGTHS

- Disclosure of roles and responsibilities of the board and the board chair
- Boards with at least one-third independent members
- Establishment of key committees with independent chairs and independent members composing the majority
- Disclosure of terms of reference of committees
- Disclosure of committee meetings and attendance by individual members
- Establishment of audit committee with at least one independent director who has accounting expertise
- Existence of separate internal audit function



AREAS FOR IMPROVEMENT

- Company corporate governance policy or board charter
- Code of ethics or conduct
- Review and approval of vision and mission of the company
- Diversity policy
- Independent board chair
- Term limits for independent directors
- Directorship limits for directors
- Independent directors to be independent from both management and substantial shareholders
- Conduct of board meetings
- Disclosure of processes such as director appointments, succession of key management, performance assessment of the chief executive officer, and board and committee assessment
- Disclosure of remuneration policies and approval
- Approval of audit committee for appointment and removal of internal auditor
- Review of internal controls and risk management system by the board of directors
- Disclosure of management of key risks (other than financial risks)

Conclusion and Recommendations

The ASEAN Corporate Governance Scorecard is developed largely based on the OECD Principles of Corporate Governance. It differs from the Singapore Code of Corporate Governance, which has a stronger focus on board matters and equitable treatment of shareholders. The average score of just over 56 for the 100 largest companies by market capitalization is a result of the difference in focus where listed companies in Singapore have been working to comply with the Code of Corporate Governance. Six companies have nevertheless scored above 75. With a shifting focus by the regulatory bodies on stakeholders and sustainability reporting through recent revisions to the Singapore Code of Corporate Governance and the introduction of a Sustainability Reporting Guide, Singapore companies should improve their performance in these areas which are of interest to different stakeholders. This will help these companies, most of which have a market capitalization of over S\$1 billion, to seek and attract global investors.

However, as the above discussion indicates, there is room for improvement in all areas. Here are some suggested key areas for improvement:

- **Communication with shareholders.** Companies should improve their communication with shareholders around general meetings. They should (i) state more clearly the rationale of agenda items requiring shareholders' approval; (ii) send out notices and circulars in a timely manner, clearly explaining procedures for meetings before they start; (iii) provide more detailed minutes of general meetings; (iv) ensure that directors (especially the board and committee chairs) and key members of the management team are present at general meetings; (v) ensure that an independent party is involved in counting and validating votes; and (vi) disclose fully the voting results for each resolution after the general meeting. Given the importance placed by many shareholders on dividend policy, companies should disclose their dividend policy and explain the rationale of the policy.

Companies need to consider in particular how to leverage technology to communicate better with global investors, possibly through webcasting of general meetings, electronic communication and dissemination of documents, and electronic voting in absentia.

- **Directors' and insiders' interests.** Companies should adopt more stringent standards in relation to directors' interest in transactions and dealing in shares by directors and key officers. This is necessary because they are in a position of conflict or may be in possession of material nonpublic information. Directors should be required to abstain from discussions on transactions in which they have a conflict of interest, and even to recuse themselves. Directors and key officers should also be required to notify the board or its delegate before trading in the shares of the company. Such a measure is beyond the current rules, which require directors and substantial shareholders to disclose share trades only after the trades are made.

- **Stakeholders' issues.** Companies need to go beyond the current practice of generic discussions of corporate social responsibility and sustainability, and adopt robust policies, undertake activities, and report specific data relevant to different stakeholders, including creditors, employees, customers, suppliers, and the community at large. They also need to pay more attention to anticorruption programs and avenues for stakeholders to lodge complaints about violations of their rights.
- **Disclosure and transparency.** There is room for improvement in disclosure, both in annual reports and on websites. The disclosure covers a variety of information relating to the business and corporate governance of the company, including information about share trades by insiders and RPTs. Companies can use their websites better to communicate corporate governance information, such as the company's memorandum and articles of association, board charter or corporate governance policy, code of ethics, and terms of reference of committees.
- **Board responsibilities.** Companies should develop a corporate governance policy or board charter to guide their implementation of corporate governance. The board should set the tone at the top by ensuring that the code of ethics or conduct is sufficiently comprehensive and applies to directors, management, and employees, and that the company has in place procedures for implementing and monitoring compliance with the code.

Companies need to pay more attention to the independence of directors, including threats to independence caused by relationships with major shareholders and long tenure, and to the ability of directors to commit sufficient time to the discharge of their responsibilities. They will need to consider issues of limits on the tenure of independent directors and the number of directorships held by directors.

Disclosure relating to the conduct of board meetings and to key practices and responsibilities of the board can also be improved. In addition, many companies can improve the disclosure of the remuneration of the CEO and individual directors, remuneration policies for executive directors and senior management, the board's oversight of internal controls and risk management, and the management of key risks.

Table 6 Corporate Governance: Top 50 Publicly Listed Companies – Singapore

| No. | Publicly Listed Company Name | No. | Publicly Listed Company Name |
|-----|--|-----|-------------------------------------|
| 1 | Ara Asset Management | 26 | Olam International |
| 2 | Asia Pacific Breweries | 27 | Oversea-Chinese Banking Corporation |
| 3 | Biosensors International Group | 28 | Singapore Airport Terminal Services |
| 4 | CapitaLand | 29 | Sembcorp Industries |
| 5 | CapitaMalls Asia | 30 | Sembcorp Marine |
| 6 | City Developments | 31 | SIA Engineering |
| 7 | ComfortDelGro Corporation | 32 | Singapore Airlines |
| 8 | COSCO Corporation (Singapore) | 33 | Singapore Exchange |
| 9 | DBS Group Holdings | 34 | Singapore Post |
| 10 | EZRA Holdings | 35 | Singapore Press Holdings |
| 11 | First Resources | 36 | Singapore Tech Engineering |
| 12 | Fraser and Neave | 37 | Singapore Telecommunications |
| 13 | Gallant Venture | 38 | SMRT Corporation |
| 14 | Global Logistic Properties | 39 | Sound Global |
| 15 | Great Eastern Holdings | 40 | Sri Trang Agro-Industry |
| 16 | Hi-P International | 41 | StarHub |
| 17 | Hong Leong Asia | 42 | STATS ChipPac |
| 18 | Hong Leong Finance | 43 | STX OSV Holdings |
| 19 | Jardine Cycle & Carriage | 44 | Tiger Airways Holdings |
| 20 | Keppel Corporation | 45 | United Engineers |
| 21 | Keppel Land | 46 | United Overseas Bank |
| 22 | Keppel Telecommunications & Transportation | 47 | UOL Group |
| 23 | Liongold Corporation | 48 | WBL Corporation |
| 24 | M1 | 49 | Wilmar International |
| 25 | Neptune Orient Lines | 50 | Ying Li International Real Estate |

Note: The publicly listed companies are arranged alphabetically.



THAILAND

Corporate Governance Framework

The corporate governance framework for publicly listed companies (PLCs) in Thailand has evolved around the following primary pieces of legislation:

- the Public Limited Company Act of 1992,
- the Securities and Exchange Act of 2010, and
- the Civil and Commercial Code of 2011.

These laws have laid a strong foundation, institutional setting, supervisory framework, and enforcement rules for the Thai capital market. The secondary level of regulatory requirements governing corporate governance practices in Thailand consists of

- listing rules by the Stock Exchange of Thailand, and
- regulatory notifications by the Securities and Exchange Commission.

The tertiary level of corporate governance compliance operates on the “comply or explain” basis. The Stock Exchange of Thailand initially issued the 15 Principles of Good Corporate Governance in 2002 and then amended these into the Principles of Good Corporate Governance for Listed Companies in 2006. The principles have now been revised and introduced to the Thai listed companies and will take effect in January 2015 to further ensure sound corporate governance practices in Thailand.

Overall Analysis

The Association of Southeast Asian Nations (ASEAN) Corporate Governance Scorecard 2012 reviewed the corporate governance practices of 100 Thai listed companies, using the assessment criteria embodied in 219 questions. The average corporate governance score in 2012 was 67.7%.

Among the five categories benchmarked against the Organisation for Economic Co-operation and Development (OECD) Principles on Corporate Governance, Thai listed companies scored highest in *Equitable Treatment of Shareholders*. *Rights of Shareholders* showed the second-highest score, while *Disclosure and Transparency* and *Responsibilities of the Board* came next. The average score was lowest in *Role of Stakeholders*. Improvement in *Role of Stakeholders* and *Responsibilities of the Board* must be further advocated for Thai listed companies.

Part A: Rights of Shareholders

Strengths and Areas for Improvement

The *Rights of Shareholders* principle aims to assess whether the company recognizes the shareholders' rights in its business affairs. According to the OECD Principles on Corporate Governance, shareholders should generally be able to exercise their ownership rights, such as rights on issues that affect the corporation as a whole; the right to receive dividends; the right to participate in the annual general meeting (AGM); the right to elect the directors; the right to subscribe to new securities offerings; the right to buy, sell, or transfer assets of the corporation; and the right to inspect the records and books of the corporation. A well-governed company must protect shareholders' rights.

The majority of Thai PLCs exhibit good governance practices in allowing shareholders to participate in decision making and to exercise their rights at the AGM. Only a few governance areas need improvement.

Figure 28 shows the strengths and areas for improvement in *Rights of Shareholders*. Most Thai PLCs allow their shareholders to elect directors individually, and disclose the outcome and the voting results, including approving, dissenting, and abstaining votes for each agenda item, by the next working day. The notice of call to a shareholders' meeting provides the rationale and explanation for each agenda item. In addition, most Thai listed companies hold the AGM at an easy-to-reach location. These practices reflect well on Thai listed companies, as they clearly demonstrate that they are designed to protect the rights of shareholders.

However, the responses to some survey questions show room for improvement. First, an independent party should be appointed to count the votes at the AGM. Second, Thai listed companies should encourage share ownership of greater than 5% by institutional investors. Lastly, the chair of the board should attend the AGM regularly.

Figure 28 Strengths and Areas for Improvement in *Rights of Shareholders***STRENGTHS**

- Allow shareholders to elect directors individually.
- Disclose the outcome of the annual general meeting (AGM) by the next working day.
- Disclose the voting results including approving, dissenting, and abstaining votes for each agenda term.
- Provide the rationale and explanation for each agenda item in the notice of AGM.
- Organize the AGM in an easy-to-reach location.

AREAS FOR IMPROVEMENT

- Need to encourage the chair of the board to attend the AGM.
- Have not yet appointed an independent party to count votes at the AGM.
- Encourage share ownership of greater than 5% by institutional investors.

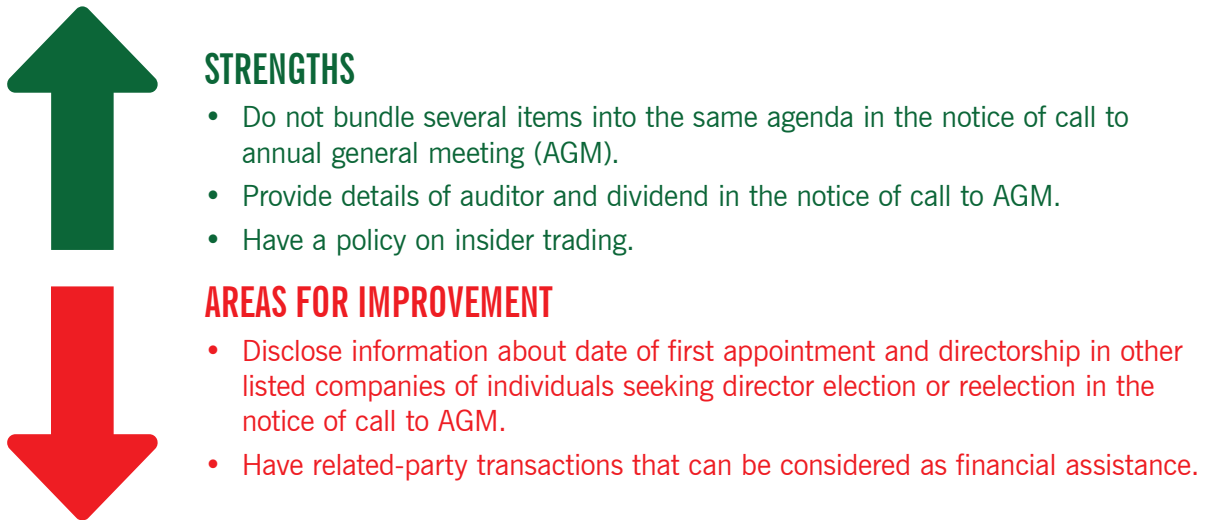
Part B: Equitable Treatment of Shareholders

Strengths and Areas for Improvement

The *Equitable Treatment of Shareholders* principle strives to ensure fair treatment of shareholders, both controlling and noncontrolling. The AGM process, for example, should enable all shareholders to participate in the meeting without undue complexity. In addition, outside shareholders should be protected from possible tunneling actions by or for controlling shareholders acting directly or indirectly through the use of material nonpublic information and related-party transactions (RPTs).

Figure 29 summarizes the important observations in the *Equitable Treatment of Shareholders* category. Most Thai listed companies issue the notice of shareholders' meeting with full details of the auditor and dividend agenda, and without bundling of several items into the same agenda. Most Thai listed companies also have a policy on insider trading.

Regarding areas for improvement, only some Thai listed companies disclose information in the notice of AGM on the date of first appointment and directorship in other listed companies of individuals seeking director election or reelection. Also, most Thai listed companies have had RPTs that can be considered as financial assistance to a nonsubsidiary company.

Figure 29 Strengths and Areas of Improvement in *Equitable Treatment of Shareholders*

Part C: Role of Stakeholders

Strengths and Areas for Improvement

Stakeholders are affected by the decisions and actions that the firms make. The companies should therefore behave ethically and in a socially responsible manner. To earn premium corporate citizenship, companies must integrate the concept of corporate responsibility into their business model and activities. Corporations should pursue the interests of the various stakeholders, not just those of shareholders, and thereby enhance the well-being of all stakeholders.

Figure 30 presents the strengths and areas for improvement in the *Role of Stakeholders* category. Most Thai listed companies have set a policy on the treatment of stakeholders and a separate corporate responsibility report or section in the annual report.

However, the majority of Thai listed companies still have much to do to improve their governance practices, especially the treatment of stakeholders, to meet international standards. They still fall short in the disclosure of practices relating to the health, safety, and welfare of employees and to the staff training and development program. Also, only some Thai listed companies have procedures for dealing with complaints from employees about illegal or unethical behavior, and a policy or procedure for protecting whistle-blowers from retaliation.

Figure 30 Strengths and Areas for Improvement in *Role of Stakeholders***STRENGTHS**

- Have a policy on the treatment of stakeholders.
- Have a separate corporate responsibility report or section in the annual report.

**AREAS FOR IMPROVEMENT**

- Publish information relating to the health, safety, and welfare of employees.
- Publish information on the training and development program for employees.
- Have procedures for dealing with complaints by employees concerning illegal or unethical behavior.
- Have a policy or procedure to protect a person who reveals illegal or unethical behavior from retaliation.

Part D: Disclosure and Transparency

Strengths and Areas for Improvement

Companies should disclose material corporate information in a timely and cost-effective manner through a variety of channels to reach all interested and relevant parties in time. RPTs, firm ownership structure, financial information, and other information about company performance are all significant items to disclose. An independent assessment from an external auditor about the financial health of the company is also an important part of the disclosure and transparency practices.

Figure 31 presents the strengths and areas for improvement in the category of *Disclosure and Transparency*. Most Thai listed companies disclose the policy and full details of RPTs, as well as audit and nonaudit fees in the annual report. In addition, most Thai listed companies include statements of affirmation from their board members in the annual financial statement. The majority of Thai listed companies disclose company information and contact details of investor relations on their website.

On the other hand, there are further improvements to be made. For example, Thai PLCs should

- disclose the direct and indirect shareholdings of the board and senior management;
- disclose trading by directors and senior management in the company's shares;
- disclose corporate objectives and nonfinancial performance indicators in the annual report;
- disclose in the annual report information about the directors' date of first appointment, directorship in other listed companies, and training and education obtained in the most recent financial year.

Figure 31 Strengths and Areas for Improvement in *Disclosure and Transparency*

Part E: Responsibilities of the Board

Strengths and Areas for Improvement

The *Responsibilities of the Board* category examines whether there is an effective corporate governance framework for the board members to act on a fully informed basis, in good faith, with due diligence and care, and in the best interests of the company and the shareholders. The board of directors must exercise care and loyalty in overseeing the business organization and protecting the shareholders' assets. Basic board responsibilities include (i) creating and reviewing a statement of vision and mission that articulates the organization's goals and primary constituents, (ii) participating in overall planning and assisting in implementing and monitoring the plan, (iii) securing adequate financial resources for the organization to fulfill its mission, (iv) assisting in developing the annual budget and ensuring that proper financial controls are in place, (v) articulating prerequisites for director candidates, (vi) orienting new board members and evaluating their performance periodically and comprehensively, (vii) adhering to legal norms and high ethical standards, (viii) undertaking a careful search to find the most qualified chief executive, and (ix) supporting and evaluating the chief executive.

Figure 32 shows the strong practices and areas for improvement in the *Responsibilities of the Board* category. On the positive side, the majority of Thai listed companies have their own corporate governance policy, code of ethics, and clear roles and responsibilities of the board. In addition, the internal control analysis suggests that most Thai listed companies have an internal

control and risk management system in place. With regard to the separation of monitoring and management, most Thai listed companies indicate that the chair of the board is an independent director and not the chief executive officer (CEO). Also, the majority of Thai listed companies schedule board meetings before or at the start of the year and hold such meetings at least six times a year.

Despite these good governance practices, there are areas for improvement. Only some Thai PLCs disclose the type of decisions requiring board approval, the board diversity policy, the role and responsibilities of the chair, the policy limiting to five the number of board seats that a director may hold at the same time in listed companies, and the policy limiting the term of independent directors to 9 years. Under the duty of care of the board of directors, only some Thai listed companies report an average board meeting attendance by individual directors of greater than 75% of all board meetings. In addition, only some boards conduct an evaluation of the board, individual directors, and board committees, and disclose the criteria and process in the annual report. Also, the board of directors should review the vision and mission at least once every 5 years.

Figure 32 Strengths and Areas for Improvement in *Responsibilities of the Board*



STRENGTHS

- Clear roles and responsibilities of the board
- Disclosure of the company's corporate governance policy and code of conduct
- Separate roles of the chair and the chief executive officer
- Chair is an independent director
- Good structure of board committees
- Scheduling board meetings before or at the beginning of the year
- Board meetings are held at least six times per year
- Board establishment and review of the internal control and risk management system



AREAS FOR IMPROVEMENT

- Disclosure of types of decisions requiring board approval
- Disclosure of board diversity policy
- Disclosure of the role and responsibilities of the chair
- Disclosure of the term limit of 9 years for independent directors
- Disclosure of the limit of five seats in publicly listed companies that a director may hold simultaneously
- Board review and approval of the vision and mission at least once every 5 years
- Attendance of each director at 75% or more of all board meetings during the year
- Evaluation of the board, individual directors, and board committees, and disclosure of the evaluation criteria and process

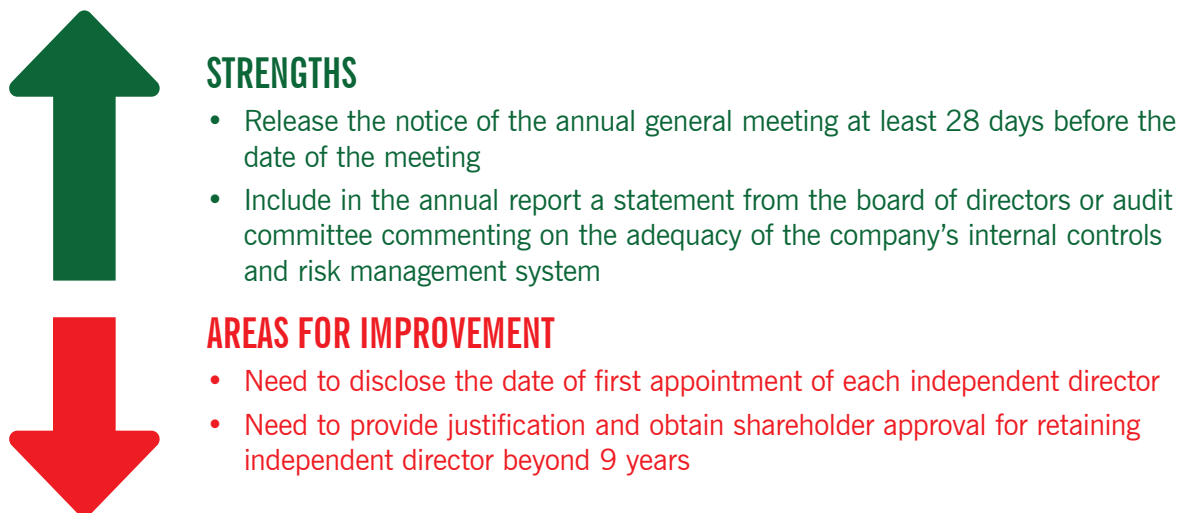
Bonus and Penalty

The *Bonus* questions recognize and reward companies with internationally accepted governance practices. In contrast, a penalty is recorded for companies with governance practices or violations that are beyond the pale of the good corporate governance paradigm.

Figure 33 shows the strengths and areas for improvement in the *Bonus and Penalty* area. The majority of Thai listed companies give their shareholders enough time to prepare for the AGM by releasing the notice of meeting at least 28 days before the date of the meeting. In addition, the audit committees of most Thai firms state in their report that the internal controls and risk management systems are adequate for ensuring the integrity of the reporting systems and are disclosed in the annual report.

The independence of any director who has served on the board beyond 9 years from the date of first appointment should be subject to particularly rigorous review. In the review, the board should take into account the need to refresh the board membership. The board should also explain why any such director should be considered independent. Most Thai companies do not disclose the date of first appointment of each independent director and fail to provide justification and obtain shareholders' approval for the retention of independent directors beyond 9 years.

Figure 33 Strengths and Areas of Improvement in the *Bonus and Penalty* Area



Recommendations and Conclusion

The ASEAN Corporate Governance Scorecard 2012 provides a clear picture of the most recent corporate governance practices of Thai PLCs. Thai PLCs do well in the *Rights of Shareholders* and *Equitable Treatment of Shareholders* categories. Specifically, the notice of call to AGM and the AGM minutes are of high quality and have complete details. However, several governance areas in the *Role of Stakeholders* and *Responsibilities of the Board* categories need further attention to meet international standards.

Another important finding from the Scorecard is that a company should not only set effective corporate governance policy, but also apply consistent procedures in disclosing its existing corporate governance policy and practices. With a corporate governance policy in place, the company should effectively disclose how it practices that policy. Outside shareholders, including institutional investors, rely on publicly available information and therefore place significant emphasis on the disclosure of the company's corporate governance policy and practices. The company may prepare a manual for any corporate officers to consistently follow in disclosing the relevant corporate governance information to the public. Moreover, the company should make its corporate information available in English to facilitate investment decision making by foreign investors. The company should also regularly update the corporate information on its website. In due course, Thai PLCs will be ready for the corporate governance assessment at the international level—the Scorecard in 2015. The Thai Institute of Directors is determined to assist Thai PLCs in meeting high governance standards.

Table 7 Corporate Governance: Top 50 Publicly Listed Companies – Thailand

| No. | Publicly Listed Company Name | No. | Publicly Listed Company Name |
|-----|--|-----|---|
| 1 | Advanced Info Service | 26 | Land and Houses |
| 2 | Airports of Thailand | 27 | MCOT |
| 3 | Amata Corporation | 28 | Minor International |
| 4 | Asian Property Development | 29 | Oishi Group |
| 5 | Bangkok Bank | 30 | Precious Shipping |
| 6 | Bangkok Expressway | 31 | Pruksa Real Estate |
| 7 | Bank of Ayudhya | 32 | PTT Exploration and Production |
| 8 | Banpu | 33 | PTT Global Chemical |
| 9 | Big C Supercenter | 34 | PTT |
| 10 | Central Pattana | 35 | Ratchaburi Electricity Generating Holding |
| 11 | CIMB Thai Bank | 36 | Robinson Department Store |
| 12 | Eastern Water Resources Development and Management | 37 | S&P Syndicate |
| 13 | Electricity Generating | 38 | SC Asset Corporation |
| 14 | GFPT | 39 | Shin Corporation |
| 15 | GMM Grammy | 40 | Somboon Advance Technology |
| 16 | HANA Microelectronics | 41 | Thai Oil |
| 17 | Hemaraj Land and Development | 42 | Thai President Foods |
| 18 | Home Product Center | 43 | Thanachart Capital |
| 19 | I.C.C. International | 44 | Bangchak Petroleum |
| 20 | Indorama Ventures | 45 | Siam Cement |
| 21 | IRPC | 46 | Siam Commercial Bank |
| 22 | Jasmine International | 47 | TISCO Financial Group |
| 23 | Kasikornbank | 48 | TMB Bank |
| 24 | Kiatnakin Bank | 49 | Total Access Communication |
| 25 | Krung Thai Bank | 50 | True Corporation |

Note: The publicly listed companies are arranged alphabetically.



VIET NAM

Corporate Governance Framework

In Viet Nam, the main laws and regulations affecting corporate governance are the Law on Enterprises of 2005, the Law on Securities of 2006, the Model Charter of 2007, Ho Chi Minh Stock Exchange and Hanoi Stock Exchange Listing Requirements, and corporate governance regulations.

The corporate governance regulations that are most applicable to publicly listed companies (PLCs) are the Code of Corporate Governance for Listed Companies (supplementing the Law of Enterprises and the Law of Securities), the Modal Charter, and disclosure requirements.

The issuance of the Code of Corporate Governance in March 2007 under Decision 12/2007/QDBTC first introduced corporate governance concepts and principles to PLCs in Viet Nam. It was revised in 2012 under Circular 121/2012/TT-BTC in July 2012. Board responsibilities and disclosure and transparency requirements were the main focus of the revision. The revised code, which took effect on 17 September 2012, applies not only to PLCs but also to all other public companies in the country.

The Sample

The sample of PLCs in Viet Nam was selected from two stock markets, the Ho Chi Minh Stock Exchange (HSX) and the Hanoi Stock Exchange (HNX), on the basis of market capitalization. All of the companies chosen had to have documents, such as annual reports, available in English. The final sample for Viet Nam therefore comprised 39 PLCs with a total market capitalization of \$23.58 billion, representing 65.5% of the total market capitalization of the two stock exchanges at the end of June 2012.

Overall Analysis

According to the Association of Southeast Asian Nations (ASEAN) Corporate Governance Scorecard, corporate governance practices in Vietnamese PLCs fall below expectations. All stakeholders need to exert much more effort to raise these practices to international standards. Corporate governance performance requires improvement in all categories, with below-average scores in each category, as shown in Figure 34. Performance is weakest in *Responsibilities of the Board* (average score of 17.2%) and *Role of Stakeholders* (26.9%). The *Responsibilities of the Board* category has below-average maximum (30.4%) and minimum (7.5%) scores.

Although the maximum score in *Role of Stakeholders* is above average (61.9%), at least one company scored zero in this category. The next-weakest performance is in *Disclosure and Transparency*, an important category given that the assessment is based on information that is publicly available and accessible. A company may already practice good corporate governance, but if it does not disclose or mention its practices using public information media, including annual reports, company websites, and regulatory filings, the assessment can be impaired by the lack of data and information.

Figure 34 Scores of Publicly Listed Companies in the Various Corporate Governance Categories



The second reason for the poor scores is the lack of investor communications in English. As the Scorecard is based on sources available to the typical international investor, the language used in public media must be English. Most investor communications of Vietnamese PLCs are in the Vietnamese language, and therefore they could not be used in the assessment.

Detailed analyses in each Scorecard category show weak policies and practices in Vietnamese PLCs. Only strong commitment from individual directors, executives, and stakeholders, as well as the regulator, can help improve corporate governance.

Part A: Rights of Shareholders

Strengths and Areas for Improvement

The country's corporate governance framework requires companies to respect the rights of shareholders, including the right to participate and vote in the annual general meeting (AGM), make fundamental decisions for the company, nominate and elect directors, approve major transactions, and receive a share of company profits.

To exercise their rights, investors need access to company information. Vietnamese PLCs are good at organizing AGMs in easy-to-reach locations. But the investor communications of most companies are in the local language; materials and documents in English are available only to a very limited extent. Foreign investors therefore find it very difficult to practice their rights.

For most Vietnamese PLCs, the major problems occur in holding AGMs. Notices usually lack justifications for proposed resolutions and are sent out late. After the AGM, the resolutions are not disclosed promptly on the company's website and in most cases are not comprehensive. AGM minutes are rarely available; if they are, the contents are often incomplete and give limited information about the attendance of board members and top executives in the AGM. Lastly, companies do not provide dividends on time.

Figure 35 Strengths and Areas for Improvement in *Rights of Shareholders*



STRENGTHS

- Annual general meetings (AGMs) are held in easy-to-reach locations.



AREAS FOR IMPROVEMENT

- AGM notices are not comprehensive and are sent out late.
- AGM notices lack explanations and information.
- AGM resolutions are not released promptly on company and exchange websites.
- AGM minutes are unavailable or not comprehensive, with limited information about the attendance of board members and key executives.
- Dividends are not paid on time.

Part B: Equitable Treatment of Shareholders

Strengths and Areas for Improvement

The corporate governance framework requires equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress of violations of their rights, and should be protected from potential violations, mainly from related-party transactions (RPTs) and insider trading. AGM processes and procedures should provide for the equitable treatment of all shareholders.

In AGM notices, Vietnamese PLCs are good at presenting resolutions as single items and not as a bundle of several items. However, English is not widely used in the country and companies do not communicate in English with investors and other stakeholders. It is therefore very hard to ensure equitable treatment of foreign and local investors. Vietnamese firms are consequently at a disadvantage in the assessment, which is made from the standpoint of international investors and therefore requires documents in the English language.

With regard to the protection of noncontrolling shareholders, companies fail to require directors dealing in the company's shares to report those transactions within 3 business days. Companies are also weak at reviewing and approving RPTs and ensuring that they are conducted fairly. Companies generally do not have a policy to prevent conflicts of interest that would require board members to abstain from decisions that serve their private interests.

In nominations, companies are weak at providing comprehensive profiles of directors seeking election, and at identifying auditors seeking appointment or reappointment. Also, dividend policy is hardly ever explained.

Figure 36 Strengths and Areas for Improvement in *Equitable Treatment of Shareholders*



STRENGTHS

- Annual general meeting resolutions are presented as single items and not as a bundle of several items.



AREAS FOR IMPROVEMENT

- Annual general meeting notices are not translated into English and published on the same date as the version in the local language.
- Directors dealing in company shares are not required to report these dealings within 3 business days.
- Policies on the review, approval, and conduct of related-party transactions are weak.
- Companies generally have weak mechanisms for preventing conflicts of interest in board decisions. Profiles of directors seeking election are not comprehensive.
- Auditors seeking appointment or reappointment are not clearly identified.
- Dividend policy is not explained.

Part C: Role of Stakeholders in Corporate Governance

Strengths and Areas for Improvement

The corporate governance framework requires recognition of the rights of stakeholders established by law or through mutual agreements, and cooperation between companies and stakeholders in creating wealth, jobs, and financially sound and sustainable enterprises.

Performance in the category of corporate governance is among the weakest for Vietnamese PLCs. Corporate social responsibility is still a new concept to Vietnamese PLCs. Vietnamese PLCs are nonetheless good at interacting with communities through programs such as human capital building, community outreach, and economic value strengthening. However, they need to exert significant efforts to improve policies and practices for addressing customer health and safety, selecting suppliers, safeguarding creditor rights, and implementing anticorruption programs.

With respect to stakeholder protection, companies do not have specific contact details that stakeholders can use when they need to voice concerns and lodge complaints about violations of their rights. Regarding employee participation, companies lack performance-improvement mechanisms, such as employee training and development programs; programs for employee health, safety, and welfare; and a reward and compensation policy for long-term, deserving performers. Companies also have weak policies and procedures for allowing employees to voice complaints about illegal and unethical behavior, and most have no policies and procedures for protecting whistle-blowers.

Figure 37 Strengths and Areas for Improvement in *Role of Stakeholders*



STRENGTHS

- Companies generally have policies and practices for effectively interacting with communities.



AREAS FOR IMPROVEMENT

- Companies lack policies and practices for addressing customer health and safety, selecting suppliers, safeguarding creditor rights, and implementing anticorruption programs.
- Companies generally do not give specific contact details for stakeholders to use when they need to voice concerns and complaints about violations of their rights.
- Mechanisms for improving employee participation are weak.
- Companies have weak policies and procedures for allowing employees to voice complaints about illegal and unethical behavior, and generally lack whistle-blower protection policies and procedures.

Part D: Disclosure and Transparency

Strengths and Areas for Improvement

The corporate governance framework requires timely and accurate disclosure of all material issues affecting the company, including its financial situation, performance, ownership, and governance. It shows not only how transparent the company is to its shareholders, but also allows shareholders to know how committed the company is to regulations and to its own rules and policies. Unfortunately, Vietnamese PLCs score low on average in this category.

Vietnamese companies are good at disclosing the identity of major shareholders; details of subsidiaries, associates, joint ventures, and special-purpose enterprises or vehicles; and the nature and value of material RPTs. They are also good at presenting financial statements with board members or top executives attesting to their correctness and fairness.

Significant improvements need to be made in disclosure and transparency in annual reports of the company's dividend and whistle-blowing policies, biographical details of directors, training and education program for directors, attendance at board meetings, and remuneration of the chief executive officer (CEO) and board members. Companies do not present a statement of full compliance with the Code of Corporate Governance, and fail to explain cases of noncompliance. The disclosure of policies for the review and approval of major RPTs and for audit and nonaudit fees is still considerably below standard, and the use of communication media, such as analyst briefings, media briefings and press conferences, and websites, is limited. Companies also do not release financial statements on time, and generally do not provide full contact details for the officer responsible for investor relations.

Figure 38 Strengths and Areas for Improvement in *Disclosure and Transparency***STRENGTHS**

- Companies reveal the identity of major shareholders.
- Companies disclose details of subsidiaries, associates, joint ventures, and special-purpose enterprises or vehicles.
- Companies disclose financial performance indicators.
- Companies disclose the nature and value of material related-party transactions.
- Board members or top company executives affirm the correctness and fairness of financial statements.

**AREAS FOR IMPROVEMENT**

- Companies do not state the dividend policy and whistle-blower policy in their annual reports, and do not disclose the biographical details of directors, the training and education program for directors, attendance at board meetings, and the remuneration of the chief executive officer and board members.
- Companies generally do not present a statement of full compliance with the Code of Corporate Governance and do not explain cases of noncompliance.
- Companies do not disclose the policy for the review and approval of major related-party transactions.
- Disclosure of audit and nonaudit fees is very poor.
- The use of communication media, such as analyst briefings, press conferences, and media briefings, is limited.
- Financial statements are not released on time.
- Company websites have limited information regarding shareholding structure and other materials normally provided in briefings to analysts and media.
- Full contact details for the officer responsible for investor relations are not disclosed.

Part E: Responsibilities of the Board

Strengths and Areas for Improvement

The corporate governance framework provides strategic guidance to the company, and ensures effective monitoring of management by the board and the accountability of the board to the company and the shareholders. If the board does not set and monitor corporate governance practices or, worse, if it is unaware of its duty to do so, overall governance will be very poor. Vietnamese PLCs score lowest in this category.

Lack of transparency in director profiles, director activities and meetings, director appointments and functions, and director remuneration is among the most critical issues. Vietnamese PLCs are

good at keeping the size of the board within 5 to 11 members, with at least one nonexecutive director having prior work experience in the major industry of the company. However, various areas need further improvement to meet regional and international standards. Companies do not disclose clearly defined board responsibilities and board decisions. Boards of directors are deficient in performing their responsibility of setting up governance principles and codes of conduct for their companies, and of reviewing and approving the corporate vision and mission, as well as material control and risk management systems. Boards in Vietnamese PLCs are usually not independent from the management, do not have functional committees responsible for nomination and remuneration, and do not have a clear diversity policy. Board reports do not disclose the attendance of individual members at meetings. Company reports do not mention details about the orientation and training program for new and incumbent board members. Board and individual directors' annual assessments and details of their remuneration are rarely mentioned. Few companies have a separate internal audit function.

The supervisory board in Vietnamese PLCs is supposed to monitor both the board of directors and the management; however, it falls short of its designed effectiveness in monitoring and in the task of addressing corporate issues.

Figure 39 Strengths and Areas for Improvement in *Responsibilities of the Board*



STRENGTHS

- The board size is generally kept between 5 and 11 members.
- At least one nonexecutive director has prior working experience in the major industry in which the company operates.



AREAS FOR IMPROVEMENT

- Board responsibilities and board decisions are unclearly defined.
- Companies are remiss in setting up a code of ethics and a corporate governance policy.
- Directors are deficient in performing the responsibility to review and approve the corporate vision and mission.
- Boards lack independence from the management, support from functional committees, and a clear diversity policy.
- Board meeting attendance and board decision making are not disclosed in board reports.
- The orientation program for new directors and director training are often not mentioned in board reports.
- Company reports generally do not mention board appraisal and remuneration.
- Most companies have no internal audit function.
- Directors do not review material control and risk management systems.

Bonus and Penalty

The *Bonus and Penalty* area weighs heavy in the Scorecard. Even with good performance in other areas, if a company violates a standard covered in the *Penalty* area, it could lose up to 10 points. The sampled firms received an average deduction of 1 point in this category. In the most serious case, the company received a deduction of 8 points.

With their limited information disclosure, Vietnamese firms are at a disadvantage in the *Bonus* category. Bonus points come only from the early release of AGM notices and accompanying documents.

Companies are most commonly penalized for a “qualified opinion” from independent auditors, for revisions in financial reports, and for violations of rules regarding trading in company shares by the company itself.

Conclusion and Recommendations

The issuance of the updated corporate governance code in May 2012 was an encouraging development. It showed the strong commitment of regulators to improve corporate governance in the country and is expected to be a catalyst for improved corporate governance in Vietnamese PLCs. However, moving from the regulations to actual practice requires not only top-down enforcement, but also voluntary commitment by the companies, which must devote significant time and effort to the undertaking. Among the areas of enforcement focus, regulators must check the following closely:

- Preparation, announcement, and conduct of AGMs; provision of AGM documents to investors to facilitate their approval; and promptness with which resolutions are announced. AGM resolutions must be announced at an early date. Although they are not required by law to do so, PLCs should also release AGM minutes to the public to increase transparency.
- Equitable treatment of foreign and local investors. Companies must be encouraged to make investor resources available in English. This will allow Viet Nam to benefit from the integration of financial markets in the region.
- Equitable treatment of controlling and noncontrolling shareholders in RPTs. The disclosure of RPTs needs to be made mandatory, with requirements for full disclosure of information including name, relationship, value, and nature of the transaction; and mechanisms to prevent conflicts of interest.
- Anticorruption principles and creditors' right to protection, along with better programs and policies to ensure employee health and safety.
- Transparency regarding the direct and indirect shareholdings of the company and the transactions of substantial shareholders and directors in the company's shares. Transparency in this matter should be strictly enforced to avoid potential violations of shareholder rights.

- Disclosure of board member profiles. Full disclosure must be encouraged, especially regarding directorships held in other companies.
- Transparent reporting of board activities and board remuneration.
- Stricter enforcement of the timely submission of financial statements.
- Disclosure of board responsibilities and board decisions.
- Role of the supervisory board.
- Independence of the board. To facilitate compliance with the new corporate governance code and its stricter requirements for board independence, regulators should encourage the establishment of an institute that provides training in corporate governance to directors and corporate secretaries. Such an institute would create new pools of independent directors for PLCs and thereby improve independence among the PLCs.

The Scorecard results have shown that, although Vietnamese PLCs have made attempts to improve corporate governance, significant efforts are still needed to face the challenges and reap the benefits of the integration of the regional financial markets. Vietnamese PLCs must recognize the benefits of capital market integration, such as the availability of a larger pool of funds. The efforts should be voluntary and concerted, and should not proceed only from top-down regulatory enforcement. Among the various governance categories, the most important ones to focus on are *Disclosure and Transparency* and *Responsibilities of the Board*.

Vietnamese PLCs must ensure that source documents are available both in Vietnamese and in English to promote the equitable treatment of domestic and foreign investors, and to make Viet Nam more attractive in the international financial markets. Transparency is especially important in the timely release of financial statements; the disclosure of the direct and indirect shareholdings of directors and major shareholders; the release of a comprehensive annual report that discloses dividend policy and whistle-blower policy, board members' attendance at meetings and remuneration details, and RPT policy; and the independence of external auditors.

The board of directors needs to exercise stronger authority in providing strategic guidance to the company, monitoring the management, and ensuring the company's accountability to its shareholders. Specifically, the board of directors should (i) have clearly stated responsibilities and decisions, (ii) regularly review and approve the vision and mission, (iii) formulate a code of conduct and a corporate governance policy, (iv) take steps to enhance their independence, (v) increase their functional effectiveness by setting up specialized board committees, (vi) organize continuous training and education programs for new and incumbent directors, (vii) perform the annual appraisal of individual board members and the whole board, (viii) oversee risk management systems, and (ix) set up and maintain an active internal audit function.

Enhancing the corporate governance of Vietnamese PLCs demands efforts from various parties—the company itself, the regulator, the investors, and advocates. Long-term commitment, together with prompt action, is crucial to success.

Table 8 Corporate Governance: Top 30 Publicly Listed Companies – Vietnam

| No. | Publicly Listed Company Name | No. | Publicly Listed Company Name |
|-----|--|-----|---|
| 1 | Asia Commercial Bank | 16 | NBB Investment Corporation |
| 2 | Bao Viet Holdings | 17 | PetroVietnam Drilling & Well Services Corporation |
| 3 | BIDV Insurance Corporation | 18 | PetroVietnam Fertilizer & Chemicals Corporation |
| 4 | Dry Cell and Storage Battery Joint Stock Company | 19 | PetroVietnam Finance Corporation |
| 5 | FPT Corporation | 20 | PetroVietnam Insurance Holdings Company |
| 6 | Gemadept Corporation | 21 | Saigon General Service Corporation |
| 7 | Hau Giang Pharmaceutical Joint Stock Company | 22 | Saigon Securities Incorporation |
| 8 | Hoa Binh Construction & Real Estate Corporation | 23 | Saigon Thuong Tin Commercial Join Stock Bank |
| 9 | Hoang Anh Gia Lai Joint Stock Company | 24 | Tan Cang Logistics Corporation |
| 10 | Hoa Phat Group Joint Stock Company | 25 | Thanh Cong Textile Garment Investment Trading Joint Stock Company |
| 11 | Hoa Sen Group | 26 | TRAPHACO Joint Stock Company |
| 12 | Ho Chi Minh City Securities Corporation | 27 | Vietnam Dairy Products Joint Stock Company |
| 13 | Joint Stock Commercial Bank for Foreign Trade of Vietnam | 28 | Vingroup Joint Stock Company |
| 14 | Ma San Group Corporation | 29 | Vietnam Joint Stock Commercial Bank for Industry & Trade |
| 15 | Minh Phu Seafood Corporation | 30 | Vietnam Export Import Commercial Join Stock Bank |

Note: The publicly listed companies are arranged alphabetically.



4

CONCLUSION AND ADB's RECOMMENDATION

The ASEAN corporate governance initiative is a showcase of successful collaboration between capital market regulators, domestic ranking bodies, independent corporate governance experts, and development partners. During the implementation of this initiative, several key decisions and critical factors contributed to its outcome, including this report. This section reviews some of these factors and offers some recommendations to those involved.

The first critical factor in any regional initiative is a strong and effective anchor organization. Regional initiatives by their nature are consensus-building exercises. Building consensus across countries with different levels of economic and regulatory development, different types of legal architecture, and different corporate governance cultures requires participants to focus on the bigger picture of regional integration and needs a body to lead and coordinate these efforts. Some compromises may be necessary to get agreement, but the agreement should not be based on the lowest common denominator. For this initiative, the implementation plan for regional integration represents the bigger picture and the Association of Southeast Asian Nations (ASEAN) Capital Markets Forum serves as the anchor organization.

Second, the corporate governance experts engaged should not only be technical experts, but must also enjoy the confidence of the regulators. Ideally, all participating countries should be represented during the development stage. This encourages a deliberative process that considers the unique characteristics of each country's corporate governance legal architecture and culture. While there is a risk that having country representatives may result in a regional initiative that is designed with national interests in mind, this can be mitigated by identifying the regional objective of the initiative at the outset and keeping this objective as the main basis for decisions made during both the developmental and implementing stages. Where there are differences in views, an independent and internationally recognized reference point is required. International standards, such as the corporate governance principles of the Organisation for Economic Co-operation and Development, play that important role because they are recognized by the international community. The incorporation of such standards into the development of the Scorecard also increases the likelihood that international investors will accept the Scorecard results and ranking. Validation with the international corporate governance community through discussion and presentation in international events also increases the quality of the output.

During the final development stages and before the publicly listed companies (PLCs) are assessed, the private sector i.e., companies that will be the subject of the assessment, should be sufficiently engaged and the Scorecard should be adequately disclosed and distributed. Any scorecard creates expectations and, depending on the incentives for scoring well, has the potential to modify corporate governance practices both in substance and in disclosure. For the scoring and ranking to be representative of corporate governance standards in a particular country, the PLCs must be aware of the Scorecard's requirements. For this initiative, several seminars, conferences, and workshops were held in participating countries to familiarize stakeholders with the Scorecard. However, PLCs should not use the Scorecard as a compliance document or a checklist of good corporate governance practices; rather, they should always be encouraged to go beyond its requirements. The *Bonus and Penalty* section encourages this approach.

During the assessment stage, even after the experts have agreed on the content of the Scorecard and even when the questions are objective and require “yes” and “no” responses, differences of interpretation are unavoidable. To mitigate and minimize the differences, two steps are required: first, a detailed guidance note for the assessors, and second, a robust peer review process after the initial assessment. During the peer review, differences of opinion should be discussed and debated. Although decisions have to be made by the majority, they should be based on sound justification.

Third, although development partners can play a catalytic role in supporting the initial phase of an initiative, no initiative can be sustainable if it is dependent on external resources. For the initiative to be sustainable, the local authorities or stakeholders need to be able to see the value of the initiative and must be willing to take it up, including its associated costs. This is why it is important for an initiative to be output oriented in the early years, so that its value can be demonstrated. It is also crucial that the initiative is financially sustainable and that there is an effective cost recovery method.

For future implementation, four recommendations can be considered to keep the momentum of the initiative and take it to the next level. First, assessment using the Scorecard should be a continuous process. It will require several iterations before the Scorecard becomes self-sustaining. An annual or biennial event where the results of the Scorecard are distributed and publicized can be hosted in collaboration with the private sector. Second, different countries should lead the initiative by rotation. This serves two purposes. First, the initiative benefits from different leadership, which provides its own value add. Each country gets the opportunity to influence the initiative as long as the process is consultative and inclusive of the other participating countries. Second, a rotation process reduces the perception that the initiative is dominated by one country and increases the chances that the initiative will be taken to the next level.

Third, while assessment and ranking has its own value, especially given that good corporate governance practices increase shareholder value at least in the medium term, opportunities

for synergy with other regional capital market initiatives should also be explored. The interconnectedness of regional initiatives increases their sustainability, the sum being greater than the individual parts. For example, there is potential for the top-performing ASEAN corporate governance PLCs to be marketed along with the ASEAN Stars (top performing companies) during ASEAN Invest events. This would be consistent with the idea of using corporate governance to brand ASEAN as an asset class.

Finally, the ASEAN Scorecard can also be a reference point for the development of national corporate governance frameworks. The recommendations implicit in the Scorecard should filter down to the review process of corporate governance codes and guidelines. This completes the cycle, as the initiative incorporates national perspectives, is then developed into a regional ASEAN product, and ends up guiding the development of national corporate governance. While it is unrealistic to expect a one-to-one correlation between a regional initiative and national frameworks, because recommendations suitable from a regional perspective, benchmarked against international standards mainly used to attract foreign investors may not be always appropriate for countries that are still developing their corporate governance framework, the spirit should be consistent and the two processes should move in the same direction.

ASEAN Corporate Governance Scorecard

Country Reports and Assessments 2012–2013

Corporate governance principles provide guidance on how corporations should operate and can be useful to attract foreign investments. In the Association of Southeast Asian Nations (ASEAN), countries use national methodologies to assess corporate governance performance of publicly listed companies. The Asian Development Bank in partnership with the ASEAN Capital Markets Forum have jointly developed an ASEAN methodology of corporate governance assessment using a scorecard system that is based on international best practices and that encourages publicly listed companies to go beyond national legislation requirements. This inaugural report is a compilation of corporate governance assessments of publicly listed companies in six ASEAN countries using the Scorecard. The assessment is useful to improve corporate governance in the region collectively and to brand ASEAN as an asset class.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.7 billion people who live on less than \$2 a day, with 828 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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